

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends regulations to allow the use of Legal Services Corporation ("LSC") funds for the representation of permanent amnesty aliens, i.e., aliens who have adjusted their status to that of permanent resident alien under the provisions of the Immigration and Nationality Act ("INA").

EFFECTIVE DATE: March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On April 27, 1989, LSC published at 54 FR 18111 a final rule which, in part, prohibited LSC recipients from representing permanent amnesty aliens for a period of five years from the date such aliens received their temporary resident status. The rule's prohibition on such representation was adopted pursuant to a provision in the 1986 amendments to the INA which disqualified amnesty aliens from being eligible for "programs of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need." 8 U.S.C.

1255a(h). Both the United States Department of Justice ("DOJ") and LSC interpreted the prohibition as disqualifying amnesty aliens from legal services funded by LSC. See DOJ Rule, 54 FR 29434-29438 (July 12, 1989).

However, the amnesty alien provision of LSC's rule was challenged in Federal court, and the United States District Court for the Northern District of California issued a permanent injunction against implementation of that provision. *California Rural Legal Assistance, Inc. v. Legal Services Corp.*, 727 F. Supp. 553 (N.D. Cal. 1989), *aff'd*, 917 F.2d 1171 (9th Cir. 1990). Due to the injunction against enforcement of the rule's amnesty alien provision, amnesty aliens who gain permanent resident status remain eligible for LSC-funded legal assistance.

LSC thereafter gave notice of and requested public comment on its proposal to amend the rule to allow representation of permanent amnesty aliens. 57 FR 33699 (July 30, 1992). LSC received and reviewed eight written public comments, all in favor of the amendment. In addition, LSC's Board of Directors and the Board's Operations and Regulations Committee heard public comment at meetings in Minneapolis, Minnesota, on September 24, 1992; Washington, DC, on October 19, 1992; and Lake Buena Vista, Florida, on December 7, 1992. On December 7, 1992, in order to conform the rule to the court injunction to allow representation of permanent amnesty aliens the Board voted to amend part 1626.

List of Subjects in 45 CFR Part 1626

Aliens, Legal services, Migrant labor, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1626 is amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The authority citation for part 1626 continues 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.

2. Section 1626.4 is amended by revising paragraph (a) introductory text and paragraph (a)(1) 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).

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Dated: January 27, 1993

Victor M. Fortuno,
General Counsel.

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