U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

September 4, 2025 PM-602-0190

Policy Memorandum

SUBJECT: Reaffirming Guidance on Public Charge Inadmissibility Determinations

Purpose

President Trump has made it a priority to ensure that the availability of public benefits does not encourage or reward illegal immigration into the United States.[1] Consistent with this priority, USCIS officers are reminded that they must strictly adhere to the statutes, regulations, and USCIS policy when making inadmissibility determinations, including under the public charge ground.[2] Aliens subject to the public charge ground of inadmissibility must demonstrate that they are not likely at any time to become a public charge.[3]

Authority

- INA 212(a)(4)(A)

Background

Self-sufficiency has been a longstanding principle of United States immigration policy to the extent that aliens are expected to "rely on their own capabilities and the resources of their families, their sponsors, and private organizations" rather than the government to meet their needs.[4] The public charge ground of inadmissibility has been a part of U.S. immigration law for more than 100 years. An alien who is likely at any time to become a public charge is inadmissible and ineligible for a visa, admission to the United States, or for adjustment of status to that of lawful permanent resident (LPR).[5]

The current public charge ground of inadmissibility has been in place since 1996 when Congress passed both the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). PRWORA provided the conceptual framework for changes to our country's approach to

[1] See Preventing Illegal Aliens from Obtaining Social Security Act Benefits, 90 FR 16451 (Apr. 18, 2025).
[2] See sections 212(a)(4) and 213A of the Immigration and Nationality Act (INA) respectively for the public charge ground of inadmissibility and Affidavit of Support Under Section 213A of the INA requirements. 8 CFR 212.20 through 212.23 address the public charge ground of inadmissibility under INA 212(a)(4). 8 CFR 213a addresses the Affidavit of Support Under Section 213A of the INA. See also the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility [8 USCIS-PM G].
[3] See INA 212(a)(4)(A).
[4] See 8 U.S.C. 1601(1) and (2).
[5] See INA 212(a)(4)(A).

the use of public benefits by aliens.[6] PRWORA states that aliens should not depend on public resources and the availability of public benefits should not constitute an incentive for immigration to the United States.[7] PRWORA also limited aliens' eligibility for federal, state, local, and tribal public benefits.[8] IIRIRA amended the public charge ground of inadmissibility in the Immigration and Nationality Act (INA) to mandate that an alien's age, health, family status, assets, resources, and financial status, and education and skills be considered when determining whether an alien is likely at any time to become a public charge.[9]

IIRIRA also required most aliens seeking admission as an immigrant or adjustment of status to that of an LPR to submit a legally enforceable Affidavit of Support Under Section 213A of the INA executed by a sponsor,[10] and stated that it may be considered as a factor in the public charge inadmissibility determination.[11] The former Immigration and Naturalization Service (INS) issued Interim Field Guidance in 1999,[12] and DHS promulgated regulatory changes in 2019[13] and additional regulatory changes in 2022.[14]

President Trump has made ensuring "that taxpayer-funded benefits be provided only to eligible persons and not encourage or reward illegal immigration to the United States" a priority.[15] The President has repeatedly emphasized that the executive branch must take action to ensure that public benefits are not provided to illegal aliens or unqualified aliens, and to ensure that appropriate eligibility verification is conducted.[16] Congress also recently passed H.R.1, a reconciliation act,[17] which further limited access to public benefits by aliens. These recent actions by President Trump and Congress are consistent with the longstanding policy of the United States that aliens should not be reliant on public benefits.

As set forth below, USCIS officers must make public charge inadmissibility determinations as mandated by Congress and consistent with DHS regulations and the USCIS Policy Manual.

