

ALIEN ELIGIBILITY FOR PUBLIC BENEFITS©

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INTRODUCTION

To understand public benefits eligibility for aliens, one must first understand that eligibility is not simply a matter of having a particular immigration status. Underlying all of public benefits eligibility is the matter of categorical eligibility. Categorical eligibility refers to being in a certain category or having particular characteristics or factors in one's life which make it possible for one to be considered as an applicant for particular benefits programs. These categories, characteristics, or factors are distinct from being an alien. In fact, even citizens must be categorically eligible for the benefits program for which they are applying if they hope to be found eligible. An example of categorical eligibility is poverty. One must be poor, i.e. have little income and few assets, in order to be found eligible for needs-based public assistance. All the public assistance programs discussed in this outline are needs-based: Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance for Needy Families (TANF). Another example of categorical eligibility could be being part of a family that includes minor children. That is because for the TANF program, only families with children can apply.

After an applicant passes the threshold question of categorical eligibility, one must understand that there is still more to alien eligibility than just having one of several eligible immigration statuses. Sometimes the date the status was acquired, the length of time the status has been possessed, and/or the country of origin may all figure into the eligibility determination. For example, while a status of lawful permanent resident (LPR) ordinarily is an eligible status for many public assistance programs, if the LPR arrived in the U.S. less than 5 years ago, the LPR would not be eligible for Food Stamps unless she could be credited with several years of earnings in the U.S. or unless she first entered the country as a refugee or was granted asylum before adjusting to LPR status.

Finally, this outline presumes that one is somewhat familiar with various common immigration statuses. For that reason, very little explanation is provided to define the majority of immigration statuses which are relevant to this outline. In some instances, abbreviations for the statuses are used without explanation due to lack of space (TPS for Temporary Protected Status, DED for Deferred Enforced Departure) and for this the author apologizes.

- I. The Concept of Being a “Qualified” Alien
 - A. Qualified is not used entirely in its ordinary sense
 1. In a sense it means eligible to get benefits but is not the be-all or end-all of the eligibility determination
 - B. Qualified is a “term of art” which arose via welfare reform
 1. a/k/a Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193)
 - C. Qualified refers to a laundry list of aliens
 1. Whose statuses “may” make them eligible for benefits
 - a. That is, potential eligibility on the factor of alienage
 - b. Under certain circumstances for certain programs
 2. But this potential alienage eligibility has nothing to do with financial or categorical eligibility
 - D. The list of Qualified Aliens (8 USC 1641)
 1. Lawful Permanent Resident (LPR)
 2. Asylee (fears persecution in native country; requests asylum here; when granted, acquires asylee status here)
 3. Refugee (fears persecution in native country; gets this status conferred abroad before U.S. entry)
 4. Parolee (paroled under 212(d)(5) for at least a year)
 5. Cuban/Haitian Entrant (C/HE)
 6. Battered aliens

-----less frequently seen-----
 7. Granted withhold of deportation/removal
 8. Granted conditional entry

- E. Battered aliens (8 USC 1641(c))
 - 1. Must meet
 - a. Battered or subject to extreme cruelty
 - (1) In the U.S.
 - (2) By a spouse or parent
 - (a) or member of the spouse or parent's family residing in the same house where spouse or parent consented or acquiesced
 - b. Substantial connection between battery and need for benefits
 - c. Approved for or pending petition setting forth prima facie case under VAWA
 - 2. Or be the parent of a child who meets above
 - 3. Or be the child of a parent who meets above
 - 4. And no longer be residing with batterer

