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February 25, 2020

Catherine O'Hagan Wolfe, Esq.,
Clerk of Court
United States Court of Appeals
for the Second Circuit
40 Foley Square
New York, NY 10007

Re: *State of New York v. U.S. DHS*
No. 2019-3591

Dear Ms. Wolfe:

Plaintiffs-appellees submit this letter under Fed. R. App. P. 28(j) to inform the Court of an updated policy manual issued by defendant U.S. Citizenship and Immigration Services (USCIS) on February 5, 2020, concerning implementation of the Final Rule challenged in this proceeding.

Among other changes, the manual instructs USCIS officers to impose an automatic negative factor in the public-charge analysis simply because an applicant is seeking legal permanent resident (LPR) status. Ex. A (USCIS, *Policy Manual*, Vol. 8, pt. G, ch. 12 (“[s]eeking adjustment of status as a lawful permanent resident” is a negative factor)).¹ That negative factor would apply to *every single applicant* subject to the Rule’s new public-charge framework.

This alteration to the Rule’s public-charge analysis, which USCIS implemented without any advance notice, underscores defendants’ extraordinarily sweeping view of their authority to deem applicants

¹ The full manual is available at <https://www.uscis.gov/policy-manual/volume-8-part-g>.

inadmissible as a “public charge.” Br. for Appellees at 32-33, 43-46. Treating every applicant as presumptively more likely to be a public charge, for no reason other than their interest in adjusting their status, radically departs from any historical application of the public-charge analysis, which has always focused on factors that distinguish particular applicants from others. And attributing *automatic* negative weight to an applicant’s mere request for LPR status is also arbitrary and capricious because it does not help to identify which applicants are likely to become dependent on public benefits—instead treating all applicants with a single, indiscriminate broad brush. Indeed, contrary to USCIS’s apparent assumption, defendants’ own data indicates that far less than half of LPRs ever use the benefits targeted by the Rule, *see* 83 Fed. Reg. 51,114, 51,161, tbl. 12 (76.4% of noncitizens admitted as LPRs did not use benefits); and many applicants will obtain work authorization if they are granted LPR status, giving them the ability to obtain a better-paying job with employee benefits.

Respectfully submitted,

/s/ *Judith Vale*

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cc (via CM/ECF):

All counsel of record

EXHIBIT A

USCIS Policy Manual, Volume 8, Part G

Public Charge Ground of Inadmissibility

- [Guidance](#)
- [Resources\(76\)](#)
- [Appendices\(7\)](#)
- [Updates\(2\)](#)

Current as of February 05, 2020

- [Chapter 1 - Purpose and Background](#)
- [Chapter 2 - Public Charge Inadmissibility Ground](#)
- [Chapter 3 - Applicability](#)
- [Chapter 4 - Prospective Determination Based on Totality of the Circumstances](#)
- [Chapter 5 - Factors](#)
- [Chapter 6 - Age](#)
- [Chapter 7 - Health](#)
- [Chapter 8 - Family Status](#)
- [Chapter 9 - Assets, Resources, and Financial Status](#)
- [Chapter 10 - Public Benefits](#)
- [Chapter 11 - Education and Skills](#)
- [Chapter 12 - Prospective Immigration Status and Expected Period of Admission](#)
- [Chapter 13 - Additional Support through Sponsorship](#)
- [Chapter 14 - Heavily Weighted Factors](#)
- [Chapter 15 - Totality of the Circumstances Scenarios](#)
- [Chapter 16 - Waivers of Inadmissibility Based on Public Charge Ground](#)
- [Chapter 17 - Adjudicating Public Charge Inadmissibility](#)
- [Chapter 18 - Public Charge Bonds](#)
- [Chapter 19 - Public Charge Bonds: Posting and Accepting Bonds](#)
- [Chapter 20 - Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds](#)



U.S. Citizenship and
Immigration Services

USCIS Policy Manual

Current as of February 05, 2020

Volume 8 - Admissibility

Part G - Public Charge Ground of Inadmissibility

Chapter 1 - Purpose and Background

ALERT: This policy guidance is effective on February 24, 2020, and will apply to all applicants and petitioners filing applications and petitions for adjustment of status, extension of stay, and change of status, except for applicants and petitioners in the State of Illinois, whose cases will be adjudicated under prior policy, including the [1999 Interim Field Guidance \(PDF\)](#) and [AFM Ch. 61.1](#). For additional information, see [Public Charge Inadmissibility Determinations in Illinois](#). Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the Inadmissibility on Public Charge Grounds final rule. For more information about the classes of aliens who are exempt from the final rule, click [here](#).

