

CHAPTER 9: IMMIGRANTS AND PUBLIC BENEFITS

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§ 9.1 Overview of Immigration

Public benefit eligibility for noncitizens depends on an individual’s immigration status in the United States. Since the eligibility determination for immigrants is complex, and the rules vary from program to program, it is necessary to have a sound understanding of your client’s immigration status in the United States.

To navigate public benefits eligibility for immigrants, you need to understand immigration terminology. The starting point is to determine whether the client is a US Citizen or a Non-citizen.

- U.S. Citizens or Nationals¹ are individuals: (1) born in the United States or its territories; (2) born to United States citizen parents; or (3) who have been naturalized.

(This is a simplified definition, and not exhaustive. If the client believes they are a U.S. Citizen or National, but cannot prove it, please direct them to seek legal services for assistance.)

- Non-citizens are individuals present in the United States, who are not citizens and may be immigrants.

The most important question to ask your client when trying to determine their

NOTE:

Discussing immigration status can be sensitive. First and foremost, clients need to understand that you are working to help them. Be mindful that some individuals do not fully understand their immigration status. Be patient and explain to your client the reasons why you are asking these questions.

¹ Also include individuals born in American Samoa, Guam, Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands. Individuals born in American Samoa, Guam, Northern Mariana Islands may be United States Nationals. See: 8 U.S.C.S. § 1401 (Lexis Advance through Public Law 116-135, approved March 26, 2020, with a gap of P.L. 116-113)

citizenship is to ask where they were born.

If your client is not a U.S. Citizen, ask when the client came to the U.S. and with what status. If your client is not certain of their current immigration status, please direct them to seek legal advice.

TIP:

For people living with HIV in Pennsylvania and South Jersey, the AIDS Law Project of Pennsylvania will evaluate their immigration case. Please direct your clients to call our office to complete an intake.

§ 9.2 Immigration Categories for Public Benefits

For purposes of public benefits eligibility, noncitizens will be categorized as follows:

- Qualified Immigrant
- Lawfully Present
- Persons Residing Under the Color of Law (PRUCOL)
- Everyone Else

“Qualified Immigrants” include:

- Legal Permanent Residents (Green Card” holders)
- Refugees (persons granted refugee status while in their country and traveled to the U.S.)
- Asylees (persons who filed for asylum after they entered the U.S.)
- Cuban/Haitian Entrants (entered in the 1980s.)
- Battered immigrant spouse, child, or parent of a battered child, or an immigrant child of a battered parent, and who has petitioned for immigration status under the Violence Against Women Act (VAWA)
- Victims of human trafficking (“T” visa holders)
- Persons whose deportation is being withheld
- Persons paroled into the United States for at least 12 months
- Persons granted conditional entry into the United States
- Amerasian Immigrants (immigrant status granted to children in Vietnam born of U.S. fathers)
- Iraqi and Afghan Special Immigrants

“Lawfully Present” includes:

- People granted Temporary Protected Status (TPS)
- People granted Deferred Enforced Departure
- People paroled into the U.S. for less than one year
- Non-immigrants who have not violated the terms of their status (people with current visas, including U-Visas)
- People with deferred action EXCEPT those granted deferred action through Deferred Action for Childhood Arrivals (DACA)
- People whose visa petitions have been approved and who have a pending application for adjustment of status
- Children under age 14 with applications for asylum or withholding of removal that have been pending at least 180 days
- Children with pending applications for Special Immigrant Juvenile status
- Family Unity beneficiaries.
- Individuals with Employment Authorization, who have an:
 - order of supervision;
 - application pending for asylum, withholding of removal, TPS, suspension of deportation, cancellation of removal, registry, or legalization (legalization under the IRCA of 1986 or the LIFE Act of 2000).

“PRUCOL” (Permanently Residing Under the Color of Law) are individuals residing in the U.S. with permission from the United States Citizenship and Immigration Services (USCIS) to stay indefinitely and include a broad range of categories. This is not a specific immigration status and only used for public benefit eligibility purposes.

