

Immigrant Eligibility for Public Benefits in New York State



Public Benefit-related Immigration categories		Immigration Status	Supplemental Security Income (SSI) ⁴ *	TANF (Family Assistance) ⁵ *	SNAP (Food Stamps) ^{5, 6}	Public Housing/ Section 8	Federal Medicaid ¶	Safety Net Assistance ^{5, 8} *	New York State Medicaid ⁹	Qualified Health Plans (QHP) and Essential Plans (EP) ^{10, 11}	Children's Health Insurance Program (CHIP) & AIDS Drug Assistance Program (ADAP)	Emergency Medicaid	Is there a public charge test when applying for this status? ²¹	Is there a public charge test when applying for LPR status? ²¹
Lawfully Present ¹	Qualified Aliens ²	Lawful Permanent Resident (LPRs); If LPR is a veteran or active duty service member, or a member of his or her family, see below	Eligible after 5 years in LPR status but only if can be credited with 40 qualifying work quarters in SSA system; Pre-8/22/96 Entrants: Eligible if lawfully residing in US on 8/22/96 and, at time of application, is blind or disabled	Eligible after 5 years in a LPR status; Pre 8/22/96 Entrants: Eligible if entered US before 8/22/96 and continuously resided in US until attaining LPR status, no 5 year bar even if such status was attained after 8/22/96	Eligible after 5 years in LPR status; If in receipt of a disability based benefit (e.g. disability based Medicaid) or if a child under 18 or if LPR credited with 40 qualifying work quarters, no 5-year bar	Yes	Eligible after 5 years in LPR status; No 5 year bar for pregnant women or children <21	Yes	Yes	Yes	Yes	No	Yes, unless applicant is seeking adjustment to LPR status from a status that is not subject to public charge (e.g. refugee, asylee, VAWA self petitioner)	N/A since LPRs are already in permanent resident status; However, if re-entering the US after 180 days or more out of the country, immigration may reassess admissibility on public charge grounds
		Refugees and Asylees	Yes, eligible during the first 7 years after entry as refugee or after grant of asylum; If entered/granted before 8/22/96, no 7-year limit	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
		Withholding of deportation or removal¹²	Yes, eligible during the first 7 years after granted withholding; If granted W/H before 8/22/96, no 7-year limit	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Not eligible for adjustment from this status; Caution: if adjust via family or other non-exempt basis in future, public charge admission rules would apply but benefits used while exempt would be disregarded
		Battered spouses and children of U.S. citizens or LPR who have a prima facie determination or approved I-360 self-petition under VAWA or a pending or approved I-130 ^{13, 14}	Eligible if lawfully present on 8/22/96 and disabled at time of application	Eligible if entered US before 8/22/96 and continuously resided in US until qualifying as battered immigrant, OR, If entered US after 8/22/96, eligible after 5 years in qualified status	Eligible if a child under 18; Battered spouse eligible only after 5 years in qualified status; If receiving disability based benefit, no 5 year bar	Yes ¹⁵	Eligible after 5 years in qualified status; If pregnant or child <21, no 5-year bar	Yes	Yes	Yes	Yes	No	No	No
		Cuban/Haitian Entrant (C/H)¹⁶	Yes, eligible during the first 7 years after entering the US in C/H status; If entered before 8/22/96, no 7-year limit	Yes	Yes	No, unless in parole status	Yes	Yes	Yes	Yes	Yes	No	No	No

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Lawfully Present ¹	Qualified Aliens ²	Paroled for period of one year or more	Eligible if lawfully present on 8/22/96 and currently in parole status and disabled at time of application	Eligible after 5 years in parole status	Eligible if a child under 18; If over 18, eligible after 5 years in parole status; If receiving disability based benefit, no 5 year bar	Yes	Eligible after 5 years in a parole status; If pregnant or child <21, no 5-year bar	Yes	Yes	Yes	Yes	No	No	Not eligible for adjustment from this status unless paroled under specific statute; Caution: if adjust via family or other non-exempt category in future, public charge test will be applied but benefits granted while in parole status would be disregarded
		Lawfully residing armed services connected noncitizens (including veterans) and their dependents	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	N/A	Yes, but benefits received by armed services members or serving in active duty or in the Ready Reserve are be counted in the public charge determination
		Iraq / Afghan Special Immigrant Visa Holder	Yes, eligible during the first 7 years after entering the US with SIV	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
		Canadian born Native Americans	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
		Amerasian Immigrant	Yes, eligible during the first 7 years after entry; If entered before 8/22/1996, no 7-year limit	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
		Victims of trafficking (T visa, granted “continued presence,” or certified by ORR) and their derivatives	Yes, eligible during the first 7 years after being granted continued presence, certification, or the T visa	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
	PRUCOL ³	In a valid nonimmigrant status (except U, T, and S which are set out separately)	No	No	No	No	Only if pregnant or child <21 and resident of New York State	No	Yes, if resident of New York State	Yes	Yes, if resident of New York State	No	Yes	Not eligible for adjustment from this status; Caution: if adjust via family or other non-exempt status in future, benefits use could be considered in public charge determination
		U Visa Grantees	No	No	No	No	Only if pregnant or child <21	Yes	Yes	Yes	Yes	No	No	No

