

TEMPORARY RESIDENT ALIENS' ELIGIBILITY FOR PUBLIC BENEFITS

Overview

There are two types of legalization programs: one based on continuous unlawful residence in the U.S. since before January 1, 1982 (the 1/1/82 program) and one based on work as a seasonal agricultural worker (the SAW program). The laws regarding eligibility for certain public benefit programs are different for these two legalization programs.

Persons who have obtained temporary resident alien status under either amnesty program may be eligible to receive important public benefits. They may be disqualified for five years from receiving other forms of assistance. Members of their family who were born in the U.S. are eligible for all public benefits, assuming they are poor or otherwise in need. However, receipt of benefits, either by the temporary resident alien or the other citizen family members, could affect the alien's eligibility for permanent residency. This memo will describe the benefit programs that newly legalized aliens can receive and it will explain the "public charge" ground of exclusion. If you have questions after reading this, please feel free to call our office for help.

What Benefit Programs Can Legalized Aliens Receive?

There are several benefit programs that newly legalized aliens can receive. Here is a list of some of the most important ones:

1. **Supplemental Security Income (SSI)** – This program provides cash benefits to aliens who are over 65, blind, or disabled. To qualify, the alien must also be poor. Both 1/1/82 aliens and SAWs are eligible for this program.
2. **General Relief or General Assistance** – Many states provide cash benefits to needy persons who do not qualify for the federal welfare program. Each state sets its own eligibility standards. However, receiving this may hurt the alien's chances of getting permanent residency, as discussed below.
3. **Federal Housing Programs** – Federally-financed housing programs include public housing, rent supplements, or other reduced rental housing programs.
4. **Job Training** – State employment offices provide job training and job placement services to aliens with INS work authorization.
5. **Child Nutrition Programs** -- There are no alienage restrictions on alien participation in WIC (Women, Infants, and Children Program), school lunch, or school breakfast programs. WIC provides food supplements to pregnant women, to infants, and to children under five with nutritional needs.
6. **State Health Care** – Most states or counties provide health care to poor persons in need of assistance. The eligibility requirements and the care that is provided will vary depending upon the program.
7. **Social Security** – Aliens who have worked and had earnings reported to a Social Security account may be eligible to receive retirement or disability benefits. Their dependents may be eligible for survivors' benefits in the event the wage earner dies. Temporary resident aliens can get a Social Security card, as can other aliens who have INS work authorization.

8. **Unemployment Compensation** – Aliens who are unemployed, through no fault of their own, may qualify for unemployment compensation. Their eligibility will depend upon how long they have worked in the past. Newly legalized aliens will be considered to have had work authorization since 11/6/86, the date the new immigration law was enacted.

What Are The Benefit Programs Legalized Aliens Cannot Receive?

Aliens who legalized under the 1/1/82 program are disqualified for five years from receiving the following programs: Aid to Families with Dependent Children (AFDC or "welfare"), food stamps, and some forms of Medicaid. Children under 18 years, and legalized aliens who are 65 and older, blind, or disabled can receive full Medicaid services. Other temporary resident aliens can receive Medicaid only for emergency treatment and pregnancy-related services. Finally, 1/1/82 temporary resident aliens may be restricted from receiving other federal financial assistance programs which have not yet been identified. The five-year disqualification period begins on the date the alien applied for amnesty.

Aliens who legalized under the SAW program are also disqualified for five years from receiving AFDC and the same Medicaid benefits as the 1/1/82 aliens. They are eligible to receive food stamps.

PUBLIC BENEFIT ELIGIBILITY FOR NEWLY LEGALIZED ALIENS

BENEFIT PROGRAM	1/1/82 LEGALIZED ALIENS	SAWs
AFDC	Not eligible	Not eligible
SSI	Eligible	Eligible
State General Assistance	States may provide	Eligible
Medicaid	Full services for aged, blind & disabled, and children under 18; others get only emergency and pregnancy-related services	SAWs are eligible for same restricted benefits as 1/1/82 aliens
State or local medical care	States may not disqualify	Eligible
Food stamps	Not eligible unless aged, blind, or disabled after obtain permanent residency	Eligible
WIC, school lunch and school breakfast	Eligible	Eligible
Federal housing programs	Eligible	Eligible
Unemployment compensation	Eligible	Eligible
Job Training	Eligible	Eligible

CAN RECEIVING PUBLIC BENEFITS HURT THE CHANCES OF GETTING PERMANENT RESIDENCY?

