

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 213, 214, 245a and 248

[CIS No. 2499-10; DHS Docket No. USCIS-2010-0012]

RIN 1615-AA22

Inadmissibility on Public Charge Grounds

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to add a new regulation that would guide how DHS will determine whether an alien is inadmissible to the United States because he or she is likely at any time to become a public charge under section 212(a)(4) of the Immigration and Nationality Act (INA). Aliens applying for a visa, admission at a port of entry, or adjustment of status must establish that they are not likely at any time to become a public charge. DHS proposes to define the term “public charge” for immigration purposes and provide guidance on the types of public benefits that are considered in public charge determinations. DHS proposes to clarify that it will make public charge determinations based on the totality of an applicant’s circumstances. This includes, but is not limited to, the mandatory consideration of statutory factors in section 212(a)(4) of the INA. These factors may be weighed positively or negatively, depending on how the factor impacts the alien’s likelihood to become a public charge. Additionally, DHS proposes to clarify the types of public benefits that DHS will consider when determining whether an alien is likely at any time to become a public charge. With the publication of this proposed rule, DHS withdraws the proposed regulation on public

charge that former Immigration and Naturalization Service (INS)¹ published on May 26, 1999.

DATES: Written comments and related material to this proposed rule must be submitted to the online docket via www.regulations.gov, on or before 60 days from date of publication in the *Federal Register*.

ADDRESSES: You may submit comments on this proposed rule, including the proposed information collection requirements, identified by DHS Docket No. USCIS-2010-0012, by any one of the following methods:

- Federal eRulemaking Portal (preferred): www.regulations.gov. Follow the website instructions for submitting comments.
- Mail: Samantha L. Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, N.W., Washington, DC 20529-2140. To ensure proper handling, please reference DHS Docket No. USCIS-2010-0012 in your correspondence. Mail must be postmarked by the comment submission deadline.

FOR FURTHER INFORMATION CONTACT: Mark Phillips, Residence and Naturalization Division Chief, Office of Policy & Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW., Washington, DC 20529-2140; telephone 202-272-8377.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

¹ On March 1, 2003, INS functions were transferred from the Department of Justice to DHS. See Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2178, 2192 (Nov. 25, 2002).

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

8 CFR 213

Immigration, Surety bonds.

8 CFR 214

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

8 CFR 245a

Persons Admitted for Temporary Resident Status Under Section 245A of the Immigration and Nationality Act

8 CFR 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend 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 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2; Pub. L. 112-54.1

2. Section 103.6 is amended by:

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

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

8 CFR 213

Immigration, Surety bonds.

8 CFR 214

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

8 CFR 245a

Persons Admitted for Temporary Resident Status Under Section 245A of the Immigration and Nationality Act

8 CFR 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to amend 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 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2; Pub. L. 112-54.1

2. Section 103.6 is amended by:

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

- c. Revising paragraph (e); and
- d. Adding a new paragraph (f).

The revisions and additions read as follows:

§ 103.6 Surety bonds.

(a) *Posting of surety bonds. (1) Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases must be executed on the forms designated by the Secretary of Homeland Security, a copy of which, and any rider attached thereto, must be furnished to the obligor. The Secretary is authorized to approve a bond, a formal agreement to 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 the Secretary of Homeland Security. All other matters relating to bonds, including a power of attorney not executed on the form designated by the Secretary of Homeland Security 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.

(b) *Acceptable Sureties.* Any company listed on Department of the Treasury's Listing of Approved Sureties (Department Circular 570) in effect on the date the bond is requested.

