



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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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 must consider the applicant's age when determining whether the applicant is likely at any time to become a public charge.^[1] An applicant's age may impact his or her work and is therefore relevant to his or her self-sufficiency and likelihood of becoming a public charge at any time in the future. An officer examines an applicant's age primarily in relation to employment or employability.

A. Standard

The officer assesses whether the applicant’s age makes him or her more or less likely to become a public charge at any time in the future and in the totality of all the circumstances. If an applicant is between the ages of 18 and 61, USCIS considers the applicant’s age as a positive factor in the totality of the circumstances.^[2]

Age below 18 or above 61 is a negative factor in the totality of the circumstances. However, applicants whose age is a negative factor in the totality of the circumstances because it is outside of the 18-61 age range can overcome the negative age factor by other positive factors in the totality of the circumstances, such as employment history, being able to attain employment, or having adequate means of financial support by household members.

1. Applicants 62 Years of Age and Older

The applicant’s age may negatively impact his or her ability to earn a living through employment^[3] and may make the applicant more likely than not to become a public charge at any time in the future.^[4] Therefore, it is a negative factor in the totality of the circumstances.

Although being age 62 and older is a negative factor in the totality of the circumstances, this negative factor, like any negative factor, can be overcome by a positive factor or positive factors, such as current employment, employment history, income over the 125 percent of the [Federal Poverty Guidelines](#) (FPG) threshold, having retirement savings or retirement benefits,^[5] or other non-governmental resources.

2. Applicants Under the Age of 18

Being under the age of 18 is a negative factor. The weight of the factor, however, also depends on circumstances such as whether the applicant is able to earn an income through employment. In addition, applicants under the age of 18 may be more likely to qualify and receive public benefits.^[6]

B. Summary of Age

The following table provides a list of positive factors and negative factors related to age.

Applicant's Age	
Positive Factors	Negative Factors
<ul style="list-style-type: none">• Age between 18 and 61	<ul style="list-style-type: none">• Age 17 and younger• Age 62 and older

Age alone does not determine whether an applicant is more likely than not to become a public charge at any time in the future. An officer reviews the totality of the alien’s circumstances to determine whether the applicant is inadmissible based on public charge.

C. Evidence

An applicant's birth certificate is sufficient to establish the applicant's age.

Footnotes

[¹] See [INA 212\(a\)\(4\)](#). See [8 CFR 212.22\(b\)](#).

[²] See [8 CFR 212.22\(b\)\(1\)\(i\)](#) and [42 U.S.C. 416\(l\)\(2\)](#).

[³] See [Matter of Harutunian \(PDF\)](#), 14 I&N Dec. 583 (BIA 1974) (A legacy Immigration and Naturalization Service Regional Commissioner took a totality of the circumstances approach and determined that the respondent in that case was inadmissible as likely to become a public charge because the respondent lacked the means to support herself, the ability to earn a living, and the presence of a sponsor to assure that she would not need public support. Furthermore, the alien was increasingly likely to become dependent, disabled, and sick because of her older age, and accordingly was expected to become dependent on old-age assistance for support).

[⁴] See DHS's analysis of the Survey of Income and Program Participation (SIPP) data in Tables 14 and 15 in [83 FR 51114, 51181 \(PDF\)](#) (Oct. 10, 2018) (proposed rule).

[⁵] The minimum age for retirement for purposes of Social Security is generally 62. People who are at the minimum retirement age may stop working and start receiving retirement benefits such as Social Security. If a person does have access to Social Security benefits or a retirement pension, he or she may not need public benefits for income maintenance or other benefits to be self-sufficient as the income from Social Security or the pension may suffice. See [42 U.S.C. 416\(l\)](#). See U.S. Social Security Administration (SSA), [Retirement Planner: Benefits by Year of Birth](#).

[⁶] See [83 FR 51114, 51179-51181 \(PDF\)](#)(Oct. 10, 2018) (proposed rule).

Current as of February 10, 2021
