

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



January 5, 2000

ALL COUNTY LETTER NO. 00-07

TO: ALL COUNTY WELFARE DIRECTORS
 ALL CalWORKs PROGRAM SPECIALISTS
 ALL FOOD STAMP COORDINATORS

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

SUBJECT: BATTERED NONCITIZEN ELIGIBILITY UNDER CALIFORNIA
 WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS
 (CalWORKs) AND FOOD STAMP PROGRAM

REFERENCE: ACL 98-65, ACL 99-78, ACIN I-53-99

The purpose of this All County Letter (ACL) is to provide information to the counties on CalWORKs and Food Stamp eligibility for battered noncitizens. Battered noncitizens are eligible as PRUCOL (Permanently Residing Under Color of Law) for CalWORKs if they have an Immigration and Naturalization Service (INS) document which indicates an approved petition or a pending petition which sets forth a prima facie case, or a court order from EOIR (Executive Office for Immigration Review) as described within this document. Battered noncitizens can be eligible for food stamps if they are "qualified aliens" and meet other requirements that are also explained within this document. Additionally, this letter will provide information on deeming requirements in CalWORKs for sponsored noncitizens who are battered and existing regulations that can assist counties in dealing with this population.

Background

In 1994 the Violence Against Women Act (VAWA) was passed by Congress to allow an abused noncitizen spouse or child of a United States citizen or lawful permanent resident (LPR) to apply directly (self-petition) to the INS on their own behalf for a lawful immigration status. The purpose of VAWA is to allow noncitizens that are in abusive situations, in which their immigration status may be used as a tool of control, to petition without the assistance of the abusive individual who could be the spouse or parent. INS makes the determination as to whether abuse has occurred. Prior to VAWA only a United States citizen or an LPR could petition to the INS for their noncitizen spouses or children to become LPRs. The self-petitioning provision mentioned in VAWA is not gender-specific nor does it exclude children. Abused children, children whose parents were abused, and parents whose children have been abused can petition under this provision.

Federal law allows some battered noncitizens to be eligible for federal funding as a “qualified alien” if they meet specific requirements. The battered noncitizens include some VAWA petitioners as well as family based petitioners, self-petitioning widow(er), and cancellation of removal/suspension of deportation petitioners (see Attachment A). The specific requirements for federal eligibility are:

- 1) The noncitizen has an approved petition or a pending petition from INS or EOIR which sets forth a prima facie case, as described in Attachment A;
- 2) The noncitizen or the noncitizen’s child or parent has been battered or subjected to extreme cruelty within the U.S. by his/her spouse, parent, or member of family residing in the same household;
- 3) There is a substantial connection between the abuse and the need for benefits;
- 4) The noncitizen no longer resides with the batterer.

This document discusses how requirements 2) through 4) are applied differently within the CalWORKs and Food Stamp Programs. The following information relates to both programs and will be referred to throughout the document.

INS Petitions

Requirement 1) mentioned above for determining eligibility for federal funding as a battered noncitizen is, “ The noncitizen has from INS or EOIR an approved petition, or a pending petition which sets forth a prima facie case...”. This section provides information on the INS and EOIR documents that satisfy this requirement as well as other pertinent information on petitions.

Attachment E provides a list of the INS documents that provide proof of approved petitions and pending petitions which set forth a prima facie case. The documents listed in this section and on Attachment E are not an exhaustive list. If counties are unsure about a document, they should contact the Vermont Service Center or EOIR as indicated in the section identified as “Inquiries on INS Petitions” on page four.

For purposes of explaining the various types of petitions for battered noncitizens, the petitions will be separated into four categories as indicated on Attachment A. The four categories are: self-petitions, self-petitions by widow(er), family based petitions, and cancellation of removal/suspension of deportation.

Self-Petitions

The INS documents that indicate an approved petition or a prima facie determination for self-petitioners are the I-797 or I-797C. These documents must show approval or prima facie determination of an I-360 based on the status as a spouse or child of an abusive U.S. citizen or LPR.

