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**Informational Letter**

**Section 1**

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<b>To:</b>	Local District Commissioners
<b>Issuing Division/Office:</b>	Employment and Transitional Supports
<b>Date:</b>	Revision Date: May 5, 2006/Original Release: March 22, 2006
<b>Subject:</b>	Battered Aliens Eligibility for Benefits
<b>Suggested Distribution:</b>	Temporary Assistance Directors, Food Stamp Directors, Medical Assistance Directors, Domestic Violence Liaisons, Staff Development Coordinators
<b>Contact Person(s):</b>	Temporary Assistance Bureau at 1-800-343-8859, extension 4-9344
<b>Attachments:</b>	Alien Eligibility Desk Aid
<b>Attachment Available On – Line:</b>	

**Filing References**

<b>Previous ADMs/INFs</b>	<b>Releases Cancelled</b>	<b>Dept. Regs.</b>	<b>Soc. Serv. Law &amp; Other Legal Ref.</b>	<b>Manual Ref.</b>	<b>Misc. Ref.</b>
03 INF 23 03 INF 14 03 INF 19 02 INF 40 02 ADM 04 02 ADM 07 01 INF 09 00 INF 13 99 ADM 02 99 LCM 23 98 ADM 05 98 ADM 04 98 INF 05 97 ADM 25 97 ADM 23 97 LCM 21		Part 349.3	8 USC 1641(c) 7 CFR 273.4 7 CFR 273.1 (b)(7)(iv) 7 CFR 273.6 PRWORA WRA SSL Section 122	TA Source Book Chapter24	

## Section 2

### I. Purpose

This release will clarify the benefit eligibility of alien victims of domestic violence. It will explain the responsibilities the districts' domestic violence liaisons (DVLs) and temporary assistance (TA) eligibility workers have in determining if an alien, who is a victim of domestic violence, is a "qualified alien" and eligible for benefits. For purposes of eligibility for food stamp benefits, refer to section H of this INF.

### II. Background

United States citizens and lawful permanent residents (LPRs) with foreign born spouses or children may file an alien visa petition with the United States Citizenship and Immigration Services (USCIS) on behalf of a spouse or child, so that these family members may emigrate or remain in the United States. USCIS Form I-130, "Petition for Alien Relative," is filed by the U.S. citizen or LPR spouse or parent who is the petitioner on behalf of the family member who is the beneficiary. The petitioner controls when or if the petition is filed, which is necessary for the beneficiary to obtain an immigrant visa and ultimately file a petition for adjustment to LPR status. Unfortunately, when domestic violence occurs in these families, abusers can misuse their control over the I-130 process by threatening to report the victim to the USCIS for deportation. As a result, most battered aliens are afraid to report the abuse to the police or other authorities.

Under the 1994 Violence against Women Act (VAWA), the spouses and children of U.S. citizens or LPRs may self-petition by filing (Form I-360, Petition for Amerasian, Widow(er), or Special Alien) to obtain lawful permanent residency. The immigration provisions of VAWA allow certain battered aliens to file for immigration relief without the abuser's assistance or knowledge, in order to seek safety and independence from the abuser. The basic requirements for filing an I-360 self-petition for a battered alien are:

#### The self-petitioning spouse:

- Must be legally married to the U.S. citizen or lawful permanent lawful resident. A self-petition may also be filed if the marriage was terminated by the abusive spouse's death and if verified to have occurred within two years prior to filing. A self-petition may also be filed if the marriage to the abusive spouse was terminated by a divorce related to the abuse within two years prior to filing;
- Must have been abused in the United States unless the abusive spouse is an employee of the United States government or a member of the uniformed services of the United States;
- Must have been battered or subjected to extreme cruelty during the marriage, or must be the parent of a child who was battered or subjected to extreme cruelty by the U.S. citizen or lawful permanent resident spouse or a member of the spouse's or parent's family living in the same household during the marriage;
- Is required to be a person of good moral character; and,

- Must have entered the marriage in good faith, not solely for the purpose of obtaining immigration benefits.

