

# HEALTH COVERAGE CROSSWALK: ELIGIBILITY BY IMMIGRATION STATUS



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Benefit Related Immigration Classifications	Immigration Status	HEALTH COVERAGE OPTIONS					
		EXCHANGE (BHP) <sup>1</sup>	FEDERAL MEDICAID	NYS MEDICAID/ FHPlus <sup>2</sup>	ADAP CHIP <sup>3</sup> (<19)	EMERGENCY MEDICAID <sup>4</sup>	
<b>Lawfully Present<sup>5</sup></b>	<b>Qualified Aliens</b>	<a href="#">Lawful Permanent Resident (LPRs)</a>	Yes	5 year bar unless pregnant or child<21	Yes	Yes	Only while subject to 5 year bar for Fed Med
		<a href="#">Refugees and Asylees<sup>7</sup></a>	Yes	Yes	Yes	Yes	No
		<a href="#">Granted withholding of removal under the INA</a>	Yes	Yes	Yes	Yes	No
		<a href="#">Battered Spouses / children of U.S. citizens or LPR w/ pending VAWA or family petition</a>	Yes	5 year bar unless pregnant or child<21	Yes	Yes	Only while subject to 5 year bar for Fed Med
		<a href="#">Cuban/Haitian Entrant</a>	Yes	Yes	Yes	Yes	No
		<a href="#">Paroled for period of one year or more</a>	Yes	5 year bar unless pregnant or child< 21	Yes	Yes	Only while subject to 5 year bar for Fed Med
		Lawfully residing armed services connected noncitizens and their dependents <sup>8</sup>	Yes	Yes	Yes	Yes	No
		<a href="#">Iraq / Afghan SIV<sup>9</sup></a>	Yes	Yes	Yes	Yes	No
		Canadian born Native Americans <sup>10</sup>	Yes	Yes	Yes	Yes	No
		<a href="#">Amerasians</a>	Yes	Yes	Yes	Yes	No
		<a href="#">T Visa Holders and Certified Victims of Trafficking<sup>11</sup></a>	Yes	Yes	Yes	Yes	No
	<a href="#">In valid nonimmigrant status<sup>12</sup></a>	Yes, if state resident	Only if pregnant or child <21 and state resident	Only if pregnant or child <21 and state resident	Yes, if state resident	Yes, unless eligible for Fed Medicaid <sup>13</sup>	
	<b>PRUCOL<sup>6</sup></b>	<a href="#">U, K3 / K4, V, and S visa holders</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Approved Visa and Pending I-485</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
<a href="#">Granted withholding of removal under CAT</a>		Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid	

This Crosswalk and Status Explanation originally appeared as appendices to a report supported by the United Hospital Fund entitled, “New York’s Exchange Portal: A Gateway to Coverage for Immigrants.”

Benefit Related Immigration Classifications	Immigration Status	HEALTH COVERAGE OPTIONS					
		EXCHANGE <sup>1</sup> (BHP)	FEDERAL MEDICAID	NYS MEDICAID/ FHPlus <sup>2</sup>	ADAP CHIP <sup>3</sup> (<19)	EMERGENCY MEDICAID <sup>4</sup>	
Lawfully Present <sup>5</sup>	PRUCOL <sup>6</sup>	<a href="#">Paroled for less than 1 year</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Temporary Protected Status (TPS)</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">(non DACA) Deferred Action</a> <sup>14</sup>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Order of Supervision</a>	<b>Only with EAD</b>	Only with EAD AND pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Deferred Enforced Departure</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Granted stays of deportation or removal</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes
		Noncitizens Lawfully Present in American Samoa Under its Immigration Laws <sup>15</sup>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Temporary resident INA 210 / 245A</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Family Unity Beneficiary</a>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<b>APPLICANTS FOR:</b>					
		<a href="#">Special Immigrant Juvenile Status</a>	Yes	Yes	Yes	Yes	No
		<a href="#">Asylum / Withholding Under INA or CAT</a>	<b>Only w EAD or, if child ≤ 14, 180 days after app</b>	Only with EAD AND pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Cancellation of Removal</a>	<b>Only w/ EAD</b>	Only with EAD AND pregnant or child <21	Yes	Yes	Only with EAD AND pregnant or child <21
		<a href="#">Temporary Protected Status (TPS)</a>	<b>Only w/ EAD</b>	Only with EAD AND pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid

Benefit Related Immigration Classifications	Immigration Status	HEALTH COVERAGE OPTIONS					
		EXCHANGE <sup>1</sup> (BHP)	FEDERAL MEDICAID	NYS MEDICAID/ FHPlus <sup>2</sup>	ADAP CHIP <sup>3</sup> (<19)	EMERGENCY MEDICAID <sup>4</sup>	
<b>Lawfully Present<sup>5</sup></b>	<b>PRUCOL<sup>6</sup></b>	<a href="#">For Record of Admission Under 249 (registry alien)</a>	Only w/ EAD	Only with EAD AND pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Adjustment Under LIFE Act</a>	Only w/ EAD	Only with EAD AND pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<a href="#">Legalization Apps Under SAW and IRCA</a>	Only w/ EAD	Only with EAD AND pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
		<b>PRUCOL ONLY</b>					
		<a href="#">Noncitizens who can show continuous residence since on or before 1/1/1972 (registry aliens)</a>	No	No	Yes	Yes	Yes
		<a href="#">Immediate Relatives with approved I-130</a>	No	No	Yes	Yes	Yes
		<a href="#">Deferred Action under DACA (including applicants)<sup>16</sup></a>	No	No	Yes	Yes	Yes
		<a href="#">Request for Deferred Action (non DACA cases) pending for 6 months or more and not denied<sup>17</sup></a>	No	No	Yes	Yes	Yes
		Citizens of Micronesia, Paula and Marshall Islands <sup>18</sup>	Yes	Only if pregnant or child <21	Yes	Yes	Yes, unless eligible for Fed Medicaid
<b>Out of Status</b>	Entry across border without inspection (EWIS) and Visa Overstays	No	No	No, unless pregnant	Yes	Yes	

## ENDNOTES

<sup>1</sup>Exchange eligibility for the various immigration statuses refers to: Eligibility to purchase private insurance in the Exchange, Eligibility for Exchange related financial assistance (advance premium tax credits and assistance with cost-sharing), and Eligibility for the Basic Health Plan (BHP), which New York may choose to create

<sup>2</sup>New York State's Medicaid program (including Family Health Plus) provides assistance to noncitizens for whom it receives federal reimbursement as well as for those who are ineligible for the federal Medicaid programs. This includes most noncitizens who are "lawfully present" but not qualified aliens as well as noncitizens who meet the definition of PRUCOL.

<sup>3</sup>Federal reimbursement for CHIP is only available for qualified alien and lawfully residing children <19.

<sup>4</sup>The state can seek federal reimbursement through the federal Emergency Medicaid program for qualifying services provided to noncitizens ineligible for Federal Medicaid but in receipt of Medicaid using only state funds. This is a "back end" process that does not require the noncitizen in the state's Medicaid program to actually apply for Emergency Medicaid.

<sup>5</sup>The ACA's category of "lawfully present" is for all practical purposes identical to the 2009 CHIP category "lawfully residing" because the ACA requires that to be eligible for the Healthcare Exchange, a "lawfully present" noncitizen must meet the Medicaid state residency rules.

<sup>6</sup>Permanently Residing Under Color of Law (PRUCOL).

<sup>7</sup>Even if a refugee or asylee adjusts to permanent resident status, their exemption from the 5 year bar is not lost.

<sup>8</sup>This category includes active duty service members and honorably discharged veterans not only who are in the "qualified alien" classifications but also those in the "lawfully present" categories. They are not subject to the 5 year bar but may be subject to sponsor deeming and liability.

<sup>9</sup>Treated as refugees for benefits purposes as required by the legislation that created the status.

<sup>10</sup>Must have tribal membership documents. Do not have to apply for LPR status to be eligible.

<sup>11</sup>NYS DOH includes T-visa holders in the "qualified alien" category because they are treated like refugees for benefits purposes. However, under the recently published federal rules, they are defined as "lawfully present."

<sup>12</sup>In its recently published Proposed Rule, HHS removed the phrase "who have not violated their status" inasmuch as that determination is not within the jurisdiction of the Medicaid agency to make. *Medicaid, Children's Health Insurance Programs and Exchanges: Essential Health Benefits in the Alternative Benefit Plans, Eligibility Notices, Fair Hearings and Appeals Processes for Medicaid and Exchange Eligibility Appeals and Other Provisions Related to Eligibility and Enrollment for Exchanges, Medicaid and CHIP, and Medicaid and Premiums and Cost Sharing*, Proposed Rule, 78 Fed.Reg. 4594, at 4613 (January 23, 2013).