Examples of “PRUCOL” categories include:

- People on whose behalf an immediate relative petition has been approved
- People who have filed applications for adjustment of status that USCIS has accepted as “properly filed”
- People granted deferred action
- People granted extended voluntary departure or Deferred Enforced Departure
- People paroled into the U.S
- People granted a stay of deportation, suspension of deportation, or voluntary departure
- People residing in the U.S. under orders of supervision

- People who have been continuously residing in the U.S. since before January 1, 1972
- Permanent non-immigrants as established by the Compact of Free Association Act of 1985
- Other individuals living in the United States with the knowledge and permission of federal immigration officials and whose departure federal immigration officials do not contemplate enforcing

NOTE:

The Lawfully Present and PRUCOL categories look similar, but there are distinctions for public benefits purposes. PRUCOLs are living in the U.S. with the permission of the government and the USCIS is not contemplating enforcing their departure. Lawfully present persons, while in the U.S. lawfully (on a visa on the USCIS knows of their presence) may not be allowed to remain in the US permanently. They are persons allowed to enter the United States temporarily for a specific purpose and for a specific period of time.

Everyone else (for public benefits purposes) include individuals who are:

- Undocumented
- Tourists or Visitors
- Foreign Students
- Granted work visas
- Temporary workers, including agricultural contract workers
- Performers, artists, entertainers, members of the foreign press; and their families

§ 9.3 Benefit Programs Available without Restriction

A limited number of benefit programs are available, regardless of immigration status.

Medical Services:

- Emergency Medical Assistance for treatment of emergency medical conditions, including labor and delivery (Chapter 5)
- Medical care at community health centers

Income-based Nutrition Programs:

- Public school lunch and breakfast programs
- WIC, a program providing food and nutrition to pregnant women, breastfeeding women, infants, and children under five (See Chapter 7).

Services delivered by community-based organizations and educational institutions that provide non-cash benefits:

- Public education from kindergarten through high school
- Crisis counselling and intervention
- Child and adult protective services
- Violence and abuse prevention programs
- Domestic violence and other crime victim services
- Short-term shelter or housing assistance for homeless persons, or runaway, abused or abandoned children
- Soup kitchens and community food banks
- Emergency disaster relief
- Disability or substance abuse services necessary to protect life or safety

§ 9.4 Benefit Eligibility of “Qualified” Noncitizen and Others

Qualified noncitizens are eligible for the benefits detailed below. Please refer any client who is eligible for these benefits, but denied because of their immigration status, to the AIDS Law Project.

§ 9.4a — Medical Assistance

The following individuals are eligible for full Medical Assistance if they meet all other eligibility criteria:

- U.S. Citizens and U.S. Nationals
- Qualified immigrants referred to in § 9.2 *unless* subject to the five-year bar
- PRUCOLs (see § 9.2)

The following Qualified immigrants are not subject to the five-year bar (see below for a discussion on the five-year bar):

- Children under age 21
- Pregnant women (through 60 days, beginning with the last day of pregnancy)
- Refugees and Asylees
- Legal Permanent Residents (LPRs) who first entered the country under an exempt category and later converted to LPR status
- Persons who entered the U.S. before August 22, 1996, and have been continuously present in the U.S. since that day and are currently qualified

- Persons who have lawful permanent residency for more than five years
- Cuban/Haitian entrants
- Amerasian immigrants
- Victims of trafficking, under the Trafficking Victims Protection Act of 2000
- Aliens whose deportation is being withheld
- Veterans that are Qualified Non-citizens
- Members of a Federally recognized Indian tribe
- Native Americans born in Canada to whom Section 289 of the Immigration and Naturalization Act applies, who are at least 50 percent Native American
- Iraqi and Afghani immigrants granted special immigrant status
- Iraqi or Afghan passport with various immigrant visa stamp in the S category and a DHS notation on the passport or I-94 showing the date of entry
- DHS Form I-551 (“green card”) showing Iraqi or Afghan nationality and stamped SI6, SQ6, SI7, SQ7, SI9, or SQ9.

The following Qualified immigrants are subject to the five-year bar:

- Lawful permanent residents (“green card” holders) for less than five years. Examples of such individuals include persons who received their green card in the last five years based on family, or employment-based visas, or the green-card lottery visa.
- Qualified non-citizens who receive relief under the Violence Against Women’s Act (VAWA)
- Persons granted parole into the United States for at least 12 months

Please note: Some persons in the ‘qualified non-citizens’ status cannot receive MA until they after five (5) years from the date the person obtained the “qualified” status in the U.S. This is called the “five-year bar”. The “five-year bar” only applies to qualified non-citizens who entered the U.S. on or after August 22, 1996, and to individuals who entered the U.S. prior to August 22, 1996, and did not remain continuously present in the U.S. and later obtained qualified non-citizen status.

