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*** CURRENT THROUGH PL 110-296, APPROVED 7/30/08 ***
 *** WITH GAPS OF 110-289, 110-291 and 110-293 ***

TITLE 8. ALIENS AND NATIONALITY
 CHAPTER 14. RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS
 ELIGIBILITY FOR FEDERAL BENEFITS

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8 USCS § 1612

§ 1612. Limited eligibility of qualified aliens for certain Federal programs [Caution: For provisions in effect before October 1, 2008, see June 18, 2008 amendment note below.]

(a) Limited eligibility for specified Federal programs.

(1) In general. Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 431 [8 USCS § 1641]) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions.

(A) Time-limited exception for refugees and asylees. With respect to the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien until 7 years after the date--

(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

(ii) an alien is granted asylum under section 208 of such Act [8 USCS § 1158];

(iii) an alien's deportation is withheld under 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 [8 USCS § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

(iv) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 note]); or

(v) an alien is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 [8 USCS § 1101 note] (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended [8 USCS § 1101 note]).

(B) Certain permanent resident aliens. Paragraph (1) shall not apply to an alien who--

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 USCS §§ 401 et seq.] or can be credited with such qualifying quarters as provided under section 435 [8 USCS § 1645], 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 403 [8 USCS § 1613]) during any such period.

(C) Veteran and active duty exception. Paragraph (1) shall not apply to an alien who is lawfully residing in any State and is--

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in *section 107 of title 38, United States Code*) 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, United States Code*,

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(ii) on active duty (other than active duty for training) in the Armed Forces of the United States, or
 (iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) or the unmarried 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, United States Code*.

(D) Transition for aliens currently receiving benefits.

(i) SSI.

(I) In general. With respect to the specified Federal program described in paragraph (3)(A), during the period beginning on the date of the enactment of this Act [enacted Aug. 22, 1996] and ending on September 30, 1998, the Commissioner of Social Security shall redetermine the eligibility of any individual who is receiving benefits under such program as of the date of the enactment of this Act [enacted Aug. 22, 1996] and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.

(II) Redetermination criteria. With respect to any redetermination under subclause (I), the Commissioner of Social Security shall apply the eligibility criteria for new applicants for benefits under such program.

(III) Grandfather provision. The provisions of this subsection and the redetermination under subclause (I), shall only apply with respect to the benefits of an individual described in subclause (I) for months beginning on or after September 30, 1998.

(IV) Notice. Not later than March 31, 1997, the Commissioner of Social Security shall notify an individual described in subclause (I) of the provisions of this clause.

(ii) Food stamps.

(I) In general. With respect to the specified Federal program described in paragraph (3)(B), ineligibility under paragraph (1) shall not apply until April 1, 1997, to an alien who received benefits under such program on the date of enactment of this Act [enacted Aug. 22, 1996], unless such alien is determined to be ineligible to receive such benefits under the Food Stamp Act of 1977 [7 USCS §§ 2011 et seq.]. The State agency shall recertify the eligibility of all such aliens during the period beginning April 1, 1997, and ending August 22, 1997.

(II) Recertification criteria. With respect to any recertification under subclause (I), the State agency shall apply the eligibility criteria for applicants for benefits under such program.

(III) Grandfather provision. The provisions of this subsection and the recertification under subclause (I) shall only apply with respect to the eligibility of an alien for a program for months beginning on or after the date of recertification, if on the date of enactment of this Act [enacted Aug. 22, 1996] the alien is lawfully residing in any State and is receiving benefits under such program on such date of enactment.

(E) Aliens receiving SSI on August 22, 1996. With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in the United States and who was receiving such benefits on August 22, 1996.

