

PUBLIC CHARGE GROUND OF INADMISSIBILITY

NEW USCIS POLICY GUIDANCE

FEBRUARY 7, 2020

Where can I find this information?

USCIS has posted detailed policy guidance regarding this rule in the USCIS Policy Manual, Volume 8, Part G. <https://www.uscis.gov/policy-manual/volume-8>

When does this rule start?

The rule will take effect February 24, 2020.

The rule applies to all applications and petitions that post-marked on or after the effective date of February 24, 2020 (except if you live in the State of Illinois, where a preliminary injunction is still in place). Anything that was filed and postmarked prior to that date will *not* be subject to this new rule.

Who does this rule affect?

Applicants in the US who are not exempt.

This rule applies to applicants for admission who are seeking to adjust status to become a legal permanent resident (green card applicants) as well as applicants for non-immigrant visas who wish to extend their stay in the US or change their status in the US.

Who won't this rule affect?

Applicants specifically exempt by statute

The statute exempts certain applicants from the public charge ground of inadmissibility. The full list can be found in the regulations or on the USCIS. While *some* of the following applicants may be exempt from the majority of the public charge grounds they must still meet some basic requirements (like having a sufficient affidavit of support):

- Asylees/Refugees
- T-Visa Victims of Human Trafficking
- U-Visa Victims of Particular Crimes
- VAWA Self-Petitioners (unless they are seeking to adjust in certain employment categories)
- Special Immigrant Juvenile Self-Petitioners

What about applicants for a Green Card who are consular processing?

Applicants who will be applying for a Green Card at the consulate abroad rather than adjusting status in the US are not subject to these particular guidelines but the Department of State will be releasing separate guidance for the public charge rule.

What is a public charge?

"Public charge" is a ground of inadmissibility that would result in the denial of a green card, visa, or admission into the United States.

The new rule creates additional factors that must be considered when an immigration officer is deciding whether to grant an applicant a green card, a change of status, or a visa. An immigration officer must decide whether applicant is likely to become dependent on certain government benefits in the future. If the immigration officer determines that the applicant is likely to become dependent on government benefits in the future then the applicant would be deemed a "public charge."

How will USCIS determine whether or not an applicant is inadmissible as a public charge?

When reviewing an application the USCIS officer will consider eight factors, along with evidence submitted to determine whether or not, "under the totality of the circumstances", the applicant is "more likely than not to become a public charge" at any time in the future.

The **EIGHT FACTORS** that are considered when making this determination are:

1. The applicant's **age**;
2. The applicant's **health**;
3. The applicant's **family status**;
4. The applicant's **assets, resources & financial status**;
5. The applicant's **education & skills**;
6. The applicant's **prospective immigration status & expected period of admission**;
7. A sufficient **affidavit of support** pursuant to INA §213A (From I-864); and
8. The presence of heavily weighted **positive & negative factors**

An applicant *must* submit evidence relevant to *each factor* to establish that, in the totality of their circumstances, he or she is not more likely than not to be-

come a public charge at any time in the future. (Yes it is worded as a double negative by the US government).

APPLICANT'S AGE

Applicants 62 years of age and older.

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, having retirement savings or retirement benefits, or other non-governmental resources.

Applicants 18 years of age and younger.

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.

APPLICANT'S HEALTH

When assessing how the applicant's health affects his or her likelihood of becoming a public charge at any time in the future, the officer should consider all factors relevant to the applicant's case based on the medical reports and other documentation submitted by the applicant including, but not limited to:

Whether the applicant is in good health; Whether the applicant has been diagnosed with a physical or mental medical condition; The nature and severity of the condition(s); Whether the medical condition is likely to require extensive medical treatment or institutionalization in the future; Whether the condition affects the applicant's capability for normal physical activity and ability to complete daily tasks; Whether the medical condition will interfere with the applicant's ability to provide and care for him or herself, to attend school, or to work; and Any information relating to the prognosis of the applicant, including information on past or current medication, prospect of recovery, or extent to which a condition is progressively detrimental to the applicant's health and mental state.

APPLICANT'S FAMILY STATUS

Positive Factors	Negative Factors
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.

APPLICANT'S FINANCIAL SITUATION

FINANCIAL FACTOR 1 | INCOME & PERCENT OF THE FEDERAL POVERTY GUIDELINES

Generally, the applicant must demonstrate an income of at least 125 percent of the Federal Poverty Guidelines (FPG) based on his or her household size for the household income to be considered a positive factor. The higher the income, the more positive the factor. Alternatively, the lower the income, the more negative the factor.

FINANCIAL FACTOR 2 | BASIS OF INCOME

Annual Gross Income

Annual gross income is the total income before any adjustment, taxes, or deductions. This includes wages from employment. This is line 6 "total income" on the 1040 Internal Revenue Service (IRS) form. On a Wage and Tax Statement, Form W-2, the total income is in line 1 "Wages, tips, other compensation." However, a W-2 does not include income from bank account interest, stocks and bond interest, or other income a person may be receiving outside of employment. If a person has multiple jobs with multiple corresponding Forms W-2, the income is added to find the total gross income.

Lawful Sources of Income

USCIS only considers income sources from legal employment or transactions. USCIS does not consider income derived from illegal activities, whether illegal under federal law or state law, in the calculation of gross annual household income. These sources include, but are not limited to income gained illegally from:

gambling, drug sales or trafficking, money laundering, prostitution, and alien smuggling.

Any income derived from unlawful sources must be deducted from the applicant's household annual gross income.

**Income from unauthorized employment should be included in the applicant's household annual gross income.*

Children

Children may or may not have their own income. A child may be working or have a trust fund or bank accounts that would be considered as income and assets within the public charge inadmissibility determination. The child's income would be included as part of the gross household income to meet the threshold.

When the child does not have his or her own income or assets, the applicant would include income or support available from the parent(s), legal guardian, or other person providing at least 50 percent of the child's financial support as household annual gross income.

FINANCIAL FACTOR 3. ASSETS IN LIEU OF INCOME

If the applicant's household's annual gross income is less than 125 percent of the most recent FPG (or 100 percent for an alien on active duty, other than active duty for training, in the U.S. armed forces), the applicant may submit evidence of ownership of significant assets. Significant assets may include savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets as described below. See 8 CFR 212.22(b)(4)(B).

In general, the combined cash value of all the assets (the total value of the assets less any offsetting liabilities) should exceed five times the difference between the alien's household income and 125 percent of the FPG (100 percent for those on active duty, other than active duty for training, in the U.S. armed forces) for the alien's household size, unless the applicant is a spouse or child as provided below.