Public Charge Ground of Inadmissibility

In general, the public charge ground of inadmissibility at INA 212(a)(4) applies to any alien who is applying for a visa, admission, or adjustment of status.[18] An alien applying for a visa, admission, or adjustment of status must establish that he or she is eligible for such benefit, including establishing that he or she is admissible and not inadmissible under the public charge ground (unless exempt

[6] Pub. L. 104-193 (August 22, 1996) (codified at 8 U.S.C. 1601).
[7] See 8 U.S.C. 1601(2).
[8] See Section 400 of PRWORA.
[9] See INA 212(a)(4)(B). See Section 531 of Division C of Pub. L. 104-208, 110 Stat. 3009-546, 3009-674 (September 30, 1996) (amending INA 212(a)(4)).
[10] See INA 212(a)(4)(C) and (D). See INA 213A.
[11] See INA 212(a)(4)(B)(ii).
[12] See 64 FR 28676 (May 26, 1999).
[13] See 84 FR 41292 (Aug. 14, 2019), as amended by 84 FR 52357 (Oct. 2, 2019).
[14] See 87 FR 55472 (Sept. 9, 2022) (final rule).
[15] See Preventing Illegal Aliens from Obtaining Social Security Act Benefits, 90 FR 16451 (Apr. 18, 2025).
[16] See Protecting the American People Against Invasion, 90 FR 8443 (Jan. 20, 2025); Ending Taxpayer Subsidization of Open Borders, 90 FR 10581 (Feb. 19, 2025); Protecting American Communities from Criminal Aliens, 90 FR 18761 (Apr. 28, 2025).
[17] See Pub. L. 119-21 (July 4, 2025).
[18] See INA 212(a)(4)(A).

from this ground).[19] If an alien is exempt from the public charge ground of inadmissibility, this ground of inadmissibility does not apply.[20]

The public charge inadmissibility determination is a prospective determination based on the totality of the alien's circumstances.[21] In making such a determination, USCIS must consider the alien's age, health, family status, assets, resources, and financial status, and education and skills, the sufficient Affidavit of Support Under Section 213A of the INA, and if applicable, any current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[22] USCIS reviews all relevant information prior to making a public charge inadmissibility determination.[23] The public charge inadmissibility determination is inherently subjective in nature given the express wording of INA 212(a)(4)(A), which states that the public charge inadmissibility determination is "in the opinion of" DHS.[24]

The burden of proof to establish admissibility when seeking adjustment of status is always on the alien.[25] The burden never shifts to the government at any point during the adjudication.[26]

Affidavit of Support Under Section 213A of the INA

Congress amended INA 212(a)(4) in 1996 to require that certain immigrants submit a sufficient Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ), executed by a sponsor, to avoid a finding of inadmissibility under INA 212(a)(4). Congress created a new provision, INA 213A, which specifies who meets the definition of a sponsor, how a sponsor demonstrates the means to maintain the intending immigrant, the scope of a sponsor's support obligations, and how an Affidavit of Support Under Section 213A of the INA is to be enforced.

By executing an Affidavit of Support Under Section 213A of the INA, a sponsor creates a legally enforceable contract between the sponsor and the U.S. government. Under this contract, the sponsor agrees:

- To provide support to maintain the sponsored immigrant at an annual income not less than 125 percent of the federal poverty guidelines (FPG) (or 100 percent of the FPG if the sponsor is on active duty—and not in active duty for training—in the U.S. armed forces and petitioning for their spouse or child) during the period the support obligation is in effect;

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[19] See INA 291 and INA 212(a)(4).
[20] See 8 CFR 212.23(a). See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 3, Applicability, Section C, Exemptions [8 USCIS-PM G.3(C)].
[21] See INA 212(a)(4). See 8 CFR 212.22(b).
[22] See INA 212(a)(4)(B). See 8 CFR 212.22(a).
[23] See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 9, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications [8 USCIS-PMG.9].
[24] See *Matter of Harutunian*, 14 I&N Dec. 583, 588 (Reg. Comm. 1974) ("[T]he determination of whether an alien falls into that category [as likely to become a public charge] rests within the discretion of the consular officers or the Commissioner . . . Congress inserted the words 'in the opinion of' (the consul or the Attorney General) with the manifest intention of putting borderline adverse determinations beyond the reach of judicial review." (citation omitted)). See *Matter of Martinez-Lopez*, 10 I&N Dec. 409, 421 (A.G. 1964) ("[U]nder the statutory language the question for visa purposes seems to depend entirely on the consular officer's subjective opinion.").
[25] See INA 291. See *Matter of Bett*, 26 I&N Dec. 437 (BIA 2014).
[26] See *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1978).

