U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

December 19, 2022 PA-2022-27

Policy Alert

SUBJECT: Public Charge Ground of Inadmissibility

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address the public charge ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA).

Background

Under INA 212(a)(4), an applicant for a visa, admission, or adjustment of status who is likely at any time to become a public charge, is inadmissible. The INA does not define public charge. It does, however, specify that, at a minimum, certain factors must be considered when determining whether a noncitizen is likely at any time to become a public charge.

On September 9, 2022, DHS published a final rule that, among other provisions, defines "likely at any time to become a public charge" as "likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense."[1]

Like the final rule, this guidance, contained in Volume 8 of the Policy Manual, will be implemented beginning on December 23, 2022, and applies prospectively to applications for adjustment of status postmarked (or submitted electronically, if applicable) on or after that date. On that date, the final rule and this policy update will supersede the public charge inadmissibility guidance found in the 1999 Interim Field Guidance and any related guidance addressing public charge inadmissibility.[2] For applications postmarked (or submitted electronically, if applicable) before December 23, 2022, USCIS will continue to apply the public charge ground of inadmissibility consistent with the statute and the 1999 Interim Field Guidance. The guidance contained in the Policy Manual supersedes any related prior guidance on the topic.

Policy Highlights

[1] See 8 CFR 212.21(a). See Public Charge Ground of Inadmissibility, 87 FR 55472 (Sept. 9, 2022) (final rule).
[2] See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 FR 28689 (May 26, 1999) (notice). Due to a printing error, the Federal Register version of the field guidance appears to be dated "March 26, 1999" even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the Federal Register on May 26, 1999.

- Describes the regulatory definitions, including "likely at any time to become a public charge" for purposes of inadmissibility determinations under INA 212(a)(4).

- Reiterates the categories of applicants who are exempt from, or may obtain a waiver of, the public charge inadmissibility ground.

- Reiterates the minimum factors USCIS considers in a public charge inadmissibility determination.

- Reiterates that the types of public benefits that USCIS considers in the public charge inadmissibility determination are limited to public cash assistance for income maintenance and long-term institutionalization at government expense, and provides a non-exhaustive list of the types of programs that are not considered in the public charge inadmissibility determination.

- Describes how USCIS considers long-term institutionalization at government expense.

- Reiterates that no one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ), if required, can be the sole basis for determining whether a noncitizen is likely at any time to become a public charge.

- Provides scenarios to illustrate the practical application of the totality of the circumstances analysis used in the public charge inadmissibility determination.

- Describes the public charge bond process for an applicant who files an Application to Register Permanent Residence or Adjust Status (Form I-485) with USCIS and who has been found inadmissible only on the public charge ground and invited to post a public charge bond.

Summary of Changes

Affected Section: Volume 8 > Part G, Public Charge Ground of Inadmissibility

- Adds new Chapters 1-12 and removes obsolete historical appendices.

Citation

Volume 8: Admissibility, Part G, Public Charge Ground of Inadmissibility [8 USCIS-PM G].

This policy is effective on December 23, 2022 and will be incorporated into the Policy Manual accordingly.

USCIS Policy Manual, Volume 8: Admissibility
Part G – Public Charge Ground of Inadmissibility

Chapter 1. Purpose and Background

A. Purpose

Under the Immigration and Nationality Act (INA) 212(a)(4), 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] unless exempt from this ground of inadmissibility.[4] DHS has the authority to waive this ground of inadmissibility for certain applicants for admission[5] and, in limited circumstances, also has the authority to waive this ground of inadmissibility for certain applicants for adjustment of status.[6]

B. Background

1. Public Charge Ground of Inadmissibility General Overview

The INA provides that an applicant for a visa, admission, or adjustment of status is inadmissible if in the opinion of the consular officer, immigration officer, or immigration judge at the time of application for a visa, admission, or adjustment of status, the applicant is likely at any time to become a public charge.[7]

The public charge ground of inadmissibility, therefore, applies to any noncitizen 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).[8] Congress has exempted by statute certain applicants for a visa, admission, or adjustment of status from the public charge ground of inadmissibility.[9]

The INA does not define public charge. It does, however, specify that consular officers, immigration officers, and immigration judges must, at a minimum, consider certain factors when determining whether a noncitizen is likely at any time to become a public charge.

2. Public Benefits Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which is commonly known as the 1996 welfare reform law, was passed by Congress. PRWORA stated that noncitizens generally should not depend on public resources and that the availability of public benefits

[3] See INA 212(a)(4)(A).
[4] See 8 CFR 212.23(a).
[5] See INA 212(d)(3)(A). See 8 CFR 212.23(c)(1).
[6] See INA 245(j). See 8 CFR 245.11 and 8 CFR 212.23(c)(2).
[7] See INA 212(a)(4).
[8] See INA 212(a)(4).
[9] See Chapter 3, Applicability, Section C, Exemptions [8 USCIS-PM G.3(C)].

should not constitute an incentive for immigration to the United States.[10] Moreover, PRWORA significantly restricted a noncitizen's eligibility for federal, state, local, and tribal public benefits.[11]

3. History of Public Charge Statutory and Regulatory Changes

Illegal Immigration Reform and Immigrant Responsibility Act of 1996

In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)[12] was passed by Congress. IIRIRA amended section 212(a)(4) of the INA, introducing the mandatory statutory factors, and created the enforceable Affidavit of Support Under Section 213A of the INA.[13]

More specifically, IIRIRA codified the following minimum factors that must be considered when making public charge inadmissibility determinations: age; health; family status; assets, resources, and financial status; and education and skills.[14]

Additionally, with IIRIRA, Congress made the legally enforceable Affidavit of Support Under Section 213A of the INA (Form I-864) a requirement for most family-sponsored and certain employment-based immigrants,[15] and indicated that it may be considered as a factor in a public charge inadmissibility determination.[16]

1999 Interim Field Guidance

On May 26, 1999, the legacy Immigration and Naturalization Service (INS) issued interim guidance, titled "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds" (1999 Interim Field Guidance).[17] This guidance identified how the agency would determine if a noncitizen is likely at any time to become a public charge[18] for admission and adjustment of status purposes, and when a noncitizen would be deportable[19] as a public charge.[20]

INS incorporated the policies contained in the 1999 Interim Field Guidance in a proposed rule published on May 26, 1999.[21] However, INS never finalized the proposed rule. INS, and later DHS, continued to apply the public charge ground consistent with the 1999 Interim Field Guidance for two decades.

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[10] See Section 400 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, (August 22, 1996) (codified at 8 U.S.C. 1601).
[11] See 8 U.S.C. 1601-1646, as amended.
[12] See Division C of Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996).
[13] See Division C of Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996). Congress added requirements for certain immigrant categories by creating INA 213A, making a sponsor's affidavit of support submitted on behalf of a noncitizen legally enforceable under IIRIRA. See Division C, Title V of Pub. L. 104-208, 110 Stat. 3009, 3009-670 (September 30, 1996).
[14] See INA 212(a)(4)(B). See Section 531 of Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-674 (September 30, 1996) (amending INA 212(a)(4)).
[15] See INA 212(a)(4)(C), INA 212(a)(4)(D), and INA 213A.
[16] See INA 212(a)(4)(B)(ii). See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].
[17] See 64 FR 28689 (May 26, 1999). Due to a printing error, the Federal Register version of the field guidance appears to be dated "March 26, 1999" even though the guidance was actually signed May 20, 1999, became effective May 21, 1999, and was published in the Federal Register on May 26, 1999.
[18] See INA 212(a)(4).
[19] See INA 237(a)(5).
[20] See 64 FR 28689 (May 26, 1999).
[21] See 64 FR 28676 (May 26, 1999).

Under the 1999 Interim Field Guidance and the 1999 proposed rule, "public charge" for purposes of a public charge inadmissibility determination was defined as a noncitizen who is likely to become primarily dependent 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.[22]

Regulatory Changes in 2019

On August 14, 2019, DHS issued a final rule regarding the public charge ground of inadmissibility, titled "Inadmissibility on Public Charge Grounds" (2019 Final Rule).[23] The 2019 Final Rule provided new and expanded definitions for certain terms and provided a multi-factor framework along with associated evidentiary requirements.

The 2019 Final Rule also added provisions that rendered certain nonimmigrants ineligible for extension of stay or change of status if they received specific public benefits for a certain period. Additionally, it revised DHS regulations governing the Secretary's discretion to accept a public charge bond for those seeking adjustment of status.

The 2019 Final Rule was set to take effect on October 15, 2019. Before it did, numerous plaintiffs filed suits challenging the 2019 Final Rule in five district courts, across four circuits.[24] The 2019 Final Rule was ultimately implemented on February 24, 2020. However, following a series of preliminary injunctions and stays or reversals of those injunctions, a partial final judgment vacating the 2019 Final Rule went into effect nationwide on March 9, 2022.[25] DHS subsequently formally removed the 2019 Final Rule from the Code of Federal Regulations (CFR).[26]

After the 2019 Final Rule was vacated and removed from the CFR, DHS returned to making public charge inadmissibility determinations in accordance with the statute and the 1999 Interim Field Guidance.[27]

Regulatory Changes in 2022

On August 23, 2021, DHS published an Advance Notice of Proposed Rulemaking (ANPRM) to seek broad public feedback on the public charge ground of inadmissibility to inform its development of a future

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[22] See 64 FR 28689 (May 26, 1999). See 64 FR 28676 (May 26, 1999).
[23] See 84 FR 41292 (Aug. 14, 2019), as amended by 84 FR 52357 (Oct. 2, 2019).
[24] See *CASA de Maryland, Inc., et al. v. Trump*, 19-cv-2715 (D. Md.). See *City and County of San Francisco, et al. v. DHS, et al.*, 19-cv-04717 (N.D.Ca.). See *City of Gaithersburg, et al. v. Trump, et al.*, 19-cv-02851 (D. Md.). See *Cook County et al. v. McAleenan et al.*, 19-cv-06334 (N.D. Ill.). See *La Clinica De La Raza, et al. v. Trump, et al.*, 19-cv-4980 (N.D. Ca.). See *Make the Road New York, et al. v. Cuccinelli, et al.*, 19-cv-07993 (S.D.N.Y.). See *New York, et al. v. DHS, et al.*, 19-cv-07777 (S.D.N.Y.). See *State of California, et al. v. DHS, et al.*, 19-cv-04975 (N.D. Cal.). See *State of Washington, et al. v. DHS, et al.*, 19-cv-05210 (E.D. Wa.).
[25] See *Cook County v. Wolf*, 498 F. Supp. 3d 999 (N.D. Ill. 2020).
[26] See 86 FR 14221 (Mar. 15, 2021).
[27] See 64 FR 28689 (May 26, 1999).

regulatory proposal.[28] DHS reviewed all of the comments and considered them in developing a Notice of Proposed Rulemaking (NPRM).[29]

On February 24, 2022, DHS published an NPRM.[30] Following careful consideration of public comments received in response to the NPRM, DHS published a final rule, titled "Public Charge Ground of Inadmissibility", on September 9, 2022 (2022 Final Rule).[31]

The 2022 Final Rule implemented a different policy than the 2019 Final Rule. Under the 2022 Final Rule, similar to the 1999 Interim Field Guidance that was in place for two decades before the 2019 Final Rule, noncitizens are considered likely at any time to become a public charge if they are likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

The 2022 Final Rule only addresses the public charge ground of inadmissibility and does not address the public charge ground of deportability, which was addressed in the 1999 Interim Field Guidance and 1999 NPRM.

C. Scope

The guidance outlined in this Part G only applies to Applications to Register Permanent Residence or Adjust Status (Forms I-485) postmarked (or, if applicable, submitted electronically) on or after December 23, 2022.[32]

Officers must adjudicate applications postmarked (or, if applicable, submitted electronically) before December 23, 2022, consistent with the 1999 Interim Field Guidance.[33] Public charge bond availability depends on the immigration benefit the applicant is seeking.[34] The discussion of immigration bonds in this Part G is limited to public charge bonds administered by USCIS for applicants seeking adjustment of status with USCIS.[35]

D. Legal Authorities

- INA 212(a)(4); 8 CFR 212 – Public charge inadmissibility
- INA 213A; 8 CFR 213a – Requirements for sponsor's affidavit of support

[28] See 86 FR 47025 (Aug. 23, 2021) (advance notice of proposed rulemaking).
[29] See 87 FR 10570, 10597 (Feb. 24, 2022) (proposed rule).
[30] See 87 FR 10570 (Feb. 24, 2022) (proposed rule).
[31] See 87 FR 55472 (Sept. 9, 2022) (final rule).
[32] The effective date of the DHS final rule. See 87 FR 55472 (Sept. 9, 2022) (final rule).
[33] See 64 FR 28689 (May 26, 1999).
[34] See INA 213.
[35] See 8 CFR 213.1. USCIS also accepts bonds before the issuance of an immigrant visa upon a request from a U.S. consular officer or upon the presentation by an interested person of a notification from the consular officer requiring such a bond. For more information, contact the U.S. Department of State. Moreover, U.S. Immigration and Customs Enforcement (ICE) administers other types of immigration bonds, such as voluntary departure bonds, delivery bonds, and order of supervision bonds. For more information on these types of bonds, contact ICE.

- INA 213; 8 CFR 213.1 – Admission of aliens on giving bond or undertaking; return upon permanent departure; admission under bond or cash deposit

- 8 CFR 103.6 – Immigration bonds

- INA 245; 8 CFR 245 – Adjustment of status of nonimmigrant to that of person admitted for permanent residence

- 31 U.S.C. 9304-9308 – Surety corporations

Chapter 2. Definitions

Under the Immigration and Nationality Act (INA) 212(a)(4), an applicant for adjustment of status is inadmissible if, in the opinion of the immigration officer at the time of application for adjustment of status, they are "likely at any time to become a public charge."[36]

A. Likely at Any Time to Become a Public Charge

The INA does not define the phrase "likely at any time to become a public charge."[37]

The regulations at 8 CFR 212.21(a) define "likely at any time to become a public charge" to mean "likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense."[38]

B. Public Cash Assistance for Income Maintenance

For purposes of a public charge inadmissibility determination, "public cash assistance for income maintenance" means:

- Supplemental Security Income (SSI);

- Cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF) program; or

- State, tribal, territorial, or local cash benefit programs for income maintenance, commonly called "General Assistance."[39]

C. Long-term Institutionalization at Government Expense

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[36] See INA 212(a)(4).
[37] See INA 212(a)(4)(A).
[38] See 8 CFR 212.21(a).
[39] See 8 CFR 212.21(b). USCIS does not consider benefits that are not referenced above when making a public charge inadmissibility determination. See 8 CFR 212.22(a)(3). For details and examples, see Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense [8 USCIS-PM G.7].

For the purpose of a public charge inadmissibility determination, "long-term institutionalization at government expense" means government assistance for long-term institutionalization (in the case of Medicaid, limited to institutional services under section 1905(a) of the Social Security Act) received by a beneficiary, including in a nursing facility or mental health institution.

Long-term institutionalization at government expense is the only category of Medicaid-funded services (limited to institutional services under section 1905(a) of the Social Security Act) considered in a public charge inadmissibility determination.[40]

As part of the consideration of long-term institutionalization, USCIS considers both permanent institutionalization as well as institutionalization for a long period of time short of indefinite duration, in the totality of the circumstances.[41] However, long-term institutionalization does not include imprisonment for conviction of a crime or institutionalization for short periods for rehabilitation purposes.[42]

Long-term institutionalization does not include sporadic or intermittent periods of institutionalization, even on a recurring basis.[43] No other services paid for by Medicaid, including home and community-based services (HCBS), and no services provided under the Children's Health Insurance Program (CHIP), are considered as long-term institutionalization at government expense.[44]

D. Receipt (of Public Benefits)

USCIS determines an individual's likelihood of becoming primarily dependent on the government for subsistence, as demonstrated by the noncitizen's receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[45] "Receipt (of public benefits)" only occurs when the applicant is listed as a beneficiary of the benefit. USCIS does not consider public benefits received by the applicant's relatives, including children, or received by the applicant solely on behalf of third parties. It is not considered receipt to apply for a public benefit on one's own behalf or on behalf of another. Similarly, approval for future receipt of a public benefit on the noncitizen's own behalf or on behalf of another is also not considered receipt.[46]

E. Government

DHS defines "government" for the purpose of implementing the public charge ground of inadmissibility as "any Federal, State, Tribal, territorial, or local government entity or entities of the United States."[47]

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[40] See 8 CFR 212.21(c).
[41] See Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense, Section C, Long-Term Institutionalization at Government Expense [8-USCIS PM G.7(C)].
[42] See 8 CFR 212.21(c).
[43] See 87 FR 55472, 55563 (Sept. 9, 2022).
[44] For more information about long term-institutionalization, see Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense, Section C, Long-term Institutionalization at Government Expense [8 USCIS-PM G.7(C)].
[45] See 8 CFR 212.21(a). For more information regarding the public benefits considered in a public charge inadmissibility determination, see Section B, Public Cash Assistance for Income Maintenance [8 USCIS-PM G.2(B)], and Section C, Long-term Institutionalization at Government Expense [8 USCIS-PM G.2(C)].
[46] See 8 CFR 212.21(d).
[47] See 8 CFR 212.21(e).

F. Household

For the purpose of a public charge inadmissibility determination, DHS states that a noncitizen's household includes:[48]

- The noncitizen;
- The noncitizen's spouse, if physically residing with the noncitizen;
- The noncitizen's parents, if physically residing with the noncitizen;
- The noncitizen's unmarried siblings under 21 years of age, if physically residing with the noncitizen;
- The noncitizen's children,[49] if physically residing with the noncitizen;
- Any other individuals who are listed as dependents on the noncitizen's federal income tax return;[50] and
- Any other individuals who list the noncitizen as a dependent on their federal income tax return.

Chapter 3. Applicability

In general, the public charge ground of inadmissibility at Immigration and Nationality Act (INA) 212(a)(4) applies to an applicant who is applying for a visa, admission, or adjustment of status.[51] A noncitizen applying for a visa, admission, or adjustment of status must establish that they are not inadmissible under any ground of inadmissibility including the public charge ground.[52] If a noncitizen is exempt from the public charge ground of inadmissibility, this ground of inadmissibility does not apply to them.[53]

A. Applicants for Admission

The public charge ground of inadmissibility[54] generally applies to applicants for admission[55] as an immigrant [56] or a nonimmigrant unless they are specifically exempted by statute or regulations.[57] U.S. Customs and Border Protection (CBP) inspects applicants for admission to the United States. When an

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[48] See 8 CFR 212.21(f).
[49] As defined in INA 101(b)(1).
[50] Including a spouse or child as defined in INA 101(b)(1) not physically residing with the noncitizen.
[51] See INA 212(a)(4)(A).
[52] See INA 291 and INA 212(a)(4).
[53] See 8 CFR 212.23. See Section C, Exemptions [8 USCIS-PM G.3(C)].
[54] See INA 212(a)(4).
[55] See INA 101(a)(4) and INA 101(a)(13)(A).
[56] A noncitizen, who is a lawful permanent resident (LPR), who travels abroad and seeks to enter the United States again is generally not seeking admission under the Immigration and Nationality Act (INA). See INA 101(a)(13)(C).
[57] See 8 CFR 212.23. For more information, see Section C, Exemptions [8 USCIS-PM G.3(C)].

applicant for admission demonstrates that they are admissible, the applicant may be permitted to enter the United States as an immigrant or nonimmigrant.[58]

1. Nonimmigrants

Under INA 212(a)(4), any noncitizen who is applying for a visa or for admission to the United States as a nonimmigrant is inadmissible if they are likely at any time to become a public charge. A noncitizen applies directly to a U.S. consulate or embassy abroad for a nonimmigrant visa to travel to the United States temporarily for a limited purpose, such as to visit for business or tourism.[59] Department of State (DOS) consular officers assess whether the noncitizen is inadmissible and therefore ineligible for a visa, including under the public charge ground of inadmissibility, as applicable.[60] Eligible noncitizens may also apply for admission as a nonimmigrant without a visa under, for example, the Visa Waiver Program (VWP).[61]

Once DOS issues the nonimmigrant visa, or the prospective traveler has obtained any required pre-travel authorization from CBP, the noncitizen generally may travel to the United States using that visa or travel authorization, if applicable, and apply for admission at a port of entry. CBP then determines whether the applicant for admission is inadmissible under any ground, including public charge.

