



# IMMIGRANTS' ACCESS

*Since enactment of the Welfare Reform Act of 1996 and related legislation, human services workers and immigrants have often been confused about the*

## Who Remains Eligible for What?

JILL D. MOORE

In the summer of 1996, Congress set out to “end welfare as we know it,” making sweeping reforms in U.S. public assistance programs. During the debates over how best to accomplish that goal, attention turned to the issue of noncitizens receiving public benefits. Fueled by the perception that increasing numbers of legal immigrants were receiving such benefits, and by the belief that generous benefits provide an incentive to illegal immigration, Congress took action to restrict immigrants’ eligibility for those benefits.

In August 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, known for short as the Welfare Reform Act.<sup>1</sup> Title IV of the act placed new limits on the ability of immigrants, including those legally present in the United States, to obtain benefits from government agencies. For benefit eligibility, the act distinguished between “nonqualified” and “qualified” aliens.<sup>2</sup> It barred nonqualified aliens from receiving most public benefits. But it also barred most qualified aliens from receiving significant benefits, including food stamps and Supplemental Security Income (SSI, the federal program that provides cash assistance to poor people who are disabled or elderly). In addition, for qualified aliens entering the United States after August 22, 1996 (the date the Welfare Reform Act became law), the act imposed a five-year waiting period for many other benefits. Finally, the act authorized states to restrict immigrants’ access to federally funded benefits even further.

Immediately after the Welfare Reform Act was signed into law, the Clinton administration proposed a

number of legislative changes designed to soften some of the restrictions, especially those affecting legal immigrants. Congress agreed and in subsequent federal legislation broadened the definition of qualified alien and restored some immigrants’ eligibility for food stamps, SSI, and other federal programs.

This article describes the provisions of the various federal laws that address immigrants’ eligibility for public benefits. The article addresses the complex changes made by these laws in three ways. The body of the article describes in broad strokes Congress’s developing approach to immigrants’ eligibility for public benefits. A sidebar (see page 24) lists the relevant federal laws and describes the main effects of each. Following this and the next article is a guide (see page 35) summarizing the current state of the law and identifying the benefits for which immigrants now are eligible.

The legislation discussed in this article addressed many other important issues. One set, relating to the duty of some government agencies to verify noncitizens’ immigration status before providing services, is discussed in the next article, “Immigrants’ Access to Public Benefits: When Should Agencies Inquire about Immigration Status?,” page 29. The discussion here is confined to which immigrants are eligible for what federal, state, and local benefits.

### QUALIFIED AND NONQUALIFIED ALIENS

A noncitizen’s eligibility for public benefits depends largely on whether he or she is a “qualified alien,” a

# TO PUBLIC BENEFITS



*latter's eligibility for public benefits. The following articles explain what has changed and how non-citizens and service agencies are affected.*

designation created by the Welfare Reform Act. The largest group in this category is lawful permanent residents, which primarily includes noncitizens who have been admitted to the United States to join their families or to work.<sup>3</sup> Other qualified groups include noncitizens admitted for humanitarian reasons—among them, refugees, political and religious “asylees” (people granted asylum), and people granted withholding of deportation (noncitizens who ordinarily would be deported, but the U.S. attorney general has determined that they would be subject to persecution if they were required to return to their home countries).<sup>4</sup>

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996—for short, the Immigration Reform Act—added to the list of qualified aliens certain immigrant spouses and children who have been battered or subjected to extreme cruelty.<sup>5</sup> The Balanced Budget Act of 1997 added certain ethnic groups to the category of noncitizens admitted for humanitarian reasons.<sup>6</sup>

Any noncitizen who does not meet the definition of qualified alien is considered a nonqualified alien for the purpose of determining eligibility for benefits. “Undocumented,” or illegal, immigrants fall into the nonqualified category, but so do aliens considered to be nonimmigrants, such as students or foreign visitors, and others who are lawfully present in the United States, such as applicants for asylum.

## **QUALIFIED ALIENS' ELIGIBILITY FOR FEDERAL BENEFITS**

The Welfare Reform Act and the legislation amending it addressed qualified aliens' eligibility for three categories of federal benefits:

- Food stamps
- SSI
- Other federal means-tested public benefits

All these benefits have other eligibility criteria that individual recipients, including qualified aliens, also must meet.

### **Food Stamps and SSI**

The Welfare Reform Act made most qualified aliens *ineligible* for food stamps and SSI.<sup>7</sup> Initially, Congress exempted only two categories of qualified aliens from this bar on eligibility:

- Those with strong military connections—namely, honorably discharged veterans and members of the armed services on active duty, along with their spouses and dependent children<sup>8</sup>
- Lawful permanent residents with long work histories in the United States—that is, those with forty qualifying quarters, or ten years, of work for purposes of receiving Social Security benefits<sup>9</sup>

Certain aliens admitted to the United States for humanitarian reasons—such as refugees and asylees—also were exempted from the bar but only for their first five years of residence in the United States.<sup>10</sup> The largest group of qualified aliens—lawful permanent residents without strong military connections or a long work history—was rendered completely ineligible for food stamps and SSI under the Welfare Reform Act.

Immediately after the act's passage, the Clinton administration asked Congress to restore eligibility to

## FEDERAL LEGISLATION AFFECTING IMMIGRANTS' ELIGIBILITY FOR PUBLIC BENEFITS

### **Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act") —Public Law 104-193**

The Welfare Reform Act created a distinction between "qualified" and "nonqualified" aliens for purposes of benefit eligibility, and it imposed limits—in some cases outright bans—on all aliens' eligibility for benefits. With certain exceptions the act barred nonqualified aliens from receiving any federal, state, or local public benefits. The act also imposed strict limits on qualified aliens' eligibility for benefits. It made most qualified aliens ineligible for food stamps and Supplemental Security Income (SSI). Further, it imposed a five-year waiting period for eligibility for federal means-tested public benefits on qualified aliens who first enter the United States after August 22, 1996. Finally, the act authorized states to place additional restrictions on qualified aliens' eligibility for Medicaid, Temporary Assistance for Needy Families (TANF), and programs funded under the Social Services Block Grant.

### **Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act") —Public Law 104-208**

The Immigration Reform Act expanded the definition of "qualified aliens" to include certain battered immigrant spouses and children. It also directed the U.S. attorney general, in consultation with the secretary of health and human services, to develop procedures for verifying citizenship or immigration status when such verification is required.

### **Balanced Budget Act of 1997—Public Law 105-33**

The Balanced Budget Act restored SSI eligibility to the following groups of aliens: people who are disabled or blind who were lawfully present in the United States on August 22, 1996; people who are lawfully present in the United States and were receiving SSI on August 22, 1996; people whose applications for benefits predated January 1, 1979; cross-border Native Americans; and members of Hmong or Highland Lao tribes who provided assistance to U.S. military

forces during the Vietnam War. The act also extended from five to seven years the period of SSI eligibility for refugees, asylees, Cuban/Haitian entrants, Amerasians, and persons granted withholding of deportation.

Further, the Balanced Budget Act clarified that the bar on federal public benefits for nonqualified aliens does not apply to Medicare benefits for aliens who are lawfully present in the United States and who were authorized to do the work that earned them eligibility for those benefits. Finally, the act provided that the bar does not apply to benefits earned under the Railroad Retirement Act or the Railroad Unemployment Act by nonqualified aliens who are lawfully present in the United States.