#### The self-petitioning child:

- Must qualify as the child of the abuser as “child” is defined under the Immigration and Nationality Act (INA); and,
- Any relevant credible evidence that can prove the relationship with the parent will be considered.

### **III. Program Implications**

Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), as amended by Section 501 of the IIRIRA (Illegal Immigration Reform and Responsibility Act of 1996) provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States by a family member who they resided with are “qualified aliens” eligible for public benefits under the Act. An alien whose child or an alien child whose parent has been abused is also a ‘qualified alien.’

Districts should observe the following protocols with regard to all applicants who seek “qualified alien” status under Section 431 of the Act.

#### Procedures for Determining “Qualified Alien” Status for Battered Aliens

Alien victims of abuse can be treated as a “qualified alien” for benefit eligibility purposes if they meet the following four requirements:

1. Be a credible victim of battery or extreme cruelty, either the spouse, child or the child or parent of a credible victim in the U.S; and
2. Have an appropriate status including a pending or approved I-130 petition for an Alien Relative, a pending or approved I-360, or Notice of Prima Facie Case as explained below, or an Executive Office for Immigration Review (EOIR) order granting suspension or cancellation under 8 U.S.C. 1229b(b)(2) or evidence that an application for suspension of deportation/cancellation of removal has been granted or is pending with evidence that the immigration court finds that the applicant has a prima facie case for this relief; and
3. Be able to show a substantial connection between the need for benefits sought and the battery or extreme cruelty; and,
4. No longer residing in the same household as the abuser.

The process for assuring that the applicant meets these requirements is explained below:

#### **A. Appropriate Immigration Documents**

Districts must determine if the USCIS or the EOIR has approved an applicant’s I-360 self-petition or has found that an applicant’s pending petition sets forth a prima facie case under one of the following documents:

1. Petition for Amerasian, Widow(er), or Special Alien (Form I-360, Self-Petition)

a. Pending Form I -360 with a Prima Facie Determination

Battered aliens filing an I-360 self- petition who can establish a “prima facie” case are considered “qualified aliens” for the purposes of eligibility for public benefits if the local district finds that the battered alien meets the third and fourth requirements for qualified status (see Procedures for Determining “Qualified Alien” Status for Battered Aliens).

The USCIS reviews each I-360 petition to initially determine whether the self-petitioner has addressed all of the requirements of the petition and has provided some supporting evidence. If the USCIS makes a prima facie determination, the self petitioner will receive a “Notice of Prima Facie Determination” (Form I-797, Notice of Action), which is valid for 150 days, but can be extended. Applicants with “Prima Facie Notices” are considered to have met the requirement of demonstrating battery or extreme cruelty; and, therefore the district need not refer to the DVL to make a new determination of battery or extreme cruelty. The TA eligibility worker would be responsible for making the third and fourth findings (see Procedures for Determining “Qualified Alien” Status for Battered Aliens) in order to treat the alien as a “qualified alien” and determine eligibility for benefits.

If the Prima Facie Notice has expired, districts should determine eligibility for benefits as if the Notice were still valid. The battered alien would then have to provide proof of requesting an extension of the Prima Facie Notice within 30 days of application for continued eligibility of TA benefits.

b. Approved Form I-360 Self-Petition

If the USCIS approves the alien’s I-360 self-petition, the USCIS has accepted the alien as a credible victim of domestic violence and has granted him/her immigration relief, then the alien will be able to file a petition for lawful permanent residence, once an alien visa is available.

An alien applying for benefits with an approved I-360 petition (Form I-797, Notice of Action) does not need to see the district’s DVL for a credibility determination because the USCIS has already made such determination. The TA eligibility worker would be responsible for making the third and fourth findings (see Procedures for Determining “Qualified Alien” Status for Battered Aliens) in order to treat the alien as a qualified alien and make an eligibility determination for benefits.