2. Immigrants

A noncitizen who is abroad and is the beneficiary of an approved immigrant visa petition may apply to DOS for an immigrant visa to allow them to travel to the United States and seek admission to the United States as an immigrant.[62] As part of the immigrant visa process, DOS determines whether the applicant is eligible for the visa, which includes a determination of whether the noncitizen has demonstrated that they are not inadmissible under any of the applicable grounds in INA 212.

Once DOS issues the immigrant visa, the noncitizen may travel to the United States and seek admission as an immigrant at a port of entry. CBP determines whether the applicant for admission as an immigrant is inadmissible under any ground, including public charge.[63]

3. Certain Lawful Permanent Residents Returning to the United States

Lawful permanent residents (LPRs) generally are not considered to be applicants for admission, and therefore are not subject to inadmissibility determinations upon their return from a trip abroad. However, in certain limited circumstances, an LPR is considered an applicant for admission and,

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[58] See INA 235. See 8 CFR 235. CBP follows CBP guidance on the determination, in accordance with DHS regulations at 8 CFR 212.20 and 8 CFR 212.23.
[59] Certain nonimmigrant classifications are subject to petition requirements, and in such cases USCIS generally must approve a petition before the nonimmigrant applies for a visa. See INA 214. In addition, certain noncitizens are not subject to a visa requirement in order to seek admission as a nonimmigrant. See INA 217. See 8 CFR 212.1.
[60] See INA 221 and INA 222. See 8 CFR 204.
[61] Examples of other ways in which eligible noncitizens may apply for admission as a nonimmigrant without a visa include but are not limited to the Guam-CNMI VWP (see 8 CFR 212.1(q)) as well as certain nationals of Canada, Bermuda, the Bahamas, the British Virgin Islands, and Mexico in certain situations (see 8 CFR 212.1(a)-(c)).
[62] See INA 221 and INA 222. See 8 CFR 204.
[63] The public charge ground of inadmissibility does not apply to nonimmigrants seeking extension of stay or change of status in the United States.

therefore, subject to an inadmissibility determination upon the LPR's return to the United States.[64] This inadmissibility determination includes whether the noncitizen is inadmissible under the public charge ground of inadmissibility.

B. Applicants for Adjustment of Status

Unless they are specifically exempt from the public charge ground of inadmissibility, the public charge ground of inadmissibility will generally apply to all applicants for adjustment of status, including, but not limited to:

- Family-based applicants;
- Employment-based applicants; and
- Diversity visa applicants.

C. Exemptions

The public charge ground of inadmissibility does not apply, based on statutory or regulatory authority, to the following applicants for visas, admission, and adjustment of status:[65]

- Asylees[66] and refugees;[67]
- Amerasian immigrants at admission;[68]
- Afghan and Iraqi interpreters or Afghan and Iraqi nationals employed by or on behalf of the U.S. government;[69]
- Cuban and Haitian entrants at adjustment of status;[70]
- Applicants seeking adjustment under the Cuban Adjustment Act;[71]

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[64] See INA 101(a)(13)(C). See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, "Inspected and Admitted" or "Inspected and Paroled," Subsection 2, Admission [7 USCIS-PM B.2(A)(2)]. An LPR who travels abroad does not undergo another public charge inadmissibility determination upon return to the United States unless CBP determines that the returning LPR is an applicant for admission based on one of the criteria set forth in INA 101(a)(13)(C) (for example, CBP determines that the noncitizen has been absent from the United States for more than 180 days).
[65] See 8 CFR 212.23(a) where DHS has codified this list of exemptions.
[66] See INA 208. See 8 CFR 208.
[67] See INA 207 and INA 209. See 8 CFR 209.2.
[68] See Sections 101(e) and 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202, 101 Stat. 1329-183 (December 22, 1987), as amended.
[69] See Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 119 Stat. 3136, 3444 (January 6, 2006), as amended, and Section 602(b), Title VI of the Omnibus Appropriations Act, 2009, Pub. L. 111-8 (March 11, 2009), as amended, and Section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008), as amended.
[70] See Section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, 3404 (November 6, 1986), as amended.
[71] See Cuban Adjustment Act, Pub. L. 89-732 (November 2, 1966), as amended.

- Nicaraguans and other Central Americans who are adjusting status to LPR;[72]
- Haitians who are adjusting status to LPR;[73]
- Lautenberg parolees;[74]
- Special immigrant juveniles;[75]
- Applicants for registry;[76]
- Applicants seeking temporary protected status (TPS);[77]
- Certain nonimmigrant ambassadors, ministers, diplomats, and other foreign government officials, and their families;[78]
- Victims of human trafficking (T nonimmigrants);[79]
- Victims of qualifying criminal activity (U nonimmigrants);[80]
- Self-petitioners under the Violence against Women Act (VAWA);[81]

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[72] See Sections 202(a) and 203 of the Nicaraguan Adjustment and Central American Relief Act, Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997), as amended.
[72] See Section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.
[73] See Section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.
[74] See Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, 1263 (November 21, 1989), as amended.
[75] See INA 245(h).
[76] Registry is a section of immigration law that enables certain noncitizens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.
[77] See 8 CFR 244.3. INA 244(c)(2)(ii) authorizes DHS to waive any INA 212(a) ground, except for those that Congress specifically noted could not be waived.
[78] See INA 101(a)(15)(A)(i), INA 101(a)(15)(A)(ii), and INA 102. See 22 CFR 41.21(d). See INA 101(a)(15)(G)(i), INA 101(a)(15)(G)(ii), INA 101(a)(15)(G)(iii), and INA 101(a)(15)(G)(iv).
[79] See INA 245(l). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Application to Register Permanent Residence or Adjust Status (Form I-485), is still in valid T nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file an Affidavit of Support Under Section 213A of the INA (Form I–864). See 8 CFR 213a.2(b)(2).
[80] See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I-485, is still in valid U nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I–864. See 8 CFR 213a.2(b)(2).
[81] See INA 212(a)(4)(E)(i).

- Certain battered noncitizens who are "qualified aliens" under PRWORA;[82]
- Applicants adjusting status who qualify for a benefit as surviving spouses, children, or parents of military members;[83]
- Noncitizen American Indians born in Canada;[84]
- Noncitizen members of the Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma;[85]
- Nationals of Vietnam, Cambodia, and Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;[86]
- Polish and Hungarian Parolees;[87]
- Certain Syrian nationals;[88]
- Applicants adjusting under the Liberian Refugee Immigration Fairness (LRIF) law;[89] and
- Any other categories of noncitizens exempt from the public charge ground of inadmissibility under any other law.[90]

D. Categories of Noncitizens Exempt from the Public Charge Ground of Inadmissibility Who Must Still Submit Form I-864

Under INA 212(a)(4)(D), certain noncitizens applying to adjust status in an employment-based category are required to submit an Affidavit of Support Under Section 213A of the INA (Form I-864). This includes noncitizens whose employment-based petition was filed by a relative of the noncitizen[91] or by an entity

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[82] See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013). See Section 431(c) of Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996). See 8 U.S.C. 1641(c).

[83] See Section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents).

[84] See INA 289.

[85] See Pub. L. 97-429 (Jan. 8, 1983).

[86] See Section 586 of Pub. L. 106-429, 114 Stat. 1900, 1900A-57 (November 6, 2000) under 8 CFR 245.21.

[87] Includes certain Polish and Hungarian parolees who were paroled into the United States from November 1, 1989, to December 31, 1991. See Section 646(b) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-709 (September 30, 1996).

[88] See Pub. L. 106-378 (October 27, 2000).

[89] See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182, 2155 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension).

[90] For the most comprehensive list and description of the exemptions, see 8 CFR 212.23(a).

[91] Relatives include spouse, parents, children, adult sons or daughters, brothers, and sisters. See 8 CFR 213a.1. An affidavit of support under this section is not required, however, if the relative is a brother or sister of the intending immigrant, unless the brother or sister is a citizen. See 8 CFR 213a.2(a)(2)(i)(C).

in which the noncitizen's relative has a significant ownership interest.[92]

Congress did not include an exemption from this requirement for noncitizens applying to adjust status in the employment-based category, even for certain categories of noncitizens who are otherwise exempt from the public charge ground of inadmissibility.[93]

Therefore, if a noncitizen in the following categories applies for adjustment of status based on an employment-based petition that requires a Form I-864, these applicants must submit a Form I-864 executed by their petitioning relative (or the relative with significant ownership interest in the petitioning entity):[94]

- Noncitizens who have a pending application that sets a prima facie case for eligibility for T nonimmigrant status;
- Noncitizens who have been granted T nonimmigrant status and are in valid T nonimmigrant status at the time the adjustment of status application is properly filed with USCIS and at the time the adjustment of status is adjudicated;
- Petitioners for U nonimmigrant status;
- Noncitizens who have been granted U nonimmigrant status and are in valid U nonimmigrant status at the time the adjustment of status application is properly filed with USCIS and at the time the adjustment of status is adjudicated;
- Self-petitioners under the Violence Against Women Act (VAWA); and
- Certain noncitizens who have been battered or subjected to extreme cruelty by a family member in the United States.[95]

Chapter 4. Prospective Determination Based on the Totality of the Circumstances

The public charge inadmissibility determination is a prospective determination based on the totality of an applicant's circumstances.[96] In making such a determination, USCIS reviews all information in the record.

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[92] Significant ownership interest means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under INA 203(b). See 8 CFR 213a.1.
[93] See INA 212(a)(4)(E).
[94] See 8 CFR 212.23(b).
[95] See INA 212(a)(4)(E)(iii). The list of "qualified aliens" included in this exemption is described in 8 U.S.C. 1641(c). See 8 CFR 212.23(b).
[96] See INA 212(a)(4). See 8 CFR 212.22(b).

The public charge inadmissibility determination is inherently subjective in nature given the express wording of INA 212(a)(4)(A), which states that the public charge inadmissibility determination is "in the opinion of" DHS.[97]

The burden of proof to establish admissibility when seeking adjustment of status is always on the applicant.[98] The burden never shifts to the government during the adjudication process.[99]

A. Prospective Determination

A public charge inadmissibility determination is based on an applicant's likelihood at any time in the future to become a public charge,[100] that is, the likelihood of becoming primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

B. Factors USCIS Considers

Evaluating whether an applicant is likely at any time to become a public charge based on the totality of the applicant's circumstances[101] means evaluating all the information provided on the Application to Register Permanent Residence or Adjust Status (Form I-485), Report of Medical Examination and Vaccination Record (Form I-693), any other forms and evidence contained in the record, and statements by an applicant during an interview, if applicable. USCIS considers all information or evidence in the record that is relevant in the totality of the circumstances.[102]

For all applicants subject to the public charge ground of inadmissibility,[103] the officer will consider the statutory minimum factors: age;[104] health;[105] family status;[106] assets, resources, and financial status;[107]

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[97] See *Matter of Harutunian*, 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*, 10 I&N Dec. 409, 421 (A.G. 1964) ("[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer's subjective opinion.").
[98] See INA 291. See *Matter of Bett*, 26 I&N Dec. 437 (BIA 2014).
[99] See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).
[100] See 8 CFR 212.22(a). See *Matter of Harutunian*, 14 I&N Dec. 583 (Reg. Comm. 1974). See *Matter of Perez*, 15 I&N Dec. 136 (BIA 1974). In comparison, the public charge ground of removal under INA 237(a)(5) is predicated on whether the noncitizen has become a public charge. See *Matter of Viado*, 19 I&N Dec. 252, 253 (Comm. 1985) ("The distinction is based on the fact that the determination of excludability involves a prediction of the likelihood of an alien becoming a public charge in the future, rather than an assessment of whether the alien has already become a public charge.")
[101] See 8 CFR 212.22(b). See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) ("The determination of whether an alien is likely to become a public charge under section 212(a)(15) is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States.").
[102] See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule).
[103] See INA 212(a)(4). See 8 CFR 212.23(a).
[104] See 8 CFR 212.22(a)(1)(i). See Chapter 5, Statutory Minimum Factors, Part A, Age [8 USCIS-PM G.5(A)].
[105] See 8 CFR 212.22(a)(1)(ii). See Chapter 5, Statutory Minimum Factors, Part B, Health [8 USCIS-PM G.5(B)].
[106] See 8 CFR 212.22(a)(1)(iii). See Chapter 5, Statutory Minimum Factors, Part C, Family Status [8 USCIS-PM G.5(C)].
[107] See 8 CFR 212.22(a)(1)(iv). See Chapter 5, Statutory Minimum Factors, Part D, Assets, Resources, and Financial Status [8 USCIS-PM G.5(D)].

and education and skills.[108] The officer will favorably consider a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864) (when required).[109] The officer will also consider any current or past receipt (or both) of public cash assistance for income maintenance or long-term institutionalization at government expense by the applicant.[110] However, relatively few applicants will be both subject to the public charge ground of inadmissibility and eligible for public benefits prior to adjustment of status.[111]

There is no "bright-line" test in making a public charge inadmissibility determination. No one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, can be the sole criterion for determining if a noncitizen is likely at any time to become a public charge.[112] Instead, the officer must determine whether the applicant's circumstances, assessed in their totality, suggest that the applicant is more likely than not to become a public charge.[113]

C. Empirical Analysis of the Best-Available Data

Under 8 CFR 212.22(b), USCIS may periodically issue guidance to officers about how the factors under 8 CFR 212.22(a) may inform the likelihood that an applicant will become a public charge at any time, based on an empirical analysis of the best-available data as appropriate.[114]

USCIS has reviewed the available data and currently anticipates that the best-available data may be found in the Survey of Income and Program Participation (SIPP) from the U.S. Census Bureau, which is a nationally representative longitudinal survey of households that provides comprehensive information on the dynamics of income, employment, household composition, and government program participation. USCIS continues to analyze the SIPP data and other sources of data to consider how the best-available data can help inform this policy guidance as appropriate.

The regulation's reference to empirical analysis does not contemplate individual officers conducting their own such analysis. The analysis of the best-available data mentioned in the regulation is performed at the agency level and is used to inform the Policy Manual content as appropriate.

USCIS will continue to analyze the data and may update the Policy Manual in the future as appropriate.

Chapter 5. Statutory Minimum Factors

Under INA 212(a)(4), officers are required to consider specific minimum factors in determining whether an applicant seeking admission to the United States or seeking to adjust status to that of lawful permanent resident is likely at any time to become a public charge. These statutory minimum factors include the noncitizen's:

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[108] See 8 CFR 212.22(a)(1)(v). See Chapter 5, Statutory Minimum Factors, Part E, Education and Skills [8 USCIS-PM G.5(E)].
[109] See 8 CFR 212.22(a)(2). See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].
[110] See 8 CFR 212.22(a)(3). See Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense [8 USCIS-PM G.7].
[111] See 87 FR 55472, 55519 (Sept. 9, 2022) (final rule).
[112] See 8 CFR 212.22(b).
[113] See 87 FR 55472, 55517 (Sept. 9, 2022) (final rule) (DHS defined the term ''likely'' as ''more likely than not'' in the 2019 Final Rule. DHS continues to believe that this interpretation is appropriate).
[114] See 8 CFR 212.22(b). USCIS may periodically issue new guidance to officers to inform the totality of the circumstances assessment.

- Age;
- Health;
- Family status;
- Assets, resources, and financial status; and
- Education and skills.[115]

This chapter discusses the statutory minimum factors. Subsequent chapters discuss the Affidavit of Support Under Section 213A of the INA and consideration of current or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[116]

A. Age

USCIS must consider a noncitizen's age in a public charge inadmissibility determination.[117] The applicant indicates their age on the Application to Register Permanent Residence or Adjust Status (Form I-485).

In some circumstances, such as in the case of children, an applicant's age may on its face suggest that they are at present unable to earn a living through employment. USCIS considers the applicant's household's income, assets, and liabilities, however, not just those of the applicant.

USCIS considers an applicant's age in the totality of the noncitizen's circumstances, as part of a prospective determination.[118] Furthermore, USCIS considers age in combination with the other factors, and examines the applicant's age in relation to its possible impact on the other factors (for example, health or assets, resources, and financial status).

B. Health

USCIS must consider a noncitizen's health in a public charge inadmissibility determination.[119]

1. Report of Medical Examination and Vaccination Record

In considering a noncitizen's health in a public charge inadmissibility determination, USCIS generally defers to the medical information provided by a civil surgeon on the Report of Medical Examination and Vaccination Record (Form I-693) or by a panel physician on the following Department of State forms:

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[115] See INA 212(a)(4)(B)(i).
[116] See Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6]. See Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense [8 USCIS-PM G.7].
[117] See 8 CFR 212.22(a)(1)(i).
[118] For more information about the totality of the circumstances determination, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4]. For more information about the totality of circumstances specifically relating to children, see Chapter 9, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications, Section A, Evidence in the Record, Subsection 3, Other Notable Circumstances Relevant in the Totality of the Circumstances [8 USCIS-PM G.9(A)(3)].
[119] See INA 212(a)(4)(B)(i).

Medical Examination for Immigrant or Refugee Applicant (1991 TB Technical Instructions) (Form DS-2053), the Medical Examination for Immigrant or Refugee Applicant (2007 TB Technical Instructions) (Form DS-2054), or the Electronic Medical Examination for Visa Applicant (DS-7794), and related worksheets.[120] Officers should not make health diagnoses.

Such information includes diagnoses of any Class A[121] or Class B medical conditions diagnosed by the civil surgeon or panel physician. Class A conditions are medical conditions listed in INA 212(a)(1)(A) that render a person inadmissible and ineligible for a visa or adjustment of status.

Class B medical conditions include any "physical or mental abnormality, disease, or disability serious in degree or permanent in nature amounting to a substantial departure from normal well-being," in which case the civil surgeon or panel physician must also document "the nature and extent of the abnormality; the degree to which the alien is incapable of normal physical activity; and the extent to which the condition is remediable . . . [as well as] the likelihood, that because of the condition, the applicant will require extensive medical care or institutionalization."[122]

USCIS may request additional information regarding an applicant's health if the information provided in the report of medical examination is incomplete.[123]

2. Relationship Between Health and Disability

INA 212(a)(4)(B)(i) requires USCIS to consider a noncitizen's health when making a public charge inadmissibility determination, which may include consideration of any disabilities, as defined by Section 504 of the Rehabilitation Act, identified in the report of medical examination.[124] However, USCIS will not find an applicant inadmissible on the public charge ground solely based on an applicant's disability.

