



George E. Pataki
Governor

NEW YORK STATE
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001

Brian J. Wing
Commissioner

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 97 ADM-25

TO: Commissioners of
Social Services

DIVISION: Temporary
Assistance

DATE: December 19, 1997

SUBJECT: Food Stamp Eligibility of Non-Citizens

SUGGESTED DISTRIBUTION:	Income Maintenance Directors Food Stamp Directors WMS Coordinators CAP Coordinators Staff Development Coordinators
CONTACT PERSON:	Region I (518) 473-0332; Region II (518) 474-9344; Region III (518) 474-9307; Region IV (518) 474-9300; Region V (518) 473-1469; Region VI (212) 383-1658
ATTACHMENTS:	Attachment A - Food Stamp Alien Eligibility Requirements - available on-line Attachment B - Establishing Qualifying Work Quarters - available on-line Attachment C - Alien Documentation - available on-line Attachment D - Documentation for Parolees, Conditional Entrants, and Battered Spouses - available on-line

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
97 ADM-5		387.1, 387.8(b), 387.9(a) (2) and 387.14	PRWORA, (PL 104-193), Title V of the Omnibus Consolidated Appropriations Act (PL 104-208) and the Balanced Budget Act of 1997		96 LCM-86 97 LCM-21 GIS 96 TA/ DC039 WMS Co-Ord Ltr., dtd 8/1/97

I. PURPOSE

The purpose of this Administrative Directive (ADM) is to provide social services districts with additional information on the food stamp eligibility of non-citizens. The information and instructions provided in this ADM update the information and instructions previously provided in 96 LCM-86, GIS 96 TA/DC039 (issued on October 2, 1996), 97 LCM-21, 97 ADM-5, and the WMS Coordinator Letter dated August 1, 1997.

II. BACKGROUND

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193, was signed into law by the President on August 22, 1996. Among its many provisions, PRWORA makes many non-citizens ineligible for food stamps even though they are currently in the United States legally.

As described in GIS 96 TA/DC039, Section 510 of the Omnibus Consolidated Appropriations Act (Title V, The Illegal Immigration Reform and Immigrant Responsibility Act of 1996), Public Law 104-208, postponed the implementation date of the alien provisions as they apply to recipients until April 1, 1997.

On August 5, 1997, the President signed into law the Balanced Budget Act of 1997, Public Law 105-33. This Act included a number of provisions which affected aliens seeking food stamp benefits. Specifically, the Act clarified certain provisions of PRWORA and added Cuban/Haitian Entrants and certain Amerasians to the groups of legal aliens who can qualify to participate in the food stamp program.

Basic Policy

To be eligible to participate in the Food Stamp program, a person must be a citizen of the United States or be an eligible alien as set forth in this ADM.

A. Ineligible Alien (Department Regulation 387.1).

An ineligible alien is an alien who is not a citizen of the United States and does not meet the eligible alien requirements set forth in this ADM. An alien who is a qualified alien, as set forth below, is not eligible to participate in the Food Stamp program unless otherwise provided for in subsection B of this section.

1. Qualified Alien

A qualified alien is an alien who at the time the alien applies for, receives or attempts to receive food stamp benefits, is:

- (a) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
- (b) an alien who is granted asylum under section 208 of the Immigration and Nationality Act;
- (c) a refugee who is admitted to the United States under section 207 of the Immigration and Nationality Act;
- (d) an alien who is paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year;
- (e) an alien whose deportation is being withheld under section 241(b)(3) or section 243(h) of the Immigration and Nationality Act;
- (f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act as in effect prior to April 1, 1980; or
- (g) an alien who is a battered spouse and dependents of such battered spouse meeting the criteria of Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;
- (h) an alien who is granted status as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
- (i) an alien who is admitted to the United States as an Amerasian immigrant pursuant to sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (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).

B. Eligible Aliens (Department Regulation 387.9(a)(2))

Only certain qualified aliens can be eligible to participate in the Food Stamp program. These eligible aliens, which are listed below, will henceforth be referred to in this ADM as Specially Qualified Aliens.

Specially Qualified Aliens

1. Aliens with Time-Limited Eligibility

The following aliens are eligible for food stamps until five years after the date:

- (a) the alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;
- (b) the alien is granted asylum under section 208 of the Immigration and Nationality Act; or
- (c) the alien's deportation is withheld under section 241(b)(3) or section 243(h) of the Immigration and Nationality Act; or
- (d) the alien is granted status as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
- (e) the alien is admitted to the United States as an Amerasian immigrant pursuant to sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (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).

