

PUBLIC CHARGE

What is public charge?

“Public charge” is a ground of inadmissibility. Grounds of inadmissibility are reasons that a person could be denied a green card. It is not a test that applies to everyone. It is a test where an immigration officer must decide whether that person is likely to become dependent on certain government benefits in the future, which would make them a “public charge.”

When does this rule take effect?

After a ruling by the U.S. Supreme Court on January 27, 2020, immigration officials can now implement the new rule relating to the “public charge” ground of inadmissibility. It was announced that the rule will go into effect on February 24, 2020. **Adjustment of Status applications postmarked before February 24, 2020 will be adjudicated under policies in place before the new rule.**

Who does the new public charge rule apply to?

This new rule will mainly impact those seeking permanent resident status (a green card) through family members while *inside the United States*.

Who is NOT affected by any public charge rule?

Applicants for adjustment through U Visas, VAWA, T Visas, Special Immigrant Juvenile Status (SIJS), Refugees, Asylees, Parolees, Afghans and Iraqis with special visas, members of the military and their dependents, children eligible for acquisition of citizenship, DACA recipients, Temporary Protected Status and other categories such as those applying to become U.S. Citizens.

What is the new public charge definition?

A public charge is a person who receives certain public benefits for a total of 12 months over any 36-month period. Each benefit used counts towards the 12-month calculation. For instance, if a person receives two different benefits in one month, that counts as two months’ use of benefits.

Which benefits are included in the public charge analysis?

BENEFITS THAT COUNT AS PUBLIC CHARGE

- Full-scope Medi-Cal
- CalWORKs for the immigrant (not family members)
- Supplemental Security Income (SSI)
- Section 8 housing vouchers and rental assistance*
- CalFresh (food stamps)*
- Any cash benefits or assistance to maintain income

BENEFITS THAT DO NOT COUNT AS PUBLIC CHARGE

- Benefits received prior to age 21
- Medi-Cal received during pregnancy and up to 60 days afterward
- Emergency Medi-Cal and My Health L.A.
- Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- School-based services up to high school only (like free lunch or health services)
- Benefits under Individuals with Disabilities Education Act (IDEA)
- Benefits received on behalf of an eligible family member
- Children’s Health Insurance Program (CHIP)
- Head Start
- Federal grants for college
- Ryan White Programs, HOPWA, & ADAD (HIV/AIDS-related programs)
- Red Cross benefits
- Testing and treatment related to COVID-19

If I receive any the benefits that count listed above, will I become a public charge?

The receipt of public benefits for any 36-month period is a heavily weighted factor in the public charge test. However, the new rule also considers other factors including age, health, family status, income and financial status, education, skills, and the affidavit of support to determine if someone is likely to be a public charge in the future. It is not clear how an officer will decide a case that has a heavily weighted factor or a case with both heavily weighted positive and negative factors.

Which other factors does U.S. Citizenship and Immigration Services (USCIS) consider?

Positive: English proficiency, unsubsidized private health insurance, education, skills, income at or above 250% of the federal poverty level based on household size.

Negative: Lack of English proficiency, major health issues that require a lot of medical care, any previously received benefits (listed above), total income (including contribution from public benefits), and past use of immigration fee waivers.

Will it affect me if I receive benefits for my U.S. Citizen children?

NO. Only benefits received by the applying immigrant will count towards the public charge determination. Benefits received by U.S. Citizen or Lawful Permanent Resident children or spouses will not count against you unless the benefits are the only income for your household.

Can I overcome a public charge determination?

Bonds are possible where an immigration officer finds inadmissibility based on public charge. But these bonds will be highly discretionary and there are some factors that make a person ineligible for a bond. If you are eligible for a bond, the minimum amount is **\$8,100** but this can be higher depending on the USCIS officer's discretion.

If I am thinking about applying to become a Lawful Permanent Resident (for a green card) and am afraid of becoming a public charge should I cancel or not apply for public benefits?

NO. Do not make any decisions about applying for or stopping receiving public benefits without first consulting with an immigration attorney about your immigration options.

What if I am applying for my green card through consular processing?

Similar but distinct standards are currently in place for consular processing cases. You are strongly encouraged to consult with a reputable immigration attorney before you make any decision to cancel benefits or leave the United States.

How do I know if I am applying to become a Lawful Permanent Resident in the United States or through consular processing?

This is a complicated area of law. You should consult with a reputable immigration attorney in order to determine the path that applies in your case.

If you have any questions about the public charge rule or how it applies to your situation, please call the Legal Aid Foundation of Los Angeles toll-free at 800-399-4529 or visit our website at lafla.org to complete an online intake.

This handout was prepared by the Legal Aid Foundation of Los Angeles. It is not intended to give you specific legal advice regarding your individual problem, but to give you general information. If you have questions or need legal advice about your specific case, please contact an attorney. Rev. March 2020