



LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: This proposed rule updates the Legal Services Corporation (LSC or Corporation) regulation on legal assistance to aliens. The revisions are intended to implement three statutory changes on aliens eligible for legal assistance from LSC grant recipients that have been enacted since the pertinent provisions of the existing regulation were last revised in 1997. Those three changes are described in more detail in the Supplementary Information section of this preamble.

LSC seeks comments on the proposed changes to the rule. LSC also seeks comments on specific items that it has identified in this notice.

DATE: Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

ADDRESSES: Written comments must be submitted to Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street, NW, Washington, DC 20007; (202) 337-6519 (fax) or 1626rulemaking@lsc.gov. Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street, NW, Washington, DC 20007, (202) 295-1623 (phone), (202) 337-6519 (fax), 1626rulemaking@lsc.gov.

SUPPLEMENTARY INFORMATION: LSC's current appropriations restrictions, including those governing the assistance that may be provided to aliens, were enacted in 1996 and have been reincorporated annually with amendments. Section 504(a)(11) of the FY 1996 LSC appropriation prohibits the Corporation from providing funds to any person or entity (recipient) that provides legal assistance to ineligible aliens, subject to statutory exceptions. Pub. L. 104-134, Title V, section 504(a)(11), 110 Stat. 1321, 1321-54 (1996).

After the alienage restrictions were enacted in 1996, LSC adopted an interim rule to implement these statutory requirements. 61 FR 45750 (August 29, 1996). While this rule was pending for comment, Congress passed the Kennedy Amendment, which expanded eligibility for LSC recipients to use non-LSC funds to provide related assistance to aliens who have been battered or subjected to extreme cruelty in the United States by family members. Pub. L. 104-208, Div. A, Title V, section 502(a)(2)(C), 110 Stat. 3009, 3009-60 (1996). The Kennedy Amendment was repeated in the FY 1998 modification of the LSC appropriation restrictions. Thereafter, LSC's annual appropriations have incorporated the FY 1998 restrictions by reference. Pub. L. 105-119, Title V, section 502(a)(2)(C), 111 Stat. 2440, 2511 (1997) incorporated by Pub. L. 113-6, Div. B, Title IV, 127 Stat. 198, 268 (2013) (LSC FY 2013 appropriation).

In 1997, LSC revised Part 1626 to implement the Kennedy Amendment. 62 FR 19409 (April 21, 1997), amended by 62 FR 45755 (August 29, 1997). The substantive

provisions in Part 1626 have not been changed since 1997. In 2003, LSC added a list of documents establishing the eligibility of aliens for legal assistance from LSC grant recipients as an appendix to Part 1626. 68 FR 55540 (Sept. 26, 2003). The appendix has not been changed since 2003. This proposed rule makes three changes in Part 1626 to conform the regulation to statutory provisions.

The first proposed change would update the definition of aliens eligible for legal assistance under anti-abuse statutes. In the existing regulation, this definition appears in 45 CFR 1626.4, which in turn implements section 502(a)(2)(C) of the FY 1997 LSC appropriation. Pub. L. 104-208, 110 Stat. 3009 as repeated in FY 1998 and incorporated by reference in LSC's annual appropriations thereafter. Pub. L. 113-6, 127 Stat. 198 (2013) incorporating by reference FY 1998 appropriations. Since the last revision of the regulation in 1997, section 502(a)(2)(C) has been amended by anti-abuse statutes to expand the definition of eligible aliens. The anti-abuse statutes are the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA), and the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA). These statutes permit LSC recipients to provide assistance to aliens who are direct victims of abuse and to other covered aliens who are not direct victims, such as family members and persons who may assist in law enforcement efforts. VTVPA and TVPRA create trafficking exceptions to the alienage prohibitions. VAWA amends section 502.

Because the amended text of section 502 is not codified, the pertinent portion is available at www.lsc.gov/about/regulations-rules/open-rulemaking to aid in understanding how the proposed rule implements that provision.

The second proposed rule change would implement the FY 2008 LSC appropriation expansion of eligibility for legal assistance to include alien forestry workers admitted to the United States as temporary workers under the H-2B program of the Immigration and Nationality Act (INA).

The third proposed rule change is technical. The statutory basis for an existing category of eligible aliens under the regulation, persons granted withholding of removal from the U.S., has been relocated to a new section of the INA.

The proposed rule also updates the definition of “related legal services” that may be provided to aliens because of abuse and related crimes to conform with statutory authority and previous LSC interpretations.

The existing regulation includes an appendix that lists examples of documents acceptable to establish the eligibility of aliens for legal assistance from LSC grant recipients. The proposed rule would modify the appendix in three respects. First, the Corporation proposes to move the list of example documents from an appendix to the alienage regulation to a program letter because updating the example documents as immigration forms change is a ministerial function that does not alter the substance of the regulation. Second, the list is updated to include documentation that would establish eligibility for the categories of eligible aliens added in the proposed rule. Third, the list has been updated to include new eligibility documents for aliens covered under the existing regulation.

The most extensive revisions in the proposed rule are to section 1626.4 of the regulation, and update that provision to conform to the statutory changes in alien eligibility that result from the trafficking statutes and VAWA.