### **Agricultural Research, Extension and Education Reform Act of 1998 ("Agriculture Act")—Public Law 105-185**

The Agriculture Act restored food stamp eligibility to the following groups of aliens: disabled people who were lawfully present in the United States on August 22, 1996; children under age eighteen who were lawfully present in the United States on August 22, 1996; adults who were at least sixty-five years old on August 22, 1996, and were lawfully present in the United States on that date; cross-border Native Americans; and members of Hmong or Highland Lao tribes who provided assistance to U.S. military forces during the Vietnam War. The act also extended from five to seven years the period of food stamp eligibility for refugees, asylees, Cuban/Haitian entrants, Amerasians, and persons granted withholding of deportation.

### **Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 ("Welfare Reform Technical Corrections Act")—Public Law 105-306**

The Welfare Reform Technical Corrections Act provided that nonqualified aliens who were receiving SSI on August 22, 1996, may continue to receive SSI and Medicaid (if their eligibility for Medicaid is based on their eligibility for SSI) as long as they continue to meet all other eligibility requirements for benefits.

certain groups that had been rendered ineligible by the act. In response, in the Balanced Budget Act of 1997, Congress restored *SSI eligibility* to qualified aliens who (1) are currently lawfully residing in the United States and were receiving SSI on August 22, 1996 (the date the restrictions in the Welfare Reform Act went into effect), or (2) were lawfully residing in the United States on that date and are, or become, disabled or blind.<sup>11</sup>

Congress also restored SSI eligibility to specific ethnic groups—namely, "cross-border Native Americans" (Native Americans whose tribes have treaty rights to cross the United States' border with Canada or Mexico and who thus may have been born outside the United States),<sup>12</sup> and members of Hmong and Highland Lao tribes who provided assistance to U.S. military forces during the Vietnam War.<sup>13</sup>

In addition, the Balanced Budget Act extended the period of eligibility for SSI benefits from five to seven years for immigrants admitted for humanitarian reasons. It also added to that category Cuban/Haitian entrants and Amerasian immigrants (noncitizens who were fathered by a U.S. citizen but were born in Vietnam between 1962 and 1975, or in Cambodia, Korea, Laos, or Thailand between 1951 and 1982).<sup>14</sup>

The Agricultural Research, Extension and Education Reform Act of 1998, known for short as the Agriculture Act, thereafter restored *eligibility for food stamps* to many of the same groups. It also restored eligibility to children under age eighteen who were lawfully present in the United States on August 22, 1996, and to adults who were both lawfully present and at least sixty-five years old on that date. Finally, the Agriculture Act extended from five to seven years the period during which people admitted for humanitarian reasons are exempt from the bar on food stamp eligibility.<sup>15</sup>

#### **Federal Means-Tested Public Benefits**

The Welfare Reform Act made qualified aliens who enter the United States after August 22, 1996, ineligible to receive any “federal means-tested public benefit” for five years after their lawful admission to the United States.<sup>16</sup> Only those described earlier as having strong military connections or having been admitted for humanitarian reasons are exempt from the five-year waiting period.<sup>17</sup>

The Welfare Reform Act did not define “federal means-tested public benefit.” Significantly, however, it specified several important public benefits that are *not* subject to the five-year waiting period, among them, Medicaid for emergency services (although not for organ transplants) for people who otherwise meet Medicaid eligibility criteria; immunizations; and testing for and treatment of symptoms of communicable diseases. Also exempted from the five-year waiting period are programs, services, or assistance specified by the U.S. attorney general that (1) deliver in-kind (noncash) services at the community level, (2) do not condition assistance on the recipient’s income or resources, and (3) are necessary for the protection of life or safety.<sup>18</sup> This potentially expansive exemption also applies to non-qualified aliens and is discussed later in connection with that group.

Because Congress failed to define “federal means-tested public benefit,” three federal agencies—the U.S.

Department of Health and Human Services (DHHS), the Social Security Administration, and the U.S. Department of Agriculture (USDA)—developed and published their own definitions. DHHS interpreted the term to mean mandatory spending programs that condition eligibility for benefits, or the amount of those benefits, on the income or the resources of the recipient. Applying that definition, DHHS concluded that, among its programs, only Medicaid and Temporary Assistance for Needy Families (TANF, which replaced Aid to Families with Dependent Children, or AFDC) are subject to the five-year waiting period for qualified aliens who arrive after August 22, 1996.<sup>19</sup> The Social Security Administration concluded that its sole means-tested public benefit is SSI,<sup>20</sup> and the USDA concluded that its only means-tested public benefits are the food stamp program and the food-assistance block grant programs in Puerto Rico, the Northern Mariana Islands, and American Samoa.<sup>21</sup> Because eligibility for SSI and food stamps is addressed separately in the Welfare Reform Act and subsequent legislation, these conclusions have no bearing on qualified aliens’ eligibility for those benefits or the five-year waiting period that applies to aliens who arrived after August 22, 1996.<sup>22</sup> Significantly, the USDA’s notice found many of that department’s programs *not* to constitute federal means-tested public benefits, among them school breakfast and lunch programs, the special milk program for children, and the special supplemental nutrition program for women, infants, and children (WIC).

#### **State Restrictions on Qualified Aliens’ Eligibility for Benefits**

As noted earlier, the Welfare Reform Act authorized states to impose further restrictions on qualified aliens’ eligibility for federal benefits. States may bar qualified aliens from receiving Medicaid, TANF, and benefits funded by the Social Services Block Grant (SSBG), including child care programs and services for the elderly.<sup>23</sup> States also may bar qualified aliens from receiving benefits funded or provided by state or local governments.<sup>24</sup> However, states must exempt from any state-enacted bar on federal, state, or local benefits those qualified aliens described earlier as having strong military connections or long work histories. Further, any state bar on eligibility for TANF and SSBG programs may not apply to the groups described earlier as being admitted for humanitarian reasons, at least for their first seven years in the United States, and state

and local benefits must continue to be made available to those groups for at least the first five years.

States must affirmatively pass legislation to create limits on qualified aliens' eligibility for these benefits. Otherwise, qualified aliens are eligible according to the provisions of federal law. North Carolina has not enacted a state bar, so qualified aliens in North Carolina remain eligible for these benefits to the extent provided by federal law.

### **NONQUALIFIED ALIENS' ELIGIBILITY FOR FEDERAL BENEFITS**

Before the Welfare Reform Act of 1996, some federal programs explicitly prohibited undocumented immigrants from receiving benefits. Others explicitly provided that benefits were available to all who met program eligibility criteria, without regard to citizenship or immigration status. Still others did not address undocumented immigrants' eligibility for benefits.

The Welfare Reform Act sought to bring about uniformity in federal programs' treatment of noncitizens who are undocumented or otherwise not qualified aliens under the act. It explicitly barred immigrants who do not meet the definition of qualified alien from receiving most federal, state, and local benefits.<sup>25</sup>

The act made nonqualified aliens ineligible for any "federal public benefit," defined as follows:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.<sup>26</sup>

Although broad, this general rule of ineligibility is not absolute. The Welfare Reform Act included a number of exceptions to the bar on benefits. Subsequent actions of federal agencies have expanded the exceptions and construed the statutory definition narrowly, with the result that nonqualified aliens remain eligible for a number of federal public benefits.

