

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF HUMAN SERVICES
APPEALS OFFICE
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Docket # 14-2160
Hearing Date: December 11, 2014

Date: January 15, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and agency policy reference(s) were the matters before the hearing:

DHS POLICY MANUAL: SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM
SECTION: 1004.20 Citizenship and Eligible Non-Citizen Status
SECTION: 1004.20.10 Eligible Non-Citizen Status
SECTION: 1014.55 Households Containing Sponsored Alien Member

The facts of your case, the agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: Donna Yeadon, Jovonna Edwards, Mike Fallon, and Denise Tatro.

Present at the hearing were you, and Agency Representatives Donna Yeadon, and Jovonna Edwards.

ISSUE: Is the appellant eligible for Supplemental Nutrition Assistance Program (SNAP) benefits for the month of September 2014?

DHS POLICIES:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy Manual.

DISCUSSION OF THE EVIDENCE:

The agency representatives provided the following testimony

- He (the appellant) applied for assistance on September 16th (2014), and provided an Alien card with an entry date of February 6, 2009.
- He met the requirement of being here 5 years.
- At that time, we ran a quarters request and he did not have 40 quarters, so he also needed to provide sponsorship information.
- On September 17th, he was sent a notice indicating that he had only 26 working quarters of 40. Because of this, he was requested to provide information about the person who sponsored him to come into this country. We requested this, but did not receive that information.
- At the same time we ask you (the appellant) for the information we do try and get it, so on September 17th we sent off to INS Homeland Security to determine who your sponsor or sponsors were.
- When he (the appellant) sent in his request for a hearing we sent a second request on December 4th to INS and have not yet gotten a response.
- Unless you're a refugee, you can't apply for citizenship unless you're here at least 5 years.
- If you came here after December 16, 1997, then your sponsor is required to sign affidavits that they will sponsor you, and that they will provide their sponsorship information.
- In response to the appellant's marriage certificate, the Agency noted-Just because you're married to someone that doesn't show sponsorship, and you can have more than one sponsor, so verification of support is needed.
- Per policy, he is here legally, but in order to be eligible for food stamps, a sponsor must be responsible for him, and we need to deem their income.

- Your sponsor must provide your sponsor's name, and they have to provide information about home ownership or whether they receive rental income-which includes any income they receive, earned or unearned. They must provide information about whether they are a sponsor for anyone else, as that helps determine how much of their income goes towards sponsoring the appellant.
- The Agency is including additional alien policy which further explains in more depth that the sponsor's income is needed, as well as other needed information. We needed the sponsor's information.
- Your sponsor is responsible for you until you become an American citizen or they die, or you die.
- When an alien comes to this country, and they apply, they are usually given a copy of their sponsorship papers, and if they don't have it we send a copy of a G845, and sometimes we need to send a second request.
- When it is received you sometimes find there is more than one sponsor, so we have to know who the sponsors are and if they're able and available to support (the applicant).
- Often INS responds to our second request within a couple of weeks, and we clearly marked the paperwork as SECOND request.
- The Agency is willing to look at any documents received, and if they are sufficient, reconciliation can be discussed with the appellant during the held open period.

The appellant testified:

- After he received the September notice he came to the DHS office, and saw a gentleman who indicated that if he had no way to obtain his sponsorship information, they would get it for him, and they would call his wife and explain to her.
- He explained to the worker he had no way of getting the information.
- He did not initially provide the papers, because the officer (DHS worker) told him he was going to do it for him.
- Yes, he is sometimes in contact with his former wife, and he can get in touch with her and can get her to fill out the sponsorship papers.
- When he first came to the country, he lived with his girlfriend, and then they married. She is an American and they lived together for eight years.

