



HOW TO ANALYZE PUBLIC CHARGE INADMISSIBILITY WITH CASE EXAMPLES AND ANSWERS

By Em Puhl, Sarah Lakhani, and Ariel Brown

Answering questions about whether public charge inadmissibility applies to a client's specific situation can be complicated. Case-specific considerations include, but are not limited to, whether the client has a legal status that is exempt from public charge inadmissibility, whether the client is seeking a form of relief that has an admissibility component, and whether the client is eligible to adjust status or will be consular processing. This advisory offers a three-step framework for thinking through this analysis. Each step includes questions meant to focus the analysis on the pertinent factors to identify whether public charge inadmissibility applies, and if so, how it will be evaluated in a given case.

We begin with an explanation of this three-step approach to analyzing public charge inadmissibility (Part I).¹ Next, the advisory takes the reader through a guided analysis with five case examples, illustrating how to apply the three-step analysis for assessing public charge inadmissibility in practice (Part II).

I. Overview of Three-Step Public Charge Analysis

Briefly, the three steps and questions at each step are as follows:

Step 1, Determine If Public Charge Applies by Asking *Who* and *What*

Only proceed to Steps 2 & 3 if you determine that public charge applies at end of Step 1

Step 2, Determine Which Public Charge Rule Applies by Asking *Where*

Step 3, Determine How Public Charge Will Apply to This Case by Asking *How*

How to approach thinking about each of these steps will be described in greater detail in the sections that follow.

Step 1. Determine if Public Charge Applies

At Step 1, you must ask yourself *who* you are talking about and *what* application(s) they plan to file. The answers to these questions will dictate whether public charge inadmissibility applies at all, and thus whether you need to proceed to Steps 2 and 3 of the analysis.

If the person whose case you are analyzing is undocumented and has no immediate option to immigrate, or alternatively is already a lawful permanent resident (LPR) or naturalized U.S. citizen, public charge inadmissibility

¹ This discussion is adapted from a much more lengthy discussion in "Who/What/Where/How: Public Charge Analysis for Advocates," part of the ILRC's *Public Charge Legal Services Toolkit*, (Dec. 2019), available at <https://www.ilrc.org/public-charge-legal-services-toolkit>.

does not apply to them.² For most others, you must look at what application they will be submitting in order to determine whether public charge applies (this includes those who are currently without status but have an option to immigrate or apply for other relief).

Multiple forms of relief do not require that an applicant establish they are admissible under *any* of the grounds of inadmissibility, such as asylum, cancellation of removal, or Deferred Action for Childhood Arrivals (DACA).³ Each of these forms of relief has its own unique eligibility requirements, but none requires a showing of admissibility under INA § 212(a).

Other forms of relief *do* require that the applicant be admissible, but may exempt certain grounds of inadmissibility, such as public charge. Examples of forms of relief where in general applicants must establish they are admissible, but do not have to show that they are admissible under the public charge ground specifically, are U or T nonimmigrant status (including adjustment of status applications based on having U or T status) and Temporary Protected Status (TPS). For these forms of relief, applicants must show they are not inadmissible (or else eligible for a waiver) under the criminal grounds, security-related grounds, grounds related to immigration violations like unlawful presence, etc., but do not have to show they are not inadmissible as likely to become a public charge. The Immigration and Nationality Act (INA), federal regulations, and/or other laws explicitly exempt applicants for such forms of relief from the public charge ground of inadmissibility.⁴

If a person will be applying for permanent resident status based on an employer or family petition (I-140 or I-130, respectively), then they will be subject to public charge inadmissibility.⁵ This last group encompasses employment-based or family-based applicants for adjustment of status as well as applicants for an immigrant visa via consular processing. Although the majority of individuals may fall within this last group, nonetheless at this first step the advocate should be on the lookout for individuals and applications that are not subject to public charge inadmissibility.

