

State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

(b) When a household moves within the State, the State agency may require the household to reapply in the new project area or it may transfer the household's casefile to the new project area and continue the household's certification without reapplication. If the State agency chooses to transfer the case, it shall act on changes in household circumstances resulting from the move in accordance with § 273.12(c) or § 273.21. It shall also ensure that duplicate participation does not occur in accordance with § 272.4(f) of this chapter, and that the transfer of a household's case shall not adversely affect the household.

[46 FR 60166, Dec. 8, 1981, as amended by Amdt. 211, 47 FR 53317, Nov. 26, 1982; Amdt. 269, 51 FR 10785, Mar. 28, 1986; Amdt. 274, 51 FR 18750, May 21, 1986; Amdt. 364, 61 FR 54317, Oct. 17, 1996]

§ 273.4 Citizenship and alien status.

(a) *Household members meeting citizenship or alien status requirements.* No person is eligible to participate in the Program unless that person is:

- (1) A U.S. citizen¹;
- (2) A U.S. non-citizen national¹
- (3) An individual who is:

(i) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(ii) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

- (4) An individual who is:

(i) Lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(ii) The spouse, or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(iii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a full-time student under the age of 22; an unmarried child under the age of 18 or if a full time student under the age of 22 of such a deceased Hmong or Highland Laotian provided the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday. For purposes of this paragraph (a)(4)(iii), child means the legally adopted or biological child of the person described in paragraph (a)(4)(i) of this section, or

(5) An individual who is *both* a qualified alien as defined in paragraph (a)(5)(i) of this section and an eligible alien as defined in paragraph (a)(5)(ii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(F) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an

¹For guidance, see the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered²; or

(H) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(5)(i) of this section, must also be at least one of the following to be eligible to receive food stamps:

(A) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(I) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(2) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits

on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total.

(B) An alien admitted as a refugee under section 207 of the INA. Eligibility is limited to 7 years from the date of the alien's entry into the U.S.

(C) An alien granted asylum under section 208 of the INA. Eligibility is limited to 7 years from the date asylum was granted.

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) or the INA. Eligibility is limited to 7 years from the date deportation or removal was withheld.

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980). Eligibility is limited to 7 years from the date the status as a Cuban or Haitian entrant was granted.

(F) An Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461. Eligibility is limited to 7 years from the date admitted as an Amerasian.

(G) An alien with one of the following military connections:

(I) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the

²For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published on November 17, 1997 (62 FR 61344).

Food and Nutrition Service, USDA

§ 273.4

Philippine Scouts, as described in 38 U.S.C. 107;

(2) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(3) The spouse and unmarried dependent children of a person described in paragraphs (a)(5)(ii)(G)(1) or (G)(2) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(5)(ii)(G)(3) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(5)(ii)(G)(3), child means the legally adopted or biological child of the person described in paragraph (a)(5)(ii)(G)(1) or (G)(2) of this section.

(H) An individual who on August 22, 1996, was lawfully residing in the U.S., and is now receiving benefits or assistance for blindness or disability (as specified in § 271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who on August 22, 1996, was lawfully residing in the U.S. and is now under 18 years of age.

(iii) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

(6) For purposes of determining eligible alien status in accordance with paragraphs (a)(4) and (a)(5)(ii)(H) through (a)(5)(ii)(J) of this section "lawfully residing in the U.S." means that the alien is lawfully present as defined at 8 CFR 103.12(a).

(b) *Reporting illegal aliens.* (1) The State agency must inform the local INS office immediately whenever personnel responsible for the certification or recertification of households determine that any member of a household is ineligible to receive food stamps because the member is present in the U.S. in violation of the INA. The State agency may meet this requirement by conforming with the Interagency Notice providing guidance for compliance with PRWORA section 404 published on September 28, 2000 (65 FR 58301).

(2) When a household indicates inability or unwillingness to provide documentation of alien status for any household member, the State agency must classify that member as an ineligible alien. When a person indicates inability or unwillingness to provide documentation of alien status, the State agency must classify that person as an ineligible alien. In such cases the State agency must not continue efforts to obtain that documentation.

(c) *Households containing sponsored alien members—*(1) *Definition.* A sponsored alien is an alien for whom a person (the sponsor) has executed an affidavit of support (INS Form I-864 or I-864A) on behalf of the alien pursuant to section 213A of the INA.

(2) *Deeming of sponsor's income and resources.* For purposes of this paragraph (c)(2), only in the event a sponsored alien is an eligible alien in accordance with paragraph (a) of this section will the State agency consider available to the household the income and resources of the sponsor and spouse. For purposes of determining the eligibility and benefit level of a household of which an eligible sponsored alien is a member, the State agency must deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I-864 or I-864A, as the unearned income and resources of the sponsored alien. The State agency must deem the sponsor's income and resources until the alien gains U. S. citizenship, has worked or can receive credit for 40 qualifying quarters of work as described in paragraph (a)(5)(ii)(A) of this section, or the sponsor dies.

