



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 Family-Based Adjustment of Status Applications

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

Category	Subject to INA 212(a)(4) and must file Declaration of Self-Sufficiency (Form I-944)? *	INA 213A and Affidavit of Support Under Section 213A of the INA (Form I-864) -- Required or Exempt?
Spouses, children, and parents of U.S. citizens (immediate relatives) ²	Yes, per INA 212(a)(4)	Required, per INA 212(a)(4)(C)
Unmarried sons and daughters of U.S. citizens and their children (family-sponsored 1st preference) ³	Yes, per INA 212(a)(4)	Required, per INA 212(a)(4)(C)
Spouses, children, and unmarried sons and daughters of alien residents (family-sponsored 2nd preference) ⁴	Yes, per INA 212(a)(4)	Required, per INA 212(a)(4)(C)

¹ Applicants who filed a Form I-485 before December 19, 1997 are exempt from the Affidavit of Support requirement. See Section 531(b) of Div. C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-675 (September 30, 1996). See [8 CFR 213a.2\(a\)\(2\)\(i\)](#) (adjustment applicants) and [8 CFR 213a.2\(a\)\(2\)\(ii\)\(B\)](#) (applicants for admission). Aliens who acquired citizenship under [INA 320](#) upon admission to the United States are exempt from submitting an affidavit of support. See [8 CFR 213a.2\(a\)\(2\)\(ii\)\(E\)](#). See Section 101 of the Child Citizenship Act, Pub. L. 106-395, 114 Stat. 1631, 1631 (October 30, 2000) (amending [INA 320](#)). In addition, the surviving spouses, children, and parents of a deceased member of the military who obtain citizenship posthumously are exempt from a public charge determination. See Section 1703(e) of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136, 117 Stat. 1392, 1695 (November 24, 2003). 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 Including the following categories: IR-6 Spouses; IR-7 Children; CR-7 Children, conditional; IH-8 Children adopted abroad under the Hague Adoption Convention; IH-9 Children coming to the United States to be adopted under the Hague Adoption Convention; IR-8 Orphans adopted abroad; IR-9 Orphans coming to the United States to be adopted; IR-0 Parents of adult U.S. citizens. Children adopted abroad generally do not apply for adjustment of status.

³ Including the following categories: A-16 Unmarried Amerasian sons/daughters of U.S. citizens; F-16 Unmarried sons/daughters of U.S. citizens; A-17 Children of A-11 or A-16; F-17 Children of F-11 or F-16; B-17 Children of B-11 or B-16.

⁴ Including the following categories: F-26 Spouses of alien residents, subject to country limits; C-26 Spouses of alien residents, subject to country limits, conditional; FX-6 Spouses of alien residents, exempt from country limits; CX-6 Spouses of alien residents, exempt from country limits, conditional; F-27 Children of alien residents, subject to country limits; C-28 Children of -C-26, or C-27, subject to country limits, conditional; B-28 Children of, B-26, or B-27, subject to country limits; F-28 Children of F-26, or F-27, subject to country limits; C-20 Children of C-29, subject to country limits, conditional; B-20 Children of B-29, subject to country limits; F-20 Children of F-29, subject to country limits; C-27 Children of alien residents, subject to country limits, conditional; FX-7 Children of alien residents, exempt from country limits; CX-8 Children of CX-7, exempt from country limits, conditional; FX-8

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Married sons and daughters of U.S. citizens and their spouses and children (family-sponsored 3rd preference) ⁵	Yes, per INA 212(a)(4)	Required, per INA 212(a)(4)(C)
Brothers and sisters of U.S. citizens (at least 21 years of age) and their spouses and children (family-sponsored 4th preference) ⁶	Yes, per INA 212(a)(4)	Required, per INA 212(a)(4)(C)
Fiancés of U.S. citizens ⁷ (admitted as a K-1 or K2 nonimmigrant)	Yes, per INA 212(a)(4)	Required, per INA 212(a)(4)(C)
Amerasians based on preference category, born between December 31, 1950 and before October 22, 1982 ⁸	Yes, per INA 212(a)(4)	Exempt, per Amerasian Act, Pub. L. 97-359 (October 22, 1982)

Children of FX-7, or FX-8, exempt from country limits; CX-7 Children of alien residents, exempt from country limits, conditional; F-29 Unmarried sons/daughters of alien residents, subject to country limits; C-29 Unmarried children of alien residents, subject to country limits, conditional.

