

Families and Children Manual	Section: Non-Financial Eligibility Requirements
Policy Manual Number: 005.015	Chapter: Qualified Non-Citizens

## QUALIFIED NON-CITIZENS

**Legal Authority:** 42 CFR 435.139; 42 CFR 435.406; 42 CFR 440.255; 42 CFR 457.320; Tenn. Comp. R. & Regs. 1200-13-20

### 1. Policy Statement

Non-citizen eligibility for TennCare Medicaid and CoverKids is limited to certain immigration statuses. In order to be eligible, an individual must be either:

- a. A qualified non-citizen, as defined by Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 at 8 USC 1641;
- b. An American Indian born outside of the U.S.; or
- c. A non-citizen who has been granted a certain humanitarian status.

Ineligible non-citizens are potentially eligible for Emergency Medical Services (EMS) only. Ineligible non-citizens are not required to provide information regarding citizenship, immigration status or enumeration when applying for EMS.

### 2. Qualified Non-Citizen

The PRWORA created two categories of non-citizens for the purpose of public assistance eligibility: qualified and non-qualified (ineligible) non-citizens. A non-citizen's status is based on an individual's date of entry into the U.S. and their immigration status with the United States Citizenship and Immigration Services (USCIS).

A qualified non-citizen is an individual who belongs to one of several non-citizen categories, each of which is tied to a specific section of the Immigration and Nationality Act (INA) at 8 USC. 1101, *et seq.* Qualified non-citizens are potentially eligible for full TennCare Medicaid and CoverKids benefits just like U.S. citizens. However, certain categories of qualified non-citizens have periods of program ineligibility or time limits placed on eligibility.

Qualified non-citizens are:

- a. Non-citizens lawfully admitted for permanent residence, a Lawful Permanent Resident (LPR), as an immigrant as defined in the INA (8 USC 1101);
- b. Refugees admitted under Section 207 of the INA (8 USC 1157);
- c. Asylees granted asylum under Section 208 of the INA (8 USC 1158);
- d. Non-citizens paroled in the U.S. under Section 212(d)(5) of the INA (8 USC 1182(d)(5)) for a period of at least one year;
- e. Non-citizens whose deportation is withheld under the INA (8 USC 1253 or 8 USC 1231(b)(3), as amended);
- f. Battered immigrants and children who meet the conditions set forth in Section 431(c) of the PRWORA (8 USC 1641(c));

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- g. Cuban or Haitian entrants as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
- h. Non-citizens granted conditional entry under the INA (8 USC 1153(a)(7)) in effect before April 1, 1980; and
- i. Non-citizens who are victims of a severe form of trafficking or who have been granted nonimmigrant status under Section 101(a)(15)(T) of the INA or who have a pending application that sets forth a prima facie case for such nonimmigrant status.
- j. Non-citizens who lawfully reside in the U.S. in accordance with the Compacts of Free Association (COFA) between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau

### 3. Other Eligible Immigration Statuses

The following immigration statuses are not statutorily defined as qualified non-citizens; however, these groups are generally treated like qualified non-citizens for eligibility purposes:

- a. Non-citizens admitted as Amerasian immigrants under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;
- b. Non-citizens who are members of a federally recognized Indian tribe as defined in the Indian Self-Determination and Education Assistance Act (25 USC 450(b)(e));
- c. Non-citizens who are American Indians born in Canada to whom the INA (8 USC 1359) applies;
- d. Afghan non-citizens granted Special Immigrant Status under Section 602(b) of the Afghan Allies Protection Act of 2009 as described in the INA (8 USC 1101(a)(27)); and
- e. Iraqi non-citizens granted Special Immigrant Status under the National Defense Authorization Act for Fiscal Year 2008 as described in the INA (8 USC 1101(a)(27)).

### 4. Ineligible Non-Citizens

Ineligible non-citizens are not eligible to receive full TennCare Medicaid or CoverKids benefits, but may be eligible to receive EMS.

Ineligible non-citizens include:

- a. **Undocumented Non-Citizens:** Undocumented non-citizens are individuals who enter and reside in the U.S. without notification of or proper permission from the U.S. government.
- b. **Lawfully Present Non-Citizens:** Lawfully present non-citizens are a specific group of non-citizens who are eligible to receive health insurance coverage through the Federally Facilitated Marketplace (FFM), but who are unable to receive TennCare Medicaid or CoverKids benefits.  
Lawfully present non-citizens include:
  - i. Non-citizens paroled into the U.S. in accordance with 8 USC 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings;

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- ii. Non-citizens granted temporary resident status in accordance with 8 USC 1160 or 1255a;
- iii. Non-citizens granted Temporary Protected Status (TPS) in accordance with 8 USC 1254a and individuals with pending applications for TPS who have been granted employment authorization;
- iv. Non-citizens granted employment authorization under 8 CFR 274a.12(c);
- v. Family Unity beneficiaries in accordance with 8 USC 1182;
- vi. Non-citizens under Deferred Enforced Departure (DED) in accordance with a decision made by the President of the United States;
- vii. Non-citizens granted Deferred Action status;
- viii. Non-citizens granted an administrative stay of removal under 8 CFR 241;
- ix. Beneficiaries of approved visa petitions who have a pending application for adjustment of status;
- x. Individuals with a pending application for asylum under 8 USC 1158, or for withholding of removal under 8 USC 1231 or under the Convention Against Torture, who:
  - 1. Have been granted employment authorization; or
  - 2. Are under the age of 14 and have had an application pending for at least 180 days;
- xi. Non-citizens who have been granted withholding of removal under the Convention Against Torture (8 CFR 208.16);
- xii. Children who have a pending application for Special Immigrant Juvenile status as described in 8 USC 1101(a)(27)(J); and
- xiii. Non-citizens lawfully present in American Samoa under the immigration laws of American Samoa.