At the end of Step 1 if you determine public charge does not apply to your client based on their being in an exempt status or submitting an application that does not involve a public charge inadmissibility inquiry, the analysis ends here; there is no need to continue to Steps 2 and 3. If instead you determine your client will be applying for permanent resident status based on an I-140 or I-130 petition, then you should proceed to Steps 2 and 3 of the analysis.

Step 2. Determine Which Public Charge Rule Applies

Assuming you determine that public charge inadmissibility applies to the individual's case (see Step 1), at Step 2 you must ask *where* the application will be decided—in immigration court by an immigration judge, at a U.S.

² Note the exception to this general rule that LPRs are not subject to the grounds of inadmissibility is that LPRs may be subject to the grounds of inadmissibility if they fall under INA § 101(a)(13)(C), most commonly because they traveled outside the United States for more than 180 days on a single trip. For more information on how to advise LPRs who are considering naturalizing with regards to public charge, see ILRC, *Public Charge and Naturalization*, (Sept. 2019), available at <https://www.ilrc.org/public-charge-and-naturalization>.

³ For a more complete list of applications for relief and whether that relief includes a public charge inadmissibility test, see “Public Charge Relief Chart,” part of the ILRC’s *Public Charge Legal Services Toolkit*, (Dec. 2019), available at <https://www.ilrc.org/public-charge-legal-services-toolkit>.

⁴ See *id.*

⁵ As mentioned, public charge inadmissibility applies to applicants who are seeking permanent residency *through an I-140 employer or I-130 relative petition*; note that a family-based I-130 that is filed by a U.S. citizen or LPR family member must be distinguished from other petitions filed on behalf of derivative family members, such as an I-730 asylee relative petition (filed by the principal asylee for a relative) or I-929 or I-918A petition for derivatives of a U principal (filed by the U principal for a relative). Public charge only applies in the I-130 family petition context, not in the context of these other petitions that might seem like family petitions. In other words, in the family petition context that we are discussing here, the petitioner must be a U.S. citizen or LPR who is submitting an I-130 on behalf of their relative.

Citizenship and Immigration Services (USCIS) office within the United States, or at a U.S. consulate or embassy abroad—to figure out which rules will govern how the case is evaluated.

The immigration court falls under the Department of Justice (DOJ); USCIS, which adjudicates adjustment of status cases, falls under the Department of Homeland Security (DHS); and U.S. consulates and embassies abroad, which adjudicate visa applications, fall under the Department of State (DOS). Each agency has its own public charge rules (see Step 3). If you are uncertain whether the applicant for permanent residency will be adjusting status with USCIS or consular processing at a U.S. consulate or embassy abroad, see ILRC, “Family-Based Adjustment of Status Options” (Dec. 2018),⁶ for help screening for adjustment eligibility; those who are ineligible to adjust status may have the option of consular processing.⁷

Step 3. Determine How Public Charge Will Apply to This Case

In this final step of the analysis, you must consider *how* public charge will be evaluated, based on the rules governing the specific agency that will be deciding the case (identified in Step 2).

With the exception of “arriving aliens,” who must file an application for adjustment of status with USCIS even if they are currently in removal proceedings,⁸ a person who is in removal proceedings must file their application for permanent residency with the immigration judge presiding over the case.⁹ Unlike the other agencies involving in evaluating public charge, DOJ has not formally changed their public charge guidance in recent years. Therefore, immigration judges continue to apply BIA and federal circuit case law,¹⁰ which largely tracks the 1999 DHS field guidance on public charge (see below).

DHS published a new public charge rule in the Federal Register on August 14, 2019 that would greatly expand the definition of public charge and make the public charge test much more difficult to pass.¹¹ However, this new rule is currently enjoined nationwide.¹² While DHS is blocked from implementing this new guidance, DHS and USCIS continue to follow guidance from 1999, which defines “public charge” as being primarily dependent on the government for subsistence, as reflected by receipt of cash assistance for income maintenance or long-term institutionalization at government expense.¹³ The 1999 guidance directs immigration officers to focus on the affidavit of support. A sufficient affidavit of support is viewed as strong evidence that the applicant is not likely to

⁶ Available at <https://www.ilrc.org/family-based-adjustment-status-options>.