<sup>13</sup>In other words, all immigrants in these and the following categories are eligible for Emergency Medicaid except pregnant women and children <21, who are eligible for Federal Medicaid and therefore ineligible for Emergency Medicaid.

<sup>14</sup>HHS issued clarification at the end of August 2012 that noncitizens granted deferred action under the Deferred Action for Childhood Arrivals (DACA) program are **not** eligible for Federal Medicaid or for the Exchange.

<sup>15</sup>Added by 1/23/2013 Proposed Rule, which also eliminated the category of those lawfully present in Micronesia, Palau and the Marshall Islands from the "lawfully present" list on the ground that they were included in other categories.

<sup>16</sup>See endnote 14. The code on the work authorization of DACA beneficiaries will be (c)(33), which distinguishes them from other noncitizens with Deferred Action, whose work authorization code is (c)(14) and who are eligible for the Exchange.

<sup>17</sup>NYS DOH Policy Guidance memo 08 OHIP/INF-4 at:

[www.health.ny.gov/health\\_care/medicaid/publications/docs/inf/08inf-4.pdf](http://www.health.ny.gov/health_care/medicaid/publications/docs/inf/08inf-4.pdf).

<sup>18</sup>See endnote 15.

# IMMIGRATION STATUS: EXPLAINING THE TERMS

## “QUALIFIED ALIENS” UNDER PRWORA AND “LAWFULLY PRESENT<sup>1</sup>” UNDER THE ACA:

### **1. Lawful Permanent Resident (LPRs):**

Lawful permanent residents are foreign nationals who immigrate to the United States to live here permanently. Most noncitizens become permanent residents through a family petition filed by their U.S. citizen or lawful permanent resident spouse or parent. Once granted LPR status, they have permission to work and live in the U.S., travel abroad, petition for certain of their family members to come to the U.S. and, after a few years, apply for citizenship. In addition to family based immigration, another path to LPR status is through employment, when an employer files an immigration petition on behalf of an employee, generally one with special skills. Refugee and asylees are eligible to apply for LPR status one year after being granted status. An LPR can apply for citizenship after five years in LPR status, three if the immigrant is married to a U.S. citizen.

### **2. Refugees and Asylees:**

A refugee is a noncitizen who, while outside the U.S. and their home country, has been granted permission to enter and live in the U.S. because of a well-founded fear of persecution based on their nationality, religion, race, political opinion or membership in a particular social group. Asylees are noncitizens who have come into the U.S. in some other way and are already here when they apply for, and are granted, refugee status. Both refugees and asylees can apply for LPR status.

### **3. Granted withholding of deportation or removal under the Immigration and Nationality Act (INA):**

A status similar to asylum, it is granted to noncitizens who are in removal proceedings and who prove that their life or freedom would be threatened based on one of the five protected grounds listed above if they were to be returned to their home country. To be granted this relief, the individual must meet a higher evidentiary standard than for asylum. It is generally granted to someone who, because of their past actions, does not qualify for asylum. A person granted withholding could be removed to a third country if there is one that will accept him. There is no path to permanent residence from a grant of withholding.

### **4. Spouses and children of U.S. citizens or LPRs subjected to “battery or extreme cruelty”:**

Noncitizen spouses and children of U.S. citizens or lawful permanent residents who have been subjected to battery and abuse may petition on their own behalf (self-petition) for lawful permanent residence under the Violence Against Women Act (VAWA). Under PRWORA, they are eligible for Medicaid and other public benefits while they are waiting for the immigration process to be completed and before they adjust to LPR status. In order to be classified as a qualified alien for

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<sup>1</sup> The “lawfully present” immigrant eligibility classification of the ACA is identical to the “lawfully residing” immigrant classification established under the Section 214 of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA). Because the ACA requires that, in order to be eligible to utilize the Health Care Exchange, a “lawfully present” noncitizen must meet the Medicaid state residency rules; there is no difference between these two classifications.

## IMMIGRATION STATUS: EXPLAINING THE TERMS

benefit purposes, the individual can no longer be living with the abuser and must also show that (s)he has begun the immigration process by providing evidence that:

- a. her/his VAWA self-petition has been approved or is pending and (s)he has received a “prima facie case determination” from USCIS, or
- b. (s)he has an approved or pending visa application filed by the abusive U.S. citizen or lawful permanent resident spouse or parent and the benefit agency finds that (s)he has presented credible evidence of abuse, or
- c. (s)he has an application pending for cancellation of removal or suspension of deportation under VAWA based on the battery and abuse of her/his US citizen or LPR spouse or parent.

