



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.



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On Sept. 11, 2020, the U.S. Court of Appeals for the Second Circuit issued a decision that allows DHS to resume implementing the [Public Charge Ground of Inadmissibility final rule](#) nationwide, including in New York, Connecticut and Vermont. The decision stays the July 29, 2020, [injunction](#), issued during the coronavirus (COVID-19) pandemic, that prevented DHS from enforcing the public charge final rule during a national health emergency.

Therefore, we will apply the public charge final rule and [related guidance](#) in the USCIS Policy Manual, Volumes [2](#), [8](#) and [12](#), to all applications and petitions postmarked (or submitted electronically) on or after Feb. 24, 2020. If you send your application or petition by commercial courier (for example, UPS, FedEx, or DHL), we will use the date on the courier receipt as the postmark date.

For information about the relevant court decisions, please see the public charge injunction [webpage](#).

A. Standard

Officers must consider an applicant's education and skills when determining whether an alien is likely to become a public charge at any time in the future.^[1] Education and skills are relevant to the public charge inadmissibility determinations because they affect the applicant's ability to obtain and maintain stable employment.^[2]

USCIS considers whether the alien has adequate education and skills to either obtain or maintain lawful employment with sufficient income to avoid being more likely than not to become a public charge at any

time in the future.^[3]

Being employed with an income above 250 percent of the [Federal Poverty Guidelines](#) (FPG) is considered a heavily weighted positive factor, while being unable to demonstrate employment history or reasonable prospects of employment is a heavily weighted negative factor.^[4]

1. History of Employment

The ability of the applicant to earn sufficient income to pay for basic living needs (that is, food and nutrition, housing, and healthcare), the current employment status, and the future employment prospects, are a focus of the public charge determination.^[5]

Having no work experience is a negative factor in the totality of the circumstances.

Employment Offers

An officer may consider valid tentative job offers as a positive factor in the totality of the circumstances.^[6]

An approved Immigrant Petition for Alien Worker ([Form I-140](#)) is evidence of a valid tentative job offer for most employment-based adjustment applicants. If a specific immigration benefit, such as an employment-based benefit, requires a specific level of education and skills, the officer reviews the alien's level of education and skills and considers them as part of the public charge determination. The officer should consider the applicant's skills, length of employment, and frequency of job changes.^[7]

The majority of employment-based immigrants are subject to the labor certification requirement.^[8] An officer may presume when an Application for Permanent Employment Certification (Form ETA-9089), or Application for Alien Employment Certification (Form ETA-750, Parts A and B) is certified, that the position is permanent and the prevailing wage has been met. However, an officer may question whether the position is permanent or provides sufficient income and benefits to the person to maintain self-sufficiency.

The officer should also review [Form I-485, Supplement J, Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204\(j\)](#), to ensure that the job offered to the applicant on his or her Form I-140 remains a bona fide job offer that the applicant intends to accept. If the applicant is requesting portability under INA 204(j), the officer should ensure that the new job offer is bona fide and is in the same or similar occupational classification as the job offered to the applicant on his or her Form I-140.^[9]

Most applicants who are the beneficiary of an approved alien worker petition should already have documentation of employment history and skills required for the employment offer, and do not need to reestablish such employment or skills. However, if an officer doubts the veracity of the applicant's employment history, the applicant's claimed skills, or the offer of employment, the officer may request additional evidence.

Adjustment of status applicants who do not require a Form I-140, Form I-485 Supplement J, or labor certification may also be employed or have an offer of employment. Officers should review the evidence in the record and evaluate this employment or prospective employment in the totality of the circumstances.

Authorized and Lawful Employment

An officer may consider any employment history or job offers, even if the applicant is not authorized to accept employment,^[10] as a positive factor in the totality of the circumstances for purposes of the public charge inadmissibility determination. However, unauthorized employment may adversely impact immigration eligibility generally, including being barred from adjusting status under INA 245(c)(2) and INA 245(c)(8).^[11]

USCIS, however, does not consider as a positive factor any employment in an illegal industry, such as illegal gambling, drug sales, drug trafficking, alien smuggling, or prostitution. This includes any employment that is illegal under federal law even when state laws have decriminalized such conduct. Illegal industries under federal law include, but are not limited to, possession, manufacture or production, or distribution or dispensing of marijuana.^[12] Employment in the marijuana industry may constitute conduct that violates federal controlled substance laws, and therefore, is not considered a positive factor in the totality of the circumstances.

