AN ADVOCATE'S GUIDE TO

GOVERNMENT BENEFITS

FOR

IMMIGRANTS

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NOTES

A note about immigration law. The INA is law generally governing the presence of non-citizens in the United States. However, the Immigration and Nationality Act has been amended many times. Amendments and changes are contained in "acts," such as NACARA or HRIFA (see glossary). The name of the act will usually not be found in the INA. In this guide, legal citations, where applicable, are provided to the Immigration and Nationality Act (INA), United States Code (USC), N.Y.S. Social Services Law (SSL), Code of Federal Regulations (CFR), Federal Register (FR), Public Laws (Pub. L.), and other sources as appropriate.

A note about the former INS. The agency formerly known as INS (Immigration and Naturalization Service) has been dismantled; three new agencies under the jurisdiction of the Department of Homeland Security were created in its place. These agencies are USCIS (United States Citizenship and Immigration Services) which handles applications/issues concerning immigration applications and status, ICE (Immigration and Customs Enforcement) which is responsible for removal/deportation proceedings, and CBP (Customs and Border Protection) which is responsible for the admission of non-citizens to the U.S.

STEP ONE: DETERMINE YOUR CLIENT'S IMMIGRATION STATUS.

Locate your client's status from list below.

Qualified Aliens. Immigrants in a Qualified Alien status are non-citizens who are eligible for certain federal, state and local benefits. 8 U.S.C.§§1641(b), 1613(b). Qualified Aliens include:

- Legal permanent residents ("green card holders") (see 8 U.S.C. §1641(b)(1));
- Refugees pursuant to INA §207 (see 8 U.S.C. §1641(b)(3));
- Asylees pursuant to INA §208 (see 8 U.S.C. §1641(b)(2));
- Persons granted withholding of deportation pursuant to former INA §243(h) (repealed 4/1/97), or persons granted withholding of removal pursuant to successor provision INA §241(b)(3) (see 8 U.S.C. §1641(b)(5), which governs removal/exclusion proceedings commenced after April, 1997);
- Parolees for a year or more under INA §212(d)(5) (see 8 U.S.C. §1641(b)(4));
- Conditional entrants pursuant to INA § 203(a)(7) (repealed 4/1/80) (see 8 U.S.C. §1641(b)(6));
- Cuban/Haitian entrants (see 8 U.S.C. §1641(b)(7));
- Amerasians (see 8 U.S.C. §1613(d));
- Battered spouses and children of US Citizens or LPRs, who have pending or approved "VAWA self-petitions" or I-130 family petitions (see 8 U.S.C. §1641(c));
- Active duty or honorably discharged members of the military and immediate relatives (see 8 U.S.C. §1613(b)(2))
- Victims of trafficking (see, Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No.106-386, §107(b)(l)(A), 114 Stat. 1464,1475 (2000)).

PRACTICE TIP : Clients may not be able to identify their precise immigration status. The categories are complicated and can change over time. Whenever possible, ask to review the client's most recent immigration paperwork, green card, or work authorization card for status information.

Immigrants in a Qualified Alien status who are Exempt from the Five Year Bar. Congress made most immigrants in a Qualified Alien status ineligible for food stamps, Medicaid, and TANF (public assistance) until they have been in the "Qualified Alien" status for at least five years. 8 USC §1613, "Five Year Limited Eligibility of Qualified Aliens for Federal Means-Tested Benefits"[1]. Congress, however, exempted some categories of immigrants in a Qualified Alien status from the five year bar.

> **Note**: The "five year bar" applies to "federal means-tested benefits," which include SSI, FS, MA, TANF, and SCHIP. Many states, including NY, fund State versions of these programs. NYS provides State Medicaid, State CHIP, and State public assistance. These State programs are unaffected by restrictions on the federal means-tested benefit programs.

The exemptions are found at 8 USC §1612(a,b).[2]

Aliens exempt from the five year bar ("Specially Qualified Aliens," as they are sometimes known), include:

1. Humanitarian-based immigrants (8 U.S.C. §1612(b)(2)(A) (i)(I)-(V))[3]:
   - Refugees;
   - Asylees;
   - Persons granted withholding of deportation or removal;
   - Cuban/Haitian entrants;
   - Amerasians.

> **Another Note**: the humanitarian-based immigrants listed above are immediately, and indefinitely, eligible for food stamps, TANF, Medicaid, and programs funded through Title XX Social Services Block Grants. However, they are only eligible for the SSI program for the first seven years of their humanitarian-based status. After seven years, humanitarian immigrants are terminated from SSI unless and until they become US Citizens.

[1] 8 U.S.C. 1613: "...Notwithstanding any other provision of law and except as provided in subsections (b), (c), and (d) of this section, an alien who is a qualified alien (as defined in section 1641 of this title) and who enters the United States on or after August 22, 1996, is not eligible for any Federal means- tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien".

[2] The exemptions concern "specified" federal programs, defined in 8 USC §1612(a)(3) as SSI and Food Stamps; and "designated" federal programs, defined in 8 USC §1612(b)(3) as TANF, Medicaid, and Title XX Social Services Block Grant programs.

[3] 8 USC 1612 originally granted a five year exemption for these aliens; this section was later amended to extend the exemption for seven years.

2. Any Legal Permanent Resident (LPR) who entered the United States:
   - before August 22, 1996, and who can be credited with *40 quarters of work* (8 USC 1612(a)(2)(B), or
   - after August 22, 1996, who can be credited with *40 quarters of work*, and has been *physically present in the United States for at least five years*.

3. Any immigrant in a Qualified Alien status who is on *active duty in US Armed Forces, or veteran who received an honorable discharge*. (Active duty and veteran status also qualifies spouse and minor children.). This category includes *Hmong and Highland Laotians* (who were recruited by American forces to fight in Vietnam).

PRUCOL (Permanently Residing Under Color Of Law). PRUCOL is not an immigration status; it is a term used by benefits-granting agencies to describe non-citizens who are known by USCIS (INS) to be residing in the United States, but whom USCIS has given permission to remain or in whose continued presence USCIS acquiesces. In New York State, PRUCOLs are entitled to certain government benefits, including Safety Net Assistance, Medicaid, and sometimes SSI.

Undocumented persons. Undocumented persons are also known as "illegal immigrants," "illegal aliens," or immigrants or aliens who are "out of status." These terms refer to aliens who lack authorization to be in the United States. The term "undocumented" applies to any person who entered without inspection (did not pass through customs), or overstayed or otherwise violated the terms of a visa.

Non-immigrant visa holders. Persons who entered and were admitted (by customs) into the United States specifically for a limited period of time. The classification and restrictions on the visa are based on the traveler's previously-declared intentions at the U.S. Embassy abroad prior to obtaining the visa. The most common non-immigrant visa is the visitor's (B1/B2) visa for those who declare themselves to be visitors for business or tourism. Non-immigrant visa holders are generally restricted from employment, unless they were admitted as temporary workers. They are not Immigrants in a Qualified Alien statuss. They are not entitled to ongoing government benefits. They become undocumented once they overstay or otherwise violate the terms of their visa.

United States Citizens. *Could your "immigrant" client actually be a US Citizen?* There are persons who were born outside of the United States who may not know that they are actually US Citizens. The following are US citizens:

- a person born outside of the US and its possessions, if both parents are/were US citizens and at least one parent lived in the US or a US possession sometime prior to the person's birth (INA §301(c));
- a person born outside of the US and its possessions, if at least one parent is/was a US national, and the other parent is/was a US Citizen who was physically present in the United States or a US possession for at least one continuous year prior to the person's birth (INA §301(d));
- a person born *in* a US possession, and at least one parent is/was a US citizen who was physically present in the US or a US possession for at least one continuous year at *any time* prior to the person's birth (INA §301(e)).
- A person born outside of the US to one US parent and one non-citizen parent. The rules here are

very complex; consult an immigration practitioner.

STEP TWO: DETERMINE YOUR CLIENT'S ELIGIBILITY FOR GOVERNMENT BENEFITS.

Food Stamps. The federal Food Stamp Program, administered by New York under the supervision of the USDA and authorized by the Food Stamp Act of 1977, provides food stamps benefits to needy persons to buy food. The rules for the Food Stamp program have changed frequently in the last several years.

Financially-eligible non-citizens who qualify for **food stamps** are:

1. Any immigrant in a Qualified Alien status, regardless of date of entry, who has resided in the US for at least 5 years with that status;
2. any immigrants in a Qualified Alien status, regardless of date of entry, and regardless of how long they have had Qualified Alien status, if that person:
   (1) is currently disabled or blind; **or**
   (2) was at least sixty-five years old on August 22, 1996; **or**
   (3) is now a child under 18 years old.
3. any immigrant exempt from the five year bar (refugees, asylees, etc.).

