



## 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: Totality of the Circumstances Framework

### Totality of the Circumstances Framework

#### Step-by-Step Approach

**Important Note:** If the applicant is required to submit an Affidavit of Support Under Section 213A of the INA and fails to submit such an Affidavit of Support or if that Affidavit of Support does not meet the requirements of section 213A of the Act and 8 CFR 213a, the applicant is inadmissible as likely to become a public charge. In this instance, the officer must not conduct a totality of circumstances assessment and deny the adjustment of status application.

**Step 1.** Evaluate all of the facts, circumstances, and evidence in the record to determine whether factors in the analysis are positive or negative. Some factors may be interrelated.

- Any factor that decreases the applicant's future likelihood of receiving one or more public benefits above the threshold (more than 12 months in the aggregate in a 36-month period (such that, for instance, receipt of two benefits in 1 month counts as 2 months) is positive.
- Any factor that increases the applicant's future likelihood of receiving one or more public benefits above threshold is negative.

**Step 2.** Weigh all factors individually and cumulatively. Assess the weighted degree to which each factor that is negative or positive.<sup>1</sup>

- Certain enumerated factors will weigh heavily in favor of finding that an alien is not likely to become a public charge or finding that an alien is likely to become a public charge.
- The weight given to an individual factor not designated a heavily weighted factor depends on the particular facts and circumstances of the case and the relationship of the individual factor to other factors in the analysis.
- Multiple factors operating together will carry more weight to the extent those factors in tandem show that the alien is more or less likely than not to become a public charge in the future.

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<sup>1</sup> The extent to which the factor alone and in relation to other factors affects the likelihood that the alien will or will not receive one or more public benefits, as defined in [8 CFR 212.21\(b\)](#), at any time in the future for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in 1 month counts as 2 months).

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Step-by-Step Approach
<p><b>Step 3.</b> Determine whether the applicant is likely or not likely to become a public charge at any time in the future.</p> <ul style="list-style-type: none"> <li>• <i>Not inadmissible based on public charge</i> – The applicant’s positive factors outweigh the applicant’s negative factors, such that the alien is not likely to receive one or more public benefits above the designated threshold at any time in the future.</li> <li>• <i>Inadmissible based on public charge</i> – The applicant’s negative factors outweigh the alien's positive factors, such that the alien is more likely than not to receive one or more public benefits above the designated threshold at any time in the future.</li> </ul>

### Totality of the Circumstances Framework

Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
Applicant’s Age	<ul style="list-style-type: none"> <li>• Age between 18 and 61</li> </ul>	<ul style="list-style-type: none"> <li>• Age 17 and younger</li> <li>• Age 62 and older</li> </ul>	None	None
Applicant's Health	<ul style="list-style-type: none"> <li>• No diagnosed medical issues</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-693 (DOS medical examination report or any other medical documentation) lists a Class A</li> </ul>	None	None

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Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
		medical condition <sup>2</sup> or a Class B medical condition <sup>3</sup> that the civil surgeon, panel physician, or other medical professional indicates is significant enough to interfere with the applicant’s ability to provide and care for him or herself, to attend school, or to work, or that is likely to require extensive medical treatment or institutionalization in the future.		

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<sup>3</sup> See [42 CFR 34.2\(e\)](#).

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Factor	Positive	Negative	Heavily Weighted Positive	Heavily Weighted Negative
Family Status	<ul style="list-style-type: none"> <li>The alien is able to support him or herself and his or her household members at or above 125 percent of the Federal Poverty Guidelines (FPG) (100 percent for active duty military, other than active duty for training, in the U.S. armed forces) for the alien's household size.</li> </ul>	<ul style="list-style-type: none"> <li>The alien is not able to support him or herself and his or her household members at or above 125 percent of the FPG (100 percent for active duty military, other than active duty for training, in the U.S. armed forces) for the alien's household size.</li> </ul>	None	None
Applicant's Assets, Resources, and Financial Status	<ul style="list-style-type: none"> <li>Current employment</li> <li>Total household gross income at or above 125 percent of the FPG (100 percent for those on active duty, other than active duty for</li> </ul>	<ul style="list-style-type: none"> <li>No or low income or the applicable equivalent assets</li> <li>Request, certification of, or receipt of public benefits in the United States as defined</li> </ul>	<ul style="list-style-type: none"> <li>The alien's household has income, assets, or resources, and support of at least 250 percent of the FPG</li> <li>Private health insurance appropriate for the</li> </ul>	<ul style="list-style-type: none"> <li>Receipt, certification of, or approval to receive public benefits for more than 12 months in any 36-month period starting before the application for adjustment of status, (calculate no</li> </ul>