(2) *Bond riders. (i) General.* Bond riders must be prepared on the form designated by the Secretary of Homeland Security, and attached to the submission of 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) Cancellation. (1) Public charge bonds. A public charge bond posted for an alien must be cancelled when the alien dies, departs permanently from the United States or is naturalized, provided the alien did not become a public charge prior to death, departure, or naturalization. A public charge bond may also be canceled in order to allow the substitution of another bond. A public charge bond must be cancelled by the Secretary upon review following the fifth anniversary of the admission of the immigrant, provided that the alien has filed the form designated by the Secretary of Homeland Security and the Secretary finds that the alien did not become a public charge prior to the fifth anniversary. If the cancellation request as submitted in the form designated by the Secretary is not filed, the bond must remain in effect until the form is filed, and the Secretary reviews the evidence supporting the form and renders a decision to breach or cancel the bond.

* * * * *

(d) * * *

(3) Public charge blanket bonds. If the sponsored alien is found inadmissible under section 212(a)(4) of the INA based on the totality of circumstances and the alien has no heavily weighted negative factors as described in 8 CFR 212.22(e) the bond amount is not less than \$10,000.

(e) Breach of bond. 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 or discharged. The office having custody of the file containing the immigration bond executed on the form designated by the Secretary determines whether to declare the bond breached or cancelled, and must notify the obligor on the form designated by the Secretary of the decision. If the bond is declared breached, that office must notify the obligor of the reasons-why, and of the right to appeal in accordance with the provisions of this part.

(f) Breach of public charge bond. Receipt of a public benefit as listed in 8 CFR 212.23 is a breach of a public charge bond.

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

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

Authority: 6 U.S.C. 111, 202, 236 and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1185, 1187, 1223, 1225, 1226, 1227, 1255, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458); 8 CFR part 2.

4. Sections 212.20 through 212.26 are newly added to read as follows:

§ 212.20 Purpose and applicability of public charge inadmissibility.

8 CFR 212.20 through 212.26 address the public charge ground of inadmissibility under section 212(a)(4) of the Act.

(a) Purpose. These subparts implement section 212(a)(4) of the Act as it relates to the statements of Congress on national welfare and immigration policy in 8 U.S.C. 1601:

(1) Self-sufficiency is a basic principle of United States immigration law;

(2) Aliens must rely on their own capabilities and the resources of their families, their sponsors, and private organizations;

(3) The availability of public benefits must not constitute an incentive for immigration to the United States; and

(4) Aliens in the United States must not depend on public resources to meet their needs.

(b) Applicability of public charge inadmissibility.

Unless the immigration benefit or classification requested by the alien has been exempted from section 212(a)(4) of the Act or that section has been waived by law, the provisions of sections 212.20 through 212.26 of this chapter apply to:

(1) Aliens applying for admission to the United States; and

(2) Aliens applying for adjustment of status to lawful permanent resident.

§ 212.21 Definitions Public Charge.

For the purposes of § 212.20 through § 212.26 of this chapter, the following definitions apply:

(a) *Public Charge*. A public charge means a person who is dependent on public benefits as defined in subpart 212.21(d) of this section. An alien inadmissible based on public charge means an alien who is likely to become pendent on public benefits.

(b) *Dependent*. A person who relies on another person or entity for financial or material support.

(c) *Government*. Government means any U.S. Federal, State, Territorial, tribal, or local government entity or entities.

(d) *Public benefit.* (1) Public benefit means any government assistance in the form of cash, checks or other forms of money transfers, or instrument and non-cash government assistance in the form of aid, services, or other relief, except those benefits described in paragraph (d)(2) of this section.

(2) Public benefit does not include earned benefits such as Federal Old-Age, Survivors, and Disability Insurance Social Security benefits, veteran's benefits, government pension benefits, unemployment benefits, and worker's compensation, Medicare, or state disability insurance. In addition, public benefit does not include services or benefits available to the community as a whole and not to a specific individual, or loans provided by the government that require repayment.

(e) *Subsidized health insurance.* Subsidized health insurance is any health insurance for which the premiums are partially or fully paid by the Federal, State or local government including but not limited to advanced premium tax credits, tax credits, or other forms of reimbursement.