2. Certain Permanent Resident aliens with 40 qualifying quarters of work

A permanent resident alien is eligible for food stamps if the alien is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act; and

- (a) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters; and
- (b) entered the United States before August 22, 1996;

or

entered the United States on or after August 22, 1996 and has lived in the United States at least 5 years since the date of entry into the United States in a qualified alien status.

3. Lawfully residing aliens who are veterans or are on active duty in the Armed Forces of the United States

A qualified alien lawfully residing in this State is eligible for food stamps if the alien:

- (a) is a veteran with a discharge characterized as an honorable discharge and not on account of alienage; or
- (b) is on active duty, other than duty for training, in the Armed Forces of the United States; or
- (c) is the spouse or unmarried dependent child of an individual described in (a) and (b) of this paragraph.

The requirements for specially qualified aliens are discussed in more detail in subsections C., D., and E. of Section IV of this ADM.

III. PROGRAM IMPLICATIONS

As a result of PRWORA, social services districts must identify non-citizens and determine whether such individuals can document that they qualify for food stamp benefits as specially qualified aliens.

Social services districts must have completed the recertifications of all food stamp households containing non-citizens by August 22, 1997.

IV. REQUIRED ACTION

A. Required Implementation Dates

1. Implementation for New Applicants

As stated in 96 LCM-86, the alien eligibility provisions must be applied to all new food stamp applicants as of September 21, 1996. Alien applicants who cannot document that they are specially qualified aliens must be denied food stamp benefits.

2. Implementation for Recipients

As described in GIS 96 TA/DC039, the Omnibus Consolidated Appropriations Act postponed the implementation of the alien eligibility provisions described in 96 LCM-86 for aliens in receipt of food stamp benefits on August 22, 1996.

Non-citizens who were receiving food stamps on August 22, 1996 (recipients) and fail to document that they fall into one of the specially qualified alien categories must have had their food stamp benefits terminated no earlier than April 1, 1997 and no later than August 22, 1997. Certification periods for affected recipient households must have been scheduled accordingly.

As described in 97 ADM-5, social services districts had the option of extending the certification periods of certain non-citizens up to August 22, 1997.

The food stamp benefits of former recipients whose benefits were terminated due to the application of the alien eligibility provisions of PRWORA before April 1, 1997 must have their food stamp benefits restored for periods prior to April 1, 1997.

A non-citizen who was a food stamp recipient on August 22, 1996, subsequently went off the food stamp program for a reason other than alien status, and later reapplied before April 1, 1997, should not have been subjected to the new alien provisions at that time. That alien is considered a food stamp recipient and was not subject to the new alien eligibility provisions until April 1, 1997.

If a non-citizen submitted a food stamp application before August 22, 1996, but the eligibility determination was completed after August 22, 1996, the applicant would not be subject to the new alien eligibility provisions until April 1, 1997. Since the individual would be eligible for food stamp benefits back to the date of application, that individual would be considered to be a food stamp recipient on August 22, 1996.

B. Required Actions

1. Notification For Both Applicants and Recipients

Districts must inform non-citizen food stamp applicants and recipients about the new alien eligibility provisions by including the "Food Stamp Alien Eligibility Requirements" notice, ATTACHMENT A of this ADM, as part of the application and recertification packages. Districts must also post this notice.

2. For Food Stamp Applicants

Districts must:

- a. inform non-citizens of the alien eligibility provisions, and

- b. apply the new alien provisions to determine food stamp eligibility of non-citizens that apply for food stamps.

3. **For Food Stamp Recipients**

97 ICM-21 instructed districts that, for recertifications completed prior to April 1, 1997, the Pre-PFWORA alien eligibility rules were to be applied.

For recertification on or after April 1, 1997, districts must use the alien eligibility provisions of PFWORA to determine continuing food stamp eligibility.

As described in 97 ADM-5, the certification periods of certain non-citizens could have been extended, thereby postponing application of the new alien eligibility provisions to as late as August 1997.

C. **Aliens With Time-Limited Eligibility (5 years)**

1. **Definition and Basic Policy**

Aliens with time-limited eligibility are eligible for participation in the Food Stamp program as Specially Qualified Aliens until five years after the date:

- (a) the alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;
- (b) the alien is granted asylum under section 208 of the Immigration and Nationality Act; or
- (c) the alien's deportation is withheld under section 241(b)(3) or section 243(h) of the Immigration and Nationality Act; or
- (d) the alien is granted status as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
- (e) the alien is admitted to the United States as an Amerasian immigrant pursuant to sections 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (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).