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Lawfully Present ¹	PRUCOL ³	S Visa Grantees	No	No	No	No	Only if pregnant or child <21	Yes	Yes	Yes	Yes	No	Application cannot be made by individual; only government	No
		SIJS (Special Immigrant Juvenile Status) grantees	No	No	No	No	Only if pregnant or child <21	No	Yes	Yes	Yes	No	No	No
		Applicants for adjustment to LPR status with approved visa petition (e.g. relative or employer petition)	No	No	No	No	Only if pregnant or child <21	No	Yes	Yes	Yes	No	N/A	Yes
		Applicants for adjustment under the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Haitian Refugee Immigration Fairness Act (HRIFA), the Cuban Adjustment Act or under INA Registry provisions (noncitizen who has continuously resided in the US since before 1/1/1972)	No	No	No	No	Only if pregnant or child <21	No	Yes	Yes	Yes	No	N/A	No
		Paroled for less than 1 year	No	No	No	Yes	Only if pregnant or child <21	Yes	Yes	Yes	Yes	No	No	Not eligible for adjustment from this status; If adjust via family or other nonexempt basis in future, benefits used while in parole status cannot be counted against applicant in public charge determination
		Temporary Protected Status (TPS)	No	No	No	No	Only if pregnant or child <21	Yes ¹⁷	Yes	Yes	Yes	No	No	Not eligible for adjustment from this status; If adjust via family or other non-exempt basis in future, benefits used while in TPS status cannot be counted against applicant in public charge determination

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Lawfully Present ¹	PRUCOL ³	Deferred Action (but not DACA)	No	No	No	No	Only if pregnant or child <21	Yes	Yes	Yes	Yes	No	No	Not eligible for adjustment from this status; Caution: if adjust via family or other non-exempt basis in future, benefits use could be considered in public charge determination
		Order of Supervision	No	No	No	No	Only with Employment Authorization Document (EAD) and pregnant or child <21	Yes	Yes	Yes, if granted EAD	Yes	No	No	Not eligible for adjustment from this status; Caution: if adjust via family or other non-exempt basis in future, benefits use could be considered in public charge determination
		Deferred Enforced Departure	No	No	No	No	Only if pregnant or child <21	Yes	Yes	Yes	Yes	No	No	Currently only Liberians have DED; Under the recently enacted Liberian Refugee Immigrant Fairness Act, those meeting the statutory requirements may apply for LPR status and public charge will not apply
		Granted stays of deportation or removal	No	No	No	No	Only if pregnant or child <21	Not included in PRUCOL list of Office of Temporary and Disability Assistance (OTDA), but arguably meets PRUCOL definition	Yes	Yes	Yes	No	No	Yes, if after successful motion to reopen, apply for adjustment on basis of family or other non-exempt category
		Noncitizens Lawfully Present in American Samoa Under its Immigration Laws	No	No	No	No	Only if pregnant or child <21	No	Yes	Yes	Yes	No	N/A	Potentially subject to public charge if seek to reenter or applying to adjust under family or other non-exempt basis
		Citizens of Micronesia, Palau and Marshall Islands permitted to reside in the US in non-immigrant status and have unlimited eligibility for work authorization	No	No	No	Yes	Only if pregnant or child <21	No	Yes	Yes	Yes	No	N/A	Potentially subject to public charge if seek to reenter or applying to adjust under family or other non-exempt basis