- To be liable for any reimbursement obligation incurred from the sponsored immigrant receiving means-tested public benefits during the period the obligation is in effect; and

- To submit to the jurisdiction of any federal or state court for enforcing the support obligation.[27]

Guidance

A public charge inadmissibility determination is based on an alien's likelihood at any time in the future to become a public charge,[28] that is, the likelihood of becoming primarily dependent on the government for subsistence as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[29]

There is no "bright-line" test in making a public charge inadmissibility determination. Instead, evaluating whether an alien is likely at any time to become a public charge based on the totality of the alien's circumstances[30] means an officer must evaluate all information provided on the alien's Application to Register Permanent Residence or Adjust Status (Form I-485), Report of Immigration Medical Examination and Vaccination Record (Form I-693), any other forms or supporting evidence contained in the record, and statements made by an alien during an interview, if applicable.[31] USCIS considers all information or evidence in the record that is relevant in the totality of the circumstances.[32] No one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, can be the sole criterion for determining if an alien is likely at any time to become a public charge.[33] Instead, the officer must consider all of the required factors and determine whether the alien's circumstances, assessed in their totality, suggest that the alien is more likely than not to become a public charge.

For all aliens subject to the public charge ground of inadmissibility, the officer must consider each of the following factors related to an alien's:

- Age;

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[27] See INA 213A(a)(1).
[28] See 8 CFR 212.22(a). See *Matter of Harutunian (PDF)*, 14 I&N Dec. 583 (Reg. Comm. 1974). See *Matter of Perez*, 15 I&N Dec. 136 (BIA 1974). In comparison, the public charge ground of removal under INA 237(a)(5) is predicated on whether the alien has become a public charge within five years after the date of entry from causes not affirmatively shown to have arisen since entry. See *Matter of Viado*, 19 I&N Dec. 252, 253 (Comm. 1985) ("The distinction is based on the fact that the determination of excludability involves a prediction of the likelihood of an alien becoming a public charge in the future, rather than an assessment of whether the alien has already become a public charge."). *See also* Matter of B-, 3 I&N Dec. 323 (BIA, Acting A.G. 1948).
[29] See 8 CFR 212.21(a).
[30] See 8 CFR 212.22(b). See *Matter of Perez*, 15 I&N Dec. 136, 137 (BIA 1974) ("The determination of whether an alien is likely to become a public charge under section 212(a)(15) is a prediction based upon the totality of the alien's circumstances at the time he or she applies for an immigrant visa or admission to the United States.").
[31] See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule).
[32] See 87 FR 55472, 55497 (Sept. 9, 2022) (final rule). See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 4, Prospective Determination Based on the Totality of the Circumstances [8 USCIS-PM G.4].
[33] See 8 CFR 212.22(b).

- Health;
- Family status;
- Assets, resources, and financial status; and
- Education and skills.[34]

The officer must also:

- Favorably consider a sufficient Affidavit of Support Under Section 213A of the INA when required under INA 212(a)(4)(C) or (D);[35] and
- Consider any current and/or past receipt of public cash assistance for income maintenance or long-term institutionalization at government expense by the alien.[36]

Officers are reminded that under current regulation, these are the seven designated "minimum factors" to be considered.[37]

Officers are further reminded that when making a public charge inadmissibility determination based on the totality of the alien's circumstances, the factors and relating evidence and information are not considered in isolation but rather considered together by the officer to make a holistic determination of whether the alien is likely at any time to become a public charge.

