

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
<p>Maps available for inspection at the City Hall, 11250 5th Street, N.W., Hanover, Minnesota. Send comments to The Honorable Maxine Ladda, Mayor, City of Hanover, City Hall, 11250 5th Street, N.E., Hanover, Minnesota 55341.</p>					
New Jersey	Bridgewater Township, Somerset County.	Raritan River	Area south of Main Street and west of Interstate 287 at American Cyanamid Plant.	None	*38
			Area east of Cuckels Brook and south of Maine Street at American Cyanamid Plant.	None	*43
<p>Maps available for inspection at the Municipal Building, 700 Garretson Road, Bridgewater, New Jersey. Send comments to The Honorable James T. Dowden, Mayor of the Township of Bridgewater, Somerset County, P.O. Box 6300, Bridgewater, New Jersey 08807.</p>					
North Carolina	Unincorporated Areas of Cabarrus County.	Rocky River	At confluence of Mallard Creek	*570	*570
			About 0.8 mile upstream of SR 1600	None	*650
<p>Maps available for inspection at the County Courthouse, 77 Union Street South, Concord, North Carolina. Send comments to The Honorable Martha Melvin, Acting County Manager, Cabarrus County, County Courthouse, 77 Union Street South, P.O. Box 707, Concord, North Carolina 28026.</p>					
Pennsylvania	Eldred Borough, McKean County.	Barden Brook	Approximately 50 feet upstream of Bennett Street.	*1,448	*1,448
			Approximately 140 feet upstream of corporate limits.	None	*1,457
<p>Maps available for inspection at the Borough Building, Three Bennett Street, P.O. Box 94, Eldred, Pennsylvania. Send comments to The Honorable William Luce, Mayor of the Borough of Eldred, McKean County, 184 Main Street, Eldred, Pennsylvania 16731.</p>					
Tennessee	City of Cleveland, Bradley County.	South Mouse Creek	About 0.87 miles downstream of Mohawk Drive.	*768	*769
			Just downstream of Kile Road	*854	*852
			Just upstream of Kile Road	*855	*864
			Just downstream of Norfolk Southern Railway.	*855	*864
			Just upstream of Norfolk Southern Railway	*872	*876
			Just upstream of Norfolk Southern Railway Spur.	None	*885
<p>Maps available for inspection at the City of Cleveland, Engineering Department, Cleveland, Tennessee. Send comments to The Honorable Bill Schultz, Mayor, City of Cleveland, P.O. Box 1518, Cleveland, Tennessee 37364-1518.</p>					
Utah	City of Salt Lake City, Salt Lake Co.	Little Cottonwood Creek	Approximately 4,360 feet above Little Cottonwood Creek Road.	*4,763	*4,763
			Approximately 4,760 feet above Little Cottonwood Creek Road.	*4,768	*4,769
			Approximately 5,760 feet above Little Cottonwood Creek Road.	*4,796	*4,794
			Approximately 6,740 feet above Little Cottonwood Creek Road.	*4,823	*4,820
			Approximately 7,700 feet above Little Cottonwood Creek Road.	*4,858	*4,854
			Approximately 8,060 feet above Little Cottonwood Creek Road.	*4,902	*4,902
<p>Maps are available for inspection at the Flood Control and Highway Division, 2001 South State Street, #N3300, Salt Lake City, Utah. Send comments to The Honorable Bart Barker, Chairman, Salt Lake County Board of Commissioners, City and County Building, Salt Lake City, Utah 84111.</p>					

Issued: October 11, 1988.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

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LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Revisions to 45 CFR Part 1626 are proposed to conform the rule to changes required by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359 (1986), and

to LSC's appropriations act for fiscal year 1989, Pub. L. 100-459, 102 Stat. 2186 (1988).

DATE: Comments must be submitted on or before November 18, 1988.

ADDRESS: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1823.

SUPPLEMENTARY INFORMATION: Part 1626 was originally promulgated to implement the terms of Pub. L. 98-377, 96 Stat. 1874 (1982), the appropriations act for fiscal year 1983, which restricts the availability of legal assistance to certain aliens. 48 FR 19750 (May 2, 1983) (proposed rule); 48 FR 28099 (June 20, 1983) (final rule).