Primary Caregiver^[13]

USCIS recognizes that certain aliens may serve as primary caregivers within their households, which results in such aliens not being employed outside of the home, and lacking current or recent employment history due to their unpaid role in their household. USCIS considers household contributions through primary caretaking responsibilities as a positive factor in the totality of the circumstances aspect but recognizes that such unpaid engagement is difficult to monetize. Correspondingly, being a primary caretaker is considered in the totality of the circumstances adjudication and may outweigh a negative factor related to the alien's education and skills because of lack of employment or lack of employment history.^[14]

A primary caregiver is an alien who is 18 years of age or older who has significant responsibility for actively caring for and managing the well-being of a child or an elderly, ill, or disabled person in the alien's household.^[15]

In determining whether to consider that the applicant is a caretaker as a positive factor in the totality of the circumstances,^[16] USCIS considers:

- Whether the person receiving the applicant's care is a member of the applicant's household;^[17]
- Whether other members of the household also claim to be the primary caregiver. A person requiring care may only have one primary caregiver within a household.^[18] If multiple caregivers share the care of a person in a given household, the applicant must establish that he or she has significant caregiving responsibility so as to impact the applicant's ability to be employed full-time;
- Whether the person being cared for lives in the same residence as the applicant;
- The age of the person being cared for; and
- The medical condition, including any disabilities, of the person being cared for.

Examples of primary caregivers who USCIS may consider to have a positive factor in the totality of the circumstances:

- Parent who stays at home to care for a newborn child or child in school. A parent who has joint custody should have primary residence with the child in order to be considered a primary caregiver.

- An adult son or daughter staying at home to care for his or her elderly parent. The applicant may provide a certification from a doctor indicating the parent's medical condition or copies of the parent's medical record, and documentation of legal guardianship over the parent.^[19]

Examples of applicants who USCIS does not consider to have a positive factor based on being a primary caregiver:

- The applicant indicates that he or she is staying at home to care for his or her elderly in-laws. However, the elderly parent is not living in the same residence as the applicant and the applicant's spouse (the son or daughter of the in-laws). Instead, the applicant is financially providing for the elderly parent's room and board at a nursing home.^[20]

When two members of the same household claim to be the primary caregiver and the officer is not able to interview both members, and there is no documentation that establishes who is the primary caregiver, evidence of legal guardianship, or other evidence that the applicant is the primary caregiver, then the applicant may not claim to be the primary caregiver.

2. Education

A person may have more opportunities for employment at higher salaries with higher education. Having a high school diploma or higher education such as a bachelor's, master's, or doctoral degree is a positive factor in the totality of the circumstances. In addition, an alien who is currently attending a college or university to obtain a degree is also a positive factor. An alien may, upon completion of education, obtain employment with a higher salary. An officer may review whether the alien is in good standing at the college or university and attending a full course of study. For example, the fact that an alien who enrolls in one course for the purpose of an immigration benefit would not be considered a positive factor in the totality of the circumstances.

Applicants Under the Age of 18

For the purposes of reviewing this factor, the fact that an alien is under the age of 18 and has not completed a high school education does not result in a negative factor. Being enrolled in school is a positive factor. The officers weigh the parent's or legal guardian's ability to financially provide for the child.^[21] Children may however have otherwise completed a high school education or higher and have worked or gained certifications in skills which would be considered positively in the totality of the circumstances.

3. Skills

Occupational skills relevant to employment are also considered positive factors in the totality of the circumstances. An applicant who has specific skills and certifications as a mechanic, plumber, electrician, millwright, agricultural work, hospitality, welder, or other trade is more likely to obtain employment in those trades, which decreases the likelihood that the alien will become a public charge at any time in the future.^[22] Having no employment skills is a negative factor.

