

Representing Immigrants: What Do LSC Regulations Allow?

By Sara Campos, Sheila Neville, and Linton Joaquin

Sara Campos
Staff Attorney

National Immigration Law Center
1212 Broadway, Suite 1400
Oakland, CA 94612
510.663.8282.

Sheila Neville
Staff Attorney

Legal Aid Foundation of Los Angeles,
East Office
5228 E. Whittier Blvd.
Los Angeles, CA 90022
213.640-3929
sneville@lafla.org.

Linton Joaquin
Executive Director

National Immigration Law Center
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
213.639.3900
Joaquin@nilc.org

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The immigrant population in the United States has grown rapidly in recent years; it increased by an estimated 57 percent between 1990 and 2000. Immigrants now constitute about 11 percent of the U.S. population.¹ Eighty-five percent of immigrants live in “mixed” households that include at least one citizen, typically a child.² Immigrants and first-generation citizens account for some fifty-six million people, or approximately one in five U.S. residents.³

As the immigrant population grew during the 1990s, dramatic changes occurred in the geographic locations of immigrant communities. The six states where immigrants tended to concentrate in recent decades—California, Florida, Illinois, New Jersey, New York, and Texas—saw their immigrant population stabilize and the proportion of immigrants even decline. At the same time nineteen states that were not traditional immigrant destinations experienced an astounding 95 percent increase in their foreign-born populations.⁴ The immigrant population in these “new immigrant states” grew twice as fast (61 percent versus 31 percent) as in the six “major destination” states.⁵

Immigrants are more likely than the native-born population to be poor—16.8 percent versus 11.2 percent in 1999. Immigrants who arrived recently fare significantly worse, with a poverty rate of 23.5 percent.⁶

The ramifications of these trends for programs in legal services are profound. During most of legal services' history, outside of a few states, attorneys were unlikely to have significant numbers of immigrant clients. Now every part of the country is home to a growing immigrant population. Moreover, with disproportionate poverty, immigrants are more likely than others to be financially eligible for legal services. All

¹U.S. CENSUS BUREAU, PROFILE OF SELECTED SOCIAL CHARACTERISTICS: CENSUS 2000 SUPPLEMENTAL SURVEY 8 (2001). The percentage is still lower than it was at the turn of the last century; around 1890 almost 15 percent of U.S. residents were immigrants. MICHAEL E. FIX ET AL., URBAN INSTITUTE, THE INTEGRATION OF IMMIGRANT FAMILIES IN THE UNITED STATES 8 (2001).

²FIX ET AL., *supra* note 1, at 34.

³A. DIANNE SCHMIDLEY, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, SERIES P23-206, PROFILE OF THE FOREIGN BORN POPULATION IN THE UNITED STATES: 2000, at 2 (2001).

⁴JEFFREY S. PASSEL & WENDY ZIMMERMANN, URBAN INSTITUTE, ARE IMMIGRANTS LEAVING CALIFORNIA?: SETTLEMENT PATTERNS OF IMMIGRANTS IN THE LATE 1990s, at 7 (2001), available at www.urban.org/Uploaded.pdf/are_immigrants_leaving-ca.pdf. The nineteen “new growth” states are Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Iowa, Kansas, Kentucky, Maryland, Mississippi, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, South Carolina, Utah, and Virginia. *Id.* n.5.

⁵FIX ET AL., *supra* note 1.

⁶SCHMIDLEY, *supra* note 3, at 46.

attorneys in legal services should be familiar with Legal Services Corporation (LSC) regulations governing representation of immigrants, laws on immigrant access to public benefits, and where to seek guidance on the complexities of immigration law.⁷

History of LSC Restrictions on Representing Immigrants

During LSC's early years, programs in legal services were allowed to represent clients regardless of immigration status. That changed in 1980, when Congress imposed an "alien rider" in the act that appropriated funds for programs in legal services; the rider prohibited representation of individuals who were "known" to be in the United States in violation of immigration laws. As interpreted, the prohibition was limited to use of funds for legal services to represent noncitizens known to be subject to final orders of deportation or exclusion.

Congress broadened the restriction in 1983 when it directed programs to serve only lawful permanent residents, applicants for adjustment of status who have a qualifying U.S. citizen relative, refugees, and a number of other special categories. Further changes came in 1986 with the Immigration Reform and Control Act.⁸

In 1996, a watershed year, Congress enacted the Antiterrorism and Effective Death Penalty Act, the Illegal Immigration Reform and Immigrant Responsibility Act, and the Personal Responsibility and Work Opportunity Reconciliation Act. These statutes markedly affected immigrants' rights and access to public bene-

fits. In that same year Congress also extended the Appropriation Act's restrictions on representing immigrants to all funds, including private and other public funds, for legal services.⁹

The passage of the Trafficking Victims Protection Act of 2000, with its mandate that LSC-funded services be made available to victims of human trafficking regardless of immigration status, marks the first time that Congress has expanded the categories of immigrants who can be represented by LSC grantees with LSC funds.¹⁰ The Trafficking Victims Protection Reauthorization Act of 2003 further expanded this category to include trafficking victims' family members who have been granted "derivative" visas under the first act.¹¹

For some time now, LSC has been considering updating and revising its regulations concerning representation of immigrants. Attorneys should regularly check the LSC website (www.lsc.gov) for information regarding any proposed changes, although, to date, LSC has not developed a proposal to revise the regulation.