Part 1626 now requires revision to conform the rule to LSC's current appropriations act and to the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359.

In August 1987, the Immigration and Naturalization Service (INS) published a proposed rule pursuant to requirements of IRCA. 52 FR 31784 (August 24, 1987), which would include legal services provided by LSC recipients in the list of benefits or services unavailable to immigrants legalized under IRCA. The disqualification for services, which extends for five years, is based on section 245A(h)(1)(A)(i) of IRCA, which prohibits aliens newly legalized under IRCA from receiving benefits or services from any program of financial assistance furnished under Federal law on the basis of financial need. Pub. L. 99-603, 100 Stat. 3401.

LSC's appropriations act allows the provision of legal assistance to permanent resident aliens as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(20). Aliens who have acquired the status of temporary resident aliens under IRCA cannot qualify. However, within nineteen months of becoming temporary residents, aliens may apply for and receive the status of permanent resident aliens pursuant to section 245A(b) of IRCA, Pub. L. 99-603, 100 Stat. 3395. When they acquire permanent status, such aliens still do not become eligible for Corporation-funded legal assistance, because the five-year prohibition on receipt of such services applies during the five-year period regardless of their status. Section 1626.4(a)(1) has been revised to reflect this restriction on the availability of legal services to aliens.

IRCA delineates two new categories of aliens who are eligible for legal assistance from LSC recipients: Special Agricultural Workers admitted as permanent residents pursuant to section 101(a)(20) of INA, Pub. L. 99-603, 100 Stat. 3422; and H-2 workers who become eligible for legal services only with respect to certain specific matters. Pub. L. 99-603, 100 Stat. 3431.

Section 1626.3(c)

Section 1626.3(c) has been amended to conform to the terms of the alien

restriction in Pub. L. 100-459. Public Law 100-459 repeats the terms of Pub. L. 97-377, LSC's appropriations act for fiscal year 1983, which originally contained the alien restriction, as have all subsequent appropriation acts. The present regulation allows representation of an eligible client which directly benefits an ineligible alien, except when there is no benefit to the eligible client. It expands the scope of legal assistance provided for in the act by, in effect, allowing representation "on behalf of" an ineligible alien under a pretense of representing an eligible client.

LSC's appropriation act, Pub. L. 100-459, 102 Stat. 2166, disallows the use of LSC funds to provide legal assistance "for or on behalf of" aliens, except for four categories of aliens. An alien may receive LSC-funded legal assistance if he or she is: (1) An alien who is present in the United States and is a lawfully admitted permanent resident as defined in section 101(a)(20) of INA; (2) an alien who is present in the United States and is a spouse or minor child of a United States citizen, and has filed an application for permanent resident status that has not been rejected; (3) an alien who is lawfully present in the United States pursuant to section 207 of INA (refugee admissions) or has been granted asylum by the Attorney General, or who is lawfully present in the United States as a result of receiving conditional entry pursuant to section 203(a)(7) of INA because of persecution or fear of persecution or being uprooted by catastrophic natural calamity; or (4) an alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation under section 243(h) of INA. Unless an alien falls within one of these categories, no LSC funds should be used to provide legal assistance "on behalf of" the alien. The present language of the regulation may allow such unintended representation.

It is clear that Congress intended the words "on behalf of" to preclude representation that "render[s] legal assistance to an eligible client which directly benefits an ineligible alien," see § 1626.3(c), when the ineligible alien is the intended beneficiary of the legal assistance. For example, one category of aliens eligible for legal assistance are the spouses and minor children of United States citizens. The present language of § 1626.3(c) would allow representation of an eligible permanent resident alien who is seeking to adjust the immigration status of relatives. Of course, while the eligible resident alien may be said to receive some legal services under such circumstances, the relatives of the eligible resident alien,

who are ineligible for legal services, are clearly the principal beneficiaries of the service. Such representation would be at odds with the language and intent of LSC's alien restrictions, which allow representation for the spouses and minor children of United States citizens only, not family members of permanent resident aliens.

