

VI. List of Subjects and Regulatory

Amendments List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 213

Immigration, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, DHS ~~proposes to amend~~amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103 – IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS;

AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b;~~31~~

~~31~~ U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47~~FR~~
~~14874,~~

~~FR 14874,~~ 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2; Pub. L. 112-54.

2. Section 103.6 is amended by:

- a. Revising paragraphs (a)(1), (a)(2)(i), and (c)(1);
- b. Adding paragraph (d)(3); and
- c. Revising paragraph (e)

The revisions and additions read as follows:

§ 103.6 Surety bonds.

(a) ***

(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases must be executed on the forms designated by DHS, a copy of which, and any rider attached thereto, must be furnished to the obligor. DHS is authorized to approve a bond, a formal agreement for the extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on the form designated by DHS, if any. All other matters relating to bonds, including a power of attorney not executed on the form designated by DHS and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, will be forwarded to the appropriate office for approval.

(2) *Bond riders--(i) General.* A bond rider must be prepared on the form(s) designated by DHS, and ~~submitted with~~ attached to the bond. If a condition to be included in

a bond is not on the original bond, a rider containing the condition must be executed.

* * * * *

(c) ***

(1) *Public charge bonds.* Special rules for the cancellation of public charge bonds are described in 8 CFR 213.1.

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(d) * * *

(3) *Public charge bonds.* The threshold bond amount for public charge bonds is set forth in 8 CFR 213.1.

(e) *Breach of bond.* Breach of public charge bonds is governed by 8 CFR 213.1.

For other immigration bonds, a bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released by the officer. DHS will determine whether a bond has been breached. If DHS determines that a bond has been breached, it will notify the obligor of the decision, the reasons ~~therefor~~therefore, and inform the obligor of the right to appeal the decision in accordance with the provisions of this part.

* * * * *

3. Section 103.7 is amended by adding paragraphs (b)(1)(i)(LLL) and (MMM) to read as follows:

§ 103.7 Fees.

(b) * * *

(1) * * *

(i) * * *

(LLL) Public Charge Bond, Form I-945. \$25.

(MMM) Request for Cancellation of Public Charge Bond, Form I-356. \$25.

**PART 212 – DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS;
WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

4. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, ~~1182~~
~~and~~

1182 and note, 1184, 1185 note (section 7209 of Pub. L. 108-458), 1187, 1223, 1225,

1226, 1227, 1255, 1359; 8 CFR part 2.

5. ~~Add §§212.20 through 212.24~~ Amend § 212.18 by revising paragraph (b)(2) and (3) to read as follows:

**§ 212.18 Application for Waivers of inadmissibility in connection with an
application for adjustment of status by T nonimmigrant status holders**

* * * * *

(b) * * *

(2) If an applicant is inadmissible under section 212(a)(1) of the Act, USCIS may waive such inadmissibility if it determines that granting a waiver is in the national interest.

(3) If any other applicable provision of section 212(a) renders the applicant inadmissible, USCIS may grant a waiver of inadmissibility if the activities rendering the alien inadmissible were caused by or were incident to the victimization and USCIS determines that it is in the national interest to waive the applicable ground or grounds of inadmissibility.

6. Add §§212.20 through 212.23 to read as follows:

Sec.

212.20 ~~§ 212.20~~ Applicability of public charge inadmissibility.

212.21 Definitions.

212.22 Public charge inadmissibility determination.

212.23 Exemptions and waivers for public charge ground of inadmissibility.

§ 212.20 Applicability of public charge inadmissibility.

8 CFR 212.20 through ~~212.24~~212.23 address the public charge ground of inadmissibility under section 212(a)(4) of the Act. Unless the alien requesting the immigration benefit or classification has been exempted from section 212(a)(4) of the Act as listed in 8 CFR 212.23(a), the provisions of ~~§§ 212.20~~ §§ 212.20 through ~~212.24~~212.23 of this part apply to an applicant for admission or adjustment of status to lawful permanent resident, if the application is postmarked (or, if applicable, submitted electronically) on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

§ 212.21 Definitions ~~for public charge.~~

For the purposes of 8 CFR 212.20 through ~~212.24~~212.23, the following definitions apply:

(a) *Public Charge*. Public charge means an alien who receives one or more public ~~benefit~~benefits, as defined in paragraph (b) of this section, for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months).

(b) *Public benefit*. Public benefit means:

~~(1) Any of the following monetizable benefits, where the cumulative value of one or more of the listed benefits exceeds 15 percent of the Federal Poverty Guidelines (FPG) for a household of one within any period of 12 consecutive months, based on the per-month FPG for the months during which the benefits are received.~~

(1) (A) Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), including:

(i) (A) Supplemental Security Income (SSI), 42 U.S.C. 1381 et seq.;

(ii) (B) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 et seq.; or

(iii) (C) Federal, State or local cash benefit programs for income maintenance (often called “General Assistance” in the State context, but which ~~may also~~ exist under other names);
and

~~(ii) Non-cash benefits, monetized as set forth in 8 CFR 212.24:~~

(2) (A) Supplemental Nutrition Assistance Program (SNAP, formerly called “Food Stamps”), 7 U.S.C. 2011 to 2036c;

(3) (B) Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD under ~~24 CFR part 984;~~ 42 U.S.C. 1437f ~~and 1437u;~~

(4) Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under ~~24 CFR parts 5, 402, 880 through 884 and 886;~~ and Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f); and

~~(2) Any of one or more of the following non-monetizable benefits if received for more than 12 months in the aggregate within a 36-month period (such that, for instance, receipt of two non-monetizable benefits in one month counts as two months):~~

(5) (A) Medicaid, Medicaid under 42 U.S.C. 1396 et seq., except for:

(i) (A) Benefits ~~paid~~ 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);

(ii) ~~(B)~~ Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 et seq.;

(iii) ~~(C)~~ School-based services or benefits provided to ~~children~~ individuals who are at or below the oldest age ~~of children~~ eligible for secondary education as determined under State or local law;

(iv) 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).

(6) Public Housing under section 9 of the U.S. Housing Act of 1937.

(7) Public benefits, as defined in paragraphs (b)(1) through (b)(6) of this section, do not include any public benefits received by an alien who at the time of receipt of the public benefit, or at the time of filing or adjudication of the application for admission or adjustment of status, or application or request for extension of stay or change of status is—

(i) 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

(ii) Serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or

(iii) Is the spouse or child, as defined in section 101(b) of the Act, of an alien described in paragraphs (b)(7)(i) or (ii) of this section.

(8) In a subsequent adjudication for a benefit for which the public charge ground of inadmissibility applies, public benefits, as defined in this section, do not include any public benefits received by an alien during periods in which the alien 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, as set forth in 8 CFR 212.23(b).

