

## AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106–78 substituted “Richard B. Russell National School Lunch Act” for “National School Lunch Act”.

1997—Subsec. (a). Pub. L. 105–33 struck out “(as defined in section 1622(c) of this title)” after “public benefits” in introductory provisions.

1996—Subsec. (a)(1). Pub. L. 104–208 inserted “and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996” after “section 423”.

## EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, see section 5582 of Pub. L. 105–33, set out as a note under section 1367 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days, and not later than 90 days after the date the Attorney General formulates the form for such affidavits, see section 551(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment; Promulgation of Form note under section 1183a of this title.

## SUBCHAPTER IV—GENERAL PROVISIONS

## § 1641. Definitions

## (a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C. 1101(a)].

## (b) Qualified alien

For purposes of this chapter, the term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is—

- (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.],
- (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158],
- (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C. 1157],
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C. 1182(d)(5)] for a period of at least 1 year,
- (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104–208),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980;<sup>1</sup> or
- (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

## (c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term “qualified alien” includes—

(1) an alien who—

(A) has been battered or subjected to extreme cruelty in the United States 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 and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) has been approved or has a petition pending which sets forth a prima facie case for—

(i) status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act [8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)],

(ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [8 U.S.C. 1154(a)(1)(B)(ii), (iii)],

(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [8 U.S.C. 1254(a)(3)] (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).<sup>2</sup>

(iv) status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act [8 U.S.C. 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 U.S.C. 1154(a)(1)(B)(i)];<sup>3</sup>

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 U.S.C. 1229b(b)(2)];

(2) an alien—

(A) whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1);

(3) an alien child who—

(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency provid-

<sup>1</sup> So in original. The semicolon probably should be a comma.

<sup>2</sup> So in original. The period probably should be a comma.

<sup>3</sup> So in original. The semicolon probably should be “, or”.

ing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B) who meets the requirement of subparagraph (B) of paragraph (1); or

(4) an alien who has been granted non-immigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(T)) or who has a pending application that sets forth a prima facie case for eligibility for such nonimmigrant status.

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms "battery" and "extreme cruelty", and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.

(Pub. L. 104-193, title IV, § 431, Aug. 22, 1996, 110 Stat. 2274; Pub. L. 104-208, div. C, title III, § 308(g)(8)(E), title V, § 501, Sept. 30, 1996, 110 Stat. 3009-624, 3009-670; Pub. L. 105-33, title V, § 5302(c)(3), 5562, 5571(a)-(c), 5581(b)(6), (7), Aug. 5, 1997, 111 Stat. 599, 638, 640, 643; Pub. L. 106-386, div. B, title V, § 1508, Oct. 28, 2000, 114 Stat. 1530; Pub. L. 110-457, title II, § 211(a), Dec. 23, 2008, 122 Stat. 5063.)

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title" meaning title IV of Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

Section 243 of such Act, referred to in subsec. (b)(5), is section 243 of act June 27, 1952, which is classified to section 1253 of this title. Section 1253 of this title was amended generally by Pub. L. 104-208, div. C, title III, § 307(a), Sept. 30, 1996, 110 Stat. 3009-612, and, as so amended, no longer contains a subsec. (h). For effective date of section 307 of Pub. L. 104-208, see section 309 of Pub. L. 104-208, set out as an Effective Date of 1996 Amendments note under section 1101 of this title.

Section 203(a)(7) of such Act as in effect prior to April 1, 1980, referred to in subsec. (b)(6), means section 203(a)(7) of act June 27, 1952, which was classified to section 1153(a)(7) of this title. Section 1153(a)(7) of this

title was repealed and section 1153(a)(8) was redesignated section 1153(a)(7) by Pub. L. 96-212, title II, § 203(c)(3), (6), Mar. 17, 1980, 94 Stat. 107, effective Apr. 1, 1980.

Section 501(e) of the Refugee Education Assistance Act of 1980, referred to in subsec. (b)(7), is section 501(e) of Pub. L. 96-422, as amended, which is set out in a note under section 1522 of this title.

Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, referred to in subsec. (c)(1)(B)(iii), is section 309 of title III of div. C of Pub. L. 104-208, as amended, which is set out as a note under section 1101 of this title.

#### AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110-457 added par. (4).

2000—Subsec. (c)(1)(B)(iii). Pub. L. 106-386 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "cancellation of removal under section 240A of such Act (as in effect prior to April 1, 1997)."

1997—Subsec. (b)(5). Pub. L. 105-33, § 5562, substituted "section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208)" for "section 243(h) of such Act".

Subsec. (b)(7). Pub. L. 105-33, § 5302(c)(3), added par. (7).

Subsec. (c). Pub. L. 105-33, § 5571(b), inserted at end "After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms 'battery' and 'extreme cruelty', and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program."

Subsec. (c)(1)(A). Pub. L. 105-33, § 5571(a), substituted "agency providing such benefits" for "Attorney General, which opinion is not subject to review by any court)".

Subsec. (c)(1)(B)(iii). Pub. L. 105-33, § 5581(b)(7)(A), substituted "(as in effect prior to April 1, 1997)," for "or".

Subsec. (c)(1)(B)(v). Pub. L. 105-33, § 5581(b)(7)(B), added cl. (v).

