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Informational Letter

Section 1

Transmittal:	03 INF 19
To:	Local District Commissioners
Issuing Division/Office:	Division of Temporary Assistance
Date:	April 28, 2003
Subject:	Expired or Lost Immigration Documents
Suggested Distribution:	Temporary Assistance Directors Food Stamp Directors Medical Assistance Directors HEAP Directors Staff Development
Contact Person(s):	Contact the Central Team at 1-800-343-8859, extension 4-9344
Attachments:	BCIS INS Fee Waiver Guidance 99-LCM-23 LDSS-4579
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
00 INF - 13 00 INF - 13 Errata 99 LCM - 23 99 INF - 11 97 ADM - 25 97 ADM -23		349.3	PRWORA WRA	PASB Section XXIII - C- 1 All FSSB Section V-B-3.1-B-3.30	

Section 2

I. Purpose

This release explains how local districts determine program eligibility for aliens who have lost their immigration documentation or whose documentation has expired.

II. Background

The Federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 restricted the availability of federally supported assistance to certain “qualified aliens.” Only aliens Lawfully Admitted for Permanent Residence (LPR) before August 22, 1996, or aliens admitted because of a certain immigration status e.g., Refugees, Asylees are eligible for federal supported assistance.

The New York State Welfare Reform Act of 1997 (WRA) mandated that Safety Net Assistance (SNA) be available to aliens considered Persons Residing Under the Color of Law (PRUCOL).

Aliens’ eligibility for benefits is based on the immigration status they receive from the Department of Homeland Security’s Bureau of Citizenship and Immigration Services (BCIS). Aliens are required by law to carry immigration documents as evidence of their status.

Districts are uncertain how to make an eligibility determination when an alien has expired BCIS documentation or has lost his/her immigration documentation.

III. Program Implications

Federal law precludes local districts from delaying, denying, reducing or terminating an applicant’s eligibility for benefits under a program on the basis of the applicant’s citizenship or nationality during the period of time it takes to verify his or her status. When an alien applicant has only expired BCIS documentation or claims a lawful immigration status, but has lost his/her alien documentation local districts should follow the appropriate procedure outlined below for the type of immigration documentation the alien has.

A. Lost Immigration Documentation

Aliens claiming a lawful immigration status and who have lost their immigration documentation should be referred to the BCIS for replacement documentation. Local districts need some verification from BCIS of an alien’s lawful presence in order to make a determination of the alien’s eligibility for benefits.

B. Expired Immigration Documentation

1. Permanent Resident Card

The most common BCIS document used to prove lawful permanent resident status (LPR) is the Permanent Resident Card (I-551). Commonly called the “Green Card”, an I-551 expires after 10 years. BCIS began implementing a 10-year expiration period in 1989 to allow the agency to update photo identification and implement new card technologies that will increase the card’s resistance to counterfeiting and tampering. Aliens do not lose permanent resident status because their Green Card has expired. However, they are required by law to carry evidence of their

immigration status, such as a valid Green Card or some other temporary proof of status provided by BCIS while a Green Card renewal is being processed.

If the only immigration document an alien has is an expired Green Card, local districts can use it to determine the alien's eligibility for benefits. The immigration status on the expired Green Card should be compared against the BCIS immigration statuses on the LDSS-4579 (Alien Eligibility Desk Aid) to determine the specific programs for which the alien may be eligible.

Many aliens do not renew their Green Cards because of the \$110 processing fee. A fee is imposed because federal guidelines require the processing of immigration benefits to be self-supported by filing fees.

BCIS does have discretion to waive any fee, if the applicant establishes that he/she is unable to pay the fee. Information on how an applicant can apply for a fee waiver is found on the BCIS Web site at:

<http://www.immigration.gov/graphics/publicaffairs/factsheets/waiverfs.htm>

Local districts have no obligation to pay an alien applicant or recipient's Green Card renewal fee. The provisions of 18 NYCRR 351.5 are not applicable to the Green Card renewal fee, because an expired Green Card is an acceptable document for districts to use for making an eligibility determination.

2. Foreign Passport with a Form I-551 Stamp

It often takes many months for aliens to actually receive their Green Cards. While they are waiting for their card, BCIS can provide temporary evidence of permanent residence by stamping an alien's passport with an I-551 stamp. Alien passports can also have an I-551 stamp for Green Card renewals. If the I-551 stamp has expired and the alien has no other immigration documents, districts can use the expired I-551 stamp to determine an alien's eligibility for benefits.

3. Form I-94 Arrival/Departure Record

An I-94 record is created by BCIS when an alien is inspected upon arrival in the United States. The I-94 is a 3" X 5" card that the inspector endorses with the date, place of arrival and the class of admission. The card is stamped or handwritten with a notation that indicates the immigration category or the section of immigration law under which the person is granted admission. The words "Employment Authorized" may also be stamped on the card. Only aliens with an I-94 that have specific qualified alien status notations would be eligible for benefits. Districts need to carefully note the admitting status on the I-94 and use the LDSS 4579 to determine an alien's benefit eligibility.

4. Form I-668B or I-766 Employment Authorization Documents (EAD)

These documents indicate that an alien is authorized to work in the U. S. Many qualified aliens are not automatically authorized to work in the U. S. by virtue of their immigration status. Both these forms indicate an alien's immigration status. If the only documentation an alien has is an expired EAD, districts may use it to determine

the alien's eligibility for benefits. EADs are also issued to temporary residents who are non-immigrants and are ineligible for temporary assistance benefits. The alien's immigration status on the EAD must be checked against BCIS immigration statuses on the LDSS-4579 to determine benefits for which the alien may be eligible.

Any time a district must use expired immigration documents for a determination of an alien's eligibility the district needs to:

- Verify the alien's status by sending a G-845 (Documentation Verification Request) to BCIS following the procedures in 1999-LCM-23 (Implementation of the Systematic Alien Verification for Entitlements (SAVE) – Interim Process).
http://sdssnet5/otda/directives/1999/LCM/99_LCM-23.pdf
- Advise the alien that he/she needs to go to BCIS to renew his/her Green Card or other immigration documentation.
- Use the immigration status on the expired immigration documentation as the basis for the alien's eligibility. Districts should refer to LDSS-4579 (Alien Eligibility Desk Aid) http://sdssnet5/otda/ldss_eforms/eforms/4579.pdf for information on program eligibility based on eligibility status.

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