Types of Skills

USCIS considers positively any relevant occupational skill(s) including, but not limited to:

- Workforce skills and training which may include participation in vocational rehabilitation programs to the extent that such participation makes the applicant less likely to receive one or more enumerated public benefits above the threshold;
- Licenses for specific occupations or professions; and
- Certificates documenting mastery or apprenticeships in skilled trades or professions.

[Department of Labor's Bureau of Labor Statistics \(BLS\) Occupational Outlook Handbook](#) details career information on duties, education and training, pay, and outlook for numerous occupations. Additionally, [BLS Occupational Employment Statistics Program](#) provides annual employment and wage estimates for over 800 occupations for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas.

In reviewing the skills certifications and licenses, an officer reviews:

- When the certifications or licenses were obtained;
- Who issued the certification, license; and
- Expiration or renewal date of the license or certification.

A certification or license that has been maintained for multiple years may indicate that the person may have additional positive consideration in that more employment opportunities may be available. In addition, an expired certification or license may not weigh as much as a current certification or license.

4. English Proficiency

In addition, an applicant's literacy and English proficiency is a positive factor.

The alien may have a certification or be undertaking classes establishing proficiency in English, which is a positive factor. An officer may determine an applicant's ability to speak and understand English based on the applicant's ability to respond to questions normally asked in the course of an interview, if applicable. If necessary, the officer should repeat and rephrase questions during the interview until the officer is satisfied that the applicant either understands the questions or does not understand English. The applicant only needs to demonstrate basic English skills for a positive consideration.

If the applicant is not proficient in English, the officer should review whether the lack of English or other language proficiency adversely affects the applicant's ability to obtain or maintain employment with an income at or above the income threshold. Not all occupations require proficiency in English. Also, based on the amount of household assets and resources, an applicant may not need to be employed, which would be taken into consideration in the totality of the circumstances.

Some occupations require proficiency in foreign language, and fluency in foreign language could positively affect the applicant's ability to obtain or maintain employment at or above the income threshold.

B. Summary of Education and Skills

Applicant's Education and Skills

Positive Factors	Negative Factors	Heavily Weighted Negative Factor ^[23]	Heavily Weighted Positive Factor ^[24]
<ul style="list-style-type: none"> • Attendance in elementary, middle, or high school • High School Diploma or GED or equivalent • Higher education such as Bachelor's Degree, Master's Degree, or Doctoral Degree • Skills and certifications relevant to employment • Basic English proficiency • Primary Caregiver • Other language skills in addition to English 	<ul style="list-style-type: none"> • No high school diploma or GED or equivalent • No work experience • No occupational skills • Limited to no English language proficiency 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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

C. Evidence

Documentation of employment, education, and skills includes but is not limited to:

- History of employment for the last 5 years including employment from outside the United States and including part-time or seasonal employment, self-employment, and unemployment;

- Last 3 years of the alien’s federal income tax return transcripts from the Internal Revenue Service (IRS);
- College or university degree certificates, diplomas, or transcripts;^[25]
- Degrees, diplomas, or transcripts from other educational institutions;
- Completion certificate of English language and literacy programs;
- Completion certificate of workforce skills training;
- Licensures for specific occupations or professions;
- Certificates documenting mastery or apprenticeships in skilled trades or professions.

If tax return transcripts are not available, the alien may provide other probative evidence of employment for the last 3 years including an explanation as to why the transcripts are not available (for example, an explanation why the alien is not subject to taxation in the United States). Such documentation, if not required to file federal income taxes, may include:

- The most recent Wage and Tax Statement (IRS Form W-2); or
- Pay-stubs if a W-2 is not available.

For foreign employment, an applicant should provide comparable documentation, such as tax returns transcripts, tax statements, or pay stubs with the information showing the employment. If the applicant has already included the same tax documentation in relation to Form I-944 or I-864, he or she does not need to provide duplicate copies.

USCIS may pursue verification of any information provided by the applicant with the employer or financial or other institutions, such as the IRS or the Social Security Administration.

