

ADVOCATE'S GUIDE TO IMMIGRANT ISSUES IN
SOUTH CAROLINA

SOUTH CAROLINA APPLESEED LEGAL JUSTICE
CENTER

NOVEMBER 2008



Forward

South Carolina Appleseed Legal Justice Center is dedicated to advocacy for low-income people in South Carolina to effect systemic change by acting in and through the courts, legislature, administrative agencies, community and the media, and helping others do the same through education, training and co-counseling. To find out more about SCALJC, go to www.scjustice.org on the Internet.

The goal of this manual is to educate immigrants and advocates about the laws and services available to immigrants. This manual will be more in- depth than previous manuals Appleseed produced that cover similar topics.

This manual should not be used as a substitute for legal advice. Specific legal questions should be directed to attorneys.

Reading or printing this manual does not create an attorney-client relationship.

The South Carolina Lawyer Referral Service has names of attorneys willing to meet with potential clients and advise them at a lower rate. Call the Lawyer Referral Service at (800) 868-2284 statewide or (803) 799-7100 in Columbia for more information.

Documented immigrants with low- income may be able to seek assistance from their local legal services office. The South Carolina Legal Services provides assistance with civil legal issues. They can only serve undocumented immigrants if they are the victims of domestic violence or human trafficking and only if the assistance they are seeking is related to the abuse. To reach SCLS, call the Legal Assistance Telephone Intake Service for a referral (888) 346-5592 statewide or (803) 744-9430 in Columbia.

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TABLE OF CONTENTS

Forward	2
Language Access for Limited English Proficient Persons	6
Who Is a Limited English Proficient (LEP) Individual?	6
What does federal financial assistance include?	6
What are recipients’ obligations under the law?	7
How does a federal recipient decide what language assistance services to utilize?.....	8
Interpreter issues	8
Translator issues	9
How would a LEP individual know that free language assistance is available?.....	10
What can advocates do if the law is not being followed?	10
Public education for grades kindergarten through twelve.....	12
Immigration Status	12
Enrollment.....	12
Communicating with the School	12
Serving Limited-English Proficient Students.....	13
Health Care Options for Immigrants	14
Paying for medical care	14
Medicaid.....	14
Qualified Immigrants.....	14
Medically Indigent Assistance Program (MIAP)	15
Emergency Medicaid.....	15
Finding health care services	17
Free and Reduced Fee Health Care	17
Free Clinics	17
Federally Qualified Health Care Centers (FQHCs).....	18
Health Clinics	18
Hospital Charity Care Programs.....	18
Hill –Burton Act.....	18
Health Care at the Emergency Room	19
Emergency Medical Treatment and Labor Act	19
Public Benefits and Immigrants	22
Important Terms for This Section	22
Public Benefits – what are they?	24
Eligibility.....	25
Food Stamps also known as Supplemental Nutrition Assistance Program (SNAP).....	25
Temporary Assistance for Needy Families (TANF)/Family Independence (F/I)	26
Supplemental Nutrition Program for Women, Infants, and Children	26
Migrant workers and WIC	27
Supplemental Security Income.....	27
Medicaid.....	28
Emergency Medicaid.....	29
Public Housing	29
Barriers to Public Benefits Access	31
Important Terms for This Section	31

Confusion about Eligibility	31
Applying for Public Benefits.....	31
Language Access.....	32
Public Charge	32
Affidavits of Support and Sponsor Deeming.....	34
Affidavits of Support.....	34
Sponsor Deeming	35
Verification and Reporting.....	35
Assistance and Benefits for All Persons Regardless of Legal Status.....	36
Disaster Relief Services.....	36
Immigrant Crime Victims	38
Violence Against Women Act.....	38
Basic Requirements.....	38
The Application Process.....	41
Self-Petition Denials and Appeals.....	42
U-Visas	43
Eligibility for U-Visa.....	43
The Crime Victim.....	43
Suffered Harm	44
Knowledge and Cooperation	44
Certification.....	45
Personal Statement	45
Evidence	45
Inadmissibility	46
The Application Process.....	46
Derivative Beneficiaries	46
Employment Authorization	46
Denials and Appeals.....	47
T-Visas	48
Important Terms for this Section.....	48
Basic Requirements	48
Trafficking in Persons	49
Showing compliance with Law Enforcement.....	49
Extreme Hardship.....	50
Physically Present in the United States	50
Inadmissibility.....	50
The Application Process.....	50
Derivative Beneficiaries	50
Employment Authorization	51
Denials and Appeals.....	51
Special Immigrant Juvenile Status	52
Court Jurisdiction	52
Home Country	52
Judge’s Order	52
Age	53
Family Court Jurisdiction.....	53
The Application Process.....	53
Derivative Beneficiaries	53
Employment Authorization	53
The Dangers of Travel.....	53

Denials and Appeals.....	54
Legal Assistance.....	55
Where to go for low cost immigration help in South Carolina:	55

Language Access for Limited English Proficient Persons

Not being able to speak, read, write, or understand English is a barrier for individuals who want to access important services, exercise legal rights, and comply with the law. Fortunately, a federal law mandates that recipients of federal financial assistance reduce any language barriers.

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. Specifically, Title VI provides that:

[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

This law also forbids federal recipients from using methods to administer the law that would in effect discriminate against someone based on race, color, or national origin.

To give further credence to Title VI of the Civil Rights Act, Executive Order 13166 - "Improving Access to Services for Persons with Limited English Proficiency" was issued.¹ This order mandates that every federal agency providing financial assistance to non-federal entities publish guidance to their recipients detailing how to provide meaningful access to Limited English Proficient persons. After the order was issued, several agencies, including the Department of Justice and the Department of Health and Human Services, set out policy guidance and general principles for agencies outlining how to meet the needs of limited English proficient (LEP) persons.

Who Is a Limited English Proficient (LEP) Individual?

A limited English proficient (LEP) person has a limited ability to read, write, speak, or understand English. The term usually refers to people whose primary language is not English.² All persons, regardless of immigration status are entitled to laws that protect LEP persons.

What does federal financial assistance include?

The clearest example of federal financial assistance is the award of grant money. Federal financial assistance however, may be in non-monetary forms. Federal financial assistance may include:

1. the use or rent of federal land or property at below market value
2. grant or donation of federal property and interests in property
3. federal training

In order to fall under Title VI, the program must have been receiving federal financial assistance at the time of the alleged discriminatory act(s). Examples of entities covered under the law include, but are not limited to:

1. Hospitals, nursing homes, home health agencies, and managed care organizations.
2. Universities
3. State, county, and local government offices

¹ 65 FR 50121 (August 16, 2000)

² The term also refers to people who are hearing-impaired.

4. K-12 Schools and Head Start programs.
5. Public and private contractors, subcontractors, and vendors.
6. Physicians
7. Police departments

Here are two examples of how agencies can fall under Title VI.

- A state health department receives federal funds from the Department of Health and Human Services. The state health department then disperses the funds to hospitals for emergency room services. The funds constitute federal financial assistance to the state health department, and to all hospitals funded by the money.³
- A police department receives free training from the Federal Bureau of Investigation (FBI). The department has received federal financial assistance.⁴

What are recipients' obligations under the law?

Executive Order 13166⁵ requires federal recipients to take reasonable steps to ensure LEP persons have meaningful access to their programs and activities. A four-factor test determines the extent of the recipient's obligation.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Area

When determining the proportion of LEP persons, the recipient must look at how many LEP individuals are in their geographic service area. If the recipient has not designated a service area, then it must either (1) look to that designated area approved by state or local authorities or (2) designate a geographic area, as long as the designations do not discriminatorily exclude certain populations. Information from school systems, community organizations, the U.S. Census, and state and local governments can help agencies determine their LEP population.

Recipients can also identify LEP persons through language identification cards, also known as "I speak cards". LEP persons can pick the card with their language on it. These cards are available on the Internet for free at <http://www.usdoj.gov/crt/cor/13166.htm> and <http://www.lep.gov>. Staff need to note which "I speak cards" the LEP person points to and record it in the individual's file.

(2) The Frequency with Which LEP Individuals Come in Contact with the Recipient's Program, Activity, or Service

Recipients must accurately assess not only which LEP groups they encounter, but also how often. Frequent contact with a LEP group requires the availability of comprehensive language services. This is best illustrated with an example of a hospital. A hospital having frequent contact with the Portuguese speaking population must have interpreters on staff and important materials translated into the Portuguese language. The less frequent the contact with a particular LEP population the more limited the duties of the agency receiving federal funds. For example, if a hospital sees only five Japanese LEP people in one year, then the hospital is not expected to have interpreters on staff. However, the hospital must still provide language assistance. This can be accomplished through a telephone interpreting line.

³ See 42 U.S.C. §§ 2000d-4a(1)(a), 4a(3)(A)(ii). Titled "Improving Access to Services for Persons with Limited English Proficiency"

⁴ See *Delmonte v. Department of Bus. & Prof'l Regulation*, 877 F. Supp. 1563 (S.D. Fla. 1995).

⁵ Federal Register Vol 65 No. 159 (August 11, 2000)

In summary, the more frequent and more common the LEP population, the higher the duty the recipient has to ensure language access.

(3) The Nature and Importance of the Recipient's Program, Activity, or Service

The third part of the test looks at the nature and importance of the service provided. Any program that serves urgent and important needs is obligated to have an immediate way to assist the LEP person(s). The most common examples of this are (1) an ambulance bringing a person to the emergency room or (2) where public benefits are being terminated. Entities serving less urgent or less important needs can delay service to meet language assistance needs. However, the assistance can only be delayed for a reasonable amount of time and only as long as it does not put the person's life or health in jeopardy.

(4) The Resources Available to the Recipient and Costs

The final part of the test requires recipients to take into account their level of resources and costs to provide language assistance to LEP persons. Small entities with fewer resources cannot use their lack of resources as a way to avoid implementing a language access plan. A smaller entity will just not be expected to have the same level of services as a larger recipient with numerous resources.

Agencies have no excuse for not being able to comply with Title VI of the Civil Rights Act because there are wide arrays of options for finding competent bilingual interpreters and translated materials. For example, bilingual staff can be trained to be interpreters and translators. Interpreters are also available by video conferencing and phone. Recipients must explore cost-effective means of delivering competent and accurate language access services.

How does a federal recipient decide what language assistance services to utilize?

Language access services are provided either through interpretation (oral) and/or translation (written).

(1) Considerations Relating to Competency of Interpreters and Translators

Recipients can choose their own interpreters and translators, as long as the interpreters and translators are competent, appropriate, and skilled. Options to consider include:

1. Bilingual staff
2. Staff interpreters and translators
3. Contract interpreters and translators
4. Telephone interpreter lines
5. Community volunteers

Interpreter issues

Being bilingual is not enough to qualify someone as an interpreter. Interpreters must be able to communicate effectively in both English and the second language, and understand all special terms used in the recipient's day-to-day affairs; this may include medical and/or legal terms. Bilingual interpreters must also be able to follow confidentiality and impartiality rules and avoid giving advice. It is preferable to have certified interpreters where possible.

Recipients should not allow a LEP person's family members or friends to interpret or translate. Even though LEP individuals may feel more comfortable with a loved one assisting them, it is not a good idea. Many times family members and friends do not understand medical or legal terms, or may be embarrassed to interpret something.

This may affect how the LEP person is treated and what services they receive. When there is a conflict of interest or if a family member or friend is not competent to interpret the recipient can insist on the use of their interpreter.

Agencies should inform the LEP person that language assistance is free. If the LEP person insists on using a friend or family member then recipients should take reasonable steps to ascertain that the family member or friend is competent and appropriate to interpret and/or translate. When a friend or family member interprets, the agency's interpreter should be in the room monitoring the conversation or written communication (translation). This way if an error is made the agency's interpreter can correct it immediately.

Here are some examples that demonstrate why friends or family members should not interpret.

A child brought to the emergency room has injuries consistent with abuse and neglect. The parent wishes to interpret. Even if the doctor finds the parent is capable of skillfully interpreting, he should not use the parent. The doctor does not know if the parent is the abuser, and therefore it would be best to have a neutral and impartial interpreter.

A man and his wife visit an eye doctor for an eye examination. The man insists that his wife be the interpreter. The eye doctor through discussions with the wife determines that she is competent to interpret for her husband. During the examination, the doctor realizes the wife does not understand the terms he is using to explain the diagnosis. The eye doctor must stop the examination and obtain a skilled and competent interpreter for the husband.

A Korean woman shows up at the hospital with her husband. She is badly beaten. Her husband tells the doctor that he is the only one who can interpret for her. It would be inappropriate for the husband to interpret, as the woman may be a victim of domestic violence. Chances are her husband will not be truthful when discussing how she received her injuries, especially if he is trying to protect himself.

Translator issues

Translators must be able to competently translate documents. They need to understand terms of art, legal, or other technical concepts. Translators must also understand the audience's reading level, know and understand terms from the target language, and understand the documents themselves. It is preferable to have certified translators when possible.

All vital documents should be translated. To determine if a document is vital, the recipient should look at the following factors:

- importance of the program;
- service involved;
- consequences to the LEP person if the information is not provided accurately or in a timely manner.

Vital information may include, but is not limited to:

- ➔ Consent and complaint forms.
- ➔ Intake forms
- ➔ Written notices about one's rights or eligibility
- ➔ Notices advising LEP persons of free language assistance.
- ➔ Applications to receive benefits or services.

