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## USCIS Response to Coronavirus 2019 (COVID-19)



U.S. Citizenship  
and Immigration  
Services

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## Chapter 2 - Lawful Permanent Resident Admission for Naturalization

### Guidance

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### **i** Alert

On Sept. 11, 2020, the U.S. Court of Appeals for the Second Circuit issued a decision that allows DHS to resume implementing the [Public Charge Ground of Inadmissibility final rule](#) nationwide, including in New York, Connecticut and Vermont. The decision stays the July 29, 2020, [injunction](#), issued during the coronavirus (COVID-19) pandemic, that prevented DHS from enforcing the public charge final rule during a national health emergency.

Therefore, we will apply the public charge final rule and [related guidance](#) in the USCIS Policy Manual, Volumes [2](#), [8](#) and [12](#), to all applications and petitions postmarked (or submitted electronically) on or after Feb. 24, 2020. If you send your application or petition by commercial courier (for example, UPS, FedEx, or DHL), we will use the date on the courier receipt as the postmark date.

For information about the relevant court decisions, please see the public charge injunction [webpage](#).

## A. Lawful Permanent Resident (LPR) at Time of Filing and Naturalization

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has been lawfully admitted to the United States for permanent residence at the time of filing the naturalization application.<sup>[1]</sup> An applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the Immigration and Nationality Act (INA) if his or her lawful permanent resident (LPR) status was obtained by mistake or fraud, or if the admission was otherwise not in compliance with the law.<sup>[2]</sup>

In determining an applicant's eligibility for naturalization, USCIS must determine whether the LPR status was lawfully obtained, not just whether the applicant is in possession of a Permanent Resident Card (PRC). If the status was not lawfully obtained for any reason, the applicant is not lawfully admitted for permanent residence in accordance with all applicable provisions of the INA, and is ineligible for naturalization even though the applicant possesses a PRC.

An applicant must also reside continuously in the United States for at least five years as an LPR at the time of filing,<sup>[3]</sup> though the applicant may file his or her application up to 90 days before reaching the five-year continuous residence period.<sup>[4]</sup>

### *Public Charge Inadmissibility*

The public charge ground of inadmissibility does not apply in naturalization proceedings.<sup>[5]</sup> Therefore, an applicant for naturalization does not need to demonstrate that he or she is not inadmissible as likely at any time to become a public charge as part of a naturalization application. Officers should not make a new determination of public charge inadmissibility when adjudicating a naturalization application.

However, when determining the applicant's eligibility for naturalization, USCIS assesses whether the applicant was lawfully admitted as an LPR,<sup>[6]</sup> which includes an assessment of whether the naturalization applicant was inadmissible at the time the application that conveyed LPR status was granted,<sup>[7]</sup> at the time the applicant was granted adjustment of status, or at the time the applicant was admitted as an LPR.<sup>[8]</sup>

When reviewing a naturalization application in which the applicant's adjustment of status was postmarked on or after February 24, 2020, or in which the applicant was admitted into the United States with an immigrant visa on or after February 24, 2020, the officer determines whether the alien was lawfully admitted as an LPR, including that he or she was not inadmissible as a public charge.<sup>[9]</sup>

The determination of whether the applicant was lawfully admitted as a LPR must be made with the evidence available at the time the application that conveyed LPR status was granted, at the time the applicant was granted adjustment of status, or at the time the applicant was admitted as an LPR. If a naturalization applicant received public benefits after obtaining LPR status, or if the applicant is receiving public benefits at the time he or she applies for naturalization or before the approval of the naturalization,<sup>[10]</sup> officers should not assume that the applicant should have been found inadmissible on the public charge ground at the time the application that conveyed LPR status was granted, at the time the applicant was granted adjustment of status, or at the time the applicant was admitted as an LPR. Public benefits are generally only considered if received on or after February 24, 2020.<sup>[11]</sup>

For a naturalization application in which the applicant's adjustment of status application was postmarked before February 24, 2020, or in which the applicant was admitted into the United States with an immigrant

