

HIV / AIDS and Immigrants:

A manual for service providers

2004 Edition



**San Francisco AIDS
Foundation**

n a t i o n a l
IMMIGRATION
p r o j e c t
of the National Lawyers Guild

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Introduction

Why should you care?

Imagine this scene:

A client who has tested HIV positive comes to see you. Besides worrying about testing HIV positive, she also fears what will happen to her because she is not a US citizen. You may wonder whether her immigration status will change the kind of services she can get. She may ask:

- Will I be deported?
- Will I lose my immigration status?
- Can I work or get public benefits to help me if I need them?
- Will getting benefits make it hard to get another immigration status?
- If I cannot work or get benefits, is there anything I can do to get another immigration status that will help me?

This manual is for anyone who works with HIV positive clients who may not be US citizens. This includes case managers, HIV test counselors, paralegals, social workers, health care workers, nurses, doctors, interpreters, and discharge planners in hospitals. We hope you will learn that many noncitizens with HIV/AIDS, regardless of their immigration status, may have some immigration options and may be able to work or receive some benefits.

Immigration law is complicated. Though this manual will not make you an immigration law expert, it will help you and your clients think about their choices and make informed decisions. Two federal laws are causing hardship in all immigrant communities: the Personal Responsibility and Work Opportunity Act of 1996, commonly known as the Welfare Reform law and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which amended the fundamental Immigration and Nationality Act by making immigration standards more stringent. Nevertheless, with a little creative advocacy you can help your clients find a way to stay in the United States and get the assistance or work they need.

This manual is dedicated to the memory of Tomás Fábregas, AIDS activist and immigrant, who dedicated himself to challenging the exclusion and mistreatment of people with HIV.

Important Changes in U.S. Government

Most people will be familiar with the former Immigration and Naturalization Service (INS), the government agency that until recently had authority over all noncitizens. After September 11, 2001, the US created a new, Cabinet-level government agency, the Department of Homeland Security (DHS). DHS took over almost all of the functions of the former INS and reorganized them under three new bureaus. The new bureaus are:

- Citizenship and Immigration Services (CIS), which provides immigration-related services and benefits such as lawful permanent residence, naturalization, and work authorization;
- Immigration and Customs Enforcement (ICE), which investigates and enforces federal immigration laws, customs laws, and air security laws; and
- Customs and Border Protection (CBP), which is responsible for the borders.

The Department of Justice retains control only of the immigration judges and court system, also known as the Executive Office for Immigration Review (EOIR.)

Your HIV positive noncitizen clients may have encounters with all three immigration bureaus, as well as the immigration court system. If your client has been or must go before the court, arrange a consultation with an immigration lawyer immediately.

The Rights of Noncitizens

Because DHS power and discretion are so great, noncitizens must know their rights. Noncitizens arrested by DHS have the right to speak to an attorney and, at least in some cases, the right to a hearing with an immigration judge before DHS can remove them. In addition, since the federal courts can rule that some or all parts of the expedited removal process are unconstitutional, and since the Attorney General may eventually include people in the United States in the expedited removal process, noncitizens should assert the right to a hearing with an immigration judge any time they are arrested by DHS. It does not matter if the noncitizens are documented or undocumented; they still have these rights. Noncitizens must assert these rights, or DHS may convince them to sign documents allowing DHS to “remove” them (formerly called “deporting”) without seeing either an attorney or a judge.

Basic rules of working with noncitizens living with HIV/AIDS

Treat noncitizen, HIV positive clients like you would any other client. Get them the services they need. Assure them that everything they tell you will be kept confidential and that you will not call the Department of Homeland Security. **The difference:** Be aware that being a noncitizen may make it risky for them to get services and do things that a US citizen can do without risk.

Cultural barriers may make it harder to help noncitizens. Noncitizen clients may not feel comfortable discussing HIV or sexual orientation with anyone, let alone a stranger. Explore ways to ask questions about HIV or sexual orientation that allow clients to be more open and trusting. Some advocates may be homophobic or fear people with HIV/AIDS. Make sure the immigration advocates working with your clients are comfortable dealing with HIV/AIDS and sexual orientation or transgender issues. Clients may not realize you will not turn them over to DHS. Assure your clients that you do not work for DHS and will keep everything they tell you confidential. Clients may not be able to communicate their fears or concerns in English. Interview them in a language they speak fluently, using an interpreter who is not related to them.

Ask them whether they have explored all routes to immigration status, including asylum petitions based on persecution because of HIV status or sexual orientation.

Never tell clients to go to the Department of Homeland Security by themselves. No one should speak to DHS or go to DHS before talking to an immigration law expert. If noncitizens go to DHS by themselves, DHS may arrest them and remove them from the United States before they have the chance to talk to a lawyer.

Noncitizens with HIV should not contact DHS without first discussing their options with an immigration advocate.

Inform clients that DHS may arrest and detain them. Although it is unlikely that DHS will make arresting HIV positive noncitizens a high priority, it will remove noncitizens if they entered the country without permission. DHS may also try to deny returning noncitizens with legal status from reentering the United States if the agent suspects the noncitizens are HIV positive. Tell your client to be prepared.

Being Prepared

- Carry copies of any immigration documents you have at all times.
- Carry with you the name and phone number of an immigration advocate who will take your call from DHS detention.
- Before traveling outside the United States, check with an immigration advocate about whether you will be able to get back in.
- If DHS detains you, demand your right to call your immigration advocate.
- Never sign any DHS documents without first talking to an immigration advocate.
- If DHS turns you back from the border, call your immigration advocate right away. Unless you challenge the DHS decision, DHS may criminally prosecute you if you enter the United States again.

Work with local immigration advocates. Although this manual will give you some basic information about immigration status and HIV, you should only use this information to explore your clients' options. Do not tell your clients you *know* what their immigration status is or how they can change that status. The consequences of providing inaccurate advice can be severe. The severe consequences of the immigration law mean it is very important that you establish a working relationship with a local immigrants' rights agency or practitioner. *Your noncitizen clients always should carry with them the name and telephone number of an immigration advocate or agency that they can call from DHS detention.*

Many immigration advocates do not know how HIV can affect immigration status and may never have had a client with HIV. They may lack sensitivity to clients with HIV and be unaware of all the options available to noncitizens with HIV. After reading this manual, *you may know more than local immigration advocates about HIV and immigration.* Share this manual with the immigration advocates you consult. If you do not know immigration advocates in your area who are sensitive to HIV/AIDS issues and know the options for noncitizens with HIV, call the National Immigration Project of the National Lawyers Guild (see back cover). Be aware that some fraudulent immigration practitioners prey on the hopes and desperation of noncitizens.

Tell noncitizens to talk to an immigration expert before they leave the United States. Anyone who is not a US citizen may be prevented from coming back into the United States if a DHS border official suspects he or she has HIV. This includes some lawful permanent residents

(people with "green cards") and applicants for lawful permanent residence who go abroad to pick up their visas. Some noncitizens - whether or not they are HIV positive - who have been in the United States without Government permission also may be permanently barred from reentering or gaining legal status in the United States. See the section on *Travelers with HIV* for more information.

Inform all noncitizens that they should never falsely claim to be a US citizen. False claims to US citizenship can lead to a variety of problems, including deportation or removal, the inability to ever legalize one's status, or even prosecution. If you or your client believes that he or she has already made a false claim to US citizenship, consult an immigration legal advocate. There is one extremely limited exception for children of citizens who were lawful permanent residents and reasonably believed that they also were citizens at the time they claimed to be a citizen. There may also be other considerations that would help your client.

Every noncitizen should get counseling on HIV that assures confidentiality or anonymity or both. Before undergoing a DHS medical examination, a noncitizen should get tested at a local clinic. Most testing centers will ensure results are confidential, meaning they will share them only with the person taking the test. Despite this assurance, however, some states require doctors and medical practitioners to turn over the names of people who test positive for HIV or those with an AIDS diagnosis to state or federal agencies. If this occurs in your state, noncitizens should only take tests anonymously. Call the National AIDS Hotline (1-800-342-2437) or contact a local AIDS office or health department to find out where your client can get an anonymous or confidential HIV antibody test.

Work to ensure noncitizens get necessary public benefits. Under the 1996 federal welfare reform law, state and local governments decide who receives many public assistance benefits. Work with other state advocates to ensure state and local public assistance is available to all your noncitizen clients, regardless of immigration status. Since Congress eliminated numerous forms of federal public assistance for noncitizens, this local support becomes vital, both for individual clients and for public health concerns in general. *Your efforts to convince state and local governments that noncitizens should receive public assistance are crucial.*

Be aware that some people administering public benefits hold racist, homophobic, and/or anti-immigrant ideas and stereotypes. Before sending noncitizens to another agency, including an HIV/AIDS agency, find out that agency's policies on reporting people to DHS. Ask them if they believe they can help noncitizens and if they feel they must report undocumented immigrants to DHS. Although many local benefits administrators are not required to report people they suspect are undocumented to DHS, many may believe think they are. Moreover, unsympathetic service providers may call DHS if they suspect a noncitizen is undocumented or HIV positive or has AIDS. Sympathetic benefits providers, in contrast, may wish to help challenge the legality, morality, and practicality of reporting applicants to DHS. It is unlikely noncitizens in the United States will be removed for being HIV positive, but they could end up in immigration court if DHS learns of their HIV status. Make sure you do not refer clients to service providers who will report them to DHS. **The best you can do for your clients is to help them understand their choices, and provide them with whatever support you can find.**

Learning the System:

Basic Immigration Concepts

Immigration Law

The Immigration and Nationality Act (INA) contains most of the United States' immigration laws.

Noncitizen

“Noncitizen” means any person in the United States who is not a US citizen, whether the person has legal immigration documents or not. Noncitizens are often called “aliens.”

Undocumented Persons

Undocumented persons are noncitizens who either entered the US without government permission or whose legal immigration documents have expired. These people are often called “illegal aliens,” although simply being in the US without documents is not a crime.

Lawful Permanent Residents (LPRs)

Most people gain lawful permanent residence (i.e. get their “green card”) in the United States via family or employment. A smaller number gains lawful permanent residence through other forms of immigration such as asylum, refugee processing, cancellation of removal, legalization, lottery, or country-specific laws. The application form filed by a family member or an employer on behalf of a noncitizen who wishes to immigrate to the United States is called an “immigrant visa petition” or, for short, a “petition.” The term “noncitizen” includes LPRs.

Non-immigrants

Other noncitizens, known as “non-immigrants,” may come to the United States temporarily, to visit, study, or work.

Visa

A visa is a document the US gives to a noncitizen to enter the United States. A person may get a visa from DHS or from a US consular official in another country. Visas for people who are in the US temporarily are called non-immigrant visas. Visas for people who plan to stay in the US are called immigrant visas. Most people with immigrant visas should eventually get a card that identifies their immigration status as a lawful permanent resident.

The Department of Homeland Security (DHS)

DHS enforces the US immigration laws. It has offices all over the country. DHS handles immigration applications of all kinds, including those for citizenship, lawful permanent residence, immigrant visas, extension of visas, plus many more. It also has the power to remove (formerly “exclude” and “deport”) noncitizens from the United States. DHS agents have police-like power to detain, search, question, and arrest people who it suspects may have violated the immigration laws. Agents may use information they discover about a noncitizen as evidence to remove the noncitizen, in some cases without giving the noncitizen a chance to make his or her case at a hearing in front of a judge.

Consular Officers

Consular officers at US embassies abroad grant and deny requests for immigrant and non-immigrant visas. They are part of the US Department of State. They have an enormous amount of discretion in making their decisions and no court in the US may review their decisions, except in very unusual circumstances.

Removal (formerly called Exclusion and Deportation)

Removal is the process by which DHS stops noncitizens from entering or staying in the United States. DHS may prevent noncitizens from entering the US if they find they are “inadmissible,” as defined by the immigration statute. The rules on inadmissibility also apply to people who seek lawful permanent residence and DHS may prevent the noncitizen from getting that immigration status. DHS can also remove people it finds in the US. Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, undocumented noncitizens inside the US now can be removed for being “inadmissible” or “deportable.” The rules on deportability are somewhat different than the rules on inadmissibility. Being HIV positive is a ground of *inadmissibility*. Therefore, noncitizens with HIV/AIDS can be prevented from entering the United States, from getting lawful permanent residence, and may be “removed” from the United States if they entered without government permission. In practice, however, since DHS can remove people for entering the US without permission, it is more likely that HIV positive noncitizens in this category will be removed primarily for that reason. Some HIV positive noncitizens may be able to ask an immigration judge for a status such as asylum, which overrides the HIV ground of inadmissibility.

Expedited Removal

Low-level immigration officers may remove many noncitizens encountered at a border or port of entry without a hearing with an immigration judge. This is called “expedited removal.” Being HIV positive is not one of the reasons for summarily removing noncitizens. Nevertheless, the government may swiftly remove many HIV positive noncitizens for other reasons, such as not having proper documents. It is extremely important that noncitizens understand their rights and be prepared to assert them if arrested by DHS. See *Being Prepared* for more information.

Immigration Proceedings

All noncitizens inside the US have the right to an immigration hearing. It is important for noncitizens arrested by DHS to assert their right to a hearing because immigration proceedings are like trials. An immigration judge presides over the hearing, a government attorney represents DHS, and the noncitizen has the right to a lawyer, although not at the government’s expense. Some trial rules about evidence and procedure apply in immigration proceedings. The Board of Immigration Appeals (BIA) reviews all appeals of an immigration judge’s decisions. The federal courts have some power to review BIA decisions.

Discretion

DHS officers and immigration judges often have a great deal of discretion in making their decisions. This means that they can consider different factors in making their decisions and must personally evaluate how important each factor is. Cancellation of removal and asylum are examples of “discretionary” decisions. It is sometimes very difficult to convince the BIA or a federal court to overturn a discretionary decision by a judge or DHS officer.

Waiver

There are two very different kinds of waivers. Noncitizens may “waive” their rights when they sign forms that admit to certain truths. This is why noncitizens should refuse to sign anything before talking to an immigration advocate. DHS also may “waive” some of the rules on inadmissibility and deportability, in favor of the noncitizen. For instance, there are several waivers for the HIV ground of inadmissibility, depending on the immigration status of the applicant. Generally, noncitizens have to ask for these waivers from the DHS officer or the immigration judge deciding their case.

Part One: Understanding Your Client's Immigration Status

Some noncitizens think they have a certain status when they do not; while others think they do not have status when they do. The first step in helping noncitizens with HIV is to find out their current immigration status. This may be a very personal question. You may wish to ask the following questions:

Is your client having any problems with DHS? If yes, does your client have a “final removal order”?

If the answer to either of these questions is yes, your client should see an immigration legal advocate immediately. Clients may have hearings scheduled with an immigration judge or have missed hearings. They may have a “final removal order.” A final removal order is a written decision by an immigration judge, which is not on appeal, requiring a noncitizen to leave the US. An immigration judge can issue a final removal order *in absentia*, that is, without the noncitizen being present at the court hearing. Clients also may have interviews scheduled with a DHS officer. In any of these cases, *they should get legal advice immediately since the result of the hearing or interview may be swift removal.*

What immigration documents does your client have?

Does your client have immigration documents? See the section on *Immigration Documents*. Immigration documents should provide clues to your client's immigration status. Does your client have a birth certificate? Almost everyone born in the United States is a US citizen. Where were your client's parents and grandparents born? If any of them were born in the United States, or became a naturalized US citizen, it is possible your client is a US citizen or could easily become one, even if he or she was born outside the United States. Determining US citizenship is often a complicated process. If you think your client may be a US citizen, consult an immigration advocate who specializes in citizenship.

Did your client ever have documents?

Clients without documents are not necessarily undocumented. To decide if they are truly undocumented, ask them some questions. They may not want to talk to you about their status because they fear being turned over to DHS. Reassure them that anything they tell you is confidential and that you will not share this information with anyone.

Ask your client:

- How did you come in to the United States (by airplane, boat, walking or wading across the border)?
- Did you get a visa before you came into the United States?
- Did you talk to a government officer when you came in?
- Did you get any documents from the US government when you came in?
- Once you were in the United States, did you or anyone else apply to the US government for a status for you? If yes, what happened to that application?
- Has the US government ever stopped or arrested you in the United States?
- Have you ever had to go to immigration court?
- Have you ever left the United States after an immigration court hearing or after signing a government paper?

If it appears your client once had immigration documents, try to determine what happened to them. It may be possible to get replacements, though your client will probably need help from an immigration advocate to obtain copies.

Is your client undocumented?

Clients are probably undocumented if:

- They came into the United States without a visa, **and**
- They did not speak to a the US government official at the border, **and**
- No one has applied for status for them in the United States.

Noncitizens may be undocumented if they came in on visas but the visas are no longer valid. Visas may no longer be valid for several reasons:

- The time period has expired, and they did not get an extension on the deadline for leaving the United States, or
- They did something they were not allowed to do without government permission, such as work without a work permit, or
- They were indicted or convicted of violating a criminal law in the United States or have an outstanding warrant for an alleged crime.

Many undocumented noncitizens may be able to get legal immigration status.

Immigration Documents

Your client may have some of these documents:

Alien Registration Card, Form I-551: Sometimes called the “green card” (it is now pink). People with valid alien registration cards are **lawful permanent residents**. New alien registration cards have expiration dates stamped on them for ten years from date of issuance. The LPR must renew the card before that date but does not have to reapply for lawful permanent residence. The card also has a code showing how the noncitizen got lawful permanent residence. Alien registration cards with “CR” printed on them expire two years after they were issued. These are for **conditional residents** who must file another petition by that date to get the “condition” removed from their permanent residence. See section on *Types of Immigration Status* below for more information on conditional residence.

Work Permit or Employment Authorization Document (EAD), Form I-688 (A or B). Anyone with permission to work (“**work authorization**”) has some sort of legal status, although it may be temporary. Usually the EAD identifies the person’s status by listing the section of the immigration regulations which applies to the noncitizen.

Arrival/Departure Record, Form I-94. Many noncitizens who enter the United States with DHS permission get an I-94 card. It should identify the person’s status by code and state the date the status expires. It also may say “employment authorized” or “employment authorization through _____” with a date stamped in.

Other documents showing DHS has received an application for status. Clients may have DHS forms stating that the agency has received an application for a status, such as a petition for lawful permanent residence, or an immigrant visa, or an application for asylum.

