

CLE FOR ALJS AND SHOS

Topic: Alien Eligibility Training for Administrative Law Judges

Place: 14 Boerum Place. 16A Waiting Room

Date: May 18, 2007

Time: 10:00am – 12:00 pm (one 10 minute break)

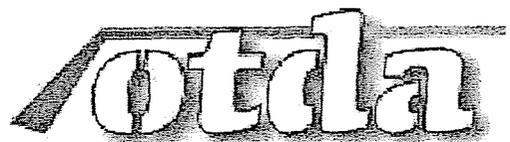
This course will be eligible for 2 hours of non-transitional credits in Areas of Professional Practice

Attendance: All ALJs and SHOs stationed at our Boerum Place office are expected to attend unless excused by their supervisor.

Alien Eligibility Training

For Administrative Law Judges

Continuing Legal Education



**In collaboration with
Office of Temporary and Disability Assistance
Training and Management Analysis**

This document was designed and produced under a contractual agreement
between the:

New York State Office of Temporary and Disability Assistance

Division of Program Support and Quality Improvement

Bureau of Training and Management Analysis

and the

Professional Development Program

Rockefeller College, University at Albany

State University of New York

through the

Research Foundation of the State University of New York

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Appendix

GIS 07 TA/DC001

Permanently Residing Under the Color of Law (PRUCOL)

Temporary Assistance Source Book

Chapter 24: Alien Eligibility

Food Stamp Source Book

Section 5: Initial Eligibility Determination

Citizenship and Alien Status

LDSS-4579 (Rev. 6/06)

Alien Eligibility Desk Aid

About the Training Program

Program Description

Alien Eligibility Training is a two hour training program designed to increase New York City Hearing Officers' knowledge of alien eligibility for federal and state assistance programs.

Purpose

The purpose of this program is to provide an introduction and a basic understanding of alien eligibility. It will introduce the Alien Eligibility Desk Aid, LDSS-4579 (rev. 6/06).

Training Goals

The training goal for the program is to enhance the Hearing Officer's knowledge and skills so that s/he may more effectively determine the appropriateness of the Agency's (HRA) action.

Audience Profile

This training program is designed for New York City Hearing Officers.

Course Objectives

By the end of this training program, participants will be able to:

- Use the Alien Eligibility Desk Aid
 - Describe the differences in eligibility for aliens between federal and state programs.
-

About the Training and Development Staff

Professional Development Program, Rockefeller College University at Albany, Harlem Training Center

Sheila Ryan has a Master of Public Administration degree from New York University's Wagner School of Public Service. She joined the Professional Development Program (PDP) in 2005 as a Senior Education Specialist and has been involved in developing and delivering training for Temporary Assistance, Food Stamps and Fair Hearing. Before joining PDP, Sheila worked in a variety of non-profit organizations as a curriculum developer and trainer.

Donald Shortslef holds a Bachelor of Science degree in Elementary Education from Atlantic Union College in South Lancaster, Massachusetts. He joined PDP in 2005 as a Senior Education Specialist and has been involved in the development and delivery of training programs in the areas of Temporary Assistance, Food Stamps and Fair Hearings. Prior to coming to PDP, Donald served as a trainer for the Center for Development of Human Services for 15 years conducting audits and trainings in the New York City metro area.

Peter Wilson earned a Master of Arts degree in Public Administration from Queens College and a Bachelor of Science degree from York College. He joined PDP in 2005 as a Senior Education Specialist. He has experience in curriculum development and Temporary Assistance/Food Stamp policy training. He worked for the Office of Training Operations (OTO) in the Human Resources Administration (HRA) for seven years training Welfare Management System (WMS) Inquiry, Automated Child Care Information System (ACCIS) and the Paperless Office System (POS).

Kristin McElroy received her Bachelor of Arts degree in Political Science from SUNY Albany's Rockefeller College in 2005. She joined PDP in July 2005 as an Education Specialist, working to research and to develop new training in Albany. Kristin was a trainer for the Mental Health Awareness project, the Welfare Fraud Investigator Training, the Food Stamp Worker Training Institute, and Domestic Violence iLinc. Kristin became a member of the Harlem team in early 2007.

NYS Office of Temporary and Disability Assistance – Legal Resource

Malinka Gutierrez received a B.A. in political science from Boston College in 1991 and a J.D. from Vermont Law School in 1994. She was admitted to the NY Bar in 1995. Malinka worked at the Columbia County DA's office from 1994-1996 where she was responsible for all criminal matters in Hudson City court. From 1996-2000 she worked as Counsel to the Judiciary Committee for the NY State Assembly drafting and negotiating legislation relating to the domestic relations law, family court act, social services law, the civil procedure law, trusts and estates, the penal law, and on immigration and alien issues. She began working in OTDA Counsel's Office in 2000. As a Senior Attorney Malinka works in the DETS bureau doing litigation, regulations, legislation and assisting program on issues relating to Temporary Assistance, Food Stamps, immigration and aliens, and fiscal claiming. Additionally, she has practiced immigration law since 1994 in private practice during my time at the DA's office and at the Assembly.

Program Agenda

- 10:00 – 10:10 am Overview of Alien Eligibility
- 10:10 – 10:30 am Alien Approval Process
- 10:30 – 11:00 am Reviewing the Alien Desk Guide
- 11:00 – 11:10 am Break
- 11:10 – 11:30 am Reviewing the Alien Desk Guide, continued
Case Scenario – Tanaka Family
- 11:30 – 11:55 PRUCOL
Case Scenarios
- 11:55 – 12:00 pm Recap and Questions

Overview of Alien Approval Process

Introduction In order to be eligible to participate in various assistance programs, an individual must either be a United States citizen or meet the requirements for non-citizens.

The Bureau of United States Citizenship and Immigration Services (USCIS) grants specific alien status to an individual based on his/her situation and in accordance with federal immigration law and regulations.

It is important to note that not all legal aliens are eligible for assistance. Being lawfully present in the U.S. does not in and of itself constitute eligibility for assistance.

Federal Programs Eligibility for federal programs such as Family Assistance (FA) or Food Stamps (FS) depends on an individual's status. He/she must:

- Be a citizen of the U.S.

or

- Meet the requirements for qualified aliens (See the *Alien Eligibility Desk Aid*, LDSS-4579 rev. 6/06)

Note: Individuals must meet all other eligibility requirements to receive benefits.

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Overview of Alien Approval Process, Continued

**State
Programs**

Those not eligible for federal programs may qualify for certain NYS programs:

- Regardless of date of entry, an alien who is a Lawful Permanent Resident (LPR) can qualify for Safety Net Assistance (SNA)
 - Children under 19 may be provided with medical assistance without regard to immigration status
 - Undocumented aliens may receive Medicaid for care and services necessary for treatment of emergency medical conditions
 - Pregnant women may be provided Medicaid at any time without regard to alien status
-

Aliens Eligible for Family Assistance

Introduction An alien can qualify for Family Assistance (FA) benefits if he/she:

- Is an LPR who entered the country *prior to 8/22/96*, or
- Is an LPR who entered the country *on or after 8/22/96* and meets at least one other qualifying criteria, or
- Has a special qualifying immigration status, e.g. refugee, asylee as determined by USCIS

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Aliens Eligible for Family Assistance, Continued

Specially Qualified Statuses

Only qualified aliens are eligible for federally funded benefits. Certain qualified aliens are considered 'specially qualified.'

Specially qualified aliens receive assistance immediately if otherwise found eligible.

Status	Eligible from Date of Entry	Eligible from Date Status is Granted
Refugee	X	
Cuban/Haitian entrant		X
Asylee		X
Amerasian immigrant	X	
Deportation or removal withheld		X
Certain Hmong or Highland Laotians		X
Victim of Human Trafficking*		X
Conditional Entrant Refugee (status granted prior to 1980)	X	

Note: See the *Alien Eligibility Desk Aid* for a complete list.

*Entry means the Date of Certification or Letter of Eligibility from the Office of Refugee Resettlement (ORR).

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Aliens Eligible for Family Assistance, Continued

Veterans

An alien may be eligible for FA if:

- Currently on active duty or
- A veteran who has served a minimum of two years on active duty and is honorably discharged from the U.S. military

The following people may also be eligible for FA:

- Spouse of veteran or active duty personnel
- Unmarried dependent children
- Surviving unmarried spouse

These aliens are eligible from the date status is granted.

Other Qualified Statuses

The following people may be eligible for FA:

- An LPR who entered the U.S. on or after August 22, 1996
- A person paroled for at least one year into the U.S. under Section 212 (d)(5) of the INA (for humanitarian or public interest reasons)
- Under certain circumstances, a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent

An alien in any of these three statuses must meet an additional criterion to be eligible for FA.

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Aliens Eligible for Family Assistance, Continued

**Additional
Criteria**

A non-citizen who has the qualified status of parolee for at least one year, or an LPR, or a battered alien spouse or child must also meet the following condition to be eligible for FA:

- Reside in the U.S. in a qualified status for five years.
-

**5 Years in a
Qualified
Status**

A non-citizen with five years in a qualified status may be eligible for FA. The alien does **not** have to be in the same qualified status for that period.

Example: Mario Noto, an immigrant from Italy, was granted parolee status in 2002. In 2003, Mr. Noto became an LPR. He applies for FA in 2007 and is determined eligible because he has been in a qualified status for five years – one as a parolee, four as an LPR.

Continued on next page

Aliens Eligible for Family Assistance, Continued

Battered Spouse and/or Dependent Child of a U.S. Citizen or LPR

An alien spouse who immigrates to the U.S. based on marriage to a U.S. citizen or LPR has no immigration status on his or her own. The U.S. citizen or LPR spouse must file an I-130 (Petition for Alien Relative) on behalf of their alien spouse to establish family relationship. After USCIS approval of the I-130 petition and the immediate availability of an immigrant visa an I-485 (Application to Register Permanent Residence or Adjust Status) can be filed for the alien spouse.

If the marriage is less than two-years old the alien spouse will be granted conditional permanent residency. Conditional permanent residency expires in two years unless the conditional resident and spouse successfully apply to have the condition removed by filing an I-751 (Petition to Remove Conditions on Residence) jointly with their spouse.

An alien spouse whose conditional permanent residency has not expired is eligible for public benefit as any LPR.

Under the Violence Against Women Act (VAWA), spouses and children of U.S. citizens or LPRs may self-petition to obtain LPR status, if domestic violence would preclude the completion of the I-130 and I-485 petition process. The immigration provisions of the VAWA allow certain battered immigrants to file for immigration relief without the abuser's assistance or knowledge in order to seek safety and independence from the abuser.

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Aliens Eligible for Family Assistance, Continued

**Qualifying
Criteria for a
Battered
Spouse,
Dependent
Child, or
Parent**

An alien may be granted qualified status as a battered alien if he or she meets all four of the following criteria:

- Be a credible victim of battery or extreme cruelty – as the abused spouse, the abused child, the child of an abused spouse or the parent of an abused child or the abused parent; **and**
- Have appropriate immigration documentation, **and**
- Be able to show a substantial connection between the need for benefits sought and the battery or extreme cruelty; **and**
- No longer reside in the same household as the abuser

See 06-INF-14, *Battered Aliens Eligibility for Benefits* for additional details regarding these requirements.

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Aliens Eligible for Family Assistance, Continued

Determin- ation of Credibility

Non-citizens who apply for benefits may or may not require a referral to a Domestic Violence Liaison (DVL) for a determination of credibility.

- Referral to a DVL is not required when the non-citizen:
 - Has an I-797 (Notice of Action) indicating prima facie eligibility of an I-360 self-petition; or
 - Has an I-797 indicating approval of an I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv) or Section 204(a)(1)(B)(i) or (iii) of the Immigration and Nationality Act (INA)
 - Has documentation from the Immigration Court (Executive Office for Immigration Review) finding a prima facie case of abuse
 - Referral to a DVL is required when the non-citizen presents:
 - An I-797 indicating pending I-360 self-petition without a prima facie determination
 - An I-797 indicating pending or approved I-130 petition under section 201(b) of the INA or section 203(a)(2)(A) of the INA; or
 - An I-688B or I-766 (Employment Authorization) annotated (a)(9) or (a)(15); or
 - An I-94 coded K3, K4, V1, V2 or CR 1-7 and a pending or approved I-130 or
 - Any other USCIS document indicating the alien has a K or V visa or an approved I-130
-

Aliens Eligible for Safety Net Assistance

Introduction Alien applicants who do not meet FA qualifications may still be eligible for public assistance under Safety Net Assistance (SNA) rules.

These aliens include:

- LPRs entering on or after 8/22/96
 - Battered spouse and/or dependent child who meet criteria for a battered qualified alien but who do not have five years in the U.S. in a qualified status
 - Parolee less than one year
 - Aliens considered as Permanently Residing in the U.S. Under Color of Law (PRUCOL)
-

**Lawful
Permanent
Residents
with No
Other
Qualifying
Criteria**

LPRs who entered the U.S. on or after 8/22/96 and do not meet one of the other qualifying criteria for FA may qualify for SNA if they meet all other eligibility criteria.

Example: A family arrives in the U.S. on 12/03 and each member has LPR status. The family applies for PA. When all other qualifying criteria are met, the family will be eligible for Safety Net Assistance. No one in the family can receive FA because the five-year criterion has not yet been met.

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Aliens Eligible for Safety Net Assistance, Continued

**Battered
Spouse
and/or
Dependent**

A battered spouse or dependent child who has resided in the U.S. for less than five years does not qualify for FA but may qualify for SNA.

Example: Ms. Diaz arrived in the U.S. two years ago and applied for Public Assistance for herself and her child as a battered spouse and the child of an abused spouse. Ms. Diaz and her child met the criteria of a battered spouse and child, but were not eligible for FA because they had not resided in the U.S. for five years in a qualified status. Ms. Diaz and her child are eligible for SNA if they meet all other eligibility criteria. In five years from their date of application Ms. Diaz and her child may be eligible for FA.

PRUCOL and Program Eligibility

PRUCOL

Individuals considered as Permanently Residing in the U.S. Under Color of Law (PRUCOL) are eligible for SNA if all other eligibility criteria are met. Those non-citizens considered PRUCOL are not eligible for federal benefits including FA and Food Stamps.

PRUCOL is a public benefit eligibility category and not an immigration status or an immigration law term. Individuals are considered PRUCOL if their presence in the U.S. is known to the USCIS and the agency does not intend to deport them.

PRUCOL Criteria

Aliens who meet the PRUCOL criteria include those:

- Paroled for less than a year
 - Residing in the U.S. pursuant to an Order of Supervision under Section 241 (a)(3) of the Immigration Nationality Act (INA)
 - Granted cancellation of removal pursuant to Section 240A of INA
 - Granted deferred action status
 - Granted K3 or K4 visa status
 - Granted V visa status under the Legal Immigration Family Equity Act
 - Granted S visa status
 - Granted deferred action as interim relief for a U visa
 - Who demonstrate that they entered the U.S. and have continuously resided in the U.S. since January 1, 1972 pursuant to Section 249 or the INA
-

Aliens Eligible for the Food Stamp Program

Introduction To be eligible for benefits under the federal Food Stamp (FS) program, an alien must be in a qualified alien status. Certain qualified aliens must also meet one additional criterion to receive FS benefits.

Qualified Aliens An alien can qualify for FS benefits if he/she:

- Is a Lawful Permanent Resident (LPR) who entered the country *prior to 8/22/96*, or
- An LPR who entered the country *on or after 8/22/96* and meets at least one other qualifying criteria, or
- Has a *special* qualifying immigration status, e.g. refugee, asylee as determined by USCIS

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Aliens Eligible for the Food Stamp Program, Continued

**Additional
Criteria**

Qualified aliens who are parolees more than one year, LPRs or battered aliens, must also meet one of the following criteria to be eligible for food stamp benefits:

- Have lived in the U.S. in a qualified status for 5 years, or
- Have 40 qualifying quarters of work, either earned or can be deemed, or
- Be in receipt of disability benefits (see page 24 of the Food Stamp Source Book) as provided in the Food Stamp Act, or
- Be a child under 18 years of age, or
- Be on active duty in the U.S. military or be a veteran who has served a minimum of two years in active duty and is honorably discharged from the U.S. military

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Aliens Eligible for the Food Stamp Program, Continued

**Applying the
Battered
Alien Criteria**

Ms. Delina Lamoureux came into the Job Center on 3/22/06. Her husband is a Lawful Permanent Resident (LPR). Ms. Lamoureux came to the U.S. on 8/10/05 on a V visa. Her husband previously filed an I-130 petition (*Petition for Alien Relative*) for her in August, 2000 which is currently pending. She was recently admitted to the hospital due to physical abuse by her husband. She has been forced to leave their joint residence and has found an apartment for herself and her infant child who is a U.S. citizen.

The rent is \$400 per month with heat included. She has used all of her resources to secure the apartment. As she is no longer receiving any support from her husband, she is now applying for Temporary Assistance and Food Stamps for herself and her minor child. Ms. Lamoureux is screened on 3/22/06 and determined ineligible for expedited processing of her Food Stamp application. However her minor child is **eligible** as a U.S. citizen.

