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What Artists Need to Know About the Status of the New Public Charge Rules & Unemployment Benefits/Maintenance of Visa Status

In July, a federal court ruled that the use of public healthcare and other public benefits would not trigger the new “public charge” rules during the COVID-19 national health emergency nationwide. Now, a higher court has limited that ruling to New York, Connecticut, and Vermont.

Note: this advisory, dated August 19, 2020, supersedes all prior “public charge” advisories.

What happened?

On July 29, 2020, a New York federal court issued an injunction that blocked the U.S. government from enforcing the new “public charge” rules during the COVID-19 national health emergency nationwide. The new public charge rules, implemented in February 2020, made it easier for the government to deny people visas and green cards on the grounds that they might become reliant on public benefits in the U.S. These rules were designed to discourage immigrants and temporary residents from using certain public assistance programs. So the July 29th injunction was good news.

Then, on August 12th, a higher federal court ruled that the July 29th injunction *only* applied to applicants in **Vermont, Connecticut, and New York**.

What does this new ruling mean?

We don't really know. The Department of Homeland Security/USCIS has not provided updated guidance on the impact of this modified Vermont/Connecticut/New York injunction. Moreover, this modified injunction does not impact the nationwide injunction suspending the

implementation of the new public charge rules for Department of State (i.e., the embassies and consulates that issue visas).

We will provide an updated advisory as soon as we know more.

Receiving Unemployment Benefits and Maintaining Visa Status

Would seeking unemployment benefits be a violation of my visa?

Probably, but not necessarily. This is a little complex: O and P visa holders are issued their visas to allow them to do specific work in the U.S. If you fail to do that work, the government generally sees it as a violation of your visa, called a “failure to maintain status.” If you fail to maintain your status, this could remain on your record forever, and could make it difficult to get visas, green cards, and ESTA. The problem with seeking unemployment is that you are telling the government that you are not working, which strongly suggests that you are “failing to maintain your status.” But there are some loopholes, so you need to read this carefully:

For O-1 visa holders:

If you lose your job while on an O-1, you technically *may* have up to a 60-day grace period in which you can find other work, and it *might* be okay for you to collect unemployment during those 60 days. The catch is that at the end of 60 days you must discontinue the unemployment benefits and depending on your specific situation, either (1) have some new work starting, (2) have a new visa petition filed for you, or (3) depart the U.S. Given these uncertainties and limitations, we advise against applying for unemployment if at all possible, unless you can find *some way* to continue to do some work. Please talk to your attorney about your specific situation in order to decide whether seeking or accepting unemployment benefits is advisable.

For O-2 and P visa holders:

The 60-day grace period that O-1 holders enjoy is not available to O-2 or P visa holders. O-2 and P visa holders must maintain some degree of work, even if they seek unemployment benefits. In the event that USCIS or a consular officer wants proof of maintenance of status down the line, you will want to be able to produce records that you were still working. Given these uncertainties and limitations, we advise against applying for unemployment if at all possible, unless you can find *some way* to continue to do some work.

For other kinds of visa holders:

We are talking about O and P visas here. It may be possible for holders of other kinds of employment visas to accept unemployment benefits and still maintain their status.

How much work do I need to do to maintain my status?

If your visa was arranged through a specific employer, and you are only allowed to work for that employer, then failing to maintain your contracted employment with that employer would be a failure to maintain status. If, however, you are on an agent-based O or P visa, any authorized work you can do—paid or unpaid, in real life or online—will help you maintain status; any documentation you can save of that work (contracts, screen shots, publicity materials, reviews) will help you at a later date prove that you maintained status. While there is no rule about how much work is needed to maintain status, the more authorized work you can prove you have undertaken, the more you can defend against an assertion of “failure to maintain status.”

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