
RESIDENCE

A. GENERAL RESIDENCE REQUIREMENTS

1. Eligible Persons

To be eligible to CAPI, an applicant/participant must be:

- a. A legal non-citizen (**SOC 451- Item 3**); and
- b. A California resident (**MC 210 - Items 10 - 12**).

California residence is established by physical presence in California with the intent to remain in the State. The applicant's statement in the RESIDENCE section of the MC 210 application is acceptable evidence of his/her intention to reside in California, unless there is contrary evidence; and

- c. Residing in Los Angeles County.

NOTE: Refer to Application Section, Q., Inter-County Transfers, when dealing with an applicant/participant who leaves the County.

2. Ineligible Persons

The following individuals are ineligible to CAPI:

- a. Anyone living in a public institution (e.g., public hospital) for an entire month.
- b. Persons who are incarcerated for an entire month.
- c. Non-citizens who are here temporarily (e.g., on a visa) or whose immigration status does not permit them to stay in the U.S. with an INS document.
- d. PRUCOLs receiving SSI who were slated to have their benefits discontinued effective September 30, 1998. As Congress permanently restored these individuals' SSI/SSP benefits, they do not qualify for CAPI.
- e. Qualified aliens under age 65 who lawfully entered the U.S. before August 22, 1996 are not eligible to CAPI, even if they are blind disabled (e.g., qualified alien minor who is blind or disabled, etc.).
- f. Non-citizens entering the U.S. on or after August 22, 1998 without having a sponsor (e.g., refugees, etc.).
- g. Any non-citizen receiving federal SSI/SSP.

RESIDENCE

B. NON-CITIZENS ELIGIBLE TO CAPI

1. Pre-August 22, 1996 Immigrants (SOC 451 - Item 4)

- a. Qualified aliens age 65 years or older who lawfully entered the U.S. on or before August 21, 1996. Also, if disabled or blind, these individuals are eligible to CAPI and may be eligible to SSI/SSP.

NOTE: Certain Qualified Aliens are not eligible to CAPI during the first seven years following the date they are granted their Qualified Alien status by INS due to potential eligibility to SSI.

- b. Individuals who do not meet the definition of qualified aliens, who are disabled, blind or aged, and who entered the U.S. on or before August 21, 1996. These individuals must provide proof of an immigration status which qualifies as PRUCOL (Permanently Residing under Color of Law).

2. Post-August 22, 1996 Immigrants (SOC 451 - Item 4 - 11)

- a. Qualified aliens with a sponsor who are disabled, blind or aged and who lawfully entered the U.S. on or after August 22, 1996, but the sponsor is deceased, disabled, or abusive, or the sponsor's spouse/immigrant's spouse/immigrant's family member is abusive.
- b. Qualified aliens or PRUCOLs who are disabled, blind or aged and who entered the U.S. on or after August 22, 1996, but do not have a sponsor, or have a sponsor who is not deceased disabled, or abusive.

C. DEFINITIONS

1. Qualified Alien

A qualified alien, as defined under federal welfare reform, includes:

- a. Lawfully Admitted for Permanent Residence (LAPR).
- b. Granted Cuban/Haitian entrant status. (Section 501(e) of the Refugee Education Assistance Act of 1980).
- c. A refugee who entered the United States under Section 207 of the INA.
- d. Granted status as an asylee under Section 208 of the INA.

RESIDENCE

C. **DEFINITIONS** (Continued)

1. **Qualified Alien** (Continued)

- e. A non-citizen whose deportation is being withheld under Section 243 (h), or whose removal is being withheld under Section 241 (b)(3) of the INA.
- f. A non-citizen paroled into the United States for a period of at least one year under Section 212(d)(5) of the INA.
- g. A conditional entrant admitted to the United States under Section 201(a)(7) of the INA as in effect before April 1, 1980.
- h. A battered non-citizen, child of a battered spouse, or parent of a battered child who no longer lives with the abuser and has a petition for qualified alien status pending under Section 204(a)(1)(A) or (B) or 244(a)(3) of the INA.

