

JULY-AUGUST 1998  
VOL. 32 ■ NOS. 3-4

# CLEARINGHOUSE REVIEW

JOURNAL OF POVERTY LAW

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## **Representing Noncitizens in Social Security and Supplemental Security Income Claims**

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The Balanced Budget Act of 1997 (BBA)/[\\*1\\*](#) included several significant fixes that undo some of the more serious restrictions imposed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA),/[\\*2\\*](#) which affected noncitizen eligibility for Supplemental Security Income (SSI)./[1/](#) This article summarizes the current status of noncitizen eligibility for social security and SSI benefits and discusses some of the issues arising from the recent changes.

### **I. Social Security Eligibility**

Title II social security benefits are payable only to an "alien who is lawfully present in the United States as determined by the Attorney General" or to noncitizens receiving payment pursuant to a treaty or totalization agreement./[2/](#) The provision limiting payment applies only to benefits payable based on applications filed on or after December 1, 1996./[3/](#) The limitation applies to dependents as well as to wage earners filing for Title II benefits.

The Attorney General issued regulations defining the "lawfully present" provision for Title II purposes./[4/](#) The definition is much broader than the categories of noncitizens eligible for SSI (see sec. II, infra) and includes "qualified aliens" as defined in 8 U.S.C. Sec. 1641; persons who have been inspected and admitted into the United States and have not violated the terms of their status; persons who have been paroled into the United States pursuant to section 212(d)(5) of the Immigration and Naturalization Act for less than *\*p101\** one year;/[5/](#) noncitizens admitted for humanitarian or other public policy reasons (seven categories are listed);/[6/](#) and noncitizens who have applied for asylum or withholding of deportation and who have been granted employment authorization.

Similar to the payment restrictions for Title II benefits, the BBA limits eligibility for Medicare and Railroad Retirement Act benefits to persons "lawfully present" in the United States./[7/](#)

### **II. Supplemental Security Income Eligibility**

In light of the BBA changes, noncitizens who were lawfully residing in the United States on August 22, 1996 (the date the PRA was enacted), have much broader SSI eligibility categories available to them. The PRA's general bar to SSI eligibility, however, still applies to immigrants entering the United States after August 22, 1996. The BBA makes two major changes in the PRA. It continues benefits for noncitizens who were receiving SSI on August 22, 1996, and creates a new eligibility category for blind or disabled noncitizens who were lawfully residing in the United States on August 22, 1996. Since the changes are effective as if included in the PRA,<sup>[8/](#)</sup> the Social Security Administration (SSA) is readjudicating the claims of all noncitizens who were denied SSI under the PRA and who were denied on the basis of alien status (see sec. II.D, *infra*).

### ***A. Qualified Alien Requirement***

Since the PRA's enactment, noncitizens have been divided into two general categories: (1) "qualified aliens" (QAs) and (2) "nonqualified aliens" (non-QAs). A noncitizen must fall, as a threshold requirement, into a QA category to be eligible for most federal benefits, including SSI. This requirement must be met before any further eligibility requirements are considered. The former SSI category of "persons residing under color of law" (PRUCOL) was eliminated in the PRA.

The QA categories are set by statute and include only persons (1) lawfully admitted for permanent residence (LAPR); (2) admitted to the United States as refugees; (3) granted asylum (asylees); (4) "paroled" into the United States for at least one year; (5) granted withholding of deportation or removal; (6) granted "conditional entry"; (7) who are Cuban/Haitian entrants; or (8) who meet the "battered spouse or child" definition under Department of Justice guidelines.<sup>[9/](#)</sup>

The only non-QAs who continue to be eligible for SSI are those who were "receiving" SSI as PRUCOLs on August 22, 1996. They remain eligible, however, only until September 30, 1998, unless they establish current QA status (see sec. II.H, *infra*).<sup>[10/](#)</sup>

### ***B. Qualified Aliens Eligible for Supplemental Security Income***

Being a QA by itself does not make one eligible for SSI. The PRA and the BBA limit SSI eligibility to noncitizens who are qualified aliens or who fall under the PRUCOL exception and who fall into one of the following exceptions:

**Time-Limited Exception for Refugees, Persons Granted Asylum, and Others.** Persons who entered the United States as refugees, were granted asylum, and whose deportation was withheld under Sec. 243(h) \*p102\* of the Immigration and Nationality Act have an exception but only for the first seven years after status is granted.<sup>[11/](#)</sup>

**Veterans' Exception.** Honorably discharged veterans or active-duty members of the U.S. Armed Forces who are lawfully residing in any state have an exception. It extends to their spouse (including a surviving spouse of a deceased veteran if the spouse is not remarried) or their unmarried dependent child.<sup>[12/](#)</sup>

