

OFFICE OF LEGAL AFFAIRS

ADVISORY OPINION

AO – 2010-002

SUBJ: Legal Assistance to Ineligible Alien Parents with U.S. Citizen Children (Part 1626)

DATE: April 14, 2010

Question Presented

In a situation in which an applicant is an ineligible alien, but has a U.S. citizen child, may an LSC recipient provide legal assistance to either

Analysis

Under LSC regulations, recipients may not “provide legal assistance for or on behalf of an ineligible alien.” 45 CFR §1626.3². In the circumstances which have been inquired about, the adult applicants are the persons with the legally cognizable claims (i.e., the lease holders, the applicant for benefits, etc.) but are not themselves eligible because they do not meet the LSC definition of an “eligible alien.” Conversely, the children, as U.S. citizens, are eligible under Part 1626, but they generally do not have a legally cognizable legal right or interest in these cases (i.e., the child has no standing to sue the parents’ landlord or is not the party eligible for the government benefits). To provide legal assistance “on behalf of an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.” 45 CFR §1626.2(e). Because in such cases, the applicant with the legal right or interest would be an ineligible alien, the recipient is prohibited from accepting the parent applicant as a client. The fact that the representation of the ineligible alien would have a direct, personal benefit to the citizen child is not sufficient to confer eligibility on the ineligible alien parent. At the same time, because in such cases the child does not have the legal right or interest, the child cannot be considered the applicant and accepted as the client.

On the other hand, if in a particular case, a citizen child in fact has a legally cognizable claim in his/her own right (i.e., the child is the applicant for benefits, or if state law confers standing on a child in housing cases involving claims of habitability, etc.), the citizen child would be able to be accepted as a client (provided that financial eligibility requirements were also met). This is true, even if most of the communications are between the recipient and the parents acting on the child’s behalf. Further, in such a case, the representation would be permissible notwithstanding that legal assistance to the child