



OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION

Advisory Opinion # AO – 2009-1008

Subject: Part 1626 Citizenship or Alienage Inquiries and Statutory Exceptions to the Alienage Restrictions

Date: December 4, 2009

---

---

QUESTION PRESENTED

We have been asked if the Legal Services Corporation (“LSC”) statutes or regulations mandate that grantees inquire into the citizenship or alienage status of applicants with legal issues that are within the statutory exceptions to the alienage requirements, such as human trafficking or domestic violence.

BRIEF ANSWER

The LSC statutes and regulations prohibit grantees from serving certain non-citizens. Three specific statutes lift those prohibitions for specific categories of people, including victims of human trafficking or domestic violence, regardless of alienage status. LSC grantees are not required by law or regulation to inquire into the citizenship or alienage status of people with legal issues in those categories because Congress has determined that individuals with those legal problems may be served by LSC grantees regardless of their citizenship or alienage status.

BACKGROUND

The LSC FY 1996 appropriation contains a restriction on LSC grantees providing services to certain categories of non-citizens.<sup>1</sup> This restriction largely carried forward prior alienage restrictions and also extended them to grantees’ non-LSC funds (except for tribal funds). LSC’s regulations regarding the alienage restrictions appear at 45 C.F.R. Part 1626. Subsequently, certain categories of exceptions were created. *See* 62 Fed. Reg. 45,755, Part 1626 Final Rule (Aug. 29, 1997), LSC Program Letters 05-02 and 06-02, and Pub. L. 110-161, Div. B, Title V, §540, 121 Stat. 1844 (2007) (regarding H(ii)(b) forestry workers).<sup>2</sup>

---

<sup>1</sup> *See* Omnibus Consolidated Rescissions and Appropriations Act (“OCRAA”) of 1996, Pub. L. 104-134, §504, 110 Stat. 1321-53-56 (1996), incorporated by reference thereafter in subsequent LSC appropriations through reenactment in Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-119, §502, 111 Stat. 2440-510 (1997). Subsequent legislation has modified some of the OCRAA restrictions not at issue here.

<sup>2</sup> 45 C.F.R. Part 1626 has not been amended since 1997. As such, these subsequent statutory changes to the alienage restrictions have been addressed in program letters or other communications to LSC grantees. The forestry worker exception is not relevant to the question addressed herein.

First, in FY 1997 Congress passed the “Kennedy Amendment” providing that LSC grantees could provide non-LSC funded services to certain victims of domestic violence regardless of their citizenship or alienage status. 45 C.F.R. §1626.4 (implementing provisions of Public Law 104-208, 110 Stat. 3009 (1996)); 62 Fed. Reg. 45,755 (revising Part 1626 to implement the Kennedy Amendment).<sup>3</sup>

Subsequently, Congress passed the Victims of Trafficking Protection Act in 2000 and reauthorized it in 2003 providing that LSC “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, without regard to the immigration status of such victims.” Pub. L. 106-386, §107(b) and (e) (2000) as amended by Pub. L. 108-193, §4 (2003) (adding certain family members to the class of eligible aliens) and codified at 22 U.S.C. §7105. LSC Program Letter 05-2 states that Section 107(b)(1)(B) allows victims of trafficking and eligible family members “to be determined to be eligible for legal assistance from LSC grantees without regard to their immigration status.”

The Violence Against Women Act Amendments of 2005 (“VAWA”) amended the Kennedy Amendment to expand the scope of eligible clients and services that LSC grantees can provide to victims of domestic violence, sexual assault, trafficking and certain other crimes, regardless of their immigration status. Pub. L. 109-162, §104, 119 Stat. 2960, 2978–79 (2006). *See* LSC Program Letter 06-2.

Subsequent Case Service Reporting (“CSR”) instructions led to some confusion about whether grantees were required to inquire about citizenship and alienage status for applicants in these categories of legal problems. Generally grantees are required to establish citizenship or alienage status in order to demonstrate that the statutory prohibitions on serving ineligible aliens are not violated. Nonetheless, for these categories of legal issues, the grantee could provide services regardless of citizenship or alienage status. LSC Program Letter 09-01 appeared to clarify the matter by stating that cases involving these statutory exceptions to Part 1626 “are considered LSC eligible and may be reported without the documentation of citizenship or eligible alien status otherwise required in Section V of the 2008 CSR Handbook.”<sup>4</sup>

## ANALYSIS

The confusion appears to have resulted from the phrasing of the three statutes that create exceptions to the general prohibition on serving aliens. Those statutes only apply to people who

---

<sup>3</sup> “This final rule revises the Legal Services Corporation’s (‘Corporation’ or ‘LSC’) rule on legal representation of aliens. The revisions to this rule are intended to implement a statutory provision included in the Corporation’s FY 1997 appropriations act, which permits the use of a recipient’s non-LSC funds for legal assistance to otherwise ineligible aliens who are the victims of domestic abuse.”

<sup>4</sup> By regulation LSC has stated that “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 the citizen is brief advice and consultation by telephone which does not include continuous representation.” 45 C.F.R. §1626.6(a). This provision does not mandate a citizenship inquiry for all applicants. Rather it sets forth the documentation requirement for those applicants for whom citizenship is a basis for eligibility.

are ineligible aliens themselves. Thus, there was a question if a grantee needed to first determine whether the person with that type of legal problem was an ineligible alien in order to then determine whether the exception applied. Problems arose when applicants were minors, mentally unfit, or otherwise not competent to provide reliable citizenship or alienage information. In those situations the grantee could not determine whether the applicant was a citizen or alien, even though the grantee could provide services regardless of citizenship or alienage.

Reading all of the LSC statutory provisions together, it becomes clear that there is no necessity for such an inquiry once an applicant establishes that he or she has a problem that would qualify for these statutory exceptions were he or she an otherwise ineligible alien. LSC requires proof of citizenship or eligible alien status in order to demonstrate that an applicant is not covered by the alienage prohibition. Once an applicant demonstrates that he or she has one of these legal problems—for example domestic abuse by a spouse—then there is no remaining applicable alienage prohibition and thus no need for a citizenship or alienage inquiry. In creating these exceptions Congress explicitly removed citizenship or alienage requirements from these types of cases.

#### CONCLUSION

The LSC statutes and regulations prohibit LSC grantees from providing services to certain classes of aliens. In order to ensure compliance with these restrictions, LSC generally requires grantees to inquire about applicants' citizenship or alienage status. When grantees provide services to individuals with legal needs that would qualify for the statutory alienage exceptions under the Victims of Trafficking Acts or the Violence Against Women Act of 2005 (expanding the Kennedy Amendment), the alienage restriction no longer applies. As such, there is no remaining statutory or regulatory requirement that grantees inquire into citizenship or alienage in those limited situations.



Victor M. Fortunato  
Vice President & General Counsel