FINANCIAL FACTOR 4. FINANCIAL MEANS TO PAY REASONABLY FORESEEABLE MEDICAL COSTS

USCIS also reviews whether the alien has sufficient household income, assets, and resources to cover any reasonably foreseeable medical costs, including a medical condition that is likely to require extensive medical treatment or institutionalization, or that will interfere with the alien's ability to provide and care for him or herself, to attend school, or to work. If an applicant has assets and resources to pay for such medical costs, it is a positive factor in the totality of the circumstances, as this decreases the likelihood that the applicant will become a public charge at any time in the future.

Reasonably Foreseeable Medical Costs

The costs of medical care can vary by state and medical condition. Health insurance helps cover the cost of medical care and being covered by health insurance programs, other than the health insurance programs considered public benefits for public charge purposes, is a positive factor in the totality of the circumstances, as it decreases the likelihood of the applicant receiving a public benefit in the future.

Having private health insurance, such as through employment, is a heavily weighted positive factor as it significantly decreases the likelihood of the applicant receiving a public benefit in the future.

An alien may have other assets and resources as described above that may provide for foreseeable medical costs, which are a positive factor in the totality of the circumstances.

Not all health insurance programs provide for adequate coverage. An officer should generally consider whether a plan meets the requirements under the Affordable Care Act in limiting cost-sharing, including deductible, copayments, and out of pocket maximum amounts. The health insurance Summary of Benefits and Coverage should provide sufficient information of the costs and coverage of the insurance. A health insurance with a high deductible or other cost-sharing costs would carry less positive weight in the totality of the circumstances consideration.

Generally, the following plans do not provide adequate coverage for reasonable foreseeable medical costs: Plans that only provide for vision and dental care; Worker's compensation; plans that only provide for specific diseases or conditions; and Plans that only provide for discounts on medical services.

Lack of health insurance is a negative factor in the totality of the circumstances. Officers must not speculate as to the cost of an applicant's

medical conditions. In addition, officers must not speculate as to what medical conditions a person may be diagnosed with in the future. For example, an officer must not assume that a person will need long term care or institutionalization with increasing age.

Private Health Insurance

For purposes of the public charge inadmissibility determination, *private health insurance is considered a heavily weighted positive factor* in the totality of the circumstances and includes, but is not limited to:

- Any employer-provided health insurance, including federal government employment-provided healthcare including Tricare (for military members and their families);
- Private health insurance provider through the Patient Protection and Affordable Care Act (ACA) Health Marketplace without a subsidy;
- Medicare;
- Other health insurance sold by the private industry and bought or purchased for or by the person;
- Medicaid for children under the age of 21 or pregnant women (and women for up to 60 days after giving birth);
- Children's Health Insurance Plan (CHIP);
- State-only subsidized health insurance, including state-based exchange; and
- Health Insurance subsidized by foreign country.

Medicaid, CHIP, ACA Subsidy

While having health insurance would generally be a positive factor in the totality of the circumstances, recent (within the past 36 months) or current receipt of Medicaid that constitutes a public benefit, is a heavily weighted negative factor.

Health insurance that is not considered a public benefit under the definition but may be considered a public benefit in other contexts unrelated to public charge, would be considered a positive factor, but not a heavily weighted positive factor. Ex.: Medicaid for applicants under the age of 21; Medicaid for pregnant women (including 60 days after pregnancy); CHIP/State Children's Health Insurance Plan (SCHIP); and Health Marketplace subsidized insurance.

Health Insurance	Positive Weight	Heavily-Weighted Positive	Heavily-Weighted Negative
Employer-Based Health Insurance (including Tricare and insurance through government employment)		X	
Private Health Insurance through Health Marketplace (with subsidy)	X		
Private Health Insurance through Health Marketplace (without subsidy)		X	
Medicare		X	
Private Health Insurance bought or paid for (outside of Health Marketplace)		X	
Medicaid for applicant under 21	X		
Medicaid for applicant over 21			X
Medicaid for pregnant women (including 60 days after pregnancy)	X		
CHIP	X		
State only subsidized Health Insurance		X	
Foreign Health Insurance		X	

FINANCIAL FACTOR 5. ADDITIONAL INCOME & RESOURCES

Any additional income that is received on a continuing weekly, monthly, or annual basis that is not included as part of the income tax return, may be added to other income or assets to meet the income threshold or may be considered as a positive factor in the totality of the circumstances.

There is specific income that must be reported to the IRS. Income that must be reported to the IRS is not considered additional income

FINANCIAL FACTOR 6. FINANCIAL LIABILITIES

Credit Report

Credit reports contain information about an applicant's bill payment history, loans, current debt, and other financial information. Credit reports may also provide information about work, residences, lawsuits, arrests, and bankruptcies.

USCIS may review an applicant's U.S. credit reports and score, if available, to determine if the applicant is able to support him or herself and his or her household

Applicant's Credit Score

670 -850 = Positive factor
580-669 = A neutral factor
300-580 = A negative factor

Not everyone has a credit history or may be able to transfer credit history from country to country. An officer must not consider the fact that an applicant does not have an established credit history as a negative factor in reviewing the totality of the circumstances.

Negative credit history is a negative factor in the totality of the circumstances and may include:

- Delinquent accounts;
- Foreclosures;
- Debt collections;
- Charge-offs (delinquent accounts deemed unlikely to be collected);
- Repossession;
- Foreclosure;
- Judgments;
- Tax liens; or other liabilities not reflected in the credit report.

USCIS also reviews any other liabilities not reflected in the credit report including, but not limited to: Mortgages; Car loans; Unpaid child or spousal support; Unpaid taxes; and Credit card debt.

Liabilities may be considered in the totality of the circumstances according to the amount and type. A high amount of unpaid child or spousal support, taxes, or credit cards may be weighted more negatively. A single mortgage and a single car payment may be weighted less negatively as these are long term investments, particularly if the applicant can demonstrate that he or she meets all his or her financial obligations and makes timely payments.

FINANCIAL FACTOR 7. FEE WAIVERS

USCIS will consider past requests for a fee waiver as a negative factor. (USCIS will not consider fee waivers submitted before an IJ)

FINANCIAL FACTOR 8. PUBLIC BENEFITS

Application for public benefits filed on or after February 24, 2020, received benefits on or after Feb. 24, 2020, or is certified or approved to receive public benefits on or after Feb. 24, 2020.

12/36 RULE- If an applicant receives benefits for an aggregate of 12 months within any 36-month period before filing an application for adjustment of status it will be considered a "heavily weighed negative factor." See 8 CFR 212.21(a) & 8 CFR 212.22(a).

Public Charge Ground Cannot Be Based Solely on the Receipt of a Public Benefit.

An officer should consider: The length of time that the applicant previously received the benefits; and How recently the applicant received the benefits in relation to the application for admission or adjustment of status.

