REPRESENTING/ADVISING INDIVIDUALS WHO HAVE RECEIVED BENEFITS IN MASSACHUSETTS IN ADJUSTMENT OF STATUS CASES UNDER THE 12-23-22 FINAL DHS/USCIS PUBLIC CHARGE REGULATIONS

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I. Introduction

Immigration attorneys representing clients who seek to adjust status to permanent residence or apply for other immigration status may encounter questions from clients about past and current receipt of public benefits. This memo is aimed at helping attorneys provide individualized advice to would-be adjustment of status clients about this complex area of law, which involves the intersection of immigration law with benefits eligibility, so that clients can make informed decisions about their benefits in relation to the "totality of circumstances" test relevant to public charge determinations under 8 U.S.C. 1182(a)(4), when such admissibility grounds apply.

On September 8, 2022, the U.S. Department of Homeland Security finalized a new public charge regulation that is effective on December 23, 2022.[1] This regulation applies to adjustment of status applications postmarked on or after that date. It does *not* apply to the following:

- Pending, previously filed adjustment of status applications, which remain subject to the 1999 INS Field Guidance.[2] That Guidance provides similar though not identical public charge standards, as elsewhere described.[3]
- Adjustment of status applications filed during Immigration Court removal proceedings or appeals from such proceedings to the Board of Immigration Appeals (BIA) or the Attorney General, all of which fall under the authority of the U.S. Department of Justice.[4]
- Consular decisions applying the public charge ground of inadmissibility to immigrant visa applications, which are subject to U.S. Department of State standards.[5]

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[1] Dep't of Homeland Sec., Inadmissibility on Public Charge Grounds, 87 Fed. Reg. 55472 (Sept. 09, 2022), available at https://www.federalregister.gov/documents/2022/09/09/2022-18867/public-charge-ground-of-inadmissibility [hereinafter "Final Rule"].

[2] Immigr. and Naturalization Serv., Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg 28689 (March 26, 1999), available at https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds [hereinafter "1999 Field Guidance"]

[3] Fact Sheet, Public Charge: What Advocates Need to Know, Protecting Immigrant Families (Sept. 12, 2022), https://pifcoalition.org/resource/public-charge-what-advocates-need-to-know.

[4] See Final Rule p 55472, footnote 2. Note, however, that many BIA precedents and federal court cases reviewing them address public charge principles, many of which have been incorporated into the 1999 Field Guidance and the Final Rule. See generally 1999 Field Guidance at p 28690 and 2022 Final Rule p 55498-55499 . Additionally, both the Final Rule, and the Field Guidance for previously filed cases, may provide persuasive authority for Immigration Court cases construing the public charge ground in adjustment proceedings before an Immigration Judge.

[5] See Final Rule, footnote 2. DOS presently has an updated Foreign Affairs Manual (FAM) that is similar to the 1999 Field Guidance and governs consular cases. DOS will likely publish new regulations and additional FAM updates now that the DHS regulations have been finalized.

While the Final Rule also applies to admissions decisions at or in some instances between U.S. ports of entry,[6] which are regulated by a different agency within DHS,[7] the text of the rule and preamble focus on public charge determinations by USCIS.

On December 19, 2022, USCIS published updates to its Policy Manual that provide additional guidance, also effective December 23, 2022, regarding certain aspects of the Final Rule[8] as well as helpful FAQs and more detailed policy resources for guidance.[9] Additionally, DHS has finalized a new I-485 adjustment of status application, with accompanying instructions, which is required as of December 23, 2022, superseding prior versions.[10]

Section II below summarizes the Final Regulation and the USCIS Policy Manual clarifications.

Section III addresses the benefits-related information that must be provided or may be omitted on the new I-485.

Section IV addresses the types of benefit programs that are relevant to the public charge ground and considerations in advising and representing immigrants who have received such benefits.

II. Summary of Final Regulation & USCIS Policy Manual Changes

Section 212(a)(4) of the Immigration and Nationality Act (INA) renders a noncitizen inadmissible if they are determined "likely at any time to become a public charge" based on, at minimum, statutory factors that Congress put into place.[11] A noncitizen who is deemed likely to become a "public charge," can be denied admission or lawful permanent residence if seeking adjustment of status through a pathway to which the ground applies; the public charge inadmissibility determination is a forward-looking, prospective determination that is made at the time of the application for a visa, admission, or adjustment of status.[12]

The new public charge regulation primarily restores the historical understanding of a "public charge" that was reflected in the 1999 INS Field Guidance, and adds critical clarifications to protect immigrant families' access to the health and social services safety net. The following summarizes the provisions of the new regulation, some of which are cited and

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[6] See Final Rule, footnote 2.
[7] U.S. Customs and Border Patrol (CBP). See Final Rule p. Page 55485.
[8] USCIS Policy Manual, Vol. 8, Part G, available at https://www.uscis.gov/policy-manual/volume-8-part-g [hereinafter "Policy Manual"]
[9] See Public Charge Resources, USCIS (last updated Dec. 19, 2022), available at https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources and Volume 8: Admissibility, Part G, Public Charge Ground of Inadmissibility [8 USCIS-PM G], available at https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20221219-PublicChargeFinalRule.pdf.
[10] *See* USCIS, Application to Register Permanent Residence or Adjust Status (Form I-485), OMB No. 1615-0023 (expires Oct. 31, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-485.pdf and USCIS, Instructions for Application to Register Permanent Residence or Adjust Status (Form I-485), OMB No. 1615-0023 (expires Oct. 31, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf.
[11] INA 212(a)(4)(B).
[12] INA 212(a)(4); 8 C.F.R. 212.22(b); Policy Manual Ch 4, pp 14-15.

discussed in more detail in Sections III and IV.[13] A summary of the USCIS Policy Manual updates follows the summary of the new rule.

A. The new rule

Definition of Public Charge: The 2022 rule mirrors the 1999 Interim Field Guidance by defining "likely at any time to become a public charge" as "likely at any time to become primarily dependent on the government for subsistence," as demonstrated by either (a) using public cash assistance for income maintenance or (b) long-term institutionalization at government expense.