- Now, they decided to separate after he lost his job in 2009.
- His girlfriend (his wife) was his only sponsor.
- He is a qualified alien, and has worked very hard, and has never gotten a penny from this government.
- He does not want to live all his life on food stamps, but needs a little help to survive.
- He came to this country with a 10 year Visa as a journalist, and he married before he went back to his country.
- He thought they (DHS) told him he was an illegal alien, but now he understands he is not a "qualified alien".
- He may get a job before the letter (from INS) comes in.
- Four weeks would be sufficient to obtain the sponsorship information from his ex-wife.

FINDINGS OF FACT:

- A notice dated September 17, 2014 informed the appellant he must obtain proof of his sponsorship information by September 27th or his SNAP benefits may be denied. It further informed him that additional information was being requested because he had only 26 of 40 quarters of working history.
- The notice under appeal, dated October 16, 2014 informed the appellant that his SNAP benefits had been denied for September 2014 because he was not a qualified alien.
- The appellant filed a timely appeal date stamped October 23rd.
- A hearing was held on December 11, 2014.
- The record of hearing was held open until January 9, 2015 for additional evidence. If necessary, the held open letter allowed the appellant to request an extension of time in order to obtain the needed documents.
- During the held open period, the Agency received and provided a copy of the INS application which indicated that his former wife was his only sponsor. It was noted by the Agency that no additional income verification had been received.
- The appellant submitted no additional evidence during the held open period.

CONCLUSION:

The issue to be decided is whether the appellant is eligible for SNAP benefits for the month of September 2014?

Per SNAP policy, to receive benefits an individual must be either a citizen, or an eligible non-citizen. Policy further identifies that a qualified non-citizen must meet additional criteria including five years of residence from the date of entry, and 40 qualifying quarters of work under the Social Security regulations.

There is no dispute that the appellant is a legal resident, and that his date of entry is February 6, 2009. There is no dispute that the appellant has at least one sponsor-his former wife. The appellant received a September 16, 2014 notice indicating the necessity for obtaining sponsorship information and documents in order to process his SNAP application. He testified that he had come into the DHS office following this notice, and was informed by a male DHS worker that the worker could obtain the documents needed. Although this was never corroborated by the Agency, the Agency did request document verification of sponsorship through Homeland Security on September 17th, and again on December 2nd. In October the SNAP application was denied as the Agency had not received the needed documentation. The appellant argues that he is a legal alien and should be allowed benefits. Additionally, he understood the Agency would obtain his documents. He argued as well that he has been working in this country since 2009 when he was laid off.

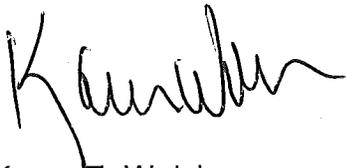
The Agency countered that the appellant is a "legal" alien, but is not a "qualified" alien resulting from his failure to document his sponsorship information which they identified would include the name of his sponsor and financial information which they delineated during hearing, and for which they provided policy to further explain the additional requirements. The Agency concurred that the appellant was legal and had been in this country for the required 5 years, but he had not been credited with the 40 qualifying work quarters which would establish him eligible for benefits. The Agency produced an Earnings Data read out which documented the total quarters of work coverage for the appellant from 1937-2016. The data identified that the appellant had participated in 26 of the 40 quarters beginning in 2006. The appellant did not dispute the documentation. The Agency argues that the additional request for sponsorship documentation resulted from the appellant's lack of work history required for SNAP eligibility. Further exploration of policy supports the Agencies contentions. Policy indicates that in order to determine eligibility for a household in which an eligible sponsored alien is a member; the state must deem the resources of the sponsor. It further identifies that the sponsor's income shall be deemed until the legal alien obtains U.S. citizenship, has worked or can receive 40 qualifying quarters of work, or the sponsor/or appellant dies.

The record of hearing was held open for four weeks to allow the appellant to provide the needed documentation. Additionally, the Agency was awaiting a response from two requests sent to Homeland Security in order to verify the number and name of sponsors available to the appellant. The appellant was allowed the option to extend the held open period in the event the needed documentation had not been received. The Agency received the INS

response on December 22nd indicating that the appellant's former spouse was his only sponsor. The appellant did not request an extension, or submit any evidence during the held open period.

