



**FREEDOM**

# **PRO BONO BRIEFING: PUBLIC CHARGE AND OTHER RECENT POLICY UPDATES**

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# LEARNING OBJECTIVES

- What is public charge?
- Who does it apply to?
- How to talk to clients?
- Update on other recent policy changes

# ***WHAT IS PUBLIC CHARGE***

- Prior definition: A person who is considered “likely to become primarily dependent on the government for subsistence.”
- Prior benefits taken into account:
  - Cash assistance for income maintenance
  - Institutionalization for long-term care at government expense
- Prior public charge test:
  - Forward-looking assessment: Is the person likely to rely on case or long-term care in the future?
  - Looked at the totality of circumstance

# WHO DOES PUBLIC CHARGE APPLY TO?

- Public charge assessment is made when a person:
  - Applies to enter the U.S.
  - Applies to adjust status to become a LPR
  - A LPR leaves the U.S. for more than 180 consecutive days and reenters the U.S.
- Inadmissible if likely to become a public charge
- The public charge ground of inadmissibility does NOT apply to everyone. For example, it does not apply to:
  - LPRs applying for citizenship
  - Refugees and Asylees
  - VAWA Self-petitioners
  - U or T visa applicants/holders
  - Special Immigrant Juveniles

# WHAT DOES THE NEW RULE DO?

- New public charge definition
  - A person who “receives one or more public benefit...for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).”
- Additional public benefits programs can be considered by immigration officials
- New totality of circumstances test to determine whether someone more likely than not to become a public charge

# NEW BENEFITS CONSIDERED

- From previous rule:
  - Cash assistance for income maintenance
- Added benefits:
  - Supplemental Nutrition Assistance Program (SNAP or Food Stamps)
  - Federal, State, Local, and Tribal cash assistance
  - Housing Assistance (Public Housing or Section 8 Housing Vouchers and Rental Assistance)
  - Non-emergency Medicaid
    - Exceptions: emergency medical conditions, coverage for children under 21, IDEA and school-based services, and coverage for pregnant women

# NEW TOTALITY OF CIRCUMSTANCES TEST

- Income and Financial Status:
  - Considered a negative factor: If household income under 125% of the federal poverty guideline
  - Considered a positive factor: Over 250% of the federal poverty guideline
- Age
  - Under 18 or over 61 is considered a negative factor
- Education and Skills
  - DHS will consider whether the applicant has adequate education and skills to maintain sufficient income
- Health
  - Considered a negative factor: Medical condition likely to require extensive treatment, institutionalization or interfere with ability to care for self, attend school or work
- Family Status
- Affidavit of Support
  - Will consider the likelihood the sponsor will actually provide financial support.

# IMPORTANT NOTES

- The rule is not effect yet.
  - The rule applies only to applications submitted on or after October 15, 2019.
  - The new benefits named in the rule will not be considered prior to October 15, 2019.
- Don't forget that not everyone is subject to the rule
  - As per the previous slide, many immigrants are exempt from the public charge inadmissibility ground
  - Benefits used by family members will not be counted.
- Rule allows for the posting of a public charge bond (of at least \$8,100) for applicants who might otherwise fail the public charge test.

# HOW TO TALK TO CLIENTS

- Ask questions and give information:
  - Do you or family members have green cards?
    - Remember that LPRs are not subject to the public charge rule, unless the individual plans to leave the U.S. for more than 6 months and reenter the U.S.
  - Is the green card through one of these statuses?
    - Public charge does not apply to following statuses: U.S. citizenship, green card renewal, U or T visa, VAWA self-petition, asylee or refugee status, Special Immigrant Juvenile Status, DACA renewal, TPS
  - Are you applying for a green card in the U.S. or from outside the U.S.?
    - The new rule applies for applicants in the U.S.
    - If an applicant is applying for a green from outside the U.S. you will need to the Department of State's Foreign Affairs Manual.

