

9 FAM 40.41 PUBLIC CHARGE

*(CT:VISA-1314; 09-22-2009)
(Office of Origin: CA/VO/L/R)*

9 FAM 40.41 RELATED STATUTORY PROVISIONS

(CT:VISA-1314; 09-22-2009)

See INA 212(a)(4) (8 U.S.C. 1182(a)(4)); INA 213A (8 U.S.C. 1883A); Sec. 232 of Public Law 106-113, and Public Law 107-150.

INA 212(a)(4)

(4) Public charge.-

(A) In *General*

Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

INA 212(a)(4)(B)

(B) Factors to be taken into account.-

- (i) In determining whether an alien is *inadmissible* under this paragraph, the consular officer or the Attorney General shall at a minimum consider the alien's-
 - (I) age;
 - (II) health;
 - (III) family status;
 - (IV) assets, resources, and financial status; and
 - (V) education and skills
- (ii) In addition to the factors under clause (i), the consular officer or the Attorney General may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

INA 212(a)(4)(C)

(C) Family-Sponsored *Immigrants*

Any alien who seeks admission or adjustment of status under a visa issued under section 201(b)(2) or 203(a) is *inadmissible* under this paragraph unless

- (i) the alien has obtained-
 - (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) or section 204(a)(1)(A) , or
 - (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B);
 - (III) classification or status as a VAWA self-petitioner; or
- (ii) the person petitioning for the alien's admission 6a/ (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

INA 212(a)(4)(D)

(D) Certain Employment-Based Immigrants

Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is *inadmissible* under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

INA 213

An alien inadmissible under paragraph (4) of section 212(a) may, if otherwise admissible, be admitted in the discretion of the Attorney General (subject to the affidavit of support requirement and attribution of sponsor's income and resources under section 213A) upon the giving of a suitable and proper bond or undertaking approved by the Attorney General, in such amount and containing such conditions as he may prescribe, to the United States, and to all States, territories, counties, towns, municipalities, and districts thereof holding the United States and all States, territories, counties, towns, municipalities, and districts thereof harmless against such alien becoming a public charge. Such bond or undertaking shall terminate

upon the permanent departure from the United States, the naturalization, or the death of such alien, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representatives. Suit may be brought thereon in the name and by the proper law officers of the United States for the use of the United States, or of any State, territory, district, county, town, or municipality in which such alien becomes a public charge, irrespective of whether a demand for payment of public expenses has been made.

9 FAM 40.41 RELATED REGULATORY PROVISIONS

(CT:VISA-967; 06-11-2008)

See 22 CFR 40.41

40.41 Public charge.

- (a) *Basis for Determination of Ineligibility.* Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that, notwithstanding any affidavit of support that may have been filed on the alien's behalf, the alien is likely to become a public charge after admission, or, if applicable, that the alien has failed to fulfill the affidavit of support requirement of INA 212(a)(4)(C).
- (b) *Affidavit of support.* Any alien seeking an immigrant visa under INA 201(b)(2), 203(a), or 203(b), based upon a petition filed by a relative of the alien (or in the case of a petition filed under INA 203(b) by an entity in which a relative has a significant ownership interest), shall be required to present to the consular officer an affidavit of support (AOS) on a form that complies with terms and conditions established by the Secretary of Homeland Security. Petitioners for applicants at a post designated by the Deputy Assistant Secretary for Visa Services for initial review of and assistance with such an AOS will be charged a fee for such review and assistance pursuant to Item 61 of the Schedule of Fees for Consular Services (22 CFR 22.1).
- (c) *Joint Sponsors.* Submission of one or more additional affidavits of support by a joint sponsor/sponsors is required whenever the relative sponsor's household income and significant assets, and the immigrant's assets, do not meet the Federal poverty line requirements of INA 213A.
- (d) *Posting of Bond.* A consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4) (subject to the affidavit of support

requirement and attribution of sponsor's income and resources under section 213A), upon receipt of a notice from DHS of the giving of a bond or undertaking in accordance with INA 213 and INA 221(g), and provided further that the officer is satisfied that the giving of such bond or undertaking removes the likelihood that the alien will become a public charge within the meaning of this section of the law and that the alien is otherwise eligible in all respects.

- (e) *Prearranged Employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must provide written confirmation of the relevant information sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.
- (f) *Use of Federal Poverty Line Where INA 213A Not Applicable.* An immigrant visa applicant, not subject to the requirements of INA 213A, and relying solely on personal income to establish eligibility under INA 212(a)(4), who does not demonstrate an annual income above the Federal poverty line, as defined in INA 213A (h), and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4).

[62 FR 67564, Dec. 29, 1997, as amended at 65 FR 78094, Dec. 14, 2000]