§ 212.22 Public Charge Determination

If the Secretary of Homeland Security determines that an alien applying for admission or adjustment of status is likely to become a public charge at any time, the alien is inadmissible under section 212(a)(4) of the Act.

(a) Prospective determination. The Secretary must determine the likelihood that an alien will become a public charge at any time in the future.

(b) Totality of the circumstances. The Secretary must base the determination on the totality of the alien's circumstances by weighing all positive and negative factors, as outlined in paragraphs (c) through (f) of this section.

(c) Minimum factors to consider. Except as provided in paragraph (g) of this section, the Secretary may not make a finding of inadmissibility based on a single factor.

At a minimum, the Secretary must consider:

- (1) The alien's age;
- (2) The alien's health;
- (3) The alien's family status;
- (4) The alien's assets, resources, and financial status; and
- (5) The alien's education and skills.

(d) Additional considerations. The Secretary may also consider each of the following:

- (1) Whether the alien has sought, has received, or is receiving any public benefit as defined by 8 CFR 212.21;
- (2) Whether the alien has received any public benefit (as defined by 8 CFR 212.21(d)) within the last 2 years;
- (3) Whether any dependent family members for whom the alien provides financial support, including a U.S. citizen child, in the alien's household have received or are receiving any public benefits;
- (4) Whether an alien has received a fee waiver for an immigration benefit request;
- (5) Whether the alien has received or is likely to receive any subsidized health insurance;

(6) Whether there is a sufficient affidavit of support under INA 213A when required. A sufficient affidavit of support meets the sponsorship and income requirements of INA 213A; and

(7) Any other factors or evidence submitted that are relevant to the public charge determination.

(e) Heavily weighted negative factors. The following factors weigh heavily in favor of a finding that an alien is likely to become a public charge:

(1) The alien is of employable age, and is authorized to work, but is unable to demonstrate current employment, and has no employment history or no reasonable prospect of future employment;

(2) The alien is currently receiving public benefit(s);

(3) The alien has received public benefit(s) for more than 6 months cumulatively within 2 years immediately before filing the application or seeking admission;

(4) The alien has a costly medical condition and is unable to show proof of unsubsidized health insurance, prospect of obtaining unsubsidized health insurance, or other non-governmental means of paying for treatment; or

(5) The alien's spouse or parent had previously been found inadmissible based on public charge, and the applicant is an alien spouse or child accompanying under section 203(d) of the Act, 8 U.S.C. 1153(d).

(f) Heavily weighted positive factors. The following factors weigh heavily in favor of a finding that an alien is not likely to become a public charge:

(1) The alien is a healthy person of employable age with financial assets, resources, and support of at least 250 percent of the Federal Poverty Guidelines.

(2) The alien is authorized to work and is currently gainfully employed with an income of at least 250 percent of the Federal Poverty Guidelines.

(g) Lack of a sufficient affidavit of support under INA 213A.

Notwithstanding paragraphs (b) and (c) of this section, if an alien is required to submit an affidavit of support under section 212(a)(4)(C) and (D) of the Act and the affidavit of support is not sufficient as defined in 8 CFR 212.22(d)(6)), the alien is inadmissible on public charge grounds.

(h) *Effective Date.* The Secretary will consider an alien's receipt of public benefits that were previously excluded from consideration under the public charge guidance published in the Federal Register at 64 FR 28689 (May 26, 1999), only if such benefits are received on or after [the effective date of the final rule]. Receipt of such benefits will be considered along with all other relevant factors in the totality of the circumstances analysis in determining whether an alien is inadmissible as likely to become a public charge.

(g) *Lack of a sufficient affidavit of support section 213A of the Act.*

Notwithstanding paragraphs (b) and (c) of this section, if an alien is required to submit an affidavit of support under section 212(a)(4)(C) and (D) of the Act and the affidavit of support as defined in paragraph (d)(5) of this section, the alien is inadmissible on public charge grounds.