The “five-year bar” prohibits certain recent immigrants from receiving federally-funded Medical Assistance. Advocates should note that only a very small category of immigrants are affected by the five-year bar. An immigrant subject to the five-year bar who meets all the other criteria (such as residence, income resource, and categorical eligibility) can still receive state-funded Medical Assistance, See Chapter 5.

State-funded Medical Assistance includes GA-related Medical Assistance. Chart 9-2 below details federally funded Medical Assistance and state-funded Medical Assistance programs. Five years barred qualified immigrants who are ineligible for state-funded Medical Assistance may receive Emergency Medical Assistance if they otherwise qualify.

Chart 9-1: Medical Assistance Categories	
State-Funded MA Categories	Federally Funded MA Categories
GA related MA - persons with physical or mental disabilities (permanent or temporary) - persons in need of health-sustaining medications - persons in drug and alcohol treatment - victims of domestic violence - caretaker of an ill or disabled household member - residing with a minor unrelated child under 13 or disabled child over 13 - the custodial parent(s) exercising care and control of a dependent child under age 21 if not eligible for - GA related MNO - TANF (state) related MA if receiving state-funded TANF	- Healthy Horizons (disabled or 65 or older) - SSI related MA - MAWD - Waiver programs - Nursing Home Care - Children and pregnant persons receiving MA under MAGI related MA - BCCPT - MA for children (loophole kids – “PH95” kids) - Medicaid expansion for adults (people under 138% of the FPIG)

NOTE:
 Individuals subject to the five-year bar, and not eligible for any of the state-funded Medical Assistance programs may apply for coverage at the Marketplace or may be eligible for Emergency Medical Assistance (**Chapter 5**).

Violence Against Women Act (VAWA): Under the provisions of VAWA, victims of domestic violence, a spouse (male or female), child, or parent of a child of a U.S. citizen or permanent resident who has filed for and received “relief” from the USCIS may be eligible for public benefits, if they meet the other program requirements. Many of these victimized individuals have no understanding that they may be eligible for relief under the provisions of VAWA and should be referred to legal services. Relief under VAWA is frequently granted.

§ 9.4b — Marketplace Coverage

An individual with a lawfully documented immigration status may apply for Marketplace coverage under the Affordable Care Act without a waiting period. These lawfully present immigrants may also qualify for subsidies through the Marketplace.

- “Qualified non-citizen” immigration status without a waiting period
- Humanitarian statuses or circumstances (including Temporary Protected Status, Special Juvenile Status, asylum applicants, Convention Against Torture, victims of trafficking)
- Valid non-immigrant visas
- Legal status conferred by other laws (temporary resident status, LIFE Act, Family Unity individuals) See a [full list of immigration statuses eligible for Marketplace coverage](#) by visiting www.healthcare.gov/immigrants/lawfully-present-immigrants/

NOTE:

Persons classified under Deferred Action for Childhood Arrivals (DACA) do not have an eligible immigration status to applying for health insurance and cannot therefore apply for health insurance at the health exchanges.

Case managers should assess clients’ eligibility for MA before applying for Marketplace coverage.

§ 9.4c — Cash Assistance

Federal law bars states from using federal TANF dollars to assist most legal immigrants until they have been in the United States for at least five years. This restriction applies not only to cash assistance, but also to TANF-funded work supports and services such as childcare, transportation, and job training.

U.S. citizen children are eligible for TANF benefits and services even if they have non-citizen immigrant parents who do not, or do not yet, qualify.

TANF funds can be used for undocumented immigrants.

IMPORTANT:

Many recent immigrants, especially individuals who have been brought to the U.S. by relatives, are subject to the **sponsor deeming** rules. These rules are complicated and apply even after the immigrant is no longer receiving financial support from the sponsor. There are, however, significant exceptions to these rules. If DHS is counting a sponsor’s income against your client, seek legal advice from the AIDS Law Project or your local legal aid office.

There are no sponsor deeming for children, humanitarian immigrants (refugees, asylees, Cuban/Haitian entrants), and immigrants who received relief under VAWA.

Refugee Assistance Program: Some non-citizens granted “Refugee” status may qualify for cash assistance through the Refugee Assistance Program. Refugee Assistance is available for 8 months beginning with the individual’s date of entry into the U.S. as a refugee. This cash assistance program, generally for persons recently granted refugee status, is a federally funded benefit, administered through the DHS via the local county

assistance office (CAO) and modelled after the TANF program. The refugee cash assistance program is meant for qualifying refugees who do not meet TANF criteria. The payment amounts are similar to that of the TANF program. It also requires employment and training activities similar to the TANF program.