### 5. Cuban/Haitian Entrants as defined by the Refugee Education Assistance Act (REEA)<sup>2</sup>:

The classification Cuban/Haitian Entrant has its historical roots in the time of the Mariel boatlift and the influx of Cuban and Haitian nationals in 1980, when, between April and October, about 125,000 Cubans and 40,000 Haitians entered the U.S. This massive influx occurred just after Congress passed the 1980 Refugee Act. However, the Refugee Act was directed toward the admittance and resettlement of refugees arriving from abroad, not for individuals arriving directly into the U.S. Furthermore, the Cubans and Haitians entering the U.S. fit somewhere between refugees fleeing persecution and immigrants seeking better lives<sup>3</sup>. In June of 1980, the federal government used the Attorney General’s parole authority to create a new immigrant category, “Cuban/Haitian Entrant (Status Pending).” In October of 1980, the Refugee Education Assistance Act was passed, which authorized the provision of refugee benefits to Cuban and Haitian entrants.

A CUBAN/HAITIAN ENTRANT IS DEFINED UNDER SECTION 501(E) OF THE REEA AS:

1. any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, **regardless of the status of the individual at the time assistance or services are provided** (emphasis added); and
2. any other national of Cuba or Haiti –
  - A. who-
    - i. was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;
    - ii. is the subject of removal proceedings under the Immigration and Nationality Act; or
    - iii. has an application for asylum pending with the Immigration and Naturalization Service and
  - B. with respect to whom a final, nonappealable, and legally enforceable order of removal has not been entered.

<sup>2</sup> P.L. 96-42, 94 Stat. 1799 (1980)

<sup>3</sup> Hemenway, Rohani and King, *Cuban, Haitian, and Bosnian Refugees in Florida: Problems and Obstacles in Resettlement*, Florida Department of Children and Families, Refugee Programs Administration, June 1999, available at: [www.cala.fsu.edu/files/refugee\\_lit\\_review.pdf](http://www.cala.fsu.edu/files/refugee_lit_review.pdf).

## IMMIGRATION STATUS: EXPLAINING THE TERMS

The years since the Mariel boatlift have seen periodic waves of both Cuban and Haitian migrations. Many of the later arrivals were simply given parole status, without any special designation. A rule published in the Federal Register in the late 1990's by INS clarified that a national of Cuba or Haiti who is paroled into the U.S. at any point after October of 1980 is considered to have been paroled in the "special status" referred to in the REAA.<sup>4</sup> Thus, for example, Haitians who came to the U.S. in parole status after the massive earthquake of three years ago are Cuban/Haitian Entrants and therefore qualified aliens with respect to Medicaid and other benefits.

Even an order of removal does not terminate the Cuban/Haitian Entrant status for the purpose of determining the individual's eligibility for Medicaid or other benefits. This applies primarily to Cubans who were initially granted parole status and then, at some later point, were placed in removal proceedings and ordered deported. Because they cannot legally be returned to Cuba while the Communist government is in power, the Office of Refugee Resettlement, in a 2001 clarification to State Refugee Coordinators, instructed that they be treated as Cuban/Haitian Entrants for benefit purposes if they had been granted parole status at any point after October of 1980.<sup>5</sup>

### **3. Paroled into the U.S. for a period of one year or more:**

Noncitizens "paroled" into the U.S. are foreign nationals who have been given permission to enter the U.S. on humanitarian grounds or because it is in the public interest of the U.S. to allow them into the country even though they do not have a visa or lawful status. It is not an immigration status and, with some exceptions, notably Cuban and Haitian parolees, it does not provide a path to permanent residence. If the period of parole granted is one year or more, the person is both a "qualified alien" and "lawfully present." If the period of parole granted is less than one year, the individual is not considered a "qualified alien" but is "lawfully present."

### **4. Noncitizens from Iraq and Afghanistan with Special Immigrant Visas:**

Under various programs enacted by Congress over the last six or so years, a specified number of nationals of Iraq and Afghanistan who have worked with the U.S. in their home country, as translators and in certain other capacities, are permitted to come to the U.S. with special immigrant visas (SIV) each year. Though they enter as lawful permanent residents, they are treated for Medicaid and other public benefit purposes as if they were refugees. Consequently they are not barred for the first five years from qualifying for these benefits.