(i) The monthly income of the sponsor and sponsor's spouse (if he or she

§ 273.4

7 CFR Ch. II (1–1–05 Edition)

has executed INS Form I-864 or I-864A) deemed as that of the eligible sponsored alien must be the total monthly earned and unearned income, as defined in § 273.9(b) with the exclusions provided in § 273.9(c) of the sponsor and sponsor's spouse at the time the household containing the sponsored alien member applies or is recertified for participation, reduced by:

(A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse; and

(B) An amount equal to the Program's monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

(i) If the alien has already reported gross income information on his or her sponsor in compliance with the sponsored alien rules of another State agency administered assistance program, the State agency may use that income amount for Food Stamp Program deeming purposes. However, the State agency must limit allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien to amounts specified in paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this section.

(ii) The State agency must consider as income to the alien any money the sponsor or the sponsor's spouse pays to the eligible sponsored alien, but only to the extent that the money exceeds the amount deemed to the eligible sponsored alien in accordance with paragraph (c)(2)(i) of this section.

(iii) The State agency must deem as available to the eligible sponsored alien the total amount of the resources of the sponsor and sponsor's spouse as determined in accordance with § 273.8, reduced by \$1,500.

(iv) If a sponsored alien can demonstrate to the State agency's satisfaction that his or her sponsor is the sponsor of other aliens, the State agency must divide the income and resources deemed under the provisions of paragraphs (c)(2)(i) and (c)(2)(iii) of this sec-

tion by the number of such sponsored aliens.

(3) *Exempt aliens.* The provisions of paragraph (c)(2) of this section do not apply to:

(i) An alien who is a member of his or her sponsor's food stamp household;

(ii) An alien who is sponsored by an organization or group as opposed to an individual;

(iii) An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

(iv) An indigent alien that the State agency has determined is unable to obtain food and shelter taking into account the alien's own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor(s). For purposes of this paragraph (c)(3)(iv), the phrase "is unable to obtain food and shelter" means that the sum of the eligible sponsored alien's household's own income, the cash contributions of the sponsor and others, and the value of any in-kind assistance the sponsor and others provide, does not exceed 130 percent of the poverty income guideline for the household's size. The State agency must determine the amount of income and other assistance provided in the month of application. If the alien is indigent, the only amount that the State agency must deem to such an alien will be the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date. Each indigence determination is renewable for additional 12-month periods. The State agency must notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved;

(v) A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after the State agency determines that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer.³ After 12 months, the State agency

³For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published November 17, 1997 (62 FR 61344).

must not deem the batterer's income and resources if the batterer is recognized by a court or the INS and has a substantial connection to the need for benefits, and the alien does not live with the batterer.

(4) *Eligible sponsored alien's responsibilities.* During the period the alien is subject to deeming, the eligible sponsored alien is responsible for obtaining the cooperation of the sponsor and for providing the State agency at the time of application and at the time of recertification with the information and documentation necessary to calculate deemed income and resources in accordance with paragraphs (c)(2)(i) through (c)(2)(v) of this section. The eligible sponsored alien is responsible for providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support. The State agency must attribute the entire amount of income and resources to the applicant eligible sponsored alien until he or she provides the information specified under this paragraph (c)(4). The eligible sponsored alien is also responsible for reporting the required information about the sponsor and sponsor's spouse should the alien obtain a different sponsor during the certification period and for reporting a change in income should the sponsor or the sponsor's spouse change or lose employment or die during the certification period. The State agency must handle such changes in accordance with the timeliness standards described in § 273.12 or § 273.21, as appropriate.

(5) *Awaiting verification.* Until the alien provides information or verification necessary to carry out the provisions of paragraph (c)(2) of this section, the sponsored alien is ineligible. The State agency must determine the eligibility of any remaining household members. The State agency must consider available to the remaining household members the income and resources of the ineligible alien (excluding the deemed income and resources of the alien's sponsor and sponsor's spouse) in determining the eligibility and benefit level of the remaining household members in accordance with § 273.11(c). If the sponsored alien refuses to cooperate in providing infor-

mation or verification, other adult members of the alien's household are responsible for providing the information or verification required in accordance with the provisions of § 273.2(d). If the State agency subsequently receives information or verification, it must act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12 or § 273.21, as appropriate. If the same sponsor is responsible for the entire household, the entire household is ineligible until such time as the household provides the needed sponsor information or verification. The State agency must assist aliens in obtaining verification in accordance with the provisions of § 273.2(f)(5).

(6) *Demands for restitution.* The State agency must exclude any sponsor who is participating in the Program from any demand made under 8 CFR 213a.4(a) for the value of food stamp benefits issued to an eligible sponsored alien he or she sponsors.

[Amdt. 388, 65 FR 70200, Nov. 21, 2000]

§ 273.5 Students.

(a) *Applicability.* An individual who is enrolled at least half-time in an institution of higher education shall be ineligible to participate in the Food Stamp Program unless the individual qualifies for one of the exemptions contained in paragraph (b) of this section. An individual is considered to be enrolled in an institution of higher education if the individual is enrolled in a business, technical, trade, or vocational school that normally requires a high school diploma or equivalency certificate for enrollment in the curriculum or if the individual is enrolled in a regular curriculum at a college or university that offers degree programs regardless of whether a high school diploma is required.

(b) *Student Exemptions.* To be eligible for the program, a student as defined in paragraph (a) of the section must meet at least one of the following criteria.

(1) Be age 17 or younger or age 50 or older;

(2) Be physically or mentally unfit;

(3) Be receiving Temporary Assistance for Needy Families under Title IV of the Social Security Act;