



## 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.



U.S. Citizenship  
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## Chapter 12 - Prospective Immigration Status and Expected Period of Admission

### Guidance

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### **i** Alert

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](#).

Officers consider the applicant's immigration status and duration of admission sought by the alien, and the classification the alien is seeking, as part of the public charge inadmissibility determination.

### A. Standard

USCIS considers the immigration status that the alien seeks and the expected period of admission as it relates to the alien's ability to financially support him or herself during the duration of the alien's stay.<sup>[1]</sup> An adjustment of status applicant's prospective immigration status is that of a lawful permanent resident (LPR). The expected period of stay is permanent and is generally considered to be a negative factor. In general, aliens seeking admission as LPRs are more likely to receive public benefits than nonimmigrants because they intend to reside permanently in the United States and LPRs are eligible for more public benefits than nonimmigrants. An applicant may otherwise establish that he or she is not eligible for public benefits because of his or her immigration status or income.<sup>[2]</sup>

## B. Summary of Immigration Status and Expected Period of Stay

The following table provides a list of positive and negative factors related to the prospective immigration status and expected period of stay.

**Applicant's Immigration Status and Expected Period of Admission**

Positive Factor	Negative Factor
<ul style="list-style-type: none"><li>The applicant provides evidence of ineligibility for public benefits based on immigration status or expected period of stay</li></ul>	<ul style="list-style-type: none"><li>Evidence that the alien will be in the United States for a 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</li></ul>

## C. Evidence

Generally, the alien's prospective immigration status is established through his or her immigration benefit request or application for admission. As a result, there is no additional evidence relating to this factor that an alien must provide.

## Footnotes

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<sup>[1]</sup> See [8 CFR 212.22\(b\)\(6\)](#).

<sup>[2]</sup> See [8 CFR 212.22\(b\)\(4\)\(ii\)\(E\)\(3\)](#).