

(4) Public charge.-

(A) In general.-Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Secretary of Homeland Security at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.

(B) Factors to be taken into account.-

- (i) In determining whether an alien is inadmissible under this paragraph, the consular officer or the Secretary of Homeland Security shall at a minimum consider the alien's-
 - (I) age;
 - (II) health;
 - (III) family status;
 - (IV) assets, resources, and financial status; and
 - (V) education and skills
- (ii) In addition to the factors under clause (i), the consular officer or the Secretary of Homeland Security may also consider any affidavit of support under section 213A for purposes of exclusion under this paragraph.

(C) Family-Sponsored immigrants.-Any alien who seeks admission or adjustment of status under a visa issued under section 201(b)(2) or 203(a) is inadmissible under this paragraph unless-

- (i) the alien has obtained-
 - (I) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) or section 204(a)(1)(A) , or
 - (II) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) ;
 - (III) classification or status as a VAWA self-petitioner; or
- (ii) the person petitioning for the alien's admission (and any additional sponsor required under section 213A(f) or any alternative sponsor permitted under paragraph (5)(B) of such section) has executed an affidavit of support described in section 213A with respect to such alien.

(D) Certain employment-based immigrants.-Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) by virtue of a classification petition filed by a relative of the alien (or by an entity in which such relative has a significant ownership interest) is excludable under this paragraph unless such relative has executed an affidavit of support described in section 213A with respect to such alien.

(E) Health insurance.¹

- (i) All immigrants must agree to seek health insurance for themselves, their spouses and their dependent children after the immigrant is admitted or adjusts status until the immigrant naturalizes.²

¹ Bargaining concession: Many are angry that illegal immigrants don't have health insurance and cost emergency rooms a lot of money when they can't pay the bill. This section is a response to that. I believe the country is headed toward mandatory health insurance and that while the government will subsidize citizens when this occurs, they won't subsidize immigrants. If we are headed there anyway, let's use this as a bargaining chip while we still can.

² Bargaining concession: This is not a requirement that every immigrant have health insurance. It is merely a requirement that the immigrant agree to seek health insurance after immigrating.

- (ii) Any alien who seeks admission or adjustment of status under a visa number issued under section 203(b) other than under paragraphs (1)(A) and (1)(B) of such section, who has not obtained health insurance other than through the petitioning employer is inadmissible unless the petitioning employer has agreed to offer a health insurance plan to the alien and the alien's derivative beneficiaries for the duration of the alien's employment until the alien naturalizes.³
- (iii) Any alien who is the spouse or minor child of a United States citizen or permanent resident and seeks admission or adjustment of status under a visa issued under section 201(b)(2) or 203(a) is inadmissible who has not obtained health insurance or who has not proven to the satisfaction of the consular officer or the Secretary of Homeland Security that the alien will obtain health insurance within 30 days of admission or adjustment of status or within 30 days of the issuance of a social security number following admission or adjustment of status.⁴
- (iv) Clause (iii) shall not apply to an alien who has been declined health insurance due to a pre-existing condition who can show to the satisfaction of the consular officer or the Secretary of Homeland Security that the alien or the alien's US citizen or permanent resident spouse, parent or child has enough income to pay for the alien's healthcare without health insurance and still have enough income remaining to meet the income requirement described in section 213A.⁵

³ Bargaining concession: For people coming on an employment-based visa, a requirement that the petitioner agree to provide health insurance is not terribly unreasonable and will likely benefit the immigrants by giving more opportunity for immigrants to obtain insurance. The requirement will not make it more expensive for employers to petition for immigrants as there is no requirement that the petitioner pay part of the premium. I think many immigrants don't know how to find health insurance outside of employment, such just improving the opportunity will help.

⁴ Bargaining concession: The spouse or minor child of a US citizen or permanent resident would have to get health insurance. As the US citizen or permanent resident should be able to get health insurance him/herself, it is not unreasonable to require that he/she put the alien spouse or minor child on the insurance. If the US citizen or permanent resident can't afford to do so, then it is not unreasonable to say that the alien is likely to become a public charge.

⁵ Out of concern that some people – due to prior medical conditions – simply won't be able to get insurance at any price, there's an exception, though that person would then have to prove that he/she can pay out of pocket. This is similar to the requirements in an HIV waiver, so there's precedent for this situation.