

NIWAP Newsletter

October 3, 2018



Victory for the Georgia Legal Services Program - No 5 Year Bar to Federally Funded Medicaid for Immigrant Who Entered the U.S. Pre 8/22/1996

On June 8, 2018 the Court of Appeals of Georgia issued a ruling in CRITTENDEN et al. v. WHITE. A18A0457 confirming that the 5 year bar imposed on federal means-tested public benefits, including Medicaid does not apply to immigrants who:

- Entered the U.S. before August 22, 1996;
- Have been continually present in the U.S. since that date; and
- Become qualified immigrants eligible for federal and state public benefits including lawful permanent resident

The conclusion the Georgia Court of Appeals reached in this case applies equally to all qualified immigrants including lawful permanent residents, VAWA self-petitioners with prima facie determinations, and T visa applicants with bona fide determinations. When the immigrant becomes a qualified immigrant through VAWA, T or lawful permanent residency they are statutorily immediately eligible for federal means-tested public benefits, including Medicaid without a 5 year bar, if they entered the U.S. and have been continually present in the U.S. since August 22, 1996.

NIWAP congratulates Vicky Ogawa Kimbrell of the Georgia Legal Services Program for their great work on this case. The ruling is available [here](#).

When the 5 year bar applies, how is it calculated?

It is important to note that the SNAP regulations from the U.S. Department of Agriculture (7 CFR 273.4(a)(6)(iii)) provide helpful guidance discussing how to calculate the 5 year bar in cases of qualified immigrants entering the U.S. after August 22, 1996. The regulations state that "The 5 years in qualified status may be either consecutive or non-consecutive". This allows for immigrants who have breaks in their qualified immigrant status to count time in qualified immigrant status that is not consecutive toward the 5 year bar. Two examples illustrate how this might work in cases of immigrant survivors.

- A battered immigrant gains conditional permanent residency through a family based visa petition filed by her spouse. The victim is abused by her citizen spouse and the spouse never agrees to file the joint petition required for the victim to gain lawful permanent residency at the end of the victims 2 year conditional residency. The victim loses conditional residency and later learns about VAWA self-petitioning, which she files for and receives a prima facie determination. She can count her two years as a conditional permanent resident toward the 5 year bar and will thus have only 3 years to wait from the date she received her prima facie determination
- An immigrant with lawful permanent residency and a 5 year bar, lives in the U.S. with lawful permanent resident status for 3 years. The immigrant leaves the U.S. for longer than 6 months due to death of a family member in their home country. Should they later regain lawful permanent residency in the U.S. they would only have 2 years of the 5 year bar remaining.

New NTA Policy Memo Will Not Affect Immigrants Crime Victims at This Point

On June 28, 2018, the U.S. Citizenship and Immigration Services (USCIS) issued an **Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens Policy Memorandum (PM) (PDF, 140 KB).**

On Sept. 26, 2018, the USCIS released a **supplemental notice** which says that the USCIS will start implementing the June 2018 NTA policy on Oct. 1, 2018. Additionally, the notice states that the new NTA policy memo will not be applied to two group of immigrants at this point. According to the USCIS supplemental notice:

"The June 2018 NTA Policy Memo will not be implemented with respect to employment based petitions and humanitarian applications and petitions at this time. Existing guidance for these case types will remain in effect."

This means that the U-Visa applicants, T-Visa applicants, Continued Presence applicants, and VAWA Self-petitioners will not be affected by the June 2018 NTA policy memo at this time. Since we do not know when or if this policy memo will apply to these groups, we recommend attorneys and advocates to work with immigrant victims to file strong, well documented cases. Moreover, it is useful to screen all crime victim clients for 10-year cancellation eligibility. This would include:

- having continuous physical presence in the U.S. for 10 years or more
- having U.S. citizen or lawful permanent resident children, spouse, or
- parents being a person of good moral character, including:
 - being a crime victim who came forward and cooperated in the detection, investigation, prosecution, conviction, or sentencing of criminal activity
 - and not being convicted of an aggravated felony

If your U visa, VAWA self-petitioner, and T-visa client have been placed in removal proceedings, contact us through our Technical Assistance line 202-274-4457 or info@niwap.org. For more information on VAWA, T-visa and U-visa eligibility visit our **NIWAP Web Library**.

USCIS is Building an Online Filing System to Process Immigration Forms

They currently have four forms operational online: Form I-90, Application to Replace

Permanent Resident Card; N-400, Application for Naturalization; Form N-565, Application for Replacement Naturalization/Citizenship Document; and Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA).

To build a user-friendly and seamless online experience, USCIS conducts user testing around the country. They then refine their prototypes based on the feedback they receive. They are currently developing online filing for Form I-539, Application to Change/Extend Nonimmigrant Status. USCIS is looking for volunteers to give an hour of their time to review prototypes of the online I-539 form.

Can you help test the I-539 prototype? The user sessions are private and anonymous and have no bearing on any pending or future cases. If you can help, please contact: janna.m.evans@uscis.dhs.gov

The New Sexual Assault Response Team (SART) Toolkit is Now Available

The SART Toolkit is an online resource loaded with information on over 80 topics and thousands of resources for SARTs. Have a question? Need to identify an expert?

This toolkit is your source for information and resources related to working as a team, responding to sexual assault, starting a SART, engaging your community, and much more.

1. Entire kit: <https://www.nsvrc.org/sarts/toolkit/0>
2. Just immigrant excerpt: <https://www.nsvrc.org/sarts/toolkit/6-12>

NIWAP's Rebuilt Interactive Public Benefits Map

NIWAP has rebuilt its Interactive Benefits Map. This site provides information specifically geared towards case workers and attorneys who work with immigrants. The homepage describes each benefit and links to its map. Clicking on a state in a benefit map shows the benefits available in each state by immigration status. We will continue to update the map to ensure it reflects state laws and policies. To explore the map click [here](#).

Note of Georgia Benefits Case & Clarification on SNAP Eligibility

Per a June 2018 decision of the Georgia court of appeals, a British immigrant and current lawful permanent resident received exemption from the 5-year waiting period for Medicaid benefits by proving her entry date had been before August 22nd 1996. The court granted this despite the approval of her green card occurring in 2014, two years after which she applied for Medicaid benefits. The effect of this ruling is that all entries prior to August 22, 1996 may be exempt from the 5 year waiting period for federal benefits.

In a similar vein, we resolved a recent TA matter of SNAP eligibility, per 7 CFR 273.4(a)(6)(iii): "The 5 years in qualified status may be either consecutive or non-consecutive". This allows for immigrants who have departed from the U.S. for a period of greater than 6 months to still apply time lived prior to the departure towards their eligibility.

End Violence Against Women International's 2019 Conference on Sexual Assault, Intimate Partner Violence, and Increasing Access

The event will take place April 22-25, 2019 in San Diego, California. NIWAP's Director Leslye E. Orloff and partner trainer Michael LaRiviere from the Salem Police Department will participate in a panel called, "Best Practices for Working with Immigrant Crime Victims."

To access the information discussed and materials used throughout this conference, click [here](#).

NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT

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