

2. The alien, the alien's child or the alien child's parent has been abused in the United States under any one of the following circumstances:
 - The alien has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent of the alien, or by a member of the spouse's or parent's family residing in the same household if the spouse or parent consents to the battery or cruelty.
 - The alien's child has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent of the alien, or by a member of the spouse's or parent's family residing in the same household if the spouse or parent consents to the battery and cruelty, and the alien did not actively participate in the battery or cruelty
 - The parent of an alien child has been battered or subjected to extreme cruelty in the United States by the parent's spouse, or by a member of the spouse's family residing in the same household as the parent, if the spouse consents to or acquiesces in such battery or cruelty.
3. There is a substantial connection between the battery or extreme cruelty and the need for food stamp benefits. (Examples of a substantial connection are: Receipt of food stamp benefits will enable the alien to become self-sufficient. Receipt of food stamp benefits will allow the alien to escape the abuser. Food stamp benefits are needed due to the alien's separation from the abuser and subsequent loss of financial support or loss of a dwelling. Receipt of food stamp benefits will alleviate nutritional risk. Receipt of food stamp benefits will allow the alien to seek medical attention or mental health counseling. The alien is disabled due to the abuse.)
4. The battered alien, child or parent no longer resides in the same household as the abuser.

Being granted status as a battered alien does not automatically give eligible alien status. Instead the alien must meet the other conditions for eligibility specified in FSC 1621.3.

In order to be classified as a battered alien, an alien must present evidence of having petitioned INS for permanent resident status (see item 1 above) and reasonable proof of battery. Reasonable proof of battery includes, but is not limited to, police reports, information from medical or school personnel, and/or photographs. A collateral statement may be accepted to verify that battered individual no longer lives with the batterer.

FSC 1621.2 Participation for up to Seven Years

03-01-03

Any of the following qualified aliens may participate in the Food Stamp Program for up to seven years from the date of admission to the United States if otherwise eligible:

- Aliens who were granted asylum under section 208 of the INA.
- Aliens who were granted status as a refugee under Section 207 of the INA.
- Aliens whose deportation was withheld under section 243(h) or, after April 1, 1997, section 241(b)(3) of the INA.
- Aliens who were admitted as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.
- Aliens who were admitted as a Cuban or Haitian entrant under 501(e) of the Refugee Assistance Act of 1988.

Refugees that are admitted under Section 207 of the Immigration and Nationality Act are given refugee status before the person enters the country. Therefore, for refugees, the seven year count begins the date the refugee enters the U.S. The seven-year limit for refugees does not change once established. This applies even if the refugee's immigration status is later changed to another legal immigration status.

For other aliens such as, but not limited to, asylees, the seven-year count begins the date the alien was granted the particular status.

Example: A non-citizen entered the country in September 1998, as a student. In December 1999, his status was changed to asylee admitted under Section 208 of the INA. If otherwise eligible, he can participate in the Food Stamp Program through the month of November 2006, without meeting another alien eligibility status rule.

Once a seven-year period has been established, subsequent changes in the alien's citizenship status will have no impact on his or her eligibility to participate in the Food Stamp Program.

Example: An individual is admitted to the United States as a refugee under Section 207 of the INA in September 1998. In September 2000, his status changed to lawfully admitted for permanent residence. If he is otherwise eligible, this individual may participate in the Food Stamp Program based on his status as a refugee for up to seven years. (NOTE: In September 2003, he will have been in the United States for five years as a qualified alien. See FSC 1621.3.1.)

When eligibility expires under one eligible alien status, the county office worker must determine if the alien is eligible under another status.

Example: An individual is admitted to the United States as a refugee under Section 207 of the INA in September 1993. In August 2001, his eligibility as an eligible alien will expire. Before his status is changed from eligible to ineligible household member, the DHS county office worker must determine if he will be classified as an eligible alien under FSC 1621.3.1, Participation After Five Years as a Qualified Alien, or another alien status.

FSC 1621.3 **Other Eligible Aliens**

10-01-03

Any of the following aliens may participate in the Food Stamp Program if otherwise eligible.

1. Any alien who has lived in the United States as a qualified alien for a period of five years or longer may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible." See FSC 1621.3.1. This includes those aliens described in FSC 1621.2.

