



OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION

AO-2013-002

SUBJ: Use of Older American Act Funds for Representation of Ineligible Aliens

DATE: February 21, 2013

QUESTION PRESENTED

Legal Services of Northern Virginia (LSNV) receives Older Americans Act (OAA)(42 U.S.C. § 3015) funding from the Administration on Aging (AoA). OAA permits funds to be used to provide legal assistance to undocumented elderly persons. Do the LSC citizenship restrictions nonetheless prohibit LSNV from representing undocumented elderly persons using OAA funds?

BRIEF ANSWER

Yes. LSNV is prohibited from accepting LSC funding if it elects to use its OAA-funds to represent ineligible aliens. LSC's statutory prohibition against representation of ineligible aliens attaches to any entity receiving LSC funds, which means that the entity may not use any funds, regardless of source, to provide legal assistance to ineligible aliens.

BACKGROUND

Some LSC recipients, including LSNV, receive funding from the AoA, which administers programs authorized under the OAA to provide legal assistance to qualifying elderly persons. OAA funding is not subject to Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub.L.104-193, which restricts illegal aliens from access to "Federal public benefits." According to program guidance issued by the Department of Health and Human Services, OAA-funded programs are not considered to provide "Federal public benefits" as defined in Title IV of PRWORA, and therefore, citizenship-verification requirements promulgated by the Department of Justice are not applicable to the use of OAA funds. 63 Fed. Reg. 41658 (Aug. 4, 1998).

LSNV received guidance from the AoA that it should not decline representation of undocumented elderly persons represented with OAA funds, notwithstanding LSC's restrictions. LSNV inquired about the LSC's statutory citizenship restrictions as they apply to LSNV's use of OAA funds to represent undocumented elderly persons.

ANALYSIS

Section 504(a)(11) of the Fiscal Year 1996 appropriations act funding LSC, and each subsequent annual appropriation to LSC, prohibits LSC from providing funding to any recipient that provides legal assistance to ineligible aliens:

None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to *any person or entity* (which may be referred to in this section as a 'recipient')... that provides legal assistance for or on behalf of any alien [subject to specified exceptions]....

Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, § 504(a); (d)(11), 110 Stat. 1321, 1321-54 (emphasis added). This statutory prohibition on recipients' representation of non-citizens is implemented in Part 1626 of LSC's regulations, which states that recipients "may not provide legal assistance for or on behalf of an ineligible alien." 45 C.F.R. § 1626.3.

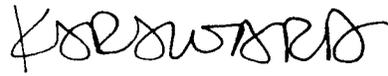
According to LSC's appropriations statute and subsequent regulations, LSC's citizenship requirements attach to *the entity* receiving LSC funds rather than attaching only to activities funded with LSC support. Unlike OAA-funded activity, acceptance of LSC funding imposes citizenship-verification requirements on all activities undertaken by the recipient, regardless of funding source.

Congress has created specific exemptions to the citizenship-verification requirement for LSC recipients receiving funds under several other laws, including the Violence against Women Act and the Victims of Trafficking and Violence Protection Act. LSC has codified these exemptions based on other laws at 45 C.F.R. § 1626.4. None of the exemptions listed in 45 C.F.R. § 1626.4, however, include OAA funds or encompasses the criteria that the Department of Health and Human Services has determined permits service of undocumented elderly persons with OAA funds. 63 Fed. Reg. 41658 (Aug. 4, 1998).

CONCLUSION

An entity providing OAA-funded legal assistance to undocumented elderly persons not falling within the explicit exemption categories in the LSC regulations is disqualified from receiving LSC funding.

LSNV may not accept LSC funding if it elects to use its OAA funds to represent ineligible aliens, as that term is described in LSC's regulations.



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