Types of Immigration Status

The immigration system treats noncitizens differently depending on their status. Each status has different requirements and benefits. This list includes only the major categories of status likely to apply to a noncitizen. For more information on any of these kinds of status, contact National Immigration Project.

US Citizenship

An individual born in any of the fifty states in the United States, Washington, D.C., and certain US commonwealths, territories, and possessions are US citizens. This includes people born of undocumented parents. Children born abroad to US citizen parents also may be US citizens. Everyone else must “naturalize” to become a citizen, usually after a required period of lawful permanent residence.

US citizens cannot be removed unless a federal court takes away their citizenship because they obtained citizenship by fraud or other illegal means. They do not need DHS authorization to work, and they may file petitions for lawful permanent residence for their spouses, parents, sons and daughters (both married and unmarried), and brothers and sisters. Most US citizens will either have a birth certificate showing they were born in the United States or a certificate of naturalization.

Lawful Permanent Residence

Lawful permanent residents are noncitizens who make the United States their permanent home, have authorization to work in the United States, and have the most stable immigration status. They may get this status in a variety of ways, often through family members or employers who “sponsor” or apply for them by filing a petition. Asylees, refugees, and those granted suspension of deportation or cancellation of removal also may get lawful permanent residence. Other kinds of lawful permanent residents are described below.

Lawful permanent residents cannot vote and must follow certain guidelines when they travel or stay outside the United States. In addition, the government may take away their status and remove them from the United States if they break certain rules. After five years, or in some cases, three years, lawful permanent residents may become citizens or “naturalize” by taking a test and fulfilling other requirements. Lawful permanent residents may file petitions for lawful permanent residence for their spouses and unmarried children. Lawful permanent residents should have Permanent Resident Cards, often called “green cards.” Anyone with a Permanent Resident Card can work legally in the United States.

Conditional Residence

Noncitizens who apply for lawful permanent resident status based on marriage to a US citizen or lawful permanent resident are granted “conditional residence” if they were married for less than two years on the date their application for permanent residence was approved. Although conditional residents are lawful permanent residents, to keep their status permanently and no longer be considered “conditional”, they must file another petition approximately one and three-quarters years after the first petition is granted asking the government to remove the “conditions” on their residence.

Conditional residents have all the rights of lawful permanent residents. They should have Permanent Resident Cards (Form I-551) with “CR” printed on them. An individual with a Permanent Resident Card can work legally in the United States.

Battered Spouses and Children of US Citizens and Lawful Permanent Residents

In the 1994 Violence Against Women Act (VAWA), Congress created two ways certain immigrant survivors of domestic violence can gain status without their abusers’ help. Those who can show they were battered or subjected to extreme cruelty by a US citizen or lawful permanent resident spouse or parent may petition on their own, or ask an immigration judge to grant them a special kind of cancellation of removal.

VAWA applicants can obtain work authorization and, eventually, lawful permanent residence. HIV positive approved VAWA applicants will need an HIV waiver to gain lawful permanent residence, but, unlike most other types of applicants, do not need a US citizen or lawful permanent resident spouse, parent or child, to obtain the HIV waiver. Noncitizens with approved VAWA petitions should have a letter saying their application (Form I-360) has been approved.

Noncitizens granted VAWA cancellation of removal will have a written decision from an immigration judge. As with regular cancellation of removal, VAWA cancellation of removal does not require applicants to undergo a medical examination or to request an HIV waiver.

Abandoned, Neglected and Abused Children

Some children whose parents have abandoned, neglected or abused them may be able to get lawful permanent residence through an immigration status known as Special Immigrant Juvenile Status (SIJS). They will need help from both an immigration advocate and someone familiar with the local family court system because they need a finding by a family court to qualify for immigration status. HIV positive children who qualify for SIJS do not need a qualifying relative to apply for an HIV waiver and may apply based on humanitarian purposes, family unity, or when it is otherwise in the public interest. See the HIV waiver section for details.

Nicaraguan, Cuban, and Haitian Adjustment to Lawful Permanent Residence (NACARA and HRIFA)

In 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act (NACARA). NACARA allows Guatemalan, Salvadoran, and particular former Soviet bloc nationals to apply for suspension of deportation and cancellation of removal, categories described below. In addition, as the name of the law suggests, the Act provides a range of new ways in which Nicaraguans and Cubans in particular can apply for lawful permanent residence. A similar law, the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998, established a new route to immigration status for thousands of Haitians who fled political upheaval in their country several years prior.

Specifically, Nicaraguans and Cubans who entered the United States before December 1, 1995, could gain lawful permanent residence if they applied before April 1, 2000. Haitians who applied by that date qualified for lawful permanent residence if they had applied for asylum or been "paroled" into the United States (see "parolees" below) before December 31, 1995. Some Nicaraguan, Cuban, and Haitian family members also were eligible for lawful permanent residence, as were some Haitian children who had no parents.

More recently, Congress enacted the Legal Immigration Family Equity (LIFE) Act in December 2000. This law amended NACARA and HRIFA. The government estimated that these new immigration law provisions could affect approximately 10,000 people. The first groups of immigrants potentially affected were *persons who never applied under NACARA or HRIFA*. Since NACARA and HRIFA originally excluded those who had been previously removed from the United States or had left the United States voluntarily while under an order of removal from applying under these provisions, many people had **not** applied for status under these acts. These individuals were given until June 19, 2001, to file motions to reopen their exclusion, deportation, or removal proceedings so that they could subsequently apply to become lawful permanent residents under NACARA or HRIFA.

In addition, the new provisions opened the possibility for reapplication for immigrants from Nicaragua, Cuba, or Haiti who had previously submitted applications under NACARA or HRIFA but were denied because they had re-entered the United States illegally after having been removed by INS or having left the country voluntarily while under an order of removal. People in this "denied" category are also allowed to make a motion to have the denial of their adjustment application reopened with the INS. Unlike those that had never applied, nationals seeking reconsideration are not subject to the June 19, 2001 deadline. Thus some of your clients may still be able to apply for permanent residency status under these amended provisions.

Although HIV positive Nicaraguans, Cubans, and Haitians are exempt from the public charge bar (see section on *Public Charge*), they must obtain an HIV waiver. This is a major obstacle if they do not have a US citizen or lawful permanent resident spouse, parent, or child (see the section on *HIV Waiver*).

The Legalization Program ("Amnesty" or "Late Amnesty")

A grassroots movement is building for expanding access to immigration status for noncitizens already in the United States for many years. This route to status is called legalization or amnesty. Nevertheless, Congress refused to pass such a bill in 2000. You can contact immigrant rights organizations in your area to help build the movement for change in the future.

Congress created a legalization program in 1986. Two primary categories of noncitizens qualified for this amnesty: people who had been in the United States without status since January 1, 1982, and certain types of agricultural workers, called Special Agricultural Workers (SAWs). Legalized immigrants should have an alien registration card (Form I-551), or “green card”, showing they are lawful permanent residents. The legalization process required all applicants to undergo an HIV test as part of the required immigration medical examination and some people may still be waiting for decisions on HIV waiver requests or appeals.

At the end of 2000, Congress passed a law (the LIFE Act) providing access to lawful permanent residence for a number of noncitizens involved in national lawsuits challenging various aspects of the amnesty program. Noncitizens with only a “Temporary Resident Card” (Form I-688), those who joined the *Catholic Social Services* (CSS), *League of United Latin American Citizens* (LULAC) or *Zambrano* lawsuits before October 1, 2000, and close family members of these amnesty applicants should contact an immigration legal advocate immediately to determine whether they can apply for lawful permanent residence.

Additionally, early in 2004, the US government settled the CSS and LULAC legalization lawsuits. Class members' rights under the settlement are independent of and in addition to their right to obtain legal status under the LIFE Act. For more information, consult the website of the Center for Human Rights and Constitutional Law at www.centerforhumanrights.org.

The CSS and LULAC settlement agreements allow for those who meet certain requirements to apply or reapply for Temporary Resident status under the 1986 amnesty program. This is not a new amnesty program. The application period is open for one year, starting May 24, 2004 and ending May 23, 2005. To qualify, a noncitizen must have been living undocumented in the United States before 1982 and could have applied to legalize during the 1986 legalization program, but did not, for certain specific reasons. More information on who qualifies and application instructions are available at the Center for Human Rights and Constitutional Law at www.centerforhumanrights.org or at the government’s immigration website at www.uscis.gov.

The legalization program is important for HIV positive noncitizens because they do not need a relative to qualify for the HIV waiver. See the *HIV Waiver* section for more details.

The Family Unity Program

Spouses and children of noncitizens in the legalization program are eligible for status under the Family Unity program if they have been in the United States since May 5, 1988. There is no deadline for applying and most people who qualify already have applied by now.

When legalization program immigrants gain lawful permanent residence, they can file regular family petitions for their family unity relatives. Family unity immigrants may stay in the US while waiting to gain lawful permanent residence, may obtain work authorization, and are exempt from many of the new laws about gaining immigration status imposed by the 1996 reforms of immigration law. See the section on [Gaining Legal Immigration Status](#) for details of these bars. Those with family unity status should have a Family Unity Approval Notice (Form I-797). HIV positive Family Unity applicants are eligible for the same expanded HIV waiver as legalization applicants. See the *HIV Waiver* section for details.

The Diversity Program or “Lottery”

Periodically, Congress creates special temporary programs that grant lawful permanent residence to people from certain countries. Those who get status this way are chosen by a lottery. Generally, the application periods for these lotteries are very short. HIV positive noncitizens with visas from the lottery must have a relative to obtain the HIV waiver to gain lawful permanent residence (see the section on *HIV Waiver*).

Asylum, Refugee Status, Withholding of Removal, and the Convention Against Torture

Asylum and refugee status are for those who show that they have a “well founded fear” of persecution in their homelands based on race, religion, nationality, political opinion or membership in a social group. **Refugees** have applied for and received asylum before they came to the United States. Those who apply for asylum once they are in the United States are **asylum applicants**. If they get asylum, they become **asylees**. Some asylum applicants are granted **withholding of removal** (formerly “withholding of deportation”) instead of asylum. People who do not qualify for asylum or withholding of removal may

ask for protection under the **Convention Against Torture (CAT)**. Refugees must obtain an HIV waiver prior to coming to the US. Asylum applicants, withholding of removal applicants, and applicants under CAT do not need an HIV waiver.

DHS has officially recognized that persecution against HIV positive noncitizens may satisfy the asylum requirements, and some people have gotten asylum because they feared persecution for their sexual orientation. The section on [Gaining Legal Immigration Status](#) discusses asylum requirements in more detail.

Asylees and refugees can apply for lawful permanent residence after a year, but there is a limit on the number of asylees who can obtain lawful permanent residence each year. It now takes many years for the government to issue lawful permanent residence to asylees. Those granted withholding of removal or CAT protections are not eligible for lawful permanent residence. When HIV positive asylees apply for lawful permanent residence they must obtain a waiver, but it is different from the waiver that applies to most applicants for LPR status (see the section on *HIV Waiver*). Refugees obtain this same waiver before they come to the United States, and again when applying for lawful permanent residence. Making refugees apply for the same waiver twice may be illegal – contact the National Immigration Project if you are concerned about this issue.

Refugees, asylees (those granted asylum), and people granted withholding of removal can get work authorization immediately. Asylum *applicants* may only request work authorization 150 days after they file for asylum. Noncitizens granted CAT protection can get work authorization, but only if the immigration judge decides DHS may not permanently detain them, which is another reason CAT is not the best option for many people.

Refugees and asylees should have a DHS arrival/departure document (Form I-94), as well as an Employment Authorization Document (EAD). Asylum applicants may have an I-94 form and an EAD noting their status as asylum applicants. Those granted withholding of removal or CAT protection might only have a written decision from an immigration judge and an EAD.

Parolees

When DHS stops people before they enter the United States, it sometimes lets them enter the United States to apply for status or to go to immigration court. This is called “paroling” them into the United States. Although these noncitizens paroled in, called **parolees**, are physically in the United States, the legal system views them as outside the United States. This means they have fewer rights in immigration court proceedings. Noncitizens who are stopped by DHS for being HIV positive may wish to consider asserting their right to be paroled in for “deferred inspection,” including undergoing an HIV test by a doctor of the public health service. DHS immigration agents are not allowed to make a medical determination of inadmissibility, and a noncitizen’s admission to having HIV/AIDS is not sufficient proof of inadmissibility. The noncitizen will likely be detained in immigration jail, however, so some noncitizens may choose not to assert this right rather than stay in detention. It is also possible that the applicant might be released and given an appointment to return for additional investigation.

Noncitizens paroled into the United States for a year or more are eligible for some public benefits not available to other parolees. All parolees should have an I-94 arrival/departure card with a date stamped on it, and they may also have an EAD noting their status.

Suspension of Deportation and Cancellation of Removal

Prior to April 1, 1997, noncitizens in immigration court could ask for “seven-year suspension of deportation” if they had been in the United States continuously for seven years, could show good moral character, and could illustrate a reasonable fear of extreme hardship if removed. Congress has eliminated this type of relief for people who first got into immigration court after that date.

Now most noncitizens in immigration court may ask for “ten-year cancellation of removal.” Unlike seven-year suspension, to qualify for ten-year cancellation, noncitizens must show they have been continuously present in the United States for ten years and that removing them will cause exceptional and extremely unusual hardship to a US citizen or lawful permanent resident spouse, child, or parent. The section on gaining legal immigration status discusses the suspension and cancellation requirements in more detail.

Suspension and cancellation applicants do not have to undergo an HIV antibody test, and they automatically become lawful permanent residents if the judge grants them status. While they are waiting

for a decision on their cases, they can ask for work authorization. Those granted suspension or cancellation should have a Permanent Resident Card. While awaiting their card, they can use a written notice from an immigration judge to confirm their status.

Temporary Protected Status (TPS)

The Attorney General of the United States may grant this status for a limited period of time to nationals of certain countries in turmoil. TPS is currently granted to certain nationals of Burundi, El Salvador, Honduras, Liberia, Montserrat, Nicaragua, Sierra Leone, Somalia, and Sudan, although the list of countries changes frequently. The designated period of protection can legally last up to the maximum of eighteen months at a time and may be renewed by DHS under certain conditions. When DHS ceases to renew TPS for a designated country, protection ends, and DHS sends TPS recipients a notice that they must appear in immigration court. At this point, they must either leave the United States or apply for another immigration status. Thus, TPS programs carry a significant risk since they are neither amnesty nor a guaranteed route to lawful permanent residency.

HIV positive noncitizens may apply for TPS, but must request a special waiver. See the HIV waiver section. TPS recipients can obtain work authorization. They should have an arrival/departure card (Form I-94) and an EAD noting their status.

Salvadorans, Guatemalans, and Eastern Europeans

As mentioned above, the Nicaraguan Adjustment and Central American Relief Act (NACARA) established special routes to immigration status for individuals and families from other countries. Although not provided with the same routes to lawful permanent residency status as certain Nicaraguans and Cubans, Salvadorans and Guatemalans, and nationals from Eastern Europe, including those from Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia, were allowed to file for suspension of deportation or cancellation of removal. The rules governing this law are complicated, though a few of the basic guidelines are included here. Please see an immigration legal advocate for more specific information.

In general, individuals and families from former Soviet Republics or former Eastern European states may qualify if they entered the United States before January 1, 1991, and filed for asylum before January 1, 1992. Guatemalans may qualify if they first entered the United States on or before October 1, 1990 and signed up as part of the *American Baptist Churches* lawsuit agreement (called the "ABC class"). Guatemalans may also qualify if they applied for asylum before April 1, 1990. Finally, Salvadorans may qualify if they entered the United States on or before September 19, 1990 and either registered for the ABC Class or applied for Temporary Protected Status by October 31, 1991. Alternatively, Salvadorans may also qualify if they applied for asylum before April 1, 1990. People who were apprehended by immigration upon entry or with certain criminal convictions do not qualify. HIV positive applicants must have a qualifying relative to apply for an HIV waiver. See the HIV waiver section for details.

Registry

Registry allows people who have been in the United States for a very long time, since 1972, to gain lawful permanent residence. One great advantage of registry is that most of the barriers facing HIV positive applicants for lawful permanent residence do not apply.

Voluntary Departure and Deferred Action

DHS district directors and immigration judges may grant "voluntary departure" to noncitizens they could remove from the United States. Noncitizens with voluntary departure must leave by the date stamped on the notice or face stiff fines and penalties, including bars to becoming lawful permanent residents. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 limited voluntary departure grants to a four-month period.

DHS officials also may grant "deferred action" to people they could remove. Since this "status" does not actually appear in immigration law, local DHS officers control whether or not this condition is granted. DHS agents and directors rarely assign deferred action status. Those who do receive deferred action, however, do not have to leave the United States by any particular date and do not face fines and bars to status for failing to leave.

Since deferred action and voluntary departure granted by DHS district directors are discretionary grants of status, DHS may revoke them any time. (DHS cannot, however, revoke voluntary departure granted by an immigration judge.) People granted deferred action or voluntary departure may have a work authorization card.

HIV positive noncitizens ineligible for other forms of status have been granted deferred action; however, these cases usually involve other extremely compelling factors.

Victims of Trafficking and of Other Crimes

The Victims of Trafficking and Violence Prevention Act of 2000 created the new T and U visas. The T visa is for those who have been subjected to sex or labor trafficking. The U visa is for victims of designated crimes. Both provide eligible immigrants with access to employment authorization, lead to lawful permanent residence, and have waivers of most inadmissibility grounds, including health-related grounds such as HIV/AIDS. Approved T visa applicants will have an I-94 card and a work permit. Since the government has not yet developed rules for noncitizens to qualify for the U visa, applicants are currently only able to apply for “interim relief,” which is deferred action. Applicants who are approved for U visa interim relief will have a letter granting them deferred action and a work authorization card. Both of these areas are in constant flux, so periodically consult the National Immigration Project website at www.nationalimmigrationproject.org for training materials and updates.

Non-immigrants

Non-immigrants have their permanent home or residence in another country. There are many kinds of non-immigrants, including visitors for business or pleasure, foreign students, and temporary workers and trainees. Some noncitizens are eligible to enter the United States “visa free” under the *Visa Waiver Pilot Program* (VWPP), which allows citizens from designated countries to enter the United States without a visa if they meet certain requirements.

In 2000, Congress created several new kinds of non-immigrant categories. These include special visas for people who have had to wait a long time to get lawful permanent residence (see Part Two of this manual), and visas for certain victims of human trafficking or other crimes (see *Victims of Trafficking and of Other Crimes* section). People in these new categories may eventually gain lawful permanent residence, even though this seems contrary to the normal assumptions about non-immigrants.