The VTVPA and TVPRA require that LSC and Federal agencies “shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, and aliens classified as a nonimmigrant under section 1101 (a)(15)(T)(ii) of title 8 [family members of trafficking victims], without regard to the immigration status of such victims. 22 U.S.C. 7105, codifying VTVPA, Pub. L. 106-386, sections 107(b) and (e), 114 Stat.1464, 1475, and 1477 (2000), and TVPRA, Pub. L. 108-193, section 4, 117 Stat. 2875, 2877 (2003). In 2006, VAWA amended the LSC alienage eligibility provision in section 502(a)(2)(C) to expand the categories of aliens to whom recipients may provide related assistance by adding aliens who (1) are victims of sexual assault or trafficking in the United States or (2) qualify for “U” visas under section 101(a)(15)(U) of the INA. Pub. L. 105-119, Title V, section 502(a)(2)(C), amended by Pub. L. 109-162, section 104, 119 Stat. 2960, 2978 (2006). The U visa provision of the INA allows aliens to remain in the United States for a limited period who are victims of a variety of abuse crimes, who may assist in law enforcement related to such crimes, or who are family members of victims. 8 U.S.C. 1101(a)(15)(U). The VAWA amendments in 2006 incorporated the VTVPA and TVPRA provisions.

The two major changes resulting from the VAWA amendment of the LSC appropriations were that (1) LSC recipients are permitted to provide assistance to previously ineligible aliens who are entitled to remain in the U.S. under the anti-abuse statutes and (2) recipients may use LSC funds to assist these aliens.

LSC issued two program letters to provide guidance to recipients on implementing the VTVPA, TVPRA and VAWA eligibility changes. Program Letter 05-2 (October 6, 2005) (addressing VTVPA and TVPRA); Program Letter 06-2 (February 21, 2006)

(addressing VAWA). However, the existing regulation has not been updated to include the extension of eligibility under the anti-abuse statutes.

In addition to the changes resulting from the anti-abuse statutes, the FY 2008 LSC appropriation amended section 504(a)(11) to extend eligibility for assistance from recipients to forestry workers admitted to the U.S. under the H-2B temporary worker provisions in section 101(a)(15)(H)(ii)(b) of the INA. Pub. L. 104-134, section 504(a)(11)(E), 110 Stat. at 1321-55, amended by Pub. L. 110-161, Div. B, Title V, section 540, 121 Stat. 1844, 1924 (2007). Section 1626.11 of the LSC alienage regulation establishes eligibility for H-2A agricultural temporary workers, but has not been amended to implement the statutory extension of eligibility to forestry workers.

On April 14, 2013, the Operations and Regulations Committee (the Committee) of the LSC Board of Directors (the Board) recommended that the Board authorize rulemaking to conform Part 1626 to statutory authorizations. On April 16, 2013, the Board authorized the initiation of rulemaking.

Pursuant to the LSC Rulemaking Protocol, LSC staff prepared a proposed rule amending Part 1626 with an explanatory rulemaking options paper. On July 22, 2013, the Committee recommended that the Board approve the proposed rule for notice and comment rulemaking. On July 23, 2013, the Board approved the proposed rule for publication in the Federal Register for notice and comment. A section by section discussion of the proposed rule is provided below.

Authority

Citations to the VTVPA, TVPRA, VAWA, the FY 2006 Appropriations Act, and the FY 2008 Appropriations Act are added.

1626.1 Purpose.

No revisions have been made to this section.

1626.2 Definitions.

Paragraphs (b) and (c) have been changed to add references to § 1626.4 to the definitions of “eligible alien” and “ineligible alien.” This revision, along with others discussed subsequently, reflects a change in how the two sections on alien eligibility, § 1626.4 and § 1626.5, are described in the proposed rule. In the existing regulation, aliens eligible under anti-abuse statutes (§ 1626.4) are described as persons to whom alienage restrictions do not apply, and aliens eligible because of immigration status (§ 1626.5) are described as eligible aliens. In the proposed rule, both § 1626.4 and § 1626.5 are described as establishing categories of aliens who are eligible for assistance. The Corporation believes that this adds clarity to the rule’s identification of aliens who may be assisted by recipients.

Paragraph (d) has been revised to identify the Department of Homeland Security (DHS) as the governmental entity that makes status adjustment determinations in place of the Immigration and Naturalization Service.

Paragraph (f) of the existing regulation, the definition of persons “battered or subjected to extreme cruelty”, has been moved to § 1626.4(c)(1). Paragraph (g) of the existing regulation, the definition of “[l]egal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty” has been moved to § 1626.4(b) and renamed with substantive revisions that are explained in the discussion of that section.

These moves are part of the proposed rule’s consolidation of all terms exclusive to eligibility under anti-abuse statutes to § 1626.4. Existing definitions that apply to §

1626.4 and new definitions added in the interim rule appear in that section as revised. A new paragraph (f) is added that defines the term “anti-abuse statutes,” which is used to collectively describe the statutes that expand eligibility.

1626.3 Prohibition.

Technical revisions have been made to this section.

1626.4 Aliens eligible for assistance under anti-abuse laws.

This section is substantially rewritten to incorporate alien eligibility expansion under the VTVPA, TPVRA, VAWA, and resulting amendments to the LSC restrictions. The title of this section and of § 1626.5 have been revised to clearly state that these two sections of Part 1626 establish the two major categories of eligible aliens who are excepted from the restrictions on assistance: (1) aliens who are eligible for assistance under anti-abuse laws (covered in § 1626.4) and (2) aliens eligible for assistance based on immigration status (covered in § 1626.5).

