



LEXSTAT 8 U.S.C. 1631(E)

UNITED STATES CODE SERVICE
Copyright © 2008 Matthew Bender & Company, Inc.
a member of the LexisNexis Group (TM)
All rights reserved.

*** CURRENT THROUGH PL 111-10, APPROVED 3/20/2009 ***
*** WITH A GAP OF PL 111-8 ***

TITLE 8. ALIENS AND NATIONALITY
CHAPTER 14. RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS
ATTRIBUTION OF INCOME AND AFFIDAVITS OF SUPPORT

Go to the United States Code Service Archive Directory

8 USCS § 1631

§ 1631. Federal attribution of sponsor's income and resources to alien

(a) In general. Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 403 [8 USCS § 1613]), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act [8 USCS § 1183a] (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) Duration of attribution period. Subsection (a) shall apply with respect to an alien until such time as the alien--

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act [8 USCS §§ 1421 et seq.]; or

(2) (A) 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 (B) 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) Review of income and resources of alien upon reapplication. Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a).

(d) Application.

(1) If on the date of the enactment of this Act [enacted Aug. 22, 1996], a Federal means-tested public benefits program attributes a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after the date of the enactment of this Act [enacted Aug. 22, 1996].

(2) If on the date of the enactment of this Act [enacted Aug. 22, 1996], a Federal means-tested public benefits program does not attribute a sponsor's income and resources to an alien in determining the alien's eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after the date of the enactment of this Act [enacted Aug. 22, 1996].

(3) This section shall not apply to assistance or benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) to the extent that a qualified alien is eligible under section 402(a)(2)(J) [8 USCS § 1612(a)(2)(J)].

(e) Indigence exception.

(1) In general. For an alien for whom an affidavit of support under section 213A of the Immigration and Nationality Act [8 USCS § 1183a] has been executed, if a determination described in paragraph (2) is made, the amount of income and resources of the sponsor or the sponsor's spouse which shall be attributed to the sponsored alien shall not exceed the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date.

(2) Determination described. A determination described in this paragraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be 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. The agency shall notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved.

(f) Special rule for battered spouse and child.

(1) In general. Subject to paragraph (2) and notwithstanding any other provision of this section, subsection (a) shall not apply to benefits--

(A) during a 12 month period if the alien demonstrates that (i) the alien 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 to such battery or cruelty, (ii) the alien's child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien when the spouse or parent consented to and the alien did not actively participate in such battery or cruelty, or (iii) the alien is a child whose parent (who resides in the same household as the alien child) 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 to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii) (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the public benefits applied for; and

(B) after a 12 month period (regarding the batterer's income and resources only) if the alien demonstrates that such battery or cruelty under subparagraph (A) has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service, and that such battery or cruelty (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits.

(2) Limitation. The exception under paragraph (1) shall not apply to benefits for 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 who was subjected to such battery or cruelty.

HISTORY:

(Aug. 22, 1996, P.L. 104-193, Title IV, Subtitle C, § 421, 110 Stat. 2270; Sept. 30, 1996, P.L. 104-208, Div C, Title V, Subtitle C, §§ 551(b)(1), 552, 110 Stat. 3009-679, 3009-680; Aug. 5, 1997, P.L. 105-33, Title V, Subtitle F, Ch 4, Subch B, § 5571(d), 111 Stat. 641; May 13, 2002, P.L. 107-171, Title IV, Subtitle D, § 4401(b)(2)(B), 116 Stat. 333.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"Section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996", referred to in this section, is § 551(a) of Act Sept. 30, 1996, P.L. 104-208, which amended 8 USCS § 1183a.

Amendments:

8 USCS § 1631

1996. Act Sept. 30, 1996 (applicable as provided by § 551(c) of such Act, which appears as *8 USCS § 1183a* note), in subsec. (a)(1), inserted "and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996".

Such Act further (effective on enactment as provided by § 591 of such Act, which appears as *8 USCS § 1101* note), added subsecs. (e) and (f).

1997. Act Aug. 5, 1997 (effective as provided § 5582 of such Act, which appears as *8 USCS § 1367* note), in subsec. (f)(1)(A), deleted "or" preceding "(ii) the alien's child", and substituted "or (iii) the alien is a child whose parent (who resides in the same household as the alien child) 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 to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii)" for "and the battery or cruelty described in clause (i) or (ii)".

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. (d), added para. (3).

Transfer of functions:

For abolition of the Immigration and Naturalization Service, transfer of functions, and treatment of related references, see transfer of functions note under *8 USCS § 1551*.

NOTES:**Related Statutes & Rules:**

This section is referred to in *8 USCS §§ 1371, 1624, 1641*.

Research Guide:**Am Jur:**

3A Am Jur 2d, Aliens and Citizens § 21.

3C Am Jur 2d, Aliens and Citizens §§ 2181-2183, 2194.

1108GW

***** Print Completed *****

Time of Request: Tuesday, March 31, 2009 16:55:08 EST

Print Number: 1843:149098374

Number of Lines: 112

Number of Pages:

Send To: FATA, SORAYA
LEGAL MOMENTUM
395 HUDSON ST FL 5
NEW YORK, NY 10014-3669