When LSC Programs May Represent Immigrants

The following rules affect representation of immigrants generally. Although the regulations prohibit representation of ineligible immigrants, in many instances LSC grantees may provide outreach and services to immigrant communities while remaining in compliance with LSC restrictions. In this article we address how LSC programs can provide legal services without regard to immigration

⁷The National Immigration Law Center offers brief advice and technical assistance to legal aid attorneys; consult www.nilc.org, call its Los Angeles office (213.639.3900), or e-mail a question to technicalassistance@nilc.org. The Legal Aid Foundation of Los Angeles gives legal aid programs technical assistance and training on representing human trafficking and other immigrant survivors; consult www.lafla.org or contact Sheila Neville at 213.640.3929 or sneville@lafla.org. The Center for Law and Social Policy interprets the Legal Services Corporation (LSC) regulations. Contact Linda Perle at 202.906.8002 or lperle@clasp.org.

⁸Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359 (1986).

⁹Congress did, however, through the Kennedy Amendment, exempt domestic violence survivors from this limitation. See discussion *infra*.

¹⁰Trafficking Victims Protection Act § 107, 22 U.S.C. § 7105 (2000).

¹¹Trafficking Victims Protection Reauthorization Act § 4, Pub. L. No. 108-193, 117 Stat. 2875, 2877 (2003); 22 U.S.C. § 7105.

status, explain in detail the immigration eligibility categories, and suggest ways to overcome barriers to serving low-income noncitizens.

Legal Services Without Regard to Immigration Status. Programs can provide services to low-income noncitizens regardless of their immigration status, in the following ways.

Abused Spouses and Children Under the Kennedy Amendment. Congress recognized the plight of abused immigrants and their children when it enacted the Violence Against Women Act, which allows abused spouses and children of U.S. citizens or lawful permanent residents to free themselves from abusive relationships without losing their eligibility to immigrate. The LSC Appropriations Act's Kennedy Amendment includes a special provision that allows programs in legal services to represent battered victims by using non-LSC funds.¹²

Victims represented through this mechanism must have been abused or subjected to extreme cruelty in the United States by a parent or spouse (or relative of the parent or spouse residing in the same household if the immigrant's parent or spouse consented to or acquiesced to the abuse) or be the parent of a child who has been abused or subjected to extreme cruelty in the United States by a spouse, parent, or other member of the parent's or spouse's family in the same household, and not have participated or acquiesced in the abuse.

The legal assistance provided must be directly related to preventing or obtaining relief from the abuse. LSC interprets this language broadly to include any legal assistance that assists victims of abuse in escaping from an abusive situation, ameliorates the current effects of the abuse,

or protects against future abuse.¹³ Thus programs may give legal assistance on matters such as civil protective or temporary restraining orders, divorce, housing, public benefits, employment, or immigration services.

The Kennedy Amendment provides for an excellent way for LSC programs to reach battered immigrants who are often fearful, isolated, and in urgent need of legal assistance in a variety of areas. For example, because of the Kennedy Amendment, the Legal Aid Foundation of Los Angeles can assist thousands of immigrant domestic violence victims a year. Its Immigration, Family, Government Benefits and Asian Pacific Islander Units collaborate in cross-referrals, internal training, and community outreach to insure that the legal needs of such clients are met.

"Mixed" Families. A program may provide representation that benefits an ineligible immigrant client if, while doing so, the program represents an eligible client who has a legal right or interest in the matter. For example, programs may represent "mixed" families consisting of both legal and undocumented immigrants as long as the legal immigrants have a legal right or interest in the outcome of the case. Or an LSC program may represent a U.S. citizen who wants to file an immigrant visa petition on behalf of a family member who would not otherwise fall under the LSC immigrant eligibility rules.

Group Representation. At present, programs in legal services may represent organizations of low-income clients without regard to the immigration status of the groups' membership.¹⁴ However, LSC is considering changes in its current interpretation of the policy on group representation.¹⁵

¹²See Pub. L. No. 104-208, 110 Stat. 3009 (1996).

¹³45 C.F.R. §1626.2(g) (2003).

¹⁴*Id.* § 1611.5(c); Suzanne B. Glasow, Office of General Counsel, Legal Services Corporation, External Opinion: 99-28: Eligibility for Farmers and Citizenship Eligibility for Group Clients (Dec. 3, 1999), available at www.lsc.gov/ex99_28.htm ("A group found to be financially eligible under Part 1611 is not disqualified from eligibility if members of or persons served by the group are not U. S. citizens or aliens eligible for legal assistance under Part 1626. Part 1626 does not include any group eligibility provision and, by its terms, applies only to individual persons.").

