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Regulation Package # 0208-01

CDSS MANUAL LETTER NO. EAS 09-01

TO: HOLDERS OF THE ELIGIBILITY AND ASSISTANCE STANDARDS MANUAL

Regulation Package # 0208-01

Effective 02/5/09

Sections 40-037, 42-431, 42-433, and 49-020

This manual letter has been posted on the Office of Regulations Development website at <http://www.dss.cahwnet.gov/ord/PG1717.htm> .

Senate Bill (SB) 1569 (Chapter 672, Statutes of 2006) extended eligibility for certain public social services to noncertified, noncitizen victims of a severe form of human trafficking and noncitizen victims of domestic violence and other serious crimes, to the same extent as refugees.

In October 2000, the federal Trafficking Victims Protection Act (TVPA) created two new nonimmigrant visas, the "T" Visa, for victims of a severe form of human trafficking, and the "U" Visa, for victims of criminal activity as defined in federal statute, to allow these individuals to remain in the United States (U.S.). The U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), after consultation with the U.S. Attorney General, may certify a victim of a severe form of trafficking who is willing to assist in every reasonable way with the investigation and prosecution of human traffickers; and has made a bona fide application to the Bureau of United States Citizenship and Immigration Services (USCIS) for a T Visa and the application has not been denied; or is a person for whom "continued presence" in the U.S. has been requested by federal law enforcement because s/he is assisting or willing to assist in the investigation or prosecution of human traffickers.

Federal law defines noncitizen victims of serious crimes as aliens who have suffered substantial physical or mental abuse as a result of having been victims of severe criminal activity and possess information concerning criminal activity (or in the case of an alien child under the age of 16, the parent, guardian, or adult representing the child); and have been helpful, are being helpful, or are likely to be helpful to a federal, state, or local law enforcement official, prosecutor, or judge or to other federal, state, or local authorities investigating or prosecuting criminal activities described above (or in the case of an alien child under the age of 16, the parent, guardian, or adult representative of the alien is helpful).

Certain federal programs provide benefits and services to refugees and victims of human trafficking who meet federal eligibility criteria. Noncertified noncitizen victims of human trafficking and noncitizen victims of serious crime are not eligible for federal programs. SB 1569 provides state-only funded benefits and services to the same extent as those persons eligible under the federal Refugee Act of 1980. Services include, but are not limited to, the equivalent of: Refugee Cash Assistance, Refugee Medical Assistance, Refugee Social Services, California Work Opportunity and Responsibility to Kids (CalWORKs), Food Stamps, Cash Assistance Program for Immigrants, and Healthy Families Program benefits. Once the trafficking victim has been certified by ORR, he or she is eligible for federal benefits and services to the same extent as refugees.

SB 1569 required the California Department of Social Services (CDSS) to adopt regulations to implement and administer the provisions of the bill no later than July 1, 2008.

These regulations were adopted on an emergency basis and the amendments included in this manual letter are the result of issues raised at the public hearing held on August 13, 2008 and from further review of the emergency regulations by CDSS.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Eligibility and Assistance Standards Manual changes was EAS-08-03.

<u>Page(s)</u>	<u>Replace(s)</u>
37.2 and 37.3	Pages 37.2 and 37.3
194 and 195	Pages 194 and 195
202 through 205	Pages 202 through 205
660.15a	Page 660.15a

Attachment

NH

40-036	IMPLEMENTATION OF QUARTERLY REPORTING PROSPECTIVE BUDGETING FOR CalWORKs RECIPIENTS	40-036
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- .1 Effective Date
- All regulatory action implementing the provisions of Quarterly Reporting/Prospective Budgeting (QR/PB) as authorized by Assembly Bill (AB) 444 (Chapter 1022, Statutes of 2002), AB 692 (Chapter 1024, Statutes of 2002), and AB 1402 (Chapter 398, Statutes of 2003) shall become effective for recipient cases upon Quarterly Reporting becoming operative in the county in which they reside pursuant to the Director's QR/PB Declaration. Quarterly Reporting regulations include a unique regulation design which include a tandem format for the operation of both monthly and quarterly reporting systems to account for the staggered implementation dates. Regulations that become obsolete under Quarterly Reporting, are labeled as (MR). Regulations that are operative under Quarterly Reporting are labeled (QR). Regulations not labeled are applicable to both reporting systems and therefore remain unchanged. In addition, each regulation impacted by QR includes a disclaimer stating QR regulations will replace the MR regulations once QR is implemented by the county.
- .2 Divisions Impacted by Quarterly Reporting
- Division 22, 40, 42, 44, 47, 48, 80, 82, and 89.