Congressional efforts in 1984 to add language to LSC's appropriations act that would have allowed representation of family members of permanent resident aliens were defeated, and Congress voted to retain the language of the 1983 funding act. 129 CONG. REC. H7024 (1983); 129 CONG. REC. 14446-14447 (1983). This same restrictive language has been retained in all subsequent LSC appropriations acts. Thus, in order to conform to the language of the appropriations act and congressional intent, the revised regulation would prohibit representation of an eligible client which directly benefits an ineligible alien, unless the benefit to the ineligible alien is incidental to the relief obtained for the eligible client.

Section 1626.4

The language of § 1626.4(a) has been changed to conform to the language of the appropriations act, which requires an alien to be present in the United States in order to be eligible for legal assistance. Pub. L. 100-459.

Section 1626.4(a)(1) has been revised to reflect the rule that aliens legalized pursuant to IRCA are not eligible for Corporation-funded legal assistance for five years from the day they receive their temporary resident status, whether or not they adjust their status to become permanent resident aliens during the five-year period.

The listing of categories of ineligible aliens in § 1626.4(b) has been deleted as unnecessary.

Section 1626.5

Section 1626.5 has been changed to delete the listing of documents which do not provide evidence of eligible alien status as unnecessary. The list of the documents identified in § 1626.5(b) to demonstrate eligibility is considered sufficient. No change in substance is intended.

The new paragraph (c) of § 1626.5 establishes that a Special Agricultural Worker who presents an INS Form I-688 is eligible for legal services.

Under the provisions of § 1626.5(e), legal assistance to potentially ineligible clients may be provided in an emergency situation, because the emergency provision is considered to be

the only instance in which a deviation from the verification requirement is warranted. Accordingly, § 1626.5(f), which permitted brief advice to potentially ineligible clients by telephone, has been deleted.

Section 1626.10(c)

Paragraph (a) has been revised to make the language of § 1626.10(a) more precise and, in addition, restates congressional intent that residents of these political entities are eligible to be clients of a legal services program.

A new paragraph (c) has been added to § 1626.10 to implement the provision of section 302 of the Immigration Reform and Control Act of 1986, 100 Stat. 3422, 8 U.S.C. 1160(g). Since Special Agricultural Workers are considered permanent resident aliens for all purposes after an adjustment in status to temporary resident aliens, these individuals are entitled to legal assistance. They are the only aliens who are entitled to legal assistance after an adjustment in status. Aliens who adjust their status under the general amnesty provisions of IRCA, 8 U.S.C. 1255a, are not entitled to legal assistance.

Section 1626.11

A new section to Part 1626 has been added in order to implement the provisions of section 305 of IRCA which delineate the circumstances under which H-2 workers are entitled to legal assistance. 100 Stat. 3434, 8 U.S.C. 1101 note.

Technical Corrections

The authority section of Part 1626 has been revised to reflect LSC's current appropriations act. In addition, § 1626.3(a) has been amended to provide that the regulation will continue in effect if the alien restriction continues to appear in succeeding appropriations acts.

List of Subjects in 45 CFR Part 1626

Aliens, Legal Services, Privacy, Reporting and recordkeeping requirements.

For the reasons set out above, 45 CFR Part 1626 is proposed to be amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The table of contents is revised to read as follows:

Sec.
1626.1 Purpose.
1626.2 Definitions.
1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.
1626.4 Alien status and eligibility.

Sec.
1626.5 Verification of citizenship and eligible alien status.
1626.6 Disposition of cases involving ongoing representation of ineligible aliens.
1626.7 Change in circumstances.
1626.8 Records.
1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.
1626.10 Special eligibility questions.
1626.11 H-2 agricultural workers.

2. The authority citation for Part 1626 is revised to read as follows:

Authority: Sec. 1006(e); Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99-603, 100 Stat. 3417; Pub. L. 100-459, 102 Stat. 2186.

3. Section 1626.1 is revised to read as follows:

§ 1626.1 Purpose

This part is designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This part does not apply to any case or matter in which assistance is not being provided with funds appropriated under Pub. L. 100-459 or any succeeding act which contains similar restrictions.

4. Section 1626.2 paragraph (b) is revised to read as follows:

§ 1626.2 Definitions.

(b) "Ineligible alien" means an alien who does not meet the requirements of § 1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 100-459 or any succeeding act which contains similar restrictions.

5. Section 1626.3 paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised, and paragraphs (c)(1) and (c)(2) are added to read as follows:

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 100-459 or any succeeding act which contains similar restrictions shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien.