2. Suspension of Deportation or Cancellation of Removal

VAWA includes a remedy from removal (deportation) for battered aliens who are in removal proceedings before the Executive Office for Immigration Review (EOIR). If the EOIR grants the application for suspension of deportation or cancellation of removal, or if the application is pending and the immigration court finds that the applicant has a “prima facie case” for this relief, the applicant may be considered a ‘qualified alien’, if otherwise eligible.

An applicant with such a document from the EOIR would not have to see the district’s DVL for a credibility determination. Review of VAWA applications for cancellation/ suspension includes a determination by the EOIR that the applicant has been subjected to battery or extreme cruelty. The TA eligibility worker would have to make the additional third and fourth findings (see Procedures for Determining “Qualified Alien” Status for Battered Aliens) in order to determine eligibility for benefits as a “qualified alien.”

## **B. Credible Victim of Domestic Violence**

If the USCIS or the immigration court has not yet determined that the alien has in fact been subject to battery or extreme cruelty, the alien victim would have to see a district's DVL for a credibility determination as the first step in being considered a "qualified alien" for benefits. The DVL will determine credibility as stated in 98 ADM 3. The DVL can consider any credible evidence of abuse the alien provides. This would include, but is not limited to the following: reports or affidavits from police, judges and other court officials, medical personnel, school officials, clergy social workers, counseling or mental health personnel; orders of protection; evidence that alien sought help from a battered woman's shelter; photographs of injuries related to abuse; affidavits from family members or others who have personal knowledge of the battery or extreme cruelty; and the alien's own credible affidavit.

The specific situations where the alien would have to disclose that she/he is a domestic violence victim and agree to see the DVL will be discussed in this section on immigration documents.

### **1. Pending I-360 Self-Petition**

If the USCIS merely acknowledges receiving the alien's I-360 self-petition with an I-797, Notice of Action or simple receipt, the I-360 is pending action and no determination of battery or extreme cruelty has been done by the USCIS. Therefore, an applicant applying for benefits with a pending I-360, but without a Prima Facie Notice needs to be referred to the district's DVL for a credibility determination. If the DVL finds the alien to be a credible victim, the TA eligibility worker would have to make the additional finding (see Procedures for Determining "Qualified Alien" Status for Battered Aliens) for the alien to be treated as a "qualified alien" for benefits.

### **2. Petition for Alien Relative (Form I-130)**

The filing of a family-based visa petition (Form I-130) by a U.S. citizen or LPR who is a close family member is one of the most common ways an alien may obtain LPR status. Districts with large alien populations can expect to see alien domestic violence victims whose immigration status is tied to a pending or approved I-130. The I-130 governs eligibility to receive LPR status as a spouse or child of a U.S. citizen, or as a spouse, child or unmarried son or daughter of an LPR, based on the petition of a spouse or parent. Form I-797 (Notice of Action) is the form USCIS uses to acknowledge the receipt or approval of the I-130.

In cases where the alien doesn't have the I-797 Notice of Action (perhaps it's with papers that she/he was forced to leave behind) a "case status search" is available on the USCIS website at <https://egov.immigration.gov/cris/jsps/index.jsp> if the alien victim has the receipt number for the I-130 petition.

Because domestic violence sometimes stalls or interrupts the I-130 process, these battered aliens may ultimately have to file an I-360 self-petition to adjust to lawful permanent residence status. However, battered aliens with an I-130 petition pending or approved on their behalf do not have to file an I-360 petition before they can be considered a "qualified alien" to be eligible for benefits.

An alien with a pending or approved I-130 petition may satisfy the requirement of "qualified alien" if she/he can establish that she/he has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the alien. The UCIS does

not make a determination of abuse for aliens who have an I-130 filed on their behalf. Local social services DVLs will have to make this determination if the I-130 petition is the only documentation of immigration "status" the alien has. If an alien applying for assistance is claiming domestic violence and has proof of a pending or approved I-130 petition, the TA worker should refer the alien to the district's DVL. Prior to the DVL's assessment, the DVL needs to know that the alien is meeting with him/her to establish their credibility as a victim of battery and abuse for TA eligibility as a battered alien. If the DVL finds the alien to be a credible victim, the TA eligibility worker would have to make the additional finding (see Procedures for Determining "Qualified Alien" Status for Battered Aliens) for the alien to be treated as a "qualified alien" for benefits.