As noted previously, no one factor (other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA when required) will lead to a public charge inadmissibility finding. Disability alone is not a sufficient basis to determine whether a noncitizen is likely at any time to become primarily dependent on the government for subsistence and therefore inadmissible under INA 212(a)(4).[125]

Additionally, many disabilities do not impact a person's health, prevent a person from working, or require extensive medical care or institutionalization. In fact, the vast majority of people with disabilities do not use institutional care.[126]

Therefore, USCIS does not presume that a noncitizen having a disability in and of itself means that the noncitizen is in poor health or is likely at any time to become primarily dependent on the government

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[120] See 8 CFR 212.22(a)(1)(ii). As of October 1, 2013, panel physicians only use DS-2054 or DS-7794. The DS-2053 is no longer used after that date. Applicants for adjustment of status generally submit Form I-693; however, immigrants applying for adjustment of status as a refugee, a derivative of an asylee, or a K or V nonimmigrant visa holder, as well as some Afghan nationals as part of Operation Allies Welcome who have already had a medical examination overseas, may submit a medical examination performed by a panel physician.
[121] See 42 CFR 34.2(d).
[122] See 42 CFR 34.4(b)(2) and 42 CFR 34.4(c)(2). For more information about Class A and Class B conditions, see Volume 8, Admissibility, Part B, Health-Related Grounds of Inadmissibility [8 USCIS-PM B].
[123] See 8 CFR 212.22(a)(1)(ii).
[124] See 8 CFR 212.22(a)(1)(ii).
[125] See 8 CFR 212.22(a)(4).
[126] See 87 FR 55472, 55544 (Sept. 9, 2022).

for subsistence. Likewise, USCIS does not presume that the noncitizen's disability in and of itself negatively impacts any of the other statutory minimum factors.

C. Family Status

USCIS must consider a noncitizen's family status, as evidenced by the applicant's household size, as household is defined in 8 CFR 212.21(f), in a public charge inadmissibility determination.[127]

The applicant indicates their household size on Form I-485. A household includes:[128]

- The noncitizen;
- The noncitizen's spouse, if physically residing with the noncitizen;
- The noncitizen's parents, if physically residing with the noncitizen;
- The noncitizen's unmarried siblings under 21 years of age, if physically residing with the noncitizen;
- The noncitizen's children,[129] if physically residing with the noncitizen;
- Any other individuals who are listed as dependents on the noncitizen's federal income tax return;[130] and
- Any other individuals who list the noncitizen as a dependent on their federal income tax return.

As seen in this list, an applicant's household includes certain individuals living with the noncitizen (who may or may not contribute financially to the household) as well as certain relatives and close relations who may contribute financially to the noncitizen's household while not residing with the noncitizen. Financial contributions from these non-cohabitating household members are included in the consideration of the applicant's assets, resources, and financial status factor, as described below.

D. Assets, Resources, and Financial Status

USCIS must consider a noncitizen's assets, resources, and financial status in a public charge inadmissibility determination.[131] In considering a noncitizen's assets, resources, and financial status, USCIS examines the noncitizen's household's[132] income, assets, and liabilities.[133]

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[127] See INA 212(a)(4)(B)(i). See 8 CFR 212.22(a)(1)(iii).
[128] See 8 CFR 212.21(f).
[129] As defined in INA 101(b)(1).
[130] Including a spouse or child as defined in INA 101(b)(1) not physically residing with the noncitizen.
[131] See INA 212(a)(4)(B)(i).
[132] As defined in 8 CFR 212.21(f).
[133] USCIS does not include income derived from the public benefits listed in 8 CFR 212.21(b): Supplemental Security Income (SSI); cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF); and state, tribal, territorial, or local cash benefit programs for income maintenance, commonly called "General Assistance," in the income calculation. See 8 CFR 212.22(a)(1)(iv). USCIS also does not include any income or assets derived from illegal activities or sources, such as proceeds from illegal gambling or drug sales. See 8 CFR 212.22(a)(1)(iv).

The applicant indicates their household's income, assets, and liabilities on Form I-485. Noncitizens are not required to submit any specific supporting evidence related to their household's income, assets, and liabilities. USCIS may request additional evidence on a case-by-case basis if more information is needed to make a public charge inadmissibility determination.

Income

Applicants indicate their household's annual income, which may include income provided to the household from sources who are not members of the household, such as alimony or child support.[134] A household's annual income excludes any income from Supplemental Security Income (SSI); Temporary Assistance for Needy Families (TANF); or state, tribal, territorial, or local cash benefit programs for income maintenance (often called "General Assistance" in the state context, but which also exist under other names).[135] Similarly, the household's income excludes any income from illegal activities or sources such as proceeds from illegal gambling or drug sales.[136]

USCIS does not limit the consideration of income only to income that appears on federal income tax forms, and considers all evidence of income from lawful sources. Examples of income that may not appear on income tax forms include child support and alimony. Some households may also have regular income, such as Social Security income, that does not reach the minimum required threshold for filing federal income taxes.[137] USCIS also considers any evidence a noncitizen submits pertaining to expected future income.

In some instances, the household's income may include income that has resulted from unauthorized employment. Whether a noncitizen or a member of the noncitizen's household engaged in unlawful employment, and any immigration consequences flowing from such unauthorized employment, is a separate determination from the public charge inadmissibility determination.[138]

Therefore, this income is not excluded from the household's income calculation, and USCIS considers any income derived from employment, regardless of whether the household members had employment authorization, as long as the income is not derived from illegal activities or sources, such as illegal gambling.

Assets and Liabilities

When considering the applicant's financial status, USCIS also considers the noncitizen's household's assets and resources, for example, investments or home equity, excluding any assets from illegal activities or sources, such as proceeds from illegal gambling or drug sales. USCIS also considers the noncitizen's household's liabilities, both secured and unsecured, such as loans, alimony, and child support payments. By taking into account a noncitizen's household's liabilities, USCIS is able to examine the noncitizen's overall financial status in the totality of the circumstances.

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[134] See 87 FR 55472, 55475 (Sep. 9, 2022).
[135] See 8 CFR 212.22(a)(1)(iv).
[136] See 8 CFR 212.22(a)(1)(iv) and 8 CFR 212.21(b).
[137] See the Internal Revenue Service's (IRS) Who Should File a Tax Return webpage for more information on the minimum taxable income threshold.
[138] See INA 245(c)(2) and INA 245(c)(8). For more information about the unauthorized employment determination, see Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 6, Unauthorized Employment (INA 245(c)(2) and INA 245(c)(8)) [7 USCIS-PM B.6].

USCIS considers financial obligations and debts alongside assets and resources to avoid artificially inflating the calculation of a noncitizen's financial status, as these obligations and debts would decrease the resources that are actually accessible to the noncitizen. However, if a noncitizen has financial obligations and debts, this does not necessarily indicate that the noncitizen is inadmissible under the public charge ground, and USCIS considers this factor in the totality of the circumstances.

E. Education and Skills

USCIS must consider a noncitizen's education and skills in a public charge inadmissibility determination.[139] In considering a noncitizen's education and skills in this determination, USCIS considers any degrees, certifications, licenses, educational certificates, and skills obtained through work experience or educational programs.[140] The applicant indicates their education and skills on Form I-485.

Skills obtained through work experience (including volunteer and unpaid opportunities) include but are not limited to the noncitizen's workforce skills, training, licenses for specific occupations or professions, language skills, and certificates documenting mastery or apprenticeships in skilled trades or professions. Educational certificates are issued by an educational institution (or a training provider) and certify that an occupation specific program of study was completed.

While some noncitizens may establish their education and skills through evidence of completed degrees, the statutory education and skills factor does not specify that only formal education is acceptable.

USCIS may consider other evidence of attained knowledge and skills, including those skills earned through certifications and licensure, as well as skills obtained through on-the-job training or overall work experience. This consideration allows USCIS to acknowledge those noncitizens who hold occupations that do not require official licenses or certifications but whose occupations impart skills that otherwise affect the noncitizen's overall employability.

Chapter 6. Affidavit of Support Under Section 213A of the INA

A. Background

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created the requirement for a legally enforceable affidavit of support to reduce the potential for an intending immigrant to become a public charge.[141] When required, the applicant must submit an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ)[142] completed by a sponsor.

Form I-864[143] is a legally enforceable contract that a U.S. citizen, U.S. national, or lawful permanent resident (LPR) signs to accept financial responsibility for a noncitizen, usually a relative, who is coming to

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[139] See INA 212(a)(4)(B)(i).
[140] See 8 CFR 212.22(a)(1)(v).
[141] See Title V, Subtitle C of Pub. L. 104-208, 110 Stat. 3009, 3009-675 (September 30, 1996).
[142] A sponsor may use Form I-864EZ if the sponsor is the Petition for Alien Relative (Form I-130) petitioner, there is only one beneficiary on the Form I-130 petition, and the income the sponsor is using to qualify is based entirely on the sponsor's salary or pension and is shown on one or more Forms W-2 provided by the sponsor's employer(s) or former employer(s). Hereinafter, any references to the Form I-864 also include the Form I-864EZ.
[143] Filed on Form I-864 or Form I-864EZ.

the United States to live permanently. Form I-864[144] is legally binding and requires a sponsor to maintain the applicant at an annual income of no less than 125 percent of the Federal Poverty Guidelines (FPG).[145] The U.S. citizen, U.S. national, or LPR who signs the Form I-864 becomes the immigrant's sponsor once the applicant becomes an LPR.

For Form I-864 to be sufficient, a sponsor generally must demonstrate that the sponsor is able to maintain the sponsored noncitizen at an annual income of not less than 125 percent of the FPG.[146] The presence of a sufficient Form I-864 does not eliminate the need to consider all of the factors of a public charge inadmissibility determination, and USCIS only considers it as one factor in the totality of the circumstances.[147] However, the statute requires a finding of inadmissibility on the public charge ground if the noncitizen is required to submit an affidavit of support and fails to do so. [148]

B. Applicants Required to File Form I-864

The Immigration and Nationality Act (INA) outlines which noncitizens are required to submit a legally enforceable Form I-864.[149] Most noncitizens intending to immigrate or to adjust status as immediate relatives or the family-sponsored preference categories, and in certain employment-based categories after December 19, 1997, are required to submit Form I-864 signed by a sponsor.[150]

Noncitizens required to submit an Affidavit of Support Under Section 213A of the INA, and who are not otherwise exempt, are inadmissible on the public charge ground if they do not submit a sufficient Form I-864.[151]

1. Immediate Relatives and Family-Sponsored Preference Immigrants

In general, most noncitizens applying for an immigrant visa or adjustment of status based on a family relationship are required to submit Form I-864. The following table outlines categories of applicants by immigrant category who must submit Form I-864 unless otherwise exempt:

Immediate Relatives and Family-Sponsored Preference Immigrants	
Immediate relatives of U.S. citizens	U.S. citizens' parents, spouses, and unmarried children under the age of 21, including most orphans and Hague Convention adoptees[152]

[144] As required under INA 212(a)(4) and INA 213A.
[145] See INA 213A. See 8 CFR 213a.
[146] See INA 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).
[147] See 8 CFR 212.22(a) and 8 CFR 212.22(b).
[148] See INA 212(a)(4)(D).
[149] See INA 212(a)(4) and INA 213A. A sponsor may use Form I-864EZ if the sponsor is the Form I-130 petitioner, there is only one beneficiary on the Form I-130 petition, and the income the sponsor is using to qualify is based entirely on the sponsor's salary or pension and is shown on one or more Forms W-2 provided by the sponsor's employer(s) or former employer(s). Hereinafter, any references to the Form I-864 also include the Form I-864EZ.
[150] See INA 212(a)(4) and INA 213A.
[151] See INA 212(a)(4).
[152] See INA 201(b)(2). Certain orphans that become U.S. citizens at time of adjustment of status under INA 320 are exempt from filing Form I-864.

Immediate Relatives and Family-Sponsored Preference Immigrants	
First Preference	Unmarried sons and daughters of U.S. citizens who are 21 years of age or older, including their unmarried children[153]
Second Preference	Spouses, children, and unmarried sons and daughters of LPRs, including their unmarried children[154]
Third Preference	Married sons and married daughters of U.S. citizens, including their spouses and unmarried children[155]
Fourth Preference	Brothers and sisters of adult U.S. citizens, including their spouses and unmarried minor children[156]

All of these applicants are required to submit Form I-864, unless exempt from the requirement.

2. Certain Employment-Based Immigrants

In general, most noncitizens applying for an employment-based immigrant visa or adjustment of status are not required to file Form I-864.[157] Applicants seeking LPR status based on an employment-based petition are required to file Form I-864 if:

- The petitioner is a relative of the applicant;[158] or
- The petitioner is an entity[159] in which the applicant's relative has a significant ownership interest.[160]

These applicants are required to file Form I-864 unless an exception applies.

3. K Nonimmigrants

Principal K nonimmigrants[161] seeking adjustment of status must submit Form I-864.[162] This requirement also applies to a noncitizen who seeks adjustment after having been admitted as the child of a principal K nonimmigrant.

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[153] See INA 203(a)(1).
[154] See INA 203(a)(2).
[155] See INA 203(a)(3).
[156] See INA 203(a)(4).
[157] Even though an affidavit of support is not required, an officer still makes a public charge inadmissibility determination when assessing the applicant's admissibility, unless the applicant is exempt from the public charge ground of inadmissibility.
[158] For employment-based cases, an affidavit of support is required only if the intending immigrant will work for a relative who is eligible to file a Form I-130 petition, on behalf of the intending immigrant. For purposes of the affidavit of support, a relative is defined as a U.S. citizen or LPR who is the intending immigrant's spouse, parent, child, adult son or daughter; or a U.S. citizen who is the intending immigrant's brother or sister. See 8 CFR 213a.1.
[159] An entity includes any petitioning for-profit entity such as a business or corporation.
[160] Owning 5 percent or more of an entity constitutes a significant ownership interest. See 8 CFR 213a.1.
[161] This includes a relative who is either a K-1 fiancé(e), a K-3 spouse, or a K-2 or K-4 child of fiancé(e) or spouse. See 8 CFR 213a.2(a)(2)(i)(A).
[162] See 8 CFR 213a.2(a)(2)(i)(A). K nonimmigrants include the fiancé(e)s of U.S. citizens and their accompanying children, spouse of a U.S. citizen and their accompanying minor children, and step-children of U.S. citizens. A child has to be under 21 years of age. See INA 101(b).

Any applicant for adjustment of status based on a K nonimmigrant visa must submit a Form I-864 at the time of adjustment of status. Termination of the marriage between the K-1 beneficiary and the petitioner does not end the K-1 nonimmigrant's eligibility for adjustment.[163]

A former spouse can still be the sponsor who submits the Form I-864 for a K-1 and a K-2 nonimmigrant to adjust status. However, if the former spouse does not submit the Form I-864, or timely withdraws one already submitted, the K-1 and K-2 nonimmigrants are inadmissible based on the public charge ground unless an exception applies.[164]

4. Accompanying Spouse or Child

A spouse or child is considered to be accompanying a principal immigrant if:

- The spouse or child applies for an immigrant visa or adjustment of status at the same time as the principal immigrant; or

- The spouse or child applies for an immigrant visa or adjustment of status within 6 months after the date the principal immigrant acquires LPR status.

If the principal applicant is required to have a Form I-864, then any accompanying spouse or child must also be included on that affidavit of support. To meet the requirement, the accompanying spouse or child must submit a photocopy of the principal applicant's Form I-864. A photocopy of the principal's supporting documentation,[165] however, is not required.

5. Following-to-Join Spouse or Child

When a spouse or a child of a principal applicant applies for an immigrant visa or adjustment of status 6 months or more after the principal immigrant, the spouse or child is considered to be following-to-join the principal.

If the principal applicant is required to have a Form I-864, then the following-to-join spouse or child must also have a Form I-864. Each following-to-join spouse or child requires a Form I-864, independent of the principal applicant's Form I-864, at the time of adjustment of status or consular processing.[166]

6. T and U Nonimmigrants, VAWA Self-Petitioners, and Certain "Qualified Aliens" Subject to Affidavit of Support Under Section 213A of the INA Requirements

In general, INA 212(a)(4)(E) provides that the following provisions do not apply to "qualified alien" victims:

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[163] See *Matter of Sesay*, 25 I&N Dec. 431 (BIA 2011).
[164] See *Matter of Song*, 27 I&N Dec. 488, 492 (BIA 2018) (noting that the two exceptions to the requirement that the petitioner execute Form I-864 are when the applicant is or was married to an abusive spouse as set forth in INA 204(a)(1)(A)(iii) and INA 204(a)(1)(A)(iv), or when the petitioner died before the adjustment application was adjudicated and the applicant has a qualifying relative execute a Form I-864 as set forth in INA 213A.
[165] Supporting documentation such as federal income tax returns or transcripts, W-2, and employment verification.
[166] See 8 CFR 213a.2(g).

- Public charge inadmissibility, in general;[167]
- Minimum factors to be considered in the public charge inadmissibility determination);[168] and
- Inadmissibility for lack of sufficient affidavit of support for family-based immigrants.[169]

A "qualified alien" victim[170] includes:

- A VAWA self-petitioner;
- A noncitizen who is an applicant for, or is granted, U nonimmigrant status;[171] or
- A "qualified alien" as described in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA),[172] such as a noncitizen who has a pending application establishing prima facie eligibility for T nonimmigrant status or has been granted T nonimmigrant status.

When Congress created the current version of INA 212(a)(4)(E), it did not exempt qualified "alien victims" from the requirements under INA 212(a)(4)(D). INA 212(a)(4)(D) makes a noncitizen inadmissible on public charge in employment-based cases,[173] unless the noncitizen has a properly executed Form I-864 from the noncitizen's relative if:[174]

- The noncitizen's relative filed the employment-based petition; or
- The noncitizen's relative has a significant ownership interest (of 5 percent or more) in the business or entity that filed the employment-based petition.

If the qualified "alien victim" files for adjustment of status under an employment-based category and their petitioning employer meets the above circumstances but does not submit a sufficient Form I-864, [175] then the noncitizen is inadmissible on the public charge ground.

C. Applicants Not Required to File Form I-864

Certain applicants are not statutorily required to submit a Form I-864. Other applicants, although generally required to file a Form I-864, may be exempt from this requirement. Being exempt from the Form I-864 requirement is different from being exempt from the public charge inadmissibility ground.[176]

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[167] See INA 212(a)(4)(A).
[168] See INA 212(a)(4)(B).
[169] See INA 212(a)(4)(C).
[170] As outlined in INA 212(a)(4)(E).
[171] See INA 101(a)(15)(U).
[172] See Section 431(b) of PRWORA, Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996).
[173] See INA 203(b).
[174] Under INA 213A. See 8 CFR 213a.
[175] As required under INA 212(a)(4)(D) and INA 212(a)(4)(E) and as described in INA 213(a) and 8 CFR 213a.
[176] See Chapter 3, Applicability [8 USCIS-PM G.3].