Public Benefits Received Before February 24, 2020

USCIS does not consider public benefits that were previously excluded under the 1999 Interim Field Guidance. If received before February 24, 2020, USCIS, however, continues to consider the public benefits that were considered under the 1999 Interim Field Guidance received before February 24, 2020, including:

Cash assistance for income maintenance, including: SSI; TANF; and State and local cash assistance programs that provide benefits for income maintenance (often called "General Assistance" programs); and Programs (including Medicaid) supporting aliens who are institutionalized for long-term care (for example, in a nursing home or mental health institution).

USCIS considers these benefits received before February 24, 2020, as negative factors in the totality of the circumstances. However, USCIS only considers receipt of these benefits as heavily weighted negative factors if received on or after February 24, 2020.

Consideration of Eligibility for Public Benefits

USCIS does not specifically assess whether an alien qualifies or would qualify for any public benefit as defined. However, USCIS does consider evidence submitted by the applicant from a federal, state, local, or tribal agency administering a public benefit that the applicant has specifically identified as showing that he or she does not qualify or would not qualify for such public benefit by virtue of, for instance, the alien's annual gross household income or prospective immigration status or length of stay. Such evidence

includes, but is not limited to print-outs of web pages from a public benefits agency outlining the requirements for benefit receipt, which would enable an officer to verify why the applicant does not qualify or would not qualify for such public benefits.

Applied for a Public Benefit

USCIS may consider whether the applicant applied for a public benefit on or after February 24, 2020, as a negative factor. However, applying for a public benefit is not considered receipt of the benefit. USCIS may also consider whether the applicant's request for public benefits was denied, rejected, or withdrawn. Applying for a public benefit does not constitute receipt of public benefits although it may suggest a likelihood of future receipt.

A person may apply for public benefits and be rejected because he or she is over the income eligibility threshold or because of his or her immigration status. The fact that a person may have too much income or assets to qualify for public benefits may be a positive consideration. However, the fact that the applicant applied for the public benefit may indicate that he or she is not financially stable and needs assistance in the form of public benefits which may be taken into consideration.

A previous application for public benefits, by itself, does not establish that an applicant is likely at any time to become a public charge. An officer should not find an applicant inadmissible on the public charge ground solely based on the application for a public benefit in the United States.

Certified or Approved to Receive a Public Benefit

Some public benefits may have certification periods in which a person is certified to receive public benefits at a future time. Some public benefits may also require a recertification where the person needs to establish that he or she is and will continue to be eligible for the public benefit.

Certification for future receipt of a public benefit does not constitute receipt of public benefits, although it may suggest a likelihood of future receipt. Certification or approval to receive one or more public benefits, for more than 12 months in the aggregate within the 36-month period prior to the alien's application for adjustment of status and starting on or after February 24, 2020, is a heavily weighted negative factor. Therefore, for the purposes of determining whether the applicant's receipt of public benefits for more than 12 months is a heavily weighted negative factor, officers do not count benefits received before February 24, 2020.

Withdrawal, Disenrollment, or Request to Disenroll

A withdrawal, disenrollment, or request to disenroll from public benefits, is considered a positive factor in the totality of the circumstances and may indicate that the person no longer needs the public benefit(s) and may not need the public benefit(s) in the future. Applicants who withdraw, disenroll, or request to disenroll may have become self-sufficient. This may happen before the alien files the adjustment of status application, while an application is pending, or after an interview. However, an applicant may also disenroll and then re-enroll at a later time, which officers may consider as part of the totality of the circumstances.

Amount and Duration Considerations

In considering how much weight to give to the receipt of public benefits that is 12 months or less in the aggregate within any 36-month period, an officer may consider the dollar amount of public benefit received, where applicable, and how long the alien had received the public benefit. Generally, there is no specific dollar amount that makes the applicant more likely than not to become a public charge at any time in the future. However, USCIS may consider the amount in the totality of the circumstances.

Because of the totality of the circumstances review, if an alien who receives a small dollar value in public benefits over an extended period of time, disenrolls from a benefit and later applies for admission or adjustment of status, she or he is not necessarily inadmissible or ineligible for adjustment of status by virtue of such past receipt.

Consideration of When the Public Benefit Was Received

In addition to considering the duration of the benefit received, and the dollar amount, where applicable, USCIS also considers how long ago a public benefit was received. For example, an officer may consider that a person who received SSI benefits for 2 years, ending 10 years before the application for adjustment of status was filed, is a negative factor in the totality of the circumstances. However, the officer would not give this negative factor as much weight in the totality of the circumstances as other factors in the totality of the circumstances.

Applicant's Assets, Resources, and Financial Status

Positive Factors	Negative Factors	Heavily Weighted Negative	Heavily Positive	Weighted
<ul style="list-style-type: none"> Current employment Total household gross income at or above 125 percent of the FPG (100 percent for those on active duty, other than active duty for training, in the U.S. armed forces) Financial resources that would make the applicant ineligible to obtain means-tested public assistance Total household assets and resources in the applicable equivalent amount Good, very good, or exceptional credit score Any health insurance, not considered a public benefit, or sufficient income, assets, or resources to pay for reasonably foreseeable medical costs 	<ul style="list-style-type: none"> No income or assets Request or receipt of public benefits in the United States as defined Any previous bankruptcy within the last 2 years Request or receipt of a fee waiver for immigration benefits Poor credit score No private health insurance or sufficient income, assets, or resources to pay for reasonably foreseeable medical costs 	<ul style="list-style-type: none"> Receipt, certification, or approval of public benefits for more than 12 months in any 36-month period starting before the application for adjustment of status, (calculated no earlier than February 24, 2020) 	<ul style="list-style-type: none"> Total household gross income at or above 250 percent of the FPG Authorized to work and currently employed in a legal industry with an annual income of at least 250 percent of the FPG Private health insurance appropriate for the expected period of admission (not including health insurance for which the alien receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act, as amended). 	

Evidence

An applicant should provide information regarding his or her:

- Annual income, in the form of federal income tax transcripts, Wage and Tax Statements (W-2s), or Social Security Statement;
- Annual income of household members and dependents;
- Health insurance;
- Financial resources; and
- Financial status and liabilities (for example, credit report and score and receipt of public benefits).

USCIS may verify, through the available systems, any information pertaining to income, assets, and resources provided by the applicant with the employer, financial or other institutions, IRS, or Social Security Administration.

Evidence of Income

Federal income tax return transcripts for the most recent tax year are the primary evidence of income. If the income of other household members is included in the total household income, then the federal income tax return transcripts for each person's income must be submitted.

If the applicant is filing an application and declaration between January 1 and April 15 of any year, and the applicant or a household member has not yet filed the current year's federal income tax return, the applicant submits the most recent tax year. **The officer may issue an RFE for the current tax year transcripts.*

If the applicant or the household member(s) were residing outside of the United States during the time required to file a tax return and the person was not required to file a federal individual income tax return with the U.S. government, the alien may submit any tax transcripts filed with any foreign government.