(F) Disabled aliens lawfully residing in the United States on August 22, 1996. With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien who--

(i) in the case of the specified Federal program described in paragraph (3)(A)--

(I) was lawfully residing in the United States on August 22, 1996; and

(II) is blind or disabled (as defined in paragraph (2) or (3) of section 1614(a) of the Social Security Act (42 U.S.C. 1382c(a))); and

(ii) in the case of the specified Federal program described in paragraph (3)(B), is receiving benefits or assistance for blindness or disability (within the meaning of section 3(j) of the Food Stamp Act of 1977 (7 U.S.C. 2012(r) [2012(j)])).

(G) Exception for certain Indians. With respect to eligibility for benefits for the specified Federal programs described in paragraph (3), section 401(a) [8 USCS § 1611(a)] and paragraph (1) shall not apply to any individual--

(i) who is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1359) apply; or

(ii) who is 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))).

(H) SSI exception for certain recipients on the basis of very old applications. With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual--

(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.

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(I) Food stamp exception for certain elderly individuals. With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who on August 22, 1996--

- (i) was lawfully residing in the United States; and
- (ii) was 65 years of age or older.

(J) Food stamp exception for certain children. With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any individual who is under 18 years of age.

(K) Food stamp exception for certain Hmong and Highland Laotians. With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to--

- (i) any individual who--

- (I) is lawfully residing in the United States; and
- (II) was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in *section 101 of title 38, United States Code*);

- (ii) the spouse, or an unmarried dependent child, of such an individual; or
- (iii) the unremarried surviving spouse of such an individual who is deceased.

(L) Food stamp exception for certain qualified aliens. With respect to eligibility for benefits for the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to any qualified alien who has resided in the United States with a status within the meaning of the term "qualified alien" for a period of 5 years or more beginning on the date of the alien's entry into the United States.

(3) Specified Federal program defined. For purposes of this title, the term "specified Federal program" means any of the following:

(A) SSI. The supplemental security income program under title XVI of the Social Security Act [42 USCS §§ 1381 et seq.], including supplementary payments pursuant to an agreement for Federal administration under section 1616(a) of the Social Security Act [42 USCS § 1382e(a)] and payments pursuant to an agreement entered into under section 212(b) of Public Law 93-66 [42 USCS § 1382 note].

(B) Food stamps. The food stamp program as defined in section 3(l) of the Food Stamp Act of 1977 [7 USCS § 2012(l)].

(b) Limited eligibility for designated Federal programs.

(1) In general. Notwithstanding any other provision of law and except as provided in section 403 [8 USCS § 1613] and paragraph (2), a State is authorized to determine the eligibility of an alien who is a qualified alien (as defined in section 431 [8 USCS § 1641]) for any designated Federal program (as defined in paragraph (3)).

(2) Exceptions. Qualified aliens under this paragraph shall be eligible for any designated Federal program.

(A) Time-limited exception for refugees and asylees.

(i) Medicaid. With respect to the designated Federal program described in paragraph (3)(C), paragraph (1) shall not apply to an alien until 7 years after the date--

- (I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

- (II) an alien is granted asylum under section 208 of such Act [8 USCS § 1158];

- (III) an alien's deportation is withheld under 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 [8 USCS § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

- (IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 nt.]); or

- (V) an alien [is] admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) until 5 years after the date of such alien's entry into the United States.

(ii) Other designated Federal programs. With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph (1) shall not apply to an alien until 5 years after the date--

- (I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 USCS § 1157];

- (II) an alien is granted asylum under section 208 of such Act [8 USCS § 1158];

- (III) an alien's deportation is withheld under section 243(h) of such Act [8 USCS § 1253(h)] (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 USCS § 1251(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);

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(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980 [8 USCS § 1522 nt.]); or

(V) an alien admitted to the United States as an Amerasian immigrant as described in subsection (a)(2)(A)(i)(V) until 5 years after the date of such alien's entry into the United States.

(B) Certain permanent resident aliens. An alien who--

(i) is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

(ii) (I) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 USCS §§ 401 et seq.] or can be credited with such qualifying quarters as provided under section 435 [8 USCS § 1645], 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 403 [8 USCS § 1613]) during any such period.

