Update on Public Charge
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Webinar Agenda

• Overview of public charge
• Exemptions
• Definition and Final Rule
• USCIS Policy Manual and I-485 changes
• Receipt of public benefits
• Public charge bonds

Overview of Public Charge

• Ground of inadmissibility, INA § 212(a)(4)
• Brief history
• Who is affected:
  • Applicants for adjustment (I-485 filed on/after 12/23/22)
  • Immigrant visa recipients seeking admission
  • Returning LPRs (outside > 180 days)
• What about Dept. of State? Dept. of Justice?
• Ground of deportation

Exempt from Public Charge, 8 CFR § 212.23

• Asylees and refugees
• Cubans applying under Cuban Adjustment Act
• Special Immigrant Juvenile applicants
• VAWA self-petitioners
• T nonimmigrant applicants and at adjustment stage
• U nonimmigrant petitioners and at adjustment stage
• Afghan and Iraqi interpreters or employees of US
• LRIF, NACARA, HRIFA adjustment applicants
• TPS applicants/re-registrants
Exempt from I-864 but Not Public Charge

- Most employment-based applicants
- DV lottery winners
- Others file I-864W but still subject to 212(a)(4):
  - Widow/widowers
  - 40 qualifying quarters
  - Children under 18 of USC parents
- ** VAWA self-petitioners exempt from public charge but must file I-864W

Public Charge Defined

- INA § 212(a)(4): at the time of adjustment or application for admission in the opinion of the USCIS/DOS is likely at any time to become a public charge
- 8 CFR § 212.21(a): “primarily dependent on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or long-term institutionalization at government expense”
- USCIS Policy Manual, Vol. 8, Part G

Public Cash Assistance for Income Maintenance, Institutionalization

- 8 CFR § 212.21(b):
  - SSI
  - TANF
  - State, Tribal, territorial, or local cash benefit programs for income maintenance
- Long-term institutionalization:
  - Medicaid
  - Nursing home, mental health facility
“Receipt”
- Not receipt by other relatives
- Not receipt on behalf of third parties
- Not pending applications
- Not approved/certified for future benefits (but can be considered)

Major Public Benefits Not Included
- Benefits available to refugees while in a status not subject to public charge
- Medicaid, other health programs
- SNAP, WIC, other food programs
- CHIP
- HUD, other housing programs
- Immunizations or testing
- Earned benefits (SSDI, UI)
- Child Tax Credit
- LIHEAP, other energy programs
- Treatment related to Covid-19
- Home and Community-based Services
- Emergency Food Assistance
- School lunch, school breakfast
- Public school
- Disaster-related benefits
- School loans, educational programs
- Foster care/adoption benefits

Five Statutory Factors - INA § 212(a)(4)(B)
- Factors added to INA in 1996:
  - Age
  - Health
  - Family status
  - Assets, resources and financial status
  - Education and skills
- Prospective determination based on the totality of the circumstances
- For family-based, focus has been on sixth factor: I-864 affidavit of support. Remains most important factor.
- Five factors now in regulations at 8 CFR § 212.22(a)(1)
- Some guidance in USCIS Policy Manual Vol. 8, Part G
**New I-485**

**Public Charge**

61. Are you subject to the public charge ground of inadmissibility under INA section 212(a)(4)?

☐ Yes  ☐ No

If you answered “Yes” to Item Number 61., complete Item Numbers 62. - 68.d. below. If you answered “No” to Item Number 61., go to Item Number 69.a. If you need extra space to complete this section, use the space provided in Part 14.

