

SMCRA to subject interim program operations to the penalty and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247, 45.1-249, 45.1-250, 45.1-251 of the Virginia SMCRA and the penalty and enforcement regulations implementing those Sections (Administrative Record No. VA 463).

Also, in the March 22, 1983 letter, Virginia submitted two additional proposed revisions to the Virginia SMCRA. One of the proposed revisions amends § 45.1-240 to correct an erroneous cross-reference in the Virginia SMCRA. The other proposed revision amends §§ 45.1-249 and 45.1-251 of the Virginia SMCRA to satisfy condition (g) imposed by the Secretary in his conditional approval. These additional proposed amendments are the subject of a separate notice of rulemaking in the *Federal Register*. See 48 FR 25184, June 6, 1983.

On April 21, 1983, the Director, OSM, published a notice in the *Federal Register* to announce interim final approval of the modification and to invite public comment on the modification and on the interim action being taken (48 FR 17071). The public comment period ended May 23, 1983. On June 6, 1983, at 48 FR 25184, the program amendment was codified at paragraph (g) at new § 946.15 of 30 CFR (Approval of regulatory program amendments).

Findings

The Director has found, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendment, which subjects interim program operations to the penalty and enforcement provisions of the Virginia SMCRA and its implementing regulations, submitted by Virginia on March 22, 1983, meets the requirements of SMCRA and the Federal regulations.

The approval of this modification was effective as of April 21, 1983, when the Director announced interim final approval.

Public Comment

No comments were received from the public on Virginia's amendment. Comments from Federal agencies were limited and did not identify any specific deficiencies of the amendment.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i) of those Federal agencies invited to comment, comments were received from the following: Fish and Wildlife Service, Bureau of Mines, Bureau of Land Management, Mine Safety and Health Administration, and the Army Corps of Engineers.

Dated: June 13, 1983.

J. R. Harris,
Director, Office of Surface Mining.
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 431

Medicaid Program; Freedom of Choice; Waiver of and Exceptions to State Plan Requirements

Correction

In FR Doc. 83-13733, beginning on page 23212, in the issue of Tuesday, May 24, 1983, make the following corrections.

1. On page 23213, in the third column, in the center heading, beginning with "C", in the second line "(TEFBA)" should read "(TEFRA)".

2. Also on page 23213, in the third column, the fourth and fifth lines from the bottom should read "comments are discussed in Section IV. *Public Comments*."

3. On page 23214, in the third column, in the fourth indented paragraph, in the third line "replace with" should read "replace it with".

4. On page 23216, in the third column, in the first paragraph, in the sixth line "generally" should read "generally"; in the second paragraph, in the second line "preclude" should read "preclude"; in the first and second lines from the bottom of the page "That provide services to non-hospital patients" should read "that provide services to non-hospital patients".

5. On page 23220, in the first column, in fifth paragraph, in the fifth line, "cost-efficient" should read "cost-effective".

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LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Continuing Resolution under which the Legal Services Corporation is presently operating restricts categories of aliens who may receive legal assistance financed with fiscal year 1983 funds. This final rule adds a new Part 1626 to implement these restrictions. It clarifies and interprets

them, sets forth procedures for verification of eligibility, requirements for recordkeeping and protection of confidential information, and guidelines for withdrawal from representation when an alien client is found to be ineligible.

EFFECTIVE DATE: July 20, 1983.

FOR FURTHER INFORMATION CONTACT: John Meyer, Deputy General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule to implement restrictions on the categories of aliens who may receive legal assistance supported by funds authorized by Pub. L. 97-377 on May 2, 1983. (48 FR 19750). Interested parties were given 30 days, until June 1, 1983, to submit comments on the proposed rule. All comments received by the Corporation with respect to the proposed rule were given full consideration, and the following issues were taken into account in adopting the final regulation.

