



Neighborhood Legal Services
of Los Angeles County

October 21, 2013

Via e-mail: 1626rulemaking@lsc.gov

Mark Freedman
Senior Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington, DC 20007

Re: Comments on Proposed Updates to 45 CFR Part 1626

Dear Mr. Freedman,

Thank you for the opportunity to comment on the proposed rule to update the Legal Services Corporation (“LSC”) regulation on legal assistance to aliens.

Neighborhood Legal Services of Los Angeles County (“NLSLA”) is an LSC-funded legal aid agency and one of the leading legal services providers serving low-income people in the Los Angeles area. The community we serve includes many immigrants and mixed-immigration status families, and a substantial number of our clients are victims of domestic violence, sexual assault, and human trafficking. We strive to address our clients’ legal issues in a comprehensive and holistic manner, including immigration, domestic, and poverty law matters, as appropriate. For this reason, the update to the LSC regulation on legal assistance to aliens directly impacts our work and the community we serve.

We commend LSC for acting to update Part 1626 to reflect more recent changes in the law and to formally incorporate program letters into the regulations. Having clear, up-to-date regulations will help agencies like ours to better identify eligible aliens who seek our assistance as well as further expand the assistance we are currently providing. Unfortunately, we only recently learned of the rulemaking proposal, and have discovered that the same is true for many other interested organizations across the country. We strongly urge LSC to extend the rulemaking comment period for additional time.

In the comments below we will address some specific aspects of the proposed rule by eligibility category.

ADMINISTRATIVE OFFICE
1102 East Chevy Chase Drive
Glendale, CA 91205
Fax: (818) 291-1790

EL MONTE OFFICE
9354 Telstar Ave
El Monte, CA 91731
Fax (626) 307-3650

GLENDALE OFFICE
1104 East Chevy Chase Dr.
Glendale, CA 91205
Fax (818) 291-1795

PACOIMA OFFICE
13327 Van Nuys Blvd
Pacoima, CA 91331
Fax (818) 896-6647

TEL: (800) 433-6251

45 CFR § 1626.4 – Aliens eligible for assistance under anti-abuse laws

Geographic location of activity giving rise to eligibility:

We applaud the proposed regulations for eliminating the requirement that the abuse or crime giving rise to eligibility under the anti-abuse laws must have occurred in the United States. It makes sense to eliminate this geographic requirement when it is not a requirement of the immigration relief sought by many clients who are eligible for assistance under the anti-abuse laws. In addition, eliminating the requirement that the abuse or crime giving rise to eligibility under the anti-abuse laws must have occurred in the United States would allow LSC-funded agencies to serve a wider range of abuse and crime victims, including those seeking asylum and special immigrant juvenile status in the United States after having fled abuse suffered abroad. This expanded group of potential clients would also be eligible to receive other related legal assistance as provided in the proposed rule.

We do not agree with the distinction made by the proposed rule that would require victims of sexual assault or severe forms of sexual trafficking to have suffered this abuse in the United States in order to establish eligibility. We understand the qualifying phrase “in the United States” in 22 U.S.C. § 7105(b)(1)(B) to refer to the location of the victim, rather than the location of the abuse. This interpretation is supported by the heading of § 7105(b), “Victims in the United States.” The VAWA amendment to section 502 of the appropriations legislation simply adopts the same language, and “in the United States” should be interpreted to qualify the location of the victim rather than the misconduct. Thus, we would urge that the proposed regulation at Section 1626.4(d)(1) be revised to remove the opening phrase, “Except for aliens eligible because they are victims of trafficking or severe forms of trafficking,” and the second sentence, “Victims of trafficking must be subjected to illegal trafficking in the United States to be eligible for assistance.”

