



Immigrants and Public Benefits: A closer look for harder times

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Key acronyms:

- USCIS: United States Citizenship and Immigration Services, part of the Department of Homeland Security. Took over function of adjudicating immigration benefits from former INS.
- ICE: Immigration and Customs Enforcement. Took over enforcement functions from former INS.
- LPR: Lawful Permanent Resident. A person with a "green card"
- USC: U.S. Citizen
- VAWA: Violence Against Women Act. Law that provides immigration benefits for the abused spouses and children of USCs and LPRs.

Immigrant Eligibility Restrictions for Federal Programs

- The 1996 welfare law created two categories of immigrants for benefits eligibility purposes:
 - “Qualified”
 - “Not Qualified”
- However, for any given benefit, “qualified” immigrants may not actually “qualify” to receive the benefit. Mercifully, “not qualified” usually really means “not qualified” with a few important exceptions.

Immigrant Eligibility Restrictions for Federal Programs (cont'd):

The “qualified” immigrant category includes:

- Lawful Permanent Residents (LPRs)
- Refugees, persons granted asylum or withholding or deportation/removal, and conditional entrants
- Persons granted parole by the Department of Homeland Security for a period of at least one year
- Cuban and Haitian entrants
- Certain abused immigrants, their children, and/or their parents

Note: All other immigrants, whether lawfully present or not, are considered “not qualified.”

Immigrant Eligibility Restrictions for Federal Programs (cont'd):

Generally, “not qualified” immigrants are prohibited from enrolling in most federal public benefits programs, including:

Medicaid, SCHIP, Medicare, TANF, Foster Care, Adoption Assistance, Child Care and Development Fund, and LIHEAP.

Most important exception: All immigrants, including “not qualified” immigrants, remain eligible for *Emergency Services Only (ESO) Medicaid* if they are otherwise eligible for *Medicaid*.

Immigrant Eligibility Restrictions for Federal Programs (cont'd):

Eligibility for “Qualified” Immigrants:

- Most immigrants who entered the U.S. on or after August 22, 1996, are barred from receiving “federal means-tested public benefits” during their first five years of qualified immigrant status.
- “Federal means-tested public benefits” include Medicaid (except ESO), SCHIP, TANF, food stamps, and SSI.

Immigrant Eligibility Restrictions for Federal Programs (cont'd):

Eligibility for “Qualified” Immigrants – Important Exceptions:

- States can choose to use state funds to provide benefits to some or all qualified immigrants who are subject to the five year bar, or to a larger group of immigrants.
- Food Stamp exceptions for: All “qualified” immigrant children under 18, refugees, asylees, victims of human trafficking, Cuban/Haitian entrants, LPRs with 40 Social Security credits of work history, certain others.
- Battered immigrants (VAWA self-petitioners) only automatically exempt from 5 year bar if they entered U.S. before August 22, 1996

Verification:

SAVE: Systematic Alien Verification for Entitlements

- SAVE is a USCIS information system that assists benefit agency workers in determining a non-citizen applicant’s immigration status.
- SAVE is not a perfect system. “Contact Center” for problems: 1-888-464-4218; Fax (202) 358-7856; SAVE.HELP@dhs.gov Or, consider congressional office inquiry.

Is it “safe” to apply?

- No inquiry should be made into the immigration status of a non-applicant. For example, a parent applying for benefits only for a USC child.
- Can an agency worker call ICE on suspicion that an applicant is undocumented? See PEM 225 (Michigan) at 9-10:

“Determine a person to be in the U.S. unlawfully only if you “know” the alien is not lawfully present in the U.S. “Know” has a very special meaning. For purposes of this item, determine that you “know” that an alien is not lawfully present only if:

- *A final order of deportation is presented during the eligibility or redetermination process; or*
- *A determination of ineligibility was made and the action by DHS was upheld in an administrative hearing and the hearing determination of unlawful presence is supported by a determination by the USCIS or EOIR. . .” (See Broder/Blazer article in materials for non MI policy)*

Language Policies: LEP

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from discriminating on the basis of national origin, and such discrimination can include failure to address language barriers that prevent those with limited English proficiency from accessing services. See *Lau v. Nichols* 414 U.S. 563 (1974).

This is the law even in states with “English Only” laws or severe budget crises.