¹⁵LSC and field representatives participated in a negotiated rule-making to revise Part 1626, and group representation was discussed. However, no consensus was reached on group representation.

Service Other than Legal Representation. Programs may assist ineligible clients through intake, consultation, and referral. They may also make community education presentations, distribute written materials about developments in the law, and serve in ways that do not involve direct legal advice or representation. Since these services are not considered legal assistance, LSC treats them as “matters” instead of cases.¹⁶

One particularly effective way of serving individuals without regard to their immigration status is to give legal information through outreach and self-help clinics. The following are some examples:

- Neighborhood Legal Services of Los Angeles County conducts, on evenings and weekends, workers’ rights clinics that offer legal information to workers on wage claims, criminal record expungements, and unemployment insurance benefit appeals. Clinic volunteers—supervised by a Neighborhood Legal Services attorney—assist the workers in completing forms such as *pro se* demand letters, wage claims, and appeals. The clinics also orient workers on how to represent themselves at settlement conferences and state labor commissioner hearings.
- California Rural Legal Assistance has a long track record of outreach to and education for immigrant workers on wage and hour rights, sexual harassment, and occupational safety. Advocates encourage workers to file claims on their own behalf with the labor commissioner, the Equal Employment Opportunity Commission, and the Occupational Safety and Health Administration. The program also provides outreach in multiple languages on fair housing issues, encourages immigrants to file discrimination complaints when appropriate, and conducts tenant clinics. If legal representation is needed, the program refers individuals to private attorneys.

- Northwest Justice Project has a joint task force with non-LSC provider Columbia Legal Services to provide outreach to farmworkers in rural Washington and inform them about driver’s license eligibility, public benefits, housing, and employment. The task force meets regularly to plan their work and review the status of intakes and cross-referrals.
- In partnership with Los Angeles County, the Los Angeles Superior Court and Neighborhood Legal Services of Los Angeles County, the Legal Aid Foundation of Los Angeles recently established a Self-Help Legal Access Center at a local courthouse. The center offers information, legal forms, and guidance on a variety of civil matters without regard to immigration status.

LSC Immigrant Categories

LSC-funded programs may, in accordance with the regulations, offer full representation to citizens, nationals, and certain immigrants.¹⁷ These immigrant categories are set forth below.

Citizens and Nationals. The following are the ways to acquire citizenship or its equivalent:

Citizenship by Birth. Except for the children of certain diplomats, everyone born in the United States and its territories acquires U.S. citizenship at birth. Congress has collectively naturalized people born in Puerto Rico, Virgin Islands, Guam, and the trust territories of the Northern Mariana Islands.

Citizenship by Naturalization. Immigrants who have been lawful permanent residents for at least five years (three years for spouses of U.S. citizens, one year for certain persons in the military and veterans) may apply to naturalize if they meet certain requirements (e.g., 18 or older, of good moral character, literate in English, knowledgeable regarding civics, and

¹⁶LSC OFFICE OF PROGRAM OPERATION, REVISED CSR [CASE SERVICE REPORTING] HANDBOOK, § 7.1 (2001); 45 C.F.R. §§ 1620.2(b), 1635.2(b) (2003).

¹⁷See Omnibus Consolidated Rescissions and Appropriations Act of 1996 § 504(a)(11), Pub. L. No. 104-134, 110 Stat. 1321, 1321-54 (1996); 45 C.F.R. § 1626.5 (2003).

willing to take an oath of allegiance). The English literacy requirement does not apply to certain elderly immigrants with lengthy U.S. residency. Disabled immigrants may apply for a waiver of the English literacy, civics, and oath requirements.¹⁸

Citizenship by Acquisition. Children born outside the country to U.S. citizen parents may acquire citizenship automatically, depending on the law in effect at the time of birth. Generally one parent (or, in some cases, a grandparent) must have resided in the United States for a specified period before the birth. An immigrant child adopted by a U.S. citizen and admitted to the United States as a lawful permanent resident may automatically acquire U.S. citizenship under the Child Citizenship Act.¹⁹ Laws on citizenship by acquisition are complex, and many people with acquired citizenship are unaware of their status. Legal services intake systems can easily screen for potential citizenship by asking all noncitizens if they have a parent or grandparent born in the United States.²⁰ Such screening could affect not only qualification for LSC-funded assistance but also eligibility for government benefits and eligibility to immigrate other family members, as well as whether an individual is subject to deportation.

Derivative Citizenship. Children under 18 generally may not apply to naturalize. However, through “derivative naturalization,” they may automatically become citizens if they are in the custody of a parent who naturalizes. The law governing derivative naturalization has changed many times, and the specific require-

ments differ depending on the law in effect when the parent naturalizes.²¹

Noncitizen Nationals. Noncitizens born in an “outlying possession” of the United States are nationals (as are all U.S. citizens). At present, only American Samoa and Swain’s Island are “outlying possessions.”