Note: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and Section 71, Assembly Bill (AB) 444 (Chapter 1022, Statutes of 2002), as amended by Section 3, AB 1402 (Chapter 398, Statutes of 2003). Reference: Sections 11265.1, 11265.2, and 11265.3, Welfare and Institutions Code; Section 70, AB 444 (Chapter 1022, Statutes of 2002); and Section 71, AB 444 (Chapter 1022, Statutes of 2002), as amended by Section 3, AB 1402 (Chapter 398, Statutes of 2003).

40-037 IMPLEMENTATION OF BENEFITS AND SERVICES TO NONCITIZEN VICTIMS OF HUMAN TRAFFICKING, DOMESTIC VIOLENCE, OR OTHER SERIOUS CRIMES 40-037

- .1 General
- These regulations extend eligibility for certain public social services, including state-funded CalWORKS, to certain noncitizen victims of trafficking, domestic violence or other serious crimes, as defined, who can demonstrate their eligibility for these programs, and to trafficking victims who are taking steps to meet eligibility conditions for federal benefits. The time limit provision specified in Section 42-302.1 shall also apply to noncitizen victims of trafficking, domestic violence and other serious crimes as defined in Section 42-431.23.
- .2 Effective Date
- All regulatory action implementing the provisions authorized by the federal Trafficking Victims Protection Reauthorization Act of 2003 (Public Law 108-193) as Senate Bill (SB) 1569 (Chapter 672, Statutes of 2006) shall become effective for applicants and recipients July 2008. (Welfare Institutions Code Sections 13283, 14005 and 18945)
- .3 Sections Adopted
- 40-105.26, Social Security Number Exception 42-431.23 et seq., Eligibility Requirements 42-431.3 through .6 Determining Eligibility

Note: Authorized cited: Sections 10553 and 10554, Welfare and Institutions Code; and SB 1569 (Chapter 672, Statutes of 2006). Reference: Sections 13283, 14005.2, and 18945, Welfare and Institutions Code; 8 United States Code 1182(d)(5)(B), 45 Code of Federal Regulations 400.43; The Trafficking Victims Protection Act of 2000 (P.L. 106-386), Sections 107(b)(1)(A), (B), and (C); The Trafficking Victims Protection Reauthorization Act of 2003 (Public Law 108-193).

42-431 **ELIGIBILITY REQUIREMENTS (Continued)** **42-431**

- .221 Aliens lawfully present in the U.S. as a result of the application of the following provisions of the Immigration and Nationality Act.
 - a. Section 207(c), after March 31, 1980 - Aliens Admitted as Refugees.
 - b. Section 208 - Aliens Granted Political Asylum by the Attorney General.
 - c. Section 212(d)(5) - Aliens Granted Temporary Parole Status by the Attorney General.
- .222 Aliens granted status as Conditional Entrant Refugees pursuant to Section 203(a)(7) of the Immigration and Nationality Act in effect prior to April 1, 1980.
- .223 Aliens granted indefinite voluntary departure in lieu of deportation.
- .224 Aliens granted an indefinite stay of deportation.
- .23 A victim of trafficking, domestic violence or other serious crimes granted eligibility for certain public social services under Welfare and Institutions Code Section 18945
- .231 The CWD must determine the status of individuals applying for benefits as victims of human trafficking, domestic violence or other serious crimes.