These special visas are currently limited to 1500 a year through the year 2013 for Afghan nationals who worked with the U.S. and 50 a year for Afghan and Iraqi nationals who acted as translators. From fiscal years 2008 through 2012, there was an annual allocation of 5,000 visas a year for Iraqi nationals who worked for the U.S. but that ended this federal fiscal year. Spouses and children accompanying the principal visa holders do not count towards these limits.

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<sup>4</sup> Final Rule, *Effect of Parole of Cuban and Haitian Nationals on Resettlement Assistance Eligibility*, 63 Fed. Reg. 31895 (June 11, 1998).

<sup>5</sup> However, in New York, Cubans who have a deportation order and are under an Order of Supervision at the time they apply for benefits, even if they were initially granted parole status, are classified as PRUCOL rather than as Cuban/Haitian Entrants. Consequently, the state receives no federal reimbursement for medical assistance provided to them and they are denied food stamps.

## IMMIGRATION STATUS: EXPLAINING THE TERMS

### 5. Amerasians:

Amerasians are noncitizens from Vietnam who are admitted to the U.S. as immigrants (LPRs) pursuant to legislation enacted by Congress in 1988. The term Amerasians refers to Vietnamese children born to U.S. citizen fathers between 1962 and 1976 and their children, spouses and mothers, guardians or next of kin. Because of the passage of time this is likely to be a relatively rarely encountered immigration classification.

### 6. T Visa Holders and Certified Victims of Trafficking:

Trafficking victims with a T visa or a prima facie case determination on a T visa application are “lawfully present” under federal immigration law.

T visa holders are treated like refugees in qualifying for Medicaid and other public benefits. Noncitizens who are victims of human trafficking but not yet in possession of a T visa are also eligible for benefits as if they were refugees if the Office of Refugee Resettlement (ORR) has certified them. To be certified, the individual must be a victim of human trafficking as defined by the Trafficking Victims protection Act of 2000, be willing to assist with the investigation and prosecution of trafficking cases and have completed a bona fide application for a T visa or have received “continuous presence” status from the Department of Homeland Security Immigration and Custom Enforcement (ICE). Children (under 18) who are victims of human trafficking do not have to be certified to be eligible for benefits. Rather, ORR will issue an eligibility letter stating that the child is such a victim.

NYS DOH classifies this group as “qualified aliens” because they are treated as refugees for benefit purposes. T visa holders are eligible to apply for permanent resident status after three years.

### **NONCITIZENS WHO ARE “LAWFULLY PRESENT” AND RESIDING IN THE STATE BUT WHO ARE NOT “QUALIFIED ALIENS” OR PRUCOL**

#### **In Valid Nonimmigrant Status:**

Most noncitizens in a valid nonimmigrant status, for example students or foreign workers, are classified as “lawfully residing.” They are not classified as PRUCOL because historically, nonimmigrants were never, and are still not, eligible for welfare or food stamps or federal housing programs and the like, programs in which the concept of PRUCOL developed. The January 23, 2013 Proposed Rule eliminated the earlier phrase “who have not violated their status” since benefit agencies are not capable of making that determination. Whether an individual violated the conditions of their nonimmigrant status is a determination to be made only by immigration agencies. (An example of a violation of status would be a student who takes a job even though he is not authorized to work.)