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Aliens Eligible for the Food Stamp Program, Continued

**Case
Determina-
tion**

Ms. Lamoureux informed the designated agency staff that she has filed an I-360 self-petition and provides an I-797 (acknowledging receipt) as proof. The designated agency worker then determined that Ms. Lamoureux does not have qualified status without a determination of battery.

As Ms. Lamoureux has not yet received a prima facie letter from USCIS indicating a prima facie determination of battery, it is necessary for the Domestic Violence Liaison (DVL) to assess her credibility and determine battery. The DVL determines that she is a credible victim of battery. In addition to being battered, an alien must meet two other requirements to obtain qualified status:

- The designated agency worker must determine that Ms. Lamoureux no longer resides in the same household as the abuser, and
- There is a substantial connection between the need for benefits and the battery

The designated agency worker determines that Ms. Lamoureux meets these requirements and is a qualified alien. The date she obtained qualified status is considered the date of her FS application (3/22/06).

**Case
Conclusion**

To be eligible for FS benefits, a qualified alien must be in a qualified status for five years or be in receipt of disability benefits as provided in the Food Stamp Act or be a child under 18 years of age or be credited with 40 qualifying quarters of work. Ms. Lamoureux is not in receipt of disability benefits, is not a child and does not have 40 qualifying quarters of work, so she must be in qualified status for five years before she can be eligible for FS benefits. If she remains in qualified status she may be eligible for FS as of 3/22/2011.

However, as a citizen, her infant child may currently be eligible for FS benefits. If the child had not been a citizen, the child would have qualified alien status as a child of a battered parent and may have been eligible for FS benefits as a child under 18 years of age.

Note: Qualified aliens under 18 years of age are not subject to the five year rule and may be currently eligible for FS benefits.

Documentation

Introduction The United States Citizenship and Immigration Services (USCIS) grants specific alien status to an individual based on their situation. It is necessary to review that status using the available documents. It is important to note that not all legal aliens are eligible for assistance. Being a legal immigrant does not in and of itself constitute eligibility for assistance.

Lawful Permanent Resident Status A Lawful Permanent Resident (LPR) is an alien who is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act.

The following documents indicate LPR status:

- Form I-551, *Resident Alien Card* (January 1977, August 1989, January 1992; *Permanent Resident Card*, December 1997)
- Form I-327, Re-entry permit
- Form I-181, Memorandum of Creation of Lawful Permanent Residence with approval stamp
- Foreign passport stamped to show temporary evidence of LPR status or I-551 status or I-94

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Documentation, Continued

40 Qualifying Quarters Credit

The Social Security Administration (SSA) keeps track of qualifying work quarters, which are based on the amount of income earned.

Eligibility based on 40 qualifying quarters can be determined by using Selection 14, *SSA 40 Quarter Matching*, from the WMS Main Menu.

An LPR may be credited by SSA with a qualifying quarter as follows:

- Quarters earned by a parent/parents while the LPR is less than 18 years of age, including quarters earned prior to his or her birth
Note: Does not include stepparents.
- Quarters earned by a spouse or common-law partner during their marriage
- Widows or widowers retain credit for all qualifying quarters earned during the marriage by a deceased spouse
- Divorced spouses lose any quarters earned by one spouse not credited to the other spouse, unless the divorced spouse has already been determined eligible for public benefits

Note: An LPR can not be credited for a quarter after December 31, 1996 if the worker whose earnings are being claimed received Medicaid, SSI, FS, TANF or State Children's Health Insurance Program (SCHIP) during that quarter.

Continued on next page

Documentation, Continued

Receiving Disability or Blindness Benefits

Proof of receipt of any one of the following benefits is acceptable verification of disability or blindness for food stamp purposes:

- Supplemental Security Income (SSI)
 - State SSI Supplemental Assistance
 - Social Security Disability (SSD)
 - Federal or state disability retirement benefits
 - Railroad Retirement Disability
 - Disability related federal or state Medicaid
 - Veteran's disability benefits for a total disability
-

Veterans and Military Service

Proof of military service includes:

- Military Identification Card (DD Form 2)
- Current military orders

Proof of veteran's status includes:

- A Discharge Certificate (Form DD-214)
 - Must read "honorably discharged"; "discharged under honorable conditions" does not meet the requirement.
 - Receipt of Veteran's Benefits
-

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Documentation, Continued

Documentation of SAVE Procedure

The federal Systematic Alien Verification for Entitlements Program (SAVE) verifies alien documentation showing status.

A SAVE verification is required for all of the following circumstances:

- All aliens who are applying for TA
 - When an alien is being added to the assistance unit, and
 - Any time there is a change in alien status in a temporary assistance case
-

Undocumented Aliens

If an alien does not have valid and unexpired documentation of alien status or his/her documentation is not available, the individual is not eligible for cash assistance until valid and unexpired documentation of eligible alien status can be provided. If the alien does not have immigration documentation, but claims to have a satisfactory immigration status for expedited food stamp eligibility the food stamp case can be certified for two months pending the valid documentation of qualified alien status.



Matching Alien Status to Program

Directions

Read the following case examples and answer the questions related to eligibility based on alien status.

For the purpose of this activity, assume that the individuals in these cases are otherwise eligible for benefits.

Continued on next page

Matching Alien Status to Program, Continued

Case 1

Yoshi Tanaka is an immigrant from Japan and has been residing in the United States for 7 years. His girlfriend Yoshida and their child Sherri, age 8, emigrated from Japan 3 years ago. They married soon after her arrival and had a second daughter, Sumi, within the year. At the time of their marriage Yoshi had 18 qualifying quarters of work. He now has a part-time job at Duane Reade. His wife works 15 hours a week at the corner deli as a clerk.

They are unable to make do on their part time minimum wage jobs and apply for TA and FS on December 1, 2004. He provides I-551 cards for himself, Yoshida and Sherri. Yoshi now has 30 qualifying quarters of work and his wife has 12.

What is the alien status of each household member?

What is their eligibility for TA and FS?

TA:

FS:

Answer located:

Continued on next page

Matching Alien Status to Program, Continued

Case 2

Mercedes Ramos and her two daughters are from Cuba. They entered the United States on January 26, 2003. Ms. Ramos provides a passport with form I-94 attached and stamped "CU6" for each household member. One June 1, 2004 she submits an application for TA and FS.

What is the alien status of each household member?

What is their eligibility for TA and FS?

TA:

FS:

Answer located:

Continued on next page

Matching Alien Status to Program, Continued

Case 3

In the fall of 2003, Beyonce St. Jean and her infant set out for the United States from Port-au-Prince, Haiti, hiding in the hold of a cargo ship bound for Ft. Lauderdale, Florida. Once in the U.S., Ms. St. Jean makes her way to New York City where she plans to stay with her second cousin and seek work as a nanny. Shortly thereafter, Ms. St. Jean petitions USCIS for asylum because she comes from the politically unstable Haiti.

Six months later, she has no job and her cousin is pressing her to leave. She believes she will never get a job until she can resolve her immigrant status and improve her English skills. Facing eviction, she applies for assistance.

What is Ms. St. Jean's and her infant's eligibility for TA and FS?

What documentation from USCIS would change her status? Consider only those documents that support approval of her petition as described in the scenario.

Answer located:

Continued on next page

Matching Alien Status to Program, Continued, Continued

Case 4

Kadife and Oban Pamuk married in Turkey where Oban was working. Kadife was born in Turkey and Oban is a U.S. citizen. Oban's company moved the family to the U.S., where they have resided for the past 18 months.

Seven months after arriving in the U.S. a child was born. Shortly thereafter, Oban lost his job and was unable to find work. Seriously depressed, he abused his wife verbally, refused to give her pocket money, and prevented her from talking to friends. Oban developed a heroin addiction that ate away at the family's dwindling resources and led to angry erratic outbursts against Kadife. To safeguard their well-being, Kadife and her child left their home to live with a friend.

Kadife filed an I-360 self-petition, and due to the loss of Oban's financial assistance, she comes to a Job Center to apply for assistance for herself and her child. At the Job Center, Kadife presents an I-797 indicating prima facie eligibility of her I-360 self-petition.

What is Kadife's and her child's eligibility for TA and FS?

TA:

FS:

Answer located:

Appendix: Answer Keys

Matching Alien Status to Program

Case 1

Yoshi Tanaka is an immigrant from Japan and has been residing in the United States for 7 years. His girlfriend Yoshida and their child Sherri, age 8, emigrated from Japan 3 years ago, and they married soon after her arrival and had a second daughter Sumi within the year. At the time of their marriage Yoshi had 18 qualifying quarters of work. He now has a part-time job at Duane Reade. His wife works 15 hours a week at the corner deli as a clerk.

They are unable to make do on their part time minimum wage jobs and applied for TA and FS on December 1, 2004. Yoshi provided an I-551 Card for himself, Yoshida and Sherri. Yoshi now has 30 qualifying quarters of work and his wife 12.

What is the alien status of each household member?

Yoshi, his wife Yoshida and his daughter Sherri are LPRs as indicated by their I-551 cards. Sumi is a citizen because she was born in the U.S.

What is their eligibility for TA and FS?

TA: Yoshi and his daughter Sumi are eligible for FA. Yoshi has resided in the U.S. for over 5 years in a qualified status (LPR), and Sumi was born in the U.S.

As LPRs, Yoshida and Sherri are eligible for Safety Net Cash Assistance under a separate suffix. Yoshida and Sherri are not eligible for FA because they have not resided in the U.S. for 5 years in a qualified status

FS: Yoshi and his daughters Sherri and Sumi are eligible for FS. Yoshi has resided in the U.S. for over five years as an LPR. Sherri qualifies for FS as an LPR under 18 years old. Please note that Sherri receives credit for the combination of her parents' work quarters (42), which is not affected by when her parents married. Sumi qualifies for FS as a U.S. citizen. Yoshida is ineligible for FS. Although she is an LPR, Yoshida does not meet any of the FS additional qualifying criteria.

Answer located: See information on LPR status on page 3 of the Alien Eligibility Desk Aid.

Continued on next page

Matching Alien Status to Program, Continued

Case 2

Mercedes Ramos and her two daughters are immigrants from Cuba. They entered the United States on January 26, 2003. Ms. Ramos provides a passport with form I-94 attached and stamped "CU6" for each household member. On June 1, 2004, Ms. Ramos submits an application for TA and FS.

What is the alien status of household members?

All are categorized as Cuban entrants.

What is the eligibility for TA and FS?

TA: All are eligible for FA since Cuban entrants meet special qualifying criteria and do not need to reside in the U.S. for five years in a qualified status to be eligible for FA.

FS: All are eligible for FS, since Cuban entrants do not need to meet FS additional qualifying criteria.

Answer located: See page 1 of the Alien Eligibility Desk Aid.

Continued on next page

Matching Alien Status to Program, Continued

Case 3

In the fall of 2003, Beyonce St. Jean and her infant set out for the United States from Port au Prince, Haiti, hiding themselves in the hold of cargo ship bound for Ft. Lauderdale, Florida. Once in the United States, Beyonce made her way to NYC where she planned to stay with her second cousin and seek work as a nanny. Shortly thereafter, she petitioned USCIS for asylum because she came from the politically unstable Haiti.

Six months later Beyonce has no job, and her cousin is pressing her to leave. Beyonce believes she will never get a job until she can resolve her immigrant status and improve her English skills. Facing eviction, she applies for assistance.

What is Ms. St. Jean's and her infant's eligibility for TA, and FS?

They would not be eligible for TA or FS because they are currently undocumented aliens. They would become eligible if granted special status as Haitian entrants by the USCIS. This status would need to be documented.

What documentation from USCIS would change their status? Consider only those documents that support approval of her petition as described in the scenario.

The following documents would be acceptable for her petition as described in this scenario.

- *Form I-94 stamped "Cuban/Haitian Entrant (Status Pending)" or "Section 212 (d) (5) of the INA" or "Form I-589 filed" or "CU6" or "CU 7."*
- *Form I-551 Resident Alien Card stamped "CU6," "CU7," or "CH6"*
- *Temporary Form I-551 stamped in her Haitian passport*

Answer located: See page 1 and 6 of the Alien Eligibility Desk Aid.

Note: Only those forms that apply to her situation as described above are listed in the answer.

Continued on next page

Matching Alien Status to Program, Continued

Case 4

Kadife and Oban Pamuk married in Turkey where Oban worked. Kadife was born in Turkey. Oban is a U.S. citizen. Oban's company moved the family to the U.S. 18 months ago.

Seven months after arriving in the U.S., a child was born. Shortly thereafter, Oban lost his job and was unable to find work. Seriously depressed, he abused his wife verbally, refused to give her pocket money, and prevented her from talking to friends. Oban developed a heroin addiction that ate away at the family's dwindling resources and led to angry erratic outbursts against Kadife. To safeguard their well-being, Kadife and her child left their home to live with a friend.

Kadife filed an I-360 self-petition, and, due to the loss of Oban's financial assistance, she comes to a Job Center to apply for assistance for herself and her child. At the Job Center, Kadife presents an I-797 indicating prima facie eligibility of her I-360 self-petition.

What is Kadife's and her child's eligibility for TA and FS?

TA: Kadife would be eligible for SNA as a qualified battered alien. Due to the I-797 indicating prima facie eligibility of her I-360 self-petition, Kadife is a credible victim of battery or extreme abuse, and she has documented that she has an appropriate status (immigration-related). There is a substantial connection between the need for the benefits sought and the battery or extreme cruelty. The abuse caused Kadife to leave Oban, and as a result, Kadife has experienced a financial loss and an increase in living expenses. Lastly, Kadife is no longer residing in the same household as Oban. It is noted that Kadife is not eligible for Family Assistance because she has not resided in the U.S. for 5 years in a qualified status.

Kadife's child would be eligible for FA as a U.S. citizen.

FS: Kadife is not eligible for FS because she does not meet any of the additional FS qualifying criteria (in receipt of certain disability benefits, or 40 qualifying quarters, or under 18 years of age, or 5 years in the U.S. in a qualified status).

Kadife's child would be eligible for FS as a U.S. citizen.

Answer located: See page 4 of the Alien Eligibility Desk Aid.

GENERAL INFORMATION SYSTEM
DIVISION: Employment & Transitional Supports

February 20, 2007

Page: 1

TO: Commissioners, TA Directors; Staff Development Coordinators

FROM: Russell Sykes, Deputy Commissioner, Division of Employment and Transitional Supports

SUBJECT: Permanently Residing Under the Color of Law (PRUCOL)

EFFECTIVE DATE: Immediately

CONTACT PERSON: Paul Dichian 1-800-343-8859, extension 4-0886

An alien is considered by the Office of Temporary and Disability Assistance (OTDA) to be “permanently residing under the color of law” (PRUCOL) if it has been officially determined by the United States Citizenship and Immigration Service (USCIS) that the alien is legitimately present in the United States (U.S.) and the USCIS is allowing the alien to reside in the country for an indefinite period of time. PRUCOL is not an immigration status, but a public benefit category used by OTDA for the purposes of Safety Net Assistance (SNA) eligibility.

The 1996 Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) created new eligibility criteria for aliens to receive federal benefits. As a result, certain aliens who were previously eligible for federal benefits are no longer eligible for federal benefits. PRWORA provided states with the authority to grant state and/or local benefits to those aliens made ineligible for federal benefits. The PRUCOL category is used by OTDA to determine certain aliens’ eligibility for SNA, including some of the aliens made ineligible by PRWORA.

Subsequent changes in federal immigration law repealed and changed certain immigration categories listed in the Temporary Assistance Source Book (TASB) (Chapter 24 pages 440-442) under the PRUCOL section. The TASB is in the process of being updated to accurately reflect changes in federal immigration law and OTDA’s PRUCOL policy.

Aliens who meet the OTDA PRUCOL criteria and who may be eligible for SNA benefits include:

- Aliens paroled for less than a year
- Aliens residing in the United States pursuant to an Order of Supervision under Section 241(a)(3) of the Immigration Nationality Act (INA)
- Aliens granted cancellation of removal pursuant to Section 240A of the INA
- Aliens granted deferred action status, which defers their departure
- Aliens granted “K3” or “K4” visa status established under the Legal Immigration Family Equity Act (Life Act)
- Aliens granted “V” visa status under the Legal Immigration Family Equity Act (Life Act)
- Aliens granted “S” visa status
- Aliens granted deferred action as interim relief for a “U” visa
- Aliens who demonstrate that they entered the U.S. and have continuously resided in the U.S. since January 1, 1972 pursuant to Section 249 of the INA

The TASB is currently being updated to reflect the revised PRUCOL criteria set forth in this GIS.