- F. Cuban/Haitian Entrant (8 USC 1522 note, P.L. 104-208, 110 Stat. 3009-726, (501(e) Refugee Education Assistance Act (REAA))
 - 1. Category One
 - a. Any individual "granted parole status as a Cuban-Haitian Entrant (status pending)"
 - b. Or granted any other special status subsequently established under the immigration laws for national of Cuba or Haiti
 - c. Including any national of Cuba or Haiti who was paroled into the U.S. on or after October 10, 1980 (8 CFR 212.5(h)(1))
 - d. Regardless of the status of the individual at the time assistance or services are provided
 - 2. Category Two
 - a. Any other national of Cuba or Haiti who
 - (1) was paroled into the U.S. and has not acquired any other status, or
 - (2) is the subject of removal proceedings, or
 - (3) has an application pending for asylum
 - b. And not subject to a final, nonappealable, legally enforceable order of removal
 - 3. C/H E is a "catch-all" public benefits category, not an

immigration status terminology

G. Concept of “Extra Special Treatment” (EST*) for some aliens

1. Certain qualified aliens get EST under law
 - a. Refugees
 - b. Asylees
 - c. Cuban/Haitian Entrants
 - d. LPRs who can be credited with 40 quarters of work
 - e. Withheld deportation/removal

2. And also some other aliens get EST under law (may/may not be considered qualified aliens)
 - a. Aliens admitted as Amerasians
 - b. Aliens with U.S. military service
 - (1) active duty & honorably discharged veterans
 - (2) and their spouses and dependents
 - c. Victims of trafficking (treated like refugees)
 - d. American Indian tribe members born abroad
 - e. Hmong or Laotian tribe members (for food stamps)

3. What “treatment” do they get that’s so “extra special”?
 - a. Eligible for some programs without any conditions
 - (1) LPRs with 40 quarters
 - (2) Aliens in Military
 - b. Or eligible for benefits for period of at least 7 years where others who entered at the same time are not
 - c. Or, if arrived recently, exempt from the 5 year bar where others, even other qualified aliens, are not

WHICH BEGS THE QUESTION...

H. So, Who’s Generally Not Very Special?

1. Among qualified aliens, the following are not so special
 - a. LPRs without 40 credited quarters of work
 - b. Parolees for over a year (even many years)
 - (1) If NOT from Cuba or Haiti
 - c. Battered aliens
 - d. Conditional Entrants

* EST = Extra Special Treatment (not a term found in law)

WHICH BEGS SOME OTHER QUESTIONS/CONCEPTS...

- I. Who is not a “Qualified Alien”? (some examples)
 1. Undocumented
 2. Generally, mere applicants for status with no other status
 - a. Such as asylum applicants not from Cuba or Haiti
 - b. But applicants for adjustment under VAWA are distinct
 3. Parolees for less than one year
 4. Special Immigrant Juveniles who are not yet LPRs
 5. Temporary Protected Status (TPS)
 6. Non-immigrants
 - a. Tourists
 - b. Students
 - c. Business or Labor/Employment visa holders
- J. The Concept of Covered Quarters (for LPRs) 8 USC 1645
 1. Social Security Administration (SSA) divides the work year into 4 periods (@ 3 months) called quarters
 - a. A quarter is earned if person works and earns minimum set amount of income during the year
 - (1) amount changes annually
 - (2) in 2004 a person must earn \$900 to get credit for one quarter, \$3600 for four quarters
 - (3) in 2004 if you earn \$1800 you get two quarters even if \$1800 earned all in Jan. '04
 - (4) maximum quarters earned in one year is four regardless of excess earnings
 2. Can “borrow” and be “credited” with others’ quarters
 - a. quarters earned by a parent while LPR under 18
 - b. married or widowed LPR can use quarters spouse earns or earned during their marriage (but quarters are lost upon divorce)
- K. The Concept of Lawfully Residing? (lawfully present)
SSI POMS 00502.142 B.2. <http://policy.ssa.gov/poms.nsf/lnx/0500502142!opendocument>
 1. Includes all qualified aliens
 2. Includes others here with some lawful status who have not violated the terms of said status
 3. Includes Parolees for less than one year
 4. Includes Asylum applicants