(9) Public benefits, as defined in this section, do not include any public benefits that were or will be received by—

(i) ~~(D)Medicaid benefits received by children~~ 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, Pub. L. 106-395 (section 320(a)-(b) of the Act, 8 U.S.C. 1431(a)-(b)), in accordance with 8 CFR part 320;~~ citizenship, upon meeting the eligibility criteria of section 320(a)-(b) of the Act, in accordance with 8 CFR part 320; or

(ii) Children of U.S. citizens 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), upon meeting the eligibility criteria of section 320(a)-(b) of the Act, in accordance with 8 CFR part 320; or

(iii) ~~(E)Medicaid benefits received by the children~~ Children of U.S. citizens who are entering the United States for the ~~primary~~ purpose of attending an interview under ~~the Child Citizenship Act of 2000, Pub. L. 106-395 (section 322 of the Act, 8 U.S.C. 1433),~~ in accordance with 8 CFR part 322.

~~(ii) Any benefit provided for institutionalization for long-term care at~~

government expense;

~~(iii) Premium and Cost Sharing Subsidies for Medicare Part D, 42 U.S.C. 1395w-114;~~

~~(iv) Subsidized Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.~~

~~The receipt of a combination of monetizable benefits under paragraph (b)(1) of this section where the~~

~~cumulative value of such benefits is equal to or less than 15 percent of the Federal Poverty~~

~~Guidelines for a household size of one within any period of 12 consecutive based on the per-~~

~~month FPG for the months during which the benefits are received, together with one or~~

~~more non-monetizable benefits under paragraph (b)(2) of this section if such non-monetizable~~

~~benefits are received for more than 9 months in the aggregate within a 36-month period (such~~

~~that, for instance, receipt of two non-monetizable benefits in one month counts as two months);~~

~~(4) DHS will not consider any benefits, as defined in paragraphs (b)(1) through (b)(3) of this section,~~

~~received by an alien who, at the time of receipt, filing, or adjudication, is 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), serving in~~

~~active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such~~

~~an individual's spouse or child as defined in section 101(b) of the Act, in the public charge~~

~~inadmissibility determination.~~

(c) *Likely at any time to become a public charge.* Likely at any time to become a public charge means more likely than not at any time in the future to ~~receive one or more~~ become a public benefit charge, as defined in ~~paragraph (b) of this section~~ 212.21(a), based on the totality of the alien's circumstances.

(d) *Alien's household.* For purposes of public charge inadmissibility determinations under section 212(a)(4) of the Act:

(1) If the alien is 21 years of age or older, or under the age of 21 and married, the alien's household includes:

- (i) The alien;
 - (ii) The alien's spouse, if physically residing with the alien;
 - (iii) The alien's children, as defined in 101(b)(1) of the Act, physically residing with the alien;
 - (iv) The alien's other children, as defined in section 101(b)(1) of the Act, not physically residing with the alien for whom the alien 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 alien;
 - (v) Any other individuals (including a spouse not physically residing with the alien) 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 alien's federal income tax return;
- and

(vi) Any individual who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

(2) If the alien is a child as defined in section 101(b)(1) of the Act, the alien's household includes the following individuals:

- (i) The alien;
- (ii) The alien's children as defined in section 101(b)(1) of the Act physically residing with the alien;

~~(iii)~~ (i) The alien's other children as defined in section 101(b)(1) of the Act not physically residing with the alien for whom the alien 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 alien;

(iv) The alien's parents, legal guardians, or any other individual providing or required to provide at least 50 percent of the alien's financial support to the alien 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 alien;

(v) The parents' or legal guardians' other children as defined in section 101(b)(1) of the Act physically residing with the alien;

(vi) The alien's parents' or legal guardians' other children as defined in section 101(b)(1) of the Act, not physically residing with the alien 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) Any other ~~individuals~~ individual(s) to whom the alien's parents or legal guardians provide, or are required to provide at least 50 percent of ~~the individuals'~~ such individual's financial support or who ~~are~~ is listed as a dependent on the parent's or legal guardian's federal income tax return.

Receipt of public benefits. Receipt of public benefits occurs when a public benefit-granting agency provides a public benefit, as defined in paragraph (b) of this section, to an alien as a beneficiary, whether in the form of cash, voucher, services, or insurance coverage. Applying for a public benefit does not constitute receipt of public benefits although it may suggest a

likelihood of future receipt. Certification for future receipt of a public benefit does not constitute receipt of public benefits, although it may suggest a likelihood of future receipt. An alien's receipt of, application for, or certification for public benefits solely on behalf of another individual does not constitute receipt of, application for, or certification for such alien.

(e) Primary caregiver means an alien who is 18 years of age or older and has significant responsibility for actively caring for and managing the well-being of a child or an elderly, ill, or disabled person in the alien's household.

§ 212.22 Public ~~Charge~~ charge inadmissibility determination.

This section relates to the public charge ground of inadmissibility under section 212(a)(4) of the Act.

(a) *Prospective determination based on the totality of circumstances.* The determination of an alien's likelihood of becoming a public charge at any time in the future must be based on the totality of the alien's circumstances by weighing ~~all factors that make the alien more or less likely at any time in the future to become a public charge, as outlined in this section~~ all factors that are relevant to whether the alien is more likely than not at any time in the future to receive one or more public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period. Except as necessary to fully evaluate evidence provided in paragraph (b)(4)(ii)(E)(3) of this section, DHS will not specifically assess whether an alien qualifies or would qualify for any public benefit, as defined in 8 CFR 212.21(b).

(b) *Minimum factors to consider.* A public charge inadmissibility determination must at least entail consideration of the alien's age; health; family status; education and skills; and assets, resources, and financial status, as follows:

(1) *The alien's age--(i) Standard.* When considering an alien's age, DHS will consider whether the alien ~~is between the age of 18 and the minimum "early retirement age" for Social Security set forth in 42 U.S.C. 416(l)(2), and whether the alien's age otherwise~~ makes the alien more ~~or less~~ likely than not to become a public charge at any time in the future, such as by impacting the alien's ability to work, including whether the alien is between the age of 18 and the minimum "early retirement age" for Social Security set forth in 42 U.S.C. 416(l)(2).

(ii) [Reserved]

(2) *The alien's health--(i) Standard.* DHS will consider whether the alien's health makes the alien more ~~or less~~ likely than not to become a public charge at any time in the future, including whether the alien 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 and care for ~~him~~ himself or herself, to attend school, or to work upon admission or adjustment of status.

(ii) *Evidence.* USCIS' consideration includes but is not limited to the following:

(A) A report of an immigration medical examination performed by a civil surgeon or panel physician where such examination is required (to which USCIS will generally defer absent evidence that such report is incomplete); or

(B) Evidence of a medical condition that is likely to require extensive medical treatment or institutionalization ~~after arrival~~ or that will interfere with the alien's ability to provide and care for ~~him~~ himself or herself, to attend school, or to work upon admission or adjustment of status.