After the five year period expires, such aliens are ineligible for food stamps unless they become a United States citizen or meet the requirements of subsections D. (40 qualifying quarters) or E. (veteran) of section IV. of this ADM.

The five year period of food stamp eligibility continues even if the alien's status is adjusted to lawfully admitted for permanent residence (LAPR) status during the five year period. Such a change in alien status will usually be indicated on the alien's I-551, Resident Alien card. (See ATTACHMENT C for information on documenting this changed status.)

2. Examples

1. An alien who provides documentation which indicates that asylee status was granted in March 1989 is not eligible for food stamps as an asylee because the 5 year period of eligibility expired at the end of February, 1994. This individual's application for food stamps would be immediately denied.
2. If the alien in Example #1 was a food stamp recipient in March 1997, the alien would become ineligible when the alien's certification period ends (between April 1, 1997 and August 22, 1997).
3. An alien classified as permanent resident applies for food stamps in March 1997. The alien documents entry into the United States as a refugee in November 1994. This alien's status was changed to LAPR in November 1996. This individual remains eligible for food stamps until the end of October 1999, five years after entry into the United States as a refugee.

3. Systems Support

For areas outside New York City (NYC), to aid in tracking alien eligibility and the 5 years of potential food stamp eligibility, WMS edits have been changed to allow entries in the following fields for Case Types 31 (NPA-FS), 32 (FS-MIX) and 60 (HEAP):

Citizenship Code, Alien Number, Date of Entry into United States, Nationality Code and Resettlement Agency Code.

NYC WMS support to aid in tracking alien eligibility is still under development.

D. Aliens Lawfully Admitted for Permanent Residence
with Qualifying Quarters of Coverage

1. Definition and Basic Policy

A permanent resident alien is eligible to participate in the Food Stamp program as a Specially Qualified Alien if the alien:

- (a) is lawfully admitted to the United States for permanent residence (IAPR) under the Immigration and Nationality Act (Such aliens are called permanent resident aliens and possess what is commonly called a "green card". See ATTACHMENT C for information on documenting this status.); and
- (b) has earned 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters; and
- (c) entered the United States before August 22, 1996;

or

entered the United States on or after August 22, 1996 and has lived in the United States at least 5 years since their date of entry into the United States in a qualified alien status.

These entry dates mean that a IAPR alien who enters the United States on August 22, 1996 or later cannot be eligible based on having 40 qualifying quarters until 5 years after the alien's date of entry into the United States as a qualified alien or until 5 years after first gaining a qualified alien status.

In determining the number of qualifying quarters of coverage set forth in subparagraph (b) above, an alien is credited with the following:

- (1) all qualifying quarters of coverage worked by the alien;
- (2) all qualifying quarters of coverage worked by a parent of such alien before the alien reached age 18; and
- (3) all qualifying quarters worked by the spouse of such alien during their marriage and the alien remains married to such spouse or such spouse is deceased.

However, no qualifying quarters of coverage may be credited to an alien for any period after December 31, 1996 if such alien, parents or spouse received any Federal means-tested public benefit (as defined in #4 below) during the period for which such qualifying quarter of coverage is credited.

Thus an alien may earn a qualifying quarter by either working or by being credited with a qualifying quarter worked by another. The same quarter can be credited to the person who worked as well as other family members eligible to be credited with such quarter.

2. Who Can Be Credited With Work Quarters From Family Members

An alien can be credited with qualifying quarters earned by other family members. The following guidelines must be used to determine which family members can contribute qualifying quarters to the alien.

- a. An alien who is married can be credited with work quarters actually worked, and any quarters worked by a spouse during the marriage. This applies so long as the alien remains married to or separated from the spouse, or, if the spouse is deceased, was married to the spouse at the time of the spouse's death.

The alien loses all of their spouse's work quarters when divorced. The loss of the spouse's quarters must be used to determine FS eligibility when eligibility is redetermined due to a reported change during the certification period but no later than the first recertification subsequent to the divorce.

- b. An alien under age 18 can be credited with work quarters worked by both parents (including quarters earned prior to the child's birth), whether the parent is an alien or not, and any of the alien's own quarters worked.
- c. An alien over age 18 can be credited with work quarters worked by both parents (including quarters earned prior to the child's birth) before that alien reached age 18, whether the parent is an alien or not, and any of the alien's own quarters worked.