### 3. K Visa

The federal Legal Immigration Family Equity Act (LIFE Act) and its amendments established a new non-immigrant K visa category that allows the spouse or child of a U.S. citizen to be admitted to the U.S. in the interest of family unity. The family may live together in the U.S. while the spouse or child completes processing for permanent residence. A K visa holder is someone on whose behalf an I-130 petition was filed. The alien's I-130 petition is pending and USCIS is allowing the individual to enter the U.S. to wait the approval of the petition and subsequent adjustment to lawful permanent resident status rather than waiting in his or her home country apart from his/her U.S. citizen spouse or parent.

Generally, a holder of an unexpired K visa is considered a person residing under the color of law (PRUCOL). Aliens who are considered PRUCOL are eligible for Safety Net Assistance. An alien with an unexpired K visa does not have to be a domestic violence victim to be eligible for SNA. If however, the holder of an unexpired K visa claims she/he is a domestic violence victim, she/he would need to see the district's DVL for a credibility determination. An unexpired K visa holder who is a credible victim of domestic violence and is found by the TA eligibility worker to meet the other requirements (see Procedures for Determining "Qualified Alien" Status for Battered Aliens), may instead be eligible for benefits as a battered "qualified alien," but would be subject to the five-year bar on federal benefits.

A holder of an expired K visa would have to provide the district with proof that a visa extension had been filed to be considered PRUCOL. However, a holder of an expired K visa claiming domestic violence would need to see the district's DVL for a credibility determination. If the DVL finds the holder a credible victim and a TA eligibility worker finds that she/he meets the other two requirements for qualified status as a battered alien, she/he may be eligible for assistance, but subject to the 5-year bar on federal benefits. An alien domestic violence victim with an expired K visa may be a "qualified alien" as long as the I-130 petition underlying the K visa has not expired or not been denied. If the SAVE inquiry indicates that the I-130 petition was denied, the alien would have to provide proof of filing an I-360 self-petition and meet the requirements set forth above for the I-360 self-petition in order to be treated as a qualified alien and thus eligible for TA.

### 4. V Visa

The LIFE Act and its amendments also established the new non-immigrant V visa category for certain spouses of lawful permanent residents and the children of those spouses. V visa holders can reside in the U.S. and travel to and from the U.S. while they wait for the final completion of their I-130 immigration process. It does not matter

whether the process will be completed by adjusting to lawful permanent resident status in the U.S. or in securing an alien visa overseas. The spouse of a lawful permanent resident may apply for a non-immigrant family based visa, if the following conditions are met:

- The lawful permanent resident filed an alien family based visa petition (I-130) for his or her spouse on or before December 21, 2000, and
- The beneficiary spouse has waited three years since the filing of the petition and has not been scheduled for an alien visa interview.

The beneficiary spouse may be waiting either for USCIS approval of the petition or, if the petition was approved by the USCIS, for the availability of a visa number in order to complete alien visa processing. A holder of an unexpired V visa is considered a person residing under the color of law (PRUCOL). Aliens who are considered PRUCOL are eligible for Safety Net Assistance. An alien with an unexpired V visa does not have to be a domestic violence victim to be eligible for SNA benefits. However, if the holder of an unexpired V visa claims she/he is a domestic violence victim however, she/he would need to be referred to the district's DVL for a credibility determination. An unexpired V visa holder who is a credible victim of domestic violence and is found by the TA eligibility worker to meet the other two requirements (see Procedures for Determining "Qualified Alien" Status for Battered Aliens) may eligible for benefits as a "battered qualified alien", but is subject to the five-year bar on federal benefits.