The "40 Quarters Exception." LAPRs who entered the United States before August 22, 1996, and who (i) have worked 40 "qualifying quarters" or may be credited with such quarters and (ii) did not receive any federal means-tested public benefits during any quarter that begins after December 31, 1996, have an exception.[/13/](#) (If an LAPR entered the United States on or after August 22, 1996, the 40-qualifying-quarters exception is available only after he or she will have resided in the United States for five years.)[/14/](#)

Grandfatheres. Noncitizens who are lawfully residing in the United States and who were "receiving" SSI on August 22, 1996, have an exception.[/15/](#)

In the United States on August 22, 1996, and Blind or Disabled. Noncitizens who were in the United States on August 22, 1996, and who are determined by SSA to be blind or disabled regardless of date of onset, age, or date of application have an exception. Each of these groups is discussed in more detail below.

### ***C. Groups Exempted from the Noncitizen Provisions***

The BBA exempted several groups from the noncitizen provisions limiting SSI eligibility. These individuals remain eligible for SSI without the need to meet the restrictive criteria in either the PRA or the BBA. They include (1) certain American Indians born in Canada[/16/](#) and Indians who were born outside the United States and are members of specified tribes[/17/](#) and (2) persons who were receiving SSI "for months after July 1996 based on an application filed before January 1, 1979," and for whom SSA lacks "clear and convincing evidence" that they are not qualified aliens.[/18/](#) These recipients will receive benefits indefinitely. This provision was intended to benefit elderly, long-term SSI recipients who were born in the United States but who are unable to document their status.

### ***D. Grandfatheres***

The BBA provides that qualified aliens who "received" SSI on August 22, 1996, and who are "lawfully residing" in the United States remain eligible for SSI indefinitely, provided that they meet other SSI eligibility requirements (e.g., income and resource limits).[/19/](#) These individuals are known as "grandfatheres." This category of eligibility is the most beneficial to a noncitizen because SSA policy considers grandfathered aliens to remain eligible under the more liberal pre-August 22, \*p103\* 1996, law and rules in effect before August 22, 1996. This means that a grandfathered alien retains grandfathering rights under the pre-August 22, 1996, law and rules even if benefits terminate.[/20/](#)

Program Operations Manual System (POMS) Example. A qualified alien received SSI on August 22, 1996, on the basis of disability. In 1997 a continuing disability review was conducted and benefits terminate because disability had ceased. He does not meet any other eligibility category. At a later date he reaches age 65. Because he was receiving SSI on August 22, 1996, and is now lawfully residing in the United States, he is a grandfathered alien. Thus he is eligible under the pre-August 22, 1996, law, which allowed noncitizen eligibility for SSI based on age.[/21/](#)

As usual with social security policy, the terms "receiving SSI benefits on August 22, 1996," and "lawfully residing"--the two requirements for grandfather status--have their own SSA definition, which is not necessarily the commonsense meaning.

"Receiving SSI Benefits on August 22, 1996." SSA considers the following individuals to have been "receiving" SSI on August 22, 1996:[/22/](#) recipients in current pay status on August 22, 1996, including persons in the 1619(b) program; individuals in nonpay and suspense status on August 22, 1996; claimants with a favorable disability determination at any level made on or before August 22, 1996, whether or not nondisability development was complete; claimants with appeals pending on August 22, 1996, based on a fully or partially favorable allowance issued on or before August 22, 1996; and claimants for whom a presumptive disability determination was made on or before August 22, 1996.

An additional group considered "receiving" SSI on August 22, 1996, are noncitizens who applied for SSI before August 22, 1996, but whose cases were denied on the basis of alien status under the PRA on or after August 22, 1996.[/23/](#)

"Lawfully Residing" in the United States. A noncitizen is "lawfully residing" in the United States if he or she is a "resident" of the United States and is "lawfully present" as defined by the U.S. Attorney General per the regulations for Title II benefits (see sec. I, supra).[/24/](#) Because all "qualified aliens" are "lawfully present," the key issue is whether one is a resident of the United States.

The answer is easy if one was physically present in the United States on August 22, 1996. Even if one was outside the United States on August 22, 1996, however, one still may be considered a resident so long as one had no intent to abandon residency. Without any intent to abandon U.S. residency, temporary absences of less than six months do not interrupt the period of residency. If absent for more than six months, one is presumed to have abandoned U.S. residency unless one presents evidence of intent to resume U.S. residency.[/25/](#) Thus an LAPR who was out of the United States on August 22, 1996 but is present now and whose SSI had been suspended may be considered to be lawfully residing in the United States and "receiving" SSI on August 22, 1996, and is entitled to grandfathered status.

