

# Update on Public Charge

January 13, 2023

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## Today's Instructors



- Charles Wheeler
- Senior Attorney



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- Managing Attorney

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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

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### 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

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### Exempt from Public Charge, 8 CFR § 212.23

- |   |  |
|---|--|
| • Asylees and refugees                              | • U nonimmigrant petitioners and at adjustment stage |
| • Cubans applying under Cuban Adjustment Act        | • Afghan and Iraqi interpreters or employees of US   |
| • Special Immigrant Juvenile applicants             | • LRIF, NACARA, HRIFA adjustment applicants          |
| • VAWA self-petitioners                             | • TPS applicants/re-registrants                      |
| • T nonimmigrant applicants and at adjustment stage |  |

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### 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

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### 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

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### 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

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### “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)

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### 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

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### 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

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### 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

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### Household Size

- Specific definition, different from that for sponsors, I-864
- Count applicant and family members **residing with applicant**:
  - Spouse
  - Children
  - Parents
  - 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?

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### Income, Assets, Liabilities

63. Indicate your annual household income. 64. Identify the total value of your household assets.

- |   |  |
|---|--|
| <input type="checkbox"/> \$0-27,000       | <input type="checkbox"/> \$0-18,400        |
| <input type="checkbox"/> \$27,001-52,000  | <input type="checkbox"/> \$18,401-136,000  |
| <input type="checkbox"/> \$52,001-85,000  | <input type="checkbox"/> \$136,001-321,400 |
| <input type="checkbox"/> \$85,001-141,000 | <input type="checkbox"/> \$321,401-707,100 |
| <input type="checkbox"/> Over \$141,000   | <input type="checkbox"/> Over \$707,100    |

65. Identify the total value of your household liabilities (including both secured and unsecured liabilities).

- \$0    \$1-10,100    \$10,101-57,700    \$57,701-186,800    Over \$186,800

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### 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    12<sup>th</sup> 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 (JD, MD, DMD, etc.)    Doctorate degree

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### Certificates, Licenses, Skills

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

67. List your certifications, licenses, skills obtained through work experience, and educational certificates.


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### Receipt of SSI, TANF, State Cash Assistance

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

68.a. Have you ever received Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or State, Tribal, territorial, or local cash benefit programs for income maintenance (often called "General Assistance" in the State context, but which also exist under other names)?  Yes  No

68.c. If your answer to Item Number 68.a. is "Yes," list the specific benefit(s) you received, the start and end dates of each period of receipt, and the dollar amount of benefits received.

Benefit Received	Start Date	End Date	Dollar Amount

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### 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

68.b. Have you ever received long-term institutionalization at government expense?  Yes  No

68.d. If your answer to Item Number 68.b. is "Yes," list the name, city, and state for each institution, the start and end dates of each period of institutionalization, and the reason you were institutionalized.

Institution Name/City/State	Date From	Date To	Reason

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### 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

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### 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

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### 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

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### 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

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### Resources and Websites

- September 2022 Final Public Charge rule: [Federal Register notice](#)
- USCIS Policy Manual: [Vol. 8, Part G, Public Charge Ground of Inadmissibility](#)
- USCIS FAQs: [Public Charge Resources](#)
- AILA Practice Pointer on Final Rule: [AILA Doc. No. 22111800](#)
- Legal Aid of San Mateo Co. website: [keepyourbenefits.org](http://keepyourbenefits.org)
- Protecting Immigrant Families: [pifcoalition.org/our-work/public-charge](http://pifcoalition.org/our-work/public-charge)
- CLINIC Resource: [Final Public Charge Rule and New I-485](#)

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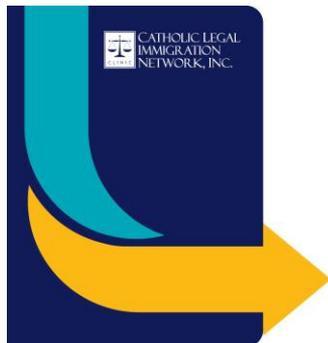
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