Consideration of Public Benefits: The only cash assistance programs that the federal government will consider under the rule are Supplemental Security Income (SSI), cash assistance for income maintenance under the Temporary Assistance for Needy Families (TANF) program, and State, Tribal, territorial, or local cash benefit programs for income maintenance. A public charge determination may also consider an individual's long-term institutionalization at government expense. As discussed in greater detail in Section IV below, DHS will not consider public benefits not referenced in 8 C.F.R. 212.21(b) or (c), such as Supplemental Nutrition Assistance Program (SNAP) or other nutrition programs, Children's Health Insurance Program (CHIP), Medicaid (other than for long-term use of institutional services under section 1905(a) of the Social Security Act), housing benefits, or any benefits related to immunizations or testing for communicable diseases. Supplemental or special purpose payments - such as payments for childcare, energy assistance, disaster relief, pandemic assistance, or for other specific purposes - are not considered, nor are tax credits. The preamble to the final rule also indicates that if a program typically does not provide the primary source of income or is made available without income-based eligibility rules, USCIS would not consider those programs.

Long-term institutionalization at government expense means government assistance for long-term institutionalization (in the case of Medicaid, limited to institutional services under section 1905(a) of the Social Security Act) received by a beneficiary, including in a nursing facility or mental health institution. Long-term institutionalization does not include imprisonment for conviction of a crime, institutionalization for short periods for rehabilitation purposes, or institutionalization that violates federal discrimination laws (such as the Americans with Disabilities Act).

The rule clarifies that applying for a public benefit, being approved for benefits in the future, assisting someone else to apply for benefits, or being in a household or family with someone who receives benefits would not constitute receipt of public benefits for consideration of public charge.

Factors Considered: The factors that DHS will consider in prospectively determining whether an individual is inadmissible on the public charge ground in the totality of the circumstances include the statutory minimum factors, which are also listed in 8 C.F.R. 212.22:

[13] See also Fact Sheet, Overview of 2022 Public Charge Regulation, National Immigration Law Center (Dec. 19, 2022), available at https://www.nilc.org/wp-content/uploads/2022/12/Overview-of-2022-PC-reg-12.19.pdf (provides a summary of the regulations).

age; health; family status; assets, resources, and financial status; and education and skills; as well as an Affidavit of Support Under Section 213A of the INA if required. [14] DHS will also take into consideration the past and current receipt of the designated public benefits. DHS has determined that past or current receipt of public cash assistance for income maintenance or long-term institutionalization at government expense is also probative in determining whether a noncitizen will become primarily dependent on the government for subsistence in the future. DHS will take into consideration in the totality of the circumstances the recency, duration, and amount of receipt. No one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, may be the sole criterion for determining that an applicant is likely at any time to become a public charge.

Exemptions and waivers for public charge ground of inadmissibility: By statute, some categories of noncitizens are exempt from the public charge ground of inadmissibility, while others may apply for a waiver of the public charge inadmissibility ground. The rule includes a list at 8 C.F.R. 212.23(a) of 29 statutory exemptions from the public charge ground of inadmissibility, including a "catch-all" exemption if Congress adds other exemptions by legislation. Some exempt noncitizens described in 8 C.F.R. 212.23(a)(18) through (21) are required to submit an Affidavit of Support Under Section 213A of the INA if they are applying for adjustment of status based on an employment-based petition that requires such an affidavit of support as described in section 212(a)(4)(D) of the INA.

The waivers listed in 8 C.F.R. 212.23(c) reflect categories of noncitizens who are subject to the public charge ground of inadmissibility but who Congress has designated as eligible to seek a waiver of inadmissibility. The only waivers available for those seeking permanent residence are for S nonimmigrants and certain legalization applicants.[15]

Public Benefits Received by Discrete Populations: DHS will not consider public benefits received by a noncitizen during periods in which the noncitizen was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, or for which the noncitizen received a waiver of public charge inadmissibility, and will not consider any public benefits received by a noncitizen who was made eligible by Congress for resettlement assistance, entitlement programs, and other benefits available to refugees, even if the noncitizen was not admitted as a refugee under section 207 of the INA, 8 U.S.C. 1157.

Written denials: DHS will require written denial decisions in which USCIS considers each of the statutory minimum factors, the Affidavit of Support Under Section 213A of the INA, where required, and the noncitizen's current and/or past receipt of public benefits and USCIS specifically articulates the reasons for the officer's determination.

B. The Policy Manual updates

[14] With very limited exceptions, most noncitizens seeking family-based immigrant visas and adjustment of status, and some noncitizens seeking employment-based immigrant visas or adjustment of status, must submit a sufficient Affidavit of Support Under Section 213A of the INA in order to avoid being found inadmissible as likely at any time to become a public charge. See INA sec. 212(a)(4)(C) and (D), 8 U.S.C. 1182(a)(4)(C) and (D).
[15] See notes 283 and 284, Policy Manual, Ch 8 p 41.

The new USCIS Policy Guidance issued in the Policy Manual chapters on public charge (Volume 8, Part G) summarizes the rule and clarifies certain aspects of the rule, including a (non-exhaustive) list of benefits not considered, a discussion of what is not considered long-term institutionalized care, a discussion of what is not considered state and local cash assistance for income maintenance, and examples of several circumstances relevant in the totality of the circumstances test (as it regards to children, pregnancy, military service, and survivors of violence or crime). Many of these topics are discussed throughout this Advisory.

III. What Benefits-Related Information Must be Provided with the New I-485?

The Public Charge questions are found at Questions 61-68 of the I-485.[16]

Question 61 asks whether the applicant is subject to the public charge ground of inadmissibility. Applicants who answer "no" to Question 61 because they are exempt from the public charge ground of inadmissibility need not answer Questions 62-68 at all. These categories of adjustment of status applicants are listed in the Final Rule.[17] Applicants who answer "yes" to Question 61 must answer Questions 62-68, which cover the public charge factors. (Note that Part Two of the form at Questions 1a.-d. requires applicants to identify the adjustment of status category in which they're applying, and that the listed categories include both those that are subject to the public charge ground of inadmissibility and those that are not.)

