

Immigration Issues and Social Security

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Topics

- Qualified alien eligibility
- Other alien eligibility
- Pre-1996 grandfathering
- SSA's medical evaluation process
- SSA's vocational evaluation process
- Totalization agreements
- Issues of bias

Categories of Eligibility

- Lawfully Admitted to the U.S.
- INA Section 208 (Asylum)
- Deportation or Removal Withheld
- INA Section 207 (Refugees)
- Cuban or Haitian Entrants
- Amerasian Immigrants
- American Indians
- Active Duty Military Veterans
- Pre-1996 Grandfathering
- Certain “Battered Aliens”
- Victims of Severe Forms of Trafficking

INA Section 208

- Asylum: well-grounded fear of persecution based on race, religion, nationality, membership in a particular group, or political opinion
- Eligibility limited to a maximum of seven years from start of status

Deportation or Removal Withheld

- Similar to asylum except cannot become lawful permanent resident
- Eligibility limited to a maximum of seven years from start of status

INA Section 207

- Refugee status must be determined prior to entry into the United States
- Similar to asylum but a broader category of standards apply (e.g., war, genocide, and so forth)
- Eligibility limited to a maximum of seven years from start of status

Cubans, Haitians, and Amerasians

- Refugee Education Assistance Act of 1980 grants status to select Cuban and Haitian immigrants
- Foreign Operations Act grants status to “Amerasians”: Vietnamese fathered by a U.S. citizen between 1962 and 1975 and their next of kin.

American Indians Under Indian Self-Determination and Education Assistance Act

- Applies to members of lawfully recognized American Indian tribes who are born in Canada
- Members are considered lawful permanent residents

Military and Pre-1996 Residents

- Status is granted to active duty member of the military, honorably discharged veterans, and dependants
- Aliens lawfully residing in the United States as of August 22, 1996 are grandfathered into eligibility

Medical Evaluation Process

- Consultative Exams
 - Right to request an interpreter
- Failure to follow prescribed treatment
 - Cultural differences
 - Language barriers

Vocational Evaluation Process

- Language Barriers
 - Illiteracy/inability to communicate in English
 - Requirement for an interpreter
- Equivalency of Foreign Education
- Foreign Past Relevant Work
 - SGA must be calculated by converting foreign currency to U.S. dollars
 - Foreign PRW can result in a finding of “not disabled” even if the work does not exist in the United States

Totalization Agreements

- Provide SSA protection for people who have worked under certain countries' social insurance plans outside the U.S.

Bias Issues

- Objection must be raised at earliest possible opportunity
- Patterns of behavior may be considered
- Grounds for requiring a different ALJ
 - Four-step test versus three-step test
- Complaints addressed to Division of Quality Review or under the Rehab Act