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2. Any alien who is CURRENTLY ADMITTED FOR PERMANENT RESIDENCE as defined in Section 101(a)(2) of the INA and who can be credited with 40 quarters of work (their own, a spouse's or a parent's) may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible. See FSC 1621.3 for instructions on determining if the alien meets 40 quarters of work.
 3. Any qualified alien (as defined in FSC 1621) who is a veteran of or is on active duty in the U.S. armed forces (e.g., has a military connection) OR any alien who is the spouse and/or dependent child of an individual with a military connection may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible. See FSC 1621.4 for additional information about aliens with a military connection
 4. Any qualified alien who was lawfully present, as defined in FSC 1621, in the United States on August 22, 1996, was age 65 or older on August 22, 1996 (i.e., were born on or before August 22, 1931) may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible..
 5. Any qualified alien who is under 18 years of age may participate in the Food Stamp Program if otherwise eligible until he or she turns 18. After the child turns 18, the child may continue to be eligible for food stamp benefits only if he or she meets another alien eligibility status such as having qualified alien status for five years. If the child will turn 18 during the household's upcoming certification period, the county office worker must take action to review the food stamp case prior to the month in which the child turns 18. If the worker cannot determine from the information in the case that the child meets another alien eligibility status, a request for contact (FSC 12400) will be issued to the household. If the household does not respond to the request for contact or does not provide the information needed to determine the child's alien eligibility status, the case will not be closed. Instead, the child will be classified as an ineligible alien. (See FSC 1621.6 for instructions on handling the income and resources of an ineligible alien. These instructions will also apply to the parent's income if the child is eligible but one or both of the parents are not eligible.)
 6. Any qualified alien who is currently receiving one of the payments for blindness or disability listed in the Glossary, definition of "Aged/Disabled Household" may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible.
 7. Any American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the INA apply may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible.
 8. Any member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act when the tribe is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible. (*This provision covers Native Americans who are entitled to cross the United States border into Canada or Mexico. These Indian tribes include, among others, the St. Regis band of the Mohawk in New York State, the Micmac in Maine, the Abanaki in Vermont, and the Kickapoo in Texas.*)

9. Any individual who is lawfully residing (as defined below) in the United States and who was a member of a Hmong or Highland Loatian tribe at the time the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975, may participate in the Food Stamp Program for an unlimited time if he or she is otherwise eligible. The spouse or surviving spouse (if not remarried) and unmarried, dependent children (natural or legally adopted) of such an individual may also receive food stamp benefits for an unlimited period if otherwise eligible. *(This includes unmarried, dependent children under the age of 18, unmarried, dependent children between the ages of 18 and 22 who attend school full time, and unmarried, dependent disabled children age 18 and older so long as the child was disabled and dependent prior to his or her 18th birthday. It also includes the unmarried children of a deceased tribe member if the child meets one of the criteria stated above and was dependent on the tribe member at the time of his or her death.)*

The following aliens are considered by the Department of Justice to be lawfully residing in the United States.

- A qualified alien.
- An alien who has been inspected and admitted to the United States and who has not violated the terms of the status under which he or she was admitted or to which he or she was changed after admission.
- An alien who has been paroled into the United States pursuant to section 212(d)(5) of the INA for less than one year.
- An alien currently in temporary resident status pursuant to section 210 or 245A of the INA.
- An alien currently under Temporary Protected Status pursuant to section 244A of the INA.
- A Cuban Haitian entrant as defined in section 202(b) Public Law 99-603, as amended.
- A Family Unity beneficiary pursuant to section 301 of Public Law 101-649, as amended.
- An alien currently in deferred action status pursuant to Service Operations Instructions at OI 242.1(a)(22).
- An alien who is the spouse or child of a United States Citizen whose visa application has been approved and who has a pending application for adjustment of status.
- An applicant for asylum under section 208(a) of the INA and applicants for withholding of deportation under section 243(h) of the INA who have been granted employment authorization and such applicants under the age of 14 who have had an application pending for at least 180 days.

FSC 1621.3.1 **Participation after Five Years as Qualified Alien**

04-01-03

Any alien who has lived in the United States as a qualified alien for a period of five years or longer may participate in the Food Stamp Program if he or she is otherwise eligible. The Immigration and Naturalization Service (INS) has the sole responsibility for determining the status of an immigrant as a qualified alien. The five year waiting period begins on the date the immigrant obtains status as a qualified alien through the INS.

Example An alien was lawfully admitted for permanent residence on January 1, 1998. As of January 2, 2003, the alien has met the five-year waiting period and may participate in the Food Stamp Program if otherwise eligible.

Even though some refugees may be granted qualified alien status prior to entering the United States, the five-year waiting period will begin with the date of entry into the United States.

NOTE: Refugees (and other qualified aliens as specified in FSC 1621.2) may participate in the Food Stamp Program for up to seven years. However, after the five-year waiting period, the seven-year limitation will no longer apply: these qualified aliens may participate in the Food Stamp Program indefinitely if otherwise eligible.

FSC 1621.3.1 continued on next page.