⁷ This does not mean that all would-be permanent resident applicants who cannot adjust status should consular process; such individuals must still be screened for red flags that may indicate consular processing is inadvisable. For more information, see ILRC, “Preparing Clients for Immigrant Visa Interviews at U.S. Consulates,” (Nov. 2018), available at <https://www.ilrc.org/preparing-clients-immigrant-visa-interviews-us-consulates>.

⁸ See 8 CFR § 1245.2(a)(1)(ii).

⁹ If a person is in removal proceedings, but is not eligible for adjustment of status and is only eligible for consular processing, they will not be able to pursue that option until their removal case is administratively closed or terminated, which has become much more challenging given recent Attorney General decisions limiting an immigration judge’s ability to administratively close or terminate cases. See *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018); *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018).

¹⁰ See, e.g., *United States v. Tod*, 299 F. 592 (2d Cir. 1924); *Matter of Vindman*, 16 I&N 131 (BIA 1977); *Matter of Harutunian*, 14 I&N Dec. 583 (BIA 1974); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (A.G. 1964).

¹¹ See 84 Fed. Reg. 41292 (Aug. 14, 2019).

¹² For updates on the litigation challenging this public charge rule and status of the various injunctions currently blocking this rule from going into effect, see <https://protectingimmigrantfamilies.org/>.

¹³ See 64 Fed. Reg. 28689 (May 26, 1999).

become a public charge in the future, because they have a sponsor pledging to financially support them so they will not have to resort to government aid.¹⁴

DOS also published a new public charge rule in the Federal Register, on October 11, 2019, meant to align DOS with DHS on public charge inadmissibility.¹⁵ This rule is also not yet in effect; however, no court is blocking implementation. Instead, DOS is delaying implementation awaiting finalization of a new form, DS-5540 Public Charge Questionnaire, which is currently subject to a notice-and-comment period that runs through December 23, 2019.¹⁶ Until the new DOS rule is implemented, consular officers are following the Foreign Affairs Manual (FAM) guidance on public charge, last revised in January 2018.¹⁷ Presumably the FAM section on public charge will eventually be updated to reflect the new DOS rule on public charge, but for now its guidance is different in some key respects from the 1999 DHS field guidance as well as the new 2019 DHS and DOS rules. The FAM guidance is the only public charge guidance that directs immigration officers to consider receipt of benefits by the applicant's family, sponsor, and sponsor's household members as well as by the applicant. Additionally, the FAM revisions from 2018 represent the start of a shift in recent years from a qualifying affidavit of support to scrutinizing other factors like an applicant's age, health, household size, education, employment, and financial situation,¹⁸ which the 2019 DHS and DOS rules only expand upon. For more details about the 2018 FAM guidance and the 2019 DOS rule, see ILRC, "Public Charge Considerations: Adjustment of Status vs Consular Processing" and "Public Charge Inadmissibility Rules Comparison Chart," both part of the ILRC's *Public Charge Legal Services Toolkit* (Dec. 2019).¹⁹ Note that until at least December 23, 2019, and likely longer than that,²⁰ the 2018 FAM guidance on public charge controls cases decided by immigration officers at U.S. consulates and embassies abroad.

II. Illustrating the Three-Step Analysis with Case Examples

In Part II, we go through five case examples illustrating how to employ this three-step public charge analysis.

Case Example 1

Saul entered the United States without inspection in 2008 and has been living in California since then. He has two U.S.-born children, ages 9 and 13. The family has been receiving CalFresh (California's Supplemental Nutrition Assistance Program, or SNAP) and Medi-Cal (California's Medicaid health care program) since Saul's U.S. citizen wife stopped working due to a serious injury from a car accident. Saul came to your office because he just received a Notice to Appear (NTA). He wonders if his family should stop receiving public benefits.