Footnotes

[^1] See [INA 212\(a\)\(4\)](#).

[^2] See [83 FR 51114, 51189 \(PDF\)](#) (Oct. 10, 2018) (proposed rule). The level of education may be an indicator of continued employment. See [Department of Labor, Bureau of Labor Statistics, Employment Projections](#).

[^3] See [8 CFR 212.22\(b\)\(5\)\(i\)](#).

[^4] See Chapter 14, Heavily Weighted Factors [\[8 USCIS-PM G.14\]](#).

[^5] See [84 FR 41292, 41397 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction). See [Department of Labor, Bureau of Labor Statistics, Employment Projections](#).

[^6] See *In re Feinkopf*, 47 F. 447 (E.D.N.Y 1891) (overturning exclusion of immigrant with only fifty cents in cash but with cabinetmaking skill and willingness to work).

[^7] If the officer believes that the [Form I-140](#) or the labor certification was improperly approved or if the officer detects issues that may warrant reconsideration, the officer should follow existing procedures to address the potential deficiency. In this case, the officer should await the results of the investigation and not consider the alien's education and skills required for the immigrant visa category as part of the public charge inadmissibility determination until all issue(s) have been resolved.

[^8] See [INA 212\(a\)\(5\)](#) and [22 CFR 40.51](#).

[^9] See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section B, Determining Ongoing Eligibility, Subsection 3, Continuing Validity of the Employment-based Petition [[7 USCIS-PM A.6\(B\)\(3\)](#)].

[^10] Certain nonimmigrant and immigrant categories may not have employment authorization. See [8 CFR 274a.12](#).

[^11] See Volume 7, Adjustment of Status, Part B, 245(a) Adjustment, Chapter 6, Unauthorized Employment - INA 245(c)(2) and INA 245(c)(8) [[7 USCIS-PM B.6](#)].

[^12] See [21 U.S.C. 841\(a\)](#) ("unlawful for any person knowingly or intentionally...to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance."). See [21 U.S.C. 844](#) (simple possession). See [21 U.S.C. 802\(15\)](#) (defining manufacture) and [8 U.S.C. 802\(22\)](#) (defining production).

[^13] See [8 CFR 212.21](#). See [8 CFR 212.22\(b\)\(5\)](#). See [84 FR 41292 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction).

[^14] See [83 FR 51114, 51221 \(PDF\)](#) (Oct. 10, 2018) (proposed rule). See [84 FR 41292, 41417 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction). For more information on these special considerations, see Chapter 11, Education and Skills [[8 USCIS-PM G.11](#)].

[^15] See [8 CFR 212.21\(f\)](#).

[^16] See [8 CFR 212.22\(b\)\(5\)\(ii\)\(E\)](#).

[^17] As defined in [8 CFR 212.21\(d\)](#). See Chapter 8, Family Status, Section A, Standard [[8 USCIS-PM G.8](#)].

[^18] See [8 CFR 212.22\(b\)\(5\)\(ii\)\(E\)](#).

[^19] See [8 CFR 212.22\(b\)\(5\)\(E\)](#).

[^20] The elderly parent may be considered, nonetheless, as a household member as described in Chapter 8, Family Status [[8 USCIS-PM G.8](#)] for purposes of the income standard and family status factor

[^21] See Chapter 9, Assets, Resources, and Financial Status [[8 USCIS-PM G.9](#)].

[^22] See [Department of Labor's Bureau of Labor Statistics \(BLS\) Occupational Outlook Handbook](#).

[^23] See Chapter 14, Heavily Weighted Factors [[8 USCIS-PM G.14](#)].

[^24] See Chapter 14, Heavily Weighted Factors [[8 USCIS-PM G.14](#)].

[^25] Foreign education should include an evaluation of equivalency to education or degrees acquired at accredited colleges, universities, or educational institutions in the United States. For a list of organizations that provide equivalency evaluation, see the [National Association of Credential Evaluation Services \(NACES\)](#).

Current as of February 10, 2021
