

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



May 13, 2002

ALL COUNTY LETTER NO. 02-37

TO: ALL COUNTY WELFARE DIRECTORS

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: RELEASE OF REFUGEES AND OTHER NON-CITIZENS PREVIOUSLY HELD IN "INDEFINITE DETENTION"

On June 28, 2001, the U.S. Supreme Court issued a decision that non-citizens, after serving time for a criminal conviction and given a final order of removal by the Immigration and Naturalization Service (INS), cannot remain indefinitely in detention in the U.S. because their home country or other countries will not accept them.

In a number of cases, aliens with final orders of removal originally came to the U.S. as refugees or had another status that made them eligible for benefits and services. These individuals, upon release from detention, may come to county welfare departments (CWD) for assistance.

CWDs may be unable to make eligibility determinations because these individuals most likely will lack the required documentation and the Systematic Alien Verification for Entitlements (SAVE) system will not contain the needed eligibility information. CWDs are to contact the federal Office of Refugee Resettlement (ORR) as ORR has developed a process with the INS to determine the applicant's original status, entry date and eligibility. CWDs should use the process ONLY for determining the status of individuals who have received a final order of removal but who have been released from detention because they cannot be removed to their home country or any other country.

Attached is ORR State Letter 02-03, that goes into greater detail on this subject and provides instructions on who to contact at ORR and what information to provide. ORR will notify the CWD of status, entry date and eligibility by a fax.

If you should have any questions, please do not hesitate to contact Ms. Linda Keene, Refugee Programs Branch, at (916) 654-2602 or e-mail at linda.keene@dss.ca.gov.

Sincerely,

Original Signed by Bruce Wagstaff
On May 13, 2002

BRUCE WAGSTAFF
Deputy Director
Welfare to Work Division

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

ORR State Letter

02-03

Date: January 24, 2002

OMB Control No: 0970-0231
Expiration Date: 06/30/2002

TO: STATE REFUGEE COORDINATORS
NATIONAL VOLUNTARY AGENCIES
OTHER INTERESTED PARTIES

FROM: Nguyen Van Hanh, Ph.D., Director
Office of Refugee Resettlement

SUBJECT: Release of Individuals Previously Held in "Indefinite Detention"

BACKGROUND

On June 28, 2001, the U.S. Supreme Court issued its decision in *Zadydas v. Davis*.¹ The case concerned "indefinite detainees" or "lifers", which are terms used to refer to non-citizens who, after having served time for a criminal conviction and being given a final order of removal by the Immigration and Naturalization Service (INS), remain indefinitely in detention in the U.S. because their home country and no other countries will accept them. In *Zadydas* the Supreme Court held that the law limits an "alien's detention to a period reasonably necessary to bring about that alien's removal from the United States, and does not permit indefinite detention." Shortly after the Supreme Court decision, Attorney General John Ashcroft ordered the INS to begin looking into the release of certain indefinite detainees. Some of these individuals already have been released from detention.

EFFECT ON AGENCIES PROVIDING ORR-FUNDED BENEFITS

In a number of cases, aliens with final orders of removal originally came to the U.S. as refugees or had another status that made them eligible for ORR-funded benefits and services.² These individuals, upon release from detention, may come to benefit-granting agencies for assistance. Prior to providing benefits or services, agencies must determine status, identity, the date an individual

¹ 533 U.S. 678 (2001).

² Individuals with the following statuses are eligible for ORR-funded benefits (see 45 CFR §400.43 and ORR State Letters 00-17 and 01-13): (1) refugees under § 207 of the Immigration and Nationality Act (INA), (2) asylees whose status was granted under § 208 of the INA, (3) Cuban and Haitian entrants, in accordance with the requirements in 45 CFR part 401, (4) certain Amerasians from Vietnam and (5) victims of severe forms of trafficking.

initially became eligible for benefits (i.e., entry date) and, in certain cases, nationality. ORR anticipates that benefit-granting agencies will encounter problems in making these determinations for recently released detainees. First, while they have been convicted of a crime that triggers a final order of removal, some of these individuals may remain eligible for ORR-funded benefits. This complicated determination, which will differ depending on the individual's original status³, cannot be made easily by eligibility workers through their normal procedures. Second, these individuals most likely will not have documentation of their original status. Also, the INS Systematic Alien Verification for Entitlements (SAVE) system will not be able to provide the needed eligibility information, such as status or entry date, through primary verification. Secondary verification may be able to provide some of the needed information but most likely it will not have all of the needed information and the information will not arrive in a timely manner. Finally, agencies should note that many of these individuals will no longer be eligible for benefits because their eligibility periods may have expired during their incarceration. ORR has developed this State Letter to assist agencies with these difficult determinations.

PROCESS FOR DETERMINING STATUS

ORR recognizes that the above mentioned information is complicated and, as noted in the previous section, agencies may be unable to make eligibility determinations because of a lack of documentation and information in the SAVE system. Therefore, ORR has developed a process with the INS so that benefit-granting agencies, instead of conducting a SAVE query or basing an eligibility determination solely on documentation, may send information about the applicant to ORR. ORR then will work with the INS to determine the applicant's original status, entry date and eligibility and will relay this information to the benefit-granting agency.

Agencies should use the following process ONLY for determining the status of individuals who have received a final order of removal but who have been released from detention because they cannot be removed to their home country or to any other country. Individuals whose eligibility determination should be done through this process may present the eligibility worker with an Order of Supervision, which is INS Form I-220B. The Order of Supervision should include the individual's alien registration number and a notation concerning exclusion, deportation or removal. These individuals also may have an employment authorization document (most likely the INS Form I-688B) showing § 274a.12(c)(18) as the provision of law.

³ Information about termination of status for the various ORR-eligible populations may be found throughout the Immigration and Nationality Act (INA) and the Code of Federal Regulations (CFR). For information about refugees, please see INA § 207(c)(4) and 8 CFR § 207.9. For information about asylees, please see INA § 208(c)(2) and 8 CFR § 208.24. For information about Cuban and Haitian entrants, please see the Refugee Education Assistance Act and ORR State Letter 01-22. Amerasians enter the U.S. as lawful permanent residents and information about their status may be found at 8 CFR § 1.1(p). Victims of severe forms of trafficking are not eligible for benefits based on their immigration status but on their certification or recognition from the U.S. Department of Health and Human Services. Information about certification of adult trafficking victims and recognition of minor trafficking victims for benefits purposes can be found in the Trafficking Victims Protection Act and in ORR State Letter 01-13.

Agencies should follow these steps for determining eligibility for these applicants:

- (1) Gather as much of the following information as possible from the applicant:
 - a. Name
 - b. Alien registration number ("A number")
 - c. Date of birth
 - d. Social security number
 - e. Home country
 - f. Number on the I-94 card
 - g. Parents' names
 - h. Driver's license number
 - i. **Copies of any immigration documents**
- (2) Call or email AnnaMarie Bena at 202-260-5186 or abena@acf.dhhs.gov or Pamela Green-Smith at 202-401-4531 or pgrccensmith@acf.dhhs.gov to inform them about the need for an eligibility determination for an indefinite detainee.
- (3) Send a fax with the information that was collected from the applicant to AnnaMarie Bena or Pamela Green-Smith at 202-401-0981 or 202-401-5487. Include contact information for the individual that is handling the case at the benefit-granting agency.

After this information has been submitted to the INS, ORR may contact the benefit-granting agency for additional information. ORR will notify agencies of status, entry date and eligibility by a fax, which should be kept in the applicant's file.

PUBLIC BURDEN STATEMENT UNDER THE PAPERWORK REDUCTION ACT

Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing the instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.