Critical LEP tool: Executive Order 13166

- On August 11, 2000, President Bill Clinton issued Ex. Order 13166, *Improving Access to Services for Persons with Limited English Proficiency*, which remains law
- Ex. Order 13166 had two major initiatives
 - 1) *Required all federal agencies granting federal funding to draft Title VI LEP guidance specific to its recipients*
 - 2) *Required federal agencies to meet the same standard as funding recipients*

Critical LEP tool: Executive Order 13166, cont'd

- DOJ designated by order as lead agency for guiding other agencies
- DOJ guidance gives four factors for determining the extent of a federal fund recipient's Title VI obligations re: LEP:
 - 1) *Number or proportion of individuals with LEP who cannot access services without efforts to remove language barriers*
 - 2) *Frequency with which individuals with LEP contact the federally assisted program*
 - 3) *Nature and importance of the program to beneficiaries*
 - 4) *Available resources and const considerations*

Key place to do LEP advocacy when local negotiations fail:

- Within the federal agencies, an office for civil rights is often designated to receive and investigate complaints
- In the benefits context, U.S. Department of Health and Human Services Office of Civil Rights is designated and must respond to complaints by an individual
- Leverage: HHS has the power to terminate federal funding to a program that is out of compliance or ask the Justice Department to sue for compliance
- Networking with advocates and negotiating locally with advocates with experience with regional HHS/OCR office are, of course, good first steps

Is it “safe” to apply? PUBLIC CHARGE

- “Public Charge” is a ground of inadmissibility found, among others, at Section 212 of the Immigration and Nationality Act. The immigration law allows denial of applications for LPR status or entry into the U.S. for nonimmigrant aliens who are determined to be “likely to become a public charge.”
- Public charge is NOT an issue for LPRs unless they are returning from more than six months abroad, because after six months, even an LPR is considered to be “applying for admission.”

Is it “safe” to apply? PUBLIC CHARGE

- Public charge is not an issue for refugees, persons granted asylum, or persons certified as trafficking victims. (They are not subject to the ground of inadmissibility.)
- It is generally not an issue for LPRs applying to become U.S. citizens. (Because they are not seeking “admission.”)
 - Limited exception:
 - An LPR can be removed for public charge grounds if he received cash welfare or long-term care with 5 years of entering the US as LPR for reasons that existed before entering U.S, LPR or sponsor has a “legal debt” to the agency and was notified of the debt within 5 years of entry, alien or sponsor refused to repay the benefits after government sued
 - This is an especially rare scenario because SSI and TANF do not create legal debt for this purpose. In some states General Assistance may create a debt, but not a problem in Michigan.

Is it “safe” to apply? PUBLIC CHARGE

- It is never an issue for naturalized U.S. citizens.
- It is never an issue if alien’s children or other household members used medical or noncash benefits (SCHIP, Medicare/Medicaid, Food Stamps). Use of cash benefits (SSI, TANF) is only a potential issue if those benefits were the family’s only income for a sustained period of time.

Is it “safe” to apply?
SPONSORED IMMIGRANTS

Some qualified and eligible “sponsored” immigrants worry that their “sponsor” could be sued to pay back the cost of any benefits that they receive.

This is extremely unusual, but theoretically possible.

Is it “safe” to apply?
SPONSORED IMMIGRANTS

- Some sponsors sign an enforceable affidavit of support (I-864). An I-864 is a contract signed by the sponsor to help an immigrant overcome the public charge ground of inadmissibility.
- Some types of immigrants not subject to public charge do not have sponsors, including refugees and asylees, most Cubans, and Special Immigrant Juveniles

Is it “safe” to apply? SPONSORED IMMIGRANTS

- A sponsor’s obligations end when the immigrant may be credited with 40 Social Security credits of work history or when the immigrant becomes a U.S. citizen
- A sponsored immigrant may get certain benefits, but immigrants who have been in LPR status for less than 5 years generally are not eligible for adult Food Stamps, TANF, nonemergency Medicaid, and SSI
- If a sponsored immigrant becomes eligible for these benefits and uses them while sponsor’s obligations are still in effect, technically the sponsor may be sued by the state to force repayment
- Only a few states have attempted such suits and those that have abandoned the effort as not cost-effective

Rich sponsor/Poor sponsor SPONSOR DEEMING

- Sometimes, a sponsor’s income can be deemed to be available to a sponsored immigrant when she applies for means-tested public benefits, making the immigrant ineligible. The practice varies from state to state. It does not apply to ESO Medicaid.
- There are numerous exceptions, including exceptions for domestic violence survivors and, with respect to food stamps, for children.



Hypothetical Clients



Mariela does not have any form of legal immigration status. Her three young children became LPRs last year through their LPR father, from whom Mariela is separated.

Assuming they otherwise qualify, how would you advise Mariela about her household's eligibility for FAP (Food Stamps), FIP (TANF), Medicaid (full scope and ESO)?

The children's father was their sponsor – must his income be counted as part of the household income for determining whether the children qualify financially?

Hypothetical Clients

- Bonus: Do you have any other questions for Mariela about her relationship with her estranged husband?

Key Resources

- National Immigration Law Center:
<http://www.nilc.org>
- NILC's *Guide to Immigrant Eligibility for Federal Programs*
- MPLP
- *In Michigan, our friends at CCJ!*