Questions from AILA Public Charge Session
Answers provided by session speaker and AILA Author Charles Wheeler

1. **How many months of bank statements should we submit under new public charge rules?**

   12 months of bank statements if filing with the I-944.

2. **What is your take on what documentation is required as initial evidence for the I-944? Are you seeing receipts for including just the tax, credit report and health insurance documentation? Or do you think all of the documentation is required to get the I-944 accepted?**

   We are not seeing rejections from the NBC if the I-944 is not submitted with extensive documentation at this time, but that might change. The fear is that if the I-944 is not sufficiently documented, it could lead to a summary finding of public charge and thus a denial, but that is unlikely. I think the most important thing is to be prepared for the adjustment interview and have updated documentation at that time.

3. **Is MEDI-CAL considered a PUBLIC CHARGE? Client is adult & it’s not for emergency purposes.**

   No, an applicant who is receiving Medi-Cal is not by definition considered a public charge. Receipt of federally-funded Medicaid after 2/24/2020 will be considered a negative factor, but there are three important exceptions: emergency services, for those under 21, and for pregnancy-related care. The non-citizen eligibility requirements for Medi-Cal make it almost impossible for an adjustment of status applicant to be eligible for the program and not also be within one of those three exceptions.

4. **Anyone else been receiving a rejection notice or RFE seeking an I-864 even when claiming the 40 quarter Social Security exemption?**

   Those who are not required to file an I-864 based on satisfaction of the 40 qualifying quarters exception need to indicate that on the Form I-485 and accompany that with the Social Security earnings statement. The Service eliminated the Form I-864W. If the I-495 is rejected for failure to include an I-864, send it back and indicate that you are requesting supervisory review and explain that no I-864 is required.

5. **The DS-5540 is now available in the drop-down menu of docs to upload in the NVC ceac website. Is it best practice to start uploading it now even though the form is inconsistent in that it asks for applicant info but also family info?**

   I do not recommend that immigrant visa applicants complete the DS-5540 and submit it, along with the documents, online. I recommend completing it and submitting it at the time of the consular
interview, if requested. There are so many things that are wrong with the current form that it needs to be modified and submitted with a cover letter explaining why the positive factors outweigh the negative ones.

6. Are I-730 beneficiaries subject to public charge?

No. derivative asylees and refugees are not subject to public charge.

7. Did you mean to indicate that the I-944 is required even in proceedings before EOIR? The FR itself states that it is not.

It is not clear yet whether the immigration judges are going to require the submission of the I-944. They are not required to, since the public charge regulation applies to DHS and not to the Department of Justice. But it remains to be seen if they are going to request it for purposes of establishing admissibility for public charge.

8. Are widows/widowers of USCs exempted?

Widows and widowers are exempt from the affidavit of support requirements but not public charge. Hence, they will need to file an I-944 if adjusting status.

9. There is a new requirement for education equivalency evaluation for family-based immigrants. Do we know how strictly they are requiring this? It's fairly expensive and somewhat onerous to get that.

I think it depends on the facts in your case and whether you believe it is necessary to expend the money. If it is obvious that the applicant has a high school degree or its equivalent, as well as college courses/degrees, then I would skip it. But it also depends on other positive factors in your case.

10. Beneficiaries of the I-130 (immediate family, parents of USC) who worked for over 10 years in the USA and contributed of more 40 quarterly contributions to the Social Security, are they exempt from filing I-944 Declaration of Self Sufficiency.

No, all family-based adjustment applicants are required to submit an I-944. In your case, the applicants may not need to file an I-864 if they can establish that they have already earned or accrued 40 qualifying quarters through the submission of social security earnings records. But that also assumes that they have a valid SSN and that they had, at least at one time, and EAD.

11. On the deportability ground issue, am I wrong in understanding that in order for it to apply the government must first sue for the services provided to the alien?

There are so many requirements that the government must satisfy before charging an LPR with being deportable for being a public charge that no one in the last 40 years has been charged with it. So, don’t worry about it. But the DOJ is considering filing a regulation that would make it easier for the agency.
12. Does anyone have an idea how Covid employment loss will impact self-sponsors? I have a pre-(new) public charge case with a beneficiary/applicant self-supporting, but he’s changed his job since Covid.

When you say “self-supporting,” I am not sure if you mean VAWA applicants. They are not subject to public charge. Widow/ers on the other hand, are subject and must complete an I-944. The agency has only stated that it would take into consideration the effects of Covid-19 social distancing and job loss. We don’t know how they plan to use their discretion in this area. If “self-supporting” means the petitioner is the sponsor and not using a joint sponsor, then the same principle would apply.

13. Are B-1/B-2 visitors who cannot travel back home due to COVID closures and file I-539 also subject to public charge in the event that they file for fee waiver?

These nonimmigrants are subject to public charge, but the new public charge rules and definition are focused on immigrant visa applicants. It is very unlikely that these persons would have filed for a fee waiver. Only very few applicants filing an I-539 qualify for a fee waiver.

14. Is the DS-5540 required of all applicants at the USDOS? Or is it discretionary? At what point does it get submitted?

The form can be submitted through the ceac website with the NVC, but we recommend completing it and having it ready to submit, along with the documents, at the consular interview. We are in a transitional period now where the DOS does not have to ask for it.

