SOURCES OF LAW FOR NON-CITIZEN RESTRICTIONS

Status	NY Social Services Law	Immigration and Nationality Act (8 USCA 1611 *et seq.*)
Qualified Aliens - General	122[1](b)-(c) NOTE: Immigrant eligibility restrictions in Medicaid program as applied to QA's in the first 5 years of residence held unconstitutional in Aliessa v. Novello	1611(a), 1612, 1613, 1622, 1641(b)
Refugees	122[1](a)(i) NOTE: There are NO time limits on the eligibility of refugees for benefits except for the time limits in the State's SSI supplement program, which mirror the federal limits–*see* 122[1](f)	1612(a)(2) & (b)(2) 1613(b)(1) 1622(b)(1) 1641(b)(3)
Asylees	122[1](a)(ii) NOTE: There are also NO time limits on the eligibility of asylees (except in SSI supplement program)	1612(a)(2) & (b)(2) 1613(b)(1) 1622(b)(1) 1641(b)(2)
Granted Withholding of Deportation	122[1](a)(iii) NOTE: There are also NO time limits on the eligibility for benefits of immigrants granted withholding of deportation (again except in SSI supplement program)	1612(a)(2) & (b)(2) 1613(b)(1) 1622(b)(1) 1641(b)(5)
Cuban and Haitian Entrants	122[1](a)(vi) NOTE: There are also NO time limits on the eligibility for benefits of C/H entrants (except for the time limits in SSI supplement program)	1612(a)(2) & (b)(2) 1613(b)(1) 1622(b)(1) 1641(b)(7)
Amerasian Immigrants	122[1](a)(vii) NOTE: There are also NO time limits on the eligibility of Amerasians (again, except in SSI supplement progrqam)	1612(a)(2) & (b)(2) 1613(b)(1) 1622(b)(1)
Lawful Permanent Residents (LPR)	122[1](b)&(c)(i)	1612(a)(1); 1641(b)(1)
LPR with 40 QQ	122[1](a)(iv)	1612(a)(2)(B) &(b)(2)(B); 1622(b)(2); 1631(b)(2); 1645
Veterans and Active Duty Service Members	122[1](a)(v)	1612(a)(2)(C); 1612(b)(2)(C); 1613(b)(2); 1622(b)(3)
Battered Immigrants	122[1](b)-(c)(i)	1611(a); 1612(a);, 1622; 1631(f); 1641(c)
Canadian-born Native Americans		1612(a)(2)(G);1612(b)(2)(E); 1613(d)(1)
Hmong / Laotians		1612(a)(2)(K); 1613(d)(2)
Granted Parole	122[1](d) – granted parole for period of less than 1 year	1621(a)(3); 1622; 1641(b)(4) – granted parole for period of at least 1 year
PRUCOL	122[1](c) – but the limits on PRUCOL eligibility for Medicaid found unconstitutional in Aliessa	1611(b)(1)(A)-(E); 1615; 1621
Without Status	122[2] and [6]	1611(b)(1)(A)-(E); 1615; 1621; 1623

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RESTRICTIONS ON ELIGIBILITY OF NON-CITIZENS IN NEW YORK STATE FOR CERTAIN FEDERAL AND STATE PUBLIC BENEFITS[†]

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This four-page guide summarizes the immigration status requirements as a condition of eligibility for non-citizens residing in New York State who are applying for public benefits. The immigrant eligibility rules of the following public benefit programs are outlined:

- Supplemental Security Income (SSI)
- Federal Food Stamps (FS)
- Temporary Assistance to Needy Families (TANF) – NYS Family Assistance (FA)
- Medicaid (Federal and State Programs) and Family Health Plus (FHP)
- Child Health Plus (CHIP)
- Title XX Services
- Safety Net Assistance (SNA)
- Childcare

In the summer of 1996, Congress enacted a massive welfare reform bill, the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which imposed complicated eligibility rules on lawfully residing immigrants in need of public benefits. New York implemented the federal changes through the New York State Welfare Reform Act of 1997 (WRA). Since PRWORA's initial enactment, there have been several amendments to its provisions, most of which have expanded the access of lawfully residing immigrants to the various benefit programs. First, the impending termination of the Supplementary Security Income (SSI) benefits of thousands of elderly and disabled immigrants mandated by PRWORA in 1996 was averted by the Balanced Budget Act of 1997 (BBA), which permitted immigrants in receipt of SSI when PRWORA was enacted to keep their benefits. The BBA also restored prospective SSI eligibility to immigrants in a qualified immigration status who were lawfully residing in the United States in August of 1996 and who later become disabled.

In 2002, the Food Stamp Reauthorization Act restored federal food stamp eligibility to otherwise eligible children and disabled adults in a qualified immigrant status without a five-year bar. Non-disabled adults became eligible for food stamp benefits once they had resided in the U.S. in a qualified status for five years.

The courts have also weighed in on behalf of immigrants. In 2001, the NY Court of Appeals ruled, in Aliessa, et al. v. Novello (96 N.Y. 2d 418), that New York must provide state funded Medicaid to the lawfully residing immigrants who had been excluded by PRWORA from access to the federal Medicaid program, specifically, immigrants "permanently residing under color of law" (PRUCOL) and those with a qualified immigration status but subject to the federal five year bar.

For the most part, PRWORA's sponsor income deeming and liability rules have not been much of an issue in New York. Until the NYS Department of Health issues regulations, local districts have been advised that sponsor deeming and liability is not to be imposed in the State's Medicaid program. In addition, local social services districts have been instructed not to bring court actions against sponsors of immigrants for the reimbursement of food stamp benefits. With respect to the State's public assistance program, a pre-PRWORA decision of the NYS Court of Appeals, Minino v. Perales, held that sponsor income deeming rules could not be used to deny benefits to a needy immigrant who is otherwise eligible for assistance. However, sponsor liability rules undoubtedly have had a chilling effect on the willingness of sponsored immigrants to apply for assistance and the actions of some local districts have no doubt reinforced this reluctance.