A. Purpose

Self-sufficiency is a basic principle of U.S. immigration law and policy.^[1] Aliens coming to the United States should rely on their own capabilities and the resources of their families, their sponsors, and private organizations. Aliens should not depend on public resources to meet their needs.^[2]

In recognition of these principles, Congress provided a specific ground of inadmissibility and implemented other requirements to ensure admission of those aliens who could prove self-sufficiency. Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an applicant who is applying for a visa, admission, or adjustment of status and who is likely at any time to become a public charge, is inadmissible.^[3]

In addition, all family-based and a limited number of employment-based applicants for immigrant visas and adjustment of status are required to submit an Affidavit of Support Under Section 213A of the INA ([Form I-864](#) or [Form I-864EZ](#)), completed by a qualified sponsor.^[4]

B. Background

1. Statutory Provision

Since at least 1882, the United States has denied admission to aliens based on the public charge ground.^[5] The INA of 1952 excluded aliens that, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the government at the time of application for admission, were likely at any time to become public charges.^[6] The government has long interpreted the words "in the opinion of" as evincing the subjective nature of the determination.^[7]

The INA provides that an applicant for a visa, admission, or adjustment of status is inadmissible if he or she is likely at any time to become a public charge.^[8] The public charge ground of inadmissibility, therefore, applies to any alien

applying for a visa to come to the United States temporarily or permanently, for admission, or for adjustment of status to that of a lawful permanent resident (LPR).^[9]

The INA does not define public charge. It does, however, specify that consular officers and immigration officers must, at a minimum, consider certain factors when determining if an alien is likely at any time to become a public charge.^[10]

2. Immigration and Receipt of Public Benefits

In 1996, when passing the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),^[11] Congress reaffirmed self-sufficiency as the basic principle governing welfare and immigration in the United States. Specifically, it reaffirmed that aliens should not depend on public resources, and that the availability of these resources should not constitute an incentive for immigration to the United States.^[12] Through PRWORA, Congress significantly restricted an alien's eligibility for federal, state, local, and tribal public benefits.^[13]

Additionally, Congress added requirements for certain immigrant categories by creating INA 213A, making a sponsor's affidavit of support submitted on behalf of an alien legally enforceable^[14] under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).^[15]

Although Congress significantly restricted aliens' receipt of public benefits with PRWORA, it permitted "qualified aliens" to remain eligible for some public benefits. In particular, qualified aliens remain eligible for medical and nutritional benefits, including Medicaid and Food Stamps (currently known as Supplemental Nutritional Assistance Program or "SNAP").^[16] With certain exceptions, aliens who are not qualified aliens^[17] generally are ineligible to receive federal, state, local, or tribal public benefits. Still, some states and localities have funded public benefits, particularly medical and nutrition benefits, for which nonqualified aliens may be eligible.^[18]

Congress chose not to restrict eligibility for certain types of federal benefits, including emergency medical assistance; short-term, in-kind, non-cash emergency disaster relief; and public health assistance related to immunizations and treatment of the symptoms of a communicable disease.^[19]

PRWORA defined the term "State or local public benefit" broadly except where the term encroached upon the definition of federal public benefit.^[20] Under PRWORA, states may enact their own legislation to provide public benefits to certain aliens not lawfully present in the United States.^[21] PRWORA also provided that a state that chooses to follow the federal qualified alien definition in determining aliens' eligibility for public assistance "shall be considered to have chosen the least restrictive means available for achieving the compelling governmental interest of assuring that aliens be self-reliant in accordance with national immigration policy."^[22]

While PRWORA allows both qualified aliens and non-qualified aliens to receive certain federal public benefits, Congress did not exempt the receipt of such benefits from consideration for purposes of the public charge inadmissibility determination.^[23] Therefore, even where an alien is eligible to receive public benefits under PRWORA, USCIS may take such receipt into consideration, for purposes of a public charge inadmissibility determination, unless the alien is exempt from the public charge ground of inadmissibility.