15. Can you discuss the interplay of the public charge regulation and all the great language relating to the affidavit of support at 8 CFR 213a and its sufficiency to meet the public charge requirements?

If the applicant does not submit a legally sufficient affidavit of support, the applicant will be found inadmissible for public charge and the officer will not have to look at the other five statutory factors. But the USCIS Policy Manual also indicates that not having a legally sufficient affidavit of support is just a heavily weighted negative factor. Nevertheless, the statutory language would control. The affidavit of support is also a positive factor and should be brought out in any cover letter submitted with the I-944 or the DS-5540.

16. Could they please re-cite the article (resource) by Charles Wheeler and confirm AILA doc is 19050634?

Here is the link to AILA resources on public charge:
https://www.aila.org/about/announcements/see-ailas-resources-on-public-charge

17. Can you list the other relevant articles here (other than the AILA doc)? Thanks!

The Immigrant Legal Resource Center (www.ilrc.org) and the Catholic Legal Immigration Network, Inc (www.cliniclegal.org) also have resources on public charge on their websites.

18. Must all the supporting documentation to the I-944 get submitted with the One Step?
It is hard to predict what the National Benefits Center will require as satisfactory initial supporting documentation with the I-944. At a minimum, I would submit tax returns (transcripts), assets (if need to reach 125% of poverty), health insurance policy, credit report/score, and high school transcript. This will need to be current at the time of the adjustment interview, so that is when I would load up on additional documentation.

19. If the Foreign National spouse is NOT a public charge but the USC spouse is receiving unemployment now during the pandemic (in CA the checks are very significant), AND, if the USC spouse wants to apply for Cal-Fresh (food stamps federally subsidized) does that affect the beneficiary spouse’s I-944 when the beneficiary makes over $55K per year?

Receipt of benefits by other family members who are not applying for an immigrant visa or adjustment of status are not considered. But receipt of benefits by the USC petitioner/sponsor could be considered in evaluating the likelihood that the sponsor will provide the necessary financial support.

20. If the applicant lives with a sister and shares expenses, does the sister need to be listed on the form as a family member?

If the sister provides at least 50% of the applicant’s financial support or lists the applicant as a dependent on her tax return, then she is a household member for purposes of the I-944 or DS-5540. Otherwise, no.

21. Does the public charge rule apply to people in removal proceedings who are adjustment eligible and applying before an IJ?

The new rule only affects DHS adjudicators, not DOJ. But it is unclear whether IJs will apply the new standard anyway, since the statute lists the six statutory factors.

22. How does this revamped public charge apply in cases where the applicant is an adult who suffers from a physical or mental disability that has prevented and prevents the applicant from obtaining future gainful employment?

It is going to make it more difficult for that person to overcome public charge, but look to total household income and assets, health insurance, and other positive factors.

23. Have you seen an impact on I-130s for elderly parents of well-established petitioners (highly paid professionals w/good assets)?

Not with I-130 adjudication, which does not look to grounds of inadmissibility. Will be keeping a close look to see how parents are going to fare at the adjustment or consular processing stage.

24. Are I-929 approved AOS subject?

U visa applicants and visa holders applying for adjustment are not subject to public charge.
25. Do any of you anticipate that the Public Charge Rule requirements will return to the status quo ante if the Democrats win the elections in November?

Hard to say, since the statute still requires consideration of all six statutory factors.

26. Is someone with TPS who got unemployment during pandemic subject to public charge?

Unemployment benefits are not one of the nine designated public benefit programs that will be considered in the totality of the circumstances analysis. TPS recipients and re-registrants are also not subject to public charge.

27. TPS client recently traveled out and in on TPS AP. Aside from issue of CIS now claiming that AP entrant comes back in under same manner of entry prior to TPS – i.e. EWI for many – client has been here for 20+ years and has filed bankruptcy twice during that period, most recent one in 2018. So, does bankruptcy history in any way impact public charge assessment to form basis for denial?

It is a factor that is included in the “liabilities” section. So would need to confirm that the applicant did file for bankruptcy but that is outweighed by positive factors.

28. What are the public charge requirements for EB-5 individual investors with approved I-526?

Still subject to public charge but should not have a problem overcoming it.

29. The I-864W was revoked right?

Yes, that information is not reported on the I-485.

30. Does this apply if the applicant applied for benefit but beneficiaries are her US citizen children?

No. The parent is not considered the recipient. Benefits received by other family members are not considered.

31. Question about I-864W, I have recently gotten RFE from USCIS asking for proof of LAWFUL employment for the 40 quarters. Is that in the law or something ultra vires that USCIS made up?

That is not the law. There is no requirement in the regulations or statute that the 40 qualifying quarters have to have been earned while working with an EAD. The quarters must have been posted to a valid social security account, however, and thus the wage earner must have had an EAD at some point.

32. How do you prove that someone has been credited with those 40 social security hours? Can something be downloaded from the social security website, or is there a need for an official letter from the social security administration stating so?

The worker can create an online account and download his/her earnings record. It does not need to be “certified” by the SSA.

33. But still requiring to do the I-944?
Yes, only the I-864 is waived.

34. Since I-864W form has been eliminated, what do we use it for consular interviews?

Indicate to the NVC that the applicant is not subject to the I-864 requirement and be prepared to indicate that to the consular officer at the interview. DOS only states that the officer will make a note of that in the file.

