§ 1631. Federal attribution of sponsor’s income and resources to alien

(a) In general

Notwithstanding any other provision of law, in determining the eligibility and the amount of benefits of an alien for any Federal means-tested public benefits program (as provided under section 1613 of this title), the income and resources of the alien shall be deemed to include the following:

(1) The income and resources of any person who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) on behalf of such alien.

(2) The income and resources of the spouse (if any) of the person.

(b) Duration of attribution period

Subsection (a) of this section shall apply with respect to an alien until such time as the alien—

(1) achieves United States citizenship through naturalization pursuant to chapter 2 of title III of the Immigration and Nationality Act [8 U.S.C. 1421 et seq.]; or

(2) (A) has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act [42 U.S.C. 401 et seq.] or can be credited with such qualifying quarters as provided under section 1645 of this title, and

(B) in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(c) Review of income and resources of alien upon reapplication

Whenever an alien is required to reapply for benefits under any Federal means-tested public benefits program, the applicable agency shall review the income and resources attributed to the alien under subsection (a) of this section.

(d) Application

(1) If on August 22, 1996, a Federal means-tested public benefits program attributes a sponsor’s income and resources to an alien in determining the alien’s eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning on the day after August 22, 1996.

(2) If on August 22, 1996, a Federal means-tested public benefits program does not attribute a sponsor’s income and resources to an alien in determining the alien’s eligibility and the amount of benefits for an alien, this section shall apply to any such determination beginning 180 days after August 22, 1996.

(3) This section shall not apply to assistance or benefits under the Food Stamp Act of 1977 1 (7 U.S.C. 2011 et seq.) to the extent that a qualified alien is eligible under section 1612 (a)(2)(J) of this title.

(e) Indigence exception

(1) In general

For an alien for whom an affidavit of support under section 213A of the Immigration and Nationality Act [8 U.S.C. 1183a] has been executed, if a determination described in paragraph (2) is made, the amount of income and resources of the sponsor or the sponsor’s spouse which shall
be attributed to the sponsored alien shall not exceed the amount actually provided for a period beginning on the date of such determination and ending 12 months after such date.

(2) Determination described

A determination described in this paragraph is a determination by an agency that a sponsored alien would, in the absence of the assistance provided by the agency, be unable to obtain food and shelter, taking into account the alien’s own income, plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor. The agency shall notify the Attorney General of each such determination, including the names of the sponsor and the sponsored alien involved.

(f) Special rule for battered spouse and child

(1) In general

Subject to paragraph (2) and notwithstanding any other provision of this section, subsection (a) of this section shall not apply to benefits—

(A) during a 12 month period if the alien demonstrates that

(i) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent’s family residing in the same household as the alien and the spouse or parent consented to or acquiesced to such battery or cruelty,

(ii) the alien’s child has been battered or subjected to extreme cruelty in the United States by the spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse’s or parent’s family residing in the same household as the alien when the spouse or parent consented or acquiesced to and the alien did not actively participate in such battery or cruelty, or

(iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent’s spouse, or by a member of the spouse’s family residing in the same household as the parent and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii) (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the public benefits applied for; and

(B) after a 12 month period (regarding the batterer’s income and resources only) if the alien demonstrates that such battery or cruelty under subparagraph (A) has been recognized in an order of a judge or administrative law judge or a prior determination of the Immigration and Naturalization Service, and that such battery or cruelty (in the opinion of the agency providing such public benefits, which opinion is not subject to review by any court) has a substantial connection to the need for the benefits.

(2) Limitation

The exception under paragraph (1) shall not apply to benefits for an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual who was subjected to such battery or cruelty.

Footnotes

1 See References in Text note below.

References in Text

Section 213A of the Immigration and Nationality Act (as added by section 423 and as amended by section 551(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), referred to in subsec. (a)(1), is section 1183a of this title as added by section 423 of Pub. L. 104–193 and amended by section 551(a) of div. C of Pub. L. 104–208.


Amendments


1997—Subsec. (f)(1)(A). Pub. L. 105–33 struck out “or” before “(ii) the alien’s child” and substituted “or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent’s spouse, or by a member of the spouse’s family residing in the same household as the parent and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii)” for “and the battery or cruelty described in clause (i) or (ii)’’.


Subsecs. (e), (f). Pub. L. 104–208, § 552, added subsecs. (e) and (f).

Effective Date of 2002 Amendment


Effective Date of 1997 Amendment


Effective Date of 1996 Amendment

Amendment by section 551(b)(1) of Pub. L. 104–208 applicable to affidavits of support executed on or after a date specified by the Attorney General, which date shall be not earlier than 60 days, and not later than 90 days after the date the Attorney General formulates the form for such affidavits, see section 551(c) of Pub. L. 104–208, set out as an Effective Date of 1996 Amendment; Promulgation of Form note under section 1183a of this title.

Abolition of Immigration and Naturalization Service and Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.