3. Examples Of Crediting Quarters

1. If an alien has earned 20 qualifying quarters, and his spouse has earned 20 qualifying quarters over the same time span, that alien can be credited with 40 qualifying quarters in as few as 5 years. If the spouse is also an alien, the spouse can also be credited with 40 qualifying quarters.
2. If a LAPR alien is divorced from her husband, she cannot be credited with any of the qualifying quarters her former husband may have earned while they were married or since the divorce. If she qualified for food stamps by being credited with qualifying quarters from her former spouse, she must have her eligibility based on alien status redetermined at the first recertification subsequent to the divorce.

If the LAPR is separated, she would be credited with all of the quarters her spouse earned during the marriage and since the separation.

4. Qualifying Quarters and Federal Means-Tested Public Benefit

PRWORA established a special limitation on quarters worked after December 31, 1996. Quarters worked after December 31, 1996, do not count as qualifying quarters if the alien receives any Federal means-tested public benefits during that quarter.

The definition of "Federal means-tested public benefits" provided in 96 LCM-5 was too broad, including far too many programs. Federal means-tested programs include only those programs which:

- a. include federal dollars, and
- b. establish eligibility for program benefits based on income or income and resources.

This definition limits this prohibition to aliens who received assistance from one of the following programs during the quarter in question:

- federally participating public assistance (formerly ADC and EAF and now TANF and EAF),
- federal food stamp benefits,
- federally participating medical assistance, and
- SSI benefits.

Specifically excluded from the definition of Federal means-tested public benefits are:

medicaid for certain emergency care, short-term non-cash emergency disaster relief, school lunch assistance, WIC assistance, public health services for treatment of communicable diseases and immunizations, foster care and adoption assistance under IV-B and E of the Social Security Act if the foster/adoptive parent is a potentially eligible alien, certain programs providing assistance to students for educational purposes, Head Start benefits, JTPA benefits, and assistance which the United States Attorney General will designate.

ATTACHMENT B updates the listing of money amounts used by SSA to establish qualifying quarters originally provided as an attachment to 96 LCM-86.

E. Aliens Who are Veterans or in Active Military Duty

1. Definition and Basic Policy

Qualified aliens who are lawfully residing in the United States are eligible for participation in the Food Stamp program as Specially Qualified Aliens if the alien:

- (a) is a veteran with a discharge characterized as an honorable discharge and not on account of alienage; or
- (b) is on active duty, other than duty for training, in the Armed Forces of the United States; or
- (c) is the spouse or unmarried dependent child of an individual described in (a) and (b) of this paragraph.

The eligibility of these Specially Qualified Aliens is not subject to any time limitation.

A veteran means a person who served in the active military, naval, or air service of the United States, and discharged or released therefrom under conditions other than dishonorable.

Active duty in the Armed Forces of the United States means being on full-time duty in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

Duty for training is temporary full-time duty in the Armed Forces performed by members of the Reserves, Army National Guard, or Air National Guard for training purposes. Active duty for training does not establish eligible alien status.

This provision applies to both aliens and citizens who are veterans or on active duty in the Armed Forces of the United States and to their alien spouses and alien unmarried dependent children.

A spouse is someone who is currently married under the laws of this State or whose marriage is recognized by this State as a legal marriage. This includes spouses who are residing apart regardless of whether or not a separation agreement is in effect.

An unmarried dependent child of a veteran or active duty member of the Armed Forces is a child who is:

- a. the child (biological or adopted) or the stepchild of a veteran or active duty member of the Armed Forces; and
- b. not married; and
- c. dependent on the veteran or active duty member (can be claimed as a deduction on his or her federal income tax return).

The eligibility of an unmarried dependent child is not affected by the marital status of the parents.

2. Policy Clarification

96 ICM-86 stated that only aliens who are "lawfully admitted for permanent residence" can qualify under this provision. This statement requires clarification.

In addition to meeting the requirements of paragraph 1 of this subsection, non-citizens who are lawfully residing in the United States must also meet the definition of Qualified Alien as set forth in Section II in this ADM. Aliens who are "lawfully admitted for permanent residence" constitute one of nine groups meeting the definition of Qualified Alien.

It should be noted that the definition of a Qualified Alien includes parolees, conditional entrants, and certain battered spouses. Documentation guidelines for these three groups are found in **ATTACHMENT D**.

3. Documentation of Military Status

The DD-214 is the form provided to veterans by the Defense Department which documents the type of military discharge a veteran has been granted. A description of this form and how it should be used is found in **ATTACHMENT C** of this ADM.