The Welfare Reform Act excluded from the bar several key federal benefits, including Medicaid benefits for emergency services (but not for organ transplants), provided that the person otherwise meets Medicaid

eligibility criteria; immunizations; and testing for and treatment of symptoms of communicable diseases.<sup>27</sup>

Subsequent federal legislation added other exceptions to the eligibility bar. For example, the Balanced Budget Act stated that the bar does not apply to Medicare benefits for aliens who are lawfully present in the United States and were authorized to be employed during the time they earned wages rendering them eligible for Medicare.<sup>28</sup>

One of the exceptions enumerated in the Welfare Reform Act allows nonqualified aliens access to public benefits related to emergencies or other threats to life and safety. The act authorized the U.S. attorney general to specify programs and services that should be excepted from the bar on benefits because they deliver in-kind services at the community level, do not condition assistance on the recipient's income or resources, and are necessary for the protection of life or safety.<sup>29</sup> Attorney General Janet Reno released a provisional specification in August 1996. Reno first stated that she did not construe the act to preclude aliens from receiving police, fire, ambulance, transportation, sanitation, and other widely available services. Accordingly she did not include those items in her specification. She then found that several programs and services are necessary for the protection of life and safety and may be provided to nonqualified aliens, among them crisis counseling and intervention programs, child and adult protective services, violence and abuse prevention programs or services, programs or services for victims of domestic violence or other crimes, and treatment of mental illness or substance abuse. Also included is a catch-all exception for any other programs, services, or assistance necessary for the protection of life and safety.<sup>30</sup>

Other actions at the federal level also have served to expand nonqualified aliens' eligibility for benefits. Several federal agencies have taken the position that some of their programs and services do not meet the definition of "federal public benefit." To date, though, only DHHS has formally stated its position. In August 1998 it issued an interpretation concluding that many of its programs are not federal public benefits and therefore may be provided to all otherwise eligible persons without regard to citizenship or immigration status.<sup>31</sup> The DHHS interpretation construes the term "federal public benefit" narrowly. DHHS first examined part (A) of the definition, which refers to "any grant" provided by a federal agency or federal funds. DHHS concluded that this part of the definition applied to grants pro-

vided to individuals and therefore did not include block grant funds that federal agencies award to states or localities.

DHHS then considered part (B) of the definition. It noted that a benefit must satisfy two conditions to be considered a “federal public benefit” under part (B): (1) it must be a “retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit” or a similar benefit; and (2) it must be provided to “an individual, household, or family eligibility unit.” DHHS reasoned that the second condition narrows the set of benefits that fall within the categories described in the first condition. Accordingly it concluded that benefits targeted at communities or specific sectors of the population—such as people with a particular physical condition or people of a certain age—do not fall within the scope of the term “federal public benefit.”

DHHS ultimately concluded that, among its programs, only certain ones provide federal public benefits that must be denied to nonqualified aliens. However, some significant benefits fall within DHHS’s interpretation—for example, Medicare, Medicaid (except assistance for an emergency medical condition), TANF, and benefits under SSBGs—and so must be denied to nonqualified aliens unless other exceptions apply.<sup>32</sup>

DHHS has directed all states and localities that administer programs supported by it to comply with its interpretation. Accordingly, nonqualified aliens in North Carolina remain eligible for all DHHS benefits that do not fall within its interpretation of federal public benefit.

#### **NONQUALIFIED ALIENS’ ELIGIBILITY FOR STATE AND LOCAL BENEFITS**

Under the Welfare Reform Act, states may choose to provide state and local public benefits to nonqualified aliens, but they must enact a state law affirmatively making this choice.<sup>33</sup> North Carolina has not done so. In the absence of such a law, most nonqualified aliens are ineligible for state and local public benefits.<sup>34</sup> The definition of state and local public benefits parallels the definition of federal public benefits described earlier, except that the benefits are supported by state or local funds instead of federal funds.<sup>35</sup>

Once again, the Welfare Reform Act created a number of exceptions to this general bar on eligibility. Nonqualified aliens remain eligible for certain state or local public benefits, including assistance for health

care items and services necessary for treatment of emergency medical conditions (but not for organ transplants); immunizations; and testing for and treatment of symptoms of communicable diseases.

#### **CONCLUSION**

In the Welfare Reform Act of 1996, Congress embraced the policy that noncitizens should not rely on public resources to meet their needs and that public benefits should not constitute an incentive for immigration to the United States.<sup>36</sup> The act created a set of benefit-eligibility rules to implement that policy. Subsequent legislation carved out exceptions or exemptions designed to further other policy objectives, such as providing humanitarian assistance to certain groups of noncitizens. The result is a very complicated set of benefit-eligibility rules, which in some cases are still being refined or changed. For instance, as this article goes to press, Congress is considering legislation that would extend food stamps, SSI, and Medicaid to additional groups of immigrants.<sup>37</sup>

Understanding the benefit-eligibility rules is difficult. Nevertheless, North Carolina’s governing bodies and agencies must undertake to do so. As the state’s immigrant population grows, more and more immigrants will approach state or local government agencies seeking public benefits. At the same time, state and local governments may wish to promote existing benefits to meet the needs of these new residents, or to develop new programs. Government officials and agencies should make every effort to prepare themselves for these occasions.

#### **NOTES**

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 8 U.S.C. and 42 U.S.C.).

2. The Welfare Reform Act does not use the term “nonqualified alien.” Rather, it defines the term “qualified alien” and describes all other noncitizens as “aliens who are not qualified aliens.” The term “nonqualified aliens” is commonly used, however, to refer to the latter group. Other terms that readers may encounter include “not-qualified aliens” and “unqualified aliens.”

3. A small proportion of lawful permanent residents are admitted through the “diversity visa” program—a lottery designed to encourage immigration from certain countries.

4. “Refugee” and “asylee” are special statuses accorded to immigrants who are permitted to enter and remain in the

United States because they have a well-founded fear of persecution in their native countries. The Welfare Reform Act also designated as qualified aliens “parolees” admitted to the United States for at least one year (that is, noncitizens who ordinarily would not be admitted but are “paroled” into the United States—allowed to enter temporarily—for humanitarian, medical, or legal reasons) and people who have been present in the United States since before April 1, 1980, as “conditional entrants” under federal immigration laws. § 431(b). For purposes of this article, the latter two groups are not included in the category of those admitted for humanitarian reasons because their eligibility for benefits differs.

5. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter Immigration Reform Act), Pub. L. No. 104-208, Division C, § 501, 110 Stat. 300a-546 (codified in scattered sections of 8 U.S.C.).

6. Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 5302, 5306, 111 Stat. 251.

7. Welfare Reform Act § 402.

8. Welfare Reform Act § 402(a)(2)(C).

9. Welfare Reform Act § 402 (a)(2)(B). A qualified alien may receive credit for a spouse’s work. He or she also may receive credit for the work of a parent that occurred while the qualified alien was an unmarried dependent under age eighteen. The qualifying quarters may not include any quarter after December 31, 1996, in which the qualified alien received a federal means-tested public benefit. Congress has not defined the term “federal means-tested public benefit.” Three federal agencies have developed their own definitions and identified the programs that must be considered when determining whether an alien has received a federal means-tested public benefit. See the text under “Federal Means-Tested Public Benefits.”