An approved self-petition may indicate that INS has exercised the option to place the person in deferred action. This means that INS will not initiate removal (deportation) proceedings against the self-petitioner. A deferred action determination is valid for a specified period of time as indicated on the INS document. Once the time period has expired a battered noncitizen must provide acceptable INS documentation in order to continue to be eligible.

A pending petition which sets forth a prima facie case means that INS has made a precursory review and has determined that based on the face value of the evidence the case appears to be valid. A prima facie determination is an interim decision pending an approval or a denial of the petition. Once INS has made the prima facie determination, the battered noncitizen will receive a prima facie notice. A prima facie notice is valid for up to 150 days after issuance. In order for a battered noncitizen to remain eligible after the expiration of a prima facie notice, the battered noncitizen must have either a renewal of the prima facie notice or an approved petition.

Self-Petitions by Widow(er) & Family Based Petitions

Self-petitions by a widow(er) and family based petitions will not have prima facie determinations; however they may have a pending petition. In this case a pending petition is one that has been submitted to INS and a final decision has not yet been provided. For battered noncitizens with a pending self-petition by a widow(er) or a family based petition, the county should request that INS expedite the petition process. Please follow the instructions for contacting the INS Vermont Service Center provided in the section on "Inquiries on Petitions". The counties are also advised to refer the battered noncitizen to the local legal organization for possible assistance with self-petitioning as a battered noncitizen.

The INS document, which indicates approval of petitions by widow (er), is the I-797 or the I-797C. This document must indicate approval of an I-360 based on the status as a widow(er).

There are family relationship requirements that must be met in order to qualify for a family based petition. In order to qualify as a battered noncitizen with a family based petition, the approval document, INS Form I-797 which indicates approval of an I-130, must contain the following relationship information: husbands or wives of U.S. citizens or LPRs, unmarried children under 21 years old of U.S. citizens or LPRs, or the unmarried sons or daughters age 21 or older of LPRs.

A battered noncitizen who has attained LPR status through a family based petition is a “qualified alien”. Therefore, it is not necessary to apply the battered alien requirements in this situation. Instead, the counties are advised to follow the guidelines already set forth in the CalWORKs and Food Stamp Programs for determining eligibility for “qualified aliens”.

Cancellation of Removal/Suspension of Deportation

An abused noncitizen that is already undergoing deportation proceedings can petition to the EOIR immigration courts for cancellation of removal/suspension of deportation as a battered noncitizen. An approved petition in this situation will be a final court order or notice from an Immigration Judge, Board of Immigration Appeals, or a federal court granting a cancellation of removal or suspension of deportation.

Derivative Beneficiaries

INS documents that indicate an approved petition or prima facie determination will reference principal beneficiaries only and not derivative beneficiaries. Derivative beneficiaries are unmarried children under the age of 21. Derivative beneficiaries who are referenced on the petition request but are not indicated on the INS approval document or the prima facie notice are eligible for the same benefits as the principal beneficiary. The counties should verify derivative beneficiaries with INS. Depending upon the type of petition, the counties may need to contact the INS Vermont Service Center, EOIR, or the local INS office for verification.

Inquiries on INS Petitions

Battered noncitizens that are self-petitioning, not including a widow(er), must file their application via mail to the INS Vermont Service Center. Therefore, any inquiries from the counties regarding these petitions should be directed to the Vermont Service Center. The county should submit their inquiries by fax. Please refer to Attachment B for a sample of the fax request. The Vermont Service Center fax number is (802) 527-3159. The telephone number is (802) 527-3160.

For inquiries on approved family based petitions and the self-petitions by widow(er), counties are advised to follow the normal process of sending the G845S form to the local INS office. However, there is an exception in regards to pending petitions. In these cases, the counties are advised to fax the INS Request Fax Form to the INS Vermont Service Center. Please refer to Attachment B for a sample of the fax request.