4. Examples

1. If the spouse of a veteran is an alien, but the veteran is a citizen, the spouse would meet the alien eligibility criteria for food stamps.
2. If an alien veteran is divorced from his or her spouse, the veteran's unmarried dependent child would meet the alien eligibility criteria for food stamps, regardless of which parent the child lives with.

F. Documentation of Alien Status

ATTACHMENT C is a chart designed to supplement the information found in the Documentation section of 96 ICM-86 and may be used as a desk guide. **ATTACHMENT D** provides information on documenting the status of those qualified aliens not addressed in **ATTACHMENT C**.

G. Income of Aliens Ineligible for Food Stamps Due to Alien Status

Current policy describes when the income of an alien who is ineligible to participate in the food stamp program due to alien status is budgeted to the determine the household's FS benefits.

(See FSSB Section V-A-1.1 for instructions for determining household composition and Section XII-E-1 #2 for instructions for budgeting the income of ineligible aliens. See FSSB Sections X-D-2 and X-D-3 for instructions for budgeting deductions for households with ineligible aliens.)

If the alien is a member of the food stamp household, that person's income must be prorated and a prorated share excluded as meeting the alien's needs and the balance budgeted as available to the food stamp household. This applies to aliens who are mandated household members (parents of minor children and spouses) and aliens who purchase and prepare food in common with the rest of the household.

If the alien is not a member of the food stamp household, none of that alien's income is budgeted.

The PRWORA made it possible for a FS household member who is an alien to be eligible for public assistance but ineligible for food stamps. In such situations, a prorata share of the household's PA income is excluded from food stamp income. The balance of the household's PA income is budgeted for FS purposes.

In such situations, the household's FS benefits are calculated as follows:

1. divide the countable PA income evenly among the household members including the ineligible alien;
2. subtract the ineligible alien's share from the total PA income and use the remainder as the PA income input on the food stamp budget.
3. reduce the number of food stamp household members by the number of ineligible(s) living with the household.

Examples

1. Suppose a single mother who is a permanent resident has 2 children, both of whom are U.S. citizens. She applies for PA and food stamps for herself and her children. She entered the US as a permanent resident in March of 1993 and cannot be credited with 40 qualifying quarters.

The mother and children are eligible for PA and receive a PA grant of \$450 a month. However, only the children are eligible for food stamps.

To determine FS entitlement, the household's PA grant is prorated. One-third (\$150) is excluded as meeting the mother's needs and two-thirds (\$300) is budgeted in determining the FS benefits for the 2 FS eligible children.

2. Suppose the mother's boyfriend who is also an ineligible alien moves in with the family. He is not the father of either child. He states that he does not purchase and prepare in common with the mother and her children and the district determines he is not part of the mother's FS household.

The boyfriend's income is not considered in determining the children's FS entitlement.

3. Suppose the boyfriend in example #2 is the father of one of the children or states that he purchases and prepares food in common with the mother and the children. His income is then prorated and a prorated share is budgeted as available to the children.

If his countable income is \$400 a month, the district would divide his income by 4, the number of individuals in the household. His prorated share is \$100, the mother's share is \$100. The balance, \$200, is budgeted as available to the children.

Systems Support For Budgeting PA Only Cases

On Upstate ABEL, workers must remember, after using Function Key 8 from a PA budget, to:

1. reduce the number in the food stamp household by 1 (or however many ineligible aliens there are in the household) and
2. reduce the countable PA grant brought over to the food stamp Input screen by ABEL, by the alien's prorata share of the countable PA grant.

Downstate ABEL will be modified to exclude the alien's prorata share of countable PA income. Workers will be notified via an ABEL transmittal when the system change is available.

VI. SYSTEMS IMPLICATIONS

Specific systems implications are addressed in the particular subsections of Section IV of this ADM to which they apply.

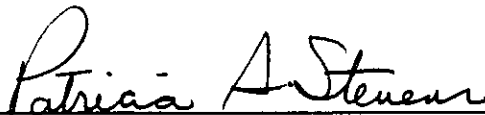
CNS language has been modified to reflect the alien provisions of PRWORA for the following food stamp individual reason codes:

- F92, Ineligible Alien, and
- F85 and F86, Failure to Verify Alien Status.

ABEL has been modified to support the budgeting of a prorated SUA for food stamp households which include an ineligible alien. Information on these procedures was provided in ABEL Transmittal 97-1.

VI. EFFECTIVE DATE

This ADM is effective January 15, 1998, retroactive to August 22, 1996.



Patricia A. Stevens
Deputy Commissioner
Division of Temporary Assistance