For example, an alien's age, education and skills, and health affect an officer's consideration of that alien's assets, resources, and financial status. If an alien has already retired from regular employment, or is near retirement,[38] officers will closely review any employer-based retirement plans (e.g., pensions), retirement contribution plans (e.g., 401(k) or Individual Retirement Accounts, etc.), Social Security retirement benefits (or similar earned benefit), trust funds, annuities, or any other retirement investments or accounts of the alien and their household, as well as any other assets or resources of the household. These assets and resources take on a more critical role in the public charge inadmissibility determination when, based on the alien's age, health, and employment history, it seems likely that they will either not be employed after admission or adjustment of status, or would be employed only for a short period of time.

In another example, the analysis of whether or not an alien is likely at any time in the future to be institutionalized long-term at government expense will be informed by all relevant evidence and information, but particularly evidence and information relating to an alien's age, health, assets,

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[34] See INA 212(a)(4)(B)(i). See 8 CFR 212.23(a). See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 5, Statutory Minimum Factors [8 USCIS-PM G.5].
[35] See INA 212(a)(4)(B)(ii). See 8 CFR 212.22(a)(2). See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 6, Affidavit of Support Under Section 213A of the INA [8 USCIS-PM G.6].
[36] See 8 CFR 212.22(a)(3).
[37] See 8 CFR 212.22(a).
[38] Individuals retire at different ages, and officers must make a case-by-case determination as to an alien's plans for future employment in the United States.

resources, and financial status, and past long-term institutionalization at government expense.[39] No one factor or piece of evidence or information is the sole criterion for determining if an alien is likely to become a public charge; officers must always consider them in a holistic way in the totality of the circumstances.[40]

If the information provided on the Application to Register Permanent Residence or Adjust Status (Form I-485) is incomplete, and/or any required initial evidence submitted by the alien does not establish eligibility, an officer (1) issues a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) to request more information or evidence from the alien in accordance with USCIS regulations and policy or (2) denies the application.[41] If a NOID is issued, the officer must provide an explanation of the consideration of all the factors and why the officer believes that the alien is likely at any time to become primarily dependent on the government for subsistence, based on the consideration of the totality of the alien's circumstances.[42] If an officer is basing an adverse decision in whole or in part on information of which the alien is unaware or could not reasonably be expected to be aware, the officer must advise the alien of this fact and provide the alien with an opportunity to rebut the information and present evidence on their own behalf before a decision is rendered.[43]

If, after reviewing the application for adjustment of status and supporting evidence, the officer finds that the alien is not likely to at any time become primarily dependent on the government for subsistence based on the officer's consideration of all of the required factors in the totality of the circumstances, then the officer should determine that the alien is not inadmissible based on the public charge ground. The officer then continues with the adjudication.

However, if, after reviewing the application for adjustment of status and supporting evidence, the officer finds that the alien is likely at any time to become primarily dependent on the government for subsistence based on the officer's consideration of all of the required factors in the totality of the circumstances, then the officer determines that the alien is inadmissible under the public charge ground. If the alien is inadmissible under the public charge ground, he or she is ineligible for adjustment of status and the officer either issues a NOID or denies the adjustment application in accordance with USCIS policy. If the alien is *only* inadmissible under the public charge ground of inadmissibility and is otherwise eligible for adjustment of status, the officer may in his or her discretion offer the alien an opportunity to post a public charge bond.[44]

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[39] But see 8 CFR 212.22(a)(4) ("A finding that an alien has a disability…will not alone be a sufficient basis to determine whether the alien is likely at any time to become a public charge.")
[40] See 8 CFR 212.22(b).
[41] See 8 CFR 103.2(b)(8)(ii) and (iii). Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID. See 8 CFR 103.2(b)(8)(iii). See the USCIS Policy Manual, Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].
[42] See 8 CFR 103.2(b)(8)(iv).
[43] See 8 CFR 103.2(b)(16)(i); 8 CFR 103.2(b)(8)(iv). See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 9, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications [8 USCIS-PM G.9].
[44] See INA 213; 8 CFR 103.6; 213.1. If USCIS decides in its discretion that the alien may post a bond, USCIS will provide the alien with an opportunity to submit a public charge bond, which may entail the issuance of a Notice of Intent to Deny (NOID). Since USCIS may only offer the opportunity to post a public charge bond to "an alien