### ***E. The Disability Exception***

Noncitizens who were not receiving SSI on August 22, 1996, but who were \*p104\* "lawfully residing" in the United States on August 22, 1996, are eligible if they are "blind" or "disabled."[/26/](#) The key for them is that they were "lawfully residing" in the United States on August 22, 1996. Once they meet that requirement, they are eligible at any time after that date if they are determined by SSA to be blind or disabled, regardless of onset, age, or date of application, and they need not meet any other eligibility category.

"Lawfully Residing" in the United States on August 22, 1996. The same policies apply to this exception as discussed above for grandfatherees.[/27/](#) A noncitizen who did not have

QA status on August 22, 1996, but who was "lawfully residing" in the United States on that date, may be eligible in this category if a QA when the SSI application is filed.[/28/](#) Remember that "lawfully residing" encompasses a much broader group of noncitizens than QA status because it is based on the categories in the "lawful presence" requirement. See section I, *supra*.

Disability. If one was lawfully residing in the United States on August 22, 1996, the disability application may be filed at any time in the near or distant future. Eligibility in this category does not require that onset occur after entry. Onset is an issue only if sponsor-to-alien deeming applies (see sec. II.K, *infra*), in which case onset must occur after entry for one to avoid deeming.

Aged noncitizens. The "lawfully residing/disability exception" becomes the primary method of proving SSI eligibility for aged noncitizens (65 and over) who were in the United States on August 22, 1996, but were not receiving SSI on that date. SSA will not change the disability standard for noncitizens 65 or older and will rely on existing procedures to evaluate their disability.[/29/](#) The POMS instruction provides the following guidance:[/30/](#) (1) Evaluate the "medically determinable impairment" without regard to generalized effects of aging. However, once medically established, the resulting limitations are to be fully accepted.[/31/](#) (2) Medical results are to be taken at face value when confirmed by medical findings. No attempts are to be made to estimate the extent to which age contributes to the findings. (3) Persons 65 or older are to be regarded as "closely approaching retirement age" (60--64) for purposes of medical-vocational evaluation.

Representatives should expect that many of the problems with disability evaluation will affect this elderly population. Below are several areas of concern:

**Getting Past Step 4.** SSA policy states that whether past work performed in a foreign country exists in the United States is irrelevant because the focus at step 4 of the sequential evaluation[/32/](#) is on the ability to perform the mental and physical demands of past work.[/33/](#) Job availability in the United States does not come into play until the burden shifts to SSA at step 5.

**Ability to Communicate in English.** The ability to communicate in English is factored at step 5, but not at step 4, for the same reason described above.[/34/](#) However, the Medical-Vocational Guidelines[/35/](#) recognize that the inability to communicate in English may significantly limit vocational options as a step-5 factor.[/36/](#) \*p105\*

**Getting Past Step 2.** Many older persons are considered to be disabled because they have functional limitations precluding past work or any other work. To proceed to those steps, however, they first must establish a "severe impairment"--step 2 of the sequential evaluation.[/37/](#)

Representatives should be alert to disability adjudicators who apply step 2 inappropriately to deny the claim./38/

### ***F. Readjudication of Claims***

Noncitizens whose SSI claims were denied on the basis of alien status under the PRA have received "come-in" letters and, if they respond, will have their cases readjudicated under the new eligibility provisions in the BBA. The instructions for them are set forth in Emergency Teletype EM-97-207 (Dec. 18, 1997) and eventually will be incorporated into the POMS. Emergency Teletype EM-97-207 also reflects policy changes made in response to numerous lawsuits that challenged SSA's retroactive application of the PRA./39/

Readjudications fall generally into three categories, and policies regarding failure to cooperate and what constitutes misinformation are also in place:

**Individuals Who Filed for SSI Before August 22, 1996, and Were Denied on or After August 22, 1996.** For this group (about 8,500 cases nationwide), SSA policy has changed significantly. Prior instructions subjected the entire application, including pre-August 22, 1996, portions, to the 1996 welfare law changes. SSA has renounced this policy. Under the new instructions SSA will apply the law in effect before August 22, 1996, to periods preceding the PRA's effective date./40/ If the file contains an uneffectuated, favorable disability determination, no further disability development is needed even if the determination was made more than one year ago./41/

If eligible for the month of August 1996, one is considered as "receiving" SSI on August 22, 1996, and will be grandfathered under the provisions of the BBA (see sec. II.D, supra)./42/ This policy applies to all denied claims for which the application was filed before August 22, 1996, including cases on appeal, cases not appealed or otherwise lapsed, and any new initial claim for which the protective filing date is prior to August 22, 1996 (see infra).

**Individuals Who Filed for SSI on or After August 22, 1996, and Were Denied on or After August 22, 1996, Under Pre-BBA Law.** The readjudications for these individuals (23,000 nationwide) involve a determination of their eligibility under the provisions in the BBA (e.g., lawfully present on August 22, 1996, and disabled (regardless of age), time-limited eligibility extension (from five to seven years)). Eligibility may be based also on the nonamended provisions of the 1996 welfare law (e.g., the "40 quarters" and veterans' exceptions).