HANDBOOK BEGINS HERE

- a. Severe forms of human trafficking are defined in the U.S. Code, Title 22, Section 7102 (8) as: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- b. Sections 1101(a)(15)(U)(i) and (iii) of Title 8 of the U.S. Code define noncitizen victims of serious crimes as aliens who:
 - (1) Have suffered substantial physical or mental abuse as a result of having been victims of criminal activity involving, or similar to, the following violations: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury, or attempt, conspiracy or solicitation to commit any of the above mentioned crimes; and,

HANDBOOK CONTINUES

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- (2) Possess information concerning criminal activity (or in case of an alien child under the age of 16, the parent, guardian, or adult representing the child); and
- (3) Have been helpful, are being helpful, or are likely to be helpful to a federal, state, or local law enforcement official, prosecutor, or judge or to other federal, state, or local authorities investigating or prosecuting criminal activities described above (or in the case of an alien child under the age of 16, the parent, guardian, or adult representative of the alien is helpful).

HANDBOOK ENDS HERE

.3 Eligible noncitizen trafficking, domestic violence or other serious crime victims who meet all other eligibility criteria for cash assistance shall be aided under the CalWORKS program. See MPP Section 40-105.26 for SSN exception.

.31 If not otherwise eligible under the CalWORKS program requirements, these individuals shall have their eligibility determined under the Trafficking and Crime Victims Assistance Program (TCVAP).

.4 Determination of Eligibility as a Victim of Human Trafficking: The county shall consider all forms of acceptable evidence as listed below.

.41 For purpose of determining eligibility as a victim of human trafficking (Section 42-431.23), the CWD shall consider all relevant and credible evidence. A sworn statement by a victim or a representative, if the victim is unable to competently swear, shall be sufficient to verify trafficking status, if at least one item of additional evidence is provided. This evidence includes, but is not limited to the following:

.411 Police, government agency, or court records or files;

.412 News articles;

.413 Documentation from a social services, trafficking or domestic violence program, or a legal, clinical, medical, or other professional from whom the applicant or recipient has sought assistance in dealing with the crime;

.414 A statement from any other individual with knowledge of the circumstances that provided the basis for the claim;

.415 Physical evidence;

.416 A copy of a completed visa application;

.417 Written notice from United States Citizenship and Immigration Services (USCIS) of receipt of the visa application.

42-431 **ELIGIBILITY REQUIREMENTS (Continued)** **42-431**

.42 If the victim of human trafficking cannot provide additional evidence, a sworn statement shall be sufficient if the county makes a determination that the applicant appears to be credible.

.421 The CWD may use a generic "under penalty of perjury" form for the sworn statement that contains the applicant's declaration that s/he is a victim of human trafficking.

.422 The credibility of an applicant for purposes of accepting his/her sworn statement of trafficking status may be determined by applying the same standard used when determining credibility in domestic violence cases as defined in Section 42-712.12. The sworn statement is acceptable unless there is an independent and reasonable basis, documented in writing, for finding the applicant not credible.

.5 Determination of Trafficking Victim's Eligibility for Benefits and Services

.51 Once it has been determined that the applicant meets the definition of a victim of human trafficking, the CWD must verify that the applicant:

.511 Has filed an I-914 application for T Nonimmigrant status (T Visa) with USCIS and the application has not been denied; or

.512 Is preparing to file an application for a T Visa; or

.513 Is otherwise taking steps to meet the eligibility conditions for federal benefits; or

.514 Is a person for whom "continued presence" in the U.S. has been requested by federal law enforcement because s/he is assisting or willing to assist in the investigation or prosecution of human traffickers.

.52 The following documentation can be used in determining whether an applicant has filed or is preparing to file for a T Visa:

.521 A confirmation receipt or letter from USCIS verifying an application has been filed; or

.522 A copy of the application for a T Visa (form I-914); or

.523 If an applicant has not yet filed for a T Visa, the applicant's statement that he or she intends to file or is taking steps to become federally eligible (e.g., working with a community-based organization to prepare to qualify for federal benefits, working with law enforcement, etc.) will be acceptable.