(C) Veteran and active duty exception. An alien who is lawfully residing in any State and is--

(i) a veteran (as defined in section 101, 1101, or 1301, or as described in *section 107 of title 38, United States Code*) 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, United States Code*,

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

(iii) the spouse or unmarried dependent child of an individual described in clause (i) or (ii) 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, United States Code*.

(D) Transition for those currently receiving benefits. An alien who on the date of the enactment of this Act [enacted Aug. 22, 1996] is lawfully residing in any State and is receiving benefits under such program on the date of the enactment of this Act [enacted Aug. 22, 1996] shall continue to be eligible to receive such benefits until January 1, 1997.

(E) Medicaid exception for certain Indians. With respect to eligibility for benefits for the program defined in paragraph (3)(C) (relating to the medicaid program), section 401(a) [8 USCS § 1611(a)] and paragraph (1) shall not apply to any individual described in subsection (a)(2)(G).

(F) Medicaid exception for aliens receiving SSI. An alien who is receiving benefits under the program defined in subsection (a)(3)(A) (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.

(3) Designated Federal program defined. For purposes of this title, the term "designated Federal program" means any of the following:

(A) Temporary assistance for needy families. The program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act [42 USCS §§ 601 et seq.].

(B) Social services block grant. The program of block grants to States for social services under title XX of the Social Security Act [42 USCS §§ 1397 et seq.].

(C) Medicaid. A State plan approved under title XIX of the Social Security Act [42 USCS §§ 1396 et seq.], other than medical assistance described in section 401(b)(1)(A) [8 USCS § 1611(b)(1)(A)].

HISTORY:

(Aug. 22, 1996, P.L. 104-193, Title IV, Subtitle A, § 402, 110 Stat. 2262; Sept. 30, 1996, P.L. 104-208, Div C, Title V, Subtitle A, § 510, 110 Stat. 3009-673; June 12, 1997, P.L. 105-18, Title II, Ch 6, § 6005(a), 111 Stat. 191; Aug. 5, 1997, P.L. 105-33, Title V, Subtitle D, §§ 5301, 5302(a), (b), 5303(a), (b), 5304, 5305(b), 5306(a), (b), Subtitle F, Ch 4, Subch A, §§ 5562, 5563, 111 Stat. 597, 600, 601, 638; June 23, 1998, P.L. 105-185, Title V, Subtitle A, §§ 503-508, 112 Stat. 578; May 13, 2002, P.L. 107-171, Title IV, Subtitle D, § 4401(a), (b)(1), (c)(1), 116 Stat. 333; May 22, 2008, P.L. 110-234, Title IV, Subtitle A, Part III, § 4115(c)(2)(D), 122 Stat. 1110; June 18, 2008, P.L. 110-246, Title IV, Subtitle A, Part III, § 4115(c)(2)(D), 122 Stat. 1871.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Subsection (a)(2)(A)(i)(V)" of this section, referred to in subsec. (b)(2)(A)(i)(V), (ii)(V), was redesignated by § 503(2) of Act June 23, 1998, P.L. 105-185, and, as so redesignated, now appears as 8 USCS § 1612(a)(2)(A)(v).

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The "Immigration and Nationality Act", referred to in this section, is Act June 27, 1952, ch 477, 66 Stat. 163, which appears generally as 8 USCS §§ 1101 et seq. For full classification of such Act, consult USCS Tables volumes.

"Section 243(h) of such Act", referred to in this section, is § 243 of Act June 27, 1952, which appears as 8 USCS § 1253. Such section was amended by § 307 of Act Sept. 30, 1996, P.L. 104-208, and, as so amended, no longer contains a subsec. (h).

"This title", referred to in this section, is Title IV of Aug. 22, 1996, P.L. 104-193, 110 Stat. 2260, which appears generally as 8 USCS §§ 1601 et seq. For full classification of such Title, consult USCS Tables volumes.