(h) *Effective date.* The Secretary will consider an alien's receipt of public benefits that were previously excluded from consideration under the public charge guidance published in the Federal Register at 64 FR 28689 (May 26, 1999), but only if such benefits are received on or after [the effective date of the final rule]. Receipt of such

benefits will be considered along with all other relevant factors in the totality of the circumstances analysis in determining whether an alien is inadmissible as likely to become a public charge.

§ 212.23 Public benefits considered for purposes of public charge inadmissibility.

(a) Consideration of public benefits includes, but is not limited to, the following:

- (1) Supplemental Security Income (SSI), 42 U.S.C. 1381 et seq.;
- (2) Temporary Assistance to Needy Families (TANF), 42 U.S.C. 601 et seq.;
- (3) State or local cash benefit programs for income maintenance (often called State "General Assistance," but which may exist under other names);
- (4) Any other federal public benefits for purposes of maintaining the applicant's income, such as public cash assistance for income maintenance;
- (5) Certain Benefits under the Medicaid Program, 42 U.S.C. 1396 to 1396w-5;
- (6) Government-provided subsidies for premium payments under the Patient Protection and Affordable Care Act, Pub. L. 111-148, 42 U.S.C. § 18001 et seq., or other government subsidized medical insurance programs;
- (7) Supplemental Nutrition Assistance Program (SNAP) (formerly called "Food Stamps"), 7 U.S.C. 2011 to 2036c;
- (8) Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), 42 U.S.C. 1786;
- (9) State Children's Health Insurance Program (CHIP) (formerly called "SCHIP"), 42 U.S.C. 1397aa to 1397mm;
- (10) Transportation vouchers or other non-cash transportation services;

(11) Housing assistance under the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11301 et seq. or the Housing Choice Voucher Program (section 8), U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437u, 24 CFR part 982;

(12) Energy benefits such as the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621 to 8630;

(13) Institutionalization for both long-term and short-term care at government expense;

(14) Certain educational benefits, including, but not limited to, benefits under the Head Start Act, as amended, 42 U.S.C. 9801 et seq., and

(15) Any other Federal, State, or local public benefit program, except for those benefits described in § 212.24 of this chapter.

§ 212.24 Public benefits not considered for purposes of public charge inadmissibility.

(a) *Emergency or disaster relief.* Emergency and disaster relief benefits include, but are not limited to:

(1) Any services provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 93-288, as amended, 42 U.S.C. 1521 et seq.;

(2) Short-term, non-cash, in-kind emergency disaster relief;

(3) Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) provided by local communities or through public or private nonprofit organizations;

(4) Benefits under the Emergency Food Assistance Act, as amended, 7 U.S.C. 7501 to 7517; and

(5) Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(b) *Educational and Child Care Block Grants*. Educational and Child Care Block Grants include, but are not limited to:

- (1) Attending public school;
- (2) Benefits through school lunch or other supplemental nutrition programs;
- (3) Benefits through the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1771 to 1793;

(4) Benefits from the Richard B. Russell National School Lunch Act, as amended, 42 U.S.C. 1751 to 1769j;

(5) Child care related services including the Child Care and Development Block Grant Program (CCDBGP), 42 U.S.C. 9858 to 9858q.; and

(6) Foster care and adoption benefits.

§ 212.25 Burden of proof and evidence.

(a) *Burden of proof*. The alien bears the burden of proof, as provided in section 291 of the Act, to show that he or she is not inadmissible as a public charge under section 212(a)(4) of the Act.