- Exempt adjustment of status applicants who may answer no to Question 61 include those adjusting status as refugees or asylees, Special Immigrant Juveniles, trafficking and crime victims, and VAWA beneficiaries, as well as those adjusting under the INA Registry provisions, under special laws for Afghan, Iraqi, Haitian, Cuban, Nicaraguan/other Central American, Vietnamese, Cambodians, Laotian, Polish, Hungarian, Liberian, Syrian, and certain other groups, and in any other category exempt from the INA's public charge ground.[18]
- Some applicants who have multiple adjustment of status pathways available to them are exempt regardless of whether they adjust via the applicable categorical pathway or a family-based pathway to which the public charge ground applies. These super-exempted categories are: (1) Ts and Us, subject to additional limitations described in the rule[19] and (2) VAWA self-petitioners and certain "Qualified" noncitizen survivors of domestic violence.[20] Note that those who are designated as VAWA self-petitioners and Qualified noncitizen victims under the INA include applicants for status under the Violence Against Women Act, the TVPRA as well as other statutory provisions.[21]

Questions 62-68. Questions 62-67 ask for information that relates to the public charge factors (household size, income, assets, liabilities, education and skills, which checkboxes to facilitate responses) but not specifically about public benefits received or institutionalization at

[16] See *supra* note 10.
[17] 8 C.F.R. 212.23(a)
[18] See 8 C.F.R. 212.23(a)(1)-(11),(17)-(22), and (25)-(29).
[19] 8 C.F.R. 212.23(a)(17),(18),(19).
[20] 8 C.F.R. 212.23(a)(20) and (21); see Preamble at 55514.
[21] See INA 101(a)(51) and 8 USC 1641(c)(4).

government expense. Questions 68a. and 68c. ask specifically about relevant cash assistance benefits received and Questions 68b. and 68d. ask specifically about institutionalization at government expense.

In answering the benefits-related questions on the form, note that:

- The *only* benefits relevant to the public charge definition in the Final Rule that must be listed in the answer to these questions are the **two federal cash programs expressly** listed in Question 68a (SSI and TANF) and any **relevant state or local cash** equivalents. Apart from these programs, and the government expense that relates to institutionalization, *no other benefits are relevant.*[22]
- Benefits that are provided to one's child or to any other household member or otherwise obtained on behalf of a third party rather than the immigrant adjustment of status applicant as a beneficiary do not need to be listed, as the question asks only for information about the applicant's benefits, and the Final Rule clarifies that such receipt by a third party is not receipt by the immigrant applicant.[23]
- When a non-exempt adjustment of status applicant has received a relevant cash benefit as described above, dates and dollar amounts must be supplied in the answer to 68d. However, the applicant does not need to produce proof of such information when filing the application, though USCIS may seek such information later, by way of a Request for Evidence (RFE).[24]
- *Special benefits disregard rules:* If a relevant cash benefit was received by an adjustment of status applicant who, while not exempt from the public charge ground, received the benefit while in an exempt or otherwise protected status, the receipt of such benefits will be disregarded under two special provisions of the Final Rule.[25] (This benefits disregard is also discussed in Section IV below.) Although Form I-485 appears to require these applicants to identify the disregarded benefit, dates and amounts, the fact that they must be disregarded suggests that an applicant may omit the information and answer N/A.[26] Also, USCIS will consider those benefits received before and/or after a person had an exempt status, but the I-485 instructions similarly leave this out and USCIS has indicated it will try to correct this in a future revision.
- Question 68b is a Yes/No question asking if the applicant has ever received. "long-term institutionalization at government expense." If the answer is Yes,

[22] See 8 C.F.R. 212.21(b).
[23] 8 C.F.R. 212.21(d).
[24] See Form Instructions p 16.
[25] 8 C.F.R. 212.22(d) and (e). The *former provision* requires DHS to disregard any benefits received by an immigrant while in one of the exempt statuses listed in 8 C.F.R. 212.23(a) and (c); this provision ensures that adjustment of status via a family-based pathway will not be denied on public charge grounds, for example, because of benefits received while an immigrant was an asylum applicant or TPS beneficiary, among other statuses. *The latter provision* requires DHS to disregard benefits received by an immigrant eligible for all the resettlement programs and benefits for which refugees are eligible, including TANF in some cases, even though the person was not admitted as a refugee; this provision ensures that adjustment of status via a family-based pathway will not be denied on public charge grounds to Afghan allies who were provided parole status under the Operation Allies Welcome program and others treated similarly to refugees in regard to these benefits. This special provision only applies to the categories of noncitizens who are eligible for all three types of support listed (resettlement assistance, entitlement programs, and other benefits) typically reserved for refugees.
[26] See Form Instructions p 6, How to Fill Out Form I-485 # 3.

Question 68d asks for the following additional information: The name, city and state of any institution, the start and end date of the period of institutionalization, and the reason the applicant was institutionalized.

- The instructions clarify that the applicant should exclude imprisonment for conviction of a crime or institutionalization for short periods for rehabilitation purposes. These exclusions are set out in the rule. The rule also states that in the totality of the circumstances assessment, the service will consider evidence that the institutionalization violated Federal law, including the American Disabilities Act or the Rehabilitation Act. The instructions provide that the applicant must submit documentation to support such a claim.
- Additional guidance on what constitutes long-term institutionalization at government expense, and what additional factors may be considered related to a period of institutionalization are set out in the Policy Guidance and summarized in in Section IV below.
- The special benefit disregard rules described above also apply to receipt of institutionalization at government expense.

IV. Considerations When Immigrants Have Received or Are Receiving Relevant Benefits

A. DHS' Definition of a Relevant Benefit under 8 U.S.C. 1182(a)(4)

The Final Rule defines who is "likely at any time to become a public charge" for purposes of 8 U.S.C. 1182(a)(4), the public charge inadmissibility ground, to mean the following:

> …likely at any time to become primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or long-term institutionalization at government expense.[27]

Thus, the relevant benefits must be in the form of *cash assistance for income maintenance* unless they support long-term institutionalization (discussed in subsection 4 below). The relevant *federal* cash assistance programs have been limited to SSI and TANF.[28]

1. Federal cash benefits for income maintenance

The Final Rule specified the two federal programs that fall under the definition of a relevant benefit for public charge purposes: SSI and TANF. Eligibility for SSI and TANF requires recipients to be "Qualified Aliens." [29] Since most categories of Qualified noncitizens

[27] 8 C.F.R. 212.21(a).
[28] 8 C.F.R. 212.21(b)(1) and (2).
[29] Although the INA uses the word "alien," in keeping with the federal policy of avoiding use of this pejorative term, this memo substitutes "noncitizens" or "immigrants." The groups Congress designated as Qualified are: LPRs, asylees & refugees, Withholding of Removal grantees, noncitizens paroled for one year or longer, trafficking victims, crime victims eligible for U visa, VAWA "self-petitioners" (which, as defined by statute, encompasses some

have pathways to adjustment of status that exempt them from the public charge ground of inadmissibility,[30] limited groups of federally-eligible immigrants will have received either of the two relevant federal benefits should they seek adjustment of status via a pathway that is subject to the public charge ground.[31] These groups are:

- Individuals paroled under INA 212(a)(5) for at least one year[32] who are not in a special parole category Congress may have exempted;
- Individuals granted withholding of removal[33]; and
- Those subsets of Cuban-Haitian Entrants who are not statutorily exempted.[34] [Note, however, that benefits used by CHEs, who are also eligible for refugee benefits, may be disregarded under a special rule described in subsection B.2 below.]

