

**UNCLASSIFIED (U)****9 FAM 302.8  
(U) PUBLIC CHARGE - INA 212(A)(4)**

*(CT:VISA-1014; 02-21-2020)*

*(Effective date: 02-24-2020)*

*(Office of Origin: CA/VO/L/R)*

**9 FAM 302.8-1 (U) STATUTORY AND REGULATORY  
AUTHORITY****9 FAM 302.8-1(A) (U) Immigration and Nationality Act**

*(CT:VISA-198; 09-30-2016)*

**(U)** INA 101(a)(15) (8 U.S.C. 1101(a)(15)); INA 101(b)(1)(E) (8 U.S.C. 1101(b)(1)(E)); INA 102 (8 U.S.C. 1102); INA 203(g) (8 U.S.C. 1153(g)); INA 212(a)(4) (8 U.S.C. 1182(a)(4)); INA 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)); INA 213 (8 U.S.C. 1183); INA 213A (8 U.S.C. 1183a); INA 221(g) (8 U.S.C. 1201(g)); INA 245 (8 U.S.C. 1255); INA 248 (8 U.S.C. 1258); INA 316 (8 U.S.C. 1427); INA 317 (8 U.S.C. 1428); INA 319(b)(1) (8 U.S.C. 1430(b)(1)); INA 320 (8 U.S.C. 1431).

**9 FAM 302.8-1(B) (U) Code of Federal Regulations**

*(CT:VISA-1014; 02-21-2020)*

**(U)** 8 CFR 103.6; 8 CFR 205.1(a)(3)(i)(C); 8 CFR 212.23; 8 CFR 213a; 8 CFR 213.1; 8 CFR 316.20; 22 CFR 40.41.

**9 FAM 302.8-1(C) (U) United States Code**

*(CT:VISA-198; 09-30-2016)*

**(U)** 8 U.S.C. 1641(c); 28 U.S.C. 1746; 42 U.S.C. 9902(2).

**9 FAM 302.8-1(D) (U) Public Laws**

*(CT:VISA-198; 09-30-2016)*

**(U)** Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

**9 FAM 302.8-2 (U) PUBLIC CHARGE****9 FAM 302.8-2(A) (U) Grounds**

*(CT:VISA-1014; 02-21-2020)*

**(U)** INA 212(a)(4)(A) provides that an applicant who is likely at any time to become a public charge is inadmissible and, consequently, is ineligible for a visa. All immigrant visa (IV) and nonimmigrant visa (NIV) applicants, except those mentioned in [9 FAM 302.8-2\(B\)\(6\)](#), are subject to the public charge ground of ineligibility.

## **9 FAM 302.8-2(B) (U) Application**

### **9 FAM 302.8-2(B)(1) (U) What is "Public Charge"**

*(CT:VISA-1014; 02-21-2020)*

#### **a. (U) In General:**

- (1) **(U) Public Charge:** An applicant is ineligible under INA 212(a)(4) if he or she is more likely than not, at any time in the future, to become a public charge based on the totality of the applicant's circumstances, or, if applicable, the applicant has failed to submit a sufficient Affidavit of Support, i.e., an Affidavit of Support that meets all applicable requirements (see [9 FAM 601.14](#)). "Public charge" means an applicant who receives one or more defined public benefits for more than 12 months in the aggregate within any 36-month period. "Public benefit" is defined in paragraph b, below.

**(U) Note:** Receipt of two enumerated benefits in one month is counted as two months of benefits, for purposes of public charge visa ineligibility determinations.

- (2) **(U) Totality of the Circumstances:** When considering the likelihood of an applicant becoming a public charge at any time in the future, you must take into account the totality of the alien's circumstances at the time of visa application, including at a minimum the applicant's: age; health; family status; education and skills; assets, resources, and financial status; visa classification sought and how long the applicant expects to remain in the United States. You may also deny an applicant on public charge grounds based the insufficiency of an affidavit of support, when required. Form DS-5540, Public Charge Questionnaire is designed to help you assess the totality of the applicant's circumstances when making a public charge ineligibility determination. (See [9 FAM 302.8-2\(B\)\(2\)](#) for more information on the totality of circumstances.)
- (3) **(U) Affidavit of Support:** An applicant who is required, pursuant to INA 212(a)(4)(C) or (D), to submit Form I-864 or Form I-864EZ, Affidavit of Support Under Section 213A of the INA, and who fails to submit a Form I-864 or meeting all applicable requirements, is ineligible under INA 212(a)(4). For more information on the affidavit of support See [9 FAM 601.14](#), Affidavit of Support.

#### **b. (U) Defining Public Benefit:** In the "public charge" visa ineligibility context, "public benefit" means any of the following, received on or after February 24, 2020:

- (1) **(U)** Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), including:
  - (a) **(U)** Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
  - (b) **(U)** Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 et seq.);
  - (c) **(U)** Federal, State or local cash benefit programs for income maintenance (often called "General Assistance" in the State context, but which also may be known by other names);

- (2) **(U)** Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps") (7 U.S.C. 2011 et seq.);
  - (3) **(U)** Housing Choice Voucher Program, as authorized under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f);
  - (4) **(U)** Project-Based Rental Assistance (including Moderate Rehabilitation) authorized under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);
  - (5) **(U)** Medicaid under 42 U.S.C. 1396 et seq., **except for**:
    - (a) **(U)** benefits received for an emergency medical condition as described in section 1903(v) of Title XIX of the Social Security Act (42 U.S.C. 1396b(v)(2)-(3), 42 CFR 440.255(c));
    - (b) **(U)** services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.);
    - (c) **(U)** school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law;
    - (d) **(U)** benefits received by an alien under 21 years of age, or a woman during pregnancy (and during the 60-day period beginning on the last day of the pregnancy); and
  - (6) **(U)** Subsidized Public Housing under Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g).
- c. **(U) Exclusion for Benefits Received by Members of the Armed Forces:** "Public benefit", for the purposes of public charge visa ineligibility determinations, does not include any of the benefits described above received by an alien who, at the time of receipt or at the time of filing or adjudication of the visa application, is:
- (1) **(U)** enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2) (or is the spouse or child of such person); or
  - (2) **(U)** serving in active duty or in the Ready Reserve component of the U.S. Armed Forces (or is the spouse or child of such person).
- d. **(U) Public Benefits Exclusion for Benefits Received by Certain Children of U.S. Citizens:** Public benefit, for the purposes of public charge visa ineligibility determinations, does not include any of the benefits described above that were or will be received by children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship or whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption (if the child satisfies the requirements applicable to adopted children under INA 101(b)(1)) in the United States by the U.S. citizen parent(s) and, once meeting other eligibility criteria as required by the Child Citizenship Act of 2000 (8 U.S.C. 1413(a) and (b)), in accordance with 8 CFR part 320, or children of U.S. citizens who are entering the United States for the purpose of attending an interview under INA 322, in accordance with 8 CFR part 322. Because 22 CFR 40.41(c) defines "public charge" as an alien who receives one or more "public benefit" for more than 12 months in the aggregate within any 36-month period, you should not find children described in this paragraph

ineligible under INA 214(a)(4) unless they have failed to fulfil an affidavit of support requirement.

