

# Draft proposes fresh US immigration curb

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Lubna Kably | TNN | Updated: Oct 8, 2018, 09:08 IST

## Highlights

- A majority of H-1B visa holders, who constitute a significant chunk of the Indian diaspora in the US, may not fall afoul of this "public charge" draft proposal, a 447-page document which was put out by the Trump administration on September 22.
- But the proposal requires them to attest self-sufficiency at the time of seeking an extension or change in status, e.g. from student visa to H-1B.



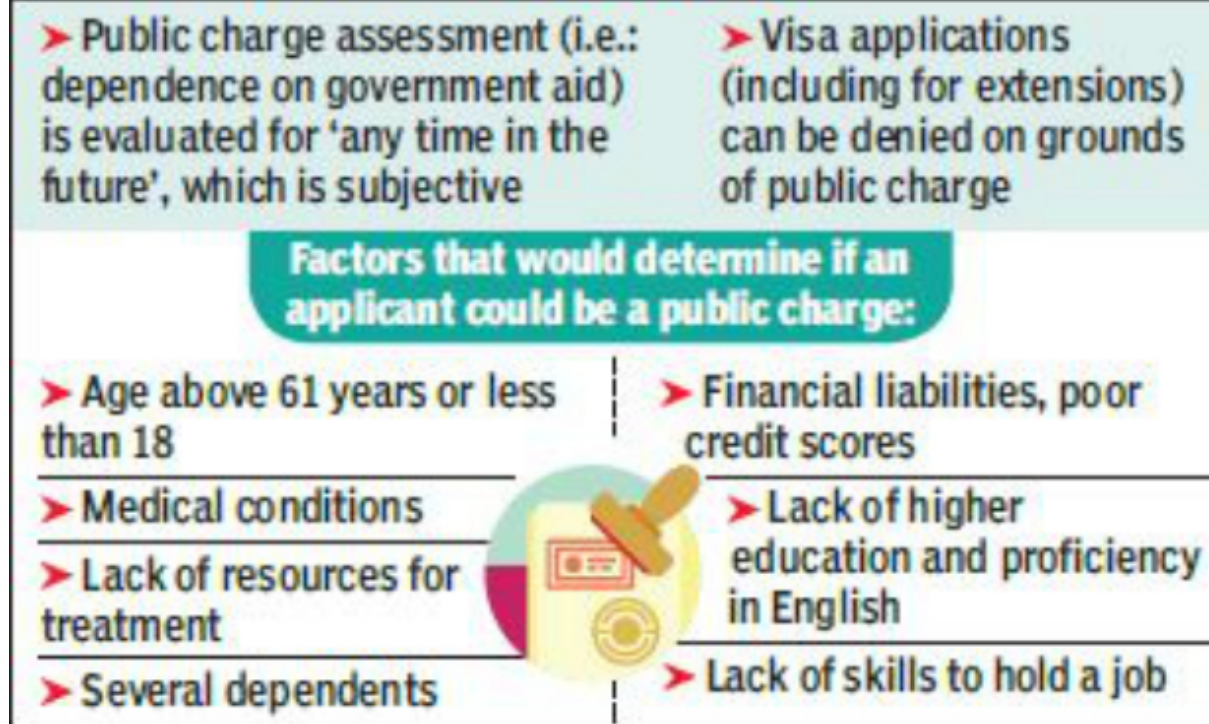
Representative image.

MUMBAI: A draft proposal recently released by the US department of homeland security explains that immigration applications can be denied if the applicant is "likely at any time to be a public charge". Public charge refers to a situation where a person receives certain public (government) benefits above the defined quantum or duration.

## Prevent jobs from going to H-1B visa holders: USCIS director

A majority of H-1B visa holders, who constitute a significant chunk of the Indian diaspora in the US, may not fall afoul of this "public charge" draft proposal, a 447-page document which was put out by the Trump administration on September 22. However, the proposal requires them to attest self-sufficiency at the time of seeking an extension or change in status, eg from student visa to H-1B.

## THE NEGATIVE TRIGGERS



Immigration authorities may seek further details in a form that will be introduced for this purpose. This will increase administrative costs and processing delays. Immigration attorneys view the proposal as another hurdle to curb legal immigration.

### Why it's not a good time to be an Indian student in US

DHS has announced its intention will be prospective and will be based on the "totality of circumstances".

Indians in the US are largely employees or students and unlikely to avail of public benefits like food stamps, federal housing, rental assistance, health subsidies, non-emergency Medicaid, etc. "However, several definitions in the proposal are rife for arbitrary decisions. It is the 'future' likelihood of the applicant receiving one or more of the defined public benefits that is covered by the term — 'likely at any time to become a public charge'. Phrases like 'totality of circumstances' introduce more elements of uncertainty," Rajiv S Khanna, managing attorney at Immigration.com, told TOI.

Several challenges are foreseen, to illustrate lack of private health insurance coverage, financial liabilities, low credit scores or even having several dependants are negative factors that could lead DHS into determining that an applicant is likely to become a public charge.

"The notion of public charge has been in the law for over 100 years. The proposal seeks to interpret it in a manner that is radically different from how it has always been understood," says Cyrus Mehta, immigration attorney and founding partner of a New York-based law firm.

The scope has also expanded. Immigration attorney Emily Neumann, partner with Reddy & Neumann, told TOI: "Currently, the public charge ground of admissibility is only applicable at the time of applying for the visa stamp at the US consulate and at the time of being admitted at the port of entry. Congress did not include applications for extension of stay or change of visa

status. It would be over-reaching for DHS to issue a regulation and apply the public charge ground to other instances and it's likely to be litigated." The entire process for this draft proposal to be final could take several months.

Impact on H-1B workers: "The employer of an H-1B visa holder has to pay the required wage which is at least equal to the actual wages paid to others (with similar experience and qualification for the same job), or the prevailing wage for the occupation, whichever is higher. As such, H-1B holders are not found to be a public charge. However, under the proposed rule, for visa extensions, the H-1B beneficiary (employee) will have to attest that he has not received and is not likely to receive public benefits above the specified thresholds," explains Snehal Batra, managing attorney with NPZ Law Group.

Immigration officials have the discretion to send a "request for evidence" requiring the H-1B beneficiary to submit a new form. The Form I-944 would collect wide-ranging information on facets mentioned above to determine whether the entry can be denied based on public charge grounds. "As most H-1B beneficiaries should be able to make this attestation, I think the vast majority should not expect to receive this type of RFE," says Neumann.

However, if additional details have to be given, having a household income of 250% or more of the federal poverty guidelines, which is viewed as a heavily positive facet, will be useful. This translates to an annual income of \$41,150 for a two-member family or \$84,350 for a family of six. In the past, average salaries at the top-five H-1B recruiting companies have ranged from \$71,819 to \$ 84,344. Companies admit that it would be even more difficult to sponsor a student who has undergone optional practical training with them for an H-1B. Khanna adds that challenges could crop up for certain occupations which call for high qualifications but have lower salary thresholds, like teachers or researchers.

"I think most H-1B workers will not be impacted by the new public charge rule. If the wage is below the 250% limit, it will be a negative factor, but not a disqualifier and will be viewed under the totality of circumstances. If this family has no insurance and one of them had a chronic health condition, then there may be an issue," illustrates Mehta.

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