3. History of Statutory and Regulatory Changes

Statutory Changes in 1996

With the passage of IIRIRA in 1996,^[24] Congress changed the public charge inadmissibility statute to codify the following minimum factors that must be considered when making public charge inadmissibility determinations:^[25]

- Age;
- Health;
- Family status;
- Assets, resources, and financial status; and

- Education and skills.^[26]

Additionally, with IIRIRA, Congress made the legally enforceable affidavit of support (Affidavit of Support Under Section 213A of the INA (Form I-864)) a requirement for family-sponsored and certain employment-based immigration cases,^[27] and indicated that it may be considered as a factor in the public charge inadmissibility determination.^[28]

In the Conference Report, the committee indicated that the amendments to the INA^[29] were designed to expand the public charge ground of inadmissibility.^[30] The report indicated that self-reliance was one of the fundamental principles of immigration law and aliens should have affidavits of support executed.^[31] Therefore, although an alien may obtain public benefits for which he or she is eligible, the receipt of those benefits may be considered for future public charge inadmissibility determination purposes, unless the alien is exempt from public charge.

1999 Interim Field Guidance

On May 26, 1999, legacy Immigration and Naturalization Service (INS) issued interim guidance entitled, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds (1999 Interim Field Guidance (PDF))*.^[32] This guidance identified how the agency would determine if a person is likely at any time to become a public charge,^[33] for admission and adjustment of status purposes, and when a person would be deportable^[34] as a public charge.^[35] INS incorporated the policies contained in the 1999 Interim Field Guidance as regulations in a proposed rule issued on May 26, 1999.^[36]

The 1999 Interim Field Guidance defined public charge in its proposed rule to mean “the likelihood of an alien becoming primarily dependent^[37] on the government for subsistence, as demonstrated by either:

- Receipt of public cash assistance for income maintenance; or
- Institutionalization for long-term care at government expense.”

The 1999 Interim Field Guidance is applied to applications postmarked (or, if applicable, submitted electronically) before 12:00 a.m. Eastern Time on February 24, 2020.^[38]

Regulatory Changes in 2019

On August 14, 2019, DHS published the final rule, *Inadmissibility on Public Charge Grounds (PDF)*.^[39] This Policy Manual Part incorporates the final rule and provides corresponding guidance to officers for adjudicating the public charge ground of inadmissibility. The final rule superseded any guidance previously provided as part of the 1999 Interim Field Guidance.^[40]

With the final rule, DHS seeks to better ensure that applicants for admission to the United States and applicants for adjustment of status who are subject to the public charge ground of inadmissibility are self-sufficient. Furthermore, the following congressional policy statements relating to self-sufficiency, immigration, and public benefits inform DHS’s administration of INA 212(a)(4):

- Self-sufficiency has been a basic principle of United States immigration law since this country’s earliest immigration statutes.
- It continues to be the immigration policy of the United States that:
 - Aliens within the Nation’s borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations; and
 - The availability of public benefits not constitute an incentive for immigration to the United States.^[41]

Within this administrative and legislative context, DHS's view of self-sufficiency is that aliens subject to the public charge ground of inadmissibility must rely on their own capabilities and secure financial support, including from family members and sponsors, rather than seek and receive public benefits to meet their needs.

USCIS is implementing the DHS regulation governing public charge inadmissibility determinations as of 12:00 a.m. Eastern Time on February 24, 2020, and applies to applications and petitions postmarked (or, if applicable, submitted electronically on or after 12:00 a.m. Eastern Time on February 24, 2020).^[42] For applications and petitions that are sent by commercial courier (for example, UPS, FedEx, or DHL), the postmark date is the date reflected on the courier receipt.

4. Public Charge Bond

Historically, bond provisions started with states requiring certain amounts to assure an alien would not become a public charge.^[43] Bond provisions were codified in federal immigration laws in 1903.^[44] The acceptance of a bond posting in consideration of the alien's admission and to assure that he or she will not become a public charge may have had its origin in federal administrative practice earlier than this date. Beginning in 1893, immigration inspectors served on Boards of Special Inquiry that reviewed exclusion cases of aliens who were likely to become public charges because the alien lacked funds or relatives or friends who could provide support.^[45] In these cases, the Board of Special Inquiry usually admitted the alien if someone could post bond or one of the immigrant aid societies would accept responsibility for the alien.

The present language of INA 213 has been in the law without significant variation since 1907.^[46] Under Section 21 of the Immigration Act of 1917, an immigration officer could admit an alien if a suitable bond was posted.^[47] In 1970, Congress amended INA 213 to permit the posting of cash received by the U.S. Department of the Treasury and to eliminate specific references to communicable diseases of public health significance.^[48] Regulations implementing the public charge bond were promulgated in 1964 and 1966.^[49]

With the passage of the IIRIRA in 1996, Congress amended the section by adding a parenthetical that clarified that a bond may be requested in addition to, and not in lieu of, the affidavit of support and the deeming requirement under INA 213A.^[50]

C. Scope

The guidance outlined in this Part G only applies to applications or petitions postmarked (or, if applicable, submitted electronically) on or after February 24, 2020, for which admissibility is required.^[51] For applications and petitions that are sent by commercial courier (for example, UPS, FedEx, DHL), the postmark date is the date reflected on the courier receipt.