CHAPTER 24: ALIEN ELIGIBILITY**A: BACKGROUND**

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA 8 U.S.C. 1612((a)(2)) established new alien eligibility criteria for the receipt of TA benefits. It introduced the concept of qualified and non-qualified aliens. Only qualified aliens are eligible for federally funded benefits. Because of their immigration status, the federal government grants certain qualified aliens special access to all federal benefit programs. OTDA identifies these aliens as specially qualified.

The State Welfare Reform Act of 1997 incorporated the PRWORA alien changes in State Social Services Law by adding a new Section 122 for aliens.

Local districts were notified of these new criteria in directive 97 ADM-8. Since the publication of that ADM, federal laws were passed that modify the alien eligibility criteria by adding Cuban and Haitian entrants and Amerasian immigrants to the specially qualified alien designation.

B: Qualified Aliens

The list below sets forth all qualified aliens. A subset of this group is the “specially qualified aliens” who are not subject to the 5-year bar on federal benefits and who are not subject to the federal sponsorship deeming requirements.

I. The "specially qualified aliens" are as follows:

- a. A refugee admitted under Section 207 of the Immigration and Nationality Act (INA);
- b. A Cuban Haitian entrant (as defined in Section 501(e) of the Refugee Education Assistance Act of 1980) paroled into the United States;
- c. An asylee granted asylum status under Section 208 of the INA;
- d. An alien admitted into the United States as an Amerasian immigrant as described in Section 402(a)(2)(A)(i)(V) of PRWORA;
- e. An alien whose deportation was withheld under section 243(h) of the INA as in effect prior to April, 1997 or whose removal was withheld under section 241(b)(3) of the INA;
- f. Hmong or Highland Laotian tribe members who are members of a tribe who rendered assistance to the U.S. personal by taking part in a military or rescue operation during the Vietnam era between August 5, 1964 and May 7, 1975 and who are legally residing in the U.S. The individual must be born prior to 05/08/75 and state he/ she is a member of a Hmong or Highland Laotian tribe who rendered assistance to the U.S during the Vietnam era. Such tribe members, their spouses, their unremarried surviving spouses, and/or their unmarried children are eligible for the date qualified status was granted;
- g. A person granted conditional entry into the U.S. under Section 203(a)(7) of the INA;
- h. Military personal who are legal permanent residents (also spouses and unmarried dependent children) who are on active full-time duty in a branch of the U.S armed forces or Coast Guard are eligible from the date qualified status was granted;
- i. A victim of serve from of trafficking in persons with a certification letter (for adults) or an eligibility letter (for children) from the Office of Refugee Resettlement (ORR);
- j. U.S. veterans who are legal permanent residents (also spouses and unmarried dependent children) who fulfilled the 2-year minimum active duty requirement and received an “Honorable” discharge are eligible from the date qualified status was granted;
- k. Native Americans are eligible indefinitely if they meet one of the following criteria:
Born in Canada and possess at least 50% American Indian blood; or
Born outside of the U.S. and a member of a federally recognized tribe.

II. Other "qualified aliens" are as follows:

- a. A person lawfully admitted for permanent residence in the United States (LPR);
- b. A person paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year.
- c. Battered aliens who are married to a United States Citizen or an LPR if they meet all four of the following eligibility requirements:

1. Be a credible victim of battery or extreme cruelty; and
2. Have appropriate immigration documentation; and
3. Be able to show a substantial connection between the need for benefits and the battery or extreme cruelty; and
4. No longer reside in the same household as the abuser.

QUALIFIED BATTERED ALIENS

The following non-citizens potentially could be considered to be “qualified battered aliens”:

1. AN ALIEN who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty;
2. AN ALIEN WHOSE CHILD has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty;
3. AN ALIEN CHILD who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent’s spouse or by a member of the spouse’s family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty.

The abuser spouse or the abuser parent, referenced above, must be a United States Citizen or an LPR.

If the abuser was an employee of the United States government or a member of the uniformed services of the United States, the abuse would then not necessarily have to have occurred in the United States for purposes of “qualified battered alien” status.

Credible victims of battery or extreme cruelty

Referral to a domestic violence liaison (DVL) is not required.

Some non-citizens who apply for public benefits and assert that they were battered may have already been determined to be credible victims of domestic violence via the finding of prima facie eligibility of an I-360 self-petition by the USCIS or via the approval of an I-360 self-petition by the USCIS or via the finding of a prima facie case of abuse by the Executive Office for Immigration Review (EOIR).

Non-citizens who have been determined to be credible victims of domestic violence as set forth above should present the following documentation:

- I-797 (Notice of Action) indicating PRIMA FACIE ELIGIBILITY of an I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv) or Section 204(a)(1)(iii)(B)(i) or (iii) of the Immigration and Nationality Act (INA); or
- I-797 (Notice of Action) indicating APPROVAL of an I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv) or Section 204(a)(1)(iii)(B)(i) or (iii) of the INA; or

Order from the EOIR granting suspension of deportation under section 240A(b)4 of the INA; or

- Order from the EOIR granting cancellation of removal under section 240A(b)(2) of the INA.

NOTE: “Prima facie” eligibility is a determination by USCIS that it has initially accepted the non-citizen’s claim of domestic violence and is allowing the battered alien(s) to remain in the U.S. while he/she awaits a decision on his/her, I-360 self-petition for LPR status.

Non-citizens who present the above documentation will have satisfied the first requirement that they are credible victims of battery or extreme cruelty. These persons should not be referred to a DVL for a duplicate determination.

NOTE: A non-citizen’s submission of the above documentation will also satisfy the second requirement that s/he have appropriate immigration documentation.

Referral to a DVL is required.

All other non-citizens who assert that they were battered will require a credibility assessment and a determination of battery by the DVL in order to establish that s/he is a domestic violence victim. The DVL is responsible for assessing the situation and making these determinations. In these situations, a credibility assessment and determination of battery by the DVL are needed before eligibility as a qualified battered alien can be established.

Non-citizen applicants who present the immigration documents listed below and make a claim of domestic violence must be referred to the DVL for a credibility assessment and determination of battery:

- I-797 indicating PENDING I-360 self-petition (without a prima facie determination) under section 204(a)(1)(A)(iii) or (iv) or section 204(a)(1)(iii)(B)(i) or (iii) of the INA; or
- I-797 indicating PENDING or APPROVED I-130 (Petition for Alien Relative) under section 201(b) (spouse or child of a US citizen) of the INA or Section 203 (a)(2)(A) (spouse of a permanent legal resident) of the INA; or
- I-94 (Arrival/Departure Record) coded K3, K4, V1, V2 or CR 1-7 and a pending or approved I-130; or
- I-688B or I-766 (Employment Authorization Documents [EAD]) annotated (a)(9) or (a)(15); or
- Any other USCIS document indicating the alien has a K or V visa and a pending or approved I-130.

NOTE: K or V visas are family based visas. K visas may be issued to the fiancée, the spouse or the child of a US citizen. V visas may be issued to the spouse or child of an LPR.

Non-citizens who present one of the above documents will need to be referred to a DVL to determine whether they are credible victims of domestic violence and thus meet the first requirement. The submission of these documents alone does not establish that a person is a credible victim of domestic violence.

NOTE: A noncitizen’s submission of the above documents, however, does satisfy the second requirement that s/he have appropriate immigration documentation.

Non-citizens who do not have any of the immigration documents listed above, but are claiming that they are victims of domestic violence must be referred to the DVL for a credibility assessment and determination of battery. The DVL will review any documents provided by the non-citizens that support their claim of domestic violence. However, the DVL can make a credibility assessment and determination of battery without any the above documents, if such documents are not available.

Note: In this instance, any noncitizen seeking assistance as a “qualified alien” based on a DV claim must meet with the DVL as a mandatory part of the eligibility process.

Consequently, the failure to meet with the DVL will result in a determination that the non-citizens are not qualified battered aliens and thus are ineligible for FA, SNA and FS on these grounds. This ineligibility will apply to both the noncitizen and any foreign-born children covered by the pending I-360 self-petition.

The DVLs are only responsible for determining if the non-citizen is a credible victim of battery or extreme cruelty, which is the first requirement for a qualified battered alien. If the DVLs determine a person is a credible victim of battery or extreme cruelty, TA staff will be responsible for determining whether or not the non-citizen meets the other three requirements and is thus a qualified battered alien.

Appropriate Immigration Documentation

Pursuant to the second requirement to establish qualified battered alien status, the center workers must determine whether the non-citizen has appropriate immigration documentation. This necessitates the review of all immigration documents the non-citizen has available. As set forth above, the following immigration documents will satisfy this requirement:

- I-797 (Notice of Action) indicating PRIMA FACIE ELIGIBILITY of an I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv) or Section 204(a)(1)(iii)(B)(i) or (iii) of the INA; or
- I-797 (Notice of Action) indicating APPROVAL of an I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv) or Section 204(a)(1)(iii)(B)(i) or (iii) of the INA; or
- Order from the EOIR granting suspension of deportation under section 240A(b) of the INA; or
- Order from the EOIR granting cancellation of removal under section 240A(b)(2) of the INA; or
- I-797 indicating PENDING I-360 self-petition (without a prima facie determination) under section 204(a)(1)(A)(iii) or (iv) or section 204(a)(1)(iii)(B)(i) or (iii) of the INA; or
- I-797 indicating PENDING or APPROVED I-130 (Petition for Alien Relative) under section 201(b) (spouse or child of a US citizen) of the INA or Section 203 (a)(2)(A) (spouse of a permanent legal resident) of the INA; or
- I-94 (Arrival/Departure Record) coded K3, K4, V1, V2 or CR 1-7 and a pending or approved I-130;
- I-688B or I-766 (Employment Authorization Documents [EAD]) annotated (a)(9) or (a)(15); or
- Any other USCIS document indicating the alien has a K or V visa and a pending or approved I-130.

Substantial Connection

Pursuant to the third requirement to establish qualified battered alien status, there must be a substantial connection between the abuse and the need for benefits. This requirement will not be satisfied solely by a determination that the applicant has been subjected to battery or extreme cruelty. It is the responsibility of the TA worker to determine whether this connection exists. A substantial connection between the abuse and the need for benefits exists when circumstances such as the following exist:

- Benefits are needed to enable the applicant/victim and/or his/her child to become self-sufficient following separation from the abuser;
- Benefits are needed to enable the applicant/victim and/or his/her child to escape the abuser and/ or the community where the abuser lives or to insure the safety of the applicant/victim and/or his/her child;
- Benefits are needed due to the loss of financial support resulting from the applicant/victim's or his/her child's separation from the abuser;
- Benefits are needed because of lost housing or lost income or because fear of the abuser jeopardizes the applicant/victim's ability to care for his/her child; or
- Benefits are needed because the applicant/victim or his/her child requires medical attention or mental health counseling or has become disabled as a result of the battery or cruelty.

These examples are not all inclusive, and the TA workers should consider the circumstances of each case to determine whether the required substantial connection exists.

Battered Applicant no Longer Resides in the Same Household as the Abuser

Pursuant to the fourth requirement to establish qualified battered alien status, the battered noncitizen can no longer reside in the same household as the abuser. TA workers are responsible for verifying the battered alien's residence just as they would for any applicant for assistance. Districts should consider any relevant credible evidence supporting the claim of non-residency with the batterer, including, but not limited to, any of the following:

- Proof of residence in a domestic violence or homeless shelter;
- Orders of protection requiring the abuser to stay away from the applicant;
- Civil order evicting the batterer from the applicant's residence;
- Employment records;
- Utility receipts;
- School records;
- Hospital or medical records;
- Statement from a friend or relative regarding the noncitizen victim's staying with him or her.

Since the noncitizen has been found to be a credible victim of domestic violence by the DVL, districts should not contact the batterer for any verification of living arrangements or any other factor of eligibility.

Derived qualified status for children

When a battered alien files an I-360 self petition, he/she is both the petitioner and the beneficiary of that petition. If the petitioner has foreign-born minor children, the foreign-born minor children who are listed will be covered by the same I-360 self-petition.

In the context of I-360 self-petitions, foreign born children of battered aliens derive their benefit eligibility from their parents. If the parent petitioners are determined to be qualified aliens, their foreign born children are also determined to be qualified aliens.

An example of a qualified battered alien is as follows:

Kadife and Oban married in Turkey where Oban was working. Kadife was born in Turkey, and Oban is a US citizen. Oban's company moved the family to the United States where they have resided for the past 18 months. Seven months after arriving in the US, a child was born. Shortly thereafter, Oban lost his job and was unable to find work. Oban began abusing his wife verbally, refusing to give her pocket money, and preventing her from talking to friends. Oban developed a heroin addiction which depleted the family's resources and led to angry erratic outbursts against Kadife. To safeguard her well-being, Kadife and the child left their home to live with a friend. Kadife filed an I-360 self-petition, and due to the loss of Oban's financial help, she went to a Job Center to apply for assistance for herself and her child. At the Job Center, Kadife presented an I-797 indicating prima facie eligibility of her I-360 self-petition.

The designated Agency worker determined that if all other eligibility requirements are met, Kadife is eligible for Safety Net Assistance as a qualified battered alien. Due to the I-797 indicating prima facie eligibility of her I-360 self-petition, Kadife is a credible victim of battery or extreme abuse, and she has documented that she has an appropriate status (immigration-related). The designated Agency worker also determined there is a substantial connection between the need for the benefits sought and the battery or extreme cruelty. The abuse caused Kadife to leave Oban, and as a result, Kadife has experienced a financial loss and an increase in living expenses. Lastly, Kadife is no longer residing in the same household as Oban. It is noted that Kadife is not eligible for Family Assistance because she has not resided in the US for 5 years in a qualified status.

The designated Agency worker determined that if all other eligibility requirements are met, Kadife's child is eligible for Family Assistance as a US citizen. It is noted that if the child had not been a citizen, the child would have had qualified alien status as a child of a battered alien and would have been eligible for Safety Net Assistance, if all other eligibility requirements were met.

C: ELIGIBILITY CRITERIA

No person except a citizen or a **specially qualified alien** shall be eligible for Family Assistance (FA), federally participating Safety Net Assistance (SNA), or services funded under Title XX of the federal social security act, **except** as follows:

- 1 A qualified alien, who is not a specially qualified alien, who was a lawful resident of the United States before August 22, 1996, or who has resided in the United States on or after August 22, 1996, for five or more years in a qualified status is, if otherwise eligible, eligible for FA, and services pursuant to Title XX of the federal social

security act. A qualified alien, who is not a specially qualified alien, who entered the United States on or after August 22, 1996 but who has resided in the United States for less than five years in a qualified status shall, if otherwise eligible, be eligible for SNA, but shall be ineligible for FA.

- 2 An alien whose status is not within the meaning of the term qualified alien but who is otherwise permanently residing in the United States under color of law, (PRUCOL) is, if otherwise eligible, eligible for SNA.
- 3 A person paroled into the United States under Section 212(d)(5) of the INA for a period of less than one year is, if otherwise eligible, eligible for safety net assistance.
- 4 Nothing herein shall preclude the receipt by an alien of community based non-cash assistance in accordance with the directions of the United States Attorney General.
- 5 Any alien, including an alien who is not a qualified alien, is eligible for adult protective services and services and assistance relating to child protection to the extent that such person is otherwise eligible pursuant to this Section and the Regulations of the department.
- 6 An alien is eligible for additional State payments for aged, blind and disabled persons under social services law only to the extent that such person is not ineligible for federal SSI benefits due to alien status.

D: DATE OF ENTRY

A battered alien who meets the requirements for "qualified alien" is not exempt from the 5 year-bar on federal benefits. If they entered the U.S. on or after August 22, 1996, they must have 5 years in a qualified status before they are eligible for federal benefits based on immigration status. However, a person is not subject to the 5-year bar for TANF funded-benefits if she/he entered the U.S. before August 22, 1996, even if she/he did not obtain a lawful qualified immigration status until some time after she/he entered. As long as a person "continuously resided" in the U.S. from the earlier date, that date will be considered the date of entry. Continuously resided means the person may only have left the U.S. for short periods of time. The following example will illustrate the meaning of this provision for a battered alien.

Example 1

A woman came to the U.S. in 1995 as an undocumented alien and resided in the U.S. since that time. In 1996 she married a U.S. citizen. In 2001 she filed an I-360 self petition and received an I-797, Notice of Action from the USCIS stating she had a "prima facie case." She is not subject to the five-year bar for TANF-funded benefits because her date of entry is 1995.

When an alien who was physically present in the U.S. before 8/22/96 is determined to be a "qualified alien" under the battered alien provisions of the Act, the date of qualified status is her original date of entry.

Aliens who entered the U.S. on or after 8/22/96 must reside in the U.S. for 5 years in a qualified status to be eligible for any federal Temporary Assistance for Need Families (TANF) program. For an alien who is determined to be a "qualified alien" under the battered alien provisions of the Act, and who entered the U.S. on or after 8/22/96, the 5 year clock will begin on the date of application for benefits.

Districts must note this date in the case record as this date may determine when the alien has completed the 5 year residency in the U.S. in a qualified alien status, at which time he/she may be eligible for federal benefits. The date of qualified status for battered aliens who entered on or after 8/22/96 is distinct from their date of entry, which is when they physically entered the U.S.