Applicants residing in one of the U.S. territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands, may not be required to file federal income tax return. Therefore, the territories' tax transcripts may be submitted to establish income.

If federal income tax return transcripts are unavailable because the person is unemployed or he or she was not required to submit federal income tax returns, the applicant may provide other credible and probative evidence of the income, and include an explanation of why such transcripts are not available. A person may not have filed taxes because he or she is not required to file a tax return (i.e. because of unemployment or low income), or a person may have filed a tax extension and may not have filed the final tax return. In such cases, the applicable may provide documentation including:

- W-2, Wages and Tax Statement, and
- Social Security Statement.

Religious Workers

Certain religious workers may not earn income above 125 percent of the FPG, and this fact is considered as a negative factor in the totality of the circumstances. Congress did not specifically exempt religious workers from the public charge ground of inadmissibility.

Unskilled Employment

Unskilled employment, such as agricultural work, or construction, may not provide applicants with income above 125 percent of the FPG, and this fact is considered a negative factor in the totality of the circumstances. Congress did not exempt these groups from the public charge inadmissibility determination.

Officers should review the Immigrant Petition for Alien Worker ([Form I-140](#)), application for labor certification, and Confirmation of Bona Fide Job Offer or Request for Job Portability Under INA Section 204(j) ([Form I-485, Supplement J](#)), along with any evidence provided in support of those forms or the Form I-485 to evaluate the applicant's income. In the totality of the circumstances, an officer may consider an employer-provided compensation package including room, board, and other remuneration. Any compensation that is not a part of cash salary should generally be included as part of the salary for federal tax return purposes and should be annotated in a contract or employment offer. Therefore, officers would not need to review such remunerations outside of the federal income tax returns.

Household Annual Gross Income

Documentation of annual gross income of the applicant and household members and dependents may be provided in the form of:

- The most recent years U.S. federal income tax return transcripts or comparable foreign country document;
- Wage and Tax Statements (W-2s); or
- Social Security Statement providing history or annual income.

Assets and Resources

Documentation of assets and resources must include information regarding the type of asset or resource, the location, ownership, date of acquisition, and its value including any liens or liabilities on the asset or resource.

Health Insurance

In establishing sufficient assets and resources to cover for any reasonable foreseeable medical costs, an applicant may provide information regarding health insurance. If the alien currently has health insurance, he or she should provide the following information:

- For each health coverage policy, a copy of each policy page showing;
- The terms and type of coverage and persons covered; and
- Annual amount of deductible or annual premium of the health insurance including documentation of the amount of deductible or premium; and
- Letter on the company letterhead or other evidence from the health insurance company stating the alien is currently enrolled in health insurance and providing the terms and type of coverage; or
- The most recent Form 1095-B, Health Coverage; Form 1095-C, Employer-Provided Health Insurance Offer and Coverage (if available) with evidence of renewal of coverage for the current year.

A health insurance card is insufficient proof without evidence of the effective and expiration dates.

If the alien has received a Premium Tax Credit (PTC) or Advanced Premium Tax Credit for the health insurance, he or she must provide a transcript copy of the IRS Form 8963 Report of Health Insurance Provider Information, Form 8962 Premium Tax Credit (PTC), and a copy of Form 1095A, Health Insurance Marketplace Statement.

If the alien indicates that he or she does not currently have health insurance but will soon be enrolled in health insurance, he or she must provide a letter or other evidence from the insurance company showing that he or she has enrolled in or has a future enrollment date for a health insurance plan. The letter or other evidence must include the terms, the type of coverage, that the alien is the person covered, and the date when the coverage begins.

The alien may provide any documentation that may outweigh any negative factors related to a medical condition, including but not limited to:

- Information provided by a civil surgeon or a panel physician on a medical examination;
- An attestation from the treating physician regarding the prognosis of any medical condition and whether this medical condition impacts the ability of the alien to provide and care for him or herself, to attend school, or to work; and
- Evidence of sufficient assets and resources to pay the costs of any reasonably anticipated medical treatment.

Liabilities

In addition to documentation regarding annual household income, assets, resources, and liabilities, an applicant must provide a copy of his or her latest credit report and score, if available. Applicants are eligible for a free credit report once a year under the Fair Credit Reporting Act (FCRA). The alien is only required to provide one credit report from any of the three main credit reporting agencies, Equifax, Experian, and TransUnion that generated within the last 12 months. If there are any errors in the credit report, the person should provide information about the error and the report or notice from the credit agency.

Other documentation of liabilities would include mortgage and car payment and credit card statements, leases, and continued payments of other debts.

Information on Public Benefits Received

An applicant must provide documentation of any receipt of public benefits received which may be in the form of a letter, notice, or other agency documents and must contain the:

- The alien's name;
- Name and contact information for the public benefit-granting agency;
- Type of public benefit;
- Date the alien was authorized to start receiving the benefit or date the coverage starts; and
- Date benefit or coverage ended, expires, or must be recertified (if applicable).

If the applicant indicates he or she received public benefits but is unable to provide specific information on the public benefit receipt because the public benefit-granting agency does not keep the record after a certain period of time, the applicant should provide a letter or statement from the public benefit-granting agency indicating that the information is not available. Officers should only review the information provided by the applicant on the form and the statement from the public benefit-granting agency indicating that such information is not available.

An alien may choose to submit evidence from a Federal, State, local, or tribal agency administering a public benefit showing that the alien does not qualify or would not qualify for such public benefit on account of his or her prospective immigration status or expected period of admission

As part of the assets, resources, and financial status factor, public benefits are considered in the following ways:

- Whether the applicant has applied for public benefits;
- Whether the applicant has been certified or approved to receive public benefits;
- Whether the applicant has received public benefits; and
- If the applicant submits relevant evidence, whether he or she is eligible for the public benefits based on income or immigration status.

PUBLIC BENEFITS CONSIDERED

Enumerated Public Benefits

As part of the public charge inadmissibility determination, USCIS considers both cash and noncash benefits including:

- Any federal, state, local, or tribal cash assistance for income maintenance such as:
 - Supplemental Security Income (SSI);
 - Temporary Assistance for Needy Families (TANF) which may be provided under another New York
 - Federal, state, or local cash benefit programs for income maintenance (often called "General Assistance" in the state context, but which may exist under other names);
 - Supplemental Nutrition Assistance Program (SNAP);
 - Medicaid (with some exceptions); federally funded Medicaid may also be provided under ;
 - Section 8 Housing Assistance under the Housing Choice Voucher Program;
- New York State**
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation); and Housing under the Housing Act of 1937.