The "effective date of section 307 of division C of Public Law 104-208", referred to in this section, is, with certain exceptions, the first day of the month beginning more than 180 days after the date of enactment of such Act (Act Sept. 30, 1996, P.L. 104-208), as provided by § 309 of such Act, which appears as 8 USCS § 1101 note.

Explanatory notes:

The bracketed word "is" has been inserted in subsec. (b)(2)(A)(i)(V) to indicate the probable intention of Congress to include such word.

Amendments:

1996. Act Sept. 30, 1996 (effective on enactment as provided by § 591 of such Act, which appears as 8 USCS § 1101 note), in subsec. (a)(2)(D)(ii), substituted subcl. (I) for one which read: "(I) In general. With respect to the specified Federal program described in paragraph (3)(B), during the period beginning on the date of enactment of this Act and ending on the date which is 1 year after the date of enactment, the State agency shall, at the time of the recertification, recertify the eligibility of any individual who is receiving benefits under such program as of the date of enactment of this Act and whose eligibility for such benefits may terminate by reason of the provisions of this subsection.".

1997. Act June 12, 1997 (effective as provided by § 6005(b) of such Act, which appears as a note to this section), in subsec. (a)(2)(D)(i), in subcl. (I), substituted "September 30, 1997," for "the date which is 1 year after such date of enactment," and, in subcl. (III), substituted "September 30, 1997," for "the date of the redetermination with respect to such individual".

Act Aug. 5, 1997 (effective as provided § 5308 of such Act, which appears as a note to this section), in subsec. (a)(2), substituted subpara. (A) for one which read:

"(A) Time-limited exception for refugees and asylees. Paragraph (1) shall not apply to an alien until 5 years after the date--

"(i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

"(ii) an alien is granted asylum under section 208 of such Act; or

"(iii) an alien's deportation is withheld under section 243(h) of such Act.".

in subpara. (D)(i), in subcl. (I), substituted "September 30, 1998," for "September 30, 1997," and, in subcl. (III), substituted "September 30, 1998" for "September 30, 1997," and added subparas. (E)-(H); and, in subsec. (b)(2), substituted subpara. (A) for one which read:

"(A) Time-limited exception for refugees and asylees.

(i) An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act until 5 years after the date of an alien's entry into the United States.

"(ii) An alien who is granted asylum under section 208 of such Act until 5 years after the date of such grant of asylum.

"(iii) An alien whose deportation is being withheld under section 243(h) of such Act until 5 years after such withholding.".

and added subparas. (E) and (F).

Such Act further (effective as provided § 5582 of such Act, which appears as 8 USCS § 1367 note), in subsec. (a)(2), in subpara. (A), in cls. (i)(III) and (ii)(III), substituted "section 243(h) of such Act (as in effect immediately before the

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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" and, in subpara. (C), in cl. (i), inserted "and who fulfills the minimum active-duty service requirements of *section 5303A(d) of title 38, United States Code*" and ", 1101, or 1301, or as described in section 107" and, in cl. (iii), inserted "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, United States Code*"; and, in subsec. (b)(2), in subpara. (A), in cls. (i)(III) and (ii)(III), 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" and, in subpara.(C), in cl. (i), inserted "and who fulfills the minimum active-duty service requirements of *section 5303A(d) of title 38, United States Code*" and ", 1101, or 1301, or as described in section 107" and, in cl. (iii), inserted "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, United States Code*".

