



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 16 - Waivers of Inadmissibility Based on Public Charge Ground

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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](#).

The availability of a waiver of an inadmissibility ground depends on the immigration benefit the applicant is seeking.

A. Immigrant Waivers

In general, the public charge ground of inadmissibility cannot be waived for aliens seeking lawful permanent resident (LPR) status. However, the law may provide certain aliens seeking LPR status a waiver of the public charge ground of inadmissibility. The following aliens seeking LPR status may overcome the public charge ground of inadmissibility if they apply for and USCIS grants a waiver of the public charge ground of inadmissibility:

- Applicants seeking adjustment of status on account of their witness or informant status.^[1]
- Certain aged, blind, or disabled applicants for adjustment of status under INA 245A.^[2]

B. Nonimmigrant Waivers

The following nonimmigrants seeking admission may overcome the public charge ground of inadmissibility if the alien applies for and is granted a waiver of the public charge ground of inadmissibility:

- Nonimmigrants seeking admission to the United States. An alien applying for a nonimmigrant visa or seeking temporary admission as a nonimmigrant may seek a temporary waiver of inadmissibility.^[3] This application for a temporary waiver of inadmissibility is adjudicated by U.S. Customs and Border Protection (CBP) as part of either an alien's application for admission at a port of entry or an alien's application for a nonimmigrant visa at a U.S. consulate or embassy.^[4] If granted, the waiver generally only applies to the nonimmigrant classification for which it was granted.
- Applicants for admission as nonimmigrant witnesses or informants (S nonimmigrants).^[5] The application to seek nonimmigrant status as a witness or informant, including the request for a waiver of a ground of inadmissibility, is made on the Inter-Agency Alien Witness and Informant Record ([Form I-854A](#)). The waiver is discretionary, and USCIS may grant the waiver if it considers it to be in the national interest.

Footnotes

^[1] See [INA 245\(j\)](#). See [8 CFR 245.11](#). According to [8 CFR 245.11\(c\)](#), grounds of inadmissibility that were waived at the time of obtaining S nonimmigrant status are considered waived for purposes of the adjustment.

^[2] See [INA 245A\(d\)\(2\)\(B\)](#). Aged, blind, or disabled applicants, as defined in Section 1614(a)(1) of the Social Security Act, as codified in [42 U.S.C. 1382c\(a\)\(1\)](#), for adjustment of status under [INA 245A](#) may apply for a waiver of the public charge ground of inadmissibility. The waiver is filed on the Application for Waiver of Grounds of Inadmissibility ([Form I-690](#)) according to the form's instructions.

^[3] See [INA 212\(d\)\(3\)\(A\)](#).

^[4] For more information on applying for a waiver as a nonimmigrant under [INA 212\(d\)\(3\)](#), visit [CBP.gov](#).

^[5] See [INA 101\(a\)\(15\)\(S\)](#). See [INA 212\(d\)\(1\)](#). See [8 CFR 214.2\(t\)\(5\)\(i\)](#). See [8 CFR 212.4\(j\)\(1\)](#). The waiver is granted by USCIS.