2. State or local cash benefits for income maintenance

The Final Rule does not specifically identify the state or local cash benefit programs that fall under the definition of a relevant benefit, other than to indicate that such cash income maintenance programs are "often called General Assistance."[35] The one Massachusetts state program that appears to satisfy the definition is the state's Emergency Aid to the Elderly, Disabled, and Children (EAEDC) program. This is a state-funded, means-tested benefit program that provides monthly cash benefits, lower than the federal SSI or TANF benefits, to individuals who are categorically eligible because they are age 65 or older, have a short or long term disability or impairment, participate in a vocational rehabilitation program, are caretakers for persons with severe disabilities, or are children living with non-relatives.[36] As discussed elsewhere in this advisory, it is important to keep in mind that the receipt of benefits alone is not determinative but is only one part of the totality of the circumstances test, and that the duration, amount, and reasons a person received the benefit also matter.

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individuals adjusting via other pathways), and "Cuban-Haitian Entrants" (another statutory term-of-art category encompassing multiple statuses) 8 U.S.C. 1641.

[30] Note that because asylees, refugees, trafficking victims, U crime victims, all VAWA self-petitioners, and several subcategories of Cuban-Haitian Entrants are exempt from public charge inadmissibility, see 8 C.F.R. 212.23(a), such individuals will generally be able to answer "no" to Question 61 on the I-485 Form described in Section III above.

[31] USCIS' December 20, 2022 webinar on the new rule provided a helpful explanation of this point. See Public Charge National Stakeholder Engagement December-20-2022, USCIS (Dec. 20, 2022), available at https://www.uscis.gov/outreach/upcoming-national-engagements/uscis-public-charge-national-stakeholder-engagement-december-20-2022. Presumably, a recording and slides will be distributed later. See Notes from Previous Engagements, USCIS (last reviewed Jan. 9, 2023), available at https://www.uscis.gov/outreach/notes-from-previous-engagements.

[32] 8 U.S.C. 1641(b)(4)

[33] 8 U.S.C. 1641(b)(5)

[34] 8 U.S.C. 1641(b)(7). The CHE definition encompasses asylum applicants and others with exempt statuses such as those listed in 8 C.F.R. 212.23(a)(5), (6), and (8), but it also includes parolees and individuals in exclusion or deportation proceedings without a final order. §501(e) of the Refugee Education Assistance Act of 1980 (P.L. 96-422).

[35] 8 C.F.R. 212.21(b)(3)

[36] 106 CMR 703.010

Immigrant eligibility for EAEDC is broader than for SSI or TANF.[37] Therefore, more categories of immigrants who qualify for this benefit are potentially subject to the public charge ground. In addition to qualified noncitizen statuses described in the previous subsection on federal cash benefits, immigrants eligible for EAEDC include those with a number of statuses considered to be in the U.S. under color of law ("permanently residing in the U.S. under color of law" or "PRUCOL"), which is a broad public benefits standard, not an immigration status.[38] These PRUCOL-designated statuses include:

- Temporary Protected Status (TPS), U visas, Deferred Action, DACA, and parole (of any duration);
- Applicants for TPS, a U visa, asylum, adjustment of status, or other immigration relief; and
- Beneficiaries of an approved or pending relative petition, Order of Supervision, or stay of removal; and
- Others that may be considered PRUCOL as a group or on an individual basis.[39]

3. Federal, state, and local benefits that may not be considered for public charge purposes

The text of the Final Rule and language in the Preamble[40], as well as the updated Policy Manual,[41] clarify that many types of benefits are irrelevant under the public charge test. The Preamble notes that the list of such benefits in the regulation is not an exclusive one.[42]

Benefits that do not count include:

- SNAP or other nutrition programs"[43]
- Housing benefits[44]
- CHIP, Medicaid (other than for institutionalization, as described in subsection 4 below), and any benefits related to immunizations or testing for communicable diseases,[45] including health care related to COVID-19[46]

[37] 106 CMR 703.440
[38] See *Cruz v. DPW*, 395. Mass. 107 (1985).
[39] 106 C.M.R. 703.440.See also, *Cruz v. DPW*, 395. Mass. 107 (1985) and Holley v. Levine, 553 F.2d 845 (2d Cir. 1977).
[40] 8 C.F.R. 212.22(a)(3) and pp 55495, 55511, & 55523-26
[41] Policy Manual Ch. 7 pp 33-39.
[42] Preamble p 55523.
[43] 8 C.F.R. 212.22(a)(3). "Other nutrition programs" include free or subsidized school lunch programs, see p. 55518, as well as the Women, Infants, and Children (WIC) program, the Child and Adult Care Food Program (CACFP), and benefits under the Emergency Food Assistance Act, among other programs. See pp- 38-39 Policy Manual Ch. 7.
[44] 8 C.F.R. 212.22(a)(3). See also Policy Manual Ch 7 pp 38-39. Housing programs would include the federal McKinney-Vento Homeless Assistance Act, the Section 8 voucher, and the federal public housing programs, as well as state-subsidized housing programs. These are summarized in Massachusetts "Safe to Use" Benefits, MLRI, MIRA, HCFA, HLA (Oct. 2022), available at https://miracoalition.org/wp-content/uploads/2022/10/Massachusetts-Safe-to-Use-Benefits-October-2022.pdf.
[45] 8 C.F.R. 212.22(a)(3).
[46] The Preamble emphasizes that, as with previous USCIS alerts and web updates regarding testing, treatment, and vaccination related to COVID-19 [see, e.g., Public Charge Resources, USCIS (last updated Dec. 19, 2022),