What should you tell Saul?

¹⁴ For more details on the 1999 DHS field guidance on public charge, see "Public Charge Considerations: Adjustment of Status vs Consular Processing" and "Public Charge Inadmissibility Rules Comparison Chart," both part of the ILRC's *Public Charge Legal Services Toolkit*, (Dec. 2019), available at <https://www.ilrc.org/public-charge-legal-services-toolkit>.

¹⁵ See 84 Fed. Reg. 54996 (Oct. 11, 2019).

¹⁶ See 84 Fed. Reg. 57142 (Oct. 24, 2019).

¹⁷ See 9 FAM § 302.8.

¹⁸ For more on this multi-factored evaluation, referred to as the "totality of the circumstances" test, see ILRC, *Totality of the Circumstances: Assessing the Public Charge Ground of Inadmissibility*, (May 2019), available at <https://www.ilrc.org/totality-circumstances-assessing-public-charge-ground-inadmissibility>.

¹⁹ Available at <https://www.ilrc.org/public-charge-legal-services-toolkit>.

²⁰ After the notice-and-comment period closes on December 23, 2019, the government is required to review all comments and issue a final rule that takes into consideration the comments they received and justifies their course of action in light of the comments. At a minimum, this should take a few months, so advocates anticipate that the new DOS rule may start being implemented in early 2020.

Step 1. Determine If Public Charge Applies

- **WHO: Category of Immigration Status?**

Saul is currently undocumented, so we know that he does not have any special status that is exempt from public charge, such as U nonimmigrant status. Whether public charge applies to him will depend on what type of application he may be filing.

- **WHAT: Type of Application?**

Because Saul has received an NTA, we know that he is currently in removal proceedings. Thus, we will want to think about what applications he is most likely to pursue in proceedings. Since Saul has been living in the United States for at least 10 years and has a U.S. citizen wife and U.S. citizen children, he may be eligible for *non-LPR cancellation of removal*.²¹ There is no inadmissibility assessment associated with cancellation of removal, so Saul would not be subject to public charge if he pursues this avenue to legal status.

In addition to cancellation of removal, given that Saul is married to a U.S. citizen, another option for him may be to apply for LPR status through his spouse via an *immediate relative family-based petition*.²² If he pursues that avenue to a green card, Saul would be seeking an admission as an LPR and would be subject to a public charge determination. However, because Saul entered the United States without inspection, unless he otherwise has adjustment eligibility, to apply for permanent residence based on his wife's petition he would have to consular process. Given that Saul is currently in removal proceedings, he is not in a position to pursue consular processing unless he could get his removal case administratively closed or terminated.

Thus, cancellation of removal is currently Saul's most likely application.

Because public charge inadmissibility does not apply in the cancellation of removal context, we have reached the end of the analysis and there is no need to proceed to Steps 2 and 3. Therefore, public charge does not apply to Saul's situation and he does not need to worry about his family's use of CalFresh and Medi-Cal. They should continue to receive the benefits they need and qualify for. Further, his wife's injuries will likely factor into Saul's showing of exceptional and extremely unusual hardship as part of his cancellation of removal case.²³

Case Example 2

Aubrey came to the U.S. on a tourist visa in late 2018 because of harm that she experienced in her country. She recently started dating a U.S. citizen and they are considering getting married in the future. Aubrey and her partner are both HIV-positive and receive a variety of forms of public assistance, including cash assistance from the city and medical care through Ryan White funding (provided by the federal government). Because of these programs, Aubrey and her partner are able to work and live without any physical problems. However, it is hard for them to maintain a stable income, especially since Aubrey does not currently have work authorization.

What can you advise Aubrey about her options?

²¹ See INA § 240A(b).

²² See INA § 201(b)(2)(A)(i).

²³ See INA § 240A(b)(1)(D).

