



Decision Memorandum

TO: The Honorable Paul Ray
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: The Honorable Karen S. Evans
Chief Information Officer
Department of Homeland Security

FROM: William S. McElhaney WILLIAM S
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Date: 2020.08.06 16:47:49 -0400'

SUBJECT: Request for Emergency Approval of an Information Collection Request pursuant to 44 U.S.C. 3507(j)(1)(B) and 5 CFR 1320.13

Purpose: USCIS is requesting emergency approval of this collection of information under 5 CFR 1320.13.

Background: On August 14, 2019, DHS published the Inadmissibility on Public Charge Grounds, Final Rule (84 FR 41292, Aug. 14, 2019, final rule; as amended by 84 FR 52357, Oct. 2, 2019, final rule correction), the “Public Charge Final Rule”. On February 24, 2020, after a number of nationwide injunctions and stays of those injunctions, DHS implemented the Public Charge Final Rule, including information collection instruments approved by the Office of Information and Regulatory Affairs in connection with that rule.

Discussion: On Wednesday, July 29, 2020, DHS was enjoined by the U.S. District Court for the Southern District of New York from enforcing, applying, implementing, or treating as effective the Public Charge Final Rule, which was implemented on February 24, 2020. USCIS has been advised by the U.S. Department of Justice that the nationwide injunction covers the use of the information collection instruments approved with the Public Charge Final Rule - see table on the next page. In light of the injunction, and instead of applying the Public Charge Final Rule,

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USCIS will need to use the 1999 Interim Field Guidance on Deportability and Inadmissibility on Public Charge grounds to make public charge inadmissibility determinations, together with information collection instruments in place before the Public Charge Final Rule was implemented.

Pursuant to 44 U.S.C. 3507(j)(1)(B) and 5 CFR 1320.13, DHS is requesting that the Director approve this information collection request which includes the impacted information collection instruments without the information collection elements instituted pursuant to the Public Charge Final Rule. USCIS certifies that the requirements of 5 CFR 1320.13(a)(1) are met and that:

- The subject collection of information is needed immediately and is essential to the mission of the agency; and
- The agency cannot reasonably comply with the normal collection procedures because public harm is reasonably likely to result if normal clearance procedures are followed.

USCIS greatly appreciates the timely consideration of this request.

The following list are the forms impacted:

| <u>OMB Control Number</u> | <u>Form Number</u> |
|---------------------------|-----------------------------------|
| 1615-0023 | I-485 |
| 1615-0009 | I-129 |
| 1615-0111 | I-129CW |
| 1615-0003 | I-539 and I-539A |
| 1615-0075 | I-864, I-864A, I-864EZ and I-864W |