§ 9.4d — SNAP (Supplemental Nutrition Assistance Program)

The following Qualified immigrants are potentially eligible for SNAP benefits:

- Refugees
- Asylees
- Persons whose deportation is withheld
- Cuban/Haitian entrants
- Amerasian immigrants
- Persons who receive benefits based upon blindness or disability (including recent Lawful Permanent Resident receiving cash assistance or Medical Assistance based on an Employability Assessment Form certifying disability for 12 months or more)
- Minors (there is no sponsor deeming rule for persons under 18)
- Persons who have lived in the United States as a qualified immigrant for five years or more in that status
- Lawful Permanent Residents with forty work quarters (10 years of work including the work of spouses and parents of minor children)
- Persons who lawfully residing in the United States prior to August 22, 1996, and are 65 or older
- Veterans with an honorable discharge; active duty; spouse or unmarried dependent of a member of armed forces

Immigrants not eligible for SNAP include:

- Recent Lawful Permanent Residents who have been in the U.S. for less than five years before applying for SNAP benefits,
- Individuals who are not receiving any disability benefits or otherwise qualify for SNAP based upon their work history (40 quarter requirement).
- Diversity lottery winners; family/employment-based recent Lawful Permanent Residents; or immigrants who received immigration relief under VAWA.

§ 9.4e — SSI

The following Qualified immigrants are potentially eligible for SSI, regardless of their date of entry to the United States:

- U.S. Citizens or Nationals

- Refugees
- Asylees
- Qualified non-citizens lawfully residing in the United States prior to August 22, 1996, and currently disabled. (Immigrants legally residing in the U.S. on August 22, 1996, but not receiving SSI on that date, cannot receive SSI because they have become elderly. SSI will be granted only if they are currently disabled)
- A lawful permanent resident who has worked (or has immediate family members who have worked) in the U.S. for a total of 40 quarters (10 years) or more. (See below for information about counting quarters)
- Lawful Permanent Residents whose lawful permanent residency status is based upon refugee or asylee status
- Persons whose deportation has been withheld or cancelled or removed
- Cuban/Haitian entrants
- Amerasian immigrants
- Victims of trafficking
- Veterans or people who have served in the U.S. military (or have an immediate family member who is a veteran or who has served in the U.S. military)
- Certain immigrants who were receiving SSI on August 22, 1996 (grandfathered SSI recipients)

Countable Work: Any work in the U.S. counts towards the quarters. In addition, if the client, the client's spouse, the client's parents (while the client was a minor) worked at the same time, the client can get credit for the quarter for each person who worked. So, if the client and a spouse were both employed during the first quarter of 2003, they can each get credit for two-quarters of work. The work counts even if the spouse or parents are not U.S. citizens.

Quarters worked after January 1, 1997, however, may be counted only if the applicant was not getting means-tested public benefits at the same time. An applicant earning wages low enough to receive SNAP benefits during the first quarter of 1997 cannot get any credit for that quarter.

The following qualified immigrants can receive SSI for seven years from the date they acquired their "qualified" status:

- Refugees
- Asylees
- Persons whose deportation has been withheld or cancelled or removed
- Cuban/Haitian entrants

- Amerasian immigrants

Immigrants at risk of losing SSI eligibility after the seven-year limit, who become U.S. citizens and are otherwise eligible can continue to receive SSI. Clients should contact SSA as soon as they become U.S. citizens and provide them with proof of citizenship for continuing eligibility.

The following are examples of immigrants **not eligible** for SSI benefits:

- Individuals who became Lawful Permanent Residents after 8/22/1996, unless the individual, spouse or parent has a work history of 40 quarters
- Individuals who received immigration relief under VAWA

§ 9.4f — SSDI and Medicare

“Lawful Presence”: Lawful presence is required to receive SSDI benefits. Work performed before an individual becomes lawfully present in the United States counts in determining if an individual has a sufficient number of quarters to receive SSDI. The term Lawful Presence includes a broad range of categories both immigrant and non-immigrants with work visas. Most people living legally in the United States can demonstrate lawful presence.

The following groups of persons are eligible for SSDI and Medicare if they meet all other eligibility criteria:

- U.S. Citizens or Nationals
- Immigrants who are lawfully present in the U.S. (also includes the Qualified non-citizens referred to in § 9.3)

§ 9.5 Citizen Children of Undocumented Immigrants

Undocumented immigrant parents may apply for benefits for their citizen children. When applying for benefits, immigrant parents should make it clear that the application is for their children and not themselves. The parent is not required to have a Social Security number if the application is only for a citizen child. Parents need to be cautioned not to give a false number.