Officers must adjudicate applications or petitions postmarked (or, if applicable, submitted electronically) before February 24, 2020, according to the 1999 Interim Field Guidance.^[52]

Public charge bond availability depends on the immigration benefit the applicant is seeking.^[53] This Part G only addresses public charge bonds administered by USCIS for applicants seeking adjustment of status with USCIS.^[54]

D. Legal Authorities

- INA 212(a)(4); 8 CFR 212.20-212.23 – Public charge inadmissibility
- INA 213A; 8 CFR 213a – Requirements for sponsor's affidavit of support
- INA 213; 8 CFR 213.1 – Admission of aliens on giving bond or undertaking; return upon permanent departure; adjustment of status of aliens on submission of a public charge bond
- 8 CFR 103.6 – Surety bonds

- INA 245; 8 CFR 245; 8 CFR 245.4– Adjustment of status of nonimmigrant to that of person admitted for permanent residence
- 31 U.S.C. 9304-9308 – Surety corporations

Footnotes

1. [^] See Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104-193 (PDF), 110 Stat. 2105, 2260 (Aug. 22, 1996) (codified at 8 U.S.C. 1601).
2. [^] See 8 U.S.C. 1601.
3. [^] See INA 212(a)(4)(A).
4. [^] See INA 212(a)(4)(C) and (D).
5. [^] See Sections 1-2 of the Immigration Act of 1882, 22 Stat. 214, 214 (PDF) (August 3, 1882). Section 11 of the Immigration Act of 1891, 26 Stat. 1084, 1086 (PDF) (March 3, 1891) also provided that an alien who became a public charge within 1 year of arrival in the United States from causes that existed prior to his or her landing, was deemed to be in violation of law, and was to be returned at the expense of the person or persons, vessel, transportation, company or corporation who brought the alien into the United States.
6. [^] See Section 212(a)(15) of the INA of 1952, Pub. L. 82-414 (PDF), 66 Stat. 163, 183 (June 27, 1952).
7. [^] See Matter of Harutunian (PDF), 14 I&N Dec. 583, 588 (Reg. Comm. 1974) (“[T]he determination of whether an alien falls into that category [as likely to become a public charge] rests within the discretion of the consular officers or the Commissioner . . . Congress inserted the words ‘in the opinion of’ (the consul or the Attorney General) with the manifest intention of putting borderline adverse determinations beyond the reach of judicial review.” (citation omitted)). See Matter of Martinez-Lopez (PDF), 10 I&N Dec. 409, 421 (A.G. 1962) (“[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer’s subjective opinion.”). Neither *Harutunian* nor *Martinez-Lopez* specifically limited the general understanding of public charge to only those who are “elderly, unemployed or unsponsored” aliens; these decisions were based on the understanding that Congress intended to exclude those who were unable to support themselves and who received public benefits.
8. [^] See INA 212(a)(4).
9. [^] See INA 212(a)(4).
10. [^] See INA 212(a)(4)(B)(i).
11. [^] See Title IV of Pub. L. 104-193 (PDF), 110 Stat. 2105, 2260 (August 22, 1996). See Appendix: Totality of the Circumstances Framework for a complete list of public benefits and eligibility for immigrants.
12. [^] See Title IV of Pub. L. 104-193 (PDF), 110 Stat. 2105, 2260 (August 22, 1996) and 8 U.S.C. 1601.
13. [^] See 8 U.S.C. 1601-1646, as amended.
14. [^] See Section 423(a) of Title IV of Pub. L. 104-193 (PDF), 110 Stat. 2105, 2271 (August 22, 1996). See 8 U.S.C. 1601-1646. See INA 213A and 8 CFR 213a.
15. [^] See Div. C, Title V of Pub. L. 104-208 (PDF), 110 Stat. 3009, 3009-670 (September 30, 1996).
16. [^] Other programs for which certain aliens remain eligible include: Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), the Children’s Health Insurance Program (CHIP), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).
17. [^] As defined in 8 U.S.C. 1641.