(3) *The alien's family status--(i) Standard.* When considering an alien's family status, DHS will consider the alien's household size, as defined in 8 CFR 212.21(d), and

whether the alien's household size makes the alien more ~~or less~~ likely than not to become a public charge at any time in the future.

(ii) [Reserved]

(4) *The alien's assets, resources, and financial status--(i) Standard.* When considering an alien's assets, resources, and financial status, DHS will consider whether such assets, resources, and financial status excluding any income from illegal activities or sources (e.g., proceeds from illegal gambling or drug sales, and income from public benefits listed in 8 CFR 212.21(b)), make the alien more likely than not to become a public charge at any time in the future, including whether:

(A) The alien's household's annual gross income is at least 125 percent of the most recent Federal Poverty ~~Guidelines based on the alien's household size as defined by §212.21(d), or if the alien's household's annual gross income is under 125 percent of the recent Federal Poverty Guidelines, whether the total value of the alien's household assets and resources is at least 5 times the difference between the alien's household's gross annual income and the Federal Poverty~~ Guideline for the alien's household size; (100 percent for an alien on active duty, other than training, in the U.S. Armed Forces) based on the alien's household size as defined by section 212.21(d);

(B) If the alien's household's annual gross income is less than 125 percent of the most recent Federal Poverty Guideline (100 percent for an alien on active duty, other than training, in the U.S. Armed Forces), the alien may submit evidence of ownership of significant assets. For purposes of this paragraph, an alien may establish ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate or other assets, in which the combined cash value of all the assets (the total value of the assets less any offsetting

liabilities) exceeds:

(1) If the intending immigrant is the spouse or child of a United States citizen (and the child has reached his or her 18th birthday), three times the difference between the alien's household income and 125 percent of the FPG (100 percent for those on active duty, other than training, in the U.S. Armed Forces) for the alien's household size;

(2) If the intending immigrant is 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 intending immigrant'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 section 320 of the Act, the difference between the alien's household income and 125 percent of the FPG (100 percent for those on active duty, other than training, in the U.S. Armed Forces) for the alien's household size;
or

(3) In all other cases, five times the difference between the alien's household income and 125 percent of the FPG (100 percent for those on active duty, other than training, in the U.S. Armed Forces) for the alien's household size.

(C) (B)The alien has sufficient household assets and resources to cover any reasonably foreseeable medical costs- including as 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 him-himself or herself, to attend school, or to work; and

(D) (C)The alien has any financial liabilities ~~or past receipt of public benefits as defined in 8 CFR 212.21(b) that make the alien more or less likely to become a public charge;~~ and

whether

(E) The alien has applied for, been certified to receive, or received public benefits, as defined in 8 CFR 212.21(b), on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(ii) *Evidence.* USCIS' consideration includes, but is not limited to the following:

(A) The alien's annual gross household income ~~excluding any income from public benefits as defined in 8 CFR 212.21(b);~~ including, but not limited to:

(1) For each member of the household whose income will be considered, the most recent tax-year transcript from the U.S. Internal Revenue Service (IRS) of such household member's IRS Form 1040, U.S. Individual Income Tax Return; or

(2) If the evidence in paragraph (b)(4)(ii)(A)(1) of this section is unavailable for a household member, other credible and probative evidence of such household member's income, including an explanation of why such transcript is not available, such as if the household member is not subject to taxation in the United States.

(B) Any additional income from individuals not included in the alien's household ~~who physically reside with the alien and whose income will be relied on by the alien to meet the standard at 8 CFR 212.22(b)(4)(i);~~ provided to the alien's household on a continuing monthly or yearly basis for the most recent calendar year and on which the alien relies or will rely to meet the standard at 8 CFR 212.22(b)(4)(i);

~~Any additional income provided to the alien by another person or source not included in the alien's household on a continuing monthly or yearly basis for the most recent calendar year excluding (C) any income from public benefits as defined in 8 CFR 212.21(b);~~

(C) ~~(D)~~ The household's cash assets and resources, including as reflected in. Evidence of such cash assets and resources may include checking and savings account statements

covering 12 months prior to filing the application;

(D) The household's non-cash assets and resources- that can be converted into cash within 12 months, such as 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;

~~(E)~~retirement and educational accounts; and any other assets that can easily be converted into cash;

(E) ~~(F)~~~~Whether~~ Evidence that the alien has:

(1) Applied for or received any public benefit, as defined in 8 CFR 212.21(b), on ~~or after~~

~~for after~~ [INSERT DATE 60 DAYS FROM AFTER DATE OF PUBLICATION OF IN THE FINAL RULE]; or

FEDERAL REGISTER] or disenrolled or requested to be disenrolled from such benefit(s); or

(2) Been certified or approved to receive any public benefits ~~benefit~~, as defined in 8 CFR

212.21(b), on or after [INSERT DATE 60 DAYS FROM AFTER DATE OF PUBLICATION OF THE FINAL RULE]; IN

THE FEDERAL REGISTER] or withdrew his or her application or disenrolled or requested to be to disenrolled from such benefit(s);

(3) Submitted evidence from a Federal, State, local, or tribal agency administering

a public benefit, as defined in 212.21(b), that the alien has specifically identified as

showing that the alien does not qualify or would not qualify for such public benefit by

virtue of, for instance, the alien's annual gross household income or prospective

immigration status or length of stay;

(E) ~~(G)~~Whether the alien has applied for or has received a USCIS fee waiver for an

immigration benefit request on or after [INSERT DATE 60 DAYS FROM AFTER DATE OF

PUBLICATION OF THE FINAL RULE]; IN THE FEDERAL REGISTER], unless the fee

waiver was applied for or granted as part of an application for which a public charge

inadmissibility determination under section 212(a)(4) of the Act was not required.

(G) ~~(H)~~The alien's credit history and credit score; ~~and~~ in the United States, and other

evidence of the alien's liabilities not reflected in the credit history and credit score (e.g., any mortgages, car loans, unpaid child or spousal support, unpaid taxes, and credit card debt); and

(H) ~~(H)~~ Whether the alien has ~~private~~ sufficient household assets and resources (including, for instance, health insurance or the financial resources not designated as a public benefit under 8 CFR 212.21(b)) to pay for reasonably foreseeable medical costs, such as costs 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 ~~him~~ himself or herself, to attend school, or to work;

(5) *The alien's education and skills.* (i) *Standard.* When considering an alien's education and skills, DHS will consider whether the alien has adequate education and skills to either obtain or maintain lawful employment with an income sufficient to avoid ~~becoming~~ being more likely than not to become a public charge, ~~if authorized for employment.~~

(ii) *Evidence.* USCIS' consideration includes but is not limited to the following:

(A) The alien's history of employment; excluding employment involving illegal activities, e.g., illegal gambling or drug sales. The alien must provide the following:

(1) The last 3 years of the alien's tax transcripts from the U.S. Internal Revenue Service (IRS) of the alien's IRS Form 1040, U.S. Individual Income Tax Return; or

(2) If the evidence in paragraph (b)(5)(ii)(A)(1) of this section is unavailable, other credible and probative evidence of the alien's history of employment for the last 3 years, including an explanation of why such transcripts are not available, such as if the alien is not subject to taxation in the United States;

(B) Whether the alien has a high school ~~degree~~ diploma (or its equivalent) or has a higher education degree;

(C) Whether the alien has any occupational skills, certifications, or licenses; and

(D) Whether the alien is proficient in English or proficient in other languages in addition to English.

