

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

FINAL

ORDER

CASH ASSISTANCE AND FOOD STAMP PROGRAMS

3024 Citizens and Aliens **9007.1 Citizenship and Alien Status**

Nature of the Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to the Cash Assistance and Food Stamp Programs. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code Section** 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the March 2007 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2007 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary of Proposed Changes

Statutory Authority

- INA Act Sec. 301 [8 U.S.C. §1401], *Nationals and Citizens of United States at Birth*
- 7 CFR §273.4, *Citizenship and Alien Status*
- 45 CFR §233.50, *Citizenship and Alienage*

Summary of Proposed Changes

DSSM 3024, *Citizens and Aliens* and DSSM 9007.1, *Citizenship and Alien Status*: DSS is making these changes to correct Cash Assistance and Food Stamp policies regarding the eligibility of children born outside of the United States (U.S.). Current policy states that a child born to one U.S. parent is a citizen which is not entirely correct. There are other conditions that must be met to allow a child born outside of the United States to automatically become a U.S. citizen.

DSS proposes several other structural and grammatical changes within this rulemaking.

Summary of Comments Received With Agency Response

No public comments were received.

Findings of Fact:

The Department finds that the proposed changes as set forth in the March 2007 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to the eligibility of children born outside of the United States under the cash assistance and food stamp programs is adopted and shall be final effective May 10, 2007.

Vincent P. Meconi, Secretary, DHSS, 4/16/07

DSS FINAL ORDER REGULATIONS #07- 23
REVISIONS:

3024 Citizens and Aliens

[233.50]

Only U.S. citizens and qualified aliens, as defined in section 431 of PRWORA, are eligible to receive cash assistance benefits.

Citizens are those persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, U.S. Virgin Islands, and Northern Mariana Islands. Children born outside of the United States are citizens if ~~both parents are citizens~~. they meet one of the following conditions:

- both parents are citizens of the United States and one parent has had a residence in the United States, or one of its outlying possessions, prior to the birth of the child; or
- one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the United States; or
- one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.

Qualified aliens who entered the United States prior to August 22, 1996 are treated as if they were United States citizens. Qualified aliens are defined as aliens who are:

1. An alien lawfully admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of the INA;
3. A refugee admitted to the United States under section 207 of the INA;
4. An alien paroled into the United States under section 212(d)(5) of the INA for a period of at least 1 year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry under section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is a Cuban or Haitian entrant; or
8. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Qualified aliens admitted on or after August 22, 1996, are barred from receiving cash benefits for five (5) years, except for certain excepted groups described below who are not subject to the bar. The following excepted groups of aliens are exempt from the 5-year ban on benefits:

1. Qualified aliens lawfully residing in the State who are honorably discharged veterans and who fulfill minimum active-duty service requirements, or who are on non-training active duty in the U.S. Armed Forces, or who are the spouse, unmarried dependent child, or unremarried surviving spouse of such a veteran or active-duty personnel, provided that, in the latter case, the marriage satisfied the requirements of 38 U.S.C. § 1304;
2. Refugees, for a period of five years after the date they entered the U.S. as refugees;
3. Asylees, for a period of five years after obtaining such status;
4. Aliens whose deportation or removal has been withheld, for a period of five years after obtaining such status;
5. Cuban/Haitian entrants, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, for a period of five years after they obtain such status; and
6. Amerasian immigrants from Vietnam, admitted to the U.S. pursuant to section 84 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, for a period of five years after their admission.
7. Individuals who are eligible due to being lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work;
8. Victims of Severe Trafficking per Public Law 106-386 Trafficking Victims Protection Act of

2000:

Severe forms of trafficking is defined as,

- sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person inducted to perform such an act has not attained 18 years of age; or
- the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking are treated like refugees. Victims of trafficking do not have to hold a certain immigration status, but they need to be certified by HHS in order to be eligible for cash assistance; and

9. An alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the United States and otherwise satisfies the requirements of 8 U.S.C. 1641(c).

