



Program Letter 14-3

TO: All Executive Directors

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SUBJ: Assessing Eligibility of Aliens Under 45 C.F.R. § 1626.4(c)(1)

Introduction

LSC is issuing this Program Letter to provide guidance to recipients in light of the recent influx of non-citizens into the United States from Central America. LSC has received multiple inquiries from recipients and stakeholders about whether recipients may represent these non-citizens, particularly unaccompanied alien children. LSC has also learned that there may be some confusion about the use of 45 C.F.R. § 1626.4(c)(1), which became effective on May 19, 2014, to assess the eligibility of non-citizens who may qualify for legal assistance under one of the anti-abuse statutes. This Program Letter responds to the questions and clarifies the application of section 1626.4(c)(1).

May LSC recipients provide legal assistance to unaccompanied alien children?

Yes, if the child meets one of the exceptions to the general prohibition on legal assistance to non-citizens that are described in detail at 45 C.F.R. Part 1626.

Section 504(a)(11) of the fiscal year 1996 LSC appropriation act generally prohibits LSC from funding any recipient “that provides legal assistance for or on behalf of any alien[.]” Pub. L. 104-134, tit. V, § 504(a)(11), 122 Stat. 1321-50, 1321-53 (1996); Pub. L. 105-119, tit. V, § 502(a)(2), 111 Stat. 2440, 2510 (1998) (incorporated by reference annually thereafter). Congress enacted limited exceptions to this general restriction in Pub. L. 104-134, Pub. L. 105-119, and in subsequent legislation not particular to LSC. *See, e.g.*, Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7105(b)(1)(B) (“TVPA”); Violence Against Women and Department of Justice Reauthorization Act, Pub. L. 109-162, § 104; 111 Stat. 2440, 2510 (2006) (“VAWA 2005”). These exceptions are further detailed at 45 C.F.R. §§ 1626.2, 1626.4 and 1626.5.

An unaccompanied alien child, by definition, is an individual under the age of 18 who has no lawful immigration status in the United States and who has no parent or guardian available to provide care and custody in the United States. *See* 6 U.S.C. § 279(g); 8 U.S.C. § 1232(g). The statutes governing the care, placement, and provision of legal assistance to unaccompanied alien children do not authorize LSC recipients to provide legal assistance to unaccompanied alien children. Nor do any of the statutes discussed above authorize LSC recipients to assist unaccompanied alien children by virtue of their categorization as such. In

order for a recipient to represent a non-citizen, including an unaccompanied alien child, the non-citizen must fall into one of the exceptions to the general prohibition on legal assistance to non-citizens.

How do recipients determine whether a non-citizen is eligible for assistance under one of the anti-abuse statutes? Does the non-citizen have to have been victimized in the United States?

Reports indicate that a number of the non-citizens entering from Central America may have been victims of crimes or subject to abuse that would make them eligible for legal assistance under one of the anti-abuse statutes (e.g., VAWA 2005, the TVPA). Recipients should use 45 C.F.R. § 1626.4 to determine whether a non-citizen qualifies for LSC-funded legal assistance under one of the anti-abuse statutes. A recipient may provide legal assistance to non-citizens who are eligible under one of the anti-abuse statutes if providing the assistance is among the recipient's priorities, as determined under 45 C.F.R. Part 1620.

Section 1626.4(c) describes the relationship between both (1) the qualifying activity and the United States and (2) the victim and the United States. Under section 1626.4(c)(1), the qualifying activity ***does not have to have occurred in the United States***. For purposes of eligibility for LSC-funded legal assistance, an activity that "violated a law of the United States" means an activity that:

- Is described in the definition of ***battered or subjected to extreme cruelty*** in 45 C.F.R. § 1626.2(b);
- Is described in the definition of ***victim of sexual assault or trafficking*** in 45 C.F.R. § 1626.2(k);
- Meets the definition of ***severe forms of trafficking in persons*** in section 103(9) of the Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7102(9); or
- Is a crime listed in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)(iii).

For example, the person may have suffered the requisite battery or sexual assault in his or her home country, on the journey to the United States, or in the United States. As long as the activity giving rise to eligibility meets one of the definitions listed above, the individual may be eligible for legal assistance under one of the anti-abuse statutes. In addition, some non-citizens, such as a parent of a minor victim of severe forms of trafficking, may be eligible under Part 1626 based on their relationship to a child or other relative who is eligible for assistance under one of the anti-abuse statutes. See 45 C.F.R. § 1626.4(a).

Section 1626.4(d) outlines the requirement for evidentiary support of an individual's claim for eligibility under one of the anti-abuse statutes. Sections 1626(d)(2) and (d)(3) describe the types of documentation that recipients may consider as evidence, if credible, of an individual's claim for eligibility under one of the anti-abuse statutes.

May a recipient represent a non-citizen if the individual will likely be victimized if returned to his or her country of origin?

Yes, if the non-citizen already meets one of the exceptions to the general prohibition on legal assistance to non-citizens. For example, if an applicant for assistance claims that he or she would be victimized again if returned to the applicant's country of origin and demonstrates that he or she was subjected to sexual assault within the definition of 45 C.F.R. § 1626.2(k)(1), a recipient may represent that individual. If the individual has not been subjected to an activity that would give rise to eligibility or is not eligible for legal assistance under another exception to the general prohibition on legal assistance to non-citizens, a recipient may not assist that person based solely on a representation that the individual will likely be victimized if returned.

May a recipient represent an unaccompanied alien child in Special Immigrant Juvenile Status ("SIJS") proceedings?

Yes, if the child meets one of the exceptions to the general prohibition on legal assistance to non-citizens. Under section 101(a)(27)(J) of the INA, a non-citizen minor may qualify for SIJS if a court determines that that reunification with the minor's parent or parents is not viable because of abuse, abandonment, neglect, or similar basis under state law, and that it is not in the minor's best interests to repatriate the minor to his or her country of origin or last habitual residence. 8 U.S.C. § 1101(a)(27)(J). Although nothing in section 101(a)(27)(J) or the statutes discussed above specifically authorizes LSC recipients to provide legal assistance to minors applying for SIJS, recipients may represent such minors if the minors fall under one of the exceptions to the general prohibition on legal assistance to non-citizens.