

OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION

AO – 2010-002

SUBJ: Legal Assistance to Ineligible Alien Parents with U.S. Citizen Children (Part 1626)

DATE: April 14, 2010

Question Presented

In a situation in which an applicant is an ineligible alien, but has a U.S. citizen child, may an LSC recipient provide legal assistance to either the ineligible alien parent or the eligible child when the assistance would have the result of benefitting the citizen child?

Brief Answer

A recipient may generally not accept as a client and provide legal assistance to an ineligible alien simply because the legal representation will be of benefit to the ineligible alien applicant's U.S. citizen child. Similarly, if the citizen child does not have a legally cognizable claim in his/her own right, a recipient may not accept the child as a client in order to pursue a claim belonging to the ineligible alien parent. However, in situations in which the citizen child has his/her own legally cognizable claim, a recipient may accept as a client and provide legal assistance to a financially eligible U.S. citizen child, even though the assistance may have a benefit to the ineligible alien parent.

Factual Background

As we understand the facts, a recipient has recently received a large number of requests for services from adult applicants who themselves are neither citizens nor among the categories of eligible aliens as permitted by LSC statutes and regulations, but who do have children who are U.S. citizens. These applicants are seeking assistance with such issues as housing problems, government benefits and family law issues.¹ In all of these cases, the citizen children would greatly benefit from having a recipient pursue these matters their parents' or their own behalf as the current circumstances have a negative impact on their lives. However, in these instances, we understand that the parents are generally the persons with the legally cognizable claims, with the children only having a personal interest in the situation.

¹ None of the legal requests involve situations (such as domestic violence or human trafficking) in which the immigration status of the potential client is immaterial to LSC eligibility under statutes such as the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, §104, or the Victims of Trafficking and Violence Protection Act, 108-193, §4.

Analysis

Under LSC regulations, recipients may not “provide legal assistance for or on behalf of an ineligible alien.” 45 CFR §1626.3.² In the circumstances which have been inquired about, the adult applicants are the persons with the legally cognizable claims (i.e., the lease holders, the applicant for benefits, etc.) but are not themselves eligible because they do not meet the LSC definition of an “eligible alien.” Conversely, the children, as U.S. citizens, are eligible under Part 1626, but they generally do not have a legally cognizable legal right or interest in these cases (i.e., the child has no standing to sue the parents’ landlord or is not the party eligible for the government benefits).³ To provide legal assistance “on behalf of an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.” 45 CFR §1626.2(e). Because in such cases, the applicant with the legal right or interest would be an ineligible alien, the recipient is prohibited from accepting the parent applicant as a client. The fact that the representation of the ineligible alien would have a direct, personal benefit to the citizen child is not sufficient to confer eligibility on the ineligible alien parent. At the same time, because in such cases the child does not have the legal right or interest, the child cannot be considered the applicant and accepted as the client.

On the other hand, if in a particular case, the citizen child in fact has a legally cognizable claim in his/her own right (i.e., the child is the applicant for benefits, or if state law confers standing on a child in housing cases involving claims of habitability, etc.), the citizen child would be able to be accepted as a client (provided that financial eligibility requirements were also met). This is true, even if most of the communications are between the recipient and the parents acting on the child’s behalf. Further, in such a case, the representation would be permissible notwithstanding that legal assistance to the child would result in some incidental benefit to the ineligible alien parent, provided that the intended beneficiary of the legal assistance is the eligible client and the relief obtained is to the direct benefit of the eligible client. 45 CFR §1626.2(e); 53 Fed. Reg. 40914 (October 19, 1988) at 40915.



Mattie Cohan
Senior Assistant General Counsel

² The regulation provides for limited exceptions to this rule, none of which are applicable to the facts as we understand them. See, 45 CFR §§1626.4 and 1626.10 and LSC Program Letters 05-2 and 06-2 at www.lsc.gov. The exceptions are, therefore, not further considered.

³ The fact that the proposed representation would have an effect on the child does not confer upon the child a “specific legal right or interest” required under LSC regulations. Rather, the applicant’s legal right and interest must be derived from applicable law regarding the particular cause of action at hand.