**Individuals Who Received Informal Denials Based on Alien Status.** After the August 22, 1996, changes, many individuals inquired about eligibility and might have received informal denials without filing an application. Under normal procedures, the date of inquiry is considered a "protective filing" date but only if an application is filed within 60 days./43/ \*p106\* Emergency Teletype EM-97-207 provides for a departure from normal

procedures, and through March 31, 1999, SSA will treat the date of the prior inquiry as a protective filing date.[/44/](#)

For "protective filing closeout notices," individuals will be notified of their right to come in and have their claims readjudicated.[/45/](#) How many of these folders will be available is questionable because protective filing documentation (if it was issued at all) is retained for only 90 days after the date of the closeout notice.[/46/](#) If the notice is not located, SSA also applies these instructions to an individual who furnishes "other acceptable evidence" to establish a protective filing date (i.e., other SSA-generated documents such as a written note of a worker's recollection and a copy of an appointment-confirmation notice).[/47/](#)

**Failure to Cooperate and Misinformation.** For persons covered by the Emergency Teletype EM-97-207 readjudication procedures, representatives should be aware of two other SSA policies:

*Follow-up Before Closeout.* Persons who fail to respond to the "come-in" letters will have their cases closed out because of failure to cooperate. However, Emergency Teletype EM-97-207 emphasizes that "[i]t is essential that all possible efforts be made to obtain the information/evidence needed to readjudicate these cases." Before denying a claim based on failure to cooperate, the SSA worker must take certain steps to request information/evidence and offer assistance.[/48/](#) These steps include contacting third parties, making phone contact, reviewing the file for names of relatives, friends, or medical treating sources, and pursuing known sources of assistance, including community organizations. Emergency Teletype EM-97-207 notes that this is "particularly important where a language barrier may interfere with the claimant's ability to cooperate."

If efforts fail, the caseworker must document the basis for the denial for failure to cooperate, including efforts to contact the claimant.[/49/](#) A claim may be denied only "after exhausting all leads."[/50/](#) A denial on this basis is an appealable decision.[/51/](#) If past the 60-day appeal period, the denial may be reopened for good cause.[/52/](#) \*p107\*

*Protective Filing Date Based on Misinformation.* After August 22, 1996, many noncitizens were turned away from SSA without receiving any informal denial and/or were given erroneous eligibility information. They may be able to establish a deemed filing date based on misinformation.[/53/](#) Emergency Teletype EM-97-207 specifically instructs workers to be alert to such situations. Where misinformation is alleged and no "primary" evidence (such as SSA-generated documents) turns up, a supervisor must interview the claimant to develop secondary evidence.[/54/](#) If no clear contradictory evidence exists, the issue must be resolved in the claimant's.[/55/](#) A determination that no misinformation occurred is appealable.[/56/](#)

Evidence from any source may be used to determine whether misinformation occurred, in contrast to the requirement that only SSA-generated evidence is to be considered in establishing an informal denial. The regulations and the POMS provide guidance on the types of evidence that are to be considered.<sup>/57/</sup> Examples of acceptable evidence of misinformation include nonprofit agency records from caseworkers who assisted the claimants and/or affidavits from caseworkers or other advocates who accompanied the claimants or contacted SSA.

### ***G. Refugees, Persons Granted Asylum and Withholding of Deportation, Cuban/Haitian Entrants***

The BBA extended eligibility for SSI from five to seven years to refugees, persons granted asylum and withholding of deportation, and Cuban/Haitian entrants.<sup>/58/</sup> Note that the time period for SSI eligibility on this basis starts from the date that status is granted and not from the date of SSI eligibility.

This eligibility category primarily applies to refugees, asylees, etc., who are granted that status on or after August 22, 1996, because(1) refugees and asylees in this category who were "receiving" SSI on August 22, 1996, are eligible indefinitely as "grandfatherees" (after the BBA was enacted, SSA identified and reinstated SSI for persons whose benefits were suspended under the prior five-year limit in the PRA) and(2) refugees and asylees in this category who were not receiving SSI on August 22, 1996, but who were "lawfully residing" in the United States on August 22, 1996, also are eligible indefinitely if and when they become blind or disabled, as discussed above in section II.E.