Federal Public Benefits Used Under other Names

Some federal public benefits, as listed above, may be listed under other names depending on the state. These federal public benefits are considered in the public charge inadmissibility determination.

However, a state medical insurance program, funded exclusively by the state, is not included in the definition of public benefit and is not considered as a public benefit in the public charge inadmissibility determination.

To the extent that states give the same name to their Federal Medicaid program and the state-only funded health insurance program, aliens are not required to report the receipt of the state-only funded health insurance. However, if Medicaid is listed on the Form I-944 as a received public benefit receipt, it is the burden of the applicant to provide information and documentation that the health insurance is state funded only. USCIS assumes that any Medicaid identified on the Form I-944 is federally-funded Medicaid.

Federal, State, Local, and Tribal Cash Benefits

In addition to the cash benefits for income maintenance identified in the rule (SSI, TANF and GA), USCIS considers any other federal, state, local tribal cash assistance for income maintenance (other than tax credits). To be considered a cash assistance for income maintenance, it must be:

- Cash or cash equivalent (such as a debit card or check);
- For a non-specific purpose in which the cash or cash equivalent may be used for food and nutrition, housing, or healthcare;
- Means-tested (requirement based on income threshold); and
- Not otherwise excluded under the rule or this chapter.

The cash benefit is considered even if the public benefit was only state-funded.

Cash assistance for income maintenance is considered a public benefit for purposes of the public charge inadmissibility determination even if the funding is provided by the state unless they are provided to persons not subject to public charge.

Public Benefits Not Considered

Unenumerated Public Benefits

The following is a non-exhaustive list of public benefits that USCIS does not consider in the public charge inadmissibility determination as they are considered earned benefits:

- Federal Old-Age, Survivors, and Disability Insurance Social Security benefits (SSDI);
 - Social Security;
 - Veteran's benefits including but not limited to **HUD-VASH**, and medical treatment through the **Veteran's Health Administration**;
 - Government (including federal and state) pension benefits and healthcare;
 - Unemployment benefits;
 - Worker's compensation;
 - Medicare; or
 - Federal and state disability insurance.
- Other benefits not considered public benefits in the public charge inadmissibility determination include, but are not limited to:
- Any services provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act);
 - Benefits under the Emergency Food Assistance Act (TEFAP);
 - Child and Adult Care Food Program (CACFP);
 - Food Distribution Program on Indian Reservations (FDPIR);
 - Short-term, non-cash, in-kind emergency disaster relief;
 - Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) provided by local communities or through public or private nonprofit organizations;
 - Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
 - Attending public school;
 - Benefits through school lunch or other supplemental nutrition programs including:
 - Benefits through the Child Nutrition Act;
 - Benefits from the National School Lunch Act;
 - Summer Food Service program;
 - Child care related services including the Child Care and Development Block Grant Program (CCDBGP);
 - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
 - Children's Health Insurance Program (CHIP) and State Children's Health Insurance Program (SCHIP);
 - Health Insurance through the Affordable Care Act;
 - Tax Credits;
 - Transportation vouchers or other non-cash transportation services;
 - Housing assistance under the McKinney-Vento Homeless Assistance Act;
 - Energy benefits such as the Low Income Home Energy Assistance Program (LIHEAP);
 - Educational benefits, including, but not limited to, benefits under the Head Start Act;
 - Student loans and home mortgage loan programs; and
 - Foster care and adoption benefits.

As there are multiple federal and state public benefits programs, USCIS is unable to list all programs not included within the public charge inadmissibility determination.

Medicaid Exclusion

- Benefits paid for an emergency medical condition;
- Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA);
- School-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under State law;
- Benefits received by an applicant under the age of 21; and
- Benefits received by a pregnant applicant, including the period during the pregnancy and 60 days after the end of the pregnancy.

Emergency Medical Condition

"Emergency medical condition means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part." States determine whether an illness or injury is an "emergency medical condition" and provide payment to the healthcare provider as appropriate. "Emergency medical services" are often involuntary and must be provided by doctors and hospitals regardless of the ability to pay, such as medical services at a hospital after a car accident.

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) sets apart treatment for emergency medical conditions and makes funds available for the reimbursement of states regardless of an alien's immigration status, and regardless of whether or not an alien would be subject to public charge ground of inadmissibility or other grounds of inadmissibility. Congress intended that PRWORA exceptions be applied generally, and treatment of emergency medical conditions in particular, be narrowly construed. To qualify for emergency medical condition exclusion, medical conditions must be of an emergency nature, such as:

- Medical treatment administered in an emergency room;
- Critical care unit or intensive care unit;
- Pre-natal or delivery care assistance; or
- Treatment for mental health in which the alien's condition is such that he is a danger to himself or to others and has therefore been judged incompetent by a court of appropriate jurisdiction.

Depending on the state, and the medical condition, categorization as an "emergency medical condition" for purposes of Medicaid reimbursement may not be limited to hospital emergency room visits as defined by state case law. This may depend on the state which provided the emergency medical care. The applicants must provide information from the state indicating that the medical condition and use of the public benefit was for emergency medical condition. The following are examples of how states have categorized conditions as emergency medical condition.

Individuals with Disabilities Education Act and School-Based Benefits

USCIS does not consider the Individuals with Disabilities Education Act (IDEA) and school-based benefits provided to children who are at or below the oldest age of children eligible for secondary education as determined under state law as public benefits in the public charge inadmissibility determination. Parents provide consent for school districts to release personally identifiable information to a state public insurance program (for example, Medicaid) for billing purposes. The applicant would submit such consent document or documentation from the school to identify the Medicaid benefit as provided under the IDEA or other school-based benefit.

Under the Age of 21 and Pregnant Women

Congress, through Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), expanded the Medicaid coverage for children and pregnant women who are lawfully residing in the United States, including those within their first 5 years of having certain legal status.

For public charge inadmissibility purposes, USCIS does not consider receipt of Medicaid by children under 21 and pregnant women during pregnancy and 60 days following pregnancy.

Children Acquiring Citizenship

For public charge inadmissibility purposes, USCIS does not consider any public benefits received by:

- Children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship, upon meeting the eligibility criteria for acquisition of citizenship; or
- Children of U.S. citizens whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption (if the child satisfies the requirements applicable to adopted children) in the United States by the U.S. citizen parent(s), upon meeting the eligibility criteria for acquisition of citizenship; or
- Children, residing outside the United States, of U.S. citizens who are entering the United States for the purpose of attending an interview.

Benefits Received by Member of the U.S. Armed Forces and their Spouses and Children

Alien military service members and their families are subject to the public charge inadmissibility determination. However, USCIS does not consider any public benefit received by a person enlisted in the U.S. armed forces, or serving in active duty or in the Ready Reserve component of the U.S. armed forces in the public charge inadmissibility determination. In addition, public

benefits received by the spouse or child of a service member are not considered a public benefit in the public charge inadmissibility determination. This is applicable regardless of the service member's immigration status.

