The U.S. Public Ground of Inadmissibility – Should it Concern You?

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Pursuant to Immigration and Nationality Act (a)(4), the U.S. can deny admission to any foreign national on the basis that they are likely to become a public charge. This means the individual is likely to require assistance for basic sustenance including food and shelter. This ground of inadmissibility is rarely used against visitors to the U.S., but it requires significant documentary submissions for an immigrant to overcome.

Concern about those who might become a "public charge" is nothing new. The concept has been part of immigration law in the U.S. since at least 1882, but didn't come to be formally defined until May 1999. At this time, guidance was published by the U.S. government defining a "public charge" as someone who is "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." These include things such as Supplemental Security Income (SSI); Temporary Assistance for Needy Families (TANF, commonly known as "welfare"); and state and local cash assistance (sometimes called "general assistance"). Importantly, many health care programs—including Medicaid and COVID-19 care—as well as certain housing, food programs, and many

other vital services are safe to use. Only those deemed likely to be primarily dependent on cash aid for income maintenance or long-term care at the government's expense could cause inadmissibility for intending immigrants based on the "public charge" ground of inadmissibility.

Immigrants are those seeking to reside in the U.S. permanently. They are usually sponsored by a close family member who is a permanent resident or U.S. citizen, or by an employer, whereby employers must demonstrate an ability to pay. If an immigrant is sponsored by a family member, that relative must be over 18 and must have sufficient income and/or assets to meet 125% of the poverty level for the household size including the immigrant. If the relative cannot meet these standards, another sponsor must be willing to be a sponsor and must meet the requirements. This liability taken on is joint and severable, and sponsors have been sued by the U.S. government to pay back what welfare payment the immigrant received. This is why is it so important for sponsors to understand their obligations going into a sponsorship—regardless of any assurances of intent to support themselves by their intending immigrant relative. If that sponsored relative falls on hard times, the ability to pay the obligation could have significant impacts on the sponsor's life and finances as well.

Sponsors can often meet the ability-to-pay requirements through employment income. However, this is made more challenging if the sponsor is self-employed. Because a self-employed sponsor does not receive a W-2 from an employer, or a letter reporting on past, current, and future employment, government adjudications often reject these sponsors. Any set of documents outside of the most common employee compensation reports are viewed as inadequate. The securing of a joint sponsor usually ensues.

The requirements placed on a sponsor can be a determent. It is also important to understand how the obligation terminates. There are four things that will end the sponsorship: the foreign national becomes a citizen; the foreign national accrues 40 quarters towards social security (after 10 years of work); the foreign national abandons Lawful Permanent Residence by moving abroad; or the foreign national dies. It is important to note that if a U.S citizen sponsor divorces the foreign national, the obligation still continues.

While many U.S. citizens may never need to be attentive to the sponsorship obligations related to a public charge, the more migrants admitted to the U.S., the more likely it is that they will need sponsorship.

For any questions related to the public charge ground of inadmissibility, sponsorship, or other aspects of U.S. immigration law, conferring with competent immigration counsel is recommended. The Lippes Mathias LLP immigration team is ready to assist.

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