Documents should be translated into the most frequently encountered languages. For example, a domestic violence shelter that serves a large Japanese population should have documents translated into Japanese.

How would a LEP individual know that free language assistance is available?

By law, federal recipients should make LEP individuals aware of free language assistance. Entities can (1) post signs in intake areas and other entry points in appropriate languages, (2) state in outreach documents that language services are available, and (3) work with community-based organizations to inform LEP individuals of language assistance services.

Also, the LEP person or a friend or family member, more fluent in English, can always ask if assistance is available.

What can advocates do if the law is not being followed?

The requirement to provide meaningful access to LEP persons is enforced by the Office for Civil Rights (OCR). Recipients of federal financial assistance must investigate whenever there is a complaint or report alleging noncompliance with Title VI or its regulations. To start the complaint process one can call or file a written complaint.

If you decide to call then make sure to have at a minimum the following information. The Title VI hotline number is 1-888-TITLE-06 (1-888-848-5306).

1. Your name, address, and phone number;
2. The name of the person discriminated against and their contact information;
3. The name and contact information of the agency that discriminated and if possible:
 - All names of person involved in the incident;
 - The date(s) of discrimination;
 - A description of what occurred;
 - Names and contact information of witnesses who saw the incident;
 - Any actions that were taken to remedy the discrimination.

Forms are available in both English and Spanish. They can be downloaded from the site, printed, filled out and then sent in. Forms are available for download at: <http://www.usdoj.gov/crt/cor/complaint.htm>. Anyone with questions about the forms can call 1-888-848-5306. There are operators available that speak English and Spanish.

OCR will investigate once they receive a complaint. If the investigation results in a finding of compliance or no discrimination, OCR will inform the recipient/covered entity in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance (discrimination), OCR must inform the recipient/covered entity of the noncompliance and send a letter that sets out the areas of noncompliance and steps that must be taken to correct the problem. Initially OCR must seek voluntary compliance through informal means. Informal compliance usually means that OCR gives the entity technical advice on how to comply with the law and encourages them to do a number of things to meet LEP requirements.

Some suggestions OCR may give entities are below.

- Hiring trained and competent bilingual staff who can interpret;
- Contracting with an outside interpreter service for trained and competent interpreters;
- Arranging for the services of trained and competent voluntary community interpreters;
- Arranging/contracting for the use of a telephone language interpreter service.
- Arranging for trained and competent translators to translate vital written materials and signs that let LEP persons know language access is free and available.

If the matter cannot be resolved informally, OCR will secure cooperation through (a) the termination of federal assistance after the recipient/covered entity has been given an opportunity for an administrative hearing, (b)

referral to the Department of Justice for injunctive relief or other enforcement proceedings, or (c) any other means authorized by law.

For more information about the OCR and the complaint process, please go to this link - <http://www.hhs.gov/ocr/>

Sources:

The Title VI Legal Manual, written by the US. Department of Justice. (September 1998)
http://www.usdoj.gov/crt/grants_statutes/legalman.html

Executive Order 13166 "Improving Access to Services for Persons with Limited English Proficiency."
Federal Register Vol 65 No. 159 (August 11, 2000)

"Department Health and Human Services Guide to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." Federal Register Vol 68 No. 153 (August 8, 2003).

Public education for grades kindergarten through twelve

All children, regardless of legal status are entitled to a free public education for grades kindergarten through twelve. South Carolina law requires all children between the ages of five through seventeen to attend school. Children can go to a public or private school, or can be home-schooled.

Immigration Status

Advocates should let parents know that federal law prohibits school staff and administrators from asking children and their parents about legal status. Schools are also prohibited from reporting students and parents to the immigration authorities, unless the school receives a valid subpoena from the federal government or the parents give permission to the school to release information to the immigration authorities.

Enrollment

Usually, parents or guardians must enroll their child in the school closest to where they live. Advocates should advise parents that language access will be available at enrollment. School systems must provide an interpreter, to the extent practicable, to assist in the enrollment of a limited-English or non-English speaking student or parent.⁶ Some schools do not have interpreters on staff, and therefore may need time to find an interpreter to assist in the enrollment process.

Certain documents are required for enrollment. These typically include:

- proof of the child's age
- immunization record
- proof the parent or guardian lives in the school district

Schools cannot require proof of immigration status for enrollment. Many times schools will ask for Social Security Numbers. Social Security Numbers (SSNs) are not required to enroll in school and a child cannot be denied enrollment because the parent or child does not produce a SSN.

Sometimes schools also request birth certificates. Birth certificates are not required as long as other proof of the child's age is given. For example, a doctor's examination and medical report can prove the child's age.

If the school insists on a SSN or birth certificate for enrollment, then complain to the principal. If that doesn't solve the problem then contact the district superintendent. As a last resort, the State Department of Education, English of Other Speakers Department should be contacted.⁷

Communicating with the School

School districts realize that not all parents and students are English proficient. To help determine which parents and students are LEP, students complete a Home Language Survey during enrollment. If the survey indicates English is not the student's first language then further testing determines the English-language proficiency level.

Students who do not speak English fluently are English Language Learners (ELL) and are limited English proficient (LEP).

⁶ This is due to Title 1 and III of the Federal law – No Child Left Behind.

⁷ <http://ed.sc.gov/agency/offices/fjp/ESOLTitleIII.html> - website last viewed on May 28th, 2008.

The term 'limited English proficient', for State Department of Education (SDE) purposes means:

1. A person between that ages of 3 to 21, who is
 - enrolled in or preparing to enroll in an elementary or secondary school and
 - whose native language is a language other than English or
 - who comes from an environment where a language other than English is the dominant language;
- AND**
2. The difficulty in speaking, reading, writing, or understanding the English language makes it hard for the student
 - to pass a State assessment exam; or
 - do well in classes where the subject is taught in English; or
 - to fully participate in society.

Once it is determined a child is LEP, the school is on notice that the parents also do not speak, read, or write English well and therefore accommodations must be made to communicate with the parents in a language they understand. The communications could include, but are not limited to, school policies and procedures, school activities, academic and behavioral expectations, and other student academic progress. Parents may also want to ask for the following in their native language: school newsletters, discipline brochures, teachers' notes, and notes about the school being closed for parent-teacher conferences. If the child is in a special program then the parents should request important materials about the program be placed in their native language. For example, if a child has a diagnosed learning disability the child might be placed in special classes. The school in that situation is required to do an Individualized Education Plan for the child. The plan will set out how the school plans to address the child's special needs. The parents should request that the plan and all important materials related to it be in their native language.

Serving Limited-English Proficient Students

Schools must treat ELLs the same way they treat other students. ELLs have the right to equal access to instruction, support, and extracurricular activities. ELLs must be placed in age-appropriate grades. The limited ability to speak, write, or read English does not dictate grade placement for ELLs. They cannot be excluded categorically from programs for the academically gifted, from other specialized programs, or from student support services that are available to other students in the school. Also, ELLs cannot be placed in special education classes solely based on their LEP status.

In summary, LEP students are to be treated just like any other child in the school. They cannot be discriminated against because of either their or their parents' inability to speak, read, write, or understand English. It is also illegal for the students and their parents to be discriminated against because of lack of legal immigration status.

Sources:

South Carolina State Department of Education's English Language Learning Handbook
May 14, 2007 version.
<http://ed.sc.gov/agency/offices/fp/documents/ELLHandbook5-14-07.doc>

Health Care Options for Immigrants

Undocumented immigrants have fewer options for health care coverage than U.S. citizens or immigrants legally in the United States. Typically, immigrants employed without work authorization lack health insurance. This means undocumented immigrants are responsible for all their health care costs unless they have private insurance or qualify for Emergency Medicaid.

Paying for medical care

If you are low-income and do not have health insurance, then one of these programs might be able to assist you with your health care coverage.

Medicaid

Medicaid is a federal and state program that provides health insurance for certain low-income families with children, low-income elderly, and certain disabled individuals. Immigrants who wish to receive Medicaid must have lawful presence (see section below for list of Qualified Immigrants).

Medicaid Application Process and Requirements

The applicant must verify his identity, show that he is a state resident, and show that he is either a citizen or a qualified alien. All Medicaid applicants must have a Social Security Number or apply for one. Applicants must also verify the basis for the application (*e.g.*, if the applicant is eligible as a pregnant woman, she must furnish proof of pregnancy).

Applications for Medicaid are accepted at the Department of Health and Human Services (DHHS) offices or other locations where DHHS has stationed eligibility workers, such as hospitals or health departments. A list of DHHS offices can be found at: <http://www.dhhs.state.sc.us/dhhsnew/DHHSCountyOffices.asp>.

Qualified Immigrants

Immigrants must meet certain citizenship requirements to be eligible for Medicaid. When determining eligibility for Medicaid, immigrants are broken down into two groups: those who came to the United States before August 22, 1996, and those who arrived on or after August 22, 1996. This date is significant because it is the date Congress passed welfare and immigration laws that imposed serious restrictions on immigrant access to public benefits. The 1996 laws created two categories of eligibility: “qualified” and “not-qualified.”⁸

“Qualified” includes the following groups of people:

- Lawful Permanent Residents with green cards;
- Refugees, Asylees, Persons granted withholding of deportation or removal, and Conditional entrants;
- Persons granted parole by the USCIS (United States Citizenship and Immigration Services) for a period of at least 1 year;
- Cuban/Haitian entrants; and
- Certain abused immigrants, their children, and/or their parents.

⁸ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

“Not -Qualified” includes all other non-citizens, even if they have work authorization and are in the United States legally. Undocumented immigrants fall in the “not-qualified” category as well.

Immigrants who came to the United States before August 22, 1996, are eligible for Medicaid if they fall into a “qualified” category.

Immigrants who came to the United States on or after August 22, 1996, cannot receive the full range of Medicaid benefits until *both* of the following have occurred:

- (1) They have resided in the United States legally for 5 years and
- (2) They have earned or can be credited with 40 work quarters.⁹

Note that some public benefits exempt these requirements for children with green cards.

Undocumented immigrants are ineligible for Medicaid. To receive Medicaid, immigrants must disclose their Social Security Number and their citizenship/immigration status. If household members do not want to give out this information, they can designate themselves as “non-applicants.” Non-applicants cannot receive Medicaid benefits, but they can apply for benefits for other eligible members of their household. For example, an undocumented mother can apply for Medicaid for her U.S. citizen child.

Medically Indigent Assistance Program (MIAP)

South Carolina created the Medically Indigent Assistance Program (MIAP) to help provide medical care to low-income people with little or no health care coverage. MIAP is available to a very limited number of people. Individuals who are eligible for Medicaid or who have health care coverage are not eligible for MIAP. To qualify for MIAP, applicants must be citizens or qualified aliens, reside in the county in which they apply, have income below poverty level, and meet resource limits. Only inpatient hospital care which would be covered by Medicaid is covered under MIAP and only one hospital stay is covered at a time.

Each county has a designated agent that will accept and determine MIAP eligibility. In a non-emergency, the applicant must submit an application to the designated agent to determine eligibility before hospital admission. When the hospital has provided emergency treatment to someone who may be eligible, the hospital will submit the application to the designated agent. The hospital cannot hold the patient responsible for a bill for emergency care if it appears that the patient may be eligible for MIAP. Check with your local hospital for more information and an application. Applications and more information are also available at the South Carolina Department of Health and Human Services website at: <http://www.dhhs.state.sc.us/dhhsnew/index.asp>.

Emergency Medicaid

Emergency Medicaid will pay for care for emergency services when an individual is income and category qualified for Medicaid, but is ineligible due to immigration status.

Emergency Medicaid covers “emergency medical conditions”. These are conditions that if not treated immediately could result in:¹⁰

1. placing a person’s health in serious jeopardy; or
2. serious impairment to bodily functions; or

⁹ 40 quarters of work is equivalent to approximately 10 years of working. An immigrant can add up these 40 quarters with the immigrant’s work, his/her spouse’s work, and his/her parent’s work if the immigrant is less than 18 years of age.

¹⁰ 42 U.S.C. §1396b(v)(3); 42 C.F.R. §440.255

3. serious dysfunction of any bodily organ or part; or
4. emergency labor and delivery.

It does not cover conditions like the common cold, or other ailments that do not place a person's life in jeopardy. Emergency Medicaid also only covers the "emergency" and not other treatment related to the emergency. For example, after care therapy, prescription medications, and pre-natal care is not covered.

In order to determine if one is eligible for Emergency Medicaid, one must first figure out if he or she qualifies for regular Medicaid. Typically, the following immigrants are covered by Emergency Medicaid, as long as they are residents¹¹ of South Carolina, meet income criteria, and fall into one of the categories below. This list is not exhaustive.

- A pregnant woman;
- A person age 65 or older;
- A disabled person;
- A person under age 19; or
- A relative who lives with a child under age 18 and who takes care of that child.
- Parents of children who are at or below 50% of the federal poverty level

Here are some examples to consider.

Julie was pregnant when she came to visit her family in the United States on a tourist visa. She decided to stay in the United States, despite her visa expiring. While here on an expired visa, she went into labor. Julie is eligible for Emergency Medicaid if she intends to live and stay in the state and meets financial eligibility requirements.