WIC (Special Supplemental Nutrition Program for Women, Infants and Children): WIC provides vouchers for food, nutrition counseling, and referrals to health and other social services organizations to low-income women who are pregnant, breastfeeding, or in the postpartum period; babies; and children up to age 5. The program is open to all persons regardless of immigration status, provided they meet the other eligibility requirements (income at or below 185% of the Federal Poverty Level, medical or nutritional risk factors, and state residency). WIC eligibility criteria are found at 42 U.S.C. §1786(c)(1)(D).

Food pantries. Most food pantries do not require clients to have a particular immigration status. Food for Survival, for example, is a private charitable organization which operates a 24-hour call center which refers hungry persons to food pantries, shelters, or soup kitchens in their borough. The call center does not make immigration status inquiries; however, clients are urged to independently confirm the reporting and confidentiality policies of the resources to which they are referred. The hotline number is 1-866-NYC-FOOD (1-866-692-3663).

Medicaid. The Medicaid program is available to all PRUCOL immigrants and immigrants in a Qualified Alien status who meet financial eligibility requirements (Aliessa v. Novello, 96 N.Y.2d 418(2001)), and to all pregnant women, regardless of immigration status. The technical rules are set out below, but most practitioners will not need to distinguish between eligibility for federally funded and state funded Medicaid. The bottom line will be the same: PRUCOL immigrants and immigrants in a Qualified Alien status are eligible for Medicaid.

(a) Federally-funded Medicaid

(i) If the immigrant entered the US *after* 8/22/96, and:

1. has had Qualified Alien status for five years, she is now eligible; or

2. is now an Immigrant in a Qualified Alien status Exempt for the Five Year Bar, she is now eligible.

(**If the post-1996 immigrant is a Immigrants in a Qualified Alien status who has had that status for less than five years, see State funded Medicaid, below.)

(ii) If the immigrant entered the US *before* 8/22/96, and:

1. is now a Immigrants in a Qualified Alien status, regardless how long she has had that status, she is eligible; or

2. is now a Immigrants in a Qualified Alien status Exempt from the Five Year Bar, she is eligible.

(b) State funded Medicaid

(i) Immigrants in a Qualified Alien statuss with less than five years of that status are eligible;

(ii) PRUCOL aliens are eligible.

Emergency Medicaid. Emergency Medicaid is available to immigrants who lack status. This includes immigrants who are undocumented, as well as those who are in the process of obtaining status but are not yet considered PRUCOL. Emergency Medicaid covers only emergency conditions (see, N.Y.S. SSL §122(1)(c)), which are those in which acute symptoms place a person's health in serious jeopardy, may result in a serious impairment of a bodily function, and/or may cause dysfunction of any bodily part or organ. (See also, 42 U.S.C. §1396(b)(v)(3).) The treating physician must certify the emergency.

PCAP. The Prenatal Care Assistance Program is a available to all financially-eligible pregnant women regardless of immigration status. Clients receive medical coverage for up to two months post partum (after the date of the baby is born). Children born to mothers in the PCAP program automatically receive one year of Medicaid coverage.

Child Health Plus ("CHP" or "SCHIP"). This state health insurance program is available to all otherwise financially eligible children regardless of immigration status.

Family Health Plus. Family Health Plus or "FHP" (health insurance for low-income adults who are overincome for Medicaid) is available to Immigrants in a Qualified Alien status or PRUCOL immigrants. FHP is provided through managed care plans or HMOs. This program has higher income limits than Medicaid does, and no assets test.

Medicare. Medicare is a federal health insurance program for elderly and disabled persons who have worked and paid FICA (Federal Insurance Contribution Act) taxes. (For many workers, FICA taxes are automatically deducted from their paychecks by their employers.) "Medicare Part A" helps pay for inpatient hospital care, skilled nursing care, home health care, and hospice care. "Medicare Part B" helps pay for outpatient treatment, medical supplies and equipment. Any lawfully present non-citizen who otherwise meets the eligibility criteria for the Medicare program may participate. In practical terms, this means that for Medicare Part A, the non-citizen must have worked with USCIS (INS) employment authorization, had a valid Social Security Number, and paid FICA taxes during the period when the Medicare applicant was "earning quarters" towards insured status (See 8 C.F.R. §103.12); for Medicare Part B, there is no earnings requirement, and persons who are ineligible for Part A may purchase Part B (by paying a higher premium). For questions about Medicare eligibility, call The Legal Aid Society Health Law Hotline at 212-577-3575.

Public Hospitals and Clinics ("HHC"). All financially-eligible uninsured persons, including undocumented persons, can obtain discounted or free medical care, including well-care and medication, at public hospitals and clinics run by the New York City Health and Hospitals Corporation ("HHC"). In New York City, public hospitals include Bellevue, Harlem, and Metropolitan hospitals in Manhattan; Coney Island, Kings County, and Woodhull Hospitals in Brooklyn; North Central Bronx, Lincoln, and Jacobi Hospitals in the Bronx; and Queens Hospital Center and Elmhurst Hospital in Queens. See HHC's website at: http://www.nyc.gov/html/hhc/home.html .

Undocumented persons with low incomes may enroll in "HHC Plus," which allows patients to pay $15 per visit for care at New York City Health and Hospitals Corporation's (HHC) hospitals, clinics, and other facilities. Prescriptions cost a one-time fee of $10. Parents may earn up to 150% of the federal poverty level; childless adults, up to 100%.

All private and public hospitals throughout New York State are required to provide their own financial assistance to patients who use any of the hospital's services. Everyone has the right to apply for financial assistance to reduce a hospital bill, regardless of immigration status. Receiving hospital financial assistance should not affect immigration status.

Public Assistance (cash assistance). For federal authority on eligibility for cash assistance, see PRWORA §§401, 402(b), 403; 8 U.S.C. §§ 1611, 1612(b), 1613. Federal cash assistance is known as TANF (Temporary Assistance to Needy Families), the welfare program which excludes many immigrants and has a five-year time limit. In New York, TANF is administered through the Family Assistance (FA) program. New York State also provides "Safety Net Assistance" (SNA) for childless households, families who are immigration-ineligible for Family Assistance, and persons who have reached their time-limit for Family Assistance. For a list of job centers (where your client can apply), see http://www.ci.nyc.ny.us/html/hra/html/serv_welfarework.html .

Non-citizens eligible for **Family Assistance (**include:

(1) Immigrants in a Qualified Alien status who are exempt from the five year bar (N.Y.S. SSL §122(1)(a));

(2) Immigrants in a Qualified Alien status who arrived in the U.S. prior to 8/22/96 (N.Y.S. SSL §122(1)(b)(i));

(3) Persons who arrived in the U.S. after 8/22/96, and who resided in the U.S. for at least five years with Qualified Alien status (N.Y.S. SSL§122(1)(b)(ii))

(4) Persons who arrived in the U.S. after 8/22/96, and who resided in the U.S. for at least five years with Qualified Alien status (N.Y.S. SSL§122(1)(b)(ii)).

NOTE: There is a five-year lifetime limit on receipt of Family Assistance. After five years, clients are transferred to Safety Net Assistance.

Non-citizens eligible for **Safety Net Assistance** include:

(1) Persons no longer eligible for Family Assistance because they reached the five-year time limit;

(2) Immigrants in a Qualified Alien statuss, regardless of when they entered the U.S. (N.Y.S. SSL §122(1)(b,c);

(3) PRUCOLs (N.Y.S. SSL §122(1)(d)).

Housing. Federal law provides that immigrants in the following categories are eligible for subsidized housing (see 42 U.S.C. 1436-a):

- Citizens
- Nationals (persons born in a U.S. territory or possession)
- Legal permanent residents ("green card holders") (see 8 U.S.C. § 1641(b)(1));
- Refugees pursuant to INA §207 (see 8 U.S.C. § 1641(b)(3));
- Asylees pursuant to INA §208 (see 8 U.S.C. § 1641(b)(2));
- Permanent resident under registry provision, INA § 249 (see 8 U.S.C. § 1259) (noncitizens who have been lawfully admitted for permanent residence based on entry in the U.S. before 1972 and continuous residence since then);
- Persons granted withholding of deportation pursuant to INA §241(b)(3) (see 8 U.S.C. § 1641(b)(5));
- Parolees under INA § 212(d)(5) (see 8 U.S.C. § 1641(b)(4));
  Persons admitted under the mid-1980s legalization ("amnesty") program, INA § 245A (see 8 U.S.C. § 1255a).