A USCIS officer must articulate the reasons for a finding of inadmissibility under the public charge ground based on the officer's review of all of the required factors in the totality of the circumstances in the denial decision issued to the alien.[45] Every written denial decision issued by USCIS based on the totality of the circumstances analysis must reflect consideration of each of the factors outlined in regulation for the public charge inadmissibility determination.[46]

Application to Register Permanent Residence or Adjust Status

An alien applying for adjustment of status must complete and file an Application to Register Permanent Residence or Adjust Status (Form I-485), including "Part 9. General Eligibility and Inadmissibility Grounds." Adjustment applicants who are subject to the public charge ground of inadmissibility, i.e., are not exempt from the ground,[47] are required to select "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." on Item Number 56. and complete Item Numbers 57.-66. on Form I-485.

An officer must examine the following items or questions in relation to the public charge ground of inadmissibility to make sure they are completed and not left blank.

- *Item Number 56.: Public Charge Ground if Inadmissibility Exemptions*

    - If the alien checked one of the exempt categories (i.e., checked anything other than "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." in Item Number 56.), then the officer must review the alien's A-file and Form I-485 to confirm that the alien selected the correct category and that the alien is actually exempt from the public charge ground of inadmissibility.

    - If the alien checked "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." on Item Number 56. or left Item Number 56. blank, has failed to completely answer Item Numbers 57.-66., and a review of the alien's A-file and Form I-485 confirm that the alien is not in an exempt category, then the officer must either issue an RFE or NOID or deny the Form I-485, under

inadmissible" under INA 212(a)(4) and who is otherwise eligible for adjustment of status, the officer must first complete their inadmissibility determination as well as the rest of the adjustment of status eligibility determination, and explain, in writing, why they have found the alien inadmissible under INA 212(a)(4) before providing the alien with an opportunity to submit a bond. See 212.22(c). Any notice inviting the alien to submit a public charge bond will include the bond amount and instructions for submitting the bond, including a timeframe for its submission. No public charge bonds will be accepted from aliens applying for adjustment of status without an invitation from USCIS. See 8 CFR 213.1(a) and (c). See 8 CFR 103.2(b)(8)(iii).

[45] See 8 CFR 212.22(c). See 8 CFR 103.3(a)(1)(i).

[46] See 8 CFR 212.22(c) and 8 CFR 212.22(a). See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 9, Adjudicating Public Charge Inadmissibility for Adjustment of Status Applications [8 USCIS-PM G.9].

[47] See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 3, Applicability [8 USCIS-PM G.3]. For a full list of exemptions and waivers for the public charge ground of inadmissibility, see 8 CFR 212.23.

current guidance.[48]

- If the alien checked the wrong exempt category on Item Number 56. but a review of the A-file and Form I-485 confirms that the alien is in a different exempt category, the officer must note the mistake on the Form I-485 and may continue to adjudicate the Form I-485 without making a public charge inadmissibility determination.

- If the alien checked "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." in Item Number 56., but a review of the A-file and Form I-485 confirms that the alien is in an exempt category, the officer must note the mistake on the Form I-485. The officer may continue to adjudicate the Form I-485 without making a public charge inadmissibility determination.

- *Item Number 57.: Household Size*

  - If an alien checked "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." in Item Number 56., then the alien must answer Item Number 57.

  - The officer reviews the alien's A-file to ensure that the alien has correctly counted the number of people who should be included in the household size. Household size is defined in the regulations at 8 CFR 212.21(f).[49]

- *Item Numbers 58.-62.: Income, Assets, Liabilities, Education, and Skills*

  - If an alien checked "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." in Item Number 56., then the alien must answer Item Numbers 58.-62.

  - An alien is not required to submit additional evidence for these questions when he or she files a Form I-485. However, on a case-by-case basis, if an officer reviews the A-file and determines that the answers to these questions are incomplete or are inconsistent with the evidence in the A-file, then the officer may issue an RFE.