35. Can one use a Joint Sponsor under the new public charge?

Yes, absolutely.

36. I-730 - public charge would not be considered.

That is correct.

37. What best practices do you recommend for medical insurance where applicant doesn't have and can't get for example b/c living abroad and not in the US?

The DOS is not putting much importance on health insurance for applicants who have never been to the United States. They want to know if the applicant intends to get insurance within 30 days. If so, indicate what policy they are planning to get. It is only a negative factor if the applicant has a medical condition and does not have insurance, the intention to get it, or the funds to pay for foreseeable health expenses.

38. When you file I-864W, do you still have to file the I-944 Declaration of Self Sufficiency?

There is no more I-864W. The exemptions are not claimed on the I-485. And everyone subject to public charge needs to file an I-944.

39. If you’re an adult and in school, is that a positive factor?

It goes to education and employment skills. Having a high school degree is a positive factor. Anything more than that increases the weight, especially if you can link the education to employment skills.

40. Could you address, as you go forward, how to make the case for stepchildren who need to complete DS-5540. If they are under 18, they are likely in school, not working, have no skills, no income of their own, etc. And coming to join parent after several years. Thoughts on how these are being treated?

We don’t have any experience on how they are being treated by the consulates, but I would stress the positive factors: full-time student, good health, total household income and assets above 125 or 250%, health insurance when immigrates, any English language ability, and not eligible for public benefits.
41. TPS recipients who have had the 40 quarters of Social Security used to do the I-864W, but do they need the declaration of self-sufficiency?

TPS recipients who are now immigrating based on a family petition—either adjusting status or consular processing—and have 40 qualifying quarters do not need to submit an I-864, but they are still subject to public charge and would need an I-944 or a DS-5540.

42. Can someone run us through an example? Let's say, married, young, high school graduates and earns like 25-30k, no savings, intending immigrant doesn't speak English, but earns most of the income as a construction worker, etc. Like "normal" people.

Well normal people are at risk under the new public charge rule. Make sure you prepare a cover letter to accompany the I-944 or the DS-5540 that highlights all the positive factors. In you situation, age, health, work history, on-the-job skills, total household income and assets, job offer, health insurance quote, high school or its equivalent, no fee waiver, no bankruptcy, documentation establishing not eligible for public benefits. CLINIC has a lot of resources on our website, and then of course there is my book.

43. If retired parent of USC has a pension - is that a positive factor?

Yes, it goes to total household income and also mitigates any negative factor due to age (above 61 years).

44. I-944 instructions say that U Visa holders *may* be subject to filing I-944 with their AOS if they no longer hold U status by the time their I-485 is adjudicated. So far we have erred on the side of not including the I-944 and waiting for USCIS to send us an RFE. Has anyone had U clients that have been asked to file I-944’s?

Haven’t heard of any practitioners who have mentioned this.

45. Do you need to show HISTORY of petitioning child paying for 50% of parent's income, or can a petitioning child simply state they will be responsible for over 50% upon moving to the U.S.?

The household size includes individuals “who provide” at least 50 percent of the applicant’s financial support, so I would assume the petitioning child would need to have demonstrated some history of supporting the parent rather than expectation.

46. What is the public charge bond amount for DOS? USCIS has indicated that they will start bonds at $8100 but I don’t think DOS has released the possible amount.

It would be the same amount, but I do not expect DOS to offer any public charge bonds.
47. Because I have seen and done checklists that require credit reports from all parties, etc. etc. and y’all are not even talking about that. Also, has anyone gotten a bond? I have just seen denials? Is anyone working with the BULK of immigrants from Latin America? Juarez, in particular is NOTORIOUS for being strict in the best of times. Or Manila, too. They are pretty terrible.

Only the applicant needs to submit a credit report (if one exists), not the other household members. No public charge denials from USCIS so far for adjustment applications filed on or after 2/24/2020. No public charge bonds have been processed. DOS has indicated that they are unlikely to offer the opportunity to post a public charge bond.

48. Does the public charge rule apply to people in removal proceedings who are adjustment eligible and applying before an IJ? Do they have to submit the I-944?

See above.

49. Does the applicant offer to pay bond to uscis or does uscis request it from the applicant? How would you request a bond, what amount do you need?

The USCIS has to initiate the public charge bond offer; the applicant cannot initiate the process. The minimum bond would be $8,100.

50. Also, the importance of health insurance? Where are folks getting private health insurance, etc? Anyone have a checklist that has worked with normal clients (not educated, not rich, normal everyday folks)?

CLINIC has prepared a detailed memo on securing private health insurance. That is available on our website at https://cliniclegal.org/resources/family-based-immigration-law/adjustment-status/health-insurance-and-public-charge. My book also provides information on this issue.

51. Can we assume President Biden will change this rule?

Only if we can assume Biden will become president.

52. If an aged parent has a medical condition, what can they show for health insurance prior to coming to US?

They can show that they have the resources to pay for foreseeable medical costs. They can check the box on the DS-5540 indicating that they will obtain health insurance in the United States within 30 days. They can get a quote from an ACA Marketplace insurance carrier.

53. Could you please explain how does posting bond works. Do you ever get it back? What is the procedure?

There is a procedure for requesting the cancelation of the bond after the conditions have been satisfied. This will usually be after the intending immigrant has been an LPR for five years. The procedure is set out in the USCIS Policy Manual.
54. Have people seen any consular denials on public charge where DOS actually writes a detailed enough decision to explain the denial on these grounds, such as the age/health issues just mentioned?