Ingrid is a single undocumented mother with two children under the age of four, who were born in the United States. Ingrid has high blood pressure and difficulty breathing. Because she feels dizzy, faint, and has trouble breathing she goes to the emergency room. A doctor determines Ingrid does not have an emergency medical condition. Ingrid will be responsible for her health care costs.

Kwon, an undocumented immigrant, is 30 years old, homeless and unemployed. One night he is beaten up at the shelter by another resident. He suffers a black eye, two cracked ribs, and a ruptured spleen. Kwon goes to the emergency room for treatment. Under Federal law, Kwon must be treated. Kwon is not eligible for Emergency Medicaid, because he is a young single person with no dependents, and this is not a category that Medicaid covers. The hospital will bill him.

Zora, a low-income single mother to a five year old, comes into the emergency room with a gunshot wound to the chest. The gunshot wound is life-threatening and Zora could die without treatment. The care to stabilize her is covered by Emergency Medicaid. However, follow up care that Zora needs like rehabilitation, prescription drugs, and checks ups, is not covered by Emergency Medicaid. The routine care needed after the injury is not required to save her life and therefore Zora will be responsible for these additional costs.

How to Apply

Just because a person is eligible for Emergency Medicaid and meets the criteria, that does not mean they will automatically receive Emergency Medicaid. Just like regular Medicaid the patient must apply for Emergency Medicaid. Some hospitals give immigrants the required application at the hospital. Other times, people must go to their local DHHS office to obtain a form. Immigrants can receive language access to fill out the form, because of federal language access laws.

¹¹ Leases, minor school children's records, and utility bills all show residency.

It is imperative that the application be completed promptly. Even though Medicaid for Emergency Services coverage can be backdated up to three months preceding the month of application, it is best to finish and turn in the application as soon as possible to preserve the maximum backdating period possible. Missing the deadline will cause denial of coverage.

Advocates should educate immigrants about Emergency Medicaid in case the hospital fails to inform the immigrant about necessary steps to receive Emergency Medicaid. By informing immigrants about their rights, advocates can ensure immigrants will ask for and apply for the benefit in a timely manner.

Advocates – what to do if services or aid denied

The most common issues advocates encounter with Emergency Medicaid involve (1) hospitals not informing immigrants about the available aid or (2) hospitals insisting that immigrants pay up front or be placed on a payment schedule for services that can and should be covered by Emergency Medicaid.

If a hospital refuses or forgets to give an immigrant an Emergency Medicaid application, advocates should go to their local DHHS office and obtain a form as soon as practicable. While there, they should also let the DHHS staff know the hospital did not inform the immigrant of his or her rights. Look in the phone book to find a local DHHS office or go to <http://www.dhhs.state.sc.us/dhhsnew/dhhscountyoffices.asp> for a list of county offices.

Sometimes hospitals insist on a payment schedule or payment up front. This is illegal. Complaints should be made to the hospital and the State Office of DHHS in Columbia.¹²

Another situation that immigrants may encounter is being asked for a Social Security Number (SSN) and about their legal status. The hospital and DHHS do not need a SSN in order for immigrants to receive Emergency Medicaid. Immigrants should never divulge their legal status. The hospital and DHHS may claim they need to know the immigrant's legal status to determine if Emergency Medicaid is appropriate. Because Emergency Medicaid is for immigrants it should be sufficient for one to indicate that he or she is in one of the groups eligible for Emergency Medicaid.

Finding health care services

Now that you know what kinds of programs are available to assist with health care costs, you need to know where immigrants can go to obtain health care services.

Free and Reduced Fee Health Care

Many times immigrants believe the only place they can receive treatment is at a hospital. This is not true. There are facilities that provide free and reduced health care to all persons, regardless of legal status.

Free Clinics

Free clinics provide medical care, free of charge to indigent residents of South Carolina. The clinics provide basic medical care, including, a medical home, some prescription medications, and wellness education. Some clinics may even provide dental care, chiropractic care, and psychological counseling. For a list of free clinics go to this website from the South Carolina Free Clinic Association: http://www.scha.org/scfmca_locations.asp. This website lists all

¹² <http://www.dhhs.state.sc.us/dhhsnew/index.asp> - at the bottom of the website are general phone numbers to call. Website last visited on May 28th, 2008.

the free clinics in the state. If you click onto one of the areas on the location map (on the website link), then the clinic information including the hours, location, phone number, and services available is provided.

Federally Qualified Health Care Centers (FQHCs)

Federally Qualified Health Care Centers (FQHCs) receive grants from the federal government to provide health services to underserved populations without regard to ability to pay.¹³ However, FQHCs commonly charge for services on a sliding scale based on income. FQHCs include health care providers such as community health centers and migrant health centers. These centers are not required to collect data on their patients' citizenship status or place of birth, so they serve all people.

FQHCs provide for non-emergency health care services, like immunizations.

You can find a list of these providers on the South Carolina Primary Health Care Association's website at: <http://www.scphca.org/findcenter.htm>.

Health Clinics

The Department of Health and Environmental Control (DHEC) operates county health departments and clinics. The local DHEC office (go to <http://www.scdhec.net/> to find a local office) can tell people what services are available, qualifications for programs, how to access the services, and what fees are involved.

Hospital Charity Care Programs

Most hospitals have charity care programs. The charity care programs provide services to patients who cannot afford to pay for care. The hospitals can adjust fees based on the ability to pay. Each hospital has a different policy for providing free care. Typically, a person's income, as well as other factors, including extenuating circumstances or serious financial hardship such as loss of employment, disability, prolonged illness, or other similar hardships, are considered when determining if the hospital will place them under the charity care program. Advocates should contact individual hospitals to find out about their policies.

Hill –Burton Act

Certain health facilities receive government grants to provide free health care for the low-income under the Hill-Burton Act. Anyone interested in applying for free health care under the Hill-Burton act must contact the facility to find out about qualifications and services covered.

Here are the South Carolina facilities that provide free health care under the Hill-Burton Act.:

Margaret J. Weston Health Clinic	Aiken
St. James-Santee Rural Health	Charleston
Greeleyville Medical Clinic	Greeleyville
Richland Community Health Center	Richland
North Central Family Medical Center	Rock Hill

To always have a list of the most recent up to date Hill-Burton facilities go to the U.S. Department of Health and Human Services website. <http://www.hrsa.gov/hillburton/hillburtonfacilities.htm>.

¹³ 42 U.S.C. §e254b et seq.

Health Care at the Emergency Room

Although emergency care should be a last resort for medical treatment, it is often the only health care available to low-income, uninsured people.

Under both federal and state law, hospitals must treat people who are very sick or badly hurt and will only get worse without treatment, regardless of ability to pay for health care. Hospitals must also treat people who are pregnant and in active labor. This does not mean that the health care will be free. The hospital will bill people for services rendered. However, people should not let medical bills prevent them from seeking care when needed.

Many times, hospitals want to avoid absorbing the expenses of treating the uninsured low-income. To avoid the costs, hospitals sometimes practice “patient dumping”. Patient dumping includes acts like (1) transferring or refusing to treat emergency patients (2) refusing to treat Medicaid patients (3) requiring payments or deposits prior to receiving emergency treatment. Congress passed the Emergency Medical Treatment and Active Labor Act (EMTALA) to prevent these illegal activities.

Emergency Medical Treatment and Labor Act

The Emergency Medical Treatment & Labor Act (EMTALA) requires hospitals to examine anyone who walks into their Emergency Room, regardless of ability to pay.¹⁴ EMTALA has strict rules in place that a hospital must follow.

Under EMTALA:

- A hospital must provide a medical screening examination (MSE) without delay to determine if an emergency medical condition (EMC) exists.
 - MSEs must be provided regardless of diagnosis, financial status, race, color, national origin, and/or disability, etc.
 - Hospitals cannot require a Social Security Card or Number in order to receive a MSE or treatment.
- The hospital must provide stabilizing treatment to anyone with an EMC prior to transfer.
 - EMCs include active labor and delivery.
- A hospital can only transfer patients to another hospital if:
 - the responsible physician certifies in writing that the benefit of the transfer outweighs the risk; AND
 - the receiving hospital has space and personnel to treat the patient and has accepted the transfer; AND
 - the transferring hospital sends medical records along with the patient; AND
 - the transfer is made with appropriate transportation equipment with life support if needed.

¹⁴ This statute is codified at [§1867](#) of the Social Security Act, (the Act) the accompanying regulations in [42 CFR §489.24](#) and the related requirements at [42 CFR 489.20\(l\), \(m\), \(q\), and \(r\)](#).

EMTALA exemptions

A hospital's EMTALA obligation ends when (1) a physician, nurse, or physician's assistant decides that there is no EMC or (2) a patient is stabilized, or (3) the individual is appropriately transferred to another facility and admitted to the hospital for further stabilizing treatment.

Hospitals do not violate EMTALA if a person, diagnosed with an emergency medical condition, leaves before treatment can be administered. The only way the hospital violates EMTALA here, is if the individual left the emergency department based on a "suggestion" by the hospital or if the hospital was operating beyond its capacity and did not attempt to transfer the individual to another facility. When a person leaves the hospital Against Medical Advice (AMA) or leaves before being seen, on his or her own free will, the hospital is not in violation of EMTALA.

EMTALA and prescriptions

Hospitals do not have to provide medication to individuals who do not have an EMC. Therefore, if the person is simply unable to pay for their medication or did not plan appropriately to secure prescription refills, the hospital is not obligated to provide the medication.

Compliance with EMTALA

EMTALA applies to Emergency Rooms/Departments and any other entity holding itself out to the public as a place that provides care for emergencies.

Hospitals with dedicated emergency departments must have certain procedures in place. A few of the procedures are below. This is not an exhaustive list. Hospitals must:

- (1) maintain a central log that indicates who has come in for services
 - The log must contain information about whether the person refused treatment, was denied treatment, admitted, or stabilized, or was transferred to another hospital.
- (2) adopt and enforce policies and procedures that comply with the requirements of EMTALA.
- (3) post signs in the languages of the population they serve
 - For example, a hospital serving a high Korean immigrant population must post the signs in Korean. The signs must specify the rights of individuals with emergency medical conditions and women in labor.

Enforcement of EMTALA

If someone believes EMTALA was violated, they need to complain to the hospital, so that an investigation will start. If the results of an investigation indicate the hospital violated one or more EMTALA provisions, the hospital will face civil penalties.

If emergency services are denied based on diagnosis (e.g., AIDS), financial status, race, color, national origin, or handicap, then the U.S. Health and Human Services Office of Civil Rights should be contacted.¹⁵

Sources:

State Operations Manual Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases (Rev. 1, 05-21-04)
http://www.cms.hhs.gov/manuals/Downloads/som107ap_v_emerg.pdf

¹⁵ <http://www.hhs.gov/ocr/> . This website can walk people through the complaint process. Website last visited on May 28th, 2008.

Medicaid Coverage of Emergency Medical Conditions
Jane Perkins
Clearinghouse Review Journal of Poverty Law and Policy. Sept-Oct 2004 p. 384.

A Guide to Getting the Health Care You Need
South Carolina Appleseed Legal Justice Center, 2003

Public Benefits and Immigrants

In 1996, Congress passed welfare and immigration laws that imposed restrictions on immigrant access to public benefits.¹⁶ This chapter will clarify immigrant eligibility for public benefits and the barriers immigrants face when applying for such services.

Important Terms for This Section

Asylee

An asylee is a person who has fled his or her country of origin because of past persecution or a well-founded fear of persecution based upon race, religion, nationality, political opinion, or a membership in a particular social group. If the person is not in the United States, he or she may apply overseas for inclusion within the U.S. Refugee program. If the person is already within the United States, he or she may apply for the U.S. Asylum program.

Amerasian

An Amerasian is the child of a male U.S. citizen serviceman who was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982. An Amerasian is a Lawful Permanent Resident.

Battered Immigrant Spouse or Child

A battered immigrant is a qualified immigrant who is a victim of domestic violence. In order to qualify for public benefits, the immigrant must have suffered from abuse and be able to demonstrate a “substantial connection” between the abuse and the need for the public benefit. Victims cannot be living with the abuser and must have already filed for legal status under the Violence Against Women Act (VAWA). Children of a battered spouse are included in the definition.

Cancellation of Removal

Changing one’s status from that of deportable to one of lawfully admitted for permanent residence.

Conditional Entrant

An immigrant given temporary legal status.

Cuban and Haitian Entrant

To meet the definition of a Cuban or Haitian Entrant the person must meet the rules set out in Section 501(e) of the Refugee Education Assistance Act of 1980. Under section 501(e) nationals of Cuba and Haiti qualify if they (a) were granted status as a Cuban/Haitian Entrant (Status Pending) on or after April 21, 1980; or (b) were paroled into the United States on or after October 10, 1980, unless the parole was only for criminal prosecution or solely to testify as a witness.

Eligible Immigration Status (term typically used to describe who is eligible for public housing assistance)

Non-citizens who fall into one of the following groups:

- Special agriculture workers
- People who came and kept a residence in the United States prior to 1972 (also known as Registry)
- People let in under refugee or asylee status
- People who have parole status from the Attorney General
- People who have had removal relieved

¹⁶ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Five Year Bar

Many lawfully present immigrants are not eligible for public benefits for their first five years in the United States. This is called the five-year bar. The Supplemental Nutrition Assistance Program (SNAP) has an exception to this bar for children with green cards. Children with green cards do not have to wait the mandatory five year period. If the children meet all other criteria, they are eligible for SNAP.