Paragraph (a) of this provision has been rewritten to incorporate into the regulation (1) the current language of section 502(a)(2)(C) of the appropriations restrictions, which contains the VAWA amendment expanding alien eligibility, and (2) the language of 22 U.S.C. 7105(b)(1)(B) implementing VTVPA and TPVRA. The introductory clause before paragraph (a)(1) tracks that of § 1626.5. As is the case with the new titles, this is intended to clearly reflect that the two sections establish two distinct categories of aliens who are eligible for assistance.

Paragraph (a) allows recipients to assist aliens eligible under the anti-abuse statutes with any funds, including LSC funds, as permitted by those statutes. This replaces the

superseded funding limitation in the existing § 1626.4, which requires that recipients use non-LSC funds to assist clients eligible under this provision.

Paragraph (a)(1) in the proposed rule adopts language identifying eligible aliens from the VAWA amendment to section 502(a)(2)(C) of the appropriations restrictions. Persons “battered and subject to extreme cruelty” are eligible under the existing Part 1626 language, which adopts the definition of that term from immigration regulations implementing the 1994 VAWA. *See* 8 CFR 204.2(c)(1)(vi); 8 CFR 216.5(e); 8 CFR 1216.5(c)(3)(i). The proposed rule implements two changes from the VAWA amendment. First, the proposed rule eliminates the existing, but superseded, regulatory requirement that the battering or cruelty take place in the United States, a territorial restriction which has been eliminated by the VAWA amendment. Second, the proposed amendment implements statutory language eliminating the existing superseded regulatory requirement that persons be battered or subjected to extreme cruelty by a family or a household member.

The proposed changes in paragraph (a)(1) also implement the VAWA amendment by adding two new groups of eligible aliens: (1) victims of sexual assault or trafficking in the United States and (2) persons qualified for “U visa” relief under section 101(a)(15)(U) of the INA. The existing limitation that only “related legal assistance” can be provided is retained in the VAWA amendment and the regulation.

Paragraph (a)(2) adds language implementing 22 U.S.C. 7105 (codifying provisions of the VTVPA and TVPRA), which requires that LSC expand all services to “victims of severe forms of trafficking in the United States” as well as to some relatives of such

victims. Unlike the VAWA provision, the VTVPA and TVPRA do not limit recipients to providing “related legal assistance.”

Paragraph (b) is a relocated and provides a revised definition of “related legal assistance” that may be provided to VAWA-eligible aliens under section 502(b)(2) of the FY 1998 LSC appropriation, as amended. The VAWA amendment limits assistance to aliens to “related legal assistance.” The definition of such assistance is relocated from the general definitions in § 1626.2, into § 1624.4 establishing eligibility for aliens under the anti-abuse statutes because the definition applies only to VAWA-eligible aliens covered by § 1626.4.

The substance of the definition of related legal assistance is changed to use the same term for assistance, “related legal assistance,” as used in the VAWA amendment to the LSC appropriations. Paragraphs (1), (2), and (3) of the definition link the assistance to the three categories of aliens eligible under the anti-abuse laws, including the categories added by VAWA and included in the proposed rule.

The closing paragraph of the definition of “related legal assistance,” following the three paragraphs, adopts LSC’s prior interpretation of permissible legal assistance for persons eligible under anti-abuse laws. The definition of “related legal assistance” in the proposed rule conforms to the interpretation of that term in the February 21, 2006 LSC Program Letter 06-2 providing guidance of the VAWA amendments. That program letter referenced LSC’s interpretation on the existing Part 1626 regulation. 62 FR 45757 (preamble to final rule) (Aug. 29, 1997). In that interpretation, LSC concluded that related legal assistance for abused aliens could include representation on matters such as domestic and poverty law, employment, housing, and benefits, so long as such matters

would assist in preventing, protecting from, or ameliorating abuse. *Id.* This same protection is necessary to fully protect persons in the added groups of aliens eligible for assistance, and accordingly the language added to the definition from prior LSC interpretations provides direction to recipients and other interested parties on the scope of assistance that is permissible.

Paragraph (c) adds definitions for the four groups of aliens eligible for assistance under the anti-abuse statutes. Paragraph (c)(1), the definition of persons “battered or subjected to extreme cruelty,” is part of the existing regulation and is relocated from the definitions in § 1626.2 to § 1626.4 on eligibility under the anti-abuse laws. The first sentence of paragraph (c) defines “battered or subjected to extreme cruelty” by cross-reference to that term as defined in DHS regulations. This will allow the definition to remain accurate if the DHS regulations change. The examples of prohibited abusive behavior that follow the cross-reference are taken directly from the language of existing DHS regulations. *See* 45 CFR 204.2(c)(1)(vi); 8 CFR 216.5(e); 8 CFR 1216.5(e)(3)(i). This language is the definition of “battered or subjected to extreme cruelty” in the existing regulation.

Paragraph (c)(2), the definition of “sexual assault or trafficking,” derives from VAWA and the INA “U visa” provision and incorporates by cross-reference the definitions in those statutes.

Paragraph (c)(3) incorporates the definition of the term “severe forms of trafficking” from the INA “T visa” provision, VTVPA and TVPRA. This language differs from the VAWA term “trafficking” in that it adds the words “severe forms.”