State Non-Cash Benefits

USCIS does not consider any state funded non-cash benefit which may include health insurance, or social services programs as public benefits to be considered within the public charge inadmissibility determination. For example, the following public benefit would not be considered in the public charge inadmissibility determination:

EDUCATION & SKILLS

Officers must consider an applicant's education and skills when determining whether an alien is likely to become a public charge at any time in the future. Education and skills are relevant to the public charge inadmissibility determinations because they affect the applicant's ability to obtain and maintain stable employment.

USCIS considers whether the alien has adequate education and skills to either obtain or maintain lawful employment with sufficient income to avoid being more likely than not to become a public charge at any time in the future. Being employed with an income above 250 percent of the [Federal Poverty Guidelines](#) (FPG) is considered a heavily positive factor, while being unable to demonstrate employment history or reasonable prospects of employment is a heavily weighted negative factor.

The ability of the applicant to earn sufficient income to pay for basic living needs (that is, food and nutrition, housing, and healthcare), the current employment status, and the future employment prospects, are a focus of the public charge determination.

Having no work experience is a negative factor in the totality of the circumstances.

An officer may consider any employment history or job offers, even if the applicant is not authorized to accept employment, as a positive factor in the totality of the circumstances for purposes of the public charge inadmissibility determination. However, unauthorized employment may adversely impact immigration eligibility generally, including being barred from adjusting status under INA 245(c)(2) and INA 245(c)(8).

Primary Caregiver

USCIS considers household contributions through primary caretaking responsibilities as a positive factor in the totality of the circumstances aspect but recognizes that such unpaid engagement is difficult to monetize. Correspondingly, being a primary caretakers is consideration in the totality of the circumstances adjudication and may outweigh a negative factor related to the alien's education and skills because of lack of employment or lack of employment history.

A primary caregiver is an alien who is 18 years of age or older who has significant responsibility for actively caring for and managing the well-being of a child or an elderly, ill, or disabled person in the alien's household.

In determining whether to consider that the applicant is a caretaker as a positive factor in the totality of the circumstances, USCIS considers:

- Whether the person receiving the applicant's care is a member of the applicant's household;
- Whether other members of the household also claim to be the primary caregiver. A person requiring care may only have one primary caregiver within a household. If multiple caregivers share the care of a person in a given household, the applicant must establish that he or she has significant caregiving responsibility so as to impact the applicant's ability to be employed full-time;
- Whether the person being cared for lives in the same residence as the applicant;
- The age of the person being cared for; and
- The medical condition & any disabilities, of the person being cared for.

EDUCATION

A person may have more opportunities of employment at higher salaries with higher education. Having a high school diploma or higher education such as a bachelor's, master's, or doctoral degree

is a positive factor in the totality of the circumstances. In addition, an alien who is currently attending a college or university to obtain a degree is also a positive factor. An alien may, upon completion of education, obtain employment with a higher salary. An officer may review whether the alien is in good standing at the college or university and attending a full course of study. For example, the fact that an alien who enrolls in one course for the purpose of an immigration benefit would not be considered a positive factor in the totality of the circumstances.

Applicants Under the Age of 18

For the purposes of reviewing this factor, the fact that an alien is under the age of 18 and has not completed a high school education does not result in a negative factor. Being enrolled in school is a positive factor. The officers weigh the parent's or legal guardian's ability to financially provide for the child. Children may however have otherwise completed a high school education or higher and have worked or gained certifications in skills which would be considered positively in the totality of the circumstances.

SKILLS

Occupational skills relevant to employment are also considered positive factors in the totality of the circumstances. An applicant who has specific skills and certifications as a mechanic, plumber, electrician, millwright, agricultural work, hospitality, welder, or other trade is more likely to obtain employment in those trades, which decreases the likelihood that the alien will become a public charge at any time in the future. Having no employment skills is a negative factor.

Types of Skills

USCIS considers positively any relevant occupational skill(s) including, but not limited to:

- Workforce skills and training which may include participation in vocational rehabilitation programs to the extent that such participation makes the applicant less likely to receive one or more enumerated public benefits above the threshold;
- Licenses for specific occupations or professions; and
- Certificates documenting mastery or apprenticeships in skilled trades or professions.

Department of Labor's Bureau of Labor Statistics (BLS) Occupational Outlook Handbook details career information on duties, education and training, pay, and outlook for numerous occupations. Additionally, see BLS Occupational Employment Statistics Program provides annual employment and wage estimates for over 800 occupations for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas.

In reviewing the skills certifications and licenses, an officer reviews:

- When the certifications or licenses were obtained;
- Who issued the certification, license; and
- Expiration or renewal date of the license or certification.

A certification or license that has been maintained for multiple years may indicate that the person may have additional positive consideration in that more employment opportunities may be available. In addition, an expired certification or license may not weigh as much as a current certification or license.

ENGLISH PROFICIENCY

An applicant's literacy and English proficiency is a positive factor.

The alien may have a certification or be undertaking classes establishing proficiency in English, which is a positive factor. An officer may determine an applicant's ability to speak and understand English based on the applicant's ability to respond to questions normally asked in the course of an interview, if applicable. If necessary, the officer should repeat and rephrase questions during the interview until the officer is satisfied that the applicant either understands the questions or does not understand English. The applicant only needs to demonstrate basic English skills for a positive consideration.

If the applicant is not proficient in English, the officer should review whether the lack of English or other language proficiency adversely affects the applicant's ability to obtain or maintain employment with an income at or above the income threshold. Not all occupations require proficiency in English. Also, based on the amount of household assets and resources, an applicant may not need to be employed, which would be taken into consideration in the totality of the circumstances.

Some occupations require proficiency in foreign language, and fluency in foreign language could positively affect the applicant's ability to obtain or maintain employment at or above the income threshold.

Applicant's Education and Skills

Positive Factors	Negative Factors	Heavily Weighted Negative Factor	Heavily Weighted Positive Factor
Attendance in elementary, middle or high school	No high school diploma or GED or equivalent	The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment	The alien is authorized to work and is currently employed in a legal industry with an annual income, excluding any income from illegal activities, of at least 250 percent of the FPG for the alien's household size
High School Diploma or GED or equivalent	No work experience		
Higher education such as Bachelor's Degree, Master's Degree, or Doctoral Degree	No occupational skills		
Skills and certifications relevant to employment	Limited to no English language proficiency		
Basic English proficiency			
Primary Caregiver			
Other language skills in addition to English			

APPLICANT'S IMMIGRATION STATUS & EXPECTED PERIOD OF ADMISSION

USCIS considers the immigration status that the alien seeks and the expected period of admission as it relates to the alien's ability to financially support himself or herself during the duration of the alien's stay. An adjustment of status applicant's prospective immigration status is that of a lawful permanent resident (LPR). The expected period of stay is permanent and is generally considered to be a negative factor. In general, aliens seeking admission as LPRs are more likely to receive public benefits than nonimmigrants because they intend to reside permanently in the United States and LPRs are eligible for more public benefits than nonimmigrants. An applicant may otherwise establish that he or she is not eligible for public benefits because of the immigration status or income.