Lawful Permanent Residents. Commonly referred to as “green card holders,” lawful permanent residents are foreign-born individuals whom the United States has admitted permanently and lawfully to reside and work in this country. One of the most common ways to acquire lawful permanent resident status is by immigrating through a U.S. citizen or lawful permanent resident family member.

Although green cards are now issued with a ten-year expiration date, the lawful status does not expire with the card.²² Lawful permanent residents may lose their status only by abandoning it or by being stripped of it as a result of a final order after removal proceedings.

Adjustment of Status. Under LSC rules, attorneys in legal services may represent clients who have applied for lawful permanent status, provided that the applicant is the spouse, parent, or child (under 21) of a citizen, and the application has not been rejected.²³ The LSC statute and regulations refer to the term “adjustment of status.” In immigration law, adjustment of status has a more technical meaning relating solely to the filing of a Form I-485 application to obtain legal status. However, LSC interprets “adjustment of status” more broadly to encompass other applications that

¹⁸See 8 U.S.C. §§ 1423–1445 (2002). See also DANIEL LEVY, U.S. CITIZENSHIP AND NATURALIZATION HANDBOOK (Mary A. Kenney ed., 2004). Mary A. Kenney is updating editor under the auspices of the National Immigration Project of the National Lawyers Guild.

¹⁹Child Citizenship Act, Pub. L. No. 106-395, 114 Stat. 1631 (2000) (codified in scattered sections of 8 and 18 U.S.C.).

²⁰See 8 U.S.C. § 1401 (2002).

²¹See *id.* § 1431.

²²Persons who are immigrating on the basis of a marriage that is less than two years old at the time of admission to the United States become “conditional” residents and are issued green cards that have a two-year expiration date. They are required to apply to remove the condition before the expiration date of the card. Immigration and Nationality Act § 216, 8 U.S.C. § 1186a. For purposes of LSC eligibility, “conditional” residents are eligible as lawful permanent residents.

²³The revised appendix deletes the requirement (erroneously included in the original appendix) that, to be eligible, noncitizen parents of U.S. citizens must show that their children are under 21. 45 C.F.R. § 1626 app. (2004).

lead to lawful permanent status. Thus, for LSC purposes, any application or petition that allows a noncitizen to obtain lawful permanent residence is an application for adjustment of status.

In 2003 LSC revised the appendix to the regulation governing immigrant eligibility for legal services.²⁴ The new appendix corrects the prior version by including as “adjustment applications” those applications for two additional statuses that lead to legal permanent resident status—family unity and asylum, described below.

Ways to obtain lawful permanent resident status include the following.

Application for Adjustment of Status. The procedure by which one who qualifies for an immigrant visa may apply to become a lawful permanent resident without leaving the country is called “adjustment of status.”

Application for an Immigrant Visa Abroad. Immigrants commonly obtain lawful permanent residence through “consular processing,” whereby a U.S. citizen or lawful permanent resident relative files a petition for a visa on behalf of the immigrant. After the petition is approved, backlogs and limitations on the number of immigrant visas that may be issued may cause substantial delay. Once a visa is available, the immigrant files an application for an immigrant visa with the U.S. consulate abroad. After an interview, if an immigrant visa is issued and the immigrant is admitted to the United States on this basis, the immigrant becomes a lawful permanent resident.

Suspension of Deportation or Cancellation of Removal. Before 1996, immigrants faced with deportation were allowed to apply for suspension of deportation if they could

show continuous physical presence in the United States for seven years, good moral character, and the likelihood that they would suffer extreme hardship if they were removed to their country of origin. In 1996 Congress replaced “suspension of deportation” with “cancellation of removal” and made the requirements more stringent. Now, to adjust status through cancellation of removal, an immigrant must show ten years of continuous physical presence and good moral character; one also must show that one’s return to one’s country of origin would cause exceptional and extremely unusual hardship to one’s spouse, child, or parent who is a lawful permanent resident or citizen. Applicants also must not have committed a crime rendering them deportable or excludable.²⁵ In 1997 Congress recognized that many of its changes in the suspension remedy imposed harsh conditions on Salvadoran and Guatemalan asylum seekers. Because of long backlogs in their asylum cases, suspension of deportation was often the only form of immigration relief available to them. To ameliorate these consequences, Congress passed the Nicaraguan Adjustment and Central American Relief Act, which allows Guatemalans, Salvadorans, and Eastern Europeans to apply for suspension of deportation under the pre-1996 requirements.²⁶

Salvadorans are eligible for this remedy if they (1) entered the United States by September 19, 1990; (2) registered for benefits under the settlement in *American Baptist Churches v. Thornburgh*, or applied for Temporary Protected Status by October 31, 1991, or filed an asylum application by April 1, 1990; (3) had no aggravated felony conviction; and (4) were not apprehended upon entering the United States after December 1990. Spouses and children (including unmarried adult children) are covered as are

²⁴45 C.F.R. § 1626 app. (2004). Prepared by the National Immigration Law Center for the LSC, the appendix lists typical documents that non-U.S. citizens may use to show their LSC-eligible immigration status. The appendix had not been updated since 1997, and the new revision lists a number of new documents. The new appendix took effect on September 26, 2003.