- e. **(U) Other Public Benefit Exclusion:** Public benefit, as defined in this section, does not include any form of assistance listed above received by an individual during periods in which the individual was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, as set forth in 8 CFR 212.23(a), or for which the alien received a waiver of public charge inadmissibility from DHS. Public benefit does not include health services for immunizations and for testing and treatment of communicable diseases, including communicable diseases of public health significance as defined in 42 CFR 34.
- f. **(U)** When determining whether any applicant is likely at any time to become a public charge based on the totality of the circumstances, you must consider the forms of assistance that fall within the definition of "public benefit" set out above, if received on or after February 24, 2020, as well as cash assistance for income maintenance and/or institutionalization for long-term care as described in [9 FAM 302.8-2\(B\)\(1\)](#) subparagraph (b) received before February 24, 2020. You may not consider any other forms of public assistance the applicant or the applicant's family has received for purposes of public charge visa ineligibility determinations.

## 9 FAM 302.8-2(B)(2) (U) Determining "Totality of the Circumstances"

*(CT:VISA-1014; 02-21-2020)*

### a. **(U) In General:**

- (1) **(U)** In making a determination whether an applicant is ineligible for a visa under INA 212(a)(4)(A), **in every case**, you must consider at a minimum the applicant's:
- (a) **(U)** Age (see paragraph b below);
  - (b) **(U)** Health (see paragraph c below);
  - (c) **(U)** Family status (see paragraph d below);
  - (d) **(U)** Assets, resources, and financial status (see paragraph e below);
  - (e) **(U)** Education and skills (see paragraph f below);
  - (f) **(U)** Visa classification sought and expected period of admission (see paragraph g below); and
  - (g) **(U)** A Form I-864/Form I-864EZ, when required (see paragraph h below).
- (U) Note:** A properly filed, facially sufficient, non-fraudulent Form I-864/Form I-864EZ, when required, is a positive factor in the totality of the circumstances.
- (2) **(U)** These factors, and any other factors you consider relevant in a specific case, will make up the "totality of the circumstances" that you must consider when making a public charge visa ineligibility determination for each applicant.

- b. **(U) Age:** You must consider whether the applicant's age makes the applicant more likely than not to become a public charge at any time in the future, such as by impacting the applicant's ability to work, including whether the applicant is between the age of 18 and the minimum "early retirement age" for Social Security set forth in

42 U.S.C. 416(I)(2) (currently 62). You must consider whether the alien's age affects the alien's employability or may increase the potential for healthcare-related costs.

- (1) **(U)** You should consider it a positive factor in the totality of the circumstances if the applicant is of working age; generally between age 18 and 61.
- (2) **(U)** For an applicant who is under the age of 18 and neither accompanied by a parent or guardian nor following to join a parent or guardian, and who lacks evidence of financial self-sufficiency, age is a negative factor in the totality of the circumstances.
- (3) **(U)** If the applicant is at or above the early retirement age (currently 62), you must consider it a negative factor in the totality of the circumstances if the evidence reflects that the applicant's age adversely affects the applicant's ability to obtain or perform work, or may increase the potential for healthcare related costs that would be borne by the public.

c. **(U) Health:** You must consider if the applicant's health makes it more or less likely that the applicant will become a public charge at any time in the future, including whether the applicant has been diagnosed with a medical condition that is likely to require extensive medical care or institutionalization, or that will interfere with the applicant's ability to provide and care for himself or herself, to attend school, or to work upon admission.

- (1) **(U)** You must take into consideration the report of a medical examination performed by the panel physician, where such examination is required, including any medical conditions noted by the panel physician. A Class B medical condition, including Class B forms of communicable diseases of public health significance, is not alone a determinative factor for public charge visa ineligibility purposes. The medical condition should be taken into consideration with all factors under the totality of the circumstances.
- (2) **(U)** You must take into consideration the panel physician's report regarding the applicant's health, especially if there is a prognosis that might prevent or ultimately hinder the applicant from maintaining employment successfully or indicate the likelihood that the alien would require institutionalization at government expense. As noted above in [9 FAM 302.8-2\(B\)\(1\)](#) paragraph (c), the likelihood that an applicant will receive Medicaid that is used to support applicants who reside in an institution for long-term care – such as a nursing home or mental health institution – may be considered a negative factor in the totality of the circumstances for purposes of public charge visa ineligibility determinations.

**(U) Note:** Medical conditions which might affect employment, increase the likelihood of future medical expenses unlikely to be covered by health insurance, or otherwise affect the applicant's ability to adequately provide for himself or herself (and any dependents) are considered a negative factor in the totality of the circumstances.

- (3) **(U)** In assessing the effect of the applicant's health on a public charge visa ineligibility determination, you should consider evidence of health insurance or the ability to pay for reasonably foreseeable medical expenses in the United States a positive factor in the totality of the circumstances. While proof of private medical insurance or other ability to pay for reasonably foreseeable medical expenses in the United States is associated with the alien's assets, resources, and financial status, it will be particularly relevant if the applicant has a health issue

that will likely require extensive medical treatment or interfere with the alien's ability to care for himself or herself, to attend school, or to work.