1998. Act June 23, 1998 (effective 11/1/98 as provided by § 910 of such Act, which appears as a note to this section), in subsec. (a)(2), in subpara. (A), substituted "asylees. With respect to the specified Federal programs described in paragraph (3)" for "asylees. (i) SSI. With respect to the specified Federal program described in paragraph (3)(A)", redesignated subcls. (I)-(V) as cls. (i)-(v), respectively, and deleted former cl. (ii), which read:

"(ii) Food stamps. With respect to the specified Federal program described in paragraph (3)(B), paragraph (1) shall not apply to an alien until 5 years after the date--

"(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

"(II) an alien is granted asylum under section 208 of such Act;

"(III) an alien's deportation is withheld under 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);

"(IV) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or

"(V) an alien is admitted to the United States as an Amerasian immigrant as described in clause (i)(V).", in subpara. (F), in the introductory matter, substituted "specified Federal programs described in paragraph (3)" for "program defined in paragraph (3)(A) (relating to the supplemental security income program)" and, in cl. (ii), inserted "(I) in the case of the specified Federal program described in paragraph (3)(A),", substituted "; and" for a concluding period, and added subcl. (II), in subpara. (G), in the heading, substituted "Exception" for "SSI exception" and, in the introductory matter, substituted "specified Federal programs described in paragraph (3)" for "program defined in paragraph (3)(A) (relating to the supplemental security income program)", and added subparas. (I)-(K).

2002. Act May 13, 2002 (effective on 10/1/2003, as provided by § 4401(b)(3) of such Act, which appears as 7 USCS § 2014 note), in subsec. (a)(2)(J), substituted "who is under" for

"who--

"(i) was lawfully residing in the United States on August 22, 1996; and

"(ii) is under".

Such Act further (effective on 4/1/2003, as provided by § 4401(c)(2) of such Act, which appears as a note to this section), in subsec. (a)(2), added subpara. (L).

Such Act further (effective on 10/1/2002, as provided by § 4405 of such Act, which appears as 2 USCS § 1161 note), in subsec. (a)(2)(F), substituted cl. (i) and "(ii) in the case" for

"(i) was lawfully residing in the United States on August 22, 1996; and

"(ii)

(I) in the case of the specified Federal program described in paragraph (3)(A), is blind or disabled, as defined in section 1614(a)(2) or 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)); and

"(II) in the case".

2008. Act May 22, 2008, which made the same amendments as Act June 18, 2008, was repealed effective 5/22/2008, pursuant to § 4 of Act June 18, 2008, which appears as 7 USCS § 8701 note.

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Act June 18, 2008 (effective 10/1/2008, as provided by § 4407 of such Act, which appears as 2 *USCS* § 1161 note), in subsec. (a), in para. (2)(F)(ii), substituted "section 3(j)" for "section 3(r)", and in para. (3)(B), substituted "section 3(l)" for "section 3(h)".

Other provisions:

Effective date of Sept. 30, 1996 amendment. Act Sept. 30, 1996, P.L. 104-208, Div C, Title V, Subtitle A, § 510, 110 Stat. 3009-673, provides that the amendment made by such § 510 (amending subcl. (I) of subsec. (a)(2)(D)(ii) of this section) is effective as if included in the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (enacted Aug. 22, 1996).

Effective date of June 12, 1997 amendment. Act June 12, 1997, P.L. 105-18, Title II, Ch 6, § 6005(b), 111 Stat. 191, provides: "The amendment made by subsection (a) [amending subsec. (a)(2)(D)(i)(I), (III) of this section] shall be effective as if included in the enactment of section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [enacted Aug. 22, 1996]."

Effective date of Aug. 5, 1997 amendments. Act Aug. 5, 1997, P.L. 105-33, Title V, Subtitle D, § 5308, 111 Stat. 603, provides: "Except as otherwise provided, the amendments made by this subtitle [for full classification, consult USCS Tables volumes] shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [enacted Aug. 22, 1996]."

Effective date of June 23, 1998 amendments. Act June 23, 1998, P.L. 105-185, Title V, Subtitle A, § 510(b), 112 Stat. 580, provides: "The amendments made by sections 503 through 509 [amending 8 *USCS* §§ 1612(a)(2) and 1613(d)] take effect on November 1, 1998."