NYCHA requires all tenants who receive housing subsidies to verify citizenship or eligible immigration status. However, family members may avoid disclosure by "electing not to contend" that they have ineligible immigration status. In this case, the obligation to submit documentary evidence of citizenship or qualified alien status is excused for the family member who does not contend s/he is eligible, but the housing subsidy will be reduced accordingly; that is, mixed households (with some eligible and some immigration-ineligible HH members) have their housing subsidy prorated according to the percentage of ineligible members. 24 C.F.R. §5.520; also §5.518(e). A family is ineligible for public housing on immigration grounds only if *all* of its members are ineligible.

> Note about VAWA self-petitioners seeking public housing: although VAWA self-petitioners are qualified aliens (see, 8 USC 1641(c)), they are not one of the enumerated groups of eligible persons listed by HUD as eligible for public housing. (Instead of making "qualified aliens" eligible for public housing, HUD made *those persons defined in 1996 as qualified aliens* eligible for public housing. Domestic violence survivors were not defined as qualified aliens in 1996; therefore, even though "qualified aliens" are eligible for housing, some housing authorities take the position that domestic violence survivors are not eligible. Advocates have had mixed results in seeking public housing options for their VAWA self-petitioner clients (with *prima facie* or final approvals).

Important note: Eligibility for housing assistance is **not** tied to TANF eligibility (or eligibility for any other federal benefits program). For example, Legal Permanent Residents who entered the United States after August 22, 1996 are not TANF-eligible for the first five years after entry (8 U.S.C. § 1613), and, except for veterans, those in active military service, and their spouses,

are not eligible without 40 qualifying quarters of work (8 U.S.C. § 1612). Nonetheless, Legal Permanent Residents **are** immediately eligible for public/subsidized housing, regardless of the date of entry, passage of five years, 40 quarters, etc.

Proof of Eligible Immigration Status

Family members may choose not to claim they have an eligible immigration status. In that instance, no proof of immigration status need be submitted to NYCHA. Among family members who claim an eligible immigration status, citizens and nationals are required to submit a signed declaration of citizenship or U.S. nationality. Non-citizens 62 years of age or older are required to submit a signed declaration of eligible immigration status and proof of age. All others who claim an eligible status are required to document their immigration status.

NYCHA recognizes any of the following original documents as acceptable proof of eligible immigration status:

- INS Form I-551 (Permanent Resident Card) (**Note:** An I-551 stamp on a passport should also suffice)
- Form I-94 (arrival/departure record), with an annotation (1) "Admitted as Refugee Pursuant to Section 207"; or (2) "Section 208" or "Asylum"; or (3) Section 243(h) or "Deportation Stayed by Attorney General"; or (4) "Paroled Pursuant to Section 212(d)(5)"
- Form I-94 not annotated, but accompanied by (1) a final court decision granting asylum; or (2) a letter from an INS asylum officer granting withholding of deportation, or from an INS district director granting asylum; or (3) a court decision granting withholding of deportation;
- Form I-688B (employment authorization card) annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12"
- I-688 temporary resident card annoted "Section 245A" or "Section 210";
- A receipt issued by the INS indicating that an application for issuance of a replacement document in one of these categories has been made and the applicant's entitlement to the document has been verified.

Practitioners are strongly advised to consult an experienced attorney concerning immigrant eligibility and documentation requirements.

"Grandfathering in" of Long-Term Tenants

Households currently in receipt of public housing are entitled to the full ongoing ("continued") assistance, at no reduction of benefits, if:

- the head of household or spouse has an eligible immigration status
- the family was receiving assistance on June 19, 1995
- there is no ineligible family member outside of the immediate family line (the head of household, spouse, and parents and children of the head of household and spouse)
- the family was entitled to continued assistance before November 29, 1996.

Current resident families who cannot afford or do not want to pay a higher rent, and tenant families with no eligible members, can ask for a deferral of the termination of assistance. A temporary deferral of up to 18 months, in six month increments (or 3 years if a refugee or asylee household) may be granted if the following conditions are met:

- the family demonstrates that reasonable efforts to find other affordable housing have been unsuccessful; and
- either the vacancy rate for affordable housing of the appropriate size is below five percent, or the jurisdiction lacks sufficient affordable housing.

NYCHA recognizes any of the following original documents as acceptable proof of eligible immigration status

- Form I-94 (arrival/departure record), with an annotation (1) "Admitted as Refugee Pursuant to Section 207"; or (2) "Section 208" or "Asylum"; or (3) Section 243(h) or "Deportation Stayed by Attorney General"; or (4) "Paroled Pursuant to Section 212(d)(5);

- INS Form I-551 (Permanent Resident Card) (**Note:** An I-551 stamp on a passport should also suffice)

- Form I-94 not annotated, but accompanied by (1) a final court decision granting asylum; or (2) a letter from an INS asylum officer granting withholding of deportation, or from an INS district director granting asylum; or (3) a court decision granting withholding of deportation;

- Form I-688B (employment authorization card) annotated "Provision of Law 274a.12(11)" or "Provision of Law 274a.12"

- I-688 temporary resident card annoted "Section 245A" or "Section 210";

- A receipt issued by the INS indicating that an application for issuance of a replacement document in one of these categories has been made and the applicant's entitlement to the document has been verified.

Again, practitioners are strongly advised to consult an experienced attorney concerning immigrant eligibility and documentation requirements.

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Homeless services and shelters. New York City provides homeless services to all homeless persons regardless of immigration status. Although homeless shelters may not turn clients away based on immigration status, the options for moving on to permanent housing are limited if there are no

immigrants in a Qualified Alien status living in the household (see, Housing section, above). Most immigration-ineligible families try to save up money while in the shelter system to be able to afford a private apartment. (Some families are put into "forced savings plans" by shelters for this purpose.)

Domestic violence services and shelters. City-run and City-funded shelters for domestic violence survivors may not turn clients away based on immigration status. Accordingly, undocumented survivors of domestic violence are eligible for domestic violence shelters. Those domestic violence survivors who are married to US Citizens of LPRs usually become VAWA self-petitioners. The ones who do not will face the same limitations on finding (and funding) permanent housing as other shelter residents (homeless persons). Undocumented persons may experience difficulties accessing City-run shelters through HRA (the shelters are sometimes reluctant to accept clients for whom will be difficult to find permanent housing), but many privately operated domestic violence shelters do not discriminate based on immigration status, and will accept undocumented survivors of domestic violence. (Call the hotline listed above.)

Social Security Administration ("Title 2") benefits. Social Security disability benefits (SSD), survivors' benefits, death benefits, and certain hospital insurance benefits (Medicare) are paid out to qualified workers and their dependents under Title II of the Social Security Act, which provides federal employment insurance benefits to qualified elderly, blind or disabled workers and their dependents. The insured must have (had) a sufficient number of paid FICA quarters (quarters in which FICA insurance was paid or deducted from paycheck) to qualify.

Persons eligible for Social Security payments: Widow, widower, or dependent spouse aged 60 or older (or aged 50 if disabled), with no minor children in the household; a widow, widower, or dependent spouse of any age if children under 16 are in the household; unmarried children 18 or under (19 if enrolled full time in secondary education); children of any age who became disabled before the age of 22 and remain disabled today; dependent parents aged 62 or older; surviving divorced spouses if the marriage lasted 10 years or more; surviving divorced spouses of a marriage of any duration if the spouse is caring for minor children of the deceased who are less than 16 years old.

Eligible immigrant beneficiaries are those otherwise eligible persons who are lawfully present (see 8 CFR §103.12 for definition of lawfully present, or review the definition of "lawfully present" for the purposes of SSI, below) at the time they seek the benefit. If the beneficiary is not the insured but is a dependent of the insured, that beneficiary also needs to be lawfully present. In some cases, persons who are lawfully present may be credited with quarters earned prior to lawful status (such as in cases of the 1986 amnesty program or other special circumstances).

Supplemental Security Income. Supplemental Security Income (SSI) is a federal cash assistance program authorized by Title XVI of the Social Security Act, which guarantees a minimum level of income to needy persons who are elderly, blind or disabled. Non-citizens eligible for SSI include:

1. Any "lawfully residing" alien who was receiving SSI on or before August 22, 1996 (8 USC 1612(a)(2)(E)).

   A. Who <u>resides</u> in the US?

      * Must live in the U.S., Puerto Rico, Guam, or U.S. Virgin

Islands;

* Must have intent to make the US his or her permanent home.