In summary, the appellant applied for SNAP benefits in September 2014. Per policy, he had met the five year residency requirement, but had not met the 40 qualifying quarters of work. As a result, per DHS SNAP policy, the appellant was additionally required to obtain sponsorship documentation in order to allow the Agency to determine income deeming. The appellant noted that he had the ability to contact and obtain the needed information from his sponsor (his ex-wife) post hearing. He was allowed ample time and/or options to obtain the documentation, but did not present additional information which would have allowed for an eligibility determination.

After a careful review of the Agency's policies, as well as the evidence and testimony given, the Appeals Officer finds that the appellant's request for SNAP benefits for the month of September 2014 is not allowable. The appellant's request for relief is denied.

A handwritten signature in black ink, appearing to read 'Karen E. Walsh', written in a cursive style.

Karen E. Walsh
Appeals Officer

APPENDIX

1004.20 (7 CFR 273.3) CITIZENSHIP AND ELIGIBLE NON-CITIZEN STATUS

REV:04/2003

To receive SNAP benefits, an individual must be either:

- * A citizen of the United States as described in Section 1004.20.05; or
- * An eligible non-citizen as described in Section 1004.20.10.

A household with a member who does not meet either of the above criteria must not be prevented from applying and, if eligible, receiving benefits for the remaining eligible members of the household. Procedures for handling households with undocumented immigrants are found in Section 1004.20.35.

1004.20.10 (7 CFR 273.3) Eligible Non-Citizen Status

REV:10/2011

Prior to certification, the agency representative must determine the noncitizen status of household members who are applying for benefits and have indicated on the application that they are non-citizens. In doing this, however, the agency representative must not contact the U.S. Citizenship and Immigration Services (USCIS) without the written consent of the non-citizen. (This procedure is not applicable to SAVE policy in Section 1083.) Use of USCIS documentation is the primary source of verification.

Eligibility for participation in the Supplemental Nutrition Assistance Program depends on the non-citizen being an eligible non-citizen or a qualified non-citizen that meets certain conditions related to the qualified non-citizen status.

The following eligible non-citizens may be eligible to participate in the Supplemental Nutrition Assistance Program without having to meet any additional non-citizen requirements:

- * Certain American Indians born abroad: American Indians born in Canada living in the U.S. under section 289 of

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the INA or non-citizen members of a Federally recognized Indian tribe under section 4(e) of the Indian Self-Determination and Education Assistance Act; and

- * Hmong or Highland Laotian tribal members: An individual lawfully residing in the U.S. who was a member of a Hmong or Highland Laotian tribe that rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era (August 5, 1964 - May 7, 1975). This category includes the spouse (or unremarried surviving spouse) or unmarried dependent children of these individuals.

The following qualified non-citizens may be eligible to participate in the Supplemental Nutrition Assistance Program without having to meet an additional condition:

- * Asylees: Individuals granted asylum under section 208 of the Immigration and Nationality Act (INA);
- * Refugees: Refugees admitted to the United States under section 207 of the INA;

* Deportation withheld: individuals whose deportation is

being withheld under section 243(h) of the INA as in effect before 4/1/97, or removal is withheld under section 241(b)(3) of the INA;

* Cuban/Haitian Entrants: Cuban or Haitian entrants under section 501(e) of the Refugee Education Assistance Act of 1980; or

* Victims of Severe Trafficking: Victims under the Trafficking Victims Protection Act of 2000.

* Iraqi and Afghan Special Immigrants (SIV): Iraqi and Afghan special immigrants who have been granted special immigrant status under section 101(a)(27) of the INA who have worked on behalf of the U.S. government in Iraq or Afghanistan. The Department of Defense Appropriations Act of 2010 (DoDAA), P.L.

111-118, section 8120 enacted on December 19, 2009, provides that SIVs are eligible for all benefits to the same extent and the same period of time as refugees.