1. Enter the full gross income amount to the automated system.
2. Divide the gross income evenly among all household members including the ineligible alien. (For example, assuming the gross income amount is \$500 and there are five members including the ineligible alien, the calculation would be $\$500 \div 5 = \100 prorated amount.)
3. Multiply the number of eligible members by the prorated amount to determine the amount to be counted in the budget. (For example, if there are four eligible members and the prorated amount is \$100, the calculation would be $\$100 \times 4 = \400 to be counted in the budget.)
4. Enter the amount to be counted in the budget. Enter earned income in the earned income fields and allow the 20% earned income deduction. Enter other income in the appropriate unearned income field.

Medical expenses incurred by an ineligible alien who is aged/disabled are not allowable. Expenses such as shelter costs, dependent care costs and child support payments will be allowed in their entirety unless the ineligible alien incurs part or all of the expense. If the ineligible alien incurs part or all of any expense, the expense will be prorated or divided evenly among all household members including the ineligible alien. Then, the number of eligible household members will be multiplied by the amount of the pro rata share. Each expense will be prorated individually.

If the household has elected to use the utility standard and the ineligible alien incurs part or all of the expense entitling the household to the standard, the standard will be prorated in the same manner as the other allowable expenses. Uncapped shelter costs will not be allowed if the disqualified member is the only aged/disabled household member. Even if the household does remain entitled to uncapped shelter costs, prorated shelter costs must be used to determine the full shelter deduction.

Ineligible aliens are not included in the budget when eligibility or food stamp benefit amount is determined.

1621.7 **Sponsored Aliens**

04-01-03

Most immigrants who enter the U.S. must have a sponsor - someone who signs an affidavit promising to provide enough financial support to maintain the immigrant at or above 125 percent of the Federal poverty line. (This will be 100 percent for active duty military.) Legal immigrants who enter the country under the provisions of immigration law other than the family-sponsored categories do not have sponsors whose income must be deemed into the food stamp budget. These categories include refugees and asylees.

There are special procedures for some sponsored aliens under which a portion of the sponsor's income and resources are considered available to the alien. These are called deeming procedures. **The deeming requirements apply only to immigrants whose sponsor has signed a legally binding affidavit of support (Form I-864 or Form I-864A) on or after December 19, 1997.** Before December 19, 1997, affidavits of support were not legally binding meaning the sponsor could not be legally compelled to support the immigrant.

Even some of those aliens whose sponsor has signed a legally binding affidavit of support are exempt from the deeming procedures. These sponsored aliens are listed below:

- Ineligible aliens.
- Aliens participating in the Food Stamp Program as a member of the sponsor's household.
- Aliens sponsored by an organization or group rather than an individual.
- Sponsored aliens who have 40 qualified quarters of work as per FSC 1621.3.1.
- Indigent aliens. (See FSC 1621.7.2 for additional information.)
- Battered aliens. (See FSC 1621.7.1 for additional information.)
- Aliens under the age of 18. (See FSC 1621.3.)

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At each initial application and at each application for recertification afterward, the sponsored alien must provide information about his/her sponsor. Deeming, which is the attribution of the sponsor's income and resources to the alien, lasts until the alien becomes a naturalized citizen, can be credited with 40 qualifying quarters of work (FSC 1621.3.1), meets one of the exceptions listed above in items 1-6, or the sponsor dies.

The county office worker may verify whether an immigrant has a sponsor who has signed a binding affidavit of support by submitting to INS the *Document Verification Request and Supplement* (INS Form G-845 and G-845 Supplement) and requesting completion of block #7 - *Affidavit of Support*. (See FSC 162.5.3 for the web-site where this form may be down-loaded and the mailing address for INS.) Pending receipt of this form from INS, the worker will not delay, deny, reduce, or terminate the individual's food stamp benefits if he or she is otherwise eligible.

1621.7.1 Citizenship Requirements for Sponsored Aliens

06-01-01

Sponsored aliens must meet the citizenship requirements in FSC 1621.1. If not, the sponsored alien is ineligible to participate in the Food Stamp Program and the deeming procedures will not apply. For sponsored aliens who meet the requirements in FSC 1621.1 because they can be credited with 40 quarters of work, no deeming will apply. Sponsored aliens who meet the requirements in FSC 1621.1 for other reasons, must meet the deeming procedures.

Deeming will be delayed for 12 calendar months for aliens who have been battered by a spouse, a parent, or another member of the household, if the battering is substantially connected to the need for benefits. This also applies to the alien child of a battered parent. (In other words, the alien had to leave the household where the battering occurred and, as a result, is in need of food stamp benefits.) After 12 calendar months, deeming of the sponsor's income and resources is permanently eliminated if the battery has been substantiated in a court or by the Immigration and Naturalization Agency (INA) and the battery has substantial connection to the need for benefits.

These provisions do not apply if the battered alien lives with the batterer. If the battered alien does live with the batterer and is a sponsored alien, the sponsor's income and resources will be deemed.