



DEFINING THE TERM 'QUALIFIED ALIEN'

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 defined certain immigrants as 'qualified aliens.' Eligibility for certain federal needs-based benefit programs, such as SSI, SNAP benefits, TANF, Medicaid, Public Housing, are predicated on whether an immigrant is classified as a 'qualified alien.'



NOTE

In addition to 'qualified alien' criteria, some federal benefit programs have additional criteria that a 'qualified alien' must meet to qualify for the benefit.

1. Lawful Permanent Residents (LPR)

A lawful permanent resident (LPR) is a foreign national who has been accorded the privilege of permanently residing in the U.S. Such individuals are granted a Permanent Resident Card, often referred to as a 'green card.' Immigrants may obtain LPR status through family based immigration, employment based immigration, diversity immigrant visa program, as an asylee or refugee, among other ways. LPR is the only immigration status from which an immigrant can apply for U.S. citizenship.

2. Refugees

A refugee is a foreign national who flees his/her country due to a well-founded fear of persecution. Persecution must be based on race, religion, nationality, political opinion, or membership in a social group. Refugees generally apply for admission to the U.S. in refugee camps or designated processing sites outside their home country. However, in some instances refugees may apply for refugee status within their home country, for example, Cuba and Vietnam.

3. Conditional Entrants

Before "refugee" status was established in U.S. law by the Refugee Act of 1980, nationals of communist countries or of certain countries in the Middle East were admitted as "conditional entrants," which is a status similar to refugee status. This classification has not been used since 1980.

4. Asylees

An asylee is a foreign national who flees his/her country due to a well-founded fear of persecution. As with refugees, persecution must be based on race, religion, nationality, political opinion, or membership in a social group. The difference between refugees and asylees is that asylees apply for protected status after they have entered the U.S. Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 the asylum seeker must file an asylum application within one year of arriving in the U.S.



5. Persons Granted Withholding of Deportation/Removal

A person granted withholding of deportation/removal is a foreign national who is in deportation or removal proceedings who demonstrates that s/he faces a “clear probability of persecution” in his/her home country. The clear probability standard is significantly stricter than the well-founded fear of persecution required for asylum eligibility.

Because of withholding's stricter statutory standard, an immigration judge would consider the application for withholding only after reaching a negative determination on an asylum application. Immigration judges can deny asylum applications based on discretionary factors, such as fraudulently entering the U.S. In addition, automatic denial for asylum would result if the applicant committed certain statutory crimes.

6. Cuban/Haitian Entrants

A Cuban or Haitian national is a “Cuban or Haitian entrant” if s/he meets the definition contained in the Refugee Education Assistance Act of 1980. Cuban/Haitian entrants are treated as refugees for purposes of public benefit eligibility. Section 501(e) of the Refugee Education Assistance Act, to which PRWORA refers, defines a Cuban/Haitian Entrant as:

- Category 1: Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for national of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; or
- Category 2: Any other national of Cuba or Haitian who was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act, and any other national of Cuba or Haiti who was paroled into the U.S. and has not acquired any other status under the INA and who is the subject of removal proceedings under the Immigration and Nationality Act; or has an application for asylum pending with the USCIS; and with respect to whom a final, non-appealable, and legally enforceable order of removal has not been entered.

7. Amerasians

An Amerasian is a child of a Vietnamese parent and U.S. citizen parent born during the years of U.S. conflict in that region, after December 31, 1950 and before October 22, 1982. Amerasians are treated as refugees for purposes of public benefit eligibility.

8. Persons Paroled into the U.S.

The United States Citizenship Immigration Services (USCIS) has discretionary authority to permit certain foreign nationals or groups to enter the U.S. "for emergent reasons or reasons deemed strictly in the public interest" and to grant such individuals parolee status. Parolee status may be granted for humanitarian, legal, or medical reasons. Only parolees admitted for at least one year are considered 'qualified aliens.'



9. Certain Battered Spouses and Children

Certain spouses and children of U.S. citizens or LPRs who have been battered or subjected to extreme cruelty in the U.S. and otherwise satisfy the requirements of 8 USC 1641(c) are considered 'qualified aliens' for public benefits purposes. Such individuals can apply for LPR status through an I-360 self-petition. Self-petitioning allows an battered spouse or child without documentation, married or a child of a U.S. citizen or LPR to apply for legal status on behalf of himself/herself without the sponsorship of the abusing spouse or parent.

A self-petitioning battered spouse may include her/his non-citizen child (unmarried child under the age of 21) in the petition, even if the child is not battered and/or is not the child of the abusing spouse.

Go to <http://otda.ny.gov/policy/directives/2006/INF/06-INF-14.pdf> for NYS' Administrative Directive on *Battered Aliens Eligibility for Public Benefits*.

For assistance with assisting battered immigrants with a self-petition, contact Sanctuary for Families' Center for Battered Women at (212) 349-6009 x 246.

10. Victims of Trafficking and Violence Protection Act of 2000

Congress created the "T" and "U" non-immigrant classifications with the passage of the Victims of Trafficking and Violence Protection Act of 2000. Victims of trafficking are permitted to apply for permanent residence after 3 years.

T" Visas – A Qualified Alien

Immigrants certified by the U.S. Department of Health and Human Services to be a 'victim of a severe form of trafficking of persons in accordance with Section 107 of the Victims of Trafficking and Violence Protection Act' or who have been granted a 'T visa' or who have a grant of 'continuous residence.' Children, parents and siblings of trafficking victims are also eligible for a 'T visa' under certain circumstances.

Although not listed as a 'qualified alien' under PRWORA, individuals granted a 'T visa' are eligible for benefits to the same extent as aliens admitted to the U.S. as refugees for the purposes of public benefit eligibility.

For victims of trafficking who have not yet received their 'T visa' or have not been granted continuous residence, the Office of Refugee Resettlement (ORR) is the sole authority that can certify them as trafficking victims and can provide them with a certification letter, which the individual must submit to the local agency administering the public benefits when making an application.

For more information about ORR services call the National Human Trafficking Resource Center (NHTRC) at 1-888-373-7888, or go to: <https://polarisproject.org/national-human-trafficking-hotline>.

"U" Visas – Not a Qualified Alien

"U" visas are designed to assist law enforcement to investigate and prosecute cases of domestic violence, sexual assault and other crimes. While U visa holders are not considered 'qualified aliens,' they are considered 'permanently residing under color.'



11. Iraqi and Afghan Special Immigrants

Afghan or Iraqi nationals granted special immigrant visa (SIV) are generally interpreters and/or translators who performed work for the U.S. Armed Forces under section 101 (a) (27) of the Immigration and Nationality Act.

Although not listed as a 'qualified alien' under PRWORA, Iraqi and Afghan Special Immigrants are treated as refugees for purposes of public benefit eligibility.