Global Immigration alert

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United States

USCIS publishes guidance explaining agency's analysis for AOS applicant public charge inadmissibility determinations

Executive summary

On 18 August 2026, US Citizenship and Immigration Services (USCIS) updated its Policy Manual to outline how officers will consider evidence to determine whether an applicant for adjustment of status (AOS) is likely to become a public charge. The guidance implements the Department of Homeland Security's (DHS) recent recission of the 2022 public charge inadmissibility regulations, which becomes effective on 18 September 2026. The updated guidance clarifies which foreign nationals are subject to the public charge ground of inadmissibility, the factors officers will consider when making public charge determinations, and the process for public charge bonds.

USCIS also announced on 19 August 2026 that a new Form I-485, Application to Register Permanent Residence or Adjust Status, will become mandatory on 18 September 2026. This new form, which facilitates the collection of evidence that will be evaluated under the new guidance, must be used for all applications that are filed electronically or postmarked on or after 18 September.

Background and analysis

The Immigration and Nationality Act (INA) provides that certain foreign nationals seeking admission to the United States or AOS may be found inadmissible if they are likely at any time to become a public charge. Under the updated guidance, USCIS officers will evaluate the likelihood that an AOS applicant may become a public charge based on the totality of the circumstances at the time of the foreign national's application for admission or AOS. Officers must consider the statutory factors of age, health, family status, assets, resources and financial status, and education and skills.

Significantly, the new guidance notes that officers may consider the applicant's "employment history, in the totality of the circumstances, in the context of assessing [their] education and skills, as well as assets, resources and financial status." However, past or current unemployment alone would be insufficient to support a finding of inadmissibility based on public charge grounds. Further, the updated Policy Manual indicates that USCIS will consider certain medical conditions in the totality of the circumstances analysis, even when such conditions would not otherwise make an applicant inadmissible.

USCIS further clarifies how public benefits will be considered in future adjudications. For benefits received prior to 18 September 2026, officers will consider only public cash assistance for income maintenance and long-term institutionalization at government expense. For means-tested public benefits received on or after 18 September 2026, USCIS may consider any such benefits as part of the overall public charge analysis and totality of the circumstances review.

Lastly, if USCIS determines that an AOS applicant is inadmissible solely because they are likely to become a public charge, the agency may invite the applicant to post a public charge bond. USCIS will assess bond amounts based on the applicant's individual circumstances and potential eligibility for government assistance.

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What this means

The updated Policy Manual provides additional insight into how USCIS will implement the revised public charge framework beginning 18 September 2026. While the statutory factors remain unchanged, the guidance confirms that officers will evaluate each case based on the totality of the circumstances at the time of adjudication and will have broader discretion to consider an applicant's overall financial circumstances and receipt of means-tested public benefits when assessing self-sufficiency. As a result, AOS applicants may be subject to increased scrutiny of their financial resources, support arrangements, educational background, health, family circumstances, and prior use of public benefits.

Employers and foreign nationals pursuing permanent residence should familiarize themselves with the updated guidance and consider its potential impact on future AOS filings. USCIS is expected to continue implementing the revised public charge framework through updated forms, adjudication guidance, and case-by-case review procedures.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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