



February 5, 2020

PA-2020-04

## Policy Alert

SUBJECT: Public Charge Ground of Inadmissibility

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing guidance in the [USCIS Policy Manual](#) to address the Inadmissibility on Public Charge Grounds Final Rule.<sup>1</sup>

### Background

Under section 212(a)(4) of the Immigration and Nationality Act (INA), an alien who is likely at any time to become a public charge is inadmissible.<sup>2</sup> USCIS published the Inadmissibility on Public Charge Grounds Final Rule on August 14, 2019, with an effective date of October 15, 2019. The Final Rule was subsequently enjoined by several federal courts. On January 27, 2020, the Supreme Court of the United States stayed the last nationwide injunction allowing the Department of Homeland Security (DHS) to implement the Final Rule everywhere except for the State of Illinois, where the Final Rule remains enjoined.<sup>3</sup> DHS has renewed its request for a stay of the Illinois injunction from the U.S. Court of Appeals for the Seventh Circuit in light of the Supreme Court decision.

The public charge inadmissibility ground and the Final Rule reflect Congress' longstanding national immigration policy that aliens seeking to come to or remain in the United States are self-sufficient and will not rely on public benefits, as defined in the Final Rule.

The accompanying Policy Manual guidance, contained in Volumes 2, 8, and 12, incorporates the Final Rule and replaces the previous guidance found in Chapters 40.4 and 61.1 of the Adjudicator's Field Manual (AFM), and related appendices.<sup>4</sup> The new guidance contained in the Policy Manual is controlling and supersedes any prior guidance on the topic. The new guidance is effective as of February 24, 2020, and applies to all applications and petitions postmarked on or after February 24, 2020.<sup>5</sup>

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<sup>1</sup> See [84 FR 41292](#) (Aug. 14, 2019).

<sup>2</sup> See [INA 212\(a\)\(4\)](#).

<sup>3</sup> See [DHS v. New York](#), 589 U.S. \_\_ (2020).

<sup>4</sup> USCIS is also making minor technical updates in other Policy Manual parts consistent with this update.

<sup>5</sup> For applications and petitions that are sent by commercial courier (for example, UPS, FedEx, or DHL), the postmark date is the date reflected on the courier receipt. This new policy guidance does not apply to applicants or petitioners in the State of Illinois whose cases will be adjudicated under prior policy, including the 1999 Interim Field Guidance, [64 FR 28689](#) (Mar. 26, 1999), and AFM 61.1. For additional information, see [Public Charge Inadmissibility](#)

USCIS will not consider the application for, certification or approval to receive, or receipt of certain previously excluded non-cash public benefits (such as SNAP, most forms of Medicaid, and public housing) before February 24, 2020. Similarly, USCIS will not consider as a heavily weighted negative factor receipt of previously included public benefits (such as SSI and TANF) before February 24, 2020.

### Policy Highlights

- Defines the term “public charge” for purposes of inadmissibility determinations under [INA 212\(a\)\(4\)](#).
- Lists the categories of applicants that are exempt from, or may obtain a waiver of, the public charge inadmissibility ground.
- Identifies the types of public benefits that are considered in public charge inadmissibility determinations, as well as in applications and petitions for extension of stay and change of status.
- Identifies the factors that USCIS considers and explains that officers review the totality of the applicant’s circumstances when determining public charge inadmissibility.
- Explains that a sufficient Affidavit of Support Under Section 213A of the INA ([Form I-864](#)), when required, is but one factor in the totality of the circumstances, and does not, by itself, mean an alien is not inadmissible based on the public charge ground.
- Explains the public charge bond process for adjustment of status applications filed with USCIS.
- Explains the public benefits condition that applies to nonimmigrants seeking extension of stay and change of status.
- Explains that the public charge ground of inadmissibility does not apply in naturalization proceedings except that, for the purposes of determining whether a naturalization applicant was lawfully admitted for permanent residence under [INA 318](#), the officer’s review includes whether the alien was inadmissible based on the public charge ground.

### Citation

Volume 2: Nonimmigrants, Part A, Nonimmigrant Policies and Procedures, Chapter 4, Extension of Stay and Change of Status [[2 USCIS-PM A.4](#)];

Volume 8: Admissibility, Part G, Public Charge Ground of Inadmissibility [[8 USCIS-PM G](#)];

Volume 12: Citizenship and Naturalization, Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident Admission for Naturalization [[12 USCIS-PM D.2](#)].

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[Determinations in Illinois](#). Certain classes of aliens are exempt from the public charge ground of inadmissibility (such as refugees, asylees, certain VAWA self-petitioners, U petitioners, and T applicants) and therefore, are not subject to the Inadmissibility on Public Charge Grounds Final Rule. For more information about the classes of aliens who are exempt from the Final Rule, click [here](#).