

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 23-2023

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

FILED

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& LEGISLATIVE COUNSEL

FILING CAPTION: Re-Establishing a Temporary Rule Effective April 7 through October 3 about Noncitizen Status Eligibility

EFFECTIVE DATE: 07/01/2023 THROUGH 10/03/2023

AGENCY APPROVED DATE: 04/07/2023

CONTACT: Meorah Solar
503-602-7545
meorah.a.solar@odhs.oregon.gov

2885 Chad Drive
Eugene, OR 97408

Filed By:
Meorah Solar
Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-120-0125 about Noncitizen Status Requirements, needs to be amended to ensure the rule's provisions include all individuals who meet noncitizen status requirements for Department programs under federal law. If the rule is not updated to continue eligibility for the groups added in the April 7, 2023 temporary rule filing, the rule will reflect inaccurate program eligibility information, causing confusion and possibly inaccurate eligibility determinations for applicants, Department staff, and regulatory agencies like administrative law judges.

JUSTIFICATION OF TEMPORARY FILING:

The Department finds that failure to act promptly amending and adopting all rules in this filing will result in serious prejudice to the public interest and the Department, but mostly to individuals who are a citizen or national of Afghanistan with a qualifying USCIS status or their qualifying family members. The Department needs to proceed by temporary rule due to immediate nature of ongoing program eligibility review and the need for Department rules to align with policy and ONE system programming. This change continues current eligibility for the individuals to whom the provisions apply. Failure to act immediately could result in confusion for administrative law judges, state employees, and the aforementioned program applicants and recipients. This temporary rule filing will keep the rule language in alignment with the Department's recent policy decisions or with federal regulations. The temporary provisions of this rule will expire in accordance with 180 days from the initial temporary filing (April 7, 2023 through October 3, 2023) which was interrupted by a permanent July 1, 2023 change to this rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

* Policy Letter 22-01 dated October 11, 2022, and further revised on January 5, 2023, from the Office of Refugee Resettlement, available here:

<https://www.acf.hhs.gov/sites/default/files/documents/orr/ORR-PL-22-01-ORR-Authority-to-Serve-Afghan-Humanitarian-Parolees.pdf>

* Policy Letter 22-02, available here: <https://www.acf.hhs.gov/sites/default/files/documents/orr/ORR-PL-22-02->

AMEND: 461-120-0125

RULE SUMMARY: OAR 461-120-0125 is being changed to re-establish a temporary change to the rule effective April 7, 2023 through October 3, 2023, that was ended upon a permanent change to this rule effective July 1, 2023. These changes are put back into place and allow more citizens and nationals from Afghanistan, and their children or spouses, to meet the noncitizen requirements for the ERDC, TA-DVS, TANF, OSIPM, QMB, REF, REFM, and SNAP programs. The change includes individuals with the following statuses, but is limited by parole dates, age, marital status, USCIS status type, and more.

Citizens or nationals of Afghanistan granted parole into the U.S., their children, their spouse, and their parent or legal guardian.

Citizens or nationals of Afghanistan granted Special Immigrant Conditional Permanent Resident status or Special Immigrant SQ/SI Parole status., their children, their spouse, and their parent or legal guardian.

CHANGES TO RULE:

461-120-0125

Noncitizen Status Requirements ¶¶

An individual who must meet noncitizen status requirements under OAR 461-120-0110, must meet the noncitizen status requirements of the program for which they are applying. The requirements are listed in sections (2) through (6) of this rule.¶¶

(1) For purposes of this chapter of rules,¶¶

(a) In all programs, an individual is a "qualified noncitizen" if the individual is any of the following:¶¶

(A) An individual who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).-¶¶

(B) An Iraqi or Afghan individual granted special immigrant visa status (SIV) under section 101(a)(27) of the INA. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(C) An individual who is an "Amerasian" who is granted immigration status under section 584 of Public Law 100-202; the Foreign Operations, Export Financing, and Related Program Appropriations Act of 1988; as amended by Public Law 100-461. These individuals are lawfully admitted for permanent residence under the INA.¶¶

(D) An individual who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).¶¶

(E) An individual who is granted asylum under section 208 of the INA (8 U.S.C. 1158).¶¶

(F) An individual who is a "Cuban or Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).¶¶

(G) An individual who is a "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).¶¶