B. Which immigrant residents are here lawfully ? According to 61 61 F.R. 47039-01 (Sept. 6, 1996), and Social Security POMS SI 00502.142:

* Immigrants in a Qualified Alien statuss

* Aliens paroled under INA § 212(d)(5) (humanitarian parole) for less than 1 year - - except *not* aliens paroled for "deferred inspection," or paroled for exclusion proceedings, or paroled in order to be prosecuted under 8 CFR 212.5(a)(3));

* Aliens inspected and admitted to the U.S. and who have not violated the terms of their status;

* Most legal non-immigrant aliens, including visitors, students, fiancées of citizens, and citizens of States in the Compact of Free Association;

* Aliens with a pending application for asylum or withholding, *where employment authorization has been granted,* and such applicants under age 14 who have had an application pending for at least 180 days; and

* Aliens in the following categories permitted to remain in the U.S. for humanitarian or other public policy reasons:

    - Persons with Temporary Resident Status under INA § 210 or 245A;
    - Persons with Temporary Protected Status under INA § 244A;
    - Persons with Family Unity beneficiary status under section 301 of P.L. 101-649, as amended;
    - Persons with Deferred Enforced Departure status under a decision made by the President;
    - Persons with Deferred Action status under INS Operations Instructions at OI 242.1(a)(22); and

- Spouses and children of U.S. citizens whose visa petitions have been approved and who have pending applications for adjustment of status.

C. Which currently lawfully residing aliens were receiving SSI on or before August 22, 1996? According to POMS SI 00502.150, the following persons are considered to have been in receipt of SSI as of August 22, 1996:

* Persons who were in "pay status" as of August 22, 1996;

* Persons who were in payment status N01 with §1619(b) status

* Persons who were a recognized "nonpay" status (such as N01, N03, or N04), a suspense status (such as S06 or S08), or payment status E01

* Persons who filed for SSI, or obtained a protective filing date, before August 22, 1996, and whose claims were ultimately allowed, either initially or on appeal.

2. Any Immigrants in a Qualified Alien status who was lawfully residing in the U.S. on August 22, 1996, and is now blind or disabled (8 USC 1612(a)(2)(F)).

   Who is a immigrants in a Qualified Alien status? Legal permanent residents ("green card holders"), refugees, asylees, persons granted withholding of deportation or removal, parolees for a year or more, conditional entrants, Cuban/Haitian entrants, Amerasians, VAWA self-petitioners, members of the military and dependants. (See discussion, above.)

3. Any LPR who entered the US *before* August 22, 1996, and has 40 quarters of work history.

   Who has forty quarters? A "quarter" refers to a three month period in which a wage-earners paid Social Security taxes (FICA payments). Four quarters = one year. Forty quarters = ten years. Persons obtain credit for quarters during which they paid sufficient FICA tax, and in some cases for quarters during which sufficient FICA taxes were paid by parents or by a spouse.

   Note that credit cannot be obtained for any quarter during which an immigrant also collected federal public benefits.

4. Any LPR who entered the US *after* August 22, 1996, has 40 quarters of work history, and has had "qualified alien" status for at least five years.

This category includes the same people listed above, except that because the immigrant entered the US after August 22, 1996, /he needs five years of qualified alien status to become eligible for SSI.

5. Any immigrants in a Qualified Alien status "exempt from the five-year bar."(8 USC 1612 (a)(2)(A, B, C, G).

   Who is exempt from the five year bar? These are the immigrants in a Qualified Alien statuss listed as exempt from the bar by federal statute: persons with a "seven year humanitarian exemption (refugees, asylees, deportation/removal withheld, Cuban or Hatian entrants, Amerasians), LPR's with 40 quarters of earnings (plus five years of physical presence in the US if entered after 8/22/96), and veterans, soldiers on active duty, and their dependants.

   Note: after the seven years of exemption are up, unless the client meets other immigrant eligibility criteria, the SSI will terminate.

Unemployment Insurance. Unemployment insurance is temporary income (up to 26 weeks) for eligible workers who become unemployed through no fault of their own and who are "ready, willing, able to work" and have a sufficient number of "covered weeks" of prior employment. Unemployment insurance benefits are funded by taxes paid by employers. Non-citizen applicants must have work authorization and a social security number -- and a sufficient number of covered weeks -- to be eligible for Unemployment Insurance.

Undocumented workers and PRUCOL workers who lack social security numbers and work authorization are not entitled to unemployment insurance benefits. Many of these workers will also be ineligible for public assistance, as well.

Workers' compensation. Workers' Compensation insurance provides weekly cash payments and covers the cost of medical treatment, including rehabilitation, for employees who become disabled as a result of injury (or disease) connected with their employment. It also provides payments for qualified dependents of a worker who was killed on the job (injury or illness). The New York State Attorney General's Office advises that Worker's Compensation benefits are available to anyone who worked including those paid in cash, paid off the books, paid as an independent contractor, or otherwise not reported to the government as an employee, and that immigration status is irrelevant. Advocates report that undocumented workers do not have problems accessing workers' compensation benefits.

STEP THREE: HOW DO YOU PROVE YOUR CLIENT'S IMMIGRATION STATUS TO THE CASE WORKER?

What kind of documents are helpful? The documents which various benefits-granting agencies rely

on when making eligibility determinations generally will come from the agencies themselves, a "supervisory agency," or USCIS (INS). Citations to the actual law are generally not as persuasive to the front-line worker as are memos from the agency purporting to summarize the law. One problem is that these memos (called policy directives, administrative directives, informational letters, local commissioner memoranda, etc.) are sometimes inaccurate, or confusing, or both.

Documents needed to prove eligibility generally fall into two categories: documents indicating your client's immigration status, and those showing which immigration statuses are eligible for which benefits. You may need either, or both, types of documents for your client.

Documents which indicate your client's immigration status.

If your client is a U.S. citizen: he or she may have a birth certificate, passport, naturalization papers, U.S. citizen identification card (INS Form I-197), Consulate Report of Birth Abroad, or other evidence of citizenship.

If your client is a Legal Permanent Resident: he or she may have an Alien Resident Card (I-551, formerly I-151); temporary I-551 stamp in passport or I-94; or I-327 re-entry permit.

Refugees and asylees: may have an I-94 with the annotation "admitted as refugee pursuant to section 207," or "admitted as -- pursuant to section 208" or simply "asylum"; letter from INS or Court decision granting asylum; I-688B or I-766 annotated "(a)(3)" or "(a)(5)"; or an I-571 Refugee Travel Document.

A person paroled for a year or more: may have an I-94 with annotation "paroled pursuant to Sec. 212(d)(5) of the INA," with the date of entry and date of expiration indicating a period of time in excess of one year; I-688B or I-766 annotated as "(c)(11)" and issued for at least for a one year period; I-571 Refugee Travel Document.

If your client was granted withholding of removal / deportation: he or she may have an I-94 annotated "deportation stayed by Attorney General"; letter from INS or Court decision granting withholding of removal/deportation; I-688B annotated "(a)(10)"; I-571 Refugee Travel Document.

Your PRUCOL client: may have any of various documents demonstrating that INS is aware of the PRUCOL's presence in the United States. For more information, see Special Note on Proving PRUCOL status, below.

Non-immigrants: may have foreign passports; tourist visas; various INS documents indicating temporary status.

Agency policy directives setting out benefits eligibility

OTDA Alien Eligibility Desk Aid, LDSS-4579 (Rev. 10/07)
The OTDA Desk Aid is the document used by workers to determine your client's benefit eligibility. It lists common documentation your client may have, and states whether date of entry into the US is relevant. http://www.otda.state.ny.us/main/directives/2007/INF/07-INF-15-Attachment.pdf

HRA PRUCOL Eligibility Desk Aid, Form W-205JJ (9/7/07), attachment to PD 07-33-ELI, Determining

Qualified Alien Status for Battered/Abused Non-Citizens and PRUCOL Eligibility (9/13/07)
This City desk aid describes recognized PRUCOL statuses, cites common documentation, and notes whether date of entry is relevant. http://onlineresources.wnylc.net/nychra/docs/07-33-eli.pdf

Social Security Numbers for Noncitizens, PD 07-32-ELI (9/11/07).
This HRA policy directive sets out the rules for requiring – and obtaining – social security numbers. It includes the sample letter that the immigrant must take to the Social Security Administration in order to apply for a SSN. http://onlineresources.wnylc.net/nychra/showquestion.asp?faq=3&fldAuto=343

DOH Administrative Directive 04 OMM/ADM 7: Citizenship and Alien Status Requirements for the Medicaid Program. This comprehensive Department of Health administrative directive sets out in detail immigrant eligibility for Medicaid programs.
http://www.health.state.ny.us/health_care/medicaid/publications/docs/adm/04adm-7.pdf

Basic SSI Alien Eligibility Requirements, SI 00502.100
http://policy.ssa.gov/poms.nsf/lnx/0500502100
This Social Security POMS explains who is a Immigrants in a Qualified Alien status, and which Immigrants in a Qualified Alien statuss are eligible for SSI.