(b) * * *
(1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using Corporation funds

to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not possible, and ineligible alien client may not be represented with Corporation funds that contain similar restrictions on such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case using Corporation funds.

(3) The provisions of Section 1010(c) of the Legal Services Corporation Act, 42 U.S.C. 2996i(c), do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c) * * *

(1) To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which directly benefits an ineligible alien. Ineligible aliens may benefit only as an incidental result of the relief obtained for eligible clients. As an example, where a group of individuals renting a residence is faced with eviction, and one of the group is an eligible alien or a citizen, representation of that individual is allowed because there is a direct benefit inuring to the client represented which would exist even absent the involvement of ineligible clients. The other aliens may not be named as parties or represented and no relief may be sought for them, but they may receive an incidental benefit if successful representation of the eligible client leads to their not being evicted.

(2) Any case in which an eligible client seeks legal assistance to facilitate immigration or adjustment of status of an ineligible alien constitutes provision of legal assistance "on behalf of" an ineligible alien, even if there is some benefit to the eligible client. The benefit to the eligible client occurs only as a consequence of the benefit to the ineligible alien. Consequently, the prohibition of assistance on behalf of an ineligible alien.

6. Section 1626.4 paragraphs (a) introductory text, (a)(1), and (b) are revised to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by Section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 (a)(20)) except that an alien who has adjusted his status to that of temporary resident alien under the provisions of Section 245A of INA (§ 201 of IRCA, 100 Stat. 3394, 8 U.S.C. 1255a) shall not be eligible for legal assistance pursuant to the provisions of 245A(h) of INA (8 U.S.C. 1255a(h)) for a period of five years, which commences on the date the alien is granted temporary resident alien status whether or not such alien acquires the status of permanent resident alien during the five-year period, unless the alien can qualify under another exception to the general restriction;

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services.

7. Section 1626.5 paragraphs (a)(5), (b)(1), and (c) are revised and paragraphs (a)(6) and (f) are removed as follows:

§ 1626.5. Verification of citizenship and eligible alien status.

(a) * * *

(5) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(b) * * *

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I-151 or I-551), or a valid passport and immigration visa.

(c) A Temporary Resident Card (INS Form I-688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. See § 1626.10(c). This form shall not be considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA), 8 U.S.C. 1255a. See § 1626.4(a)(1).

8. Section 1626.6 paragraphs (a) introductory text, (a)(3), and (b)(1) are revised to read as follows:

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 100-459 or any succeeding act which contains similar restrictions to

provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally three alternatives are available:

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of pre-1983 Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen whenever not inconsistent with an attorney's professional responsibilities.

(b)(1) Where referral or discontinuance of representation is not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditure of funds appropriated by Pub. L. 100-459 or any succeeding act which contains similar restrictions will not be permitted.

9. Section 1626.7 paragraphs (a) introductory text and (b) are revised to read as follows:

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 100-459 or any succeeding act which contains similar restrictions to provide legal assistance for or on behalf of an alien if:

(b) A recipient shall discontinue representation supported by funds authorized by the Corporation under the circumstances described in § 1626.7(a), provided discontinuance is not inconsistent with the attorney's professional responsibilities.

In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

10. Section 1626.10 paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 1626.10 [Amended]

(a) *Micronesia.* The alien restriction stated in the appropriations act is not applicable to the legal services program in the following Pacific Island entities:

- (1) Commonwealth of the Northern Marianas;
- (2) Republic of Palau;
- (3) Federated States of Micronesia;
- (4) Republic of the Marshall Islands.

All citizens of these entities are eligible to receive legal assistance, provided they are otherwise eligible under the Act.

(c) *Special Agricultural Workers.* An alien who qualifies as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99-603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers are eligible for legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status to temporary resident under IRCA, but are eligible for legal assistance after the adjustment of status to that of temporary resident.

11. Section 1626.11 is added to read as follows:

§ 1626.11 H-2 agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(H)(ii), commonly called H-2 workers, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and, as such, are eligible for legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

- (1) Wages;
- (2) Housing;
- (3) Transportation; and
- (4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

October 14, 1988.

Timothy B. Shea,
General Counsel.

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