

# THE LEGAL LANDSCAPE: WHAT THE LATINO COMMUNITY NEEDS TO KNOW

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porterwright

# AGENDA

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- Public charge rule
- USCIS operations during COVID-19 pandemic
- Deferred Action for Childhood Arrivals (DACA)



# PUBLIC CHARGE RULE

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February 24, 2020 - Inadmissibility on Public Charge Grounds final rule implemented.

- Changes the definitions for public charge and public benefits.
- Changes the standard that DHS uses when determining whether an individual is likely to become a “public charge” at any time in the future and is therefore inadmissible and ineligible for admission or adjustment of status.

# INADMISSIBILITY

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- Likely at any time to become a public charge.
- Factors to consider
  - Age,
  - Health,
  - Family status,
  - Assets, resources, and financial status; and
  - Education and skills.

# INDIVIDUALS SUBJECT TO PUBLIC CHARGE RULE

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- Immigrant or nonimmigrant visas abroad;
- Admission to the United States on immigrant or nonimmigrant visas; and
- Adjustment of their status to that of a lawful permanent resident from within the United States.

# INDIVIDUALS EXEMPT FROM THE PUBLIC CHARGE RULE

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- Refugees and asylees.
- People with a U Visa, T Visa, VAWA, or SIJS.
- DACA and TPS applicants.
- The majority of permanent residents.
- U.S. Citizens.

# AGE

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## Positive Factors:

- Age between 18 and 61.

## Negative Factors:

- Age 17 and younger.
- Age 62 and older.



# HEALTH

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## Positive Factors:

- No diagnosed medical issues.

## Negative Factors:

- Class A or Class B medical condition significant enough to interfere with the applicant's ability to provide and care for self, to attend school, or to work, or that is likely to require extensive medical treatment or institutionalization in the future.

# FAMILY STATUS

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## Positive Factors:

- Support self and household members at or above 125% of the FPG (100% for active duty military, other than active duty for training, in the U.S. armed forces) for the household size.

## Negative Factors:

- Not able to support self and household members at or above 125% of the FPG (100% for active duty military, other than active duty for training, in the U.S. armed forces) for the household size.

# ASSETS, RESOURCES, AND FINANCIAL STATUS

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## Positive Factors:

- Current employment.
- Total household gross income at or above 125% of the FPG (100% for those on active duty, other than active duty for training, in the U.S. armed forces).
- Financial resources that would make the applicant ineligible to obtain means-tested public benefits.
- Total household assets and resources in the applicable equivalent amount.
- Good, very good, or exceptional credit score.
- Health insurance, not otherwise considered a public benefit, or sufficient income, assets, or resources to pay for reasonably foreseeable medical costs.

# ASSETS, RESOURCES, AND FINANCIAL STATUS

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## Heavily Weighted Positive Factors:

- Total household income, assets, or resources, and support of at least 250% of the FPG.
- Private health insurance appropriate for the expected period of admission (not including health insurance for which the alien receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act, as amended).

# ASSETS, RESOURCES, AND FINANCIAL STATUS

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## Negative Factors:

- No or low income or applicable equivalent assets.
- Request, certification of, or receipt of public benefits in the United States as defined.
- Any bankruptcy filings within the last 2 years.
- Request or receipt of a fee waiver for immigration benefits.
- Poor credit score.
- No private health insurance or sufficient income, assets, or resources to pay for reasonably foreseeable medical costs.

# ASSETS, RESOURCES, AND FINANCIAL STATUS

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## Heavily Weighted Negative Factors:

- Receipt, certification of, or approval of public benefits for more than 12 months in any 36-month period starting before the application for adjustment of status, (calculated no earlier than February 24, 2020).
- Medical condition and is uninsured and either lacks the prospect of obtaining private health insurance or lacks the financial resources to pay for reasonably foreseeable medical costs related to such medical condition.

## PUBLIC BENEFITS CONSIDERED

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- Any federal, state, local or tribal cash assistance for income maintenance.
  - Supplemental Security Income
  - Temporary Assistance for Needy Families
  - Federal, State, local, or tribal cash benefit programs for income maintenance (often called General Assistance in the state context, but which may exist under other names)
  - Supplemental Nutrition Assistance Program (formerly called Food Stamps).
- Section 8 Housing Assistance under the Housing Choice Voucher Program.
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation).
- Public Housing.
- Most forms of federally funded Medicaid (with certain exclusions).

# PUBLIC BENEFITS NOT CONSIDERED

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- While enlisted in the U.S. armed forces or is serving in active duty or in any of the Ready Reserve components of the U.S. armed forces.
- Medicaid exceptions.
  - Emergency Medicaid
  - IDEA benefits
  - School-based services
  - Benefits for those under 21 or women during pregnancy.



# **PUBLIC BENEFITS NOT CONSIDERED CONT.**

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- Received on behalf of another as a legal guardian or under power of attorney for such a person.
- Receipt of a public benefit by one or more members of the applicant's household to the applicant, unless the applicant is also a listed beneficiary of the public benefit.

