



## 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 15 - Totality of the Circumstances Scenarios

### 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](#).

The officer must make public charge inadmissibility determinations based on the factors, circumstances, and evidence submitted and available in the record, as listed in the previous chapters.

Below are hypothetical case examples that should help illustrate the review of the factors, circumstances, and evidence in the totality of the circumstances. These hypotheticals are not meant to be exhaustive or all-inclusive with respect to the scenarios that may give rise to a public charge inadmissibility finding. Circumstances that are not listed in the previous chapters may also be relevant to making a public charge inadmissibility determination. Although a USCIS officer may encounter similar scenarios as those presented in the hypotheticals below, an officer may reasonably reach a different conclusion than what is

described below. This is because public charge inadmissibility determinations are made in the totality of facts and circumstances for each individual case. The presence of one or more of the factors in a particular case does not necessarily result in a public charge inadmissibility finding.

Additionally, for purposes of the following hypotheticals, it is assumed that:

- The applicant is not inadmissible under any other ground; and
- The facts asserted in the hypotheticals are supported by evidence in the record.

## A. Scenario 1

The applicant is a child seeking adjustment of status as a derivative beneficiary on a Form I-130 petition (F-48) filed by the child's U.S. citizen uncle (the child's parent is the principal beneficiary). The applicant is 5 years of age, with no individual income or assets. The applicant attends kindergarten and is learning English. The Report of Medical Examination and Vaccination Record ([Form I-693](#)) reflects that the applicant has no Class A or Class B medical condition which would render the applicant unable to take care of him or herself or attend school. The applicant lives with the parents and one sibling. The household income is \$70,000 (over 250 percent of the [Federal Poverty Guidelines for 2020](#) (FPG) for a household of four), and the applicant has never received public benefits. The child has private health insurance through the parents' employment, and has not received any Patient Protection and Affordable Care Act (ACA)-related subsidies. The petitioning uncle has submitted an Affidavit of Support Under Section 213A of the INA ([Form I-864](#)) on behalf of each family member and is single, has no children, and is willing and able to provide for each applicant. The petitioning uncle's income is \$105,000 (well over 125 percent of the FPG for a household of five). The applicant provides evidence demonstrating that he or she is ineligible for public benefits based on the household income. As an applicant for adjustment of status, he or she intends to reside permanently in the United States.

### *Analysis of Scenario 1*

Although the applicant's age and lack of employment history are negative factors in the totality of the circumstances, the applicant has the following positive factors: the applicant has not received public benefits, is currently attending school, the Form I-864 was executed by a close family member (the petitioner uncle) who has income well over 125 percent of the FPG for his household size plus the number of applicants sponsored, and the applicant is healthy. The applicant's private health insurance as well as the household income of 250 percent of the FPG are both heavily weighted positive factors. Applying for lawful permanent resident (LPR) status is considered a negative factor because LPRs have a higher possibility of becoming eligible for public benefits. However, the applicant provided documentation of ineligibility for public benefits based on the household income.

Therefore, in the totality of the applicant's circumstances, the positive factors outweigh the negative factors, and the applicant would not be inadmissible on the public charge ground.

## B. Scenario 2

The applicant submitted an Application to Register Permanent Residence or Adjust Status ([Form I-485](#)) based on being selected in the Diversity Visa Lottery (DV-6), which does not require a Form I-864. The applicant was admitted to the United States as a nonimmigrant academic student, is 21 years old, and is proficient in English. The applicant is not currently working and has no source of income, but is attending

a 2-year master's degree program full-time in civil engineering. The applicant recently inherited \$200,000, which the applicant uses for support and education. The bank account statement reflects a balance of \$100,000, representing the remaining funds from the inheritance. The applicant is living in student housing on campus. The applicant does not have a current or future offer of employment. The applicant is not presenting post-graduation plans. The applicant has not been able to demonstrate any work history because the applicant has always been a student. Furthermore, the applicant has a poor credit score (550) and the credit report shows several outstanding liabilities, including a car loan and student loans for a total of \$30,000. The applicant has purchased a medical insurance plan through the university. The Form I-693 reveals no Class A or B medical conditions. The applicant does not have any additional family members and does not present evidence of any additional funds other than the money in the bank account. The applicant has never received public benefits or a fee waiver from USCIS since the admission as a nonimmigrant student. As an applicant for adjustment of status, the applicant intends to reside permanently in the United States.