(b) *Evidence obtained by the Government*. The Secretary may request evidence from the alien based on the procedures outlined in 8 CFR 103.2, or from any other

government entity that is relevant to the public charge determination. Evidence that the Government may obtain includes, but is not limited to:

- (1) Any information relevant to the determination of an alien's likelihood of becoming a public charge;
- (2) Any information obtained or received by DHS that indicates the alien has applied for public benefits, such as verifications of an alien's immigration status and notifications from state or local government agencies that an alien may be indigent;
- (3) The results of a credit check of the alien and any person supporting the alien;
- (5) Information obtained from the U.S. Department of Labor (DOL) relating to occupational skills and employability;
- (6) Information obtained from the Internal Revenue Service (IRS);
- (7) Information obtained from the U.S. Social Security Administration (SSA);
- (8) Information obtained from U.S. Department of Health and Human Services (HHS);
- (9) Information obtained from U.S. Department of Agriculture (USDA);
- (10) Information obtained from any other government entity that provides public benefits;
- (11) The alien's immigrant medical examination, the applicant's medical records, and any other documentation relating to the alien's health; and
- (12) Any other information obtained from any government entity relevant to the public charge determination.

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

(a) *Exemptions.* Sections 212.20 through 212.25 do not apply to categories of aliens who are exempt from the public charge ground of inadmissibility as provided by the Act, regulation, or other federal law. The public charge ground of inadmissibility does not apply to the following categories of aliens:

(1) Refugees and asylees at the time of admission and adjustment of status to lawful permanent resident according to sections 207(c)(3) and 209(c) of the Act;

(2) Amerasian immigrants at admission as described in sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, section 101(e), Public Law 100-202, 101 Stat. 1329-183 (Dec. 22, 1987) (as amended), 8 U.S.C. 1101 note;

(3) Afghan and Iraqi Special immigrants serving as translators with United States armed forces Section 1059(a)(2) of the National Defense Authorization Act for Fiscal Year 2006 Pub. L. 109–163 (JAN. 6, 2006) and Section 602(b) of the Afghan Allies Protection Act of 2009, as amended Pub. L. 111–8 (MAR. 11, 2009);

(4) Cuban and Haitian entrants at adjustment as described in section 202 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603, 100 Stat. 3359 (1986) (as amended), 8 U.S.C. 1255a, note;

(5) Aliens applying for adjustment of status as described in the Cuban Adjustment Act, Pub. L. 89-732 (Nov. 2, 1966) as amended; 8 U.S.C. 1255, note;

(6) Nicaraguans and other Central Americans who are adjusting status as described in section 202(a) and section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-100, 111 Stat. 2193 (1997) (as amended), 8 U.S.C. 1255 note;

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(7) Haitians who are adjusting status as described in section 902 of the Haitian Refugee Immigration Fairness Act of 1998, Public Law 105-277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255 note;

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

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

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

(11) Aliens applying for Temporary Protected Status as described in section 244 of the Act who receive a blanket regulatory waiver of the public charge ground of inadmissibility under 8 CFR 244.3(a);

(12) A nonimmigrant described in section 101(a)(15)(T) of the Act, under section 212(d)(13)(A) of the Act at time of admission;

(13) An applicant for, or who is granted, nonimmigrant status under section 101(a)(15)(U) of the Act described in section 212(a)(4)(E)(ii) of the Act;

(14) Nonimmigrants who were admitted under section 101(a)(15)(U) of the Act at the time of their adjustment of status under section 245(m) of the Act and 8 CFR 245.24;

(15) An alien who is a VAWA self-petitioner under section 212(a)(4)(E)(i) of the Act;

(16) 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;

(17) Applicants adjusting status under section 1703 of the National Defense Authorization Act, Pub. L. 108-136, 117 Stat. 1392 (November 24, 2003) (posthumous benefits to surviving spouses, children, and parents);

(18) American Indians Born in Canada as described in INA 289;

(19) Nationals of Vietnam, Cambodia, and Laos adjusting status under section 586 of Public Law 106-429; and

(20) Polish and Hungarian Parolees who were paroled into the United States from November 1, 1989 to December 31, 1991 under Title VI, Subtitle D, Section 646(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) – Pub. L. 104-208.

(21) Subsequent legal provisions that may exempt other categories of aliens from the public charge ground of inadmissibility provisions under section 212(a)(4) of the INA.