Geographic location of alien:

We applaud the revision allowing for provision of services to aliens eligible under the anti-abuse statutes regardless of whether they are in the United States. As discussed in the proposed rule, many individuals who qualify for immigration relief under the anti-abuse statutes remain eligible to pursue such relief even if they are currently outside the United States. Indeed, many such individuals were victimized in the United States and now find themselves abroad for reasons connected to the abuse suffered here. Furthermore, individuals outside the United States are often vulnerable to continued victimization if their abusers follow them abroad or have family members abroad to do their bidding.

The ability to petition for and obtain legal status in the United States is often the only way to ensure such individuals’ safety and economic stability. The free legal services provided by LSC-funded agencies would provide an essential lifeline to this client population, as many who find themselves abroad lack the financial resources to pay for legal representation. Those who apply for immigration relief from abroad tend to encounter additional complications and steps involved in the process of petitioning for legal status in the United States from abroad. Thus, they are

more likely to need high-quality legal services by advocates experienced in anti-abuse-related immigration relief, as many advocates at LSC-funded agencies are.

45 CFR § 1626.5 – Aliens eligible for assistance based on immigration status

We agree with the addition of persons granted withholding of removal to the categories of eligible noncitizens listed in Section 1626.5. However, persons granted withholding of deportation under former section 243(h) of the INA should not be removed from the regulation. There are today many people in the country who have withholding of deportation – they cannot obtain withholding of removal. Moreover, there are still today people who are currently in deportation proceedings rather than removal proceedings. This is because of the prospective and gradual manner in which removal proceedings were implemented under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Under IIRIRA, persons whose deportation proceedings were initiated prior to April 1, 1996, were not put into removal proceedings, but rather continued in deportation proceedings. Their cases may be appealed to the courts of appeals and subsequently remanded, they may be reopened to apply for other relief, but they continue to be deportation rather than removal proceedings.

In addition, we recommend that LSC include withholding of removal and deferral of removal under the Convention Against Torture (CAT) in this category of eligibility. As with withholding of removal under the INA, this relief was created after the last revision of Part 1626. It implements the United States’ adoption of an international treaty prohibiting the involuntary return of persons in danger of subjection to torture. See Act Oct. 21, 1998, P.L. 105-277, Div. G, Subdiv. B., Title XXII, Ch. 3, Subch B, § 2242, 112 Stat. 2681-822. These forms of relief are extremely similar to withholding of removal under the INA, and they all require the individual to establish that his or life or freedom would be endangered by removal – either because of the threat of persecution, in the case of Section 241(b)(3), or because the threat of torture, in the case of CAT. Moreover, individuals granted withholding may not have documentation indicating whether the grant was based on the INA or CAT. Indeed, the employment authorization documents issued by USCIS for individuals granted withholding of deportation, withholding of removal under the INA, and withholding of removal under the CAT, all use the same code, A10.

Accordingly, we recommend that paragraph (e) of this section be revised to read as follows:

(e) An alien who is lawfully present in the United States as a result of the Attorney General’s withholding of removal pursuant to section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)), withholding of removal or deferral of removal under the Convention Against Torture, or withholding of deportation pursuant to former section 243(h) of the INA (8 U.S.C. 1259, as in effect on Sept. 29, 1996).

45 CFR § 1626.7 – Verification of eligible alien status

We support the proposal to replace the appendix to Part 1626, listing documents establishing immigrant eligibility for representation, with program letters. We agree that immigration forms and documents frequently change, and LSC will be better able to provide this information to

programs in a timely manner by means of program letters, rather than the formal rulemaking process. However, we would urge LSC to implement a comment and feedback procedure with regard to issuance of such program letters.

Furthermore, the supplementary information preceding the proposed rule indicates that the current appendix to Part 1626 has been revised in anticipation of its reclassification as a program letter. We would like an opportunity to review and comment on this initial revision before it is published as a program letter.

* * *

In conclusion, we appreciate the work that LSC has put into updating Part 1626, and we support these changes, with the modifications suggested herein. Again, we strongly urge that LSC extend the comment period in order to receive comments from a greater number of interested organizations.

Sincerely,

NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY



Monica Kane
Staff Attorney – Immigration