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How Receiving Public Benefits During COVID-19 Can Affect Your Immigration Status and Applications

COVID-19 has changed life as we know it. While everybody's primary focus is and should be staying safe and healthy, it is impossible not to worry about other problems that are arising with layoffs, furloughs, and other changes to the work environment. How these changes affect your immigration status or future immigration applications may not be top of your thoughts, but they are important to keep in mind. Below is a brief summary of some pertinent questions about the effects of layoffs, working from home, and receiving unemployment benefits, PPP, or other government subsidies.

H-1B Work Visas and Other Nonimmigrant Visas

Many people are in the United States on a nonimmigrant visa. A nonimmigrant visa is a temporary visa that allows you to come to the United States for tourism, to work, or to go to school. For all nonimmigrant applications, the applicant has to show that they are admissible and that they are not currently nor will likely be public charges in the near future. See the Lawful Permanent Residence section for more information about what accepting public benefits means relative to the public charge analysis.

The most common of the nonimmigrant visa types is the H-1B work visa. People in the United States on an H-1B visa face a myriad of issues as do their employers. One of the key issues is whether employees are allowed to transition to working from home. 20 C.F.R. §655.732(a) provides that H-1B workers must be provided with working conditions on the same basis as U.S. workers, thus if the U.S workers are allowed to work from home, then an H-1B worker must be allowed to work from home. If a company furloughs an H-1B employee, fires them, or puts them on unpaid leave, then he or she will risk disruption of their status. According to H-1B petition guidelines, if an employer terminates you or furloughs you as a result of the pandemic, your employer must either continue to pay your wages, or pay for your return to your last country of residence until the job can be reinstated. Once you are no longer working for your company, you have 60 days to leave the country or find a new job and petition to change your status. What is unclear is what happens after the 60-day period expires as there are very few flights out of the country. You can find a more detailed analysis of these issues in the post titled "H-1B questions for employers and employees during COVID-19".

If you are on a visa that is not tied to employment, such as the spouse of an H-1B visa holder or the spouse of an E-2 visa holder, then you may be able to receive unemployment benefits without affecting your status.

Lawful Permanent Residence (Green Card) Applications

Green Card applications can come in a variety of forms: family based, employment based, or following an asylum petition. Before a beneficiary can obtain lawful permanent residence in the United States, they must provide information proving that they are not currently and not likely in the future to become a "public charge" (not applicable for refugees or asylees).

Under the public charge rule, a person is a public charge if he or she has received one or more public benefits for more than 12 months within any 36-month period. The government construes this to mean that if you received two benefits in one month, it is considered to be two months out of the 36 period. The benefits that the government considers includes:

- supplemental security income;
- temporary assistance for needy families;
- federal, state, local or tribal cash benefit programs;
- food stamps;
- section 8 housing assistance;
- section 8 rental assistance;
- public housing;
- federally funded Medicaid (with certain exclusions).

Emergency medical assistance, disaster relief, and government subsidized student and mortgage loans do not count as benefits under this rule. Further, the government looks at several factors together including age, health, family status, assets and resources, education, and affidavits of support. On the USCIS website, the government has placed a message encouraging everybody to seek medical treatment and preventive services if they are suffering from symptoms, and that such treatment or preventive services will not negatively affect any future public charge analysis. The message also states that if a person is prevented from working and must rely on public benefits during the COVID-19 outbreak and recovery phase, he or she can provide an explanation and relevant supporting documentation with their application. USCIS will take all evidence into consideration in the totality of the person's circumstances.

U.S. Citizenship Applications

The final goal for many people in the immigration process is to become a United States Citizen. U.S Citizenship offers a degree of certainty and finality that is not available for any other immigration status, and confers a degree of pride as a member of the country where many of us have lived and worked for so long. The U.S. Citizenship application process is known as the naturalization process. Unlike many immigration applications, the U.S Citizenship application does not require the applicant to show that he or she is "admissible". Instead, you are required to show that you meet certain eligibility requirements set forth by the Government. The requirement that you are not, nor likely to become a public charge, is one that affects admissibility and is not a requirement for U.S. Citizenship. Showing that you are financially secure is not part of your Citizenship application, thus receiving public benefits does not negate your eligibility.

One requirement for U.S Citizenship is showing good moral character. There are plenty of questions on the Citizenship application form that seek information about your moral character. Receiving public benefits, however, is not a factor for your moral character unless you obtained the benefits fraudulently. It goes without saying that any fraudulent action will have a major impact on any future immigration application. Ultimately, it is good to know that if you need to apply for government benefits or loans during this global pandemic, it should not affect your future Citizenship Application.

For any questions or concerns about specific situations, please feel free to contact **Adam Kanji** at akanji@mdmc-law.com.

Offices

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