Districts must note this date in the case record as this date may determine when the alien has completed the 5 year residency in the U.S. in a qualified alien status, at which time he/she may be eligible for federal benefits. The date of qualified status for battered aliens who entered on or after 8/22/96 is distinct from their date of entry, which is when they physically entered the U.S.

Example 2

A woman came to the U.S. in 2003 on a visitor's visa. In 2004 she married a lawful permanent resident who filed an I-130 petition for her on January 2, 2005. She is now a victim of domestic violence and no longer living with her lawful permanent resident spouse and has applied for benefits on March 2, 2006. If she meets the battered alien's requirements for "qualified" alien she became a "qualified alien" on March 2, 2006. Her 5-year bar on federal benefits will be over on March 1, 2011, if she has 5 years as "qualified alien" either as battered alien or in some other qualifying immigration status.

E: DOCUMENTATION REQUIREMENTS

At each application and at each recertification for FA, SNA, or services funded under Title XX of the Social Security Act, the applicant/recipient must provide documentation to the local district for each member of the applying/recipient household of the person's United States citizenship or qualified alien status granted by the United States Citizenship and Immigration Services (USCIS).

Any member of the applying/recipient household who is not a United States citizen must provide the local district, as a condition of eligibility, with documentation as to the immigration status granted to them by USCIS.

In addition, all applicants/recipients who were lawfully admitted for permanent residence must provide the local district, as a condition of eligibility, with USCIS documentation regarding their lawful entry into the United States prior to August 22, 1996.

If the alien documents that he/she was lawfully admitted for permanent residence on or after August 22, 1996, the alien must also document the number of quarters of qualified employment he/she worked or can be credited with. The local district can verify the majority of the previous quarters to credit a non-citizen by use of WMS (Main Menu choice 26, SSA 40 Quarter Data Exchange).

All non-citizens who are serving in the United States Armed Forces or veterans discharged honorably discharged from the United States Armed Forces and their spouses, their unremarried surviving spouses and unmarried dependent children must, as a condition of eligibility, provide USCIS documentation that they are qualified aliens.

The applicant/recipient is responsible for providing the required documentation. However, if he/she cannot provide the needed documentation, the local district must provide reasonable assistance to help the applicant/recipient to obtain the documentation. Once the documentation has been provided, the local district is not required to obtain it again unless the applicant/recipient has an immigration status that can be changed.

Local districts must review and analyze the citizenship/alien status documentation provided by the applicant/recipient and make an eligibility determination consistent with the documentation provided.

Districts can contact the Division of Employment and Transitional Supports at 518-474-9344, if needing assistance with evaluating an alien's USCIS documentation.

DOCUMENTATION – Citizenship or qualified/satisfactory alien status may be verified in the following ways:

1. Evidence of U.S. Citizenship.
 - a. A birth certificate identifying birth location as one of the following:
 - One of the 50 States
 - The District of Columbia
 - Puerto Rico (on or after January 13, 1941)
 - The U.S. Virgin Islands (on or after January 17, 1917)
 - b. Certificate of Naturalization (N-550 or N-570)
 - c. Certificate of Citizenship (N-560 or N-561)
 - d. United States Citizen Identification Card (I-197 or I-179)

- e. Valid U.S passport
 - f. Statement provided by a U.S. Consular Officer certifying that the individual is a U.S. citizen or
 - g. Military discharge papers (DD-214) that identify the individual as a U.S citizen
2. Evidence of qualified alien status. See this Chapter, Sections B, D and E and the ALIEN ELIGIBILITY DESK AID (LDSS-4579)(Rev. 06/06) attached at the **end of this Chapter**.
 3. Evidence of Permanent Residence Under the Color of Law (PRUCOL) See **this Chapter, Section G**.

F: SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE) PROGRAM

The provisions of the PRWORA require New York State to participate in the federal Systematic Alien Verification for Entitlements (SAVE) Program. The purpose of this process is to verify alien eligibility for FA, SNA and Emergency Assistance cases that include aliens.

The automated SAVE process has not yet been implemented. In the interim, in order to comply with federal requirements, effective October 1, 1999, local districts are required to manually complete an USCIS Form G-845 "Document Verification Request" and send this completed form along with photocopies of the front and back of all USCIS documents to their respective USCIS Office for the following situations:

- a. All aliens who are applying for temporary assistance;
- b. When an alien is being added to the assistance unit; or
- c. Any time there is a change in alien status in a temporary assistance case.

NOTE: This does not apply to Medicaid-only cases.

USCIS will review and respond to each verification request. When USCIS returns the verification requests, the verified information should be reviewed and appropriate action taken.

Benefits must not be delayed, denied, reduced or terminated pending verification of the alien's documentation through SAVE. Therefore, if all other factors of eligibility have been established and the alien is otherwise eligible, benefits must be granted while awaiting the USCIS response.

NOTE: See Alien Eligibility Desk Aid" (LDSS-4579) (Rev. 06/06) for more information.

G: PERMANENTLY RESIDING UNDER COLOR OF LAW - PRUCOL

Individuals are considered to be permanently residing under the color of law" or PRUCOL, if their presence in the U.S. is known by USCIS, and USCIS does not intend to deport them. PRUCOL is neither an immigration status nor an immigration law term, but a public benefit eligibility category.

Prior to PRWORA, immigrants who were considered PRUCOL were eligible for a number of federal programs, including Medicaid, SSI and Aid to Families with Dependent Children. PRWORA eliminated PRUCOL as a category of eligibility for federal benefits. The term is used now by a number of states in determining eligibility for state-funded programs. New York provides Safety Net Assistance to aliens considered to be PRUCOL.

Non-citizens who New York State recognizes as PRUCOL include:

- 1 Aliens residing in the United States pursuant an order of Supervision under section 222(d) of the INA
 - These aliens are found deportable, however, certain factors exist which make it unlikely that USCIS would enforce departure. Factors include: age, physical condition, humanitarian concerns, and the availability of a county to accept the deportee.
 - USCIS requires periodic reports from these aliens. USCIS will initiate action to remove the alien if the factors preventing deportation are eliminated.
 - Documents I-220B
- 2 Aliens residing in the United States pursuant to indefinite stay of deportation
 - These aliens are found to be deportable, but USCIS may defer deportation indefinitely for humanitarian reasons.

- Documents: USCIS letter or I-94
- 3 Aliens residing in the United States pursuant to an indefinite voluntary departure
 - Documents: Letter and/or I-94 indication that the alien has been granted voluntary departure for an indefinite time period.
 - 4 Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure (Under 8 CRR 245.2(a)(2)(vi)) and whose departure USCIS does not contemplate enforcing

The immediate relatives of an American citizen who has filed an I-130 petition for issuance of immigration visa of their behalves. (An immediate relative for USCIS purposes is: husband, wife, father, mother, or child (unmarried and under 21))

 - If this petition has been approved, a visa will be prepared, which will allow the alien to remain in the United States permanently.
 - Documents: I-94 and/or an I-210 letter indication departure on a specified date (usually 3 months from date of issue). USCIS expects the alien's visa to be available within this time. If it is not, extensions will be granted until the visa is ready. Also indicated on these documents is the authorization for employment.
 5. Aliens granted deferred action status pursuant to USCIS operating instructions
 - This category is similar to aliens residing in the U.S. under an order of supervision; expect there has been no formal deportation proceedings initiated.
 - Documents: I-210 or a letter indicating that the alien's departure has been deferred. This determination is made by the Regional Commissioner, USCIS and is relatively rare.
 6. Aliens granted suspension of deportation pursuant to section 244 of the INA whose departure the USCIS does not contemplate enforcing.
 - These aliens are found deportable, but have met several factors including a period of continuous residence and have filed an application for USCIS to suspend deportation in an effort to be granted lawful permanent resident status.
 - Documents: Letter/order from the immigration judge and an I-94 with employment authorized for 1 year. After lawful permanent residence is granted, the alien will have an I-551 or I-151.
 7. Aliens who entered and have continuously resided in the United States since January 1, 1972 (June 30, 1948 for determinations made prior to November 6, 1986)
 8. Aliens who have filed applications for adjustment of status pursuant to section 245 of the INA that USCIS has accepted as "properly filed" (within the meaning of 8 CFR 245.2(a)(1) or (2)), and whose departure USCIS does not complete enforcing.
 - These aliens have filed for lawful permanent status
 - Documents: I-181 or passports will be stamped with either of the following "adjustment application" or "employment authorized during status as adjustment applicant."
 9. Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of USCIS pursuant to section 106 of the INA, 8 CFR 243.4, or USCIS operation Instruction 243.3 whose departure USCIS does not contemplate enforcing
 - These aliens are found to be deportable, but USCIS may defer deportation for a specific period of time due to humanitarian reasons.
 - Documents: Letter from USCIS or a copy of the court order and or and I-94
 10. Aliens granted voluntary departure pursuant to section 242(b) or the INA or 8 CFR 242.5 and whose departure USCIS does not contemplate enforcing

- These aliens are awaiting a visa

Documents: I-94 and or an I-210, which indicate a departure within 60 days. This may be extended if the visa is not ready within the time allotted.

11. Aliens whose deportation has been withheld pursuant to 243(h) of the INA

- Deportation proceeding has been initiated against these aliens, but deportation has been withheld because of conditions similar to those leading to a granting of refugee status: i.e. fear of persecution if returned to the alien's home country. (However, they may be deported to another country)
- Documents: Order from an immigration judge showing that deportation has been withheld

12. Aliens with unexpired K1, K3, K4 or V1 or V2 visas.

- K and V visas are granted for family unity purposes. They allow a certain spouses and their dependent children of a U. S. citizen or lawful permanent resident to enter and reside in the U.S. while their petition for permanent residence is processed.

13. Any other aliens living in the U.S. with the knowledge and permission of USCIS and whose departure that agency does not contemplate enforcing

- Aliens in this category may be in a status not listed above but based on information from USCIS; we may find them to be PRUCOL.
- Such aliens may have any of the documentation listed above or other USCIS forms or letters, which indicate that the aliens meet PRUCOL
- Examples include, but are not limited to: permanent nonimmigrants and aliens granted extend voluntary departure for a specific time due to conditions in their home country.

H: NON-IMMIGRANTS

Non-citizens who are allowed to enter the U.S. for a specific purpose and for a limited period of time are classified as non-immigrants. Examples of non-immigrants include tourists, students, and visitors on business. Most non-immigrants are required to show that they intend to maintain their residence abroad. Some categories of non-immigrants, such as temporary workers and students are permitted to work under certain specific restrictions. Non-immigrants are issued an Arrival/Departure Record (I-94) by USCIS to show their alien status.

NOTE: Non-immigrants are not eligible for benefits (except emergency Medicaid) because of their alien status.

I: REFERRAL REQUIREMENTS

Any applicant or recipient who has been determined to be ineligible for FA, or SNA because he/she is an alien unlawfully residing in the United States or because he/she failed to furnish evidence that he/she is lawfully residing in the United States shall be immediately referred to the USCIS, or the nearest consulate of the country of the applicant or the recipient for the service or consulate to take appropriate action or furnish assistance. The USCIS, or consulate can take appropriate action or furnish assistance. Local districts comply with referral requirements by providing the alien applicant or recipient with the address of the nearest USCIS office or home country consulate. Districts should also advise the applicant or recipient that he/she should probably seek legal counsel before contacting the the USCIS or their consulate.

J: REPORTING REQUIREMENT

Each local district shall report to the Office of Temporary and Disability Assistance, the name and address and other identifying information known to it with respect to any alien known to be unlawfully in the U.S. A determination that an individual is not lawfully present can only be made about someone who is applying for benefits. A unlawful determination cannot be made about an individual who is only submitting an application for benefits on behalf of other family members.

The Office has identified two specific conditions that establish that an alien is unlawfully present. Accordingly, the report of "Aliens Unlawfully in the United States" should **only include** aliens who meet either of the following two conditions:

- 1 **Aliens with a final USCIS Order of Deportation outstanding.** An outstanding order of deportation is final when it is not subject to appeal, either because:
 - a. the relevant statutory appeal period (10 days) has expired;
 - b. there are no lawful grounds upon which an appeal may be based; or
 - c. the available administrative and/or judicial appeals have been exhausted and the order is not subject to review under the limited standards for reopening or reconsideration.
- 2 Aliens for which the SAVE response to a manually submitted USCIS G-845 (Document Verification Request) indicates that the person has submitted false immigration documents to the agency.

When either of the above situations is applicable to an applicant or recipient of FA or SNA, you should submit the name(s) and address(es) of the individual(s), along with identification of the documentation establishing their being unlawfully present in the U.S., including copies of the documentation when possible, to:

NYS Office of Temporary and Disability Assistance
Division of Employment and Transitional Supports - 11th Floor
40 North Pearl St.
Albany, NY 12243

This information should be provided on a copy of the reporting form, "Aliens Unlawfully in the United States". You should submit the form within 10 days from the end of any month in which you identify "reportable" aliens.

NOTE: There are no reporting requirements for Medical Assistance (MA) or Food Stamps (FS). When an applicant is applying only for MA and/or FS, you should not include them on the report.

K ALIEN SPONSORSHIP DEEMING

1. **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA):**
 - a. The PRWORA mandates that the income and resources of the sponsor(s) of an immigrant must be deemed to the sponsored immigrant(s) when:
 - (1) The sponsored immigrant is applying for Federal means-tested public benefits; and,
 - (2) The sponsor has executed the new USCIS form I-864 Affidavit of Support on behalf of the immigrant.
 - b. Additionally, PRWORA requires that the sponsor reimburse any agency for federally funded means-tested benefits granted to immigrants covered by the new Affidavit of Support. This requirement also applies to any State programs which are determined by the State as means-tested public benefits.
 - c. Additionally, under PRWORA such designated State programs may apply sponsor deeming to the eligibility determination.

NOTE: New York State Social Services law prohibits deeming in state/locally funded TA programs.

- d. The federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended section 213A of the Immigration and Nationality Act (INA) to establish a legally enforceable I-864, Affidavit of Support. In signing the new affidavit, the sponsor agrees to provide financial support to the sponsored alien and to reimburse any agency which provides means-tested public benefits to a sponsored alien.

- e. Interim federal regulations were published implementing the use of the revised, legally enforceable, I-864 Affidavit of Support effective as of December 19, 1997. The Federal, State and local governments can enforce these agreements in the same way that they enforce contracts.
- f. The State Welfare Reform Act of 1997 (WRA) provides that the income and resources of a sponsor of an alien who has signed an affidavit of support pursuant to section 213A of the INA as amended shall be deemed available to such alien for determining eligibility for FA, other public assistance funded under the Federal Temporary Assistance for Needy Families (TANF) block grant and Medicaid.

2. Definitions.

- a. **Sponsored Immigrant.** Any alien who is seeking an immigrant visa or adjustment of status as:

- (1) An immediate relative, including orphans and family-based immigrants; or,
- (2) An employment based immigrant where a relative is the petitioning employer or has a significant ownership interest in the business that is filing the petition on behalf of the immigrant.

Immigrants in the above groups are described in this Chapter under "**Other Qualified Aliens**" (These are LPRs, Certain Battered Aliens and Persons Paroled into the U.S. for a least one year). Generally, it is immigrants in these groups who will have a sponsorship agreement.

NOTE: Immigrants in these groups who entered the United States on or after August 22, 1996 are not eligible for federally funded public assistance benefits until they have resided in the United States for 5 years in a qualified status. Determination of eligibility for public assistance, if any, must be made under the non-federally funded Safety Net Assistance programs.

"**Specially Qualified Aliens**" as described in this Chapter **are exempt** from having a sponsor. These include Refugees; Cuban/Haitian Entrants; Amerasians; Asylees; immigrants with Deportation or Removal Withheld; certain Hmong or Highland Laotians and certain Native Americans.

- b. **Sponsor.** The sponsor must be:

- (1) A citizen or national of the United States or an alien Lawfully Admitted to the United States for Permanent Residence;
- (2) At least 18 years of age; and,
- (3) Domiciled in the United States or its possessions.

The sponsor must demonstrate to INS the means to maintain an income of at least 125% of the Federal poverty guidelines based on a household size including family members residing with the sponsor plus all sponsored immigrants. The sponsor, by signing the I-864 Affidavit of Support agrees to reimburse any agency which provides means-tested public benefits to the sponsored alien(s).

- c. **Means-tested public benefits.** The federal Department of Health and Human Services has designated **Temporary Assistance to Needy Families (TANF) and Medicaid** as Federal means-tested programs. The United States Department of Agriculture has designated the **Food Stamp Program** as a Federal means-tested program. The Social Security Program has designated **Supplemental Security Income (SSI)** as their only means-tested program. In addition, each state must determine which state and/or local programs are considered means-tested public benefits. New York State has designated non-TANF funded Safety Net Assistance (SNA) as a means-tested public benefit program.

