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600 14th Street, NW
Suite 502
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San Antonio

10127 Morocco Street
Suite 149
San Antonio, TX 78216

Austin

6633 East Hwy 290
Suite 102
Austin, TX 78723

ilrc@ilrc.org
www.ilrc.org



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Office of Policy and Strategy
U.S. Citizenship and Immigration Services
United States Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20588

Submitted by email to policyfeedback@uscis.dhs.gov

Re: USCIS Policy Manual update, "Incorporating Guidance on Applicability of the Public Charge Ground of Inadmissibility"

Dear USCIS,

On July 20, 2023, USCIS announced a USCIS Policy Manual update which aims to provide further clarity for applicants on the public charge ground of inadmissibility. We commend the agency for its efforts to provide more clarity in this area. We write today to provide suggestions that would further enhance the public's understanding of this complicated area of the law.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC is a leader in family-based immigration, including the affidavit of support, producing trusted legal resources including webinars, trainings, and manuals such as *Families & Immigration: A Practical Guide* and *Public Charge and Immigration Law*. The ILRC provides technical legal support for attorneys, DOJ-accredited representatives, and non-profit programs who represent immigrants during the process of applying for permanent residence.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local service providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. For many, one of the benefits of becoming a U.S. citizen is being able to sponsor family members such as parents, children, and siblings by filing a visa petition and meeting the requirements of the public charge ground of inadmissibility

and the affidavit of support. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits and sponsor family members. As a member of the Protecting Immigrant Families (PIF) campaign, we have also developed our nuanced understanding of the challenges posed by the public charge ground of inadmissibility.

The ILRC appreciates USCIS's update to the Policy Manual to make it easier for applicants responding to public charge questions on Form I-485, Application to Register Permanent Residence or Adjust Status, to identify whether the public charge ground of inadmissibility applies to them.

However, we suggest the following additional changes that will clarify the applicability of public charge for applicants and adjudicators by making the connection between the policy guidance and the questions on the I-485 explicit. ILRC continues to hear confusion from practitioners and advocates on whether checking "yes" to Part 8, Question 61 on the I-485 is stating that the applicant *is* a public charge or *will be found likely to become* a public charge, rather than simply *subject* to the public charge ground of inadmissibility. Thus, further clarification will enable applicants to accurately respond to questions relating to public charge on Form I-485, and ensure officers have the information they need to adjudicate these applications.

This connection between the guidance and Part 8 Question 61 on the Form I-485 should be made clear in the USCIS Policy Manual Volume 8, Part G, Chapter 3, as well as in instructions for the Form I-485 since unrepresented applicants likely are not accustomed to referring to the Policy Manual when filling out immigration forms. To implement these suggestions, ILRC recommends:

- Adding reference to the Form I-485 application in the USCIS Policy Manual guidance on applicability of the public charge ground of inadmissibility (Volume 8, Part G, Chapter 3);
- Adding guidance regarding applicability of the public charge ground to the Form I-485 instructions, including the "Additional Instructions" section; and
- Adding guidance regarding applicability of the public charge ground to the Form I-485 "Special Instructions" dropdown tab at <https://www.uscis.gov/i-485>.

Suggested wording for each of these changes is provided below.

- 1. Add reference to Form I-485 application in USCIS Policy Manual guidance on applicability of public charge ground of inadmissibility.**

ILRC suggests adding the following wording to the USCIS Policy Manual updated sections B and C in Volume 8, Part G, Chapter 3:

B. Applicants for Adjustment of Status

The public charge ground of inadmissibility will generally apply to all applicants for adjustment of status unless they are specifically exempt from the public charge ground of inadmissibility.

The tables below indicate which applicants for adjustment of status are subject to the public charge ground of inadmissibility. ^[15] Such applicants should check "Yes" to Question 61, "*Are you subject to the public charge ground of inadmissibility under INA section 212(a)(4)?*" in Part 8 of Form I-485, Application to

Register Permanent Residence or Adjust Status. Please note that answering “yes” to this question on the I-485 *does not* indicate that the applicant will be found inadmissible under the public charge ground or is likely to be a public charge in the future, this question merely identifies whether the applicant is generally among the types of adjustment applicants, indicated below, who immigration law says must be screened for public charge inadmissibility.

...

C. Exemptions

The public charge ground of inadmissibility does not apply, based on statutory or regulatory authority, to the following applicants for visas, admission, and adjustment of status:^[39] Applicants for adjustment of status who fall within the exempted categories listed below should check “No” to Question 61, “Are you subject to the public charge ground of inadmissibility under INA section 212(a)(4)?” in Part 8 of Form I-485, Application to Register Permanent Residence or Adjust Status.

2. Add guidance regarding applicability of public charge ground to the Form I-485 instructions, including the “Additional Instructions” section, based on application type or filing category.