(b) *Waiver*. Inadmissibility based on public charge grounds may be waived as provided by the Act or any other federal law. A waiver for the public charge ground of inadmissibility may be available for the following categories of aliens:

(1) Certain aged, blind, or disabled applicants for adjustment of status under section 245A(d)(2)(B)(ii)(IV) of the Act;

(2) Nonimmigrants who were admitted under section 101(a)(15)(T) of the Act at the time of their adjustment of status under section 245(l)(2)(A) of the Act;

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

(4) Nonimmigrants who were admitted under section 101(a)(15)(S) of the Act at the time of their adjustment of status under section INA 245(j) of the Act (witnesses or informants); and

(5) Other categories of aliens may be permitted by subsequent legal provisions to waive the public charge ground in section 212(a)(4) of the Act.

(6) Nonimmigrants described in INA 212(d)(3).

PART 213 – ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

5. The authority citation for part 213 continues to read as follows:

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

6 Section 213.1 is revised to read as follows:

§ 213.1 Admission of aliens on giving surety bond.

(a) DHS may admit an alien inadmissible on account of public charge under paragraph (4) of section 212(a) upon the alien's giving of a suitable and proper bond according to the procedures outlined in this section 213.1, DHS may accept a suitable and proper public charge surety bond on an alien's behalf if the bond meets the conditions set forth in section 213 of the INA, and in 8 CFR 213 and 8 CFR 103.6. Acceptance of such a bond is discretionary.

(b) The Secretary may accept a public charge bond prior to the issuance of a visa, granting admission under section 235 of the INA, adjustment of status to that of a lawful permanent resident, and extension of stay under 8 CFR 214.1. Additionally, the Secretary may accept a public charge bond prior to the approval of a change of status request under

section 248 of the INA and 8 CFR 248 if the Secretary determined that the alien is described in section 212(a)(4) of the INA, whether inadmissible or not.

(1) After an applicant has been found inadmissible as likely to become a public charge, the Secretary, in his or her discretion, may accept a public charge surety bond, if the alien is otherwise admissible.

(2) A person may submit a surety bond on the alien's behalf after the Secretary has notified the alien that a surety bond may be submitted. The bond must be received by DHS within 30 days of a notice.

(3) A public charge surety bond is only warranted where the applicant was found likely to become a public charge in the totality of the circumstances due to failure to demonstrate sufficient financial resources and the applicant has no heavily weighted negative factors.

(4) An alien who is currently receiving a public benefit as defined by 8 CFR 212.21(d) is not eligible for a public charge surety bond.

(c) The office having jurisdiction over the place where the examination for admission is being conducted or a designated officer may exercise the authority under section 213 of the Act.

(d) All bonds and agreements given as a condition of an alien's visa, admission or adjustment of status under section 213 of the Act must be executed on the form designated by the Secretary, and must not be less than \$10,000.

(e) A suitable and proper bond submitted to overcome inadmissibility based on public charge must not be less than [XXX]. A must be provided on the form designated by the Secretary.

(f) For procedures relating to bond riders, acceptable sureties, cancellation or breaching of bonds, see §103.6 of this chapter.

(g) *Conditions of bond.* Conditions of bond. The issuance of a bond is on the condition that the alien does not receive any public benefit as defined by 8 CFR 212.21(d)).

PART 214 – NONIMMIGRANT CLASSES

7. 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, 1221, 1281, 1282, 1301-1305 and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 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.

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

8. Section 214.1 is amended by revising paragraphs (a)(3)(i), redesignating paragraph (c)(4)(iv) as paragraph (c)(4)(v), and adding in its place a new paragraph (c)(4)(iv), to read to as follows:

(a) * * *

(3) *General requirements.* (i) Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. 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, the alien must demonstrate that he or she is not receiving, nor is likely to receive, public benefits as defined in 8 C.F.R. 212.21(d). Upon application for admission, the alien must present a valid passport and valid visa unless either or both documents have been waived. A nonimmigrant alien's admission to the United States is conditioned on compliance with any inspection requirement in § 235.1(d) or of this chapter, as well as compliance with part 215, subpart B, of this chapter, if applicable. The passport of an alien applying for admission must be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien must agree to abide by the terms and conditions of his or her admission. An alien applying for extension of stay must present a passport only if requested to do so by the Department of Homeland Security. The passport of an alien applying for extension of stay must be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien must agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension.