(a) Documentation could also include statements from persons in official capacities, (e.g., law enforcement officials or victims advocates) who have assisted or are assisting the victim with the T Visa application or steps to becoming eligible.

42-431 ELIGIBILITY REQUIREMENTS (Continued) 42-431

- .53 "Continued Presence" is a status that allows trafficking victims assisting law enforcement to remain in the country during the course of a criminal investigation.
- .54 Eligibility for state-funded services for trafficking victims shall be terminated if:
 - .541 The recipient has a final administrative denial of a T Visa application; or
 - (a) "Final Administrative Denial" means that an appeal of the visa denial has been unsuccessful or the time to appeal the denial has passed without an appeal having been filed, whichever comes first.
 - .542 The recipient has not applied for a T Visa within one year of the date of the CalWORKs application; or
 - .543 A request on behalf of the recipient for continued presence has not been made within one year of the date of CalWORKs application; or
 - .544 The recipient is issued a T Visa.
- .545 When a trafficking recipient who is otherwise eligible receives his/her T Visa, the case is reviewed for Temporary Assistance For Needy Families (TANF) eligibility and application for SSN must be made in accordance with Section 40-105.21.
- .6 Determination of Eligibility for Benefits and Services for Victims of Domestic Violence or Other Serious Crimes
 - .61 State-funded services for noncitizen victims of domestic violence or other serious crimes are available only when a request with USCIS for a U Visa has been filed, if otherwise eligible. This section also applies to individuals who have requested U Visa Interim Relief only if requested prior to October 17, 20087, if otherwise eligible. To be eligible under this section, the CWD must verify that these applicants:
 - .611 Have filed a formal application for U Visa (Form I-918 and required supplements) with USCIS for status under Section 1101(a)(15)(U)(i) or (ii) of the Title 8 of U.S. Code or have requested U Visa Interim Relief prior to October 17, 2007, if otherwise eligible.

42-431 ELIGIBILITY REQUIREMENTS (Continued) 42-431

- .62 Acceptable documentation for verifying that an application for a U Visa has been filed or a request for U Visa Interim Relief was filed (U Visa Interim Relief is acceptable only if a request for U Visa Interim Relief was filed prior to October 17, 2007) includes, but is not limited to:
 - .621 A confirmation receipt or letter from USCIS verifying that a request has been filed; or
 - .622 The Notice of Action (form I-797) approving a U Visa; or a request for U Visa Interim Relief (U Visa Interim Relief is acceptable only if a request U Visa Interim Relief was filed before October 17, 2007); or
 - .623 A form I-797 which serves as a fee receipt for an employment authorization request based on a U Visa application; or
 - .624 A copy of the Petition for U Nonimmigrant status (Form I-918)
 - .625 An Employment Authorization Document (EAD) issued under Category “A19” or “A20” for an approved U Visa petitioner.
- .63 Eligibility for state-funded services will continue until the recipient has a final administrative denial, as defined in Section 42-431.441(a), of a U Visa application or when the 60-month program limitation has been reached, whichever comes first.

NOTE: Authority cited: Sections 10553 and 10554, Welfare Institutions Code; and SB 1569 (Chapter 672, Statutes of 2006). Reference: Sections 13283, 14005.2, and 18945, Welfare and Institutions Code; 8 United States Code 1182(d)(5)(B), 28 Code of Federal Regulations (CFR) Section 1100.35, 45 (CFR) Section 400.43; the Trafficking Victims Protection Act of 2000 (P.L. 106-386), Sections 107(b)(1)(A), (B), and (C);

42-433 PROOF OF CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS 42-433

A citizen must prove his/her citizenship to be eligible, as provided in Section 42-433.2. A noncitizen must prove that he/she is in one of the eligible categories described in Section 42-431.2 above, by presenting the appropriate documentation described in Section 42-433.31 below.

