
DEPARTMENT OF JUSTICE

[AG Order No. 2131-97]

**Guidance on Standards and Methods
for Determining Whether a Substantial
Connection Exists Between Battery or
Extreme Cruelty and Need for Specific
Public Benefits**

AGENCY: Department of Justice.

ACTION: Notice of guidance; rescission of
prior order.

SUMMARY: The Personal Responsibility
and Work Opportunity Reconciliation
Act of 1996 ("PRWORA"), as amended
by the Illegal Immigration Reform and
Immigrant Responsibility Act of 1996,
provides that certain categories of aliens
who have been subjected to battery or
extreme cruelty in the United States are

"qualified aliens" eligible for certain federal, state, and local public benefits. To be qualified under this provision, an alien must demonstrate, among other things, that there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought. As initially enacted, the PRWORA vested in the Attorney General the authority to determine whether a substantial connection exists between the battery or extreme cruelty suffered by the alien or alien's child and the specific benefits sought by the alien. The Attorney General exercised that authority in Attorney General Order No. 2097-97. Subsequent to the issuance of that Order, Congress passed the Balanced Budget Act of 1997, which amended the PRWORA to vest the authority for making substantial connection determinations in benefit providers, rather than the Attorney General. The Balanced Budget Act also requires the Attorney General to issue guidance to benefit providers on the standards and methods to be used in making substantial connection determinations. Pursuant to the Balanced Budget Act, this Notice rescinds Attorney General Order No. 2097-97 and provides guidance to benefit providers regarding substantial connection determinations.

DATES: This Notice is effective November 23, 1997.

FOR FURTHER INFORMATION CONTACT: Diane Rosenfeld, Senior Counsel, The Violence Against Women Office, United States Department of Justice, 950 Pennsylvania Ave., Washington, D.C. 20530, (202) 616-8894.

SUPPLEMENTARY INFORMATION: Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"), Public Law 104-193, as added by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, and amended by sections 5571-72 and 5581 of the Balanced Budget Act of 1997, Pub. L. 105-33, provides that certain categories of aliens who have been subjected to battery or extreme cruelty in the United States are "qualified aliens" eligible for certain federal, state, and local public benefits. To be a qualified alien under this provision, an alien must demonstrate that: (1) The Immigration and Naturalization Service or the Executive Office for Immigration Review has granted a petition or application filed by or on behalf of the alien, the alien's child, or the alien child's parent under one of several subsections of the Immigration and Nationality Act (INA), or has found that a pending petition or

application sets forth a prima facie case for relief under the applicable provision of the INA; (2) the alien, the alien's child, or the alien child's parent has been battered or subjected to extreme cruelty in the United States; (a) in the case of an abused alien, by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consents to or acquiesces in such battery or cruelty; (b) in the case of an alien whose child is abused, by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consents to or acquiesces in such battery or cruelty and the alien did not actively participate in the battery or cruelty; (c) in the case of an alien child whose parent is abused, by the parent's spouse or a member of the spouse's family residing in the same household as the parent and the spouse consents to or acquiesces in such battery or cruelty; (3) there is a substantial connection between the battery or extreme cruelty and the need for the public benefit sought and (4) the battered alien, child, or parent no longer resides in the same household as the abuser.

As originally enacted, section 431(c) of the PRWORA vested in the Attorney General the responsibility for determining whether an alien applicant for benefits had demonstrated a substantial connection between the battery or extreme cruelty and the applicant's need for particular benefits. The Attorney General exercised that authority in Attorney General Order No. 2097-97, Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Benefits, 62 FR 39874 (July 24, 1997). In drafting this Determination, the Attorney General consulted with federal benefit-granting agencies that are implementing section 431(c) of PRWORA and with other interested parties.

Subsequently, Congress enacted the Balanced Budget Act of 1997, which amended section 431(c) of the PRWORA to require that benefit providers, rather than the Attorney General, determine whether an applicant for benefits under this section has demonstrated a substantial connection between battery or extreme cruelty and the need for the particular benefit sought. Although section 5571 of the Balanced Budget Act transfers the authority to make substantial connection determinations from the Attorney General to the benefit provider, it directs the Attorney General to issue guidance to benefit providers on the standards and methods for making

such determinations.¹ That guidance is set forth below.

This Notice of guidance is an "interpretive rule" and therefore is not subject to the notice and comment or delay in effective date requirements of 5 U.S.C. 553. This Determination is not a "significant regulatory action" under Executive Order 12866 and is not a "major rule" under 5 U.S.C. 804.

Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists Between Battery or Extreme Cruelty and Need for Specific Public Benefits

By virtue of the authority vested in me as Attorney General by law, including section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, I hereby issue the following guidance to federal, state, and local public benefit providers concerning the standards and methods to be used in determining whether an alien applicant for benefits demonstrates that there is a substantial connection between the battery or extreme cruelty suffered by the alien, the alien's child, or (in the case of an alien child) the alien's parent and the need for the public benefit(s) sought. The following list sets forth the circumstances under which I would find the existence of a substantial connection. Although this guidance is not binding upon benefit providers, it is intended to assist benefit providers in developing standards by which to make substantial connection determinations.

(1) Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to become self-sufficient following separation from the abuser;

(2) Where the benefits are needed to enable the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to escape the abuser and/or the community in which the abuser lives, or to ensure the safety of the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent from the abuser;

(3) Where the benefits are needed due to a loss of financial support resulting from the applicant's, his or her child's, and/or (in the case of an alien child) his or her parent's separation from the abuser;

¹ Section 5571 also requires the Attorney General to issue guidance on the meaning of the terms "battery" and "extreme cruelty" as employed in the PRWORA, as amended. That information can be found in Exhibit B to Attachment 3 of the Interim Verification Guidance.

(4) Where the benefits are needed because the battery or cruelty, separation from the abuser, or work absences or lower job performance resulting from the battery or extreme cruelty or from legal proceedings relating thereto (including resulting child support or child custody disputes) cause the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to lose his or her job or require the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent to leave his or her job for safety reasons;

(5) Where the benefits are needed because the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent requires medical attention or mental health counseling, or has become disabled, as a result of the battery or cruelty;

(6) Where the benefits are needed because the loss of a dwelling or source of income or fear of the abuser following separation from the abuser jeopardizes the applicant's and/or (in the case of an alien child) the applicant's parent's ability to care for his or her children (e.g., inability to house, feed, or clothe children or to put children into day care for fear of being found by the abuser);

(7) Where the benefits are needed to alleviate nutritional risk or need resulting from the abuse or following separation from the abuser;

(8) Where the benefits are needed to provide medical care during a pregnancy resulting from the abuser's sexual assault or abuse of, or relationship with, the applicant, the applicant's child, and/or (in the case of an alien child) the applicant's parent and/or to care for any resulting children; or

(9) Where medical coverage and/or health care services are needed to replace medical coverage or health care services the applicant, the applicant's child, and/or (in the case of an alien child) the alien's parent had when living with the abuser.

Dated: November 23, 1997.

Janet Reno,

Attorney General.

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