LSC specifically seeks comment on whether the VAWA term “trafficking” differs from the VTVPA/TVPRA/INA term “severe forms of trafficking,” and, if so, how the terms are

different and what evidence LSC recipients should rely on in distinguishing between these two terms for prohibited trafficking.

Paragraph (c)(4) identifies persons “qualified for relief” under the U visa statute, section 101(a)(15)(U) of the INA. This includes persons who have been granted U visas, listed in paragraph (c)(3)(A). Because the term “qualified for relief” is not limited to persons who have been granted relief, the U visa paragraph also establishes eligibility for applicants for U visa relief and for persons who have not applied but who a recipient concludes are entitled to U visa relief. These latter two groups are included to permit recipients to represent aliens who have either applied for U visa relief or would, in the recipient’s determination, qualify for U visas but have not applied.

The eligibility provisions for U visa qualified aliens who have not been granted U visa relief require that there be evidentiary support for a recipient’s determination of U visa qualification and eligibility. This standard is adopted from Rule 11 of the Federal Rules of Civil Procedure and is used to require recipients to have a factual basis for eligibility determinations.

The last sentence of paragraph (c)(4) addresses the two categories of U visa relief, referred to in immigration forms as “primary U visa status” and “derivative U visa” status. Primary U visas are those sought by persons who are victims of abuse or who can assist with investigation or enforcement of such crimes, while derivative visas are those sought for family members of persons seeking primary U visas.

Derivative U visa applicants are qualified for relief based on the eligibility of their family members applying for primary U visa status. The clarification in the proposed rule confirms that all U visa seekers are eligible for assistance without exclusion of applicants

seeking derivative U visa status. The Corporation determined that this clarification would be useful to incorporate the analysis and conclusions of a recent Advisory Opinion from the LSC Office of Legal Affairs on U visa eligibility. *See* LSC Advisory Opinion AO-2013-003 (June 13, 2013).

Paragraph (d) of the proposed rule addresses two issues regarding geographic location. As described below, LSC specifically requests comments on these issues. Generally, the 504(a)(11) provision regarding eligible aliens requires presence in the United States, a requirement set forth in § 1626.5. The anti-abuse laws enacted by Congress subsequent to the FY 1996 restrictions do not contain the same broad presence requirement.

The first geographic location issue is the geographic location of the criminal activity that gives rise to the eligibility of the alien, addressed in paragraph (d)(1). The prohibitions of VAWA and the trafficking acts are not limited to activity within the United States.

Similarly, the VAWA definition of “battered and extreme cruelty” was amended to eliminate the requirement that such conduct take place in the United States. The U visa provision in the INA requires that the criminal activity have “violated the laws of the United States *or* occurred in the United States (including in Indian country and military installations) or the territories or possessions of the United States.” 8 U.S.C. 1101

(a)(15)(U)(i)(IV)(emphasis added). The DHS United States Custom and Immigration Service (USCIS) has interpreted this “as requiring that the predicate activity violate the laws of the United States *regardless of whether it occurred in the United States.*” 72 FR 53030 (September 17, 2007)(emphasis added).

The USCIS regulation makes clear that criminal activity violative of U.S. law sufficient for U visa eligibility *need not take place in the United States*. Similarly, because the

geographic location restriction in the definition of “battered and subjected to extreme cruelty” has been eliminated, such conduct need not take place in the United States. The trafficking act definition does not state that trafficking activity must take place in the United States, though it refers to victims in the United States. 22 U.S.C. 7102(9); 7105(b). Similarly, the “T visa” provision of the INA requires that a person be physically present in the United States to obtain relief, but does not require that the trafficking take place in the United States. 8 U.S.C. 1101(a)(15)(T). Moreover, the list of crimes for which a U visa may be granted includes trafficking. 8 U.S.C. 1101(a)(15)(U)(iii). However, the VAWA amendment to section 502 of the appropriations legislation states that “a victim of sexual assault or trafficking *in the United States*” is eligible for assistance. Pub. L. 109-162, section 104, 119 Stat. at 2979 (emphasis added). This is narrower than the other, related definitions of trafficking, which do not require that trafficking occur in the U.S. Similarly, the VTVPA and TVPRA refer to “severe forms of sexual trafficking in the United States.” 22 U.S.C. 7105(b)(1)(B). It is LSC’s conclusion that the narrower VAWA, VTVPA, and TVPRA language controls on this issue and that trafficking and severe forms of trafficking must have occurred in the United States.

In sum, it is LSC’s view that the predicate activity for eligibility under the anti-abuse statutes need not take place in the United States so long as the activity violates a law of the United States, with the exception of trafficking and severe forms of trafficking, which must occur in the United States as described above.

LSC specifically requests comment on this issue regarding where the predicate activity takes place.

The second geographic location issue is whether an alien must be physically present in the United States to be eligible, addressed in paragraph (d)(2). The U visa statutory provision does *not* impose a physical presence requirement. The USCIS interpretation states that its regulation “does not require petitioners to file for relief within the U.S. The statute does not require petitioners to be physically present to qualify for U visa status.” 72 FR 53021 (September 17, 2007).

