



## 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 Other Applicants**

**Applicability of INA 212(a)(4) to Other Applicants Who Must be Admissible**

<b>Category</b>	<b>Subject to INA 212(a)(4) and must file Form I-944, Declaration of Self-Sufficiency? *</b>	<b>INA 213A, and Form I-864, Affidavit of Support Under Section 213A of the INA, Required or Exempt?</b>
Diplomats Section 13	Yes, per Section 13 of Pub. L. 85-316 (September 11, 1957), as amended by Pub. L. 97-116 (December 29, 1981); 8 CFR 245.3	Exempt, by statute, as they are not listed in INA 212(a)(4) as a category that requires Form I-864.
Persons Born in the United States under Diplomatic Status (NA-3), as described in 8 CFR 101.3	Yes, per INA 212(a)(4)	Exempt, per 8 CFR 101.3
Diversity, DV-1 diversity immigrant, spouse and child	Yes, per INA 212(a)(4)	Exempt, by statute, as they are not listed in INA 212(a)(4) as a category that requires Form I-864. Diversity visas are issued under INA 203(c) which do not fall under INA 212(a)(4)(C) or (D).
W-16 Entered without inspection before 1/1/82 W-26 Entered as nonimmigrant and overstayed visa before 1/1/82. Certain Entrants before January 1, 1982	Yes, per INA 212(a)(4), INA 245A(b)(1)(C)(i), and INA 245A (a)(4)(A).  Special Rule for determination of public charge - See INA 245A(d)(2)(B)(iii). Certain aged, blind or disabled persons as defined in Section 1614(a)(1) of the Social Security Act, 42 U.S.C. 1382c(a)(1), may apply for a	Exempt, by statute as they are not listed in INA 212(a)(4) as a category that requires an Form I-864

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	waiver of inadmissibility due to public charge. INA 245A(d)(2)(B)(ii).	
T, T-1 victim, spouse, child, parent, sibling INA 101(a)(15)(T), INA 212(d)(13)(A)	No, per INA 212(a)(4)(E)	Exempt, by statute as they are not listed in INA 212(a)(4) as a category that requires Form I-864. Adjustment of status based on T nonimmigrant status is under INA 245(l) which does not fall under INA 212(a)(4)(C) or (D).
American Indians - INA 289	No, per INA 289	Exempt, per INA 289
Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983)  KIC - Kickapoo Indian Citizen KIP - Kickapoo Indian Pass	No, per Pub. L. 97-429 (January 8, 1983)	Exempt, per Pub. L. 97-429 (January 8, 1983)
S (Alien witness or informant)	Yes, but there is a waiver available - INA 245(j); INA 101(a)(15)(S); 8 CFR 214.2(t)(2); 8 CFR 1245.11 (Waiver filed on Inter-Agency Alien Witness and Informant Record (Form I-854))	Exempt, per INA 245(j); INA 101(a)(15)(S); 8 CFR 214.2(t)(2); 8 CFR 1245.11 (Waiver filed on Inter-Agency Alien Witness and Informant Record (Form I-854))
Private Immigration Bill providing for alien's adjustment of status	Dependent on the text of the Private Bill	Dependent on the text of the Private Bill

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NACARA 202 <sup>1</sup> Principal NC-6, (NC 7-9) spouse and children	No, per Section 202(a) of Pub. L. 105-100, 111 Stat. 2193 (November 19, 1997) (as amended), 8 U.S.C. 1255	Exempt, per Section 202(a) of Pub. L. 105-100, 111 Stat. 2193 (November 19, 1997) (as amended), 8 U.S.C. 1255
NACARA 203 Cancellation of removal (Z-13) Battered spouses or children (Z-14) Salvadoran, Guatemalan and former Soviet bloc country nationals (Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA))	No, per Section 203 of Pub. L. 105-100, 111 Stat. 2193 (November 19, 1997) (as amended), 8 U.S.C. 1255	Exempt, per Section 203 of Pub. L. 105-100, 111 Stat. 2193 (November 19, 1997) (as amended), 8 U.S.C. 1255
Lautenberg, LA-6 <sup>2</sup>	No, per Section 599E of Pub. L. 101-167, 103 Stat. 1195 (November 21, 1989), 8 U.S.C.A. 1255	Exempt. Section 599E of Pub. L. 101-167, 103 Stat. 1195 (November 21, 1989), 8 U.S.C.A. 1255
Registry, Z-66 - Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions	No, per INA 249 and 8 CFR 249	Exempt, per INA 249 and 8 CFR 249
U, U-1 Crime Victim, spouse, children and parents, and siblings under INA 245(m)	No, per INA 212(a)(4)(E)	Exempt, per INA 212(a)(4)(E)
Temporary Protected Status (TPS)	No, per 8 CFR 244.3(a) <sup>3</sup>	Exempt, per 8 CFR 244.3(a) <sup>4</sup>

<sup>1</sup> Note that this program has a sunset date of April 1, 2000; however, some cases may still be pending.

<sup>2</sup> Note that this program sunset date of September 30, 2014, only applies to parole. Eligible applicants may still apply for adjustment of status.

<sup>3</sup> [INA 244\(c\)\(2\)\(ii\)](#) authorizes USCIS to waive any section 212(a) ground, except for those that Congress specifically noted could not be waived.

<sup>4</sup> See [INA 244\(c\)\(2\)\(ii\)](#).

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<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>		