Forty Quarters of Work

Quarters are determined by figuring out the amount of wages in covered employment period that a person earned in income. Workers can earn 4 quarters in one year. Forty quarters of work is equivalent to approximately 10 years of working in the United States. An immigrant can obtain 40 quarters either through their own work or by adding in, his/her spouse's work, and his/her parent's work if the immigrant is under age 18. For example, a child can use his mother's 20 quarters of work and his father's 20 quarters of work to qualify for the Supplemental Nutrition Assistance Program (SNAP) (formerly called Food Stamps). Quarters cannot count if during that same period the immigrant was receiving assistance from SSI, TANF, SNAP, or Medicaid.

Green Card

A card given to Lawful Permanent Residents (LPRs). It is also known as a Permanent Resident Card.

Immigrant

A person, not a U.S. citizen, who enters the United States and plans to stay for an undecided amount of time.

Lawfully Present

An immigrant who has lawful permanent residence status.

Lawful Permanent Resident:

A person, not a U.S. citizen, who has the right to live and work in the United States forever. The person is a permanent resident alien.

Mixed Family

A family where some members have citizenship or eligible immigration status, and the rest of the family does not. Sometimes a family will consist of U.S. citizen children, a Lawful Permanent Resident spouse, and an undocumented spouse. When it comes to public benefits eligibility the benefits are calculated based on those that are lawfully present or U.S. citizens.

Non-applicant

Non-applicants cannot receive public benefits, but can apply for benefits for eligible members of their household. For example, an undocumented mother can apply for food stamps (now called SNAP) on behalf of her two U.S. citizen children; the mother's undocumented status is irrelevant.

Not-qualified Immigrants (term typically used when dealing with who is eligible for public benefits) Immigrants who are not "qualified". The group includes:

- Applicants for protection
- Applicants for family unity
- Applicants for change of status
- Undocumented immigrants
- Non-immigrants like students and foreign visitors.

Out of Status

This occurs when a foreign citizen breaks the terms of his or her entry conditions into the United States. For example if a Japanese citizen is in the U.S. on a visitor visa and stays longer than the Visa allows for, then he or she is out of status and in the country illegally.

Parolee

A parolee is an immigrant allowed into the United States for the reason of an important social policy. Parole does not allow formal entry to the United States. It only gives the immigrant a temporary status.

Qualified Immigrant (term typically used to describe who is eligible for public benefits). A person who falls into one of the following groups:

- A Lawful Permanent Resident (LPR)
- A Refugee
- An Asylee
- An immigrant given relief from removal
- An immigrant given parole for at least one year
- An immigrant given conditional entry
- A battered immigrant and her child/children
- Immigrants born in Canada who have at least 50 percent of the blood of an American Indian race or belong to certain Indian tribes

Refugee

This person is the same as an Asylee, except that the person applied for the protection while in a foreign country.

Veteran

For public benefit purposes, a veteran is someone who served in active military and was honorably discharged. Spouses must be either legally married or common law married (in those states that allow it) to receive public benefits. For children of the veteran to receive public benefits, they must be unmarried, a dependent on the parent's tax return, and under 18 years of age or under 22 years of age if attending college full time. Children 18 years of age and older that have disabilities can qualify for exemptions if they had the disability before their 18th birthday and were dependent on the parent during that timeframe. Unmarried surviving spouses can collect public benefits if (1) the spouse and veteran were married for at least one year and (2) they had a child with the veteran. Some special rules also apply if the veteran died due to injury or disease incurred because of military service. The following rules have to be met for a surviving spouse to qualify for public benefits under this circumstance: (1) the veteran died as a result of the injury or disease (2) the disease or injury occurred during military service (3) the marriage existed some time within 15 years after the injury or disease occurred or became aggravated.

Victim of Severe Trafficking

A person who has been forced or tricked into slavery, work, or prostitution. In order to receive public benefits the victim must either be (1) under 18 years of age or (2) certified by the U.S. Department of Homeland Security as willing to assist in the investigation or prosecution of the crime. Typically victims will also have filed an application for a T-Visa and been granted the legal status of continued presence.

Undocumented Immigrant

An immigrant who is here without the permission of the U.S. Department of Homeland Security. The definition is the same for immigrants who are out of status.

Public Benefits – what are they?

Public Benefits consist of Supplemental Nutrition Assistance Program (SNAP) (formerly called Food Stamps), Supplemental Security Income, Temporary Assistance to Needy Families, Public Housing, and Medicaid. Special Supplemental Nutrition Program for Women, Infants, and Children and Emergency Medicaid are also considered public benefits. Of these, undocumented immigrants are only eligible for the last two – Supplemental Nutrition Program for Women, Infants, and Children and Emergency Medicaid, if they meet all the criteria. Each public benefit will be addressed separately in this chapter.

Eligibility

The different public benefit programs dictate immigrant eligibility. Generally, though, factors such as one's immigration status and date of entry into the United States play key roles.

When determining eligibility for public benefits, immigrants are often broken down into two groups: those who arrived in the U.S. before August 22, 1996 and those who came to the U.S. on or after August 22, 1996. August 22nd, 1996 is the date Congress passed restrictive welfare laws and why it matters for public benefits eligibility.

The 1996 welfare laws created two categories of eligibility: "qualified" and "not-qualified."¹⁷ This terminology is relevant in determining eligibility for public benefits. Note that just because an immigrant falls into a "qualified" category that does not mean that immigrant will automatically be eligible for public benefits.

Qualified immigrants are typically eligible for public benefits as long as they meet all eligibility rules. Usually the following immigrant groups are qualified.

- Lawful Permanent Residents (green card holders);
- Refugees, Asylees, Persons granted withholding of deportation or removal, and Conditional entrants;
- Persons granted parole by the United States Citizenship and Immigration Services (USCIS) for a period of at least 1 year;
- Cuban/Haitian entrants;
- Certain abused/battered immigrants, their children, and/or their parents

Not-qualified immigrants are all non-citizens, even if they have work authorization and are in the U.S. legally. Undocumented immigrants fall in the "not-qualified" category as well. Note, though that, even though undocumented immigrants are not eligible for public benefits, they can apply as "non-applicants".

Non-applicants are people who apply for public benefits on behalf of eligible persons. The best example of this is an undocumented mother applying for public benefits for her minor U.S. citizen child. Households, like this, that contain family members with different legal statuses, are known as mixed families.

Food Stamps also known as Supplemental Nutrition Assistance Program (SNAP)

The program provides monthly benefits to eligible low-income families, which can be used to purchase food. Eligibility for SNAP is based on financial and non-financial factors. The 1996 welfare laws disqualified most legal immigrants from SNAP. In 2002, Congress passed the Farm Security and Rural Investment Act ("Farm Bill"). The Farm Bill restored eligibility to three main groups of immigrants:

1. "Qualified" immigrants receiving disability benefits;
Immigrants qualify as disabled if they are receiving Supplemental Security Income (SSI) or interim assistance pending SSI; Social Security disability; federal or state disability retirement benefits for a permanent disability; Veteran's disability benefits, railroad retirement disability, and some forms of disability-related benefits.
2. Immigrants who have lived in the United States for 5 years in "qualified" status;
For example, an immigrant who has had a green card for 5 years is eligible for SNAP.¹⁸
3. All "qualified" children.

¹⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

¹⁸ This is called the "five year bar" because these immigrants cannot receive Food Stamps for their first five years in the U.S.

In addition to the three groups listed above, the following groups of immigrants are also eligible for SNAP:

- Lawful Permanent Residents (LPRs) with 40 quarters of work;
- Refugees, asylees, persons granted withholding of deportation or removal;
- Cuban/Haitian entrants and Amerasian entrants;
- Veterans, active duty military, and their spouses/children;
- “Qualified” immigrants born before August 22, 1931, who were lawfully present in the United States on August 22, 1996.
- Member of Hmong or Laotian tribe during the Vietnam era and their spouses/children;
- Certain American Indians born abroad.

Undocumented immigrants are ineligible for SNAP. However, an undocumented immigrant can designate himself as a “non-applicant” in order to apply for benefits for an eligible member of the household. This is true for all public benefits.

Temporary Assistance for Needy Families (TANF)/Family Independence (F/I)

Family Independence is a program administered by the Department of Social Services that provides monthly cash assistance to eligible families with children. Temporary Assistance for Needy Families (TANF) is the name of South Carolina’s Family Independence program. To be eligible for TANF benefits, applicants must meet income and household requirements. Additionally, they must meet certain citizenship requirements.

- Immigrants who came to the United States before August 22, 1996, are eligible for TANF benefits if they fall into a “qualified” category.
- Immigrants who came to the United States on or after August 22, 1996, are eligible for TANF benefits if they fall into one of the following categories:
 - Lawful Permanent Residents with 40 quarters of work;
 - Veterans, active duty military; and their spouses/children;
 - Victims of severe trafficking;
 - Refugees, asylees, persons granted withholding of deportation, Cuban/Haitian entrants and Amerasian entrants are eligible for TANF benefits.

Undocumented immigrants are ineligible for TANF. However, non-applicants can apply for eligible members in their household.

Supplemental Nutrition Program for Women, Infants, and Children

Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a food and nutrition program that helps:

- 1) Pregnant women
- 2) Women up to six months after the birth of the infant or the end of the pregnancy
- 4) Women for breastfeeding up to the infant's first birthday
- 5) Infants – up to the infant’s first birthday
- 6) Children – up to their fifth birthday

In addition to these requirements, applicants must be (a) residents of South Carolina, (b) at a nutrition risk, and (c) low-income. Certain applicants can be determined income eligible for WIC because of their participation in SNAP, Medicaid, or Temporary Assistance for Needy Families.

Undocumented immigrants are eligible for WIC. Legal status is irrelevant.

Applicants must see a health professional such as a physician, nurse, or nutritionist to determine if they are a “nutrition risk”. This is usually done in the WIC clinic at no cost to the applicant.

Nutrition risk means that an individual has medical-based or dietary-based conditions. An applicant must have at least one of the medical or dietary conditions on the state's list of WIC nutrition risk criteria. The criteria are:

- Medically-based risks: like anemia, underweight, maternal age, history of pregnancy complications, or poor pregnancy outcomes.
- Diet-based risks such as inadequate dietary pattern.

WIC is a short-term program. Usually, an eligible individual receives WIC benefits from 6 months to a year, at which time she must reapply.

Migrant workers and WIC

Special procedures exist to facilitate the WIC certification of migrant farm workers and their families. Migrant families are given a Verification of Certification (VOC) card. This card helps to ensure that migrant families' WIC service is not interrupted when they move from one area of the state to another. Proof of income and nutritional risk eligibility is documented on the VOC card. For purposes of the health screening portion application, migrancy is a nutritional risk factor.

Supplemental Security Income

Supplemental Security Income (SSI) is a “general welfare” program for the blind, elderly, and disabled, who do not have enough quarters of earnings to qualify for Social Security benefits. SSI beneficiaries receive Medicaid, which pays most doctor and hospital bills, nursing home care, and some prescription drug and medical equipment costs.

Anyone who wants to receive SSI must be:

- 1) Age 65 or older; or
- 2) Blind; or
- 3) Disabled.

What does the term disabled mean?

The condition claimed as a disability must interfere with basic work-related activities. The condition must be severe enough to prevent a person from having the ability to do the work they previously did. As part of the disability determination the Social Security Administration (SSA) also determines if the person is capable of doing other jobs. Age, medical condition, education, past work experience, and transferable skills are taken into account. If someone is capable of performing other work then the claim will be denied.

What constitutes blindness?

Blindness for purposes of the SSA means vision cannot be corrected to better than 20/200 in the better eye or the visual field is 20 degrees or less, even with a corrective lens. Note that many people who meet this legal definition still have some sight and may be able to read large print.

Children may qualify for SSI if they are less than 18 years of age and meet the applicable SSI disability or blindness, income and resource requirements.

For immigrants to receive SSI, they must meet the above criteria AND be:

- ⊗ A Green Card Holder/Lawful Permanent Resident (LPR);
- ⊗ A Refugee, Asylee, Conditional Entrant, or person given relief from removal;
- ⊗ A person given parole by the USCIS for 1 year;
- ⊗ A Cuban, Haitian, or Amerasian;
- ⊗ A certain abused immigrant, or one of their children, and/one of their parents.

AND finally one of these requirements:

- o Had a Green Card and were receiving SSI on August 22, 1996.
- o Had a Green Card on August 22, 1996 and were blind or disabled.
- O Be a Green Card Holder with 40 quarters of work.
- o Be a veteran, person in the military, or their spouse/child.

There are some exceptions to the above rules. Certain groups of non-citizens in the United States can receive SSI without meeting all of the eligibility rules. They are:

- ⊗ American Indians who were born in Canada and have at least 50 percent American Indian blood or
- ⊗ Noncitizen members of a federally recognized Indian tribe or
- ⊗ Victims of trafficking

Undocumented immigrants cannot receive SSI. Again, though, as with all public benefits, undocumented immigrants can apply for applicants who meet eligibility rules.