As noted, this new rule is intended to implement certain restrictions on categories of aliens which can be provided legal assistance with FY 1983 funds appropriated by Pub. L. 97-377. Several commentators argued that the Corporation should not adopt a final rule at this time because it had not given adequate consideration to all of the issues involved. It should be noted that the Corporation published a proposed rule on May 2, although the restrictions on representation were attached to funds made available to recipients beginning on January 1, 1983. The Corporation began the process of implementing the restrictions immediately, but it delayed issuing a proposed rule for public comment until it was satisfied that the proposed rule addressed the intent of Congress in enacting the restrictions as well as the practical problems of implementing the restrictions in light of the complexity of immigration and nationality law. Moreover, the Corporation fully complied with the requirements of Section 1008(e) of the Legal Services Corporation Act which requires the Corporation to afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations or guidelines. Finally, the Corporation notes that this rule will become effective less than three months prior to the expiration of the appropriation authorized by Pub. L. 97-377 and less than six months prior to the expiration of the Corporation's 1983 grants. To delay promulgation of a rule

any longer could negate the purpose of the legislation.

Definition of "Rejected" Application

Proposed § 1626.2(c) defined a rejected application for adjustment of status as one that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal. A number of comments criticized this standard because it would not allow programs to continue representing persons whose applications had been denied by INS but were on appeal to a court with jurisdiction to review INS actions, and thus would have the effect of allowing INS to determine which persons are eligible for legal services. The Corporation considered alternative language that would define a rejected application as an application which has been denied by the court of last resort. The Corporation decided not to adopt this language because it would render the restriction meaningless. Consequently, this section is adopted as proposed.

Interpretation of "for or on behalf of"

A substantial number of comments addressed the definition of "on behalf of" contained in proposed § 1626.3(c). The comments suggested that the proposed definition was too restrictive in that it could be interpreted to preclude representation to an eligible client because such representation also benefited an ineligible client. In addition to questions of clarity, a number of comments specifically objected to proposed § 1626.3(c)(2) which would have prohibited the provision of legal assistance to an eligible client in immigration matters where the eligible client is assisted in order to aid or facilitate the immigration or adjustment of the status of a family member or relative.

In response to these comments, the Corporation has redrafted § 1626.3(c) to make it clear that only legal assistance which directly benefits an ineligible alien and does not benefit the eligible client is prohibited. Thus, proposed § 1626.3(c)(2) is omitted since the final rule permits representation of eligible clients seeking to adjust the immigration status of relatives. This change is consistent with one of the expressed policies of the Immigration and Nationality Act, that is, to promote the unification of families. Furthermore, in the absence of clear legislative history or legal authority to the contrary, the Corporation believes that the definition of "on behalf of" in the final rule is fully consistent with one of the possible interpretations of that language, namely,

that Congress intended a prophylactic rule to prevent the filing of suits by eligible clients in which only ineligible aliens have a real interest.

The Corporation considered and rejected proposals to define "on behalf of" by the same tests that are used to determine standing to sue because it believes that such a standard would be more difficult to apply than the one contained in the final rule.

Verification of Citizenship and Alien Status

Proposed § 1626.5(a) requires United States citizens seeking legal assistance to attest to their citizenship in writing. Many commentators opposed this requirement because they believed it would be burdensome, would interfere with the development of trust in attorney-client relationships, would be impossible to follow in rural areas or where intake is done by telephone, and would prevent non-literate persons from receiving services. The Corporation considered these comments carefully and decided to retain the written attestation provision as it is less burdensome than requiring documentation of citizenship in every case and intrudes minimally into the attorney-client relationship. In order to assist programs in carrying out this provision, the amended regulation states that the written attestation shall be in a form approved by the Corporation. In response to the comments concerning emergency situations and rural and telephone intake systems, the Corporation has added new § 1626.5 (e) and (f), as discussed below. Finally, nothing in this provision should be construed to prevent recipients from accepting an appropriately witnessed and executed symbol as written attestation from non-literate persons.

