

LEXSTAT 8 USC 1641

UNITED STATES CODE SERVICE  
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TITLE 8. ALIENS AND NATIONALITY  
CHAPTER 14. RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS  
GENERAL PROVISIONS

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*8 USCS § 1641 (2004)*

§ 1641. Definitions

(a) In general. Except as otherwise provided in this title, the terms used in this title have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [*8 USCS § 1101(a)*].

(b) Qualified alien. For purposes of this title, 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,
- (2) an alien who is granted asylum under section 208 of such Act [*8 USCS § 1158*],
- (3) a refugee who is admitted to the United States under section 207 of such Act [*8 USCS § 1157*],
- (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [*8 USCS § 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 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),
- (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [*8 USCS § 1153(a)(7)*] as in effect prior to April 1, 1980; 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 [*8 USCS § 1522 nt.*]).

(c) Treatment of certain battered aliens as qualified aliens. For purposes of this title, 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 USCS § 1154(a)(1)(A)(ii), (iii), or (iv)*],
    - (ii) classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act [*8 USCS § 1154(a)(1)(B)(ii) or (iii)*],
    - (iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act [*8 USCS § 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 [*8 USCS § 1101 note*]).

(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 USCS § 1154(a)(1)(A)(i)], or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act [8 USCS § 1154(a)(1)(B)(i)];

(v) cancellation of removal pursuant to section 240A(b)(2) of such Act [8 USCS § 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); or

(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 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).

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 421(f) [8 USCS § 1631(f)], 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.

**HISTORY:** (Aug. 22, 1996, P.L. 104-193, Title IV, Subtitle D, § 431, 110 Stat. 2274; Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle A, § 308(g)(8)(E), Title V, Subtitle A, § 501, 110 Stat. 3009-624, 3009-670; Aug. 5, 1997, P.L. 105-33, Title V, Subtitle D, § 5302(c)(3), Subtitle F, Ch 4, Subch A, § 5562, Subch B, § 5571(a)-(c), Subch C, § 5581(b)(6), (7), 111 Stat. 599, 638, 640, 643.)

(As amended Oct. 28, 2000, P.L. 106-386, Div B, Title V, § 1508, 114 Stat. 1530.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

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.

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

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

Amendments:

1996. Act Sept. 30, 1996 (effective on enactment as provided by § 591 of such Act, which appears as 8 USCS § 1101 note), added subsec. (c).

Such Act further (effective as provided by § 309(a) of such Act, which appears as 8 USCS § 1101 note), in subsec. (c)(1)(B)(iii), 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".

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1997. Act Aug. 5, 1997 (effective as provided § 5308 of such Act, which appears as 8 *USCS* § 1612 note), in subsec. (b), in para. (5), deleted "or" following the concluding comma, in para. (6), substituted "; or" for a concluding period, and added para. (7).

Such Act further (effective as provided § 5582 of such Act, which appears as 8 *USCS* § 1367 note), in subsec. (b)(5), 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 subsec. (c), in para. (1), in subpara. (A), substituted "agency providing such benefits)" for "Attorney General, which opinion is not subject to review by any court)" and, in subpara. (B), in cl. (iii), substituted "(as in effect prior to April 1, 1997)," for ", or", in cl. (iv), deleted "or" following the concluding semicolon, and added cl. (v), in para. (2), in subpara. (A), substituted "agency providing such benefits)" for "Attorney General, which opinion is not subject to review by any court)" and, in subpara. (B), substituted "subparagraph (B) of paragraph (1)" for "clause (ii) of subparagraph (A)" and substituted "; or" for a concluding period, and added para. (3); and, in the concluding matter, added the paragraph beginning "After consultation with the Secretaries of Health and Human Services . . .".

2000. Act Oct. 28, 2000, in subsec. (c)(1)(B), substituted cl. (iii) for one which read: "(iii) cancellation of removal under section 240A of such Act (as in effect prior to April 1, 1997),".

**NOTES:**

## CODE OF FEDERAL REGULATIONS

Immigration and Naturalization Service, Department of Justice--Immigrant petitions, 8 CFR Part 204.

## RESEARCH GUIDE

## Am Jur:

*3C Am Jur 2d, Aliens and Citizens* § § 2637-2639, 2641, 2642, 2644, 2656, 2658, 2659.

## Immigration:

4 *Immigration Law and Procedure* (Matthew Bender rev. ed.), Preliminary Visa Petition Requirements for Immediate Relatives and Family-Sponsored Preference Groups § 41.05.

## 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.