To apply for SSI, people have to go to their local Social Security Office and present the following documents:

- 1) Social Security Card (or Number);
- 2) Proof of identify and age (birth certificate, drivers license, etc);
- 3) A list of all doctors and hospitals attended since becoming disabled, and information about all places of employment for the past 15 years.
- 4) Paycheck stubs, bank statements, insurance policies and deeds to property (in case one is eligible for SSI)

Medicaid

Medicaid is South Carolina's state-run, health-payment program for low-income families and individuals. It is administered by the Department of Health and Human Services (DHHS) and provides medical and health-related services to those who qualify. In most counties, applicants can apply at their local DHHS office.

Immigrants must meet income and citizenship requirements to be eligible for Medicaid.

- Immigrants who came to the United States before August 22, 1996, are eligible for Medicaid if they fall into a "qualified" category.
 - Refugees, Asylees, Amerasian entrants, Cuban/Haitian entrants, and persons whose deportation has been withheld.
- Immigrants who came to the United States on or after August 22, 1996, are eligible for Medicaid if they fall into one of the following categories:
 - Lawful Permanent Residents with 40 quarters of work;
 - Immigrants who have lived in the United States for five years in "qualified" status. For example, if an immigrant has been a Lawful Permanent Resident (green card holder) for five years, he/she is eligible for Medicaid.
 - Veterans, active duty military; and their spouses/children;
 - Refugees, Asylees, Amerasian entrants, Cuban/Haitian entrants, and persons whose deportation has been withheld.

It is important to note that children, under age 18, can use their parent's 40 quarters of work to qualify Medicaid. For example, a child can use his mother's 20 quarters of work and his father's 20 quarters of work to qualify for Medicaid.

Undocumented immigrants are ineligible for Medicaid. Ineligible non-applicants, however, can apply for eligible household members.

[For more information about Medicaid, see page 13 in this manual.](#)

Emergency Medicaid

Immigrants who do not meet Medicaid's strict citizenship status requirements may be eligible for Emergency Medicaid. To be eligible for Emergency Medicaid, an immigrant must meet all other eligibility requirements for Medicaid, excluding citizenship or qualified legal status. Emergency Medicaid recipients must meet 3 main requirements: financial eligibility, categorical eligibility, and state residency.

- An immigrant's income must fall under the income limits set for Medicaid.
- An immigrant must fall into one of the Medicaid coverage groups: aged, blind, disabled; pregnant women, children under 19 years of age, or parents in families with very low income.
- An immigrant must be a resident of South Carolina.

If undocumented immigrants meet the financial, categorical, and state residency requirements, they can qualify for Emergency Medicaid. Immigrants can apply for Emergency Medicaid at the hospital or their local DHHS Office after receiving medical services.

Emergency Medicaid only covers emergency services. An emergency is defined as a medical condition that if not treated immediately, could reasonably be expected to result in:

- Placing the patient's health in serious jeopardy;
- Serious impairment to bodily functions; or
- Serious dysfunction of any bodily organ or part."

It is important to note that labor and delivery is considered an emergency medical condition.

[For more on Emergency Medicaid see page 14 in this manual.](#)

Public Housing

Only U.S. citizens and noncitizens that have "eligible immigration status" are eligible for federal housing assistance provided through the United States Department of Housing and Urban Development (HUD). There are many different types of federal housing assistance. The two common programs are public housing and Section 8.

Public housing provides rental housing to low-income families, elderly people, and people with disabilities. The local housing authority owns the housing, and the rent charged is based on one's income.

The Section 8 voucher program also helps low-income families, elderly people, and people with disabilities. Section 8 vouchers allow people to choose their own housing, as long as it meets the program rules. The government helps the person pay the rent.

Eligibility is based on financial status, and priority is given to certain persons, such as those who are homeless or displaced by a disaster, who currently live in sub-standard housing, or who pay more than 50 percent of their income in rent. People can apply for housing assistance at their local housing authority office if the waiting list is open.

The 1996 reform laws dictate which immigrants are eligible for public housing benefits. Citizens and the following persons who qualify on the basis of “eligible immigration status” are eligible for public housing assistance:

- Green Card holders;
- Refugees, Asylees, immigrants given relief from removal, and conditional entrants;
- Immigrants given parole by the USCIS for at least one year;
- Victims of trafficking;
- Citizens of Micronesia, the Marshall Islands, and Palau.

Not every member of a family must be a citizen or have eligible immigrant status for the family to qualify for HUD housing programs. Mixed families are eligible for HUD-funded housing, so long as at least one family member (this can be a minor child) is either a citizen or an eligible immigrant. Note that eligibility may also depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition.

However, in cases where there are mixed families, the financial assistance provided through the housing must be prorated to take into account the number of members of the household who are ineligible. This means that the family will pay more for rent than it would otherwise pay if all family members were citizens or had eligible immigration status. For example, let’s say a family with five household members is entitled to a Section 8 voucher housing assistance payment of \$500, however because one family member is undocumented, the assistance will be prorated. In this example, the family’s assistance would be reduced by one-fifth to \$400. The proration formula varies by program, and the regulations must be consulted to perform the computation.

Exempt from the changes in the 1996 reform laws were immigrants who were residing in subsidized housing on June 19, 1995. These immigrant families were allowed to continue receiving assistance if they were part of a mixed household. Typically the mixed families were granted a full subsidy or allowed to pay a prorated share of the value of the subsidy. This was only true for those families that had as head of the household or spouse, a citizen or eligible immigrant. If no family members were eligible, then the family had to apply for “deferred termination”. This deferred determination allowed the family to stay in the housing for up to 3 years.

Anyone who applies for housing assistance must be truthful about who is living in the home. This means undocumented persons living in the household must be named and listed on the lease. If this is not done, the family could lose their housing assistance and possibly be evicted.

Federally subsidized landlords must verify eligible immigration status of at least one family member prior to providing housing assistance. The verification process involves (1) every household member signing a declaration under penalty of perjury stating that (a) they are a U.S. citizen or an eligible immigrant or (b) they are not eligible. The declaration must be signed by every adult in the household. Children less than 18 years of age must have their adult caretaker, who resides in the household, sign the declaration. Those with eligible immigration status must show the original documents they received from the United States Citizenship and Immigration Services (USCIS) that prove eligible immigration status. In addition, they must sign a consent form allowing the public housing authority or federally subsidized landlord to verify the claimed status.

When an individual or family is denied housing assistance based on ineligible immigration status, the family must be notified and given an opportunity for an appeal and an informal hearing to present evidence and arguments in support of eligible status.

Barriers to Public Benefits Access

Many times immigrants do not apply for public benefits. This is true for a number of reasons, including, but not limited to, confusion about eligibility, public charges concerns, and the fear of being reported to the immigration authorities. This section will explore and clear up the most common barriers to public benefits.

Important Terms for This Section

Deportable Alien

An immigrant in the United States who can be deported. This includes any immigrant illegally in the United States.

Deportation

Making an immigrant leave the United States when he or she has violated the immigration laws. It is now called removal.

Inadmissible

An immigrant seeking entry to the United States, who does not meet the criteria for entry. The immigrant may be placed in removal proceedings or, allowed to withdraw his or her application for admission.

Removal

Making an immigrant leave the United States. The immigrant may have to leave due to grounds of inadmissibility or deportability.

Confusion about Eligibility

Confusion about eligibility rules pervades benefit agencies and immigrant communities. The confusion stems from the complex interaction of the immigration and welfare laws, differences in eligibility criteria for various state and federal programs, and a lack of adequate training on the rules as clarified by federal agencies. Consequently, many eligible immigrants have assumed that they should not seek services, and eligibility workers mistakenly have turned away eligible immigrants. Effective training and education for all parties involved is the only solution to this barrier.

Applying for Public Benefits

To receive public benefits (with the exception of Emergency Medicaid and WIC), immigrants must disclose their Social Security Number (SSN) and their citizenship/immigration status. If someone in the household does not want to turn this information over, they can designate themselves as a “non-applicant.” Non-applicants cannot receive public benefits, but can apply for benefits for other eligible members of their household. For example, an undocumented mother can apply for SNAP on behalf of her two minor U.S. citizen children; the mother’s undocumented status is irrelevant.

The Department of Social Services cannot deny benefits to eligible household members simply because ineligible household members do not disclose SSNs or citizenship or immigration status. However, the amount of public benefits the family receives is reduced when ineligible family members are in the household.

Advocates should tell non-applicants to:

- ⊗ Make it clear they are seeking services only for eligible household members, not themselves.
- ⊗ Not provide information about their immigration status. Information about their status is unnecessary, since they are not seeking services for themselves.
- ⊗ Not provide false information.

Immigrants will get into trouble if they intentionally provide false information on applications about SSNs, immigration status, income, or other circumstances in order to obtain services they are not eligible for. Committing fraud can lead to criminal prosecution and also affect one's chances of obtaining a green card or U.S. citizenship.

Language Access

Many immigrants face significant linguistic barriers to obtaining benefits. Limited-English proficient (LEP) residents are entitled to language assistance when they apply for public benefits.¹⁹

Entities like the Department of Social Services, the Department of Health and Human Services, and the Department of Health and Environmental Control fall under mandates that require them to provide language access to LEP persons. These entities can and must meet language needs through either (1) competent bilingual staff and/or (2) language phone banks and/or (3) translated written materials. [To learn more about language access please refer to the "Language Access" Section on page 5.](#)

Public Charge

"Public charge" is a term used in immigration law that describes people who are unable to support themselves. Typically such persons are dependent on public benefits that provide them with cash assistance.²⁰ The U.S. government can deny applications for permanent residency based upon a determination that an immigrant is likely to become a public charge. In making this determination, the government looks at the "totality of the circumstances," including the immigrant's age, health, education and skills, income, and affidavits of support. For example, an elderly immigrant with a heart condition and an 8th grade education is more likely to be labeled a "public charge" than a young, college-educated, immigrant in perfect health.

The possible consequences of a public charge determination are as follows:

- Denial of application for a green card (application for lawful permanent residence);
- Denial of re-entry into the United States for a Lawful Permanent Resident (LPR) who has traveled abroad more than 180 days; or
- In rare cases, removal of a LPR.

Note, though, that USCIS cannot deport an immigrant on public charge grounds unless the immigrant has failed to meet the benefit-granting agency's demand for repayment of either (1) a cash benefit for income maintenance or (2) for the costs of institutionalization for long-term care.

The agency demanding repayment must have the authority to seek these costs and:

- chose to seek repayment within five years of the alien's entry into the United States;
- obtained a final judgment;
- taken all steps to collect on that judgment; and
- been unsuccessful in those attempts.

¹⁹ Title VI of the Civil Rights Act of 1964

²⁰ The official definition of "public charge," as defined by the Bureau of Citizenship and Immigration Services is as follows: An immigrant who has become or who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense."

Many immigrants avoid applying for and obtaining public benefits because of the consequences of a public charge label. However, there are certain limitations to the public charge doctrine, and immigrants and advocates should be educated about these limitations to correct misconceptions and overcome barriers to accessing public benefits. For example, public charge concerns do not apply to refugees, asylees, persons granted withholding of deportation/removal, Amerasian immigrants, and immigrants applying for naturalization.

Additionally, public charge concerns apply only to cash welfare programs for income maintenance, like TANF, SSI, General Relief/General Assistance, and long-term care in a nursing home or mental institution. Non-cash benefits such as Medicaid, SNAP, and WIC do not affect the public charge decision. Other non-cash benefits that do not affect the public charge determination include immunizations, use of health care clinics, short-term rehabilitation services, emergency medical services, school meals, emergency food assistance programs, housing benefits, child care services, energy assistance, foster care and adoption assistance, job training programs, soup kitchens, and short-term shelters.

Some mixed families may worry that obtaining public benefits for eligible household members will affect the non-eligible family members. The only way non-eligible immigrants in the household could be considered public charges is if the cash public benefits are the sole means of support. If there are other sources of support or if a parent is working, then the cash assistance would not represent the family's sole source of income, and thereby negate public charge concerns.

In summary, an immigrant's receipt of TANF, SSI, or long term care in an institution are the main public benefits that affect public charge determinations, especially if these benefits are the family's only source of income.

Immigrants Exempt from Public Charge Concerns

- Refugees
- Asylees
- Amerasians
- Persons granted withholding of deportation/removal
- Immigrants applying for naturalization
- Lautenberg parolees
- Special immigrant juveniles
- Haitians applying for adjustment of status under the Haitian Refugee Immigration Fairness Act
- Registry applicants (residing continuously in the United States since January 1, 1972)
- Certain Indo-Chinese, Polish, and Hungarian parolees applying for adjustment of status
- Cubans applying for adjustment of status under the Cuban Adjustment Act ; Cubans and Nicaraguans applying for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act;

Benefits Not Subject to Public Charge Consideration

Non-cash benefits and special-purpose cash benefits not intended for income maintenance are not subject to public charge consideration. Such benefits include:

- | | |
|----------------------------|---|
| 1. Medicaid | 9. testing and treatment of communicable diseases |
| 2. Food Stamps | 10. emergency medical assistance |
| 3. WIC | 11. emergency disaster relief |
| 4 immunizations | 12. housing assistance |
| 5. nutrition programs | 13. energy assistance |
| 6. child care services | 14. foster care and adoption assistance |
| 7. transportation vouchers | 15. educational assistance |
| 8. job training programs | 16. non-cash benefits funded under the TANF program |
| | 17. disaster relief services |

Affidavits of Support and Sponsor Deeming

Affidavits of Support

Some family and employment-based immigrants must have sponsors. A sponsor helps an immigrant become a Lawful Permanent Resident (green card holder) by signing an affidavit of support. Essentially, the affidavit of support is a contract signed by the sponsor, stating that the immigrant applying for a green card will not become a public charge. The sponsor promises to support the immigrant at 125% of the federal poverty level and to repay any means-tested public benefits the immigrant receives after becoming a Lawful Permanent Resident (if any). Sponsors do not have to repay the cost of Emergency Medicaid, immunizations, testing/treatment of communicable diseases, short-term non-cash emergency aid, school breakfast or school lunch, Head Start, or many other programs that are not considered “means-tested” benefits. Additionally, sponsors do not have to repay benefits used by the sponsored immigrants’ minor U.S. citizen children or by any other “non-sponsored” family members.