5. And certain aliens permitted to remain under law/policy
 - a. ex: TPS, DED, LPR applicant spouse/child of citizen

- II. Concept of Time (e.g. specific “date” as well as passage of time)
 - A. The date entered U.S. or date alien started lawfully residing
 - 1. 8/22/96 = THE date (which shall live in infamy)
 - a. Date of passage of PRWORA
 - 2. The date started lawfully residing = lawfully present
 - a. Can begin before attaining qualified status
 - B. How does TIME play into eligibility for those arriving after 8/22/96 or those not lawfully residing on that date
 - 1. A 5 year bar (8 USC 1613(a)) for TANF and Medicaid
 - a. Can’t get benefits for first 5 years after entry as qualified
 - b. But some qualifieds are exempt from 5 year bar (8 USC 1613(b))
 - (1) ESTs
 - (a) refugees
 - (b) asylees
 - (c) C/H Es
 - (d) Withheld deportation/removal
 - c. And a few others are exempt from 5 year bar
 - (1) Amerasians
 - (2) Aliens with Military service
 - (3) American Indians born abroad, as to Medicaid (8 USC 1613(d))
 - 2. Can get SSI for a period of at least 7 years from the date a particular status [i.e. EST status] obtained
 - a. ESTs (8 USC 1612(a)(2)(A))
 - (1) refugees
 - (2) asylees
 - (3) C/H Es
 - (4) Withheld deportation/removal
 - (5) Amerasians
 - b. Then must become a citizen to retain SSI
 - C. Residing in any qualified status for 5 years makes one eligible for Food Stamps
 - 1. Regardless of entry date being pre or post 8/22/96

- III. Overview of Who Is Eligible [for What] On the Factor of Alien Status
 - A. Emergency Medicaid (EMA), public health for immunizations and communicable diseases, in-kind/non-cash/short-term, etc.
 - 1. ANY ALIEN (see 8 USC 1611(b)(1), 1621(b))
 - B. Regular Medicaid (family-related or aged/disability-related) and TANF (parents with minors children) in Florida
 - 1. Amerasians, Military service aliens, Indians born abroad
 - 2. Qualified aliens (but beware of 8/22/96 and the 5 yr. bar)
 - 3. 8 USC 1612(b)(2), 1613, 1622(b)
 - C. Food Stamps (8 USC 1612(a)(2))
 - 1. Eligible without regard to time concept considerations
 - a. EST Qualifieds
 - (1) Refugees
 - (2) Asylees
 - (3) Cuban/Haitian Entrants
 - (4) LPRs who can be credited with 40 quarters of work
 - (5) Withheld deportation/removal
 - b. "Categorical" (minority, disability) qualifieds
 - (1) Qualifieds under age 18
 - (2) Qualifieds getting disability-related benefits
 - (3) Aliens with U.S. military service
 - (a) active duty, honor discharged veterans
 - (b) and their spouses and dependents
 - 2. Eligible but with regard to time concept considerations
 - a. Any qualifieds who have been in qualified status for at least 5 years
 - b. Aged Qualifieds born pre-8/22/31 and lawfully residing on 8/22/96
 - 3. Other less frequently encountered ESTs (may/may not be considered qualified aliens); (but can get f.s. without regard for time concept considerations)
 - a. Aliens admitted as Amerasians
 - b. Victims of trafficking
 - c. Indian tribe members born abroad

d. Hmong or Laotian tribe members lawfully present

- D. Supplemental Security Income (SSI) (8 USC 1612(a)(2))
1. Eligible without regard to “time concept” considerations
 - a. An LPR with 40 quarters
 - b. Aliens with U.S. military service
 - (1) active duty & honorably discharged veterans
 - (2) and their spouses and dependents
 - c. Indian tribe members born abroad
 2. Eligible but with regard to time concept implications
 - a. Lawfully residing now and were getting SSI already on 8/22/96
 - (1) can keep getting SSI
 - b. Lawfully residing on 8/22/96 who are qualified and disabled
 - (1) So long as qualified at the time of application
 - (2) Even aged have to meet disability criteria
 - (a) note that “aged” for SSI means 65 years of age or older (“aged” can be defined differently for other public benefits programs)
 - c. Not lawfully residing on 8/22/96
 - (1) Qualified ESTs for first 7 years after attaining these statuses
 - (a) refugees
 - (b) asylees
 - (c) C/H Es
 - (d) Withheld deportation/removal
 - (e) Amerasians
 3. For Social Security disability or retirement eligibility under Title II
 - a. See 8 USC 1611(b)(2)