18. [^] See Overview of Immigrants Eligible for SNAP, TANF, Medicaid and CHIP, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (March 2012).
19. [^] See 8 U.S.C. 1611(b)(1). See 66 FR 3613 (PDF), (Jan. 16, 2001). See 62 FR 61344 (PDF), (Nov. 17, 1997).
20. [^] See 8 U.S.C. 1621(c).
21. [^] See 8 U.S.C. 1621(d).
22. [^] See 8 U.S.C. 1601(7).
23. [^] See INA 212(a)(4).
24. [^] See Division C of Pub. L. 104-208 (PDF), 110 Stat 3009-546 (September 30, 1996).
25. [^] See Section 531 of Division C of Pub. L. 104-208 (PDF), 110 Stat. 3009-546, 3009-674 (September 30, 1996) (amending INA 212(a)(4)).
26. [^] See INA 212(a)(4)(B).
27. [^] See INA 212(a)(4) and INA 213A.
28. [^] See INA 212(a)(4)(B)(ii).
29. [^] See INA 212(a)(4).
30. [^] See H.R. Rep. No. 104-828, at 240-41 (1996) (Conf. Rep.). See H.R. Rep. No. 104-469(I), at 143-45 (1996).
31. [^] See H.R. Rep. No. 104-828, at 241 (1996) (Conf. Rep.).
32. [^] See 64 FR 28689 (PDF), (May 26, 1999).
33. [^] See INA 212(a)(4).
34. [^] See INA 237(a)(5).
35. [^] See 64 FR 28689 (PDF), (May 26, 1999).
36. [^] See 64 FR 28676 (PDF), (May 26, 1999).
37. [^] Former INS defined “primarily dependent” as “the majority” or “more than 50 percent.”
38. [^] However, for applications postmarked (or, if applicable, submitted electronically) on or after February 24, 2020, “if the alien received any included public benefit listed in the 1999 Interim Field Guidance (cash assistance for income maintenance, including SSI, TANF, and general assistance) before February 24, 2020, DHS will consider those benefits as they would have been considered under the 1999 Interim Field Guidance. In other words, for adjustment of status applications postmarked (or if applicable, submitted electronically) on or after February 24, 2020, an applicant’s receipt of any of the benefits listed in the 1999 Interim Field Guidance prior to February 24, 2020, will be treated as a negative factor in the totality of the circumstances, as they were in the 1999 Interim Field Guidance.” See 84 FR 41292, 41459 (PDF), (Aug. 14, 2019) (final rule).
39. [^] See 83 FR 51114 (PDF), (Oct. 10, 2018) (proposed rule). See 84 FR 41292 (PDF), (Aug. 14, 2019) (final rule).
40. [^] See 84 FR 41292 (PDF), (Aug. 14, 2019) (final rule).
41. [^] See PRWORA, Pub. L. 104-193 (PDF), 110 Stat. 2105 (August 22, 1996), codified in part at 8 U.S.C. 1601.
42. [^] See 83 FR 51114 (PDF), (Oct. 10, 2018) (proposed rule). See 84 FR 41292 (PDF), (Aug. 14, 2019) (final rule).
43. [^] See, for example, *Mayor, Aldermen & Commonality of City of N.Y. v. Miln*, 36 U.S. 102 (1837) (upholding a New York statute that required vessel captains to provide certain biographical information about every passenger on the ship and further permitting the mayor to require the captain to provide a surety of not more than \$300 for each noncitizen passenger to indemnify and hold harmless the government from all expenses incurred to financially support the person and the person’s children).
44. [^] See the Immigration Act of 1903, Pub. L. 57-162, 32 Stat. 1213 (March 3, 1903).