10. Welfare Reform Act § 402(a)(2)(A).

11. Balanced Budget Act § 5301.

12. Balanced Budget Act § 5303.

13. Members of Hmong and Highland Lao tribes who provided such assistance are to be treated the same as veterans in determining eligibility for benefits. Balanced Budget Act, § 5566.

14. Balanced Budget Act §§ 5302, 5306. Other groups whose SSI eligibility was restored are listed in the guide accompanying this article (see page 35).

15. Agricultural Research, Extension and Education Reform Act of 1998, Pub. L. No. 105-185, §§ 503-508, 112 Stat. 523. The Balanced Budget Act added Cuban/Haitian entrants and Amerasian immigrants to the list of people who had a time-limited exemption from the bar. §§ 5302, 5306.

16. Welfare Reform Act § 403.

17. Welfare Reform Act § 403(b); Balanced Budget Act §§ 5302, 5306.

18. Welfare Reform Act § 403(c).

19. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA): Interpretation of “Federal Means-Tested Public Benefit,” 62 Fed. Reg. 45,256 (Aug. 26, 1997).

20. Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Federal Means-Tested Public Benefits Paid by the Social Security Administration, 62 Fed. Reg. 45,284 (Aug. 26, 1997).

21. Federal Means-Tested Public Benefits, 63 Fed. Reg. 36,653 (July 7, 1998).

22. However, the conclusions do affect some qualified aliens who are eligible for benefits on the basis of their long work histories in the United States. To receive credit for a long work history, a qualified alien must have worked forty qualifying quarters. Any quarter after December 31, 1996, in which the alien received a federal means-tested public benefit such as SSI is not a qualifying quarter.

23. Welfare Reform Act § 402(b).

24. Welfare Reform Act § 412. States also may require programs offering means-tested state or local benefits to include the income and the resources of the alien’s immigration sponsor and the sponsor’s spouse in determining the alien’s eligibility for the benefits. § 422. The Immigration Reform Act further authorized states to prohibit qualified aliens from receiving general public cash assistance, or to limit qualified aliens’ eligibility for cash assistance programs. States may apply limitations to all aliens or to specific classes of aliens but may not place greater restrictions on eligibility than are placed on comparable federal programs. § 553.

25. Welfare Reform Act §§ 401(a), 411(a).

26. Welfare Reform Act § 401(c)(1). Part (A) of this definition does not apply to the employment-related contracts or licenses of nonimmigrants whose entry visas are related to their employment in the United States. § 401(c)(2).

27. Welfare Reform Act § 401(b).

28. The law also does not apply to aliens who are lawfully present in the United States and eligible for benefits under the Railroad Retirement Act or the Railroad Unemployment Act. Balanced Budget Act § 5561. The Welfare Reform Technical Corrections Act also restored eligibility for SSI and certain other federal public benefits to non-qualified aliens who were lawfully present in the United States and were receiving those benefits on August 22, 1996. Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, § 2.

29. Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation, 61 Fed. Reg. 45,985 (Aug. 30, 1996).

30. The term “necessary for the protection of life and safety” has not been defined by Congress or any federal agency. Therefore its scope is ambiguous.

31. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of “Federal Public Benefit,” 63 Fed. Reg. 41,657 (Aug. 4, 1998).

32. DHHS has cautioned that even the listed programs may provide certain benefits that are not federal public benefits. The test to be applied is whether the benefit is targeted at recipients based on their membership in a particular group, or at individual “eligibility units.”

33. Welfare Reform Act § 411(d).

34. Nonqualified aliens who are nonimmigrants or pa-

roles for less than one year remain eligible under federal law. Welfare Reform Act § 411(a).

35. Welfare Reform Act § 411(c)(1). As with eligibility for federal benefits (see note 26), part (A) of this definition does not apply to the employment-related contracts or li-

censes of nonimmigrants whose entry visas are related to their employment in the United States. § 411(c)(2).

36. Welfare Reform Act § 400.

37. Fairness for Legal Immigrants Act of 1999 (S. 792/H.R. 1399, 106th Cong., 1st Sess.).

## IMMIGRANTS' ACCESS TO PUBLIC BENEFITS



# When Should Agencies Inquire about Immigration Status?

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The 1996 Welfare Reform Act,<sup>1</sup> combined with the 1996 Immigration Reform Act<sup>2</sup> and other federal legislation, dramatically changed the rules on immigrants' access to federal and state public benefits. These changes have added to existing confusion and fear in the immigrant community in dealing with government agencies. They also have created confusion among North Carolina human services workers, who are charged with administering federal and state public benefit programs.

The confusion surrounding the new rules already has led to a marked decrease in immigrant households' use of basic benefit programs, such as Child Nutrition Act programs and public health services, even though eligibility rules for those programs remain largely unchanged and most immigrants remain eligible to use the programs.<sup>3</sup> This decrease in usage has fallen particularly hard on children who live in the nearly ten million households of "mixed immigration status"—households that include at least one child who is a U.S. citizen and at least one parent who is an immigrant.<sup>4</sup> One-fourth of uninsured children who are eligible for Medicaid or the Child Health Insurance Program (CHIP) live in such households.<sup>5</sup> These complicated situations can make eligibility determinations difficult

and threaten a family's access to needed benefits. Further, members of households with mixed immigration status may be reluctant to apply for benefits for fear that undocumented family members will be deported or that their applying will have adverse consequences on their immigration status.<sup>6</sup>

To ensure that eligible immigrants receive needed benefits and to avoid liability for discriminatory treatment of applicants or wrongful denial of benefits, agencies that administer public benefits must understand the new rules and implement them properly. The preceding article, "Immigrants' Access to Public Benefits: Who Remains Eligible for What?" (see page 22), addresses which immigrants are eligible for various federal, state, and local benefits. This article focuses on two related issues:

1. When agencies that administer federal and state public benefits must verify immigration status before providing them
2. Under what limited circumstances agencies must report applicants for benefits who are undocumented immigrants to the Immigration and Naturalization Service (INS), and which agencies must do so

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## BACKGROUND

Before passage of the Welfare Reform Act, the major federal benefit programs were required to verify an applicant's immigration status through the Systematic Alien Verification for Entitlements system (SAVE). The programs that used SAVE included Aid to Families with Dependent Children (AFDC), Medicaid, Food Stamps, federal housing assistance, unemployment insurance, and some education loan and grant programs.

The Welfare Reform Act expanded the verification requirements to cover all "federal public benefits" and "state public benefits" except those that continue to be available to all immigrants. The Welfare Reform Act also required the INS, along with the U.S. Department of Health and Human Services (DHHS), to develop regulations implementing a uniform verification system, at least for federal public benefits. From the date on which the INS publishes final regulations, states will have twenty-four months to put a verification system into effect for their programs that administer federal public benefits.<sup>7</sup>

Final regulations have not yet been issued, so the twenty-four-month period has not begun to run. However, federal agencies have issued two documents that address when and how local government agencies should verify immigration status in the meantime. On November 17, 1997, the U.S. Department of Justice (DOJ) issued interim guidance (hereafter DOJ Guidance) on procedures for verifying immigrants' eligibility for federal public benefits.<sup>8</sup> On August 4, 1998, the INS issued proposed regulations on verification procedures, which are very similar to the DOJ Guidance.<sup>9</sup> The regulations state that they should be used "in tandem" with the DOJ Guidance and that the DOJ Guidance should be followed to the extent that it is consistent with the proposed regulations. The remainder of this article focuses on the contents of the DOJ Guidance, discussing the proposed regulations only when they vary from the DOJ Guidance.