VAWA does not address whether aliens must be physically present in the U.S. The trafficking acts themselves do not impose such a requirement, although they do reference victims in the United States and eligibility for services when victims are in the United States. 22 U.S.C. 7105(b). However, the T visa provision of the INA, which establishes visa eligibility for victims of trafficking, requires that victims be present in the United States. 8 U.S.C. 1101(a)(15)(T). The VAWA amendment to the appropriations legislation refers to eligibility for “victims of sexual assault or trafficking in the United States.” Pub. L. 109-162, section 104, 119 Stat. at 2979 (amending section 502(a)(2)(C)). Complicating this further, trafficking and VAWA violations are among the crimes that establish U visa eligibility, so a victim of trafficking who is not in the United States can obtain a U visa but not a T visa. 8 U.S.C. 1101(a)(15)(U).

Reviewing these statutes collectively, it is the view of LSC that aliens should be eligible for assistance under the anti-abuse statutes regardless of whether they are present in the United States. Most significantly, this interpretation of the statutes comports with the USCIS interpretation of the U visa statute, under which victims of trafficking and VAWA violations may seek relief. Victims of sexual assault *and* trafficking are qualified for U visa relief and need not be physically present in the United States for such relief.

LSC specifically requests comment on this issue regarding presence in the United States.

Paragraph (e) of the proposed rule, “evidentiary support”, establishes an evidentiary standard for determining eligibility for assistance under the anti-abuse statutes. The standard is adopted from Rule 11 of the Federal Rules of Civil Procedure, and permits a recipient to determine an alien is eligible if there is evidentiary support that the alien falls within any of the eligibility categories or if there is likely to be evidentiary support after reasonable opportunity for further investigation. The list of examples of evidence that would meet the standard is taken from VAWA, which allows consideration of “any credible evidence” of abuse. This standard is established in section 204(a)(1)(J) of the INA (8 U.S.C. 1154(a)(1)(J)), and has been adopted by DHS. 8 CFR 204.2(c)(1)(vi). Paragraph (e) of the proposed rule identifies the examples of credible evidence listed in VAWA and the DHS regulation.

In applying the evidentiary standard, LSC considered that recipients will be making eligibility determinations on whether aliens qualify for recipient assistance on pending and contested claims rather than making final decisions on the merits of the claims of aliens for relief. For that reason, LSC chose an evidentiary standard that was appropriate for assessing the validity of filing and proceeding with claims. The evidentiary support standard in the proposed rule addresses the issues that recipients will confront in assessing eligibility in several ways.

First, the rule adopts a standard based on Rule 11 of the Federal Rules of Civil Procedure for filing and continuing with claims. Second, the standard permits recipients to make a judgment that an alien who may not possess evidence at intake will be able to do so after further investigation. Third, the rule allows eligibility based on statements taken from an

alien, which may in some cases be the only evidence available during intake. Fourth, the rule accounts for the reality that the facts underlying eligibility assessments in abuse cases will often be fluid by calling for recipient staff to continue to assess eligibility beyond the intake process and to reverse eligibility determinations when appropriate. Fifth, the rule does not permit a recipient to delay in making eligibility determinations in order to provide assistance to an ineligible alien.

Paragraph (f) of the proposed rule is a revision of paragraph (d) of the existing regulation, which states that recipients are not required to maintain records regarding the immigration status of clients represented under § 1626.4(a). The reason for this waiver of immigration status recordkeeping for clients eligible under § 1626.4 is that, under the existing regulation, clients are eligible under § 1626.4 because they are victims of abuse and not because of their immigration status.

For clients who are eligible because they are battered, subjected to extreme cruelty, victims of sexual abuse, or victims of trafficking or severe forms of trafficking, but who have not been granted visa, eligibility is based on abuse and not on immigration status.

Paragraph (f)(2) of the proposed rule requires that evidence of the abuse must be maintained for such clients but does not require evidence of immigration status. When such clients have filed applications for U visas or T visas copies of those applications must be retained.

However, the eligibility of certain of the aliens eligible under the proposed rule does rest in part on immigration status. Specifically, the eligibility of aliens who have been granted U visas or T visas is based on their immigration status in the visa process. Accordingly, paragraph (f)(1) in the proposed rule requires that recipients maintain

verification of U visa or T visa status for clients whose eligibility is based on their receiving such visas.

Paragraph (g) is a new provision that addresses aliens who qualify under both § 1626.4 and § 1626.5. Because recipients are limited to providing “related legal assistance” under § 1626.4 but may provide the full range of permissible assistance without this restriction under § 1626.5, the paragraph instructs recipients to treat “dual eligible” aliens as eligible under § 1626.5.

1626.5 Aliens eligible for assistance based on immigration status.

This section is substantively unchanged. As explained in the immediately preceding discussion, the titles for proposed § 1626.4 and § 1626.5, have been changed to describe more precisely the exceptions to the prohibition of assistance to aliens established in those sections.

The proposed rule includes a change in § 1626.5(e), which concerns persons granted withholding of deportation. Section 1626.5 of the regulation allows recipients to provide assistance to several categories of aliens who have been granted immigration status and are lawfully present or admitted to the United States. One category eligible under this section is “alien[s] who [are] lawfully present in the United States as a result of the Attorney General’s withholding of deportation pursuant to section 243(h) of the INA (8 U.S.C. 1253(h)).” 45 CFR 1626.5(e).

The withholding provision has been relocated to another section of the INA, and is now codified at 8 U.S.C. 1231(b)(3). The relocated withholding provision prohibits the removal of an alien to a country if the life or freedom of the alien would be threatened in the country of removal. Section 1626.5(e) in the proposed regulation is amended to

correctly identify the citation to the statutory basis for withholding relief, and to reflect that the relocated provisions refers to withholding of “removal” and not to withholding of “deportation.”

