

Mobility: immigration alert

August 2020

United States

Appellate Court lifts nationwide injunction on the Public Charge Regulations, allowing these regulations to again apply to certain immigration filings outside of the Second Circuit.

Executive summary

On 12 August 2020, the U.S. Second Circuit Court of Appeals limited the nationwide injunction on the Department of Homeland Security (DHS) Public Charge Rule to apply only to Connecticut, New York and Vermont.

Background

On 10 October 2018, the Department of Homeland Security (DHS) published a notice of proposed rule affecting people likely to need financial assistance from the government by amending the standard of inadmissibility applied in public charge determinations. Between 11 October 2019 and 14 October 2019, multiple federal district courts, including the U.S. District Court for the Southern District of New York, issued preliminary injunctions to enjoin the application of the new rule. Following this, on 27 January 2020, the U.S. Supreme Court ordered a stay of this injunction, which allowed DHS to apply the new Public Charge rule, which went into effect on 24 February 2020. On 29 July 2020, the U.S. District Court for the Southern District of New York had issued a nationwide injunction and temporary stay of the Public Charge regulations due to concerns that applicants for immigrant visas may be discouraged to seek public benefits for medical treatment in the midst of the COVID-19 pandemic.

On 12 August 2020, the U.S. Second Circuit Court of Appeals limited the nationwide injunction to apply only to Connecticut, New York and Vermont. This appellate order permits the government to again implement the Inadmissibility of Public Charge regulations outside of the Second Circuit. "Public Charge" is a long-standing ground of inadmissibility for those who cannot support themselves financially and require certain types of government assistance. The recent regulations apply additional requirements to certain nonimmigrant and immigrant filings to include those seeking admission to the US and those within the US seeking to adjust, change, or extend their immigration status.

What this means

The Appellate Court decision means that the Public Charge regulations in place before 29 July 2020 are again in effect for most of the US. However, a temporary stay remains in effect based on a separate lawsuit for those living in New York, Connecticut, and Vermont. Therefore, those individuals living outside of those three states are now again subject to the Public Charge requirements.

We will continue to monitor and review future developments. For additional information, please contact your EY Law LLP professional.



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EYG no. 005679-20GbI

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ey.com/en_ca

George Reis, Managing Partner
+1 416 943 2535
george.reis@ca.ey.com

Alex Israel, Partner
+1 416 943 2698
alex.d.israel@ca.ey.com

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Christopher Gordon, Partner
+1 416 943 2544
christopher.d.gordon@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Jonathan Leebosh, Partner
+1 604 899 3560
jonathan.e.leebosh@ca.ey.com