²⁵U.S.C. § 1254(a) (repealed 1996); 8 U.S.C. § 1229b (2002).

²⁶Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, 111 Stat. 2160, tit. II, div. A (1997), as amended by Pub. L. No. 105-139, 111 Stat. 2644 (1997). Eastern Europeans are those who at the time of filing were nationals of certain republics—Russia, Latvia, Estonia, or Lithuania—of the former Soviet Union; Poland; Czechoslovakia; Romania; Hungary; Bulgaria; Albania; East Germany; or any state of the former Yugoslavia.

sons and daughters if they entered the United States by October 1, 1990.²⁷ Guatemalans are eligible under the same rules as Salvadorans except that they must have entered the United States by October 1, 1990, and have registered for benefits under the *American Baptist Churches* settlement before December 31, 1991. Eastern Europeans are eligible if they entered the United States on or before December 31, 1990, filed an application for asylum on or before December 31, 1991, and have not been convicted of an aggravated felony.

Registry. For people who entered the United States before January 1, 1972, and have maintained continuous residence since then, registry is available. Registry applicants must show that they have good moral character and are neither ineligible for citizenship nor inadmissible or deportable on security or terrorist grounds.²⁸

Self-Petitions. A widow or widower who was married to a U.S. citizen for two years before the citizen spouse's death may file a self-petition to adjust status.²⁹ Immigrant spouses and children who experience domestic violence at the hands of a citizen or lawful permanent resident may file a self-petition to adjust their status under the Violence Against Women Act.³⁰ Applicants may include the parent of an abused child and the child of an abused spouse; they must show that they have good moral character, that they married in good faith, that they or their children were subject to battery or extreme cruelty at the hands of the spouse, and that they lived with the spouse in the past or currently reside in

the United States. If they live abroad, they must show that the abusing spouse is a U.S. government employee or a member of the uniformed services or that the abuse occurred in the United States.

Note that, under the Kennedy Amendment, programs in legal services may represent certain alien victims of domestic violence. If the client has a citizen spouse or child who has an application or petition for lawful permanent residence pending, this representation may be provided without resort to non-LSC funds. In some cases, a program may initially represent the domestic violence victim with non-LSC funds but change to LSC funds once the petition for permanent residence is filed.

Certain "Nonimmigrant" Categories. "Non-immigrants" are permitted to enter the United States only temporarily for a specific purpose and generally are required to maintain their residence abroad. However, people with certain types of nonimmigrant status, including K, V, S, T, and U visas, may work and eventually adjust their status to that of lawful permanent resident.³¹ The K (for the spouse, child, or fiancé(e) of a U.S. citizen) and V (for the spouse or child of a lawful permanent resident whose visa petition has been pending for at least three years before December 21, 2001) visas allow people to enter the United States or remain here while they await status adjustment. An S visa is available to an informant who assists a criminal investigation. A "U" visa is available to a crime victim who agrees to cooperate with law enforcement in the investigation and prosecution of a variety of crimes, including domestic violence.³² Although

²⁷*American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991). Temporary protected status allows nationals of certain countries to work and remain in the United States temporarily. The U.S. attorney general may grant the status to nationals of a particular country when the attorney general determines that they should not be returned due to armed conflict or other unsafe conditions in that country. 8 U.S.C. § 1254a (2002).

²⁸8 U.S.C. § 1259 (1999).

²⁹*Id.* §§ 1151(b)(12)(i), 1154(a)(1)(A)(ii).

³⁰Violence Against Women Act, Pub. L. No. 103-322 § 40701, 108 Stat. 1953, 2024 (1994) (codified as amended at 8 U.S.C. § 1154).

³¹See discussion *infra* for an explanation of human trafficking and T visas.

³²Even before U visa adjustment applications are available, under the Kennedy Amendment LSC programs may represent eligible victims of domestic violence in applying for U visa interim relief (deferred action and employment authorization) and, later, U visas. For more information about U visas, see www.nationalimmigrationproject.org of the National Immigration Project of the National Lawyers Guild.

the statute was enacted in October 2000, this remedy for adjusting status is not available because the U.S. Department of Homeland Security has not yet issued regulations or forms.

Asylum. Asylum is available to those who have been persecuted or fear persecution because of their race, national origin, political opinion, religion, or membership in a particular social group.³³

Family Unity. This status is available to family members of amnesty applicants under the Immigration Reform and Control Act of 1986 when the family members did not themselves qualify for amnesty under the Act. In 1990 Congress allowed spouses and unmarried children of those who received temporary or permanent residence under the agricultural or amnesty provisions of the Act, or as Cuban or Haitian entrants, to legalize their status; the law grants such family members work authorization and an automatic stay of deportation. The Legal Immigration Family Equity Act of 2000 provided for a family unity status for spouses and children of individuals eligible for legalization.³⁴ As these individuals are pursuing permanent resident status, they would be eligible for legal services if they have a qualifying U.S. citizen relative.