45. [^] See the Immigration Act of 1892, Pub. L. 51-551, 26 Stat. 1084 (March 3, 1891), which created the Office of the Superintendent of Immigration within the Treasury Department. The Superintendent oversaw a new corps of U.S. immigration inspectors stationed at the country's principal ports of entry. See USCIS' web page, [Origins of Federal Immigration Service](#).
46. [^] See Section 26 of the Act of February 20, 1907, Pub. L. 59-96, 34 Stat. 898, 907.
47. [^] See Pub. L. 64-301, 39 Stat. 874, 876 (February 5, 1917).
48. [^] See Immigration and Nationality Act Amendments of 1970, [Pub. L. 91-313 \(PDF\)](#), 84 Stat. 413 (July 10, 1970). See 116 Cong. Rec. S 9957 (daily ed. June 26, 1970).
49. [^] See [8 CFR 103.6](#) and [8 CFR 213.1](#). See 29 FR 10579 (July 30, 1964). See 31 FR 11713 (Sept., 7, 1966).
50. [^] See Section 564(f) of Division C of [Pub. L. 104-208 \(PDF\)](#), 110 Stat. 3009-546, 3009-684 (September 30, 1996). The Examinations Handbook included guidance on public charge bond processes and policies in Part VI, at VI-88 through VI-98 (October 1, 1988). After legacy Immigration and Naturalization Service (INS) retired the Examinations Handbook, INS's Operating Instructions provided guidance on the topic at Section 103.6 and 213.1 (November 1997). In 1998, INS removed the Operating Instructions and transferred the parts relating to immigration bonds to the Inspector's Field Manual, Chapter 45. Neither INS nor USCIS appear to have issued new guidance on the topic since that time. With the creation of the Adjudicator's Field Manual (AFM), USCIS incorporated existing public charge bond guidance into Chapter 61.1, but given the affidavit of support, the authority has rarely been exercised since the passage of IIRIRA.
51. [^] The date USCIS implemented the rule. See [84 FR 41292 \(PDF\)](#) (Aug. 14, 2019) (final rule). For applications postmarked (or, if applicable, submitted electronically) on or after February 24, 2020, "if the alien received any included public benefit listed in the 1999 Interim Field Guidance (cash assistance for income maintenance, including SSI, TANF, and general assistance) before February 24, 2020, DHS will consider those benefits as they would have been considered under the 1999 Interim Field Guidance. In other words, for adjustment of status applications postmarked (or if applicable, submitted electronically) on or after February 24, 2020, an applicant's receipt of any of the benefits listed in the 1999 Interim Field Guidance prior to February 24, 2020, will be treated as a negative factor in the totality of the circumstances, as they were in the 1999 Interim Field Guidance." See [84 FR 41292, 41459 \(PDF\)](#) (Aug. 14, 2019) (final rule).
52. [^] See [64 FR 28689 \(PDF\)](#) (May 26, 1999).
53. [^] See [INA 213](#).
54. [^] See [8 CFR 213.1](#). U.S. Immigration and Customs Enforcement (ICE) administers other types of immigration bonds, such as voluntary departure bonds or appearance bonds. For more information on these types of bonds, [contact ICE](#).

Legal Authorities

[10 U.S.C. 504\(b\)](#) - Citizenship or residency

[15 U.S.C. 1681](#) - Congressional findings and statement of purpose

[21 U.S.C. 802](#) - Definitions

[21 U.S.C. 841](#) - Prohibited acts A

[22 CFR 40.51](#) - Labor certification

[29 CFR 570](#) - Child labor regulations, orders and statements of interpretation

29 U.S.C. 213(c) - Child labor requirements

31 U.S.C. 9304-9308 - Sureties and surety bonds

31 U.S.C. 9305 - Authority and revocation of authority of surety corporations

38 U.S.C 1965 - Definitions

42 CFR 34.4 - Medical notifications

42 U.S.C. 1382c - Definitions

42 U.S.C. 413 - Quarter and quarter of coverage

42 U.S.C. 416(l) - Retirement age

7 CFR 273 - Certification of eligible households

8 CFR 1.2 - Definitions

8 CFR 1.3 - Lawfully present aliens for purposes of applying for Social Security benefits

8 CFR 1003.14 - Jurisdiction and commencement of proceedings

8 CFR 1003.1 - Organization, jurisdiction, and powers of the Board of Immigration Appeals

8 CFR 103.6 - Surety bonds

8 CFR 204.5 - Petitions for employment-based immigrants

8 CFR 212.20-212.23 - Applicability of public charge inadmissibility; Definitions; Public charge determination; Exemptions and waivers for the public charge ground of inadmissibility

8 CFR 212.21(b) - Public Benefits

8 CFR 212.4 - Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3)

8 CFR 213.1 - Admission under bond or cash deposit

8 CFR 213a - Affidavits of support on behalf of immigrants

8 CFR 214.2 - Special requirements for admission, extension, and maintenance of status

8 CFR 214.2 - Special requirements for admission, extension, and maintenance of status

8 CFR 235 - Inspection of persons applying for admission

8 CFR 245.11 - Adjustment of aliens in S nonimmigrant classification

8 CFR 292 - Representation and appearances

8 CFR 293.1 - Computation of interest

8 U.S.C. 1363 - Deposit of and interest on cash received to secure immigration bonds

8 U.S.C. 1601-1646 - Restricting welfare and public benefits for aliens

8 U.S.C. 1611 - Aliens who are not qualified aliens ineligible for Federal public benefits

8 U.S.C. 1612 - Limited eligibility of qualified aliens for certain Federal programs

8 U.S.C. 1613 - Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

8 U.S.C. 1641 - Definitions

Final Specification of Community Programs Necessary For Protection Of Life Or Safety Under Welfare Reform Legislation, 66 FR 3613 (Jan. 16, 2001) (Final rule)