1626.6 Verification of citizenship.

No substantive revisions have been made to this section. The proposed rule amends the section to reference internet, email, or other non-telephone communications.

1626.7 Verification of eligible alien status.

This section is revised to reflect that the list of eligibility documents presently published as an appendix to § 1626 will be subsequently published and revised in LSC program letters, or equivalent documents. The revision made to § 1626.6 on non-in-person communications also appears in this section.

1626.8 Emergencies.

Section 1626.4 has been added to the list of provisions for which emergency service can be provided prior to compliance with eligibility provisions.

1626.9 Change in circumstance.

No revisions have been made to this section.

1626.10 Special eligibility questions.

No revisions have been made to this section.

1626.11 H-2 forestry and agricultural workers.

This section establishes eligibility for assistance to certain workers admitted to the U.S. under temporary workers provisions in section 101(a)(15)(H)(ii) of the INA. Workers with immigration status under this section of the INA are often referred to as “H-2A” or

“H-2B” visa holders, depending on the subsection of the H-2 provision they are admitted under.

The title of this section has been changed to add a reference to forestry workers, because statutory changes implemented in this section of the proposed rule add forestry workers authorized to be in the United States pursuant to the H-2B provision of the INA.

The changes in paragraph (a) of this section conform the regulation’s language on eligibility of agricultural workers to the statutory authority establishing this eligibility.

The statutory authority establishing eligibility for agricultural workers, section 504(a)(11)(E) of the FY 1996 LSC appropriations legislation, permits recipients to provide assistance to “an alien to whom section 305 of the Immigration Reform Act of 1986 [“IRCA”] (8 U.S.C. 1101 note) applies.” Pub. L. 104-134, section 504(a)(11)(E), 110 Stat. at 1321-55, amended by Pub. L. 110-161, section 540, 121 Stat. at 1924.

Section 305 of IRCA in turn establishes eligibility for “non-immigrant worker[s] admitted or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Naturalization Act .” 8 U.S.C. 1101, note.

The existing § 1626.11 language refers generally to “agricultural H-2 workers” and eligibility “under the provisions of 8 U.S.C. 1101(a)(15)(H)(ii).” This general reference to H-2 could be confused as a broader authorization than that actually created by the statute, which establishes eligibility specifically for H-2A agricultural workers. The revised rule clarifies this by citing section H-2A rather than H-2.

The added paragraph (b) implements the FY 2008 amendment to section 504(a)(11)(E) of the FY 1996 LSC appropriations legislation, which extended eligibility for assistance from recipients to H-2B visa forestry workers. Pub. L. 104-134, section 504(a)(11)(E),

110 Stat. at 1321-55, amended by Pub. L. 110-161, section 540, 121 Stat. at 1924. The existing § 1626.11 provision on H-2 visa eligibility does not include forestry workers. Paragraph (b) of the proposed rule also establishes that the existing limitations on assistance for H-2A agricultural workers apply as well to H-2B forestry workers. This conforms to the FY 2008 LSC appropriation, which limits the assistance for H-2B eligible forestry workers to that described in section 305 of IRCA. *Id.* Section 305 limits assistance to “matters relating to wages, housing, transportation and other employment rights” that arise under a temporary worker’s specific H-2A contract. 8 U.S.C. 1101, note. The limitations, codified in the existing regulation at paragraph (b), appear without substantive revision in paragraph (c) of the proposed rule.

1626.12 Recipient policies, procedures and recordkeeping.

No revisions have been made to this section.

Appendix to Part 1626—Examples of documents and other information establishing alien eligibility for representation by LSC programs.

The list of eligibility documents presently included in the regulation as an appendix to Part 1626 was last updated in 2003, and, like the regulation, it requires updates. Revisions to the list do not entail policy decisions, as they are limited to administrative updates to the list of examples of documents or information which satisfy eligibility. In view of the frequency with which immigration forms change, subjecting updates of the list to the process of repeated Board approval and the LSC rulemaking protocol would be unduly complicated. For that reason, the Corporation proposes that the information currently contained in the appendix be reclassified as a program letter posted on the LSC website, and emailed to grant recipients.

The initial revision of the appendix and reclassification as a program letter is a change in the regulation and is therefore being done pursuant to the LSC rulemaking protocol, which requires Board review and approval prior to publication for notice and comment. Legal Services Corporation Rulemaking Protocol, 67 FR 69762 (November 19, 2002). Subsequent revision of the program letter would allow for, but would not require, Board consideration and approval and thereafter notice and comment.

List of Subjects in 45 CFR Part 1626

Aliens, Grant programs-law, Legal services, Migrant labor, Reporting and recordkeeping requirements

For the reasons discussed in the preamble, the Legal Services Corporation proposes to revise 45 CFR part 1626 to read as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

1626.1 Purpose.

1626.2 Definitions.

1626.3 Prohibition.

1626.4 Aliens eligible for assistance under anti-abuse laws.

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1626.10 Special eligibility questions.

