



OFFICE OF INTERNATIONAL SERVICES

University Center for International Studies
University of Pittsburgh

2020 Public Charge Rule Changes

Background

“Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (Green Card) is inadmissible if the individual, “at the time of application for admission or adjustment of status, is likely at any time to become a public charge.” (Note that the public charge analysis does not apply in naturalization proceedings.) If an individual is inadmissible under this analysis, admission to the United States or adjustment of status will be denied.
(<https://www.uscis.gov/greencard/public-charge>)

2020 Changes

On August 14, 2019, the U.S. government published a new rule which changed the criteria used in determining whether an individual is “likely to become a public charge.” That rule was delayed in its implementation due to challenges filed in numerous court cases, but in January 2020, the Supreme Court lifted the injunction and the changes were permitted to go into effect, effective February 24, 2020.

There are two situations where these new rules come into effect. First, when a person seeks to extend or change his/her nonimmigrant status, such as changing from an F-1 student to an H-1B employee or when an employee’s H-1B status is extended. The second is when a person seeks to adjust status to that of a permanent resident. The rules for both situations are applied somewhat differently, but under both circumstances, the benefits that may affect the adjudication are:

- Any federal, state, local, or tribal cash assistance/benefits for income maintenance
- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Supplemental Nutrition Assistance Program (SNAP/“Food Stamps”)
- Section 8 Housing/Rental Assistance
- Public Housing under section 9 the Housing Act of 1937, 42 U.S.C. 1437 et seq.
- Federally funded Medicaid, **except when used for a medical emergency, for a minor child, or for pregnancy-related treatment**

Change of Status Policy and Procedures

According to the new rules, any applicant for a change or extension of status must verify that s/he has not received any of the public benefits listed above for more than 12 months in the aggregate within a 36 month period, after February 24, 2020. (For these purposes, each benefit is counted separately, so if you received two public benefits in one month, that would be counted as 2 months’ worth of benefits.) [[8 CFR 214.1\(a\)\(3\)\(iv\)](#)]

After February 24, 2020, all Forms I-539 (Change of non-immigrant status request) and Forms I-129 (Application for H-1B status) will include a questionnaire about the public assistance that the applicant has received.

Applicants for Visas, Admission to the United States, and Adjustment of Status (to permanent residence) Policy and Procedures

The standard applied to an application for permanent residence, or any admission into the United States is taken from INA 212(a)(4) [[8 USC 1182\(a\)\(4\)](#)], “Any alien, who....is **likely at any time to become a public charge** is inadmissible.” The government considers “the totality of the alien’s circumstances” and determines whether s/he is “more likely than not at any time in the future” to become a public charge. [[See 8 CFR 212.21\(c\)](#) and [22 CFR 40.41\(a\)](#)]

Under the new guidelines, the government indicates that it will identify positive and negative factors and weigh them against each other in making this determination. Factors taken into account will include age, health, family status, education and skills, assets, resources, and financial status. One example of a heavily weighted **negative** factor would be the fact that the alien has received public benefits for more than 12 months in a 36 month period, for instance. Examples of a heavily weighted **positive** factor would be an applicant who earns more than 250% of the poverty guidelines, or an applicant who has private health insurance.

Advice to Nonimmigrant Visa Holders in the U.S.

Note that the Office of International Services is unable to provide you with legal advice. Following are some general rules that we suggest you follow during your stay in the United States:

1. Prior to accepting any type of public assistance, you are encouraged to speak with an immigration attorney to ascertain whether that type of assistance will likely be weighed against any future application for immigration benefits;
2. If you have previously accepted any public assistance, be sure to list them on any future immigration application **where asked**. Do not ever omit pertinent information on any form, but also do not give information that is not directly requested.
3. When reporting information, be very clear about how long the assistance lasted, and carefully list the beneficiary. (i.e., If you received Medicaid for your minor children, but you could not use it for your own health needs, list only your childrens' names as beneficiaries on the immigration application.

Resources

- Public Charge Fact Sheet, *United States Citizenship and Immigration Services* (2020)
<https://www.uscis.gov/news/fact-sheets/public-charge-fact-sheet>
- Final Rules on Public Charge Determination, *NAFSA Association of International Educators* (2020)
<https://www.nafsa.org/regulatory-information/final-rules-public-charge-determinations>
- Public Charge, *National Immigration Law Center* (2020)
<https://www.nilc.org/issues/economic-support/pubcharge/>