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## 2. Effective Date of Lawful Permanent Residence

A person is generally considered to be an LPR at the time USCIS approves the applicant's adjustment application or at the time the applicant enters and is admitted into the United States with an immigrant visa.<sup>[13]</sup> Most applicants applying for adjustment of status become LPRs on the date USCIS approves the application.<sup>[14]</sup>

For certain classifications, however, the effective date of becoming an LPR may be a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). For example, a person admitted under the Cuban Adjustment Act is generally an LPR as of the date of the person's last arrival and admission into the United States or 30 months before the filing of the adjustment application, whichever is later.<sup>[15]</sup> A refugee is generally considered an LPR as of the date of entry into the United States.<sup>[16]</sup> A parolee granted adjustment of status pursuant to the Lautenberg Amendment is considered an LPR as of the date of parole into the United States.<sup>[17]</sup> In addition, USCIS generally considers an asylee's date of admission as an LPR to be one year prior to the date of approval of the adjustment application.<sup>[18]</sup>

## B. Conditional Residence in the General Requirements (INA 316)

A conditional permanent resident (CPR) filing for naturalization under the general provision on the basis of his or her permanent resident status for five years.<sup>[19]</sup> must have met all of the applicable requirements of the conditional residence provisions.<sup>[20]</sup> CPRs are not eligible for naturalization unless the conditions on their resident status have been removed because such CPRs have not been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.<sup>[21]</sup> Unless USCIS approves the applicant's Petition to Remove Conditions on Residence ([Form I-751](#)), the applicant remains ineligible for naturalization.<sup>[22]</sup>

## C. Exceptions

### 1. Nationals of the United States

The law provides an exception to the LPR requirement for naturalization for non-citizen nationals of the United States. Currently, persons who are born in American Samoa or Swains Island, which are outlying possessions of the United States, are considered nationals of the United States.<sup>[23]</sup>

A non-citizen national of the United States may be naturalized without establishing lawful admission for permanent residence if he or she becomes a resident of any state.<sup>[24]</sup> and complies with all other applicable requirements of the naturalization laws. These nationals are not "aliens" as defined in the INA and do not possess a PRC.<sup>[25]</sup>

### 2. Certain Members of the U.S. Armed Forces

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## D. Documentation and Evidence

USCIS issues a PRC to each person who has been lawfully admitted for permanent residence as evidence of his or her status. LPRs over 18 years of age are required to have their PRC in their possession as evidence of their status.<sup>[27]</sup> The PRC contains the date and the classification under which the person was accorded LPR status. The PRC alone, however, is insufficient to establish that the applicant has been lawfully admitted for permanent residence in accordance with all applicable provisions of the INA.<sup>[28]</sup>