Documentation:

1. Lawful permanent resident status is verified by:
 - INS Form I-551; or
 - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94.
2. Refugee status is verified by:
 - INS Form I-94 annotated with stamp showing admission under section 207 of the INA;
 - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(3);
 - INS Form I-766 (Employment Authorization Document) annotated "A3"; or
 - INS Form I-571 (Refugee travel Document).
3. Asylee status is verified by:
 - INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
 - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(5);
 - INS Form I-766 (Employment Authorization Document) annotated "A5";
 - Grant letter from the Asylum Office of INS; or
 - Order from an immigration judge granting asylum.
4. The status of an alien whose deportation is withheld is verified by:
 - INS Form I-688B (Employment Authorization Card) annotated "274a12(a)(10);
 - INS Form I-766 (Employment Authorization Document) annotated "A10"; or
 - Order from an immigration judge showing deportation withheld under §243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under §241(b)(3) of the INA.
5. Cuban/Haitian entrant status is verified by:
 - INS Form I-551 (Alien Registration Receipt Card) with the code CU6, CU7, or CH6;
 - An unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7;
 - INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" (Status Pending);
 - INS Form I-94 showing parole into the United States on or after October 10, 1980; and
 - Cuban or Haitian passport, identity card, birth certificate, or other reasonable evidence of Cuban or Haitian nationality
6. Amerasian immigrant status is verified by:
 - INS Form I-551 with the code AM6, AM7, or AM8; or
 - Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code AM1, AM2, or AM3.
7. The 40 qualifying quarters of work is determined under Title II of the Social Security Act. This includes the quarters of work not covered by Title II of the Social Security Act. Quarters of work not covered by Title II of the Social Security Act is based on the sum of the following:
 - quarters the alien worked;
 - quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and
 - quarters credited from the work of a spouse of an alien during their marriage if they are still

married or the spouse is deceased.

NOTE: A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

8. When a victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

- Accept the original certification letter or letter for children in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT SEND FOR SAVE VERIFICATION.)
- Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Office of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
- Note the "entry date" for the refugee benefit purposes. The individual's "entry date" for refugee benefits purposes is the certification date, which appears in the body of the certification letter or letter for children.
- Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
- Recertification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees; and
- Victims of trafficking are issued T visas by US Immigration and Citizenship Services.
- The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible like the direct victims of severe trafficking.
- If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.
- If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

9. For aliens who (or whose child or parent) is claiming that they have been battered or subjected to extreme cruelty in the United States and otherwise meets the requirements of 8 U.S.C. 1641(c) call the Program and Policy Development Unit (PPDU) to determine if the documentation provided is satisfactory.

Aliens admitted as temporary residents are not eligible for public assistance benefits. Included are visitors, tourists, diplomats, and students.

Citizenship and alien status are verified at the time of application.

8 DE Reg. 1712 (06/01/05)

10 DE Reg. 1702 (05/01/07) (Final)

(Break in Continuity of Sections)

9007.1 Citizens and Qualified Aliens

[273.4]

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if ~~at least one of the parents is a citizen~~; they meet one of the following conditions:

- both parents are citizens of the United States and one parent has had a residence in the United States, or one of its outlying possessions, prior to the birth of the child; or
- one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year prior to the birth of the child, and the other parent is a national, but not a citizen of the United States; or
- one parent is a citizen of the United States who has been physically present in the United States, or one of its outlying possessions, for a continuous period of one year at any time prior to the birth of the child.

2 Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U.S. non-citizen nationals;

3. Individuals who are:

A. An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

B. A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

C. Lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or highland Laotian who is under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

4. Individuals who are eligible indefinitely due to being:

A.A lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited for the work of a parent the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouses quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

B. lawfully living in the U. S. for five (5) years as a qualified alien beginning on the date of entry:

Qualified aliens include lawfully admitted residents (holders of green cards), those granted asylum, refugees, victims of a severe form of trafficking, those paroled in the United States under section 212(d)(5) of the INA for at least one year, those whose deportation is being withheld, those granted conditional entry under

section 501(e) of the Refugee Education Assistance Act of 1980, Cuban or Haitian entrants, and under certain circumstances, a battered spouse, battered child or parent or child or battered person with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

C. lawfully in US and is now under 18 years of age;

D. lawfully in US and is receiving disability or blind (payments listed under DSSM 9013.1)

E. lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

F. An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 389 U.S.C. 107;

(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

5. The following aliens with a seven-year (7) time limit:

{A.} refugees admitted under section 207 of the Act;

{B.} asylees admitted and granted asylum under section 208 of the Act;

{C.} aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA.

{D.} Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and

{E.} Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.

The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).

{F.} Immigrants who are victims of severe trafficking in persons per Public Law 106-386 Trafficking Victims Protection Act of 2000. Severe forms of trafficking in persons is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. Victims of trafficking are issued T visas by US Immigration and Citizenship Services.