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Lawfully Present ¹	PRUCOL ³	APPLICANTS for:												
		Special Immigrant Juvenile Status	No	No	No	No	Only if pregnant or child <21	No	Yes	Yes	Yes	No	N/A	If granted, adjustment to LPR is exempt from public charge
		Asylum / Withholding of Removal	No	No	No	No	Only with EAD and pregnant or child <21; if child is under 14, EAD not necessary but application must have been pending for 180 days	Yes, only with EAD ¹⁸	Yes	Yes, if granted EAD or is a child under 14 and application has been pending for 180 days	Yes	No	No	If granted, adjustment to LPR is exempt from public charge
		Cancellation of Removal	No	No	No	No	Only with EAD and pregnant or child <21	No	Yes	Yes, if granted EAD	Yes	No	N/A	If granted, LPR status automatically follows
		Temporary Protected Status (TPS)	No	No	No	No	Only with EAD and pregnant or child <21	No	Yes	Yes, if granted EAD	Yes	No	No	See TPS row above on page 3
		PRUCOL ONLY:												
		Individuals with a pending or approved I-130 family petition	No	No	No	No	No	No	Yes	No	Yes	No	Not an application for status	Benefits used during this period before application for status will count in LPR adjustment
		DACA applicants	No	No	No	No	No	No	Yes	No	Yes	No	No	N/A since applicant is not a status
		DACA recipients	No	No	No	No	No	Yes	Yes, even those whose DACA has expired	No	Yes	No	No	Not eligible for adjustment from this status; Caution: if adjust via family or other non-exempt basis in future, benefits use could be considered in public charge determination

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PRUCOL ³	PRUCOL ONLY:												
	Noncitizens who can show continuous residence since on or before 1/1/1972 but who have not applied for LPR status (registry aliens) ¹⁹	No	No	No	No	No	Yes	Yes	No	Yes	Yes	N/A, not applying for status	N/A, not applying for status
	Request for Deferred Action with Notice of Receipt from USCIS/ICE or, if no response, request has been pending for 6 months or more and has not been denied	No	No	No	No	No	No	Yes	No	Yes	Yes, until and unless becomes eligible for state Medicaid	No	Not eligible for adjustment from this status
	Noncitizens residing in US with knowledge and permission or acquiescence of USCIS/ICE	No	No	No	No	No	No, see footnote ²⁰	Yes	No	Yes	No	N/A	Not eligible for adjustment
No lawful status: not PRUCOL													
	Entry across border without inspection (EWI) and Visa Overstays	No	No	No	No	No	No	No, unless pregnant	No	Yes	Yes	N/A	N/A

GENERAL NOTES:

- *Indicates that the benefit may be considered in a public charge analysis, as outlined in the 1999 field guidance.
- ¶Institutionalization for long-term care funded by Federal Medicaid may be considered in a public charge analysis. Otherwise, receipt of Federal Medicaid may not be considered in a public charge analysis.
- Some people are eligible for multiple types of health insurance coverage based on their immigration status or eligibility category. The specific coverage they have depends on additional factors not accounted for here such as income (for example, the income limit for the Essential Plan is higher than it is for Medicaid). To confirm an individual's specific coverage, it is best to contact the New York State of Health or the individual's local Department of Social Services.
- All references to “adjustment” should be read as changing status from one status or no status to that of a Lawful Permanent Resident, for someone already residing in the United Status.

1 Re:“Lawfully Present” category/column: The Code of Federal Regulations defines the term “lawfully present” at 45 C.F.R. § 152.2. This term is relevant to eligibility for health coverage through the Marketplace and is reflected in the eligibility determinations included in this chart. The full definition of “lawfully present” can be accessed at: <https://www.law.cornell.edu/cfr/text/45/152.2>

2 Re:“Qualified Aliens” category/column: The U.S. Code defines the term “qualified alien” at 8 U.S.C. § 1641. This term is relevant to eligibility for various federal means tested benefits and is reflected in the eligibility determinations included in this chart. The full definition of “qualified alien” can be accessed at: <https://www.law.cornell.edu/uscode/text/8/1641>

3 Re: “PRUCOL” category/column: PRUCOL stands for Persons Residing Under Color of Law. For a person to be residing “under color of law,” the federal government must be aware of the person’s presence in the U.S., and not currently contemplating enforcing their removal. Who qualifies as PRUCOL differs slightly between benefits programs, largely as a result of litigation on behalf of vulnerable populations.