- IV. Is Anyone in the Client Family Eligible on the Factor of Alienage
 - A. Client's household
 - 1. Mirtha Guillaume and two older minors
 - a. Arrived pre 8/22/96
 - b. Undocumented
 - c. H has not yet petitioned for W
 - 2. Husband Mr. Guillaume and two younger minors
 - a. citizens
 - B. EMA and public health
 - 1. ?
 - C. TANF (for parents and children) and Medicaid (family-related)
 - 1. Is anyone a qualified alien?
 - 2. If so, is anyone subject to a 5 year bar?
 - D. Florida Medicaid for the disabled or aged
 - 1. No one is over 65 or alleging disability, can skip this
 - 2. But if you did, inquiry would be same as TANF/Medicaid
 - E. Food Stamps
 - 1. Ask two questions to start
 - a. What kind of immigration status?
 - b. When did they get here (with? or without that status)?
 - 2. Then plug them into the "without time considerations" list or the "with time considerations" list as appropriate
 - 3. If no one is a qualified alien, check the less-frequently encountered ESTs
 - F. SSI (monthly cash for the blind, disabled, and aged)
 - 1. Since no one is alleging elderly (over 65) or disabled
 - a. can skip this analysis altogether

- V. Neighbors Household #1
 - A. Carlos, age 80, gets Florida Medicaid for the aged
 - 1. Paroled (indefinite parole) into U.S. from Nicaragua in 1981
 - a. no other status acquired
 - 2. Worked off and on, the equivalent of a 9 years total, but now too old
 - B. Maria, age 79, home-maker
 - 1. Entered from Nicaragua in 1982 and applied for asylum
 - a. no decision on asylum, still pending since 1982
 - C. Is Carlos eligible for SSI?
 - 1. Ask one question to start
 - a. Could he be eligible without regard to the concept of time
 - (1) Is he an LPR with 40 quarters?
 - (2) What if he could be credited with 40 quarters?
 - 2. If above fails to yield eligibility, ask 2 follow-up questions
 - a. What is Carlos' status?
 - b. When did he get here?
 - 3. Since he arrived pre-8/22/96, also need to ask
 - a. What was Carlos' status on 8/22/96?
 - b. Was Carlos lawfully residing on 8/22/96?
 - 4. Is he disabled or just aged?
 - a. If he is not disabled, would he get SSI based on age alone if he'd been a parolee from Cuba?
 - 5. Why doesn't Maria get Fla. Medicaid based on age?
- VI. Neighbor Household #2
 - A. Arturo, divorced, age 44
 - 1. Entered February 1, 2000 as an LPR from Cuba
 - 2. Worked steadily since 2000 but just lost his job
 - B. Nelia, age 17, daughter of Arturo
 - 1. Entered February 2, 2002 as an LPR from Cuba, a student
 - C. TANF for parents with minor children (comes with Medicaid)
 - 1. Are Arturo or Nelia qualified aliens?
 - 2. If so, is either subject to a 5 year bar?
 - D. Food Stamps
 - 1. Ask two questions to start
 - a. What kind of immigration status?
 - b. When did they get here (with? or without that status)?
 - 2. Then match them against the appropriate lists

3. Can Arturo borrow quarters from his ex-wife?

Carlos

age 80

indefinitely paroled into U.S. from Nicaragua in 1981,
no other status acquired

worked equivalent of 9 years total, now too old
gets Florida Medicaid for the aged