Refugees and Similar Categories. Some immigrants classified as “refugees,” and some other similar categories of immigrants may be eligible for representation from LSC-funded programs.

Refugees, Asylees, and Conditional Entrants. Refugees are processed abroad; asylees are granted status in the United States. Both groups are eligible for legal services representation. Before it passed the Refugee Act of 1980, Congress allowed persons from the former Soviet Union and the Middle East to enter the United States as “conditional

entrants.” Individuals who were admitted to the United States under this provision are eligible for representation under the LSC statute and regulations

Persons Granted Withholding of Deportation or Removal. Withholding of deportation (not to be confused with suspension of deportation, discussed above) is similar to asylum and refugee status, the difference being that the former may not lead to permanent residence. In 1996 Congress replaced deportation and exclusion proceedings with “removal” proceedings and enacted a new statute, Section 241(a)(3) of the Immigration and Nationality Act, to provide for withholding relief to individuals in removal proceedings. Although Congress repealed Section 243(h), withholding of deportation continues to be available to persons who were in deportation proceedings before repeal. An individual granted withholding of removal has the same status as one granted withholding of deportation under the former law. Because people may not adjust their status to that of lawful permanent resident if granted withholding, they may retain withholding status indefinitely. Thus programs may encounter persons granted withholding of deportation under the old Section 243(h) status as well as persons granted withholding of removal under Section 241(a)(3).³⁵

Withholding or deferral of deportation or removal may also be granted under the Convention Against Torture, a treaty that the United States has ratified and that prohibits repatriation of people who would be in danger of suffering torture on return to their countries of origin.³⁶ The U.S. attorney general issued implementing regulations that grant withholding of removal to individuals who qualify for relief under the treaty.³⁷ Although the eligibility standards differ, withholding of removal under the

³³8 U.S.C. § 1158 (2002).

³⁴Legal Immigration Family Equity Act of 2000, Pub. L. No. 106-553, § 1(a)(2) [Title XI], 114 Stat. 2762, 2762A-142, codified at 8 U.S.C. §§ 1101, 1184, 1186a, 1255.

³⁵See *id.* § 1231(b)(3).

³⁶Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822.

³⁷8 C.F.R. § 208.16 (2003).

new Section 241(b)(3) of the Immigration and Nationality Act is a status identical to withholding of removal under the treaty.³⁸ Deferral of removal is granted to individuals eligible for relief under the Convention Against Torture who are not eligible for withholding.

Immigration Reform and Control Act

Categories. The Immigration Reform and Control Act of 1986 enabled two categories of noncitizens to legalize their status: (1) those who had lived unlawfully in the United States since before January 1, 1982, and (2) special agricultural workers who performed agricultural work for certain periods before the Act was passed. Temporary residents under this program are eligible for LSC representation. Most people who applied for amnesty under either program have obtained lawful permanent residence. However, the recent settlement of long-running class action litigation over the amnesty program (the so-called late amnesty) opens the door to temporary-residence applicants who qualified under the original amnesty program but whom Immigration and Naturalization Service had improperly discouraged from applying during the original filing period of 1987–88.³⁹

The Act also enabled agricultural employers to contract with foreign workers to work on a seasonal basis. Such workers, called H2A workers, are eligible for legal services but only regarding employment-related matters.⁴⁰ In some cases, LSC programs may represent such workers even if they have left their H2A employment.⁴¹

Trafficking Victims. The Victims of Trafficking and Violence Protection Act, as amended in 2003, allows programs in legal services to represent victims of severe trafficking and certain family members. The Act defines such victims as

- minors induced to engage in commercial sex acts,
- adults compelled through the use of fraud or coercion to engage in commercial sex acts, and
- persons who are forced or fraudulently recruited, harbored, or transported for labor or services that subject them to involuntary servitude, peonage, debt bondage, or slavery.⁴²

Such victims may obtain a T visa and adjust their status to lawful permanent resident after three years. Except for victims under 18, they must be willing to assist in the investigation and prosecution of trafficking cases and show that they would suffer hardship involving unusual and severe harm upon removal. Trafficking victims are eligible for government benefits, including legal services, to the same extent as refugees, regardless of their immigration status. Trafficking victims' family members who have been granted derivative T visas also qualify for government benefits and legal services.

While LSC has not yet issued regulations on the representation of trafficking victims, it has published a program letter explaining that LSC grantees can assist trafficking victims who⁴³

³⁸LSC has included withholding of removal and deferral of removal in its revised appendix to the rule governing immigrant eligibility for legal services.