* * * * *

(c) * * *

(4) * * *

(v) Except where the alien's nonimmigrant classification is exempted from section 212(a)(4) of the Act or that section has been waived, the alien is not currently receiving, nor is likely to receive, public benefits as defined in 8 C.F.R. 212.21(d).

* * * * *

**PART 245a ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED
FOR TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION
245A OF THE IMMIGRATION AND NATIONALITY ACT**

9. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

10. Section 8 CFR 245a.2 is amended by revising the terms "Form I-134, Affidavit of Support, completed, xx" to read " Affidavit of Support, completed on the form designated by the Secretary of Homeland Security," in paragraph (d)(4)(iii).

11. Section 8 CFR 245a.4 is amended by revising the terms "Form I-134, Affidavit of Support, completed" to read " Affidavit of Support, completed on the form designated by the Secretary of Homeland Security," in paragraph (b)(4)(v)(C).

16. Section 8 CFR 245a.1 is amended to read as following:

* * * * *

(d) * * *

(3) An alien may have filed on his or her behalf an Affidavit of Support, on the form designated by the Secretary of Homeland Security. The failure to submit the affidavit of support shall not constitute an adverse factor.

* * * * *

PART 248 – CHANGE OF NONIMMIGRANT CLASSIFICATION

12. The authority citation for part 248 continues to read as follows:

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

§ 248.1 Eligibility.

13. In section 248.1, paragraph (a) is revised to read as follows:

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to 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 fiancé(e), or the child of such alien, under section 101(a)(15)(K) of the Act, 8 U.S.C. 1101(a)(15)(K), or as an alien in transit under section 101(a)(15)(C) of the Act, 8 U.S.C. 1101(a)(15)(C). Except where the nonimmigrant classification to which the alien seeks to change is exempted from section 212(a)(4) of the Act or that section has been waived, the alien must establish that he or she is not currently receiving, nor is likely to receive, public benefits as defined in 8 C.F.R. 212.21(d) as a condition for approval of a change of nonimmigrant status.

(i) An alien 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), may be accorded nonimmigrant status in the United States by following the procedures set forth respectively in § 214.15(f) or § 214.14 of this chapter.

(ii) A non-immigrant who is inadmissible under section 212(a) of the Act, 8 U.S.C. 1182(a) shall not be approved to change his or her nonimmigrant status. This provision does not apply to any ground of inadmissibility that does not apply to the nonimmigrant category to which the alien is requesting to change status or where a ground of inadmissibility in section 212(a) of the Act, 8 U.S.C. 1182(a) has been waived for the particular nonimmigrant category.

14. In section 248.1, paragraphs (b) to (e) are redesignated as paragraphs (c) to (f) respectively, and a new paragraph (b) is added to read as follows:

Adding 8 CFR 248.1(b)

Renumbering 8 CFR 248.1(b) to 8 CFR 248.1(c)

Renumbering 8 CFR 248.1(c) to 8 CFR 248.1(d)

Renumbering 8 CFR 248.1(d) to 8 CFR 248.1(e)

Renumbering 8 CFR 248.1(e) to 8 CFR 248.1(f)

(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.

14. Adding 8 CFR 248.1(c)(4)

(c) ***

(4) Except where the nonimmigrant classification to which the alien seeks to change is exempted from section 212(a)(4) of the Act or that section has been waived, the alien is not currently receiving, nor is likely to receive, public benefits as defined in 8 CFR 212.21(d).

Kirstjen M. Nielsen,
Secretary.