

**TO:** Operations and Regulations Committee

**FROM:** Kara Ward, Assistant General Counsel

**THROUGH:**

**SUBJECT:**

immigration status of such victims.” The VTVPA further provides that LSC may provide services to family members of victims of trafficking.

Pursuant to the VTVPA, LSC grantees are authorized to use LSC or non-LSC funds to represent individuals and their families who would otherwise be ineligible for assistance due to their immigration status under 45 CFR Part 1626. The VTVPA operates as an explicit waiver of the provisions that require legal residency for all grantee clients. Under the VTVPA changes to the LSC Act, LSC grantees may provide representation to victims of trafficking and their family members on a variety of matters, including obtaining certification and/or a visa as well as providing assistance with other legal issues.

B. Violence Against Women Act and the 2006 Amendments.

VAWA amended the 1996 LSC appropriations act

A non-immigrant worker admitted to, or permitted to remain in, the United States under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1109(a)(15)(H)(ii)(b)) for forestry labor or an alien to whom section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note) applies, but only to the extent that the legal assistance provided is the legal assistance described in such section.

This provision is expressly limited to H-2B visa holders who are forestry workers. Forestry workers are only a subsection of H-2B visa holders and H-2B visa holders who are not working in the forestry industry remain ineligible for legal assistance from LSC grantee programs. The permission of these forestry workers to access LSC grantees services is limited to legal assistance on matters relating to the terms and conditions of their employment as set forth in their employment contracts.

#### D. Appendix to Part 1626

Section 1626.7 currently requires that LSC publish an appendix to Part 1626 that provides examples of documents that are acceptable for establishing proof of eligibility.

As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic, of any of the documents found in the appendix to this part.

45 C.F.R. Part 1626.7(a)(1)(2012).

The appendix to Part 1626 was last updated in 2003, and, like the regulation, it has become out of date. Because revisions to the appendix would not entail policy decisions but, instead, be limited to updating the list of examples, LSC may be well served by limiting the administrative burden in making ministerial updates to the appendix. LSC can do so by removing the appendix from the regulations and instead disseminating authoritative guidance that is available by publishing a “Notice of Availability” or “Notice for Availability and Comment” in the *Federal Register* for each iteration, posting the guidance on the LSC website, and emailing the stakeholder community when updates are made.

### III) Discussion of the Rulemaking Protocol

LSC’s Rulemaking Protocol, 67 Fed. Reg. 69762, (November 19, 2002), provides:

The impetus for a rulemaking may come from any one of several sources; Congressional directive; internal LSC initiative (Board or Committee members and/or staff); or a formal request from a member of the regulated community or general public. Decisions on whether to undertake rulemakings will be made by the Board upon the recommendation of the Committee.

When Management believes that rulemaking on a given topic should be undertaken, it makes its recommendation to the Committee, which then determines whether to recommend to the Board that the Board initiate the rulemaking. In most instances, the Committee will base its recommendation upon consideration of a Rulemaking Options Paper (ROP) prepared by OLA. The ROP will contain a discussion of the subject for the potential rulemaking, and will include an outline of the policy and legal issues involved, as well as the mechanisms to accomplish the rulemaking.

#### **IV) Next Steps**

Management requests that the Committee recommend to the Board that LSC initiate a rulemaking to consider amending LSC's regulation at 45 C.F.R. Part 1626, Restrictions on Legal Assistance to Aliens, and its companion appendix, to align with the existing statutory authority. LSC will draft a Rulemaking Options Paper for consideration by the Committee and the Board at an upcoming meeting.

Attachment: Draft Guidance (Appendix to Part 1626- Alien Eligibility for Representation by LSC Programs).

**ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS BASED ON  
THE TRAFFICKING PROTECTION REAUTHORIZATION ACT (TVPA) AND THE  
VIOLENCE AGAINST WOMEN ACT (VAWA)**

<b>Alien Category</b>	<b>Statutory Source for Status</b>	<b>Eligibility Requirements</b>
<p>Victim of human trafficking, as defined by 22 U.S.C. 7101,<sup>1</sup> and his or her family members, as defined by 8 U.S.C. 1101(a)(15)(T)(ii)<sup>2</sup></p> <p>Victim of battery or extreme cruelty as defined by 45 CFR part 1626.2(f),<sup>4</sup> or sexual assault, as defined by 42 U.S.C. 13925(a)(23)<sup>5</sup></p>	<p>22 U.S.C. 7105</p> <p>Sec.</p>	<p>A victim of trafficking must be:</p> <p>(1) Under 18 years of age;</p> <p><i>or</i></p> <p>(2) A “subject of certification,” as defined by 22 U.S.C. 7105(b)(E)(i).<sup>3</sup></p>

Victim of a crime listed in  
8 U.S.C. 1101(a)(15)(U)<sup>7</sup>

Sec. 104, Pub. L. 103-322

The victim must:

- (1) Qualify for a U-nonimmigrant visa (U visa) under 8 U.S.C. 1101(a)(15)(U)<sup>8</sup>;  
*and*
- (2) Seek legal assistance directly related to preventing or obtaining relief from a qualifying crime listed in 8 U.S.C. 1101(a)(15)(U). "Related legal assistance" is defined as assisting the client or the client's child—
  - (i) Escape from the qualifying criminal activity;  
*or*
  - (ii) Ameliorate their effects;  
*or*

**ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS BASED ON  
LSC APPROPRIATIONS AND THE ACT**

<b>Alien Category</b>	<b>Statutory Authorization</b>	<b>Regulatory Authorization 45 CFR part 1626</b>	<b>Verification Documents (any of the listed documents constitutes evidence of eligible immigration status)</b>
Lawful Permanent Resident	8 U.S.C. 1101(a)(20)	§ 1626.5(a)	<p>(1) Alien Registration Receipt Card: Form I-551 or Form I-151; <i>or</i></p> <p>(2) Memorandum of Creation of Record of Lawful Permanent Residence: Form I-181 with approval stamp; <i>or</i></p> <p>(3) Passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; <i>or</i></p> <p>(4) Order granting residency or adjustment of status; <i>or</i></p> <p>(5) Permit to Reenter the United States: Form I-327; <i>or</i></p> <p>(6) Arrival/Departure Record: CPB Form I-94 with stamp indicating admission for lawful permanent residence; <i>or</i></p> <p>(7) Any verification of lawful presence in the U.S. to include any one of the following: authoritative document from the United States Immigration and</p>

			online or email verification.
Spouse of a U.S. citizen, or a parent of a U.S. citizen, or an unmarried child under 21 of U.S. citizen; <i>and</i> who has filed an application for adjustment of status to the status of a lawful permanent resident Asylee	8 U.S.C. 1158(b)(3), 1255, 1255a, 1259	§ 1626.5(b)	(1) Proof of filing of a qualifying application for adjustment of status to permanent residency; <sup>12</sup> <i>and</i> (2) Proof of relationship to U.S. citizen. <sup>13</sup>





Deportation or  
Removal

stamped “§243(h)” or  
“§241(b)(3)”;

*or*

- (2) Order granting  
withholding of  
deportation/deferral of  
removal from DHS,

Immigration and  
Naturalization Service  
(INS)<sup>22</sup> or the

			from the United States Immigration and Naturalization Service (INS) <sup>26</sup> or the Department of Homeland Security (DHS) including online or email verification
H-2B Temporary Non-Agricultural Worker <sup>27</sup>	8 U.S.C. sec. 1101(a)(15)(H)		(1) Arrival/Departure Record: Form I-94 or passport stamped “H-2B” and evidence that the worker is employed in forestry; <i>or</i> (2) Any verification of lawful presence in the U.S. or other authoritative document from the United States Immigration and Naturalization Service (INS) <sup>28</sup> or the Department of Homeland Security (DHS) including online or email verification
Spouse of a U.S. citizen, or a parent of a U.S. citizen, or an unmarried child under 21 of U.S. citizen; <i>and</i> who has filed an application for adjustment of status to	8 U.S.C. 1158(b)(3), 1255, 1255a, 1259	§ 1626.5(b)	(1) Proof of filing of a qualifying application for adjustment of status to permanent residency <sup>29</sup> ; <i>and</i> (2) Proof of relationship to U.S. citizen <sup>30</sup>

<sup>26</sup> *Infra* note 11.

<sup>27</sup> Legal assistance is limited to matters arising under the provisions of the worker’ employment contract.

<sup>28</sup> *Infra* note 11.

<sup>29</sup> Proof of filing may include one or more of the following: a fee receipt or an online or email printout showing that the application was filed with U.S. Citizenship and Immigration Services (USCIS), Immigration and Naturalization Service (INS), the Department of Homeland Security (DHS), or the immigration court; *or* a filing stamp showing that the application was filed; *or* a grant of a fee waiver for such application, a biometrics appointment notice indicating such pending application, a printout from the USCIS online service, or a copy of the application accompanied by a notarized statement signed by the alien that such form was filed.

<sup>30</sup> Proof of relationship to a U.S. Citizen may include one or more of the following: a copy of the person’s marriage certificate accompanied by proof of the spouse’s U.S. Citizenship; *or* a copy of the birth certificate, baptismal certificate, adoption decree, or other document demonstrating the individual is under the age of 21, accompanied by proof that the individual’s parent is a U.S. citizen; *or* a copy of Petition for Alien Relative: Form I-130 or Petition for American, Widow(er) or Special Immigrant: Form I-360 containing information demonstrating the individual is related to such U.S. citizen, accompanied by proof of filing.

the status of a lawful permanent resident			
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