All non-immigrants have non-immigrant visas noted by a letter (B, F, H, etc.), which include expiration dates. Non-immigrants who stay longer than originally permitted without an extension from DHS become undocumented. Even before the dates on their visas expire, DHS may deport non-immigrants if they work without permission or violate other conditions of their visas. The 1996 reforms in immigration law added several additional penalties and barriers to immigration status for people who stay beyond the expiration dates on their non-immigrant visas. Some non-immigrants, including those covered under the new categories created by Congress in 2000, are allowed to work with DHS permission.

Non-immigrants do not take a medical exam to get their visas, but they may need a waiver if they are HIV positive. The section on *Travelers with HIV* explains how other non-immigrants avoid HIV waiver problems.

Part Two: Understanding the Impact of HIV on Immigration Status

HIV as a Ground of Inadmissibility: How it works

Two major sets of rules prevent noncitizens from entering and/or staying in the United States: the grounds of inadmissibility and deportability. HIV is *not* a ground of deportability, but is a ground of inadmissibility. This means DHS can "remove" someone from the United States for HIV *only* if the person entered the United States without government permission. DHS cannot deport people for being HIV positive or having an AIDS diagnosis if they entered on visas or now have lawful permanent residence.

Because HIV is a ground of inadmissibility, DHS may attempt to keep HIV positive individuals who are trying to enter the country, except US citizens and most lawful permanent residents, out of the United States. This includes temporary visitors (non-immigrants) and those intending to live in the United States permanently (immigrants). Another inadmissibility ground that is a barrier for many HIV positive noncitizens is the "public charge" ground, which means that an individual will be deemed dependent upon federal benefits. (See details on public charge in Part Two). Most people applying for lawful permanent residence must show they are admissible, since DHS may deny lawful permanent residence to anyone who has HIV/AIDS, whether that person applies from another country or from inside the United States.

Rejecting Noncitizens Trying to Enter the US

Although DHS does not test people for HIV when they try to enter the United States, everyone except US citizens and lawful permanent residents must get a visa to enter legally. Noncitizens who want to immigrate permanently to the United States as lawful permanent residents must submit to a medical examination that includes an HIV antibody test. People coming to the United States for other reasons, such as study, work, or a visit, must fill out a "non-immigrant" visa application which asks: "Have you ever been afflicted with a communicable disease of public health significance?"

In immigration law, "infection with the etiologic agent for acquired immune deficiency syndrome" or AIDS is specifically listed as a "communicable disease of public health significance." Since this is a reason for keeping noncitizens from entering the United States, DHS can try to turn away anyone who answers "yes" to this question. DHS also may try to keep out individuals whom agents think may be HIV positive based on evidence, such as the person carrying AIDS medications in his or her luggage. The section on *Travelers with HIV* has more information on how to avoid these types of problems and what to do when they happen.

Non-immigrants

If an HIV positive noncitizen applying for a non-immigrant visa knows that HIV is a communicable disease of public health significance but checks "no" on the question about communicable diseases, DHS may deny the visa because the agency regards this as fraud. If a non-immigrant visa applicant checks "yes," or if DHS suspects the person is HIV positive, DHS will deny the visa unless the applicant asks for the special waiver for visitors. This waiver is for people visiting the United States for a short time, such as to attend a conference, to visit close relatives, or to receive medical treatment. It differs from the waivers for noncitizens seeking lawful permanent residence. Also, noncitizens with HIV are not eligible to enter the United States "visa free" under the *Visa Waiver Pilot Program* (VWPP), which allows citizens from designated countries to enter the United States without a visa if they meet certain requirements.

Lawful Permanent Residents

Lawful permanent residents (LPRs) who plan to travel outside the United States should be aware that all the inadmissibility grounds apply to them, including the HIV and public charge grounds, *if they are gone for more than 180 days or have committed criminal acts in the US or abroad*. Individuals in these categories should meet with an immigration advocate before they leave the United States. In practice, however, some immigration officials at the border may subject HIV positive lawful permanent residents to additional delays or scrutiny, even those who have left for less than 180 days or have not committed criminal acts.

Applicants for Lawful Permanent Residence

DHS requires most applicants for lawful permanent residence to undergo a medical examination, which includes an HIV antibody test. This is true whether a noncitizen is applying from another country or from inside the United States. Applicants who test HIV positive cannot become lawful permanent residents *unless they get an HIV waiver*. Waivers are often hard to get, and not everyone is eligible. The section on the *HIV Waiver* explains this process in detail. Remember that there are a few categories of applicants who are not required to submit to a medical examination at all, including applicants for cancellation of removal.

The HIV Antibody Test

DHS requires most applicants for lawful permanent residence to submit to a medical examination given by a doctor on a DHS list. The doctors on this list are called “**civil surgeons**” even though they are not necessarily surgeons. The medical examination consists of many tests, including an HIV antibody test. Civil surgeons start by giving applicants the Enzyme-Linked Immuno-Sorbent Assay (ELISA) HIV antibody test. If the noncitizen tests positive or indeterminate, the doctor must perform another ELISA and then the Western Blot test to confirm the applicant’s HIV seropositivity. If all three tests are positive, the doctor should tell the noncitizen about the test results. *Whether the doctor says anything or not, the client should ask for a copy of the HIV test results*. The doctor does not give the results directly to DHS, but rather gives the noncitizen the medical results in a sealed envelope. The noncitizen must bring the sealed envelope to the interview at DHS or the US embassy. State or local laws, however, may require the doctor to report HIV positive test results to state or local health departments.

Applicants for lawful permanent residence should not wait to learn their HIV status until they have to undergo the DHS medical examination. They should request an HIV test first with a local center that provides confidential or anonymous testing, so that they can weigh the risks of continuing with their applications.

Questions your client may ask:

Can DHS remove me from the United States because I am HIV Positive?

If someone entered the United States without government permission after April 1, 1997, DHS could remove that person solely for being HIV positive. Since DHS also can remove such individuals for the much simpler reason that they entered without permission, it is more likely that this is what the agency will do. DHS may, however, try to remove someone who is HIV positive for both reasons: being HIV positive *and* entering without DHS permission. Other common reasons noncitizens get removed from the United States are for using fraudulent documents and for committing crimes.

It is unlikely that DHS will find out a noncitizen is HIV positive unless someone informs DHS. This is why it is very important that you find out before referring your client for services whether an agency has strict confidentiality policies and will *not* report HIV positive noncitizens to DHS. You can read more about this in the public benefits section on *Verifying and Reporting Noncitizens to DHS*. You also should counsel clients not to contact DHS before they have discussed their case with an immigration advocate.

Reassure your clients that DHS will not find out from you about their HIV status. As you know, the most important thing for them to do is to get the counseling they need about their HIV status. While they are doing that, you and an immigration advocate can help them figure out what else they need to do about their immigration status, work, and any other assistance they may need.

Can I lose my status because I am HIV positive?

Being HIV positive will not change your client's immigration status as long as she or he is in the United States. If the noncitizen tries to change immigration status, or to get a status when she or he does not have one, being HIV positive may prevent the person from getting the desired status. In many cases, it may be better for them to remain in their current status than to risk being removed from the United States when they try to get permanent residence or another status.

Noncitizens often lose their status for reasons other than being HIV positive. People with only temporary status, such as a student visa or Temporary Protected Status, will lose their status when the specified time period runs out. Lawful permanent residents may lose their status for committing crimes. DHS also may prevent some HIV positive lawful permanent residents from coming back into the United States if they leave, in limited circumstances, such as if they have been abroad for 180 days or more, or if they have committed crimes.

DHS may keep HIV positive noncitizens out of the United States, keep them from coming back in, or keep them from changing their status. It also may remove them if they entered without government permission.

What will happen if I need to go back to my home country for a short time?

DHS can stop anyone with HIV/AIDS, except US citizens and most lawful permanent residents, from entering the United States. If a noncitizen is already here in the United States and needs to go back to his or her home country for a short time, he or she may need to request advance permission from the DHS to come back into the United States. This permission is called "advance parole." DHS only gives advance parole to certain noncitizens, and noncitizens must obtain it before they depart. Knowing who needs advance parole can be complicated – advise your client to consult an immigration advocate before leaving the US for any reason. Noncitizens who must get advance parole and who leave the United States without it may not be able to get back into the country. Even if they get advance parole, however, DHS may prevent them from coming back in if the agency thinks they are HIV positive (see the section on *Travelers with HIV* for more information). If DHS stops someone with legal immigration status from entering the United States because they are HIV positive, that person will have to get an HIV waiver in order to return to the US. (See the section on the *HIV Waiver* for details.) This does not apply to most lawful permanent residents, unless they left for more than 180 days or committed criminal acts.

Undocumented noncitizens with no application for legal immigration status will not be able to get back in the US legally. Being HIV positive is not the problem - having no status or right to status is. Moreover, Congress changed the law so that undocumented people, who have a right to status, such as through a US citizen spouse, may lose it if they leave the United States. The section on [*Gaining Legal Immigration Status*](#) explains how some of the 1996 changes in immigration law harm undocumented immigrants. People who have been through the immigration system and have been ordered to leave by an immigration judge or DHS officer are prohibited from re-entering the United States for at least five years. If they come back in without DHS permission, they can be charged with committing a federal felony. Although many of these people have been allowed to plead to lesser misdemeanor offenses in the past, attorneys general in various districts have begun instituting more aggressive prosecutorial approaches, making immigration cases for repeat offenses more serious legally. Furthermore, immigration matters that have additional criminal charges are taken to trial more often in some districts due to changes in immigration policy approaches. Thus, it is more likely, in some areas of the US, that immigrants may receive incarceration, hindering further attempts to gain an immigration status.

DHS can stop any noncitizen with HIV, including some lawful permanent residents, from coming back into the United States. Problems for noncitizens with HIV arise because HIV is a "ground of inadmissibility." *HIV as a Ground of Inadmissibility* explains this in more detail. Noncitizens whom DHS suspects are HIV positive may need HIV waivers to get back in to the United States. This does not mean noncitizens should necessarily be turned away at the border. (See *Travelers With HIV* to learn more about a noncitizen's right to a hearing). For many noncitizens, obtaining a waiver may be impossible. It may be quite difficult for some lawful permanent residents as well. The section on the *HIV Waiver* explains why getting these waivers may be difficult.

Noncitizens with HIV who need to leave the United States should understand and weigh the risk of not getting back into the country before they leave.

Travelers With HIV

The first step for noncitizens with HIV who want to leave the United States is to find out if they need “advance parole” to get back in. They also should be aware that DHS may try to keep them from getting back in because they are HIV positive and should be prepared to assert their right to a hearing.

Although DHS does not require a medical examination for everyone trying to come into the United States, DHS officials may keep people out whom they suspect are HIV positive or have an AIDS diagnosis. DHS may stop people because they look sick or because they are carrying HIV/AIDS medication. A DHS officer may also stop someone she or he thinks is gay, lesbian, or transgendered, even though sexual orientation is no longer a ground for denying entry to the United States. Some DHS officers may use the HIV ground to harass people they think are gay or lesbian.

Most lawful permanent residents with valid Permanent Resident Cards should not be screened for admission when they come back into the United States, with a few exceptions. If a returning LPR falls into one of the exceptions, he or she should be ready to overcome the HIV and public charge grounds again. These exceptions include but are not limited to staying outside the United States for more than 180 days or having a conviction for or admitting to certain criminal acts in the US or abroad. A returning LPR facing pending criminal charges may also have problems returning. Any noncitizen in this situation should consult an experienced immigration attorney prior to leaving the US. All lawful permanent residents with HIV/AIDS should be prepared to assert their right to a hearing with an immigration judge if they are stopped by DHS when coming back into the United States. They may be detained. If detained, they may be eligible for bond and release from detention.

There are special waivers for visitors (non-immigrants) with HIV/AIDS who are stopped at the border or an airport. Noncitizens who plan to stay permanently in the United States (immigrants) do not qualify for this special waiver for visitors, however, and can only get an HIV waiver if they have a spouse, child, or parent who is a US citizen or lawful permanent resident. While a noncitizen who plans to stay in the US applies for the waiver, DHS may detain them (the section on the *HIV Waiver* explains the waiver requirements). **For this reason, some noncitizens with HIV who leave the United States run the risk of not being able to get back in.**

Know Your Rights: Immigration border agents are not supposed to make medical determinations and a noncitizen’s own admission to having HIV is not sufficient proof to deny entry. The noncitizen should be paroled in for deferred inspection for admission and undergo an HIV antibody test administered by a doctor of the Public Health Service (a doctor approved by immigration.) The doctor will notify immigration of the HIV test results. DHS may detain (jail) the noncitizen during this process or give them an appointment to return.

If a noncitizen is eligible to apply for a waiver, he or she may ask immigration for the waiver. If the noncitizen is not eligible or is later denied a waiver by immigration, he or she will then go before an immigration judge.

Because of the 1996 laws reforming many immigration procedures, DHS officers now may “summarily remove” certain noncitizens entering the United States, without a hearing with an immigration judge. This procedure is called “expedited removal” and applies to those trying to enter the United States with false or no immigration documents. *It does NOT apply to HIV positive noncitizens with valid visas or to lawful permanent residents.* Thus a non-immigrant or visitor with valid entry documents should not be subject to summary removal. Any noncitizen wishing to challenge their expedited removal by DHS should insist on a hearing with an immigration judge. Otherwise, a DHS agent may try to convince the noncitizen to leave the United States on the next plane or bus.

Tips for Travelers

Finding HIV-related medicine or literature about AIDS in a noncitizen's bag may lead a DHS officer to ask a traveler questions about HIV. For this reason, visitors (non-immigrants) should try not to carry their HIV medicine or literature about AIDS in their luggage when they come into the United States. Other noncitizens with HIV who are leaving the US should consider bringing only the amount of medicine they will need for their trip and plan to get new medicine when they return. It is important that ALL travelers know their rights.

- If a DHS agent stops and questions a visitor (non-immigrant) with HIV, the visitor should ask for the HIV waiver for visitors. This is different than the waiver for noncitizens intending to stay in the United States (immigrants).
- If a DHS agent won't grant the waiver, the visitor should ask for a hearing before an immigration judge.
- If a DHS agent stops and questions a lawful permanent resident, the lawful permanent resident should demand to call his or her lawyer. If the agent arrests him or her, he or she should insist on a hearing with an immigration judge.
- If a DHS officer decides any noncitizen traveler is HIV positive, the noncitizen should talk to a lawyer before answering any of the DHS officer's questions. Otherwise, what the noncitizen says can be used against him or her in an immigration hearing. DHS agents are not required to inform an individual of their rights until after their arrest and placement in formal proceedings. Therefore, there are numerous cases where immigrants are not informed of their rights while in DHS custody.
- Noncitizens stopped by DHS may wish to assert their right to be paroled into the United States for "deferred inspection," since only immigration-approved doctors, not immigration agents, can make a medical determination of inadmissibility. A noncitizen's admission to having HIV is not sufficient proof to keep him or her out. DHS may decide to detain (jail) the noncitizen during this process, however, or release them with an appointment to return.

Part Three: Gaining Legal Immigration Status and Becoming a US Citizen

Each immigration status has different requirements. Getting an immigration status is very complicated, and applying for any status carries certain risks, including removal if your application is denied. The risk may be manageable and worth taking, however, if the client needs to work or wishes to become a permanent resident or US citizen. Unfortunately, many noncitizens with HIV will not be able to get the status they want.

This section describes various routes to lawful permanent residence. It also will describe how immigrants may become US citizens, which is important for many reasons, including access to voting, traveling freely, sponsoring family members, and receiving public benefits. For information on ways to secure immigration status not mentioned in this section, contact the National Immigration Project of the National Lawyers Guild (on back cover). *Remember: this manual gives you only basic information about gaining immigration status. Noncitizens with HIV/AIDS should consult with an immigration expert before contacting DHS.*

Most applicants for lawful permanent residence must get an HIV waiver. Noncitizens who do not qualify for a waiver should not apply for lawful permanent residence, because DHS may remove or deport them.

Most people want to become lawful permanent residents (get a “green card”) because this status provides the most security short of actual citizenship. Lawful permanent residence is difficult to lose, and lawful permanent residents can work legally. Furthermore, most lawful permanent residents can become citizens after five years. Up until that time and despite the relative security of legal residency, however, DHS can remove lawful permanent residents or keep them from coming back into the United States if they leave.

People can become lawful permanent residents in many ways: through a relationship with a family member, through employment, through a DHS “lottery,” or through another special program. Acquiring lawful permanent residence through a relative can be either challenging or relatively uncomplicated, but may be a very lengthy process, depending on which relative “sponsors” or applies for the noncitizen. Applying for lawful permanent residence through an employer can be very complicated and requires an experienced immigration advocate. Applying for status through a lottery is substantially easier but only a small percentage of total applicants win the opportunity to pursue this option.

Applying for Lawful Permanent Residence Through Family Members

US citizens and lawful permanent residents can file applications on behalf of their close family members, such as spouses, minor children, and adult unmarried children. Only US citizens can “sponsor” their parents, brothers and sisters, or married children over 21. Citizens must be at least 21 to sponsor their parents, and brothers and sisters of citizens must wait many, many years - sometimes decades - before they receive lawful permanent residence. The difference in waiting times depends on a complicated quota system involving the number of visas already used by applicants from the same country and the “preference” category the immigrant is in. The relationship determines the preference category. For instance, spouses and children under 21 are in one category; children of US citizens over 21 are in another.

The family immigration process requires two applications: a petition and a visa application. The petition shows that the immigrant has a family relationship with the sponsor that qualifies her or him for lawful permanent residence. The visa application is the actual application for lawful permanent residence. Applicants for lawful permanent residence must show they are not “inadmissible” as defined by immigration statute. The two inadmissibility grounds that cause the most problems for noncitizens with HIV/AIDS are HIV and “public charge.” *When applying for lawful permanent residence, all applicants must undergo a medical examination which includes an HIV antibody test. See section on HIV Antibody Test.*

The quota system does not apply to spouses and children under 21 of United States citizens, so they may file the petition and the visa application simultaneously. Spouses and children of lawful permanent residents must file the two applications separately, however. When DHS approves the petition, it assigns a “priority date” to the immigrant. The immigrant must wait to file the visa application (the application for lawful permanent residence) until the quota system says that all applicants in the immigrant's category with that priority date can file for lawful permanent residence.

