

PUBLIC BENEFITS ACCESS FOR BATTERED IMMIGRANT WOMEN AND CHILDREN

GOVERNMENT AFFAIRS OFFICE: 1101 14TH STREET, N.W., STE. 300 • WASHINGTON, DC 20005 • 202.326.0040 • WWW.LEGALMOMENTUM.ORG

Eligibility For Documented And Undocumented Immigrants

Although the law denies public benefits to many immigrants, some immigrants, including battered immigrants, may still be able to receive certain public benefits as "qualified immigrants." Battered women may require some form of public assistance in order to be able to leave their abusers. Even undocumented battered immigrants may receive some public benefits if they have filed a case with the Department of Homeland Security (DHS) and can prove a "substantial connection" between the abuse and the need for public assistance. When applying for public benefits, the benefits agency should only check on the immigration status of the person applying. U.S. citizen, lawful permanent resident, and "qualified immigrant" children may receive certain public benefits even when their parents cannot. If a battered immigrant who is not a "qualified immigrant" is questioned about her immigration status while applying for public benefits for their children, she should tell the public benefits agency, "I am not applying for public benefits for myself." In addition, non-profit charitable organizations that help battered immigrants are not required to determine a woman's immigration status.

Who Are Qualified Immigrants?

- Lawful permanent residents (including conditional permanent residents)
- Refugees
- Asylees
- Persons granted withholding of deportation
- Persons granted cancellation of removal
- Cuban/Haitian entrants
- Veterans
- Person granted conditional entry
- Amerasians
- Persons paroled into the United States for a year or more
- Persons who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident spouse or parent, with pending or approved VAWA cases or family-based petitions before DHS
- Persons whose children have been battered or subject to extreme cruelty by the U.S. citizen or lawful permanent resident parent, with pending or approved VAWA cases or family-based petitions before DHS

What Benefits Can Qualified Immigrants Receive?

Advocates should be aware that immigrant eligibility for certain benefits depends in part on the immigrant's date of entry into the United States. Immigrants who are or become "qualified

immigrants” and who entered the U.S. before August 22, 1996, are generally eligible for the same federal means-tested public benefits, federal public benefits, and federally funded social services available to U.S. citizens, except for SSI and Food Stamps. *Immigrants who become “qualified immigrants” and who entered the United States on or after August 22, 1996, however, are barred from receiving federal means-tested benefits during the first five years after obtaining qualified immigrant status.*¹

Battered immigrants may, however, receive federal public benefits during this five-year period that are not deemed to be “federal means-tested public benefits.”² The immigrant groups that qualify for an exemption of the five-year bar include: refugees, people granted asylum, Amerasians, Cuban and Haitian entrants, veterans and immigrants on active military duty, and immigrants granted cancellation of removal (stops the deportation process).

The Federal “Means-Tested” Public benefits that these immigrants can receive include:

- Temporary Assistance for Needy Families (TANF)
- Medicaid and Medicare
- Food Stamps
- Supplemental Security Income (SSI)
- Social Security Disability Insurance
- Administration on Developmental Disabilities (ADD) (direct services only)
- Child Care and Development Fund
- Independent Living Program
- Job Opportunities for Low Income Individuals (JOLI)
- Low-Income Home Energy Assistance Program (LIHEAP)
- Postsecondary Education Loans and Grants
- Public Housing
- Refugee Assistance Programs
- Section 8 Subsidized Housing
- State Children’s Health Insurance Program (CHIP)
- Title IV Foster Care and Adoption Assistance Payments (if parents are “qualified immigrants”)
- Title XX Social Services Block Grant Funds

Access to Food Stamps used to be very restrictive until Congress passed the Farm Security and Rural Investment Act (Farm Bill) in 2002. The bill restored food stamp eligibility to qualified immigrants who have lived in the U.S. in qualified status for at least five years; qualified immigrant children, regardless of date of entry; and qualified immigrants who are receiving disability-related assistance, regardless of date of entry.³

¹ Some states cover battered immigrants for certain means-tested benefits during the five-year bar. For a list of these states and what they cover please visit the National Immigration Law Center website at http://nilc.org/pubs/Guide_update.htm.

² Please see the last page of this fact sheet.

³ Some states offer food and nutrition benefits during the five-year bar. For a list of these states and what they cover please visit the National Immigration Law Center website at <http://nilc.org/immspbs/fnutr/index.htm>.

Access to Supplemental Security Income (SSI) is still severely restricted. Very few battered immigrants and children can be eligible.

Receiving public benefits will not prevent a VAWA self-petitioner from obtaining lawful permanent resident status. DHS cannot consider any public benefits received by battered immigrants after August 22, 1996, in determining whether an individual will become a public charge.⁴ This means that they will not decide a battered immigrant woman will be a burden to society (which can cause DHS to deny lawful permanent resident status) based on the fact that she has received public benefits.

How Do Battered Immigrants Become Qualified Immigrants?