- Benefits that are "supplemental" or "special purpose"[47] rather than "cash assistance for income maintenance" adequate to satisfy the "primarily dependent on the government for subsistence" standard,[48] because they:
    - are in-kind benefits[49] for particular needs and not limited to individuals without a separate means of support,[50]
    - are supplemental in nature, in that the benefits are insufficient on their own to meet all or even a substantial portion of one's needs[51]
    - address a disaster or provide similar assistance[52]
    - constitute a tax credit or allowance, including the federal Child Tax Credit and other federal or state tax credits,[53]
    - subsidize energy or utility expenses, such as the Low Income Home Energy Assistance Program (LIHEAP),[54]
    - provide child care and related assistance,[55]
    - provide educational assistance, including the federal Head Start program as well as publicly funded scholarships, educational grants, and student loans,[56]
    - are dissimilar to the federal SSI and TANF programs in requiring that the cash assistance be provided to meet a particular need rather than general life expenses,[57] or
    - are otherwise outside the Congressional policy objectives advanced by the Final Rule.[58]

Additional considerations regarding COVID-19 related benefits. The COVID-19 pandemic led to the creation of several new benefit programs related to the effects of the pandemic. These programs, like the testing, vaccination, and treatment benefits that the Final Rule specifically states will not count in a public charge determination, and the COVID-19 stimulus payments that are also excluded from consideration,[59] are irrelevant because they

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available at https://www.uscis.gov/green-card/green-card-processes-and-procedures/public-charge/public-charge-resources]
"DHS will not consider the receipt of treatments or preventative services related to COVID-19, including vaccinations" and "will not consider… benefits not referenced" in the text of the regulation itself. P. 55511.
[47] 8 C.F.R. 212.22(a)(3) and Preamble p. 55526. The distinction between benefits that may be considered and those that are irrelevant because they are "supplementary" or "special purpose" in nature has been a long-standing element of public charge doctrine, see Field Guidance at 28692-28693; Matter of Harutunian, 14 I& N Dec. 583 at 588 (BIA 1974); and Policy Manual at Ch 7 pp 38.
[48] "…not all benefits are equally indicative of primary dependence on the government for subsistence." P 55495
[49] Preamble p 55495, 55522.
[50] Preamble p 55495, 55522.
[51] Preamble p 55495, 55523, 55526.
[52] Preamble p 55525 and 55526, Policy Manual ch 7 p 38.
[53] Preamble p 55525-55526.
[54] Preamble p 55518 and Policy Manual Ch. 7 p 39.
[55] Preamble p 55518-55526 and Policy Manual Ch 7 p 38-39.
[56] Policy Manual Ch 7 p 39.
[57] Preamble p 55526.
[58] Preamble p 55523.
[59] P 55526 and Policy Manual Ch 7 p 38.

provided only limited cash assistance or an in-kind benefit and are analogous to the disaster and other comparable relief described above as supplemental in nature or serving a special purpose.[60]

Note also that Social Security retirement benefits, veterans' benefits, government pensions, unemployment compensation, and other employment-related insurance-like programs are not and have traditionally not been considered benefits encompassed by the public charge test.[61]

The Policy Manual at pp 37-39 provides a comprehensive yet non-exhaustive list of many public benefits programs that do not count in the public charge determination. For a version of such "safe" benefits that uses Massachusetts terminology, see this quick "Massachusetts Safe to Use Benefits" factsheet.

4. Long-term institutionalization at government expense

The new rule, like the 1999 Field Guidance, includes past or present receipt of long-term institutionalization at government expense as evidence that one is likely to be inadmissible as a public charge.[62] The phrase "long-term institutionalization at government expense" is defined in the rule, clarified in the policy manual, and instructions for Form I-485, and discussed at length in the preamble to the rule.[63]

What is "long-term institutionalization at government expense"?

- In general, USCIS would consider a noncitizen to have been institutionalized for a long-term if they have been continuously institutionalized, were assessed for Home and Community-Based Services (HCBS), offered HCBS, and made an informed choice to remain in an institution, or have been continuously institutionalized regardless of whether they were assessed for or offered HCBS but have not presented evidence demonstrating that such institutionalization violated their rights. (MassHealth covers an array of HCBS like Personal Care Attendants, Adult Foster Care and Adult Day Health programs that enable individuals with severe disabilities to live in a non-institutional setting).

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[60] For additional guidance on COVID-related benefits, see (link the Memo, Adjustment of Status for "Qualified Aliens" & Others Eligible for Public Benefits, MLRI (last updated Dec. 20, 2020), available at https://drive.google.com/file/d/1qVIQGVhcxE4nXzwBCzF2_oy-WdY7mYI_/view and Memo, Advising Immigrants about the Impact of The Boston Rental Relief Fund and Public Charge Rules for Adjustment of Status Purposes, MLRI (last updated Dec. 24, 2020), available at https://drive.google.com/file/d/1mtRVsgGmtVJuhaw-vLXMKaKzMQr2mS01/view. Although these memos were produced prior to the Final Rule, the description of the existing COVID-related relief programs and the explanations of why they are outside the definition of a relevant benefit under public charge standards remain applicable to pandemic relief programs that may not be specifically listed in the Policy Manual or preamble. Note that the Manual does list cash payments provided under the pandemic-related American Rescue Plan Act, which arose after the cited memos (Ch 7 p 38.)

[61] See Policy Manual Ch 7 p. 39.

[62] Compare, "Institutionalization for long term care at government expense" (64 FR 28689 (May 26, 1999)) with "long-term institutionalization at government expense."(8 C.F.R. 212.21(a) (2022).

[63] 8 C.F.R. 212.21; USCIS Policy Manual, Volume 8: Admissibility Part G – Public Charge Ground of Inadmissibility, Chapter 2, (C) and Chapter 7 (C) (Dec. 19, 2022); Instructions for Form 485-I; 87 Fed Reg 55472, 55530-8 (Sept 9, 2022).

- USCIS considers both permanent institutionalization as well as institutionalization for a long period of time short of indefinite duration.
- Institutions include nursing facilities and mental health institutions.
- "Government" is broadly defined to include federal, state, local, tribal and territorial governments.
- In the case of Medicaid, only institutional services provided under section 1905(a) of the Social Security Act are considered.[64]

What is *not* long-term institutionalization at government expense?

