



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: 2020.09.02 10:35:05 -04'00'

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: In the fall of 2019, following the filing of challenges to the public charge rule in several federal district courts around the nation, and the issuance of multiple preliminary injunction orders, both nationwide and limited in scope, the government appealed those orders to the U.S. Circuit Courts of Appeals for Second, Fourth, Seventh, and Ninth Circuits. The Ninth Circuit and Fourth Circuit stayed the injunctions issued within their jurisdictions. The Second and Seventh Circuits declined to issue stays, and further appeal was necessary. On January 27,

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

Page 2

2020 the U.S. Supreme Court issued a stay regarding the injunctions issued within the Second Circuit. On February 21, 2020, the U.S. Supreme Court issued a stay regarding the injunction issued within the Seventh Circuit. At that time, there were no injunctions constraining DHS from implementing the public charge rule and the public charge rule was implemented nationwide on February 24, 2020.

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 nationwide for any period during which there is a declared national health emergency in response to the COVID-19 outbreak. On August 12, 2020, the Second Circuit issued a partial administrative stay of the nationwide injunction limiting its scope to the Second Circuit, i.e. New York, Connecticut, and Vermont. For the period between July 29, 2020 and August 12, 2020, DHS was subject to a nationwide injunction prohibiting implementation of the Public Charge Final Rule.

USCIS has been advised by the U.S. Department of Justice that the partial administrative stay of the injunction and language of the partial administrative stay would allow USCIS to implement the Public Charge Final Rule outside of the Second Circuit. The language of the injunction and administrative stay does not directly address the use of forms impacted by the Public Charge Final Rule and DOJ has advised USCIS that USCIS could proceed with using a single version of the forms both outside and within the Second Circuit so long as USCIS provides clear guidance to the regulated public in the Second Circuit that applicants/petitioners should not provide information or evidence that would only be required under the Public Charge Final Rule. The Office of Information and Regulatory Affairs Desk Officer has advised USCIS that it must modify the instructions to impacted forms to make it clear on the instructions, in addition to the planned USCIS web guidance, that applicants/petitioners in the Second Circuit need not provide information and evidence that would only be required to make public charge inadmissibility determinations under the Public Charge Final Rule during the pendency of the July 29, 2020 injunction in the Second Circuit.

Pursuant to 44 U.S.C. 3507(j)(1)(B) and 5 CFR 1320.13, DHS is requesting that the Director approve modifications to the form instructions for the impacted information collection instruments. 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.

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

Page 3

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
1615-0116	I-912