Time-Limited Eligibility for Certain Aliens, SI 00502.106
http://policy.ssa.gov/poms.nsf/lnx/0500502106
This Social Security POMS explains the 7-year time limit on SSI eligibility for Specially Qualified Aliens.

SSI Eligibility For Cuban/Haitian Entrants, SI 00502.108
http://policy.ssa.gov/poms.nsf/lnx/0500502108#A (and documents following)
This SSA POMS explains the highly complicated question *Who is a Cuban/Hatian Entrant.*

SPECIAL NOTE ON PROVING PRUCOL STATUS

PRUCOL status defined. PRUCOL aliens are persons in the United States who lack lawful immigration status, but whom ICE pr CIS nonetheless allows to remain in the US as Permanently Residing Under Color Of Law. PRUCOL aliens have not yet obtained an immigration status. A PRUCOL immigrant might be in the process of applying for status, or might be in a legal position in which she will never obtain status. Nonetheless, for any number of reasons, USCIS (INS) does not seek to deport or remove the PRUCOL immigrant. New York's Social Services Law recognizes PRUCOL status and provides that PRUCOL aliens are entitled to certain government benefits: "The following persons . . . shall, if otherwise eligible, be eligible for safety net assistance and medical assistance . . . (ii) an alien . . . who is otherwise permanently residing in the United States under color of law." NYS. S.S.L. §122(1)(c)(ii).

Establishing PRUCOL status. PRUCOL status is established through demonstrating that (1) ICE (INS) is aware of the alien's presence in the United States, and (2) ICE has either given the immigrant permission to remain ot has "acquiesced" in the immigrants continued presence.

Establishing that CIS is aware of the immigrant's presence.

The N.Y.S. D.O.H. Health Insurance Documentation Checklist (available on the web at http://www.health.state.ny.us/nysdoh/fhplus/pdf/4220b.pdf) sets forth a list of DOH-recognized PRUCOL documents, but allows for any "other INS documentation, or correspondence to or from the INS, that shows that the alien is . . . living in the U.S. with the knowledge and permission or acquiescence of the INS, and the INS does not contemplate enforcing the alien's departure from the U.S." See, NYS DOH Health Insurance Documentation Checklist, p. 3.

Additionally, N.Y.S. OTDA GIS 01 MA/026 (6/1/01), which can be found at http://www.gulpny.org/Health/GIS_01_MA_026.PDF , identifies numerous forms, stamps, court orders, and other documents which can indicate PRUCOL status, but specifically acknowledges that acceptable proof includes any ". . . documentation supplied by the alien or his or her representative that indicates the alien is present in the U.S. with the knowledge of the INS and with the permission or acquiescence of the INS." Id. at Attachment B, p. 1. Furthermore, this GIS notes especially that "[t]here are *national and locally developed letters* which are used in lieu of or in conjunction with other INS forms to identify various alien statuses. . ." Id. (emphasis added).

Establishing that USCIS (INS) has not taken steps to enforce departure. Some documents on their face will indicate USCIS permission to remain in the United States or USCIS acquiescence to presence in the United States. Some may not explicitly state so, but ". . . based on all the facts and circumstances in that particular case, it appears that INS is otherwise permitting the alien to reside in the United States indefinitely." GIS 01 MA/026 (7/16/01), attachment B, p. 1.

Common situations in which an immigrant is considered PRUCOL include those where an immigrant has an order of supervision, cancellation of removal, or deferred action status; K, S and V visa holders; U visa or asylum applicants; TPS holders and applicants; adjustment applicants; and others. See, *HRA PRUCOL Eligibility Desk Aid, Form W-205JJ (9/7/07),* attachment to PD 07-33-ELI, Determining Qualified Alien Status for Battered/Abused Non-Citizens and PRUCOL Eligibility (9/13/07).

STEP FOUR: WHAT DO YOU DO IF BENEFITS WERE WRONGLY DENIED?

Informal relief. In many cases, the problem your client is experiencing is already the subject of a court order (or "injunction") in a class action lawsuit (a lawsuit brought on behalf of many clients with the same problem). For problems where there is an injunction already in place, clients can often obtain quick corrective action through "informal relief." Informal relief systems usually involve filling out a form with basic identifying information and a summary of the problem, and faxing the form to one of the lawyers on that class action case. Below is a summary of the informal relief systems currently in use in New York City. For immigrants, the most important informal relief system in place is the MKB Informal Relief system.

> **The M.K.B. case.** The M.K.B. case challenges practices by New York City and State welfare officials that systematically and erroneously deny applications for Food Stamps, Medicaid, and public assistance by eligible

immigrants; deny requests by immigrants to be added to a public benefits case; and discontinue and/or reduce public benefits received by immigrants, because of a systemic misapplication of rules concerning immigrant eligibility for public benefits. Most affected immigrants are domestic violence survivors who have applied for public benefits based on a Violence Against Women Act (VAWA) self-petition, a pending I-130 petition, or a pending U visa application. Others include immigrants who have had their green cards for less than five years, and persons who are Permanently Residing in the United States Under Color of Law (PRUCOL). After the court granted a preliminary injunction to plaintiffs, the parties reached a proposed settlement of the case. As part of the settlement, an informal relief system was put into place which allows immigrants who had their cases mishandled due to worker confusion over immigrant benefits eligibility, to informally request that their cases be re-examined. Contact information for this informal relief system appears below.

M.K.B. v. Eggleston (Problems determining Immigrant Eligibility for benefits). Erroneous determinations, improper documentation required, failure to add immigrant to active case, etc.	Contact: New York Legal Assistance Group: 212-613-5000.

Other common problems are addressed through informal relief systems in other lawsuits. See below.

Problems applying for benefits (Reynolds v. Giuliani). Client is not allowed to submit an application for benefits at a job center, or client is told to bring application back another day, or client is told that immigration documents are needed before the application can be submitted.	New York Legal Assistance Group: 212-613-5000.
Problems with "aid continuing" (Morel v. Giuliani). Client is not receiving aid-to-continue when she should be. (Not for use in Medicaid-only cases. For Medicaid-only issues, see below.)	New York Legal Assistance Group: Elvira Pinkhasova (212-613-5000).

Problems with fair hearing decision enforcement (Piron v. Wing). Client won his fair hearing, but the benefits were not restored.	National Center for Law and Economic Justice: Marc Cohan (212-633-6967; fax 633-6371) and Northern Man. Improvement Corp., Sr. Mary Ellen Burns (212-822-8308, fax: 212- 740-9645)
Problems with emergency grants, special needs grants, and adding new household members to the budget (Brown v. Giuliani). Client with at least one child in the household was unable to timely (within 48 hours) receive emergency grant and/or special needs grant although eligible; client with at least one child in the household cannot get new family member added to the budget.	Legal Aid Society: Steffie Kinglake or Julie Endy (718-991-4758). Form should be faxed to (718) 842-2867.
Problems with interpreter services on food stamp cases (Ramirez v. Giuliani). If your client was denied interpreter services, or was assigned to case worker who does not speak her language despite the availability of a same-language case worker at that center.	New York Legal Assistance Group: Randall Jeffrey (212-613-5000).
EVR (eligibility verification review) problems (Roberson v. Giuliani). If your client experienced problems with the EVR unit (such as failure to obtain emergency grants based on prior missed EVR appointment, denial of Medicaid for EVR violation, etc. (Not for Medicaid-only cases. For Medicaid-only problems, see below.)	New York Legal Assistance Group: Randall Jeffrey (212-613-5000)
Medicaid problems. including erroneous denials or case closings, failure to timely process application, etc.	Legal Aid Society's Health Law Hotline, 212-577-3575. Leave a message and a call-back number.

Fair hearings. Caseworker and center errors are not uncommon given the complexity of immigration issues, but frequently these errors can be corrected at a fair hearing. A fair hearing is an administrative proceeding in which the client has the opportunity to ask an Administrative Law Judge to make a center provide benefits. Fair hearings are available for denials, reductions, or terminations in food stamps, Medicaid (and Medicaid programs), and public assistance. Hearings or appeals are also available to challenge denials, reductions, and terminations of unemployment insurance, workers compensation, social security benefits, SSI benefits, and housing benefits. (Consult a practitioner in that area of the law for more information). Advocates may accompany clients to, and assist them in, fair hearings and appeals; immigrants are especially encouraged to seek legal assistance, as the law is very complicated

and not easy to decipher.