- d. **(U) Family Status and Household Size:** In considering the applicant's family status, you must consider the number of the family members living with the applicant, to the extent that may be a predictor of the size of the applicant's household after admission. Generally, an applicant and/or members of the applicant's household should have sufficient income, or the ability to earn sufficient income after arriving in the United States, to maintain the household at or above 125 percent of the Federal Poverty Guidelines (FPG) for the applicant's household size (or 100 percent for an applicant on active duty, other than training, in the U.S. Armed Forces). Therefore, having a large household will be a negative factor if number of individuals in the household reduces the overall household income to or below the applicable household size. Small household size is a positive factor if, for example, the alien is in a single-family household and has assets and significant earning capacity. Forms DS-5540, Public Charge Questionnaire, and/or Form I-864, Affidavit of Support, will be useful to determine if sufficient income exists to support the applicant's household (for more information on the DS-5540 see paragraph e below).
- (1) **(U) Composition of Household:** The applicant's household size after admission may or may not be the same as the sponsor's household size, which is used to determine whether a sponsor's submitted Form I-864 meets the FPG. (See [9 FAM 601.14-7](#).) You must take care not to conflate applicant's household size with sponsor's household size, as they are calculated differently and may not include all the same individuals. The applicant's household is defined to include the following:
- (a) **(U) For Applicants Over 21 Years of Age or Married:** If the applicant is 21 years of age or older, or under the age of 21 and married, the applicant's household includes:
- (i) **(U)** The applicant;
  - (ii) **(U)** The applicant's spouse, if the spouse will be physically residing with the applicant after admission;
  - (iii) **(U) Children:**
    - (A) **(U)** The applicant's children, as defined in INA 101(b)(1), if the child will be physically residing with the applicant after admission;
    - (B) **(U)** The applicant's other children, as defined in INA 101(b)(1), who will not be physically residing with the applicant, and for whom the applicant provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the applicant;
  - (iv) **(U)** Any other individuals (including a spouse who will not be physically residing with the applicant) to whom the alien provides, or is required to provide, at least 50 percent of the individual's financial support or who are listed as dependents on the applicant's most recent federal income tax return; and

- (v) **(U)** Any individual who provides to the alien at least 50 percent of the applicant's financial support, or who lists the applicant as a dependent on his or her most recent federal income tax return.
- (b) **(U) For Applicants Who Are Children as Defined by the INA:** If the applicant is a child as defined in INA 101(b)(1), the applicant's household includes the following individuals:
- (i) **(U)** The applicant;
  - (ii) **(U) Children:**
    - (A) **(U)** The applicant's children as defined in INA 101(b)(1), intending to physically reside with the applicant in the United States;
    - (B) **(U)** The applicant's other children as defined in INA 101(b)(1) not physically residing or intending to physically reside with the applicant for whom the applicant provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the applicant;
  - (iii) **(U)** The applicant's parents, legal guardians, or any other individual providing or required to provide at least 50 percent of the applicant's financial support to the applicant as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the applicant;
  - (iv) **(U)** The applicant's parents' or legal guardians' other children as defined in INA 101(b)(1), intending to physically reside with the applicant in the United States;
  - (v) **(U)** The applicant's parents' or legal guardians' other children as defined in INA 101(b)(1), not physically residing or intending to physically reside with the applicant for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and
  - (vii) **(U)** Any other individuals for whom the applicant's parents or legal guardians provide, or are required to provide, at least 50 percent of the individuals' financial support or who are listed as a dependent on the parent's or legal guardian's federal income tax return.

**e. (U) Assets, Resources and Financial Status:**

- (1) **(U) Applicant's Income, Assets and Resources:** If an applicant has sufficient assets, resources, and/or financial status to support him or herself and members of the applicant's household after admission, it is a positive factor in the totality of the circumstances, as the applicant is less likely to become a public charge. You must consider, among other relevant factors, the following aspects of an applicant's assets, resources, and financial status:

- (a) **(U) Annual Gross Income:** You must consider the applicant's household's annual gross income or projected annual gross income in the United States as a positive factor in the totality of the circumstances analysis if the annual gross income is at least 125 percent of the most recent Federal Poverty Guideline (FPG) based on the applicant's household size (or 100 percent for an applicant on active duty, other than training, in the U.S. Armed Forces).
- (b) **(U) Assets and Resources:**
- (i) **(U) Assets when projected annual income is insufficient:**  
Generally, if an immigrant visa applicant's household's projected annual gross income is less than 125 percent of the most recent FPG based on the applicant's household size (100 percent for an applicant on active duty, other than training, in the U.S. Armed Forces), you may consider the applicant's household assets and resources as a positive factor if the total value of the household assets and resources is at least 5 times the difference between the applicant's household gross income and 125 percent of the FPG (100 percent for an applicant on active duty, other than training, in the U.S. Armed Forces) for the applicant's household size.
- (ii) **(U) Considering assets for spouses and children over 18 children of U.S. citizens, and orphans adopted by U.S. citizens:**  
You may consider the applicant's household assets and resources as a positive factor if the total value of the assets and resources is at least 3 times the difference between the applicant's household income and 125 percent of the FPG (100 percent for an applicant on active duty, other than training, in the U.S. Armed Forces) for the following applicants: the spouse or child of a U.S. citizen (and the child has reached his or her 18th birthday). An orphan who will be adopted in the United States after the alien orphan acquires permanent residence (or in whose case the parents will need to seek a formal recognition of a foreign adoption under the law of the State of the applicant's proposed residence because at least one of the parents did not see the child before or during the adoption), and who will, as a result of the adoption or formal recognition of the foreign adoption, acquire citizenship under INA 320, you may consider assets and resources equal to the difference between the applicant's household income and 125 percent of the FPG (100 percent for an applicant on active duty, other than training, in the U.S. Armed Forces).
- (c) **(U) Other Considerations:**
- (i) **(U)** If an applicant has visited or lived in the United States you must consider whether he or she has applied for, been certified to receive, been approved to receive, or received one or more public benefits, as defined in [9 FAM 302.8-2\(B\)\(1\)](#) subparagraph (b) on or after February 24, 2020; or whether the applicant has disenrolled or requested to be disenrolled from such public benefits.
- (ii) **(U)** You must consider if an applicant has applied for, been certified to receive, been approved to receive, or received public cash assistance for income maintenance or has been institutionalized for long-term care before February 24, 2020; or whether the applicant has disenrolled or requested to be disenrolled from such public benefits.