In this situation the victims are exempt from all sponsor-deeming. See the Resources and Income Chapters for further details about this exemption.

- i. An **INS self-petitioned, battered VAWA noncitizen** includes abused children, children whose parents are abused, and parents whose children are abused. The noncitizen **must not** reside in the same household with the abuser.

A petition for these noncitizens may be pending **under one of the following INA Sections:**

- Section 204(a)(1)-(ii)-(iv)
- Section 204(a)(1)(B)-(i)-(ii)-(iii)
- Section 204(a)(1)(A)(ii)-(I)
- Section 240(b)(2)
- Section 244(a)(3).

NOTE: Qualified Aliens under VAWA provisions whose sponsor signed a **New Affidavit** of Support are **exempt** from sponsor-deeming for **one year** from the date Immigration and Naturalization Services (INS) issues the prima facie notice.

RESIDENCE

C. DEFINITIONS (Continued)

2. Qualified Aliens Under Violence Against Women Act (VAWA) Provisions

Overview

In 1994, VAWA was passed to allow an abused noncitizen spouse or child of a United States citizen or Legal Permanent Resident (LPR) to apply directly (self-petition) to the INS on their own behalf for a lawful immigration status. Prior to VAWA, only a United States citizen or an LPR could petition to the INS for their noncitizen spouses or children to become LPRs.

VAWA allows noncitizens who are in abusive situations, **in which their immigration status may be used as a tool of control**, to petition without the assistance of the abusive spouse or parent. Abused children, children whose parents were abused, and parents whose children have been abused can also petition under this law.

Battered noncitizens are eligible as Qualified Aliens for CAPI if they have an INS document that shows the applicant has an approved petition or a pending petition which sets forth a prima facie case or a court order from the Executive Office for Immigration Review (EOIR).

Acronyms/Definitions

EOIR	Executive Office for Immigration Review.
LPR	Legal Permanent Resident.
Pending Petition	A petition that has been submitted to INS and a final decision has not yet been provided.
Prima Facie Case	INS has made a preliminary review and has determined that based on face value of the evidence the case appears to be valid.
VAWA	Violence Against Women Act.

RESIDENCE

C. **DEFINITIONS** (Continued)

2. **Qualified Aliens Under Violence Against Women Act (VAWA) Provisions** (Continued)

Requirements/Eligibility

Persons who have been battered or suffered extreme cruelty by a spouse, parent or family member **may be eligible for CAPI**. These persons include:

- a. A spouse of a U.S. citizen or LPR when the battery/cruelty of the spouse was perpetrated by the citizen, LPR or by a member of his/her family living in the home;
- b. Child of a U.S. citizen or LPR when the abuse was perpetrated by a parent/parent's spouse, by a family member of the parent or parent's spouse living in the home;
- c. The child of a battered person described in "a" above; and
- d. The parent of a battered child described in "b" above.

To begin the process of establishing battered noncitizen eligibility, persons described above must be included/named in one of the following INS processes:

- I-360 pending or approved self-petition;
- I-130 pending or approved petition for noncitizen relative;
- Filed/pending EOIR 40 application for suspension or deportation; or
- Filed/pending EOIR 42 application for cancellation of removal.

The case of an applicant who is a battered noncitizen ineligible to CAPI solely because he/she is **living with the abuser** shall not be withdrawn or denied (see CAPI Handbook Application Chapter, Section N). Cases shall be held up to **30 days**.

RESIDENCE

C. DEFINITIONS (Continued)

2. Qualified Aliens Under Violence Against Women Act (VAWA) Provisions (Continued)

Referrals

Applicants who state (or it is otherwise established) that they continue to live with the spouse/parent/family member batterer shall be referred to a domestic violence service provider for assistance with counseling and housing. Additionally, applicants shall be given the telephone numbers to contact Legal Aid for legal assistance. The telephone numbers to Legal Aid offices are (213) 640-3883 and (800) 433-6251.