1626.11 H-2 forestry and agricultural workers.

1626.12 Recipient policies, procedures and recordkeeping.

AUTHORITY: Pub. L. 104-208, 110 Stat. 1321; Pub. L. 104-134, 110 Stat. 3009; Pub. L. 105-119, 111 Stat. 2440; Pub. L. 106-386, 114 Stat.1464; Pub. L. 108-193, 117 Stat. 2875; Pub. L. 109-162, 119 Stat. 2960; Pub. L. 110-161, 121 Stat. 1844.

§ 1626.1 Purpose.

This part is designed to ensure that recipients provide legal assistance only to citizens of the United States and eligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance.

1626.2 Definitions.

(a) *Citizen* includes a person described or defined as a citizen or national of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8 U.S.C. 1401 *et seq.*) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 *et seq.*) (citizens by naturalization) or antecedent citizen statutes.

(b) *Eligible alien* means a person who is not a citizen but who meets the requirements of § 1626.4 or § 1626.5.

(c) *Ineligible alien* means a person who is not a citizen and who does not meet the requirements of § 1626.4 or §1626.5.

(d) *Rejected* refers to an application for adjustment of status that has been denied by the Department of Homeland Security (DHS) and is not subject to further administrative appeal.

(e) To provide legal assistance *on behalf of* an ineligible alien is to render legal assistance to an eligible client that benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

(f) *Anti-abuse statutes* means the Violence Against Women Act of 1994, Pub. L. 103-322, 108 Stat. 1941, as amended, and the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (collectively referred to as “VAWA”); the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464 (“VTVPA”); the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (“TVPRA”); Section 101(a)(15)(T) of the Immigration and Naturalization Act (“INA”), 8 U.S.C. 1101(a)(15)(T); Section 101(a)(15)(U) of the INA, 8 U.S.C. 1101(a)(15)(U); and the incorporation of these statutory provisions in section 502(a)(2)(C) of LSC’s FY 1998 appropriation, Pub. L. 105-119, Title V, 111 Stat. 2440, 2510 as incorporated by reference thereafter. *E.g.*, Pub. L. 113-6, 127 Stat. 198, 267 (2013) (LSC’s FY 2013 appropriation).

(g) *United States*, for purposes of this part, has the same meaning given that term in 8 U.S.C. 1101(a)(38) of the INA.

§ 1626.3 Prohibition.

Recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

§ 1626.4 Aliens eligible for assistance under anti-abuse laws.

(a) Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law:

(1) A recipient may provide related legal assistance to an alien who is within one of the following categories:

(i) An alien who has been battered or subjected to extreme cruelty, or is a victim of sexual assault or trafficking in the United States, or qualifies for relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)); or

(ii) An alien whose child, without the active participation of the alien, has been battered or subjected to extreme cruelty, or has been a victim of sexual assault or trafficking in the United States, or qualifies for immigration relief under section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)).

(2) A recipient may provide legal assistance, including but not limited to related legal assistance, to:

(i) an alien who is a victim of “severe forms of trafficking” of persons in the United States, or

(ii) an alien classified as a non-immigrant under section 101 (a)(15)(T)(ii) of the INA (8 U.S.C. 1101(a)(15)(T)(ii) regarding others related to the victim).

(b) (1) *Related legal assistance* means legal assistance directly related

(i) To the prevention of, or obtaining relief from, battery or cruelty, sexual assault or trafficking;

(ii) To the prevention of, or obtaining relief from, crimes listed in section 101(a)(15)(U)(iii) of the INA (8 U.S.C. 1101(a)(15)(U)(iii));

(iii) To an application for relief:

(A) Under Section 101(a)(15)(U) of INA (8 U.S.C. 1101(a)(15)(U)); or

(B) Under section 101(a)(15)(T) of INA (8 U.S.C. 1101(a)(15)(T)).

(2) Such assistance includes representation in matters that will assist a person eligible for assistance under this part to escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse, so long as the recipient can show the necessary connection of the representation to the abuse. Such representation may include immigration law matters, and domestic or poverty law matters (such as obtaining civil protective orders, divorce, paternity, child custody, child and spousal support, housing, public benefits, employment, abuse and neglect, juvenile proceedings and contempt actions).

(c) Definitions of Categories of Eligible Aliens Under Anti-Abuse Statutes. (1) A person *battered or subjected to extreme cruelty* includes any person who has been battered or subjected to extreme cruelty as that term is defined in regulations interpreting VAWA. Examples of battering or extreme cruelty include, but are not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution may be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

(2) *A victim of sexual assault or trafficking* includes:

(i) *A victim of sexual assault* subjected to any conduct included in the definition of sexual assault or sexual abuse in VAWA, including but not limited to sexual

abuse, aggravated sexual abuse, abusive sexual contact, or sexual abuse of a minor or ward; and

(ii) *A victim of trafficking* subjected to any conduct included in the definition of “trafficking” under law, including, but not limited to VAWA and the INA.

(3) *A victim of severe forms of trafficking* includes any person subjected to such abuse under the VTVPA or TVPRA as codified at 22 U.S.C. 7105.

(4) A person who *qualifies for immigration relief under section 101(a)(15)(U) of the INA* includes:

(i) A person who has been granted relief under that section;

(ii) A person who has applied for relief under that section and who the recipient determines has evidentiary support for such application; or

(iii) A person who has not filed for relief under that section, but who the recipient determines has evidentiary support for filing for such relief.