- Incarceration
- Short periods of institutional stays for rehabilitation purposes
- Commitment to a psychiatric facility after being found incompetent to stand trial in a criminal proceeding
- Sporadic or intermittent periods of institutionalization, even on a recurring basis
- No other services paid for by Medicaid, including home and community-based services (HCBS), and no services provided under the Children's Health Insurance Program (CHIP), are considered

Long-term institutionalization in violation of federal law**.**

USCIS also considers any evidence provided by a noncitizen that they are or were institutionalized at government expense in violation of their rights, and, where such evidence is credible, it will have the tendency of offsetting evidence of current or past institutionalization.[65]

The federal law referred to here is discussed in more detail in the preamble and refers to the Supreme Court decision in *Olmstead v. L.C.* that held unjustified institutionalization of individuals with disabilities by a public entity is a form of discrimination under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.[66] This would include circumstances where the individual has experienced long-term institutionalization due to lack of HCBS availability and may include consideration of evidence regarding HCBS waiting lists and state noncompliance with applicable laws. Just such a discrimination claim is currently pending in federal district court in Massachusetts on behalf of a putative class of nursing home residents and MassHealth beneficiaries seeking a less restrictive non-institutional setting.[67]

Government-funded institutional care available to immigrants in Massachusetts

Immigration cases involving institutionalization for long-term care at government expense will not be common. While such institutions still exist, many such facilities have closed in favor of home and community-based alternatives. Another limiting factor is that in the past, the immigrant eligibility rules for MassHealth Standard, the Massachusetts program that covers long-term nursing home care, have been so restrictive that few immigrants subject to public charge were likely to have been eligible for long-term care at government expense.

[64] 42 U.S.C. 1396d(a) (Definition of Medical Assistance).
[65] 8 C.F.R. 212.22(a)(3) and USCIS Policy Manual , Volume 8: Admissibility Part G, Chapter 7 (C).
[66] 87 Fed Reg 55472, 55565-6 (Sept 9, 2022).
[67] *Simmons v. Baker*, D. Mass. Civ. No. 22-11715, filed Oct 11, 2022.

However, the entirely state-funded forms of MassHealth currently do include coverage for long-term institutional care for some immigrants who are PRUCOL (defined more broadly in MassHealth rules than in EADC rules) or lawfully present. Starting in November 2021, MassHealth created a fully state-funded pathway to long-term care services for some immigrants who do not meet the restrictive rules for federally-reimbursed Medicaid. Under this new policy, some lawfully present and PRUCOL immigrants can enroll in state-funded MassHealth that covers long-term care in a nursing facility or chronic disease rehabilitation hospital.[68] Importantly, this also creates the opportunity for institutionalized immigrants to obtain state-funded HCBS that may enable them to leave a nursing home or one of the other government-funded institutions described below.

In addition to Medicaid-paid institutional care, there are other state-funded institutions that have no immigrant eligibility requirements and may have provided long-term institutional care at government expense to immigrants seeking adjustment of status. They include:

- One of the four public health hospitals under the Bureau of Public Health Hospitals, particularly Tewksbury Hospital with a bed capacity including 210 complex chronic medical adult beds (see https://www.mass.gov/orgs/bureau-of-public-health-hospitals)
- One of the facilities operated by the Department of Mental Health including the four Continuing Care facilities at the Worcester Recovery Center, Taunton State Hospital , and units at the Tewksbury and Lemuel Shattuck Public Health Hospitals (see https://www.mass.gov/dmh-offices-facilities-and-staff-directory)
- Intermediate Care Facilities for the Developmentally Disabled operated by the Department of Developmental Services at the Hogan Regional Center, Wrentham Developmental Center and Templeton Developmental Center
- The Chelsea and Holyoke Soldiers' Homes (see https://www.mass.gov/service-details/costscharges-for-soldiers-home-for-veterans)

B. Special rules for disregarding the receipt of a relevant federal, state, or local cash benefit or long-term institutionalization at government expense by an adjustment of status applicant in a public charge determination

Immigrants who are eligible for federal and or state/local cash benefit programs or long term institutionalization at government expense, but who are not exempt from public charge upon adjusting status, will be entitled to have the receipt of such benefits disregarded under the Final Rule because of two special rules:

(1) *Special benefits disregard for exempt individuals: 212.22(d).* This provision applies to those who were exempt from public charge inadmissibility when they received the benefits. It does not extend protection to benefits received prior to or subsequent to being in the exempt status,[69] and protection extends only to those

[68] MassHealth, Chronic Disease and Rehabilitation Inpatient Hospital Bulletin 97: Family Assistance Coverage Expansion for MassHealth Chronic Disease and Rehabilitation Hospitals – Updated (Jan 2022), and MassHealth, Nursing Facility Bulletin 174: Family Assistance Coverage Expansion for Nursing Facility Services – Updated (Jan. 2022) https://www.mass.gov/lists/2022-masshealth-provider-bulletins.
[69] Preamble p. 55574.

who are categorically exempted from the public charge ground, INA 212(a)(4), *and* are listed in 8 C.F.R. 212.23(a).[70] While the latter provision includes a catch-all, 8 C.F.R. 212.23(a)(29), for additional categories "exempt under any other law" besides those referenced in 8 C.F.R. 212.23(a)(1)-(28), DHS has distinguished between immigration statuses that are "exempt" from the public charge ground expressly and those that are "not subject to" the public charge ground, such as withholding of removal, parole, DED, DACA, and deferred action beneficiaries, and has determined that the "not subject to" immigrants may not rely on the protections of 8 C.F.R. 212.22(d).[71] Practitioners may nevertheless be able to argue that this DHS distinction is unreasonable with respect to statuses for which the inapplicability of the public charge ground is statutory, especially if considering benefits received while in a humanitarian status, e.g. withholding of removal, may conflict with underlying Congressional intent.[72] Practitioners may also be able to argue that DHS has provided no justification for excluding immigrants who are "not subject to" the public charge ground of inadmissibility from the protection of 8 C.F.R. 212.22(d) for purposes of *state* cash benefits like EAEDC and may not exclude them without explanation.[73] All such arguments may need to be pressed in further proceedings if adjustment of status is denied.[74]

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[70] "during periods in which the [noncitizen] was present in the United States in an immigration category that is exempt… as set forth in 212.23(a)…"

[71] Preamble p. 55513-55514.