DHS usually wants to interview the sponsor and the intending immigrant before making a decision on the application. It makes decisions on both parts of the application at the same time if the intending immigrant is the spouse or child of a US citizen. For applicants who must wait to apply for lawful permanent residence, DHS usually approves the petition without an interview, but requires an interview on the visa application. These interviews take place either at a DHS office in the United States or at a US consular office abroad. *At the interview about the application for lawful permanent residence, noncitizens with HIV must obtain the HIV waiver and overcome the “public charge” problem.*

How long will it take to get lawful permanent residence?

Historically, spouses, children and parents of US citizens got lawful permanent residence fairly quickly. With the influx of new immigration cases, however, DHS now has so many pending applications for these immigrant visas that applicants may wait for more than a year for an interview. Because of the long waiting periods for spouses and children of lawful permanent residents, Congress passed a law in December, 2000, which allows some of these applicants to live and work in the United States with legal immigration status (a “non-immigrant” visa) until they receive permanent residence. This only applies, however, to people who had filed applications before December 21, 2000 and who already have waited three years for their status.

DHS and Congress suspect that many noncitizens marry US citizens or lawful permanent residents for the sole purpose of receiving an immigration status. For this reason, applicants who were married for less than two years when they get their permanent resident cards are “conditional” residents. Conditional residents must file another petition approximately one and three-quarters years after their permanent residence is granted asking the government to remove the “conditions” on their residence.

Should a noncitizen apply?

Noncitizens with HIV should consider the likelihood of getting lawful permanent residence before applying. If DHS officials deny the application, the agency probably will begin removal proceedings, placing the individual or family’s situation in jeopardy. Furthermore, if an immigrant goes abroad to process for lawful permanent residence and the consular office or DHS officials deny the application, the applicant may be stranded with no legal way of returning to the United States.

Applicants should decide the answers to the following questions before applying.

- Does the applicant have the basic qualifications for an *HIV waiver*?
- Can the applicant overcome the *public charge problem*?
- Can the applicant overcome the HIV waiver’s “*Extra Test*”?
- Can the applicant *stay in the United States to go to the lawful permanent residence interview*?

HIV Waiver Basics

Most applicants for lawful permanent residence are subject to an HIV antibody test as part of the application process. (Those who win cancellation of removal or the old suspension of deportation are not required to undergo a DHS medical examination.) The type of waiver applicants must obtain depends on the status for which they are applying.

Asylees, refugees, special immigrant juveniles, and those who applied through the legalization program may apply for an HIV waiver based on “family unity, humanitarian purposes or public interest” concerns. It is important to note that while immigration statute exempts these categories of noncitizens from the public charge ground of inadmissibility when they apply for lawful permanent residence, DHS imposes an additional standard similar to public charge when it makes HIV waiver decisions, as noted in the section on the *Obtaining the HIV Waiver: The “Extra Test.”*

Other applicants who do not fit into the categories above may apply for an HIV waiver if they are:

- Husbands or wives of US citizens, lawful permanent residents, or people with immigrant visas waiting to process their permanent residence cards;
- Unmarried sons and daughters of US citizens, lawful permanent residents, or people with immigrant visas waiting to process their permanent residence cards;
- Parents of US citizens, lawful permanent residents, or people with immigrant visas waiting to process their permanent residence cards; or
- Battered spouses or children of US citizens or lawful permanent residents.

For many applicants, meeting the requirements above is not the problem; the more challenging hurdles for obtaining an HIV waiver are the “public charge” condition in immigration law and the DHS requirement that people applying for HIV waivers overcome an “extra” test, which is not indicated in the law anywhere. This test includes proving that an individual will not hinder public health, is unlikely to infect others with HIV, and will not cost a government agency unless that agency gives prior consent for services or benefits. More information on this test is included in the *Extra Test* section.

There are several other kinds of HIV waivers. HIV waivers may also be available to noncitizens applying for a temporary status, such as Temporary Protected Status (TPS) or a visitor visa. HIV positive noncitizens from TPS-designated countries may apply for TPS if they apply for an HIV waiver based on family unity, humanitarian purposes or the public interest and fulfill the other TPS requirements for their country. A visitor may ask for the special waiver for visitors. This waiver is for people visiting the United States for a short time period, such as to attend a conference, visit close relatives, or receive medical treatment. These waivers are different than the waivers for noncitizens seeking lawful permanent residence.

The Public Charge Problem

Another major obstacle to gaining lawful permanent residence is being “likely at any time to become a public charge.” As with HIV/AIDS, this is a ground of inadmissibility that the DHS can use to 1) prevent a noncitizen from entering or coming back into the United States, or 2) deny a noncitizen’s application for lawful permanent residence. HIV positive applicants for lawful permanent residence often find it more difficult to meet the public charge test than to get the HIV waiver.

In recent years, many noncitizens decided not to apply for public benefits that they or their children needed because they feared it would harm their immigration status. To clear up confusion, in May 1999, the former INS issued field guidance on public charge to all immigration offices. The guidance clarified that an immigrant’s use of non-cash benefits, such as health care (except long-term care) will not be considered in public charge determinations. For a copy of the *1999 Field Guidance about Public Charge*, consult the [HIV and Immigrants section](#) of the National Immigration Project’s website at www.nationalimmigrationproject.org.

Before we explore in more detail public charge and lawful permanent residence, here are a few observations regarding how public charge affects other immigration situations:

Public Charge and Citizenship

Public charge, or receiving public assistance benefits, is not a factor in determining whether someone can become a citizen unless the person lied to receive the benefits. Some people may be asked about use of benefits to determine if they violated program rules, for example, whether they received SSI while outside the US.

Public Charge and Deportation/Removal

Deportation based on receipt of public benefits is extremely rare. The 1999 Field Guidance emphasizes that DHS can only deport someone for receiving public benefits (cash benefits and long-term care) if the person was required to pay back the government for the benefits, the government has sued the person for repayment, and the person failed to repay. The person must have used cash or long-term care benefits based on conditions that existed prior to entering the US. The person must have both used and been sued for the benefits within five years of becoming a lawful permanent resident.

Public Charge and Lawful Permanent Residence

The 1999 Field Guidance does not mention HIV specifically. It does say, however, that a person who is “primarily dependent on the government for subsistence” is a public charge. Unfortunately, DHS still seems to use old guidance on HIV/AIDS that assumes most people with HIV/AIDS will become dependent on government subsistence. If your clients can show that this assumption is wrong, especially given the advances in HIV/AIDS medication and treatment, they should be able to overcome the public charge problem.

Here is a summary of important points:

- The public charge ground requires that all people applying for lawful permanent residence through the regular family immigration process get a special “enforceable affidavit of support.” (See below for details.)
- Only certain cash benefits and long-term institutionalization cause public charge problems.
- Because DHS is supposed to look at whether the applicant is likely to become a public charge in the future, past use of public benefits is not necessarily a problem.
- DHS must look at a variety of factors, the “totality of the circumstances,” before deciding someone is a public charge, including the applicant’s health.

An applicant who must get an affidavit of support (detailed in the next section) and is unable to do so fails the public charge test; any other factors of the public charge test become irrelevant. DHS will deny an application without the affidavit and place the applicant in immigration proceedings.

Enforceable Affidavits of Support

Many applications for lawful permanent residence are based on petitions filed by US citizen or lawful permanent resident family members (“the sponsors”). In 1996, Congress passed a law requiring sponsors to provide affidavits swearing that they will support the applicants and showing that they have “the means to maintain an annual income equal to at least 125% of the Federal poverty line.” (In 2004, the federal poverty level for an individual was \$9,310.) If the sponsor cannot show the necessary income, he or she may co-sign an affidavit with another person, not necessarily a relative, who meets the income requirements. Noncitizens applying for lawful permanent residence through family members will automatically fail the public charge test if they cannot get an affidavit of support.

Many people may not be able to show they have enough income or assets to meet the new affidavit of support requirements. Before giving up, check with an immigration advocate who has done a substantial number of family immigration applications. There may be innovative ways to meet the affidavit requirements. Make sure clients have resolved all of their problems with the affidavit of support before going to an interview, since DHS officials may put applicants into immigration proceedings immediately if they deny their applications.

Looking To the Future: The “Prospective Test”

The public charge test is a "prospective test." This means DHS must "make a forward-looking determination" and focus on the future, not the past. Nevertheless, how long ago someone received cash benefits or was institutionalized often affects how likely it is to happen again in the future. The longer the period of time someone received cash benefits and the higher the amount that they received, the more likely DHS may consider that person a public charge. Being employed full-time or having a sponsor should overcome the past use of benefits, although DHS may consider many factors in making the final decision.

Totality of the Circumstances Test

The public charge test also is a “totality of the circumstances” test. According to current immigration law and the 1999 Field Guidance, DHS must consider at least the following factors when evaluating public charge:

- Age,
- Health,
- Family status,
- Assets, resources and financial status, and
- Education and skills

No single factor should determine whether an applicant would be a public charge. Applicants should especially make sure they explain the following:

- Work history, current employment, and offers of employment,
- Ability to earn a living, including mental and physical conditions, and
- For immigrants living with HIV/AIDS, a plan for covering future health care costs.

They should show why they will not become “primarily dependent on the government for subsistence.”

Clients should not necessarily avoid using public benefits for fear of the public charge test. As the next section shows, only some benefits cause public charge problems.

Receiving Public Benefits

No applicant is required to pay back public benefits to gain lawful permanent residence. In addition, the 1999 DHS Field Guidance says that only the following situations trigger an automatic public charge problem:

- Receiving cash to maintain the person's income, including Supplemental Security Income (SSI), cash Temporary Assistance to Needy Families (TANF), and state General Assistance;
- Long-term institutionalization, such as long stays in nursing homes or mental health facilities at government expense.

Benefits that do not count and may not be considered at all in the totality of the circumstances test:

- Cash benefits not used for income, for instance, supplemental cash TANF, some energy assistance, and child care;
- Cash benefits the applicant's family members receive, as long as that cash is not the family's only source of income;
- Non-cash benefits, including the following:
 - Food stamps, WIC, and other food assistance;
 - Medicaid, testing and treatment of communicable disease symptoms, Children's Health Insurance Program (CHIP), prenatal care, free or low-cost health care (excluding long-term care in a nursing home);
 - Public housing, energy assistance, Head Start, and job training;
- Short institutionalization for rehabilitation;
- Cash benefits that have been earned, including Unemployment Insurance, Social Security retirement and survivors' benefits, government pension benefits, and veterans' benefits;
- Benefits received by battered or abused immigrants who have filed self-petitions under the Violence Against Women Act immigration provisions.

According to the 1999 Field Guidance, some public benefits that raise concern, such as a small amount of cash to maintain income, may be outweighed by other factors in the "totality of the circumstances" test. Past receipt of cash benefits for income and past long-term institutionalization do not automatically make someone a public charge. The history of using these benefits is only one of many factors DHS should consider in the totality of the circumstances test.

How Public Charge Adds Up

Advances in HIV/AIDS detection and treatment should undermine DHS assumptions that HIV positive applicants inevitably will become dependent on the government. Furthermore, there must be current evidence that reasonably shows the person will become a public charge.

People who depend on SSI for income may not overcome public charge. People with sponsors and comprehensive health care coverage should be able to avoid public charge concerns. If a client cannot avoid the problem now, there may be ways to build better factors for the totality of the circumstances test for the future. An immigration advocate might be able to assist you and your client to explore such factors early on and plan for future immigration challenges.

Try to make sure your client is available for an interview. If your client can stay in the US to apply for lawful permanent residence and to interview with DHS, it is more likely your client will overcome both the HIV and public charge inadmissibility problems. Applicants who know they will have problems overcoming public charge factors should not travel abroad for their lawful permanent residence interviews. If they do, odds are they will never be able to get back into the United States legally.

Obtaining an HIV Waiver: The “Extra Test”

DHS applies a three-part test to all HIV positive noncitizens seeking lawful permanent residence, even though this test does not appear in immigration law. To meet the extra test, an applicant must show that granting him or her status will pose the following:

- Minimal danger to the public health,
- Minimal possibility of the spread of HIV, and
- No cost to a government agency without that agency’s prior consent to providing necessary services or benefits.

Applicants can meet the first two parts of the test by showing that they are aware of the nature and severity of their medical condition, are willing to attend educational sessions, and understand the way HIV is transmitted. Generally, a letter from a doctor or counselor, plus the applicant’s statement about his or her understanding of HIV/AIDS, will satisfy these requirements.

The third part of the test may be the most difficult to overcome, depending on the noncitizen’s situation. The applicant must show that no cost will be incurred by a government agency without that agency’s prior consent to providing necessary services or benefits. This essentially has been interpreted by DHS to refer to health care costs. If an applicant can show they or their sponsors have health care insurance that will cover any possible future medical expenses, for example, he or she will have a very strong application for the HIV waiver. If not, other evidence must be proffered, such as financial resources necessary to cover projected lifetime medical costs of HIV treatment, statements from specific private/government health care and research facilities assuming responsibility for treatment, or statements of consent from local or state health care officials. If an applicant is asymptomatic and has a job offer, this will also help them meet the requirements. The [National Immigration Project](#) has legal resources on HIV waivers for immigration attorneys.

In 1999, at the request of the Surgeon General, DHS issued special guidance regarding HIV positive refugees and the third prong of the Extra Test. Since refugees are eligible for existing federally funded health care programs such as Medicaid, Refugee Medical Assistance, and a variety of services provided under the Ryan White CARE Act, DHS has decided that this means the government has given prior consent to providing these benefits. Refugees, therefore, no longer have to submit individual documentation of having met the third prong of the Extra Test.

The same logic should apply to asylees and trafficking victims because Congress permits them to receive the same public benefits as refugees, though there is no specific DHS guidance at this time. HIV positive asylees who apply for and are denied adjustment of status do not automatically lose their status as asylees. DHS or an immigration judge must officially revoke asylum status, and may only revoke it for certain, limited reasons. If your HIV+ asylee client has concerns about meeting the third part of the Extra Test, contact an immigration attorney or accredited representative for a risk/benefit analysis.

Many advocates believe the extra test is illegal. Contact the National Immigration Project of the National Lawyers Guild (see contract information) if you represent a noncitizen who cannot overcome it.

Can the applicant stay in the US to get lawful permanent residence?

If possible, noncitizens should try to stay in the United States for the interview on their lawful permanent residence applications. This is called **“adjusting status.”** If they entered the United States without government permission or worked without authorization, however, they may have to go to a US embassy abroad (usually in their home countries) to get “immigrant” visas, which will confer lawful permanent residence once they return to the United States. This is called **“consular processing.”** There are a number of other reasons why they may have to process their visas abroad. The most common ones are listed below.

Normally, noncitizens that entered the United States without government permission, lost their status, or worked without government approval can only get lawful permanent residence by going abroad, with the exclusion of excepted persons because of various federal laws, such as the individuals protected under LIFE, NACARA and HRIFA. In 2001, Congress decided to allow these people to apply to adjust status here **if they pay a special \$1,000 penalty**. Only people whose sponsors filed their applications before April 30, 2001, are now eligible.

It is often harder for people to get their applications approved abroad than in the United States because they usually cannot bring their family members or legal representatives with them to the consular interview. Without this support it is much more difficult to challenge a consular officer's decision that there are problems with an application. Unfortunately, while an applicant can appeal an adjustment denial, there is no right to appeal a consular denial.

Unlawful Presence: Another Reason to Stay in US to Process Lawful Permanent Residence

“Unlawful presence” is another important reason to explore with your client and an immigration advocate the possibilities of remaining in the US to process lawful permanent residence. In 1996, Congress added many new barriers to getting lawful permanent residence, including what are called the “unlawful presence” bars. Currently, if a noncitizen stays in the United States without DHS permission for more than 180 days *and then leaves the country*, he or she will trigger these bars. The departure from the US triggers the bars. Once barred, the noncitizen only can then get lawful permanent residence if the noncitizen can show that a US citizen or lawful permanent resident spouse, parent or child would suffer extreme hardship if the noncitizen does not obtain status. This is called an “extreme hardship waiver.” There are some very limited exceptions for certain classes of noncitizens (for instance, for children under 18, asylum seekers, and domestic violence survivors). Immigration laws will prohibit or “bar” people who cannot show an exception or get a waiver from entering the United States or getting lawful permanent residence for three or ten years, depending on how long they were in the United States without government permission. If the noncitizen is able to remain in the US to “adjust status,” he or she may never trigger the bars.

Anyone who has been in the United States for more than 180 days without DHS permission should see an immigration expert before leaving the United States, even to go to an interview for lawful permanent residence abroad.

Lawful Permanent Residence Through Cancellation of Removal or Asylum

Clients who cannot get lawful permanent residence through family members or employers should explore other possible options with the help of an immigration advocate who knows about HIV. Applicants for these statuses are not subject to the HIV and public charge grounds of inadmissibility. Cancellation of removal and asylum do have other specific requirements that may be hard for a client to meet, but DHS has recognized that being HIV positive actually may be a ground for gaining status these ways.

Ten-Year Cancellation of Removal

Cancellation of removal (“cancellation”) is only available in immigration court. If an immigration judge grants cancellation, the noncitizen becomes a lawful permanent resident without having to undergo a medical examination or overcome the public charge ground of inadmissibility. Applicants must show the immigration judge that they have been in the United States continuously for ten years before receiving the notice for their immigration hearing, that they are of “good moral character,” and that a US citizen or lawful permanent resident spouse, parent or child will suffer “exceptional or extremely unusual hardship” if DHS returns them to their home country. In the past, under a more lenient provision of immigration law called “suspension of deportation,” some immigration judges found that HIV positive noncitizen applicants would suffer “extreme hardship” if DHS deported them. Under cancellation, however, hardship to the applicant is irrelevant.

Congress intentionally eliminated the more lenient seven-year suspension of deportation because it believed too many people, including gay men and people with HIV, were gaining status through this

channel. The hardship test will especially hurt such applicants because they may lack the traditional family members Congress requires must suffer hardship. Unfortunately, because of the Defense of Marriage Act, noncitizens cannot claim domestic partners and same-sex spouses as legal spouses for immigration purposes. Nevertheless, many HIV positive noncitizens, whether straight or LGBT, may have US citizen children and may qualify for ten-year cancellation of removal. They should consult an immigration advocate.