# PUBLIC BENEFITS NOT CONSIDERED CONT.

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ANY benefits not on the included list will not be applied toward the public charge test. Examples include:

- Disaster relief
- Emergency medical assistance
- Entirely state, local or tribal programs (other than cash assistance)
- Benefits received by immigrant's family members
- CHIP
- Special Supplemental Nutrition for Women Infants and Children (WIC)
- School Breakfast and Lunch
- Energy Assistance (LIHEAP)
- Transportation vouchers or non cash transportation services
- Non-cash TANF benefits
- Tax credits, including the Earned Income Tax Credit and Child Tax Credit
- Advance premium tax credits under the Affordable Care Act
- Pell grants and student Loans.

# EDUCATION AND SKILLS

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## Positive Factors:

- Attend elementary, middle, or HS
- High School Diploma or GED
- Higher education
- Skills and certifications relevant to employment
- Basic English proficiency
- Primary Caregiver
- Other language skills in addition to English.

## Heavily Weighted Positive Factors:

- The applicant is authorized to work and is currently employed in a legal industry with an annual income, excluding any income from illegal activities, of at least 250% of the FPG for the applicant's household size.

# EDUCATION AND SKILLS

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## Negative Factors:

- No high school diploma or GED or equivalent
- No work experience
- No occupational skills
- Limited to no English language proficiency.

## Heavily Weighted Negative Factors:

- The applicant is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment.

# PROSPECTIVE IMMIGRATION STATUS AND EXPECTED PERIOD OF ADMISSION

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## Positive Factors:

- The applicant provides evidence of ineligibility for public benefits based on immigration status or expected period of stay.

## Negative Factors:

- Evidence that the applicant will be in the US for a long or indefinite period (such as when seeking LPR status) that in conjunction with the applicant's insufficient income, assets, and resources may make the applicant more likely than not to become a public charge and more likely than not to be eligible for public benefits at any time in the future.

## HEAVILY WEIGHTED NEGATIVE FACTORS

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- No current employment, recent employment history, or a reasonable prospect of future employment;
- Public benefit receipt at the threshold;
- Medical condition and is uninsured and either lacks prospect of obtaining private health insurance or lacks the financial resources to pay for foreseeable medical costs related to such medical condition; or
- The applicant was previously found inadmissible or deportable based on public charge ground by an Immigration Judge or the Board of Immigration Appeals.

## HEAVILY WEIGHTED POSITIVE FACTORS

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- No current employment, recent employment history, or a reasonable prospect of future employment;
- Public benefit receipt at the threshold;
- Medical condition and is uninsured and either lacks prospect of obtaining private health insurance or lacks the financial resources to pay for foreseeable medical costs related to such medical condition; or
- The applicant was previously found inadmissible or deportable based on public charge ground by an Immigration Judge or the Board of Immigration Appeals.

# CHANGE OR EXTENSION OF NONIMMIGRANT STATUS

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Not received since obtaining the nonimmigrant status he or she seeks to extend or from which he or she seeks to change one or more public benefits 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).





# USCIS OPERATIONS DURING COVID-19 PANDEMIC

# USCIS FIELD OFFICES CLOSED

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March 18, 2020 – USCIS suspended all in-person services.

- Limited emergency in-person services.
- Adjudications not requiring interviews and in-person services continued.

# USCIS FIELD OFFICES TO REOPEN

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June 4, 2020 – some USCIS offices expected to reopen and resume non-emergency services.

- Reduce the number of appointments and interviews to ensure social distancing.
- Appointment notices will contain information on safety precautions.

# GUIDELINES FOR ENTERING USCIS FACILITIES

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- Visitors may not enter a USCIS facility if they:
  - Have any symptoms of COVID-19, including cough, fever, or difficulty breathing;
  - Have been in close contact with anyone known or suspected to have COVID-19 in the last 14 days; or
  - Have been individually directed to self-quarantine or self-isolate by a health care provider or public health official within the last 14 days.
- Visitors may not enter the facility more than 15 minutes prior to their appointment (30 minutes for naturalization ceremonies).
- Hand sanitizer will be provided for visitors at entry points.
- Members of the public must wear facial coverings that cover both the mouth and nose when entering facilities. Visitors may be directed to briefly remove their face covering to confirm identity or take their photograph. There will be markings and physical barriers in the facility; visitors should pay close attention to these signs to ensure they follow social distancing guidelines.
- Individuals are encouraged to bring their own black or blue ink pens.



# DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

# DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

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Created June 2012 by the Secretary of Homeland Security.

Exercise of Prosecutorial Discretion.

Defer immigration action for two years, subject to renewal.

# DACA CRITERIA

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- Come to the US before age of 16,
- Continuously resided in the US for the past five years,
- Be enrolled in school or graduated from high school,
- Have not been convicted of a felony, and
- Not above the age of thirty.

# CHALLENGES TO DACA

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September 2017 DACA is rescinded.

January 2018 Federal District Court blocks the rescission. DACA recipients can file renewals but new applications not allowed.

November 2019 US Supreme Court hears oral arguments.

Decision must be issued before June 30, 2020.



# QUESTIONS & ANSWERS



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