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 expanded eligibility to include the minor children, spouses, and in some cases the parents and siblings of victims of severe trafficking. Under TVPRA, eligible relatives of trafficking victims are entitled to visas designated as T-2, T-3, T-4 or T-5 (known as Derivative T Visas) and are eligible for food stamps like the direct victims of severe trafficking.

If an alien is awarded a T visa and was under the age of 21 years on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse, children, unmarried siblings under 18 years of age, and parents.

If an alien is awarded a T visa and was age of 21 years or older on the date the T visa application was filed, the Derivative T Visas are available to the alien's spouse and children.

Adult victims of severe trafficking will be certified by the U. S. Department of Health and Human Services (HHS) and will receive a certification letter. Children, those under 18 years of age, who are victims of severe trafficking do not need to be certified but will receive a letter stating that the child is a victim of a severe form of trafficking. These victims of trafficking, and eligible relatives awarded Derivative T Visas, are treated like refugees for food stamp purposes. Victims of trafficking do not have to hold a certain immigration status, but they need to be

certified by HHS in order to receive food stamps.

When a direct victim of a severe form of trafficking applies for benefits, DSS will follow normal procedures for refugees except DSS will:

1. Accept the original certification letter for child in place of INS documentation. Victims of severe forms of trafficking are not required to provide any documentation regarding immigrant status. (DO NOT CALL SAVE.)
2. Call the trafficking verification line at (202) 401-5510 to confirm the validity of the certification letter or similar letter for children and to notify the Offices of Refugee Resettlement (ORR) of the benefits for which the individual has applied.
3. Note the "entry date" for refugee benefit purposes. The individual's "entry date" for refugee benefit purposes is the certification date, which appears in the body of the certification letter or letter for children.
4. Issue benefits to the same extent as a refugee, provided the victim of a severe form of trafficking meets other program eligibility criteria like income limits.
5. Re-certification letters will be used to confirm that the individual continues to meet the certification requirements. These letters will have the same "entry date" as the original certification letters. The regular recertification periods will apply to these individuals in the same manner that they apply to refugees.
6. The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).
7. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered.

When an eligible relative of a direct victim of severe trafficking applies for benefits:

1. Accept the nonimmigrant T-2, T-3, T-4 or T-5 Derivative Visa and follow the normal procedures for providing services and benefits to refugees.
2. Call the toll-free trafficking verification lines at 1 (866) 401-5510 to notify ORR of the benefits for which the individual has applied. (NOTE: the DHS Systematic Alien Verification for Entitlements (SAVE) system does not contain information about victims of a severe form of trafficking or nonimmigrant alien family members. DO NOT CONTACT SAVE-~~C~~concerning victims of trafficking or their nonimmigrant alien family members.)
3. Issue benefits to the same extent as a refugee provided the Derivative T Visa holder meets other program eligibility criteria like income.
4. For an individual who is already present in the United States on the date the Derivative T Visa is issued, the date of entry for food stamp purposes is the Notice Date on the I797, Notice of Action of Approval of that individual's Derivative T Visas.
5. For an individual who enters the United States on the basis of a Derivative T Visa, the date of entry for food stamp purposes is the date of entry stamped on that individual's passport or I-94 Arrival Record.

8 DE Reg. 1712 (6/1/05)

9007.2 Income and Resources

The income and resources of an ineligible alien will be handled as outlined in DSSM 9076.

9007.3 Reporting Illegal Aliens

~~DSS Program Implementation Policy and Program Unit (PPDU)~~ will inform the local INS office whenever eligibility personnel knows for sure that any member of a household is ineligible to receive food stamps because the member is present in the United States in violation of the Immigration and Nationality Act.

Caution must be exercised to ensure that the determination is not made merely on the alien's inability or unwillingness to provide documentation of alien status. When a person indicates inability or unwillingness to provide documentation of alien status, staff shall not continue efforts to obtain the documentation. That person shall be classified as an ineligible alien. Staff will obtain only the documents necessary to provide information on the income and resources of the ineligible alien to be made available to the remaining members of the household.

This regulation does not permit the reporting of aliens to INS on mere suspicion of prejudice. Firm evidence that a household is illegally in the U.S. would be required. Two examples of circumstances when an alien

would be reported to INS are:

- INS documents presented by the household during the application process are determined to be forged.
- A former order of deportation is presented by the household during the application or recertification process.

If a determination is made that a household, or household member, is in fact an illegal alien present in the United States in violation of the immigration laws, staff will report the determination to the supervisor. The supervisor will send a written report to the Food Stamp Policy Administrator who will decide whether the evidence is enough to make a report to INS.