Q & A: Immigrants

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Answer

Immigrants[1]

Q1: Does the five-year bar on TANF benefits for immigrants, under section 403 of PRWORA affect someone who is present (lawfully or unlawfully) before August 22, 1996, but does not become a qualified alien until after the date of enactment?

A1: As a general matter, no. Section 403(a) of PRWORA, as amended, provides: " Notwithstanding any other provision of law...an alien who is a qualified alien...and who enters the United States on or after the date of the enactment of this Act is not eligible for any Federal means-tested public benefit for a period of 5 years..." As a general matter, the bar does not affect an individual who entered the United States before enactment.

The Justice Department has said that, if an immigrant entering before enactment is now a "qualified alien," he or she will be eligible for TANF and Medicaid if the State has elected to provide those benefits under 402(b) of PRWORA, as long as the immigrant "was continuously present in the United States from the latest date of entry prior to August 22, 1996 [the date of PWRORA's enactment], until the date he or she obtained qualified alien status. In general, any single absence from the United States of more than 30 days, or a total of aggregated absences of more than 90 days, should be considered to interrupt 'continuous presence.'" For additional information, see the DOJ Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of PRWORA at 62 FR 61415 (November 17, 1997).

Q2: Does the five-year bar for certain newly arrived qualified aliens apply to all federally-funded TANF benefits (e.g., including benefits that do not meet the definition of assistance)?

A2: As a general matter, yes. TANF benefits are generally considered "Federal public benefits," and therefore the five-year bar on the receipt of "Federal means-tested benefits" would apply to newly-arrived qualified aliens who do not meet one of the statutory exceptions. Also, since the statutory language draws no distinction between "assistance" and "non-assistance," the bar would apply to TANF benefits that fall outside the definition of "assistance." However, the five-year bar and other alien eligibility restrictions do not apply if the benefit provided is not a "Federal public benefit."

PRWORA does not limit alien eligibility if the benefit provided is not a "Federal public benefit" or if it meets the specification provided by the Attorney General. HHS has identified the TANF program (when using Federal TANF funds) as generally providing "Federal public benefits" (63 FR 41658 (August 4, 1998)). We

have expressly recognized, however, that not all benefits or services provided by these identified programs are "Federal public benefits" and require verification. When a benefit is not a "Federal public benefit," a State is not statutorily bound by title IV of PRWORA to restrict eligibility to certain aliens; it may provide that benefit to all aliens. The August 4, 1998, Federal Register notice includes some general discussion about discerning whether a benefit should or should not be considered a Federal public benefit. A use of TANF funds that may not meet the definition of a "Federal public benefit" might include pregnancy prevention services that are available to individuals regardless of financial need.

Additionally, if the benefit provided with TANF funds meets the specifications in the Attorney General notice dated August 23, 1996 (AG Order No. 2049-96, 61 FR 45985), then title IV of PRWORA does not require verification, and the State may provide the benefit regardless of immigration status. The AG Order allows certain non-cash benefits that are delivered at the community level to be provided to all aliens if the benefits are necessary for the protection of life or safety and are not conditioned on the individual's income or resources. A service that is only available to the financially needy would not meet the AG criteria and could be provided only to otherwise eligible citizens and qualified aliens. However, services provided by shelters for homeless or battered individuals that are available to anyone who needs their help would be an example of a service that might be funded in part with TANF dollars and could be provided to anyone regardless of immigration status.

Although such benefits would meet the AG criteria and would be provided to everyone regardless of financial need or alienage, TANF funds may only be used if the services would otherwise meet TANF requirements. This means that the service must be reasonably calculated to accomplish a TANF purpose or must be authorized pursuant to the State's former approved AFDC, JOBS, or EA plans, and it must not be prohibited under statute or regulation (e.g., under the provision that prohibits use of Federal TANF funds on medical services). Also, the State may only claim the portion of expenditures for benefits that it has provided to TANF-eligible families, which in the case of benefits that meet the AG criteria and are available regardless of need, requires the State to have a sound methodology that enables it to identify the portion of total qualified expenditures for benefits that were provided to needy individuals.

Q3: Does application of section 525 of Division G of the Consolidated Appropriations Act of 2008 (Public Law 110-161) regarding eligibility of Iraqi and Afghan special immigrants for a Federal TANF public benefit end on September 30, 2008? (See TANF Program Instruction TANF-ACF-PI-2008-01, dated February 21, 2008.)

A3: Yes, it will expire unless Congress acts to extend the provision. Because this provision is contained in an appropriation bill, its effect is limited to the fiscal year.

If the provision is not extended, it will only affect the Afghani special immigrants. After September 30, 2008, the Afghani special immigrants may no longer be treated as refugees – i.e., exempt from the 5-year bar for up to the 6 month time limit exemption period. The Iraqi special immigrants will not be affected as they are covered in the subsequent National Defense Authorization Act for FY 2008 (P.L. 110-181).

Q4: When does the count begin for the five-year bar, once the applicable 6-or-8 month exemption period expires for the Iraqi and Afghan special immigrants (See TANF Program Instruction TANF-ACF-PI-2008-01, dated February 21, 2008)?

A4: The count begins on the date that the individual entered the United States as a special immigrant. The count includes any month for which the individual and his family received, if applicable, a Federal TANF public benefit.

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[1]Generally speaking, a State may claim qualified expenditures toward its basic MOE requirement for benefits provided with State funds to certain aliens who are ineligible due to PRWORA, title IV, section 403(a). See the preamble discussion on MOE expenditures in the TANF final rules at pages 17817-17819 (64 FR 17817) for a full discussion of the effect of the non-citizen provisions in PRWORA, title IV, on the claiming of MOE expenditures.