The consular denial is usually a form with boxes checked and is not accompanied with any detailed explanation. Also, not many denials yet after the Feb. 24th rule kicked in.

55. If the applicant clearly meets the requirements under 8 CFR 213a, what reasons can CIS use deny based on public charge? Questions on I-944 seem very arbitrary or not applicable in a lot of applications (health insurance, credit report/score, loans, etc). How does this all interact? For new AOS applications, I've been winging it as long as I believe that the clients meet the poverty guidelines and have assets.

I have not heard of any USCIS decisions yet based on a review of the I-944.

56. The I-944 asks for information on the household. Should we include information on the petitioner. For example, whether the petitioner has filed for bankruptcy or owns their own home?

No. Liabilities, including debts and bankruptcy filings only apply to the petitioner, not the other household members.

57. I have had clients in the US who consular process get a medical in US knowing it won’t be valid abroad, but just out of an abundance of caution to see if any issues so we can cure while they are here. Is that ok or it is totally different what they look for in a medical abroad?

Good suggestion. There should be basic similarities between the medical report conducted by the civil surgeon and that of the panel physician. And you can get a copy of the report done here in the US.

58. USC sponsors parents for green card. Do you suggest parents purchase commercial medical insurance before submitting I-130 and I-485?

As an adjustment applicant, the applicant would become eligible to apply for ACA Marketplace health insurance, so I would wait until after filing the I-485.

59. Should a principal applicant provide all his assets in DS-5540? Should they bring all of the documents to an IV interview overseas? For example, if an applicant owns 20 houses in a foreign country, if he is required to disclose all of his assets and bring all the deeds and appraisal to the interview? This will be very burdensome.

The applicant is not required to disclose all assets. They can be used to demonstrate total household income (and assets) to meet the 125% of FPG baseline. Or to demonstrate income and assets exceeding 250%. But use your own judgment. It really depends on the anticipated income of the applicant after immigrating and other positive factors in his/her case.
60. Anybody had any luck in getting documentation from the credit report companies to prove that a person without a social security number does not have a credit report/credit score?

If you go to www.annualcreditreport.com and either enter no SSN or zeros you will get an error message indicating that no report can be generated. Practitioners suggest submitting this error report, along with a statement from the applicant indicating that he/she does not have a SSN.

61. What are your thoughts on probability of a retired, older professor w/ cancer in remission (Class B). No intention to work, has savings/retirement. Adult child Petitioner makes decent income (lower 6 figures).

Hard to say. Would help if the USC son/daughter is providing 50% of the applicant’s financial support now so can include in total household size and income/assets. Plus, don’t ignore other positive factors: work history, skills, education, English proficiency, not eligible for public benefits, etc. The professor’s intention to work or not work after adjustment do not have to be disclosed, only ability to work. Get statement from treating physician explaining that cancer is in remission.

62. Has anyone had an aos adjudicated that was filed with the 944?

Not that I am aware of.

63. We just had an IV interview. The consulate asked to state my client intends to purchase insurance after immediately arriving US.

Thanks.

64. For Form I-944 filed with employment based AOS, I have been indicating that the derivative applicants have an approved I-140 and skip the education and skills section. Is this correct?

I don’t think we know the answer and it may depend on the officer. The USCIS Policy Manual states that an approved Form I-140 qualifies as an acceptable job offer. But most applicants seeking LPR status through employment-based categories must still include evidence of employment history and skills, as well as specific education levels. If included, the USCIS adjudicator considers those in evaluating whether the applicant is likely to become a public charge. USCIS also may assume that when a labor certification has been issued that the employment is permanent, although the officer still can enquire about the salary and benefits offered. The officer also may review Form I-485, Supplement J, to ensure that the job offer is bona fide, and that the applicant intends to accept it.

65. If the applicants are using insurance under the exchange, would that be considered a public charge if they get subsidies?

No, it is still considered a positive factor, just not a heavily weighted positive factor.

66. Wondering how to prove languages spoken, which is a question on I-944, especially native languages.

Only relevant if in addition to being proficient in English and will assist in employment in the US. Maybe a letter from employer stating the importance and verifying the applicant’s proficiency.
67. We are filing our I-944 forms with IRS transcripts. Are you seeing rejections for failure to file with transcripts? or failure to file with client’s copies of their IRS returns (turbotax, etc)?

Not seeing rejections for filing with tax returns in lieu of transcripts. But that may change. Bring the transcripts to the adjustment interview.

68. Can you say more about the variances that we are likely to see at different consulates - there seems to be a lot more discretion to the individual consular officer. The lawyers ability to engage with the consulate on the specific case seems to be even more critical.

We are all lacking personal experience yet with variations between and among consular posts. Given that attorneys are not allowed to attend the consular interview, it is important that practitioners prepare the clients well in advance. Include a cover letter with the DS-5540 summarizing all the positive factors. Sample cover letters/templates are available on the CLINIC website and in my book.

69. Trump lets questionable health insurance be sold online. Some as cheap as $7 a month. Since Trump allows these fraudulent policies flourish, I tell my clients to buy one to show full coverage knowing full well the policy is garbage. Trump created this mess so his policies should be used.