Before the verification procedure is reviewed, three preliminary issues must be addressed. First, the DOJ Guidance relates to federal public benefits only. Future DOJ guidelines will address the rules for state public benefits. The proposed INS regulations, however, give state and local governments the option of using the proposed verification procedures in administering state public benefits. State and local governments that wish to set up an alternative procedure should do so

carefully. Under the U.S. Constitution, the federal government has plenary (that is, full) power over immigration matters, and any procedures that are inconsistent with federal law in this area will be subject to close scrutiny.

Second, the DOJ Guidance does not define which benefits fall under the definition of federal public benefit. Each federal agency bears the responsibility of determining which of its benefit programs meet the definition. For example, on the same day that the INS issued proposed regulations on verification procedures, DHHS published a notice identifying which of its programs fall under the definition of federal public benefit.<sup>10</sup> (DHHS's interpretation is discussed in the article that begins on page 22.)

Third, the DOJ Guidance instructs agencies that have been using SAVE to continue using it until the final regulations are issued and a final verification system is established. Thus, agencies such as those administering Medicaid and public housing benefits, which currently are using SAVE, should continue to do so pending establishment of the final verification system. The one exception to this rule is that states now may use a system other than SAVE to verify immigrants' eligibility for food stamps.<sup>11</sup> The continued use of SAVE includes the continued use of SAVE procedures, including the privacy protections. For example, information obtained through SAVE ordinarily may not be used for any purpose other than to verify a person's immigration status.<sup>12</sup>

Benefit providers that use SAVE still must understand the new welfare and immigration laws because SAVE will not always generate sufficient information to determine an immigrant's eligibility for benefits. For example, SAVE will not necessarily show whether a person is a "qualified alien," a designation critical to determining a person's eligibility for benefits under the Welfare Reform Act. Consequently, all benefit providers should become familiar with the verification procedure described in the next section.

Finally, as discussed on page 33, nonprofit charitable organizations are exempt from these verification regulations.

## THE VERIFICATION PROCEDURE

The DOJ Guidance sets out a four-step procedure for verification. If it is properly implemented, the procedure should not operate to deny benefits to eligible immigrants or unduly deter them from applying. The

DOJ Guidance stresses that agencies administering federal public benefits continue to be subject to federal civil rights laws and privacy rules.<sup>13</sup> In this respect the new verification procedure must correspond to SAVE,<sup>14</sup> which likewise contains civil rights and privacy protections. The DOJ Guidance instructs agencies to implement neutral policies and procedures that apply equally to all applicants. It also provides that individuals should not be singled out or asked for additional documentation just because they look foreign, have ethnic-sounding names, or have a foreign accent.

The four steps established by the DOJ Guidance<sup>15</sup> are as follows.

**STEP 1: Determine if the assistance being requested is a federal public benefit subject to the verification requirements.**

The verification requirements do not apply to all federal benefits. They apply only if the benefits are (1) federal public benefits and (2) nonexempt. Before attempting to verify a person's immigration status, the benefit provider must determine whether the benefit being requested falls within the definition of federal public benefit. Whether a benefit meets that definition is determined by the federal agency overseeing the benefit program. For example, as discussed earlier, DHHS has issued a notice identifying which of its programs constitute federal public benefits and which do not.

If a benefit is a federal public benefit, the provider must determine whether the benefit falls within one of the exempt programs—that is, programs for which all immigrants continue to be eligible. For example, all immigrants continue to be eligible for emergency Medicaid. *If the benefit is part of an exempt program, the provider is not required and should not attempt to verify immigration status.* Only if the benefit falls within the definition of federal public benefit and is not an exempt program should the provider go to step 2. (For a further discussion of federal public benefits and exemptions, see page 35.)

**STEP 2: Determine whether the person who is to receive the benefit is eligible under the general eligibility requirements.**

Designed to minimize the intrusiveness of the verification procedure, this step supports the overall goal of the DOJ Guidance to ensure that verification of immigration status take place only when absolutely necessary to determine eligibility. The DOJ Guidance

allows benefit providers to skip this step only if determining general eligibility would be more time-consuming and complex than verifying immigration status. The proposed INS regulations do not require benefit providers to take this step before verifying immigration status, but they do require that agencies make their decision about the timing of verification in a nondiscriminatory way.<sup>16</sup>

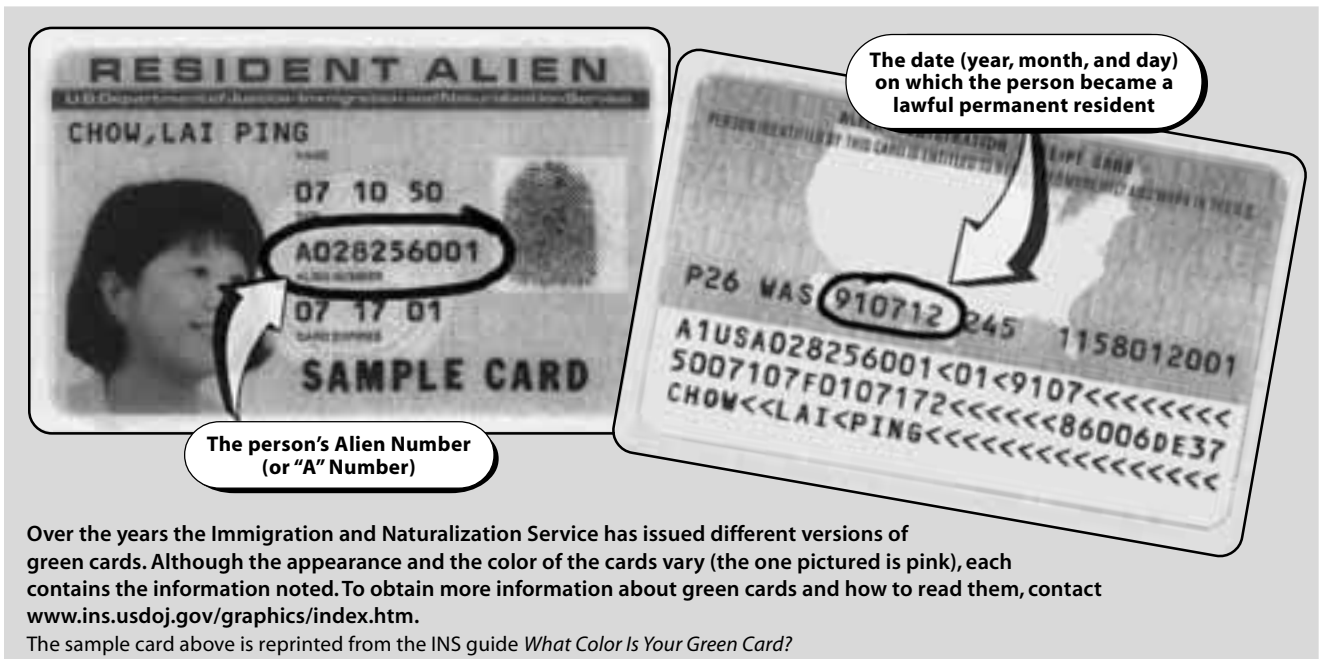
**STEP 3: Verify that the person who is to receive the benefit is a U.S. citizen, a U.S. national, or a qualified alien.**

The DOJ Guidance explicitly states that *verification should not take place unless the benefits are contingent on status.* The reason, according to the DOJ Guidance, is that the verification procedure raises significant privacy concerns and the potential for discrimination. Further, the DOJ Guidance states that if an immigrant is applying for benefits on behalf of another person, *the benefit provider should verify only the status of the person who actually will be receiving the benefit.* For example, if a mother is applying for Medicaid or disability benefits under Supplemental Security Income on behalf of her child, the benefit provider should verify only the status of the child, not that of the mother.