- *Item Numbers 63.-66.: Receipt of Public Cash Assistance for Income Maintenance and Long-term Institutionalization at Government Expense*

  - If an alien checked "I do not fall under any of the exempt categories listed above and will complete Item Numbers 57.-66." in Item Number 56., then the alien must answer Item Numbers 63.-64.

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[48] See 8 CFR 103.2(b)(8)(iii). Generally, USCIS issues written notices in the form of an RFE or NOID to request missing initial or additional evidence. However, USCIS has the discretion to deny a benefit request without issuing an RFE or NOID. See 8 CFR 103.2(b)(8)(iii). See the USCIS Policy Manual, Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)].

[49] This is a different definition than the definition of a sponsor's household size at 8 CFR 213a.1, which is used for the Affidavit of Support Under Section 213A of the INA.

- If the alien answers "Yes" to Item Number 63., then the alien must answer Item Number 65.

- If the alien answers "Yes" to Item Number 64., then the alien must answer Item Number 66.

- An alien is not required to submit additional evidence related to Item Numbers 63.-66. when he or she files Form I-485. However, if an alien indicated that he or she has received or is receiving public cash assistance for income maintenance or long-term institutionalization at government expense, the officer reviews the dates of receipt to confirm whether the alien was in a category exempt from the public charge ground of inadmissibility at the time of receipt, if so indicated. The officer also considers the period of time and amount of cash benefits received or the period of institutionalization in the totality of the circumstances of the public charge inadmissibility determination. An officer may issue an RFE, if needed.

An officer cannot approve the Form I-485 if the alien is subject to the public charge ground of inadmissibility but has failed to completely answer Item Numbers 57-66.[50] Failure to submit requested evidence that is relevant to the adjudication is grounds for denying the Form I-485. If an alien does not respond to an RFE or NOID by the required date or the response fails to demonstrate eligibility for adjustment of status, USCIS will deny the application unless the officer decides in his or her discretion to offer the alien an opportunity to post a public charge bond.[51]

Affidavit of Support Under Section 213A of the INA

Most family-based aliens applying for adjustment of status must submit an Affidavit of Support Under Section 213A of the INA (Form I-864 or Form I-864EZ), executed by a sponsor, who is usually the U.S. citizen or LPR who filed the immigrant petition on the alien's behalf.[52] Employment-based aliens applying for adjustment of status must submit Form I-864 or Form I-864EZ if the alien's U.S. citizen or LPR relative[53] filed the employment-based immigrant petition, or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the alien.[54]

Certain aliens may request an exemption from submitting the Affidavit of Support Under Section 213A of the INA and such aliens should request the exemption on Form I-485, Part 3. An officer

[50] Officers should not deny a Form I-485 where the alien is subject to the public charge ground of inadmissibility and answers Item Numbers 57.-66. but does not answer Item Number 56.
[51] See 8 CFR 103.2(b)(12) – (14). See INA 213; 8 CFR 103.6; 213.1. See USCIS Policy Manual, Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [1 USCIS-PM E.6(F)]. See USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 10, Public Charge Bonds [8 USCIS-PM G.10].
[52] See INA 212(a)(4)(C).
[53] As defined in 8 CFR 213a.1.
[54] See INA 212(a)(4)(D). For a list of aliens applying for adjustment of status who do not need to submit Form I-864 or Form I-864EZ, see the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 6, Affidavit of Support Under Section 213A of the INA, Section C, Applicants Not Required to File Form I-864 [8 USCIS-PM G.6(C)].

reviews the alien's file to ensure the alien qualifies for an exemption from the Form I-864 requirement, if requested.[55]

Moreover, officers closely review Form I-864 or Form I-864EZ, supporting documentation such as federal income tax returns, immigrant visa petitions, and USCIS systems to determine whether:

- The sponsor, or joint sponsor, or substitute sponsor has counted all household members for purposes of determining the household size and necessary income threshold;[56]
- Each person for whom the sponsor is financially responsible has been counted;
- All of the sponsor's dependents have been included in the household size; and
- The sponsor, joint sponsor, or substitute sponsor has executed a Form I-864 (or Form I-864EZ) on behalf of other aliens who have since adjusted to LPR status not included as household members on the instant Form I-864 (or Form I-864EZ).[57]