Exceptional and Extremely Unusual Hardship

Here are some questions to ask your client that may help identify whether he or she can adequately meet the hardship test for ten-year cancellation:

- How long have your US citizen or lawful permanent resident spouse, children, and parents been living in the United States?
- Do they depend on you to survive?
- Do they depend on you in other ways?
- If you leave, would they have to go with you?
- Do they speak the language of your home country?
- How long have the children been in school?
- Do they have strong community, church, or family connections here?
- Would they be able to find work in their home country?
- Would they be persecuted or discriminated against in the home country because of their relationship to you?
- Can you think of any other way in which their suffering would be worse than other family members of noncitizens who are removed?

Please note that all the questions are about the relatives. Again, hardship to the applicant is now completely irrelevant, unless it also causes hardship to the qualifying relatives.

Asylum

Those who fear persecution if they return to their home countries because of race, religion, nationality, political opinion, or social group are eligible for asylum. HIV positive noncitizens may claim asylum on one or more of these grounds. Traditionally, political opinion was the primary basis for granting asylum. In recent years, however, the Board of Immigration Appeals and the federal courts, which hear appeals from immigration courts including the Board of Immigration Appeals, have recognized that asylum seekers may be persecuted for an “imputed” political opinion, for instance, when the persecutor *thinks* someone is a gay activist because he is HIV positive. They also have found that asylum seekers may be persecuted for being members of a social group, one of the more difficult to prove yet widely used criteria. In recent years, lesbians, gay men, and bisexuals have been granted asylum based on “social group.” Although not as firmly established in statute and case law, several appellate opinions have begun including transgendered individuals as a protected social group in immigration law. In addition, some DHS asylum officers, as well as federal and immigration judges, have granted asylum to HIV positive noncitizens based on social group. In 1996, DHS officially recognized HIV as a possible “social group” asylum:

[A]liens with HIV who are seeking asylum or withholding of deportation may be able to qualify for recognition as members of a “particular social group” if the evidence in the individual case supports such a conclusion. [73 Interpreter Releases 203 (Feb. 12, 1996)]

Noncitizens may request asylum in several venues. If they have not been arrested by DHS, they may apply for asylum “affirmatively” to the DHS. Noncitizens may also apply for asylum “defensively” before an immigration judge in immigration court. Being undocumented and being HIV positive do not prevent people from applying either way. There are several advantages to applying directly with DHS: (1) the applicant does not risk immediate deportation if the affirmative application is denied and (2) the applicant gets another chance to apply defensively when he or she gets put into immigration court. It is also possible that a noncitizen might be more likely to win an affirmative case before a DHS officer rather than a defensive case before an immigration judge, or vice versa, depending on the immigration officers and courts where you live. Work with immigration advocate or asylum lawyer in your area to know what to expect. Having as many opportunities as possible to seek asylum is important.

As long as their applications have not been denied, asylum applicants should get work authorization within 180 days of applying for asylum. Those granted asylum, called “asylees”, do not immediately become lawful permanent residents. They only become eligible to apply after a year, and there is a backlog of applicants. Nevertheless, asylees may work with DHS permission and qualify for an exception to many of the disqualifications for public benefits in the 1996 Welfare Reform bill.

Procedural changes eliminating asylum for many who fear persecution

In another attempt to reduce the numbers of noncitizens gaining legal status in the United States, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act requires that individuals apply for asylum within a year of entering the United States. Many people who would be persecuted in their homelands because they are HIV positive or for other reasons will not realize that asylum is a possible way to gain safety and legal immigration status. Others may not have the resources or self-confidence to apply for asylum until they meet with an advocate. For these reasons, the one-year filing deadline may be a problem for many noncitizens. There are exceptions to the one-year filing requirement, however, so potential asylum applicants should not give up just because of this deadline. As with any complicated immigration application, they must meet with an advocate with significant experience in asylum.

Who qualifies for asylum?

To qualify for asylum, applicants with HIV must show everything on the following list:

- They have been persecuted in the past or they will be persecuted if they return to their homelands; **and**
- The people who persecuted them or who will persecute them are connected to the government in their home country or are people the government cannot or will not control; **and**
- The persecutors believe the applicants have a political opinion that they wish to suppress, such as the political opinion that people with HIV/AIDS should be treated with dignity,
- **and/or**
- The persecutors believe the applicants belong to a social group, such as people with HIV or gay men, that the persecutors wish to subdue; **and**
- The reason the persecutors will persecute or have persecuted the applicants is because they believe the applicants have a political opinion or belong to a social group they disfavor.

Persecution by someone the government cannot or will not control

Although it may be difficult, applicants must show that the government tolerates or approves the actions of the persecutors, and that the reason the persecutors target the applicant is because they wish to repress his or her opinion or group. If it is not the government directly that persecutes people with HIV/AIDS and gay or transgendered individuals, then the applicant must show that the government either tolerates or approves of others persecuting these groups. For instance, if bands of vigilantes regularly attack and beat up people with HIV/AIDS, the applicant must show that asking the police to prosecute the attackers is fruitless.

Because the victim belongs to a targeted social group

It is also essential to show the connection between the acts of persecution, either past or anticipated, and the political opinion or social group for which the applicant is persecuted. Applicants often show they have been or will be persecuted and that their opinion or group is generally disfavored, but fail to show that *the reason* they are persecuted *is because* of their opinion or social group. For instance, if the police

continually harass a young man with HIV/AIDS, the applicant must show that they do this because they think or know he is HIV positive. It helps to show they have specifically said things indicating why they are persecuting him in particular or that they do not generally harass all young men. This can be difficult to prove, however, and many immigration applications are denied because of the inability to directly correlate and prove harassment or persecution with a particular social group. Below are some suggestions for substantiating the reasons for persecution.

Collecting evidence: How you can help

Although the applicant's own statement (or "affidavit") is very important, statements by witnesses, experts and the persecutors themselves, if at all possible, often make the difference between a winning and losing case. General documentation about conditions in the home country help, but they only provide the necessary background. The applicant needs the specifics that make the story believable. If an expert is willing to look at the applicant's specific story and say it fits what he or she knows about how people like the applicant are treated, this makes the applicant's case even stronger. HIV/AIDS service providers may have better access to experts on how people with HIV are treated in various countries. Asylum applicants may also feel more comfortable discussing their experiences with you than with a traditional immigration advocate, and in working with you, they may give a more truthful and complete statement of their case. The back cover of the manual has the names, addresses, and phone numbers of organizations that may have information helpful to HIV positive asylum applicants.

Questions to ask your client about qualifying for asylum

- Are you from a country in conflict?
- HIV positive noncitizens from countries in conflict may have traditional asylum claims, as well as claims based on being in a group persecuted for being HIV positive.
- Do you think you will be discriminated against or harmed by others because of your HIV status or sexual orientation if you must return to your home country?
- People with HIV/AIDS, and gays, lesbians, and transgendered individuals may be persecuted both for being in a disfavored social group and for an imputed or expressed political opinion.
- Who do you think will harm you? If it is not the police or military, can you show that the government tolerates or approves of their behavior?

Try to find witnesses or others who have experienced similar problems in the applicant's homeland. Academics and HIV/AIDS advocates from the applicant's home country may be willing to write affidavits supporting your client's application. If there are any relevant laws, get copies and show either that they do not protect your client or that the government does not enforce the protections that allegedly exist.

- How can you show that the reason the person persecuted you or would persecute you is because you are HIV positive?
 - Did the persecutor say something? Is it generally known? If so, get someone to write an affidavit explaining how it is generally known. Are there newspaper or magazine articles about the problem? Both general and specific documentation help.
- Are you active in the HIV/AIDS or gay community in the United States?
 - Activities here may be the basis for claiming future persecution. They also may help overcome the new filing requirement discussed below.

Gaining lawful permanent residence after getting asylum

Asylees (those who have been granted asylum) are eligible to apply for lawful permanent residence after one year. There is a backlog of asylees waiting to adjust. Therefore, many asylees must wait many years, even a decade, before they can finally become lawful permanent residents. When they do apply to adjust status, they must undergo the DHS medical examination, including an HIV antibody test. The public charge ground of inadmissibility does not apply, though the HIV ground and some of the grounds created by the 1996 immigration reforms are pertinent.

Asylees adjusting status may request an HIV waiver "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." They do not need a US or lawful permanent resident

spouse, parent, or child to qualify. HIV positive asylees should consult an immigration advocate before trying to gain lawful permanent residence, since they will need an HIV waiver, and the “Extra Test” may apply.

Since Congress decided that refugees can receive the kind of public assistance benefits that normally would result in public charge concerns, DHS has interpreted this to mean the government has given prior consent to providing these benefits and issued guidance indicating this in 1999. The same logic should apply to people who have received asylum because Congress says they can receive the same public benefits as refugees, though there is no DHS guidance on asylees at this time. Also, asylees who apply for and are denied adjustment of status do not automatically lose their status as asylees. It must be officially revoked, and may only be revoked for certain, limited reasons. If your HIV positive asylee client has concerns about meeting the third part of the “Extra Test,” contact an immigration specialist for a risk/benefit analysis.

BECOMING A US CITIZEN

The combination of anti-immigrant policies and the elimination of most public benefits for lawful permanent residents have significantly increased the numbers of noncitizens seeking US citizenship. The advantages of US citizenship include the ability to vote, eligibility for public benefits, and increased ease in assisting relatives to become lawful permanent residents. A common misconception among many is that noncitizens automatically lose citizenship in their home country when they become US citizens. This is not necessarily true. In many countries, swearing allegiance to the United States does not result in the automatic loss of citizenship to that country. The home country may recognize “dual citizenship.”

Most noncitizens gain US citizenship through “naturalizing,” an administrative process during which an applicant must meet certain requirements. Any individual born in the United States is automatically a US citizen. Some people who were born while their US citizen parents were outside the United States also are US citizens, but the rules that determine who is a citizen in this situation vary according to the date of birth, which parent is a US citizen, and the marital status of the parents. Noncitizens also may “derive” citizenship from their parents when their parents naturalize. Additionally, some children adopted by US citizen parents may automatically be citizens.

Naturalization requirements

Naturalization applicants do not need to undergo a medical examination, and the HIV and public charge grounds of inadmissibility do not apply. Nevertheless, as noted below, HIV positive naturalization applicants should prepare for other possible problems when they attempt to naturalize.

Most people apply for naturalization after they have been lawful permanent residents for five years. To qualify, applicants must:

- Be 18 years old or older,
- Have continuously resided in the United States for five years after obtaining lawful permanent residence,
- Have been “physically present” in the United States for at least half this period,
- Have continuously resided in the United States between filing the naturalization application and receiving citizenship,
- Have resided for three months in the state or DHS district where the application was filed,
- Be of “good moral character,”
- Be “attached to the principles of the US Constitution,”
- Demonstrate basic English language skills, and
- Pass a test on knowledge of the history and government of the United States.

Special categories

Spouses of US citizens qualify for naturalization, assuming they meet the other requirements, after three years of continuous residence in the United States. They must have been living with their US citizen spouse for those three years, unless the spouse subjected them to domestic violence, and have been physically present in the United States for half that time. Lawful permanent residents who serve in time of war (which includes the period of time since September 11, 2001) have no waiting period to apply for

naturalization. Otherwise, lawful permanent residents who have served in the US military for one year may also apply for naturalization.

General problems for naturalization applicants

The most difficult problems for most naturalization applicants are the continuous residency, language, and history and government requirements. The other requirements may cause problems in individual cases. An individual who suspects he or she may have problems meeting one of the requirements should contact an immigration advocate or agency before applying. It is important to be prepared for problems prior to applying to avoid DHS placing an applicant in immigration court if the agent finds he or she committed a deportable offense, such as fraud, abandoning lawful permanent residence by leaving the country for an extended period of time, or having not been eligible originally to become a lawful permanent resident.

Continuous residence

While certain absences from the United States do not break “continuous residence,” rules determining which absences cause problems can be complicated. (This is why there is an additional “physical presence” requirement.) In general, absences of less than six months should not pose a problem; absences of more than a year will.

English language and US history and government

Applicants must show that they speak, read, and write English. A DHS officer will conduct the naturalization interview in English and review the applicant’s answers on the naturalization application as part of the oral English test. The applicant is also asked to write out a sentence in English.

At the interview the applicant will be required to answer civics questions, either orally or on a written multiple-choice test. DHS no longer accepts results from the standardized reading and writing test that naturalization applicants formerly took. Applicants should study the “100 Questions” DHS may ask. To get the most current questions, check with a local immigration agency or look on the DHS website (<http://uscis.gov/graphics/services/natz/require.htm>).

Exceptions to the language and civic knowledge requirements

Exemptions to the language and civic knowledge requirements are based on age and years of residence. Long-time lawful permanent residents 50 years of age or older may not have to meet the English language requirement, may be interviewed with an interpreter in their own language, and, in some cases, may be responsible only for 25 possible civics questions. Applicants who obtained lawful permanent residence through the legalization program, and have therefore already satisfied the US history and government requirements, do not have to meet the civic knowledge requirement again. Applicants with a “physical or developmental disability or mental impairment” who are unable to take the tests also are exempt, however, the applicant must obtain a medical waiver.

Special Problems for HIV Positive Applicants

If a naturalization applicant tested HIV positive at the time she or he applied for lawful permanent residency, DHS will have knowledge of it. Otherwise, since naturalization applicants are not required to undergo a medical examination and the HIV ground of inadmissibility does not apply, DHS probably will not know an applicant’s HIV positive status. DHS may learn of an applicant’s HIV status, however, through some other question or requirement. For instance, if the section of the naturalization application on work history reveals that the person is no longer able to work, DHS may ask why. This, in turn, may open the door to other questions that raise problems. The primary difficulties applicants should explore prior to the naturalization process are the good moral character question and the possibility that DHS will find that the person originally should not have received lawful permanent residence.

Good moral character

“Good moral character” is a vague term, leaving much to the discretion of DHS officers. Lying under oath, many criminal convictions, and a “willful failure to support” children may damage good moral character. Receiving public benefits, however, should only affect good moral character if the applicant fraudulently obtained the benefits.

Failing to register with Selective Service for possible military duty can pose significant good moral character problems for many naturalization applicants. All men between the ages of 18 and 26 must register in order to show good moral character. If a naturalization applicant between the ages of 26 and 31

did not register, he must show that he did not know he had to register. Applicants over 31 years of age (on the date of application) are usually excused from this requirement, unless they have other good moral character problems.

Being HIV positive, by itself, is irrelevant to good moral character, but may raise other good moral character questions. For instance, if an applicant admits he or she was a drug user when asked how he or she became HIV positive, DHS may deny citizenship for lack of good moral character. Historically, gay men, lesbians, and transgendered individuals have experienced problems with DHS in many contexts, including the naturalization process. According to DHS' own interpretation, however, sexual orientation should affect the good moral character requirement only when the sexual acts involve any of the following: minors, the threat or use of fraud, the giving or receiving of money or anything of value, taking place in public or solicitation in a public place, or violation of a marital vow. An individual who experiences problems with a DHS officer because of sexual orientation should work with an immigration advocate to challenge such discriminatory behavior.

Not eligible for lawful permanent residence when obtained

DHS may deny citizenship and put an applicant into immigration court proceedings if it finds that the person should not have been granted lawful permanent residence originally. If an applicant's lawful permanent residence is based on a marriage to a US citizen or lawful permanent resident, DHS may re-examine whether the marriage was fraudulent, especially if the couple is now divorced. If DHS finds marriage fraud, it will place the applicant in immigration court. Generally, applicants should be careful about answering questions that may reveal fraud, such as working without DHS permission, since they could be subject to civil and criminal penalties and removal.

Of particular concern to HIV positive noncitizens is the public charge ground of inadmissibility. If a noncitizen was receiving public benefits at the time he or she gained lawful permanent resident status, for instance, DHS may find that it should not have granted lawful permanent residence to that person in the first place. Other than in this instance, however, the HIV and public charge grounds of inadmissibility are not relevant for naturalization.

Read the Naturalization Application Closely

Any HIV positive lawful permanent resident who is considering applying for citizenship should carefully review the naturalization application form with an immigration advocate. For each question on the form, consider the following:

- Will this answer unnecessarily raise questions for the DHS about the applicant's HIV status or sexual orientation?
- If so, where could the DHS officer's questions lead?
- How can the applicant truthfully answer these questions, or the DHS officer's follow-up questions, without damaging the chances of gaining citizenship?

Questions about naturalization

1. Were you born in the United States?

With a few rare exceptions, such as children of diplomats, people born in any of the fifty states of the United States, Washington, D.C., and certain commonwealths, territories, and possessions, including Puerto Rico, the US Virgin Islands, Guam, and the Northern Mariana Islands are US citizens at birth.

2. Was either of your parents a US citizen when you were born?

People born outside the United States may be US citizens if one of their parents was a US citizen and resided in the United States at some time before the child was born. If the other parent was not a US citizen when the child was born, the rules are more complicated. Since the rules have changed over time and the rule that applies depends on when a person was born, an individual in this category should consult an immigration advocate.

3. Has either of your parents naturalized?

People born outside the United States may “derive” citizenship through a parent who has naturalized. Again, the rules for children of naturalized citizens are complicated. An individual whose mother or father became a US citizen after he or she was born should contact an immigration advocate.

4. How long have you been a lawful permanent resident?

In order to apply for naturalization, noncitizens must be lawful permanent residents. Lawful permanent residents married to US citizens can apply after three years of having permanent resident status, as long as the other requirements are met. People who have won self-petitions as battered immigrants should be able to naturalize in three years if the abusive spouse was a US citizen. Other noncitizens who have been lawful permanent residents for at least five years are eligible to apply for naturalization.

5. Have you been outside the United States for more than six months at any time during the past five years?

Absences from the United States for more than six months or for more than a year may cause problems in meeting the continuous residence requirement, although the requirement may be overcome. Applicants with significant absences from the United States should seek help from an immigration advocate.

6. Have you filed federal income tax returns for every year you have been a lawful permanent resident?

Although the connection between this question and the naturalization requirements is not obvious, DHS often insists that applicants provide income tax returns. The DHS agent may be looking for fraudulent marriages or a lack of good moral character. If the noncitizen has not filed income taxes, it is a good idea to remedy this situation before applying.