### ***H. Nonqualified Aliens/Persons Residing Under Color of Law***

Under the BBA's terms, PRUCOLs who were receiving SSI on August 22, 1996, and who are not QAs will continue to receive benefits only through September 30, 1998, unless they present evidence of being in a QA category by that date.<sup>/59/</sup> If they establish QA status, they will continue to receive benefits indefinitely as grandfatherees (see sec. II.D, supra). In late February 1998 SSA sent to these individuals (about 20,000) letters informing them that their SSI benefits will end on September 30, 1998, unless their alien status changes. SSA believes that some of these persons may have adjusted their immigration status and will continue to be eligible as BBA "grandfatherees" but that they have not informed SSA of the adjustment. Many individuals also may be eligible to adjust their status with the Immigration and Naturalization Service because\**p108*\* they entered the United States before 1972 and are "registry-date" aliens.<sup>/60/</sup>

SSA is engaging in a nationwide effort to reach nonqualified alien SSI recipients who are clustered in a handful of states (California, Florida, New York, and Texas). To assist state and local governments in reaching them, SSA also sent a letter in late February 1998 to all state governors and to counties with more than 50 non-QA recipients of SSI. The letter informs state and local governments that SSA will provide lists, if requested, of affected non-QAs in that jurisdiction. The governments then may work with community

organizations to reach these recipients, so long as government and organization agree to keep the names confidential, consistent with statutory privacy requirements, and the agreement is included with the letter.

### ***I. The "40 Quarters Exception"***

The "40 quarters" category of eligibility is available to LAPRs only. To be eligible, an LAPR must have 40 "qualifying quarters" of work. These may be earned by the LAPR; by his or her parents in periods when the LAPR was under 18; or by the spouse during their marriage if the marriage continues or if the spouse is deceased. Quarters are not "qualifying" if the LAPR, parent, or spouse received a federal means-tested benefit during any quarter beginning after December 31, 1996.[/61/](#)

*Eligibility Based on the "40 Qualifying Quarter" Exception.* Instead of using the term "quarter of coverage," which applies to covered earnings for Title II purposes, SSA is using the term "qualifying quarter" to describe the credit for the amount of both covered and noncovered earnings assigned to a calendar quarter for determining SSI (as opposed to Title II) eligibility.[/62/](#) For SSI purposes, earnings from work which are not creditable for Title II purposes may be used.[/63/](#) Quarters also may be credited from a "holding-out spouse."[/64/](#)

A noncitizen claimant must tell the SSA worker that he or she has worked in the United States or that his or her parents or spouse have worked in the United States. The caseworker may not automatically look into the "40 quarters" exception because the POMS state that "[n]o QC [quarter of coverage] verification is necessary if the claimant alleges that he/she never worked in the U.S. and that his parents or spouse . . . never worked in the U.S."[/65/](#)

*The Five-Year Waiting Period.* LAPRs admitted to the United States on or after August 22, 1996, face a five-year waiting period for the "40 quarters" eligibility category.[/66/](#) The five-year waiting period does not apply to LAPRs who (1) entered the United States as a refugee; were granted asylum, withholding of deportation, or Cuban/Haitian entrant status; or were admitted as an Amerasian immigrant[/67/](#) (they are eligible for seven years from the date that status was granted, even if they adjusted to LAPR status); or (2) are veterans; or are the spouse, widow(er), or unmarried dependent child of an \*p109\* active-duty member of the U.S. Armed Forces or veteran.[/68/](#)

### ***J. The Veterans' Exception***

An exception to the general SSI bar for veterans and active-duty members of the U.S. Armed Forces and certain of their family members[/69/](#) applies to a qualified alien who is(1) an honorably discharged U.S. Armed Forces veteran "lawfully residing" in any state; (2) an active-duty member of the U.S. Armed Forces; (3) the spouse of a U.S. Armed Forces veteran or active-duty member, or the unremarried surviving spouse of a deceased veteran; or(4) the unmarried dependent child of a veteran or active-duty member of the U.S. Armed Forces.

The term "veteran" includes Filipinos who fought under U.S. command during World War II<sup>70</sup> but does not include Hmong fighters. The BBA included a "congressional statement" that Hmong veterans who fought for the United States be "considered" veterans, but it did not explicitly revise the statutory definition of veteran.<sup>71</sup>

### ***K. Deeming***

Affidavits of Support are required for immigrants to establish that they will not become a "public charge." The affidavits are used primarily for immigrants who enter the United States under the family preference visa system. The PRA mandated that the U.S. Attorney General formulate a new, legally enforceable affidavit for future immigrants.<sup>72</sup> The PRA also required that the income and resources of the sponsor (the individual who signs the affidavit) be deemed to the immigrant in most benefit programs until the immigrant becomes a U.S. citizen or meets the "40 quarters" exception described above.<sup>73</sup> The legally enforceable affidavit requirement took effect on December 19, 1997.<sup>74</sup>

The current length of deeming and amounts to be deemed in the SSI program depend on the type of affidavit used. Before the PRA's enactment, the SSI program was one of a few with sponsor-to-alien deeming. Pre-PRA deeming rules still apply to immigrants who entered under the old-version affidavit.<sup>75</sup> Because the new affidavit took effect only in December 1997, the pre-PRA deeming rules apply to all noncitizens who were receiving SSI on August 22, 1996, or who were lawfully residing in the United States on August 22, 1996, and file for SSI based on disability or blindness. For them, these rules apply: (1) Only LAPRs are subject to deeming at this time.<sup>76</sup> Pre-PRA rules exclude refugees, asylees, and persons who become blind or disabled (regardless of age) after entry as an LAPR.<sup>77</sup> (2) The deeming period is three years after entry as an LAPR.<sup>78</sup>

Noncitizens who entered on or after August 22, 1996, under the old-version affidavit are subject to the pre-PRA deeming rules but will be eligible for SSI only under the limited categories described in section II.B above.