- d. **USCIS Form I-864 Affidavit of Support (under Section 213A of the Act).** This revised form (dated 10/6/97) is mandated by federal law for use by a petitioning relative when submitting an affidavit on their relative's behalf on or after December 19, 1997. The executed form creates a legally enforceable contract between the sponsor and **any Federal, state or local governmental agency**, or by any other entity that provides **means-tested public benefits** to the sponsored immigrant.

NOTE: The 213A affidavit is different from the old 213 affidavits, which are not enforceable except in the Food Stamp program. Section 213 affidavits, which include all I-864 Affidavit of Support issued prior to December 19, 1997, may not be used for PA deeming.

The I-864 remains valid until the sponsored immigrant(s) achieve naturalization or until the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work as defined by Title II of the Social Security Act.

3 Federal Alien Sponsorship Requirements.

- a. USCIS requires that a sponsor (including any joint sponsor), when executing an Affidavit of Support, must demonstrate the means to maintain an annual income equal to at least 125% of the Federal poverty level. (It is reduced to 100% of the Federal poverty level for sponsors who are on active duty in the U.S. Armed Forces who are filing on behalf of their spouse or child).
- b. When USCIS determines whether the sponsor meets the 125% test, sponsor's household size is considered to include the sponsor, all related persons residing with the sponsor, plus all aliens included in the current Affidavit of Support and any immigrants previously sponsored by the sponsor for whom the sponsor still has a financial obligation.
- c. The sponsor is required to submit to the USCIS Federal income tax returns for each of the three most recent tax years. For purposes of demonstrating means to maintain income, the total income before deductions for the most recent tax year will generally be matched against the Federal poverty level for the household as described above to determine if it is greater than 125%. The law does allow USCIS to use other sources, such as a W-2 wage report, when necessary to verify most recent income.
- d. The law also allows an assets test to be considered in addition to or in lieu of the income test in situations where significant assets exist. Under this test, the assets of the sponsor and/or the sponsored immigrant(s), if such assets are available for support of the sponsored immigrant, are evaluated.
- e. USCIS has determined that the assets must be sufficient to support the immigrant(s) for at least five years, if necessary, as sufficient for demonstrating the ability to support the sponsored alien. They consider the assets to be sufficient if they are at least five times the difference between the sponsor's income and 125% of the Federal poverty level for the sponsor's household size.

4. Federal Alien Sponsorship Deeming Requirements.

- a. PRWORA mandates that all of the income and resources of the sponsor(s) must be deemed to be available to the sponsored immigrant when determining eligibility for Federal means-tested public benefits. In most cases this would make the sponsored immigrant ineligible for the federally funded benefit sought.
- b. The Federal law does allow for exception to deeming in hardship situations. The exception applies only if the social services district makes a determination of indigence. Indigence is defined as existing when the unavailability of the sponsor's income results in the sponsored immigrant being unable to obtain food and shelter without public assistance.
- c. In determining whether the alien and his/her family are indigent, only the amount of income and support actually received from the sponsor(s) is budgeted when determining eligibility for Federal means-tested public benefits. Such local district's determinations of indigence are valid for no longer than 12 months.
- d. In signing the I-864 Affidavit of Support, the sponsor attests in Part 7:

"I agree to provide the sponsored immigrant(s) whatever support is necessary to maintain the sponsored immigrant(s) at an income that is at least 125% of the Federal poverty guidelines"; and,

"This contract is designed to protect the United States Government and State and local government agencies or private entities that provide means-tested public benefits, from having to pay benefits to or on behalf of the sponsored immigrant(s), for as long as I am obligated to support under this affidavit of support. I understand that the sponsored immigrants, or any Federal, State, local, or private entity that pays means-tested benefits to or on behalf of the sponsored immigrant(s), are entitled to sue me if I fail to meet my obligations under this affidavit of support, as defined by section 213A and USCIS regulations."

- e. In signing the I-864 Affidavit of Support, the sponsor also authorizes USCIS, as a matter of routine use, to disclose I-864 information to Federal, State, and local agencies or private entities providing means-tested benefits for use in civil action against the sponsor for breach of contract.

L. Federally Funded Public Assistance

1. Family Assistance, CAP and All Public Assistance Programs Funded Under the Temporary Assistance to Needy Families (TANF) Block Grant.

When an alien who is required to have a sponsor applies for public assistance, the local district must establish whether the affidavit of support was established on or after December 19, 1997 using the new I-864 form. If so, under PRWORA, the sponsor's income and resources must be deemed available to the alien(s) for the purpose of determining eligibility for Family Assistance, CAP, and TANF funded Safety Net Assistance.

NOTE: Most aliens subject to having an Affidavit of Support will be Qualified Aliens who are NOT ELIGIBLE for Federally funded benefits for the first five years they are in the United States.

2. Verification of Affidavit of Support. When an alien applying for Public Assistance is potentially eligible for Federally funded benefits (i.e., has been in the country for five years or has an USCIS status which entitles them to federally funded benefits), the local district must ask the immigrant to provide the agency with a copy of the Affidavit of Support.

If the client does not have a copy or cannot otherwise adequately identify the sponsor and his/her ability to support the applicant, information about the sponsor will have to be obtained from USCIS. Submitting USCIS form G-845 Documentation Verification Request to your regional USCIS office does this.

The standard report from USCIS will indicate only if an I-864 exists. However, when submitting the G-845 form you can request and are entitled to receive a copy of the I-864 Affidavit of Support, if one is on file.

Having a copy of the I-864 should provide you with all the information used by USCIS in establishing the sponsor's ability to support the sponsored immigrant, as well as the current address of the sponsor. **It is recommended that you always request a copy of the USCIS I-864 when submitting the G-845.**

Attachment: Alien Eligibility Desk Aid LDSS-4579

References

Related Items

18 NYCRR 349.3

18 NYCRR 352.33

97 ADM-23 Attach 1-11 Attach 12 Errata

89 ADM-27

85 ADM-33

06 INF-14

06 INF-23

99 INF-17

95 INF-8

92 INF-32 Errata

90 INF-8

99 LCM-23

Citizenship and Alien Status

POLICY (97 ADM-25)

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, was signed into law by the President on August 22, 1996. Among its many provisions, PRWORA makes many non-citizens ineligible for Food Stamps even though they are currently in the United States legally.

Section 510 of the Omnibus Consolidated Appropriations Act (Title V, The Illegal Immigration Reform and Immigrant Responsibility Act of 1996), Public Law 104-208, postponed the implementation date of the alien provisions as they apply to recipients until April 1, 1997.

On August 5, 1997, the President signed into law the Balanced Budget Act of 1997, Public Law 105-33. This Act included a number of provisions which affected aliens seeking FS benefits. Specifically, the Act clarified certain provisions of PRWORA and added Cuban/Haitian Entrants and certain Amerasians to the groups of legal aliens who can qualify to participate in the food stamp program.

On June 23, 1998, President Clinton signed into law P. L. 105-85, the Agricultural Research, Extension and Education Reform Act (AREERA) of 1998. Among other provisions, this law amends the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) which specify that only certain non-citizens are potentially eligible for federal food stamps.

To be eligible to participate in the FS program, a person must be a citizen of the United States or be an eligible alien.

1. **AREERA Provisions** - Effective November 1, 1998 the following groups may be eligible for FS because of AREERA.
 - a. Certain Indians may be eligible for FS. These include:
 - (1) American Indians born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply (i.e., born in Canada and at least 50% American Indian blood); or
 - (2) Individuals who are a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)). This provision covers Native Americans who are entitled to cross the United States border into Canada or Mexico and includes, among others, members of the St. Regis Band of the Mohawk in New York State.
 - b. Hmong or Other Highland Laotian
 - (1) A Hmong or other Highland Laotian who is not a U.S. citizen is eligible to receive Food Stamps if he/she meets the normal Food Stamp financial and work requirements, and:
 - (a) Is legally residing in the United States;
 - (b) Was born before 8/8/75;
 - (c) Was born in Laos or another country with Hmong or other Highland Laotian populations and can give a reasonable explanation as to why he/she was not born in Laos (the countries include Thailand, Cambodia, China, Vietnam, Indonesia, Hong Kong, Malaysia, and Singapore);
 - (d) Has refugee code RE1, RE2, RE3, RE6, RE7, R86, IC6, or IC7, or can give a reasonable explanation of his/her immigration to the U.S. (for example, sought asylum in another country and later immigrated to the U.S.);
 - (e) Entered the U.S. in April 1975 or later (or can give a reasonable explanation for having entered before that, such as came here as a student, for military training, to escape the war, and so on); and
 - (f) Signs an affidavit swearing under penalty of law that he/she was a member of a Hmong or Highland

Laotian tribe between 8/5/64 and 5/7/75. (If a Food Stamp worker has access to the Refugee Data Center (RDC) list of eligible Hmong and Highland Laotian refugees who entered the U.S. after 1979, and the name or alien number of the person claiming membership in a tribal group appears on the list, there is no need for the affidavit. However, the worker must not deny eligibility for Food Stamps simply because the RDC list is unavailable or the applicant's name or alien number does not appear on it.)

- (2) A member of a Hmong or Highland Laotian tribal member's family who is not a U.S. citizen is eligible for Food Stamps if he/she meets the regular Food Stamp work and financial eligibility requirements, and:
 - (a) Is also a tribal member; or
 - (b) Is the spouse, an unremarried widow or widower of a tribal member who has died, or unmarried dependent child of a tribal member, and verifies his/her status as a member of the tribal member's family.
 - (3) Divorced spouses do not qualify as family members. In addition, a member of the family of a tribal member who has died need not show that the tribal member was legally residing in the United States.
- c. An alien may be eligible for FS if that alien was lawfully in the U.S. on August 22, 1996 AND
 - (1) Was 65 years of age or older on August 22, 1996 (DOB of August 22, 1931 or earlier), OR
 - (2) Is under currently 18 years of age, OR
 - (3) Is disabled as defined by the Food Stamp Act (see FSSB section 5);

NOTE: To more easily identify such individuals, local districts can use the following guidelines:

- For current FAP recipients between age 18 and 59 (DOB between 10/31/38 and 11/1/80), an "X" in the A/D indicator field indicates disability status;
- For aliens in receipt of SSI who are under age 65, the receipt of SSI proves disability since persons cannot receive SSI based on age until age 65; or
- For aliens in receipt of SSI who became 65 after August 22, 1996 (DOB of 8/23/31 or later), districts must determine if SSI eligibility began before their 65th birthday. If SSI eligibility began before their 65th birthday, the alien can be considered to be disabled. If SSI eligibility began after their 65th birthday, disability status must be determined independently from SSI status.

2. **Ineligible Alien** (Department Regulation 387.1).

An ineligible alien is an alien who is not a citizen of the United States and does not meet the eligible alien. An alien who is a qualified alien, as set forth below, is not eligible to participate in the FS program unless otherwise provided for in subsection 3.

A qualified alien is an alien who at the time the alien applies for, receives or attempts to receive FS benefits, is:

- a. An alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
- b. An alien who is granted asylum under section 208 of the Immigration and Nationality Act;
- c. A refugee who is admitted to the United States under section 207 of the Immigration and Nationality Act;
- d. An alien who is paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year;
- e. An alien whose deportation is being withheld under section 241(b)(3) or section 243(h) of the Immigration and Nationality Act;
- f. An alien who is granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980; or
- g. An alien who is a battered spouse and dependents of such battered spouse meeting the criteria of Section

431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

- h. An alien who is granted status as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
- i. An alien who is admitted to the United States as an Amerasian immigrant pursuant to sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

3. **Eligible Aliens** (Department Regulation 387.9(a)(2))

Only certain qualified aliens can be eligible to participate in the FS program. These eligible aliens, which are listed below, will be referred to as Specially Qualified Aliens.

a. **Aliens With Time-Limited Eligibility (seven years)**

(1) **Definition and Basic Policy**

Aliens with time-limited eligibility are eligible for participation in the FS program as Specially Qualified Aliens for a period of seven years after the date:

- (a) The alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;
- (b) The alien is granted asylum under section 208 of the Immigration and Nationality Act; or
- (c) The alien's deportation is withheld under section 241(b)(3) or section 243(h) of the Immigration and Nationality Act; or
- (d) The alien is granted status as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
- (e) The alien is admitted to the United States as an Amerasian immigrant pursuant to sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

After the seven year period expires, such aliens are ineligible for FS unless they become a United States citizen or meet the requirements of subsections b. (40 qualifying quarters) or C. (veteran).

The seven year period of FS eligibility continues even if the alien's status is adjusted to lawfully admitted for permanent residence (LAPR) status during the five year period. Such a change in alien status will usually be indicated on the alien's I-551, Resident Alien card.

EXAMPLES

- (a) An alien who provides documentation which indicates that asylee status was granted in March 1989 is not eligible for FS as an asylee because the 7 year period of eligibility expired at the end of February, 1996. This individual's application for food stamps would be immediately denied.
- (b) If the alien in Example (a) was a FS recipient in March 1997, the alien would become ineligible when the alien's certification period ends (between April 1, 1997 and August 22, 1997).
- (c) An alien classified as permanent resident applies for food stamps in March 1997. The alien documents entry into the United States as a refugee in November 1994. This alien's status was changed to LAPR in November 1996. This individual remains eligible for food stamps until the end of October 2001, seven years after entry into the United States as a refugee.

b **Qualified Aliens who are Battered, Parolees or Lawfully Admitted for Permanent Residence (LPR) into the United States (US)**

Aliens who have been determined to be in Qualified Status because of Battery or being Paroled into the United States for at least one year or being an LPR (holder of Green cards), must meet one of the following conditions to be eligible for food stamp benefits:

- Have lived in the US in a qualified status for 5 years, or
- Have 40 qualifying quarters of work, or
- Be in receipt of disability benefits as provided in the Food Stamp Act, or
- Be a child under 18 years of age, or
- Be on active duty in the U.S. Military or be a veteran who has served a minimum of two years in active duty and is honorably discharged from the U.S. military.

Below is an example of an alien who has been battered and applies for a food stamp benefit.

Example: Ms. Delina Lamoureux came into the agency on 3/22/06. Her husband is a Legal Permanent Resident (LPR). Ms. Lamoureux came to the U. S. on 8/10/05 on a V visa. Her husband previously filed an I-130 petition for her in August, 2000 which is currently pending. She was recently admitted to the hospital due to physical abuse by her husband. She has been forced to leave their joint residence and has found an apartment for herself and her infant child who is a US citizen. The rent is \$400 per month with heat included. She has used all of her resources to secure the apartment. As she is no longer receiving any support from her husband, she is applying for Temporary Assistance and Food Stamps for herself and her minor child. Ms. Lamoureux is screened on 3/22/06 and determined eligible for expedited processing of her Food Stamp application.

Ms. Lamoureux informed the eligibility worker or other designated agency worker that she has filed an I-360 self-petition and provides an I-797 (acknowledging receipt) as proof. The eligibility worker or other designated agency worker then determined that Ms. Lamoureux does not have qualified status without a determination of battery. As Ms. Lamoureux has not yet received a prima facie letter from the United States Citizenship and Immigration Services (USCIS) indicating a prima facie determination of battery, it is necessary for the Domestic Violence Liaison (DVL) to assess her credibility and determine battery. The DVL determined that she is a credible victim of battery. In addition to being battered, an alien must meet two other requirements to obtain qualified status. To be qualified, the eligibility worker or other designated agency worker must determine that Ms. Lamoureux is no longer residing in the same household as the abuser and that there is a substantial connection between the need for benefits and the battery. The eligibility worker determines that Ms. Lamoureux meets these requirements and is a qualified alien. The date Ms. Lamoureux obtained qualified status is considered the date of her Food Stamp application (3/22/06).

To be eligible for Food Stamp benefits, a qualified alien must be in a qualified status for 5 years or be in receipt of disability benefits as provided in the Food Stamp Act or be a child under 18 years of age or be credited with 40 qualifying quarters of work. As Ms. Lamoureux is not in receipt of disability benefits, is not a child and does not have 40 qualifying quarters of work, she must be in qualified status for 5 years before she can be eligible for Food Stamp benefits. If she remains in qualified status she may be eligible for Food Stamps as of 3/22/2011. However, as a citizen, her infant child may currently be eligible for Food Stamp benefits. If the child had not been a citizen, the child would have qualified alien status as a child of a battered parent and may have been eligible for Food Stamp benefits as a child under 18 years of age (Note-children under 18 years of age who are qualified aliens are not subject to the 5 year rule and may be currently eligible for Food Stamp benefits).

(3) Systems Support

To aid in tracking alien eligibility and the seven years of potential food stamp eligibility, WMS edits have been changed to allow entries in the following fields for Case Types 31 (NPA-FS), 32 (FS-MIX) and 60 (HEAP):

Citizenship Code, Alien Number, Date of Entry into United States, Nationality Code and Resettlement Agency Code.

a. Aliens Lawfully Admitted for Permanent Residence with Qualifying Quarters of Coverage**(1) Definition and Basic Policy**

A permanent resident alien is eligible to participate in the FS program as a Specially Qualified Alien if the alien:

- (a) Is lawfully admitted to the United States for permanent residence (LAPR) under the Immigration and Nationality Act Such aliens are called permanent resident aliens and possess what is commonly called a "green card"; and
- (b) Has earned 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters.