Maria

age 79

entered from Nicaragua in 1982 and applied for
asylum, no decision on asylum which has been
pending since entry

home-maker

Arturo

entered as LPR from Cuba on February 1, 2000

age 44, divorced from Nelia's mother

worked steadily since 2000 but just lost his job

Nelia

age 17, student, daughter of Arturo

entered as LPR from Cuba on February 2, 2002

- VII. Answers to Neighbor Household #1
- A. Carlos has only 36 quarters at most and can not be credited with quarters from his wife who has earned none. (She however can be fully credited with his 36 quarters).
 - 1. Furthermore, Carlos is not an LPR and only LPRs get the benefit of quarters.
 - 2. He has no military service nor is he an American Indian born abroad.
 - B. Carlos arrived in 1981 and has had the same status the entire time, parolee (for more than one year).
 - 1. As such he is a qualified alien.
 - 2. He was a qualified alien on 8/22/96 and thus, was lawfully residing.
 - C. Age alone will not get him SSI with his status
 - 1. He would be eligible for SSI as a disabled person who was lawfully residing on 8/22/96 and is now a qualified alien.
 - 2. He needs to prove disability to get SSI.
 - D. If he were a parolee from Cuba, he could be classified as a Cuban/Haitian Entrant.
 - 1. A C/H E is a qualified alien.
 - a. A qualified alien who was lawfully residing on 8/22/96 would be eligible for SSI if he could prove disability
 - 2. If he were a Cuban/Haitian Entrant who was not lawfully residing on 8/22/96, he would be eligible for SSI based on age alone without having to prove disability
 - a. But would only be eligible for the first 7 years after he attained C/H E status (in 1981).
 - b. Since those 7 years are long gone, status as a C/H E gives him no additional eligibility today based on age alone
 - E. Carlos gets Florida Medicaid for the aged (MEDS AD) based on age because he is a qualified alien
 - 1. He was not subject to the 5 year bar because he did not arrive after 8/22/96
 - F. Maria is not eligible for SSI or Florida Medicaid
 - 1. An asylum applicant from Nicaragua is lawfully residing but is not a qualified alien

VIII. Answers to Household #2

- A. As a household consisting of a parent and child under 18 they are categorically eligible to apply for TANF
 - 1. They are also eligible to apply for food stamps and would be so even without regard to their familial relationship
 - a. Parent and children, under age 22, who live together in the same household, must apply for food stamps together as one assistance unit.
 - b. Children under 18, under the control of an adult, must apply for food stamps with that adult even were if unrelated
- B. Both Arturo and Nelia entered as LPRs
 - 1. As such they are qualified aliens, although not C/H Entrants
- C. Arturo arrived February 1, 2000; 5 years have passed since entry as a qualified alien
 - 1. He was subject to the 5 year bar because he arrived after 8/22/96
 - a. But because the 5 years have already gone by, he is no longer subject to the 5 year bar
 - (1) He is eligible for TANF and the family related Medicaid that comes with TANF
- D. Arturo has resided in qualified status for 5 years
 - 1. He is eligible for food stamps
 - a. It does not matter that he arrived after 8/22/96
 - 2. He does not need to have 40 quarters to be eligible for food stamps
 - a. In any event, he has only 20 quarters at most
 - b. He can not borrow quarters from his child or ex-wife
- E. Nelia arrived February 2, 2002, so three years have passed since entry as a qualified alien
 - 1. She is subject to the 5 year bar because she arrived after 8/22/96
 - a. She is not eligible for TANF (or Medicaid) yet
- F. Nelia is under 18 and a qualified alien
 - 1. She is eligible for food stamps
 - a. It does not matter that she arrived after 8/22/96
 - b. It does not matter that she has only resided in qualified status for 3 year
 - 2. She doesn't need 40 quarters to be eligible for food stamps

a. Although she could borrow all 20 of her fathers