Numerous comments criticized the standard of "good cause to conclude that a person may not be a United States citizen" as too loose a standard for requirement of verification of citizenship. The Corporation carefully considered this matter and does not agree. A strong program of verification is essential to the realization of the intent of Congress in enacting these restrictions on service to ineligible clients. The combination of self-declaration by citizens with verification if a recipient is unsure of a person's citizenship is the least burdensome way of achieving this objective. The Corporation considered the alternative language "substantial reason to doubt that a person is a citizen" and concluded that it would discourage recipients from requiring verification. Consequently, the Corporation chose the less strict

standard of "reason to doubt." As stated in the preamble to the proposed rule, such factors as a person's appearance, race or national origin, or limited ability to speak English may not be considered, as recipients are required by law to provide legal services in a nondiscriminatory manner. Rather, a recipient must base a decision to require documentation of citizenship only on other circumstances arising either at the outset of or during representation of an individual which indicate that he or she may not be a citizen.

A number of commentators stated that many United States citizens, if required to document their citizenship, could not do so because they are not required by law to carry such identification and may not possess any of the documents listed in proposed § 1626.5(a). In response, the Corporation has amended the list of documents to include as evidence of citizenship a baptismal certificate issued shortly after birth showing that a person was born in the United States. The Corporation has also retained the proposed provision allowing third party verification of a person's citizenship which is a method used by INS, despite some commentators' statements that this method of verification is impractical. This provision allows derivative citizens, as well as other citizens who may have no other documentation, to qualify for services. To assure that third party statements are used in good faith, the Corporation has amended the proposed regulation to require that such statements not be signed by employees of recipients. Finally, the Corporation has clarified the language of this section to provide that the documents shall be considered evidence, rather than proof, of United States citizenship.

Proposed § 1626.5(b) set forth the documentation requirement for persons claiming to be eligible aliens. Some commentators felt that self-certification as to eligibility should be allowed, rather than requiring all aliens to verify their eligibility. The Corporation considered and rejected this suggestion, since allowing self-verification would not give full effect to Congress' intent to restrict legal services to aliens who fall within a limited number of categories. Moreover, requiring aliens to verify their eligibility is reasonable since all aliens present in the United States are required by law to possess papers documenting their immigration status, and normally do have these papers on their person or readily available.

Many commentators pointed out that proposed § 1626.5(b)(2), when read together with proposed § 1626.4(b)(2),

restricted the types of applicants for adjustment who would be eligible for legal services. In response, the Corporation has redrafted § 1626.5(b)(2) to expand the list of documents which would establish eligibility under § 1626.4(a)(2). This section, as amended, now permits a recipient to provide services to all aliens who can show that they have applied to adjust their status and who can establish the requisite relationship with a United States citizen. Specifically, this section now recognizes that relatives of citizens who have filed an INS Form I-485, applied for suspension of deportation, filed for registry, or applied for an immigrant visa through a U.S. consulate, are eligible for assistance regardless of whether their applications are based on their relationship with a United States citizen.

A number of commentators pointed out that the requirements for documentary verification of citizenship or alien status contained in proposed § 1626.5(a)-(d) did not take into account situations where it is necessary to provide legal assistance on an emergency basis. They noted that requiring prior written documentation would be an undue hardship on eligible clients in these cases.

In response to these comments, the Corporation has added a new paragraph (e) to proposed § 1626.5 which provides for alternative methods of verification in emergency situations. The verification procedures set out in § 1626.5(e) apply only to cases which are determined to be emergencies according to the criteria used by a recipient in its general determination of priorities. Where it is not feasible for a citizen or an alien to go to a recipient's office or otherwise physically provide documentation to the recipient before commencement of representation, a recipient may obtain required information orally, record it and obtain the written documentation as soon as possible thereafter. If an alien is physically present in the office, but cannot produce required documentation, the recipient shall obtain a written statement indicating under which category listed in § 1626.4(a) he or she claims eligibility and the documents to be produced to verify that status. The recipient shall obtain that documentation as soon as possible thereafter. Recipients are to inform clients accepted under this emergency procedure that they can provide only limited emergency legal assistance pending receipt of the necessary documentation, and that, absent such documentation, they will be compelled to seek to withdraw from

representation, consistent with their professional responsibilities, when the emergency ceases to exist.

