

Department of Social and Health Services

Olympia, Washington

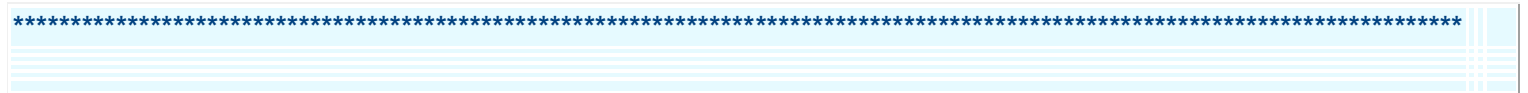
EAZ Manual

Revision # 933
Category Citizenship and Alien Status
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Summary

Updated the 9th bullet of the #7 Citizenship Definitions to read: Order of Supervision granted. This update was made per AAG guidance.

See below for edited text:



Definitions

Revised ~~August 21, 2014~~ June 28, 2016

Purpose:

This section provides basic definitions of various citizen and immigrant statuses relevant for determining eligibility for federal and state programs.

Clarifying Information - [WAC 388-424-0001](#)

Eligibility for all programs must determine an individual's citizenship or alien status. An individual will fall into one of the following four groups for purposes of benefits eligibility:

- Citizen or U.S. National;
- Lawfully Present Qualified Aliens;
- Lawfully Present Non-Qualified Aliens; or
- Undocumented Aliens.

NOTE:

Deferred Action Childhood Arrivals (DACA) are not eligible for Medicaid or CHIP. DACA individuals are non-qualified aliens who have been granted deferred action, but unlike other deferred action individuals, they are not eligible for Medicaid or CHIP. DACA individuals may be eligible for state-funded assistance, including MCS, SFA, and FAP. DACA individuals must be coded CL in the INS Stat field on the ALAS screen in ACES.

Consult the "Decision Trees" in [Appendix I](#) for an overview of citizenship and alien status eligibility rules. For a list of typical citizenship/immigration documents and some sample documents, see the National Immigration Law Center [NILC Guide in Appendix II](#).

For guidance on how to read a [Visa, I-94](#) or [Permanent Resident Card](#) select the appropriate link.

NOTE:

If uncertain as to the individuals eligibility for benefits do not deny or approve without review of the NILC guide or if needed clarification please contact appropriate program staff below.

For cash or food eligibility:

- Tom Berry (360) 725-4617 or by email at berrytj@dshs.wa.gov
- Olga Walker (360) 725-4641 or by email at walkeop@dshs.wa.gov

For medical eligibility:

Contact your HCA Area Representative at www.hca.wa.gov/hcr/me/Documents/area_representatives.pdf

1. **Child Citizenship Act of 2000.** To acquire citizenship under the Act, persons must have met all the conditions in [WAC 388-424-0001](#) on or after February 27, 2001. The Act applies to children related to the citizen parent by birth or adoption only - stepchildren are not included unless also adopted. Once the terms of the Act have been met, subsequent changes in the parents' marital status, such a separation or divorce, have no bearing on the child's citizenship. Nor does it matter whether the parent in question was a U.S. citizen at the time the child entered the U.S.
If the child is 18 years or older when the parent becomes a citizen, child citizenship laws do not apply and he/she must independently apply for naturalization. For information on the Department's

naturalization assistance program, see the [Social Services Manual, SSI Facilitation Chapter, Section E, subsection on SSI facilitation](#).

For persons who automatically become citizens under terms of the Child Citizenship Act of 2000 or previous legislation, USCIS issues no documentation unless requested. Clients themselves may not be aware that they or their children are already citizens. If there is uncertainty about whether a particular client has met the conditions for automatic citizenship, you might want to refer them to an immigration attorney or the Northwest Immigrant Rights Project in Western Washington at 206-587-4009 or in Eastern Washington at 509-854-2100.

2. **Born Abroad/Acquisition of Citizenship.** It is possible that a child or grandchild of a U.S. citizen who was born abroad may have acquired citizenship at birth. In such cases, citizenship may depend on which parent is a U.S. citizen, how long the citizen parent resided in the U.S., and whether the parents were married at the time. A person that might belong to this category should be referred to an immigration attorney for advice.
3. **American Indians.** The term "American Indian" refers to tribes throughout North America, including Canadian tribes. American Indians born outside the United States are eligible for federal benefits to the same extent as U.S. Citizens if they are:
 - Canadian-born American Indians who are at least 50 percent American Indian blood. This category does not include the spouse or child of such a person unless he or she also possesses 50 percent American Indian blood (request tribal verification that verifies 50% American Indian blood).
 - Canadian-born American Indians who are less than 50 percent American Indian blood who have been continuously residing in the U.S. since prior to December 24, 1952.
 - A member of a federally-recognized Indian tribe (see [Governor's Office of Indian Affairs website](#)) or Alaska Native villages and corporations (see Federal Register Notice).