INA 101 - Definitions

INA 101(a)(15), - Nonimmigrant classifications

INA 201 - Worldwide level of immigration

INA 203 - Allocation of immigrant visas

INA 208 - Asylum

INA 212(a)(4), - Public charge

INA 212(d), - Temporary admission of nonimmigrants

INA 213 - Admission of certain aliens on giving bond or undertaking; return upon permanent departure

INA 235 - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

INA 237(a)(5), - Public charge (deportable aliens)

INA 239, 8 CFR 239 - Initiation of removal proceedings

INA 245(j), - Adjustment to permanent resident status

INA 248, 8 CFR 248 - Change of nonimmigrant classification

INA 289 - Application to American Indians born in Canada

Inadmissibility on Public Charge Grounds, 84 FR 41292 (Aug. 14, 2019) (Final rule)

Pub. L. 104-193 - Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Pub. L. 104-208 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Pub. L. 106-395 - Child Citizenship Act of 2000

Pub. L. 111-293 - Help Haitian Adoptees Immediately to Integrate Act of 2010

Pub. L. 111-8 - Section 602(b), Title VI of the Afghan Allies Protection Act of 2009

Pub. L. 113-4 - 127 Stat 54 of the Violence Against Women Reauthorization Act of 2013

Pub. L. 89-732 - Cuban Refugees Adjustment of Status

Section 11, 26 Stat 1084 of the Immigration Act of 1891

Section 212(a)(15), 66 Stat 163, 183 of the Immigration and Nationality Act of 1952

Sections 1-2, 22 Stat 214 of the Immigration Act of 1882

Forms

G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

I-130, Petition for Alien Relative

I-134, Affidavit of Support

I-356, Request for Cancellation of the Public Charge Bond

I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status

I-864, Affidavit of Support Under Section 213A of the INA

I-864A, Contract Between Sponsor and Household Member

I-864EZ, Affidavit of Support Under Section 213A of the INA

I-864W, Intending Immigrant's Affidavit of Support Exemption

I-944, Declaration of Self-Sufficiency

I-945, Public Charge Bond

Appendices

Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

Appendix: Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications

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February 05, 2020

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Current as of February 05, 2020



U.S. Citizenship and
Immigration Services

USCIS Policy Manual

Current as of February 05, 2020

Volume 8 - Admissibility

Part G - Public Charge Ground of Inadmissibility

Chapter 12 - Prospective Immigration Status and Expected Period of Admission

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Officers consider the applicant's immigration status and duration of admission sought by the alien, and the classification the alien is seeking, as part of the public charge inadmissibility determination.

A. Standard

USCIS considers the immigration status that the alien seeks and the expected period of admission as it relates to the alien's ability to financially support him or herself during the duration of the alien's stay.^[1] An adjustment of status applicant's prospective immigration status is that of a lawful permanent resident (LPR). The expected period of stay is permanent and is generally considered to be a negative factor. In general, aliens seeking admission as LPRs are more likely to receive public benefits than nonimmigrants because they intend to reside permanently in the United States and LPRs are eligible for more public benefits than nonimmigrants. An applicant may otherwise establish that he or she is not eligible for public benefits because of his or her immigration status or income.^[2]

B. Summary of Immigration Status and Expected Period of Stay

The following table provides a list of positive and negative factors related to the prospective immigration status and expected period of stay.

Applicant's Immigration Status and Expected Period of Admission

| Positive Factor | Negative Factor |
|---|---|
| <ul style="list-style-type: none"> The applicant provides evidence of ineligibility for public benefits based on immigration status or expected period of stay | <ul style="list-style-type: none"> Seeking adjustment of status as a lawful permanent resident |

C. Evidence

Generally, the alien's prospective immigration status is established through his or her immigration benefit request or application for admission. As a result, there is no additional evidence relating to this factor that an alien must provide.

Footnotes

1. [^] See 8 CFR 212.22(b)(6).
2. [^] See 8 CFR 212.22(b)(4)(ii)(E)(3).