A person who “qualifies for immigration relief” includes any person who may apply for primary U visa relief under subsection (i) of section 101(a)(15)(U) of the INA or for derivative U visa relief for family members under subsection (ii) of section 101(a)(15)(U) of the INA (8 U.S.C. 1101(a)(15)(U)). Recipients may provide assistance for any person who qualifies for derivative U visa relief regardless of whether such a person has been subjected to abuse.

(d) *Geographic location. (1) Location of activity giving rise to eligibility.* Except for aliens eligible because they are victims of trafficking or severe forms of trafficking, an alien is eligible under this section if the activity giving rise to eligibility violated a law of the United States, regardless of whether that conduct took place in the United States or a

United States territory. Victims of trafficking must be subjected to illegal trafficking in the United States to be eligible for assistance.

(2) *Location of alien.* An alien need not be present in the United States or a United States territory to be eligible for assistance under this section.

(e) *Evidentiary support.* A recipient may determine that an alien is qualified for assistance under paragraphs (a) and (c) of this section if there is evidentiary support that the alien falls into any of the eligibility categories or if the recipient determines there will likely be evidentiary support after a reasonable opportunity for further investigation. Evidentiary support may include, but is not limited to, affidavits or unsworn written statements made by the alien; written summaries of statements or interviews of the alien taken by others, including the recipient; reports and affidavits from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; orders of protection or other legal evidence of steps taken to end abuse; evidence that a person sought safe haven in a shelter or similar refuge; photographs; documents or other evidence of a series of acts that establish a pattern of qualifying abuse. If the recipient determines that an alien is eligible because there will likely be evidentiary support, the recipient must obtain evidence of support as soon as possible and may not delay in order to provide continued assistance. Section 1626.9 applies for situations in which a previously eligible alien is determined to be ineligible, for example, if an alien's application for U visa relief is denied or if there is an official DHS determination that an alien whose eligibility is based on trafficking was not a victim of trafficking. Because the facts determinative of alien eligibility based on anti-abuse statutes may develop or change, eligibility determinations made by intake

personnel should be reviewed by other recipient staff members involved in the representation of an alien.

(f) *Recordkeeping.* (1) For a client whose eligibility is based on a grant of relief under section 101(a)(15)(U) of the INA or section 101(a)(15)(T) of the INA, or any other grant of immigration status, recipients must maintain a copy of the visa or other official record of such relief from immigration authorities;

(2) For a client whose eligibility is based on other evidentiary support as described in paragraph (e) of this section, recipients are required to maintain originals or copies of such evidence. When such a client has filed an application for relief under section 101(a)(15)(U) of the INA or section 101(15)(T) of the INA, recipients must maintain a copy of the application for such relief filed with immigration authorities as well as copies of other evidentiary support.

(g) *Changes in basis for eligibility.* If, during the course of representing an alien eligible pursuant to § 1626.4, a recipient determines that the alien is also eligible under § 1626.5, the recipient should treat the alien as eligible under § 1626.5 and may provide all the assistance available pursuant to that section.

§ 1626.5 Aliens eligible for assistance based on immigration status.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

- (b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;
- (c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the INA (8 U.S.C. 1158).
- (d) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7), as in effect on March 31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;
- (e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)); or
- (f) An alien who meets the requirements of § 1626.10 or § 1626.11.

§ 1626.6 Verification of citizenship.

- (a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race, or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic of any of the following documents as evidence of citizenship:

(i) United States passport;

(ii) Birth certificate;

(iii) Naturalization certificate;

(iv) United States Citizenship Identification Card (INS Form 1-197 or I-197);

or

(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) A recipient may also accept any other authoritative document, such as a document issued by INS, by a court, or by another governmental agency, that provides evidence of citizenship.

(3) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

§ 1626.7 Verification of eligible alien status.

(a) An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone, or by other non-in-person means, which does not include continuous representation of a client.

(1) As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct, and authentic, of any documents establishing eligibility. LSC will publish a list of examples of such documents from time to time, in the form of a program letter or equivalent.

(2) A recipient may also accept any other authoritative document issued by the DHS, by a court, or by another governmental agency, that provides evidence of alien status.

(b) A recipient shall upon request furnish each person seeking legal assistance with a current list of documents establishing eligibility under this part as is published by LSC.

§ 1626.8 Emergencies.

In an emergency, legal services may be provided prior to compliance with § 1626.4, § 1626.6 and § 1626.7 if:

(a) An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or

(b) An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant signs a statement of eligibility and submits the necessary documentation as soon as possible; and

(c) The recipient informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

§ 1626.9 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, continued representation is prohibited by this part and a recipient must discontinue representation consistent with applicable rules of professional responsibility.

§ 1626.10 Special eligibility questions.

(a) (1) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(2) All citizens of the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands residing in the United States are eligible to receive legal assistance provided that they are otherwise eligible under the Act.

(b) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(c) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(d) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of the Immigration Reform and

Control Act (“IRCA”) is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.

(e) A recipient may provide legal assistance to indigent foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child Abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. 11607(b), provided that they are otherwise financially eligible.

§ 1626.11 H-2 agricultural and forestry workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii)(a), commonly called H-2A agricultural workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section;

(b) Nonimmigrant forestry workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii)(b), commonly called H-2B forestry workers, may be provided legal assistance regarding the matters specified in paragraph (c) of this section.

(c) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

- (1) Wages;
- (2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

§ 1626.12 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

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