A number of recipients serving rural areas or other areas of dispersed client population noted that they frequently provide brief advice and consultation by telephone. They questioned the feasibility of applying the verification procedures in proposed § 1626.5 in these instances. The Corporation has therefore added a new paragraph (f) to the final rule which provides that no verification is required when the only service provided is brief advice and consultation by telephone. However, in the event the recipient provides ongoing representation in the matter, the verification procedures provided in the final rule must be followed. In such cases, there normally will be adequate opportunity to acquire the documentation required by the regulation.

Disposition of Ongoing Cases

Most commentators were seriously concerned over the ethical problems of discontinuing representation of clients whose representation was properly commenced prior to the receipt of funds governed by the continuing Resolution and who are now ineligible. The Corporation shares that concern. However, pending authoritative clarification by Congress, the Corporation has concluded after much consideration that it has no alternative but to construe the language of the Continuing Resolution as it is written. That language reads:

Provided, That none of the funds appropriated in this Act for the Legal Services Corporation shall be expended to provide legal assistance for or on behalf of any [ineligible] alien * * *

This is an absolute prohibition against such expenditures. The Corporation is aware that such prohibitions have in the past been construed to allow completion of pending cases with funds governed by such prohibitions; however, the Corporation intends to construe such explicit prohibitions more strictly henceforth, absent further Congressional guidance.

The Corporation has considered the argument that it may be in violation of § 1006(b)(3) of the Legal Services Corporation Act, prohibiting interference with any attorney in carrying out his professional responsibilities, and has concluded that the Continuing Resolution, as the more recently enacted and more specific legislation, governs in the event of any conflict with this provision of the Act. Furthermore, this regulation does not

prohibit attorneys or recipients from completing these cases, but merely effectuates the Continuing Resolution's prohibition of use of Continuing Resolution funds to do so.

The alternatives discussed in the regulation will, in fact, cover the great majority of cases that are still pending and that cannot be discontinued through referral or withdrawal. It is to be noted that such options as a special fund-raising drive or an appeal to the local legal community for *pro bono* assistance are available, in addition to use of outside funds or carryover funds already available.

Finally, funds recovered from excess recipient fund balances from previous years will be available for some additional grants to recipients. As these limited funds are not governed by the Continuing Resolution, the Board has indicated that one priority for their use should be to consider grants to assist recipients who have exhausted all other possibilities to complete ethically required representation of ineligible aliens.

Several comments addressed the requirement for immediate discontinuance of representation in matters where representation of an ineligible alien was commenced due to false information provided by the alien to the recipient and noted that immediate discontinuance could cause an attorney to violate the Code of Professional Responsibility. However, the regulation requires only that immediate "steps to discontinue" be taken as provided in Section 1626.6 and the Corporation believes that these procedures will mitigate any danger of ethical violations. Moreover, a client's providing false information to an attorney could reasonably justify the attorney's seeking immediate withdrawal from representation.

Recordkeeping and Confidentiality

A number of comments received indicated that the recordkeeping requirements in the proposed rule were unduly burdensome and noted that, in many situations, it will be impossible to obtain copies of documents establishing eligibility, either because no copying facilities are available (such as in migrant labor camps) or because it is illegal to copy some pertinent documents. For example, some states prohibit the photocopying of birth certificates.

The Corporation has maintained a record-keeping requirement because it believes that such a requirement is necessary for it to exercise its responsibility for oversight of

Corporation funds. However, in response to the comments, it has rewritten this section to provide that records of citizenship or alien status need not be kept if the application for legal assistance is rejected for reasons other than ineligible alien status, such as income. In addition, the final rule does not require maintenance of eligibility documents in instances where it is impossible or illegal to copy such documents. (In this regard, the Corporation notes that photocopying official documents issued by the U.S. Immigration and Naturalization Service is prohibited only if done with unlawful intent; attorneys are permitted to copy such documents for their files.)