(2) Qualifying Quarters

In determining the number of qualifying quarters of coverage set forth in paragraph (1) above, an alien is credited with the following:

- (a) All qualifying quarters of coverage worked by the alien;
- (b) All qualifying quarters of coverage worked by a parent of such alien before the alien reached age 18; and
- (c) All qualifying quarters worked by the spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

However, no qualifying quarters of coverage may be credited to an alien for any period after December 31, 1996 if such alien, parents or spouse received any Federal means-tested public benefit (as defined in (5) below) during the period for which such qualifying quarter of coverage is credited.

Thus an alien may earn a qualifying quarter by either working or by being credited with a qualifying quarter worked by another. The same quarter can be credited to the person who worked as well as other family members eligible to be credited with such quarter.

(3) Who Can Be Credited With Work Quarters From Family Members

An alien can be credited with qualifying quarters earned by other family members. The following guidelines must be used to determine which family members can contribute qualifying quarters to the alien.

- (a) An alien who is married can be credited with work quarters actually worked, and any quarters worked by a spouse during the marriage. This applies so long as the alien remains married to or separated from the spouse, or, if the spouse is deceased, was married to the spouse at the time of the spouse's death.

The alien loses all of their spouse's work quarters when divorced. The loss of the spouse's quarters must be used to determine FS eligibility when eligibility is redetermined due to a reported change during the certification period but no later than the first recertification subsequent to the divorce.

- (b) An alien under age 18 can be credited with work quarters worked by both parents (including quarters earned prior to the child's birth), whether the parent is an alien or not, and any of the alien's own quarters worked.
- (c) An alien over age 18 can be credited with work quarters worked by both parents (including quarters earned prior to the child's birth) before that alien reached age 18, whether the parent is an alien or not, and any of the alien's own quarters worked.

(4) Examples Of Crediting Quarters

- (a) If an alien has earned 20 qualifying quarters, and his spouse has earned 20 qualifying quarters over the same time span, that alien can be credited with 40 qualifying quarters in as few as 5 years. If the spouse is also an alien, the spouse can also be credited with 40 qualifying quarters.
- (b) If a LAPR alien is divorced from her husband, she cannot be credited with any of the qualifying quarters her former husband may have earned while they were married or since the divorce. If she qualified for food stamps by being credited with qualifying quarters from her former spouse, she must have her eligibility based on alien status redetermined at the first recertification subsequent to the divorce.

If the LAPR is separated, she would be credited with all of the quarters her spouse earned during the marriage and since the separation.

(5) Qualifying Quarters and Federal Means-Tested Public Benefit

PRWORA established a special limitation on quarters worked after December 31, 1996. Quarters worked after December 31, 1996, do not count as qualifying quarters if the alien receives any Federal means-tested public benefits during that quarter.

- (a) Federal means-tested programs include only those programs which:
 - (2) Include federal dollars, and
 - (3) Establish eligibility for program benefits based on income or income and resources.
- (a) This definition limits this prohibition to aliens who received assistance from one of the following programs during the quarter in question:
 - (4) Federally participating public assistance (formerly ADC and EAF and now TANF and EAF),
 - (5) Federal food stamp benefits,
 - (6) Federally participating medical assistance, and
 - (7) SSI benefits.

- (a) Specifically excluded from the definition of Federal means-tested public benefits are:

medicaid for certain emergency care, short-term non-cash emergency disaster relief, school lunch assistance, WIC assistance, public health services for treatment of communicable diseases and immunizations, foster care and adoption assistance under IV-B and E of the Social Security Act if the foster/adoptive parent is a potentially eligible alien, certain programs providing assistance to students for educational purposes, Head Start benefits, JTPA benefits, and assistance which the United States Attorney General will designate.

(6) Establishing Qualifying Work Quarters

The Social Security Administration determines that a person has worked a qualifying quarter when that person earns a specified amount of money.

<u>Year</u>	<u>Quarter Amount</u>	<u>Annual Amount</u>
for 1978 and earlier, \$50 or more in wages per quarter		
1979	\$260	\$1040
1980	290	1160
1981	310	1240
1982	340	1360
1983	370	1480
1984	390	1560
1985	410	1640
1986	440	1760
1987	460	1840
1988	470	1880
1989	500	2000
1990	520	2080
1991	540	2160
1992	570	2280
1993	590	2360
1994	620	2480
1995	630	2520
1996	640	2560
1997	670	2680
1998	700	2800
1999	740	2960
2000	780	3120
2001	830	3320
2002	870	3480
2003	890	3560
2004	900	3600

- a. **Immigrants receiving disability assistance: Effective October 1, 2002.** any qualified alien who is otherwise eligible and who receives disability or blindness benefits, regardless of the date of entry into the U.S., is eligible for FS. The disability assistance or benefits must be predicated on a disability determination using criteria at least as stringent as the criteria used under title XVI of the Social Security Act. This includes qualified immigrants who receive Supplemental Security Income (SSI) or Social Security Disability (SDSD), or Medicaid if a disability determination has been made (WMS Individual Categorical Code 11 or 12.)
- b. **Immigrants in the United States for five years: Effective April 1, 2003.** any individual who has lived in the U.S. for at least five years as a qualified alien, beginning on the date of entry into the U.S., may receive FS if otherwise eligible. Districts participating in the Food Assistance Program (FAP) must re-code FAP recipients who become eligible for federal FS based on this provision effective April 1, 2003. In NYC, FAP participants whose date of entry is April 1, 1998 or earlier will be automatically recoded for federal FS in a mass rebudget for April 1, 2003. The April 1, 2003 change also eliminates the seven-year limit for refugees, asylees, Cuban/Haitian entrants, Amerasian immigrants and immigrants with deportation or removal withheld.
- c. **Immigrant children: Effective October 1, 2003.** any qualified alien who is otherwise eligible and is under 18 years of age, regardless of the date of entry into the U.S. is eligible for FS. In addition, this

provision eliminates the deeming requirements to count the income and assets of the immigrant's sponsor in determining food stamp eligibility and benefits for the immigrant's child.

a. Alien Victims of Severe Forms of Trafficking

Victims of severe forms of trafficking are eligible for FS benefits to the same extent as aliens admitted to the U.S. as refugees under Section 207 of the Immigration and Nationality Act (INA). Although P.L. 106-386 makes trafficking victims eligible for benefits and services to the same extent as refugees, it does not confer status to identified trafficking victims under immigration laws.

(1) There are two kinds of qualified victims:

- (a) Adults, who are certified by the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services; and
- (b) Children under 18 years of age, who do not have to be certified but who are issued a letter by ORR stating that the child is eligible for benefits as a victim of a severe form of trafficking in persons.

Samples of the ORR adult certification letter and ORR child eligibility letter are found in 03 ADM-1. These letters are for benefits eligibility purposes only. Certification and eligibility letters issued before November 6, 2001 had 8-month expiration dates. ORR recertified these victims with a recertification letter or new eligibility letter; these letters have a lower case "r" beside the HHS tracking number. Recertification letters do not have expiration dates.

Trafficking victims' eligibility for FS benefits is summarized as follows:

- (1) Eligible for first 7 years from date of entry (from the ORR certification or eligibility letter) in the U.S.
- (2) After 7 years in the U.S.: eligible for food stamp benefits if they meet one of the following criteria:
 - (a) In receipt of disability or blindness benefits, as described in 02 ADM-7 (effective October 1, 2002); or
 - (b) Effective April 1, 2003, they will be eligible because they have resided in the U.S. as a qualified alien for at least five years; or
 - (c) Lawfully admitted for permanent residence (LPR) with 40 qualifying quarters; or
 - (d) Lawfully residing in the U.S. on August 22, 1996, and
 - (1) Disabled according to Food Stamp Source Book (FSSB) Section 5, or
 - (2) 65 or older on 8/22/96 (i.e. born before 8/22/31), or
 - (3) Under 18.

NOTE: See GIS message (GIS03TA/DC012 For Claiming Information)

g. Aliens Who are Veterans or in Active Military Duty

- (1) Qualified aliens who are lawfully residing in the United States are eligible for participation in the Food Stamp program as Specially Qualified Aliens if the alien:

- (a) Is a veteran with a discharge characterized as an honorable discharge and not on account of alienage; or
- (b) Is on active duty, other than duty for training, in the Armed Forces of the United States; or
- (c) Is the spouse or unmarried dependent child of an individual described in (a) and (b) of this paragraph.

The eligibility of these Specially Qualified Aliens is not subject to any time limitation.

- (3) A veteran means a person who served in the active military, naval, or air service of the United States, and discharged or released therefrom under conditions other than dishonorable.

NOTE: A person who is discharged or released from a period of active duty before completing the shorter of (A) 24 months of continuous active duty, or (B) the full period for which such person was called or ordered to active duty, is not eligible by reason of such period of active duty for any benefit under Federal Law (other than this title or any other law administered by the Secretary), and no dependent or survivor of such person shall be eligible for any such benefit by reason of such period of active duty of such person.

- (4) Active duty in the Armed Forces of the United States means being on full-time duty in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.
- (5) Duty for training is temporary full-time duty in the Armed Forces performed by members of the Reserves, Army National Guard, or Air National Guard for training purposes. Active duty for training does not establish eligible alien status.

This provision applies to both aliens and citizens who are veterans or on active duty in the Armed Forces of the United States and to their alien spouses and alien unmarried dependent children.

- (6) A spouse is someone who is currently married under the laws of this State or whose marriage is recognized by this State as a legal marriage. This includes spouses who are residing apart regardless of whether or not a separation agreement is in effect.
- (7) An unmarried dependent child of a veteran or active duty member of the Armed Forces is a child who is:
 - (a) The child (biological or adopted) or the stepchild of a veteran or active duty member of the Armed Forces; and
 - (b) Not married; and
 - (c) Dependent on the veteran or active duty member (can be claimed as a deduction on his or her federal income tax return).

The eligibility of an unmarried dependent child is not affected by the marital status of the parents.

- (8) It should be noted that the definition of a Qualified Alien includes parolees, conditional entrants, and certain battered spouses. Documentation guidelines for these three groups are found in **ATTACHMENT D of 97 ADM-25**.
- (9) The DD-214 is the form provided to veterans by the Defense Department which documents the type of military discharge a veteran has been granted.

EXAMPLES:

If the spouse of a veteran is an alien, but the veteran is a citizen, the spouse would meet the alien eligibility criteria for food stamps.

If an alien veteran is divorced from his or her spouse, the veteran's unmarried dependent child would meet the alien eligibility criteria for food stamps, regardless of which parent the child lives with.

1. Documentation

Local districts must obtain appropriate documentation of alien status at application or recertification.

- a. Documentation of refugee and asylee status, including the date the status started, is found on INS forms I-94 or I-688B. Documentation of asylee status may also be found on an INS or U.S. Justice Department letter granting such status. Deportation withheld can be documented by a judge's order showing that deportation was withheld pursuant to section 243(h) of the Immigration and Nationality Act (INA). The date withheld is the date of the judge's order.
- b. Documentation of working quarters can be obtained by the individual from the Social Security Administration (SSA) by filing an SSA-7004, the Benefit Estimate form. However, the time it will take an individual to receive a response after filing an SSA-7004 form with SSA may be longer than the time frame allowed to process a food stamp application or recertification request. In addition, local districts are able to access the SSA 40 Quarter Data Exchange process and get information on the client's work history directly from SSA. (WMS Coordinator Letter 8/1/97 and GIS 97 TA/DC031).
- c. Alternate means of documenting a client's work history can include statements of work history from individuals in the community such as current or former employers or business partners, client records of pay or income tax, and even statements of the client or the client's friends or family, if the statements appear creditable to the worker. For more information see 97 ADM-25 Attachment C.

NOTE: For information regarding expired or lost immigration documents see 03 INF-19.

2. Income of Aliens Ineligible for FS Due to Alien Status

Current policy describes when the income of an alien who is ineligible to participate in the food stamp program due to alien status is budgeted to determine the household's FS benefits.

See FSSB Section V for instructions for determining household composition and Section 12 for instructions for budgeting the income of ineligible aliens. See FSSB Sections 10 for instructions for budgeting deductions for households with ineligible aliens.

- a. If the alien is a member of the food stamp household, that person's income must be prorated and a prorated share excluded as meeting the alien's needs and the balance budgeted as available to the food stamp household. This applies to aliens who are mandated household members (parents of minor children and spouses) and aliens who purchase and prepare food in common with the rest of the household.
- b. If the alien is not a member of the food stamp household, none of that alien's income is budgeted.
- c. The PRWORA made it possible for a FS household member who is an alien to be eligible for TA but ineligible for food stamps. In such situations, a prorata share of the household's TA income is excluded from food stamp income. The balance of the household's TA income is budgeted for FS purposes.
- d. In such situations, the household's FS benefits are calculated as follows:
 - (1) Divide the countable TA income evenly among the household members including the ineligible alien;
 - (2) Subtract the ineligible alien's share from the total TA income and use the remainder as the TA income input on the food stamp budget.
 - (3) Reduce the number of food stamp household members by the number of ineligible(s) living with the household.

EXAMPLES:

- a. Suppose a single mother who is a permanent resident has 2 children, both of whom are U.S. citizens. She applies for TA and FS for herself and her children. She entered the US as a permanent resident in March of 1993 and cannot be credited with 40 qualifying quarters.

The mother and children are eligible for TA and receive a TA grant of \$450 a month. However, only the children are eligible for food stamps.

To determine FS entitlement, the household's TA grant is prorated. One-third (\$150) is excluded as meeting the mother's needs and two-thirds (\$300) is budgeted in determining the FS benefits for the 2 FS eligible children.

- b. Suppose the mother's boyfriend who is also an ineligible alien moves in with the family. He is not the father of either child. He states that he does not purchase and prepare in common with the mother and her children and the district determines he is not part of the mother's FS household.

The boyfriend's income is not considered in determining the children's FS entitlement.

- c. Suppose the boyfriend in example #2 is the father of one of the children or states that he purchases and prepares food in common with the mother and the children. His income is then prorated and a prorated share is budgeted as available to the children.

If his countable income is \$400 a month, the district would divide his income by 4, the number of individuals in the household. His prorated share is \$100, the mother's share is \$100. The balance, \$200, is budgeted as available to the children.

10. Systems Support For Budgeting TA Only Cases

On Upstate ABEL, workers must remember, after using Function Key 8 from a TA budget, to:

- a. Reduce the number in the food stamp household by 1 (or however many ineligible aliens there are in the household) and
- b. Reduce the countable TA grant brought over to the food stamp Input screen by ABEL, by the alien's prorata share of the countable TA grant.

11. Systems Implications

Specific systems implications are addressed in the particular subsections of Section IV of this ADM to which they apply.

CNS language has been modified to reflect the alien provisions of PRWORA for the following food stamp individual reason codes:

- F92, Ineligible Alien, and
- F85 and F86, Failure to Verify Alien Status.

ABEL has been modified to support the budgeting of a prorated SUA for food stamp households which include an ineligible alien. Information on these procedures was provided in ABEL Transmittal 97-1.

12. Declaration of Citizenship/Immigration Status -

- a. One adult representative of a FS household must, as a condition of eligibility, attest to the citizenship/alien status for all FS applicant/recipients.
 - (1) For applicants this declaration is found on page six, section twenty-two of the DSS-2921 - Application.
 - (2) For recipients this declaration is found on page fourteen, section thirty of the DSS-3174 - Recertification Application.
- b. Exemptions - The following are the only situations which do not require completion of a declaration.

- (1) An applicant/recipient (A/R) of MA or FS whose eligibility is established as a result of a separate determination process, and a completed declaration is already on file at the local district;
 - (2) An SSI A/R who has applied for FS at a Social Security Administration (SSA) Office using the national application for FS (form FNS-385(7-87)) since this application already includes the necessary declaration;
- c. Failure or Refusal to Sign - Since the declaration of citizenship/immigrant status is accomplished when the last page of the application is signed, failure to sign is synonymous with failure to sign an application for FS. The only exception to this is if the applicant had signed page one of the application establishing a filing date and then does not sign the last page of the application. In such cases the application is denied for failure to cooperate.

For TA/FS and mixed cases, individuals sanctioned from TA for failure to sign the declaration must be included in the FS household if otherwise eligible, if the general declaration on the last page of the application has been signed by any adult household member, or by an authorized representative.

13. Citizenship Status -

To be eligible to participate in the FS Program an individual must be a resident of the U.S. and a U.S. citizen, or an alien as specified in paragraph #3 below.

14. Alien Status - (Prior to PRWORA)

- a. An alien lawfully admitted for permanent residence as an immigrant pursuant to Section 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA).