Effective date of amendments made by § 4401(c)(1) of Act May 13, 2002. Act May 13, 2002, P.L. 107-171, Title IV, Subtitle D, § 4401(c)(2), 116 Stat. 334, provides: "The amendment made by paragraph (1) [adding subsec. (a)(2)(L) of this section] takes effect on April 1, 2003."

NOTES:

Research Guide:

Am Jur:

3C Am Jur 2d, Aliens and Citizens §§ 2175, 2177, 2178, 2195.

Immigration:

3 *Immigration Law and Procedure* (rev. ed.), ch 34, Procedures for Refugee Admission, Asylum, Withholding of/Restriction on Removal, and CAT Relief § 34.03.

Texts:

Cohen's *Handbook of Federal Indian Law* (Matthew Bender), ch 22, Government Services for Indians § 22.06.

Law Review Articles:

Broder. Preserving services for immigrants: state and local implementation of the new welfare and immigration laws, *30 Clearinghouse Rev* 964, February 1997.

Welfare reform--treatment of legal immigrants--Congress authorizes states to deny public benefits to noncitizens and excludes legal immigrants from federal aid programs.--Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, *110 Harv L Rev* 1191, March 1997.

Interpretive Notes and Decisions:

1. Constitutionality 2. Miscellaneous

1. Constitutionality

Permanent resident aliens who received food stamps prior to effective date of 8 USCS § 1612, and whose applications for U.S. citizenship were pending with INS, do not have property interest therein protected by due process. *Shvartsman v Apfel* (1998, CA7 Ill) 138 F3d 1196, 40 FR Serv 3d 6.

8 USCS § 1612 does not violate equal protection under Fifth Amendment. *Rodriguez by Rodriguez v United States* (1999, CA11 Fla) 169 F3d 1342, 60 Soc Sec Rep Serv 523, 12 FLW Fed C 589.

Statutory disqualification of legal aliens from receiving benefits is not unconstitutional. *City of Chicago (Alvarez) v Shalala* (1999, CA7) 189 F3d 598, cert den (2000) 529 US 1036, 146 L Ed 2d 345, 120 S Ct 1530.

"Rational basis" standard applies to determine constitutionality of statute. *City of Chicago (Alvarez) v Shalala* (1999, CA7) 189 F3d 598, cert den (2000) 529 US 1036, 146 L Ed 2d 345, 120 S Ct 1530.

In determining permanent resident alien's eligibility for food stamps, 8 USCS §§ 1612(a)(2)(B) and 1645 do not irrationally differentiate between marriages that end in divorce and those that end in death; thus, statutes do not violate equal protection component of Due Process Clause of Fifth Amendment. *Aleman v Glickman* (2000, CA9 Cal) 217 F3d 1191, 2000 CDOS 5869, 2000 Daily Journal DAR 7837.

Permanent resident aliens' constitutional challenge to Welfare Reform Act (8 USCS § 1612), which eliminates their eligibility for food stamps, must fail, where Act falls within Congress's plenary authority over regulation of aliens, because Act is rationally related to legitimate government interests in giving U.S. citizens highest priority for limited welfare funds, and not making welfare benefits attraction to immigration. *Kiev v Glickman* (1998, DC Minn) 991 F Supp 1090.

In connection with action by aliens asserting violations of 42 USCS § 1983, 42 USCS § 1396a(a)(3) and (8), and Due Process and Equal Protection Clauses of Fourteenth Amendment, temporary restraining order preventing implementation of Colo. Rev. Stat. § 26-4-301, which repealed optional coverage under 8 USCS § 1612(b)(2) of legal immigrants in Medicaid program, was granted because balance of factors weighed in favor of claimants. *Soskin v Reinertson* (2003, DC Colo) 260 F Supp 2d 1055, injunction den (2003, DC Colo) 257 F Supp 2d 1320, affd in part and revd in part, remanded (2004, CA10 Colo) 353 F3d 1242 (criticized in *Ehrlich v Perez* (2006) 394 Md 691, 908 A2d 1220).

