



Program Letter 2000-2

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TO: All LSC Program Directors

FROM: Danilo A. Cardona, Acting Vice President for Programs

DATE: January 24, 2000

RE: Alien Eligibility for Legal Services (45 C.F.R. § 1626 et seq.)

Since 1983, the Corporation's appropriations act and its regulation on the representation of aliens have required that an alien be "present in the United States" to be eligible for legal assistance from an LSC grantee. Neither the appropriations act nor the Corporation's regulations define the term "present in the United States." After the Corporation received a complaint, advocating the position that the presence requirement meant "present at all times," the Corporation's Board of Directors established a Commission, chaired by John Erlenborn, Vice Chair of LSC's Board and a former member of Congress, to study the issue.

The Commission solicited written comments from the public and held two public hearings duly noticed in the *Federal Register*. The Commission recently released its report, which was accepted and adopted by the LSC Board of Directors. The report of the Commission is based on a thorough analysis of the applicable statutory provisions, the extensive record compiled from the comments and testimony regarding the circumstances under which representation of eligible aliens occurs and the practices of legal services grantees relating to eligible aliens.

As it appears that LSC grantees may be operating under an uncertain interpretation of the presence requirement, pending further action by LSC's Board, the Corporation hereby adopts the following as Corporation policy:

For all aliens who are eligible for legal services, as described in 45 C.F.R. § 1626.5, with the exception of H-2A workers, as described in 45 C.F.R. § 1626.11, representation is authorized so long as the eligible alien is present sufficient to maintain residence or lawful immigration status. Under this interpretation, LSC grantees who have begun representation of a permanent resident alien may continue that representation should the alien be temporarily outside of the United States. Grantees may also initiate representation of aliens, with the exception of H-2A workers, who are temporarily outside of the United States, provided that they have been present sufficient to maintain and have not abandoned their residence or immigration status. LSC grantees may not represent aliens in this category who have never entered or been present in the United States.

For H-2A workers, representation is authorized if the workers have been admitted to and have been present in the United States pursuant to an H-2A contract, and the representation arises under their H-2A contract. LSC grantees are authorized to litigate this narrow range of claims to completion, despite the fact that the alien may be required to depart the United States prior to or during the course of the representation. LSC grantees may not represent aliens in this category who have never entered or been present in the United States.