Under the new laws, if a sponsor signs the new-version affidavit, the new deeming rules apply. When deeming is required, *\*p110\** it will continue indefinitely or until the immigrant becomes a U.S. citizen or may be credited with 40 qualifying quarters.<sup>79</sup>

### **III. Conclusion**

The PRA restricted the SSI eligibility of most noncitizens and imposed less severe restrictions on social security Title II eligibility for noncitizens. After widespread media coverage and public criticism of the cuts, Congress and the President rectified some of the more severe restrictions by enacting the BBA in August 1997. Even with these improvements, many immigrants are barred from receiving SSI. Thus, to represent noncitizen clients adequately, advocates should be familiar with the current eligibility categories and how they apply to their clients. *\*p110\**

**1998 SUPPLEMENTAL SECURITY INCOME (SSI) NONCITIZEN ELIGIBILITY**

(Adapted from National Immigration Law Center, Immigrant Eligibility for Public Benefits, Jan. 1998)

<p><b>QUALIFIED ALIEN IN UNITED STATES BEFORE AUG. 22, 1996</b></p>	<p><b>QUALIFIED ALIEN: ENTRY ON OR AFTER AUG. 22, 1996</b></p>	<p><b>QUALIFIED ALIEN: VETERANS (also spouse and unmarried children)</b></p>	<p><b>QUALIFIED ALIEN: 40 QUARTERS (for those lawfully admitted for permanent residence (LAPR) only)</b></p>	<p><b>QUALIFIED ALIEN: REFUGEES (also asylees, cancellation of removal, Cuban/Haitian entrants, Amerasians)</b></p>	<p><b>NATIVE AMERICANS (American Indians born in Canada and members of certain other tribes born outside United States)</b></p>	<p><b>NONQUALIFIED ALIEN</b></p>
<p><b>Eligible if:</b>   <b>GRANDFATHERED ALIEN---</b>Was receiving SSI on Aug. 22, 1996   <b>BLIND OR DISABLED---</b>Lawfully residing in United States on Aug. 22, 1996, and blind or disabled at time of eligibility determination</p>	<p>Ineligible unless meets an exemption</p>	<p>Eligible except:   <b>DEEMING:</b>                       Persons using new affidavits of support (Form I-864) are subject to deeming until citizenship or until eligible for 40 quarters of work credit.                       Persons using old affidavits of support (Form I-134) subject to deeming for first three</p>	<p>Eligible except:   <b>FIVE-YEAR BAR:</b>                       Persons who entered on or after Aug. 22, 1996, barred for first five years after obtaining qualified-alien status (unless meet veterans' or refugee exemption)</p>	<p><b>ELIGIBLE if:</b>                       Meets veterans or "40 quarters exemption"   <b>GRANDFATHERED ALIEN:</b>                       Was receiving SSI on Aug. 22, 1996   <b>BLIND OR DISABLED:</b>                       Lawfully residing in United States on Aug. 22, 1996, and blind or disabled at time of eligibility determination</p>	<p><b>ELIGIBLE</b></p>	<p><b>INELIGIBLE except:</b>                       Eligible until Sept. 30, 1998, if receiving SSI on Aug. 22, 1996                       May continue to receive SSI if eligibility is based on an application filed before Jan. 1, 1979 (unless Social Security Administration has "clear and convincing evidence" that recipient is not a qualified alien)</p>

		years after gaining LAPR status.				
EXEMPTIONS:  Meets exemption for veterans, 40 quarters (if LAPR), or refugees	EXEMPTIONS:  Must meet exemption for veterans, 40 quarters (LAPR and after five- year bar), or refugees			SEVEN-YEAR EXEMPTION:  Exempt for first seven years after entry as refugee, being granted asylum or cancellation of removal (formerly withholding of deportation), or becoming a Cuban/Haitian entrant		

***Footnotes¶***

*/\*1\*/*/Balanced Budget Act of 1997 (BBA), Pub. L. No. 105-33, 111 Stat. 251.

*/\*2\*/* / Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA), Pub. L. No. 104-193, 110 Stat. 2105.

*/1/* Title XVI of the Social Security Act, 42 U.S.C. Secs. 1381 et seq.