- (A) **(U)** Public cash assistance” for income maintenance includes: supplemental security income (SSI); cash temporary assistance for needy families (TANF), but not including supplemental cash benefits or any non-cash benefits provided under TANF; and state and local cash assistance programs that provide for income maintenance (often called state general assistance).
  - (B) **(U)** Institutionalization for long-term care refers to care for an indefinite period of time for mental or other health reasons, rather than temporary rehabilitative or recuperative care even if such rehabilitation or recuperation may last weeks or months.
  - (iii) **(U)** You must consider whether the applicant has private health insurance or other financial resources available in the United States sufficient to cover reasonably foreseeable costs related to a medical condition.
  - (iv) **(U)** You must consider whether the applicant has received an immigration benefit fee waiver from USCIS on or after February 24, 2020, unless the fee waiver was applied for or granted as part of an application for an immigration benefit to which the public charge inadmissibility does not apply;
  - (v) **(U)** You must consider any financial liabilities of the applicant.
  - (vi) **(U)** You may not consider any income from illegal activities or sources, such as proceeds from illegal gambling or drug sales, or income from any public benefit listed in [9 FAM 302.8-2\(B\)\(1\)](#) paragraph (b).
- (2) **(U) Evidence of Assets, Resources and Financial Status:** In examining specific aspects of the applicant's assets, resources, and financial status, you should consider, in particular:
- (a) **(U) As to** the applicant's gross household income, excluding any public benefits;
    - (i) **(U)** For employment-based immigrant visa applicants who are subject to public charge, you may take into consideration the expected income listed on the Labor Certification (or any updated salary information provided by the petitioner) plus any income that the applicant lists in the DS-5540, Public Charge Questionnaire, that will continue to be received after admission to the United States.
    - (ii) **(U)** For all other immigrant visa applicants, you may take into consideration any income that the applicant lists in the DS-5540, Public Charge Questionnaire, that will continue to be received after admission to the United States plus any potential income based on expected employment.
  - (b) **(U)** Any additional income from individuals not included in the applicant's household who physically reside with the applicant and whose income will be relied upon to meet the standard in paragraph 1 above;
  - (c) **(U)** Any additional income provided to the applicant by another person or source not included in the applicant's household on a continuing monthly or yearly basis for the most recent calendar year, excluding any public benefits;

- (d) **(U)** The household's cash assets and resources, including checking and savings account statements covering 12 months prior to filing the visa application;
  - (e) **(U)** The household's non-cash assets and resources that can be converted into cash within 12 months, such as the net cash value of real estate holdings minus the sum of all loans secured by a mortgage, trust deed, or other lien on the home; annuities; securities; retirement and educational accounts; and any other assets that can easily be converted into cash.
  - (f) **(U)** Whether the applicant has:
    - (i) **(U)** Applied for or received any public benefit on or after February 24, 2020, or disenrolled or made a good faith effort to be disenrolled from such benefits; or
    - (ii) **(U)** Been certified or approved to receive public benefits on or after February 24, 2020, or withdrew his or her application or disenrolled or made a good faith effort to disenroll from such benefits;
  - (g) **(U)** Submitted evidence from a Federal, State, local, or tribal agency administering a public benefit, that the applicant has specifically identified as showing that the applicant does not qualify or would not qualify for such public benefit by virtue of, for instance, the applicant's annual gross household income or prospective immigration status or length of stay.
  - (h) **(U)** Whether the applicant has applied for or received a USCIS fee waiver for an immigration benefit request on or after February 24, 2020, unless the fee waiver was applied for or granted as part of an application for which a public charge inadmissibility determination under INA 212(a)(4) was not required;
  - (i) **(U)** Whether the applicant has private health insurance or sufficient financial resources to pay for reasonably foreseeable medical costs, particularly if related to a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide care for himself or herself, to attend school, or to work.
- (3) **(U) Documenting Assets, Resources, and Financial Status in DS-Form 5540, Public Charge Questionnaire:**
- (a) **(U) Immigrant Visa Applicants:** All immigrant visa applicants subject to INA 212(a)(4) must complete and submit a Form DS-5540, Public Charge Questionnaire. (If a family unit applies together, only one form is required). The DS-5540 provides information to assist you in determining whether the applicant is more likely than not to become a public charge, based on the totality of the applicant's circumstances. Unless specified on Form DS-5540, applicants are not required to submit supporting documentation. However, if you determine documentary evidence is necessary, you may request an applicant to establish the adequacy of financial resources by submitting, for example, evidence of bank deposits, ownership of property or real estate, ownership of stocks and bonds, insurance policies, or income from business investments, as well as those of any household members.

**Unavailable.**

**(U) NOTE:** If the principal applicant is under 14 years of age, the DS-5540 should be completed and signed by the applicant's parent, legal guardian, or

other individual over the age of 14 with a legitimate interest in the applicant.

- (b) **(U) Nonimmigrants:** You may request a nonimmigrant visa applicant to complete the Form DS-5540 in any case where you believe additional information is necessary to determine whether the individual's assets, resources, and financial status are sufficient to address any concerns about eligibility on public charge grounds. Alternatively, you may ask the applicant(s) any or all of the questions from Form DS-5540 necessary for you to make the public charge determination (including orally).

(4) **(U) Supporting Documentation:**

- (a) **Bank deposits:** For applicants relying on bank deposits to meet the public charge requirements, you may consider a letter signed by a senior officer of the bank over the officer's title, showing:

- (i) **(U)** The date the account was opened;
- (ii) **(U)** The number and amount of deposits and withdrawals during the last 12 months;
- (iii) **(U)** The present balance. This information may prevent attempted abuse such as an initial deposit of a substantial sum of money being made within a relatively short time prior to the visa application; and
- (iv) **(U)** How the money, if in a foreign bank in foreign currency, is to be transferred to the United States.

- (b) **(U) Real estate investments:** Evidence of property ownership may be in the form of a title deed or equivalent or certified copies. The applicant must satisfy you as to the plans for disposal or rental of such property and the manner in which the income from the property (if abroad) is to be transferred to the United States for the applicant's support.

- (c) **(U) Stocks and bonds, income from business investments, and insurance policies:** Evidence of income from these sources should indicate present cash value or expected earnings and, if the income is derived from a source outside the United States, a statement as to how the income is to be transferred to the United States.

- (5) **(U) Informing Applicants of Required Documentation:** Post will necessarily process some cases that were documentarily qualified by NVC or KCC prior to the effective date of the public charge rule or without the DS-5540. To help ensure a smooth transition, you should make every effort to inform applicants in advance of the visa interview of supporting documents that will help you resolve a public charge determination. This could include a request that applicants complete and upload the DS-5540 to the CEAC, or bring it with them to the interview. Posts may also request applicants bring with them to the interview supporting financial documents or other documentation post knows would be relevant. Ideally, you should be in a position to assess whether applicants are ineligible for visas under INA 212(a)(4) at the end of the initial visa interview, assuming that the applicant has made reasonable efforts to submit the evidence originally requested. Applicants who you determine are more likely than not to become a public charge at any time after admission even after the presentation of additional evidence, should be refused under INA 212(a)(4) instead of INA 221(g); however, you must provide applicants an opportunity to provide a completed DS-5540 before you refuse an application under INA 212(a)(4). Adequate time and effort spent prior

to and during the initial interview can save work for the post and the applicant in this respect.