Interesting. The USCIS is requiring copies of the policies and will be examining the premiums, deductible, and terms and will be giving them the appropriate weight. Not sure these “junk” policies are going to count for much. The DOS is not giving the policies as much attention.

70. What checklists are y'all using?

AILA has resources on this issue. See: https://www.aila.org/about/announcements/see-ailas-resources-on-public-charge.

71. Since updating will be necessary, how thorough do you need be in filing the application?

We are gathering anecdotal information on how much documentation needs to be submitted with the I-944 to avoid a rejection or a denial for public charge. At the moment, we encourage the submission of tax returns, credit reports (if available), job history/skills, and health insurance policies or quotes.

72. How do we find out if it is only California only subsidized health insurance?

If you are concerned with whether the Medic-Cal is federal or state-funded, California extends coverage to some non-citizens who are otherwise ineligible for Medicaid. Hence, if your adjustment applicant is receiving Medi-Cal, you can assume that it is state funded. You can also assume, with almost 100% certainty, that the Medi-Cal benefit falls within one of the three exceptions to Medicaid receipt counting in the totality of the circumstances analysis.

73. What are you suggesting to get credit report for the beneficiary? Particularly when they don't have credit or a social security number?

See above on ways to prove ineligibility for a credit report.
74. If someone is here on B2 w/ foreign insurance, is it OK to state on the I-944 they will get via marketplace private US insurance upon LPR approval?

The travel insurance isn’t going to count for much, but as an adjustment applicant, the person would qualify to apply for marketplace health insurance. So submit that at the adjustment interview.

75. When are you telling people that they need to be careful? Again, a NORMAL person (30kish) how are they supposed to meet this? How are undocumented people supposed to get a credit check? How about those who don't speak English?

Focus on the positive factors and how they outweigh the negative ones. You don’t have to have all positive factors. Just need to have the balance come out in your favor. Focus on health, income or potential income, and ability to be financially independent or be cared for by another household member.

76. Even if it's from the marketplace, it doesn't necessarily mean it's subsidized. I check the policy as some premiums don't include subsidies for various reasons.

True.

77. I thought subsidized health insurance was considered a public benefit. You're saying it's better than nothing?

Subsidized health insurance is a positive factor, just not a heavily weighted one.

78. How is having Medicaid helpful?

It is a positive factor, assuming it falls within the exceptions: recipients under 21, pregnant.

79. Do you foresee any issues arising with the applicant working with fake documents but have filed taxes and now has to provide USCIS with such documents?

Working with a false SSN or fake LPR card is not a ground of inadmissibility. Claiming to be a US citizen is, however. So question the client as to whether he or she ever made a false claim to citizenship.

80. Can you please clarify if Medicaid is negative or positive? The new public charge guidelines state that pregnant women can only be enrolled in Medicaid for up to 60 days after giving birth. What if the AOS applicant is still enrolled in Medicaid over 60 days after giving birth?

Medicaid for those under 21 or pregnant would be considered a positive factor. Inquire as to whether the state is picking up the further coverage and treatment. This would fall outside of federal coverage. If it is state-funded, it does not count negatively.

81. Can Health Christian ministries count? They are health sharing plans not technically health insurance but minor underwriting is still done.

I would doubt it. Those types of plans usually contain language stating: “this is not a health insurance plan.”
82. How can one show proof of insurance if one is on a B-2 visa and adjusting through a USC spouse? Do they show proof of insurance held in country of origin?

No, that health insurance is not going to be valid while they are residing in the United States as an LPR. After applying for adjustment, they are eligible to apply for Marketplace health insurance.

83. Did I mishear that receiving Medicaid or Medi-Cal in CA is a plus? Isn’t that determined negative b.c it’s a public benefit?

It is a positive factor if the recipient comes within the two exceptions: under 21 or pregnant. It would be nearly impossible to qualify for Medicaid and not come within those two exceptions if you are an adjustment or immigrant visa applicant.

84. In the case where USC doesn’t have nor want health insurance, so the spouse will not have it once he enters after consular processing. How could that be confronted?

The applicant should be able to obtain a quote from a policy he would obtain after immigrating. I would suggest submitting that.

85. But what about those elderly retired age parents whose children are sponsoring them? What kind of insurance practically can they get that is not Medicare?

See above. Also, as adjustment applicants they can apply for a Marketplace policy. They could also buy into Medicare after immigrating.

86. How does having a joint sponsor for I-864 interplay with the form I-944? Is a positive or negative factor?

Having a sufficient affidavit of support is a positive factor. There is no distinction between I-864s submitted by petitioner/sponsors and joint sponsors.

87. Can USCIS deny cases without an interview due to a failure to provide initial evidence regarding I-944, even where the instructions on Form I-944 are blank in the area that says “required evidence.”

We need more anecdotal information from practitioners as to what they are experiencing. We initially saw rejections when no I-944s were submitted and we are continuing to see improper rejections when the I-944 is included. I would assume that the USCIS would issue an RFE if it needed further documentation rather than a denial, but I don’t want to underestimate or predict what they are capable of doing.

88. Parent of USC consular processing has 40 quarters of work history in U.S. so he would be eligible for Medicare. Is this helpful?

