



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

**Public Charge Update:
New Forms and Policy Guidance
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Webinar Agenda

- New Rule Quick Recap
- Implementation Recap
- New and Revised Forms
- New Policy Guidance for Adjudicators
- Best Practices and Next Steps



Final Rule Big Picture

- Assesses public charge inadmissibility by applying five statutory factors to applicant
- Evaluates applicant’s financial status by whether applicant household income is above 125% of the federal poverty guideline (FPG)
- Delegates great discretion to USCIS officer in weighing list of factors w/o firm standards
- Minimizes role of affidavit of support



Final Reg and Statutory Factors

- Sets out “standards” for consideration of each of the statutory factors:
 - Age
 - Health
 - Family status
 - Assets, resources, financial status
 - Education and skills
 - Affidavit of support
- Applicant may be inadmissible for public charge without any receipt of public benefits



USCIS on Implementation

- Final rule applies only to applications and petitions postmarked (or if applicable, submitted electronically) on or after Feb. 24, 2020. For applications and petitions sent by commercial courier (UPS, FedEx, and DHL), postmark date is date reflected on courier receipt.
- After Feb. 24, except in Illinois, USCIS will reject prior editions of forms if form is postmarked on or after Feb. 24, 2020



Update on DOS Implementation

- 2018 FAM changes
- Published interim final rule on Oct. 11, 2019
- Published proposed Form DS-5540
- DOS now seeking to implement regulations on February 24. Request to OBM for expedited approval of DS-5540 pending.
- Pending litigation in SDNY challenging reg, FAM guidance, and Presidential Proclamation

New USCIS Policy Guidance on Public Charge Inadmissibility

- Volume 8 – Admissibility, Part G- Public Charge
- 20 Chapters
- 7 Appendices
- Key Points on Totality of Circumstances Assessment:
 - Assessment is Prospective
 - Assessment is Subjective
 - Factors Assessed Individually and Cumulatively

New and Updated Forms

New USCIS Forms

- I-944
- I-945
- I-356

Updated Forms

- I-485, I-485A, I-485J
- I-539, I-539A
- I-601
- I-912
- I-864, I-864A, I-864EZ
- I-129, I-129CW

I-944 Declaration of Self-Sufficiency

- Applies only to those subject to public charge inadmissibility ground
- 18 pp form, 16 pp instructions
- Must submit with adjustment of status application
- Questions address all statutory factors, with requirements to submit related evidence

I-944 and Calculation of HH Size

Over 21, or Under 21 and Married

- Applicant
- Spouse if reside together
- Kids under 21, living with applicant or applicant is supporting or must support
- Others provided 50% support or tax dependents
- Others providing applicant with 50% of support or listing applicant as dependent

Under 21

- Applicant
- Kids under 21 living with applicant or applicant is supporting or must support
- Parents, legal guardians or others required to provide applicant with 50% support
- Children of parents/legal guardians residing with applicant, or for whom parents/guardians support or required to support

I-944 and Calculation of HH Income

- Should show annual HH gross income at 125% of FPG based on HH size
- Submit tax transcript of most tax year for all HH members whose income is included
- If insufficient income, can include value of assets and resources at 5x shortfall
- Show 3x shortfall where applicant is:
 - child of USC over age 18
 - spouse of USC
- Non-Hague orphans count assets 1x shortfall

I-944: Additional Information on Financial Status of Applicant

- Liabilities and debts
- Credit card score and report (if no credit report: evidence of continued payment of bills)
- Information re bankruptcy if applicable
- Health insurance information
- Prior receipt of public benefits
- Applications for or receipt of fee waivers

I-944: Education and Skills

- Educational history: school, degree, field of study, years of attendance
- Occupational skills: relating to formal training programs, certificates and licenses
- English and other languages: relating to formal courses and certifications
- Status as primary caregiver for child, elderly, ill or disabled individual in household

New USCIS Policy Guidance on Public Charge Inadmissibility

- Do not feel limited to the questions on I-944
- “USCIS reviews...as well as any other info provided in the record to determine whether the applicant is inadmissible on public charge”
- In evaluating totality of the circumstances, consider
 - All evidence provided and in the record
 - Statements by applicant during interview
- Guidance references 46 separate factors to assess
- Applicant may present factors not listed in statute, regs, or Policy Manual

USCIS Policy Guidance on Age

- Below 18, over 61 = negative factor
- 18-61 = positive factor
- Over 61, counter negative factor with:
 - Current employment or job history
 - Income > 125% FPG
 - Retirement income, pension, savings, resources
- Below 18, counter with:
 - Full-time student
 - Employed

USCIS Policy Guidance on Health

- Absence of health condition = positive factor
- Class A certification = inadmissible
- Class B certification = negative factor
- Civil surgeon explains medical condition and
 - Degree to which limits physical activity
 - Extent to which remediable
 - Will require extensive medical care
 - Interfere with ability to work, go to school, care for oneself