Legal Authorities

10 U.S.C. 504(b) - Citizenship or residency

15 U.S.C. 1681 - Congressional findings and statement of purpose

21 U.S.C. 802 - Definitions

21 U.S.C. 841 - Prohibited acts A

22 CFR 40.51 - Labor certification

29 CFR 570 - Child labor regulations, orders and statements of interpretation

29 U.S.C. 213(c) - Child labor requirements

31 U.S.C. 9304-9308 - Sureties and surety bonds

31 U.S.C. 9305 - Authority and revocation of authority of surety corporations

38 U.S.C 1965 - Definitions

42 CFR 34.4 - Medical notifications

42 U.S.C. 1382c - Definitions

42 U.S.C. 413 - Quarter and quarter of coverage

42 U.S.C. 416(l) - Retirement age

7 CFR 273 - Certification of eligible households

8 CFR 1.2 - Definitions

8 CFR 1.3 - Lawfully present aliens for purposes of applying for Social Security benefits

8 CFR 1003.14 - Jurisdiction and commencement of proceedings

8 CFR 1003.1 - Organization, jurisdiction, and powers of the Board of Immigration Appeals

8 CFR 103.6 - Surety bonds

8 CFR 204.5 - Petitions for employment-based immigrants

8 CFR 212.20-212.23 - Applicability of public charge inadmissibility; Definitions; Public charge determination; Exemptions and waivers for the public charge ground of inadmissibility

8 CFR 212.21(b), - Public Benefits

8 CFR 212.4 - Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3)

8 CFR 213.1 - Admission under bond or cash deposit

8 CFR 213a - Affidavits of support on behalf of immigrants

8 CFR 214.2 - Special requirements for admission, extension, and maintenance of status

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8 CFR 235 - Inspection of persons applying for admission

8 CFR 245.11 - Adjustment of aliens in S nonimmigrant classification

8 CFR 292 - Representation and appearances

8 CFR 293.1 - Computation of interest

8 U.S.C. 1363 - Deposit of and interest on cash received to secure immigration bonds

8 U.S.C. 1601-1646 - Restricting welfare and public benefits for aliens

8 U.S.C. 1611 - Aliens who are not qualified aliens ineligible for Federal public benefits

8 U.S.C. 1612 - Limited eligibility of qualified aliens for certain Federal programs

8 U.S.C. 1613 - Five-year limited eligibility of qualified aliens for Federal means-tested public benefit

8 U.S.C. 1641 - Definitions

Final Specification of Community Programs Necessary For Protection Of Life Or Safety Under Welfare Reform Legislation, 66 FR 3613 (Jan. 16, 2001) (Final rule)

INA 101 - Definitions

INA 101(a)(15), - Nonimmigrant classifications

INA 201 - Worldwide level of immigration

INA 203 - Allocation of immigrant visas

INA 208 - Asylum

INA 212(a)(4) - Public charge

INA 212(d) - Temporary admission of nonimmigrants

INA 213 - Admission of certain aliens on giving bond or undertaking; return upon permanent departure

INA 235 - Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

INA 237(a)(5) - Public charge (deportable aliens)

INA 239, 8 CFR 239 - Initiation of removal proceedings

INA 245(j) - Adjustment to permanent resident status

INA 248, 8 CFR 248 - Change of nonimmigrant classification

INA 289 - Application to American Indians born in Canada

Inadmissibility on Public Charge Grounds, 84 FR 41292 (Aug. 14, 2019) (Final rule)

Pub. L. 104-193 - Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Pub. L. 104-208 - Illegal Immigration Reform and Immigrant Responsibility Act of 1996

Pub. L. 106-395 - Child Citizenship Act of 2000

Pub. L. 111-293 - Help Haitian Adoptees Immediately to Integrate Act of 2010

Pub. L. 111-8 - Section 602(b), Title VI of the Afghan Allies Protection Act of 2009

Pub. L. 113-4 - 127 Stat 54 of the Violence Against Women Reauthorization Act of 2013

Pub. L. 89-732 - Cuban Refugees Adjustment of Status

Section 11, 26 Stat 1084 of the Immigration Act of 1891

Section 212(a)(15), 66 Stat 163, 183 of the Immigration and Nationality Act of 1952

Sections 1-2, 22 Stat 214 of the Immigration Act of 1882

Forms

G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker

I-130, Petition for Alien Relative

I-134, Affidavit of Support

I-356, Request for Cancellation of the Public Charge Bond

I-539A, Supplemental Information for Application to Extend/Change Nonimmigrant Status

I-864, Affidavit of Support Under Section 213A of the INA

I-864A, Contract Between Sponsor and Household Member

I-864EZ, Affidavit of Support Under Section 213A of the INA

I-864W, Intending Immigrant's Affidavit of Support Exemption

I-944, Declaration of Self-Sufficiency

I-945, Public Charge Bond

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