Subsec. (c)(2)(A). Pub. L. 105-33, § 5571(a), substituted "agency providing such benefits" for "Attorney General, which opinion is not subject to review by any court)".

Subsec. (c)(2)(B). Pub. L. 105-33, § 5581(b)(6), substituted "subparagraph (B) of paragraph (1)" for "clause (ii) of subparagraph (A)".

Subsec. (c)(3). Pub. L. 105-33, § 5571(c), added par. (3). 1996—Subsec. (c). Pub. L. 104-208, § 501, added subsec. (c).

Subsec. (c)(1)(B)(iii). Pub. L. 104-208, § 308(g)(8)(E), substituted "cancellation of removal under section 240A of such Act" for "suspension of deportation and adjustment of status pursuant to section 244(a)(3) of such Act".

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-457, title II, § 211(b), Dec. 23, 2008, 122 Stat. 5063, provided that: "The amendments made by subsection (a) [amending this section] shall apply to applications for public benefits and public benefits provided on or after the date of the enactment of this Act [Dec. 23, 2008] without regard to whether regulations have been implemented to carry out such amendments."

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 5302(c)(3) of Pub. L. 105-33 effective, except as otherwise provided, as if included in

the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5308 of Pub. L. 105-33, set out as a note under section 1612 of this title.

Amendment by sections 5562, 5571(a)-(c), 5581(b)(6), (7) of Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 308(g)(8)(E) of Pub. L. 104-208 effective, with certain transitional provisions, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Pub. L. 104-208, set out as a note under section 1101 of this title.

Amendment by section 501 of Pub. L. 104-208 effective Sept. 30, 1996, see section 591 of Pub. L. 104-208, set out as a note under section 1101 of this title.

### § 1642. Verification of eligibility for Federal public benefits

#### (a) In general

(1) Not later than 18 months after August 22, 1996, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall promulgate regulations requiring verification that a person applying for a Federal public benefit (as defined in section 1611(c) of this title), to which the limitation under section 1611 of this title applies, is a qualified alien and is eligible to receive such benefit. Such regulations shall, to the extent feasible, require that information requested and exchanged be similar in form and manner to information requested and exchanged under section 1320b-7 of title 42. Not later than 90 days after August 5, 1997, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall issue interim verification guidance.

(2) Not later than 18 months after August 22, 1996, the Attorney General, in consultation with the Secretary of Health and Human Services, shall also establish procedures for a person applying for a Federal public benefit (as defined in section 1611(c) of this title) to provide proof of citizenship in a fair and nondiscriminatory manner.

(3) Not later than 90 days after August 5, 1997, the Attorney General shall promulgate regulations which set forth the procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is a qualified alien, a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or an alien paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act [8 U.S.C. 1182(d)(5)] for less than 1 year, for purposes of determining whether the alien is ineligible for benefits under section 1621 of this title.

#### (b) State compliance

Not later than 24 months after the date the regulations described in subsection (a) of this section are adopted, a State that administers a program that provides a Federal public benefit shall have in effect a verification system that complies with the regulations.

#### (c) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this section.

#### (d) No verification requirement for nonprofit charitable organizations

Subject to subsection (a) of this section, a nonprofit charitable organization, in providing any Federal public benefit (as defined in section 1611(c) of this title) or any State or local public benefit (as defined in section 1621(c) of this title), is not required under this chapter to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits.

(Pub. L. 104-193, title IV, § 432, Aug. 22, 1996, 110 Stat. 2274; Pub. L. 104-208, div. C, title V, §§ 504, 508, Sept. 30, 1996, 110 Stat. 3009-672, 3009-673; Pub. L. 105-33, title V, § 5572(a), Aug. 5, 1997, 111 Stat. 641.)

#### REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (a)(3), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.

This chapter, referred to in subsec. (d), was in the original “this title” meaning title IV of Pub. L. 104-193, Aug. 22, 1996, 110 Stat. 2260, which enacted this chapter, section 1183a of this title, and sections 611a and 1437y of Title 42, The Public Health and Welfare, amended section 1383 of this title, sections 32 and 6213 of Title 26, Internal Revenue Code, and sections 1436a and 1471 of Title 42, and enacted provisions set out as notes under section 1183a of this title and section 32 of Title 26. For complete classification of title IV to the Code, see Tables.

#### AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105-33, § 5572(a)(1), inserted at end “Not later than 90 days after August 5, 1997, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall issue interim verification guidance.”

Subsec. (a)(3). Pub. L. 105-33, § 5572(a)(2), added par. (3).

1996—Subsec. (a). Pub. L. 104-208, § 504, designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 104-208, § 508, added subsec. (d).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5582 of Pub. L. 105-33, set out as a note under section 1367 of this title.

### § 1643. Statutory construction

#### (a) Limitation

(1) Nothing in this chapter may be construed as an entitlement or a determination of an individual's eligibility or fulfillment of the requisite requirements for any Federal, State, or local governmental program, assistance, or benefits. For purposes of this chapter, eligibility relates only to the general issue of eligibility or ineligibility on the basis of alienage.

(2) Nothing in this chapter may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe* (457 U.S. 202)(1982).