## Footnotes

- [^] See [INA 101\(a\)\(20\)](#), and [INA 334\(b\)](#). See [8 CFR 316.2\(a\)\(2\)](#).
- [^] See [INA 318](#). See [Matter of Koloamatangi \(PDF\)](#), 23 I&N Dec. 548, 550 (BIA 2003). See *Estrada-Ramos v. Holder*, 611 F.3d 318 (7th Cir. 2010). See *Mejia-Orellana v. Gonzales*, 502 F.3d 13 (1st Cir. 2007). See *De La Rosa v. DHS*, 489 F.3d 551 (2nd Cir. 2007). See *Savoury v. U.S. Attorney General*, 449 F.3d 1307 (11th Cir. 2006). See *Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005). See *Monet v. INS*, 791 F.2d 752 (9th Cir. 1986). See *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983).
- [^] See Chapter 3, Continuous Residence [[12 USCIS-PM D.3](#)].
- [^] See Chapter 6, Jurisdiction, Place of Residence, and Early Filing [[12 USCIS-PM D.6](#)].
- [^] An applicant may become removable on account of the public charge ground of deportability while in LPR status, which may be assessed at the time of naturalization. However, assessing whether an alien is deportable on the public charge ground entails a different analysis than assessing whether an alien is inadmissible on public charge grounds. An alien is deportable from the United States under [INA 237\(a\)\(5\)](#) when the following conditions are met: (1) within 5 years after the date of entry, has become a public charge (2) from causes not affirmatively shown to have arisen since entry. The deportability ground, therefore, looks at past behavior, occurring after entry or adjustment. In contrast, the public ground charge of inadmissibility under [INA 212\(a\)\(4\)](#) is prospective and requires an analysis to determine whether there is a likelihood that an alien will become a public charge at any time. See [Updated Guidance for the Referral of Cases and Issuance of Notices to Appear \(NTAs\) in Cases Involving Inadmissible and Deportable Aliens, PM-602-0050.1, issued June 28, 2018. \(PDF\)](#). As necessary, consult with the Office of Chief Counsel for relevant public charge issues in any adjudication or for purposes of issuing a Notice to Appear.
- [^] See [INA 318](#).
- [^] See [8 CFR 212.23](#). The public charge ground of inadmissibility generally does not apply to applications that convey LPR status other than adjustment of status and immigrant visas, such as cancellation of removal for certain nonpermanent residents pursuant to [INA 240A\(b\)](#).
- [^] See *Inadmissibility on Public Charge Grounds*, [84 FR 41292 \(PDF\)](#) (Aug. 14, 2019) (final rule), as amended by [84 FR 52357 \(PDF\)](#) (Oct. 2, 2019) (final rule; correction).

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10. [^] As defined in [8 CFR 212.21\(b\)](#).
11. [^] See Volume 8, Admissibility Part G, Public Charge Ground of Inadmissibility, Chapter 10, Public Benefits [[8 USCIS-PM G.10](#)].
12. [^] See [64 FR 28689 \(PDF\)](#) (May 26, 1999). For applications and petitions that are sent by commercial courier (for example, UPS, FedEx, DHL), the postmark date is the date reflected on the courier receipt.
13. [^] See [INA 245\(b\)](#).
14. [^] In general, a lawful permanent resident card should have the correct date of LPR status. For additional information on adjustment of status dates, see Volume 7, Adjustment of Status [[7 USCIS-PM](#)].
15. [^] See Section 1 of the Cuban Adjustment Act, [Pub. L. 89-732 \(PDF\)](#), 80 Stat. 1161, 1161 (November 2, 1966). See [Matter of Carrillo \(PDF\)](#), 25 I&N Dec. 99 (BIA 2009).
16. [^] See [INA 209\(a\)\(2\)](#).
17. [^] See [8 CFR 1245.7\(e\)](#).
18. [^] See [INA 209\(b\)](#). See Volume 7, Adjustment of Status [[7 USCIS-PM](#)].
19. [^] See [INA 316\(a\)](#).
20. [^] See [INA 216](#).
21. [^] See [INA 216](#) and [INA 318](#).
22. [^] See Part G, Spouses of U.S. Citizens [[12 USCIS-PM G](#)]; Part H, Children of U.S. Citizens [[12 USCIS-PM H](#)]; and Part I, Military Members and their Families [[12 USCIS-PM I](#)], for special circumstances under which the applicant may not be required to have an approved petition to remove conditions prior to naturalization.
23. [^] See [INA 101\(a\)\(29\)](#) and [INA 308](#).
24. [^] See [INA 325](#). See [8 CFR 325.2](#). Non-citizen nationals may satisfy the residence and physical presence requirements through their residence and presence within any of the outlying possessions of the United States.
25. [^] See [INA 101\(a\)\(20\)](#).
26. [^] See Part I, Military Members and their Families, Chapter 3, Military Service during Hostilities (INA 329) [[12 USCIS-PM I.3](#)].
27. [^] See [INA 264\(e\)](#).
28. [^] See Section A, Lawful Permanent Resident (LPR) at Time of Filing and Naturalization [[12 USCIS-PM D.2\(A\)](#)].

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