An officer still makes an inadmissibility determination for an applicant who is exempt from the Form I-864 filing requirement unless the noncitizen is also exempt from the public charge ground of inadmissibility.[177]

1. Applicants Exempt from Filing Form I-864

Some categories of adjustment of status applicants are exempt from the Form I-864 requirement but must submit a Request for Exemption for Intending Immigrant's Affidavit of Support (Form I-864W), with their adjustment of status application to establish that a Form I-864 is not required in their case.[178]

These categories include children of U.S. citizens who will automatically become U.S. citizens under the Child Citizenship Act of 2000 (CCA)[179] upon their admission to the United States, self-petitioning widows and widowers of U.S. citizens, and self-petitioning battered spouses and children. Applicants who have earned (or can be credited with) 40 quarters (credits) of coverage under the Social Security Act may also file Form I-864W to establish that a Form I-864 is not required in their case.[180]

Certain Children of U.S. Citizens

Under the CCA, children born abroad to U.S. citizens may automatically acquire U.S. citizenship if, before their 18th birthday, are residing in the United States in the legal and physical custody of the U.S. citizen parent pursuant to an admission as an immigrant or adjustment of status to that of an LPR.[181] If qualified for automatic acquisition of citizenship, the child is exempt from the Form I-864 requirement. [182]

The CCA has specific provisions for noncitizen children adopted by U.S. citizens. A noncitizen child adopted by U.S. citizens, such as orphans or Hague Adoptees (IR-3 or IH-3 classifications) automatically acquires U.S. citizenship if the child enters the United States before the child's 18th birthday and resides with the U.S. citizen parent.[183] Therefore, these children are exempt from the affidavit of support requirement.

However, this exception does not apply if:

- The child is "coming to be adopted" as an orphan or Hague Adoptee (IR-4 or IH-4 classification);[184] or

- The child is admitted as an immediate relative immigrant as the stepchild of a U.S. citizen.[185]

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[177] See 8 CFR 212.23 for exemptions from public charge inadmissibility.
[178] See 8 CFR 213a.2(a)(1)(i)(B).
[179] See the Child Citizenship Act of 2000, Pub. L. 106-395 (October 30, 2000). See INA 320.
[180] See 8 CFR 213a.2(a)(1)(i)(B).
[181] See INA 320. See Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].
[182] See INA 320. For more information on children acquiring citizenship under the Child Citizenship Act of 2000, see Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].
[183] See the Child Citizenship Act of 2000, Pub. L. 106-395 (October 30, 2000).
[184] An IR-4 or IH-4 immigrant becomes a citizen under INA 320 only when the adoption is finalized after admission and all eligibility requirements are met. See the Before Your Child Immigrates to the United States webpage.
[185] The stepchild of a U.S. citizen does not acquire citizenship under INA 320. See *Acevedo v. Lynch*, 798 F.3d 1167, 1171 (9th Cir. 2015). See *Matter of Guzman–Gomez*, 24 I&N Dec. 824 (BIA 2009).

Certain Self-Petitioning Immigrants

The following self-petitioning immigrants are exempt from the Form I-864 requirement:

- A noncitizen who has an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as a self-petitioning widow or widower;[186]
- A noncitizen who has an approved Form I-360 as a battered spouse or child;[187] and
- A noncitizen who has an approved Form I-360 as a Violence Against Woman Act (VAWA) self-petitioner.[188]

Applicants Who Have Earned or Can be Credited with 40 Qualifying Quarters of Work

A noncitizen who has earned or can be credited with 40 qualifying quarters (credits) of work in the United States under the Social Security Act (SSA) is exempt from the requirement to file a Form I-864.[189] A quarter, as defined by the Social Security Administration, is a period of three calendar months ending on March 31, June 30, September 30, or December 31.[190]

A noncitizen can acquire 40 qualifying quarters through any of the following circumstances:

- Any quarter during which the noncitizen works in the United States, as long as the noncitizen received the minimum income established by the Social Security Administration during the entire quarter;[191]
- Being credited with quarters the noncitizen's spouse worked during the marriage;[192]
- Being credited with any quarters during which the noncitizen was under 18 years of age and the noncitizen's parent worked;[193] or
- A combination of the above.[194]

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[186] See INA 212(a)(4)(C).
[187] See INA 212(a)(4)(C). See INA 212(a)(4)(E)(i). See Section 804 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013).
[188] See INA 212(a)(4)(C). See INA 212(a)(4)(E)(i). See Section 804 of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113-4, 127 Stat. 54, 111 (March 7, 2013).
[189] Qualifying quarter, as defined under Title II of the Social Security Act, is specifically tied to earnings. For more information, see the Social Security Administration's website.
[190] See 42 U.S.C. 413.
[191] Credits are based on total wages and self-employment income during the year. For more information, see the Social Security Administration's website.
[192] See INA 213A(a)(3)(B). A noncitizen cannot claim credit for any quarter worked by a spouse in which the spouse was receiving federal means-tested public benefits.
[193] See INA 213A(a)(3)(B). A noncitizen cannot claim credit for any quarter worked by a parent in which the parent was receiving federal means-tested public benefits.
[194] However, quarters cannot be counted more than once even if there are multiple circumstances that apply to make a quarter qualifying.

Since 1978, quarters are based on total wages and self-employment income earned during the year, regardless of the months during the year the actual work was performed. An applicant can earn all four credits for the year in less time if the applicant earns the required income.

For example, in 2014, a person must have earned $1,200 in covered earnings to earn one Social Security or Medicare work credit and $4,800 to earn the maximum four credits for the year. A person who earned $4,800 in 2014 earned all four credits for the year regardless of how long that year it took to earn the income.

An officer does not need to calculate an applicant's quarters. Applicants who claim they can be credited with sufficient quarters of coverage must submit official Social Security records to support the claim.[195]

2. Adjustment Applications Filed Before December 19, 1997

Any applicant for adjustment of status who filed an Application to Register Permanent Residence or Adjust Status (Form I-485) before December 19, 1997 is exempt from the requirement to file an Affidavit of Support Under Section 213A of the INA.[196] The exemption is dependent on the filing date and applies even if USCIS conducts the interview or adjudicates the case after that date.

3. Other Categories of Applicants Not Required to File Form I-864

The following are categories of immigrants who are not required to file an Affidavit of Support Under Section 213A of the INA with Form I-485, but who are subject to the public charge ground of inadmissibility:[197]

- Diversity immigrants;[198]
- Employment-based immigrants, unless the visa petition was filed by a relative or an entity in which the applicant's relative has a significant ownership interest, as described above;[199]
- Immigrant investors;[200]
- Diplomats or high-ranking officials unable to return home (Section 13 of the Act of September 11, 1957);[201]

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[195] See 8 CFR 213a.2(a)(2)(ii)(C).
[196] See 8 CFR 213a.2(a)(2)(i) and 8 CFR 213a.2(a)(2)(ii)(B). See Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208 (Sept. 30, 1996).
[197] For some of these categories, although the applicants are subject to public charge under INA 212(a)(4), the employers generally would not be a relative of the noncitizen or a for-profit entity and therefore the requirement for an affidavit of support under INA 212(a)(4)(D) is inapplicable.
[198] A winner of the diversity visa lottery has no petitioner. Diversity visas are issued under INA 203(c) which do not fall under INA 212(a)(4)(C) or INA 212(a)(4)(D).
[199] See INA 212(a)(4). This exemption also includes Afghan and Iraqi Interpreters who received a special immigrant visa by filing a petition under INA 203(b)(4).
[200] See INA 203(b)(5).
[201] See Section 13 of Pub. L. 85-316 (September 11, 1957), as amended by Pub. L. 97-116 (December 29, 1981). See 8 CFR 245.3.

- Persons born in the United States under diplomatic status;[202]
- Certain entrants before January 1, 1982;[203]
- S-nonimmigrants;[204]
- Religious workers;[205]
- Certain employees or former employees of the U.S. government abroad;[206]
- Panama Canal Zone employees;[207]
- Certain physicians;[208]
- G-4 or NATO-6 employees and their family members;[209]
- Certain U.S. armed forces members (also known as the Six and Six program);[210]
- Certain broadcasters;[211] and

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[202] As described in 8 CFR 101.3.
[203] See INA 245A(b)(1)(C)(i) and INA 245A(a)(4)(A). See INA 245A(d)(2)(B)(iii) for the special rule for determination of public charge for these applicants. Certain aged, blind, or disabled persons as defined in Section 1614(a)(1) of the Social Security Act, codified at 42 U.S.C. 1382c(a)(1), may apply for a waiver of inadmissibility due to public charge. See INA 245A(d)(2)(B)(ii).
[204] S nonimmigrants may file a waiver of the public charge ground of inadmissibility on Inter-Agency Alien Witness and Informant Record (Form I-854). See INA 245(j) and INA 101(a)(15)(S). See 8 CFR 214.2(t)(2) and 8 CFR 1245.11.
[205] Includes the following categories: SD-6 (ministers), SD-7 (spouses of SD-6), SD-8 (children of SD-6), SR-6 (religious workers), SR-7 (spouses of SR-6), and SR-8 (children of SR-6).
[206] See INA 101(a)(27)(D). See 22 CFR 42.32(d)(2). Includes the following categories: SE-6 (employees of U.S. government abroad, adjustments), SE-7 (spouses of SE-6), and SE-8 (children of SE-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.
[207] See INA 101(a)(27)(E), INA 101(a)(27)(F), and INA 101(a)(27)(G). See 22 CFR 42.32(d)(3). Includes the following categories: SF-6 (former employees of the Panama Canal Company or Canal Zone Government), SF-7 (spouses or children of SF-6), SG-6 (former U.S. government employees in the Panama Canal Zone), SG-7 (spouses or children of SG-6), SH-6 (former employees of the Panama Canal Company or Canal Zone Government, employed on April 1, 1979), and SH-7 (spouses or children of SH-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.
[208] See INA 101(a)(27)(H) and INA 203(b)(4). Includes the following categories: SJ-6 (foreign medical school graduate who was licensed to practice in the United States on Jan. 9, 1978) and SJ-7 (spouses or children of SJ-6). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.
[209] See INA 101(a)(27)(I) and INA 101(a)(27)(L). See 8 CFR 101.5. See 22 CFR 42.32(d)(5). See 22 CFR 41.24 and 22 CFR 41.25. Includes SN-6 (retired NATO-6 civilian employees), SN-7 (spouses of SN-6), SN-9 (certain surviving spouses of deceased NATO-6 civilian employees), and SN-8 (certain unmarried sons and daughters of SN-6).
[210] See INA 101(a)(27)(K). Includes the following categories: SM-6 (U.S. armed forces personnel, service (12 years) after October 1, 1991), SM-9 (U.S. armed forces personnel, service (12 years) by October 1991), SM-7 (spouses of SM-1 or SM-6), SM-0 (spouses or children of SM-4 or SM-9), and SM-8 (children of SM-1 or SM-6).
[211] See INA 101(a)(27)(M). See 8 CFR 204.13. Includes the following categories: BC-6 (broadcast (IBCG of BBG) employees), BC-7 (spouses of BC-1 or BC-6), and BC-8 (children of BC-6).

- Immigrants applying under the Amerasian Act of 1982.

The following are categories of immigrants not required to file an Affidavit of Support Under Section 213A of the INA with Form I-485, and who are not subject to the public charge ground of inadmissibility:

- Refugees and asylees at time of adjustment of status to lawful permanent resident status;[212]
- Immigrants applying under the Amerasian Homecoming Act;[213]
- Afghan and Iraqi Interpreters, or Afghan and Iraqi nationals employed by or on behalf of the U.S. Government;[214]
- Cuban and Haitian entrants;[215]
- Immigrants applying under the Cuban Adjustment Act;[216]
- Nicaraguans and other Central Americans applying under the Nicaraguan Adjustment and Central American Relief Act;[217]
- Haitians applying under the Haitian Refugee Immigration Fairness Act of 1998;[218]
- Lautenberg parolees;[219]
- Special immigrant juveniles;[220]
- Applicants for Registry;[221]

[212] See INA 209(c).
[213] See Section 584 of Pub. L. 100-202, 101 Stat. 1329, 1329-183 (December 22, 1987).
[214] See Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163, 119 Stat. 3136, 3444 (January 6, 2006), as amended, and Section 602(b) of the Afghan Allies Protection Act of 2009, Title VI of Pub. L. 111-8, 123 Stat. 524, 807 (March 11, 2009), as amended, and Section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended, Pub. L. 110-181, 122 Stat. 3, 396 (January 28, 2008).
[215] See Section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359, 3404 (November 6, 1986), as amended.
[216] See Cuban Adjustment Act, Pub. L. 89-732 (November 2, 1966), as amended.
[217] See Sections 202(a) and 203 of Pub. L. 105-100, 111 Stat. 2160, 2193 (November 19, 1997), as amended.
[218] See Section 902 of Pub. L. 105-277, 112 Stat. 2681, 2681-538 (October 21, 1998), as amended.
[219] See Section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Pub. L. 101-167, 103 Stat. 1195, 1263 (November 21, 1989), as amended.
[220] See INA 245(h).
[221] Registry is a section of immigration law that enables certain noncitizens who have been present in the United States since January 1, 1972, the ability to apply for lawful permanent residence even if currently in the United States unlawfully. See INA 249. See 8 CFR 249.

- Victims of human trafficking (T nonimmigrants);[222]
- Victims of qualifying criminal activity (U nonimmigrants);[223]
- Haitians adjusting status under the Help Haiti Act of 2010;[224]
- Self-petitioners under the Violence Against Women Act (VAWA);[225]
- Certain "qualified aliens" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA);[226]
- Applicants adjusting status who qualify for a benefit as surviving spouses, children, or parents of military members;[227]
- American Indians born in Canada;[228]
- Nationals of Vietnam, Cambodia, and Laos applying under the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2001;[229]
- Polish or Hungarian Parolees;[230]
- Applicants adjusting under Liberian Refugee Immigration Fairness (LRIF);[231]

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[222] See INA 245(l). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I–485, is still in valid T nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I–864. See 8 CFR 213a.2(b)(2).

[223] See INA 101(a)(15)(U) and INA 212(a)(4)(E)(ii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013). If the applicant is adjusting based on an employment-based petition where the petition is filed by either a qualifying relative, or an entity in which such relative has a significant ownership interest (5 percent or more), and the applicant, at both the time of filing and adjudication of the Form I–485, is still in valid U nonimmigrant status, the applicant is not subject to INA 212(a)(4) but is still required to file Form I–864. See 8 CFR 213a.2(b)(2).

[224] See Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help HAITI Act), Pub. L. 111-293 (December 9, 2010).

[225] See INA 212(a)(4)(E)(i).

[226] See INA 212(a)(4)(E)(iii). See Section 804 of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (March 7, 2013). See Section 431(c) of Pub. L. 104-193, 110 Stat. 2105, 2274 (August 22, 1996). See 8 U.S.C. 1641(c).

[227] See Section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392, 1693 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents).

[228] See INA 289.

[229] See Section 586 of Pub. L. 106-429, 114 Stat. 1900, 1900A-57 (November 6, 2000) under 8 CFR 245.21.

[230] Includes certain Polish and Hungarian parolees who were paroled into the United States from November 1, 1989 to December 31, 1991. See Section 646(b) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-709 (September 30, 1996).

[231] See Section 7611 of the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, 113 Stat. 1198, 2309 (December 20, 2019) (Liberian Refugee Immigration Fairness), later extended by Section 901 of Division O, Title IX of the Consolidated Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182, 2155 (December 27, 2020) (Adjustment of Status for Liberian Nationals Extension).

- Certain Syrian nationals;[232] and

- Any other categories of noncitizens exempt under any other law from the public charge ground of inadmissibility provisions under INA 212(a)(4).

D. Consideration of Form I-864 as a Factor in the Totality of the Circumstances Analysis

Under the statute, the minimum income the sponsor must demonstrate for a Form I-864 to be deemed sufficient is generally 125 percent of the FPG[233] based on the sponsor's household size.[234]

Sponsored immigrants[235] are considered less likely to turn to the government first for financial support because they can and have been known to successfully enforce the statutory requirement that sponsors provide financial support to the sponsored immigrant at the level required by statute for the period the obligation is in effect.[236] Therefore, USCIS will favorably consider a sufficient Affidavit of Support Under Section 213A of the INA, when required, in making a public charge inadmissibility determination.[237]

Additionally, Federal and State deeming provisions reduce the likelihood that a sponsored noncitizen would be eligible for a means-tested benefit, and therefore, less likely to become primarily dependent on the government for subsistence at any time in the future.[238] Therefore, a sufficient Form I-864 is a positive consideration in the totality of the circumstances. However, a sufficient Form I-864 does not, alone, result in a finding that a noncitizen is not inadmissible under the public charge ground due to the statute's requirement to consider the statutory minimum factors.[239]

Chapter 7. Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense

The public charge inadmissibility determination is prospective, based on an applicant's likelihood at any time in the future to become a public charge – that is, USCIS must evaluate the noncitizen's likelihood of becoming primarily dependent on the government for subsistence through future receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

As described above, under the regulations, every public charge inadmissibility determination must include consideration of the noncitizen's age; health; family status; assets, resources, and financial

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[232] See Pub. L. 106-378 (October 27, 2000).
[233] See INA 213A. See 8 CFR 213a.
[234] See INA 213A(a)(1)(A). A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).
[235] A "sponsored immigrant" means any noncitizen "who was an intending immigrant, once that person has been lawfully admitted for permanent residence, so that the affidavit of support filed for that person under this part has entered into force." See 8 CFR 213a.1.
[236] See *Erler v. Erler*, 824 F.3d 1173 (9th Cir. 2016). See *Belevich v. Thomas*, 17 F.4th 1048 (11th Cir. 2021). See *Wenfang Liu v. Mund*, 686 F.3d 418 (7th Cir. 2012).
[237] See 8 CFR 212.22(a).
[238] See Section 564(f) of IIRIRA, Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-684 (September 30, 1996). Under INA 291, the sponsor's income and resources, as well as the income and resources of the sponsor's spouse, is counted as the sponsored immigrant's income for the purposes of determining eligibility for any federal means-tested public benefits.
[239] See INA 212(a)(4)(B).

status; and education and skills; an Affidavit of Support Under Section 213A of the INA (if required); and the applicant's current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.

USCIS considers current and/or past receipt of public cash assistance for income maintenance and long-term institutionalization at government expense in the totality of the circumstances, taking into account the amount, duration, and recency of the receipt.[240] Current and/or past receipt of benefits alone, however, is not a sufficient basis to determine whether an applicant is likely at any time to become a public charge.[241]

A. Most Noncitizens Are Not Eligible for Public Benefits

Relatively few noncitizens in the United States are both subject to the public charge ground of inadmissibility and eligible for the public benefits considered as part of the inadmissibility determination before adjusting their status to that of a lawful permanent resident (LPR).

Noncitizens who are eligible for public cash assistance for income maintenance or long-term institutionalization at government expense are often already LPRs or are in a group exempt from the public charge ground of inadmissibility.[242]

B. Public Cash Assistance for Income Maintenance

Public cash assistance for income maintenance means:[243]

- Supplemental Security Income (SSI);[244]
- Cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF) program;[245] and
- State, tribal, territorial, or local cash benefit programs for income maintenance.[246]

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[240] See 8 CFR 212.22(a)(3) and 8 CFR 212.21(d). If an applicant has been approved for future receipt of a considered public benefit, that information may be considered in the totality of the circumstances. For more information on the totality of the circumstances assessment, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].
[241] See 8 CFR 212.22(a)(3).
[242] See the Public Charge Resources webpage for a table that identifies the major categories of noncitizens who are generally subject to the public charge ground of inadmissibility and may be eligible for the federal cash assistance for income maintenance or long-term institutionalization at government expense prior to filing for adjustment of status. This table is provided for background purposes only and should not be used to determine eligibility for public benefits. Note that this table does not include state, tribal, territorial, and local cash assistance programs for income maintenance (often called "General Assistance" programs), or non-Medicaid programs that support long-term institutionalization at government expense.
[243] See 8 CFR 212.21(b). For the definition of receipt, see 8 CFR 212.21(d).
[244] See 42 U.S.C. 1381 et seq.
[245] See 42 U.S.C. 601 et seq.
[246] These programs are often called "General Assistance" in the state context, but also exist under other names. See 8 CFR 212.21(b).