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<b>Factor</b>	<b>Positive</b>	<b>Negative</b>	<b>Heavily Weighted Positive</b>	<b>Heavily Weighted Negative</b>
	<p>training, in the U.S. armed forces)</p> <ul style="list-style-type: none"> <li>• Financial resources that would make the applicant ineligible to obtain public benefits</li> <li>• Total household assets and resources in the applicable equivalent amount</li> <li>• Good, very good or exceptional credit score</li> <li>• Health insurance, not otherwise considered a public benefit, or sufficient income, assets or resources to pay for reasonably foreseeable medical costs</li> </ul>	<ul style="list-style-type: none"> <li>• Any bankruptcy filings within the last 2 years</li> <li>• Request or receipt of a fee waiver for immigration benefits</li> <li>• Poor credit score</li> <li>• No private health insurance or sufficient income, assets or resources to pay for reasonably foreseeable medical costs</li> </ul>	<p>expected period of admission, (not including health insurance for which the alien receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act, as amended)</p>	<p>earlier than February 24, 2020)</p> <ul style="list-style-type: none"> <li>• Medical condition and is uninsured and either lacks the prospect of obtaining private health insurance or lacks the financial resources to pay for reasonably foreseeable medical costs related to such medical condition</li> </ul>

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<b>Factor</b>	<b>Positive</b>	<b>Negative</b>	<b>Heavily Weighted Positive</b>	<b>Heavily Weighted Negative</b>
Applicant's Education and Skills	<ul style="list-style-type: none"> <li>• Attendance in elementary, middle, or high school</li> <li>• High school diploma or GED or equivalent</li> <li>• Higher education such as Bachelor's Degree, Master's Degree, or Doctoral Degree</li> <li>• Skills and certifications relevant to education</li> <li>• Basic English proficiency</li> <li>• Primary Caregiver</li> <li>• Other language skills in addition to English</li> </ul>	<ul style="list-style-type: none"> <li>• No high school diploma or GED or equivalent</li> <li>• No work experience</li> <li>• No occupational skills</li> <li>• Limited to no English language proficiency</li> </ul>	<ul style="list-style-type: none"> <li>• The alien is authorized to work and is currently employed in a legal industry with an annual income, excluding any income from illegal activities, of at least 250 percent of the FPG for the alien's household size</li> </ul>	<ul style="list-style-type: none"> <li>• The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment</li> </ul>
Applicant's Immigration Status and Expected Period of Admission	<ul style="list-style-type: none"> <li>• The applicant provides evidence of ineligibility for</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence that the alien will be in the United States for a</li> </ul>	None	None

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	<p>public benefits based on immigration status or expected period of stay</p>	<p>long or indefinite period (such as when seeking LPR status) that in conjunction with the alien’s insufficient income, assets, and resources may make the alien more likely than not to become a public charge and more likely than not to be eligible for public benefits at any time in the future</p>		
<p>Sponsor's Ability to Support</p>	<p>The following provide for more positive weight:</p> <ul style="list-style-type: none"> <li>• Sponsor’s income and assets at or above 125 percent of the FPG (100 percent for active duty military, other than active duty for</li> </ul>	<p>The following provide for less positive weight:</p> <ul style="list-style-type: none"> <li>• Sponsor’s receipt of public benefits in the United States</li> <li>• Sponsor has a bankruptcy filings</li> <li>• Sponsor received a fee waiver for</li> </ul>	<p>None</p>	<p>None</p>

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	training, in the U.S. armed forces) <ul style="list-style-type: none"> <li>• The applicant has a familial relationship with the sponsor</li> </ul>	immigration benefits <ul style="list-style-type: none"> <li>• Sponsor is sponsoring multiple applicants</li> </ul>		
Previous Public Charge Inadmissibility	None	None	None	Having previously been found inadmissible or deportable on the public charge ground by an immigration judge or by the Board of Immigration Appeals