*/2/* Title II of the Social Security Act, 42 U.S.C. Secs. 401 et seq., is a social insurance program, funded through employee and employer payroll taxes. Benefits are based on the earnings of a worker and may be paid to a retired or disabled worker or to the dependents or survivors of a worker. Unlike Title II, Supplemental Security Income (SSI) is a means-tested program. To be eligible a person must be 65 or older, blind, or disabled, and countable income and resources must be under specified levels.

*/3/* PRA Sec. 401(b)(2). The PRA made this provision effective with applications filed on or after September 1, 1996. However, Pub. L. No. 104-208 extended the date to December 1, 1996.

*/4/* 61 Fed. Reg. 47039 (Sept. 6, 1996) (interim final regulations with request for comments), 62 Fed. Reg. 61344 (Nov. 17, 1997) (final regulation), codified at 8 C.F.R. Sec. 103.12.

/5/ Two groups of parolees are not considered "lawfully present": (1) persons paroled for deferred inspection or pending exclusion proceedings and (2) persons paroled into the United States for prosecution. 8 C.F.R. Sec. 103.12(a)(3).

/6/ 8 C.F.R. Sec. 103.12(a)(4).

/7/ Pub. L. No. 105-33, Sec. 5561, 111 Stat. 251, 638, codified at 8 U.S.C. Sec. 1611(b)(3)(Medicare) and 1611(b)(4) (Railroad Retirement benefits).

/8/ Pub. L. No. 105-33, Sec. 5308, 111 Stat. 251, 603.

/9/ 8 U.S.C. Sec. 1641.

/10/ Pub. L. No. 105-33, Sec. 5301(c), 111 Stat. 251, 598.

/11/ 8 U.S.C. Sec. 1612(a)(2)(A).

/12/ Id. Sec. 1612(a)(2)(C).

/13/ Id. Sec. 1612(a)(2)(B).

/14/ Id. Sec. 1613(a).

/15/ Id. Sec. 1612(a)(2)(E).

/16/ Pub. L. No. 105-33, Sec. 5303, 111 Stat. 251, 600. See section 289 of the Immigration and Naturalization Act to determine applicability.

/17/ Pub. L. No. 105-33, Sec. 5303, 111 Stat. 251, 600. See section 4(e) of the Indian Self-Determination and Education Assistance Act for applicability. The two exceptions for Indians are codified at 8 U.S.C. Sec. 1612(a)(2)(G).

/18/ Pub. L. No. 105-33, Sec. 5304, 111 Stat. 251, 600, codified at 8 U.S.C. Sec. 1612(a)(2)(H). See Program Operations Manual System (POMS) SI 00502.120 (Nov. 1997). If "clear and convincing evidence" of ineligibility exists, benefits will continue until at least September 30, 1998, under the provisions of Sec. 5301(c) of the BBA. For a discussion of what is meant by "receiving" SSI benefits, see section II.D.1, *infra*. The relevant payment categories are set forth in POMS SI 00502.100B.1 (Nov. 1997).

/19/ Pub. L. No. 105-33, Sec. 5301(a), 111 Stat. 251, 597.

/20/ POMS SI 00502.100B.1 (Nov. 1997).

/21/ Id.

/22/ Id.

/23/ Social Sec. Admin., Emergency Teletype No. EM-97-207 (Dec. 18, 1997).

/24/POMS SI 00502.100A, SI 00502.142B.2.

/25/ Id. SI 00502.142B.2.a (Nov. 1997). Absence from the United States for more than six months is not considered temporary without a strong indication that the individual is maintaining U.S. residency ( e.g., maintaining a house or apartment). POMS GN 00303.720. Residency development policies are in POMS GN 00303.740C.

/26/ Pub. L. No. 105-33, Sec. 5301(b), 111 Stat. 251, 597, codified at 8 U.S.C. Sec. 1612(a)(2)(F).

/27/POMS SI 00502.142B.2 (Nov. 1997).

/28/ Id.

/29/ Id. DI 23515.025 (Nov. 1997).

/30/ Id. DI 23515.010.

/31/ The example given is an elderly claimant with medical findings establishing osteoarthritis. An allowance is proper based on limitations caused by the osteoarthritis, which prevents work, even though the degree of arthritis is consistent with the person's age.

/32/ 20 C.F.R. Sec. 416.920(e). In evaluating whether a person's impairments meet the statutory standard for disability, the Social Security Administration employs the five-step sequential evaluation process. Id. Sec. 416.920.

/33/ Social Security Ruling 82-40 (PPS 69, May 14, 1982) < [www.ssa.gov](http://www.ssa.gov)>.

/34/ 20 C.F.R. Sec. 416.920(f).

/35/ Id. 20 C.F.R. pt. 404, subpt. P, app. 2.