Public cash assistance for income maintenance, even for a short period of time, is considered as part of the totality of the circumstances analysis. But the length of time that has elapsed since the noncitizen has received cash benefits is also relevant: the longer the time since a noncitizen received such cash benefits, the less the past receipt would be a predictor of future receipt.[247]

In addition, the longer the period that a noncitizen received cash assistance for income maintenance in the past and the greater the amount of benefits, the stronger the implication that the noncitizen is likely to become a public charge. For example, if a noncitizen receives a small amount of cash assistance for a limited period of time, such receipt would be unlikely to result in an adverse public charge inadmissibility determination (though receipt is but one consideration and is not outcome determinative on its own).[248]

Evidence demonstrating the noncitizen's ability to be self-supporting in the future may overcome the negative implication of any past receipt of such benefits.

C. Long-term Institutionalization at Government Expense

As part of a public charge inadmissibility determination, USCIS considers whether a noncitizen has received, is currently receiving, or is likely to receive long-term institutionalization at government expense, including in a nursing facility or mental health institution. As part of the consideration of long-term institutionalization, USCIS considers both permanent institutionalization as well as institutionalization for a long period of time short of indefinite duration, in the totality of the circumstances.

Long-term institutionalization at government expense is the only category of Medicaid-funded services (limited to institutional services provided under section 1905(a) of the Social Security Act) considered in a public charge inadmissibility determination.[249] No other services paid for by Medicaid, including home and community-based services (HCBS), and no services provided under the Children's Health Insurance Program (CHIP), are considered as long-term institutionalization at government expense.

In all circumstances, current and/or past long-term institutionalization at government expense is not alone a sufficient basis to determine that an applicant is likely at any time to become a public charge . Rather, it is one consideration in the totality of the circumstances.[250]

Long-term institutionalization does not include imprisonment for conviction of a crime or institutionalization for short periods or for rehabilitation purposes.[251] Long-term institutionalization also does not include sporadic or intermittent periods of institutionalization, even on a recurring basis, such as for caregiver respite care or behavioral health or substance abuse disorder treatment. HCBS are also not considered as long-term institutionalization at government expense.[252]

In general, USCIS would consider a noncitizen to have been long-term institutionalized if they have been continuously institutionalized, were assessed for HCBS, offered HCBS, and made an informed choice to

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[247] See 87 FR 55472, 55518 (Sept. 9, 2022).
[248] See 87 FR 55472, 55525 (Sept. 9, 2022).
[249] See 8 CFR 212.21(c).
[250] See 8 CFR 212.22(b).
[251] See 8 CFR 212.21(c).
[252] For more information about long term-institutionalization, see Chapter 2, Definitions, Section C, Long-term Institutionalization at Government Expense [8 USCIS-PM G.2(C)].

remain in an institution, or have been continuously institutionalized regardless of whether they were assessed for or offered HCBS but have not presented evidence demonstrating that such institutionalization violated their rights.

USCIS also considers any evidence provided by a noncitizen that they are or were institutionalized at government expense in violation of their rights, and, where such evidence is credible, it will have the tendency of offsetting evidence of current or past institutionalization.[253]

1. Home and Community-Based Services

When examining a noncitizen's long-term institutionalization, USCIS does not consider a noncitizen's past, current, or future receipt of, or eligibility for, HCBS, even if they are offered at government expense, including through Medicaid.

HCBS help older adults and individuals with disabilities, such as intellectual or developmental disabilities, physical disabilities, and mental illnesses, fully participate in their communities and receive services in their own home or community. HCBS can promote employment and decrease reliance on costly government-funded institutional care.

In contrast to institutional care paid for by Medicaid, Medicaid-funded HCBS do not include payments for room and board, and therefore do not provide an individual's total care for basic needs that is generally provided by an institution.

2. Institutionalization in Violation of Federal Law

There are some circumstances in which an individual may be institutionalized long-term at government expense in violation of federal anti-discrimination laws, including the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

The ADA requires public entities, and Section 504 requires recipients of federal funds, to provide services to individuals in the most integrated setting appropriate to their needs. Unjustified institutionalization of individuals with disabilities by a public entity is a form of discrimination under the ADA and Section 504. [254]

As noted above, the likelihood that a noncitizen will become a public charge at any time is determined by assessing the noncitizen's likelihood of becoming primarily dependent on the government for subsistence as evidenced by long-term institutionalization at government expense (as well as any receipt of public cash assistance for income maintenance). However, in making this determination, USCIS considers evidence submitted by the applicant that their current, past, or potential future institutionalization violates federal law.[255]

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[253] See 87 FR 55472, 55533 (Sept. 9, 2022). For more information, see Subsection 2, Institutionalization in Violation of Federal Law [8 USCIS-PM G.7(C)(2)].
[254] See *Olmstead v. L.C.*, 527 U.S. 581 (1999). See U.S. Department of Justice, Civil Rights Division, Disability Rights Section, "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.*"
[255] See 8 CFR 212.22(a)(3).

If an applicant believes that their institutionalization was in violation of federal law, they must submit evidence in support of this claim with their Form I-485.[256] USCIS may also request such evidence after the filing of Form I-485. If USCIS issues a request for evidence, that request would only be sent to the applicant for adjustment of status (and their attorney or accredited representative).

Services available to some individuals may not be in full compliance with disability rights laws, such that, as noted, individuals who might otherwise receive HCBS are instead institutionalized at government expense. Individuals may submit evidence that their institutionalization violates federal law, and USCIS considers such evidence in the totality of the circumstances. Specifically, where such evidence is credible, it will have the tendency of offsetting evidence of current or past institutionalization.

Evidence suggesting that an individual may have experienced long-term institutionalization in violation of federal law may include, but is not limited to, documentation showing:

- The state's HCBS waiting lists prevent an individual from receiving community-based services for which they are eligible;[257]

- Enforcement-related action (complaint filed in court) by a federal civil rights agency (for example, U.S. Department of Justice or U.S. Department of Health and Human Services Office for Civil Rights (HHS OCR)) alleging non-compliance by a state, or other public entity, or a facility with federal civil rights laws that contributed to the individual's institutionalization;

- An administrative decision, such as a letter of findings issued by the U.S. Department of Justice or HHS OCR under Title II of the Americans with Disabilities Act, 28 CFR 35.172(c) or HHS OCR under Section 1557 of the Affordable Care Act, 45 CFR 92.5, or Section 504 of the Rehabilitation, 45 CFR Parts 84 and 85;

- Settlement agreement, or a court-ordered consent decree that impacts the individual's institutionalization;

- A plan of care (for example, person centered plan or individualized service plan) that fails to state whether the individual wants to leave the institution and could be served in the community; [258] or

- A discharge plan of care for the individual that does not document that the individual has been asked about their interest in receiving information regarding returning to the community, or indicate whether the individual could be served in the community. [259]

D. Receipt, Approval or Certification

[256] See 8 CFR 212.22(a)(3). See the instructions for Form I-485.
[257] See 87 FR 55472, 55534 (Sept. 9, 2022).
[258] See 42 CFR 483.100-138. See 42 CFR 483.20. See 42 CFR 483.21. Such a plan of care is to be included in a comprehensive assessment of the resident not less often than once every 12 months.
[259] See 42 CFR 483.20. See 42 CFR 483.21. Such a discharge plan of care is to be included in a comprehensive assessment of the resident not less often than once every 12 months.

USCIS determines an individual's likelihood of becoming primarily dependent on the government for subsistence, as demonstrated by the noncitizen's receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[260]

Such receipt occurs when a public benefit-granting agency provides these benefits to an individual listed as a beneficiary of such benefits. USCIS does not consider public benefits received by the applicant's relatives, including children, or received by the applicant solely on behalf of third parties (including a member of the noncitizen's household as defined in the regulation).[261]

The applicant indicates their past or current receipt of public cash assistance for income maintenance or long-term institutionalization at government expense on Form I-485.

It is not considered "receipt" to apply for a public benefit on one's own behalf or on behalf of another. Similarly, approval for future receipt of a public benefit on the noncitizen's own behalf or on behalf of another is also not considered "receipt."[262]

However, to the extent that the noncitizen applies on their own behalf, USCIS may consider the application or approval for future receipt as part of all information or evidence in the record that is relevant in the totality of the circumstances. For instance, approval for future receipt of a public benefit on the noncitizen's own behalf may indicate a probability of actual future receipt of public benefits by the noncitizen.[263]

An applicant may supplement their application with an explanation of any temporary circumstances that gave rise to receipt of, or approval for, public cash assistance for income maintenance or long-term institutionalization at government expense.

E. Public Benefits Not Considered

As stated in 8 CFR 212.22(a)(3), in making a public charge inadmissibility determination, USCIS will not consider receipt of, or certification or approval for future receipt of, public benefits not referenced in sections 212.21(b)[264] and (c),[265] such as:

- Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs;
- Children's Health Insurance Program (CHIP);
- Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act);

[260] See 8 CFR 212.21(a). For more information regarding the public benefits considered in a public charge inadmissibility determination, see Section B, Public Cash Assistance for Income Maintenance [8 USCIS-PM G.7(B)], and Section C, Long-term Institutionalization at Government Expense [8 USCIS-PM G.7(C)].
[261] See 8 CFR 212.21(f) (defining household).
[262] See 8 CFR 212.21(d).
[263] See 8 CFR 212.22(b). For more information about the totality of the circumstances determination, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].
[264] See 8 CFR 212.21(b).
[265] See 8 CFR 212.21(c).

- Housing benefits;
- Any benefits related to immunizations or testing for communicable diseases; or
- Other supplemental or special-purpose benefits.[266]

USCIS also emphasizes the additional following programs and public assistance that are not considered in a public charge inadmissibility determination; however, the below list is not exhaustive:[267]

- Treatments or preventative services related to COVID-19, including vaccinations;
- The use of home and community-based services (HCBS);
- Any services provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)[268] or comparable disaster assistance provided by state, tribal, territorial, or local governments;
- Benefits under the Emergency Food Assistance Act (TEFAP);[269]
- Child and Adult Care Food Program (CACFP);
- School lunch programs;
- Cash payments that are provided for childcare assistance or other supplemental, special purpose cash assistance;
- Cash payments that are provided as part of pandemic or disaster relief funds, such as the American Rescue Plan Act;
- Food Distribution Program on Indian Reservations (FDPIR);
- Services provided by the Indian Health Service (IHS), tribes and tribal organizations under the Indian Self Determination and Education Assistance Act (ISDEA), P.L.93-638, and Urban Indian Organizations (UIO), as defined at 25 U.S.C. 1603(29), that have a grant or contract with IHS under title V of the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. 1603;
- Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) provided by local communities or through public or private nonprofit organizations;
- Attending public school;

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[266] See 8 CFR 212.22(a)(3).
[267] As there are multiple federal and state public benefits programs, USCIS is unable to list all programs not included within the public charge inadmissibility determination.
[268] See Pub. L. 100-707 (November 23, 1988).
[269] See 7 U.S.C. 7501 to 7 U.S.C. 7517.

- Child care related services including the Child Care and Development Block Grant (CCDBG) or Child Care and Development Fund (CCDF);[270]
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);[271]
- Health Insurance coverage through the Health Insurance Marketplace, state-based marketplaces, or the Small Business Health Options Program (SHOP) under the Affordable Care Act, and financial assistance for such coverage;
- Transportation vouchers or other non-cash transportation services;
- Housing assistance under the McKinney-Vento Homeless Assistance Act;[272]
- Energy benefits such as the Low Income Home Energy Assistance Program (LIHEAP);[273]
- Educational benefits, including, but not limited to, benefits under the Head Start Act;[274]
- Student loans and home mortgage loan programs;
- Publicly funded scholarships and educational grants;
- Guaranteed income programs that are not equivalent to public cash assistance for income maintenance, in that they typically do not provide the primary source of income for recipients, and/or are made available without income-based eligibility rules;[275];
- Foster care and adoption benefits;
- Earned benefits such as Social Security retirement benefits, government pensions, veterans' benefits, and unemployment insurance; and
- Child Tax Credit (CTC), or other tax-related cash benefit including Earned Income Tax Credit (EITC); Additional Child Tax Credit (ACTC); Premium Tax Credit (PTC); Advance Payment of Premium Tax Credit (APTC); and State, local, or tribal tax credit.

USCIS also does not consider public benefits received by applicant's family members (including U.S. citizen children or other relatives).[276]

F. Exclusion From Consideration of Receipt of Public Benefits In Certain Circumstances

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[270] See 42 U.S.C. 9858 to 42 U.S.C. 9858q.
[271] See 42 U.S.C. 1786.
[272] See 42 U.S.C. 11401.
[273] See 42 U.S.C. 8621 to 42 U.S.C. 8630.
[274] See Pub. L. 110-134, 121 Stat. 1363 (December 12, 2007).
[275] However, if a guaranteed income program functions like cash assistance for income maintenance in that it is income-based, and provides the primary source of support for the recipients, then it would be considered in a public charge inadmissibility determination.
[276] See Chapter 2, Definitions, Section D, Receipt (of Public Benefits) [8 USCIS-G.2(D)].

1. Receipt of Public Benefits While a Noncitizen Is Present in a Category Exempt From or Received a Waiver of the Public Charge Ground of Inadmissibility

USCIS does not consider any public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category:

- That is exempt from the public charge ground of inadmissibility; or
- For which the noncitizen received a waiver of public charge inadmissibility.[277]

However, public cash assistance for income maintenance or long-term institutionalization at government expense received before a noncitizen was in exempt status (or was in a category for which they had received a waiver of the public charge ground of inadmissibility) or after the noncitizen was no longer in an exempt status (or was in a category for which they had received a waiver of the public charge ground of inadmissibility) would be considered in a public charge inadmissibility determination in the totality of the circumstances, including consideration of any mitigating information that the applicant may wish to bring to USCIS' attention.

2. Receipt of Public Benefits by Noncitizens Granted Benefits Available to Refugees

USCIS does not consider any public benefits that were received by noncitizens who, while not refugees, are eligible for resettlement assistance, entitlement programs, and other benefits available to refugees,[278] including services provided to an "unaccompanied alien child."[279] This provision only applies to the categories of noncitizens who are eligible for all three types of support listed (resettlement assistance, entitlement programs, and other benefits) typically reserved for refugees.

For example, the U.S. government has resettled and continues to resettle our Afghan allies. This is a population invited by the government to come to the United States at the government's expense in recognition of their assistance over the past two decades or their unique vulnerability were they to remain in Afghanistan.[280]

In recognition of the unique needs of this population and the manner of their arrival in the United States, Congress explicitly extended benefits normally reserved for refugees to our Afghan allies.[281] As part of an effort by the U.S. government to assist noncitizens impacted by the Russian invasion of Ukraine, Congress has also extended benefits normally reserved for refugees to certain Ukrainians.[282]

Chapter 8. Waivers of Inadmissibility Based on Public Charge Ground

The availability of a waiver of a ground of inadmissibility depends on the immigration benefit the applicant is seeking.

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[277] See 8 CFR 212.22(d), 8 CFR 212.23(a), and 8 CFR 212.23(c).
[278] Refugees as admitted under INA 207. Refugee services as described under INA 412(d)(2).
[279] As defined under Section 462(g)(2) of the Homeland Security Act, Pub. L. 107–296, 116 Stat. 2135, 2202 (November 25, 2002). See 8 CFR 212.22(e).
[280] See DHS publication, Operation Allies Welcome.
[281] See Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. 117-43 (September 30, 2021).
[282] See Additional Ukraine Supplemental Appropriations Act of 2022, Pub. L. 117-128 (May 21, 2022).

A. Immigrant Waivers

In general, the public charge ground of inadmissibility cannot be waived for noncitizens seeking lawful permanent resident (LPR) status. However, the following noncitizens seeking LPR status may overcome the public charge ground of inadmissibility if they apply for and USCIS grants a waiver of the public charge ground of inadmissibility:

- Applicants seeking adjustment of status on account of their witness or informant status.[283]

- Certain aged, blind, or disabled applicants for adjustment of status under the legalization program.[284]

B. Nonimmigrant Waivers

The following nonimmigrants seeking admission may overcome the public charge ground of inadmissibility if the noncitizen applies for and is granted a waiver of the public charge ground of inadmissibility:

- Nonimmigrants seeking admission to the United States – A noncitizen applying for a nonimmigrant visa or seeking temporary admission as a nonimmigrant may seek a temporary waiver of inadmissibility.[285] This application for a temporary waiver of inadmissibility is adjudicated by U.S. Customs and Border Protection (CBP) as part of either a noncitizen's application for admission at a port of entry or a noncitizen's application for a nonimmigrant visa at a U.S. consulate or embassy.[286] If granted, the waiver generally only applies to the nonimmigrant classification for which it was granted.

- Applicants for admission as nonimmigrant witnesses or informants (S nonimmigrants)[287] – The application to seek nonimmigrant status as a witness or informant, including the request for a waiver of a ground of inadmissibility, is made on the Inter-Agency Alien Witness and Informant Record (Form I-854A). The waiver is discretionary, and USCIS may grant the waiver if it considers it to be in the national interest to do so.

Chapter 9. Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications

Officers determine whether in the totality of the circumstances, after reviewing all the factors and evidence, the applicant is likely at any time to become a public charge.[288]

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[283] See INA 245(j). See 8 CFR 212.23(c)(2) and 8 CFR 245.11. According to 8 CFR 245.11(c), grounds of inadmissibility that were waived at the time of obtaining S nonimmigrant status are considered waived for purposes of the adjustment.
[284] See INA 245A and INA 245A(d)(2)(B). See 8 CFR 212.23(c)(3). Aged, blind, or disabled applicants, as defined in Section 1614(a)(1) of the Social Security Act, as codified in 42 U.S.C. 1382c(a)(1), for adjustment of status under INA 245A may apply for a waiver of the public charge ground of inadmissibility. The waiver is filed on the Application for Waiver of Grounds of Inadmissibility (Form I-690) according to the form's instructions.
[285] See INA 212(d)(3)(A).
[286] For more information on applying for a waiver as a nonimmigrant under INA 212(d)(3), visit CBP.gov.
[287] See INA 101(a)(15)(S). See 8 CFR 212.23(c)(1). See INA 212(d)(1). See 8 CFR 214.2(t)(5)(i). See 8 CFR 212.4(j)(1). The waiver is granted by USCIS.
[288] See INA 212(a)(4). See 8 CFR 212.22(b).

A. Evidence in the Record

In making a public charge inadmissibility determination, a USCIS officer considers evidence relevant to the statutory minimum factors;[289] a sufficient Affidavit of Support Under Section 213A of the INA, where required; current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense, if any; and the record as a whole, as part of a totality of the circumstances framework.

Evidence that could appear in the record as a whole, which USCIS may consider relevant in the totality of the circumstances, could include the applicant's employment history (as stated on Form I-485);[290] approval for the applicant to receive public cash assistance for income maintenance or long-term institutionalization at government expense in the future; [291] or other relevant information.