.1 Cooperation

Every applicant and recipient shall provide all information necessary to determine his/her citizenship or noncitizen status. An applicant or recipient whose citizenship or noncitizen status is evidenced by a document issued by the United States Citizenship and Immigration Services (USCIS) (e.g., a naturalized citizen or person whose American citizenship is derived from the citizenship of another person) must cooperate with USCIS when the county desires that his/her documentation be verified by USCIS (as when the documentation presented is believed by the county to be of doubtful authenticity). Any applicant or recipient who refuses to cooperate in the verification of his/her status shall not be eligible. See Sections 40-105 and 40-157.3.

42-433 PROOF OF CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS (Continued) 42-433

.2 Documentation -- U.S. Citizens

- .21 United States Citizenship as defined in Section 42-431.1 shall be documented by a birth certificate, or similar proof of birth in the United States or United States Territory, U.S. passport, certificate of citizenship or naturalization provided by INS, or an identification card for use of a resident citizen in the United States (INS Form I-179 or I-197). If such evidence is not available, the applicant shall state the reason and submit other evidence which proves his/her birth in the United States or United States Territory, or his/her citizenship. Examples of other evidence: documents which show the date and place of the applicant's birth such as confirmation papers or church record of confirmation, school records, Indian agency records (if applicable), adoption decree (if birth in the United States or United States Territory is shown), copy of discharge from military service, marriage certificate, or affidavits, or declarations made under penalty of perjury, by persons with direct knowledge of (1) the date and place of the applicant's birth in the United States, or (2) the U.S. citizenship of the applicant's parents, or (3) facts concerning the applicant which would not exist if he/she were not a citizen.

- .22 An otherwise eligible person who states on the CA 2 that he/she is a United States citizen, but who cannot provide the documentation or other proof specified in .21 above shall be eligible in the absence of any conflicting evidence, for aid pending verification of citizenship for a period up to 90 days after the date of application, (restoration, or reapplication) pending verification of his/her status. For persons receiving aid, as of the effective date of these regulations, whose only proof of citizenship was a certificate of registration to vote, the county shall continue aid pending verification of status for up to 90 days after the date of the next redetermination or for up to 90 days after the date verification is requested if earlier. Efforts to obtain satisfactory documentation shall be undertaken by the recipient in this period (see Section 40-157.21). At the end of 90 days, aid to the recipient shall be terminated unless the county in assisting the recipient, determines an extension of time is necessary to obtain documentation. The extension of time shall be appropriate to the particular situation, but in no event shall extend beyond the next annual redetermination date. At that time, if no satisfactory proof of citizenship can be obtained, the recipient shall be terminated from aid.

- .23 Aid to a person receiving aid pending verification of citizenship under .22 above shall be terminated if during the period of documentation gathering:

NONLINKING FACTORS OF PUBLIC ASSISTANCE ELIGIBILITY**Regulations****RESIDENCE****42-433 (Cont.)**

42-433 PROOF OF CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS (Continued) 42-433

.231 He/she refuses to cooperate with the county and/or INS in determining his/her citizenship (see Section 42-433.1).

.232 The county verifies that he/she is not a citizen of the United States.

.3 Documentation - Noncitizens

.31 Every noncitizen claiming eligible noncitizen status as defined in Section 42-431 shall be required to present documentation of that status, as follows:

.311 Noncitizens lawfully admitted for permanent residence (Section 42-431.21): USCIS Form I-551, or earlier forms I-151, AR-3 and AR-3a, if specifically endorsed to show legal right to reside permanently.

.312 Noncitizens granted asylum or refugee status (Section 42-431.221(a) and (b) and 42-431.222): USCIS Form I-94, annotated with the term asylum or asylee, refugee or conditional entry or entrant.

.313 Parolees (Section 42-431.221(c)): USCIS Form I-94 (Arrival-Departure Record -- Parole Edition) endorsed to show bearer has been paroled in the U.S. pursuant to Section 212(d)(5) of the Immigration and Nationality Act.

.314 Persons granted indefinite voluntary departure or an indefinite stay of deportation (Section 42-431.223 and .224): A court order or correspondence from USCIS stating that the individual has been granted this status.