Positive Factor	Negative Factor
The applicant provides evidence of ineligibility for public benefits based on immigration status or expected period of stay	Seeking adjustment of status as a lawful permanent resident

AFFIDAVIT OF SUPPORT & ADDITIONAL SUPPORT THROUGH SPONSORSHIP

Aside from the requirements under INA 212(a)(4) to have a sufficient I-864, USCIS also reviews the Affidavit of Support Under Section 213A of the INA as a factor in the totality of the circumstances.

**A sufficient Affidavit of Support Under Section 213A of the INA alone does not necessarily result in a finding that an alien is not likely at any time to become a public charge due to the statute's requirement to consider the mandatory factors. USCIS does not review a submitted Affidavit of Support (Form I-134) as a factor in the public charge inadmissibility determination.*

When considering the Form I-864 in the totality of the circumstances for the public charge inadmissibility determination, USCIS reviews the likelihood that the sponsor would actually provide the 125 percent of the FPG financial support to the alien including, but not limited to, consideration of the following:

- The sponsor's annual income, assets and resources;
 - The sponsor's relationship to the applicant including whether the sponsor lives with the alien;
 - The likelihood that the sponsor would actually provide the statutorily required amount of financial support to the alien; and
 - Whether the sponsor has submitted an affidavit of support with respect to other aliens.
- The more support provided, the greater the positive weight given in the totality of the circumstances.

Sponsor's Relationship to the Applicant

USCIS looks at how close of a relationship the sponsor has to the applicant, as close family members may be more likely to meet the support obligations and are given greater positive consideration in the totality of the circumstances. If the sponsor lives with the alien, a greater positive weight will be given to the factor in the totality of the circumstances consideration, as this could be indicative of the sponsor's ability to meet his or her sponsorship obligation.

Sponsor's Ability to Support.

More Positive Weight	Less Positive Weight
<ul style="list-style-type: none"> Sponsor's income and assets 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) The applicant has a relationship with the sponsor 	<ul style="list-style-type: none"> Sponsor's receipt of public benefits in the United States Sponsor has a previous bankruptcy Sponsor received a fee waiver for immigration benefits Sponsor is sponsoring multiple applicants

Likelihood of Actual Support

Even if the Form I-864 is sufficient, USCIS nonetheless considers the sponsor's ability or willingness to meet his or her support obligation. To the extent that the initial evidence submitted by the sponsor is insufficient to make this determination, USCIS requests additional information from the sponsor or interview the sponsor to determine whether the sponsor is willing and able to meet his or her support obligation. Lack of likelihood of actual support from the sponsor is given less positive weight in the totality of the circumstances consideration.

Heavily Weighted Negative Factors	Heavily Weighted Positive Factors
<ul style="list-style-type: none"> No current employment, recent employment history, or a reasonable prospect of future employment; Public benefit receipt at the threshold; Medical condition and is uninsured and either lacks prospect of obtaining private health insurance or lacks the financial resources to pay for foreseeable medical costs related to such medical condition; or The alien was previously found inadmissible or deportable based on public charge ground by an Immigration Judge or the Board of Immigration Appeals. 	<ul style="list-style-type: none"> Household has income, assets, resources, or support of at least 250 percent of the FPG for the alien's household size; Authorized to work and is currently employed with an annual income of at least 250 percent of the FPG for the alien's household size; or Has private health insurance

BOND

	Cash Bond	Surety Bond
Who can post it?	<ul style="list-style-type: none"> Natural person, including the alien; or Company or other entity 	<ul style="list-style-type: none"> Certified surety company; or The certified surety company's authorized agent
The bond is posted by submitting what documents?	<ul style="list-style-type: none"> Form I-945, completed in accordance with the form instructions; Payment submitted according to the form instructions; and Form G-28, if necessary 	<ul style="list-style-type: none"> Form I-945, completed in accordance with the form instructions; If submitted by an authorized agent of an acceptable surety company: Power of Attorney complying with state laws of governing jurisdiction in which the Power of Attorney was executed; and Form G-28, if the agent is also acting in the capacity of an attorney or accredited representative.
Is a payment submitted with the bond?	<ul style="list-style-type: none"> Yes, payment is submitted in accordance with Form I-945's instructions 	<ul style="list-style-type: none"> No, no payment accompanies the bond submission
Can the bond have a co-obligor?	<ul style="list-style-type: none"> No 	<ul style="list-style-type: none"> Yes, if the bond is submitted by an authorized agent of an acceptable surety company, the authorized agent becomes a co-obligor

Bond Amount

A public charge bond must be at least \$8,100. The minimum amount will be adjusted annually for inflation based on the Consumer Price Index for All Urban Consumers (CPI-U). However, USCIS determines the appropriate bond amount for each applicant on a case-by-case basis. The amount cannot be appealed by the alien, the obligor, agent/co-obligor, or their representative(s)(if any).

Bond Duration

USCIS only accepts public charge bonds of unlimited duration. This means that the bond will not expire, but instead remains in effect until one of the following:

- USCIS approves a substitute bond that replaces the bond originally posted;
- USCIS cancels the bond;
- USCIS determines that the bond is breached.

Bond Stages

If an alien is determined to be inadmissible based on the public charge ground, but is otherwise admissible, he or she may be admitted in the discretion of the Secretary of Homeland Security, if otherwise admissible, upon the giving of a suitable and proper bond. USCIS will only exercise this authority in the context of adjustment of status applications in cases where adjustment would otherwise be granted but for the public charge inadmissibility.

A public charge bond is a type of immigration bond. A bond, including a public charge bond, is a contract between the United States (the obligee) and a natural person or a company (the obligor) who pledges a sum of money to guarantee a set of conditions imposed by the U.S. government concerning the alien (also called the principal). In the case of the public charge bond, the obligor pledges a sum of money to guarantee that the applicant will not become a public charge, as defined in the regulations.