Either the client or the advocate may request a fair hearing. To request a fair hearing in person, go to the Fair Hearing Office at 14 Boerum Place (corner of Boerum and Livingston Streets) in Brooklyn. You can also fax your request (on a fair hearing request form) to Albany at (518) 473-6735. (Forms are available at the Fair Hearing office in Brooklyn, or at the back of the "How to Win Your Fair Hearing" guide on the Legal Aid website (see above). You can also ask for a fair hearing by phone, (212) 417-6550, but it is always best to do so in writing.

STEP FIVE: MISCELLANEOUS CONCERNS AND ISSUES

Government "reporting" policies. Under welfare reform (PRWORA § 404, as amended by §5564 of the Balanced Budget Act of 1997, Public Law 105-33), certain government agencies which administer public benefits must report to the INS any person the agency "knows is not lawfully present in the United States.'' In New York, the law appears at N.Y.S. SSL §122(3). The government agencies themselves have defined the term "knows is not lawfully present" as requiring a specific finding to that effect by USCIS, ICE, or EOIR (Executive Office for Immigration Review), such as by a final order of deportation. Thus, in the absence of a final order of deportation or similar final ICE (INS) judgment or judicial determination, an agency does not *know*, for reporting purposes, whether a non-citizen is here unlawfully. HHS (Health and Human Services), SSA (Social Security Administration), DoL (Department of Labor), and HUD (Department of Housing and Urban Development) have all made clear that mere failure to prove lawful immigration status is not a basis for reporting the immigrant to USCIS or ICE (INS). (65 Fed. Reg. 58301.)

"SAVE" system. SAVE is an inter-agency database known formally as "Systematic Alien Verification for Entitlements." Certain government agencies are expected to perform searches on SAVE when determining eligibility for benefits. The database links to the USCIS (INS). However, failure to verify a person's immigration status through a SAVE search does not translate into a finding that a person is here unlawfully for reporting purposes. (An agency *may* use the results of a SAVE search to deny benefits to a non-citizen, however.) 65 Fed. Reg. 58301. It is not clear which agencies have begun using the SAVE system, but HRA is one which has.

For more information on SAVE, see Policy Directive 07-31-SYS: Systemic Alien Verification for Entitlements (SAVE) Program (9/11/07), http://onlineresources.wnylc.net/nychra/docs/_07-31-sys.pdf.

"**Reporting" and confidentiality.** Before revealing immigration information disclosed in confidence, attorneys must inquire with the organization about its confidentiality policy. Note that some government or government-sponsored programs may have mandatory reporting policies, whereas others operate on a "don't ask, don't tell" basis. If an advocate is unsure about disclosing information, s/he should seek assistance from a legal services organization.

NYC "Don't Tell" policy (Executive Order 41). On Sept. 17, 2003, New York City Mayor Michael Bloomberg signed into law Executive Order 41 (EO41) which is New York's own "don't ask (unless it's necessary to provide benefits), don't tell (unless you are the NYPD investigating a crime) " law

concerning confidential information, including immigration status. City workers may only ask about immigration status if necessary to determine program or service eligibility, or if otherwise required by law to ask; and with the exception of law enforcement officers questioning persons suspected of unlawful activity (and one or two other limited exceptions), city officers, employees, agents, case workers, etc. may *not* report immigration status to USCIS/ICE (INS). New York City has the strongest immigrant reporting protection policy in the country. *However, advocates are reminded that the protections of EO41 extend only to city employees, and not to state or federal employees.*

Social Security Numbers. There is much confusion over the requirement for social security numbers. Here is the rule: a social security number is NOT required for state benefits. The applicant for benefits must either furnish a social security number if she has one, or apply for one if she does not have one. The applicant must apply for one even if she knows she is ineligible for a SSN. The case worker will provide the immigrant applicant with a form letter she must take to SSA explaining why she is applying for a SSN. In the event she is ineligible for a SSN due solely to immigration status, SSA often provides the immigrant applicant with a form letter stating her ineligibility. Thereafter, the case worker may not send the immigrant applicant back to SSA again to re-apply for a SSN; the denial form from SSA ends the matter, and the application for benefits will be processed. If no form letter is provided by SSA, the applicant may attest to the efforts made to apply for a SSN. See PD 07-32-ELI, Social Security Numbers for Noncitizens (9/11/07), http://onlineresources.wnylc.net/nychra/showquestion.asp?faq=3&fldAuto=343, for more about social security numbers.

Multilingual services. A number of agencies and offices provide multilingual services to immigrants (and citizens); in many cases, these services are provided because they are required by law. Some offices have special phone numbers staffed by multilingual operators, but may not offer that information except upon request. Advocates should inquire with the individual agencies and offices whether they provide multilingual services and if so, how to access them.

Sponsor deeming. In 1997, the government began requiring sponsors of immigrants to file a Form 213A "affidavit of support" with the INS. In this affidavit of support, the sponsor acknowledges an enforceable legal obligation to financially support the beneficiary (immigrant). In determining an immigrant's eligibility for cash assistance and Medicaid, the government deems the income of the sponsor - as identified in the affidavit of support - to the immigrant. N.Y.S. SSL. §122(4). An applicant for public assistance has the opportunity to rebut the presumption that s/he is receiving the income set forth in the affidavit of support, and if successful, the government will not credit the immigrant with the sponsor's income. However, the government is authorized to sue the sponsor to recover the value of the benefits paid to the recipient of cash assistance and Medicaid. N.Y.S. SSL §122(5). Sponsor deeming does *not* apply to a domestic violence survivor whose batterer is the sponsor. New York State does not enforce sponsor deeming.

Public charge. "Public charge" is the term used to describe persons who are wholly dependant upon certain government benefits – defined by USCIS only as cash assistance and long-term institutional care - for support. Being a "public charge" may negatively influence the adjustment of status process. (However, once a person has adjusted and become an LPR, public charge is no longer relevant. It is not a concern, for example, for lawful permanent residents who are applying for naturalization.)

Receipt of long-term institutionalized care, SSI, Family Assistance and Safety Net Assistance are

evidence of public charge, but are not determinative. In-kind, non-cash benefits and services generally should not lead to a finding of public charge. These include: Medicaid, free clinics, soup kitchens, CHIP, food stamps, WIC, school breakfast and lunch programs, public housing, foster care, Head Start, emergency disaster relief, and other in-kind, non-cash assistance. For a complete list of benefits and services which do not lead to a finding of public charge, see 64 F.R. 28689.

USCIS should consider a person's age, health, income and family size, and employability (education and skills) in calculating likelihood of becoming a public charge. A sponsor's Form 213A (affidavit of support) is also considered: it must show ability to support an immigrant at 125% of the poverty level. If the sponsor's affidavit is insufficient, the application for legal permanent residence may be denied due to likelihood of the immigrant becoming a public charge.

Legal permanent residents who leave the country for more than six months may be questioned about receipt of benefits when they re-enter the country, for the purpose of determining whether the person is a public charge.

ITINs (Individual Taxpayer Identification Numbers). The Individual Taxpayer Identification Number (ITIN) is a nine-digit tax ID number that always begins with 9 and has a 7 or 8 in the fourth digit (for example, 9XX-7X-XXX). ITINs are issued by the IRS to persons who are ineligible for Social Security Numbers, The ITIN allows the individual to create a record that s/he paid taxes on earned income. ITINs are issued regardless of immigration status (because both resident and nonresident aliens may have U.S. tax obligations).

ITINs are strictly for tax purposes and do not serve as identification for most government purposes outside of the tax context. ITIN applicants are not required to apply in person, and IRS does check the validity of identity documents. ITINs do *not* authorize a non-work authorized alien to accept employment.

How to check the status of an application or petition with USCIS (INS): USCIS has an automated telephone system which allows clients to check the status of an application or petition: 1-800-375-5283. Clients need their 13-digit receipt number in order to use this system. Applications and petitions can also be checked online on the USCIS website. Clients can also write to the service center which is processing the application (addresses online at USCIS website).

IMMIGRATION/BENEFITS GLOSSARY

Adjustment of status. Adjustment of status is the process of becoming a lawful permanent resident (LPR, or "green card holder") of the United States for immigrants who are residing in the US when they apply. (Those who are living abroad when they apply do so through consular processing.)

Alien. A person who is neither a citizen nor a national of the United States is an alien. INA §101(a)(3); 8 U.S.C. 1101(a)(3).