If the benefit is contingent on the person's status, the agency should take the following steps:

1. Ask the applicant for a written declaration, under penalty of perjury, that he or she is a U.S. citizen, a U.S. national, or a qualified alien. For definitions of "U.S. citizen" and "U.S. national" and an explanation of "qualified alien," see "ABCs of Immigration Law and Policy," page 18.
2. Verify the applicant's citizenship or immigration status. The DOJ Guidance states that the appropriate verification method will depend on the requirements and the needs of the program as well as a number of other factors. For example, if the agency provides a short-term benefit, a quick and simple verification procedure may be all that is necessary. The DOJ Guidance lists the types of documentation and methods that will prove citizenship or qualified alien status.<sup>17</sup>

If an applicant presents documentation that he or she is a U.S. citizen and the documentation appears valid on its face, such as a U.S. birth certificate or passport, the provider should accept it as conclusive evidence. The more complicated issue is what documentation will establish status as a qualified alien. The



DOJ Guidance lists documents such as INS form I-551 (Alien Registration Receipt Card or “green card”) as acceptable proof of qualified status. However, there are different versions of this card, the most current one being called Permanent Residence Card. Other documentation that may be used as evidence of qualified status is INS form I-94 (a person’s arrival/departure record), but it establishes qualified status only if it bears certain codes, such as one showing a grant of asylum, or an unexpired temporary I-551 stamp.

The DOJ Guidance instructs providers not to delay, deny, or reduce benefits based on immigration status during the time it takes to complete the verification procedure unless they are instructed to do so by the federal agency administering the benefit.

**STEP 4: Verify the potential recipient’s eligibility under the provisions of the Welfare Reform Act and other federal legislation relating to immigrants.**

If the person who is to receive the benefit is a U.S. citizen or a U.S. national, the verification procedure is complete because the benefit restrictions regarding immigrants do not apply. Likewise, if the benefit being requested is one for which all qualified aliens continue to be eligible, the verification procedure is complete. For example, all qualified aliens are eligible for higher education loans and grants if they otherwise meet the eligibility criteria for those benefits. (For a list of benefits that qualified aliens may receive, see page 35.)

If additional immigrant restrictions apply to the ben-

efit, the provider will need to turn to the new eligibility rules. For example, lawful permanent residents, a subset of the new qualified alien category, are eligible for Medicaid only if they were in the United States and were granted legal permanent residence on or before August 22, 1996. To determine when a potential benefit recipient was granted legal permanent residence—and thus to determine the person’s eligibility for Medicaid and certain other benefits—the benefit provider will need to know how to read the various codes on the person’s I-551 form, or green card.

The DOJ Guidance specifically states that if at any time the benefit provider determines that verification of immigration status is unnecessary, the provider should not ask any additional questions about immigration status.

**REPORTING REQUIREMENTS**

The Welfare Reform Act expanded the circumstances under which federal agencies must report to the INS people applying for benefits. The principal change was to make three additional federal agencies subject to the reporting requirements. Previously, only agencies administering the Food Stamp program had to report. The other agencies now required to report are those responsible for Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and some public housing agencies. On a quarterly basis (or

more often if requested by the INS), these agencies must provide the INS with the names, addresses, and other identifying information concerning people who are “known to be not lawfully present in the United States.”<sup>18</sup>

As yet, neither the DOJ nor the INS has defined the phrase “known to be not lawfully present in the United States.” Nor have they issued any guidance telling agencies what and when they are to report. In the absence of specific federal rules, the safest course for agencies to follow is to look to the Food Stamp program for guidance. Food Stamp agencies must report people who are “present in the United States in violation of the Immigration and Nationality Act.”<sup>19</sup> This phrase has been interpreted narrowly to apply only to people with final orders of deportation from the INS. In addition, Food Stamp agencies have not been required to report or verify the immigration status of household members who are not applying for food stamps for themselves.<sup>20</sup>

The Welfare Reform Act did not impose any new reporting requirements on other agencies. It did, however, include a set of “anti-confidentiality rules,” which have created some confusion about benefit providers’ obligations. The anti-confidentiality rules were designed to counter any remaining “sanctuary” ordinances, which were being used in some places to prevent state or local agencies from cooperating with INS enforcement efforts. Under the anti-confidentiality rules, federal, state, or local laws may not prohibit state or local government entities from exchanging information with the INS regarding a person’s immigration status. In addition, federal, state, or local government entities may not be restricted from maintaining records on immigration status or exchanging information about immigration status with other federal, state, or local governmental entities.<sup>21</sup>

*The anti-confidentiality rules do not require any agency to turn information over to the INS. Nor do they impose an affirmative duty to collect information about immigration status.* They do prevent agencies from assuring that immigration information will be kept completely confidential. An agency must report a person’s immigration status to the INS *only* to the extent that it is subject to the reporting requirements discussed earlier.<sup>22</sup> To ensure equal access to services, and to prevent discriminatory treatment of applicants, agencies should establish procedures that minimize the collection of information about immigration status.

## EXCEPTIONS AND LIMITATIONS

### Special Verification Rules for Battered Spouses and Children

Certain battered spouses (victims of domestic violence) and children are included within the definition of “qualified aliens” and therefore continue to be eligible for certain benefits.<sup>23</sup> For these people the documentation requirements are not as stringent. The proposed INS regulations also would modify the SAVE procedures for this category of qualified aliens.<sup>24</sup> The INS has centralized in one office the handling of most applications from battered immigrants for lawful status, thereby making it easier to verify their status as qualified aliens.

### Exemption for Nonprofit Charitable Organizations

Nonprofit charitable organizations are exempt from having to verify immigration status—even if they provide a federal, state, or local public benefit—and they may not be penalized for not verifying immigration status.<sup>25</sup> Further, state and local governments may not impose verification requirements on such organizations.<sup>26</sup> To be exempt, an organization must be both nonprofit and charitable. The DOJ Guidance defines “nonprofit organization” as one that “is organized and operated for purposes other than making gains or profits for the organization, its members, or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders.” It defines “charitable organizations” to include organizations “dedicated to relief of the poor and distressed or underprivileged, as well as religiously affiliated organizations and educational organizations.”<sup>27</sup>

## CONCLUSION

Many of the issues related to the new verification and reporting requirements are still unclear, including exactly which benefits fall under the definition of federal public benefit; when TANF, SSI, and public housing agencies will be required to report applicants to the INS; and how all the requirements will be implemented at the state and local levels. These unresolved issues are adding to the confusion in the immigrant community and among benefit providers. The situation offers an opportunity, however, for benefit providers and local immigrant advocates to work together to

clarify the new rules and ensure that immigrants continue to receive appropriate benefits.