.315 Noncitizen victims of trafficking, domestic violence or other serious crimes must provide the respective documentation as set forth in Sections 42-431.4 through .6.

.32 A noncitizen who declares or presents documentation that he/she is lawfully present for temporary residence (e.g., a visitor whose period of admission has not expired) is not eligible except as noted in Sections 42-431.221(c) and .23.

.33 Documentation submitted by the noncitizen applicant in accordance with .31 above which the CWD believes to be of doubtful authenticity shall be accepted as evidence of eligibility only if the applicant cooperates with the CWD and USCIS in verifying his/her status. See Section 42-433.1. A Document Verification Request (G-844S) completed by the applicant shall be referred immediately to USCIS. If USCIS returns the G-45S to the CWD and indicates that USCIS is unable to complete the verification process due to noncooperation by the noncitizen, the CWD shall delete the noncitizen from the AU. A noncitizen who has been deleted from the AU for this reason may complete another G-845S but shall not be reinstated to the AU until confirmation of eligible noncitizen status is received by the CWD from USCIS.

.34 Where a noncitizen victim of trafficking (as defined in Section 42-431.23) is basing his or her eligibility on MPP Sections 42-431.512 through .514 and does not have documentation that can be verified by USCIS, he or she is not required to complete a G-845S; Documentation Verification Request.

42-433 PROOF OF CITIZENSHIP OR ELIGIBLE NONCITIZEN STATUS (Continued) 42-433

.4 Lack of Documentation

.41 If the noncitizen or naturalized/derivative citizen has no documentation of eligible status, the county welfare department shall inform the individual that:

.411 He/she may contact USCIS or otherwise obtain a USCIS document or other conclusive evidence verifying citizenship or eligible noncitizen status, or

.412 He/she may sign a G-845S, authorizing the county to contact USCIS to obtain the necessary verification.

.42 If a noncitizen or naturalized/derivative citizen authorizes the county to contact USCIS to obtain verification of the applicant's status, the CWD shall forward two copies of the G-845S to USCIS and retain a copy in the case file. When USCIS verification is returned to the CWD, the CWD shall notify the applicant.

.43 If the applicant does not wish to contact USCIS or give permission to the CWD to contact USCIS, the applicant may withdraw his/her application or the application shall be denied for noncooperation (see Sections 19-007.12 and 40-105.11).

.5 Receipt of G-845S from USCIS

When a noncitizen's eligibility has been confirmed by USCIS and the completed G-845S has been received by the CWD, the CWD shall resume processing the application and the beginning date of aid rules in Section 44-317 shall apply.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code; and SB 1569 (Chapter 672, Statutes of 2006). Reference: Sections 13283, 14005.2, and 18945, Welfare and Institutions Code; 8 United States Code 1182(d)(5)(B), 45 Code of Federal Regulations 400.43; The Trafficking Victims Protection Act of 2000 (P.L. 106-386), Sections 107(b)(1)(A), (B), and (C).

42-435 LANGUAGE FLUENCY **42-435**

If an alien applicant is not fluent in English, it shall be the duty of the county to provide an understandable explanation of documentation requirements in a language in which he is fluent.

49-020 **IMMIGRATION STATUS (Continued)** **49-020**

- .13 A victim of trafficking must meet the same eligibility criteria as those used for the State Trafficking and Crime Victims Assistance Program (TCVAP) found in MPP Sections 70-102 and 70-103.1 through .4.
- .14 A victim of domestic violence or other serious crimes must meet the same eligibility criteria as those used for the TCVAP found in MPP Section 70-104.1 through .125.
- .2 Specific eligibility requirements for individuals whose date of entry into the United States was prior to August 22, 1996. Non-citizens in this category (who meet all other requirements) are eligible for basic CAPI, but not extended CAPI.
- .21 Qualified Aliens as defined in MPP Section 49-005(q)(1) who were lawfully residing in the United States on August 21, 1996 must be age 65 or older to be eligible for CAPI.

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