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[1] This chart is also available on the Web at *www.empirejustice.org* in the Public Benefits section under Immigrant Access. Comments and questions can be directed to bweiner@empirejustice.org. The author acknowledges the immense contribution of Marcella Silverman, Clinical Professor at Fordham, in the original drafting of this chart.

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Non-Citizen Eligibility for Government Benefits in New York State

✔: Eligible ✘: Ineligible

(see page 4 for statutory sour

	Immigration Status	Supplemental Security Income (SSI)	Food Stamps (FSP)	TANF/Family Assistance	Medicaid/FHP	CHIP	Title XX Services	Safety Net Assistance	Child Care Assistance
QUALIFIED ALIEN CATEGORIES	HUMANITARIAN ENTRANTS: Refugee Asylee Granted Withholding of Deportation Cuban/Haitian Entrant Amerasian Immigrant Victim of trafficking (T visa, granted 'continued presence' or certified by ORR)	✔ Eligible at least during first 7 years after entry into US or after status granted, whichever is later After first 7 years, eligible only if residing in US on 8/22/96 and in receipt of SSI at that time **OR** if lawfully residing in US on 8/22/96 and, at time of application, is blind or disabled OR if becomes US citizen	✔ ELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE	ELIGIBLE	✔ ELIGIBLE	ELIGIBLE as long as child is [illegible] LSC or has a qualified immigrant [illegible] status
	Cross Border NORTH AMERICAN INDIAN	✔ ELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE		✔ ELIGIBLE	
	LAWFUL PERMANENT RESIDENT (LPR) (If entered as humanitarian immigrant, also see above))	✔ **Pre- 8/22/96 Entrants**: Eligible if in receipt of SSI on 8/22/96 **OR** If lawfully residing in US on 8/22/96 and, at time of application, is blind or disabled **Post- 8/22/96 Entrants**: Eligible if LPR can be credited with 40 qualifying work quarters (after 5 years in qualifying status). (If LPR is a veteran or active duty service member, or a member of his or her family, see below.) ***If adjusted to LPR status after 12/97, sponsor deeming and/or reimbursement may apply***	✔ Eligible if in receipt of disability based benefit or is a child under 18 of has been in a qualified status for five years, **OR** If can be credited with 40 qualifying quarters (If LPR is veteran or active duty service member, or member of his or her family , see below.) ***If adjusted to LPR status after 12/97, sponsor deeming and/or reimbursement may apply. Sponsor deeming does not apply to children.***	✔ **Pre 8/22/96 Entrants**: Eligible if entered US before 8/22/96 and continuously resided in US until attaining qualified status, even if such status was attained after 8/22/96. **Post 8/22/96 Entrants**: After 5 years in a qualified alien status ***If adjusted to LPR status after 12/97, sponsor deeming and/or sponsor reimbursement may apply***	✔ ELIGIBLE	✔ ELIGIBLE		✔ ELIGIBLE	
	BATTERED immigrant spouse or child as defined in 8 USC Sec. 1641(c) **OR** Granted PAROLE for period of at least one year	✔ Continues to be eligible if receiving SSI on 8/22/96 **OR** If lawfully residing on 8/22/96 and disabled at time of application	✔ Eligible if receiving disability based benefit or is a child under 18 or has been in a qualified status for 5 years **OR** if lawfully residing in US on 8/22/96: and was 65 years old or older on that date.	✔ Eligible if entered US before 8/22/96 and continuously resided in US until attaining qualified status; **OR,** If entered US after 8/22/96, eligible after 5 years in qualified status	✔ ELIGIBLE	✔ ELIGIBLE		✔ ELIGIBLE	
	Lawfully residing Member of the Armed Services or Honorably Discharged VETERAN, his or her spouse, surviving spouse, or unmarried child	✔ ***If adjusted to LPR status after 12/97, sponsor deeming and/or reimbursement may apply***	✔ ***If adjusted to LPR status after 12/97, sponsor deeming and/or reimbursement may apply***	✔ ***If adjusted to LPR status after 12/97, sponsor deeming and/or reimbursement may apply***	✔ ELIGIBLE	✔ ELIGIBLE		✔ ELIGIBLE	
NOT QUALIFIED	Permanently Residing Under Color Of Law (PRUCOL)	✔ Continues to be eligible if was receiving SSI 8/22/96	✘ INELIGIBLE (but eligible for WIC)	✘ INELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE	✘ INELIGIBLE EXCEPT for [illegible] and child protective services	✔ ELIGIBLE	✘ INELIGIBLE unless [illegible] provided through Head Start
	Paroled into US for less than 1 year	✘ INELIGIBLE	✘ INELIGIBLE (but eligible for WIC)	✘ INELIGIBLE	✔ ELIGIBLE	✔ ELIGIBLE	✘ INELIGIBLE EXCEPT for [illegible] and child protective services	✔ ELIGIBLE	✘ INELIGIBLE unless [illegible] provided through Head Start
	Non immigrant status (unless K3/K4, S, T, U or V visa) or Undocumented	✘ INELIGIBLE	✘ INELIGIBLE (but eligible for WIC)	✘ INELIGIBLE	✘ INELIGIBLE EXCEPT for prenatal care and treatment of emergency medical conditions	✔ ELIGIBLE	✘ INELIGIBLE EXCEPT for [illegible] and child protective services	✘ INELIGIBLE	✘ INELIGIBLE unless [illegible] provided through Head Start