



Alert

On Nov. 2, 2020, the U.S. District Court for the Northern District of Illinois vacated the Inadmissibility on Public Charge Grounds final rule, 84 Fed. Reg. 41,292 (Aug. 14, 2019), as amended by Inadmissibility on Public Charge Grounds; Correction, 84 Fed. Reg. 52,357 (Oct. 2, 2019) (“Public Charge Final Rule”) nationwide. That decision was stayed by the U.S. Court of Appeals for the Seventh Circuit. On Mar. 9, 2021, the Seventh Circuit lifted its stay and the U.S. District Court for the Northern District of Illinois’ order vacating the Public Charge Final Rule went into effect.

USCIS immediately stopped applying the Public Charge Final Rule to all pending applications and petitions that would have been subject to the rule. USCIS continues to apply the public charge inadmissibility statute, including consideration of the statutory minimum factors in the totality of the circumstances, in accordance with the 1999 [Interim Field Guidance](#) that was in place before the Public Charge Final Rule was implemented on Feb. 24, 2020, to the adjudication of any application for adjustment of status. In addition, USCIS will no longer apply the separate, but related, “public benefits condition” to applications or petitions for extension of nonimmigrant stay and change of nonimmigrant status.

On or after Mar. 9, 2021, applicants and petitioners should not provide information required solely by the Public Charge Final Rule. That means that applicants for adjustment of status should not provide the Form I-944, Declaration of Self-Sufficiency, or any evidence or documentation required on that form with their Form I-485. Applicants and petitioners for extension of nonimmigrant stay and change of nonimmigrant status should not provide information related to the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If an applicant or petitioner has already provided such information, and USCIS adjudicates the application or petition on or after Mar. 9, 2021, USCIS will not consider any information provided that relates solely to the Public Charge Final Rule, including, for example, information provided on the Form I-944, evidence or documentation submitted with Form I-944, or information on the receipt of public benefits on Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3).

If you received a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) requesting information that is solely required by the Public Charge Final Rule, including but not limited to Form I-944, and your response is due on or after Mar. 9, 2021, you need not provide the information solely required by the Public Charge Final Rule. You do, however, need to respond to the aspects of the RFE or NOID that otherwise pertain to the eligibility for the immigration benefit sought. If USCIS requires additional information or evidence to make a public charge inadmissibility determination under the statute and consistent with the 1999 [Interim Field Guidance](#), it will issue a subsequent RFE or NOID. or information about the relevant court decisions, please see the [litigation summary](#).

USCIS will issue additional guidance regarding the use of affected forms. In the interim, USCIS will not reject any Form I-485 on the basis of the inclusion or exclusion of Form I-944, and will not reject Form I-129, Form I-129CW, Form I-539, or Form I-539A based on whether the public benefits questions (Form I-129 (Part 6), Form I-129CW (Part 6), Form I-539 (Part 5), and Form I-539A (Part 3) have been completed or left blank.

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).

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?
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.