(E) Whether the alien is a primary caregiver as defined in 8 CFR 212.21(f), such that the alien lacks an employment history, is not currently employed, or is not employed full time. Only one alien within a household can be considered a primary caregiver of the same individual within the household. USCIS' consideration with respect this paragraph includes but is not limited to evidence that an individual the alien is caring for resides in the alien's household, evidence of the individual's age, and evidence of the individual's medical condition, including disability, if any.

(6) *The alien's prospective immigration status and expected period of admission.* ~~(ii)~~

(i) *Standard.* ~~The~~ DHS will consider the immigration status that the alien seeks and the expected period of admission as it relates to the alien's ability to financially support for himself or herself during the duration of ~~their~~ the alien's stay, including:

(A) Whether the alien is applying for adjustment of status or admission in a nonimmigrant or immigrant classification; and

(B) If the alien is seeking admission as a nonimmigrant, the nonimmigrant classification and the anticipated period of temporary stay.

(ii) ~~(ii)~~ [Reserved];

(7) An affidavit of support under section 213A of the Act, when required under section 212(a)(4) of the Act, that meets the requirements of section 213A of the Act and 8 CFR 213a--(i) Standard. ~~A~~ If the alien is required under sections 212(a)(4)(C) or (D) to submit an affidavit of support under section 213A of the Act and 8 CFR part 213a, and submits such a sufficient affidavit of support ~~must meet the sponsorship and income requirements of section 213A of the Act and comply with 8 CFR 213a.~~ DHS will consider the likelihood that the sponsor would actually provide the statutorily-required amount of financial support to the alien, and any other related considerations.

(A) *Evidence*. USCIS' consideration includes but is not limited to the following:

(1) The sponsor's annual income, assets, and resources;

(2) The sponsor's relationship to the applicant, including but not limited to

~~(2)~~ whether the sponsor lives with the alien; and

~~The likelihood that the sponsor would actually provide (3) — the statutorily-required amount of financial support to the alien, and any other related considerations.~~

(3) Whether the sponsor has submitted an affidavit of support with respect to other individuals.

(c) ~~Heavily weighed~~ Heavily weighted factors. The factors below will ~~generally~~ weigh heavily in a public charge inadmissibility determination. The mere presence of any one ~~enumerated circumstance is~~ heavily weighted factor does not, alone, ~~determinative~~ make the alien more or less likely than not to become a public charge.

(1) ~~Heavily weighed~~ Heavily weighted negative factors. The following factors will ~~generally~~ weigh heavily in favor of a finding that an alien is likely at any time in the future to become a public charge:

(i) The alien is not a full-time student and is authorized to work, but is unable to demonstrate current employment, recent employment history ~~or no~~, or a reasonable prospect of future employment;

(ii) The alien ~~is currently receiving or is currently~~ has received or has been certified or approved to receive one or more public ~~benefit, as defined in 212.21(b);~~ benefits, as defined in § 212.21(b), for more than 12 months in the aggregate within any 36-month period, beginning no earlier than 36 months prior to the alien's application for admission or adjustment of status on or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER];

~~The alien has received one or more public benefit, as defined in 212.21(b), within the 36 months immediately preceding (iii) the alien's application for a visa, admission, or adjustment of status;~~

~~(iv)(A)~~ (iii)(A) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that ~~will~~ will interfere with the alien's ability to provide for ~~him~~ himself or herself, attend school, or work; and

(B) ~~(A)~~ The alien is uninsured and has neither the prospect of obtaining private health insurance, ~~or nor~~ the financial resources to pay for reasonably foreseeable medical costs related to ~~a the~~ such medical condition; or

~~(iv)~~ The alien ~~had~~ was previously ~~been~~ found inadmissible or deportable on public charge grounds by an Immigration Judge or the Board of Immigration Appeals.

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

(i) The alien's household has ~~financial income~~, assets, or resources, and support (excluding any income from illegal activities, e.g., proceeds from illegal gambling or drug sales, and any income from public benefits as defined in § 212.21(b)) of at least 250 percent of the Federal Poverty Guidelines for ~~a household of~~ the alien's household size;~~or~~

(ii) The alien is authorized to work and is currently employed in a legal industry with an annual income~~-, excluding any income from illegal activities such as proceeds from illegal gambling or drug sales,~~ of at least 250 percent of the Federal Poverty Guidelines for ~~a household of~~ the alien's household size;~~or~~

(iii) The alien has private health insurance, except that for purposes of this paragraph (c)(2)(iii), private health insurance must be appropriate for the expected period of admission, and does not include health insurance for which the alien receives subsidies in the form of premium tax credits under the Patient Protection and Affordable Care Act, as amended.

(d) ~~Benefits~~ Treatment of benefits received before [INSERT DATE 60 DAYS FROM AFTER DATE OF PUBLICATION OF IN THE FINAL RULE FEDERAL REGISTER]. For purposes of this regulation, DHS will consider~~-,~~ as a negative factor~~-, but not as a heavily weighted negative factor as described in paragraph (c)(1) of this section,~~ any amount of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called "General Assistance" programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt, before [INSERT DATE 60 DAYS FROM AFTER THE DATE OF PUBLICATION OF IN THE FEDERAL FINAL RULE] REGISTER, as provided under the 1999 Interim Field Guidance, also known

as the 1999 Field Guidance on Deportability and Inadmissibility on Public Charge Grounds. DHS ~~does~~ will not consider as a negative factor any other public benefits received, or certified for receipt, before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.

~~before such date:~~

§ 212.23 Exemptions and waivers for public charge ground of inadmissibility.