While many noncitizens may demonstrate their income through their employment history and associated salaries, some noncitizens may have periods of unemployment. USCIS may consider the noncitizen's employment history, in the totality of the circumstances, in the context of assessing the noncitizen's education and skills, as well as assets, resources and financial status. However, like other factors and considerations, the fact that a noncitizen has experienced or is experiencing a period of unemployment is not alone sufficient to conclude that a noncitizen will become a public charge in the future. Also, a history of prior employment may be helpful to determine that the noncitizen has the education or skills that make it likely that they will again be employed and again earn income.

If deemed necessary in the totality of the circumstances assessment, a USCIS officer may request evidence of expected employment, including job offers with estimated salary.[292]

1. Potential Future Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense

Although USCIS expects this to be rare, it is possible that an applicant could, on their own behalf, be certified for, or approved to receive in the future, public cash assistance for income maintenance or long-term institutionalization at government expense.

While such certification or approval would not constitute receipt of such benefits under the regulations,[293] evidence of such certification or approval could indicate the probability of future receipt, and be considered by USCIS as probative of whether the applicant is likely to become a public charge at any time in the future. [294] As such, USCIS considers this certification or approval for future receipt, if any, in the totality of the circumstances.

2. Other Relevant Information

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[289] See INA 212(a)(4)(B). See Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5].
[290] See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule).
[291] Applying for a public benefit on one's own behalf or on behalf of another does not constitute receipt of public benefits by such noncitizen, and approval for future receipt of a public benefit on one's own behalf or on behalf of another does not constitute receipt of public benefits. See 8 CFR 212.21(d).
[292] For more information about the consideration of a noncitizen's totality of the circumstances, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].
[293] See 8 CFR 212.21(d).
[294] See 8 CFR 212.21(d). See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule).

The totality of the circumstances analysis includes all information or evidence in the record before the officer that is relevant to a public charge inadmissibility determination, including forms and evidence previously submitted to USCIS.

For example, it is possible that some applicants for adjustment of status may have previously requested and received a fee waiver for a prior immigration benefit. In such a case, the officer considers this evidence in the totality of circumstances, such as by taking into account the recency and amount of the fee waiver, as well as the grounds for eligibility.[295]

As a general matter, the most common eligibility criteria for a fee waiver are receipt of a means-tested benefit or household income below 150 percent of the Federal Poverty Guidelines (FPG), both of which would already be evident in the applicant's responses to questions on Form I-485. If the fee waiver were requested on the basis of financial hardship, then the officer could request additional evidence on the nature and recency of such hardship in the totality of the circumstances. Note that USCIS is not collecting information about previously received fee waivers on Form I-485. However, if such information is in the record, officers may consider it in the totality of the circumstances.[296]

3. Other Notable Circumstances Relevant in the Totality of the Circumstances

Children

The statute does not exempt children from the public charge ground of inadmissibility.[297] As with all applicants, when making a public charge inadmissibility determination for applicants who are children, USCIS must consider all of the required factors, including current and/or past receipt of public benefits.[298] As with any applicant, USCIS considers the recency, amount, and duration of receipt of such benefits when determining whether a child noncitizen is likely at any time to become primarily dependent on the government for subsistence.[299]

In the rare case that a noncitizen child has received or is receiving public cash assistance for income maintenance or has been institutionalized long-term at government expense, USCIS will, consistent with the totality of the circumstances analysis, consider financial contributions of a child's household and the circumstances that resulted in the child's receipt of public benefits and the likelihood that those circumstances would continue in the future.

The officer should also take into account whether the benefits received were due to temporary parental unemployment or other temporary circumstances. For applicants who were long-term institutionalized at government expense while children, USCIS considers any evidence supplied by the applicant that the applicant's condition was or is not permanent or was or can be managed through home and community-

[295] See 87 FR 55472, 55566 (Sept. 9, 2022) (final rule).
[296] See 87 FR 55472 55566 (Sept. 9, 2022) (final rule).
[297] See INA 212(a)(4)(A).
[298] See 8 CFR 212.21(b).
[299] See 87 FR 55472, 55524-55525 (Sept. 9, 2022).

based services, as well as any evidence that the applicant was or is institutionalized in violation of their rights in the totality of the circumstances.[300]

Benefits Received by Noncitizens During or After Pregnancy

Noncitizens who are pregnant or were recently pregnant are not exempt from the public charge ground of inadmissibility based on that pregnancy. If an applicant received or is receiving public cash assistance for income maintenance or long-term institutionalization at government expense while pregnant or recently pregnant, USCIS must consider that receipt.

However, USCIS takes the applicant's surrounding circumstances into account when assessing whether they are likely at any time to become a public charge, including the temporary nature of pregnancy and potentially temporary nature of postpartum conditions, and how these circumstances may have impacted the applicant's receipt of public benefits, in the totality of the circumstances.[301]

Active-duty Service Members

Active-duty U.S. service members are not exempt from the public charge ground of inadmissibility based on that service.[302] However, in general, very few active-duty service members use the public benefits considered in public charge inadmissibility determinations,[303] and active-duty service members therefore generally will not be impacted by the consideration of receipt of public benefits in a public charge inadmissibility determination.

In the rare case of an active-duty service member who received or is receiving public cash assistance for income maintenance or long-term institutionalization at government expense, the officer should consider any evidence the applicant provides regarding circumstances surrounding the duration, amount, and recency of receipt, and how that may have been impacted by their service. The officer should also consider any evidence the applicant submits relating to skills they obtained through their military service.

Crime, Domestic Violence, or Other Adverse Circumstances

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[300] See 87 FR 55472, 55538 (Sept. 9, 2022) (final rule). This consideration is consistent with how USCIS considers long-term institutionalization for all applicants. For more information, see Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense, Section C, Long-term Institutionalization at Government Expense, Subsection 1, Home and Community-Based Services [8 USCIS PM-G.7(C)(1)] and Subsection 2, Institutionalization in Violation of Federal Law [8 USCIS-PM G.7(C)(2)].

[301] See 87 FR 55472, 55524-25 (Sept. 9, 2022).

[302] See INA 212(a)(4)(A).

[303] The total number of active-duty service members is publicly available in the form of a "strength summary" on the U.S. Department of Defense (DOD)'s Defense Manpower Data Center's DOD Personnel, Workforce Reports & Publications webpage. USCIS does not consider the receipt of SNAP benefits, which are sometimes utilized by service members and their families, in the public charge inadmissibility determination. Additionally, noncitizens must generally be lawful permanent residents (LPRs) in order to join the U.S. military and LPRs are only subject to the public charge ground of inadmissibility in limited circumstances. See the USA.gov Join the Military webpage. However, under the Military Accessions Vital to National Interest (MAVNI) program, certain noncitizens who were asylees, refugees, temporary protected status beneficiaries, deferred action beneficiaries, or nonimmigrants in certain categories could enlist. DOD ceased recruiting service members through the MAVNI program in 2016. See Chapter 3, Applicability, Section A, Applicants Seeking Admission, Subsection 3, Certain Lawful Permanent Residents Returning to the United States [8 USCIS-PM G.3(A)(3)].

Noncitizens who have experienced crime, domestic violence, or other adverse circumstances may have used public cash assistance for income maintenance or long-term institutionalization at government expense but may not fall into one of the specific categories that Congress has exempted from the public charge ground of inadmissibility.[304] Such noncitizens may choose to provide information or evidence relating to their temporary circumstances that may be relevant to a public charge inadmissibility determination.[305] USCIS takes the surrounding circumstances into account in the totality of the circumstances.

B. Totality of the Circumstances Scenarios

Below are hypothetical examples that are intended to help illustrate a USCIS officer's review of an applicant's factors, circumstances, and evidence, in the totality of the circumstances. These hypotheticals are not meant to be exhaustive or all-inclusive with respect to the scenarios that may give rise to a public charge inadmissibility finding; rather they are illustrative of the process and are not meant to dictate the outcome of any particular case.

Although a USCIS officer may encounter similar fact patterns as those presented in the scenarios below, an officer may reasonably reach a different conclusion than what is described below in consideration of the totality of the individual's circumstances. Public charge inadmissibility determinations are made in the totality of circumstances for each individual case, on a case-by-case basis.

Additionally, for purposes of the following hypothetical scenarios, it is assumed that:

- The applicant is applying for adjustment of status before USCIS and is otherwise eligible for the benefit;
- The applicant submitted the required forms and all other required supporting evidence; and,
- The facts asserted are supported by evidence in the record.

Scenario 1

The applicant is a single, 25-year-old, recent college graduate living with their parent, and is currently unemployed. Their parent is currently supporting the applicant financially, and these are the only two individuals in the applicant's household. The household's income and net worth (assets minus liabilities) are relatively low. A sufficient Affidavit of Support Under Section 213A of the INA was submitted on behalf of the applicant. There is no information in the record to show that the applicant is receiving or has received public benefits, or has any Class A or Class B medical conditions.

The officer evaluates each of the factors USCIS considers in a public charge inadmissibility determination, and concludes that the factors do not indicate that the applicant is likely at any time to become primarily dependent on the government for subsistence. For example, the applicant's record of current unemployment, in the totality of the circumstances, does not outweigh the other factors and

[304] For a list of those exempted from the public charge ground of inadmissibility, see 8 CFR 212.23 and Chapter 3, Applicability [8 USCIS-PM G.3].
[305] See 87 FR 55472, 55563 (Sept. 9, 2022).

considerations. As a result, the officer finds in the totality of the circumstances that the applicant has met their burden of demonstrating they are not inadmissible under INA 212(a)(4).

Scenario 2

The applicant is a single 35-year-old with no evidence of any Class A or Class B medical conditions. The applicant has one child who lives with the applicant. The applicant is a currently employed high school graduate, with moderate household income and relatively low household net worth. A sufficient Affidavit of Support Under Section 213A of the INA was submitted on behalf of the applicant. There is evidence in the record that the applicant received public cash assistance for income maintenance for a period of 1 year, over 10 years ago.

The officer evaluates each of the factors USCIS considers as part of the public charge inadmissibility determination, including with the recency, amount, and duration of the past receipt of public cash assistance for income maintenance. The officer determines that the noncitizen's combination of factors does not show that the applicant is likely at any time to become primarily dependent on the government for subsistence, in part because the applicant is currently employed, and their receipt of public cash assistance was neither recent nor long in duration. As a result, the officer finds in the totality of the circumstances that the applicant has met their burden of demonstrating that they are not inadmissible under INA 212(a)(4).

Scenario 3

The applicant is a single 55-year-old, living alone, with no evidence of a Class A or Class B medical condition. The applicant is an unemployed college graduate who has not been employed for over a decade with low income arising solely from receipt of public cash assistance for income maintenance, and low household net worth. A sufficient Affidavit of Support Under Section 213A of the INA was submitted on behalf of the applicant. The applicant indicated that they are currently receiving public cash assistance for income maintenance and have been receiving such assistance for over 5 years.

The officer evaluated each of the factors USCIS considers in a public charge inadmissibility determination and the officer determined that the combination of factors shows that the applicant is likely at any time to become primarily dependent on the government for subsistence, given that the applicant is currently receiving public cash assistance for income maintenance, has received this benefit for an extended period of time, and has demonstrated no prospect of obtaining another source of income.

As a result, even though the applicant has a sufficient Affidavit of Support under Section 213A of the INA and is in good health, the officer finds in the totality of the circumstances that the applicant has not met their burden of demonstrating they are not inadmissible under INA 212(a)(4). The officer finds that the applicant is inadmissible under INA 212(a)(4).

C. Summary: Step by Step Determination of Public Charge Inadmissibility

The officer should examine all facts and circumstances of the applicant's case when evaluating inadmissibility for public charge.[306] The officer should follow the steps in the table below to determine inadmissibility.

[306] See INA 212(a)(4).

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then …	If No, then …	For More Information
Step 1: Is the applicant subject the public charge ground of inadmissibility?	Go to Step 2.	Not inadmissible based on the public charge ground.[307]	See Chapter 3, Applicability [8 USCIS-PM G.3].
Step 2: Is the applicant required to submit an Affidavit of Support Under Section 213A (Form I-864 or Form I-864EZ)?	Go to Step 3.	Go to Step 4.	Chapter 6, Affidavit of Support [8 USCIS-PM G.6].
Step 3: Was the Form I-864 (or Form I-864EZ) submitted and determined sufficient by the officer?	Go to Step 4.	Inadmissible based on the public charge ground.	
Step 4: Was the application postmarked (or, if applicable, submitted electronically) on or after December 23, 2022?	Go to Step 5.	Follow the 1999 Interim Field Guidance for adjudication.	Chapter 1, Purpose and Background, Section C, Scope [8 USCIS-PM G.1(C)].
Step 5: After reviewing the applicable forms[308] and evidence, is the applicant likely at any time to become a public charge based on the totality of the circumstances?	Go to Step 6.	Not inadmissible based on the public charge ground.	Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5] through Chapter 7, Consideration of Current and/or Past Receipt of Public Benefits [8 USCIS-PM G.7].
Step 6: Is a waiver of inadmissibility available?	The officer may issue a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to the applicant to provide them an opportunity to request a waiver, unless already requested. If the waiver is approved, the applicant may be admitted despite the public charge ground of inadmissibility. The officer	Inadmissible based on the public charge ground. Go to Step 7.	Chapter 9, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications [8 USCIS-PM G.9] Chapter 8, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.8].

[307] Self-petitioners under the Violence Against Women Act (VAWA) must file Request for Exemption for Intending Immigrant's Affidavit of Support (Form I-864W) to request an exemption from the affidavit of support requirement but are not subject to the public charge inadmissibility ground. See INA 212(a)(4)(E)(i). Self-petitioning VAWA applicants (and their derivatives) are therefore not inadmissible under the public charge ground and adjudicators will not make a public charge inadmissibility determination once they determine the Form I-864W meets the requirements of the exemption.

[308] Including Form I-485, Form I-864 or Form I-864EZ, and Form I-693. Officers may issue a Request for Evidence (RFE) to the applicant to provide them an opportunity to submit additional evidence.

Step-By-Step Determination of Public Charge Inadmissibility

Step	If Yes, then …	If No, then …	For More Information
	should continue with the adjudication of the application.		
Step 7: Does USCIS offer the applicant for adjustment of status who is inadmissible only on account of public charge the opportunity to post a public charge bond?	The officer issues a NOID, notifying the applicant that the applicant may submit a public charge bond. Proceed to Step 8.	The applicant is inadmissible on the public charge ground. The officer may issue a NOID or deny the application in accordance with USCIS policy.	Chapter 10, Public Charge Bonds [8 USCIS-PM G.10]
Step 8: Was a proper and suitable bond posted on behalf of the applicant?	The applicant may be admitted despite inadmissibility based on the public charge ground. The officer should continue with the adjudication of the application.	The applicant is inadmissible on the public charge ground. The officer should deny the application.	Chapter 11, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.11]

D. Decision

1. Request for Evidence or Notice of Intent to Deny

If the initial evidence submitted by the applicant does not establish eligibility or ineligibility, USCIS may issue an Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to request more information or evidence from the applicant in accordance with USCIS policy.[309]

If a NOID is issued, the officer must provide an explanation of the consideration of all the factors and why the officer believes that the applicant is likely at any time to become primarily dependent on the government for subsistence, based on the consideration of the totality of the applicant's circumstances. If an officer is basing a decision in whole or in part on information of which the applicant is unaware or could not reasonably be expected to be aware, the officer must issue a NOID.[310]

2. Not Inadmissible Based on Public Charge Ground

If, after reviewing the application for adjustment of status and supporting evidence, the officer finds that the applicant is not likely to at any time become primarily dependent on the government for subsistence based on the consideration of the totality of applicant's circumstances, then the officer

[309] See 8 CFR 103.2(b)(8)(i). Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID. See 8 CFR 103.2(b)(8)(iii). For more information, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)], and Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 9, Rendering a Decision, Section B, Denials, Subsection 1, Denials Based on Lack of Legal Basis [1 USCIS-PM E.9(B)(1)].
[310] See 8 CFR 103.2(b)(16)(i). See 8 CFR 103.2(b)(8)(iv).

should determine that the applicant is not inadmissible based on the public charge ground. The officer should continue with the adjudication.

3. Inadmissible Based on Public Charge Ground

If, after reviewing the application for adjustment of status and supporting evidence, the officer finds that the applicant is likely at any time to become primarily dependent on the government for subsistence, then the officer should determine that the applicant is inadmissible under the public charge ground.

In this case, the officer should determine whether the applicant may be eligible to apply for a waiver or whether to offer the applicant the opportunity to post a public charge bond.[311] If the applicant is ineligible to apply for a waiver and USCIS has decided not to offer the applicant an opportunity to post a public charge bond, then the applicant is inadmissible under the public charge ground and therefore, ineligible for adjustment of status and the officer either issues a NOID or denies the benefit request in accordance with USCIS policy.[312]

Waiver

If the applicant is eligible to apply for a waiver, the officer should inform the applicant through the issuance of an RFE or NOID in accordance with USCIS policy.[313] If the applicant submits a waiver and the waiver is approved, the applicant is no longer inadmissible under the public charge ground, and the officer should continue with the adjudication of the adjustment of status application, in accordance with the guidance.

Bond

If an applicant for adjustment of status is inadmissible based on the public charge ground, and USCIS offers, as a matter of discretion, the applicant an opportunity to post a public charge bond,[314] the officer must issue a NOID in accordance with USCIS policy.[315]

If the applicant posts the public charge bond as instructed in the NOID and USCIS accepts the bond, the officer should continue with the adjudication of the immigration benefit request, in accordance with the guidance.

Denial

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[311] For more information, see Chapter 8, Waivers of Inadmissibility Based on Public Charge Ground [8 USCIS-PM G.8] and Chapter 10, Public Charge Bonds [8 USCIS-PM G.10].
[312] See 8 CFR 103.2(b)(8)(iii). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].
[313] See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].
[314] In accordance with 8 CFR 213.1.
[315] See 8 CFR 103.2(b)(8)(iii). See Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

USCIS officers must articulate the reasons for a finding of inadmissibility under the public charge ground based on the totality of the circumstances in the denial decision issued to the applicant.[316] Every written denial decision issued by USCIS based on the totality of the circumstances analysis must reflect consideration of each of the factors[317] in the public charge inadmissibility determination (other than an Affidavit of Support Under 213A of the INA when not required) and specifically articulate the reasons for the officer's determination.[318]

Chapter 10. Public Charge Bonds

If an applicant is determined to be inadmissible based on the public charge ground,[319] but is otherwise admissible, they may be admitted in the discretion of the Secretary of Homeland Security, after posting a suitable and proper bond.[320] Public charge bonds are intended to ensure "that the alien will not in the future become a public charge."[321] Before an applicant may post a public charge bond, USCIS must invite them to do so.[322]

If USCIS decides in its discretion that the applicant may post a bond, USCIS will issue a Notice of Intent to Deny (NOID) in which it will invite the applicant to submit a bond. No public charge bonds will be accepted from adjustment of status applicants without an invitation from USCIS. In the case of visa applicants, a bond will be accepted by USCIS only if USCIS receives notification that a consular officer requires the bond.