Amerasian. Amerasians are persons born in Cambodia, Korea, Laos, Kampuchea, Thailand, or Vietnam after December 31, 1950, and before October 22, 1982, and who were fathered by a U.S.

citizen. Amerasians may become legal permanent residents of the United States. INA §204(f); 8 U.S.C. 1154(f). Spouses, children, and parents or guardians may accompany Amerasians into the United States.

Amnesty. In 1986, the government authorized two amnesty programs for non-citizens who entered the U.S. prior to 1982 and remained here without authorization. INA §245A; 8 U.S.C. §1255a. Some non-citizens who should have been included in the amnesty programs, but were not, filed lawsuits, and these amnesty applicants are sometimes referred to as CSS, LULAC or Zambrano plaintiffs (after the lawsuits filed on their behalf).

Asylee. An asylee is a non-citizen whom the government allows to remain in the U.S. because s/he is unable or unwilling to return to the country of nationality due to a "well-founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion. INA §208, 8 U.S.C. §1158; Sec. 604 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009.

> Note: distinguish refugees, who obtain authorization to enter the U.S., from asylees, who are already in the U.S. and seek authorization to remain.

Citizen (United States Citizen or USC). A person is a United States Citizen if s/he: was born in the United States (INA §301), Puerto Rico (INA §304), the U.S. Virgin Islands (INA §306), or Guam (INA §307); was born outside of the United States to U.S. Citizen parent(s) (INA §301(c,d,g,h)); naturalized (obtained United States Citizenship through application process) (8 CFR §316.2); or obtained derivative citizenship as a minor through naturalization of parent(s) (8 CFR §322.2). See also, generally, INA §101(a)(38); 45 C.F.R. §1626.2(a). Note: because citizenship laws can be complicated, some people may be U.S. Citizens without realizing it, while others may be unaware that they are actually non-citizens.

Conditional Entrant. This was a status granted prior to 1980 for certain refugees, pursuant to former INA § 203(a)(7) (now repealed). Even though this statute has been repealed, persons granted conditional entrant status under this statute retain the status, and other laws continue to refer to the statute and persons admitted under it (see, i.e., 8 U.S.C. §1641(b)(6).)

Caution: Do not confuse "conditional entrant" with "conditional LPR" (see below).

Conditional Lawful Permanent Resident (or Conditional LPR). A newly-married non-citizen may obtain a two-year conditional residency through marriage to a US Citizen. The requirement for initial two-year conditional status is intended to deter marriage fraud. Approximately 90 days before the end of the two year period, the couple must jointly apply to remove the conditional status. INA §216; 8 U.S.C. §1186a. (There are special rules for domestic violence survivors.) Note that a conditional LPR is an LPR, and is entitled to all the rights and privileges of an LPR. 8 C.F.R. §216.1. However, if the conditional LPR fails to timely apply for removal of the condition, permanent resident status is terminated at the end of the two-year period. INA §216(c)(2).

Caution: do not confuse "conditional LPR" with "conditional entrant" (see above).

Cuban-Haitian Entrant. The U.S. government has allowed certain persons fleeing Cuba and Haiti to enter the U.S. as "Cuban-Haitian Entrants." Pub. L. 96-422 §501(e)(1), §501(e)(2)(A) (April 1, 1983).

Essentially, any Cuban or Haitian Entrant who is in parole status, even one who is in removal proceedings, may benefit from this status so long as there is not a final order of deportation against her.

Family sponsorship. A citizen or LPR may petition to bring a non-citizen spouse or child into the U.S. Citizens may also petition for their parents, siblings or married children. The status of the sponsor, and the relationship of the sponsor to the immigrant, determine whether a relative may immigrate immediately, or must wait for a visa. (Relatives who do not qualify for immediate visas are grouped into "preference categories," some of which are currently backlogged by many years.) For rules on family sponsorship, see INA §203(a), 204(a); 8 U.S.C. §1153(a), 1154(a).

Forty quarters. "Forty quarters" describes an uninterrupted ten-year period during which a person working in the United States paid FICA (Federal Insurance Contributions Act) tax. Federal law requires FICA payments, also known as Social Security Administration tax, on all earned income. FICA payments are credited four times a year (quarterly); thus, "forty quarters" refers, generally, to ten years of earned income on which FICA tax was paid. 42 USC §401, et seq. For immigrant eligibility purposes, credit for FICA-paid quarters may be shared with a spouse or child (or adult son/daughter who can be credited with quarters worked by a parent while the son/daughter was still under 18 years of age), but any FICA-paid quarter after 12/31/96 in which the worker also received a federal means-tested public benefit does not count. PRWORA § 435, 8 U.S.C. §1645; N.Y.S. SSL §122 (1)(a)(iv).

Green card. This term is commonly used to describe an I-551, previously known as an "alien registration card," now known officially as a "permanent resident card," which confirms lawful permanent resident status. The name arose because the I-551 resident alien card used to be green in color; now it is salmon in color, but the terms "green card" and "green card holder" are still used. Note that green cards originally were issued with no expiration date; now they expire after ten years, although lawful permanent residency does not expire with the card. (The card needs to be renewed, but the LPR status does not lapse, and so an expired green card is acceptable evidence of lawful status for benefits purposes.)

Haitian Refugee Immigration Fairness Act (HRIFA). This 1998 law allowed certain Haitian nationals who were residing in the U.S. to adjust status and become legal permanent residents. 8 C.F.R. 245.15. The deadline to apply for lawful permanent residency under HRIFA was 3/31/00.

Immigrant / non-immigrant. An immigrant is a non-citizen who is admitted to the United States for lawful permanent residence. A non-immigrant seeks only temporary entry to the United States for a specific purpose, such as visiting (for business or pleasure), "transit through the United States," studying, or other authorized activities. INA §101(a)(15); 8 USC §1101(a)(15); 8 C.F.R. §214. Note: the term immigrant is broadly used (frequently incorrectly) to refer to any non-citizen in the United States, regardless of lawfulness or residency status.

Immigration and Naturalization Service (INS). The U.S. Immigration and Naturalization Service (INS) was the agency within the Department of Justice responsible for enforcing the immigration laws and overseeing naturalization applications. This agency no longer exists.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). Pub. L. 104-208 (1996). This 1996 federal law increased INS resources for border control, expanded penalties for immigration law violations, authorized States to deny driver's licenses to certain non-citizens,

eliminated financial aid for many non-citizens in college, decreased grounds for adjustment of status, made it more difficult to prove political asylum claims, added new grounds for deportation, and increased income requirements for immigrant sponsors.

Labor certification. A non-citizen may enter the United States as a lawful permanent resident if s/he is the beneficiary of a "labor certification." In the case of a labor certification, the government authorizes a non-citizen's entry into the U.S. as a legal permanent resident after an employer has demonstrated to the U.S. Department of Labor that there are no qualified US workers available to do the job. USCIS keeps a list of jobs for which citizens are in short supply; the current list includes (but is not limited to) registered nurses, physical therapists, and certain skilled chefs. INA §212(a)(5)(A); 8 U.S.C. 1182(a)(5)(A).

Lawful /unlawful presence. PRWORA Section 404 (and as amended) (8 U.S.C. §1614) requires certain Federal and State entities, at least four times a year, to report to INS the identity of persons the agency knows are not "lawfully present" in the United States. (The New York State version of the law is found at N.Y.S. SSL §122(3).) The Department of Health and Human Services (HHS, which administers cash assistance programs), the Department of Labor (DoL, which administers unemployment benefits), the Social Security Administration (SSA, which administers Social Security benefits), the Department of Justice (DOJ), and the Department of Housing and Urban Development (HUD, which oversees public housing) have determined that a person is known to be unlawfully present only when such is reflected in a "finding of fact or conclusion of law" based on a determination by ICE, CIS or a court, such as in a Final Order of Deportation. 65 F.R. 58301-58303. Failure to verify lawful presence alone is not sufficient "knowledge of unlawful presence" to trigger mandatory reporting to ICE or CIS under PRWORA. (However, it may be sufficient for the agency to deny benefits.) 65 F.R. 58301-58303. Note: this definition is limited by its terms to use by these four agencies in administering benefits. Moreover, the absence of a "finding of fact or conclusion of law" such as a Final Order of Deportation is not evidence of lawful presence.

"Lawfully present" is also defined for the purposes of obtaining Social Security Title II benefits. Eligible immigrant beneficiaries are those otherwise eligible persons who are lawfully present (see 8 CFR §103.12 for definition of lawfully present) at the time they seek the benefit.

