Policy Interpretation Question (PIQ) – Qualified Alien

(ACYF-CB-PIQ-99-01)

Source: Administration for Children, Youth and Families, U.S. Department of Health and Human Services

The following documents are provided as reference materials for completing the questions on citizenship and specified relative in the Initial Foster Child Eligibility Checklist and the Family Eligibility Checklist.

The *Policy Interpretation Question (PIQ) – Qualified Alien* below and the *Immigration Status List* provide detailed information on the status of "legally qualified alien."

Determining a Specified Relative provides detailed information on the definition of "specified relative."

To: State and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations, Regional Administrators, Regions I-X

Subject: The Effects of the Provisions to Restrict Welfare and Public Benefits for Aliens in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on titles IV-B and IV-E of the Social Security Act

Legal And Related References: Titles IV-B, IV-E, XIX and XX of the Social Security Act; Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193); The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208); The Balanced Budget Act of 1997 (Public Law 105-33); Attorney General Order No. 2129-97, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 Fed. Reg. 61344 (Nov.17, 1997); HHS Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41658 (August 4, 1998); Proposed Rule, "Verification of Eligibility for Public Benefits;" 63 Fed. Reg. 41662 (August 4, 1998); ACYF-PIQ-84-07; ACYF-PIQ-88-05.

Background: ACF has received numerous questions regarding the impact of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) on Titles IV-B and IV-E of the Social Security Act (the Act). This PIQ synthesizes the answers to those questions.

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) restricts alien eligibility for certain Federal, State, and local public benefits. Title IV of PRWORA does so, in part, by limiting eligibility for certain public programs to qualified aliens.

Definition of "Qualified Alien": Per Section 431 of PRWORA, as amended by The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and The Balanced Budget Act of 1997, the term "qualified alien" means:

> "... an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is –

1. an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;

2. an alien who is granted asylum under section 208 of such Act;

3. a refugee who is admitted to the United States under section 207 of such Act;

4. an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year;

5. an alien whose deportation is being withheld under section 243(h) of such Act, as in effect immediately before April 1, 1997, or section 241(b)(3) of such Act;
6. an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980;

7. an alien who is a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980)..."; or

8. an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States (see Exhibit B to Attachment 5 of the Department of Justice (DOJ) Interim Guidance, 62 Fed. Reg. 61344 (November 17, 1997), for the requirements that must be met for an alien to fall within this category of qualified alien).

Examples of persons who are not qualified aliens include, but are not limited to: undocumented aliens and aliens legally admitted on a temporary basis for work, study, or pleasure.

Limitations on Receipt of Federal Public Benefits: Federal foster care maintenance payments, adoption assistance payments, and Independent Living services are Federal public benefits and, accordingly, only qualified aliens may receive assistance under these programs (see 63 Fed. Reg. 41657 (August 4, 1998). Section 401(a) of PRWORA limits receipt of Federal public benefits, with certain specified exceptions, to qualified aliens. The statutory definition of Federal public benefit is:

> "(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and,(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States."

Verification that Recipients of Federal Public Benefits are Qualified Aliens: With a number of exceptions that are not relevant here, providers of Federal public benefits are required to verify immigration and citizenship status of applicants in order to ensure that only qualified aliens receive the programs' benefits and services. In compliance with section 432 of the PRWORA, the Department of Justice issued a Notice of Proposed Rule Making, 63 Fed. Reg. 41662 (August 4, 1998), to propose requirements for verifying citizenship or immigration status for receipt of Federal public benefits. States must be in full compliance with the verification requirements within two years of publication of a final rule. Until a final rule is published, verification of alien status may be carried out using the DOJ notice, "Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996," 62 Fed. Reg. 61344 (November 17, 1997).

We strongly encourage the State child welfare agencies to familiarize themselves with the DOJ interim guidance and the proposed rule in meeting the PRWORA requirements.

Residency Requirement for Federal Means-Tested Public Benefits: In addition to restricting Federal public benefits to qualified aliens, PRWORA, at section 403, requires a qualified alien entering the United States on or after August 22, 1996 (date of enactment of PRWORA), unless excepted, to live in the United States for five years as a qualified alien before becoming eligible for Federal means-tested public benefits. However, in accordance with section 403(c)(2)(F) of PRWORA, Federal payments for foster care and adoption assistance are excluded from this five year residency requirement if the child and the foster or adoptive parent with whom he or she is placed are both qualified aliens. Furthermore, this entire restriction does not apply if the child entering the United States after 8/22/96 is in one of the section 403(b) excepted groups: refugees; asylees; aliens whose deportation is withheld; Cuban/Haitian entrants; or Amerasians from Vietnam.

Note: The foregoing "Background" section of this PIQ provides general, limited information on the major provisions in title IV of PRWORA and should not be cited as official Departmental policy. However, the answers to the questions in this PIQ are official Departmental policy.

Question 1: How will title IV of PRWORA affect children who were receiving foster care, adoption assistance, and independent living services under titles IV-E and IV-B prior to August 22, 1996?

Answer: Foster Care: Federal foster care maintenance payments may be made only on behalf of otherwise eligible qualified alien children.
Children who are not qualified aliens become ineligible for Federal foster care maintenance payments at the first re-determination of their eligibility following the date of enactment of PRWORA, August 22, 1996.

Adoption Assistance: Federal adoption assistance agreements signed prior to August 22, 1996 remain in effect irrespective of the child's or adoptive parents' qualified alien status.

Independent Living: Federally funded independent living services may be provided only to qualified alien children. Children who are not qualified aliens become ineligible for Federal independent living services after the date of enactment of the PRWORA, August 22, 1996.