**(6) (U) Applicants with little or no current income and assets by U.S. standards:**

- (a) **(U)** An immigrant visa applicant's foreign income should only be considered among his or her income, assets, and financial resources if the income stream will continue after the applicant immigrates to the United States. If the applicant's foreign income will cease upon immigration, that income may be considered when evaluating the applicant's education and skills as evidence of work history and capacity for future employment.
- (b) **(U)** For those applicants who have insufficient or no attributable gross household income or assets, you must consider a properly filed, valid I-864, if required, in evaluating the household income in relation to the FPG. For those applicants who have insufficient or no attributable gross household income or assets and who are not required to submit a Form I-864, you may consider the information elicited in DS-5540, Public Charge Questionnaire.
- (c) **(U)** You should consider it a negative factor if an applicant currently lacks household income and assets above 125 percent of the FPG, is unlikely to be able to obtain future employment that would place the household above 125 percent of the FPG, or lacks access to additional resources and financial support from sources other than public benefits or from illegal activities or sources. An immigrant visa applicant who lacks sufficient household income or assets to place his or her household above 125 percent of the FPG due to his or her planned immigration to the United States may, in the totality of the circumstances, still overcome public charge concerns based on consideration of other factors, such as a properly filed and qualifying Form I-864 or anticipated employment in the United States. You should also consider the applicant's capacity, and the capacity of other members of the applicant's household, to obtain future employment, based on their age, health, education, and work history, when determining the applicant's likelihood of becoming a public charge.

**(7) (U) Form I-864 (Affidavit of Support)**

- (a) **(U)** A properly filed, non-fraudulent, and sufficient Form I-864, in those cases where it is required, should be considered a positive factor that complements the applicant's own assets and financial resources under the totality of the circumstances analysis. (See [9 FAM 601.14](#), Affidavit of Support for more information.) You should consider of a sufficient Form I-864, Affidavit of Support, where required, is one factor among many, and is not outcome determinative in the totality of the circumstances analysis.
- (b) **(U) Sponsor delinquent on reimbursement obligation:**
  - (i) **(U)** The sponsor's failure to reimburse Federal, state, or local government expenses incurred by a prior immigrant that the individual sponsored for immigration benefits, after proper notification to the sponsor that the sponsored immigrant has received a means-tested public benefit and reimbursement is due, is a negative factor in the totality of the circumstances, in considering the likelihood the visa applicant will become a public charge. You may determine that a sponsor's delinquency on a reimbursement obligation relative to a

previously sponsored immigrant or nonimmigrant supports a finding of ineligibility for the applicant under INA 212(a)(4), if you conclude that delinquency brings into question the applicant's likelihood to become a public charge. (See 302.8-2(B)(3) regarding consideration of likelihood sponsor will support applicant).

- (ii) **(U) When an AO is required:** In any case where you believe a sponsor has failed to reimburse a government entity that provided a sponsored alien a government, means-tested benefit, after proper notification to the sponsor that such reimbursement is due, but where the Department did not inform you of the failure, you must submit an AO. The AO may be submitted informally via email or formally via NIV or IVO.

f. **(U) Education and Skills:**

- (1) **(U)** You must consider both positive and negative factors associated with whether the applicant has adequate education and skills to either obtain or maintain employment with an income sufficient to avoid becoming a public charge.
- (a) **(U)** You should consider the applicant's history of employment, educational level (high school diploma or its equivalent or a higher educational degree), any occupational skills, certifications or licenses, or language proficiency.
- (b) **(U)** For non-employment based applicants where a job offer is not required for the visa classification sought, you should consider the applicant's employment plans and tentative job offers as part of the totality of the applicant's circumstances while assessing the likelihood of the applicant becoming a public charge.
- (c) **(U) Primary Caregiver:** You may consider as a positive factor whether the alien is a primary caregiver. This factor is intended to take into consideration difficult-to-monetize contributions by aliens who may lack current employment or an employment history due to their full-time care of household members. The visa applicant's employment history would not accurately reflect the alien's work as a primary caregiver. In this respect, serving as a primary caregiver could be a positive factor in the totality of the circumstances, particularly if the caregiving responsibility will end when the alien travels to the United States. Primary caregiver means an applicant who is 18 years of age or older and has significant responsibility for actively caring for and managing the well-being of a minor, elderly, ill, or disabled person residing in the applicant's household. Only one applicant within a household can be considered a primary caregiver of the same individual within the household. Consideration with respect to this paragraph includes, but is not limited, to evidence that an individual the applicant is caring for resides in the applicant's household, evidence of the individual's age (whether minor or advanced), and evidence of the individual's medical condition, including disability, if any.
- (2) **(U) Employment Considerations and the Form I-864:** You may not consider an offer of employment to an applicant in place of a Form I-864 in cases where the Form I-864 is required.
- (3) **(U) Information Contained on Approved Labor Certification:** The majority of employment-based immigrants are subject to the labor certification requirement under INA 212(a)(5) (see 22 CFR 40.51 and [9 FAM 302.1-5\(B\)](#)).

You may presume that when a Labor Department Form ETA-9089, Application for Permanent Employment Certification, or Form ETA-750-Part A & B, Application for Alien Employment Certification is certified, the position is permanent and the prevailing wage has been met. If you identify new facts that indicate that the position is not permanent or that the prevailing wage has not been met, you must follow the procedures at [9 FAM 504.2-8](#), Revocation and Revalidation of Immigration Visa Petitions. Some employment-based immigrants require an Form I-864, Affidavit of Support; see [9 FAM 302.8-\(C\)\(1\)](#) paragraph (a)(3) for more information on that requirement.

- g. **(U) Visa Classification Sought and Expected Period of Admission:** You must consider the visa classification sought by the applicant either as an immigrant or nonimmigrant and the applicant's expected stay in the United States as it relates to the applicant's ability to financially support himself or herself and the members of his or her household in the United States. Nonimmigrant visa applicants likely to be present in the United States for relatively short durations, particularly if admitted in a status that authorizes employment, are generally less likely, as a practical matter, to become public charges. As immigrant visa applicants seek to reside permanently in the United States, they will require more careful scrutiny of any possible ineligibility under INA section 212(a)(4). For example, for an IV applicant, being of working age and having the ability to work is an important consideration; whereas, in the case of an NIV applicant who has demonstrated sufficient funds to cover the reasonably foreseeable expenses of their proposed trip, those factors of importance for an IV applicant generally would not be relevant to an INA section 212(a)(4) analysis.
- h. **(U) An Affidavit of Support, When Required:** You may consider an Form I-864, Affidavit of Support that meets all applicable requirements, in those cases where it is required, a positive factor in the totality of the circumstances -if you believe, based for example on the relationship between the applicant and the sponsor, that the sponsor is likely to actually provide the applicant with the statutorily-required amount of financially support, if needed. An applicant who is required to submit an Form I-864 under INA 213A and who fails to submit a sufficient Form I-864 is ineligible under INA 212(a)(4). For more information on the Affidavit of Support see [9 FAM 601.14](#), Affidavit of Support.
- i. **(U) Weighing Factors Under the Totality of the Circumstances:** You should consider the following factors as weighing heavily, either positively or negatively, on a public charge determination. However, note that the mere presence of one of the circumstances below is not alone determinative; you must consider the totality of the applicant's circumstances when making a public charge determination.
- (1) **(U) Heavily-weighted negative factors:**
- (a) **(U)** The applicant will not be a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history, or a reasonable prospect of future employment;
  - (b) **(U)** The applicant has received or has been certified or approved to receive one or more public benefits, as defined in [9 FAM 302.8-2\(B\)\(1\)](#) subparagraph b, beginning no earlier than February 24, 2020, or for more than 12 months in the aggregate within the 36 months immediately preceding adjudication of his or her visa application, whichever is later;
  - (c) **(U)** The applicant has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will