However, the child’s Social Security Number needs to be provided. The parents’ immigration status is irrelevant to the citizen child’s eligibility. DHS or SSA should not require information on a parent’s immigration status for the child to receive benefits. If asked for immigration status, parents should only state, “I do not have an immigration status that qualifies me to obtain benefits.”

§ 9.6 Public Charge: Receipt of Public Benefits Affecting Immigration Status

In limited cases, receipt of public benefits may affect an immigrant’s future opportunities to obtain permanent resident status, remain in the U.S., or re-enter the U.S. Generally, receipt of public benefits by a permanent resident (already has a “Green Card”), will not affect future immigration status or the ability to become a citizen. However, if clients leave

the U.S. for 6 months or more, a public charge could apply when they return to the U.S. Clients leaving the U.S. or for 6 months or more should be advised to talk with an immigration attorney before they leave.

Prior to February 24, 2020, only individuals receiving cash assistance (TANF), SSI, or nursing home care (including Medical Assistance in any Waiver program) were at risk that USCIS or State Department Consular Officers abroad could find that the client is or may become a “public charge.”

Effective February 24, 2020, USCIS expanded the categories of benefits that, if received by prospective immigrants, could create a risk of being considered a public charge when applying for permanent residency in the U.S, remaining in the U.S. or re-entering the U.S. after being away after 6 months. These expanded categories include SNAP, Medical Assistance, and federal housing subsidies. **As of the publication of this manual, the public charge rules that took effect on February 24, 2020, are the subject of ongoing litigation and may be invalidated.**

Under the rules that took effect on February 24, 2020, a “public charge” is someone more likely than not to use public benefits. Several factors, including age, health, financial status, assets, resources, family status, education, and skills, are evaluated and may be weighed against a low-income client without assets (for example, poor health results in a need for costly treatment and limits future earnings).

Receiving public benefits will not affect the following categories of persons. In other words, the USCIS will not consider any public benefits received by these categories in determining whether an individual will become a public charge. These categories are:

- Persons receiving relief under the Violence Against Women Act (VAWA) provisions.
- T visa holders (trafficked persons)
- U visa holders (victims of crime)
- Refugees
- Asylees
- Special Immigrant Juvenile Status

Additionally, receipt of the following benefits will not cause the individual to be considered a public charge:

- Medical Assistance for children under 21, pregnant women, persons with emergency medical conditions, and state MA for very low-income persons (GA-related MA)
- Children’s Health Insurance Program (CHIP)
- Women Infant and Children (WIC) nutritional assistance
- Unemployment Compensation
- Worker’s Compensation
- Subsidies at the Market Place under the Affordable Care Act

- Any benefit received by the client's children or other family members

Under very rare circumstances, USCIS can deport an immigrant who becomes a public charge within five years of entering the U.S. Among the factors that support deportation, however, is proof that the client needed cash assistance or long-term institutional care for reasons that existed before the client entered the U.S.; the government demanded reimbursement for the costs of the cash assistance or long-term institutional care the client received; or the government sued and won to compel reimbursement and the client has not reimbursed the government.

§ 9.7 Citizenship

Immigrants eligible to become U.S. citizens should be encouraged to apply for citizenship as soon as possible. Case managers should refer clients to organizations in your area that specialize in immigration work for assistance with applying for citizenship. A number of community groups offer citizenship classes and counselling to help people prepare for the citizenship interview and examination. HIV infection is not a bar to citizenship.

Please note that this chapter does not cover many important aspects of immigration law, such as how to get citizenship, permanent resident status, or deal with other legal matters affecting immigrants with HIV.

§ 9.8 Lifting of the HIV ban on Immigrants

Advocates should note that the ban on HIV-positive persons from visiting or immigrating to the United States was lifted in November 2009 after the Department of Health and Human Services and the Center for Disease Control and Prevention removed HIV infection from the list of communicable diseases. Effective January 4, 2010, persons with HIV can immigrate and/or visit the U.S.

The effect of lifting this ban is that HIV screening is no longer required as part of U.S. immigration and non-immigration medical screening processes. In addition, immigrants and non-immigrant entrants do not have to submit a waiver (i.e., a process by which the applicant who enters the U.S. had to show access to enough money or health insurance to meet the costs of treatment of HIV infection) to enter the U.S. or become a permanent resident.