# IMMIGRATION STATUS: EXPLAINING THE TERMS

## **NONCITIZENS WHO ARE “LAWFULLY PRESENT” AND PRUCOL**

### **7. K3/K4, “U”, “S”, and “V” visa holders--nonimmigrants that are eligible to adjust to LPR status<sup>6</sup>:**

- a. A victim of crime who can obtain certification from a state or federal law enforcement agency or a state or federal court that s/he has been, or is willing to be, helpful to the agency or court in the investigation or prosecution of the crime is eligible to apply for a “U” visa. It is a visa designed to encourage noncitizens without legal status to come forward to report crimes without fear that they will be placed in removal proceedings if they do so. The spouse, parent, child(ren), and in some cases, the unmarried siblings, of the crime victim may be eligible for U visas as derivatives. U visa holders are eligible to apply for work authorization and, after 3 years, can apply to adjust to permanent resident status. There is a 10,000 annual cap in the number of U visas that can be granted.
- b. K3 and K4 visas are granted to the spouse of a U.S. citizen, and to his/her children, who are the beneficiaries of a family based petition. This allows them to enter the U.S. and live and work here until they are eligible to adjust to permanent resident status.
- c. A “V” visa is one that is granted to the spouse and children of a lawful permanent resident who are the beneficiaries of a family based petition filed on or before December 21, 2000. The petition must either have been pending for 3 years or more or, if it was granted, the spouse and his or her children are not yet eligible to adjust status. Long delays are endemic to the immigration of the spouses and children of lawful permanent residents because of the annual cap on the number of such relatives who may enter the U.S. in any given year. However, because this was a time limited remedy, no one who is a beneficiary of a petition filed by an LPR after December of 2001 is eligible for the visa. Since most of the spouses and children of LPRs with petitions filed before then have already adjusted status, it is unlikely that there are many, if any, noncitizens left who currently have a “V” visa.
- d. The “S” visa is very rare. It is not a benefit that the noncitizen can apply for on his or her own behalf. Rather, it must be applied for by Attorney General on behalf of a noncitizen who is determined to possess critical information about a criminal organization or enterprise that s/he is willing to supply to law enforcement authorities. Like “U” visa holders, “S” visa holders are eligible to work and to apply for adjustment to permanent resident status after 3 years and may obtain visas for his or her immediate family members.

### **5. Noncitizens with an Approved Visa Petition and a Pending Application for Permanent Resident Status:**

This category refers to noncitizens who are the beneficiaries of an approved immigrant visa petition under which they are now eligible to adjust to permanent resident status. If they have filed the application for adjustment and are now simply waiting for their application to be processed by USCIS, they are considered to be lawfully present.

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<sup>6</sup> Nonimmigrants generally are noncitizens with temporary visas that, by definition, do not have an intention to remain in the U.S. permanently. These specific visa holders are the exception to that rule.

## IMMIGRATION STATUS: EXPLAINING THE TERMS

### **6. Granted withholding of deportation/removal under the Convention Against Torture (CAT):**

The Convention Against Torture is an international treaty to which the U.S. is signatory and it prohibits the return of individuals to their home country who have substantial grounds for believing that they would be at risk of being subjected to torture. As with withholding of removal under the INA, there is no path to permanent residence from a grant of withholding of removal under CAT.

### **7. Persons paroled for a period of less than one year:**

Noncitizens paroled for humanitarian or public interest reasons for a period of less than one year are not included in the definition of “qualified aliens” but are included in the “lawfully present” and PRUCOL classifications. Whether they meet the definition of “lawfully residing” and are thereby eligible to participate in the Exchange will depend on the length of the period for which parole was granted, i.e. whether they can meet the residence requirement of Medicaid and the ACA.

### **8. Noncitizens Granted Temporary Protected Status (TPS):**

Temporary protected status is granted to nationals of certain countries who are residing in the U.S. when their country suffers a severe natural disaster or is experiencing serious civil strife. The Secretary of Homeland Security designates the countries whose nationals are eligible for TPS. For example, in 2010, Haitians who had been living in the U.S. when the earthquake struck were made eligible to apply for TPS. TPS beneficiaries are eligible to remain in the U.S. for specified periods that can be, and routinely are, renewed, often for many years. Individuals applying for TPS must apply for employment authorization at the same time, regardless of age. Once employment authorization is granted, even if it is prior to the grant of TPS, the noncitizen is considered to be lawfully present.

### **9. Noncitizens Granted Deferred Action:**

Immigration officers can exercise “prosecutorial discretion” by granting “deferred action” to a noncitizen who is otherwise removable. There are no statutory or regulatory provisions for this exercise of discretion and generally it is granted on a case-by-case basis on humanitarian grounds. However, there are certain instances where it is granted to certain classifications as a whole, for example VAWA self-petitioners whose petition has been granted but who have not yet adjusted to permanent resident status may be granted deferred action. It has also been granted to U visa applicants whose application has been granted but where the cap on U visas for the year has already been reached.

Most recently, young people who came to the U.S. before reaching the age of 16 and who meet certain requirements have been made eligible for deferred action as “childhood arrivals.” However, they have been excluded from ACA eligibility.

Noncitizens granted deferred action are eligible to apply for employment authorization.