7. If you are a male between 18 and 31, have you registered with Selective Service?

All men between the ages of 18 and 26, even undocumented men and conscientious objectors, must register for the Selective Service. Male naturalization applicants between the ages of 26 and 31 who failed to register for selective service before the age of 26 must convince DHS at the naturalization interview that they did not know they had to register. After an individual turns 31, DHS will be less concerned about the applicant’s failure to register. Failing to register can cause major delays in processing an application and may result in its denial. Applicants between 26 and 31 should immediately contact an immigration advocate about how they can overcome this problem. Generally, male applicants who are 26 or younger should register immediately if they have intentions of applying for naturalization. There is an exception for men in a valid non-immigrant status.

8. Have you ever belonged to a political organization that may be disfavored by the US government?

The naturalization application form asks for a list of all organizations, parties, etc., to which the applicant has belonged. Belonging to organizations which DHS or the Department of State views as communist or “terrorist” may result in the denial of citizenship. DHS may also question an applicant’s “attachment to the principles” of the US Constitution because of membership in other disfavored organizations. The federal courts, however, have historically ruled against denying citizenship to individuals for constitutionally protected beliefs or activity. In addition, affiliation with certain organizations may trigger lifestyle questions noted below.

9. Did you get your lawful permanent residence through a spouse from whom you are now divorced?

The naturalization application form requires the noncitizen to list all of his or her spouses during the past five years. DHS may question whether an applicant committed marriage fraud to gain lawful permanent residence if the marriage ended soon after the applicant gained status. If suspicions arise, DHS could require the applicant to prove again that the marriage was not fraudulent. If it determines the marriage was fraudulent, DHS will put the applicant into immigration court proceedings.

10. Did you test HIV positive and get a waiver before you became a lawful permanent resident?

DHS should know that a naturalization applicant is HIV positive if the applicant was HIV positive when he or she became a lawful permanent resident. A positive HIV serostatus may prompt a DHS officer to ask questions exploring the applicant's good moral character and original eligibility for lawful permanent residence.

11. Do you know whether you had to overcome the public charge ground of inadmissibility (exclusion) when you became a lawful permanent resident?

This issue may arise if a naturalization applicant has used public benefits, especially soon after he or she gained lawful permanent residence. In such cases, DHS may ask questions to determine whether a naturalization applicant should have been denied lawful permanent residence because he or she was likely to become a public charge.

12. Have you ever been detained or arrested for any reason?

This is a question on the naturalization application form, which can reveal both mandatory disqualifications from citizenship for certain criminal convictions and possible good moral character problems. Committing certain acts can damage good moral character, even if the person was not convicted for a crime.

13. Have you worked continuously for the past five years?

Applicants must list everywhere they have worked for the past five years. Major gaps in work history or current lack of work could lead to questions that reveal the client's HIV status or use of public benefits. Using public benefits soon after gaining lawful permanent residence can raise questions about whether the applicant was a public charge at the time he or she became a lawful permanent resident. Revealing HIV seropositivity could prompt a DHS officer to question whether the applicant should have received lawful permanent residence. The officer may also question the applicant about good moral character issues, such as drug use or sexual activities.

14. In case the DHS officer asks how you were exposed to HIV, can you truthfully answer in a way that does not raise good moral character questions?

Exposure through needles could raise questions about drug use, which could damage good moral character, especially if the use was a crime. Exposure through sexual activity could raise questions if the applicant had sex with a minor, while married to someone else, in public, or resulting from public solicitation or prostitution. Individuals in this situation should speak with an experienced immigration advocate before applying for naturalization.

Conclusion

Applicants should not start the naturalization process without preparation. Identify and find solutions to problems before applying. Many noncitizens prefer to stay in lawful permanent resident status rather than end up in immigration court because they applied to become citizens without realizing the potential pitfalls.

Part Four: Understanding Your Client's Eligibility for Public Benefits

Congress frequently changes the laws on who is eligible for public benefits. For an update, check with a local immigration or benefits advocate and the website of the National Immigration Law Center (NILC) at www.nilc.org.

An HIV positive noncitizen client walks into your office asking for information. What services can you offer him or her immediately? What help might he or she be eligible for, either now or eventually? Of course the answers depend on each client's unique situation, but there are several areas in which many HIV positive noncitizens may need assistance and face special barriers, including:

- HIV testing
- Medications
- Health care
- Food
- Housing
- Disability benefits

This section should equip you to answer questions relating to these services (and others.) We will revisit these questions at the end of Part 4.

INTRODUCTION TO NONCITIZENS AND PUBLIC BENEFITS

Never has figuring out noncitizens' eligibility for public benefits seemed more confusing than in recent years. It is not as simple as determining if an individual is in need of medicine, food, or shelter; rather, first you must determine if this person is a citizen, a national, or a noncitizen. If he is a noncitizen, is he "qualified" or "not qualified?" If he is "qualified," when did he enter the US or, in some cases, when did he become "qualified?" But you're still not done. You must now analyze whether or not he is subject to penalties imposed upon recently arrived legal immigrants or if he happens to fall into another exempt category. If not exempt, does he qualify for a state benefit program instead? This section will try to help you answer all these questions so you can help noncitizens who may be eligible for public benefits.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), also known as "welfare reform," significantly restricted which noncitizens may receive public assistance from government agencies. It contradicts the principle that all people are created equal and established a hierarchy of second and third class humans when it comes to public benefits. Noncitizens no longer have access to the same safety net as citizens despite the fact that they contribute to the safety net system. Despite numerous studies showing that noncitizens contribute more in tax dollars than they use in government services, Congress targeted the poorest noncitizens for cuts in welfare spending. The law and ensuing cuts sparked massive protests and organizing among immigrant communities, health care providers, advocates for seniors and persons with disabilities, anti-hunger organizations, and advocates for noncitizens, who documented the harsh situations facing noncitizens and encouraged states to provide a safety net for legal immigrants. Many states responded to fill the gap left by the cutoff in federal public benefits, at least temporarily, although the states that responded did so in their own way. Meanwhile, Congress has slowly but surely acknowledged the inequities of welfare "reform," by partially restoring Supplemental Security Insurance (SSI) for seniors and persons with disabilities and Food Stamps for children.

Despite these changes, Congress has not gone far enough to restore benefits to the neediest populations. Many of the refugees, asylees, and others granted legal status for humanitarian reasons after 1996 who were eligible for federal benefits upon arrival in the US, have now reached the seven-year cutoff mark set by Congress for SSI benefits. If they have not yet become US citizens, the government is systematically cutting them off from SSI, even if that is their sole source of income. Many refugees find it difficult to naturalize because they are elderly, have limited English proficiency, or are disabled. Others are hampered by system delays. According to a January 2004 report by the Government Accounting Office (GAO), over the last two years there has been a 59% increase in the processing backlog of immigration applications, including applications for citizenship. Many other noncitizens who have been working with authorization and paying taxes continue to be ineligible for SSI, Temporary Assistance for Needy Families (TANF), SCHIP, Medicaid, and Food Stamps.

This section will first summarize the 1996 welfare and immigration reform and explain the benefits terminology and concepts related to noncitizens created by these laws. Next, it will review the partial benefits restorations that occurred between 1997 and 2003 and their impact on noncitizens and federal public benefits. It will review the federal benefits left untouched by Congress in 1996 and discuss how states have replaced gaps caused by this legislation. It will address verification and reporting requirements of public benefits programs. Finally, it will suggest strategies advocates may use to expand benefits options for their noncitizens clients.

Welfare And Immigration Reform

The 1996 welfare and immigration reform laws did three major things that continue to harm noncitizens needing assistance. First, they severely restrict who may receive several major federal benefits. Secondly, they encourage states to also restrict both state and federal benefits. Thirdly, they limit access to most federal benefits for many new immigrants. The ability of noncitizen to access public assistance benefits depends on numerous factors – including when they received legal immigration status and when they sought the public benefit. **Not all noncitizens with the same immigration status are eligible for the same benefits.**

The 1996 Welfare Law: Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 – August 22, 1996

- Created **“qualified” and “not qualified”** designations of noncitizens;
- Barred “not qualified” noncitizens from most federal programs;
- Barred most “qualified” noncitizens from SSI and food stamps;
- Barred recently-arrived “qualified” noncitizens from access to certain “federal means-tested public benefits” for the **first five years**;
- Barred many lawful permanent residents with a financial sponsor from federal benefits until they gain citizenship or credit for forty **qualifying quarters** of work history.

The 1996 Immigration Law: Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 – September 30, 1996

- Required sponsors of many immigrants to meet minimum income requirements and be legally liable for certain benefits used by the sponsored immigrant, using **Affidavit of Support Form I-864**;
- Expanded **“sponsor-deeming,”** or counting sponsor income to determine eligibility for public benefits.

Public Benefits Concepts

These definitions include selected public benefits concepts and are not intended to be comprehensive. Please consult the [National Immigration Law Center's Guide to Immigrant Eligibility for Public Benefits](#) for a comprehensive resource on immigrants and public benefits.

“Qualified” versus “Not Qualified” Noncitizens

“Qualified” noncitizens include (some) abused immigrants, asylees, conditional entrants, Cuban/Haitian entrants, lawful permanent residents (green card holders), persons paroled into the US for at least one year, refugees, and those granted withholding of deportation or removal. Qualified noncitizens may have entered the US before, on, or after effective date of welfare reform law (August 22, 1996).

Qualified noncitizens who entered the US before August 22, 1996, are not subject to the [first-five-years bar](#). Qualified noncitizens who entered the US on or after August 22, 1996, are subject to the [first-five-years bar](#).

“Not qualified” noncitizens include everyone else, including other noncitizens lawfully present in the US, immigrants considered PRUCOL (Permanently Residing Under Color of Law), and the undocumented.

Exception: Trafficking victims. The “trafficking” classification of noncitizens is new and did not exist when the definitions of “qualified” and “not qualified” were originally developed; therefore, technically, victims of trafficking are “not qualified.” However, there are special laws for victims of trafficking and their derivative beneficiaries that make them eligible for most federal benefits.

The “First-Five-Years” Bar

Noncitizens who physically entered the United States on or after August 22, 1996, will not be able to access the following five federal programs during their first five years in qualified status: non-emergency Medicaid, SCHIP, SSI, TANF and Food Stamps. There are additional restrictions in the SSI program. The Food Stamp rules are slightly different. Children and a few other groups may receive Food Stamps regardless of their date of entry into the US. Some states have attempted to impose additional restrictions in non-emergency Medicaid or TANF (a choice which has subjected at least one state to litigation), while others have chosen to provide state-funded benefits to those who are ineligible for federally funded services.

Noncitizens Exempt From “First-Five-Years” Bar

If the following noncitizens entered the U.S on or after August 22, 1996, they may still be eligible for these federal benefits:

- Refugees and asylees; those granted withholding of deportation or removal; Cuban/Haitian entrants; and Amerasians; lawful permanent residents who gained status because they were refugees or asylees
- Veterans, active duty service members, and their “qualified” spouses and children
- Victims of trafficking
- A few other groups, depending on the benefit ([Click here for NILC eligibility chart.](#))

The “Sponsor Deeming” Bar

Even after the first five years have passed, many lawful permanent residents may not qualify for public benefits because of “sponsor deeming.” Sponsor deeming means that the income and resources of the relatives who filed immigration applications for their family members (the “sponsor”) will be counted (“deemed”) as the noncitizen’s own income. Usually only people with income below the federal poverty level qualify for public assistance benefits. Since [affidavits of support](#) require that the sponsor show a family income of at least 125 percent of the federal poverty guidelines, adding on the sponsor’s income will probably make most applicants [financially](#) ineligible for benefits. Sponsor deeming generally lasts until the noncitizen becomes a citizen or has credit for forty qualifying quarters of work history in the US. (See the section on [gaining legal immigration status](#) for more information

on sponsors and **affidavits of support**.)

Sponsor deeming rules, however, have not been implemented in all programs or in all states. Check with the National Immigration Law Center if you have questions about whether sponsor deeming applies to your noncitizen client.

Noncitizens Exempt From “Sponsor Deeming”

The only new (post-welfare reform) lawful permanent residents who will not be affected by the sponsor deeming requirements are those who were not required to file an enforceable affidavit of support (*e.g.*, refugees, asylees, battered immigrants, etc.; these are often applicants who are not subject to the public charge ground of inadmissibility), those who have credit for forty qualifying quarters of work, and those who would be homeless or hungry without assistance. States may apply the same sponsor deeming rules for state-funded programs; they may also create additional exceptions to deeming rules. Again, not all states or programs have implemented sponsor deeming rules. Check with the National Immigration Law Center if you have questions about whether sponsor deeming applies to your noncitizen client.

Counting ‘Quarters’

The federal SSI and Food Stamps benefits programs make an exception for lawful permanent residents who have forty quarters of work. A “quarter” is three months; there are four quarters in a year. For a quarter to “qualify,” a worker must have earned a specific minimum amount and been paying into the Social Security system. Noncitizens may accrue quarters before they become lawful permanent residents, as long as they have lawful permanent residence status at the time they apply for the benefit. For this purpose, LPRs can count quarters earned by parents (before the immigrant was 18 years old, including the time before birth) and spouses (during a marriage), and quarters earned without a valid Social Security number. Asking to be credited for quarters worked without authorization, however, may bring applicants to the attention of the Internal Revenue Service (IRS) or to the Department of Homeland Security. Check with a local immigration attorney or advocate to find out how likely this is and what the consequences would be. Noncitizens credited with forty quarters of work who entered the US on or after August 22, 1996, generally must wait until they have been in qualified status for five years before applying for certain benefits. Contact a local benefits advocate to obtain the forms and guidelines for crediting quarters to a valid account. See **Counting ‘Quarters’ Part Two** for special rules about counting quarters for Social Security and related benefits.

“Lawfully Present” for Benefits Purposes

“Lawfully present” is a benefits concept used primarily in the context of Social Security and Medicare benefits. Many of us do not think of social security programs, such as Social Security Disability Insurance (SSDI) and Medicare, as “benefits” because a portion of every paycheck (the “FICA” deduction) goes directly into them. Moreover, prior to welfare reform, immigration status was irrelevant as long as someone met Social Security’s other requirements. Nevertheless, Congress chose to eliminate these benefits for some noncitizens who have paid into the system. Most noncitizens working with authorization should still be covered, however, as long as they have paid in the necessary qualifying quarters. [New requirement: For applications based on Social Security numbers issued on or after Jan. 1, 2004, immigrants must have been assigned a Social Security number that was, at the time assigned or at any later time, valid for work purposes. Alternatively, they must have been admitted to the US temporarily for business or as a crewman when the relevant work quarters were earned.]

For Social Security and Medicare, “lawfully present” noncitizens include:

- “Qualified” noncitizens, as previously defined, and the following “not qualified” categories:
- Applicants for asylum, withholding of deportation or removal, or Convention Against Torture (CAT), with work authorization,
- Parolees (except those paroled in specifically for an immigration court hearing),
- Non-immigrants,
- Adjustment applicants who are spouses or children of US citizens,
- Noncitizens granted Temporary Protected Status or Deferred Enforced Departure,
- Noncitizens granted Family Unity status,

- Lawful temporary residents (the legalization program), and
- Noncitizens granted deferred action status.

These categories cover most noncitizens working with DHS authorization. Unfortunately, two significant groups of noncitizens are not included: those with voluntary departure and applicants for suspension of deportation/cancellation of removal. HIV positive noncitizens have been eligible in the past for both of these kinds of immigration status. HIV positive noncitizens with voluntary departure and those waiting for a determination on their suspension cases may be working with DHS authorization. After April 1, 1997, voluntary departure and seven-year suspensions were no longer available, but some noncitizen clients may be able to apply for ten-year cancellation of removal. Until cancellation applicants gain lawful permanent residence or another “lawfully present” status, they will be unable to get Social Security Disability Insurance (SSDI), Social Security, or Medicare.

Although the rules allow many noncitizens to collect SSDI, Social Security and Medicare, the Social Security Administration may not have made this sufficiently clear to benefits administrators. Contact local administrators to find out if they understand all of the categories and the documentation needed to prove a noncitizen’s eligibility. If a client who fits in a “lawfully present” category is denied SSDI or Medicare, challenge that determination. If it is based on lack of necessary qualifying quarters, help the applicant determine if he or she has gotten credit for all work. Your client may qualify for more quarters than he or she realizes.

Counting ‘Quarters’ Part Two

The Social Security Administration uses a different method of counting quarters for purposes of SSDI, Social Security, and Medicare. It is more complicated than the method of counting quarters for SSI or Food Stamps benefits, previously described in this manual. If you want more details on counting quarters for purposes of SSDI, Social Security, and Medicare, contact the National Immigration Law Center.

Partial Restorations After Welfare “Reform”

By enacting the 1996 welfare and immigration reform laws, Congress intentionally set up barriers to public assistance benefits for immigrants arriving in the United States or obtaining immigration status on or after August 22, 1996. In general, clients who had a qualifying status before August 22, 1996, were in a much better position than those who did not. Fortunately, Congress has passed a series of partial benefits restorations. These laws expanded noncitizens’ eligibility for SSI (and related Medicaid) and Food Stamps, and created the SCHIP program to provide health care for uninsured, low-income children in families earning above the Medicaid limits.

Summary of Laws

The partial restoration of benefits has occurred in phases and affected whole categories of noncitizens previously left out. Only the restorative changes are summarized below; please see page X for a complete chart of noncitizen eligibility for federal public benefits.

SSI (and related Medicaid). SSI and related Medicaid (in states that link Medicaid eligibility to SSI) have been restored to immigrant seniors and immigrants with disabilities who were receiving benefits on August 22, 1996, as well as to “qualified” disabled or blind noncitizens who were “lawfully present” on August 22, 1996. The SSI cutoff period for refugees, asylees, persons granted withholding of deportation or removal, Cuban/Haitian entrants, Amerasians and victims of trafficking, has been extended from five to seven years after the person received the relevant status. This means a refugee, for instance, who receives SSI and has not yet naturalized, is cut off from receiving SSI after seven years. Proposals to extend this period for an additional 1-2 years are currently pending in Congress. These laws change frequently. Please consult the National

Immigration Law Center for the most up-to-date information on noncitizen eligibility for public benefits.

Food Stamps. Food Stamps are now available to all “qualified” noncitizen (1) children (under the age of 18), (2) people receiving disability benefits, and (3) people who have lived in the United States in qualified status for five years or more. Food Stamps are also available to “qualified” noncitizens who were lawfully residing on August 22, 1996, and were 65 years or older on that date. There is no longer any time limit on food stamps for refugees, asylees, persons granted withholding of deportation, Amerasians, and Cuban or Haitian entrants, or victims of trafficking.