Only certain immigrants must obtain sponsors.

1. Immigrants who apply for a green card through a family member after December 19, 1997;
2. Immigrants who apply for a green card through an employer after December 19, 1997, if the employer is a relative or a relative owns more than 5% of the business.

Note, though, that out of the immigrants that must obtain sponsors, there are some exceptions. The following immigrants are exempt from filing an affidavit of support:

- Persons with credit for 40 quarters of work, which includes work performed by the spouse during the marriage and parents while the immigrant is under age 18;
- Refugees and Asylees;
- Persons applying for a green card through Registry; the Nicaraguan Adjustment and Cuban American Relief Act; the Haitian Refugee Immigration Fairness Act; and the Cuban Adjustment Act.

Theoretically, sponsors who fail to support the sponsored immigrant can be sued by any government entity providing benefits as well as by the sponsored immigrant. So far, no South Carolina state agency has ever sued a sponsor to recoup benefits.

A sponsor’s responsibility ends after the immigrant becomes a U.S. citizen; works 40 quarters in the United States (either through his/her own work or the work of a spouse or parent); leaves the United States permanently; or dies.

Sponsor Deeming

Under sponsor deeming, the sponsor's income and resources are counted as the immigrant's own assets when determining whether the immigrant is eligible for certain public benefits. Deeming often makes immigrants ineligible for benefits because they are considered "over-income" once the sponsor's income and resources are counted in. This is why sponsor deeming can be a barrier to accessing public benefits.

Sponsor deeming applies to means-tested public benefits, including SNAP, Temporary Assistance for Needy Families, and Supplemental Security Income (SSI). Under certain circumstances, deeming also applies to immigrants applying for Medicaid. Deeming does not apply to Emergency Medicaid.

Deeming also does not apply to domestic violence survivors and immigrants who would go hungry or homeless without assistance (the "indigence" exemption).

The domestic violence exemption requires victims to meet certain criteria. The victim must have been battered or subjected to extreme cruelty, in the United States by her spouse, parents, or a family member she was residing with. Also, the abuse must have a "substantial connection" to the need for public benefits. Evidence that the victim had to leave her husband due to the abuse and now has no income could demonstrate the need for the public benefits. Finally, the victim cannot be living with the abuser.

The indigence exemption is for LPRs who are either abandoned by their sponsor, or have a sponsor who cannot support them financially.

These two groups of immigrants can get benefits without deeming for at least 12 months. The domestic violence exemption can be extended for a longer time if the USCIS, a court, or an administrative law judge has recognized the abuse. The indigence exemption can be renewed for additional 12-month periods, as needed.

Verification and Reporting

As a condition of public benefits eligibility, some agencies demand immigration documents or Social Security Numbers (SSNs) from non-applicants who are not legally required to submit such information. This has caused immigrants to miss opportunities to receive public benefits for family members who are eligible and otherwise qualified for the benefit. Under the law, only applicants must present proof of citizenship or lawful immigration status.

Confusion about whether immigrants will be reported to the USCIS also acts as a barrier to applying for and receiving public benefits. Under the law, only certain agencies must report undocumented immigrants and only if certain conditions are met.

The reporting requirement applies to only three programs: (a) SSI, (b) public housing, and (c) TANF. The administering agencies are only required to report persons whom the agency knows are not lawfully present in the United States. Only persons who are actually seeking benefits (not non-applicants) are subject to the reporting requirement. Applicants can only be reported if there has been a formal determination on a claim for SSI, public housing, or TANF. Also, there must be definitive proof that the applicant is unlawfully present, such as a Final Order of Deportation.

Assistance and Benefits for All Persons Regardless of Legal Status

Pursuant to the Personal Responsibility and Work Opportunity Act and 8 USC 1611²¹ certain programs do not require one to have legal status. These programs include:

- Mental illness or drug and alcohol services
- Treatment at the emergency room
- Public health programs that give immunizations or provide testing and treatment for communicable disease symptoms.
- Services from community health clinics
- Special Supplemental Nutrition Program for Women Infants Children (WIC) food benefits
- School breakfast and lunch programs
- Head Start
- Homeless shelters and soup kitchens
- Emergency services, shelter/ food/clothing
- Soup kitchens and Meals on Wheels
- Child and Adult Protective Services from DSS
- Police, fire, ambulance, public transportation (like buses) and sanitation services
- Other services necessary to protect life or safety that are not conditioned on the individual's income or resources
- Emergency medical assistance

Immigration status will not be verified in determining an immigrant's eligibility for these programs.

Disaster Relief Services

All victims of disaster (including undocumented immigrants) can obtain services provided by community, nonprofit, or other "nongovernmental" organizations, like the American Red Cross and any other entity assisting victims. Disaster relief agencies are not required to ask about immigration status, unless one is seeking out a "restricted benefit" (see below).

Disaster relief assistance usually consists of emergency shelter, food, water, first aid, clothing, and sometimes a small amount of cash to help with immediate expenses. Many times state and local government agencies will also provide noncash emergency help, regardless of immigration status. Typically, disaster relief agencies not only have staff fluent in other languages, but also have important materials written in other languages. If for some reason interpreters are not available, people should ask for one. Immigrants and advocates should note that disaster relief services are exempt from public charge concerns.

When a hurricane, like Katrina, hits an area, the federal government may declare it a "disaster area." The Federal Emergency Management Agency (FEMA) provides emergency services in these situations. Most services from FEMA do not require immigration status. Services that are unrestricted include short-term, noncash, emergency help, warning people about dangers, helping them leave dangerous places, and searching for lost people and rescuing them. FEMA also provides transportation, emergency medical care, crisis counseling, and emergency shelter, emergency food, water, medicine, and other supplies to meet disaster victims' basic needs. Under the law,

²¹ This code section is titled "Aliens who are not qualified aliens ineligible for Federal public benefits"

Federal Emergency Management Agency (FEMA) is required to ensure that people with limited English skills can understand information FEMA provides to people affected by emergencies and disasters.

Restricted benefits are disaster services that are only available to U.S. citizens and “qualified immigrants”. Usually these benefits consist of long term assistance, like:

1. helping victims rent temporary housing;
2. repairing and replacing destroyed housing;
3. replacing possessions;
4. paying medical and funeral costs;
5. giving loans to repair or replace damaged homes, property, or businesses.

SSNs are required for these services. Also, people must sign a declaration stating they are a U.S. citizen or qualified immigrant. For mixed families, only the members who are U.S. citizens or “qualified aliens” may receive restricted disaster services. This means that undocumented parents living with their minor U.S. citizen children can apply on behalf of those children for restricted benefits. The parents will have to provide information about the legal status or citizenship of the minor children.

It is not uncommon for people to lose SSNs and other important documents in times of disasters. Disaster relief workers know this happens and can find ways to assist people, despite the lack of identifying documents.

Sources:

Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (Aug. 22, 1996); and Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Social Security Administration’s website. <http://www.ssa.gov/> .

Online Guide to Immigrant Eligibility for Public Benefits
South Carolina Appleseed Legal Justice Center; October 2003

The South Carolina Medicaid Program: A Manual for Advocates
South Carolina Appleseed Legal Justice Center

Immigration Manual: A Guide to Immigrant Issues in South Carolina
South Carolina Appleseed Legal Justice Center
February 2005

Questions and Answers: Public Charge Fact Sheet - May 25, 1999
United States Citizenship and Immigration Services
http://www.uscis.gov/files/pressrelease/public_cqa.pdf

Immigrant Eligibility for Disaster Relief
National Immigration Law Center
June 2006
http://www.nilc.org/ce/nilc/disasterassist_immeligibility_2007-06.pdf

Immigrant Crime Victims

It is not uncommon for immigrants that lack legal status to be victimized. The federal government, in an effort to encourage immigrants to report crime, set up visas to help immigrant crime victims. The main laws that assist such victims are the Violence Against Women Act, U-Visas, T-Visas, and Special Immigrant Juvenile Status. *For all petitions and applications, an immigration attorney or Board of Immigration Appeals Accredited Representative should be hired to complete and file the paperwork.*²²

CAUTION:

Once an immigrant applies for legal status they are announcing their undocumented status to United States Citizenship and Immigration Service (USCIS). This means that if their petition or application is denied, they are subject to deportation or removal at the discretion of USCIS. Advocates should not apply for any of the protections discussed in this manual unless immigrants have a high probability of being granted legal status.

Violence Against Women Act

The Violence Against Women Act (VAWA) provides a legal path for domestic violence victims.²³ People in deportation proceedings can apply for VAWA, under VAWA Suspension of Cancellation proceedings. This manual will not address Suspension of Cancellation.

Basic Requirements

The victim must be a spouse, former spouse, or child of the abuser. The abuser, either a U.S. citizen, or Lawful Permanent Resident, must have inflicted extreme cruelty or battery on the person, through domestic violence.

The Self-Petitioning Spouse

The requirements for a self-petitioning spouse or former spouse are below.

Battery or Extreme Cruelty

She²⁴ must be a victim of battery or extreme cruelty. Battery and extreme cruelty are not defined in the relevant code. Therefore, victims can present a wide array of evidence to show battery or extreme cruelty. The only proviso to this is that the abuse must rise to a certain level or severity for immigration to grant the visa. Examples of battery and extreme cruelty include:

- Social Isolation
- Accusations of infidelity
- Incessantly calling, writing, or contacting the victim
- Interrogating her friends and family members
- Threats

²² This is a person approved by the Board of Immigration Appeals to do immigration work. Board of Immigration Appeals Accredited Representatives have a lot of experience and knowledge about immigration law.

²³ The Violence Against Women Act (VAWA) provisions relating to immigration are codified in section 204(a) of the Immigration and Nationality Act.

²⁴ The victim does not have to be a woman. Men, women, and children qualify. However, because women statistically, are the victims of domestic violence, "she" will be used throughout the text.

- Economic abuse, including not allowing the victim to get a job and the abuser controlling all money in the family
- Psychological abuse
- Sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution
- Acts against a third person (including the other parent) if deliberately used to perpetuate extreme cruelty against the child.
- Witnessing domestic violence (this is usually for children)

It is always easier to prove one's case when the abuse is physical and documented. Several documents can establish abuse. The best documentation includes reports and affidavits from police, judges and other court officials, and medical personnel. Other documentation that may be just as effective, include Orders of Protection, evidence of seeking refuge in a battered women's shelter, and photographs showing visible injuries. To further prove abuse, one should include in the VAWA packet and application:

- Affidavit by the victim detailing her relationship with the abuser and the domestic violence, including descriptions of each incident, injuries and verbal threats, attempts to leave or seek help, feelings about the abuse;
- Affidavits or declarations from witnesses, friends or relatives corroborating the statements;
- Affidavits or declarations from shelter workers, counselors, social workers, experts on domestic violence

Note for Advocates

If a victim had an Order of Protection and withdrew it or let the abuser come back after obtaining the Order, she should explain this in her Affidavit. USCIS might question the level of abuse otherwise. A simple explanation can suffice. For example, the most common reason that women withdraw the Order or let the abuser come back is because they believe the abuser's promises that he will change.

Marriage Requirements

The marriage must meet certain elements.

- The marriage must be legal, legitimate, and in good faith.
- Marriages terminated by the spouse's death are acceptable as long as the victim files within two years of the spouse's death.
- Divorced victims may petition if they do so within two years of the divorce and show there is a connection between the abuse and the divorce. Note that, victims who remarry before self-petition approval will have their applications denied.

Spouses submitting petitions need to prove the marriage existed. A marriage certificate will typically suffice for this purpose. The self-petitioning spouse will also need to demonstrate that both parties were legally allowed to marry and that all prior marriages, if any, were terminated. Copies of old divorce records are excellent evidence for showing the termination of prior marriages.

Marrying in good faith is required. USCIS denies self-petitions where the primary reason of marriage is to obtain legal status. To demonstrate the marriage was in good faith include copies of documents that list both spouses as the owners or beneficiaries. Common documents in this category are mortgages, leases, bank accounts, and life insurance policies. Testimony and affidavits of others who can talk about the marriage and their experiences with

the couple can also be beneficial. Other invaluable evidence consists of birth certificates of the children, or medical and court documents with information about the relationship.