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**Age**

- Very little guidance
- Children unable to earn a living (duh!)
- Look at total household income & assets, other factors
- No mention of advance age

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**Health**

- Must defer to medical exam results (I-693)
- Class B certification
- Only conditions that affect ability to work
- Disability not itself indication of public charge
Household Size

- Specific definition, different from that for sponsors, I-864
- Count applicant and family members residing with applicant:
  - Spouse
  - Parents
  - Children
  - Siblings unmarried, under 21
- Count dependents on last tax return and those who named applicant as a dependent
- Size to be used for household income, assets, liabilities

62. What is the size of your household?

Income, Assets, Liabilities

63. Indicate your annual household income
- $0-$27,000
- $27,001-$52,000
- $52,001-$85,000
- $85,001-$141,000
- Over $141,000

64. Identify the total value of your household assets:
- $0
- $100
- $10,001-$19,999
- $20,000-$39,999
- $40,000-$99,999
- $100,000-$199,999
- $200,000-$299,999
- $300,000-$499,999
- $500,000-$749,999
- $750,000-$999,999
- $1,000,000 or more

65. Identify the total value of your household liabilities (including both secured and unsecured liabilities):
- $0
- $1,001-$10,000
- $10,001-$19,999
- $20,000-$39,999
- $40,000-$59,999
- $60,000-$79,999
- $80,000-$99,999
- $100,000-$199,999
- $200,000-$299,999
- $300,000-$399,999
- $400,000-$499,999
- $500,000-$599,999
- $600,000-$699,999
- $700,000-$799,999
- $800,000-$899,999
- $900,000-$999,999
- $1,000,000 or more

Education

- No high school degree requirement
- Unclear how “highest grade completed” will be considered
- Uses terms related to U.S. education system

66. What is the highest degree or level of school you have completed?
- Grades 1 through 11
- 12th grade - no diploma
- High school diploma, GED, or alternative credential
- 1 or more years of college credit, no degree
- Associate's degree
- Bachelor's degree
- Master's degree
- Professional degree (D.M.D., D.N.M., etc.)
- Doctorate degree
Certificates, Licenses, Skills

- Formal certificates, educational certifications or licenses
- On-the-job skills, training
- Foreign language and English literacy

Receipt of SSI, TANF, State Cash Assistance

- Eligibility requirements for federal benefits
- Eligibility for state, Tribal, territorial, local cash assistance for income maintenance

Receipt of Long-Term Institutionalization

- Medicaid benefit, Social Security Act § 1905(a)
- Typically nursing facility or mental health institution
- Not short-term or for rehabilitation, sporadic, intermittent
- Not for imprisonment for conviction of crime
I-485 Adjudications

- Steps for adjudicator to take:
  Subject to public charge → Subject to I-864 → Sufficient I-864 → I-485 filed on/after 12/23/2022 → Review 5 statutory factors → RFE/NOID → Bond → Approve or deny

- Use of RFE and NOID
- Invitation to post bond
- Denials

Public Charge Bonds

- Applicant can’t request, USCIS must invite
- Highly discretionary, no standard provided
  - When?
  - How much?
- No history of public charge bond use
- Form I-945 submitted to USCIS
  - Obligor: surety company or individual
  - Principal: adjustment applicant
  - Beneficiary: USCIS
- New Form I-356: cancel bond after 5 years or naturalized

Fee Waivers

- Can be considered if received by applicant
- Most common fee waivers:
  - N-400, naturalization
  - I-90, renew green card
  - I-765, work authorization (not DACA)
  - I-821, TPS
Final Thoughts

- Adjudication of I-485s backlogged → delay in seeing results
- Policy Manual short on guidance (no bright line test, public charge determination inherently subjective in nature)
- Will cause concern for applicants/practitioners
- Additional time needed to answer I-485 questions
- Additional documentation optional
- State of Texas filed legal challenge
- Waiting for State Department action
- Listserv to share information

Resources and Websites

- September 2022 Final Public Charge rule: Federal Register notice
- USCIS FAQs: Public Charge Resources
- AILA Practice Pointer on Final Rule: AILA Doc. No. 22111800
- Legal Aid of San Mateo Co. website: keepyourbenefits.org
- Protecting Immigrant Families: pifcoalition.org/our-work/public-charge
- CLINIC Resource: Final Public Charge Rule and New I-485