⁵ Including the following categories: A-36 Married Amerasian sons/daughters of U.S. citizens; F-36 Married sons/daughters of U.S. citizens; C-36 Married sons/daughters of U.S. citizens, conditional; A-37 Spouses of A-31 or A-36; F-37 Spouses of married sons/daughters of U.S. citizens; C-37 Spouses of married sons/daughters of U.S. citizens, conditional; B-37 Spouses of B-31 or B-36; A-38 Children of A-31 or A-36, subject to country limits; F-38 Children of married sons/daughters of U.S. citizens; C-38 Children of C-31 or C-36, subject to country limits, conditional; B-38 Children of B-31 or B-36, subject to country limits.

⁶ Includes the following categories: F-46 Brothers/sisters of U.S. citizens, adjustments; F-47 Spouses of brothers/sisters of U.S. citizens, adjustments; F-48 Children of brothers/sisters of U.S. citizens, adjustments.

⁷ Includes the following categories: CF-1 Spouses, entered as fiancé(e), adjustments conditional; IF-1 Spouses, entered as fiancé(e), adjustments.

⁸ Includes the following categories: Immediate Relative AR-6 Children, Amerasian, First Preference: A-16 Unmarried Amerasian sons/daughters of U.S. citizens; Third Preference A-36 Married Amerasian sons/daughters of U.S. citizens; See [INA 204\(f\)](#). Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

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<p>Amerasians, born in Vietnam between January 1, 1962 and January 1, 1976</p> <p>Immediate Relative: AM-6, AR-6 Children</p> <p>Amerasians under Amerasian Homecoming Act, Pub. L. 100-202 (December 22, 1987)⁹ - born between January 1, 1962 and January 1, 1976</p>	<p>No. (I-360 and adjustment) Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202</p>	<p>Exempt, per Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, Pub. L. 100-202</p>
<p>Spouses, widows or widowers of U.S. citizens (IW-6)</p>	<p>Yes, per INA 212(a)(4)</p>	<p>Exempt, per 8 CFR 204.2 and 71 FR 35732</p>
<p>Immediate relative VAWA applicants, including spouses and children¹⁰</p>	<p>No, per INA 212(a)(4)(E) and INA 212(a)(4)(C)(i)</p>	<p>Exempt, per INA 212(a)(4)(E)</p>
<p>1st preference VAWA applicants, including B-16 Unmarried sons/daughters of U.S. citizens, self-petitioning B-17 Children of B-16</p>	<p>No, per INA 212(a)(4)(C)(i)</p>	<p>Exempt, per INA 212(a)(4)(C)(i)</p>
<p>2nd preference VAWA applicants, including spouses and children¹¹</p>	<p>No, per INA 212(a)(4)(C)(i)</p>	<p>Exempt, per INA 212(a)(4)(C)(i)</p>

⁹ Includes the following categories: AM-1 principal (born between 1/1/1962-1/1/1976); AM-2 Spouse, AM-3 child; AR-1 child of U.S. citizen born Cambodia, Korea, Laos, Thailand, Vietnam. Note that this program does not have a specific sunset date and technically applicants could apply but should have already applied.

¹⁰ Includes the following categories: IB-6 Spouses, self-petitioning; IB-7 Children, self-petitioning; IB-8 Children of IB-1 or IB-6; IB-0 Parents battered or abused, of U.S. citizens, self-petitioning.

¹¹ Includes the following categories: B-26 Spouses of alien residents, subject to country limits, self-petitioning; BX-6 Spouses of alien residents, exempt from country limits, self-petitioning; B-27 Children of alien residents, subject to country limits, self-petitioning; BX-7 Children of alien residents, exempt from country limits, self-petitioning; BX-8 Children of BX-6, or BX-7, exempt from country limits; B-29 Unmarried sons/daughters of alien residents, subject to country limits, self-petitioning.

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Third Preference VAWA Married son/daughters of U.S. citizen, including spouses and children ¹²	No, per INA 212(a)(4)(C)(i)	Exempt, per INA 212(a)(4)(C)(i)
<p>* 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)</p>		

¹² Includes the following categories: Third Preference VAWA; B-36 Married sons/daughters of U.S. citizens, self-petitioning; B-37 Spouses of B-36, adjustments; B-38 Children of B-36, subject to country limits.