4 For general information on immigrant eligibility for SSI, see SI 00502.100 Basic SSI Alien Eligibility Requirements: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500502100>. For more information on eligibility for SSI for immigrants who were lawfully residing before 8/22/96 and are blind or disabled, see SI 00502.142 Qualified Aliens Who Are Blind Or Disabled And Were Lawfully Residing In The U.S. On 8/22/96: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500502142>

5 For more information on immigrant eligibility for TANF, SNAP, and SNA, see Non-Citizen Eligibility Desk Aid - LDSS-4579 (Rev. 11/19): <http://otda.ny.gov/policy/directives/2019/INF/19-INF-07-Attachment-1.pdf>

6 For more information on immigrant eligibility for SNAP see USDA’s “SNAP Policy on Non-Citizen Eligibility”: <https://www.fns.usda.gov/snap/eligibility/citizen/non-citizen-policy>

7 For information on immigrant eligibility for Federal Medicaid and required documentation, see Revised Desk Guide: “Documentation Guide to Citizenship and Immigrant Eligibility for Health Coverage in New York State” 3/26/08 - 08 MA/009: <http://onlineresources.wnyc.net/pb/docs/08ma009.pdf>

8 General PRUCOL definition from OTDA for Safety Net Assistance - Temporary Assistance Source Book (TASB) pgs 718-719: <https://otda.ny.gov/programs/temporary-assistance/TASB.pdf>

9 Clarification of PRUCOL Status for the Purposes of Medicaid Eligibility - 08 OHIP/INF-4: https://www.health.ny.gov/health_care/medicaid/publications/docs/inf/08inf-4.pdf

10 For more information on what immigration statuses qualify for coverage in the healthcare marketplace, visit: <https://www.healthcare.gov/immigrants/immigration-status>

11 If individual in the Essential Plan is also financially eligible for Medicaid, and the Essential Plan doesn’t cover a particular benefit that would be covered by State Medicaid, insured will receive wraparound benefits funded by State Medicaid.

12 Withholding of removal under the Immigration and Nationality Act (INA) is granted to those whose life or freedom would be threatened in their home country because of their race, religion, national origin, political opinion or membership in a particular social group. Withholding is also granted to those who can prove they would be tortured, without regard as to whether such torture is based on a protected ground, under the International Convention Against Torture (CAT) ratified by the U.S. in 1998 through Public Law No. 105-277, div. G, Title XXII Section 2242. Some CAT beneficiaries, usually because of criminal or security issues, are only granted deferral of removal under CAT.

13 Also included in the broader definition of “VAWA Self-Petitioners” in Section 101(a)(5) of the INA are those with VAWA cancellation, and battered family members protected under NACARA, HRIFA and the Cuban Adjustment Act

14 Battered spouses and children’s eligibility for benefits - 06-INF-14 Revised: http://onlineresources.wnyc.net/pb/docs/06-inf-14_revised.pdf

15 Note that VAWA qualified immigrants are not listed in the federal housing law at 42 U.S.C. § 1436a, but since they are considered “qualified aliens” under PRWORA, HUD has acquiesced to their eligibility for government-subsidized housing.

16 Cuban/Haitian Entrant defined - ACF Fact Sheet: https://www.acf.hhs.gov/sites/default/files/orr/orr_fact_sheet_cuban_haitian_entrant.pdf

17 TPS eligibility for Safety Net Assistance - GIS 16 TA/DC053: <https://otda.ny.gov/policy/gis/2016/16DC053.pdf>

18 Asylum applicant eligibility for Safet Net Assistance - GIS 17 TA/DC047: <https://otda.ny.gov/policy/gis/2017/17DC047.pdf>

19 Note that under the lawfully present category, the individual has to actually file an application for permanent resident status. However, for purposes of PRUCOL eligibility in the state programs, the individual need only provide the documents necessary to prove that he or she entered the US before January 1, 1972 and has lived in the US continuously since that time. This may be important in those cases where an application for permanent resident status might raise some risks.

20 The preceding list of immigration categories is not exhaustive. While these individuals are not on OTDA’s list of eligible immigration categories, advocates should press that they should be included as PRUCOL.

21 Refers to public charge ground of inadmissibility, as outlined in the 1999 field guidance: <https://www.federalregister.gov/documents/1999/05/26/99-13202/field-guidance-on-deportability-and-inadmissibility-on-public-charge-grounds>