## NOTES

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 8 U.S.C. and 42 U.S.C.).

2. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter Immigration Reform Act), Pub. L. No. 104-208, 110 Stat. 3009 (codified in scattered sections of 8 U.S.C.).

3. Gillian Dutton, "The Effect of Welfare Reform on Immigrant Children," *Clearinghouse Review* 32 (Jan.-Feb. 1999): 504, citing Wendy Zimmerman and Michael Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in L.A. County* (Washington, D.C.: Urban Institute, July 1998).

4. Sheri A. Brady, *One in Ten: Protecting Children's Access to Federal Public Benefits under the New Welfare and Immigration Laws* (Washington, D.C.: National Association of Child Advocates, 1998).

5. Brady, *One in Ten*, citing "Outreach to Medicaid Eligible Children," in *Chartbook on Children's Health Insurance Status* (GAO/HEHS 98-93), General Accounting Office for U.S. Department of Health and Human Services (Washington, D.C.: Dec. 1997). In North Carolina the CHIP is called North Carolina Health Choice.

6. Another issue that deters immigrant households from accessing benefits relates to the "public charge" ground of inadmissibility to the United States. Under the Immigration and Nationality Act of 1952, as amended, an immigrant's application for legal permanent residence or entry into the United States may be denied if the INS examiner finds that the person is likely to become a public charge or likely to need public benefits to support self or family. § 2R(a)(4), 8 U.S.C. §§ 1101-1537. This issue was recently addressed in guidelines from the U.S. Department of Justice. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689-93 (May 26, 1999).

7. Welfare Reform Act § 432. Section 504 of the Immigration Reform Act expanded the verification requirements further by requiring verification of citizenship, not just immigration status.

8. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997) (hereinafter DOJ Guidance).

9. Verification of Eligibility for Public Benefits: INS Proposed Rule, 63 Fed. Reg. 41,662 (Aug. 4, 1998) (hereinafter INS Proposed Rule).

10. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,657 (Aug. 4, 1998).

11. DOJ Guidance, 62 Fed. Reg. 61,345.

12. Four types of agencies must report information about a person's immigration status to the INS. The new reporting requirements are discussed on page 32. In the narrow circumstances when these agencies must report to the INS, it is unclear how the SAVE privacy protections apply.

13. DOJ Guidance, 62 Fed. Reg. 61,346.

14. Welfare Reform Act § 432(a). See also 42 U.S.C. § 1320b-7(d).

15. DOJ Guidance, 62 Fed. Reg. 61,346-50. Unless noted otherwise, the discussion in this part is drawn from the DOJ Guidance.

16. INS Proposed Rule, 63 Fed. Reg. 41,662.

17. The DOJ Guidance lists the following as relevant factors in determining the extent of documentation required: the nature of the benefit to be provided; the need to provide the benefit in an expedited manner; the length of time the benefit will be provided; the cost of the benefit; and the time and the cost of the chosen verification procedure. 62 Fed. Reg. 61,347. See also DOJ Guidance, attachments 4 and 5, 62 Fed. Reg. 61,362-409.

18. Welfare Reform Act § 404(b).

19. 7 U.S.C. § 2020(e)(17).

20. 7 C.F.R. § 273.4(e)(2).

21. Welfare Reform Act § 434.

22. As a final point, the scope of these anti-confidentiality rules seems to be limited, for the DOJ already has clarified that existing confidentiality rules still apply in some circumstances. For example, it recently announced that census information will remain confidential. The Effect of 8 U.S.C.A. § 1373(a) on Requirements Set Forth in 13 U.S.C. § 9(a) That Census Officials Keep Covered Census Information Confidential, Memo from Office of Legal Counsel, U.S. Department of Justice (May 18, 1999).

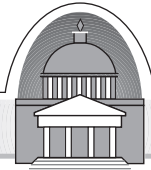
23. Immigration Reform Act § 501. To be eligible for benefits, the battered immigrant must establish that he or she either is the beneficiary of a spousal visa petition or has filed a self-petition under the Violence against Women Act (VAWA). In addition, he or she may no longer be residing with the abuser. The battered immigrant also must show a "substantial connection" between the domestic violence and the need for public benefits. The U.S. attorney general has issued guidelines on when agencies should find that this substantial connection exists. The guidelines broadly define the circumstances under which the substantial connection may be found. Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 Fed. Reg. 65,285 (Dec. 11, 1997).

24. INS Proposed Rule, 63 Fed. Reg. 41,662.

25. Immigration Reform Act § 508; DOJ Guidance, 62 Fed. Reg. 61,346.

26. INS Proposed Rule, 63 Fed. Reg. 41,662.

27. DOJ Guidance, 62 Fed. Reg. 61,345-46. The proposed INS regulations likewise exclude nonprofit charitable organizations from the verification requirements, stating that they do not come within the definition of "benefit granting agencies." INS Proposed Rule, 63 Fed. Reg. 41,662.



# A GUIDE TO IMMIGRANTS' ELIGIBILITY FOR PUBLIC BENEFITS IN NORTH CAROLINA

JILL D. MOORE

## ALL IMMIGRANTS

The Welfare Reform Act identified which aliens are *ineligible* for certain public benefits. It did not specify which benefits remain available to all aliens. Presumably, benefits not explicitly denied to aliens (or subsets of them) remain available to all people in the United States without regard to citizenship or immigration status. Those benefits include any that do not meet the statutory definition of "federal public benefit," which must be denied to nonqualified aliens (see "Nonqualified Aliens/Federal Public Benefits," later in this guide). They also include the following benefits and services, which are excepted from the statutory definition of "federal public benefit":

- Medicaid benefits for emergency services (but not for organ transplants), provided that the person otherwise meets Medicaid eligibility criteria
- Short-term, noncash emergency disaster relief
- Immunizations
- Testing for and treatment of symptoms of communicable diseases
- Benefits from housing or community development assistance programs that the person was receiving as of August 22, 1996
- Benefits under Title II of the Social Security Act (that is, Old Age, Survivors, and Disability Insurance), provided that the alien is lawfully present in the United States
- Programs or services specified by the U.S. attorney general that (1) deliver in-kind services at the community level, (2) do not condition assistance on the recipient's income or resources, and (3) are necessary for the protection of life or safety:
  - Crisis counseling and intervention programs, child protective services, adult protective services, violence and abuse prevention programs, programs for victims of domestic violence or other crimes, and treatment of mental illness and substance abuse
  - Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children
  - Assistance for people during periods of hot, cold, or other adverse weather conditions

- Soup kitchens, community food banks, senior nutrition programs such as Meals on Wheels, and other community nutritional services for people requiring special assistance
- Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety
- Activities designed to protect the lives and safety of workers, children, or community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

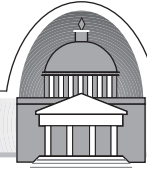
The *state and local benefits* available to all people regardless of citizenship or immigration status are those that do not meet the statutory definition of "state or local public benefit," and the following benefits, which are specifically excepted from that definition:

- Assistance for health care items and services necessary for treatment of emergency medical conditions (but not for organ transplants)
- Short-term, noncash emergency disaster relief
- Immunizations
- Testing for and treatment of symptoms of communicable diseases
- Programs and services such as soup kitchens or crisis centers that deliver in-kind services at the community level, do not condition assistance on the recipient's income or resources, and are necessary for the protection of life or safety

All people present in the United States also may make use of police, fire, ambulance, transportation, sanitation, and other widely available public services.