Non-citizen cross-border Indians who do not meet the criteria above are considered undocumented unless they have another immigration status with USCIS.

NOTE:

Non-citizen American Indians have the same eligibility for benefits as U.S. Citizens, but citizen documentation requirements do not apply. They will need to supply tribal verification they meet the requirements above.

4. **Lawfully present alien** - Refers to any non-citizen presently permitted to remain in the United States. "Lawfully present" means that USCIS has actively granted these immigrants permission to remain in the U.S. and has issued documentation that is currently valid as to their status. A lawfully present alien must still meet state residency requirements in [WAC 388-468-0005](#) to qualify for benefits.

5. **"Qualified alien" and "Non-qualified alien"** are terms used in federal immigration law and do not by themselves indicate whether an immigrant is eligible for benefits. "Qualified", "non-qualified" and undocumented aliens may be eligible for some benefits.

6. Hmong or Highland Laotian tribe members:

- They may be eligible for federal benefits based on the individual's qualified alien status. For example, after tribe members are admitted as refugees.
- If not eligible under a qualified alien status, they must be lawfully present in the U.S. and must sign the following statement under penalty of perjury to be eligible for federal benefits: **I was a Hmong (or Highland Laotian) tribe member when the tribe assisted the U.S. military during Vietnam era (August 5, 1964 to May 7, 1975).** See [Appendix III](#) for a printable version of this statement.
- The tribe member must be born prior to May 8, 1975. The tribe member's spouse and unmarried dependent children do not have to be tribal members in order to qualify for federal benefits.

7. The following lawfully present non-qualified aliens may be eligible for State funded assistance:

- Abused aliens who are a relative of a U.S. citizen with an approved I-130 petition but not meeting the other requirements of battered immigrants, as described in [WAC 388-424-0001](#). Abused aliens who have self-petitioned under VAWA but not yet received "Notice of Prima Facie" eligibility, as described in .
- Applicants for adjustment of status, asylum, cancellation of removal, suspension of deportation or withholding of deportation or removal.
- Cancellation of removal, deferred action or suspension of deportation granted. (Note: if a person is granted cancellation of removal or suspension of deportation based on having been abused or granted deferred action based on an approved self-petition as an abused alien, they are a "qualified alien").
- Deferred enforced departure granted.
- Family Unity granted.
- "K", "S", "U" or "V" statuses, designated on a person's visa, allow holders to work and eventually to adjust to Lawful Permanent Resident (LPR) status.
- Lawful temporary residents under the amnesty program of the Immigration Reform and control Act (IRCA), including those admitted under Sections 210 ("special agricultural workers") and 245A of the INA.
- Citizens of the Marshall Islands, Micronesia or Palau. These individuals have special rights under Compacts of Free Association and are lawfully allowed to enter, reside and work in the U.S. but are not U.S. Nationals.
- Order of ~~suspension~~ Supervision granted.
- Paroled into the U.S. for a period of one year or less.
- Residing in the U.S since prior to January 1, 1972.

- Eligible to petition as special immigrant juveniles. these are juveniles who have been declared a "dependent of the state" and eligible for long-term foster care due to abuse, neglect or abandonment.
- Stay of deportation or removal granted.
- Temporary protected status granted.
- Voluntary departure granted - definite or indefinite time.

8. Expired Documents versus Expired Status.

- Many immigrant documents have expiration dates. Some immigrants lose their immigrant status when their immigrant document expires; however, many do not.
- Qualified Aliens: Qualified alien status does not expire even if the document is expired, with the following exceptions:
 1. Parolees - Their status expires after the expiration date. Parolees usually have an I-94 arrival/departure record stamped with an entry and expiration date. Some may have their expiration date stamped "waived" or "indefinite".
 2. Lawful Permanent Resident with Conditions (2 year Conditional Residents) - Conditional residents receive a 2 year LPR card based on a recent marriage to a U.S. citizen. At the end of the 2 years, they must either file a joint petition to remove the condition or a request for a waiver of the joint filing requirement (for grounds that include divorce and /or domestic violence). Clients with this expired status need to be asked for proof of a pending petition to remove the condition or copy of application to waive the joint filing requirement.

NOTE:

Battered immigrants may face difficulties in filing to remove the condition on residence. You may want to refer such clients to an immigration attorney or Northwest Immigrant Rights Project in Western Washington at 206-587-4009 or Eastern Washington at 509-854-2100.