³⁹*Catholic Social Services v. Ridge*, No. Civ S-86-1343-LKK (E.D. Cal. Jan. 23, 2004), available at http://uscis.gov/graphics/lawsregs/CSS_Settlement.pdf; *Newman v. U.S. Citizenship and Immigration Services*, No. 87-4757-WDK (cwx), available at http://uscis.gov/graphics/lawsregs/LULAC_Settlement.pdf.

⁴⁰8 U.S.C. § 1101(a)(15)(H)(ii)(a) (2002).

⁴¹Mattie Condray (Senior Assistant General Counsel) & Victor M. Fortuno (General Counsel and Vice President for Legal Affairs), Office of Legal Affairs, Legal Services Corporation, External Opinion 2000-015: H-2A Worker Eligibility (Aug. 8, 2000), available at www.lsc.gov/foia/olaeo/00_1015.htm.

⁴²Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101–7110, amended by Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875. See also Sheila Neville & Susana Martinez, *The Law of Human Trafficking: What Legal Aid Providers Should Know*, 37 CLEARINGHOUSE REVIEW 551 (March–April 2004).

⁴³LSC Program Letter 2002-5, available at <http://www.lsc.gov/foia/pl/02-5.htm>.

- are under 18, or
- are certified by the U.S. Department of Health and Human Services (HHS) as victims, or
- are seeking HHS certification (an LSC program may represent the victim in applying for the T visa and may provide legal assistance to a victim who is already applying for a T visa).⁴⁴

Once one of the above criteria is met, the LSC program may represent the trafficked person for all purposes and without regard to immigration status. The Legal Aid Foundation provided legal assistance to almost fifty trafficking victims last year, and four other LSC grantees assisted over thirty more victims.⁴⁵

Others. LSC programs may represent the following other immigrants:

- American Indians who were born in Canada or who are members of the Texas Band of Kickapoo.⁴⁶
- Indigent foreign nationals who seek assistance under the Hague Convention on the Civil Aspects of International Child Abduction (incorporated into U.S. law in 1988).⁴⁷ The Hague Convention is a civil legal mechanism available to a parent seeking the return of or access to a child. It is in force between the United States and over fifty other countries.

Texas Rio Grande Legal Aid's Family Law Team has implemented a special Hague Convention project representing battered spouses whose children have been abducted by the abusive parent and either brought to the United States or taken to Mexico. In addition to providing legal representation, the team reaches out to domestic violence shelters, attorneys,

and law enforcement agents to train them on how to minimize abduction risks; advise parents who have been threatened with child abduction; and devise final custody orders to prevent abduction.

Programs operating in the Northern Mariana Islands, Republic of Palau, Micronesia, and the Marshall Islands may serve clients without regard to immigration status.⁴⁸

Ineligible Immigrants: Because immigration terminology and documents can be confusing, a sampling of visas and documents that reflect an immigration status that does not fall under any of the LSC categories of immigrants described above and that does not confer eligibility for LSC program representation follow:

- Border crossing cards
- Visitor visas, student visas, and business visas
- Temporary protected status
- H-2B visas

Note, however, that having a document indicating one of the above does not, in itself, establish that the individual is ineligible. If one has also applied for adjustment of status, and has a qualifying U.S. citizen relative, one would be eligible for LSC representation on that basis. For example, one who has been granted temporary protected status may have a pending asylum application and qualifying U.S. citizen relative. Similarly, if one is a victim of domestic violence, one may be eligible for representation with non-LSC funds.

Overcoming Barriers to Representing Immigrants

Some LSC grantees unwittingly turn away LSC-eligible immigrants because of an

⁴⁴Letter from Mattie C. Condray, LSC Senior Assistant General Counsel, to D. Michael Dale, Attorney at Law (Aug. 2, 2002) (on file with Sheila Neville).

⁴⁵U.S. Department of Justice, Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003 (May 1, 2004), www.usdoj.gov/ag/speeches/2004/050104agreporttocongressvprav10.pdf.

⁴⁶See Texas Band of Kickapoo Act of 1983, 25 U.S.C. § 1300b-11 to 1300b-16.

⁴⁷Hague Convention on the Civil Aspects of International Child Abduction, 42 U.S.C. § 11607(b) (2002). See also www.state.gov.

⁴⁸45 C.F.R. § 1610.1 (2003).

incorrect interpretation of the LSC client eligibility rules. For example, LSC's rule prohibiting the representation of prisoners does not preclude an LSC grantee from representing an otherwise LSC-eligible immigrant who is in the legal custody of the Department of Homeland Security for civil immigration proceedings. Even if managing attorneys are thoroughly familiar with the LSC rules on representing immigrants, inadequately trained intake screening staff may turn away eligible individuals. As LSC programs have consolidated across the country, newly merged office staff must be trained uniformly on the LSC immigrant rule.

