

October 8, 1996

Background

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act") was signed into law on September 30, 1996. It was passed as part of the Joint Continuing Budget Resolution (Pub. L. No. 104-208). The bill contains a number of provisions that modify the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Act") signed into law on August 22, 1996 (Pub. L. No. 104-193).

The final bill does not contain several very harmful provisions. For example, the final bill omitted an exclusion for HIV and AIDS treatment for unqualified aliens. Also gone from the final bill is a provision that would have subjected individuals to deportation as public charges if within their first seven years in the United States, they had received 12 months of certain means-tested public benefits. Such individuals also would have been prevented from becoming naturalized citizens. The final bill was amended to exempt emergency Medicaid from among the services for which a sponsor is responsible to pay.

Definition of Qualified Aliens (Section 501)

The Immigration Reform Act expands the definition of aliens qualified to receive federal public benefits, including non-emergency Medicaid, to include a narrow group of battered or abused spouses and children of U.S. citizens and permanent legal residents. In order to be considered a qualified alien under this exception, (1) an individual must have an approved or pending petition showing a prima facie case that he or she is protected under the Violence Against Women Act (VAWA); (2) the individual responsible for such battery or cruelty must no longer live in the household of the victim, and, (2) in the opinion of the Attorney General, there is a substantial connection between the abuse and the need for the benefits provided. The Immigration Act specifically prohibits judicial review of the Attorney General's determination of this matter.

While extremely helpful for those individuals who qualify, the exception is quite narrow. It does not apply, for example, to individuals who are battered by live-in boyfriends or to battered spouses or children who have no other choice but to remain living in the same household as the batterer. Also, the services for which these individuals will be eligible are unknown until the Attorney General makes a determination. A disabled, alien child who is being abused and who needs services for his or her special needs could be denied services (unless determined to be qualified under another category), if the Attorney General determines that the services are not relevant to the battering.

In addition, these aliens remain subject to limits placed upon other qualified aliens, including a five year ban for newly arrived immigrants and a state option to exclude qualified aliens from Medicaid.

Exceptions to Sponsor Deeming (Section 552)

The bill creates two new exceptions to sponsor deeming that were not available to immigrants under the Welfare Act.

Indigence Exception

In determining a qualified alien's eligibility for federal means-tested public benefits, the sponsor's and their spouses' income is deemed to be available. However, sponsor deeming will not apply if an agency determines that absent the benefit or assistance, the alien will go hungry or become homeless. During a twelve month period, only the actual amount of support provided by the sponsor will be counted. However, should the agency make such a determination, the agency must report this to the Attorney General, who presumably can take action under other provisions of the law (e.g., sue the sponsor for services provided).

Battered Spouse and Child Exception

Sponsor deeming also will not apply for 12 months to cases in which the qualified alien (or such alien's child) has been battered or subjected to extreme cruelty. The qualified alien cannot have participated in the abuse of the child to be eligible.

After 12 months, the batterer's income and resources will not be deemed to the qualified alien if the battery or cruelty has been recognized in a court order or in a prior determination of the INS.

In addition, the agency must make the determination (which cannot be reviewed by any court) that the benefits being applied for has a substantial connection to the abuse. Finally, the person who committed the battery or cruelty no longer can be living in the same household as the recipient.

Proof of Citizenship to Receive Benefits (Section 504)

This provision amends the Welfare Act to require the Attorney General, in consultation with the Secretary of the Department of Health and Human Services, to establish procedures within 18 months of the enactment of the Immigration Act to provide proof of citizenship in a "non-discriminatory manner" for individuals applying for federal public benefits. Federal public benefits include any grant, contract, loan, professional license, or commercial license provided by a federal agency or with federally appropriated funds. They also include any federal retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefits, or any other similar benefits provided to an individual, household, or family eligibility unit. (See section 401(c) of the Welfare Act of 1996).

Non-Profit Charitable Organizations Exemption from Proof Requirements (Section 508)

Non-profit charitable organizations are not required to determine, verify, or otherwise require proof of eligibility of any applicants for federal, state, or local public benefits.