### **10. Noncitizens Granted Orders of Supervision:**

A noncitizen who has been ordered removed or deported by the Immigration Court but where it is unlikely that the removal can be effectuated is usually placed under an order of supervision.

## IMMIGRATION STATUS: EXPLAINING THE TERMS

This would happen for example with a Cuban national who cannot be removed because the U.S. has no diplomatic relationship with Cuba or when someone is ordered removed to a country without a functioning government that can issue travel documents. Orders of supervision require the noncitizen to report to the local immigration officer on a regular basis and permit the individual to apply for employment authorization.

### **11. Noncitizens Granted Deferred Enforced Departure:**

Deferred Enforced Departure (DED) is much like TPS. It is in the President's discretion to authorize and in the past has been granted to nationals of Haiti, El Salvador and the People's Republic of China. Currently only nationals from Liberia are covered under DED. Like TPS, DED is granted for a specified period of time, which can be renewed, and people under DED can apply for employment authorization.

### **12. Noncitizen Granted Stay of Removal:**

Under certain circumstances, ICE may grant a stay of removal to a noncitizen who has a final Order of Removal. This is not often granted and almost always involves overwhelming humanitarian considerations.

### **13. Temporary Residents and Applicants for Adjustment under INA Sections 210 and 245A:**

The Immigration Reform and Immigrant Control Act of 1986 included a legalization program for two groups of noncitizens who were without legal status. One was a general legalization program for those who had lived in the U.S. without status since prior to January 1, 1982. The other program was for "special agricultural workers" (SAW), noncitizens who had done agricultural work for a specific period of time. Under the legalization program, individuals were first granted temporary resident status. They were then required to apply for permanent status within a certain time frame.

SAW noncitizens became lawful permanent residents automatically after residing in temporary resident status after 3 to 4 years. Because of the automatic conversion to permanent resident status for SAW noncitizens and the requirement for legalization applicants to apply for permanent status within a certain period of time after being granted temporary resident status, there are unlikely to be few if any noncitizens left who fall into this category.

### **14. Family Unity Beneficiaries:**

Family Unity status provides protection from removal for the children and spouses of noncitizens who legalized under the 1986 legalization program. To be eligible, the person must have been the spouse or child of the legalized immigrant as of May 5, 1988 and must have been continuously living in the U.S. since that time. In 2000, Congress extended Family Unity protection to the spouses and unmarried minor children of noncitizens eligible to apply for permanent resident status under the Legal Immigration Family Equity (LIFE) Act "late amnesty" legalization program.

# IMMIGRATION STATUS: EXPLAINING THE TERMS

## APPLICANTS FOR IMMIGRATION BENEFITS WHO ARE LAWFULLY PRESENT AND PRUCOL:

### 15. Applicants for Special Immigrant Juvenile Status (SIJ):

This category refers to young noncitizens under the age of 21 who have come under the jurisdiction of the Family Court and who have been abandoned or abused by at least one parent and have an application for SIJ status pending. To be eligible for SIJ the individual must have a court order with special findings, including a finding that it is not in the best interest of the child to be returned to his or her home country.

### 16. Noncitizens with Employment Authorization<sup>7</sup> who are:

- a. applicants for asylum or withholding of removal under the INA or CAT – if the applicant is a child under 18 years old, there is no requirement that s/he have employment authorization to be considered “lawfully present” but the application for asylum or withholding has to have been pending for at least 180 days;
- b. applicants for cancellation of removal – noncitizens without legal status who have been living in the U.S. for at least 10 years and who are placed in removal proceedings who are of good moral character and who have a U.S. citizen or LPR child, spouse or parent who would suffer severe and extreme hardship if the noncitizen were ordered removed are eligible to apply for cancellation of removal;
- c. applicants for TPS - note that the application for TPS must be accompanied by an application for employment authorization;
- d. applicants for a “record of admission” under INA 249 (“registry alien”) – a noncitizen of “good moral character” who has been continuously residing in the United States since before January 1, 1972 is eligible to apply for permanent resident status solely based on their length of residence and is also eligible to apply for employment authorization while his or her application for adjustment is pending;
- e. applicants for adjustment under the LIFE Act – the LIFE Act of 2000 authorizes class members of one of three class actions that challenged the INS’ implementation of the legalization program under the 1986 Immigration Reform and Immigrant Control Act (IRCA) to file for adjustment of status. In order to be eligible, the individual must show that they were continuously physically present in the U.S. during the period between November 6, 1986 and May 4, 1988 and that they applied for membership in the class before October 1, 2000. The filing period for adjustment applications under LIFE ended May 31, 2002, so it is unlikely that any applications remain pending currently.
- f. and applicants for legalization under 1986 IRCA - the filing period has long been closed, even for those applying under LIFE’s late amnesty program. Because it has been closed for a long time, there is unlikely to be anyone left with an application still pending.