A holder of an expired V visa would have to provide the district with proof that a visa extension had been filed to be considered PRUCOL. However, holders of expired V visas claiming domestic violence would need to be determined by the district's DVL to be a credible victim and found by the TA eligibility worker to meet the other two requirements for qualified status to be eligible for benefits. The 5-year bar on federal benefits would apply to holders of expired V visas. An alien domestic violence victim with an expired V visa is a "qualified alien" if the I-130 petition underlying the V visa is not expired or denied. If the SAVE inquiry indicated that the I-130 petition was denied, the alien would have to provide proof of filing an I-360 self-petition to be treated as a "qualified alien."

## 5. Conditional Permanent Resident Status

A spouse of a U.S. citizen is given conditional permanent resident status based on an approved I-130 as a spouse of a U.S. citizen if the two persons have been married for less than two years. Conditional permanent residency lasts for two years (the U.S. citizen and spouse must jointly file I-751 (Petition to Remove the Conditions on Residence) to remove the conditional status and to adjust to permanent resident status 90 days before the end of the two-year period). A conditional permanent resident will have an I-551 (Permanent Resident Card) with a CR-1 or CR-2 code or some other document, such as a visa stamp in a passport with a CR designation. An alien with conditional permanent resident status that has not expired is eligible for benefits as a lawful permanent resident. Districts do not need to make further inquiry into the applicant's immigration status.

If the conditional residency has expired and the alien is claiming domestic violence and the alien can provide no proof of filing a I-751 (Petition to Remove the Conditions on Residence) or an I-360 self-petition, districts would follow the procedure below for battered aliens with no immigration documents.

## 6. Battered Aliens with no Immigration Documents

Battered aliens may not have any or all of their immigration documents. The abuser may have controlled them or they were left behind when the battered alien escaped from the abuser. When an alien applicant without immigration documents claims domestic violence, she/he needs to see the district's DVL for the credibility determination. This lack of immigration documentation should not impede districts from making the other eligibility determinations for a battered alien. If districts are unable to verify that an acceptable alien document has been filed with the USCIS, districts can accept the alien's written attestation, and then refer the alien to immigration forms hotline or to legal aid for assistance in filing an I-360 self-petition. It should be made clear to the alien, in writing, that she/he must return to the agency with the documentation that she/he has filed the I-360 self –petition within 30 days in order to be eligible for ongoing temporary assistance. Within that time period, she/he would be eligible to have her/his immediate needs met as long as she/he met the other requirements for a “qualified alien” and was cooperating with other applicable TA requirements. This procedure is the same with other persons who have good cause for being unable to provide documentation right away.

### **C. Substantial Connection Requirement**

For a battered alien to be considered “qualified,” there must be a substantial connection between the abuse and the need for benefits. This requirement will not be satisfied by a determination that the applicant has been subjected to battery or extreme cruelty. It is the responsibility of the TA eligibility worker to determine whether this connection exists. A substantial connection between the need for benefits and abuse exists when, but is not limited to the following:

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

### **D. Battered Applicant no Longer Resides in the Same Household with the Batterer**

To be a “qualified alien,” the battered alien cannot be residing in the same household as the abuser. TA eligibility 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 battered, including, but not limited to any of the following:

- Orders of protection requiring the abuser to stay away from the applicant;
- Civil order evicting the batterer from the applicant's residence;
- Employment records;
- Domestic violence shelter records;



- Utility receipts;
- School records;
- Hospital or medical records.

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

## **E. 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.

### **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 a 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.

#### **F. Social Security Numbers for Battered Aliens**

The Social Security Administration (SSA) will not approve social security number applications from battered aliens who have not obtained employment authorization from the USCIS. SSA considers battered aliens with either pending or approved I-360 or I-130 petitions as not having a lawful immigration status.

