



# Fact Sheet

October 20, 2009

## Public Charge

### **Introduction**

Public charge has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An individual who is likely at any time to become a public charge is inadmissible to the United States and ineligible to become a legal permanent resident. However, receiving public benefits does not automatically make an individual a public charge. This fact sheet seeks to inform non-citizens about public charge determinations and help them to make informed choices about whether to apply for certain public benefits.

### **Background**

Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (green card) is inadmissible if the individual, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge." If an individual is inadmissible, admission to the United States or adjustment of status is not granted.

Immigration and welfare laws have generated some concern about whether a non-citizen may face adverse immigration consequences for having received Federal, state, or local public benefits. Some non-citizens and their families are eligible for public benefits – including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs – without being found to be a public charge.

### **Definition of Public Charge**

For purposes of determining inadmissibility, agency guidance has, since 1999, defined "public charge" to mean an individual who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense." See "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 FR 28689 (May 26, 1999). In determining whether an alien meets this definition for public charge inadmissibility, a number of factors must be considered, including age, health, family status, assets, resources, financial status, education, and skills. No single factor - other than the lack of an affidavit of support, if required - will determine whether an individual is a public charge.

### **Benefits Subject to Public Charge Consideration**

The agency guidance specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called “General Assistance” programs. Acceptance of these forms of public cash assistance could make a non-citizen inadmissible as a public charge, if all other criteria are met. However, the mere receipt of these benefits does not automatically make an individual inadmissible, ineligible to adjust status to lawful permanent resident, or deportable on public charge grounds. *See* “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689 (May 26, 1999). Each determination is made on a case-by-case basis in the context of the totality of the circumstances.

In addition, public assistance, including Medicaid, that is used to support aliens who reside in an institution for long-term care – such as a nursing home or mental health institution – may also be considered as part of the public charge analysis of the totality of the circumstances. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

### **Benefits Not Subject to Public Charge Consideration**

Under the agency guidance, non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases, use of health clinics, short-term rehabilitation services, prenatal care, and emergency medical services) other than support for long-term institutional care
- Children's Health Insurance Program (CHIP)
- Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Program, and other supplementary and emergency food assistance programs
- Housing benefits
- Child care services
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption assistance
- Educational assistance (such as attending public school), including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- Job training programs
- In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter)
- Non-cash benefits under TANF such as subsidized child care or transit subsidies
- Cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits, among other forms of earned benefits, do not support a public charge determination
- Unemployment compensation is also not considered for public charge purposes

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF. Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.



U.S. Citizenship  
and Immigration  
Services

February 9, 2010

Attention: Low-Income Immigrants  
Subject: **Food Stamps Will Not Affect** Potential Applicants for USCIS Benefits

Dear Customers:

The U.S. Government wants to ensure that you receive food assistance if you are eligible under the Food Stamp Program. This nutrition program of the United States Department of Agriculture is meant to assure the health and well-being of you and your family.

Many immigrants have fears or misunderstanding about how services like Food Stamps may affect their immigration status.

As a District Director of U.S. Citizenship and Immigration Services (USCIS), which is formerly known as INS, I want to assure you that applying for and receiving food stamps will have no impact on your application to become, or your status as, a permanent resident.

When you are applying to become a permanent resident, you are not considered a "public charge" if you are using food programs, such as Food Stamps, WIC and school meals, health care benefits or other programs that do not give cash.

USCIS officers will not ask you if you receive non-cash benefits as those listed above. The only time USCIS officers can ask about an immigrant's use of food stamps is when the interviewing officer suspects that benefits were used illegally or acquired in a fraudulent manner.

We want to encourage you to access Food Stamps and assistance programs for which you may be eligible without fear of their affect on your immigration status.

Sincerely,

A handwritten signature in cursive script that reads "Jane E. Arellano".

Jane E. Arellano  
District Director  
District 23



U.S. Citizenship  
and Immigration  
Services

May 17, 2010

Atención: Inmigrantes de Bajos Ingresos  
Tema: Food Stamps (Estampillas de Alimentos) No Afectaran Su Estado Migratorio

Estimado Aplicante:

El Gobierno De los Estados Unidos quiere asegurar que Ud. recibe la asistencia de comida si es elegible bajo el programa de Food Stamps (Estampillas de Alimentos). Este programa de nutrición del Departamento de Agricultura del Estados Unidos es para asegurar la salud y el bienestar de Ud. y su familia.

Muchos inmigrantes tienen miedo de aplicar para el programa porque no saben que si aplican por los servicios como Food Stamps (Estampillas de Alimentos), esto no afectara su estado de inmigración.

Como Directora del Distrito de Servicios de Ciudadanía y Inmigración de los Estados Unidos (el USCIS- anteriormente conocido como el INS), quiero asegurarle que si usted aplica para o recibe Food Stamps (Estampillas de Alimentos) esto no va afectar su:

- ❖ aplicación para hacerse residente permanente de los Estados Unidos.
- ❖ aplicación para hacerse ciudadano.

Agentes del USCIS no le preguntaran si usted recibe beneficios de programas como Food Stamps (Estampillas de Alimentos), WIC, Comidas Escolares, Beneficios de Salud u otros programas en los cuales usted no recibe asistencia monetaria. (La única vez que el USCIS puede preguntar a un inmigrante sobre si obtiene Food Stamps (Estampillas de Alimentos) es cuando el oficial sospecha que los beneficios han sido utilizados o adquiridos ilegalmente).

Cuando usted esta aplicando para hacerse residente permanente, usted no es considerado un "cargo publico" para el estado si usted usa estos programas que no ofrecen dinero.

Queremos animarlos a que tome ventaja de Food Stamps (Estampillas de Alimentos) u otros programas de asistencia para los cuales usted pudiera ser elegible sin tener miedo que esto le vaya afectar su estado migratorio.

Sinceramente,

A handwritten signature in black ink that reads "Jane E. Arellano".

Jane E. Arellano  
District Director  
USCIS-District 23