

ance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

(c) "State or local public benefit" defined

(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2) Such term shall not apply—

(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3) Such term does not include any Federal public benefit under section 1611(c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

(Pub. L. 104-193, title IV, §411, Aug. 22, 1996, 110 Stat. 2268; Pub. L. 105-33, title V, §§5565, 5581(b)(1), Aug. 5, 1997, 111 Stat. 639, 642; Pub. L. 105-306, §5(b), Oct. 28, 1998, 112 Stat. 2927.)

Editorial Notes

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsecs. (a)(2) and (c)(2)(B), 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 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658, referred to in subsec. (c)(2)(A), means section 141 of the Compact of Free Association between the Government of the United States and the Governments of the Marshall Islands and the Federated States of Micronesia, which is contained in section 201 of Pub. L. 99-239, set out as a note under section 1901 of Title 48, Territories and Insular Possessions, and section 141 of the Compact of Free Association between the United States and the Government of Palau, which is contained in section 201 of Pub. L. 99-658, set out as a note under section 1931 of Title 48.

AMENDMENTS

1998—Subsec. (c)(2)(C). Pub. L. 105-306 added subpar. (C).

1997—Subsec. (c)(2)(A). Pub. L. 105-33, §5565, inserted before semicolon “, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect”.

Subsec. (c)(3). Pub. L. 105-33, §5581(b)(1), made technical amendment to reference in original act which appears in text as reference to section 1611(c) of this title.

Statutory Notes and Related Subsidiaries

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.

PILOT PROGRAMS ON LIMITING ISSUANCE OF DRIVER'S LICENSE TO ILLEGAL ALIENS

Pub. L. 104-208, div. C, title V, §502, Sept. 30, 1996, 110 Stat. 3009-671, provided that pursuant to guidelines by the Attorney General, all States could conduct pilot programs to determine the viability, advisability, and cost-effectiveness of denying driver's licenses to aliens not lawfully present in the United States and, not later than 3 years after Sept. 30, 1996, the Attorney General should submit a report to the Judiciary Committees of Congress.

§ 1622. State authority to limit eligibility of qualified aliens for State public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b), a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien (as defined in section 1641 of this title), a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or 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 less than one year.

(b) Exceptions

Qualified aliens under this subsection shall be eligible for any State public benefits.

(1) Time-limited exception for refugees and asylees

(A) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157] until 5 years after the date of an alien's entry into the United States.

(B) An alien who is granted asylum under section 208 of such Act [8 U.S.C. 1158] until 5 years after the date of such grant of asylum.

(C) 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) until 5 years after such withholding.

(D) An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 until 5 years after the alien is granted such status.

(E) An alien admitted to the United States as an Amerasian immigrant as described in section 1612(a)(2)(A)(i)(V)¹ of this title.

(2) Certain permanent resident aliens

An alien who—

(A) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.]; and

(B)(i) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and (ii) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(3) Veteran and active duty exception

An alien who is lawfully residing in any State and is—

(A) a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,

(B) on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C) the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unremarried surviving spouse of an individual described in clause (i) or (ii)² who is deceased if the marriage fulfills the requirements of section 1304 of title 38.

(4) Transition for those currently receiving benefits

An alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits on August 22, 1996, shall continue to be eligible to receive such benefits until January 1, 1997.

(Pub. L. 104-193, title IV, §412, Aug. 22, 1996, 110 Stat. 2269; Pub. L. 105-33, title V, §§5302(c)(2), 5306(d), 5562, 5563, 5581(b)(3), Aug. 5, 1997, 111 Stat. 599, 602, 638, 643.)

Editorial Notes

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsecs. (a) and (b)(2)(A), is act June 27, 1952, ch. 477, 66

¹ See References in Text note below.

² So in original. Probably should be “subparagraph (A) or (B)”.

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)(1)(C), 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 501(e) of the Refugee Education Assistance Act of 1980, referred to in subsec. (b)(1)(D), 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 1612(a)(2)(A)(i)(V) of this title, referred to in subsec. (b)(1)(E), was redesignated section 1612(a)(2)(A)(v) of this title by Pub. L. 105-185, title V, §503(2), (3), June 23, 1998, 112 Stat. 578.

The Social Security Act, referred to in subsec. (b)(2)(B)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1997—Subsec. (b)(1)(C). Pub. L. 105-33, §5581(b)(3), substituted “withholding” for “with-holding”.

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)(1)(D). Pub. L. 105-33, §5302(c)(2), added subpar. (D).

Subsec. (b)(1)(E). Pub. L. 105-33, §5306(d), added subpar. (E).

Subsec. (b)(3)(A). Pub. L. 105-33, §5563(c), inserted “, 1101, or 1301, or as described in section 107” after “section 101”.

Pub. L. 105-33, §5563(a), inserted “and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38” after “alienage”.

Subsec. (b)(3)(C). Pub. L. 105-33, §5563(b), inserted before period at end “or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by sections 5302(c)(2) and 5306(d) 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, 5563, and 5581(b)(3) 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.

§ 1623. Limitation on eligibility for preferential treatment of aliens not lawfully present on basis of residence for higher education benefits

(a) In general

Notwithstanding any other provision of law, an alien who is not lawfully present in the