USCIS Policy Guidance on Health Insurance

- Private, no ACA subsidy = heavily weighted positive factor
- State-only subsidized, foreign = positive factor
- Private, ACA subsidy = positive factor
- Medicaid (w/in exceptions), CHIP = positive
- No health insurance = negative factor
- Medicaid (outside exceptions) = heavily weighted negative factor

USCIS Policy Guidance on Health Insurance

- Resources to cover medical costs = positive factor
- Medical condition and no health insurance or resources = heavily weighted negative factor
- Submit policy page: terms, conditions, deductible
- Form 1095-B, 1095-C

USCIS Policy Guidance on Household Size, Income

- Bigger household size → bigger the income
- Different from affidavit of support rules
- Learn who can and must count!
- Gross income as reported on last tax return(s)
- Income = work with EAD or w/o EAD
- Income, assets ≥ 250% = heavily weighted positive
- EAD, income ≥ 250% = heavily weighted positive
- Income, assets ≥ 125% = positive factor
- Income < 125% = negative factor

USCIS Policy Guidance on Assets, Resources, Financial Status

- Resources and assets
 - 12 mos. of bank statements
 - Full access to annuities, IRA, stocks/bonds
 - Real estate: licensed appraiser, equity value
 - Auto if more than one
- Good credit report (w/in 12 mos.) = positive factor
- Bad credit report = negative factor
- Credit score of ≥ 670 = positive factor
- Credit score 580 – 669 = neutral factor
- Credit score < 580 = negative factor

USCIS Policy Guidance on Assets, Resources, Financial Status

- Liabilities = negative factor
 - Mortgage, car loans
 - Credit card debt, taxes, child support
- Fee waivers = negative factor
- Bankruptcy w/in 2 years = negative factor
- Adjustment of status applicant = negative factor!

Policy Manual Guidance on Receipt of Benefits

- Receipt, application/certification SSI, TANF, state GA
 - Prior to 2/24/20 = negative factor
 - After 2/23/20 = negative factor; > 12 mths, w/in 36-mth period = heavily weighted negative factor
- Receipt etc. of Medicaid, SNAP, 3 housing programs
 - Prior to 2/24/20 = irrelevant
 - After 2/23/20 = negative factor; > 12 mths, w/in 36-mth period = heavily weighted negative factor
- Withdrawal from benefit = positive factor
- Print out indicating ineligible = positive factor

Policy Manual Guidance on Employment and Skills

- Adequate education, skills to get decent job?
- Not employed, no job history, no prospects = heavily weighted negative factor
- Currently employed = positive factor
- Currently employed w/ EAD and income > 250% = heavily weighted positive factor
- Valid job offer = positive factor
- Primary care provider, unpaid = positive factor

Policy Manual Guidance on Education, English Proficiency

- High school degree = positive factor
- College or other degree = positive factor
- Under 18 and in school = positive factor
- Specific job skills = positive factor
- No job skills = negative factor
- English proficiency = positive factor
- Certification of courses = positive factor
- Speak *additional* foreign language = positive

Review: Positive Factors

- Age 18-62
- Healthy (no Class B cert)
- **Total income > 250%**
- **EAD, income > 250%**
- Income > 125%
- ACA health insurance
- Medicaid, CHIP
- **Private health insurance**
- Resources to cover medical costs
- Good credit report
- Credit score \geq 670
- Employed, job history
- Job skills, job offer
- High school degree
- College or other degree
- Primary care provider
- Not benefits eligible
- Speaks basic English
- Taken English courses

Review: Negative Factors

- Age < 18 or > 62
- Class B health condition
- **Health condition and no insurance, resources**
- Total income < 125%
- No health insurance
- Receipt of SSI, TANF, state GA before 2/24/20
- **Receipt of 9 benefit programs after 2/23/20**
- Fee waiver
- Negative credit report
- Credit score < 580
- Liabilities
- **Unemployed, no job history or prospects**
- No job skills
- No high school degree
- No English skills
- Adjustment applicant
- **Prior inadmissible on public charge**

Policy Manual Guidance: Public Charge Bond

- Discretionary, only available at USCIS invitation
 - Cannot be inadmissible on any other ground
 - Totality of the circumstances analysis
 - Generally not offered if heavily weighted negative factors present
- Conditions:
 - Alien will not receive any public benefits for more than 12 months in the aggregate within any 36 month period, after adjustment is granted and until bond is cancelled
 - Additional conditions could be imposed
- Minimum bond at least \$8,100 (adjusted for inflation)
- 8 CFR 103.6 and 8 CFR 213.1

Policy Manual Guidance: Public Charge Bond

- Contract between the U.S. and a person or company who pledges a sum of money to guarantee that the alien will not become a public charge
 - Obligor = person or surety company that will post bond
 - Principal = noncitizen for whom bond is posted
 - Beneficiary/Obligee = DHS
- Cash or surety bond – but no process for cash bond yet
- Surety:
 - Acceptable sureties defined at 8 CFR § 103.6(b)
 - See Treasury Department Circular 570
 - Surety paid to gov't only if conditions of bond are breached