Public charge bonds are intended to hold the United States and all states, territories, counties, towns, municipalities, and districts harmless against aliens becoming public charges. A public charge bond is issued on the condition that the alien does not become a public charge after the bond is issued. If the U.S. government permits the alien to post a public charge bond, and the bond posted is the amount specified by USCIS, and complies with all other requirements as provided in the form and form instructions, USCIS will accept the public charge bond and will adjust the applicant's status to that of a lawful permanent resident (LPR) despite the alien's inadmissibility. If the LPR receives public benefits above the threshold while the bond is in effect, and therefore has become a public charge, the LPR will have breached the conditions of the bond and the U.S. government will require payment on the bond. A breach does not affect the alien's LPR status.

The decision to allow an alien only inadmissible on the public charge ground to submit a public charge bond is within DHS's discretion. The posting of a public charge bond by an alien found to be inadmissible only on account of the public charge ground authorizes USCIS, upon accepting the bond, to adjust the status of an alien to that of an LPR.

The public charge bond is posted on the condition that the alien does not become a public charge after adjusting status. If the alien does become a public charge because he or she has received public benefits above the threshold, the bond is breached and the U.S. government will request payment on the bond. If the alien does not become a public charge while the bond is in effect, then USCIS will cancel the bond upon the request from either the obligor or agent/co-obligor (the one who posted the bond), or the alien.

The following table summarizes the various stages of a public charge bond.

PUBLIC CHARGE BOND STAGES

Permission to Post Bond

A public charge bond may only be submitted by the alien or on the alien's behalf after USCIS notifies the alien and the alien's representative (if any) that a public charge bond may be submitted. USCIS does not accept requests to submit a public charge bond or unsolicited public charge bonds that are submitted together with an application for adjustment of status or otherwise.

USCIS Discretion to Offer a Bond

Providing the applicant with the opportunity to post a public charge bond is wholly within the discretion of the Secretary of Homeland Security. USCIS, therefore, determines whether to provide an adjustment of status applicant with the opportunity to post a public charge bond on a case-by-case basis and on the facts of each individual case.

Because USCIS has already determined that the alien is likely at any time to become a public charge, offering the opportunity to post a public charge bond in the adjustment of status context is generally only warranted in limited circumstances.

Positive Factors

- Having two or more positive factors;
- Having heavily-weighted positive factors present in the applicant's case;
- Exceptional humanitarian considerations. Such factors are unusual, rare, and compelling). General "family unity," such as unity with the relative who petitioned on the applicant's behalf, is not an exceptional consideration in the context of the public charge bond and should not be used as a basis for determining which applicants are offered the opportunity to post a bond. "Family unity" could be considered a positive factor in the case of an immediate, nuclear family (spouse and minor children) where all but one family member has been found admissible on public charge grounds; and
- The applicant's admission on bond would serve national security or is otherwise in the public interest.

Negative Factors

- Having multiple negative factors in the public charge determination; and
- Having heavily-weighted negative factors present in the applicant's case.

After identifying the positive and negative factors present in the applicant's case, USCIS assesses the weight given to these factors according to the following guidelines and determine whether the opportunity to post a public charge bond should be offered as a matter of discretion:

- If an applicant has one or more heavily-weighted negative factors present in his or her case, USCIS generally does not favorably exercise its discretion to allow posting of a public charge bond.
- If an applicant has one or more heavily-weighted positive factors present in his or her case, USCIS weighs them heavily in determining whether to offer the applicant the opportunity to post a public charge bond.
- In general, factors that promote national security or that are otherwise in the public interest carry more weight in the discretionary determination.

If the applicant's negative factors outweigh the applicant's positive factors, USCIS generally does not offer the applicant the opportunity to post a public charge bond.

If the positive factors in the applicant's case outweigh the negative factors, USCIS generally offers the applicant the opportunity to post a public charge bond after having determined the appropriate bond amount.

MINIMUM BOND AMOUNT \$ 8,100 (annually adjusted for inflation based on the Consumer Price Index for Urban Consumers (CPI-U))

Requesting Bond

If USCIS determines that giving the adjustment of status applicant the opportunity to submit a public charge bond is warranted as a matter of discretion, USCIS will request the Public Charge Bond (Form I-945) by issuing a Notice of Intent to Deny (NOID). The NOID should discuss, at a minimum, all of the following items:

- That the alien has been found inadmissible on the public charge ground and the reason(s) why;
- That USCIS decided to favorably exercise its discretion to allow the alien to have a public charge bond submitted, which would permit, if accepted, the alien to adjust status to that of an LPR;
- The type of bond. In general, the officer should give the alien the choice between a cash or surety bond. Only in extraordinary circumstances, and after consulting with the officer's supervisory chain, should the officer require a specific type of bond in the NOID. In addition, the notice should also state that, in case of a surety bond, the bond must be submitted by an acceptable surety company that is listed on the Department of the Treasury's Circular 570;
- The public charge bond amount;
- That the bond must be posted by submitting Form I-945 completed in accordance with the form instructions and with the appropriate fee;
- The due date, that is, by when Form I-945 must be submitted to (postmark date) USCIS; and
- The consequences for failure to respond to the notice and for the failure to submit Form I-945, in accordance with the form instructions and with the appropriate fee. In particular, the NOID should specify that the public charge bond will be rejected or deemed insufficient and that the adjustment of status will be denied, if the bond is not properly submitted in accordance with the instructions and with the appropriate fee. Any additional information required to properly post the bond

REVISED FORMS

With this new rule USCIS has released new forms. The new forms asks for additional information relevant to determinations of whether or not an applicant is a public charge. The following USCIS forms have been updated:

- I-129, Petition for Nonimmigrant Worker
- I-129CW, Petition for CNMI-Only NI Worker

- I-485, Application for Adjustment of Status
- I-485 Supplement A. (for INA 245(i))
- I-485J, Bona Fide Job Offer for Porting
- I-593, Application to Extend/Change NI Status
- I-601, Waiver of Ground of Inadmissibility
- I-864, Affidavit of Support
- I-864A, Contract for Sponsor & Household
- I-864EZ, Affidavit of Support
- I-912, Request for a Fee Waiver

**USCIS has stated that if they receive older versions of the revised forms listed above, they will reject them starting February 24, 2020.*

NEW FORMS

USCIS has released new forms that deal specifically with the public charge rule.

The Form I-944 Declaration of Self-Sufficiency

Applicants for adjustment of status must file a Form I-944 Declaration of Self-Sufficiency or they may be deemed inadmissible on account of the public charge ground of inadmissibility and their Green Card will be denied.

The Form I-945 Public Charge Bond

A finding of inadmissibility based on public charge cannot be overcome with a waiver like other grounds of inadmissibility. Instead this Public Charge Bond form can be used to overcome the issue.

Use this form to submit a public charge bond with the U.S. government after USCIS has notified you that you may submit a public charge bond. The public charge bond provides security for performance and fulfillment of the financial obligations of a bonded alien (someone who is not a U.S. citizen). You may only submit this form if USCIS has notified you that you may submit a public charge bond.