Despite the growing immigrant population that is dispersed throughout the United States, a significant number of LSC programs are still reluctant to undertake any form of immigration law representation. Some programs cite a lack of immigration law expertise. However, in the past decade readily available immigration law resources—websites, listserves, free and low-cost technical assistance and training, conferences, and publications—have proliferated. Using these resources, an LSC program can incorporate at least a modest level of immigration service into its current priority areas without establishing a separate immigration law unit. For example, a program with a family law unit that represents domestic violence victims or survivors can assist battered immigrant spouses in self-petitioning to the U.S. Citizenship and Immigration Services for green cards. A government benefits unit can assist elderly and disabled clients in applying for U.S. citizenship in order to establish eligibility for particular government benefits.

Language capability is also seen as a barrier to representing immigrants. While programs need to build an infrastructure of

staff that meet the language needs of their client communities, they should also explore other means of accessing and funding interpretation.⁴⁹ Grant applications should include the cost of hiring or training or both of interpreters. Programs should also tap into any nearby law schools for bilingual law clerks. The Legal Aid Foundation of Los Angeles' Asian Pacific Islander Unit operates hotlines in seven Asian languages; bilingual law students staff the hotlines throughout the year.⁵⁰ Over ten years ago California Rural Legal Assistance responded to the changing immigrant farmworker population in California by establishing an Indigenous Farmworker Project. By recruiting and training community workers who are bilingual and trilingual in English, Spanish, and Mexican indigenous languages, the legal aid program is able to provide outreach, education, and legal advocacy services to this population.⁵¹ The program also provides outreach services to Southeast Asian immigrant communities.

LSC is drafting a program letter to guide LSC-funded programs on their obligations to serve individuals and communities with limited English proficiency.⁵² Check the LSC website periodically to see if the program letter has been issued.

Some LSC programs rely on other agencies that serve immigrants, such as local ethnic or religious community-based organizations, to address a variety of immigrants' legal needs. However, the small size and limited resources of such organizations may prevent them from offering legal services to immigrants or may limit their work to certain types of cases. Partnering with such organizations, however, can be valuable to an LSC program's assessment of what legal needs are not being met in local immigrant communities and can improve cross-referrals at both agencies.

⁴⁹See Joann H. Lee, *A Case Study: Lawyering to Meet the Needs of Monolingual Asian and Pacific Islander Communities in Los Angeles*, 36 CLEARINGHOUSE REVIEW 172 (May–June 2002); see also Paul M. Uyehara, *Opening Our Doors to Language-Minority Clients*, 36 *id.* 544 (March–April 2003).

⁵⁰For more information on legal hotlines, see ASIAN PACIFIC AMERICAN LEGAL RESOURCE CENTER & NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, *DEVELOPING AND MAINTAINING A SUCCESSFUL LEGAL REFERRAL HOTLINE FOR IMMIGRANT COMMUNITIES: A "HOW TO" HANDBOOK* (2003), available at www.napalc.org/files/APALRC_Handbook.pdf.

⁵¹See Jack Daniel et al., *Indigenous Farmworker Project: Labor Law Protection for California Farmworkers*, in this issue.

⁵²We anticipated that the program letter would be issued sometime during the summer of 2004, but, to date, LSC has not made the guidance final.

Helpful Immigration Law and Policy Web Sites

Nongovernmental Organizations

American Immigration Lawyers Association: www.aila.org (law and policy)

National Network for Immigrant and Refugee Rights: www.nnirr.org (policy and civil rights)

National Immigration Forum: www.immigrationforum.org (policy)

Legal Aid Foundation of Los Angeles: www.lafla.org (human trafficking)

Northwest Justice Project: www.nwjustice.org (naturalization)

Center for Human Rights and Constitutional Law: www.chrcl.org (late amnesty)

Catholic Legal Immigration Network: www.cliniclegal.org (immigration law training)

American Bar Association: www.abanet.org (domestic violence, children's rights, pro bono representation)

National Immigration Law Center: www.nilc.org (training; Legal Services Corporation immigrant categories; immigration law and policy; employment law; government benefits)

Immigrant Legal Resource Center: www.ilrc.org (training, naturalization, domestic violence, special immigrant juvenile status, family visas, immigration consequences of crimes)

National Immigration Project of the National Lawyers' Guild: www.nationalimmigrationproject.org (domestic violence, human trafficking and U visas, HIV (human immunodeficiency virus), immigration consequences of crimes)

National Council of La Raza: www.nclr.org (law and policy)

The Urban Institute: www.urban.org (public benefits)

American Civil Liberties Union: www.aclu.org (civil rights)

Government Agencies

U.S. Department of Health and Human Services, Office of Refugee Resettlement: www.acf.dhhs.gov/programs/orr/

U.S. Department of Homeland Security: www.dhs.gov

U.S. Citizenship and Immigration Services: <http://uscis.gov>

U.S. Immigration and Customs Enforcement: www.ice.gov

U.S. Customs and Border Protection: www.cbp.gov

U.S. Department of State: www.state.gov

U.S. Department of Justice: www.usdoj.gov