Documented and undocumented battered immigrants are “qualified immigrants” if they meet the following requirements:

The immigrant or the immigrant’s child has been abused by their U.S. citizen or lawful permanent resident spouse or parent, or by the spouse’s or parent’s family member living in the same household. (The other immigrant spouse or parent must not have actively participated in the abuse.)

AND

The battered immigrant has an approved family-based petition or Violence Against Women Act (VAWA) petition;

OR the battered immigrant has been granted cancellation of removal by an immigration judge (the deportation process has been stopped and the woman has been given a green card);

OR an immigration judge has decided in an ongoing VAWA cancellation case that the battered immigrant can receive public benefits (also known as a prima facie determination);

AND

The battered immigrant or child no longer lives with the abuser. (Note that the benefits agency must decide if the battered immigrant is eligible for benefits before she leaves the abuser.)

What is “Substantial Connection”?

To receive these benefits, the applicant must also show a “substantial connection” between the abuse and the need for the public benefit. The following are considered appropriate conditions for establishing this connection:

- To help the victim of abuse be able to support herself economically without help from the abuser and/or the abuser’s community.

⁴ See, *Field Guidance on Deportability and Inadmissibility on Public Charge Grounds*, 64 Fed. Reg. 28689 (May 26, 1999).

- To ensure the safety of the woman and her children.
- To make up for the loss of financial support due to the separation.
- To make up for the loss of a job or income because of the abuse or because of time spent in domestic violence legal proceedings.
- To make up for the loss of a place to live as a result of the abuse.
- To help the victim take care of the children when fear of the abuser interferes with child care.
- To meet nutritional needs resulting from the abuse or separation.
- To provide for medical care during a pregnancy that resulted from the abuse.
- To replace medical coverage or health care services that were lost because of the separation from the abuser.

Exemptions From Deeming Requirements

When an immigrant’s family member sponsors her to receive lawful permanent residency in the United States, the sponsoring family member must sign and file an affidavit of support with DHS. This affidavit states that the sponsor is willing to be financially responsible for that immigrant as the immigrant’s sponsor. When an immigrant with a sponsor affidavit filed on her behalf applies for public benefits, deeming rules require that the benefits granting agency assume, for the purposes of determining income eligibility for benefits, that the immigrant has full access to the income and assets of her sponsor. It is often the case that these rules render the vast majority of immigrants with sponsor affidavits ineligible to receive public benefits. Previously, battered immigrants who were sponsored by their abusive spouses were often denied public benefits because it was assumed that they had full access to their spouse’s income. Some battered immigrants can now be excused from “deeming” requirements for 12 months if there is a connection between the abuse and the need for the benefit. Extensions of the 12-month time period are available. Immigrants excused from deeming include:

- VAWA self-petitioners
- VAWA cancellation of removal or suspension of deportation applicants
- Battered immigrants whose spouses or parents filed family based visas for them
- Immigrants who obtained their green card through a family based visa petition and who were battered before and/or obtaining lawful permanent resident status⁵
- Immigrants who filed new affidavits of support (I-864) after 12/5/1999 In addition to victims of domestic violence, the following individuals are also exempt from deeming requirements:
 - Persons who have become U.S. citizens
 - Persons with 40 quarters work history⁶
 - Spouses or children of U.S. citizens or lawful permanent residents with 40 quarters of work history⁷
 - Immigrants facing hunger or homelessness

⁵ Please note, however, that battered immigrants whose abusers filed old affidavits of support and whose immigration interviews were scheduled on or before 12/17/1997 are subject to deeming for the first three years after they receive their green card.)

⁶ This is equivalent to about 10 years of work.

⁷ These quarters do not count after divorce.

- Immigrants whose sponsor is dead
- Refugees
- Persons granted asylum (i.e. – asylees)

Benefits Available to All Immigrants

Fortunately, certain federal public benefits are available to both documented and undocumented immigrants. The 1996 Welfare Reform Act authorized the U.S. Attorney General to designate particular programs that are open to all persons without regard to immigration status.⁸ To be exempt from immigration restrictions, the programs designated by the U.S. Attorney General must be in-kind services, provided at the community level, not based on the individual's income or resources, and necessary to protect life or safety. These benefits may be particularly useful for domestic violence victims who do not qualify for VAWA immigration relief and are listed here:

- Crisis counseling and intervention programs
- Services and assistance relating to child protection
- Adult protective services
- Violence and abuse prevention
- Victims of domestic violence or other criminal activity
- Treatment of mental illness or substance abuse
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children
- Programs to help individuals during periods of adverse weather conditions;
- Soup kitchens
- Community food banks
- Senior nutrition programs and other nutritional programs for persons requiring special assistance
- Medical and public health services and mental health, disability, or substance abuse assistance necessary to protect life and safety
- Activities, designed to protect the life and safety of workers, children and youths or community residents
- Any other programs, services, or assistance necessary for the protection of life or safety

For more information, please contact Soraya Fata at 202-326-0045 or at sfata@legalmomentum.org.

⁸ See A.G. Order No. 2353-2001, Jan. 5, 2001 (published in the Federal Register on January 16 as "Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation", 66 Fed. Reg. 3,613-16 (Jan. 16, 2001)).