



ALERTS

New Immigration Guidelines Apply Nationwide; U.S. Supreme Court Stays Illinois Injunction

February 24, 2020

Following a stay earlier in February of [a federal court's ruling](#) granting a nationwide injunction on the enforcement of the new Public Charge Rule regarding legal permanent residency, the U.S. Supreme Court has [allowed the government to enforce](#) the rule in Illinois, while an appeal is pending before the U.S. Court of Appeals for the Seventh Circuit.

The new rule aims to make it easier for the government to deny legal permanent residency to immigrants "likely to use public benefits." With the stay, the U.S. Department of Homeland Security (DHS) said the rule now goes into effect nationwide for all new immigration filings, including in Illinois, on Feb. 24, 2020.

As such, applicants for adjustment of status and those seeking to extend an alien's nonimmigrant stay or change an alien's nonimmigrant status are now subject to the final rule.

The new rule will require submission of the:

- New version of the Form I-129 for all extensions or changes of status involving an employer-sponsored application
- New version of the Form I-539 for all applications seeking a change or extension of status not involving employer sponsorship, including those filed by dependents
- Form I-944 with each new adjustment of status application. Each individual applicant must file this form; thus, for example, if a family of four consisting of the principal beneficiary of an I-140 and his three family members

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collectively apply, each of them must separately include the Form I-944 certifying to their receipt of public benefits.

The Form I-944 is a voluminous, 18-page form and DHS estimates its completion could take over four hours.

Concurrently, the Department of State (DOS) has also incorporated the public charge guidelines into its visa application process by updating the Foreign Affairs Manual, which establishes standard impacting consular visa issuance, and by publishing a new DS-5540 form to capture public charge details. While the DOS was to start applying the new rule beginning on Feb. 24, anecdotal reports indicate that the administration has already been applying these standards in its visa adjudications for several months.

While these expanded public charge guidelines remain controversial and the subject of ongoing litigation, they are here to stay – at least for the time being. Employers and individuals should be aware that these new guidelines will apply to all employer-sponsored categories, are likely to result in further delays in visa adjudications, and could result in the denial of visa applications due to the subjectivity of the new determination process.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, including Tejas Shah at 312-214-5619 or tejas.shah@btlaw.com, or Mercedes Badia-Tavas at 312-214-8313 or mbadiatavas@btlaw.com, or Michael Durham at 574-237-1145 or m.durham@btlaw.com, or Mayra Bruno at 312-214-4575 or mayra.bruno@btlaw.com.

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