

## Court Limits Use of Form I-944

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On Aug. 12, 2020, the Second Circuit Court of Appeals limited a nationwide injunction issued earlier by a lower court in *Make the Road New York, et al. v. Cuccinelli, et al.*, where the U.S. District Court for the Southern District of New York (SDNY) issued a nation-wide injunction preventing the Department of Homeland Security (DHS) from continuing to require compliance with the public charge rule.

In its Aug. 12, 2020 decision, the U.S. Court of Appeals for the Second Circuit held that it was only appropriate to enjoin USCIS from requiring compliance with the public charge rule in the States of Connecticut, New York, and Vermont, thus exempting residents of these states from completing the Form I-944, Declaration of Self Sufficiency and providing the requisite supplemental financial evidence. The Second Circuit Court of Appeals held that DHS may require compliance with its public charge rule in all other U.S. states and the District of Columbia pending further proceedings on the merits. USCIS has not yet issued guidance on how it will implement these differing public charge standards.

By way of background, the Inadmissibility on Public Charge Grounds public rule went into effect on Feb. 24, 2020, and substantially increased the applicant's burden of proof in substantiating that they are not likely to become a public charge pursuant to INA Section 212(a)(4). To prove self-sufficiency, various factors are considered, such as age, health, family status, assets, resources, financial status, and education/skill level. For consular applications, the Department of State requires Form DS-5540, Public Charge Questionnaire, to collect information from applicants. For adjustment of status applications, USCIS requires Form I-944, Declaration of Self Sufficiency.

As long as the July 29, 2020, SDNY injunction is in effect, USCIS will apply the 1999 public charge guidance in place prior to the Feb. 24, 2020 implementation of the current Rule, to the adjudication of any application for adjustment of status on or after July 29, 2020. Additionally, USCIS will adjudicate any application or petition for [extension of nonimmigrant stay](#) or change of nonimmigrant status on or after July 29, 2020, consistent with regulations in place before the latest Public Charge Rule was implemented, meaning USCIS will not apply the public benefit condition.

Subsequently, on Aug. 7, 2020, DOS provided updated guidance stating that it is complying with the nationwide injunction and is in the process of training consular officers on how to navigate these changes. In the interim, visa applications that appear to be ineligible under INA 212(a)(4) will be refused for administrative processing to allow for consultation with the DOS, including legal review to

ensure compliance with applicable court orders. As such, visa applicants are not required to complete, nor should they present the DS-5540, Public Charge Questionnaire at the consulate.

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