INS Self Petitions/Documentation

INS documents that indicate an approval petition or a prima facie determination for self-petitioners are the **Receipt Notice**, **Self-Petitioning Spouse** or the **Approval Self-Petitioning Spouse**.

NOTE: Some notices may state that they are valid for up to 150 days. However, staff should **not deny/discontinue** the case due to the 150 day expiration. A fax inquiry, ABP 4052 - VAWA Fax Inquiry, should be made to the INS Vermont Service Center at (802) 527-3159 (**fax**). Further information may be obtained at (802) 527-3160.

Confidentiality

Information with respect to domestic abuse victims and their dependents shall not be released to any outside party or other governmental agencies or to any employee who is not directly involved in the applicant's/participant's case. Confidentiality restrictions do not apply to exceptions contained in EAS Section 42-715.311.

LEADER Procedures



After completing all required information on the **Individual Attributes** detail screen in the **Data Collection** subsystem, from the **Go to navigator**, select the **Data Collection** subsystem, **Alien Refugee Summary** screen, enter the Case Number and **Open Window**. When the **Alien Refugee Summary** screen opens, highlight the appropriate individual and select the **Details** button at the bottom of the screen.

RESIDENCE

C. DEFINITIONS (Continued)

2. Qualified Aliens Under Violence Against Women Act (VAWA) Provisions

LEADER Procedures (Continued)

When the **Alien Refugee Information** secondary screen opens:

- Enter the date of the notice (I-797 or I-797C) in the Valid From field;
- Enter the date the applicant provided the (I-797 or I-797C) in the Report Date field;
- Select the appropriate INS status from the choices in the drop-down box for the Alien Type field (VAWA is not known to LEADER);
- Select "Pending" from the choices in the drop-down box for the Alien Status field;
- Complete the "Alien Document Box" in the middle of the screen:
 - Select "Other" from the choices in the drop-down box for the Type field (the I-797 and I-797C is not currently known to LEADER);
 - Enter the appropriate expiration date in the Expiration Date field (the expiration date can be found on the I-797 or the I-797 C);

NOTE: If there is no expiration date, enter the date that is equal to 150 days from the date of the notice (I-797 or I-797 C).

Example: If the notice date is September 17, 2001, the expiration date would be February 14, 2002.

In the Verification field:

- Indicate that verification was "Received" and
 - Select "INS" document from the choices in the drop-down box for the Source field.
- "Save" the information and exit from the screens back to the **Go to Navigator**.

INS Status Verification

If an applicant possesses one of the documents listed below, the applicant has established that he or she has an approved petition, prima facie notice, or an approved application as a battered noncitizen. These documents are not an exhaustive list of all the INS documentation that is acceptable proof of a battered noncitizen. If an applicant indicates he/she is a battered noncitizen but has a different INS document than what is listed in the chart below, contact GR & CAPI Programs Section staff for clarification.

RESIDENCE

C. **DEFINITIONS** (Continued)

2. **Qualified Aliens Under Violence Against Women Act (VAWA) Provisions** (Continued)

INS Documents That Indicate Approval Of A Petition Or Application

- **I-797 OR I-797C** (This form must indicate approval of either a I-360 or I-130 petition), or a final order or notice from an Immigration Judge or the Board of Immigration Appeals, or federal court granting suspension of deportation or cancellation of removal.
- For **approval of an I-360** petition, the form must indicate the petition was based on the status of a widow/widower of a U. S. citizen or as a **self-petitioning spouse or child of an abusive U. S. citizen or LPR**.
- **For approval of an I-130**, the form must indicate the petition was based on one of the following relationships: husbands or wives of U. S. citizens or LPRs, unmarried children under 21 years old of U. S. citizens or LPRs, or the unmarried sons or daughters age 21 or older of LPRs.