Yes, being fully insured under social security law coupled with being an LPR and age-eligible for Medicare would satisfy the health insurance issue and be considered a heavily weighted positive factor.
89. What documents do you show normally for household member health insurance who do not have their own health insurance cards?

If the household members are covered under the principal’s insurance, they should be able to get confirmation from the carrier.

90. Family-based adjustment of status clients who haven’t received any govt. benefits must nonetheless submit an I-944 because it’s a prospective test, is that correct?

Yes, all adjustment applicants subject to public charge must submit an I-944, regardless of whether they have received any public benefits.

91. Re Family Size: what is impact if child is disabled—mentally or physically?

It would not affect the household size if the child is in the applicant’s household. But if the child is an applicant, it would affect the child’s health status and potential income ability.

92. What if a person was granted federal founded Medicaid but never used it? Will she be considered inadmissible?

Receipt and enrollment in Medicaid would be a negative factor, assuming the applicant does not fall within the exceptions.

93. How can Medicaid be a heavily positive factor when non-emergency Medicaid has been added as ‘Public Benefit’ by DHS and DOS rule?

It is a positive factor if the applicant is a recipient due to age (under 21) or pregnancy.

94. If petitioner makes less than poverty income guideline on I-864 but their current income in 2020 is over the poverty income guideline, will that survive Public charge guidelines?

The petitioner/sponsor has to report “current individual annual income” on the I-864, in addition to taxable income for the most three tax years. But it is the former—estimated 2020 income—that is determinative of whether the income is sufficient. If not, then add assets or obtain a joint sponsor.

95. Does anyone have any practical experience of submitting DS-5540? Do we need to submit the form through consular process? I have read the instruction but it use the language of “may be required to submit.”

I recommend having it filled out and supplemented with the required documentation and bringing that to the consular interview. I do not see the advantage of completing it and submitting it online through CEAC since the form needs to be modified and supplemented with a cover letter.

96. If we count more members in the household to include income, do we have to also include any public benefits those USC members rec'd like full scope Medi-CAL post 2/2020 for example?

No, you only need to include the public benefits that applicants have received or are receiving.
97. I have a client that has a child in his home country. There is not a legal agreement of his requirement to child support. Client has told me that he has not sent money in three months for that support. In your opinion, how is that going to impact him with the I-944?

The child would not be considered part of the applicant’s household size if the applicant is not providing or is not legally obligated to provide at least 50% of the child’s financial support. It should not affect the adjustment’s eligibility to adjust status.

98. Will premium tax credit be a negative factor if client gets ACA insurance?

No, it just means the insurance is a positive factor and not a heavily weighted positive factor.

99. If the foreign national spouse is NOT a public charge but the USC spouse is receiving unemployment now during the pandemic (in CA the checks are very significant), AND, if the USC spouse wants to apply for Cal-Fresh (food stamps federally subsidized), does that affect the beneficiary spouse’s I-944 when the beneficiary makes over $55K per year?

Only benefits received by the foreign national spouse would be considered, not those received by other family members. Unemployment benefits are not considered a “public benefit,” but rather an insurance program, so nothing negative about their receipt. Hard to imagine that the USC would qualify for SNAP benefits when the household income is so high.

100. If someone is in the US under B visa and extending their status due to COVID and inability to return home overseas, but living with US spouse while they are in the US temporarily, do they count the US spouse in the household size for the request for the extension of nonimmigrant status?

There is no “household size” question on the I-539.

101. The beneficiary is a 73-year-old male. Retired. Does not have much money. He is father of USC, does not have high school degree, does not speak English. Person will be added to son's insurance. Son is USC, 36, single, earns $200,000.00 per year. Would household income as the $200,000.00. Do you see any issues for the adjustment?

If the USC son is providing 50% of the father’s financial support or listing him as a dependent on his tax return, than the father can include the son as part of the household size. Then he can include the son’s income and assets.

102. Can social security income received by a petitioner’s minor children be counted as part of household income in the I-944 form or DS-5540 form completed by a beneficiary who is petitioner’s child (AOS case).

If I understand the facts, the petitioner is a USC parent. The beneficiary is a child. The child is applying for adjustment of status. The applicant can count the parent as part of his/her household size if the parent is residing with him/her or is providing at least 50% of the child’s financial support or is required to do so. The parent’s income can also be counted. The other children of the parent must also be counted as part of the applicant’s household size if they are residing with the parent or
the parent provides or is required to provide at least 50% of their financial support. The social
security income of these other children (the applicant’s siblings) can also be counted. The social
security belongs to the children, not the parent.

103. It seems that the CEAC website is allowing you to upload DS-5540 for CDJ cases. Thoughts
on uploading now versus having client take it in their hand at time of interview? Are any other
consular posts allowing for DS-5540 to be uploaded to CEAC that you know of?

My understanding is all consular posts allow the DS-5540 to be submitted online through CEAC. I
recommend taking it to the consular interview.

104. How much money do you show on the I-944? Client doesn’t want to produce every asset
they own. Can’t we just show they meet enough above the poverty level?

Yes, but the more income and assets, the greater the positive weight that it will be given.

105. Does Charles advocate combining the petitioner’s income with the Applicant’s on the DS-
5540?

Yes, assuming the petitioner is a household member. It means modifying the DS-5540 and explaining
that it is total household income that is being used.

106. What about home ownership as an asset?

Yes, but it is equity value and requires a current appraisal from a licensed appraiser.