Several commentators noted that the provision in the proposed rule requiring that all records pertaining to the determination of the eligibility of an alien for legal assistance be made available to the Corporation (with deletion of names and personal identification) was a departure from past Corporation practice and voiced concern that such requirement would compromise client confidentiality. Commentators also expressed concern that the provision in the proposed rule authorizing release of requested information to Congress could breach client confidentiality.

The Corporation believes that access to client eligibility records in a form that protects client confidentiality is essential to its oversight responsibility. Consequently, it has made no change in that portion of the proposed rule. However, owing to legitimate concerns for confidentiality, it has added clarifying language which provides that the regulation does not authorize release to Congress of any information which the Corporation determines to be prejudicial to the interests of a client.

List of Subjects in 45 CFR Part 1626

Privacy, Aliens, Legal services, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 45 CFR Chapter XVI is amended by adding Part 1626 to read as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

- 1626.1 Purpose.
- 1626.2 Definitions.
- 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.
- 1626.4 Alien status and eligibility.
- 1626.5 Verification of citizenship and eligible alien status.

Sec.

- 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.
 - 1626.7 Change in circumstances.
 - 1626.8 Records.
 - 1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.
 - 1626.10 Special eligibility questions.
- Authority: Section 1008(e) Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 97-377, 98 Stat. 1674.

§ 1626.1 Purpose.

This part is designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This part does not apply to any case or matter in which assistance is not being provided with funds appropriated under Pub. L. 97-377.

§ 1626.2 Definitions.

As used in this part the term—

- (a) "Eligible alien" means an alien who meets the requirements of § 1626.4(a).
- (b) "Ineligible alien" means an alien who does not meet the requirements of § 1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 97-377.
- (c) "Rejected" refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 97-377 shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien, except as authorized in this part.

(b) *Prohibited Legal Assistance "for" an Ineligible Alien.* (1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using fiscal year 1983 Corporation funds to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not

possible, an ineligible alien client may not be represented if any fiscal year 1983 funds are used in such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case (using fiscal year 1983 funds).

(3) The provisions of Section 1010(c) of the Legal Services Corporation Act do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c) *Prohibited Legal Assistance "on Behalf of" an Ineligible Alien.* To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which directly benefits an ineligible alien and does not benefit the eligible client.

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is a resident of the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and (20));

(2) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of twenty-one years of such a citizen and who has filed an application for adjustment of status to permanent resident under the Immigration and Nationality Act, and such application has not been rejected;

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157 relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), or who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity; or

(4) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)).

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services. Categories of eligible aliens include but are not limited to:

(1) Aliens present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5) relating to parolee admissions); or

(2) Aliens admitted into the United States as nonimmigrants under section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), including:

(i) Ambassadors and other diplomatic officers and employees, embassy attendants and servants, and their immediate families;

(ii) Tourists and temporary business visitors;

(iii) Aliens in transit through the United States or going to and from the United Nations;

(iv) Alien crewmen from foreign vessels and aircraft who enter the United States temporarily and intend to depart on their vessels or aircraft;

(v) Alien traders and investors present in the U.S. pursuant to treaties of commerce and navigation, and their immediate families;

(vi) Foreign students who enter the United States to study at academic institutions, and their spouses and minor children;

(vii) Officials, employees, and representatives of international organizations, and their immediate families;

(viii) Temporary workers, trainees, and persons of distinguished ability and their spouses and minor children;

(ix) Members of the foreign press, radio, film, and other media, and their spouses and children;

(x) Participants in State Department-sponsored exchange programs, and their spouses and minor children;

(xi) Fiances and fiancées of United States citizens who enter the United States solely to conclude valid marriage, and their minor children;

(xii) Employees of United States corporations or businesses based in another country who enter the United States to work for the same employers, and their spouses and minor children;

(xiii) Foreign students who enter the United States to study at vocational or nonacademic institutions, and their spouses and minor children.