- Non-Qualified Aliens: Some lawfully present non-qualified aliens have temporary status or pending applications and consequently their status may expire when their document is expired or when a final denial of their application is issued, with the following exceptions:
 1. Citizens of Marshall Islands, Micronesia or Palau - They may have a birth certificate, current or expired I-94 Arrival/Departure Record, current/expired passport, or other document verifying they are citizens of one of these countries.
 2. Persons granted cancellation of removal or suspension of deportation.
- Additional Information Regarding Specific Document Types and Status: 1. I-797

1. Notice of Action may or may not have an expiration date. It is used to notify the client that a fee was paid, an application was accepted, the case is pending, a step in the process is completed, or status is approved. Immigrants with I-797s are undocumented unless it verifies that status has been approved.
 - An example that a step in the process has been completed but status has not been approved is the Notice of Approval for "Immigrant Petition for Relative". This is the initial step in the family -related immigrant application process. It solely establishes relationship. It does not establish status. If this is the only document provided, the immigrant is considered undocumented for purposes of benefits eligibility.
 - An example that status is approved is the "Approval Notice" of an I-360 Self-Petition under the Violence Against Women Act (VAWA). In most cases a VAWA self-petitioner will first receive a "Prima Facie" notice, indicating that the petitioner has submitted evidence sufficient to establish a case. Both notices verify that the client is a "Qualified Alien" and their status does not expire.
2. Order from Immigration Judge - An order is issued because the immigrant is or has been in removal proceedings. The Judge provides a decision notifying the immigrant whether the immigrant can remain in the country. The order does not have an expiration date.
 - An example of a status granted by an "Order from Immigration Judge" are "Granted withholding of deportation" which is a "Qualified Alien" category and "Order of Supervision" which is a non-qualified alien category.
3. Form I-589 - Applicant for Asylum (non-qualified alien) does not have an expiration date, however, USCIS is required to provide a decision within 180 days. Despite this requirement, some asylum applicants may not receive a decision within the 180 day deadline. If the document is more than 180 days old staff will need to check USCIS website (see below) to determine if it is still pending a decision. If still pending a decision, the asylum applicant retains their non-qualified status.

NOTE:

If an applicant for Asylum is a national of Cuba or Haiti they are Cuban/Haitian Entrants eligible for benefits to the same extent as refugees while their application is pending.

- In cases with expired immigration documents, direct clients to apply with USCIS for renewal with instructions to submit the new USCIS form **I-912 "Request for Fee Waiver"**, **at the same time they apply for the new documents**. As public benefit's recipients, DSHS clients are eligible for Fee Waiver with their application.

- Form I-912, "Request for Fee Waiver", and instructions on how to complete this form, are now available on the USCIS website at [USCIS - FORMS](#). Fee Waiver Guidance can be found at [USCIS - Fee Waiver Guidance](#).
- If USCIS denies the fee waiver request, they will notify the client with a notice of rejection and an explanation why the fee waiver request was denied. In these cases, copy the notice of rejection into the client's file and offer help paying for the documents. If USCIS approves the fee waiver request, the client will also be notified.
- Staff can check the current case status of pending USCIS documents by entering the receipt number on the document at <http://www.uscis.gov/portal/site/uscis>.

NOTE:

If unable to verify claim is still pending using the USCIS website the client will need to provide updated documentation from USCIS as to their current status. You may want to refer the client to an immigration attorney or Northwest Immigration Rights Project in Western Washington at 206-587-4009 or Eastern Washington at 509-854-2100.

- All non-qualified aliens with expired documents or no current claim or document pending with USCIS, would be considered undocumented for purposes of benefits eligibility.

9. Reporting or release of information regarding immigrants.

- Release of information about immigrant clients is subject to the same confidentiality rules that govern release of all client information to outside parties, including law enforcement agencies such as USCIS.
- The department is only obligated to report legal immigrants in the case of the "indigence exemption" from sponsor deeming. See [WAC 388-450-0156](#) for a description of this reporting requirement.
- The department's obligation to report the presence of undocumented immigrants to USCIS has been very narrowly defined by the federal government. Such a report is **only** to be made in the following circumstances:
 1. An administrative law judge (ALJ) has determined that an individual is unlawfully present in the U.S., in the course of the individual's pursuing eligibility for federally funded benefit (including TANF, non-emergency Medicaid, CHIP, SSI and federal Basic Food); and
 2. The ALJ's finding is supported by a determination by USCIS, such as a Final Order or Deportation.
- The department is only expected to make a determination about an individual's legal or illegal immigration status if such determination is necessary to decide whether the individual is eligible for benefits. Undocumented immigrants should never be required to contact USCIS themselves.
- If you believe a report to USCIS is required, based on all the above circumstances, contact the appropriate immigrant eligibility program manager. Do not contact USCIS directly.

10. When requesting information necessary to determine citizenship or alien status, be sensitive to the right of clients not to be discriminated against on the basis of race, color or national origin. All similarly situated clients should be treated in the same manner. For example, while it is necessary to clarify questionable information to establish eligibility, clients should not be singled out for closer scrutiny simply because they look or sound "foreign."
