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Public Charge Rule Still in Effect

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President Biden issued an Executive Order ("EO") on Tuesday, February 2, 2021 ordering an immediate review of the public charge rule. On that basis, the EO **does not revoke the public charge rule** or change the current requirements of filing Form I-944, Declaration of Self-Sufficiency ("Form I-944"), with Form I-485 Adjustment of Status applications. Instead, the EO requires the Secretary of State, the Attorney General, the Secretary of Homeland Security, and the heads of other relevant agencies to review all agency actions related to the implementation of the public charge ground of inadmissibility under INS sec.212(a)(4) and the related ground of deportability in INS sec.237(a)(5) by April 3, 2021.

Further, although the Ninth Circuit upheld preliminary injunctions against the Department of Homeland Security's ("DHS") public charge rule on December 2, 2020, the preliminary injunctions have **not taken effect** against the DHS public charge rule because the Ninth Circuit has not issued a mandate.

More specifically, on January 21, 2021, the Ninth Circuit granted the government's motion to stay the issuance of the mandate pending the United States Supreme Court's decision to hear the matter.

This means, for now, that Form I-944 remains a mandatory component for all Adjustment of Status filings in all jurisdictions in the United States.

Pending a final determination of the federal agencies mentioned above, it is possible that the government may choose to withdraw its petitions for the Supreme Court to hear the matter or the Supreme Court may refuse to hear the case. In each of these scenarios, the Ninth Circuit mandates would likely be issued and the preliminary injunctions preventing the implementation of the public charge rule would once again become effective. In such scenario, the USCIS could no longer require Applicants for Adjustment of Status to file Form I-944 and its supporting documentation.

It is important to note that the rescission of the public charge rule cannot be accomplished by Executive Order. Instead, the rescission must go through the regulatory requirements of the Administrative Procedure Act ("APA"), including a notice and comment period. As such, it is possible that the courts could resolve this issue before the Biden Administration could rescind the regulation via the APA, review and respond to public comments, and then publish a final rule. This regulatory process, without a final court order, could take several months.

Absent a final court order or an effective date for a final rule repealing the regulation, applicants for Adjustment of Status must continue to file their applications with Form I-944.

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