Abuser's legal status

The abuser spouse or former spouse must be or have been either a U.S. citizen (USC) or a Lawful Permanent Resident (LPR); otherwise, the victim cannot apply for VAWA. The petitioner has the burden of proving the abuser's legal status. Copies of the abuser's birth certificate, record of Naturalization, or Permanent Resident Card should be included in the application. Also, affidavits of people that know the abuser well, like friends, family members, or employers will prove helpful. If none of this documentation is available, then USCIS will attempt to verify the status of the abuser. If USCIS cannot locate records verifying the USC or LPR status of the abuser, the petition may be denied. Therefore, it is crucial that the petitioner submit evidence of the abuser's legal status.

Residence with the Abuser and Residence in the United States

Self-petitioners must show they lived with the abuser at some point. There is not a set amount of time that a petitioner must have lived with the abuser. To prove residence with the abuser submit documents like utility receipts, school records, medical records, birth certificates, mortgages and affidavits from people with personal knowledge.

The Self-Petitioning Child

Children can receive help under VAWA in two ways. One way is by being a derivative. Children of the abused spouse who are unmarried and under the age of 21 qualify for derivative status; as long as they are included on the spouse's self-petition. Derivative children do not have to show they were abused.

If derivative status is not an option, then the child can self-petition. Just like with the spouse, the abuser must be either a USC or LPR. In most cases the abuser is the father or step-father. The child self-petitioner must include a copy of the child's birth certificate or other evidence of the relationship to the abuser.

The child self-petitioner must have suffered from extreme battery or cruelty and also have resided with the abuser at some point. The abuse may have occurred before or after the abuser became a USC or LPR. For children, residence with the abusive parent includes any period of visitation in the United States. Thus, a child can qualify even if she or he only lived with the abusive parent for a short time or only was visited by the parent.

The self-petitioner must qualify as a "child" under immigration law

- Qualifying relationships include:
 1. Natural children born in wedlock;
 2. Step-children, whether born in or out of wedlock, if the marriage creating the step relationship occurred before the child's 18th birthday;
 3. Adopted children, if the adoption was finalized before the child's 16th birthday and the child has been in the adoptive parent's physical and legal custody for two years;
 4. Children born out of wedlock, if legitimated or acknowledged by the father.

The self-petitioning child does not have to be in the abuser's legal custody, nor will changes in parental rights or legal custody affect the status of the child's self-petition. The child must be under the age of 21 and unmarried at the time of filing.

All self-petitioners must be persons of good moral character (GMC)

The self-petitioner must prove good moral character. Evidence of good moral character includes the self-petitioner's affidavit²⁵ and police clearance from all places the petitioner lived for six months or more during the previous three years. Upstanding and responsible people can and should submit affidavits attesting to good moral character (GMC). Typically, children under 14 years of age are presumed to have good moral character, and therefore do not have to submit evidence of this characteristic. Bars to GMC can include:

- Having worked as a prostitute
- Being an alcoholic
- Selling drugs or being suspected of selling drugs
- Being convicted of certain crimes

Applicants convicted of or charged with crimes need to consult an attorney to see if they can obtain a waiver from USCIS that in essence forgives the act for the VAWA petition.

The Application Process

To find out more about the application and where to file, go to USCIS's website at www.uscis.gov. The form for VAWA is I-360. The USCIS has information about qualifying for VAWA, along with instructions on how to fill out this form.

The USCIS will initially review petitions to determine whether a victim has a prima facie case – that is “on the face” it appears the person meets the requirements. Immigrants given prima facie notice are “qualified aliens” and can apply for public benefits, as long as they meet all other eligibility criteria. These prima facie notices do not constitute self-petition approval.

Approved petitioners can adjust their legal status to that of LPR. However, this process can take several years.

Some petitioners may receive a Notice of Action (NOA). This means that the USCIS has additional questions about the applicant. The NOA must be answered in a timely manner, otherwise the petition will be denied. Seek the advice of legal counsel regarding how to proceed.

Employment Authorization

All approved VAWA petitioners are eligible for work authorization. Those who want to receive work authorization need to fill out all necessary paperwork and send it in. The paperwork will include :

- A copy of the I-360 approval notice;
- A cover letter that lists assets/income and expenses to meet the economic necessity requirement in the regulation.

²⁵ 8 CFR §§204.2(c)(2)(v) and (e)(2)(v).

The Dangers of Travel

Approved self-petitioners should not travel outside the United States unless they have advance parole, otherwise they may not be able to get back into the country, due to triggering unlawful presence bars. Even those with parole can encounter problems later, when they try to adjust their legal status.

Self-Petition Denials and Appeals

Denied self-petitioners are sent a letter delineating why, along with a notice about the right to appeal. Self-petitioners have the option of appealing and/or filing a Motion to Reopen or Reconsider their case. It is best to have a lawyer handle the Appeal or Motion to Reopen or Reconsider.

CAUTION: Once an immigrant applies for legal status they are announcing their undocumented status to USCIS. This means that if their petition or application is denied, they are subject to deportation or removal at the discretion of USCIS.

Sources:

Immigration & Nationality Law Handbook (2001-02 Ed). "Applications for Immigration Status Under the Violence Against Women Act" by Gail Pendleton and Ann Block. Volume 1 page 1.

22 Code of Federal Regulations Part 40.

www.uscis.gov – Form I-360

U-Visas

The U-Visa²⁶ has been around since 2000. However, it was not until September 2007 that the United States Citizenship and Immigration Services (USCIS) promulgated the final rules regarding these Visas. The U-Visa offers a path to permanent residency status to undocumented immigrant victims who cooperate with law enforcement. Immigrants who receive U-Visas are also eligible for employment authorization. Both the temporary legal status and work authorization last for four years. After four years of having the U-Visa and being continuously present in the United States, the immigrant can apply for lawful permanent residence if there are humanitarian reasons, to ensure family unity, or if it otherwise serves a public interest.

Eligibility for U-Visa

To obtain a U-Visa, immigrants must meet certain criteria.

The basic eligibility rules are:

- The immigrant must be a victim of certain crime (see the box below) **AND** have suffered substantial abuse because of that crime.
- The victim must have knowledge about the crime, unless they are under the age of 16, then a friend or relative can turn over the information for them.
- The immigrant must be helpful or likely to be helpful to the investigation or prosecution of the crime **AND** the appropriate government agency must verify this helpfulness in a special certification form.

In cases where the petitioner is a child under 16 years of age or is incapacitated or incompetent, a parent, guardian, or next friend can petition and submit evidence on behalf of the victim. The next friend or parent or guardian must demonstrate the incapacity, or incompetence of the victim. Examples of such evidence include, but are not limited to: birth certificate of the petitioner, court documents demonstrating recognition of an individual as the petitioner's "next friend," medical records, or reports of licensed medical professionals demonstrating the incapacity or incompetence of the petitioner.

For U-Visas, the perpetrator's legal status and relationship to the victim is irrelevant. Therefore, women who did not qualify under the Violence Against Women Act (VAWA), because their abuser was not documented, would qualify under the U-Visa.

Prosecution of the crime is also not required. This is helpful in situations where the case was not prosecuted because either the abuser fled the country or the abuser was never identified. For example, if a woman raped by a stranger did everything possible to identify her attacker, but he was never located for prosecution, she would still be eligible for the U-Visa.

The Crime Victim

For purposes of the U-Visa, a crime victim must suffer from one of the crimes below. Attempts or solicitations of the crimes below will also qualify the person as a crime victim, as long as the person is directly and proximately

²⁶ The U-Visa regulations are in the Battered Immigrant Women Protection Act of 2000 of the Victims of Trafficking and Violence Protection Act of 2000, Public Law No. 106-386, 1114 Stat. 1464. Corrections and additions were made to the law in the 2005 and again in 2007.

harmed by the criminal activity. Immediate family members of crime victims, who are incompetent or incapacitated, are also deemed crime victims.²⁷

Torture	Human trafficking	Incest
Domestic Violence	Sexual Assault	Prostitution
Sexual Exploitation	Sexual Contact	Female Genital Mutilation
Held Hostage	Peonage	Involuntary Servitude
Slave Trade	Kidnapping	Abduction
False Imprisonment	Blackmail	Extortion
Manslaughter	Murder	Felonious Assault
Witness Tampering	Perjury	Obstruction of Justice
Unlawful Criminal Restraint		

For the crimes of murder and manslaughter, the victim's next closest relative would be eligible for legal status, providing they meet all other criteria.

Suffered Harm

The victim must suffer because of the crime. The harm can be in the form of physical, mental, or emotional pain. The harm can also be a culmination of events or a pattern of abuse. For example, if a woman is a domestic violence victim and the domestic violence incident she is seeking U-Visa relief under does not rise to a high level of harm, she can present evidence that the abuse has been long standing and therefore rises to a high degree of harm.

If the criminal activity caused the aggravation of a pre-existing physical or mental injury, that aggravation will be considered in evaluating whether the harm constitutes substantial physical or mental abuse.

The applicant needs to discuss and present evidence of (a) the nature of the injury inflicted; (b) the severity of the perpetrator's conduct; (c) the severity of the harm suffered; (d) the duration of the infliction of the harm; and (e) the extent to which there is permanent or serious harm to one's appearance, health, or physical or mental soundness.

Medical reports and reports from psychologists and psychiatrists can help with this. Also, the applicant's personal statement (see below) can help to establish these factors.

Knowledge and Cooperation

The victim, next friend, or certain family members (depending on the situation) must possess credible and reliable information about the criminal activity and cooperate fully with the investigation and/or prosecution of the crime. In essence, the applicant must demonstrate that they have details concerning the criminal activity that can assist in the investigation or prosecution.

Sometimes, a victim may not possess a great deal of information about the crime. For example, if a child is sexually assaulted by a stranger wearing a mask, then the child could probably not identify the attacker. However, as long as the child reports the crime and they or their next friend provide all the information they have to the investigative agency, then the child is still cooperating and sharing knowledge about the crime.

²⁷ 8 C.F.R. 214.14 (a)(14)(i), added 72 Fed. Reg. 53014 (Sept. 17, 2007).

Certification

A “Non-immigrant Status Certification” (Certification) attesting to the victim’s cooperativeness with the investigation or prosecution of the crime must accompany the U-Visa application; otherwise the application will be denied. The certified official of the agency conducting the investigation or prosecution of the criminal activity must complete the Certification. The form must be signed within the six months immediately preceding the submission of the U-Visa petition.

The Certificate carries a lot of weight because it demonstrates that the applicant:

1. is a victim of one of the enumerated crimes
2. possesses information about the criminal activity
3. is likely to be, is being, or has been helpful in the investigation or prosecution of the crime

Personal Statement

The victim must provide a personal narrative. The narrative needs to describe the qualifying crime she was a victim of and include the following information:

1. The nature of the criminal activity;
2. When the criminal activity occurred;
4. The events surrounding the criminal activity;
5. How the criminal activity came to be investigated or prosecuted; **and**
6. What substantial physical and/or mental abuse she suffered.

When the petitioner is under the age of 16, incapacitated, or incompetent, a parent, guardian, or next friend may submit a statement in lieu of the petitioner.

Evidence

Applicants should include as much evidence as possible to endorse their petition. Suggested forms of evidence include:

- Reports and/or affidavits from judges and other court officials, medical personnel, school officials, clergy, social workers and other social service personnel;
- Trial transcripts;
- Court documents;
- Police reports;
- Photos of visible injuries supported by affidavits;
- News articles;
- Affidavits;
- Affidavits from witnesses, acquaintances or family members who have personal knowledge of the facts regarding the criminal activity.
- Orders of Protection.

Inadmissibility

Applicants convicted of or charged with crimes need to consult an attorney to see if they can obtain a waiver from USCIS that will forgive that act for the petition.

The Application Process

For information about the process and how to apply go to www.uscis.gov and look under Forms. Form I-918 is the form for the U-Visa. It is best to have a lawyer assist the victim with this process, especially if the applicant has convictions or other grounds that they need a waiver for.

Derivative Beneficiaries

Just like with VAWA, certain family members are eligible for a U-Visa. When the U-Visa applicant petitions for herself, she can also petition for certain family members to receive legal status.

Principal petitioners under age 21 can file on behalf of the following family members:

- Spouse;
- Unmarried child(ren) under the age of 21;
- Parent(s);
- Unmarried siblings under the age of 18.

Principal petitioners over the age of 21 can file on behalf of the following family members:

- Spouse;
- Unmarried child(ren) under the age of 21.

Employment Authorization

All approved applicants are eligible for work authorization. Those who want to receive work authorization need to fill out all necessary paperwork and send it in. It is best to also include a listing of the assets/income and expenses to demonstrate the need for work authorization.

The Dangers of Travel

Just as with approved VAWA petitioners, it is ill advised to travel outside the United States unless one has advance parole, otherwise one may not be able to get back into the country.

Denials and Appeals

Denied applicants will be sent a letter to this effect that outlines their rights. It is best to have a lawyer handle all appeal work.

CAUTION:

Once an immigrant applies for legal status they are announcing their undocumented status to USCIS. This means that if their petition or application is denied, they are subject to deportation or removal at the discretion of USCIS.

Sources:

The "New" and Exciting U" No Longer Just My Imaginary Friend

By Julie E. Dinnerstein

Tenth Annual American Immigration Lawyer Association New York Chapter Law Symposium Handbook 125 (2007 ed.).