107. What’s worse, no insurance or Premium Tax Credit? Can client reject premium tax credit?

Having no insurance is worse. Having health insurance subject to the tax credit is still a positive
factor, just not a heavily weighted one.

108. Among the exceptions to the public charge requirement are SIJS petitioners. However, the
I-I-485 does not list this as an option. Am I missing something?

SIJS and VAWA applicants are not subject to public charge and thus are not subject to the I-864.

109. Hi Charles- you said MED-ICAL is a positive factor re: public charge. Don’t you have to be
low income to qualify? How does this not a problem for the client?

The fact that the applicant is receiving Medi-Cal (pursuant to one of the exceptions) is a positive
factor for purposes of the health insurance issue. But the applicant would need to show total
household income and assets at or above 125%. The two are not mutually exclusive, since Medicaid
financial eligibility criteria do not take into consideration the same household members as the USCIS
and DOS do. But you are correct in that the applicant may have an income problem.
110. Can you add form I-864 when you file form I-944, even if it’s not required? Could you even add a joint sponsor I-864A if weren’t required to file even the I-864 to strengthen the case?

The agencies will not consider an I-864 if it is not required. If the joint sponsor’s current individual annual income is sufficient, I do not see the advantage of including another relative’s income and submitting an I-864A.

111. Any tips on how to re-direct USCIS officer that is looking at income retrospectively if you filed a one-step adjustment prior to the expanded public charge rule going into effect?

Since 1997, USCIS has had the ability to apply the five statutory factors to the adjustment applicant. But it is anticipated income that should matter. I’d prepare the client for the five factor-analysis, even though no I-944 is required.

112. What if someone who owns a company had to shut down due to covid? How will that factor into petitioning for an immediate relative if they want to collect unemployment benefits due to that economic loss?

Unemployment benefits are considered income and the petitioner should be encouraged to receive them. But for I-944 purposes, it is past income reported on tax returns that matters most.

113. Are you saying we need to include total income on I-944 as opposed to Adjusted Gross Income like we do in I-864?

Both the I-844 and the I-944 look to unadjusted gross income. The exception is if the sponsor is self-employed, in which case it is adjusted income that is listed.

114. Do you have any experience to share on how officers are actually adjudicating public charge? Is public charge being “double checked” during interviews?

No experience yet with USCIS officers. Consular officers vary in their request for a DS-5540 or their screening for public charge after 2/24/2020.

115. If so, what number are you using on a person’s Tax return to address that question on the I-944?

Use line 7b from the 2019 IRS Form 1040 for total income.

116. If you advocate including the Petitioner’s income on the DS-5540, how would you include it?

The form asks for “your current yearly compensation,” and one way to interpret “your” is “your household.” But I would also explain what you are doing in the cover letter. The DOS regulations and the FAM allow you to count household income; it is the form that is the problem.

117. In the 8C question about income that continues after you arrive in the US?
The FAM allows for the inclusion of two types of additional income not reported above (under tax returns and annual compensation): that which comes from non-household members residing with the applicant and that which comes from some outside source. But the examples the DOS provides (rent, dividends) are usually taxable income. So, include the non-taxable income and gifts.

118. How will a high net worth individual with mental capacity issues (non-violent) be viewed while adjusting status in US in terms of inadmissibility for public charge?

You mean someone like Trump? It is a balancing of the positive and negative factors, remember. You don’t have to have all positive factors.

119. I got confused before. Are you saying that the Public Charge you need to prove the 125% of the poverty in the household?

Yes, it is total household income that is considered.

120. How do you list assets from a living trust where the trust has its own EIN but the access to the trust vests solely with the trustee who is also the sponsor?

You would have to establish that the trustee has ownership and access to the funds (and they can be withdrawn w/o incurring a penalty). Sounds like that may prove difficult.

121. For AOS in the family-based context, the I-944, what do you recommend to show as proof of credit history?

If no credit history, submit proof of regular payment of bills, credit card statements, etc.

122. Can you rely on county appraisal for property taxes instead of an appraisal?

No, not according to the Policy Manual or the FAM.

123. Any feedback on the impact of bankruptcy?

None yet.

124. Is there an issue with not disclosing some foreign assets where there are substantial income and assets?

No requirement to submit all assets.

125. If the bank statements or assets documents are in a foreign language then they need to be translated into English?

Yes.

126. What if the potential sponsor is retired? Where their income is under the required level but their assets are sizeable?

That will suffice, although there are additional factors to consider if the potential sponsor is a potential joint sponsor.
127. How does covered layoffs and furloughs play into all of this?

We only know that the USCIS has indicated that they will be taken into consideration, but the adjudicators are given wide discretion in this area.

128. What was the difference between DOS and CIS for Income? I think Mr. Wheeler was going to talk about that before some of the Q & A.

USCIS looks to the applicant’s income as reported on past tax returns while the DOS is more forward looking and asks about “current yearly compensation.”

129. If the principal makes $400,000 (for a family of 5), do we REALLY need to get house appraised, include all the cars, etc?

No. The income is already above 250% of poverty.

130. If income of all household members needs to be submitted, any tips on reporting income of those in the household who are undocumented (working without permission)?

For the I-944, it is income as reported on prior tax returns. So, it doesn’t matter if they were working without an EAD.