Humanitarian immigrants failed to state claim against Social Security Administration for violation of Due Process Clause based on termination of immigrants' supplemental security income (SSI) benefits after seven years as required under 8 USCS § 1612(a)(2)(A); time limitation is part of substantive definition of humanitarian immigrants' entitlement to SSI benefits, so there is no legitimate claim of entitlement to benefits past seven-year limitation that would establish protected property interest. *Kaplan v Chertoff* (2007, ED Pa) 481 F Supp 2d 370 (criticized in *Eldeeb v Chertoff* (2007, MD Fla) 21 FLW Fed D 18) and (criticized in *Hamandi v Chertoff* (2008, DC Dist Col) 2008 US Dist LEXIS 36400).

Humanitarian immigrants sufficiently alleged violations of Equal Protection Clause and Administrative Procedure Act (APA) by Citizenship and Immigration Services (CIS) and FBI arising from delays in processing applications for legal permanent residency status and naturalization, which led to termination of immigrants' Social Security supplemental security income benefits under 8 USCS § 1612(a)(2)(A); immigrants stated equal protection claim based on policy of expediting applications in some CIS offices but not others, and they sufficiently alleged that FBI and CIS had violated APA by unreasonably delaying processing of immigrants' applications. *Kaplan v Chertoff* (2007, ED Pa) 481 F Supp 2d 370 (criticized in *Eldeeb v Chertoff* (2007, MD Fla) 21 FLW Fed D 18) and (criticized in *Hamandi v Chertoff* (2008, DC Dist Col) 2008 US Dist LEXIS 36400).

2. Miscellaneous

Section 5566(b) of Balanced Budget Act of 1997 (Act Aug. 5, 1997, P.L. 105-33, 111 Stat. 251 at 639), which provides that it is sense of Congress that Hmong veterans who fought on behalf of United States during Vietnam conflict and who have been lawfully admitted to United States for permanent residence should be considered veterans for purposes of continuing certain welfare benefits consistent with exceptions provided other noncitizen veterans under 8 USCS § 1612, does not restore food stamp benefits to such Hmong veterans. *Chong Yia Yang v California Dep't of Social Servs.* (1999, CA9 Cal) 183 F3d 953, 99 CDOS 4998, 99 Daily Journal DAR 6499.

8 USCS § 1612

State legislation that terminated Medicaid benefits to lawful alien recipients ostensibly complied with Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 USCS §§ 1601 et seq., as Colorado had not eliminated coverage to any of mandatory groups enumerated in 8 USCS § 1612(b)(2) when it enacted S.B. 03-176, 2003 Gen. Assem., Reg. Sess. (Colo. 2003). *Soskin v Reinertson* (2003, DC Colo) 257 F Supp 2d 1320, affd in part and revd in part, remanded (2004, CA10 Colo) 353 F3d 1242 (criticized in *Ehrlich v Perez* (2006) 394 Md 691, 908 A2d 1220).

On review pursuant to 42 USCS § 405(g), Social Security claimant was found to be eligible for Supplemental Security Income benefits if he were found disabled because claimant's adjustment to lawful permanent resident status, under Nicaraguan Adjustment and Central American Relief Act, 8 USCS § 1255 n., constituted "special status subsequently established under immigration laws for nationals of Cuba or Haiti" and, thus, qualified him, under § 501(e)(1), part of Refugee Education Assistance Act, 8 USCS § 1522 n., to receive benefits under 8 USCS § 1611(a), part of Personal Responsibility and Work Opportunity Reconciliation Act, as qualified alien under 8 USCS § 1641(b)(7), although qualification was limited to seven years under 8 USCS § 1612(a)(2). *Nodarse v Barnhart* (2004, SD Fla) 319 F Supp 2d 1333, 17 FLW Fed D 601, motion gr, in part, motion den, in part, clarified, affd (2004, SD Fla) 2004 US Dist LEXIS 9812.