Step 1. Determine If Public Charge Applies

- **WHO:** *Category of Immigration Status?*

Because Aubrey's tourist visa has likely expired, she is probably without status. This means Aubrey does not have any special status that is exempt from public charge, so whether public charge applies to her will depend on what type of application she may be filing.

- **WHAT:** *Type of Application?*

If Aubrey and her partner marry, Aubrey will be able to apply for LPR status through her U.S. citizen spouse via an *immediate relative family-based petition*.²⁴ If she pursues that avenue to a green card, Aubrey would be seeking an admission as an LPR and would be subject to a public charge determination.

It also sounds as though Aubrey may have an *asylum* claim, because she came to the United States due to harm she experienced in her country of origin.²⁵ If Aubrey applies for asylum, she would not be subject to a public charge determination because asylum seekers are not subject to any grounds of inadmissibility, including public charge. Because public charge inadmissibility does not apply in the asylum context, if this were the route Aubrey chose to take, it would be the end of the public charge analysis and there would be no need to proceed to Step 2. Thus, the next steps only contemplate if Aubrey were to apply for adjustment. If Aubrey chose to apply for asylum, she would not have to worry about her and her partner's use of Ryan White or other programs and whether that would negatively affect her immigration case.

Step 2. Determine Which Public Charge Rule Applies

- **WHERE:** *USCIS, Consulate Abroad, or Other?*

If Aubrey decides to apply for LPR status through her partner via an *immediate relative family-based petition*, she will be eligible for adjustment of status with USCIS because she last entered with a tourist visa.²⁶

Step 3. Determine How Public Charge Will Apply to This Case

- **HOW:** *Positive and Negative Factors*

The USCIS officer will evaluate public charge in her adjustment case based on the 1999 Field Guidance. This means that Aubrey will only have to worry about using cash assistance or long-term care at government expense.²⁷ Aubrey currently receives cash aid, so she would want to prepare a strong adjustment of status application to show that, in spite of this assistance, she is not likely to be primarily dependent on the government for subsistence in the future. Aubrey will need to provide evidence of the positive factors in her case, such as proof that she is physically able to work notwithstanding her health condition, an explanation of the work that she did before coming to the United States, and how she can earn a stable income once she has work authorization (and thus will not be primarily dependent on the government).

The officer will not consider Aubrey's spouse's use of cash aid in Aubrey's public charge inadmissibility determination.²⁸ Nevertheless, Aubrey and her partner should also look for a family member or friend who can file

²⁴ See INA § 201(b)(2)(A)(i).

²⁵ See INA § 208.

²⁶ See INA § 245(a).

²⁷ See 64 Fed. Reg. 28689.

²⁸ See 64 Fed. Reg. 28692.

a joint sponsor affidavit of support, since Aubrey's partner is receiving cash assistance and may not have sufficient income to support Aubrey.²⁹

Case Example 3

J.P. was born in Mexico and came to the United States by walking through the desert in 1999. He recently married Imelda, a U.S. citizen who has received Medicaid and other government-funded health services because of her ongoing treatment for breast cancer. Because of Imelda's health issue, J.P. is the main income earner in the household, working as a Lyft driver when he is not caring for Imelda. Imelda wants to file a family petition for J.P. so that he can get immigration status in the United States.

What can you tell Imelda and J.P. about their options?

Step 1. Determine If Public Charge Applies

- **WHO:** *Category of Immigration Status?*

J.P. is currently undocumented, which means that he does not have any special status that is exempt from public charge. Whether public charge applies to him will depend on what type of application he may be filing.

- **WHAT:** *Type of Application?*

Because J.P. is married to a U.S. citizen, Imelda, J.P. may be able to apply for LPR status through Imelda via an *immediate relative family-based petition*.³⁰ If he pursues that avenue to a green card, J.P. would be seeking an admission as an LPR and would be subject to a public charge inadmissibility determination.