Question 2: It is our understanding that qualified aliens, regardless of whether they entered the United States before or after the date of enactment of PRWORA, August 22, 1996, are eligible for Federal foster care maintenance and adoption assistance payments. Is this a correct interpretation?

Answer: Not entirely. If the child is a qualified alien who is placed with a qualified alien or United States citizen, the date the child entered the United States is irrelevant. However, if the child is a qualified alien who entered the United States on or after August 22, 1996 and is placed with an unqualified alien, the child would be subject to the five-year residency requirement for Federal means-tested public benefits at section 403(a) of PRWORA unless the child is in one of the excepted groups identified at section 403(b). As a general matter, we do not expect these situations to arise very often. In the event such situations do arise, State or local funds may be used to support these children.

Question 3: Does the welfare reform legislation concerning benefits for immigrants/aliens have any impact on title IV-E eligibility for legal aliens, persons permanently residing under color of law (PRUCOL), etc.?

Answer: Yes. Alien children must be qualified aliens in order to be eligible for Federal foster care maintenance and adoption assistance payments and independent living services. Not all legal aliens or aliens with PRUCOL status necessarily meet the criteria for qualified alien status.

Question 4: Does title IV of PRWORA supersede the provision in section 472(a) of the Social Security Act (the Act) which affords title IV-E eligibility to certain alien children who would be otherwise eligible for title IV-E but for their disqualification for the Aid to Families with Dependent Children (AFDC) program due to their alien status?

Answer: Yes. States must follow the rule in PRWORA 401(a) that:

> "...[n]otwithstanding any other provision of law ... an alien who is not a qualified alien ... is not eligible for any Federal public benefit..."

Question 5. Section 108(d) of PRWORA (as amended by the Balanced Budget Act of 197, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the AFDC program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to "qualified aliens." The term "qualified alien" was not defined or in use on July 16, 1996. How are States to apply these two provisions?

Answer: Alien children must be eligible for AFDC under a State's July 16, 1996 plan and must also meet the PRWORA definition of "qualified alien" to be eligible for Federal foster care maintenance or adoption assistance (except that, as explained in the

answer to Question 1, children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

Question 6: Under PRWORA, can those individuals who meet the definition of a qualified alien under section 431 become the foster or adoptive parents of title IV-E eligible children?

Answer: Yes. Qualified aliens are eligible to become foster and adoptive parents and to receive title IV-E payments on behalf of the children in their care.

Question 7: Can an unqualified alien similarly become the foster or adoptive parent of a title IV-E eligible child?

Answer: Yes. However, the unqualified alien foster or adoptive parent of a child who entered the United States on or after 8/22/96 would be eligible to receive title IV-E payments on behalf of the child only if the child is a United States citizen, is in one of the 403(b) excepted groups, or has lived in the United States as a qualified alien for five years.

This interpretation is consistent with section 401(a) of PRWORA, which requires aliens to be qualified in order to receive Federal public benefits. Foster and adoptive parents are not recipients of Federal foster care and adoption assistance payments; rather, foster care and adoption assistance payments are made on the child's behalf to meet his or her needs.

Question 8: Both sections 401(c)(1)(A) and 411(c)(1)(A) of PRWORA define Federal, State, and local public benefits to include professional or commercial licenses. Is a foster care or adoptive home license/approval considered a Federal, State, or local public benefit?

Answer: No. Foster care and adoptive home licenses/approvals are not considered a Federal, State or local public benefit under sections 401(c)(1)(A) and 411(c)(1)(A) of PRWORA because they are non-professional or commercial licenses.

Question 9: Section 403(a) of PRWORA provides a five year residency requirement for qualified aliens who enter the United States on or after August 22, 1996 and who make application for Federal means- tested programs. Section 403(c)(2)(F) of PRWORA lists those programs that are exempted from section 403(a) to include titles IV-B and IV-E, under certain circumstances; however, title XIX is not on the list of programs exempted from section 403(a) of PRWORA. Title IV-E eligible children are categorically eligible for Medicaid. Must qualified alien children who are eligible for title IV-E meet the five-year residency requirement to be eligible for title XIX?

Answer: No. All qualified alien children who are eligible for title IV-E retain their categorical eligibility for Medicaid under title XIX, regardless of how long they have been in the United States. Section 402(a)(3) of the Act (as amended by PRWORA) requires States to certify, in their Temporary Assistance for Needy Families Plans, that

"... the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX."The statute makes no distinction between children who are citizens and children who are qualified aliens. Thus the law requires all title IV-E eligible children to receive medical coverage under title XIX.

Question 10: **Are States required to verify the citizenship or immigration status of individuals receiving child welfare services funded under title IV-B or payments under title IV-E?**

Answer: States are not required to verify the citizenship or immigration status of individuals receiving child welfare services funded under title IV-B, subparts 1 and 2, because those services do not meet the Federal definition of Federal public benefit (see 63 Fed. Reg. 41657 (August 4, 1998). Therefore, child welfare services are not subject to the verification requirements at section 432 of PRWORA.

States, however, are required to verify the citizenship or immigration status of all children receiving Federal foster care maintenance payments, adoption assistance payments, or independent living services. States are not required to verify the citizenship or alien status of foster or adoptive parents, with one exception. States must verify the citizenship or immigrant status of potential foster or adoptive parents when placing a qualified alien child who entered the United States on or after 8/22/96 and has been in the United States as a qualified alien for less than five years. In order to be exempt from the five-year residency requirement imposed at section 403 of PRWORA, a qualified alien child must be placed with a citizen or a qualified alien; hence, citizenship/alien status of prospective foster or adoptive parents must be verified in such circumstances.