A battered alien cannot apply for work authorization until her I-360 self-petition is approved, which normally requires between 14 and 18 months of processing time. A battered alien initially meets the eligibility requirement in 18 NYCRR 369.2(b)(i) to furnish or apply for a SSN by applying and providing proof of the application. If the SSA denies the battered alien’s SSN application because of his/her immigration status, the alien remains eligible for TA benefits because the inability of the alien to obtain a SSN is through no fault of his/her own and remains a “qualified alien.”

In these situations districts are to use WMS Social Security Code 3, SSN Applied for and Denied.

#### **G. Systematic Alien Verification for Entitlements (SAVE)**

Districts are reminded that they must either do an automated or manual SAVE (Form G-845) on every alien applying for assistance. A case status search at the USCIS website cannot be substituted for a SAVE inquiry.

#### **H. The FOOD STAMP PROGRAM - ELIGIBILITY OF BATTERED ALIENS (AND OTHER QUALIFIED ALIENS)**

Previously OTDA addressed the eligibility of Battered Aliens for benefits under the federal Food Stamp program in 03 INF 14. This section (section H) serves to remind districts of the eligibility requirements for this specific category of aliens and will clarify when a battered alien obtains Qualified Status. It also serves to remind districts regarding eligibility of other qualified aliens.

To be eligible for benefits under the federal Food Stamp program (*in addition* to other program requirements such as limits on income and resources), an alien must be in a **qualified alien** status. Certain qualified aliens must also meet an additional condition to get food stamps.

##### **Qualified Aliens**

A qualified alien is an alien who at the time the alien applies for or receives food stamps is in one of the following categories as determined by the United States Citizenship and Immigration Services (USCIS):

- Refugee, or
- Cuban/Hispanic entrant, or
- Asylee, or
- Amerasian immigrant, or

- Deportation or removal withheld, or
- Certain Hmong or Highland Laotians, or
- Alien victim of trafficking, or
- Conditional entrant, or
- Certain Native Americans, or
- Paroled into the U.S. for at least one year,\* or
- Lawfully admitted for permanent residence (LPR) in the United States (holders of green cards),\* or
- **Under certain circumstances, a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent (In addition to a determination by USCIS, Battery may also be determined by the district's Domestic Violence Liaison.).\***

[\*These qualified aliens must meet an additional condition as set forth below to be eligible for food stamp benefits.]

Qualified Aliens who are Parolees, LPR's or **Battered Aliens** as set forth above, 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.

### **BATTERED ALIEN** **EXAMPLE**

To assist you in understanding the **Battered Alien** requirements, carefully review the example below. This 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).

## **I. Alien Eligibility Desk Aid**

The attached desk aid will provide district staff with a ready reference on the common immigration documents an alien domestic violence victim will need, when a victim would have to agree to see the DVL, the relative date for eligibility and the specific benefits alien victims can receive. The desk guide is intended to supplement existing policy regarding the eligibility of aliens set forth in federal and state statute and OTDA regulations and policy issuances to local social services districts.

**Issued By Name: Russell Sykes Title: Deputy Commissioner Division/Office: Employment and Transitional Supports**



Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid <sup>1</sup>	Family Assistance	Safety Net Assistance	Food Stamp Benefits
Refugees	R	<u>I-94</u> : stamped "Admitted under Section 207 of the INA," "Refugee," "RE1, RE2, RE3, r RE4" <b>or</b> <u>I-551</u> : stamped "R8-6, RE5, RE6, RE7, RE8 or RE9" <b>or</b> <u>I-571</u> : Refugee Travel Document <b>or</b> <u>I-688B</u> : Employment Authorization Card annotated with "8 C.F.R§ .274a12(a) (3)" <b>or</b> <u>I-766</u> : Employment Authorization Card annotated "A3"	Entry	Yes			
Cuban/Haitian Entrants	H	<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" <b>or</b> <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 Haiti <sup>2</sup> <b>or</b> <u>I-551</u> : stamped "CU6, CU7, or CH6" <b>or</b> Temporary <u>I-551</u> stamp in foreign passport. <b>or</b> INS notice or letter indicating ongoing exclusion or deportation proceedings <b>or</b> A letter from USCIS indicating individual applied for asylum.	Status Granted				
Asylees	A	<u>I-94</u> : stamped "Granted asylum under Section 208 of the INA" <b>or</b> <u>I-551</u> : Stamped "AS1,AS2, AS3, AS6, AS7, or AS8" <b>or</b> <u>I-688B</u> : Employment Authorization Card annotated with "8 C.F.R§ 274a12(a)(5)" <b>or</b> <u>I-766</u> : Employment Authorization Document annotated "A.5" <b>or</b> Grant letter from USCIS Asylum Office <b>or</b> Order of an immigration judge granting asylum.					