Step 2. Determine Which Public Charge Rule Applies

- **WHERE:** *USCIS, Consulate Abroad, or Other?*

Since J.P. entered the United States without inspection, he most likely would not qualify for adjustment of status with USCIS unless he has adjustment eligibility under INA § 245(i) or other adjustment eligibility (which we do not have facts to indicate). This means that J.P. would probably have to go to the U.S. consulate in Mexico to complete his family-based green card process.

Step 3. Determine How Public Charge Will Apply to This Case

- **HOW:** *Positive and Negative Factors*

The State Department consular officer will follow the FAM guidance last updated in 2018 or the new 2019 DOS public charge rule, depending on which policy is in effect at the time of J.P.'s interview. The FAM guidance will be in effect until at least December 23, 2019.

If the 2018 FAM guidance controls, J.P. *will primarily have to worry about using cash assistance or long-term care*,³¹ *neither of which he has used*. However, the FAM guidance directs consular officers to consider use of any means-

²⁹ For more information on affidavits of support, see ILRC, *Introductory Guide to the Affidavit of Support*, (Apr. 2018), available at <https://www.ilrc.org/introductory-guide-affidavit-support>.

³⁰ See INA § 201(b)(2)(A)(i).

³¹ See 9 FAM 302.8-2(B)(1)(a)(1).

tested benefits by the applicant's sponsor, the applicant's family members, and the sponsor's family members in the totality of the circumstances.³² As J.P.'s sponsor and family member, Imelda's use of Medicaid and other government-funded health services could figure into the consular officer's determination of the likelihood of J.P. becoming primarily dependent on the government for subsistence. Importantly, Imelda's receipt of these benefits would be just one of many factors in the officer's totality of the circumstances assessment. J.P. could present other positive factors for the officer's consideration, including that he seems to have a stable income working as an independent contractor. Considering that Imelda may not have much income because she qualifies to receive means-tested benefits, J.P. and Imelda should also look for a family member or friend who can be a joint sponsor.³³

Additionally, given that J.P. has been living in the United States for many years without immigration status, he will probably need a provisional unlawful presence waiver before he departs for his consular interview (as that departure will trigger a 10-year unlawful presence bar).³⁴ He must be aware that possible public charge problems heighten the risk that his provisional waiver may be revoked by the consular official,³⁵ so he will want to prepare an especially strong case with that in mind.

Case Example 4

Rubi currently has DACA. She and her two young children receive Medi-Cal (California's Medicaid health care program). Right now, Rubi does not have anyone who could petition for her or any other options to immigrate.

What would you tell Rubi?

Step 1. Determine If Public Charge Applies

- **WHO:** *Category of Immigration Status?*

Rubi currently has DACA, so she is not subject to public charge inadmissibility unless she obtains an avenue through which to apply for legal status, elects to apply for that status, and the avenue to legal status involves an inadmissibility assessment that includes the public charge test.

- **WHAT:** *Type of Application?*

As discussed above, because Rubi currently has DACA, she is not subject to public charge unless she acquires an avenue through which to apply for legal status. She currently does not have anyone who could petition for her or any options to immigrate, so she does not have to worry about public charge.

In turn, there is no public charge test for DACA renewal applications, should Rubi apply to renew her DACA. This is because DACA, as a form of relief, is not subject to the grounds of inadmissibility, so DACA applicants do not have a public charge test at all.

³² See 9 FAM 302.8-2(B)(1)(d)(1).

³³ See ILRC, *Introductory Guide to the Affidavit of Support*, (Apr. 2018), available at <https://www.ilrc.org/introductory-guide-affidavit-support>.

³⁴ See ILRC, *Understanding Unlawful Presence Under INA § 212(A)(9)(B) and Waivers of Unlawful Presence, I-601 and I-601A*, (Mar. 2019), available at <https://www.ilrc.org/understanding-unlawful-presence-under-%C2%A7-212a9b-and-unlawful-presence-waivers-i-601-and-i-601a>; ILRC, *I-601A Provisional Waiver: Process, Updates, and Pitfalls to Avoid*, (June 2019), available at <https://www.ilrc.org/i-601a-provisional-waiver-process-updates-and-pitfalls-avoid>.