(a) *Exemptions.* The public charge ground of inadmissibility under section 212(a)(4) of the Act does not apply, based on statutory or regulatory authority, to the following categories of aliens:

(1) Refugees at the time of admission under section 207 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(2) Asylees at the time of grant under section 208 of the Act and at the time of adjustment of status to lawful permanent resident under section 209 of the Act;

(3) Amerasian immigrants at the time of application for admission as described in sections 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) (Dec. 22, 1987), as amended, 8 U.S.C. 1101 note;

(4) 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) Cuban and Haitian entrants applying for adjustment of status under ~~in~~ 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) Aliens applying for adjustment of status under the Cuban Adjustment Act, Public Law 89-732 (Nov. 2, 1966), as amended, 8 U.S.C. 1255 note;

(7) Nicaraguans and other Central Americans applying for adjustment of status ~~(7)~~ under sections 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (Nov. 19, 1997), as amended, 8 U.S.C. 1255 note;

(8) 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) Lautenberg parolees as described in section 599E of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1990, Public Law ~~101-~~101-167, 103 Stat. 1195, title V (Nov. 21, 1989), as amended, 8 U.S.C. 1255 note;

(10) Special immigrant juveniles as described in section 245(h) of the Act;

(11) Aliens who entered the United States prior to January 1, 1972-2 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249(Registry);

(12) Aliens applying for or re-registering for Temporary Protected Status as described in section 244 of the Act ~~under~~ in accordance with section 244(c)(2)(A)(ii) of the Act and 8 CFR 244.3(a);

(13) A nonimmigrant described in section 101(a)(15)(A)(i) and (A)(ii) of the Act (Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family or Other Foreign Government Official or Employee, or Immediate Family), ~~pursuant to~~ in accordance with section 102 of the Act, ~~and~~ 22 CFR 41.21(d);

(14) A nonimmigrant classifiable as C-2 (alien in transit to U.N. Headquarters) or C-3 (foreign government official), 22 CFR 41.21(d);

(15) A nonimmigrant described in section 101(a)(15)(G)(i), (G)(ii), (G)(iii), and ~~(15)(G)(iv)~~, of the Act (Principal Resident Representative of Recognized Foreign Government to International Organization, and related categories), ~~pursuant to~~ in accordance with section 102 of the Act ~~pursuant to and~~ 22 CFR 41.21(d);

(16) A nonimmigrant classifiable as NATO-1, NATO-2, NATO-3, NATO-4 (NATO representatives), and NATO-6 ~~pursuant to~~ in accordance with 22 CFR 41.21(d);

(17) ~~A~~ An applicant for nonimmigrant ~~classified status~~ under section 101(a)(15)(T) of the Act, in accordance with ~~section 212(d)(13)(A) of the Act;~~ 8 CFR 212.16(b);

(18) Except as provided in section 212.23(b), an individual who is seeking an immigration benefit for which admissibility is required, including but not limited to adjustment of status under section 245(a) of the Act and section 245(l) of the Act and who:

(i) Has a pending application that sets forth a prima facie case for eligibility for nonimmigrant status under section 101(a)(15)(T) of the Act, or

(ii) Has been granted nonimmigrant status under section 101(a)(15)(T) of the Act, provided that the individual is in valid T nonimmigrant status at the time the benefit request is properly filed with USCIS and at the time the benefit request is adjudicated;

(19) Except as provided in § 212.23(b),

(i) ~~(18) An applicant for, or individual who is granted,~~ A petitioner for nonimmigrant status under section 101(a)(15)(U) of the Act ~~;~~ in accordance with section 212(a)(4)(E)(ii) of the Act;
or

(ii) ~~(19) Nonimmigrants classified~~ An individual who is granted nonimmigrant status under section 101(a)(15)(U) of the Act ~~applying for~~ in accordance with section 212(a)(4)(E)(ii) of the Act, who is seeking an immigration benefit for which admissibility is required, including, but not limited to, adjustment of status under section ~~245(m)~~ 245(a) of the Act ~~and 8 CFR 245.24;~~ provided that the individual is in valid U nonimmigrant status at the time the benefit request is properly filed with USCIS and at the time the benefit request is adjudicated.

(20) ~~An~~ Except as provided in section 212.23(b), any alien who is a VAWA ~~self-~~ self- petitioner under section 212(a)(4)(E)(i) of the Act;

(21) ~~A~~ Except as provided in section 212.23(b), 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 section 212(a)(4)(E)(iii) of the Act;

(22) 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 (posthumous benefits to surviving spouses, children, and parents);

(23) American Indians born in Canada determined to fall under section 289 of the Act;

(24) Texas Band of Kickapoo Indians of the Kickapoo Tribe of Oklahoma, Pub. L. ~~97-~~ 97-429 (Jan. 8, 1983);

(25) 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) 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)~~IIRIRA, Public Law 104-208, Div. C, Title VI, Subtitle D (Sept. 30, 1996), 8 U.S.C. 1255 note; and

(27) Any other categories of aliens exempt under any other law from the public charge ground of inadmissibility provisions under section 212(a)(4) of the Act.

(b) Limited Exemption. Aliens described in §§ 212.23(a)(18) through (21) must submit an affidavit of support as described in section 213A of the Act if they are applying for adjustment of status based on an employment-based petition that requires such an affidavit of support as described in section 212(a)(4)(D) of the Act.

(c) ~~(b)Waiver~~Waivers. A waiver for the public charge ground of inadmissibility may be authorized based on statutory or regulatory authority, for the following categories of aliens:

~~(1) Nonimmigrants who were admitted under section 101(a)(15)(T) of the Act applying for adjustment of status under section 245(i)(2)(A) of the Act;~~

(1) ~~(2)~~ Applicants for admission as nonimmigrants under 101(a)(15)(S) of the Act;

(2) ~~(3)~~ Nonimmigrants admitted under section 101(a)(15)(S) of the Act applying for adjustment of status under section 245(j) of the Act (witnesses or informants); and

(3) ~~(4)~~ Any other waiver of the public charge ground of inadmissibility that is authorized ~~under~~ by law or regulation.

~~§ 212.24 Valuation of monetizable benefits.~~

~~In determining the cumulative value of one or more monetizable benefits listed in 8 CFR 212.21(b)(1)(ii) for purposes of a public charge inadmissibility determination under 8-~~

~~CFR 212.22, DHS will rely on benefit-specific methodology as follows:~~

~~(a) With respect to the Supplemental Nutrition Assistance Program (SNAP, formerly called “Food Stamps”), 7 U.S.C. 2011 to 2036c, DHS will calculate the value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) deposited within the applicable period of 12 consecutive months in which the benefits are received in the Electronic Benefits Transfer (EBT) card account;~~

~~(b) With respect to the Section 8 Housing Assistance under the Housing Choice Voucher Program, as administered by HUD under 24 CFR part 984; 42 U.S.C. 1437f and 1437u, DHS will calculate value of the voucher attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) within the applicable period of 12 consecutive months in which the benefits are received;~~

~~(c) With respect to Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation) under 24 CFR Parts 5, 402, 880-884 and 886, DHS will calculate the value of the rental assistance attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) received within the applicable period of 12 consecutive months in which the benefits are received; and~~

~~(d) With respect to any cash benefit received by the alien on a household (rather than individual) basis, DHS will calculate the value of the benefit attributable to the alien in proportion to the total number of people covered by the benefit, based on the amount(s) received within the applicable period of 12 consecutive months in which the benefit is received.~~

PART 213 – PUBLIC CHARGE BONDS

7 ~~6~~. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 1183; 8 CFR part 2.