interfere with the alien's ability to provide for himself or herself, attend school, or work and lacks health insurance and has neither the prospect of obtaining private health insurance for use in the United States, nor the financial resources to pay for reasonably foreseeable medical costs related to the medical condition; or

(d) **(U)** The applicant has previously been found inadmissible, or deportable on public charge grounds.

(2) **(U) Heavily weighted positive factors:** The following factors will weigh heavily in favor of a finding that an applicant is not likely to become a public charge:

(a) **(U)** The applicant's household has income, assets, or resources, or support from a sponsor, of at least 250 percent of the FPG for the applicant's household size;

(b) **(U)** The applicant is authorized to work and is currently employed or is expected to be employed in the United States with an annual income of at least 250 percent of the FPG for the applicant's household size; or

(c) **(U)** The applicant has private health insurance for use in the United States covering the period the applicant is expected to remain in the United States.

(3) **(U) Treatment of benefits received before February 24, 2020:** When considering whether an alien is more likely than not to become a public charge under this section, you must consider, as a negative factor, but not as a heavily weighted negative factor, any amount of cash assistance for income maintenance and/or institutionalization for long-term care at U.S. Government expenses that was received or occurred, before February 24, 2020. (For a definition of cash assistance and institutionalization for long-term care see [9 FAM 302.8-2\(B\)\(2\)](#) paragraph e(1)(c)(ii).) You must not consider any other form of public assistance the applicant or the applicant's family received before February 24, 2020.

j. **(U) Public Charge Bonds:**

(1) **(U) Submission to the Department:** In rare cases where you are considering the use of a bond in either a NIV or IV case, you must consult with CA/VO/L/A for assistance. In cases where the applicant appears to be ineligible as a public charge, the sponsor or another person may wish to post a public charge bond pursuant to INA 213 and consistent with 8 CFR 103.6 and 213.1. The public charge bond should be used sparingly. When an applicant appears likely on the facts to become a public charge (for example because of an acute medical condition and lack of adequate resources), the filing of a bond would not serve any purpose if the needs of the applicant would easily overcome the value of the bond.

(2) **(U)** The visa issued in such cases must carry a notation that the bond was posted and the notification (or a certified copy thereof) that the bond had been posted must be scanned in to the visa record.

## **9 FAM 302.8-2(B)(3) (U) Applying INA 212(a)(4) to Immigrants**

*(CT:VISA-1014; 02-21-2020)*

a. **(U) Determining Likelihood of Becoming a Public Charge:** INA 212(a)(4) applies to all visa applicants, with a few exceptions (see [9 FAM 302.8-2\(B\)\(6\)](#) below).

- (1) **(U)** You must base the determination of the likelihood that the applicant will become a public charge on an assessment of the totality of the applicant's circumstances.
- (2) **(U)** You must be able to point to circumstances which make it not merely possible, but more likely than not, that the applicant will become a public charge at any time in the future, as defined in [9 FAM 302.8-2\(B\)\(1\)](#), above.
- (3) **(U)** For immigrant visa applicants subject to the Affidavit of Support requirement, you should apply a two-step analysis (For information on applicants subject to the requirements of INA 213A see [9 FAM 601.14](#)):
  - (a) **(U)** Has the applicant supplied a properly executed, sufficient, non-fraudulent Form I-864, if required, from a sponsor? If not, the visa applicant is ineligible under INA 212(a)(4). If so, see (b), immediately below.
  - (b) **(U)** Is the applicant more likely than not to become a public charge at any time in the future considering all the factors in the totality of the applicant's circumstances?

**b. (U) Effect of Affidavit of Support Requirement on Public Charge Determinations:**

- (1) **(U)** Under INA 213A, an I-864, Affidavit of Support, is a requirement for certain applicants as a part of the public charge inadmissibility determination under INA 212(a)(4). The requirements under both INA 212(a)(4) and INA 213A must be satisfied when an Form I-864 is required.
  - (a) **(U)** A properly filed and non-fraudulent Form I-864 that meets all applicable requirements for the form may not necessarily satisfy the INA 212(a)(4) requirements, but may provide additional evidence in the review of a public charge determination, based on the totality of the circumstances.
  - (b) **(U)** You may consider the likelihood that the sponsor(s) will support the applicant in determining public charge.
  - (c) **(U)** If you have concerns about whether a particular Form I-864 may be "fraudulent," you should contact CA/FPP for guidance.

- c. (U) Applicants Without Sponsors:** Not all immigrant visa categories require or permit the applicants to have a sponsor (e.g., the diversity visa). As in other IV cases, you should review the totality of these applicants' circumstances to assess the likelihood of their becoming a public charge. In the case of a DV applicant, the DV program requires a certain level of education or work experience (see [9 FAM 502.6-3](#)), which are minimum standards and must be considered in the totality of the DV applicant's circumstances to determine his or her likelihood of becoming a public charge at any time in the future. These applicants are not permitted to submit form I-864; thus, consular officers will rely on Form DS-5540, Public Charge Questionnaire, and consider the totality of circumstances to make a public charge determination.

## **9 FAM 302.8-2(B)(4) (U) Applying INA 212(a)(4) to Nonimmigrants**

*(CT:VISA-1014; 02-21-2020)*

**a. (U) NIV Applicants and INA 212(a)(4):**

- (1) **(U)** All NIV applicants, except those mentioned in [9 FAM 302.8-2\(B\)\(6\)](#) below, are subject to INA 212(a)(4).