I-945: Public Charge Bond

- Include:
 - \$25 fee
 - I-485 receipt and copy of communication from USCIS instructing applicant to file I-945
 - The specified bond amount in cash or surety
- Obligor, surety, or agent must provide TIN
 - ITIN, SSN, Employer Identification Number
- If executed by surety company, rate and amount of premium
- Name and address of person who executed agreement
- If surety submitted by an authorized agent of acceptable surety company: Power of Attorney

I-356: Cancellation of Public Charge Bond

- Remains in effect until the alien
 - naturalizes
 - permanently departs
 - dies,
 - reaches 5th anniversary of adjustment to LPR status, or
 - obtains another status not subject to public charge
- Must submit request to cancel the bond with Form I-356
- Obligor or alien must establish that conditions of bond were not breached
- Provide info on receipt of public benefits since bond was accepted
- Authorize federal agencies to disclose info to USCIS regarding public benefits adjudications

New Policy Manual Guidance on Public Charge and Extension of Status

- Policy Manual Vol. 2, Part A, Chapter 4
 - Not subject to inadmissibility
 - Subject to *public benefits condition* if application is postmarked on or after 2/24/2020, unless statutorily exempt

I-539, I-539A Form Revisions

- New section on receipt of or certification for public benefits since obtaining nonimmigrant status, and applications for Medicaid
- Information not required for applicants within certain nonimmigrant categories: A1, A2, G1, G2, G3, G4, NATO1, NATO2, NATO3, NATO4, NATO5, NATO6, NATO7, T1, T2, T3, T4, T5, T6, U1, U2, U3, U4, U5

New Policy Manual Guidance on Public Charge and Naturalization

- Policy Manual Vol. 12, Part D, Chapter 2
- Applicant must have been lawfully admitted as an LPR
 - If adjustment was postmarked on or after 2/24/20 or applicant was admitted as an LPR on or after 2/24/2020, officer determines whether the alien was lawfully admitted as an LPR, including not inadmissible as a public charge.

I-485 Form Revision

- Form:
 - New Qs. re exemption from public charge and/or affidavit of support requirement. Note form error: omits VAWA self-petitioners
- Instructions:
 - New text on who must submit I-864 and I-944, and who must submit only I-944 or I-864
 - If subject to public charge inadmissibility, submit three years of evidence re employment history

I-912 Revision to Form Instructions

- **NOTE:** You may be ineligible for certain immigration benefits if you are found inadmissible as a public charge. While adjudication of the fee waiver request does not consider the requestor's inadmissibility, filing to request a fee waiver and receiving an approved fee waiver can negatively impact eligibility for any immigration benefit that is subject to the public charge determination.

Public Charge Regulations: Role of Affidavit of Support

- Sufficiency of Affidavit of Support is starting point in determining public charge inadmissibility
- Per Policy Manual “Step-by-Step Approach” to totality of circumstances analysis, if an applicant fails to submit AOS or AOS is inadequate, applicant will be found inadmissible without further assessment

Joint Sponsor Concerns

- Adjudicator will examine ability, willingness, and likelihood to provide financial support
- Factors will examine:
 - Family member or mere friend
 - Residing with the applicant
 - Filed prior I-864s
 - Filed for bankruptcy
 - Received public benefits or fee waiver
- Get separate statement from joint sponsor

Totality of Circumstances Scenario

- IR spouse, age 29, living with wife and 2 kids
- No health issues but no health insurance
- IR spouse has no work history and no identified job skills, no English proficiency, 8th grade education
- Petitioner spouse I-864 insufficient
- I-864 from joint sponsor friend of petitioner with income just above required amount, and two 864 obligations for joint sponsor family members
- No credit report, no known debts, no public benefits use

Totality of Circumstances Scenario

- F-4 child derivative living with parents and sibling
- Attends kindergarten, learning English
- No health conditions
- HH income of \$70,000 exceeds 250% of FPG
- No public benefits received and evidence submitted to show not eligible based on HH income
- Health insurance through parent’s employer
- Petitioner I-864 well over 125% FPG

Advice for Practitioners

- Use separate screening tool on public charge at onset of adjustment of status eligibility assessment. Some clients may need “advice only” counseling to prepare for application at later time
- Identify when client can file I-944 now that can be placeholder for supplemental document submission or amended I-944 at time of case adjudication
- Submit applications with cover letter referencing totality of circumstances framework and identifying why positive factors outweigh negative factors
- Utilize practitioner tools and other resources prepared by CLINIC and other organizations providing technical support
- Get training! Increase your knowledge of family-based immigration law and the grounds of inadmissibility with these CLINIC trainings:
 - Family-Based Immigration Law – register by Friday
 - Webinar Series on Grounds of Inadmissibility

Advocacy

- Join our public charge listserv by emailing advocacy@cliniclegal.org
- If you are a CLINIC affiliate and have questions that are not answered by the regulation or guidance and need clarification from USCIS, send them to advocacy@cliniclegal.org
- NOTE: Non-affiliates can send questions to CLINIC through the public charge listserv



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