### *Analysis of Scenario 2*

The negative factors include that the applicant currently does not have any documented income from employment. The applicant's assets and resources are also insufficient to make up for the lack of income. Since the applicant's assets after accounting for liabilities amount to \$70,000, they are less than 5 times the difference (which would amount to \$105,685) between the household income (\$0) and 125 percent of the FPG for Fiscal Year 2020 for a household of one (\$32,750). As a result, the assets, resources, and financial status factor is a negative factor. Other negative factors in this case include: a poor credit score, negative credit history, and the immigration status the applicant is seeking. LPRs may become eligible in the future for public benefits, and the applicant has not presented evidence demonstrating that he or she is ineligible for public benefits.<sup>[1]</sup> The lack of a history of employment or current employment is not a heavily weighted negative factor because he or she is a full-time student. The applicant does not have family members who support him or her, and therefore has no household income or financial assets that would compensate for his or her lack of individual income.

The positive factors in the applicant's case are: The applicant has education higher than a high school degree. The applicant continues to seek education and skills (master's degree) that will provide him or her a good prospect of future employability. The applicant is also proficient in English. Additionally, the applicant is 21 years old, within the working age range (between 18 and 61). The applicant does not have any documented medical condition and there are no reasonably foreseeable medical expenses since the applicant is healthy and young. There is no indication that the applicant has used public benefits in the past. The applicant has private health insurance, which is a heavily weighted positive factor.

Therefore, in the totality of the applicant's circumstances, the positive factors outweigh the negative factors, and the officer concludes that this applicant is not inadmissible on the public charge ground.

## C. Scenario 3

The applicant is seeking adjustment of status based on an approved Petition for Alien Relative ([Form I-130](#)) as the parent of a U.S. citizen (IR-0). The applicant is 68 years old. The Form I-693 states that the applicant has heart disease, a Class B medical condition that interferes with the applicant's ability to work and requires extensive medical treatment. The applicant had undergone extensive medical treatment for the heart condition outside of the United States. The applicant is living with an adult son, the son's wife, and their three children. The adult son is providing over 50 percent of the applicant's support. The alien has no income. The household annual gross income is at \$45,000 (above 125 percent of the FPG for a

household of six). The alien is a widow(er) and does not have any pension, assets, or resources. The applicant has been receiving cash assistance for income maintenance from a state government over the last 12 months (which was all received on or after February 24, 2020) and there is no indication of disenrollment from the benefit in the future. The alien did not provide a credit score or credit history but provided a letter from a credit reporting agency indicating that no credit report or score was found. The alien did not provide any evidence of health insurance and there is no indication in the file that the alien has health insurance or made any efforts to obtain health insurance in the future. The alien is not currently employed and has not demonstrated a history of employment. The applicant does not possess a high school diploma, its equivalent, or other education or skills and does not have any proficiency in English. The applicant lives with the petitioning son, who submitted a sufficient Form I-864. The applicant will be residing in the United States permanently if USCIS approves the application for adjustment of status.

### *Analysis of Scenario 3*

The positive factors include: the applicant's family status, assets, resources, and financial status (household income is at 125 percent of the FPG for the household of six) and sufficient Form I-864 with a sponsor that is able and willing to support the applicant.

However, the applicant has a number of negative factors present: the applicant's age, the diagnosis of a Class B medical condition that is likely to require extensive medical treatment or institutionalization and that interferes with the applicant's ability to provide for him or herself or work; the applicant's lack of health insurance and a failure to demonstrate a prospect of obtaining private health insurance; failure to demonstrate the financial resources to pay for reasonably foreseeable medical costs related to the applicant's medical condition; no employment history or prospect of employment; a lack of earned income, personal assets, and resources; a lack of education and skills; the receipt of a public benefit; and the applicant's age. He or she also has three heavily weighted negative factors (the medical condition likely requiring extensive medical treatment and lack of health insurance, the receipt of cash assistance, and lack of employment or prospect of employment). Since the applicant is seeking to become an LPR, and has not demonstrated that he or she is ineligible for public benefits due to the immigration status or income, this is also a negative factor.<sup>[2]</sup>

In the totality of the applicant's circumstances, the negative factors in this case outweigh the positive factors and therefore the applicant is found inadmissible on the public charge ground.

## D. Scenario 4

The applicant, 33, is applying for adjustment of status in the 3rd preference employment-based unskilled worker category (EW8) as a farmworker hired to pick crops with an annual salary of \$24,320.<sup>[3]</sup> The applicant's household includes the applicant's spouse and their three children. The 125 percent FPG threshold for a household of five in 2020 is \$38,350 annually. The applicant is not required to submit Form I-864. The applicant has \$2,000 in assets and resources, and the entire family of the applicant lives on the applicant's employer's farm. The employer provides housing and food for the employees, incident to the employment and as part of the remuneration. The applicant is not proficient in English, has health insurance through the employer, and the applicant's Form I-693 shows no Class A or Class B medical conditions.