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<sup>7</sup> For benefit eligibility under the **PRUCOL** category, there is **no requirement** that the applicants have employment authorization. In the January 23, 2013 Proposed Rule, HHS proposes to eliminate this long list and simply include all noncitizens with employment authorization under 8 C.F.R. § 273.12(c) in the category of “lawfully present.”

## IMMIGRATION STATUS: EXPLAINING THE TERMS

### **NONCITIZENS WHO ARE PRUCOL BUT NOT CLASSIFIED AS LAWFULLY PRESENT UNDER THE ACA<sup>8</sup>**

#### **17. Registry Aliens with evidence of continuous residence:**

These are noncitizens who are authorized to apply for permanent resident status if they can show that they entered the U.S. before January 1, 1972 and have evidence of continuous residence since then. In contrast to the ACA classification of “lawful presence”, to be considered PRUCOL, the individual doesn’t need to have an application for adjustment pending. Rather, to establish PRUCOL eligibility the individual need only provide the benefit agency with proof that s/he has been living in the U.S. since before January 1, 1972.

#### **18. Immediate relatives with an approved I-130 petition:**

Noncitizen spouses and children of U.S. citizens who are beneficiaries of an approved family petition are considered PRUCOL without meeting the ACA’s “lawfully present” requirement of having an application for adjustment pending with USCIS.

#### **19. Requests for Deferred Action pending for a period of 6 months that have not been denied:**

Unlike the deferred action program for childhood arrivals, which has a formal application procedure, most requests for deferred action are made by letter on behalf of noncitizens who, usually because of their health or other exigent circumstances, are requesting that they be granted deferred action on humanitarian grounds. Because these requests sometimes go unanswered by ICE, NYS DOH has developed a policy that if the request has been pending for at least 6 months without a denial by ICE, the person will be considered PRUCOL as someone who is known by the government to be in the country but where the government appears to have no intention of enforcing their departure.<sup>9</sup>

This policy does not apply to applicants for Deferred Action by Childhood Arrivals, who are treated like all other applicants for an immigration benefit or status under NYS DOH’s PRUCOL rules.<sup>10</sup> This means that they are immediately eligible for Medicaid upon proof that the application has been filed.

#### **20. Applicants for various immigration benefits who do not have employment authorization.**

With the exception of applicants for Special Immigrant Juvenile Status, to be considered lawfully present and eligible for the Exchange, applicants for most other immigration benefits must also have an employment authorization document (EAD) in addition to the pending application. In

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<sup>8</sup> These are individuals who are only eligible for public health insurance under New York’s state funded Medicaid/Family Health Plus programs.

<sup>9</sup> NYS DOH Informational Letter 08 OHIP/INF-4, *Clarification of PRUCOL Status* (August 4, 2008) available at: [www.health.ny.gov/health\\_care/medicaid/publications/docs/inf/08inf-4.pdf](http://www.health.ny.gov/health_care/medicaid/publications/docs/inf/08inf-4.pdf)

<sup>10</sup> For the purpose of eligibility for public assistance, the NYS Office of Temporary and Disability Assistance does not treat a noncitizen applicant for lawful status as PRUCOL. In order to be considered eligible for cash assistance the individual must actually have the status.

## IMMIGRATION STATUS: EXPLAINING THE TERMS

New York, these applicants are considered PRUCOL regardless of whether they have an EAD or not. Included in the list of PRUCOL eligible noncitizens are applicants for:

- a. Special immigrant Juvenile Status (also considered lawfully present even without an EAD);
- b. Asylum or withholding of Removal under the INA or CAT;
- c. Cancellation of Removal;
- d. Temporary Protected Status;
- e. Record of Admission under Section 249 of the Immigration and Nationality Act (INA);
- f. Adjustment under the LIFE Act, and
- g. Legalization under SAW and IRCA.

Each of these immigration benefits is described in paragraph 13 above, under the section “Applicants for Immigration Benefits who are Lawfully Present and PRUCOL.”