There was an attempt in previous bill language to exclude hospital services from this protection. On final passage, however, the Immigration Reform Act also exempts non-profit charitable organizations that provide hospital services from screening or verifying eligibility.

Affidavits of Support (Section 551)

This section amends the provisions on sponsor affidavits of support added by the Welfare Act.

Sponsors will have to agree and demonstrate their ability to maintain themselves (including their households and other dependents and sponsored aliens) and the sponsored alien at a minimum annual income of 125 percent of the federal poverty level. Sponsors on active duty in the armed forces must demonstrate the same at 100 percent of the federal poverty level. A sponsor includes the person who is making a petition for the admission of the alien and, in the case of the petitioner unable to meet the income requirements, anyone else who meets the income requirements and who "accepts joint and several liability" with the petitioner.

In addition, the affidavits of support now are enforceable against the sponsor for the costs of certain means tested benefits not only by federal, state, and local governments, but also by "any other entity that provides any means-tested public benefits..." The affidavits are in effect until the alien becomes a citizen or until the alien is credited with 40 qualifying quarters of work (as defined by Title II of the Social Security Act). After December 31, 1996, a quarter may be credited only if the alien did not receive a federal means-tested benefit during that quarter. Actions to obtain reimbursement from the sponsor must be brought within 10 years after the date the alien last received applicable means-tested benefits.

Sponsors must provide information on changes of address and their social security numbers. Sponsors who do not notify the Attorney General of changes in address can be fined from \$250 up to \$5,000.

Emergency Medical Services Expenses (Sections 562, 563)

Reimbursement will be provided to state and local governments that provide emergency medical treatment on or after January 1, 1997 to undocumented aliens through public hospitals, other public facilities, or contracted hospitals or facilities. Reimbursement is available only to the extent such costs are not reimbursed by another federal program and cannot be recovered from the alien or any other person. Implementation of this provision is subject to available federal appropriations.

To obtain these funds, states must verify the immigration status of the individuals for whom payment is being made using procedures to be developed by the Attorney General and the Secretary of the Department of Health and Human Services.

Emergency medical services are defined to include emergency labor and delivery or other conditions which, absent immediate medical treatment, could result in placing the patient's health in serious jeopardy or cause serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

Subject to appropriated funds, the Attorney General also is directed to reimburse states or local

governments for the costs of ambulance service for individuals injured while attempting to cross the border illegally or who are injured while in state or local custody pursuant to a federal transfer request.

Pilot Project Requiring Posting of Bond for Benefits (Section 564)

The Attorney General is required to establish a three year pilot project in five district offices of the INS to require aliens to post a bond on behalf of themselves and their dependents sufficient to cover the cost of any means-tested public benefits. This is in addition to an Affidavit of Support. The bond is to remain in effect until the death, departure, or naturalization of the alien.

Notice to the Public And Program Recipients (Section 593)

The Immigration Reform Act directs federal, state and local agencies that administer these programs to provide general notification to the public and to recipients of the changes in eligibility requirements made by these provisions. However, this section explicitly denies continued eligibility for benefits should notice not be provided.

Restrictions on General Public Cash Assistance (Section 553)

State and local governments can limit or restrict eligibility of aliens for state and local cash assistance programs (e.g., general assistance or foster care and adoption assistance programs). Criteria used to limit eligibility may not be more restrictive than the comparable federal program (e.g., AFDC for families on general assistance, SSI for GA recipients with disabilities). Sponsor deeming for purposes of determining eligibility for, and amount of, benefits are deemed to be less restrictive than a prohibition of eligibility for such benefits.

GAO Study Required on Benefits to Non-Qualified Aliens (Section 509)

Within 180 days after enactment of the Immigration Reform Act, the General Accounting Office (the Comptroller General) is required to submit to the House and Senate Judiciary Committees and to the Inspector General a report on the extent to which means-tested public benefits are being provided to non-qualified aliens. The GAO is directed to address the locations where services to non-qualified aliens are being provided and the incidence of fraud or misrepresentation to obtain such services. The stated purpose of this is to provide such benefits to citizens and qualified aliens.

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