

OFFICE OF LEGAL AFFAIRS

February 15, 2000

Hasan Shafiqullah, Esquire
Queens Legal Services Corp.
89-00 Sutphin Blvd.
Jamaica, New York 11435

Re: Immigrant Eligibility Question

Dear Hasan Shafiqullah:

As an attorney at Queens Legal Services Corporation, you recently asked us a question regarding the eligibility of "PROCULs" (Persons Residing Under Color of Law). Your question was whether "voluntary departure, together with a work permit expiring after the departure date, as well as continuous presence in the U.S., is the functional equivalent of withholding of deportation."

The Legal Services Corporation ("LSC") regulations regarding alien eligibility are found at 45 CFR Part 1626. Section 1626.5 provides the categories of aliens who are eligible to receive legal services from an LSC recipient. The categories of § 1626.5 are required by law based on § 504(a)(11) of the LSC appropriations act FY 1996 (Pub. L. 104-134, 110 Stat. 1321 (1996)), and therefore must be strictly construed.

As you noted, § 1626.5(e) permits a recipient to provide legal services to aliens lawfully present in the U.S. due to "withholding of deportation pursuant to § 243(h) of the INA." In 1997, § 243(h) was repealed and redesignated INA § 241(b)(3). According to the Part 1626 Appendix to the LSC regulations, examples of acceptable documents that would demonstrate the alien is eligible under § 1626.5(e) are: I-94 stamped "§ 243(h)" or order granting withholding of deportation from INS, immigration court, BIA, or federal court; I-688B or I-766 coded 8 CFR § 274a.12(a)(10)(withholding of deportation); I-571 refugee travel document; or any computerized verification from INS or other authoritative document.

If your prospective client does not possess any of the documentation required under § 1626.5(e), qualify under any other category of § 1626.5 or under § 1626.4 as a victim of domestic violence, the client is ineligible for services from an LSC recipient.

I hope that this adequately addresses your question. Please feel free to contact me if you have any further questions.

Sincerely,

Kelline A. Carroll
Staff Attorney