NOTE: For eligibility of aliens lawfully admitted for permanent residence pursuant to Section 245A of the INA, see paragraphs g(1) and h below.

NOTE: North American Indians, who possess at least 50 percent of blood of the American Indian race, and who enter the United States from Canada under authority of 8 U.S. C. 1359 (8 C.F. R. 289) are lawfully admitted permanent residents as described in section 101(a)(20) of the Immigration and Nationality Act.

- b. An alien who entered the U.S. prior to January 1, 1972, or some later date as required by law; who has continuously lived in the U.S. since then who is not eligible for citizenship but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to Section 249 of the INA.
- c. An alien who is qualified for entry pursuant to Section 207 or 208 of the INA.

NOTE: Under a memorandum of Understanding (MOU) between the U.S. government and the Council of Jewish Federations and the Hebrew Immigrant Aid Society (CJF/HIAS), twenty percent of refugees admitted from the Soviet Union, under Section 207(c) of the INA, as amended, during the 1990 federal fiscal year will be designated by CJF/HIAS as "privately-funded refugees".

Under the terms of the MOU, CJF/HIAS and the local Jewish Community, acting as sponsoring entities, have agreed to ensure sufficient financial, social and medical support/services so that the "privately-funded refugees" do not need TA, MA, FS, Title XX or federally funded refugee-specific social services as benefits. This obligation continues for a period of two years after admission to the U.S. or until the refugee attains lawful permanent resident status. However, these refugees have legal alien status and are entitled to receive TA, MA, FS, Title XX or federally funded refugee-specific social services or benefits, if otherwise eligible.

Sponsoring agencies have indicated their willingness to meet their responsibilities to this group. Therefore, in assessing an applicant's eligibility for benefits, the agency listed on the I-94 should be contacted to ascertain the income/resources currently being provided or available to the household to meet the needs identified in the social services application. Refusal to access the

financial resources available from the sponsoring agency is not a reason for denying Food Stamps. For "Privately-Funded Refugee" acceptable documentation see FSSB Section 5-B-3.6.

- d. An alien granted asylum through an exercise of discretion by the Attorney General pursuant to section 208 of the INA.
- e. An alien lawfully present in the U.S. as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to Section 212(d)(5) of the INA or as a result of a grant of parole by the Attorney General.
- f. An alien living within the U.S. for whom the Attorney General has withheld deportation pursuant to Section 243 of the INA.
- g. Section 245A(b)(1) of the INA -
 - (1) Permanent Residence - An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for permanent residence pursuant to section 245A(b)(1) of the INA. Such a aliens may obtain lawful permanent resident status under section 245(b)(1) of the INA no earlier than November 1, 1988.
 - (2) Temporary Residence - Aged, blind or disabled aliens who have been admitted for temporary residence under section 245A of the INA. They will likely posses an I-688 "Temporary Resident Card" which will indicate they were admitted under section 245A of the INA as lawful Temporary Residents (LTRs).

NOTE: Immigration and Naturalization (INS) will not make a determination as to whether the Resident Alien meets the SSI eligibility definition. This determination should, therefore, be made by the local district. In making this determination, the local district need not verify the alien's age, blindness or disability, unless it is questionable.

- h. An alien who is granted lawful temporary resident status pursuant to section 245A of the INA at least five years prior to applying for FS and who subsequently gained lawful permanent resident status pursuant to section 245A of the INA. Such aliens may obtain lawful temporary residence status no earlier than May 5, 1987 and may be eligible for FS no earlier than May 5, 1992.

NOTE: Eighteen months after attaining LTR status such aliens are eligible to apply for Permanent Resident status. Upon attaining Permanent Resident status, these aliens are issued INS form I-551, "Alien Registration Receipt Card" (Green Card). This card will have a registry number in the 90 million series and will be coded as either W16, W26 or W36 to verify the alien is admitted as a Permanent Resident Alien under Section 245A of the INA. Aliens attaining Permanent Resident status under Section 245A of the INA (except for those defined as aged, blind or disabled as explained in paragraph g. above) are not eligible to participate in the Food Stamp Program for a period of five years following the date they are granted L/TR status. The date the alien is granted L/TR status will be indicated on the fourth line on the reverse of the I-551. This line will read: "TEMP RES ADJ DATE-MM-DD-YY."

- i. Special Agricultural Workers (SAWS) - Aliens eligible to apply for LTR status in accordance with section 210 of the INA during the period of June 1, 1987 to November 30, 1988.
 - (1) (Group I - Those aliens who could prove that they have performed seasonal agricultural services for at least 90 man-days in each of the three twelve month periods preceding May 1, 1986 and who were among the first 350,000 SAWS with such prior seasonal agricultural work experience in the United States who applied for temporary resident status.

NOTE: Group I SAWs may apply for permanent resident status after remaining in L/TR status for one year. Upon attaining permanent status these aliens will be issued INS form I-551. Beginning in December 1989, these SAWs will have their I-551 card coded S-16 to verify permanent Resident Alien Status.

- (2) Group II - Those aliens who could prove that they performed seasonal agricultural work in the United States for at least 90-man days during the 12 month period ending may 1, 1986 and those

who would have been eligible for Group I status except that the 350,000 limit on Group I status had already been filled.

NOTE: Group II SAWs may apply for permanent resident status after remaining in LTR status these aliens will be issued INS form I-551. Beginning in December 1990 these SAWs will have their I-551 card coded S-26 to verify permanent resident alien status.

NOTE: Both SAWs groups are eligible to participate in the Food Stamp Program from the date they attain LTR status in accordance with Section 210 of the INA.

- j. Additional Special Agricultural Workers (ASAWs) - ASAWs, also referred to as Replenishment Agricultural Workers (RAWs), may be granted LTR status by INS during the period October 1, 1989 to September 30, 1993 after the Secretaries of Agriculture and Labor make a joint determination that a shortage of SAW workers exist.

Aliens granted LTR status as ASAWs must remain in Temporary Resident status for three years before they can be granted adjustment by INS to Lawful Permanent Resident status. Verification documents for this group have yet to be defined by INS.

Local districts will be advised when this information becomes available. As is the case with SAWs, ASAWs are eligible to participate in the FS Program upon attaining LTR status.

- k. A national of Poland, Uganda, Ethiopia or Afghanistan, who has resided continuously in the U.S. since prior to July 21, 1984.

NOTE: These nationals may apply for LTR status from INS between March 21, 1988 and December 22, 1989, will be treated in the same manner as other LTR's and are eligible for FS to the same extent as other LTRs adjusting under IRCA. (see paragraphs h. and j. above).

NOTE: Aliens admitted under the provisions of IRCA are listed in paragraphs b and g through k above.

NOTE: Aliens specified in g. through k. above must, when applying for FS benefits, present documentation to the local district such as, but not limited to, a letter, notice of eligibility, or identification card which clearly identifies that the aliens have been granted one of these legal statuses.

1. Documentation -

- a. PERMANENT RESIDENT ALIEN - Aliens in the categories specified in paragraphs a and b of **FSSB Section 5**, shall present INS form I-151 or I-551; Alien Registration Receipt Card; the Re-entry Permit; or a Passport Booklet for lawful permanent resident aliens.

NOTE: The validity of the Alien Registration (green) Cards issued prior to 1979 (I-151, AR-3, AR-103) will expire on March 20, 1996.

The expiration of the validity of INS documents may affect a person's TA, FS, or MA eligibility. Local districts should encourage Applicants/Recipients (A/R's) of FS benefits whose documentation of permanent resident alien status was issued prior to 1979 to apply for the I-551 (Resident Alien) card.

An A/R can find out how to apply for an I-551 by calling INS toll-free at 1-800-755-0777. Applicants for the I-551 who cannot afford the application fee may request a waiver of the fee from INS. Elderly and disabled persons unable to travel to an INS office may ask for special assistance.

If an individual with Lawful Permanent Resident (LPR) status applied for, but has not yet received a I-551 prior to March 21, 1996, potential FS eligibility is retained during the replacement application process. Local districts can identify applicants/recipients in LPR status who have applied for replacement of their green cards because these individuals retain Form I-151 during the replacement procedure, and will also be issued a receipt (INS Form 797-Notice of Action, or a fee-waived receipt)

which serves as evidence of a green card replacement application until the individual receives his or her new I-551 card.

NOTE: North American Indians who are not U.S. citizens who enter the United States from Canada must provide verification of status as any non-citizen must do to apply for FS. Such persons may verify their permanent residency as North American Indians of at least 50 percent American Indian blood admitted under 8 U.S.C. 1359 (8 C.F.R. 289) with birth records, affidavits, from tribal officials, INS forms I-151 and 551, or other documentation acceptable to the certification worker.

b. **LAWFUL TEMPORARY RESIDENT ALIENS** - Aliens in the categories specified in paragraphs c. through e. of **FSSB Section 5**, shall present INS form I-94, Arrival-Departure Record.

(1) **ACCEPTABLE ANNOTATION** - The local district shall accept the INS form I-94 as verification of eligible alien status only if the form is annotated with Section 207, 208, 212(d)(5), or 243(h) of the INA; or if the form is annotated with any of the following terms, or a combination of the following terms: refugee, parolee, paroled, or asylum.

The form is usually stamped "Employment Authorized".

NOTE: For "Privately-Funded Refugees" as described in paragraph 3 c., the Council of Jewish Federations and the Hebrew Immigrant Aid Society will be responsible for permanently affixing to the face of INS form I-94 of each "Privately-Funded Refugee" the following statement:

This refugee is sponsored by the Hebrew Immigrant Aid Society and ("Name of Local Jewish Organization"). Private resources are available. If TA is sought, please call ("Name of Local Agency") at ("Phone Number").

(2) **UNACCEPTABLE ANNOTATION** - An INS form I-94 annotated with any one of the letters (A) through (L) shall be considered verification of ineligible alien status, unless the alien can provide other documentation from INS which indicates that the alien is eligible.

c. **IRCA ALIENS** - Aliens in the categories specified in paragraphs b. and g. through k. of **FSSB Section 5**, shall present documentation which will consist of but not be limited to, a letter notice of eligibility, or identification card which clearly identifies the alien has been granted legal status.

(1) **LAWFUL TEMPORARY RESIDENT ALIENS** -

(a) Applicants for LTR status receive an "Employment Authorization Card" (Form I-688A) once they complete the first INS application review and interview procedures. This card conveys work authorization for a period of six months after issuance. Proof of legal authorization to work is required under IRCA.

(b) Approximately one to six months after the I-688A is issued, INS should issue a "Temporary Resident" card (Form I-688) to the applicant. This card is issued after the Regional Processing Facility of INS completes a full investigation of the application. Form I-688 identifies the holder as an LTR; it is usually retroactive to the date of receipt of application payment by INS.

NOTE: The I-688, not the I-688A, is documentation of Lawful Temporary Resident status.

(c) After receiving LTR status, and remaining in that status for a specified period of time, the temporary resident may apply for lawful permanent resident status. Once this procedure is complete, the individual receives an "Alien Registration Receipt Card," (Form I-551) commonly referred to as the "green card". Form I-551 is valid until it is surrendered or until the individual receives citizenship status. An I-551 with a registration number in the 90 million series indicates that the individual was granted lawful permanent resident status through IRCA.

(2) **PERMANENT RESIDENT ALIENS** - Aliens adjusting through registry or through changing entrant status receive Form I-551 (the "Alien Registration Receipt Card") upon approval of their

application. This card conveys work authorization and verifies identity.

2. **Samples of Documentation** - Below are samples of documentation which an alien may present:

a. I-551 Resident Alien Card issued prior to September 1989:

RESIDENT ALIEN

Name	GARCIA-LOPEZ, ROSA MARIA	
Date of Birth	052356	finger print
Official Seal	PHOTO	A90000000 ← SAMPLE NUMBER
	W-16	signature

CLASS OF ADMISSION CODE:
The permanent resident codes are
@ W16, W26, and W36 for 245As
@ R16 for RAWs

ALIEN REGISTRATION RECEIPT CARD
Person identified by this card is
entitled to reside permanently and
work in the US

33500000 11 23 663 563 86539

5533 47405 16323 34456 69480

0403XX 582 050 07620 9462742

SAMPLE CARD

DATE ADJ TEMP RES 010189

TEMPORARY
RESIDENT
ADJUSTMENT
DATE

b. I-551 Resident Alien Card issued after September 1989:

TEMPORARY RESIDENT

Alien Number	AA95624123	MICHELLE SALTZMAN
Date Issued Adjustment to Status	05/05/87	04/14/66
Expiration Date	12/04/89 EXPIRES	583
	PHOTO	Fingerprint
	245A	

Section Number under which Alien adjusted

3. Lack of Documentation -

- a. APPLICATION FOR VERIFICATION - If the INS form I-94 does not bear any of the above annotations and the alien has no other verification of alien classification in his or her possession, the local district shall advise the alien to submit form G-641, Application for Verification of Information from Immigration and Naturalization Service Records, to INS. Local districts shall accept this form when presented by the alien and properly annotated at the bottom by an INS representative as evidence of lawful admission for permanent residence or parole for humanitarian reasons.
- b. CONTACTING INS - The alien shall also be advised that:
- (1) Classification under Section 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status;
 - (2) He/she may be eligible if acceptable verification is obtained; and
 - (3) He/she may contact INS, as previously stated, or otherwise obtain the necessary verifications, or if the alien wishes and signs a written consent that the local district will contact INS to obtain clarification of the alien's status.
 - (4) If he/she does not wish to contact INS, the household may withdraw its application or participate without that member.
- c. OBTAINING OTHER ACCEPTABLE VERIFICATION - If an alien is unable to provide any INS document (not even an INS form I-94), then the local district has no responsibility to offer to contact INS on the alien's behalf.

The local district's responsibility exists only when the alien has an INS document that does not clearly indicate eligible or ineligible status. In any event, the local districts shall not contact INS to obtain information about the alien's correct status without the alien's written consent.

If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The local district shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to Section 101(a)(15), 101(a)(20), 207, 208, 212(d)(5), 243, or 249 of the INA, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to Section 243(h) of the INA.

4. Status While Awaiting Verification -

While awaiting acceptable verification, as defined in FSSB Section 5, the alien whose status is questionable shall be ineligible. See FSSB Sections 12 and 16 for the treatment of income and resources of an ineligible alien.

If verification of eligible alien status is subsequently received, the local district must act on the information as a reported change in household membership in accordance with timeliness prescribed in FSSB Section 6.

5. Ineligible Alien -

Unless listed above, aliens are ineligible to participate in the program as a member of any household. Among those ineligible to participate are aliens who are:

- a. Visitors;
- b. Tourists;
- c. Diplomats; and
- d. Students on a temporary visa with no intention of abandoning their residence in a foreign country.

6. Illegal Aliens -

The Welfare Reform Act of 1997 established that each local district must report to OTDA the name and address and other identifying information known to it with respect to any alien known to be unlawfully in the United States.

OTDA has identified two specific conditions which definitively establish that an alien is unlawfully present. Accordingly, your report of "Aliens Unlawfully in the United States" (97 ADM-23, Attachment IX) should only include aliens who meet either of the following two conditions:

- a. **Aliens with a final INS Order of Deportation outstanding.** An outstanding order of deportation is final when it is not subject to appeal, either because:
 - (1) The relevant statutory appeal period (10 days) has expired,
 - (2) There are no lawful grounds upon which an appeal may be based, or,
 - (3) The available administrative and/or judicial appeals have been exhausted and the order is not subject to review under the limited standards for reopening or reconsideration.
- b. **Aliens for which the SAVE response to a manually submitted INS G-845, (Document Verification Request) indicates that the person has submitted false immigration documents to the agency.**

When either of the above situations is applicable to an applicant or recipient of temporary assistance (FA or SNA), you should submit the name(s) and address(es) of the individual(s), along with identification of the documentation establishing their being unlawfully present in the U.S., including copies of the documentation when possible, to:

NYS Office of Temporary and Disability Assistance
 Division of Temporary Assistance - 11th Floor
 40 North Pearl Street, Albany, NY 12243

This information should be provided on a copy of the revised reporting form, "Aliens Unlawfully in the United States" (97 ADM-23 Attachment IX). You should submit the form within 10 days from the end of any month in which you identify "reportable" aliens.

NOTE: There are no reporting requirements for MA or FS. When an applicant is checked as being only for MA and/or FS, you should not include them on the report.

- c. Local districts should refer any alien requesting TA benefits who fails to furnish evidence that he or she is lawfully residing in the United States to the INS office, or the nearest consulate of the country of the applicant or recipient. Referral means informing the alien of the location of the nearest INS office or the nearest consulate and advising the alien that proper documentation should be secured. The proper documentation is required if you are to proceed with the processing of their TA application to determine what, if any, benefits the alien would be eligible to receive.

