

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

Applicability of INA 212(a)(4) to Employment-Based Adjustment of Status Applications¹

Category	Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency?*	INA 213A, and Form I-864, Affidavit of Support Under Section 213A of the INA, Required or Exempt?
First Preference : Priority workers ²	Yes, in general, ³ per INA 212(a)(4)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5 percent or more) ⁴ in filed Form I-140, per INA 212(a)(4)(D) and 8 CFR 213a
Second Preference: Professionals with advanced degrees or aliens of exceptional ability ⁵	Yes in general, ⁶ per INA 212(a)(4)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5 percent or more) in filed Form I-140, per INA 212(a)(4)(D) and 8 CFR 213a

¹ An alien who meets the conditions of new [8 CFR 212.23](#)(a)(18), (19), (20), or (21) (for example, certain T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) are exempt from the public charge inadmissibility ground and the affidavit of support requirement, and therefore do not need to File Form I-944 or Form I-864 regardless of what category the alien adjusts under.

² Includes the following categories: E-16 Aliens with extraordinary ability; E-17 Outstanding professors or researchers; E-18 Certain Multinational executives or managers; E-19 Spouses of E-11, E-12, E-13, E-16, E-17, or E-18; E-10 Children of E-11, E-12, E-13, E-16, E-17, or E-18.

³ If the alien 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 alien, at both the time of filing and adjudication of the Form I-485, also falls under a category exempted under [INA section 212\(a\)\(4\)\(E\)](#) (for example, T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) the alien does not need to file Form I-944 (but is still required to file Form I-864).

⁴ Relative means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister. Significant ownership interest means an ownership interest of five percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act. See [8 CFR.213a.1](#).

⁵ Includes the following categories: E-26 Professionals holding advanced degrees; ES-6 Soviet scientists E-27 Spouses of E-21 or E-26; E-28 Children of E-21 or E-26.

⁶ If the alien 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 (five percent or more), and the alien, at both the time of filing and adjudication of the Form I-485, also falls under a category exempted under [INA 212\(a\)\(4\)\(E\)](#) (for example, T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) the alien does not need to file Form I-944 (but is still required to file Form I-864).

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Third: Skilled workers, professionals, and other workers ⁷	Yes in general, ⁸ per INA 212(a)(4)	Exempt, unless qualifying relative or entity in which such relative has a significant ownership interest (5 percent or more) in filed Form I-140, per INA 212(a)(4)(D) and 8 CFR 213a
Fifth: I-526 Immigrant Petition by Alien Entrepreneur (EB-5) ⁹ INA 203(b)(5), 8 CFR 204.6	Yes, per INA 212(a)(4)	Not Applicable ¹⁰

* If an alien is found inadmissible based on the public charge ground, USCIS, at its discretion, may permit the alien to post a public charge bond (Form I-945). 8 CFR 213.1, as amended in the final rule, describes the circumstances under which a public charge bond may be cancelled using a Request for Cancellation of Public Charge Bond (Form I-356).

⁷ Includes the following categories: EX-6 Schedule - A worker; EX-7 Spouses of EX-6; EX-8 Children of EX-6; E-36 Skilled workers; E-37 Professionals with baccalaureate degrees; E-39 Spouses of E-36, or E-37; E-30 Children of E-36, or E-37; EW-8 Other workers; EW-0 Children of EW-8; EW-9 Spouses of EW-8; EC-6 Chinese Student Protection Act (CSPA) principals; EC-7 Spouses of EC-6; EC-8 Children of EC-6.

⁸ If the alien 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 alien, at both the time of filing and adjudication of the Form I-485, also falls under a category exempted under [INA 212\(a\)\(4\)\(E\)](#) (for example, T nonimmigrants, U nonimmigrants, and VAWA self-petitioners) the alien does not need to file Form I-944 (but is still required to file Form I-864).

⁹ Includes the following categories: C-56 Employment creation, not in targeted area, adjustments, conditional; E-56 Employment creation, targeted area, pilot program, adjustments, conditional; T-56 Employment creation, targeted area, conditional; R-56 Investor pilot program, not targeted, conditional; C-57 Spouses of C-51 or C-56, conditional; E-57 Spouses of E-51 or E-56; I-57 Spouses of I-51 or I-56, conditional; T-57 Spouses of T-51 or T-56, conditional; R-57 Spouses of R-51 or R-56, conditional; C-58 Children of C-51 or C-56, conditional; E-58 Children of E-51 or E-56; I-58 Children of I-51 or I-56, conditional; T-58 Children of T-51 or T-56, conditional; R-58 Children of R-51 or R-56, conditional.

¹⁰ EB-5 applicants are Immigrant Petition by Alien Entrepreneur (Form I-526) self-petitioners. The regulation at [8 CFR 213a.1](#) relates to a person having ownership interest in an entity filing for a prospective employee and therefore the requirements for an affidavit of support under [INA 212\(a\)\(4\)\(D\)](#) is inapplicable.