[72] Under INA 241(b)(3), applicants for withholding of removal, a status which as DHS acknowledges at p 55513 is "not subject to" the public charge ground of inadmissibility, are arguably "exempt under any other law" and should fall under the 8 C.F.R. 212.23(a)(29) catch-all for purposes of the benefits disregard at 8 C.F.R. 212.22(d). Since Congress did not subject them to *any* ground of inadmissibility, it was not necessary for Congress to "expressly" exempt them from the public charge ground in particular, as DHS says must be the case for the benefits disregard provision to apply. See p 55574. DHS' distinction is therefore illogical and unreasonable. See Goncalves, other 1st Cir cases. The distinction is especially arbitrary given the fact that withholding of removal and asylum – an expressly exempt status – are twin forms of relief that are applied for on the same immigration form and provide the same core right to be protected from return to conditions of persecution – conditions which leave both types of victims in need of the same public benefits for which Congress made them eligible. Like asylees, withholding of removal beneficiaries are among the limited "Qualified" noncitizen categories eligible for federal cash benefits under PRWORA (see Section A.1 above); it is implausible that Congress intended that the receipt of benefits "safe" to obtain while in this humanitarian status adversely affect a family-based adjustment of status application later. See Matter of Mesa, 12 I&N Dec. 242 (BIA, 1967) (finding federal financial assistance provided for Cuban refugees indicative of Congressional intent not to apply the public charge ground to those adjusting under the Cuban Adjustment Act, notwithstanding the absence of an express exemption in the statute.)

[73] DHS relies on justifications for excluding these immigrants that appear to apply only to *federal* benefits. These justifications include the previously described distinction between "expressly" exempt and "not subject to" categories. In addition, DHS reasons at pp 55513-14 that Congress must have intended that *some* subset of "Qualified" noncitizens whom it made eligible for federal cash benefits should pay the public charge consequences of receiving them, and that this subset must be the "not subject to" categories of withholding of removal, parole, and a narrow subset of Cuban-Haitian entrants, as these would be the only groups eligible for federal cash benefits and not "expressly" exempted. (See Section A.1 above.) This analysis does not address eligibility for purely state benefits like EAEDC, and practitioners may advocate that USCIS adjudicators disregard EAEDC cash benefits while an applicant was in any of these statutory "not subject to" statuses as well as in an administratively-created status that DHS acknowledges are also "not subject to" public charge grounds, i.e., DACA, Deferred Action, and DED. See p. 55513.

[74] USCIS regulations do not provide for an appeal of a denial of adjustment of status. However, you may file a motion to reopen or reconsider the adverse decision with the USCIS office that denied the application. A motion must be filed using Form I-209B, Notice of Appeal or Motion within 30 days from the date of notice (33 days if

Additionally, practitioners may offer arguments and evidence of mitigating circumstances, such as trauma or other events that led a withholding beneficiary or other immigrant to need benefits.[75]

(2) *Special benefits disregard for individuals eligible for refugee benefits: 212.22(e).* This provision applies to individuals who qualified for and received federal benefits available to refugees, i.e., federal resettlement assistance, entitlement programs, and assistance for refugee children.[76] In addition to individuals in refugee and asylee status, this category includes:
   - Afghans who were paroled into the U.S. between July 31, 2021, through September 30, 2022, as well as spouses and children of these individuals paroled into the US after September 30, 2022, who were eligible to receive such benefits until March 31, 2023, or the end of their parole term, whichever is later.[77]
   - Ukrainians and non-Ukrainians who last habitually resided in Ukraine who were paroled into the U.S. between February 24, 2022, and September 30, 2023, as well as spouses and children of these individuals paroled into the U.S. after September 30, 2023, who were eligible to receive such benefits until the end of their parole term.[78]
   - Individuals who received refugee benefits under the designation of "Cuban/Haitian Entrants."[79]
   - Afghan or Iraqi nationals with SQ/SI Parole and Special Immigrant Visa holders.[80]

C. Practical Strategies When a Benefit does *Count*

1. Evaluate the Receipt of Benefits in the Totality of the Circumstances

No one factor is enough in the totality of circumstances analysis required for a public charge determination.[81] Factors specified in the rule, such as income and work skills, must also be assessed[82] as "the receipt of… benefits will not alone be sufficient,"[83] and keep in mind that the totality of circumstances test is *prospective*, as stated elsewhere. In addition, the duration, amount, and recency of any benefits received may reduce any adverse consideration of this

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notice was mailed). Generally, motions to reconsider are legal in nature based on an incorrect application of the law, while motions to reopen are filed with new evidence or changed circumstances. Alternatively, a new application can be filed, or the application can be renewed before the immigration court if the individual is placed in removal proceedings.

[75] Policy Manual pp 44-45.

[76] 8 C.F.R. 212.22(e); USCIS Policy Manual, Vol. 8, Part G, Ch. 7(F)(2).

[77] Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. 117-43 (September 30, 2021). See also USCIS Policy Manual, Vol. 8, Part G, Ch. 7(F)(2).

[78] https://www.acf.hhs.gov/orr/fact-sheet/benefits-ukrainian-humanitarian-parolees. See also Policy USCIS Policy Manual, Vol. 8, Part G, Ch. 7(F)(2).

[79] https://www.acf.hhs.gov/orr/fact-sheet/benefits-cuban/haitian-entrants

[80] https://www.acf.hhs.gov/sites/default/files/documents/orr/Benefits-for-SIVs-Fact-Sheet.pdf

[81] 8 C.F.R. 212.22(b)

[82] See 8 C.F.R. 212.22(a)(1)(i)-(v)

[83] 8 C.F.R. 212.22(a)(3)

factor.[84] Practitioners should consider an affirmative filing to address the surrounding or temporary circumstances that gave rise to the receipt of counted benefits and/or provide these explanations if later faced with an RFE or interview questions probing the past receipt.[85] Crafting a narrative about why the person is not a public charge risk despite the past receipt of cash benefits may be helpful, even at the point of filing the I-485.[86] At any appropriate stage in the adjustment process, practitioners should submit evidence and arguments showing that receipt of benefits has better positioned the immigrant to avoid future poverty, such as in the case of children whose improved long-term outcomes make them less likely to become a public charge.[87]

If the benefits received are disregarded under one of the two rules described above, but the circumstances that qualified the immigrant for such benefits may have potentially adverse public charge implications, such as when a traumatized asylum-seeker's health problems have affected her ability to work and she now seeks adjustment of status via a family-based pathway, USCIS adjudicators should take the surrounding circumstances into consideration.[88] For those whose benefits receipt must be disregarded but who also have a low income, which is part of what made them financially eligible for the relevant cash benefit program, consider arguments that the income should be assessed according to principles of lenity in order to make the benefits disregard provisions meaningful.