# EXAMPLES

- Client is pregnant and is afraid enrolling in Medicaid may effect her immigration eligibility.
  - The public charge test will not consider non-emergency Medicaid used by pregnant women up until 60 days after they give birth.
- Client was just granted asylum and is worried about applying for food stamps.
  - The public charge test does not apply to asylees.
- Client is afraid to enroll in WIC benefits.
  - While WIC is a public benefit, it is not included in the public charge test.
- Client is an LPR and planning to apply for citizenship. They use Section 8 housing vouchers.
  - The public charge test is not used when a person applies for citizenship.

# OTHER IMMIGRATION POLICY UPDATES

- Matter of L-E-A-
- Zuniga Romero v. Barr (4<sup>th</sup> Circuit Case that overturns Matter of Castro Tum)
- Expanded Expedited Removal
- Asylum ban
- EOIR reorganization
- Board of Immigration Appeals

# MATTER OF L-E-A-

- On July 29, 2019, the attorney general issued a decision, Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019)
- The decision overturned in part a 2017 Board of Immigration Appeals (BIA) decision recognizing that that members of an immediate family may constitute a particular social group.
- Like the decision in Matter of A-B-, the Attorney General's decision in Matter of L-E-A- uses very broad language about family-based particular social group while essentially holding that each claim must be analyzed case-by-case.
- Many circuit courts have already recognized family-based particular social groups.

# APPELLATE TREATMENT OF AG OPINIONS

- Fourth Circuit (in *Romero v. Barr*, No. 18-1850) invalidated *Matter of Castro Tum*, in which AG said that IJs lack the authority to administratively close cases
- Fifth Circuit (in *Gonzales-Veliz v. Barr*, No. 18-60174) upheld *Matter of A-B-* as it applies to domestic-violence survivors

# EXPANDED EXPEDITED REMOVAL

- On July 23, 2019, DHS published a notice in the Federal Register to exercise the full statutory authority of expedited removal.
- On September 1, 2019, ICE began implementing the expansion of expedited removal.
- ICE plans to “primarily” apply the expansion to people either (i) identified as part of the so-called “Criminal Alien Program,” which largely focuses on those in prison or jail as a result of pending criminal charges or convictions, or (ii) arrested during workplace raids. But this does *not*, of course, mean that it won’t apply the expansion to anyone else.
- ICE agents should not apply expedited removal to those currently in immigration proceedings.

# THIRD COUNTRY ASYLUM BAN

- With very narrow exceptions, prevents all non-Mexicans who arrive in U.S. via the southern border from applying for asylum
- Expressly applies to UACs
- In practical terms, means asylum seekers must meet more onerous standards for withholding/CAT relief
- Three pending lawsuits, but ban is in place pending outcome of those lawsuits because of stay granted by Supreme Court

# REGULATION REGARDING BIA PROCESSES

- On July 2, 2019, DOJ published a final regulation addressing the adjudication of appeals at the Board of Immigration Appeals (BIA)
- Expands Board's ability to use "affirmance without opinion" decisions. These decisions do not provide the Board's reasoning on affirming the immigration judge's decision, just simply say they are affirming.
- Allows the attorney general or his designee to designate opinions as precedential.

# EOIR REORGANIZATION

- On August 26, 2019, DOJ published an interim final rule to reorganize the Executive Office for Immigration Review.
- The rule:
  - Establishes aggressive case review goals for the Board of Immigration Appeals.
  - Changes the title of Board Members at the Board of Immigration Appeals to “appellate immigration judges”
  - Allows the Director to review and decide cases pending longer than 90 days with the BIA (the Board Chair and/or Vice Chair will have 14 days to adjudicate prior to referral to the Director)
  - Moves the Office of Legal Assistance Programs from the Director’s office to the Office of Policy
  - Formalizes the establishment of the Office of Policy
  - Limits the role of the Office of General Counsel



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**Questions?**