INS Documents That Indicate Approval Of A Prima Facie Determination

- I-797 or I-797C indicating that the applicant has established a **prima facie case**.
- An immigration court or Board of Immigration Appeals order indicating that the applicant has established a prima facie case for cancellation of removal or suspension of deportation.

3. **Persons Residing Under Color of Law (PRUCOLs) (SOC 451 - Item 11)**

PRUCOLs include the following:

- a. A non-citizen subject to an Order of Supervision.
- b. A non-citizen on whose behalf an immediate relative petition (INS Form I-130 has been approved and who is entitled to voluntary departure.
- c. A non-citizen who has properly filed an application for an adjustment to lawful permanent resident status.
- d. A non-citizen granted a stay of deportation for a specific period of time.

RESIDENCE

C. **DEFINITIONS** (Continued)

3. **Persons Residing Under Color of Law (PRUCOLs) (SOC 451 - Item 11)** (Continued)

- e. A non-citizen granted voluntary departure who is awaiting issuance of a visa, Section 242 of the INA
- f. A non-citizen in deferred action status.
- g. A non-citizen who entered and has continuously resided in the United States since before January 1, 1972 or any date established by Section 249 of the INA.

These individuals must provide proof of immigration status which qualifies them as PRUCOLs.

4. **Sponsor Immigrants (SOC 451 - Items 8-11)**

For CAPI, a sponsored immigrant is a qualified alien who lawfully entered the U.S. on or after August 22, 1996. For CAPI eligibility, the applicant would have to verify that the sponsor is:

- a. **Deceased**, based on evidence provided; or
- b. **Disabled**, based on written verification that the sponsor's disability is expected to last at least 30 days and that it significantly impairs the sponsor's ability to be regularly employed; or if on California Work Opportunity and Responsibility Kids (CalWORKs), participate in welfare-to-work activities, and that the sponsor is actively seeking medical treatment; or
- c. **Abusive** to the immigrant (or the sponsor's spouse is abusive to the immigrant). Abuse means assaultive or coercive behavior that includes, but is not limited to: physical abuse, sexual abuse, psychological abuse, economic control, isolation stalking and threats or other types of coercive behavior.

Abuse can be battering or subjecting a victim to extreme cruelty. Examples can include, but are not limited to:

- 1) Physical acts that result in or threaten to result in physical injury; or
- 2) Sexual abuse; or
- 3) Sexual activity involving a child in the home; or
- 4) Being forced to participate in non-consensual sexual acts or activities; or
- 5) Threats of, or attempts at, physical or sexual abuse; or
- 6) Neglect or deprivation of medical care.

RESIDENCE

4. **Sponsor Immigrants (SOC 451 - Items 8-11)**

Abuse can be verified with a PA 853, Affidavit, completed by the victim (or a representative if the victim cannot competently swear) when one or more additional items of evidence is provided, including but not limited to:

Police, government agency, or court records or files; or
Verification from a domestic violence program, legal clinical, medical, or other professional from whom the applicant has sought assistance in dealing with abuse;
A statement from any other individual with knowledge of the circumstances that provided the basis for the claim; or
Physical evidence of abuse.

If the victim cannot provide additional evidence of abuse, and the applicant/participant is credible, the PA 853 will be sufficient documentation provided the case files that the applicant lacked additional evidence.

Immigrants who are victims of abuse by their sponsor or sponsor's spouse are exempt from all sponsor-deeming. See the Resources and Income Chapters for further detail about this exemption.

D. **PROOF OF SPONSORSHIP/NONSPONSORSHIP**

For individuals applying for CAPI as a sponsored immigrant (aid code 96) **or** as an immigrant without a sponsor or with a sponsor who is not deceased/disabled/abusive (aid code 99), the individual's sponsorship/nonsponsorship must be verified. This can be done with any of the following:

1. A photocopy of the Affidavit of Support (I-134 or I-864); or
2. A written statement from INS verifying the existence of non-existence of an Affidavit of Support; or
3. A record on the PA 1325 of a phone contact with INS verifying the existence of non-existence of an Affidavit.