The applicant has worked in the United States on and off over the last 10 years as an H-2A nonimmigrant agricultural worker with the same employer. In addition, the evidence shows that when the applicant was not working in the United States, the alien was working abroad in similar positions. Documentation also

indicates a steady increase in salary over the applicant's career. The file does not contain evidence of a credit score or credit history report. The applicant has provided a letter from a friend, indicating that the applicant is currently paying back a loan given by the friend so that the applicant could buy a car. The letter also states that the applicant has been making regular payments to the friend and that the friend anticipates that the applicant will pay the loan off in 2 years. The applicant is seeking LPR status in the United States. The applicant did not provide evidence of ineligibility for public benefits due to the immigration status or income. The applicant presents evidence of the equivalent of a high school degree from the applicant's country of origin.

#### *Analysis of Scenario 4*

There are a number of negative factors in the applicant's case. The applicant's income is insufficient to support the entire family, being well short of the 125 percent of the FPG standard for the applicant's household size. The applicant lacks sufficient assets to compensate for the shortfall in income. In addition, these assets are reduced by liabilities (the loan from the applicant's friend). The applicant is not proficient in English. The applicant is seeking to become an LPR and has not demonstrated ineligibility for public benefits on account of the immigration status or income.<sup>[4]</sup>

There are also positive factors in the applicant's case. The applicant is within the working age (between 18 and 61) and has demonstrated a continuous employment history and good prospect of future employment, as well as a steady increase in salary over time. He or she has a high school diploma and has demonstrated that he or she possesses employable skills. The applicant has provided evidence of financial responsibility (the letter from the friend who provided the loan). The applicant is in good health and has no Class A or Class B medical conditions. The applicant also has private health insurance, which is a heavily weighted positive factor in the totality of the circumstances.

In the totality of the applicant's circumstances, the positive factors outweigh the negative factors and therefore, the applicant is not likely at any time to become a public charge.

## E. Scenario 5

The applicant, 29, is applying for adjustment of status as the immediate relative spouse of a U.S. citizen (IR-6). The applicant lives with his or her spouse and two children. The applicant does not have a Class A or Class B medical condition (as indicated by Form I-693) but does not have health insurance. The applicant has the equivalent of an 8th grade education and does not speak English. The applicant has never worked and has no occupational skills. The applicant's spouse files Form I-864 for the applicant. However, the applicant's spouse lacks sufficient income, assets, and resources to meet the 125 percent FPG threshold for a household of four. The applicant provides a sufficient Form I-864 from a joint sponsor who is a friend of the applicant's spouse. The joint sponsor has never met the applicant, resides in another state, has an income of \$27,000 (slightly above the 125 percent FPG threshold for the household size of the sponsor plus one applicant), and has filed and executed two other Form I-864 on behalf of two of the friend's own family members. The sponsorship obligations have not terminated for these family members. The applicant has no credit score or credit history and there is no indication of liabilities or bankruptcies. There is no indication that the applicant has used public benefits in the past or has any current pending applications for public benefits.

#### *Analysis of Scenario 5*

The applicant's positive factors include: the applicant's age, health, and the lack of having received public benefits. The sufficient Form I-864 is also a positive factor. However, in analyzing that joint sponsor's affidavit of support, the officer considers the sponsor's relatively low income, the lack of a familial or close relationship between the sponsor and the applicant, and the sponsor's obligations to the other family members. For this reason, while a positive factor, it does not receive greater weight in the totality of the circumstances.

Negative factors for the applicant include: the applicant's lack of skills and education, the inability to speak English, the lack of assets and resources, the lack of work history and lack of health insurance, and the fact that the applicant is seeking immigrant status in the United States and has not demonstrated ineligibility for public benefits because of immigration status or income.<sup>[5]</sup>

In the totality of the applicant's circumstances, the negative factors outweigh the positive factors and therefore, the applicant is found likely at any time to become a public charge.

## Footnotes

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<sup>[^1]</sup> An applicant may otherwise establish that he or she is not eligible for public benefits because of the immigration status or income. See Chapter 12, Prospective Immigration Status and Expected Period of Admission [[8 USCIS-PM G.12](#)].

<sup>[^2]</sup> An applicant may otherwise establish that he or she is not eligible for public benefits because of the immigration status or income. See Chapter 12, Prospective Immigration Status and Expected Period of Admission [[8 USCIS-PM G.12](#)].

<sup>[^3]</sup> See <https://data.bls.gov/projections/occupationProj>.

<sup>[^4]</sup> An applicant may otherwise establish that he or she is not eligible for public benefits because of the immigration status or income. See Chapter 12, Prospective Immigration Status and Expected Period of Admission [[8 USCIS-PM G.12](#)].

<sup>[^5]</sup> An applicant may otherwise establish that he or she is not eligible for public benefits because of the immigration status or income. See Chapter 12, Prospective Immigration Status and Expected Period of Admission [[8 USCIS-PM G.12](#)].