

9 FAM 40.41 Notes

9 FAM 40.41 N2 DEFINITION OF "PUBLIC CHARGE"

(CT:VISA-1931; 10-10-2012)

a. For the purpose of determining inadmissibility under INA 212(a)(4) (8 U.S.C. 1182(a)(4)), the term "public charge" means that an alien, after admission into the United States, is likely to become primarily dependent on the U.S.

Government for subsistence. This means either:

(1) The receipt of public cash assistance for income maintenance (see 9 FAM 40.41 N2.1 below); or

(2) Institutionalization for long-term care at U.S. Government expense (see 9 FAM 40.41 N2.3). Short-term confinement in a medical institution for rehabilitation does not constitute primary dependence on the U.S. Government for subsistence.

b. When considering the likelihood of an applicant becoming a —public charge, you must take into account, at a minimum, the factors specified in INA 212(a)(4)(B) (see 9 FAM 40.41 N4) (in addition to *the* Form I-864, Affidavit of Support Under Section 213A of the Act, *or* Form I-134, Affidavit of Support *in cases which require these forms*), in order to base *your* determination on the totality of the alien's circumstances at the time of visa application.

c. USCIS states that "in determining whether an alien meets the definition for public charge inadmissibility, a number of factors are considered, including age, health, family status, assets, resources, financial status, education, and skills. No single factor, other than the lack of an affidavit of support, if required, will determine whether an individual is a public charge." (USCIS, Public Charge Fact Sheet, April 29, 2011.)

9 FAM 40.41 N2.1 Defining "Public Cash Assistance"

(CT:VISA-1931; 10-10-2012)

a. In the "public charge" context, "public cash assistance" for income maintenance includes:

(1) Supplemental security income (SSI);

(2) Cash temporary assistance for needy families (TANF), but not including supplemental cash benefits or any non-cash benefits provided under TANF; and

(3) State and local cash assistance programs that provide for income maintenance (often called "general assistance").

b. These types of assistance are sometimes also referred to as "means tested benefits." See 9 FAM 40.41 N10.

9 FAM 40.41 N2.2 Benefits Not Considered "Public Cash Assistance for Income Maintenance"

(CT:VISA-1931; 10-10-2012)

a. There are many forms of U.S. Government assistance that an alien may have accepted in the past, or that you may reasonably believe an alien might receive

after admission to the United States, that are of a non-cash and/or supplemental nature and would not create an inadmissibility under INA 212(a)(4). Certain programs are funded with public funds for the general good, such as public education and child vaccination programs, etc., and are not considered to be benefits for the purposes of INA 212(a)(4) (8 U.S.C. 1182(a)(4)). Although the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 *prohibits* aliens from receiving many kinds of public benefits, it specifically exempts from this prohibition several of the public benefits indicated below. Neither the past nor possible future receipt of such non-cash or supplemental assistance may be considered in determining whether an alien is likely to become a public charge. As discussed at INA 213A, Note 1, these benefits that are not to be considered as public cash assistance or income include, but are not limited to:

- (1) The Food Stamp Program;
- (2) The Medicaid Program (other than payments under Medicaid for long-term institutional care);
- (3) The Child Health Insurance Program (CHIP);
- (4) Emergency medical services;
- (5) The Women, Infants and Children (WIC) Program;
- (6) Other nutrition and food assistance programs;
- (7) Other health and medical benefits;
- (8) Child-care benefits;
- (9) Foster care;
- (10) Transportation vouchers;
- (11) Job training programs;
- (12) Energy assistance, such as the low-income home energy assistance program (LIHEAP);
- (13) Educational assistance, such as Head Start or aid for elementary, secondary, or higher education;
- (14) Job training;
- (15) In-kind emergency community services, such as soup kitchens and crisis counseling;
- (16) State and local programs that serve the same purposes as the Federal in-kind programs listed above; and
- (17) Any other Federal, State, or local program in which benefits are paid in-kind, by voucher or by any means other than payment of cash benefits to the eligible person for income maintenance.

b. In all cases, the underlying nature of the program reveals whether it is considered a "public charge." *The Consular Officer should be able to determine that the purpose of such benefits is not "income maintenance."* Some programs which provide cash benefits for special purposes are supplemental and not for income maintenance. They include such help as transportation or child care benefits paid in cash, or one-time emergency payments made under TANF to avoid the need for on-going cash assistance.

c. Cash benefits that have been earned (e.g., social security payments, old age survivors disability insurance (OASDI), U.S. Government pension benefits, and

veterans benefits) are not considered public cash assistance for the purposes of a public charge determination under INA 212(a)(4).

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9 FAM 40.41 N4 DETERMINING "TOTALITY OF THE CIRCUMSTANCES"

(CT:VISA-1612; 01-03-2011)

a. In making a determination regarding an alien's admissibility under INA 212(a)(4), you must consider, at a minimum, the alien's:

- (1) Age;
- (2) Health;
- (3) Family status;
- (4) Assets;
- (5) Financial status and resources; and
- (6) Education or skills.

b. These factors, and any other factors thought relevant by an officer in a specific case, will make up the "totality of the circumstances" that you must consider when making a public charge determination. As noted in 9 FAM 40.41 N3.2, a properly filed, non-fraudulent Form I-864, Affidavit of Support Under Section 213A of the Act, in those cases where it is required, should normally be considered sufficient to meet the INA 212(a)(4) requirements and satisfy the —totality of the circumstances analysis. Nevertheless, the factors cited above could be given consideration in an unusual case in which a Form I-864 has been submitted and should be considered in cases where Form I-864 is not required.

<http://www.state.gov/documents/organization/86988.pdf> (Accessed 10/11/2012)