USCIS may accept a public charge bond before the issuance of an immigrant visa upon the receipt of a request directly from a United States consular officer or upon the presentation by an interested person of a notification from the consular officer requiring the bond.[323]

A public charge bond is a type of immigration bond.[324] A bond, including a public charge bond, is a contract between the United States (the obligee) and a natural person or a company (the obligor) who pledges a sum of money to guarantee a set of conditions imposed by the U.S. government concerning the noncitizen (also called the principal).[325]

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[316] See 8 CFR 212.22(c). See 8 CFR 103.3(a)(1)(i). For more information about the consideration of the totality of the circumstances, see Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].
[317] See 8 CFR 212.22(a).
[318] See 8 CFR 212.22(c) and 8 CFR 212.22(a). For more information about the factors considered in a public charge inadmissibility determination, see Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5], Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6], and Chapter 7, Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense [8 USCIS-PM G.7].
[319] See INA 212(a)(4).
[320] See INA 213. See 8 CFR 103.6 and 8 CFR 213.1.
[321] See *Matter of Viado*, 19 I&N Dec. 252, 253 (BIA 1985).
[322] See 8 CFR 213.1(a).
[323] See 8 CFR 213.1(b).
[324] There are many types of immigration bonds prescribed in the Immigration and Nationality Act (INA). Most immigration bonds are currently administered by U.S. Immigration and Customs Enforcement (ICE), and not USCIS. For example, ICE administers the voluntary departure bonds, delivery bonds, and order of supervision bonds. For more information on other immigration bonds, contact ICE.
[325] See *Matter of Allied Fid. Ins. Co.*, 19 I&N Dec. 124, 125-26 (BIA 1984) (discussing the contractual nature of delivery bonds submitted under 8 CFR 103.6).

In the case of the public charge bond, the obligor pledges a sum of money to guarantee that the applicant will not become a public charge, as defined in the statute.[326] The purpose of a public charge bond is to act as "security for performance and fulfillment of the financial obligations of a bonded alien to the U.S. government."[327]

Public charge bonds are intended to hold the United States and all states, territories, counties, towns, municipalities, and districts harmless against noncitizens becoming public charges.[328] A public charge bond is issued on the condition that the noncitizen does not become a public charge after the bond is issued.

If the U.S. government invites the noncitizen to post a public charge bond, and the noncitizen posts the bond in the amount specified by USCIS and complies with all other requirements as provided in the form and form instructions, USCIS accepts the public charge bond and adjusts the applicant's status to that of a lawful permanent resident (LPR) despite the noncitizen's inadmissibility.

A. Background

Historically, bond provisions started with states requiring certain amounts of money to be posted as assurance that a noncitizen would not become a public charge.[329] Beginning in 1893, immigration inspectors served on boards of special inquiry that reviewed exclusion cases of noncitizens who were likely to become public charges because they lacked funds or relatives or friends who could provide support.[330] In these cases, the board of special inquiry usually admitted the noncitizen if someone could post bond or one of the immigrant aid societies would accept responsibility for the noncitizen.

Bond provisions were codified in federal immigration laws in 1903.[331] The present language of INA 213 has been in the law without significant variation since 1907.[332] Under Section 21 of the Immigration Act of 1917, an immigration officer could admit a noncitizen if a suitable bond was posted.[333] Regulations implementing the public charge bond were promulgated in 1964 and 1966,[334] and are currently found at 8 CFR 103.6 and 8 CFR 213.1. In 1970, Congress amended INA 213 to permit the posting of cash received by the U.S. Department of the Treasury (Treasury) and to eliminate specific references to communicable diseases of public health significance.[335]

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[326] See INA 212(a)(4).
[327] See Public Charge Bond (Form I-945) instructions.
[328] See INA 213. See *Matter of Viado*, 19 I&N Dec. 252 (BIA 1985).
[329] See *Mayor, Aldermen and 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 noncitizen and the noncitizen's children).
[330] See 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 U.S. Department of the Treasury. The Superintendent oversaw a new corps of U.S. immigration inspectors stationed at the country's principal ports of entry. See the USCIS Origins of Federal Immigration Service webpage.
[331] See Immigration Act of 1903, Pub. L. 57-162, 32 Stat. 1213 (March 3, 1903).
[332] See Section 26 of the Act of February 20, 1907, Pub. L. 59-96, 34 Stat. 898, 907.
[333] See Pub. L. 64-301, 39 Stat. 874, 876 (February 5, 1917).
[334] See 29 FR 10579 (July 30, 1964) and 31 FR 11713 (Sept. 7, 1966).
[335] See Immigration and Nationality Act Amendments of 1970, Pub. L. 91-313, 84 Stat. 413 (July 10, 1970). See 116 Cong. Rec. S 9957 (daily ed. June 26, 1970).

With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (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 Under Section 213A of the INA and the deeming requirement under INA 213A.[336]

The 1999 Interim Field Guidance explained the IIRIRA changes to the public charge bond statute and noted that officers can offer public charge bonds as they had done in the past, but did not detail procedures for public charge bonds.[337]

The 2022 Final Rule added streamlined provisions to clarify acceptance, forms, and amount of USCIS public charge bonds, as well as cancellation of bonds.[338]

B. Type of Bonds

Public charge bonds may generally be posted as:[339]

- A cash bond – This type of bond is posted as cash equivalent as specified by USCIS;[340] or
- A surety bond – This type of bond is posted through a surety company certified by the Treasury.[341]

Regardless of the type of public charge bond, the bond must be posted with USCIS by submitting a Public Charge Bond (Form I-945) in accordance with its instructions and the appropriate fee.[342]

Cash Bonds

A cash bond is secured by a deposit of the full face value of the bond. It can be posted by a company or a natural person. If an applicant is given the opportunity to post a public charge bond, the bond should be paid in accordance with the Form I-945 instructions.

Once USCIS receives the funds, the money is held in a U.S. Treasury account until it is either forfeited due to breach or the bond is canceled. Funds used to secure a bond accrue interest at the rate set by the Treasury on the date the funds are received.[343]

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[336] See Section 564(f) of Division C of Pub. L. 104-208, 110 Stat. 30009-546, 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.
[337] See 64 FR 28689 (May 26, 1999).
[338] See 87 FR 55472 (Sept. 9, 2022) (final rule). See 8 CFR 103.6 and 8 CFR 213.1.
[339] See 8 CFR 103.6.
[340] See 8 CFR 213.1.
[341] See 8 CFR 103.6.
[342] See 8 CFR 103.2 and 8 CFR 103.7.
[343] See 8 CFR 293.1.

Surety Bonds

A surety bond is a bond that is submitted on the noncitizen's behalf by a company, which guarantees the payment of a certain amount of money if the noncitizen fails to comply with the conditions set by the government as part of the bond. In the case of a surety bond, no cash is exchanged as part of the bond contract; only if and when the noncitizen breaches the conditions of the bond will the surety company pay the promised amount of money to the government.

Before a surety company can do business with any government entity, it must be certified by the Treasury.[344] All certified companies are listed in a document entitled Circular 570.[345] USCIS only accepts surety bonds from companies certified by the Treasury to post bonds.[346]

A surety company can execute a bond on its own or it can do so through authorized agents.[347] To establish that an agent is an authorized agent who may act on behalf of the surety company, the agent must provide evidence of the authorization through a power of attorney that must comply with the state laws governing the jurisdiction in which it is executed.

This power of attorney is not the same as the Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28). Therefore, when submitting a public charge bond on behalf of a certified surety company, the agent must attach either an original power of attorney, or a true copy (as defined under applicable state law), to Form I-945.

If the agent[348] also seeks to act in the capacity of an attorney or accredited representative of the surety company, the agent must also submit Form G-28.[349]

If the surety company posts bonds through an agent, the agent becomes a co-obligor. This means that the agent is jointly and severally liable for the bond amount. If the noncitizen breaches the condition of the bond by receiving public benefits above the threshold, either the surety company or the agent or both can be held liable for and up to the amount of the bond.

Example

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[344] See 31 U.S.C. 9304-9308. As part of the certification process, the Treasury ascertains the company's credit worthiness.
[345] Circular 570 is available at the Treasury's Listing of Certified Companies webpage.
[346] The Treasury certifies companies only after having evaluated a surety company's qualifications to underwrite federal bonds, including whether those sureties meet the specified corporate and financial standards. Under 31 U.S.C. 9305(b)(3), a surety (or the obligor) must be able to carry out its contracts and must comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond has been breached.
[347] However, a surety bond cannot be posted by a person who is not an authorized agent for a certified company. For example, if a noncitizen is offered the opportunity to post a public charge bond, the noncitizen cannot submit a surety bond on their own behalf.
[348] An agent or co-obligor may also act through their authorized representative, as defined in 8 CFR 1.2 and 8 CFR 292. Such a representative must submit Form G-28 on behalf of the agent or co-obligor.
[349] If the Form G-28 is missing, but should have been submitted, USCIS should request the Form G-28 before proceeding.

Immigration Bonds, Inc. provides public charge bond services on behalf of Bank B, a Treasury-certified surety company. When submitting a public charge bond, Immigration Bonds, Inc. must submit Form I-945 and an original or a true copy (as defined under applicable state law) of the power of attorney that complies with the state laws governing the jurisdiction in which the power of attorney was executed. The power of attorney demonstrates that Immigration Bonds, Inc. is authorized to submit the bond on behalf of Bank B.

By completing the Form I-945, the agent must sign as a co-obligor on the bond. If Immigration Bonds, Inc. also acts as Bank B's attorney or accredited representative, Immigration Bonds, Inc., would also have to submit a properly completed Form G-28. If the public charge bond is accepted, then Immigration Bonds, Inc. and Bank B become co-obligors on the public charge bond.

If the public charge bond is breached because the noncitizen does not comply with the bond conditions, the U.S. government may collect from either Immigration Bonds, Inc. or Bank B. or both to obtain the full face value of the public charge bond.

The following table illustrates the differences between the public charge cash and surety bonds.

Differences Between Cash and Surety Bonds

	Cash Bond	Surety Bond
Who can post it?	• Natural person, including the noncitizen; or • Company or other entity	• Certified surety company; or • The certified surety company's authorized agent
The bond is posted by submitting what documents?	• Form I-945, completed in accordance with the form instructions; • Payment submitted according to the form's instructions; and • Form G-28, if necessary	• Form I-945, completed in accordance with the form instructions; • If submitted by an authorized agent of an acceptable surety company: Power of attorney complying with state laws of governing jurisdiction in which the power of attorney was executed; and • Form G-28, if the agent is also acting in the capacity of an attorney or accredited representative
Is a payment submitted with the bond?	• Yes, payment is submitted in accordance with Form I-945's instructions	• No, no payment accompanies the bond submission
Can the bond have a co-obligor?	• No	• Yes, if the bond is submitted by an authorized agent of an acceptable surety company, the authorized agent becomes a co-obligor

C. Bond Amount

A public charge bond must be at least $1,000.[350] However, USCIS determines the appropriate bond amount for each applicant on a case-by-case basis.

D. Bond Duration

USCIS only accepts public charge bonds of unlimited duration. This means that the bond will not expire, but instead remains in effect until one of the following events occurs:

- USCIS approves a substitute bond that replaces the bond originally posted;[351]
- USCIS cancels the bond;[352] or
- USCIS determines that the bond is breached.[353]

E. Bond Stages

The decision to allow an applicant who is inadmissible only on the public charge ground to submit a public charge bond is within DHS's discretion. The posting of a public charge bond by an applicant who is found to be inadmissible only on account of the public charge ground authorizes USCIS, upon accepting the bond, to adjust the status of the applicant to that of an LPR. Before posting a public charge bond, USCIS must invite the noncitizen to do so.[354] No public charge bonds will be accepted without an invitation from USCIS.

The public charge bond is posted on the condition that the applicant does not become a public charge after adjusting status.[355] If the applicant does not maintain all conditions of the public charge bond, the bond is breached, and the U.S. government will demand payment on the bond.

If the applicant does not become a public charge while the bond is in effect, then USCIS will cancel the bond upon the request from either the obligor or agent or co-obligor (the one who posted the bond), or the applicant.[356]

The following table summarizes the various stages of a public charge bond.

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[350] See 8 CFR 213.1(c).
[351] For more information on bond substitution, see Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [8 USCIS-PM G.12(B)].
[352] For more information on bond cancellation, see Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section D, Canceling a Bond [8 USCIS-PM G.12(D)].
[353] For more information on bond breach, see Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [8 USCIS-PM G.12(C)].
[354] See 8 CFR 213.1(a).
[355] See INA 213.
[356] See INA 213.

Public Charge Bond Stages

Stage	For More Information
Posting and acceptance of a public charge bond	Chapter 11, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.11]
Maintenance of a public charge bond, including substitution	Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section A, Maintaining Bonds [8 USCIS-PM G.12(A)] Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section B, Substituting a Bond [8 USCIS-PM G.12(B)]
Breach of the public charge bond	Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section C, Breach of Bond [8 USCIS-PM G.12(C)]
Cancellation of the public charge bond	Chapter 12, Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds, Section D, Canceling a Bond [8 USCIS-PM G.12(D)]

Chapter 11. Public Charge Bonds: Posting and Accepting Bonds

A. Permission to Post Bond

A public charge bond may only be submitted by the applicant or on the applicant's behalf after USCIS notifies the applicant and the applicant's representative (if any) that a public charge bond may be submitted. USCIS does not accept requests to submit a public charge bond or unsolicited public charge bonds that are submitted with an application for adjustment of status or while the application is pending.

Because public charge bonds are only made available in USCIS' discretion[357] to applicants inadmissible under the public charge ground,[358] the officer should adjudicate all aspects of the adjustment of status application before USCIS will consider whether the applicant should be offered the possibility to post a public charge bond.

B. USCIS Discretion to Offer a Bond

Providing the applicant with the opportunity to post a public charge bond is wholly within the discretion of the Secretary of Homeland Security. USCIS, therefore, determines whether to provide an adjustment of status applicant with the opportunity to post a public charge bond on a case-by-case basis and based on the facts of each individual case.[359]

USCIS views bonds as an effective way to provide a safeguard to hold public benefit agencies harmless in the event that the applicant receives public cash assistance for income maintenance or long-term

[357] See INA 213.
[358] See INA 213. See 8 CFR 213.1.
[359] See INA 213. See 8 CFR 213.1.

institutionalization at government expense. USCIS does not offer the opportunity to post a public charge bond if the adjustment application would be denied on any other basis, including discretionary grounds.

Determining Public Charge Bond Amount

The purpose of the public charge bond is to hold the U.S. government harmless if a noncitizen becomes a public charge after adjusting to lawful permanent resident (LPR) status while the bond is in effect.

A public charge bond must be at least $1,000 and in such an amount that it will hold harmless[360] public benefit agencies who are likely to provide the applicant with public cash assistance for income maintenance or long-term institutionalization during the period in which the bond is in effect.[361]

However, USCIS determines the appropriate bond amount for each applicant on a case-by-case basis. USCIS considers the same factors listed in 8 CFR 212.22(a) when making a determination of the bond amount. The stronger the likelihood that the applicant will become a public charge (in the opinion of USCIS when considering these factors), the higher the bond amount.

The same factors considered as part of the public charge inadmissibility determination that rendered the applicant more likely than not to become a public charge at any time in the future should guide the determination of the public charge bond amount.

C. Requesting a Bond

If USCIS determines that giving the adjustment of status applicant the opportunity to submit a public charge bond is warranted, as a matter of discretion,[362] USCIS will request the submission of the Public Charge Bond (Form I-945) by issuing a Notice of Intent to Deny (NOID). The NOID should discuss, at a minimum, all of the following items:

- That the noncitizen has been found inadmissible on the public charge ground and the reason(s) why;
- That USCIS decided to favorably exercise its discretion to allow the noncitizen to have a public charge bond submitted, which would permit, if accepted, the noncitizen to adjust status to that of an LPR;
- The public charge bond amount;

[360] By "hold harmless", USCIS means that the bond amount should be set based on the value of the public benefits likely to be received by the applicant.
[361] See 8 CFR 213.1(c). See INA 213.
[362] To perform a discretionary analysis, USCIS weighs all positive factors present in a particular case against any negative factors in the totality of the circumstances. Some examples of discretionary considerations include: close family ties in the United States, community standing, length of lawful residence in the United States, evidence of respect for law and order, and violations of immigration law. Additionally, if an applicant is currently receiving public cash assistance for income maintenance or long-term institutionalization at government expense at the time of the public charge inadmissibility determination and indicates that they intend to continue receiving such benefits in the foreseeable future, USCIS will decline to offer the opportunity to submit a public charge bond as a matter of discretion. For more information on the use of discretion in adjudications, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 8, Discretionary Analysis [1 USCIS-PM E.8].

- That the bond must be posted by submitting Form I-945 completed in accordance with the form's instructions and with the appropriate fee;

- The due date, that is, by when Form I-945 must be submitted to (postmark date) USCIS;

- The consequences for failure to respond to the notice and for the failure to submit Form I-945, in accordance with the form's instructions and with the appropriate fee. In particular, the NOID should specify that the public charge bond will be rejected or deemed insufficient and that the adjustment of status will be denied, if the bond is not properly submitted in accordance with the instructions and with the appropriate fee; and

- Any additional information required to properly post the bond.

D. Assessing the Sufficiency of a Submitted Public Charge Bond

Once the public charge bond is submitted, USCIS should determine whether the bond was properly completed as outlined in the form's instructions and the NOID, and that the appropriate bond amount has been paid. The bond is not effective until USCIS accepts the bond.

A public charge bond is a contract between the U.S. government (USCIS) and the obligor. A contract is generally not effective until both parties accept the contract. USCIS accepts a bond when the designated USCIS authority signs the public charge bond on behalf of the U.S. government.[363]

In general, before a public charge bond can be endorsed with the signature of the authorized designated authority, USCIS must ensure that the public charge bond meets the regulatory requirements,[364] is submitted in accordance with instructions outlined in the form's instructions and the NOID, and that the appropriate bond amount has been paid. Otherwise, the bond may be rejected upon submission or ultimately deemed insufficient.

Additionally, the conditions of the public charge bond are outlined in Form I-945 and in the NOID issued by USCIS. The obligor submitting the Form I-945 may not alter these terms in any way. USCIS does not accept a public charge bond as sufficient and acceptable if:

- The obligor or noncitizen submits the Form I-945 with an attachment or rider that contains additional conditions or otherwise alters the terms of the public charge bond;[365]

- The obligor physically alters the terms contained on Form I-945;[366] or

[363] Officers tasked with evaluating the public charge bond should consult with their supervisory chain to determine to whom to forward a public charge bond so that it can be signed by the designated USCIS authority.
[364] See 8 CFR 213.1.
[365] This is the case even if the obligor generally agrees with the Form I-945 terms but suggests that the contract cover additional conditions. USCIS cannot accept a bond under conditions other than those outlined in Form I-945 and the NOID.
[366] For example, the obligor may not strike any of the text on Form I-945 or the obligor may not add any text in writing to the Form I-945. In particular, the obligor may not use the overflow section in Form I-945 to add terms or alter the obligation imposed with Form I-945.

- The obligor submits the bond on a contract other than Form I-945.[367]

1. Accepting the Bond

If USCIS determines that the public charge bond meets the regulatory requirements, the requirements outlined in the form's instructions, and in the NOID, USCIS may forward the public charge bond documentation to the designated USCIS authority for signature and acceptance of the public charge bond. Once the bond is signed and accepted, USCIS must issue a receipt.[368]

2. Issuing a Receipt for Accepted Bonds

Once the bond is signed by the designated USCIS authority and accepted, the obligor, the authorized agent (in the case of a surety bond), any representative, and the noncitizen and the noncitizen's representative, if any, are notified that the bond has been accepted. The officer should also provide a receipt to the obligor and a copy of the receipt to the applicant and their representative (if any).