- (2) **(U)** If an applicant cannot overcome INA 214(b), you should not expend resources on pursuing a possible INA 212(a)(4) ineligibility, as the alien will be unable to travel to the United States and could not therefore become a public charge. Furthermore, an applicant's circumstances might be very different should he or she apply again in the future, so unlike some other grounds of ineligibility, public charge must be assessed independently upon each new visa application; however a prior finding of ineligibility on public charge grounds should be a heavily weighted negative factor in your analysis.
- (3) **(U)** In determining ineligibility under INA 212(a)(4), you must consider the immigrant or nonimmigrant visa classification sought, as it relates to the alien's ability to financially support himself or herself during the duration of the alien's stay. You should consider the differences between IV applicants and NIV applicants. The amount and type of evidence generally required in an IV case is much greater than that which is required in an NIV case. Your determination that an applicant qualifies for the NIV sought is generally sufficient to meet the requirements of INA 212(a)(4), absent evidence that gives you reason to believe that a public charge concern exists.
- b. **(U) Additional Evidence of Support in NIV Cases:** If the evidence of nonimmigrant status submitted does not indicate adequate provision for the applicant's support while in the United States and for the return abroad, you may request specific financial evidence and/or require the applicant complete a Form DS-5540, Public Charge Questionnaire, in whole or in part, to respond orally to questions from that form, or require a surety bond. (See [9 FAM 302.8-2\(B\)\(2\)](#) paragraph g.)
- c. **(U) Aliens Seeking Admission For Medical Treatment:** If the personal resources of an applicant seeking admission to the United States for medical treatment are either not sufficient or are unavailable for use inside of the United States, detailed documentation regarding the arrangements made for the applicant's medical care and support may confirm the financial ability of the guarantor to pay for medical treatment. Normally, this would include letters from the treating physician or hospital explaining the course and cost of treatment, including financial arrangements for payment of treatment, and letters from family, friends, or charitable organizations undertaking to cover the costs of medical care and support.
- d. **(U) Alien Seeking Admission as K Nonimmigrants:** K nonimmigrants and their petitioners are not permitted to complete form I-864. You may request a K applicant complete Form DS-5540 to assist in evaluating likelihood of becoming a public charge. Note that K applicants will again be assessed under the public charge ineligibility by USCIS at the time of adjustment of status where the K nonimmigrant seeking adjustment of status will be required to submit a Form I-864.
- e. **(U) Public Charge Bonds:** In cases where the applicant is otherwise eligible for a visa, including under INA 214(b), the procedures for posting bond for NIVs are the same as those for immigrant visas (IV). (See [9 FAM 302.8-2\(B\)\(2\)](#) paragraph g.)

## **9 FAM 302.8-2(B)(5) (U) INA 221(g) versus INA 212(a)(4) Refusals**

*(CT:VISA-1014; 02-21-2020)*

**(U)** The determination of whether INA 221(g) or INA 212(a)(4) is the appropriate ground of refusal is generally determined by whether you have decided that you have

enough information to make a finding of whether the applicant is likely to become a public charge under INA 212(a)(4).

- (1) **(U)** For example, if Form I-864 is submitted without a copy of the latest Federal income tax return filed prior to the signing of the Form I-864, then this is a documentary problem; the refusal should be INA 221(g). Similarly, if you request additional documentary evidence to substantiate information in the Form DS-5540, the refusal should be INA 221(g).
- (2) **(U)** On the other hand, if the Form I-864, Affidavit of Support, is technically complete but does not reflect sufficient financial resources, or the sponsor has misrepresented information on the Form I-864, then a potential substantive problem exists insofar as the petitioner or sponsor does not meet the qualifying criteria set forth in INA 213A, and you must refuse the visa under INA 212(a)(4).
- (3) **(U)** If a sponsor submits the required Form I-864, but it does not reflect sufficient financial resources, the applicant may present an I-864 from a joint sponsor, and you will adjudicate the joint sponsor in the same manner as paragraphs (1) and (2) above. If the applicant needs a joint sponsor to satisfy the requirement that sponsors maintain an annual income equal to at least 125 percent of the Federal Poverty Guidelines and is unable to present any documentation regarding any joint sponsors for consideration at the time of interview, then you must refuse the visa under INA 212(a)(4) and may suggest the applicant submit documentation from a joint sponsor.
- (4) **(U)** You should note that applications refused under INA 212(a)(4), unlike those refused under INA 221(g), are not subject to termination under INA 203(g). See [9 FAM 504.13](#), Termination of Immigrant Visa Registration for more information on termination.

## **9 FAM 302.8-2(B)(6) (U) Aliens Exempt from INA 212(a)(4)**

*(CT:VISA-1014; 02-21-2020)*

### **(U) The following aliens are exempt from INA 212(a)(4):**

- (1) **(U)** Refugees at the time of admission under INA 207 and at the time of adjustment of status of lawful permanent resident under INA 209;
- (2) **(U)** Asylees at the time of granting of asylum under INA 208 and at the time of adjustment of status to lawful permanent resident under INA 209;
- (3) **(U)** Amerasian immigrants at the time of application for admission as described in section 584 of the Foreign Operations, Export, Financing, and Related Programs Appropriations Act of 1988, Public Law 100-202, 101 Stat. 1329-183, section 101(e) (December 22, 1987), as amended, 8 U.S.C. 1101 note;
- (4) **(U)** Afghan and Iraqi Interpreter, or Afghan or Iraqi national employed by or on behalf of the U.S. Government as described in section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 [Public Law 109-163](#) (Jan. 6, 2006), as amended, and section 602(b) of the Afghan Allies Protection Act of 2009, [Public Law 111-8](#), title VI (Mar. 11, 2009), as amended, [8 U.S.C. 1101](#) note, and section 1244(g) of the National Defense Authorization Act for Fiscal Year 2008, as amended [Public Law 110-181](#) (Jan. 28, 2008);
- (5) **(U)** Cuban and Haitian entrants applying for adjustment of status under section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-

603, 100 Stat. 3359 (Nov. 6, 1986), as amended, 8 U.S.C. 1255a note;