Lawful Permanent Resident ("LPR"). A person who is a lawful permanent resident has "been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." INA §101(a)(20); 8 USC § 1101(a)(20). This person is a green card holder, meaning s/he is legally and permanently (not temporarily) residing in the United States.

A non-citizen may obtain Lawful Permanent Residency through family sponsorship, labor certification, investment, adjustment as an asylee or refugee, the diversity lottery, international adoption, the Violence Against Women Act (VAWA), or through various laws such as the Nicaraguan Adjustment and Central American Relief Act (NACARA), the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), and others.

A person can lose lawful permanent resident status by, for instance, leaving the country for extended periods of time ("abandoning" the status), or by committing certain crimes for which ICE seeks removal (deportation).

National. A national of the United States is a person who is either a citizen, or a person who, though not a citizen, nonetheless owes permanent allegiance to the United States. Currently, the only nationals who are not also citizens of the United States are persons from American Samoa and Swains Island. See INA §101(a)(22); INA § 101(a)(29); 8 USC §1101(a)(29).

Naturalization. The process of becoming a U.S. citizen. To naturalize, a person must have resided in the U.S. for at least five years as a lawful permanent resident (three years if married to a U.S. citizen), pass a history and English test, and demonstrate "good moral character." 8 CFR §316.2. (For derivative naturalization of children, see 8 C.F.R. §322.2.)

Nicaraguan Adjustment and Central American Relief Act (NACARA). Pub. L. 105-100; Pub. L. 105-139. This law allowed certain Nicaraguan and Cuban refugees who had been physically but unlawfully present in the U.S. continuously since December 1, 1995, to apply to adjust status by March 31, 2000.

Non-immigrant visa holders. Persons who have visas for a temporary period of time are called "non-immigrant visa holders." Non-immigrants by definition are persons who come to this country for a short period of time, for a specific purpose, and who state that they will leave the country prior to the expiration of the visa. Visas are grouped into "classifications," each of which has various restrictions consistent with the visa-holder's declared intentions at the U.S. Embassy abroad prior to obtaining the visa. The most common non-immigrant visa is the visitor's (B1/B2) visa for those declared to be visitors for business or tourism. Non-immigrant visa holders are generally restricted from employment, unless they were admitted as temporary workers. They are not Immigrants in a Qualified Alien statuss under PRWORA. Non-immigrant visa holders are generally not entitled to any government benefits. They become undocumented if they stay in the U.S. past their authorized period of entry.

Parole. Parole is temporary admission into the United States. A person who receives parole is a "parolee." Parole is granted (usually for a short time) for "urgent humanitarian" reasons, or when admission is deemed to be for "significant public benefit." INA §212(d)(5); 8 U.S.C. §1182(d)(5). Parole is a temporary status only, and for most people, parole is granted for less than one year. Examples of parole include temporary admission for the purpose of attending a funeral; admission for children and pregnant women for whom detention would be inappropriate; admission for the purpose of seeking specific medical treatment; and admission for the purpose of participating in certain legal proceedings. 8 C.F.R. §212.5(b). Parole can be conditioned upon bond, community ties, or periodic reporting of whereabouts to ICE or CIS. 8 C.F.R. §212.5©).

Person granted withholding of removal / withholding of deportation. Certain non-citizens who have been ordered removed (or who were ordered deported under a previous law) may nonetheless remain in the U.S. if the person's "life or freedom would be threatened" in the country of nationality because of race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3), 8 U.S.C. §1231(b)(3); INA §243(h) (repealed as of 4/1/97). Persons granted withholding of removal/deportation are not eligible to adjust and may not become Lawful Permanent Residents. The criteria for withholding of deportation, when that provision was in effect, were found at INA §243(h) (repealed 4/1/97); the criteria for withholding of removal are found at INA §241(b)(3).

PRUCOL (Permanently Residing Under Color Of Law). "PRUCOL" is not an immigration status; it

is a term used to describe non-citizens who are known by ICE or CIS to be residing in the United States, but whom ICE or CIS has not sought to deport or remove. In New York State, PRUCOLs are entitled to certain government benefits, including Safety Net Assistance and Medicaid. N.Y.S. S.S.L. §122(1)(c)(ii); Aliessa v. Novello. For more on PRUCOL status, see separate heading in this Guide.

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Commonly known as "welfare reform," this legislation severely curtailed the eligibility of immigrants for many public benefits, including cash assistance, food stamps, Medicaid, and SSI. The legislation went into effect on 8/22/96. Pub. L. 104-193 (1996). Note: As a result of PRWORA, New York State was required to enact its own welfare reform legislation, which it did in 1997, conforming New York's laws to much, though not all, of PRWORA. See, New York State Welfare Reform Act of 1997.

Public charge. Public charge refers to persons who rely on certain government benefits - usually cash assistance and long-term institutional care - for support. If USCIS determines a person to be a public charge, an application for lawful permanent residence can be denied. (Public charge is irrelevant for purposes of naturalization.)

USCIS may not consider someone to be a public charge based on the receipt of Medicaid, participation in free health clinics, visiting soup kitchens, receiving CHIP, receiving food stamps, receiving WIC, participation in school breakfast and lunch programs, residing in public housing, reliance on foster care, enrollment in Head Start, receipt of emergency disaster relief, and acceptance of other in-kind, non-cash assistance. (For a complete list of benefits and services which are not evidence of public charge, see 64 F.R. 28689.)

Qualified Alien. Federal law uses the term "Qualified Alien" to describe those non-citizens who are eligible for certain government benefits. "Qualified Alien" is defined at PRWORA §431; 8 U.S.C.§1641, as amended. See the first chapter of this guide for more detail.

Registry. Non-citizens who can demonstrate continuous residence in the United States since before 1972 may be eligible to adjust to lawful permanent residence through registry. Prior to 1972, the cut-off date was 1948. INA §249; 8 U.S.C. §1259. Someone who meets this definition is considered PRUCOL even if she has not filed for adjustment of status. Proof of continuous residency must then be supplied to the benefits agency.

Refugee. A refugee is a person living outside his or her country of nationality, who is granted admission to the United States because s/he is unable or unwilling to return to the country of nationality due to a "well-founded fear of persecution" based on race, religion, nationality, membership in a particular social group, or political opinion. INA §207; 8 U.S.C. §1157.

Sponsor deeming. All family sponsors must file a legally-enforceable affidavit of support as part of an application to bring a qualifying non-citizen relative into the United States. The affidavit of support obligates the sponsoring (U.S.) relative to support the beneficiary. If a beneficiary later applies for public benefits, the government automatically deems the sponsor's income to the beneficiary in determining the beneficiary's level of need. If a beneficiary proves that in fact, the sponsor is not supporting the beneficiary, the agency must not deem the sponsor's income to the beneficiary. The agency, however, is authorized to sue a sponsor in court to recover the value of the benefits paid out to a beneficiary. PRWORA § 421, 8 U.S.C. 1631; N.Y.S. SSL §122(4, 5). At this time, New York is not

pursuing sponsor liability.

Sponsor deeming applies to applications for federal means-tested public benefits, including Medicaid, TANF, SSI, and Food Stamps.

Undocumented Immigrant. Also referred to as "illegal immigrant" or "illegal alien." These terms refer to persons who lack the proper authorization to be in the United States, such as persons who entered without inspection, or who violated the terms of their visas (perhaps by working without a work permit, or overstaying a visa).

VAWA Self-Petitioner (under the Violence Against Women Act). In 1994, Congress passed the Violence Against Women Act (VAWA I), and two years later, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). In 2000, Congress also passed the Battered Immigrant Women Protection Act of 2000 (usually referred to as "VAWA II"). This collection of laws promotes independence from an abusive relationship by allowing certain abused spouses and children to obtain a benefits-eligible immigration status. Specifically, the laws enable battered spouses and children to apply for adjustment of status without the knowledge or assistance of the abuser; the abused spouse or child is a "self-petitioner" under VAWA. BCIS reviews these petitions on an expedited basis and often grants applicants a "prima facie notice of approval," which makes that person a immigrants in a Qualified Alien status. After the prima facie notice, an applicant is issued a final notice of approval. See, 8 USC §1641; 45 C.F.R. §1626.2(a). Note: unfortunately, no relief is available under these laws if the abuser is neither a United States Citizen nor a legal permanent resident. INA §204(a)(1)(A)(iii); 8 U.S.C. §1154(a)(1)(A)(iii). However, crime victims, including victims of the crime of domestic violence, may be eligible for a U Visa, which is a special visa granted to crime victims who assist in the prosecution of a crime. A U Visa holder is PRUCOL.