



## 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  
and Immigration  
Services

[Home](#) > [Policy Manual](#)

## Chapter 8 - Family Status

### Guidance

[Resources \(75\)](#)

[Appendices \(7\)](#)

[Updates \(4\)](#)

### **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 must consider an applicant's family status when determining whether an alien is likely to become a public charge at any time in the future.<sup>[1]</sup>

USCIS considers whether the alien has a household to support, or whether the alien is being supported by others in the alien's household, and whether the alien's household size makes the alien more or less likely to become a public charge. Family status must be reviewed in connection with, among other things, the alien's assets and resources.

Having a large number of household members may be a negative factor, because a higher financial responsibility and support obligation is needed to avoid relying on public benefits.<sup>[2]</sup> However, household members may have their own income and assets to either support themselves or contribute to the household. An applicant should at least be able to support him or herself and the number of dependents in the applicant's household at 125 percent of the [Federal Poverty Guidelines](#) (FPG).

## A. Standard

USCIS considers an alien's household size in relation to the alien's assets and resources to determine whether the alien is more likely than not to become a public charge in the future. For aliens who are children,<sup>[3]</sup> USCIS reviews the assets and resources of household members in the parents' household.

If the applicant is able to support him or herself and the alien's household members at 125 percent of the FPG for the alien's household size, then this is a positive factor. If the applicant is not able to support him or herself and the household members at 125 percent of the FPG for the alien's household size, then this is a negative factor. USCIS considers the applicant's assets and resources, to determine whether the applicant's family status is a positive or negative factor.<sup>[4]</sup>

### 1. Household Members for Applicant over Age 21 or Under 21 and Married

For applicants who are over the age of 21 or under the age of 21 and married, USCIS considers the following people as part of the household:

- The alien;
- The alien's spouse, if physically residing with the alien;
- The alien's children, unmarried and under the age of 21,<sup>[5]</sup> physically residing with the alien;
- The alien's other children, unmarried and under the age of 21,<sup>[6]</sup> not physically residing with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;
- Any other person(s) (including a spouse not physically residing with the alien) to whom the alien provides, or is required to provide, at least 50 percent of the person's financial support or who are listed as dependents on the alien's federal income tax return; and
- Any person who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

A person who provides to the alien at least 50 percent of the alien's financial support may include another relative such as a grandparent, parent, or sibling living with the alien or someone not living with the alien who provides the alien with a monthly or yearly income, or supports the alien through payment of mortgage or rent, utility bills, grocery bills, or other needs. An alien must properly document and establish that such person is providing support for the alien for the person to be considered part of the household.

## 2. Household for Applicants under 21 and Unmarried

If the alien is a child as defined in INA 101(b)(1), the alien's household includes the following:

- The alien;
- The alien's children<sup>[7]</sup> physically residing with the alien;
- The alien's other children<sup>[8]</sup> not physically residing with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;
- The alien's parents, legal guardians, or any other person providing or required to provide at least 50 percent of the alien's financial support as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the alien;
- The parents' or legal guardians' other children<sup>[9]</sup> physically residing with the alien;
- The alien's parents' or legal guardians' other children,<sup>[10]</sup> not physically residing with the alien for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and
- Any other person(s)<sup>[11]</sup> to whom the alien's parents or legal guardians provide, or are required to provide at least 50 percent of the person's financial support or who is listed as a dependent on the parent's or legal guardian's federal income tax return.

## B. Summary of Family Status

The following table provides a list of positive and negative factors relevant to family status.

**Applicant's Family Status**

<b>Positive Factors</b>	<b>Negative Factors</b>
If the alien is able to support him or herself and his or her household members at or above 125 percent of the FPG (100 percent for active duty military, other than active duty for training, in the U.S. armed forces) for the alien's household size.	If the alien is not able to support him or herself and his or her household members at or above 125 percent of the FPG (100 percent for active duty military, other than active duty for training, in the U.S. armed forces) for the alien's household size.

## C. Evidence

Evidence of family status includes information regarding the household members, which may include birth certificates, marriage certificates, and affidavits to establish relationships.

# Footnotes

---

[<sup>1</sup>] See [INA 212\(a\)\(4\)](#).

[<sup>2</sup>] See DHS's analysis of SIPP data in Tables 16 and 17 in 83 FR 51114, 51185-86 (Oct. 10, 2018) (proposed rule).

[<sup>3</sup>] As defined by [INA 101\(b\)\(1\)](#).

[<sup>4</sup>] For more information, see Chapter 9, Assets, Resources, and Financial Status [[8 USCIS-PM G.9](#)].

[<sup>5</sup>] As defined in [INA 101\(b\)\(1\)](#).

[<sup>6</sup>] As defined in [INA 101\(b\)\(1\)](#).

[<sup>7</sup>] As defined in [INA 101\(b\)\(1\)](#).

[<sup>8</sup>] As defined in [INA 101\(b\)\(1\)](#).

[<sup>9</sup>] As defined in [INA 101\(b\)\(1\)](#).

[<sup>10</sup>] As defined in [INA 101\(b\)\(1\)](#).

[<sup>11</sup>] Such as a child or parent.

Current as of February 10, 2021

---