- (6) **(U)** Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1992), as amended, 8 U.S.C. 1255 note;
- (7) **(U)** Nicaraguans and other Central Americans applying for adjustment of status under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;
- (8) **(U)** Haitians applying for adjustment of status under section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), as amended, 8 U.S.C. 1255 note;
- (9) **(U)** Lautenberg parolees as described in section 599E of the Foreign Operations Export Financing, and Related Programs Appropriations Act of 1990, Public Law 101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;
- (10) **(U)** Special immigrant juveniles as described by INA 245(h);
- (11) **(U)** Aliens who entered the United States prior to January 1, 1972, and who meet the other conditions for being granted lawful permanent residence under INA 249 and 8 CFR 249;
- (12) **(U)** Aliens applying for or re-registering for Temporary Protected Status as described in INA 244 in accordance with INA 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);
- (13) **(U)** A nonimmigrant described in INA 101(a)(15)(A)(i) and (A)(ii), in accordance with INA 102 and 22 CFR 41.21(d);
- (14) **(U)** A nonimmigrant classifiable as a C-2 or C-3 under INA 101(a)(15)(C) and 22 CFR 41.21(d);
- (15) **(U)** A nonimmigrant described in INA 101(a)(15)(G)(i), (G)(ii), (G)(iii), and (G)(iv), in accordance with INA 102 and 22 CFR 41.21(d);
- (16) **(U)** A nonimmigrant classifiable as NATO-1, NATO-2, NATO-3, NATO-4, or NATO-6 visa, in accordance with 22 CFR 41.21(d)(2)(iii) and (v);
- (17) **(U)** An applicant for, or an individual who is granted, nonimmigrant status under INA 101(a)(15)(T), in accordance with INA 212(d)(13)(A);
- (18) **(U)** Except as provided in the NOTE below, an individual who is seeking an immigration benefit for which admissibility is required, including, but not limited to adjustment of status under INA 245(a) and INA 245(l) and who;
  - (a) **(U)** has a pending application that sets forth a prima facie case for eligibility for nonimmigrant status under INA 101(a)(15)(T);
  - (b) **(U)** has been granted T nonimmigrant status under INA 101(a)(15)(T), providing that the individual is in valid T nonimmigrant status at the time the benefit requested is properly filed with USCIS and at the time the benefit request is adjudicated;
- (19) **(U)** Except as provided in **NOTE** below,
  - (a) **(U)** A petitioner for nonimmigrant status under INA 101(a)(15)(U), in accordance with INA 212(a)(4)(E)(ii); or

- (b) **(U)** An individual who is granted nonimmigrant status under INA 101(a)(15) (U) in accordance with INA 212(a)(4)(E)(ii), who is seeking an immigrant benefit for which admissibility is required, including, but not limited to, adjustment of status under INA 245(a), provided that the individual is in valid U nonimmigrant status at the time the benefit is properly filed with USCIS and at the time the benefit request is adjudicated;
- (20) **(U)** Except as provided in **NOTE** below, an alien who is a VAWA self-petitioner under INA 212(a)(4)(E)(i);
- (21) **(U)** Except as provided in **NOTE** below, a qualified alien described in section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. 1641(c), under INA 212(a)(4)(E)(iii);
- (22) **(U)** Applicants adjusting status who qualify for a benefit under section 1703 of the National Defense Authorization Act, Public Law 108-136, 117 Stat. 1392 (Nov. 24, 2003), 8 U.S.C 1151 note;
- (23) **(U)** American Indians born in Canada determined to fall under INA 289;
- (24) **(U)** Texas Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. 97-429 (Jan. 8, 1983);
- (25) **(U)** Nationals of Vietnam, Cambodia, and Laos applying for adjustment of status under section 586 of Public Law 106-429 under 8 CFR 245.21;
- (26) **(U)** Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, Div. C. Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note; and
- (27) **(U)** Any other category of aliens exempt under any other law from the public charge ground of inadmissibility provisions under INA 212(a)(4).

**(U) Note: Limited Exemption:** Aliens described in (18) through (21) must submit an Form I-864 as described in INA 213A if they are applying for an immigrant visa based on an employment-based petition that requires such an affidavit of support as described in section 212(a)(4)(D) of the Act.

## **9 FAM 302.8-2(B)(7) (U) Certain Applicants' Receipt of Public Assistance Will Not Be Considered Receipt of "Public Benefit"**

*(CT:VISA-1014; 02-21-2020)*

**(U)** Some individuals are not exempt from INA 212(a)(4), but their acceptance of public assistance will not be considered a public benefit for the purpose of determining whether they are likely to become a public charge. Therefore it is unlikely that the following individuals would be found ineligible under INA 212(a)(4):

- (1) **(U)** Active Duty service members and their spouse and children; and
- (2) **(U)** Children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship or whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption in the United States by the

U.S. citizen parent(s), or once meeting other eligibility criteria as required by the Child Citizenship Act of 2000 (8 U.S.C. 1413(a) and (b)).

## 9 FAM 302.8-2(C) (U) Advisory Opinions

*(CT:VISA-1014; 02-21-2020)*

**(U)** An AO is not required for a potential INA 212(a)(4) ineligibility; however, if you have a question about the interpretation or application of law or regulation, you may request an AO from CA/VO/L/A.

## 9 FAM 302.8-2(D) (U) Waiver

### 9 FAM 302.8-2(D)(1) (U) Waivers for Immigrants

*(CT:VISA-1014; 02-21-2020)*

a. **(U) No** waiver is available for immigrants seeking an immigrant visa ineligible under INA 212(a)(4). Applicants may overcome the finding by presenting evidence to convince you that the inadmissibility no longer applies. While there are provisions for overcoming the inadmissibility by posting a bond or undertaking with DHS, the applicant is still subject to an Affidavit of Support and income requirements. Consequently, there are few circumstances in which a bond would be offered as an alternative to the Affidavit of Support.

b. **Unavailable.**

### 9 FAM 302.8-2(D)(2) (U) Waivers for Nonimmigrants

*(CT:VISA-1014; 02-21-2020)*

a. **(U)** While a waiver is legally available for nonimmigrants ineligible under INA 212(a)(4), as a matter of policy, consular officers should generally not recommend an NIV waiver for an applicant who is ineligible on this ground. If you believe a case merits waiver recommendation, please contact your country analyst in CA/VO/F. In almost all cases, an NIV applicant who is ineligible under INA 212(a)(4) will likely also be ineligible under INA 214(b) for failing to establish that he or she is entitled to a nonimmigrant status under INA 101(a)(15); INA 214(b) is not waivable. Both grounds of refusal may be overcome in the future if an applicant presents evidence that convinces the consular officer that the ineligibility no longer applies.

b. **Unavailable.**

## 9 FAM 302.8-2(E) Unavailable

### 9 FAM 302.8-2(E)(1) Unavailable

*(CT:VISA-1014; 02-21-2020)*

**Unavailable.**

### 9 FAM 302.8-2(E)(2) Unavailable

*(CT:VISA-1014; 02-21-2020)*

**Unavailable.**

**UNCLASSIFIED (U)**