Temporary resident aliens will need to apply for permanent status in order to keep their lawful immigration status. For the 1/1/82 amnesty program, these aliens can apply for permanent residency 18 months after they applied for temporary status, but they must apply within 30 months. The SAW program operates differently. These temporary resident aliens will adjust to permanent residency on either December 1, 1989 or December 1, 1990, depending upon their agricultural work history.

1. Public Charge under the 1/1/82 Program

Temporary resident aliens under the 1/1/82 program will be screened for potential public charge exclusion when they apply for permanent residency. Any receipt of public benefits, either by the temporary resident alien or by a dependent family member, could affect the alien's application for permanent residency. However, the INS will be using a "special rule" for the 1/1/82 temporary resident aliens. Under this rule, receipt of most forms of public benefits will not hurt the alien's chances of obtaining permanent residency.

The special rule requires two things: (1) that the alien have a job or a consistent job history at the time of applying for permanent residency, and (2) that the alien not have personally received public cash assistance. The only programs that are considered cash assistance benefits are AFDC (welfare), SSI, General Assistance, and some low-income energy assistance programs that pay cash benefits directly to the household. INS will only count cash benefits received by the temporary resident alien when applying this special rule. So, for example, AFDC or SSI received by the U. S. citizen children will not count against the alien parent. Since temporary resident aliens are ineligible for AFDC, the two programs that could cause problems are SSI or state general assistance. Unemployment compensation and Social Security benefits are insurance programs, and their receipt will not count against the alien.

There is a waiver for public charge at the permanent residency stage for an alien who is over 65, blind, or disabled, as defined in the SSI program. It does not matter at what time this person became eligible for SSI in order to apply for the waiver. To obtain the waiver the alien must show one of three things: that granting the waiver would promote family unity; that it would be in the public interest; or that there are humanitarian factors. Persons who are receiving SSI can usually show that it would be a hardship if they are denied permanent residency and are required to return to their home country. This may satisfy the third criterion for obtaining a waiver.

If the temporary resident alien has a job or consistent job history and has not received SSI or General Assistance he or she will pass the public charge test. It will not matter if other family members are receiving welfare. It will not matter if the alien or other family members are receiving non-cash benefits, such as Medicaid, food stamps, or housing assistance.

If the temporary resident alien does not have a job or consistent job history, or has personally obtained cash benefits, then he or she will not be considered under the special rule. Instead, another test will be applied. This test examines whether the alien is likely to become a public charge in the future. INS will look at the alien's income and compare it to the federal poverty income guidelines. INS will also consider the alien's age, health, past employment history, and job skills. Receipt of public benefits by the temporary resident alien and by dependent family members could count against the alien under this test.

Aliens who are unemployed will want to know whether to apply for state General Assistance or federal welfare for their children. It is important that these people get a job so that they will qualify under the special rule. They should be discouraged from getting General Assistance except in a real emergency. They will then need to get job training or otherwise show that they are not likely to get public benefits again.

2. Public Charge for SAWs

SAW aliens must only show that they have not become deportable during their temporary residence period in order to qualify for permanent residence. Receipt of public benefits should not make them deportable. If they are receiving benefits from such programs as SSI or General Assistance, however, they may face problems reentering the U.S. This is because the INS will make a determination at that time as to whether the SAW alien is excludable. It is too early to tell at this time what standard INS will use for public charge exclusion for SAWs reentering the U.S. The safest advice is that SAWs who are receiving cash benefits should not leave the U.S. until after they have become permanent residents.

PUBLIC CHARGE FOR 1/1/82 AMNESTY ALIENS

Alien's Work Status	Non-Cash Benefits (food stamps, housing, medical services)	Cash Benefits (AFDC, SSI, General Assistance)
Has been working has someone to support him/her	Safe to accept for alien or family members	Not safe for alien to accept General Assistance. Take only in an emergency and then get a job or job training. Alien is ineligible for AFDC, but U.S. citizen children can accept. Alien can get SSI but will need to file waiver of public charge to gain perm- anent residency.
Has not been working and has no one to support him/her	Should be safe to accept if can show at time of applying for permanent residency that not getting benefits <u>and</u> has a job or has job skills that show not likely to get public benefits in the future.	" " "

Questions

If you have any questions regarding alien eligibility for public benefits or regarding the public charge consequences of receiving these benefits, please feel free to call our office for assistance.