In cases involving cancellation of removal/suspension of deportation proceedings for battered noncitizens, the counties will need to contact one of the immigration courts

indicated on Attachment C. Also attached (Attachment D) is a sample fax request form for inquiries to EOIR. If it is necessary to obtain information from an immigration court in another state, the counties are advised to contact one of the immigration courts listed on Attachment C to obtain the information on other immigration courts.

Determinations of the Occurrence of Abuse

The determination of abuse is based on the type of petition filed by the battered noncitizen. When INS or EOIR has made the determination of abuse the counties should not make a new determination. The INS or EOIR determination is sufficient. Information regarding who makes the determination of abuse is as follows:

<u>Petition</u>	<u>Abuse Determination</u>
Self-petition	INS
Self-petition-widow(er)	County
Family Based	County
Cancellation of Removal/ Suspension of Deportation	EOIR

In instances when the counties must make the determination of abuse for battered noncitizens, the guidelines set forth in the domestic abuse regulations in regards to evidence of domestic abuse should be followed (EAS 42-715.121 and 42-701.2d3).

Food Stamp Program (FSP) and Battered Noncitizens

A battered noncitizen meets the definition of a “qualified alien” under Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) if he or she meets the four requirements mentioned on page two.

As a “qualified alien”, the battered noncitizen, if otherwise eligible, is eligible for food stamps. In order to receive federally funded food stamps, battered noncitizens must have either a military connection (veteran, active duty, spouse and children), be lawfully in the U.S. on August 22, 1996 and currently under 18, or disabled or blind, or be lawfully in the U.S. and 65 or older on August 22, 1996. Battered noncitizens that meet the definition of a “qualified alien” but are not eligible for the federal FSP, are eligible for the California Food Assistance Program (CFAP). Depending on the battered noncitizen’s entry date into the U.S., eligibility may be time limited.

For more information on noncitizen food stamp eligibility, previously released ACIN I-53-99 dated August 10, 1999 and ACL 99-78 dated October 1, 1999 can be accessed via the Internet at www.dss.cahwnet.gov/getinfo/ltrnotice.html.

CalWORKs - Eligibility Criteria for Battered and Sponsored Noncitizens

California's state law requires that noncitizens who meet the definition of PRUCOL are eligible for state-funded CalWORKs benefits even when they are not eligible for federal benefits. The process for determining federal eligibility for battered noncitizens is complex, time-consuming and costly. Additionally, the number of battered noncitizen cases statewide is small. Therefore, in order to be cost-effective and in the interest of simplicity, all battered noncitizens will be state-funded as PRUCOL provided all other eligibility criteria are met. Please note that the counties are to use existing aid codes for state-funded and mixed cases for battered noncitizens.

Battered noncitizens within CalWORKs are identified as those individuals who possess the INS documents listed on Attachment E. If these individuals possess these documents and meet all other eligibility criteria, then they are eligible for state-funded CalWORKs as PRUCOL. Therefore, requirements 2) through 4) mentioned on page two, do not apply to CalWORKs recipients who are battered noncitizens.

Domestic Abuse and Sponsored Noncitizens

Current state and federal law specifies that a sponsor's income and resources must be attributed or deemed to the sponsored noncitizen during the eligibility determination process. All sponsored noncitizens that are domestic abuse victims are exempt from this deeming requirement for a period of one year. This means that the normal eligibility criteria applies; however, the sponsor's income and resources are excluded.

The exemption of the deeming requirement for sponsored noncitizens that are domestic abuse victims is initially limited to one year. However, the exemption may be extended beyond the one year if: 1) the abuse has been recognized in an order of a judge or administrative law judge; or 2) INS has made a prior determination that abuse did occur; and 3) the CalWORKs eligibility criteria continues to be met.

Existing Regulations that Assist with Battered Noncitizens

The counties are advised to review the domestic abuse regulations to ensure that battered noncitizens receive all of the services and resources available to domestic abuse victims as set out in EAS 42-715. The counties are further advised to make available to battered noncitizens as well as all domestic abuse victims the National Domestic Violence Hotline number (1-800-799-7233) and, when necessary, the INS forms request line number (1-800-870-3676).