State Children Health Insurance Program (SCHIP). The federal government created SCHIP to provide health care for uninsured, low-income children in families earning more than the Medicaid income limits. SCHIP monies are distributed via block grants to individual states. US citizen and qualified immigrant children are eligible, but qualified immigrant children who do not meet an exemption are subject to the first-five-years bar.

An amendment to the SCHIP regulations allows states to provide prenatal health care to the fetuses of noncitizen women, regardless of the mother’s immigration status. The scope of coverage for pregnant women is not clear. Advocates continue to press Congress to provide health services to pregnant women directly regardless of when they came into the country. For an analysis of issues to consider in your state, read the National Immigration Law Center’s issue brief on this topic at the following link: [NILC - Prenatal coverage through SCHIP.pdf](#).

Federal Public Benefits

Unrestricted Federal Public Benefits

Congress specifically exempted certain programs from the 1996 welfare law’s immigration status restrictions and gave the US Attorney General the power to designate other federal benefits programs as exempt. Congress also gave states the option to provide WIC (Women, Infants, and Children, better known as WIC, is a nutrition program for pregnant women) to all noncitizens, including the undocumented. All 50 states have adopted this option and provide WIC to mothers and children, regardless of immigration status.

The welfare law exempts:

- Emergency Medicaid (including labor and delivery during childbirth, but not organ transplants),
- Immunizations (outside of the Medicaid program),
- Testing and treatment for symptoms of communicable diseases (outside of the Medicaid program),
- School breakfast and lunch programs for children,
- Certain housing or community development assistance programs that the person was receiving as of August 22, 1996,
- Benefits under Title II of the Social Security Act (*i.e.*, Old Age, Survivors, and Disability Insurance), provided that the alien is **lawfully present** in the United States or qualifies for payment via an international totalization agreement, and
- Short-term, in-kind, non-cash emergency disaster relief.

It also exempts certain services designated by the Attorney General as necessary to protect life or safety (see below) and confirms that elementary and secondary public education remains available to children regardless of their immigration status. The welfare law also limits restrictions to programs defined as “federal public benefits.” Programs that do not fall into the definition of federal public benefits, such as the Ryan White/CARE Act, are also available to those living with HIV/AIDS.

The Attorney General's List of Exempt Programs

The programs that the Attorney General designates as “exempt” must (1) deliver in-kind services at the community level, (2) not condition assistance on the recipient’s income or resources, and (3) be necessary for the protection of life or safety.

In 2001, the Attorney General issued a memorandum containing principles to guide federal agencies that must determine which specific programs are exempt. The memo specifies:

- Crisis counseling and intervention programs; services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity; or treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, victims of domestic violence, or for runaway, abused, or abandoned children;
- Programs, services, or assistance to help individuals during periods of heat, cold, or other adverse weather conditions;
- Soup kitchens, community food banks, senior nutrition programs such as meals-on-wheels, and other such community nutritional services for people requiring special assistance;
- Medical and public health services (including treatment and prevention of disease and injuries), and mental health, disability, or substance abuse assistance necessary to protect life or safety;
- Activities designed to protect the life or safety of workers, children and youths, or community residents; and
- Any other programs, services, or assistance necessary for the protection of life or safety.

All Other Federal Public Benefits

The law limits all other “federal public benefits” to “qualified aliens.” “Federal public benefits” are defined as:

“Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

Any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.”

Many federal public benefits are open to all “[qualified](#)” noncitizens, regardless of date of entry, and are not subject to the [first-five-years bar](#). (Programs like Social Security and subsidized housing have their own eligibility rules.) Several federal public benefits are considered “means-tested,” which means they impose additional restrictions on noncitizens.

What Are Federal “Means-Tested” Public Benefits?

Federal “means-tested” public benefits are a subset of federal public benefits. Congress imposed additional immigration restrictions on certain federal public benefits. These restrictions include the [first-five-years bar](#). The only programs that have been designated as federal “means-tested” benefits are the following five programs: non-emergency Medicaid, SCHIP, SSI, TANF and Food Stamps.

Public housing and in fact all HUD programs have been specifically declared NOT means-tested by HUD.

How Do I Know If A Program Is Considered A Federal Public Benefit?

This is a vague and confusing part of the law. Most federal agencies have not defined which of their programs are federal public benefits. The US Department of Health and Human Services (HHS) is an exception, one of a handful of federal agencies that has defined its federal public benefits programs. HHS issued a [list of thirty-two HHS programs](#) that provide federal public benefits, which are therefore only open to “qualified” noncitizens. If a program funded by HHS does not appear on the HHS federal public benefits list, it is not subject to the immigration restrictions.

To compound the confusion, however, some programs or services may be only partially funded by restricted money; the rest of the money may be exempt and have no immigration strings attached. This makes it hard to predict what will happen from year to year, but also allows advocates to influence its interpretation. This is especially true for federal funding for people living with HIV/AIDS. How state and local governments administer this money may have drastic consequences for noncitizens. See the advocacy section for more on this concern.

The Federal Benefits Analysis below should help you determine whether an immigrant is eligible for a specific program:

Federal Benefits Analysis

Before deciding whether or not a client will be disqualified from receiving a particular federal benefit, ask the following questions:

1. Is the benefit on the list of [unrestricted federal benefits](#) or similar to one of those benefits?

Note that treatment and testing for HIV should be exempt as long as it is not Medicaid-funded.

OR

2. Is the benefit on the [Attorney General's list](#) or similar to of the benefits on that list?

OR

3. Is the benefit necessary for protection of life and safety and

- community-based and
- “in-kind”—not cash and
- not based on financial status—not “means-tested”?

If the answer to questions 1, 2, or 3, is “yes” the benefit should be available to everyone regardless of their immigration status. Besides the specific exemptions listed in the law and by the Attorney General, advocates should argue that not all benefits, especially those administered at the state or local level, are federal public benefits and thus off-limits to all but qualified noncitizens.

- **Is the benefit administered by a non-profit organization?**

If the answer to this question is “yes” the noncitizen may argue he or she should be able to get the benefit regardless of immigration status because non-profit organizations are exempt from the immigration verification requirements. If the answer to all of the questions so far is “no” then a noncitizen may need to be a [“qualified alien”](#) to get it. Consult the [National Immigration Law Center's chart on immigrant eligibility for public benefits](#).

Find out more about the person's status:

- Is the noncitizen on the list of [“qualified aliens”](#)?
- If yes, when did he or she enter the US?

If the noncitizen is “qualified” and entered the US before August 22, 1996, then it is possible, but not definite, that he or she can access the benefit. Consult the [National Immigration Law Center's chart on immigrant eligibility for public benefits](#).

If the noncitizen is “qualified” but entered the US on or after August 22, 1996 then the next question is whether the [first-five-years bar](#) applies:

- Is the benefit one of the five benefits that have a [first-five-years bar](#)?
- Is the noncitizen in an immigration status exempt from the [first-five-years bar](#)?

If the answer to all of the above questions is “no,” then a noncitizen who entered the U.S on or after August 22, 1996, probably is disqualified from getting the benefit for five years. Consult the [National Immigration Law Center's chart on immigrant eligibility for public benefits](#).

To find out if they will continue to be disqualified by [sponsor deeming](#) after the five years runs out, ask:

- **Did the “qualified” noncitizen have a “sponsor” who filled out an [enforceable affidavit of support, Form I-864](#)?**

If “yes,” federal means-tested benefit programs may count the income and other financial assets of an immigrant’s sponsor when determining whether that person meets the income eligibility requirements. If the sponsor did not fill out an affidavit of support committing him or her to pay back public benefits used by the sponsored immigrant, sponsor deeming should not apply. Consult the [National Immigration Law Center’s chart on immigrant eligibility for public benefits](#).

Example: HIV testing

Is HIV testing on the list of unrestricted federal benefits or the Attorney General’s list?

Yes. The law specifically exempts testing and treatment for symptoms of communicable diseases from any immigration restrictions. This means any noncitizen should be able to be tested for HIV, as long as it is not Medicaid-funded.

Advocacy Strategies on “Other” Benefits

It may be possible to advocate for changes in the ways some benefits programs are locally administered so that they do not disqualify new immigrants. Here are some questions to help determine if this is possible:

- Could the program be administered by a non-profit, so that checking immigration status is not required?
- Could the program be restructured so that it meets the Attorney General’s test (i.e. community-based, in-kind, not means-tested, and necessary for protection of life and safety)?
- Does federal money fund only part of the program? Could local or state money be used to help those who are disqualified from the federal money?
- Could the program be changed so that access is based on something other than financial need so that it might fit under the Attorney General’s “life and safety” exemption?

If the answer to any of these questions is “yes,” you may be able to work with other advocates and sympathetic benefits’ administrators to make the needed benefit more accessible to noncitizens.

State “Alternative” Benefits Programs

One result of the welfare law and subsequent restorations has been the transfer of power from the federal government to state and local governments. When the 1996 Personal Responsibility and Work Opportunity Reconciliation Act passed, advocates feared that the effects on noncitizens would be devastating. State-level advocacy, however, was at least partially successful in many states. These states elected to develop alternative “replacement” programs for some noncitizens who did not qualify for federal public benefits. Many of these alternative programs parallel a federal public benefit. For example, federal Medicaid placed major limits on the eligibility of noncitizens. In response, at least twenty-six states initially created state-funded medical assistance programs as safety nets for certain noncitizens no longer eligible for federal Medicaid, though many have since cut back on these programs. Many state alternative programs may place restrictions on noncitizens, but these vary by state. For example, one state may offer its medical assistance program to all noncitizen children, regardless of immigration status; another may offer it only to immigrant survivors of domestic violence; a third may cover anyone of whose presence the DHS is aware and is not trying to deport or remove. Check with local or state advocacy groups for up-to-date information about which categories of noncitizens are covered by

your state's alternative benefits programs. NILC's [Guide to Immigrant Eligibility for Federal Programs](#) also includes a section on state programs.

State policies are inconsistent and constantly changing. They remain confusing to both clients and service providers alike. Many states set program enrollment caps. When states face budget crises, immigrant-friendly programs often are the first they place on the chopping block. These cuts, in turn, create a waiting-list system for benefits, similar to the waiting lists that plague the federal immigration system. These cuts result in impoverishment, homelessness and inadequate medical care, foster unnecessary emergency room care, help spread communicable diseases, and harm public health in general.

The following chart is an at-a-glance guide to [immigrant eligibility for federal benefits](#), developed by the National Immigration Law Center. For a more detailed analysis of immigrant eligibility for federal benefits programs, including a guide to state-by-state alternative programs that provide safety nets to noncitizens who are not eligible for federal benefits and a thorough guide to understanding your client's immigration status (including photos and samples of different forms of immigration identification), the National Immigration Project of the National Lawyers Guild strongly recommends that you consult the complete [Guide to Immigrant Eligibility for Federal Programs](#) and other resources available on the National Immigration Law Center's website. It is an essential resource for service providers working with noncitizens and applying for public benefits.

National Immigration Law Center Charts

EXCERPT FROM *Guide to Immigrant Eligibility for Federal Programs*
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IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS

TABLE 1
Overview of Immigrant Eligibility for Federal Programs

This table provides an overview of immigrant eligibility for the major federal public assistance programs. Some states provide assistance to immigrants who are not eligible for federally funded services.

| PROGRAM | “QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996 | “QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996 | “NOT QUALIFIED” IMMIGRANTS |
|------------------------------------|---|---|--|
| Supplemental Security Income (SSI) | <p>Eligible only if:</p> <ul style="list-style-type: none"> Receiving SSI (or application pending) on Aug. 22, 1996 Qualify as disabled and were lawfully residing in the U.S. on Aug. 22, 1996¹ Lawful permanent resident with credit for 40 quarters of work^{1,2} Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, but only during first 7 years after getting status Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ Certain American Indians born abroad | <p>Eligible only if:</p> <ul style="list-style-type: none"> Lawful permanent resident with credit for 40 quarters of work² (but must wait until 5 years after entry before applying) Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant, but only during first 7 years after getting status Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ Certain American Indians born abroad | <p>Eligible only if:</p> <ul style="list-style-type: none"> Receiving SSI (or application pending) on Aug. 22, 1996 Certain American Indians born abroad Victim of trafficking |
| Food Stamps ³ | <p>Eligible only if:</p> <ul style="list-style-type: none"> Are under age 18³ Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant Have been in “qualified” immigrant status for 5 years¹ Are receiving disability-related assistance^{1,4} Lawful permanent resident with credit for 40 quarters of work Were 65 years or older and were lawfully residing in the U.S. on Aug. 22, 1996¹ Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member¹ Certain American Indians born abroad | <p>Eligible only if:</p> <ul style="list-style-type: none"> Are under age 18³ Were granted refugee or asylum status or withholding of deportation/removal, Cuban/Haitian entrant, or Amerasian immigrant Have been in “qualified” immigrant status for 5 years¹ Are receiving disability-related assistance^{1,4} Lawful permanent resident with credit for 40 quarters of work Veteran, active duty military; spouse, unremarried surviving spouse, or child¹ Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S.; spouse, surviving spouse, or child of tribe member¹ Certain American Indians born abroad | <p>Eligible only if:</p> <ul style="list-style-type: none"> Member of Hmong or Laotian tribe during the Vietnam era, when the tribe militarily assisted the U.S., spouse, surviving spouse or child of tribe member, who is lawfully present in the U.S. Certain American Indians born abroad Victim of trafficking |

(rev. 10/03)

National Immigration Law Center

table continued next page ➤

TABLE 1 (CONTINUED, p. 3 of 3)
Overview of Immigrant Eligibility for Federal Programs

| PROGRAM | “QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. BEFORE AUG. 22, 1996 | “QUALIFIED” IMMIGRANTS WHO ENTERED THE U.S. ON OR AFTER AUG. 22, 1996 | “NOT QUALIFIED” IMMIGRANTS |
|---|---|---|--|
| HUD Public Housing and Section 8 Programs | Eligible except: <ul style="list-style-type: none"> • Certain Cuban/Haitian entrants and “qualified” abused spouses and children <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p> | Eligible except: <ul style="list-style-type: none"> • Certain Cuban/Haitian entrants and “qualified” abused spouses and children <p>Note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p> | Eligible only if: <ul style="list-style-type: none"> • Temporary resident under IRCA general amnesty, or paroled into the U.S. for less than 1 year • Victim of trafficking • Citizens of Micronesia, the Marshall Islands, and Palau <p>Note: For other immigrants, eligibility may depend on the date the family began receiving housing assistance, the immigration status of other household members, and the household composition.</p> <p>Also note: If at least one member of the household is eligible based on immigration status, the family may reside in the housing, but the subsidy will be pro-rated.</p> |
| Title XX Block Grants | Eligible | Eligible | Eligible only if: <ul style="list-style-type: none"> • Victim of trafficking • Program or service funded by the block grant is exempt from the welfare law’s restrictions |
| Social Security | Eligible | Eligible | Eligible only if: <ul style="list-style-type: none"> • Lawfully present • Were receiving assistance based on an application filed before Dec. 1, 1996 • Eligibility required by certain international agreements |
| Other Federal Public Benefits Subject to welfare law’s restrictions | Eligible | Eligible | Eligible only if: <ul style="list-style-type: none"> • Victim of trafficking |
| Benefits Exempt from welfare law’s restrictions | Eligible | Eligible | Eligible |

(rev. 10/03)

Notes appear on next page ➤

National Immigration Law Center

KEY TERMS USED IN TABLE (*IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS*)

“Qualified” immigrants are: (1) lawful permanent residents (LPRs); (2) refugees, asylees, persons granted withholding of deportation/removal, conditional entry (in effect prior to Apr. 1, 1980), or paroled into the U.S. for at least one year; (3) Cuban/Haitian entrants; and (4) battered spouses and children with a pending or approved (a) self-petition for an immigrant visa, or (b) immigrant visa filed for a spouse or child by a U.S. citizen or LPR, or (c) application for cancellation of removal/ suspension

of deportation, whose need for benefits has a substantial connection to the battery or cruelty. Parent/child of such battered child/spouse are also “qualified.” Victims of trafficking (who are not included in the “qualified” immigrant definition) are eligible for benefits funded or administered by federal agencies, without regard to their immigration status. *“Not qualified” immigrants* include all non-citizens who do not fall under the “qualified” immigrant categories.

ENDNOTES

- 1 Eligibility may be affected by deeming: a sponsor’s income/resources may be added to the immigrant’s in determining eligibility. Exemptions from deeming may apply.
- 2 LPRs are eligible if they have worked 40 qualifying quarters in the U.S. Immigrants also get credit toward their 40 quarters for work performed (1) by parents when the immigrant was under 18; and (2) by spouse during the marriage (unless the marriage ended in divorce or annulment). No credit is given for a quarter worked after Dec. 31, 1996, if a federal means-tested public benefit (SSI, food stamps, TANF, Medicaid, or SCHIP) was received in that quarter.
- 3 Children are not subject to sponsor deeming in the food stamp program.
- 4 Disability-related benefits include SSI, Social Security disability, state disability or retirement pension, railroad retirement disability, veteran’s disability, disability-based Medicaid, and disability-related General Assistance if the disability determination uses criteria as stringent as those used by federal SSI.
- 5 In Indiana, Mississippi, Ohio, South Carolina, and Texas, TANF is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the five years after obtaining this status. Indiana provides TANF to “refugees” listed in (3) regardless of the date they obtained that status. Mississippi does not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.
- 6 In Wyoming, only LPRs with 40 quarters of work credit, abused immigrants, parolees, veterans, active duty military (and their spouse, unremarried surviving spouse, or child), refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants who entered the U.S. prior to Aug. 22, 1996, are eligible for full-scope Medicaid. Similar restrictions in Colorado have been enjoined temporarily by a federal court.
- 7 In Alabama, Mississippi, North Dakota, Ohio, Texas, Virginia, and Wyoming, full-scope Medicaid is available only to immigrants who entered the U.S. on or after Aug. 22, 1996, who are: (1) LPRs credited with 40 quarters of work; (2) veterans, active duty military (and their spouse, unremarried surviving spouse, or child); or (3) refugees, asylees, persons granted withholding of deportation/removal, Cuban/Haitian entrants, and Amerasian immigrants during the seven years after obtaining this status. Similar restrictions in Colorado have been enjoined temporarily by a federal court. Wyoming provides full-scope Medicaid to “qualified” abused immigrants and persons paroled into the U.S., regardless of their date of entry. In Texas, Amerasian immigrants are eligible only during the five years after obtaining this status; Mississippi, and North Dakota do not address eligibility for Cuban/Haitian entrants or Amerasian immigrants.
- 8 In States that opt to cover fetuses, SCHIP provides prenatal care regardless of the mother’s immigration status. The scope of coverage depends in part on how the option is implemented.

