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Immigration

Immediate Change in Public Charge Rules

Legal Update
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By Immigration Group

As you may have already heard, a recent change in immigration law will affect both you and your employees, along with how we prepare applications and petitions for your review. We wanted to take a moment to explain these changes to you.

“Likelihood to become a public charge” has always been part of U.S. immigration law. Last year the Trump administration published a new regulation that will expand the way the United States Citizenship and Immigration Services (USCIS) investigates financial solvency of green card and visa applicants, including those applying for employment-based visas such as H-1B’s.

That rule was put on hold until recently, when the U.S. Supreme Court allowed it to go forward. The new regulation took effect on February 24, 2020, nationwide.

USCIS has now published new versions of various forms that contain questions related to an employee’s receipt of public benefits, credit score, prior bankruptcies, etc. One of those forms is the I-129, the petition used to file for H1B’s, O-1’s, TN’s and other non-immigrant work visas. The I-129 must be signed by the employer and will now require that the company attest to the truthfulness of information supplied by the individual employee or prospective employee about his or her financial situation.

These changes in the law may create some concerns regarding employee privacy, compliance with employment laws and potential conflicts of interest. For example, we as attorneys must collect this information from the individual and then include it in a petition for you to review and sign. In addition, it may be a violation of employment law for an employer to ask an employee or prospective employee these kinds of personal financial questions.

The good news is that in most situations your employees are not likely to be impacted by these new rules in any negative way because they all earn sufficient income, have health insurance, speak English, and have the education and skills to remain gainfully employed into the future. Nevertheless, we must be responsive to the legal changes and collect all required and relevant information to provide adequate legal representation to both employers and employees.

For now, we propose the following practice:

Fredrikson & Byron will send the beneficiary of each petition a questionnaire to complete on the public charge questions and will have a spot for him or her to attest to the truthfulness of the answers. With this information, we will complete the requisite questions on the forms before sending them to you for signature. This will insulate you from having to ask the questions directly of your employees, and it will give us both peace of mind that the answers are accurate. The I-539 filed by the family members of your employees (H4's, L2's, TD's, O3's) has also been changed dramatically, but this application is signed by the individual and not the employer.

In addition to the changes in the I-129, USCIS created a new Form I-944 which is to be filed with all Adjustment of Status applications (final stage in the permanent residence process). The new form is even more intrusive than the questions added to the I-129, but that form will be signed by the individual applicant.

As always, we are happy to answer any questions you might have and will continue to update you as this issue unfolds. Contact us at 612.492.7648 or immigration@fredlaw.com.