§ 1626.5 Verification of citizenship and eligible alien status.

(a) A citizen seeking representation shall attest in writing in a form approved by the Corporation to the fact of his or her United States citizenship. Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen. A recipient shall accept the original or a certified copy of any of the following documents as evidence of citizenship:

- (1) United States passport
- (2) Birth certificate
- (3) Naturalization certificate
- (4) United States Citizenship Identification Card (INS Form I-197)
- (5) Commuter Status Card (INS Form I-176)
- (6) Baptismal certificate showing place of birth within the United States and a date of baptism within two months after birth.

If a person is unable to produce any of the above documents, he or she may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

(b) An alien seeking representation shall submit appropriate documents to verify eligibility. A recipient shall accept originals of any of the following documents as proof of eligibility:

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I-151, I-551, or AR-3a), Temporary Evidence of Lawful Admission for Permanent Residence (INS Form I-181B), or a valid passport and immigrant visa.

(2) An alien in the category specified in § 1626.4(a)(2) shall present the following documents:

- (i) the fee receipt issued to the alien by the Immigration and Naturalization Service (INS) at the time that the Application for Status as Permanent Resident (INS Form I-485) was filed; a copy of the Application for Status as Permanent Resident accompanied by a notarized statement, signed by the alien that such form was filed with INS; a copy of the Application for Immigrant Visa & Alien Registration (Department of State Form FS-510) accompanied by a notarized statement, signed by the alien that such form was filed with a consulate office; or a copy of the Application for Suspension of Deportation (INS Form I-256A) accompanied by a notarized statement, signed by the alien that such form was filed with INS; and

(ii) a copy of the alien's marriage certificate accompanied by proof of the spouse's U.S. citizenship; a copy of the United States birth certificate, baptismal certificate, adoption decree or other documents demonstrating that the alien is the parent of a United States citizen under the age of 21; a copy of the alien's birth certificate, baptismal certificate, adoption decree, or other documents demonstrating that the alien is a child under the age of 21, accompanied by proof that the alien's parent is a United States citizen; or in lieu of the above, a copy of the Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa (INS Form I-130) containing information that demonstrates that the alien is related to such a United States citizen spouse, parent, or child, accompanied by a notarized statement that such form was filed with INS.

(3) An alien in the category specified in § 1626.4(a)(3) shall present an Arrival-Departure Record (INS Form I-94) marked "section 207" or "Refugee" (if claiming refugee status), "section 208" or "Asylum" (if claiming asylee status), or "section 203(a)(7)" or "Conditional entry" (if claiming conditional entrant status).

(4) An alien in the category specified in § 1626.4(a)(4) shall present an Arrival-Departure Record (INS Form I-94) marked "section 243(h)," or a court order or letter signed by an immigration judge stating that the Attorney General is withholding deportation of the alien.

(c) The following documents shall not be considered evidence of eligible alien status:

- (1) Nonimmigrant Visa
- (2) Arrival-Departure Record (INS Form I-94) marked with any code from "A" through "M" for nonimmigrants, or marked "section 212(d)(5)" for parolees
- (3) Crewman's Landing Permit (INS Form I-95A)
- (4) Mexican Border Visitors Permit (INS Form I-144)
- (5) Nonresident Alien Canadian Border Crossing Card (INS Form I-185)
- (6) Nonresident Alien Mexican Border Crossing Card (INS Form I-186)
- (7) Nonresident Alien Canadian Border Crossing Identification Card (unnumbered).

(d) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents described in this Section. Persons applying for legal assistance are responsible for producing the appropriate documents to verify eligibility.

(e) In an emergency, legal services may be provided prior to compliance

with all the requirements of § 1626.5(a)-(d).

(1) If it is not feasible for a citizen or an alien to come to the recipient's office or otherwise physically transmit documentation to the recipient before commencement of representation, such required information as can be obtained orally shall be recorded by the recipient and written documentation shall be submitted as soon as possible.