/36/ See, e.g., id. Secs. 201.00(i), 202.00(g).

/37/ Id. 20 C.F.R. Sec. 416.920(c).

/38/ See, e.g., *Evans v. Heckler*, 734 F.2d 1012 (4th Cir. 1984) (an impairment is "severe" unless it is completely meaningless).

/39/ E.g., *Abreu v. Callahan*, 971 F. Supp. 799 (S.D.N.Y. 1997) (Clearinghouse No. 51,773).

/40/ Social Security Admin., *supra* note 25, Secs. B.2, C.6.b.

/41/ Id. Sec. C.7.b.

/42/ Qualified aliens will be eligible for SSI indefinitely, if otherwise eligible, and will retain their "grandfathering" rights under the August 22, 1996, law, even if benefits terminate. Persons residing under color of law (nonqualified aliens) will be able to receive SSI based on that status until September 30, 1998, as set forth in section 5301(c) of the BBA. If they become "qualified aliens" before that date, benefits will continue.

/43/ 20 C.F.R. Secs. 416.340 (written inquiry), 416.345 (oral inquiry).

/44/ Social Sec. Admin., supra note 25, Sec. F.

/45/ Id. Sec. G.

/46/POMS SI 00601.015.

/47/ Social Sec. Admin., supra note 25, Sec. G.3; POMS SI 00601.030A.5.

/48/POMS SI 00601.100C, SI 00601.120. If the claimant's whereabouts are unknown, the worker must take steps described in id. SI 00601.110B.6.

/49/ Id. SI 00601.110B.5.

/50/ Id. SI 00601.110B.4.

/51/ 20 C.F.R. Sec. 416.1402; POMS SI 00601.110B.9.

/52/ Id. SI 00601.110B.10.

/53/ 20 C.F.R. Sec. 416.351.

/54/POMS GN 00204.008G.3. An example regarding a noncitizen is included in SI 00502.152C.

/55/Id. GN 00204.008G.3.

/56/ 20 C.F.R. Sec. 416.1402(m).

/57/ See 20 C.F.R. Sec. 416.351(d); POMS GN 00204.008.

/58/ Pub. L. No. 105-33, Sec. 5302, 111 Stat. 251, 598. The definition of "qualified alien" was amended in the BBA to include Cuban/Haitian entrants. BBA Sec. 5302(c)(3). Amerasian immigrants, already considered to be "qualified aliens," will be treated as "refugees" for purposes of the seven-year SSI eligibility period. BBA Sec. 5306.

/59/ Pub. L. No. 105-33, Sec. 5301(c), 111 Stat. 251, 598.

/60/ Nonqualified aliens who have resided in the United States continuously since before January 1, 1972, are eligible for registry. 8 U.S.C. Sec. 1259. Some absences, even if lengthy, do not affect the "continuous residence" requirement without any intent to abandon U.S. residence. Registry is available whether such an alien has resided in the United States lawfully or in an undocumented status. An application for registry is filed with the Immigration and Naturalization Service; if the registry is granted, the alien becomes lawfully admitted for permanent residence immediately.

/61/ 8 U.S.C. Sec. 1645. Only four benefit programs are defined as a "federal means-tested benefit": SSI, Temporary Assistance for Needy Families (formerly Aid to Families with Dependent Children), food stamps, and Medicaid. 62 Fed. Reg. 45256 (Aug. 26, 1997).

/62/ POMS SI 00502.135 (Nov. 1997).

/63/ Id. SI 00502.135A.5 (Nov. 1997).

/64/ Id. SI 00502.135D.4. For the definition of "holding out" for SSI purposes, see 20 C.F.R. Sec. 416.1806(a)(3).

/65/ POMS SI 00502.135D.1 (Nov. 1997).

/66/ 8 U.S.C. Sec. 1613(a); POMS SI 00502.135B (Nov. 1997).

/67/ 8 U.S.C. Sec. 1613(b)(1).

/68/ Id. Sec. 1613(b)(2).

/69/ Id. Sec. 1612(a)(2)(C); POMS SI 00502.140.

/70/ Pub. L. No. 105-33, Sec. 5563, 111 Stat. 251, 638.

/71/ Id. Sec. 5566, 111 Stat. 251, 639.

/72/ Pub. L. No. 193 Sec. 423, 110 Stat. 2105, 2271.

/73/ Id. Sec. 421, 110 Stat. 2105, 2270.

/74/ 62 Fed. Reg. 54346 (Oct. 20, 1997).

/75/ POMS SI 00502.200 (Nov. 1997), SI 01320.900, .910.

/76/ Id. SI 00502.200C.2.

/77/ Id. SI 01320.910.B.

/78/ Id. SI 00502.200C.1 (Nov. 1997).

/79/ Id. SI 00502.200D (Nov. 1997).

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