<sup>1</sup>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.

<sup>2</sup>EXCEPTION: 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.

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Amerasian Immigrants	R	<p><b><u>I-94</u></b>: 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 BCIS</p> <p><b>or</b></p> <p><b><u>I-551</u></b>: stamped “AM1, AM2, AM3, AM6, AM7, or AM8”</p> <p><b>or</b></p> <p>Temporary <b><u>I-551</u></b> stamp in foreign passport</p> <p><b>or</b></p> <p><b><u>1-571</u></b>: Refugee Travel Document</p> <p><b>or</b></p> <p>Vietnamese exit visa or passport stamped “AM1, AM2, or AM3”</p>	Entry	Yes			
Deportation or Removal Withheld	J	<p><b><u>I-688B</u></b>: Employment Authorization Card annotated with “8 C.F.R§ 274a12(a)(10)”</p> <p><b>or</b></p> <p><b><u>I-766</u></b>: Employment Authorization Document annotated “A10”</p> <p><b>or</b></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>	Status Granted				
Certain Hmong or Highland Laotian	Z	<p><b><u>I-94</u></b>: stamped “Admitted under Section 207 of the INA,” “Refugee,” “RE1, RE2, RE3, or RE4”</p> <p><b>or</b></p> <p><b><u>INS I-551</u></b>: Stamped “RE5, RE6, RE7, RE8, or RE9”</p> <p><b>or</b></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><b>and</b></p> <p>Documents to show lawfully residing in the US</p> <p><b>*Divorced spouses do not qualify</b></p>					

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Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid <sup>1</sup>	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)  or Temporary <u>I-551</u> stamp in foreign passport or on <u>I-94</u>	Entered Before 8/22/96	Yes			
		<u>I-327</u> : (Re-entry Permit)  or <u>I-181</u> : Memorandum of Creation of Lawful Permanent Residence with approval stamp  and <b>Proof of qualifying quarters</b>	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>  or <u>I-327</u> (Re-entry Permit)  or <u>I-181</u> : Memorandum of Creation of Lawful Permanent Residence with approval stamp	Entered Before 8-22-96	Yes			Yes, If In LPR Status before 8-22-96 (Greater than 5 years in qualified status)
			Entered On or After 08/22/96	Yes	Yes, after 5 years in US in a qualified status	Yes	Yes, if: <ul style="list-style-type: none"> <li>In receipt of certain disability benefits [7USC2012(r)] or</li> <li>After five years in US in qualified status or</li> <li>Under age 18</li> </ul>
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		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.)

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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)	B	I-797 (Notice of Action) indicating prima facie eligibility of a I-360 self-petition under Section 204(a)(1)(A) (iii) or (iv); or Section 204(a)(1)(iii)(B) (i ) or (iii)	Entered Before 8/22/96	Yes	Yes	Yes	<p>Yes If:</p> <ul style="list-style-type: none"><li>In a qualified status and in receipt of certain disability benefits [7USC 2012(r)] or</li><li>After five years in US in a qualified status or</li><li>In a qualified status and under age 18 or</li><li>In a qualified status and have 40 qualifying quarters</li></ul> <ul style="list-style-type: none"><li>In a qualified status and under age 18, or</li><li>In a qualified status and has 40 qualifying quarters or</li><li>After 5 years in US in qualified status</li></ul>
			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	
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		I-797 (Notice of Action) indicating approval of a I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv), or Section 204(a)(1)(iii)(B) (i) or (iii)	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	
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 pending and is determined to be a credible victim of domestic.		I-797 (Notice of Action) indicating pending I-360 self-petition under Section 204(a)(1)(A)(iii) or (iv), or Section 204(a)(1)(iii)(B) (i) or (iii)	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	