Because USCIS accepted the public charge bond, the officer adjudicating the adjustment of status application should proceed with the final adjudication of the adjustment. If the applicant is otherwise eligible for adjustment of status at the time the public charge bond is accepted by USCIS, then the adjustment of status application may be approved.[369]

3. Bond Not Accepted

If the public charge bond does not meet the regulatory requirements, the requirements outlined in the form's instructions, or in the NOID, USCIS cannot accept the public charge bond and denies the adjustment of status application. The denial decision will include a discussion of how the bond did not meet the regulatory requirements.

Chapter 12. Public Charge Bonds: Maintaining, Substituting, and Canceling Bonds

A. Maintaining Bonds

Once a noncitizen has adjusted their status to that of a lawful permanent resident (LPR), USCIS must ensure that the bond continues to be enforceable during the bond's validity. Additionally, an obligor, agent or co-obligor, or the noncitizen may experience a change of address, or the obligor or the noncitizen may wish to substitute the bond.

USCIS will send a copy of any communication with the obligor, the obligor's representative, if any, the agent or co-obligor, and the agent or co-obligor's representative, if any, to the noncitizen, and the noncitizen's representative, if any.[370] For that reason, any communication relating to the review of the bond should ordinarily be in writing.

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[367] This is the case even if the document submitted by the obligor contains the same text as Form I-945 and the terms as outline in the NOID but are on a document other than the Form I-945.
[368] See Subsection 1, Accepting the Bond [8 USCIS-PM G.11(E)(1)].
[369] For more information about adjustment of status, please see Volume 7, Adjustment of Status [7 USCIS-PM].
[370] See Public Charge Bond (Form I-945).

If the officer has to communicate with any of the parties involved in the bond orally, USCIS generally transcribes the communication, and sends a copy of the transcribed communication to all parties involved. USCIS also retains a copy of the communication in the noncitizen's file.

B. Substituting a Bond

A noncitizen or an obligor may have an interest in having the bond substituted at any time. For example, a noncitizen may have found a different obligor who provides the noncitizen better financial terms and conditions for purposes of a public charge bond submission. Another example would be if the obligor would like to be released from the public charge bond obligation and therefore, asks the noncitizen to seek a new obligor.

Acceptance of the Substitute Bond

A public charge bond on file with USCIS may be substituted. A substitute bond may either be submitted by the original obligor or a new obligor on behalf of the noncitizen. A substitute bond is submitted on Public Charge Bond (Form I-945) and completed in accordance with the form's instructions and with the required fee.[371]

When USCIS is reviewing the sufficiency of the substitute bond, USCIS ensures that the following requirements are met before presenting the public charge bond to the designated USCIS authority for signature and acceptance of the bond:

- The bond must meet all of the requirements applicable to the initial bond; and

- The bond must cover all liabilities that the initial obligor incurred, including any breach of the bond conditions, before USCIS accepts the substitute bond. The reason for this requirement is that USCIS may not learn of a breach until after the expiration or cancellation of the bond previously submitted to USCIS. Form I-945 includes this requirement as a term of the condition. When USCIS is verifying the sufficiency of the substitute public charge bond, USCIS must ensure that no text on the Form I-945 has been altered before USCIS accepts the form by having it signed by the designated USCIS authority.

In addition, USCIS follows the steps outlined in this part,[372] addressing the acceptance of a public charge bond when reviewing the substitute public charge bond for sufficiency.

If USCIS determines that the substitute bond is sufficient, the officer should forward the public charge bond for acceptance by the designated USCIS authority for signature. The substitute bond is effective on the day it is signed by the designated USCIS authority. The officer should proceed with issuing the receipt as outlined in this part.[373]

As part of the acceptance of the new public charge bond, USCIS cancels the bond being substituted, releases any prior obligors from liability, and accepts the substitute bond. A copy of the communication must be sent to all parties involved. If the bond that is returned to the obligor was a cash bond, USCIS

[371] See 8 CFR 103.7.
[372] See Chapter 11, Public Charge Bonds: Posting and Accepting Bonds [8 USCIS-PM G.11].
[373] See Chapter 11, Public Charge Bonds: Posting and Accepting Bonds, Section D, Assessing the Sufficiency of a Submitted Public Charge Bond, Subsection 2, Issuing a Receipt for Accepted Bonds [8 USCIS-PM G.11(D)(2)].

must return the original bond amount and any interest accrued to the obligor of the bond being substituted.

If the substitute bond submitted is insufficient, USCIS generally notifies the obligor of the substitute bond so that the obligor may correct the deficiency or deficiencies within the timeframe stipulated in USCIS' notice. This notice should not only be sent to the new obligor, but all parties involved, including the obligor and agent or co-obligor, if any, on file (the bond to be substituted), the agent or co-obligor of the substitute bond, the noncitizen, and any representative of any of the parties involved. If the deficiency is not corrected within the timeframe specified, the bond currently on file remains in effect.

C. Breach of Bond

A condition of the bond is that the noncitizen not receive public benefits[374] in the form of either public cash assistance for income maintenance or long-term institutionalization at government expense after the noncitizen has adjusted their status to that of a LPR and until USCIS cancels the bond.[375] A bond may be breached for non-compliance of any condition imposed on the public charge bond.[376]

1. Investigation

USCIS may learn of a potential bond breach from various sources. For example, USCIS may learn of a potential bond breach from the noncitizen requesting that the public charge bond be canceled, when indicating as part of the cancellation request, that they have received public benefits. Regardless of the source of the information, USCIS investigates the allegation of the public charge bond breach.

Handling Information Prohibited from Disclosure to the Obligor

When investigating the information received about public benefits receipt, USCIS is required to send all communications relating to the bond to all parties involved, including the obligor, the agent or co-obligor, and all parties' representatives, if any. Before sending any communication regarding the bond breach, USCIS consults the Office of the Chief Counsel (OCC) to determine whether any information USCIS has would be protected by law from the disclosure to the obligor.

If the information may not be disclosed by law, USCIS may not address it in the communication and use it for purposes of the public charge breach determination. Information that is not prohibited from disclosure should be included in the communication to all parties.

2. Adjudication

A bond breach exists because the noncitizen did not comply with the conditions of the bond; however, USCIS must declare the bond breached by notifying the obligor. Before the bond can be declared breached, USCIS must determine whether the information supports a finding that any conditions imposed by the bond were breached.

If USCIS finds that there is insufficient information to determine whether a breach occurred, USCIS should request additional information from the noncitizen or the obligor. However, if the evidence

[374] See 8 CFR 212.21(b)-(d).
[375] See 8 CFR 103.6(c)(1).
[376] See INA 213.

USCIS possesses supports a finding of a breach, then USCIS should inform the obligor and an agent or co-obligor of USCIS' intention to declare the bond breached by issuing a Notice of Intent to Declare the Public Charge Bond Breached. The notice must, at a minimum, comply with the following guidelines:

- Be sufficiently specific to give the obligor or the agent or co-obligor the opportunity to respond and submit rebuttal evidence;

- Include all documentation received that supports the breach determination and is by law permitted to be disclosed to the obligor or agent or co-obligor. Any information that is prohibited, by law, from being disclosed should be redacted and may not be used to support the bond breach. USCIS should consult OCC before sending the notice to avoid inadvertent disclosure; and

- Include a date by when the obligor must respond and submit rebuttal evidence.

USCIS must also send a copy of any notification to the obligor or co-obligor regarding the breach to the noncitizen and the noncitizen's representative, if any.

3. Determination

After receiving the obligor's response to the Notice of Intent to Declare the Public Charge Bond Breached, USCIS determines whether the obligor's response and any evidence submitted to rebut the initial breach determination is sufficient to overcome USCIS' initial determination that the bond was breached.

If the obligor or agent or co-obligor has not provided sufficient evidence to rebut USCIS' determination that the public charge bond was breached or if the obligor did not respond by the date required in the Notice of Intent to Declare the Public Charge Bond Breached, USCIS declares the bond breached, and informs the obligor and agent or co-obligor, if any, of the right to appeal the bond breach determination. USCIS must provide a copy of the determination to all parties involved in the bond.

If the information reveals that the noncitizen has not breached the public charge bond conditions, the public charge bond remains in place. USCIS must provide a copy of the determination to all parties involved of in the bond.

4. Appeal of Breach Determination

An obligor[377] may appeal a breach determination to USCIS' Administrative Appeals Office (AAO) by filing a Notice of Appeal or Motion (Form I-290B) together with the appropriate fee and required evidence.[378] If the obligor fails to appeal the bond breach determination within the requisite appeal period, or if the appeal is filed untimely, the bond breach determination becomes administratively final unless a motion is granted to reopen or reconsider the proceedings, if permitted under the regulations.

If the obligor appeals the bond breach determination in a timely fashion, USCIS reviews the decision before the appeal is forwarded to the AAO.[379] If an appeal is warranted, USCIS may treat the appeal as a

[377] The obligor includes the term agent or co-obligor.
[378] See 8 CFR 103.3.
[379] See 8 CFR 103.3(a)(2).

motion and then take favorable action, which would resolve the appeal. USCIS may reopen a proceeding or reconsider a decision on their own motion.[380]

If the officer is not inclined to take a favorable action, the appeal should be forwarded to the AAO for a decision on the obligor's appeal.

5. Collecting Bond Amount

An administratively final determination that a bond has been breached creates a claim in favor of the United States. The claim may not be released or discharged by an immigration officer.

Cash Bonds

In a cash bond, the actual face value of the bond is deposited with USCIS to be held in case of a bond breach. Upon an administratively final decision that the bond has been breached, the money that was deposited for purposes of the bond becomes the means to satisfy the claim that the bond breach created in favor of the U.S. government. At that time, the entire bond amount is forfeited by the obligor. However, USCIS must return the interest accrued on the deposited amount. After all business is concluded, the obligor is released from the public charge bond.

Surety Bonds

In a surety bond, no cash is exchanged as part of the bond contract when the bond is posted.[381] Only if the bond is breached will the surety company be required to pay the promised amount of money to the U.S. government. A surety company (or the obligor) must carry out its contracts and comply with statutory requirements, including prompt payment of demands arising from an administratively final determination that the bond had been breached.[382]

D. Canceling a Bond

In general, a public charge bond has to remain in place until the bond can be canceled and USCIS determines that the bond has not been breached.

1. Request to Cancel

In general, until either the obligor or the noncitizen has filed a request to cancel the bond and USCIS has favorably adjudicated it, the bond remains in effect. USCIS may, however, at its own discretion, cancel the public charge bond if USCIS determines that the noncitizen otherwise meets the requirement for cancellation.[383]

The request to cancel the public charge bond must be submitted on a Request for Cancellation of Public Charge Bond (Form I-356). The request must be completed and submitted in accordance with the form's instructions and accompanied by the appropriate fee, if applicable.[384]

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[380] See 8 CFR 103.5(a)(5)(i).
[381] See Chapter 10, Public Charge Bonds, Section B, Type of Bonds [8 USCIS-PM G.10(B)].
[382] See 31 U.S.C. 9305(b)(3).
[383] See 8 CFR 103.6(c)(1).
[384] See 8 CFR 103.5.

Because the form may be submitted either by the obligor or the noncitizen, Form I-356 has several parts that must be completed either by the obligor (the person who has posted the bond) or by the obligor's authorized agent (co-obligor, for surety companies only) who posted the bond on behalf of the noncitizen, or by the noncitizen. If the noncitizen is deceased, the executor of the noncitizen's estate may complete the noncitizen's part on behalf of the noncitizen.

Therefore, it is possible that a cancellation request is submitted without the obligor or any agent or co-obligor, or the noncitizen (or the noncitizen's executor) knowing about it. In the form instructions, USCIS encourages completion of the entire form by all parties before it is submitted. However, it is possible for a request to be submitted when only partially completed, particularly when one party has requested cancellation of the bond without informing or including the other parties in the cancellation request.

Missing Information from the Noncitizen

If the obligor (or the agent or co-obligor) submits the cancellation request but the request does not contain the information from the noncitizen required to cancel the bond, the officer should do the following:

- Copy the request for cancellation of the public charge bond form for all parties involved;
- Send the original request received from the obligor to the noncitizen for completion of their parts of the bond cancellation request form, including signature parts;
- Specify the date when the noncitizen's response is due (for purposes of calculating the response due date, the officer should follow USCIS guidance on the issuance of a Request for Evidence); and
- Send a copy of the communication to the obligor and the agent or co-obligor and any representative, even though the request originated from the obligor or agent or co-obligor.

If the noncitizen fails to respond to the communication within the timeframe stipulated, the officer should deny the request to cancel the public charge bond. This denial is without prejudice to the filing of another cancellation request.

Missing Information from Obligor

If the request to cancel the bond is submitted by the noncitizen without involvement of the obligor, USCIS officers should evaluate the information contained in the request to cancel the bond and proceed with the cancellation adjudication. If the noncitizen's information reveals that the bond may have been breached, the officer is required to notify the obligor through a Notice of Intent to Declare the Public Charge Bond Breached and share the information provided by the noncitizen, to the extent permissible by law. This provides sufficient notice to the obligor of the noncitizen's request to cancel the bond, and the opportunity to rebut any derogatory information regarding a possible bond breach.

2. Adjudicating the Request

A noncitizen or obligor may request that USCIS cancel the public charge bond if the noncitizen:

- Died (as evidenced by a certified copy of a death certificate, provided the immigrant did not become a public charge before death);

- Permanently departed the United States (provided the immigrant did not become a public charge before departure);

- Naturalized or otherwise obtained United States citizenship (provided the immigrant did not become a public charge before naturalization); or

- Reached their 5-year anniversary since admission or becoming an LPR. For purposes of this determination, the noncitizen or the obligor must establish that the public charge bond has not been breached during the 5-year period preceding the noncitizen's fifth anniversary of becoming an LPR.[385]

In addition to having to demonstrate that the above requirements are met, the obligor and the noncitizen must demonstrate that the bond has not been breached before the cancellation of the public charge bond by USCIS.[386]

Form I-356 lists the pertinent information that the noncitizen has to provide to establish that the bond be canceled.

If there is insufficient information to determine whether a breach occurred, or whether the cancellation requirements are met, USCIS may request additional information from the noncitizen or the obligor.

3. Special Considerations Related to Permanent Departure

USCIS must approve the request to cancel the public charge bond if the noncitizen has not breached the public charge bond and permanently departed the United States.[387]

A noncitizen is considered to have permanently departed if the noncitizen has:

- Lost or abandoned LPR status, whether involuntarily by operation of law or voluntarily; and

- Is physically outside the United States.

A noncitizen must establish that both elements have been met before USCIS cancels the bond.

For these purposes, a noncitizen is deemed to have involuntarily lost LPR status by operation of law only if the noncitizen lost their status:

- In removal proceedings with the entry of a final order of removal; or

- Through rescission of adjustment of status.

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[385] See Public Charge Bond (Form I-945).
[386] See Instructions for Request for Cancellation of Public Charge Bond (Form I-356).
[387] See INA 213.

If a noncitizen loses their LPR status through operation of law, the noncitizen would be required to provide evidence of the loss of status by submitting evidence of the official determination of loss of LPR status before USCIS can cancel the bond.

Generally, determining whether a noncitizen has abandoned their LPR status voluntarily is fact specific and courts consider factors such as the length of a noncitizen's absence from the United States, family and employment ties, property holdings, residence, and the noncitizen's intent or actions.[388] Any noncitizen may intentionally relinquish LPR status through their voluntary actions, such as by submitting a declaration of intent to abandon LPR status. Neither the Immigration and Nationality Act nor DHS regulations direct how noncitizens may formally inform the U.S. government of their abandoning their LPR status.

To simplify the process, USCIS created the Record of Abandonment of Lawful Permanent Resident Status (Form I-407) as a means by which a noncitizen may formally record that they have abandoned LPR status. The purpose of the form is to create a record and to ensure that the noncitizen acts voluntarily and willingly, and is informed of the right to a hearing before an immigration judge and has knowingly, willingly, and affirmatively waived that right.

A noncitizen may demonstrate voluntary relinquishment of the LPR status for purposes of bond cancellation by showing proof that they submitted Form I-407 to the U.S. government from outside the United States.

4. Decision

If USCIS determines that the obligor or the noncitizen met the burden of proof to establish that the bond has not been breached since the noncitizen became an LPR and that the conditions for the cancellation of the bond are met, USCIS may cancel the public charge bond. The decision to cancel the bond must be sent to all parties involved. When the public charge bond is canceled, the obligor is released from liability.

USCIS must notify the obligor and all parties involved of the cancellation of the bond and retain a copy of the communication in the file. If the public charge bond has been secured by a cash deposit or a cash equivalent, USCIS must refund the cash deposit and any interest earned to the obligor along with the communication.[389]

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[388] See *Matter of Huang*, 19 I&N Dec. 749, 755-57 (BIA 1988) (considering the noncitizen's absence from the United States because of her husband's work and study abroad, as well as her own employment abroad, to find that her absence was not temporary in nature and that she had abandoned her LPR status). See *Matter of Kane*, 15 I&N Dec. 258, 265 (BIA 1975) (noncitizen who spent 11 months per year living in her native country operating a lodging house abandoned her LPR status; her desire to retain her status, without more, was not sufficient). See *Matter of Quijencio*, 15 I&N Dec. 95, 97-98 (BIA 1974) (noncitizen's LPR status considered abandoned after 12-year absence). See *Matter of Castro*, 14 I&N Dec. 492, 494 (BIA 1973) (noncitizen who severed his ties to the United States for 6 years, moved abroad, acquired land, built a house and obtained steady employment, but made brief business trips to the United States was not a returning resident and had abandoned his status). See *Matter of Montero*, 14 I&N Dec. 399, 400-01 (BIA 1973) (noncitizen who returned to her native country to join her husband, children, home, employment, and financial resources without fixed intent to return within a fixed period had abandoned her LPR status). See *Khoshfahm v. Holder*, 655 F.3d 1147, 1154 (9th Cir. 2011) (noncitizen child who was out of the country for 6 years and prevented from returning due to the father's heart condition and the events of September 11 did not abandon his LPR status).

[389] See INA 293. See 8 CFR 293.1.

If USCIS determines that the noncitizen does not meet the requirements for cancellation, other than a bond breach, then USCIS issues a Notice of Intent to Deny (NOID) to the obligor and any agent or co-obligor and any representative, in order to extend the opportunity to rebut any information. The notice must include the information provided by the noncitizen in Form I-356, unless protected by law, and any other documentation.

The officer will send a notice of the communication to the noncitizen and the noncitizen's representative. If the obligor's timely response to the NOID reveals that the noncitizen does not meet the cancellation requirements then the officer should not cancel the public charge bond.

If the obligor's response cannot overcome the adverse information, then USCIS issues the decision, informing the obligor and the agent or co-obligor and any representative and the noncitizen and the noncitizen's executor, if any, and the noncitizen's representative, if any, that the bond cannot be canceled and that it remains in effect. The obligor may file an appeal to challenge this determination.[390]

An obligor may only file a motion[391] after an unfavorable decision on an appeal.

If USCIS determines that the noncitizen has breached the public charge bond, USCIS initiates bond breach proceedings.[392] As part of the notification to the obligor of USCIS' intent to declare the bond breached, the officer should explain why the bond cannot be canceled.

[390] See generally 8 CFR 103.
[391] See 8 CFR 103.5.
[392] See Section C, Breach of Bond [8 USCIS-PM G.12(C)].