ILRC also suggests adding similar guidance to the Form I-485 instructions, since unrepresented applicants may not be as familiar with the USCIS Policy Manual, and the updated guidance is specifically meant to help adjustment applicants properly fill out Form I-485 and avoid unnecessary Requests for Evidence which add to case processing delays when officers do not have all the information needed. Specifically, ILRC recommends adding the following wording to the Form I-485 Instructions:

9. Part 8. General Eligibility and Inadmissibility Grounds. Select the answer you think is correct. If you answer “Yes” to any questions (or if you answer “No,” but are unsure of your answer), provide an explanation of the events and circumstances in the space provided in **Part 14. Additional Information**.

If you answer “Yes” to **Part 8., Item Number 61.**, you are required to complete **Item Numbers 62. - 68.d.**

The following applicants should check “Yes” to **Part 8., Item Number 61.**, as those who are subject to the public charge ground of inadmissibility:

- Family-based adjustment of status applicants, including those applying as the spouses, children, and parents of U.S. citizens; unmarried sons and daughters of U.S. citizens and their children; spouses, children, and unmarried sons and daughters of LPRs; married sons and daughters of U.S. citizens and their spouses and children; brothers and sisters of U.S. citizens; fiancé(e)s of U.S. citizens; Amerasians based on preference category, born on or after December 31, 1950, and before October 22, 1982; and spouses, widows, or widowers of U.S. citizens;
- Employment-based adjustment of status applicants, including those applying as priority workers; professionals with advanced degrees or noncitizens of exceptional ability; skilled workers, professionals, and other workers; and investors;
- Special immigrants applying as religious workers; certain employees or former employees of the U.S. government abroad; Panama Canal Zone employees; foreign medical school graduates; retired employees of international organizations; U.S. armed forces personnel; and international broadcasters; and

- Other adjustment of status applicants, including those applying as diplomats or high-ranking officials unable to return home; persons born in the United States under diplomatic status; diversity visa immigrants; certain entrants before January 1, 1982; and S nonimmigrants (noncitizen witness or informant).

The following applicants should check “No” to **Part 8, Item Number 61.**, as those who are NOT subject to the public charge ground of inadmissibility:

- Asylees and refugees;
- Special immigrant juveniles;
- Victims of human trafficking (T nonimmigrants);
- Victims of qualifying criminal activity (U nonimmigrants); and
- Self-petitioners under the Violence against Women Act (VAWA).

To find out whether you are subject to the public charge ground of inadmissibility, or if you do not fall within one of the categories listed above, see the USCIS Policy Manual Volume 8, Part G, Chapter 3 at <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-3> for more information.

ILRC also recommends USCIS add guidance on whether to check “Yes” or “No” based on filing type or category in the “Special Instructions” section of the Form I-485 instructions, since Part 2 of the I-485 application already refers applicants to see additional instructions that relate to the specific immigrant category they select in Part 2. These special instructions should address applicability of the public charge ground of inadmissibility, and which applicants must select “Yes” to Part 8 Question 61 and fill out Part 8 Questions 62-68.d., based on their application type and filing category.

3. Consider adding guidance on Form I-485 webpage regarding applicability of public charge ground, under dropdown tab “Special Instructions”

Finally, ILRC recommends adding information on applicability of the public charge ground under the dropdown tab for “Special Instructions” at <https://www.uscis.gov/i-485>. ILRC suggests adding the following language:

Which Box to Check in Part 8, Item 61. of Form I-485 (Public Charge)

In general, if you are filing a Form I-485 based on a family-sponsored or employment-based petition, you must check “Yes” to **Part 8, Item 61.**, and fill out **Part 8, Item 62.** through **68.d.**, as an applicant who is subject to the public charge ground of inadmissibility. This *does not* mean that you will be denied for public charge, simply that you are categorically subject to a public charge inadmissibility screening as part of your adjustment of status application, based on your filing type or category.

If you are filing a Form I-485 as an asylee, refugee, special immigrant juvenile, victim of human trafficking (T nonimmigrant), victim of qualifying criminal activity (U nonimmigrant), or self-petitioner under the Violence against Women Act (VAWA), you should check “No” to **Part 8, Item 61.**, and skip **Part 8, Item 62.** through **68.d.**

For other applicants, see the USCIS Policy Manual Volume 8, Part G, Chapter 3 at <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-3>.

By implementing this suggested language and further clarifications, USCIS can help applicants understand the applicability of the public charge ground and reduce the likelihood of erroneous denials and time-consuming requests for evidence that will add to the backlog of applications.

Thank you, as always, for your consideration and attention to these important matters.

Best Regards,

/s/Ariel Brown

Ariel Brown

Senior Staff Attorney

Immigrant Legal Resource Center