

SUMMARY OF LEGAL STATE OF AFFAIRS

(LAW CURRENT AS OF DECEMBER 4, 2019)

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- “Public charge” is a statutory ground of inadmissibility at Immigration and Nationality Act (INA) § 212(a)(4) that could bar an individual’s admission to the United States on a visa or lead to a denial of their application for lawful permanent residence (ability to get a green card).
 - INA 212(a)(4) states that a person is inadmissible if, at the time of application for admission or adjustment of status, that person is “likely at any time to become a public charge.”
 - The statute lays out factors that immigration officers must consider when assessing public charge inadmissibility, but does not provide a definition of what it means to be a “public charge.” Thus, regulatory rules and other guidance define “public charge.”
- The Department of Homeland Security (DHS), through its subsidiary U.S. Citizenship and Immigration Services (USCIS), is the agency that controls adjustment of status applications adjudicated within the United States.
 - On August 14, 2019, the Department of Homeland Security (DHS) published a new rule related to public charge in the Federal Register, which was scheduled to take effect on October 15, 2019.
 - **However, as of October 11, 2019 this rule has been enjoined nationwide by multiple federal courts. The injunctions stop the rule from taking effect while legal challenges continue. Thus, USCIS cannot implement the new rule until a court rules otherwise, and cases filed with USCIS will follow longstanding policies around public charge.**
- The Department of State (DOS) is the agency that controls visa decisions at U.S. consulates and embassies abroad.
 - On October 11, 2019, DOS published a [new interim final rule](#) related to public charge in the Federal Register, which was set to take effect at the consulates on October 15, 2019.
 - **However**, as of November 4, 2019, the [DOS website indicates](#) that “[a]lthough the effective date of the interim final rule is October 15, 2019, **the DOS will not implement the rule until the use of a new form for information collection is approved by the Office of Management and Budget.**” On October 24, 2019, the DOS published a 60-Day Notice of Proposed Information Collection for [proposed form DS-5540 Public Charge Questionnaire](#), which is open for public comment until December 23, 2019. The DOS website also states that “[v]isa applicants are not requested to take any additional steps at this time and should attend their visa interviews as scheduled. We will inform applicants of any changes to current visa application procedures.” This suggests that cases filed with DOS will follow current policies around public charge at the consulates—not the interim final rule.