8. ~~7.~~ Revise the part heading to read as set forth above.

9. ~~8.~~ Revise §213.1 to read as follows:

§ 213.1 Adjustment of status of aliens on submission of a public charge bond.

(a) *Inadmissible aliens.* In accordance with section 213 of the Act, after an alien seeking adjustment of status has been found inadmissible as likely at any time in the future to become a public charge under section 212(a)(4) of the Act, DHS may allow the alien to submit a public charge bond, if the alien is otherwise admissible, in accordance with the requirements of 8 CFR 103.6 and this section. The public charge bond ~~submitted on the alien's behalf~~ must meet the conditions set forth in 8 CFR 103.6 and this section.

(b) *Discretion.* The decision to allow an alien inadmissible under section 212(a)(4) of the Act to submit a public charge bond is in DHS's discretion. If an alien has one or more heavily ~~weighed~~ weighted negative factors as defined in 8 CFR 212.22 ~~present~~ in his or her case, DHS generally will not favorably exercise discretion to allow submission of a public charge bond.

(c) *Public Charge Bonds.* (1) *Types.* DHS may require an alien to submit a surety bond, ~~or cash or any cash equivalent,~~ as listed in 8 CFR 103.6, ~~and agreement, to secure a bond~~ or cash or any cash equivalents specified by DHS. DHS will notify the alien of the type of bond that may be submitted. All ~~bonds~~ surety, ~~and agreements covering cash or cash equivalents, as listed in 8 CFR 103.6, to secure a bond,~~ cash, or cash equivalent bonds must be executed on a form designated by DHS and in accordance with form instructions. When a surety bond is accepted, the bond must comply with requirements applicable to surety bonds in 8 CFR 103.6 and this section. If cash or a cash equivalent, ~~as listed in 8 CFR 103.6,~~ is being provided to secure a bond, DHS must issue a receipt on a form designated by DHS.

(2) *Amount.* Any public charge bond, ~~or agreements to secure a public charge bond on cash or cash equivalents, as listed in 8 CFR 103.6,~~ must be in an amount decided by DHS, not

less than \$~~10,000~~8,100, annually adjusted for inflation based on the Consumer Price Index for All Urban Consumers (CPI-U), and rounded up to the nearest dollar. The bond amount decided by DHS may not be appealed by the alien or the bond obligor.

(d) *Conditions of the bond.* A public charge bond must remain in effect until USCIS grants a request to cancel the bond in accordance with paragraph (g) of this section, whereby the alien naturalizes or otherwise obtains U.S. citizenship, permanently departs the United States, ~~or dies, the alien requests cancellation after 5 years of being~~ has reached his or her 5-year anniversary since becoming a lawful permanent resident, or the alien changes immigration status to one not subject to public charge ground of inadmissibility, ~~and the bond is cancelled in accordance with paragraph (g) of this section.~~ An alien on whose behalf a public charge bond has been submitted may not receive any public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months), after the alien's adjustment of status to that of a lawful permanent resident, until the bond is cancelled in accordance with paragraph (g) of this section. An alien must also comply with any other conditions imposed as part of the bond.

(e) *Submission.* A public charge bond may be submitted on the alien's behalf only after DHS notifies the alien and the alien's representative, if any, that a bond may be submitted. The bond must be submitted to DHS in accordance with the instructions of the form designated by DHS for this purpose, with the fee prescribed in 8 CFR 103.7(b), and any procedures contained in the DHS notification to the alien. DHS will specify the bond amount

and ~~duration, as well as~~ any other conditions, as appropriate for the alien and the immigration benefit being sought. USCIS will notify the alien and the alien's representative, if any, that the bond has been accepted, and will provide a copy to the alien and the alien's representative, if any, of any communication between the obligor and the U.S. government. An obligor must notify DHS within 30 days of any change in the obligor's or the alien's physical and mailing address.

~~(f) — *Substitution.* A bond not eligible for cancellation under paragraph (g) of this section must be substituted prior to the expiration of the validity of the bond previously submitted to DHS.~~

(f) *Substitution.* (1) *Substitution Process.* Either the obligor of the bond previously submitted to DHS or a new obligor may submit a substitute bond on the alien's behalf. ~~If the bond previously submitted to DHS is a limited duration bond because it expires on a date certain, the substitute bond must be submitted no later than 180 days before the bond previously submitted to USCIS expires and the substitute bond must be valid and effective on or before the day the bond previously submitted to DHS expires. If the bond previously submitted to DHS is a bond of unlimited duration because it does not bear a specific end-date, the~~ The substitute bond must specify an effective date. The substitute bond must meet all of the requirements applicable to the initial bond as required by this section and 8 CFR 103.6, and if the obligor is different from the original obligor, the new obligor must assume all liabilities of the initial obligor. The substitute bond must also cover any breach of the bond conditions which occurred before DHS accepted the substitute bond, in the event DHS did not learn of the breach until after ~~the expiration or cancellation of the bond previously submitted to DHS~~ DHS accepted the substitute bond.

~~(2)~~(2) *Acceptance.* Upon submission of the substitute bond, DHS will review the substitute bond for sufficiency. ~~If the bond on file has not yet expired, as set forth in this section. If the substitute bond is sufficient~~ DHS will cancel the bond previously submitted to DHS, and replace it with the substitute bond, ~~provided the substitute bond is sufficient. If the substitute bond was submitted before the previously submitted bond expired, but.~~ If the substitute bond is insufficient, DHS will notify the obligor of the substitute bond to correct the deficiency within the timeframe specified in the notice. If the ~~deficie ney~~ deficiency is not corrected within the timeframe specified, ~~and the previously submitted bond has not yet expired,~~ the previously submitted bond will remain in effect.

(g) *Cancellation of the Public Charge Bond.* (1) An alien or obligor may request that DHS cancel a public charge bond if the alien:

- (i) Naturalized or otherwise obtained United States citizenship;
- (ii) Permanently departed the United States;
- (iii) Died;
- (iv) Reached his or her 5-year anniversary since becoming a lawful permanent resident; or
- (v) Obtained a different immigration status not subject to public charge inadmissibility, as listed in 8 CFR 212.23, following the grant of lawful permanent resident status associated with the public charge bond.