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid <sup>1</sup>	Family Assistance	Safety Net Assistance	Food Stamp Benefits
An alien determined to be a credible victim of domestic violence with a pending or approved I-130 petition	B (cont'd.)	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, or Any other USCIS document indicating the alien has a K or V visa, or I- 688B or I-766 (Employment Authorization) annotated (a)(9) or (a)(15)	Entered Before 8/22/96	Yes	Yes, after 5 years in US in a qualified status	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		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"><li>In a qualified status and in receipt of certain disability benefits [7USC 2012(r)] or</li><li>After five years in US in qualified status or</li><li>In a qualified status and under age 18 or</li><li>In a qualified status and have 40 qualifying quarters</li></ul>
			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	Yes	

Description of Status	WMS/ACI Code	Common Documentation	Relevant Date for Eligibility	Medicaid <sup>1</sup>	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 <b>or</b> <b>I-94</b> 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 <sup>2</sup>	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	<b>I-94</b> with annotation "Paroled pursuant to Section 212(d)(5) or "parole" or PIP" with date of entry and date of expiration indicating one year <b>or</b> <b>I-688B</b> annotated "8 CFR Section 274a. 12(a)(4), 274(a) 12(c)(11)" <b>or</b> <b>I-766</b> annotated "C11" or A4, and <b>I-94</b> 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	<ul style="list-style-type: none"> <li>• In receipt of disability benefits <b>or</b></li> <li>• After five years in US in qualified status, <b>or</b></li> <li>• Under age 18 <b>or</b></li> <li>• 40 qualifying quarters</li> </ul>
Parolee (for less than one year)	T	<b>I-94</b> with annotation "Paroled pursuant to Section 212(d)(5) or "parole" or PIP" <b>or</b> <b>I-688B</b> coded 274a.12(a)(4) or 274a12(c) (11) <b>or</b> <b>I-766</b> coded A4 or C11	NA	Yes	No	Yes	No
North American Indian born in Canada	<p>To be determined (PA)</p> <p>C (MA)</p>	<b>I-551</b> : (Alien Registration Card): stamped "S13;" temporary <b>I-551</b> stamp in a Canadian passport <b>or</b> <b>I-94</b> stamped "S13" <b>or</b> A letter or other tribal document certifying at least 50% American Indian blood, as required by Section 289 of the INA <b>or</b> School records, <b>or</b> A birth or baptismal certificate issued on a reservation, <b>or</b> Other satisfactory evidence of birth in Canada	NA	Yes			

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<sup>2</sup> 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 <sup>1</sup>	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) <sup>3</sup>	See TASB Chapter 24 See 6-15-01 MA-026 ATTACHMENT B	NA	Yes <sup>2</sup>	No <sup>2</sup>	Yes <sup>2</sup>	No
Undocumented immigrants or non-immigrants (aliens with a temporary immigration status)	E		NA	Treatment of emergency medical condition only <sup>1</sup>	No	Undocumented immigrants or non-immigrants (aliens with a temporary immigration status)	E

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<sup>2</sup> 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 - 458. 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-210	Voluntary Departure	I-688B	Employment Authorization Card
I-220B	Order of Supervision	I-766	Employment Authorization Card
I-327	Reentry Permit of permanent residents	I-797	Notice of Action (1-797C current version)
I-551	Legal Permanent Resident Card, Resident Alien Card or “green card”	485	Change of Status Form