National Immigration Law Center

VERIFYING AND REPORTING NONCITIZENS TO DHS

Misinformation is rampant when it comes to verifying immigration status and reporting noncitizens to the Department of Homeland Security. Both noncitizens and agency workers are confused. This confusion can deter noncitizens from securing the benefits they may need. The post 9/11 political environment aggravates this problem because some agency workers and members of the public subject noncitizens to more scrutiny than is required. This section will discuss who is required to verify, to use the SAVE computer system, and to report undocumented noncitizens to DHS.

No verification necessary

Non-profits. Non-profit organizations administering benefits are not required to check or report applicants' immigration status. Non-profits can serve as a confidential and secure atmosphere for noncitizens to seek aid.

Emergency and non-emergency health care. Health care providers and hospitals are not required to ask about a noncitizen's immigration status. While it is true that in 2004, there have been governmental and congressional efforts to require emergency health care workers to investigate a patient's immigration status, proposed legislation and other attempts have proved unsuccessful to date. It is important, however, to check with the National Immigration Law Center or an immigration advocate for new developments.

State and local agencies. States need not check immigration status for federal programs, unless a "federal agency designates a program as a federal public benefit for which 'not qualified' immigrants are ineligible." Until they do, state and local agencies are not required to verify status. Furthermore, even if a program has been designated as a federal public benefit, federal guidance strongly encourages agencies to make financial and other eligibility decisions prior to checking immigration status. If a noncitizen does not qualify for benefit due to financial or other reasons unrelated to immigration status, there is no need to check immigration status.

"Verifying" is not the same as "reporting"

Many agencies administering federal programs already verify immigration status to determine an individual's eligibility for benefits. To do this, they use the DHS's immigration computer system, called "SAVE" (The Systematic Alien Verification for Entitlements System). The Department of Homeland Security is prohibited from using information provided through SAVE for immigration enforcement purposes, unless a criminal violation is involved. Once they have verified status, however, most programs are not obligated to report to DHS. Only certain agencies have to report (see next section on reporting requirements.)

If they ask immigration status questions, benefits agencies must verify only the status of the applicant and not that of family members who are not seeking benefits on their own behalf. HHS provided helpful [guidance](#) to state benefits agencies, which limits inquiries regarding immigration status and social security numbers. In addition, the guidance strongly encourages agencies to make financial and other eligibility decisions prior to asking about immigration status.

Reporting requirements are narrow

The welfare law has only a few very specific reporting requirements, which have been narrowly interpreted. Most programs are not obligated to report undocumented noncitizens to DHS. The only agencies required to report benefits applicants to DHS (under very narrow circumstances) are SSI, Food Stamps, TANF, and public housing authorities. There are no reporting requirements in health care programs, for example.

Even agencies that must report individuals to the DHS are only required to report those who they “know are unlawfully in the United States.” Federal guidance defines “knowledge” of unlawful presence as a formal determination, subject to administrative review within the agency, which must also be supported by a determination by the INS (now DHS) or EOIR (immigration court), such as a **final removal order**. Examples of “knowledge” that are not acceptable include a negative response to a SAVE inquiry, an oral or written admission by an applicant, or an agency worker’s suspicions. This definition applies to HUD, SSI, and TANF, and is one of two standards approved for use in the Food Stamp program. In practice, these standards should virtually never be met. In many states, there is much more fear about reporting among noncitizens than any actual reporting by benefits’ caseworkers.

No guarantees

This does not ensure, however, that unsympathetic or confused benefits’ administrators will never report noncitizens to DHS. “Rogue” caseworkers or other individuals may take it upon themselves to report clients. By doing so, these employees may violate privacy laws and their own benefits agencies’ confidentiality policies. If DHS takes action, however, then the employee’s violation of the rules has little relevance. Therefore, it is important to advise your clients not to disclose their undocumented status to benefits agencies, and to ensure that benefits agencies do not ask for unnecessary information. For benefits eligibility purposes, it is almost never necessary to ask whether someone is undocumented – noncitizens may simply state that they are “ineligible” or “not qualified” or that they are a non-applicant seeking benefits only for their other family members.

If you have specific concerns about a benefits’ agency, contact a national or local immigrants’ rights organization, such as the National Immigration Law Center, which has been successful in educating benefits agencies that believe they must report immigrants.

Important: Noncitizens should not provide false social security numbers or any false information to benefits’ agencies.
No noncitizen should ever falsely claim to be a US citizen.

Advocacy tips on verification and reporting

- Do not assume that benefits administrators understand which noncitizens qualify for the benefit they administer or know what the law dictates about reporting noncitizens to DHS.
- Work with state and local agencies to ensure that these officials do not solicit unnecessary information, investigate, or report when not required to by federal law.
- Do not assume that the results of a DHS computer program check are more accurate than a client’s documents or assertions. Insist on a secondary SAVE verification (which is a manual verification instead of via computer) if you are sure that your client has been wrongfully denied. If an immigrant is otherwise eligible, administrators should not delay, deny, reduce, or terminate benefits while the applicant gathers documents or while DHS is verifying status.
- Provide a copy of [agency guidance](#) on reporting if an issue comes up.
- Complain about benefits’ administrators who check or report applicants when they are not required to do so.

Revisiting Your HIV Positive Noncitizen Client

You are now ready to apply what you have learned regarding noncitizen eligibility for federal and state benefits. Let us return to your HIV positive noncitizen client who walked into your office seeking assistance and answers to his or her questions. Is he or she eligible for the following services:

HIV testing?

Yes. Testing and treatment of symptoms of communicable diseases are specifically listed on the [Attorney General’s list](#) and are available to everyone, regardless of immigration status.

Medications?

Yes. Again, medications fall under testing and treatment of symptoms of communicable disease on the Attorney General's list and are available to everyone, regardless of immigration status. Medications may be available via your state's AIDS Drug Assistance Program (ADAP).

Health care?

Maybe, but the type and scope of health care coverage may depend on your client's immigration status and may be affected by the [first-five-years bar](#) and/or [sponsor deeming](#).

If your client is a ["qualified" noncitizen](#) and fulfills other program requirements, he or she may qualify for Medicaid. Even if your client is not "qualified," he or she may be entitled to Medicare if ["lawfully present"](#) and earned Medicare credits while working with authorization. He or she may also wish to explore Buy-In Medicare. See the benefits concepts section for more information on ["lawfully present."](#)

Emergency Medicaid is available without immigration status restrictions, if the immigrant meets the other program criteria, such as financial and local residence eligibility. Your client may also be eligible for health care services via unrestricted federal block grants or via a state alternative program.

Food Stamps?

Maybe, depending on immigration status, length of time in that status, and age, and if an adult, subject to the [first-five-years bar](#) and possibly [sponsor deeming](#). If your client does not qualify for federal Food Stamps, there may be a state replacement program available. Also, soup kitchens, community food banks, senior nutrition programs such as meals-on-wheels, and other such community nutritional services for people requiring special assistance are all exempt from immigration status restrictions. This includes, for example, community food programs for people with HIV/AIDS.

Public housing?

Maybe, depending on the immigration status of your client and of other household members. If the client is homeless or a survivor of domestic violence, however, short-term shelter and housing assistance is on the [Attorney General's list](#) and is available without immigration status restrictions.

Disability benefits?

Maybe. Your client might qualify for SSI, depending on immigration status, work history, and whether he or she was lawfully residing in the US on the effective date of welfare reform (August 22, 1996.) Lawfully residing means the immigrant must show both that he or she was ["lawfully present"](#) and actually living in the US. Your client may also be subject to [sponsor deeming](#). Consult the NILC chart, because SSI restrictions are complex. If your client has a long work history, he or she may qualify for SSDI if at least ["lawfully present."](#)

Other Assistance?

For noncitizen clients who work, but are undocumented, it is important to work with an immigration advocate. Your client may qualify for an immigration status that is, optimally, ["qualified"](#) for benefits purposes, and if not, he or she may qualify for an immigration status which would render him ["lawfully present."](#) Social Security is available to lawfully present persons with the requisite work history. Your client may be able to get credit for more quarters of his or her work than you realize. This may be important in the future, if your client becomes unable to support him or herself.

Other Important Benefits

Congress has severely restricted noncitizen access to public benefits. Nevertheless, basic constitutional rights limit the restrictions Congress and individual states can impose. No government agency may limit access to basic services such as police, fire, ambulance, or public utilities. Both public agencies and many private businesses are still prohibited from discriminating against anyone on the basis of race or nationality but some legislation, such as the USA Patriot Act, enacted after September 11, 2001, may encourage anti-immigrant sentiment. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance and may entitle clients of those programs who are “[limited English proficient \(LEP\)](#)” to language assistance (see www.lep.gov for more information.) Elementary and secondary public education remains available to children regardless of their immigration status. Everyone should challenge discrimination against noncitizens, whether perpetrated by public officials or by private individuals. Most importantly, you must advocate on the national, state, local, and individual levels on behalf of your HIV positive noncitizen clients.

One of the most effective ways you can help your HIV positive noncitizen clients is to advocate for both changing restrictive laws and for implementing existing laws as favorably as possible for noncitizens living with HIV/AIDS. You can do this on many levels. Be aware that you may encounter racism, misconceptions, and stereotypes about noncitizens. The post September 11, 2001, environment has made this problem worse, giving a “green light” to those who dislike noncitizens. You must challenge these attitudes if you wish to help your clients.

ADVOCATING FOR YOUR HIV POSITIVE NONCITIZEN CLIENT

National Advocacy

Keep abreast of Congressional developments. Educate yourself on legislation that may affect benefits for noncitizens, and become a part of collaborative efforts to change the current restrictive laws. Connect with the noncitizens and public benefits network of the National Immigration Law Center. See back cover for resources.

State and Local Advocacy

Join local efforts. By eliminating, reducing, and placing conditions on public benefits for all poor people, Congress has pitted different groups of impoverished residents against each other. You can ensure that the interests of noncitizens with HIV/AIDS are not left out of decisions on how to distribute scarce state and local resources. Identify non-profit organizations or coalitions in your state that advocate for noncitizen access to benefits. Share the information and advocacy strategies you learn with other networks.

Get involved in local and state decision-making bodies. HIV/AIDS service providers and advocates for immigrants must get involved in the local and state process for determining how to use federal money targeted for people living with HIV/AIDS. You or your colleagues should serve on planning councils for Title I funding, consortia for Title II funding, AIDS Drug Assistance Program (ADAP) advisory councils and those determining how RyanWhite/CARE Act money will be spent. Work with local planning councils, state consortia and community prevention planning bodies to ensure that immigrants' needs are included in priority setting for money for people living with HIV/AIDS.

Educate your state and local decision-makers. Make them aware of the ongoing devastating effects of previous welfare and immigration reform. Urge your state legislators to reject limiting benefits. Educate and mobilize others in your area to do so as well. Legislatures should use federal money for all "qualified" noncitizens and create, maintain or restore alternative state and local programs to help noncitizens who are not "qualified." Similarly, they should reject applying sponsor deeming to state and local funds, and instead provide a safety net for immigrants hurt by the federal first-five-years disqualification and sponsor deeming requirements. If your state is contemplating cost-cutting measures such as "freezing enrollment," educate your state legislators about the costs of hunger, homelessness, spread of disease, and unnecessary and costly emergency room visits that will result.

Insist on funding for interpreters and translation. Federal civil rights laws entitle people with Limited English Proficiency (LEP) to meaningful access to services funded by the federal government. For more information on agencies' responsibilities toward people with Limited English Proficiency, go to www.lep.gov.

Individual Advocacy

Explore and secure health care access. Use this manual and the other resources mentioned within it to decide for which benefits your client currently qualifies. Consider the range of options, including federal programs and block grants administered by the states that are accessible to noncitizens. It may be that the best advocacy is to help your client obtain an immigration status that qualifies her or him for more benefits. Be aware that the use of public benefits may, in some cases, have implications for obtaining immigration status. *For more ideas on advocacy strategies to ensure immigrant-friendly health care access, consult resources on the back cover.*

Partner with local immigration attorneys. You can help each other. Immigration attorneys have legal expertise, but may know not have much knowledge about treatment and health insurance options for HIV positive individuals, which is a key factor in an immigration case. For instance, it is unlikely that an immigration lawyer could explain "ADAP" or name the medical research programs in your area offering free HIV/AIDS treatment. In turn, the immigration attorney may be able to answer your and your client's questions or address misconceptions about "public charge" and "sponsor liability." If you know an

immigration attorney who is not familiar with HIV/AIDS issues, but is willing to learn, please refer her or him to our resources (see back page.) The National Immigration Project of the National Lawyers Guild offers technical assistance and training materials on HIV/AIDS issues for immigration attorneys.

Challenge inappropriate screening by benefits' administrators. Accompany your client when he or she applies for benefits, and review the application form. Encourage your client not to give any unnecessary information or any false information, such as a false social security number. Urge agencies to eliminate unnecessary questions regarding immigration status and social security numbers from their forms and intake process. In particular, question a state or individual policy of checking the immigration status of other family members besides the recipient of Medicaid, SCHIP, or TANF benefits. Refer to HHS [guidance](#) that forbids them to do so. Argue that the only people who an agency could “know” are here “unlawfully” are people who have a final determination on a claim for SSI, TANF, or housing and have a final order of removal from an immigration judge and are not appealing that decision. Alert a local immigrants' rights or legal services organization to practices you think go beyond the law.

Train your own managers and coworkers to promote internal policies that are friendly to noncitizens. Adopt clear policies regarding noncitizens to ensure that your HIV/AIDS organization is open and accessible to anyone living with HIV/AIDS. Do not use social security numbers as case numbers and for CDC reporting purposes.

Advocacy Tips and Example

Service providers can help noncitizens gain access to public benefits in several ways:

- Urge state and local governments to restore, maintain, and expand benefits to a broad array of noncitizens.
- Urge those who administer public benefits programs to interpret the law flexibly and generously.
- Join local, state, and national coalitions to educate state and local governments about benefits and health care and to resist restrictive laws.
- Educate your own community of HIV/AIDS service providers, including your coworkers and managers.

Example

If your state is considering capping enrollment in the AIDS Drug Assistance Program (ADAP), which provides HIV treatment to low-income, uninsured, and underinsured HIV positive individuals, educate decision-makers on why this is bad health care policy. Write up your most sympathetic client stories and encourage your colleagues to do the same. Make sure the noncitizen voice is heard among your own community of HIV/AIDS service providers, because there may be anti-immigrant sentiment there, too.

Conclusion

Congress has made it very difficult for noncitizens to receive the assistance they need. You can help ensure that state and local governments meet the needs of noncitizens who can't receive federal benefits. You also can advocate with benefits' administrators to interpret the law flexibly, in a way that will help the most people. Most importantly, you can help your clients understand their options so they can make intelligent, informed choices.

Resources

Why Does Congress Bar Noncitizens with HIV?

The Politics of Immigration and AIDS

Many people in this country do not understand HIV/AIDS or how it is spread. They hate and fear people living with HIV/AIDS. At the same time, attacks against noncitizens on the federal and state level have intensified dramatically in recent years. The post September 11, 2001, environment has contributed to anti-immigrant animosity and misconceptions. Study after study shows that noncitizens contribute more to our society than they take, but some politicians and the media play to people's fears by blaming all noncitizens for society's problems, from terrorism to lost jobs, from health care costs and crime to public benefits fraud. Some governors, state legislators and members of Congress believe they get votes by passing laws that harm noncitizens. This is doubly true for those living with HIV/AIDS. Congress will not remove the policies that harm noncitizens living with HIV/AIDS until public attitudes toward noncitizens and HIV/AIDS improve. Noncitizens living with HIV/AIDS and those who work with them must help change the hostile political climate. *Speak out against these policies!* Work on the state and local level to preserve rights and benefits for all noncitizens. Write to your senators and representatives. Contact a local immigrants' rights or AIDS service organization to find out how you can help.

For More Information

For referrals to local immigration advocates, for background information on countering anti-immigrant myths, for an HIV-related legal training packet designed for immigration practitioners, or to join the Project's HIV and Immigration listserv, which provides technical support for immigration attorneys and service providers who are helping HIV positive noncitizens with immigration legal, contact:

National Immigration Project of the National Lawyers Guild

14 Beacon Street, Suite 602
Boston, MA 02108
(617) 227-9727

www.nationalimmigrationproject.org

HIV/AIDS-related immigration memoranda, policy guidance, and a sample HIV waiver packet is available on the National Immigration Project's website by clicking on **HIV and Immigrants**. *The National Immigration Project will provide advice and information to HIV/AIDS service providers and immigration attorneys or advocates. It does not represent individual clients, but can offer referrals to immigration attorneys and advocates.*

Referrals to Local Immigration Advocates: Legal Services and Legal Aid

In 1996, Congress prohibited agencies receiving any federal money from the Legal Services Corporation (LSC) to provide assistance to certain noncitizens. Since LSC agencies are the primary legal agencies helping the poor, in many communities this has eliminated legal assistance to many noncitizens. It is vital that HIV/AIDS service providers work with Legal Services organizations to ensure that noncitizen clients who are eligible for services receive them. It is also vital for service providers to work with local immigration attorneys and organizations that do not receive LSC money to help their noncitizen clients.

Other National Sources

Gay Men's Health Crisis (GMHC)

119 West 24th Street
New York, NY 10011
(212) 367-1000
www.gmhc.org

Immigration Equality (formerly Lesbian and Gay Immigration Rights Task Force)

350 West 31st Street, Suite 505
New York, NY 10001
(212) 714-2904
www.immigrationequality.org

International Gay and Lesbian Human Rights Commission (IGLHRC)

350 Fifth Avenue, 34th Floor
New York, NY 10118
(212) 216-1814
www.iglhrc.org

IGLHRC's Asylum Documentation Project
San Francisco, CA
(415) 398-2759
asylum@iglhrc.org

Lambda Legal Defense & Education Fund

120 Wall Street, Suite 1500
New York, NY 10005
(212) 809-8585
www.lambdalegal.org

National Immigration Law Center (NILC)

3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
(213) 639-3900
www.nilc.org

Key resources: [Guide to Immigrant Eligibility for Federal Programs](#), noncitizens and public benefits listserv, issue briefs on [immigrant-friendly health care access](#).