



Public Charge Rules & Benefits for Noncitizens

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Roadmap

- What is “public charge”?
 - Background & history
 - When does it apply? When does it not?
 - What benefits are a problem under the public charge rules?
 - Takeaways & FAQs
 - Questions
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What is “public charge” in immigration law?

It is one of many “grounds of inadmissibility” – a list of reasons the government can use to deny someone permanent residence (a green card).

“Any [noncitizen] who, in the opinion of the [relevant government official at the time the noncitizen applies for permanent residence in the U.S. or seeks an immigrant visa overseas] is likely at any time to become a public charge is inadmissible.” INA § 212(a)(4).

It is also a “ground of deportability” – a list of reasons the government can use to deport someone from the U.S. Because it is a very narrow and complicated ground, it is almost never used in practice (especially because there are many other grounds that are much easier to prove).

Background: History of Public Charge Rules

“Public charge” has been a part of U.S. immigration law since 1882. It pre-dates the modern social safety net/welfare state (such as it exists in the U.S.). Originally, it referred to noncitizens the government suspected could not support themselves and would become dependent on the government, at a time when government assistance primarily took the form of institutions: asylums, almshouses, workhouses, “poor farms,” orphanages, etc. Unaccompanied minors, single women, widows, the elderly and people with disabilities were commonly found “Likely to become a Public Charge” (“LPC”) and turned back at ports like Ellis Island.

Today the modern public benefits regime has largely replaced institutions. The “public charge” ground still exists but is still only applied to those noncitizens who are **primarily dependent on the government for subsistence**.



Carolina Salatino Rizzuti, Italian widow & her 5 children, detained at Ellis Island in 1911 on public charge grounds; they were later released with the assistance of an NGO and moved to Walla Walla.



King County Poor House & Poor Farm, Georgetown (1907)

Public Charge Rules Under Trump – NOT IN EFFECT TODAY

In 2018/2019, the Trump administration tried to expand the public charge rules, so that applicants for permanent residence who recently received a wider range of benefits—including Medicaid, SNAP, housing assistance, child care subsidies & others—could be denied green cards on public charge grounds.



The Trump rules have not been in effect since March 2021.

The rules published in September 2022 under Biden reversed them back to essentially the same rules that were in effect from 1999-2019.

Public Charge Today – WHO do the rules apply to?

Noncitizens applying for:

- permanent residence (a green card);
- through a family member (*i.e.*, being sponsored by a U.S. citizen or permanent resident spouse, adult child, or parent)

These applicants must show they are not inadmissible—including on public charge grounds—before the government will grant their application.

Sponsors must provide proof of household income and their family member can be denied if their income falls below a certain threshold—regardless of whether they receive benefits.

USCIS can also look at their “age, health, family status, assets, resources, financial status and education and skills” to make a public charge determination—but in practice, they are generally approved if their financial sponsor meets the income requirements.

Public Charge Today – Who do the rules NOT apply to?

The public charge rules are not applied to anyone granted (or applying for) other forms of relief, including (but not limited to):

<ul style="list-style-type: none">• Asylum• Refugee status• Withholding of removal• Convention Against Torture (CAT)• Temporary Protected Status (TPS)• U visa (for crime victims)• T visa (for trafficking victims)	<ul style="list-style-type: none">• Violence Against Women Act (VAWA)• Parole (including Uniting for Ukraine & Venezuelan parole)• Cuban Adjustment Act• Special Immigrant Juvenile Status (SIJS)• Special Immigrant Visas (SIV) for Iraqis and Afghans• DACA or medical/military deferred action• Cancellation of removal
<ul style="list-style-type: none">• Anyone applying for a green card based on any of the above statuses• <i>Lawful permanent residents applying for citizenship!!!</i>	

Public Charge Today — If the public charge rules DO apply, what benefits will the government consider = public charge?

Being primarily dependent on the government for subsistence, as demonstrated by:

- receipt *by the noncitizen* of public cash assistance for income maintenance—e.g., SSI, TANF, “General Assistance” cash assistance; **or**
- or institutionalization for long-term care at government expense—e.g., in a public facility paid for by regular or emergency Medicaid.

NOTE: *most people applying for green cards are not eligible for SSI, TANF, or cash assistance!*

Most noncitizens who qualify for cash assistance (e.g., refugees) are exempted from the public charge rules.

Therefore, in practice, almost no one is denied a green card on public charge grounds due to receipt of benefits.

Public Charge Today – If the public charge rules apply, what benefits will the government NOT consider = public charge?

The government does NOT consider:

- Non-cash or supplemental benefits: food stamps, housing vouchers, WIC, food pantries, emergency shelter, disaster relief, stimulus checks, etc.
 - Earned benefits: workers compensation, unemployment, VA benefits, Social Security retirement or disability (SSDI)
 - Medical benefits (other than long-term institutionalization): emergency care, subsidized insurance, short-term rehab or institutionalization/hospitalization, vaccines, Covid-19 testing, etc.
 - Benefits awarded to family members (e.g., SSI awarded to U.S. citizen children)
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BUT . . .

People with a **valid, unexpired tourist visa** are subject to much stricter public charge rules.
ANY receipt of **ANY** public benefit (including emergency Medicaid) can result in the revocation of their visa.
This doesn't apply to people who have overstayed their visa because their visas are already no longer valid.

Anyone applying for an immigrant visa in an **overseas consulate** will be subject to the Department of State public charge rules. Consulates are generally stricter about evidence of financial self-sufficiency than USCIS.

Fraudulently obtaining benefits by **misrepresenting income** can be a negative discretionary factor in a range of immigration applications if it comes to light, whether or not there are criminal charges.
Receiving benefits and **failing to pay taxes when required** can be considered a negative discretionary factor
if it comes to light

Takeaways & FAQs

Use of benefits is almost never a basis to deny people green cards:

- Most people affected by the public charge rules (undocumented people being sponsored for a green card by a family member) are not eligible for cash benefits. And the benefits they *are* eligible for (emergency Medicaid, WIC) are not considered in the public charge analysis.
- Most people who *are* eligible for cash benefits (refugees, asylees, etc) are not subject to the public charge rules.

Undocumented people commonly ask if accepting benefits will make it harder to “fix their papers” in the future.

- Generally speaking, no. Any benefits they would be eligible for would not be considered in a public charge analysis. Any benefits received by their U.S. citizen kids (SSI, food stamps, etc), would not be considered either.
- If they are applying for a form of relief like asylum or a U visa, there will be no public charge analysis.

Many undocumented people want to know if the government can/will deport them for accepting public benefits.

- No immigration agency will generally be aware of what benefits an immigrant/mixed-status family receives or doesn't receive. Most benefits are awarded by state governments; all immigration benefits are awarded by federal agencies. Federal immigration agencies have no automatic access to state benefits databases.
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Questions?

This is general legal information, not legal advice.

Any individual concerned about their particular case should discuss their situation with an attorney.

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