Additionally, the counties are reminded to maintain strict confidentiality of information involving domestic abuse victims, especially in the area of disseminating information to third parties (EAS 42-715.3). It is vitally important to the well being of domestic abuse victims that counties strictly adhere to the rules governing confidentiality.

If you have any questions regarding this letter, please call Jill Sevaaetasi of the CalWORKs Eligibility Bureau at (916) 654-2130 or Varaniece Hall of the Food Stamp Bureau at (916) 657-3500.

Sincerely,

*Original document signed by
Bruce Wagstaff on 1/5/00*

BRUCE WAGSTAFF
Deputy Director
Welfare to Work Division

Attachments

c: CWDA
CSAC

CalWORKs

QUESTION AND ANSWER SECTION ON BATTERED NONCITIZENS

- 1. Should a battered noncitizen that was receiving aid due to a prima facie notice but later attained LPR status continue to receive aid through state funds or should they be aided through federal funds?**

A battered noncitizen that has attained LPR status will continue to be aided as a PRUCOL with state funds.

- 2. Can the county verify a prima facie determination through SAVE (Systematic Alien Verification for Entitlements)?**

No, presently the counties must contact the INS Vermont Service Center or EOIR, depending upon the type of petition, to confirm the determination. The fax number for the Vermont Service Center is (802) 527-3159; telephone number is (802) 527-3160. The contact information for EOIR-Immigration Courts is located on Attachment C of this document.

- 3. Is there another place in which to obtain information on the status of a battered noncitizen's petition?**

Yes, in addition to the INS Vermont Service Center, the Executive Office for Immigration Review (EOIR) makes determinations on suspension of deportation or cancellation of removal.

- 4. How long will it take INS to make a prima facie determination once an individual has submitted an application as a battered noncitizen?**

Within three weeks from the date of application, INS will send to the battered noncitizen either an approval notice, a notice of a prima facie determination, or a request for additional documentation.

RELATIONSHIP AND CONDITION REQUIREMENTS FOR PETITIONS

The following information describes the relationship and condition requirements for the petitions that satisfy requirement one (see page 2 for requirement one) for determining eligibility as a “qualified alien” for battered noncitizens.

Self-Petitions (Petitioning utilizing form I-360)

(Sections 204(a)(1)(A)(ii), 204(a)(1)(B)(ii), 204(a)(1)(iv), 204 (a)(1)(B)(iii) of the Immigration and Naturalization Act (INA))

A noncitizen who is the spouse of a U.S. citizen or LPR who has been abused by the spouse in the U.S.;

OR

A noncitizen who is the spouse of a U.S. citizen or LPR whose child has been abused by the U.S. citizen or LPR parent in the U.S.;

OR

A noncitizen child of a U.S. citizen or LPR who has been abused by the U.S. citizen or LPR parent in the U.S.;

AND

Who has resided with the parent or spouse in the U.S.

Self-Petition - widow(er) (Petitioning utilizing form I-360)

(Sections 204(a)(1)(A)(ii) of the Immigration and Naturalization Act (INA)).

A noncitizen who is the widow(er) of a U.S. citizen who had been married for at least two years at the time of the spouse’s death.

Family Based (Petitioning utilizing form I-130) (Sections 204(a)(1)(A)(i) and 204(a)(1)(B)(i) of the INA)

Noncitizen spouses, unmarried sons and unmarried daughters of U.S. citizen or LPR;

OR

Noncitizen married sons and daughters of U.S. citizens.

Cancellation of Removal/Suspension of Deportation (Filing with an immigration court utilizing forms EOIR-42B or EOIR-40) (Sections 244(a)(3) or 240A(b)(2) of the INA)

A noncitizen in deportation proceedings can receive a suspension of deportation or cancellation of removal and adjustment of status if:

The noncitizen has been abused by a U.S. citizen or LPR spouse in the U.S.;

OR

The noncitizen’s child has been abused by the U.S. citizen or LPR parent in the U.S.