(2) *Permanent Departure Defined.* For purposes of this section, permanent departure means that the alien lost or abandoned his or her lawful permanent resident status, whether by operation of law or voluntarily, and physically departed the United States. An alien is only deemed to have voluntarily lost lawful permanent resident status ~~(2)~~ when the alien has

submitted a record of abandonment of lawful permanent resident status, on the form prescribed by DHS, [from outside the United States, and](#) in accordance with the form's instructions.

(3) *Cancellation Request.* ~~An alien must~~ A request that to cancel a public charge bond ~~be cancelled~~ must be made by submitting a form designated by DHS, in accordance with that form's instructions and the fee prescribed in 8 CFR 103.7(b). If a request for cancellation of a public charge bond is not filed, the bond shall remain in effect until the form is filed, reviewed, and a decision is rendered. DHS may in its discretion cancel a public charge bond if it determines that an alien otherwise meets the eligibility requirements of paragraphs (g)(1) of this section.

(4) *Adjudication and Burden of Proof.* The alien and the obligor have the burden to establish, by a preponderance of the evidence, that one of the conditions for cancellation of the public charge bond listed in paragraph (g)(1) of this section has been met. If DHS determines that the information included in the cancellation request is insufficient to determine whether cancellation is appropriate, DHS may request additional information as outlined in 8 CFR 103.2(b)(8). DHS must cancel a public charge bond if DHS determines that the conditions of the bond have been met, and that the bond was not breached, in accordance with paragraph (h) of this section. For cancellations under paragraph (g)(1)(iv) of this section, the alien or the obligor must establish that the public charge bond has not been breached during the 5-year period preceding the alien's fifth anniversary of becoming a lawful permanent resident.

(5) *Decision.* DHS will notify the obligor, the alien, and the alien's representative, if any, of its decision regarding the request to cancel the public charge ~~(5)~~ bond. When the public charge bond is cancelled, the obligor is released from liability. If

the public charge bond has been secured by a cash deposit or a cash equivalent, DHS will refund the cash deposit and any interest earned to the obligor; consistent with 8 U.S.C. 1363 and 8 CFR 293.1. If DHS denies the request to cancel the bond, DHS will notify the obligor and the alien, and the alien's representative, if any, of the reasons why, and of the right of the obligor to appeal in accordance with the requirements of 8 CFR part 103, subpart A. An obligor may file a motion pursuant to 8 CFR 103.5 after an unfavorable decision on appeal. ~~Neither the alien nor the alien's representative may appeal a denial to cancel the public charge bond or file a motion.~~

(h) Breach—Breach. (1) *Breach and Claim in Favor of the United States.* An administratively final determination that a bond has been breached creates a claim in favor of the United States. Such claim may not be released or discharged by an immigration officer. A breach determination is administratively final when the time to file an appeal with the Administrative Appeals Office (AAO) pursuant to 8 CFR part 103, subpart A, has expired or when the appeal is dismissed or rejected.

(2) *Breach of Bond Conditions.* (i) The conditions of the bond are breached if the alien has received public benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months), after the alien's adjustment of status to that of a lawful permanent resident and before the bond is cancelled under paragraph (g) of this section. ~~Public~~ DHS will not consider any public benefits, as defined in 8 CFR 212.21(b), received by the alien during periods while an alien ~~is~~ was present in the United States in a category that is exempt from the public charge ground of inadmissibility or for which the alien received a waiver of public charge inadmissibility, as set forth in 8 CFR

~~212.23, following the initial grant of status as a lawful permanent resident~~[212.21\(b\) and 8 CFR 212.23](#), and public benefits received after the alien obtained U.S. citizenship, ~~may not be considered~~ when determining whether the conditions of the bond have been breached. DHS will not consider any [public](#) benefits, as defined in 8 CFR 212.21 (b)(1) through (b)(3), received by an alien who, at the time of receipt filing, adjudication or bond breach or cancellation determination, is enlisted in the U.S. ~~armed forces~~ [Armed Forces](#) under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or if received by such an individual's spouse or child as defined in section 101(b) of the Act; or

(ii) The conditions of the bond otherwise imposed by DHS as part of the public charge bond are breached.

(3) *Adjudication.* DHS will determine whether the conditions of the bond have been breached. If DHS determines that it has insufficient information from the benefit-granting agency to determine whether a breach occurred, DHS may request additional information from the benefit-granting agency. If DHS determines that it has insufficient information from the alien or the obligor, it may request additional information as outlined in 8 CFR part 103 before making a breach determination. If DHS intends to declare a bond breached based on information that is not otherwise protected from disclosure to the obligor, DHS will disclose such information to the obligor to the extent permitted by law, and provide the obligor with an opportunity to respond and submit rebuttal evidence, including specifying a deadline for a response. DHS will send a copy of this notification to the alien and the alien's representative, if any. After the obligor's response, or after the specified deadline has passed, DHS will make a breach determination.

(4) *Decision.* DHS will notify the obligor and the alien, and the alien's representative, if any, of the breach determination. If DHS determines that a bond has been breached, DHS will inform the obligor of the right to appeal in accordance with the requirements of 8 CFR part 103, subpart A. ~~The obligor may only file a motion in accordance with 8 CFR 103.5 of an unfavorable decision on appeal. The~~ With respect to a breach determination for a surety bond, ~~the~~ alien or the alien's representative, if any, may not appeal the breach determination or file a motion.

(5) *Demand for Payment.* Demands for amounts due under the terms of the bond will be sent to the obligor ~~or~~ and any agent/co-obligor after a declaration of breach becomes administratively final.

(6) *Amount of Bond Breach and Effect on Bond.* The bond must be considered breached in the full amount of the bond.

(i) *Exhaustion of administrative remedies.* Unless an administrative appeal is precluded by regulation, a party has not exhausted the administrative remedies available with respect to a public charge bond under this section until the party has obtained a final decision in an administrative appeal under 8 CFR part 103, subpart A.

(ii) [Reserved]

PART 214 – NONIMMIGRANT CLASSES

10. ~~9.~~ The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, ~~1187,~~

1187, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. ~~3009-708; Public~~ 3009-

708; Public Law 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall

Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

11. ~~10.~~ Section 214.1 is amended by:

a. Adding paragraph (a)(3)(iv),

~~c. Redesignating paragraph (c)(4)(iv) as paragraph (c)(4)(v); and~~

~~d. Adding a new paragraph (c)(4)(iv).~~

b. Removing the term, “and” in paragraph (c)(4)(i i); The

additions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(3) * * *

(iv) Except where the nonimmigrant classification for which the alien ~~applies, or~~ seeks to extend, ~~is~~ exempt from section 212(a)(4) of the Act or that section has been waived, as a condition for approval of extension of status, the alien must demonstrate that he or she has not received since obtaining the nonimmigrant status he or she seeks to extend, ~~is not receiving, nor is likely to receive, a~~ one or more public ~~benefit~~ benefits as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). For the purposes of this determination, DHS will only consider ~~such~~ public benefits received on or after [~~DATE-INSERT~~ 60 DAYS ~~FROM-AFTER~~ DATE OF PUBLICATION ~~OF THE FINAL RULE~~]. ~~In assessing whether the alien has~~ IN THE FEDERAL REGISTER for petitions or applications postmarked (or, if applicable, submitted electronically) on or after that date.