An officer may ask the alien about the sponsor, joint sponsor, or substitute sponsor during the interview. The Form I-864 is a legally enforceable contract that a sponsor signs to accept financial responsibility for an alien, usually a relative, who is coming to the United States to live permanently. While the Form I-130 petitioner (petitioning sponsor) must generally execute a Form I-864 or Form I-864EZ on behalf of the alien and the relationship between the Form I-130 petitioner and the alien should already be documented in the A-file, a joint sponsor does not have to be related to the petitioning sponsor or intending immigrant. If a substitute sponsor submitted the Form I-864 (or Form I-864EZ), then they must be related to the intending immigrant as set forth in 8 CFR 213a.1. In cases in which a joint sponsor or substitute sponsor submitted the Form I-864 (or Form I-864EZ), the officer must determine the nature of the relationship between the alien and the joint sponsor or substitute sponsor and refer any discrepancies to the local Fraud Detection and National Security office for further investigation, if necessary.[58]

Ultimately, the officer must find that the sponsor, joint sponsor, or substitute sponsor demonstrated that he or she is financially able to maintain the sponsored alien at an annual income of not less than 125 percent of the FPG, based on the sponsor, joint sponsor, or substitute sponsor's household size

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[55] See the USCIS Policy Manual, Volume 8, Admissibility, Part G, Public Charge Ground of Inadmissibility, Chapter 6, Affidavit of Support Under Section 213A of the INA, Section C, Applicants Not Required to File Form I-864, Subsection 1, Applicants Exempt from Filing Form I-864 [8 USCIS-PM G.6(C)(1)].

[56] Officers are reminded that the definition of "household size" for the purposes of a Form I-864 or Form I-864EZ is found in 8 CFR 213a.1, and is not the same as the definition of "household" found in 8 CFR 212.21(f) that is used in the context of public charge inadmissibility determinations.

[57] See INA 213A(a)(1)(A). See 8 CFR 213a.1 "Household size". An officer may search USCIS systems using the biographical information provided by the sponsor or joint sponsor to review digitally stored Forms I-864 (or Forms I-864EZ). An officer may also consult with his or her local Fraud Detection and National Security office for assistance.

[58] For example, if the relationship between the joint sponsor and alien has discrepancies, it could be a sign that the Form I-864 was photocopied from a different application and may not know that the Form I-864 is being reused. A joint sponsor can be any U.S. citizen, LPR, or U.S. national who is at least 18 years of age, domiciled in the United States, or its territories or possessions, and willing to be held jointly liable with the petitioner for the support of the intending immigrant. See INA 213A(f)(5)(A). An alien is not required to have a relationship with the joint sponsor, but USCIS should ensure that the joint sponsor understands the responsibilities and consequences of executing a Form I-864 on behalf of the alien.

(or 100 percent if the sponsor is on active duty—and not in active duty for training—in the U.S. armed forces).[59] If the intending immigrant does not submit a sufficient Form I-864 (or Form I-864EZ), when required, he or she is inadmissible under the public ground of inadmissibility and there is no need to engage in the totality of the circumstances analysis.[60]

Implementation

For more information and guidance on how to make public charge inadmissibility determinations, see the USCIS Policy Manual, Volume 8, Part G.

Use

This policy memorandum is intended solely for the guidance of USCIS personnel in the performance of their official duties, but it does not remove their discretion in making adjudicatory decisions. It may not be relied upon to create any right or benefit, substantive or procedural, enforceable under law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

[59] See INA 213A. A sponsor who is on active duty (other than active duty for training) in the U.S. armed forces and who is petitioning for a spouse or child only has to demonstrate the means to maintain an annual income equal to at least 100 percent of the FPG. See 8 CFR 213a.2(c)(2).
[60] See INA 212(a)(4)(C) and (D). See INA 213A(a)(1). See 8 CFR 212.22(b).