United States Citizenship and Immigration Form I-918

Website; www.uscis.gov -; Site last visited June 3rd, 2008

T-Visas

T-Visas are for immigrants who are victims of human trafficking. They provide approved immigrants with a method to remain in the United States legally, receive employment authorization, and obtain some public benefits. T-Visas last for four years. Victims can apply for Lawful Permanent Resident status. As with all petitions and applications, an immigration attorney or Board of Immigration Appeals Accredited Representative should be hired to complete and file the paperwork.

Important Terms for this Section

These terms break down and define human trafficking. Immigrants must be a victim of human trafficking to be eligible for a T-Visa; therefore, it is imperative that advocates understand the definition of human trafficking.

Coercion

Threats of serious harm to or physical restraint against any person; any scheme intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.

Commercial sex act

Any sex act for which any person receives anything of value.

Debt bondage

The status of a debtor arising from the debtor's pledge of his or her personal services or the services of a person under the debtor's control as a security for debt, if the value of those services is not applied to satisfy the debt or if the length and nature of the services are not appropriately limited and defined.

Involuntary servitude

A condition of servitude induced by causing a person to believe that the person or another will be seriously harmed, physically restrained, or subjected to abuse or threatened abuse of legal process if the person does not enter into or remain in the servitude.

Peonage

A status or condition of involuntary servitude based upon a real or alleged indebtedness.

Sex trafficking

The recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act.

Basic Requirements

The basic requirements immigrants for a T-Visa are below.

1. Must be or have been a victim of severe form of trafficking in persons;
2. Assist law enforcement in the investigation or prosecution of the crime;
3. Would suffer extreme hardship involving unusual and severe harm if removed from the United States;
4. Present in the United States because of the trafficking.

Trafficking in Persons

Trafficking in persons usually refers to commercial sex acts one is forced or tricked into performing. It can also refer to being forced into involuntary servitude, peonage, debt bondage, or slavery.

Human trafficking as defined in 22 U.S.C. § 7102.

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age, or

(b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

The best evidence to support that the immigrant is a human trafficking victim is an endorsement from a law enforcement agency. Just like with the U-Visa, a law enforcement officer or prosecutor must fill out a special form that indicates the immigrant is a victim. The form is called “Declaration of Law Enforcement Officer for Victim of Trafficking in Persons” and is found in immigration form I-914, Supplement B. Other evidence can include documentation showing immigration agents have arranged for the victim to have continued presence, due to being a victim of human trafficking.

The victim **must also present a personal narrative**. The personal narrative statement should include:

- The circumstances of the immigrant’s entry into the United States;
- The purpose for which s/ he was brought to the United States;
- How s/he was recruited or otherwise became involved in the trafficking situation;
- When these events took place;
- Who was responsible for the human trafficking;
- How long s/he was detained by the traffickers;
- How and when s/he escaped, was rescued, or otherwise became separated from the traffickers;
- What s/he has been doing since separated from the traffickers;
- Why s/he was unable to leave the United States after being separated from the traffickers;
- What harm or mistreatment s/he fears if removed from the United States; and
- Why s/he fears being harmed or mistreated.

Showing compliance with Law Enforcement

One of the main eligibility criteria for a T-Visa is cooperating with law enforcement in the investigation or prosecution of the traffickers. This is almost always required. The only time “providing reasonable assistance” is not required is if the victim has not yet attained the age of 18. Also, less cooperation may be required for victims who are severely traumatized. A doctor’s report should be included in the packet if this is the case. Cooperation can include reporting the traffickers, filing a complaint, and assisting in the investigation or prosecution of the crime. The easiest way to present proof of the requirement of complying with law enforcement is through the aforementioned required “Declaration of Law Enforcement Officer for Victim of Trafficking in Persons” form. Victims can also address how they complied with law enforcement in their personal statements.

Extreme Hardship

Immigrants must demonstrate that they would suffer “extreme hardship involving unusual and severe harm” if removed from the United States. The best evidence victims can present to show extreme hardship is their personal statements and statements from witness. Also, photographs, medical records, reports from police and therapists can be used. Sworn statements from government and international agencies detailing the immigrant’s home country’s condition can also be useful to show how the immigrant would be treated if returned to her home country.

The USCIS does look at several factors when determining extreme hardship. They can include:

- The severity of the injuries received – physical and mental – and if adequate health care is available in the home country to meet the victim’s needs.
- If any of the home country’s social or cultural laws will blame the victim for the activity and punish her or her family. For example, if a country has a tradition of stoning women who have sex outside of marriage, no matter what the circumstances, this would indicate the woman would face extreme hardship if forced to return home.
- Her chances of being re-victimized
- The likelihood that some of the traffickers are in the victims’ home country and would harm her.
- The fact that the victim’s home country is in armed conflict and the victim may be killed or injured.

Physically Present in the United States

The victim must be present in the United States or certain U.S. territories because of the trafficking. Applicants can explain how they were trafficked into the United States through their personal narratives.

Inadmissibility

Just like with all other immigration petitions and applications, immigrants with certain convictions, diseases, or immigration law violations may not be eligible for approval. Waivers are available to forgive some inadmissibility grounds. One ground that cannot be waived is if the victim committed human trafficking on others. There is no forgiveness for this.

The Application Process

For information about the process and how to apply go to www.uscis.gov and look under Forms. Form I-914 is the form for the T-Visa. Applicants who appear to qualify will receive a letter to that effect. The letter allows the victim to qualify for public benefits.

Derivative Beneficiaries

Certain family members are eligible for a T-Visa. When the T-Visa applicant petitions for herself, she can also petition for her family to receive legal status.

Principal petitioners under age 21 can file on behalf of the following family members:

- Spouse;
- Unmarried child(ren) under the age of 21;
- Parent;

Principal petitioners over the age of 21 can file on behalf of the following family members:

- Spouse;
- Unmarried child(ren) under the age of 21.

Employment Authorization

All approved applicants are eligible for work authorization. Those who want to receive work authorization need to fill out all necessary paperwork and send it in. Trafficking victims do qualify for public benefits.

The Dangers of Travel

It is ill advised to travel outside the United States unless one has advance parole, otherwise one may not be able to get back into the country.

Denials and Appeals

Denied applicants are sent a letter to this effect that outlines their rights. It is best to have a lawyer handle all appeal work.

CAUTION:

Once an immigrant applies for legal status they are announcing their undocumented status to USCIS. This means that if their petition or application is denied, they are subject to deportation or removal at the discretion of USCIS.

Sources:

CLINIC- Guide for Legal Advocates Providing Services to Victims of Human Trafficking
Chapter 4 Nov. 2006

www.uscis.gov – Form I-914 instructions

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) provides a path of lawful permanent residency to abused, abandoned, and neglected undocumented children. Children who receive SIJS will be able to go to college, get a driver's license or State ID card and be able to work legally in the United States. Just like with all paths to legal status, not everyone is eligible and strict criteria must be met.

The **basic** criteria juveniles must meet to be eligible for SIJS are:

1. A court declares the child a court dependent and commits the child to a state department or agency.
2. Parental reunification with at least one parent is not appropriate.
3. It must be in the best interests of the child to remain in the U.S. versus being returned to his or her home country.
4. The child must remain under the jurisdiction of the court until USCIS grants him or her Lawful Permanent Residency Status.

All SIJS cases should be handled by an attorney, or Board of Immigration Appeals Accredited Representative. Certain SIJS cases in particular will require even more knowledge and skill than a regular SIJS case. Usually these cases involve some of the circumstances listed below.

- A child will be 18 years of age soon or is already over 18 years old
- A child in deportation proceedings
- Certain criminal adjudications or convictions
- Drug use

Court Jurisdiction

A court must deem the child a court dependent or commit the child to a state agency or department. Usually the child is in court because they were abused, neglected, or abandoned by their parent(s) and is now in a foster home, or living with a legal guardian. Typically, the court must find that the child is eligible for long-term foster care, because of the abuse, neglect or abandonment. Also, the judge must find that family reunification is not possible.

Home Country

In addition to being eligible for long-term care, the court must conclude that it would not be in the child's best interests to return to their home country. The best evidence for this is either a home study conducted by a foreign social service agency in that country, talking to the child to find out there are no suitable relatives to care for them, or evidence and reports from an American Embassy or Consulate in that country. For example, the Consulate or Embassy could verify that the country is war-torn and unsafe.

Judge's Order

The judge needs to set these findings out in an order. This order will go in the child's application for SIJS. If the order is not present, then the child may be turned down for SIJS. Attorneys can prepare an order for the judge to meet the SIJS criteria. The order needs to state:

1. That due to abuse, neglect, or abandonment the child is a court dependent;
2. The child is deemed eligible for long term foster care;

3. Family reunification with at least one parent is not possible;
4. It is not in the best interests of the child to return to their home country.

The judge should also place in the order a description of the abuse, neglect, or abandonment and why family reunification is impossible. Also, details indicating why it is not suitable for the child to return to the home country, must be included. By having all this in the order, it will go a long way in convincing the USCIS that the child should be granted SIJS.

Age

To be eligible for SIJS the child must be under 21 years of age and unmarried. This means that some proof of age must be submitted with the SIJS application. The best way to demonstrate age is through a birth certificate, passport or other official identity documents. Sometimes these documents are not available and advocates must submit other proof of age. Other proof of age can be a doctor's or dentist's evaluation or a judge's finding of the child's age. Because a birth certificate or other official document is the preferred method for proving age, advocates need to explain in a signed affidavit that they tried to obtain those documents, but were unable to and therefore had to provide the substituted proof of age.

Family Court Jurisdiction

It is imperative that the child remain under the juvenile court jurisdiction until they receive LPR status; otherwise, the child can be denied both SIJS and/or a green card. Advocates must convince children not to seek emancipation from the court or leave the foster care situations – even if they are 18 years of age or older.

The Application Process

To find out more about the application and where to file, go to USCIS's website at www.uscis.gov. The form for SIJS is I-360. Advocates need to make sure they include the judge's order laying out that the child meets the criteria for SIJS; otherwise, it is likely the application will be denied.

Derivative Beneficiaries

Unlike the other protections for victims discussed in this manual, there are no derivative beneficiaries under SIJS. Parent(s) of the juvenile cannot immigrate through their child.

Employment Authorization

USCIS will typically grant employment authorization after receiving the application.

The Dangers of Travel

It is ill advised to travel outside the United States unless one has advance parole, otherwise one may not be able to get back into the country.

Denials and Appeals

Denied applicants are sent a letter to this effect that outlines their rights. It is best to have a lawyer handle all appeal work.

CAUTION: Once an immigrant applies for legal status they are announcing their undocumented status to USCIS. This means that if their petition or application is denied, they are subject to deportation or removal at the discretion of USCIS.

Sources:

USCIS website – www.uscis.gov – last visited on June 6th, 2008.

IMMIGRATION BENCH BOOK For Juvenile and Family Court Judges
Written by Sally Kinoshita and Katherine Brady; Immigrant Legal Resource Center
January 2005

Legal Assistance

No matter what type of legal assistance immigrants are seeking they need to know that in the United States “notarios”, also known as immigration consultants, are not attorneys and cannot practice law. Notarios are known to take immigrants irreplaceable legal documents, destroy the immigrants’ legal status, charge money for non-existent “amnesty” programs, and a multitude of other sins. These actions cause immigrants to suffer serious consequences, such as deportation.

S.C. ‘s law “Registration of Immigration Assistance Service Act” places strict requirements on anyone who has an interpreting or translating business, or who holds themselves out to be an immigration consultant. All notarios can do under the law:

1. is interpret, translate, and transcribe forms;
2. help people gather evidence and documents they need for the forms;
3. notarize signatures on government agency forms, if the person performing the service is a notary public commissioned in the State of South Carolina and is lawfully present in the United States;
4. make referrals, without a fee, to attorneys who can undertake legal representation;
5. conduct English language and civics courses;

Notarios and immigration consultants cannot suggest or advise immigrants on which forms to fill out, how to fill out them out or how to answer the questions.

The SC Registration of Immigration Assistance Service Act also requires that in all dealings with customers and the public, notarios, and immigration consultants must clarify that they are not lawyers and cannot give legal advice.

The law also makes it clear that notarios and immigration consultants cannot:

- refuse to return documents supplied by, prepared on behalf of, or paid for by the customer;
- provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law;
- make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

Advocates need to educate immigrants about not using notarios for legal work.

Where to go for low cost immigration help in South Carolina:

The USCIS keeps a list of community-based, non-profit organizations that can assist people in applying for an immigration benefit. Go to www.uscis.gov/legaladvice. At the bottom of the page there is a link to lawyers and Board of Immigration Appeals Accredited Representatives. It is important to only utilize the agencies and people on this list, as this list contains entities that are trusted to do immigration work. **Advocates and immigrants should only utilize approved representatives.**

Three trusted non-profit organizations in South Carolina that do low-cost immigration work are:

Digna Ochoa Center for Immigration Legal Assistance.
Columbia
(803) 929-1940

Catholic Charities
Mt. Pleasant
(843) 388-0089

Low Country Immigration Services
Hilton Head
(843) 682-4419

If an immigrant who sought out legal assistance was taken advantage of they should report it. If the person who took advantage of the immigrant was a lawyer, call the State Bar where the attorney is licensed. In South Carolina, that number is: (803) 799-6653. If the person who took advantage of the immigrant was not a lawyer, call the SC Department of Labor, Licensing, and Regulation at: (803) 896-4300 and also contact the local police department.



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