## QUALIFIED ALIENS

A "qualified alien" is a noncitizen who fits into one of the following categories: lawful permanent residents; certain aliens admitted for humanitarian reasons (namely, refugees; political and religious asylees; people granted withholding of deportation; Cuban/Haitian entrants; Amerasian immigrants; and parolees admitted to the United States for at least one year); aliens who have been present in the United States since before April 1, 1980, as "conditional entrants" under federal immigration laws; and



certain immigrants who have been battered or subjected to extreme cruelty, and in some cases their parents.

#### **Qualified Aliens with Strong Military Connections**

Honorably discharged veterans, members of the armed services on active duty, and their spouses and dependent children are potentially eligible for any public benefit, including food stamps, Supplemental Security Income (SSI), and all federal means-tested public benefits. These people must meet all other eligibility criteria for the benefit before they may receive it. Congress has stated that members of Hmong or Highland Lao tribes who provided assistance to United States military forces during the Vietnam War should be treated the same as honorably discharged veterans in determining eligibility for benefits. Thus those people also are potentially eligible to receive any public benefit.

#### **Qualified Aliens with Long Work Histories in the United States**

Lawful permanent residents who entered the United States before August 22, 1996, and who have worked forty qualifying quarters (ten years) under Title II of the Social Security Act are potentially eligible to receive any public benefit, provided that they meet all other eligibility criteria for the benefit. People who entered the United States after August 22, 1996, but otherwise meet the eligibility criteria are eligible for SSI and food stamps immediately but must wait five years before they are eligible to receive other federal means-tested public benefits.

#### **All Other Qualified Aliens**

##### *SSI*

The following qualified aliens are eligible to receive SSI (provided that they meet all other program eligibility criteria):

- Those with strong military connections (described earlier)
- Those with long work histories (described earlier)
- People who were lawfully present in the United States on August 22, 1996, and who were, or who become, disabled or blind
- People who are lawfully present in the United States and were receiving SSI on August 22, 1996
- SSI recipients whose applications for SSI predated January 1, 1979
- Cross-border Native Americans

Qualified aliens admitted for humanitarian reasons (described earlier) are eligible to receive SSI only during their first seven years of lawful residence in the United States.

All other qualified aliens are barred from receiving SSI.

##### *Food Stamps*

The following qualified aliens are eligible to receive food stamps (provided that they meet all other program eligibility criteria):

- Those with strong military connections (described earlier)
- Those with long work histories (described earlier)
- People who were lawfully present in the United States on August 22, 1996, and who now are disabled or who become eligible for disability-based federal benefits in the future
- Children under age eighteen who were lawfully residing in the United States on August 22, 1996
- Adults who were lawfully residing in the United States on August 22, 1996, and were at least sixty-five years old on that date
- Cross-border Native Americans

Qualified aliens admitted for humanitarian reasons (described earlier) are eligible to receive food stamps only during their first seven years of lawful residence in the United States.

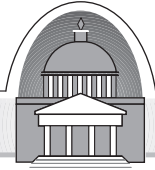
All other qualified aliens are barred from receiving food stamps.

##### *Federal Means-Tested Public Benefits*

Qualified aliens who entered the United States before August 22, 1996, are eligible for federal means-tested public benefits. Qualified aliens who entered the United States *after* August 22, 1996, are not eligible for those benefits until five years after their lawful admission to the United States.

The following groups are exempted from the five-year waiting period: qualified aliens with strong military connections and qualified aliens admitted for humanitarian reasons (both categories described earlier).

Congress did not define the term "federal means-tested public benefits." Based on federal agency interpretations, the term includes at least the following benefits and programs, and the restrictions just stated apply: Medicaid (except for emergency medical assistance), Temporary Assistance for Needy Families (TANF), and the food-assistance block grant programs in Puerto Rico, the Northern Mariana Islands, and American Samoa. No other programs administered by the U.S. Department of Health



and Human Services (DHHS), the U.S. Department of Agriculture, or the Social Security Administration meet the definition, according to those agencies, so qualified aliens are eligible for such programs (provided that they meet the particular program's criteria).

By statute, the following benefits also are exempted from the definition of federal means-tested public benefits under the Welfare Reform Act, so qualified aliens are eligible to receive them: Medicaid for emergency medical services (but not for organ transplants); short-term, noncash emergency disaster relief; services provided under the National School Lunch Act and the Child Nutrition Act; immunizations; testing for and treatment of symptoms of communicable diseases; payments for foster care and adoption assistance; student assistance under the Higher Education Act and the Public Health Service Act; means-tested programs under the Elementary and Secondary Education Act; Head Start; benefits under the Job Training Partnership Act; and programs, services, or assistance specified by the U.S. attorney general that (1) deliver in-kind services at the community level, (2) do not condition assistance on the recipient's income or resources, and (3) are necessary for the protection of life or safety.

## **NONQUALIFIED ALIENS**

### **Federal Public Benefits**

Nonqualified aliens are potentially eligible to receive the federal benefits and services listed earlier as being available to all aliens, provided that they otherwise meet eligibility criteria.

Nonqualified aliens are generally ineligible to receive other federal public benefits, which are defined as follows:

- (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
- (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

One federal agency, DHHS, has issued an official interpretation of this definition, which must be applied to programs that receive funding from DHHS. Under

DHHS's interpretation, nonqualified aliens are eligible for a number of DHHS-funded benefits that are provided at the local level, such as prenatal care and other health services. This interpretation concludes that only the following programs constitute federal public benefits: several programs of the Administration on Developmental Disabilities (ADD); adult programs/payments to territories; Agency for Health Care Policy and Research dissertation grants; child care and development fund; clinical training grants for faculty development in alcohol and drug abuse; foster care; health profession education and training assistance; independent living program; job opportunities for low-income individuals; low-income home energy assistance program; Medicare; Medicaid (except for emergency medical assistance); mental health clinical training grants; native Hawaiian loan program; refugee cash assistance; refugee medical assistance; refugee preventive health services program; refugee social services formula program; refugee social services discretionary program; refugee targeted assistance formula program; refugee targeted assistance discretionary program; refugee unaccompanied minors program; refugee voluntary agency matching grant program; repatriation program; residential energy assistance challenge option; social services block grant; state child health insurance program; and TANF.

The general bar on federal public benefits does not apply to Medicare benefits for nonqualified aliens who were lawfully present in the United States and authorized to be employed during the time they earned wages rendering them eligible for Medicare; benefits under the Railroad Retirement Act or the Railroad Unemployment Act for nonqualified aliens who are lawfully present; and SSI and associated Medicaid benefits for nonqualified aliens who were receiving those benefits on August 22, 1996.

### **State and Local Public Benefits**

Nonqualified aliens are potentially eligible to receive the state and local benefits and services listed earlier as being available to all aliens, provided that they otherwise meet eligibility criteria.

Nonqualified aliens are generally ineligible to receive other state and local public benefits. The definition of state and local benefits parallels the definition of federal benefits set forth earlier, except that the benefits are funded by state or local governments, not the federal government.

Nonqualified aliens who are nonimmigrants or parolees for less than one year are eligible to receive state and local public benefits.