* "Amerasian immigrants": as defined under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;

* Elderly Non-citizens: elderly individuals born on or before August 22, 1931 and lawfully residing in the United States on August 22, 1996;

* Children under 18: Qualified non-citizen children under eighteen (18) years of age.

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* Individuals receiving benefits or assistance for blindness or disability: Individuals who have been determined blind or disabled and are receiving benefits or assistance for their condition as defined under section 3(r) of the Food Stamp Act regardless of when they entered the United States;

* Military Connection- Individuals who are lawfully residing in a State and are on active duty (other than for training) in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard (but not full-time National Guard) or who are honorably Discharged veterans who have not been discharged due to non-citizen status. This category includes the spouse (or surviving spouse who has not remarried) or unmarried dependent children of these individuals. A discharge "Under Honorable Conditions" does not meet this requirement.

* A Legal Permanent Resident (LPR) who prior to adjustment to LPR status was:

- a refugee under section 207 of the INA, including a victim of severe forms of trafficking;
- an asylee under section 208 of the INA
- a non-citizen whose deportation was being withheld under section 243(h) of the INA as in effect before 4/1/97, or removal is withheld under section 241(b)(3) of the INA;
- a Cuban/Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or
- an Amerasian immigrant (as defined in section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1988)

The following qualified non-citizens must meet one additional condition in

order to be eligible to participate in the Supplemental Nutrition Assistance Program:

- * Legal Permanent Residents (LPR's): Individuals lawfully admitted for permanent residence (LPR) in the United States (holders of green cards).
- * Parolees: Individuals paroled into the United States under section 212(d)(5) of the INA for at least one (1) year;
- * Conditional Entrants: Individuals granted conditional entry under section 203(a)(7) of the INA as in effect before 4/1/80
- * Battered Non-Citizens: Under certain circumstances (refer to Section 1004.20.10.05.05), a battered noncitizen spouse or child, non-citizen parent of a battered child or a non-citizen child of a battered parent with a petition pending under 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

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In order to be eligible to receive SNAP benefits, LPR's, parolees, conditional entrants and battered non-citizens must meet one of the following additional conditions:

- * Five (5) years of residence: has lived in the U.S. as a qualified alien for five (5) years from the date of entry;
- * Forty (40) qualifying work quarters (this condition can only be met by individuals who are lawful permanent residents/LPR's): A LPR who can be credited with forty (40) qualifying quarters of work under the Social Security system (credits may be earned individually, in combination with a spouse and in some circumstances a parent);
- * Blind or disabled: Individuals who have been determined blind or disabled and are receiving benefits or assistance for their condition;
- * Elderly Non-citizens: elderly individuals born on or before August 22, 1931 and lawfully residing in the United States on August 22, 1996;
- * Military connection: an individual who is lawfully residing in a state and is on active duty in the military (excluding National Guard) or is an honorably discharged veteran whose discharge is not because of immigration status (includes spouse, surviving spouse if not married, and unmarried dependent children). A discharge "Under Honorable Conditions", which is not the same as an honorable discharge, does not meet this requirement.
- * Child under 18: Qualified non-citizen children under eighteen (18) years of age.

1014.55 HOUSEHOLDS CONTAINING SPONSORED ALIEN MEMBER

REV:04/2003

For purposes of determining the eligibility and benefit level of a household in which an eligible sponsored alien is a member, the State agency must deem the income and resources of the sponsor and the sponsor's spouse, if s/he has executed INS Form I-864 or I-864A on or after December 19, 1997, as the unearned income and resources of the legal permanent resident (LPR). The instructions for calculating the amounts of income and resources to be deemed are located in Sections 1014.55.10 and 1014.55.15.

The sponsor's income and resources shall be deemed until the LPR alien gains U. S. citizenship, has worked or can receive credit for forty (40) qualifying quarters of work covered by Title II of the Social Security Act or can be credited with such qualifying quarters under Section 435; and 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 during any such period, or s/he or the sponsor dies.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.