

Background

When PRWORA was enacted, Congress wanted to ensure that receipt of Federal assistance did not create an incentive for newly arriving immigrants. Consequently, PRWORA barred legal immigrants arriving on or after August 22, 1996 from receiving most Federal benefits, including Temporary Assistance for Needy Families (TANF), until they have been in the country for five years as a qualified alien. Legal immigrants were, however, made ineligible for food stamps with certain exceptions. The Department determined, however, that this general ban did not apply to the Food Stamp Program where the law specifically allows for receipt of food stamp benefits. Legislative changes enacted in the 2002 Farm Bill imposed a similar five-year requirement that is specific to the Food Stamp Program.

1. What is the five-year requirement?

The Farm Security and Rural Investment Act of 2002 (Public Law 107-171), commonly referred to as the 2002 Farm Bill, restores food stamp eligibility to a legal immigrant who has lived in the United States as a qualified* alien for a period of five years or longer.

2. When does the five-year requirement go into effect?

Qualified aliens meeting the five-year requirement and other program requirements can begin receiving food stamps on April 1, 2003.

3. When does the five-year waiting period begin?

The five-year waiting period begins on the date the immigrant obtains status as a qualified alien through the INS. While it is possible for some refugees to have obtained a qualified alien status prior to entering the United States, these individuals are eligible upon entering the country without the five-year wait based on their refugee status.

4. If qualified status is granted retroactively, does the retroactive time count toward the five-year requirement?

Yes. In certain situations, the INS may grant an alien qualified status retroactively. That retroactive time counts toward the five-year requirement.

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5. Do all qualified aliens need to meet the five-year requirement?

No. Asylees, refugees, Amerasians, Cuban/Haitian entrants, trafficking victims and aliens whose deportation or removal is being withheld are eligible for food stamp benefits when they are admitted into the country or granted status.

6. If a qualified alien is in an exempt category (e.g., asylee or refugee) and later adjusts to LPR status, does the qualified alien have to meet the five-year requirement?

No. Asylees, refugees, Amerasians, Cuban/Haitian entrants, trafficking victims and aliens whose deportation or removal was being withheld are eligible for food stamp benefits during the first seven years they are admitted or granted status in one of these exempt categories regardless of later adjustment. An example of this is an immigrant who was initially granted asylum in January 2001 and then adjusted to LPR status in January 2002. Even though this immigrant has not been in a qualified alien status for five years on April 1, 2003 when the new law is effective, the qualified alien is eligible during the first seven years as an asylee. In addition, qualified aliens who are in one of the exempt categories for five years have automatically met the five-year requirement.

When an alien has adjusted to LPR status from another category, the green card will usually show the date of the adjustment of status rather than the date the previous status was granted. To obtain a history of an immigrant's status from the INS, State agencies will have to specifically ask for the information on INS' Forms G-845 and G-845-Supplement.

7. If an immigrant has been in the United States in an undocumented status and later obtains status as a qualified alien, is the qualified alien automatically barred from receiving food stamps because of the undocumented status?

No. So long as the immigrant has been in status as a qualified alien for five years, the immigrant meets the five-year requirement.

* For purposes of understanding this guidance, a qualified alien means an alien who is in one of the following categories as determined by INS. As stated in Q and A 5, not all qualified aliens have to meet the five-year requirement.

- ✓ Lawfully admitted for permanent residence (LPR) in the United States (holders of green cards). This category also includes "Amerasian immigrants" as defined under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;

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- ✓ Granted asylum under section 208 of the Immigration and Nationality Act (INA);
- ✓ Refugee admitted to the United States under section 207 of the INA;
- ✓ Paroled into the United States under section 212(d)(5) of the INA for at least 1 year;
- ✓ Deportation is being withheld under section 243(h) of the INA as in effect before 4/1/97, or removal is withheld under section 241(b)(3) of the INA;
- ✓ Granted conditional entry under section 203(a)(7) of the INA as in effect before 4/1/80;
- ✓ Cuban or Haitian entrant under section 501(e) of the Refugee Education Assistance Act of 1980; or
- ✓ Under certain circumstances, a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.