131. USCIS policy manual does not require an appraisal from a licensed appraiser. To date, I’ve used real estate comps, but haven’t heard back whether there is problem with that.

Good to hear. But the USCIS Policy Manual, Vol. 8, Part G, ch. 9(A)(3) states: If the applicant wishes to include the net value of the real estate property, then he or she must include…a recent appraisal by a licensed appraiser.

132. How strongly are assets outside of the United States weighted? For example, property or bank accounts in the beneficiary's home country.

Hard to say at this point.

133. It seems to me if you can use all household members taxes (especially the sponsor), your chances of showing the beneficiary is not a public charge is easier to show (since you don’t have to show just the beneficiary’s income).

True.

134. An appraisal is required for a house, which is expensive. Would you think it is worth the investment?

That is a judgment call and it depends on the income and other factors.

135. For I-140 based I-485, if the applicant has stable income, does he/she need to disclose assets?

Same answer.
136. Do student loans need to be listed as a liability/debt or is this covered in the credit report?

They would need to be listed if the loans are the applicant’s.

137. Couldn’t potential assets make including household members more favorable? Thinking about young couple living with parents with significant assets.

Yes, assuming the parents qualify as household members.

138. Are credit reports required?

Yes, if they exist.

139. Credit report is only for AOS right? not CP?

Correct, only for I-944.

140. Licensed appraisals - I know they are listed, but property tax records and Zillow are easier to get and many client do not want to get or pay for them. Love your thoughts on this.

They do not have to be accepted and may not count for much, but it might depend on the adjudicator.

141. Does USCIS only look at the I-944 if they believe you to be a public charge concern or do they look at it in all cases?

I assume they will be looking at it in every case.

142. Question re bankruptcy: USCIS’s form specifically asks under which chapter a person filed. If someone filed in a foreign country, do you answer that question or note that US bankruptcy chapters do not apply to their country. Is there anything else we can do or should do instead?

It is not clear how you would answer that if the bankruptcy was filed in a foreign country.

143. In the context of a family adjustment, how can the applicant be expected to have any income if they don’t yet have work authorization.

They show income through prior tax returns. If they did not have a tax liability, they show current income through pay stubs, receipts, etc. The income does not need to come from work with an EAD.

144. What type of credential evaluation are you submitting for form I-944 (general or course by course)?

I would suggest a general one, rather than by course.

145. Some of the credit reports list the liabilities but not the credit score but the application asks for the credit score, are you making your clients get a new one?

The credit score is applied for separately and is not free.
146. If the applicant has filed for bankruptcy in the past, would USCIS/DOS look as to whether he/she filed for bankruptcy prior to 2/24/20 or would it only be filing bankruptcy on or after 2/24/20?

The form asks if the applicant has EVER filed for bankruptcy (emphasis in original).

147. For the English language skill, how do you prove that. I have been using Toefl exam results.

The real test will come at the adjustment of status interview where the adjudicator will test for whether the applicant understands basic English.

148. How should the skill of languages be documented if it is a native language?

Only language skills in addition to English will be considered and only if they are going to assist in a job in the United States.

149. Instructions state to include IRS transcripts. Due to covid many clients have been unable to obtain them. What would you do in that case?

Submit tax returns and bring the transcripts to the interview.

150. Where can I find the details about what the DOS requires for a job offer [notarization etc]?

The regulation imposes specific requirements on job offers: they must include “written confirmation of the relevant information sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer.” The person executing the job offer also must include his or her printed name and job title. See 22 CFR §40.41(f). It is legally questionable whether the agency can require that job offers be notarized rather than be submitted in declaration form. Federal law eliminated this requirement of notarization, as opposed to sworn declarations, in 1976.

151. Do we know yet whether the I-864/I-944 adjudication will be done primarily at the service center level (as it has been done in the past) or if it will done primarily after interview (e.g. to judge English language ability and other subjective criteria)? And how does this change in COVID-time when many people are reporting approvals without interview?

We assume the determination will be made primarily at the interview stage.

152. Please discuss impact on LPR returning after 180 days.

They are “seeking admission” and are subject to all of the grounds of inadmissibility.

153. How do you actually try to overcome the public charge denial? just by presenting more evidence of financial independence etc?

Yes.

154. Is a stimulus payment from the IRS considered a public benefit for the I-944?
No.

155. For the I-864, is it better to use assets or a joint sponsor if there is insufficient income?

Use assets first before turning to a joint sponsor.

156. What about just not signing the attorney section on the I-864 for the co-sponsor?

If you sign as preparer, you are still admitting to representing the joint sponsor.

157. I have a joint sponsor who agreed to serve but changed their mind after the case was filed. I am not their counsel so have advised them to either withdraw on their own or hire their own attorney to do so. The clients will submit their alternate joint sponsor at the adjustment interview. Good approach?

Sounds good to me.

158. Did you say having a joint sponsor is a negative factor?

No, having a joint sponsor is not a negative factor.

159. US Embassy in Guatemala denied the I-601 and found public charge. I appealed I-601 denial and the appeal came back stating denied because public charge stands, without addressing the merits of the I-601. Is this correct? How would you rebut public charge denial? Would you just send updated taxes for Petitioner/Sponsor with new tax year income?

You can’t file an I-601 to waive the unlawful presence if the applicant is inadmissible on a ground that is not waivable. You need to first overcome the public charge finding.