(H) An individual who is a family member of a "victim of a severe form of trafficking in persons" who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).¶¶

(I) An individual whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).¶¶

(J) An individual who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.¶¶

(K) An individual who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.¶¶

(L) An individual who is a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services (USCIS).¶¶

(b) In the OSIPM and QMB programs, in addition to subsection (a) of this section, an individual is a "qualified noncitizen" if the individual is from the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau who lawfully reside in the United States in accordance with the Compacts of Free Association. The provisions in this subsection are retroactively effective December 28, 2020.¶¶

(2) In all programs except the REF and REFM programs, an individual meets the noncitizen status requirements if the individual is one of the following:¶¶

- (a) An Indigenous, First Nation, Inuit, Métis, or Aboriginal individual who is born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.¶
- (b) A qualified noncitizen (see section (1) of this rule) who is any of the following:¶
- (A) A veteran of the United States Armed Forces who was honorably discharged for reasons other than noncitizen status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).¶
- (B) A member of the United States Armed Forces on active duty (other than active duty for training).¶
- (C) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraphs (A) or (B) of this subsection.¶
- (3) In the ~~TA-DVS~~ and TANF programs, an individual meets the noncitizen status requirements if the individual is one of the following:¶
- (a) An individual who is a qualified noncitizen (see subsection (1)(a) of this rule).¶
- (b) An individual who is a noncitizen who is currently experiencing domestic violence (see OAR 461-001-0000) or who has a safety concern related to domestic violence.¶
- (c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶
- (A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶
- ~~(B) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶~~
- (B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶
- (C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶
- (d) Effective October 1, 2021:¶
- (A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶
- (B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶
- (C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶
- (d) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶
- (e) Effective May 21, 2022, through the end of their parole:¶
- (A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:¶
- (i) Is a citizen or national of Ukraine.¶
- (ii) Last habitually resided in Ukraine.¶
- (B) An individual who was paroled after September 30, 2023, and who is one of the following:¶
- (i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶
- (ii) The spouse of an individual listed in paragraph (A) of subsection (d).¶
- (C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:¶
- (i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶
- (ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).¶
- (4) In the OSIPM and QMB programs an individual meets the noncitizen status requirements if the individual meets any of the following:¶
- (a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) or paragraph (1)(b) of this rule.¶
- (b) Effective October 1, 2009, the individual is a qualified noncitizen and is under 19 years of age.¶
- (c) The individual was a qualified noncitizen before August 22, 1996.¶
- (d) The individual has been granted a USCIS status listed under paragraphs (1)(a)(A), and (1)(a)(J) through (1)(a)(L) and meets one of the following:¶
- (A) Physically entered the United States or was granted the USCIS status on or after August 22, 1996; and has been in the U.S. for five years beginning on the date the USCIS status was granted.¶
- (B) Physically entered the United States before August 22, 1996 and was continuously present in the United States between August 22, 1996, and the date the USCIS status was granted. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date the USCIS status was granted.¶
- (e) The individual is under the age of 19 and is one of the following:¶

(A) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of noncitizens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:¶

- (i) An individual currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);¶
- (ii) An individual currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);¶
- (iii) An individual who is a "Cuban or Haitian entrant," as defined in section 202(b) Pub. L. 99-603 (8 USC 1255a), as amended;¶
- (iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101-649 (8 USC 1255a), as amended;¶
- (v) An individual currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;¶
- (vi) An individual currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or¶
- (vii) An individual who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.¶

(B) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).¶

- (f) In the OSIPM program, is receiving Supplemental Security Income (SSI) benefits.¶
- (g) In the QMB program, is receiving SSI and Medicare Part A benefits.¶
- (h) Effective July 31, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

~~(B) 3.¶~~

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(i) Effective July 31, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(D) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(j) Effective February 24, 2022, through the end of their parole:¶

- (A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:¶
- (i) Is a citizen or national of Ukraine.¶
- (ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

- (i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶
- (ii) The spouse of an individual listed in paragraph (A) of subsection (d).¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:¶

- (i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶
- (ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).¶

(5) In the REF and REFM programs, an individual meets the noncitizen status requirements if the individual is admitted lawfully under any of the following provisions of law:¶

- (a) The individual has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(H).¶
- (b) The individual has been paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)).¶
- (c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

~~(B3).~~

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2023.