~~met his or her burden, DHS will consider the nonimmigrant classification the alien is seeking to~~

~~extend, the reasons for seeking the extension of stay and the expected period of stay. For purposes of this determination, DHS may require the submission of a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions.~~

~~*****~~

~~(e)*~~

~~**~~

~~(4)*~~

~~**~~

~~(iv) As set forth in 8 CFR 214.1(a)(3)(iv), except where the alien's nonimmigrant classification is exempted by law from section 212(a)(4) of the Act, the alien has not received since obtaining the nonimmigrant status for which he or she seeks to extend, is not currently receiving, nor is likely to receive, public benefits as described in in 8 CFR 212.21(b). For the purposes of this determination, DHS will consider public benefits received on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]; and~~

~~*****~~

PART 245 - ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

12 ~~11~~. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105-100, section 202, 111~~Stat.~~
Stat. 2160, 2193; Pub. L. 105-277, section 902, 112 Stat. 2681; Pub. L. 110-229, tit. VII,
122 Stat. 754; 8 CFR part 2.

13. ~~12Section Amend § 245.4 is amended~~ by redesignating the undesignated text as
paragraph (a) and adding paragraph (b) to read as follows:

§ 245.4 Documentary requirements.

* * * * *

(b) For purposes of public charge determinations under section 212(a)(4) of the
Act and 8 CFR 212.22, an alien who is seeking adjustment of status under this part must
submit a declaration of self-sufficiency on a form designated by DHS, in accordance with
form instructions.

14. In § 245.23, revise paragraph (c)(3) to read as follows:

§ 245.23 Adjustment of aliens in T nonimmigrant classification.

* * * * *

(c)* * *

(3) The alien is inadmissible under any applicable provisions of section 212(a) of the Act and
has not obtained a waiver of inadmissibility in accordance with 8 CFR 212.18 or 214.11(j).
Where the alien establishes that the victimization was a central reason for the applicant's
unlawful presence in the United States, section 212(a)(9)(B)(iii) of the Act is not applicable,
and the applicant need not obtain a waiver of that ground of inadmissibility. The alien,
however, must submit with the Form I-485 evidence sufficient to demonstrate that the
victimization suffered was a central reason for the unlawful presence in the United States. To
qualify for this exception, the victimization need not be

the sole reason for the unlawful presence but the nexus between the victimization and the unlawful presence must be more than tangential, incidental, or superficial.

PART 248 – CHANGE OF NONIMMIGRANT CLASSIFICATION

15. ~~13.~~ The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

16. ~~14.~~ Section 248.1 is amended by:

- a. Revising paragraph (a);
- b. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f),

respectively; and

- c. Adding a new paragraph (b); and
- d. Revising newly redesignated paragraph (c)(4).

The revisions and additions read as follows:

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2 of this part, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status in accordance with section 247 of the Act, ~~8 U.S.C. 1257,~~ who is continuing to maintain his or her nonimmigrant status, may apply to have his or her nonimmigrant classification changed to any nonimmigrant classification other than that of a spouse or fiancée, or the child of such alien, under section 101(a)(15)(K) of the Act, ~~8 U.S.C. 101(a)(15)(K),~~ or as an alien in transit under section 101(a)(15)(C) of the Act, ~~8 U.S.C. 101(a)(15)(C).~~ Except where the nonimmigrant classification to which the alien seeks to change is exempted by law or regulation from section 212(a)(4) of the Act, as a condition for approval of a change of nonimmigrant status, the alien must demonstrate that he or she has not

received since obtaining the nonimmigrant status from which he or she seeks to change, ~~is not currently receiving, nor is likely to receive,~~ public benefits, as described in 8 CFR 212.21(b). ~~DHS will,~~ for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). DHS will only consider public benefits received on or after [INSERT DATE 60 DAYS FROM AFTER DATE OF PUBLICATION ~~OF THE FINAL RULE~~]. ~~An alien~~ IN THE FEDERAL REGISTER] for defined by section 101(a)(15)(V), or 101(a)(15)(U) of the Act, ~~8 U.S.C. 1101(a)(15)(V) or 8 U.S.C. 1101(a)(15)(U),~~ petitions or applications postmarked (or, if applicable, submitted electronically) on or after that date . An alien defined by section 101(a)(15)(V) or 101(a)(15)(U) of the Act may be accorded nonimmigrant status in the United States by following the procedures set forth in 8 CFR 214.15(f) and 214.14, respectively.

(b) *Decision in change of status proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested change of status, it may be granted at the discretion of DHS. There is no appeal from the denial of an application for change of status.

(c) ***

(4) ~~(4)~~ As a condition for approval, an alien seeking to change nonimmigrant classification must demonstrate that he or she has not received, since obtaining the nonimmigrant status from which he or she seeks to change, ~~is not receiving, nor is likely to receive, a one or more~~ public ~~benefit~~ benefits, as defined in 8 CFR 212.21(b), for more than 12 months in the aggregate within any 36- month period (such that, for instance, receipt of two benefits in one month counts as two months). For purposes of this determination, DHS will only consider ~~such public~~ benefits received on or after [DATE 60 DAYS FROM DATE OF PUBLICATION OF THE FINAL RULE]. ~~In assessing whether the alien has met his or her~~

~~burden, DHS will consider the prospective nonimmigrant classification, the reasons for seeking the change of status, and the expected period of stay. DHS may require the submission of a declaration of self-sufficiency on a form designated by DHS, in accordance with form instructions~~INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] for petitions or applications postmarked (or, if applicable, submitted electronically) on or after that date. This provision does not apply to classes of ~~nonimmigrants who are explicitly exempt by law from section 212(a)(4) of the Act.~~nonimmigrants who are explicitly exempt by law or regulation from section 212(a)(4) of the Act.

* * * * *

Kevin K. McAleenan,

~~Kirstjen M. Nielsen,~~
Acting Secretary of Homeland Security.

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Comparison Details	
Title	pdfDocs compareDocs Comparison Results
Date & Time	8/14/2019 10:35:46 AM
Comparison Time	5.49 seconds
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Sources	
Original Document	CFR Language from Proposed Rule - Inadmissibility on Public Charge Grounds (D0871513xA5BED).DOCX
Modified Document	CFR Language - Final Rule. Inadmissibility on Pubic Charge Grounds (D0871512xA5BED).DOCX

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Deletions	
<u>Moves</u> / Moves	
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Include Change Detail Report	Word	Separate

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