References

- 387.9(a)
- 03 ADM-1
- 02 ADM-7
- 97 ADM-25
- 92 ADM-10
- 88 ADM-22
- 03 INF-19
- 99 INF-17
- 99 INF-11
- 91 INF-48
- 90 INF-15
- 89 INF-40
- 89 INF-12
- 87 INF-18

Related Items

- Mandatory Items (FSSB)
- Income of Ineligible Individuals (FSSB)
- Resource Limits (FSSB)
- Changes During the Recertification Period (FSSB)
- Issuing Benefits (FSSB)

TA Source Book

Chapter 23

GIS Message (03TA/DC012)
GIS Message (98 TA/DC020)
GIS Message (97 TA/DC031)
GIS Message (96TA/DC039)
GIS Message (95ES/DC004)
GIS Message (94ES/DC041)
GIS Message (91IM/DC027)
GIS Message (90IM/DC039)
GIS Message (90 IM/DC019)
96 LCM-86

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid ¹	Family Assistance	Safety Net Assistance	Food Stamp Benefits
Refugees	R	<p><u>I-94</u>: stamped "Admitted under Section 207 of the INA," "Refugee," "RE1, RE2, RE3, RE4" or</p> <p><u>I-551</u>: stamped "R8-6, RE5, RE6, RE7, RE8 or RE9" or</p> <p><u>I-571</u>: Refugee Travel Document or</p> <p><u>I-688B</u>: Employment Authorization Document annotated with "8 C.F.R. § 274a.12(a) (3)" or</p> <p><u>I-766</u>: Employment Authorization Document annotated "a3"</p>	Entry				
Cuban/Haitian Entrants	H	<p><u>I-94</u>: stamped "Cuban/Haitian Entrant (status pending)," "Section 212(d) (5) of the INA," "Form I-589 filed," or "CU6," or CU7" or</p> <p><u>I-94</u> stamp showing parole under Section 212(d)(5) of INA or stamp showing parole in US on or after 10/10/80 and reasonable evidence that parolee has been a National (citizen) of Cuba or Haiti² or</p> <p><u>I-551</u>: stamped "CU6, CU7, or CH6" or</p> <p>Temporary <u>I-551</u> stamp in foreign passport. or</p> <p>USCIS notice or letter indicating ongoing exclusion or deportation proceedings or</p> <p>A document from USCIS indicating individual applied for asylum.</p>	Status Granted				Yes
Asylees	A	<p><u>I-94</u>: stamped "Granted asylum under Section 208 of the INA" or</p> <p><u>I-551</u>: Stamped "AS1, AS2, AS3, AS6, AS7, or AS8" or</p> <p><u>I-688B</u>: Employment Authorization Card annotated with "8 C.F.R. § 274a.12(a)(5)" or</p> <p><u>I-766</u>: Employment Authorization Document annotated "(a5)" or</p> <p>Grant letter from USCIS Asylum Office or</p> <p>Order of an immigration judge granting asylum.</p>					

¹REMINDER: For Medicaid, undocumented immigrants and non-immigrants may receive coverage for care and services necessary for the treatment of *emergency* medical conditions only, not including care and services related to an organ transplant procedure, if otherwise eligible. Pregnant women may be provided Medicaid *at any time* without regard to alien status, if otherwise eligible. Children may be provided medical assistance without regard to immigration status under CHIP B program.

²EXCEPTION: This guideline does not apply when the individual was paroled solely to testify as a witness in a judicial, administrative or legislative proceeding or when the parolee is in legal custody pending criminal prosecution.

ALIEN ELIGIBILITY DESK AID

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid ¹	Family Assistance	Safety Net Assistance	Food Stamp Benefits
Amerasian Immigrants	R	<p>I-94: stamped "AM1, AM2, AM3, AM6, AM7, or AM8." Derive date of entry from date of inspection on stamp; if date is missing, obtain from I-551 or from USCIS</p> <p>or</p> <p>I-551: stamped "AM1, AM2, AM3, AM6, AM7, or AM8"</p> <p>or</p> <p>Temporary I-551 stamp in foreign passport</p> <p>or</p> <p>I-571: Refugee Travel Document</p> <p>or</p> <p>Vietnamese exit visa or passport stamped "AM1, AM2, or AM3"</p>	Entry				
Deportation or Removal Withheld	J	<p>I-688B: Employment Authorization Card annotated with "8 C.F.R. § 274a.12(a)(10)"</p> <p>or</p> <p>I-766: Employment Authorization Document annotated "(a10)"</p> <p>or</p> <p>Order from Immigration Judge showing the date deportation was withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of INA</p>				Yes	
Certain Hmong or Highland Laotian	Z	<p>I-94: stamped "Admitted under Section 207 of the INA," "Refugee," "RE1, RE2, RE3, or RE4"</p> <p>or</p> <p>INS I-551: Stamped "RE5, RE6, RE7, RE8, or RE9"</p> <p>or</p> <p>Has a signed affidavit sworn under penalty of law that s/he was a member of Hmong or Highland Laotian tribe between 8/5/64 and 5/7/75 or a verified spouse*, widow, widower or unmarried dependent of a tribal member</p> <p>and</p> <p>Documents to show lawfully residing in the US</p> <p>*Divorced spouses do not qualify</p>	Status Granted				

¹REMINDER: For Medicaid, undocumented immigrants and non-immigrants may receive coverage for care and services necessary for the treatment of *emergency* medical conditions only, not including care and services related to an organ transplant procedure, if otherwise eligible. Pregnant women may be provided Medicaid *at any time* without regard to alien status, if otherwise eligible. Children may be provided medical assistance without regard to immigration status under CHIP B program.

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid ¹	Family Assistance	Safety Net Assistance	Food Stamp Benefits
* Lawfully Admitted For Permanent Residence (LPR) <u>with</u> 40 Qualifying Quarters	S	<u>I-551</u> : (Permanent Resident Card)	Entered Before 8/22/96			Yes	
		or Temporary <u>I-551</u> stamp in foreign passport or on <u>I-94</u> or <u>I-327</u> : (Re-entry Permit) or <u>I-181</u> : Memorandum of Creation of Lawful Permanent Residence with approval stamp and Proof of qualifying quarters	Entered On/After 08/22/96	Yes	Yes, after 5 years in US in a qualified status		Yes
Lawfully Admitted For Permanent Residence (LPR) <u>without</u> 40 Qualifying Quarters	K	<u>I-551</u> : (Permanent Resident Card) or Temporary <u>I-551</u> stamp in foreign passport or on <u>I-94</u> .	Entered Before 8-22-96			Yes	
		or <u>I-327</u> (Re-entry Permit) or <u>I-181</u> : Memorandum of Creation of Lawful Permanent Residence with approval stamp	Entered On or After 08/22/96	Yes	Yes, after 5 years in US in a qualified status	Yes	Yes if: • In a qualified status and in receipt of certain disability benefits [7 USC 2012(r)] or • After five years in US in a qualified status or • In a qualified status and under age 18
Veteran, spouse, unmarried surviving spouse and unmarried dependent child of a U.S. veteran who fulfilled minimum active duty requirement (2 years)	V	A Discharge Certificate (<u>Form DD-214</u>) that states "Honorable." A character of discharge "Under Honorable Conditions" is not an "Honorable Discharge" for these purposes. Narrative Reason for Separation block must not state that discharge was for reason of "alienage" or lack of U.S. citizenship	Status Granted			Yes	
Active Military: Active duty or a member of the Armed Forces on full-time duty in the Army, Navy, Air Force, Marine Corps or Coast Guard, spouse and children	M	Military Identification Card (<u>DD Form 2</u>) (Active) that lists an expiration date of more than one year from the date of determination. If ID card is due to expire within one year from the date of determination, use a copy of current military orders.	Status Granted			Yes	
Conditional Entrant (status granted to refugees before 1980)	F	<u>I-94</u> with stamp showing admitted under Section 203(a)(7) of INA or <u>I-688B</u> (Employment Authorization Card) annotated "274a.12(a)(3)" or <u>I-766</u> (Employment Authorization Document) annotated "(a1)" or "(a3)"	Entry			Yes	

*No quarters earned after 12/3/96 may be counted in which an alien has received a Federal means-tested public benefit (FA, SSI, Food Stamps or Medicaid.)

¹REMINDER: For Medicaid, undocumented immigrants and non-immigrants may receive coverage for care and services necessary for the treatment of *emergency* medical conditions only, not including care and services related to an organ transplant procedure, if otherwise eligible. Pregnant women may be provided Medicaid at *any time* without regard alien status, if otherwise eligible. Children may be provided medical assistance without regard to immigration status under CHIP B program.

ALIEN ELIGIBILITY DESK AID

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid ¹	Family Assistance	Safety Net Assistance	Food Stamp Benefits
<p>A US citizen's or LPR's battered spouse or child, or parent or child of such person, who obtains "Notice of Prima Facie Case from USCIS under the Violence Against Women Act (VAWA)</p>	<p>B³</p>	<p>I-797 (Notice of Action) indicating prima facie eligibility of an I-360 self-petition under INA Section 204(a)(1)(A) (iii) or (iv); or INA Section 204(a)(1)(iii)(B) (i) or (iii)</p>	<p>Entered Before 8/22/96</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes if:</p> <ul style="list-style-type: none"> • In a qualified status and in receipt of certain disability benefits [7 USC 2012(r)] or • After five years in US in a qualified status or • In a qualified status and under age 18 or • In a qualified status and have 40 qualifying quarters
			<p>Entered On/After 8/22/96 The relevant date for eligibility is the date qualified status was obtained</p>	<p>Yes</p>	<p>Yes, after 5 years in US in a qualified status</p>	<p>Yes</p>	
<p>A U.S. citizen's or LPR's battered spouse or child, or parent or child of such person, whose I-360 self-petition under VAWA is approved</p>		<p>I-797 (Notice of Action) indicating approval of an I-360 self-petition under INA Section 204(a)(1)(A)(iii) or (iv), or INA Section 204(a)(1)(iii)(B) (i) or (iii)</p>	<p>Entered Before 8/22/96</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	
			<p>Entered On/After 8/22/96 The relevant date for eligibility is the date qualified status was obtained</p>	<p>Yes</p>	<p>Yes, after 5 years in US in a qualified status</p>	<p>Yes</p>	
<p>A U.S. citizen's or LPR's battered spouse or child of such person, whose I-360 self-petition under VAWA is pending and is determined to be a credible victim of domestic violence by the social services district's Domestic Violence Liaison (DVL)</p>		<p>I-797 (Notice of Action) indicating pending I-360 self-petition under INA Section 204(a)(1)(A)(iii) or (iv), or INA Section 204(a)(1)(iii)(B) (i) or (iii)</p>	<p>Entered Before 8/22/96</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	
			<p>Entered On/After 8/22/96 The relevant date for eligibility is the date qualified status was obtained</p>	<p>Yes</p>	<p>Yes, after 5 years in US in a qualified status</p>	<p>Yes</p>	

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid	Family Assistance	Safety Net Assistance	Food Stamp Benefits
An alien determined to be a credible victim of domestic violence by the social services district's DVL with a pending or approved I-130 petition		I-797 (Notice of Action) indicating approval or pending I-130 visa petition under Section 201(b) of the INA (spouse or child of a U.S. citizen) or Section 203(a)(2)(A) (spouse of a permanent legal resident); or I-94 coded K3, K4, V1, V2 or CR -1-7 and a pending or approved I-130 or Any other USCIS document indicating the alien has a K or V visa and a pending or approved I-130; or I-688B or I-766 (Employment Authorization Documents) annotated (a)(9) or (a)(15)	Entered Before 8/22/96	Yes	Yes	Yes	
			Entered On/After 8/22/96 The relevant date for eligibility is the date qualified status was obtained	Yes	Yes, after 5 years in US in a qualified status	Yes	
An application for VAWA cancellation of removal or suspension of deportation has been granted or is pending and the immigration court finds that applicant has a prima facie case for this relief	B ³ (cont'd.)	Order from the Executive Office of Immigration Review (EOIR) under INA 240A(b) or if the application is pending documentation that the court finds that the applicant has a "prima facie case" for this relief	Entered Before 8/22/96	Yes	Yes	Yes	Yes, if: <ul style="list-style-type: none"> • In a qualified status and in receipt of certain disability benefits [7 USC 2012(r)] or • After five years in US in qualified status or • In a qualified status and under age 18 or • In a qualified status and have 40 qualifying quarters
			Entered On/After 8/22/96 The relevant date for eligibility is the date qualified status was obtained			Yes, after 5 years in US in a qualified status	

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid	Family Assistance	Safety Net Assistance	Food Stamp Benefits
Victim of Human Trafficking	D	Certification Document (for adults) or Eligibility Letter (for children) from the Office of Refugee Resettlement (ORR); Must call 1-866-401-5510 for verification or I-94 Coded T1, T2, T3, T4 or T5 stating admission under Section 212(d)(5) of the INA if status granted for at least one year	Entry ²			Yes	
Parolee (for at least one year) (Non-citizens who have been allowed to come into the U.S. for humanitarian or public interest reasons)	G	I-94 with annotation "Paroled pursuant to Section 212(d)(5)" or "parole" or "PIP" with date of entry and date of expiration indicating one year or I-688B annotated "8 CFR Section 274a.12(a)(4) or 274(a) 12(c)(11)" or I-766 annotated "C11" or A4, and I-94 indicating admitted for at least one year	Lawfully Residing in U.S. on 8/22/96			Yes	
			Entered on or after 8/22/96	Yes	Yes, after 5 years in US in a qualified status	Yes	Yes, if: <ul style="list-style-type: none"> In a qualified status and in receipt of certain disability benefits [7 USC 2012(r)] or After five years in US in qualified status or In a qualified status and under age 18 or In a qualified status and have 40 qualifying quarters
Parolee (for less than one year)	T	I-94 with annotation "Paroled pursuant to Section 212(d)(5)" or "parole" or "PIP" or I-688B coded 274a.12(a)(4) or 274a12(c) (11) or I-766 coded A4 or C11	NA	Yes	No	Yes	No
North American Indian born in Canada	To be determined (PA) C (MA)	I-551 : (Permanent Resident Card): stamped "S1-3", temporary I-551 stamp in a Canadian passport or I-94 : stamped "S1-3" or Tribal document certifying at least 50% American Indian blood, as required by Section 289 of the INA or documented member of a federally recognized tribe and School records, or A birth or baptismal certificate issued on a reservation, or Other satisfactory evidence of birth in Canada	NA			Yes	

REMINDER: For Medicaid, undocumented immigrants and non-immigrants may receive coverage for care and services necessary for the treatment of *emergency* medical conditions only, not including care and services related to an organ transplant procedure, if otherwise eligible. Pregnant women may be provided Medicaid at any time without regard to alien status, if otherwise eligible. Children may be provided medical assistance without regard to immigration status under CHIP B program.

² For a Victim of Human Trafficking, ENTRY means the date of Certification by the Office of Refugee Resettlement (ORR) – See 03 ADM-1.

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid ¹	Family Assistance	Safety Net Assistance	Food Stamp Benefits
Member of federally recognized tribe born outside U.S.	To be determined (PA) C (MA)	Membership card or other tribal document demonstrating membership in a federally recognized Indian tribe under Section 4(e) of the Indian Self-Determination and Education Assistance Act	NA			Yes	
PRUCOL (not in any of above statuses)	O (PA & MA) N (MA)	See <u>TASB</u> Chapter 24 See 6-15-01 MA-026 ATTACHMENT B	NA	Yes ²	No ²	Yes ²	No
Undocumented immigrants or non-immigrants (aliens with a temporary immigration status)	E		NA	Treatment of emergency medical condition only ¹		No	

¹ REMINDER: For Medicaid, undocumented immigrants and non-immigrants may receive coverage for care and services necessary for the treatment of emergency medical conditions only, not including care and services related to an organ transplant procedure, if otherwise eligible. Pregnant women may be provided Medicaid at any time without regard to alien status, if otherwise eligible. Children may be provided medical assistance without regard to immigration status under CHIP B program.

² PRUCOL refers to aliens who are permanently residing in the US under Color of Law. A description of TA PRUCOL can be found in Temporary Assistance Source Book Chapter 24, pages 436 - 438. A description of MA PRUCOL can be found in GIS 04 MA/003 ATTACHMENT 1.

United States Citizenship and Immigration Services (USCIS – Formerly INS) Documents

I-94	Arrival/Departure Record	I-571	Refugee Travel Document
I-130	Petition for an Alien Relative	I-688	Temporary Resident Card
I-181	Memorandum of Creation of Record of Lawful Permanent Residence	I-688A	Employment Authorization For Legalization Applicants
I-327	Reentry Permit of permanent residents	I-688B	Employment Authorization Card
I-485	Application to Register Permanent Residence or to Adjust Status	I-766	Employment Authorization Card
I-551	Legal Permanent Resident Card, Resident Alien Card or "green card"	I-797	Notice of Action (1-797C current version)

Footnote for Page 4 and Page 5

³ There are four requirements for qualified battered alien status:

1. Be a credible victim of battery or extreme cruelty; and
2. Have appropriate immigration documentation; and
3. Be able to show a substantial connection between the need for benefits and the battery or extreme cruelty; and
4. No longer reside in the same household as the abuser.