The American Immigration Lawyers Association (AILA) issued the following advisory on COVID-19 and the public charge rule:

1. Will getting tested, treatment or preventative care for COVID-19 impact my immigration application under the public charge rule?

On March 13, the U.S. Citizenship and Immigration Service (USCIS) announced that the agency will not consider “testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19” as part of a public-charge determination, nor as related to the public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status, even if such treatment is provided or paid for by one or more public benefits (e.g., federally funded Medicaid). USCIS is encouraging anyone with symptoms that resemble COVID-19 (e.g., fever, cough, shortness of breath) to seek necessary medical treatment or preventative services. USCIS has indicated that such treatment or preventative service “will not negatively affect any alien as part of a future public charge analysis.”

2. Will obtaining unemployment insurance impact my client’s immigration application under the public charge rule?

Unemployment insurance programs are not taken into consideration by the U.S. Department of Homeland Security (DHS) for purposes of making a public charge determination. As DHS explained in its final rule on inadmissibility on public charge grounds, “DHS would not consider federal and state retirement, Social Security retirement benefits, Social Security Disability, post secondary education, and unemployment benefits as public benefits under the public charge inadmissibility determination as these are considered to be earned benefits through the person’s employment and specific tax deductions.” In addition, USCIS indicates in Volume 8, Part G, Chapter 10 of the USCIS Policy Manual that unemployment benefits are not considered by USCIS in a public charge inadmissibility determination as unemployment insurance is considered as an “earned” benefit. For a non-exhaustive list of other public benefits that USCIS does not consider in the public charge inadmissibility determination, please see Volume 8, Part G, Chapter 10 of the USCIC Policy Manual.

The U.S. Department of State (DOS) has not confirmed whether treatment or care related to COVID-19 will be considered as part of its public charge totality of circumstances analysis. Moreover, the DOS Interim Final Rule and the Foreign Affairs Manual do not directly address the issue of how unemployment benefits will impact public charge determinations made by consular officers at U.S. consulates overseas. AILA’s DOS Liaison Committee is seeking clarification from DOS regarding how consular officers will factor in unemployment insurance compensation in public charge determinations at U.S. consulates overseas.