(2) If an alien is physically present, but cannot produce required documentation, he or she shall make a written statement identifying the category listed in § 1626.4(a) under which he or she claims eligibility and the documents that will be produced to verify that status; this documentation shall be submitted as soon as possible.

(3) Recipients shall adhere strictly to the same criteria for emergency assistance used in their general determination of priorities and shall use the procedures of § 1626.5(e) only in cases meeting these criteria.

(4) Recipients shall inform clients accepted under these procedures that only limited, emergency legal assistance may be provided them without satisfactory documentation and that failure or inability to produce satisfactory documentation will compel the recipient to discontinue representation consistent with the recipient's professional responsibilities as soon as the emergency no longer exists.

(f) No verification is required when the only service provided is brief advice and consultation by telephone.

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 97-377 to provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally, three alternatives are available:

(1) Referral to alternative counsel who can provide adequate representation;

(2) Withdrawal from pending judicial or administrative proceedings where permission to withdraw can be obtained under the rules of procedure of the tribunal; or

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of prior year Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen wherever not inconsistent with an attorney's professional responsibilities.

(b) (1) Where referral or discontinuance of representation are not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditures of Pub. L. 97-377 funds will not be permitted.

(2) In any such circumstances, a recipient shall maintain documentation clearly differentiating the time the attorney used on an uncompensated basis from his or her paid time and establishing the approximate amount of any overhead services allocable to completion of the case.

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 97-377 to provide legal assistance for or on behalf of an alien if:

(1) The alien becomes an ineligible alien due to a change in circumstances after representation has commenced;

(2) Representation of an ineligible alien was commenced due to an erroneous eligibility determination made by the recipient; or

(3) Representation of an ineligible alien was commenced due to false information provided by the alien to the recipient.

(b) A recipient shall discontinue representation supported by funds authorized by Pub. L. 97-377 under the circumstances described in § 1626.7(a) provided discontinuance is not inconsistent with the attorney's professional responsibilities. In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

§ 1626.8 Records.

Programs shall keep records of whether a client or prospective client claims to be a citizen or an alien, unless that person was found to be ineligible for services for reasons other than ineligible alien status. For all individuals seeking legal assistance, recipients shall keep copies of all documents given to them to establish eligibility, except in instances in which copying said documents is impossible or illegal. Such records shall be kept whether the individual was found to be a citizen, an eligible alien, or an ineligible alien. If an alien is found ineligible, or if records cannot be copied, a record of

documentation (or lack thereof) may be kept in lieu of copies of said documentation.

§ 1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.

(a) All records pertaining to determination of the eligibility of an alien for legal assistance shall be available (with deletion of names and personal identification) for review by the Corporation of recipient's actions and procedures in determining the eligibility of the alien for legal services. Such records shall not be released by the Corporation or by any recipient to any third party except in statistical form, nor may they be used for any other purpose than that stated in this subsection. This subsection shall not prevent release to Congress of information specifically requested by Congress which the Corporation determines is not prejudicial to the interests of the client.

(b) Release of any such record by a recipient, except to the Corporation or under court order, shall subject the recipient to appropriate sanctions by the Corporation.

(c) Such records shall be retained for a minimum of three years or until resolution of all audit questions pertaining thereto, whichever period is longer. Recipients shall keep a statistical record of the number of aliens found eligible and ineligible and the number of persons found eligible who subsequently were discovered to have been ineligible.

§ 1626.10 Special eligibility questions.

(a) *Micronesia.* The residents of the Trust Territory of the Pacific Islands (Micronesia) currently receive legal assistance under the Legal Services Corporation Act. As Congress has expressed no intention to exclude them, the Corporation deems all citizens and permanent residents of Micronesia eligible to receive legal assistance, provided they are otherwise eligible under the Act.

(b) *Cross-Border Indian Tribes.* (1) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(2) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

Dated: June 15, 1983.

Alan R. Swandiman,
General Counsel.