2. Other strategies

The sponsor's Affidavit of Support, where required, may help cure public charge problems if necessary.[89] In other cases, multiple Affidavits of Support may be needed such as when the sponsor's income may be insufficient for multiple family members, and to the extent possible, practitioners should present information to contextualize the relationship between a sponsor and

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[84] 8 C.F.R. 212.22(a)(3) – Policy Manual? See also p 55525 ("If an individual receives a small amount of cash assistance for a limited period of time, such receipt would be unlikely to result in an adverse public charge inadmissibility determination.")

[85] See p 55526 (noting that adjustment of status applicants may explain the temporary circumstances that gave rise to receipt of benefits when an applicant was victimized by crime, domestic violence, or other external events.) See also pp 40 and 45 of the Policy Manual (describing the relevance of mitigating or surrounding circumstances.)

[86] For example, one practitioner had a case in which a client had received cash benefits for many years due to a disability and used some of the benefits to take a course that led to a job. On the I-485, the practitioner indicated that a brief explanation of the circumstances was being submitted with the form, as well as evidence of the course completion and subsequent job history. This provided the interviewing officer with a framework for understanding the applicant's ability to self-support relative to past receipt of benefits.

[87] P 55525. See also, Massachusetts Self-Sufficiency Checklist: How Benefits Help, at https://drive.google.com/file/d/1J0EvYL2L5QnJ5ySizpi9Oo20Whsr5Kqv/view Although this document focuses on nutrition, housing, and health care benefits that were part of the Trump era regulations that the new regulation replaces, the questions to ask clients about how benefits may have moved them out of poverty or might otherwise help them achieve self-sufficiency would be helpful when dealing with cash benefits for income maintenance as well.

[88] P 55574. Note that many immigrants who are exempt from the public charge ground if they adjust under the various laws listed in 8 C.F.R. 212.23(a) may choose to adjust via other pathways to which the ground applies for practical or strategic reasons. If they do so, they are protected by the benefits disregard rule in 8 C.F.R. 212.22(d) but are not exempt from the public charge test itself.

[89] See Policy Manual at 32. This is especially true when one can show a history of financial support between sponsor and applicant. Documentary evidence that the sponsor is already assisting financially in some way - venmo or zelle cash transfers, payment of phone or other bills, etc - can be useful.

applicant to enhance the credibility and weight accorded to an Affidavit of Support.[90] Different joint sponsors may be advisable for the other family members.[91] Whether an Affidavit of Support is required or not, in some instances, a job offer letter may help cure public charge problems.[92] In addition, evidence about the mitigating or surrounding circumstances that led the immigrant to need the benefits, including but not limited to criminal victimization, domestic violence, or other adverse circumstances, should be provided,[93] with an eye towards what has changed or what will change in the applicant's life that make recurrence of cash benefits receipt less likely in the totality of the circumstances. For example, many domestic violence victims are prevented from working by their abusers, but supportive services may have helped them leave the abusive relationship and eventually re-enter the workforce. Even if the applicant's income is low and the benefits received relatively recently, explaining the circumstances that kept the person out of the workforce can help account for the low income now, and the end of the abuse can help show that further financial improvement is likely going forward. Finally, in some cases, although various family members may be eligible to adjust status at the same time, economic circumstances may warrant staggering the filing of applications as the family's financial circumstances improve.

3. Ethical and Moral considerations

The ethical rules governing attorney conduct require lawyers to zealously represent clients within the bounds of the law,[94] and thus to avoid harm via such representation. An attorney advising a person about whether the benefits they are receiving (or have received) will adversely affect adjustment of status prospects should provide accurate information about such risks without assuming that all benefits are harmful or even that receipt of a relevant cash benefit will be determinative in the totality of the circumstances test. An attorney should advise the client about all factors that may affect the prospective determination the public charge doctrine requires.

Although some adjudicators may apply the law improperly, and attorneys may have experienced such misapplication, a client is entitled to an assessment of the law itself, properly applied by decision-makers. Note also that a client who forgoes access to safety net benefits they need to survive may nevertheless be denied adjustment of status on the basis of other factors

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[90]Contextualizing the relationship between the joint sponsor and the applicant helps demonstrate the likelihood that the sponsor will affirmatively assist the applicant financially if needed. Consider showing past history of financial support, if any, or in-kind support like housing and food, as well as WhatsApp/phone logs showing regular contact between applicant and joint sponsor.

[91] See ILRC, Introductory Guide to the Affidavit of Support (9/22) at https://www.ilrc.org/sites/default/files/resources/introductory_guide_to_the_affidavit_of_support_sept._2022_update_final63.pdf. Note that while the Affidavit of Support is a legally enforceable contract and potentially enforceable by the government, no such enforcement has occurred to date. See Dep't of Homeland Sec., Affidavit of Support on Behalf of Immigrants, 85 Fed. Reg. 62432, 62460 (Oct. 02, 2020), available at https://www.federalregister.gov/documents/2020/10/02/2020-21504/affidavit-of-support-on-behalf-of-immigrants#citation-120-p62441 (""DHS does not have data on reimbursement efforts or successful recoveries by benefits-granting agencies"). In some states, including Massachusetts on limited occasions, private enforcement between spouses in family cases has occurred.

[92] See Policy Manual Ch 9, p 42 ("If deemed necessary in the totality of the circumstances, a USCIS officer may request evidence of expected employment, including job offers with estimated salary."

[93] Policy Manual pp 40, 45 and Preamble p. 55526.

[94] MA Rules of Professional Conduct Rule 1.3 (Diligence).

which are more outcome-determinative – such as income and assets. Practitioners should walk clients through all the factors USCIS is required to consider in order to elicit helpful information about factual arguments to counter the past receipt of benefits and to help identify those applicants who lack strong arguments to counter a past receipt of benefits and may be better served by delaying an adjustment application until they are on more solid financial footing.

Whether and when to file an adjustment of status application is ultimately a client's decision, and a client may weigh human needs differently than a lawyer when making decisions between abandoning a vital safety net benefit and delaying or foregoing an adjustment of status application.

FOR FURTHER QUESTIONS ABOUT PUBLIC BENEFITS AND PUBLIC CHARGE IN ADJUSTMENT OF STATUS CASES, CONTACT IRIS GOMEZ AT igomez@mlri.org OR JESSICA CHICCO AT jchicco@miracoalition.org