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2023.

(d) Effective October 1, 2021.

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.

(d) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).

(e) Effective May 21, 2022, through the end of their parole:

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:

(i) Is a citizen or national of Ukraine.

(ii) Last habitually resided in Ukraine.

(B) An individual who was paroled after September 30, 2023, and who is one of the following:

(i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).

(ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).

(6) In the SNAP program,

(a) An individual meets the noncitizen status requirements if the individual:

(A) Has been granted a USCIS status listed under paragraphs (1)(a)(B) through (1)(a)(I) of this rule.

(B) Has been granted a qualified noncitizen USCIS status and is under age 18.

(C) Has been granted a qualified noncitizen USCIS status and has a disability (see OAR 461-001-0015).

(D) Was born on or before August 22, 1931, and on August 22, 1996, was lawfully residing in the United States.

(E) Was a member of a Hmong or Highland Laotian Tribe at the time that the Tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101), and is a noncitizen who is lawfully residing in the United States.

(F) Is a spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in paragraph (E) of this subsection.

(b) An individual meets the noncitizen status requirements when the individual has been granted a USCIS status listed under paragraph (1)(a)(A) or paragraphs (1)(a)(J) through (1)(a)(L) of this rule, and has completed one of the following:

(A) The individual has been residing in the United States for at least five years while a qualified noncitizen.

(B) The individual has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, subject to the following provisions:

(i) No quarter beginning after December 31, 1996, is a qualifying quarter if the individual received any federal, means-tested benefit during the quarter. Federal means-tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(ii) For the purpose of determining the number of qualifying quarters of coverage, an individual is credited with all of the quarters of coverage worked by a parent of the individual while the individual was under the age of 18 and all of the qualifying quarters worked by a spouse of the individual during their marriage, during the time the individual remains married to such spouse or such spouse is deceased.

(iii) A lawful permanent resident who would meet the noncitizen status requirements, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the individual. An individual provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for

opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the individual does not have sufficient quarters.¶

(c) Effective October 1, 2021 until March 31, 2023, or through the end of their parole, whichever is later:¶

(A) An individual who is a citizen or national of Afghanistan paroled into the U.S. between July 31, 2021 through September 30, 2022.¶

~~(B) 3.¶~~

(B) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) of this subsection, who is paroled into the U.S. after September 30, 2022.¶

(C) A parent or legal guardian of an individual listed in paragraph (A) of this subsection, who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2), who is paroled into the U.S. after September 30, 2022.¶

(d) Effective October 1, 2021:¶

(A) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant Conditional Permanent Resident status on or after July 31, 2021.¶

(B) An individual who is a citizen or national of Afghanistan who was granted Special Immigrant SQ/SI Parole status on or after July 31, 2021.¶

(C) An unmarried child under the age of 21 or spouse of an individual listed in paragraph (A) or (B) of this subsection.¶

(d) A parent or legal guardian of an individual listed in paragraph (A) or (B) of this subsection who is determined to be an unaccompanied child as defined by 6 U.S.C. § 279(g)(2).¶

(e) Effective May 21, 2022, through the end of their parole:¶

(A) An individual who was paroled into the U.S. between February 24, 2022, and September 30, 2023, and meets one of the following:¶

(i) Is a citizen or national of Ukraine.¶

(ii) Last habitually resided in Ukraine.¶

(B) An individual who was paroled after September 30, 2023, and who is one of the following:¶

(i) An unmarried child, defined in section 101(b) of the Immigration and Nationality Act (INA) (8 U.S.C. § 1101(b)), under the age of 21.¶

(ii) The spouse of an individual listed in paragraph (A) of subsection (d).¶

(C) An individual who was paroled into the U.S. after September 30, 2023, and is one of the following:¶

(i) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor, as defined in section 412(d)(2)(B) of the INA (8 U.S.C. § 1522(d)(2)(B)).¶

(ii) An unaccompanied child, as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. § 279(g)(2)).

Statutory/Other Authority: 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 413.085, 414.231, 414.619

Statutes/Other Implemented: 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.231, 409.010, 411.070, 414.025, H.R. 133, 116th Cong. (2019-2020), Public Law 117-43, H.R. 7691, 117th Cong. (2021-2022)