³⁵ See ILRC, *Consular Processing Practice Alert on Public Charge and Affidavit of Support Issues*, (July 2018), available at <https://www.ilrc.org/consular-processing-practice-alert-public-charge-and-affidavit-support-issues>.

Because public charge inadmissibility does not apply in the DACA renewal context, we have reached the end of the analysis and there is no need to proceed to Step 2. Rubi can continue receiving Medi-Cal for herself and her two children without worrying about any negative immigration consequences.

Case Example 5

Kareena has been living in the United States as an LPR for the past twelve years. She is 72 years old and recently retired from her job as a cashier. Kareena receives Medicare and Medicaid. Kareena’s sister, who lives in India, recently became ill and Kareena wants to travel back to India for a few months to be with her. Kareena is worried that if she leaves, she will not be able to come back to the United States to be with her son and grandchildren.

Step 1. Determine If Public Charge Applies

- **WHO:** *Category of Immigration Status?*

Kareena is currently a permanent resident and therefore is not subject to public charge inadmissibility unless she falls under INA § 101(a)(13)(C), which lays out circumstances under which an LPR returning from travel abroad can be subject to the grounds of inadmissibility.

- **WHAT:** *Type of Application?*

Kareena will only be viewed as making a new application for admission—and thus subject to the grounds of inadmissibility—if she spends more than 180 days outside the United States (or otherwise falls under INA § 101(a)(13)(C), but we have no facts to indicate any of the others).

Step 2. Determine Which Public Charge Rule Applies

- **WHERE:** *USCIS, Consulate Abroad, or Other?*

If Kareena spends more than 180 consecutive days abroad when she travels to India on this trip, the Customs and Border Protection (CBP) officer will apply the current USCIS definition of public charge found in the 1999 Field Guidance. This is because CBP, like USCIS, falls under DHS.

Step 3. Determine How Public Charge Will Apply to This Case

- **HOW:** *Positive and Negative Factors*

Because the 1999 Field Guidance interpretation of public charge applies, Kareena will only have to worry about using cash assistance or long-term care, neither of which she has used. Therefore, Kareena would not need to worry about being found to be a public charge when she tries to reenter after a trip abroad lasting longer than 180 consecutive days. If she did have reason to worry about public charge (for example, because she received cash assistance or long-term institutionalized care at government expense in the past and feared she might be found in danger of becoming a public charge when she tried to return from India), Kareena could avoid this problem by ensuring that she did not stay outside the country for more than 180 days; in other words, Kareena could simply limit her trip to less than 180 days to avoid being subject to grounds of inadmissibility altogether.³⁶ As long as

³⁶ This assumes “Kareena” does not fall under any of the other exceptions at INA § 101(a)(13)(C) that cause a returning LPR to be subject to the grounds of inadmissibility, such as if the person has committed a criminal offense under the criminal inadmissibility grounds at INA § 212(a)(2). If she had committed an offense under § 212(a)(2), for example, she should not travel abroad for *any amount of time*, whether less than 180 days or not, as she could be subject to the grounds of inadmissibility when she tries to return.

Kareena has not traveled outside the United States for longer than 180 consecutive days, as an LPR Kareena would not be subject to public charge inadmissibility.



San Francisco

1458 Howard Street
San Francisco, CA 94103
t: 415.255.9499
f: 415.255.9792

ilrc@ilrc.org www.ilrc.org

Washington D.C.

1015 15th Street, NW
Suite 600
Washington, DC 20005
t: 202.777.8999
f: 202.293.2849

Austin

6633 East Hwy 290
Suite 102
Austin, TX 78723
t: 512.879.1616

San Antonio

500 6th Street
Suite 204
San Antonio, TX 78215
t: 210.760.7368

About the Immigrant Legal Resource Center

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