**c. Non-Citizens Admitted for a Temporary Purpose**

Some non-citizens are lawfully admitted to the U.S. for a temporary or specified period of time. They include foreign students, visitors, foreign government representatives on official business, crewmen on shore leave, treaty traders and investors and families, temporary workers, including agricultural contract workers, and members of the foreign press, radio, film and other media.

Examples of the types of documentation that a non-qualified or ineligible non-citizen may possess include:

- i. Form I-185, Canadian Border Crossing Card;
- ii. Form I-186, Mexican Border Crossing Card;
- iii. Form SW-434, Mexican Border Visitor’s Permit; and
- iv. Form I-95A, Crewman’s Landing Permit.

**5. Five-Year Period of Ineligibility**

The PRWORA established a five-year period of ineligibility for all federally funded benefits, including Medicaid and CoverKids, for certain qualified non-citizens entering the U.S. on or after August 22, 1996. The five-year period of ineligibility is not applied to qualified non-citizens admitted to the U.S. prior to August 22, 1996 who have been continuously present in the U.S. from the date of entry through

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the date the individual became a qualified non-citizen. An individual has been continuously present in the U.S. if the individual can demonstrate there has not been a single absence greater than 30 days or multiple absences totaling more than 90 days. Once the individual becomes a qualified non-citizen, absences from the U.S. do not impact the five-year period of ineligibility.

**a. Non-Citizens Subject to the Five-Year Period of Ineligibility**

The following qualified non-citizens are ineligible for TennCare Medicaid or CoverKids for a period of five years from the date they are granted qualified non-citizen status unless they meet an exception as described in 5.b.:

- i. LPRs admitted under the INA, 8 USC 1101, *et seq.*, after August 22, 1996;
- ii. Non-citizens granted parole for at least one year under the INA (8 USC 1182(d)(5)); and
- iii. Battered immigrants and children who meet the conditions set forth in Section 431(c) of the PRWORA.

A qualified non-citizen may apply for coverage once the five-year period of ineligibility expires. The five-year period of ineligibility expires on the five-year anniversary of the date the individual was granted a qualified status. Once the five-year bar expires, a qualified non-citizen may apply for benefits as if he was a U.S. citizen. No previous application is required. If the qualified non-citizen meets the technical and financial eligibility criteria for a TennCare Medicaid or CoverKids category and the five-year period of ineligibility has expired, he is eligible to receive coverage in the appropriate category as of the date of application.

A non-citizen granted parole for at least one year is considered a qualified non-citizen from the date he is granted parole. For non-citizens paroled in the U.S. for at least one year, the five-year period of ineligibility begins on the first day of the parole period.

Qualified non-citizens who are subject to the five-year bar are eligible to receive EMS and CoverKids Pregnant Woman during their period of ineligibility, if otherwise eligible.

**b. Non-Citizens Exempt from the Five-Year Period of Ineligibility**

The five year period of ineligibility does not apply to the following qualified non-citizens:

- i. Non-citizens who are victims of a severe form of trafficking or who have been granted nonimmigrant status under Section 101(a)(15)(T) of the INA or who have a pending application that sets forth a prima facie case for such nonimmigrant status;
- ii. LPRs who first entered the country under another exempt category (i.e., as a refugee, asylee, Cuban or Haitian entrant, trafficking victim, or non-citizen whose deportation is being withheld and who later converted to LPR status);
- iii. Non-citizens who are:
  - 1. Honorably discharged veterans;
  - 2. On active duty in the U.S. military; or

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3. The spouses, the unmarried dependent children, or the unremarried surviving spouses of honorably discharged veterans or individuals on active duty in the U.S. military;
- iv. Members of a federally recognized Indian tribe;
- v. American Indians born in Canada to whom the INA (8 USC 1359) applies; and
- vi. Non-citizens granted a specific humanitarian entrance status by the USCIS (8 U.S.C. 1612), including:
  1. Refugees and asylees;
  2. Cuban and Haitian entrants;
  3. Non-citizens whose deportation is being withheld;
  4. Amerasian immigrants; and
  5. Afghan and Iraqi non-citizens.
- vii. Non-citizens who lawfully reside in the U.S. in accordance with the COFA between the Government of the United States and the Governments of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau and whose immigration status is currently COFA Migrant. Once a COFA Migrant adjusts to an LPR status, the five-year period of ineligibility applies.
- viii. Afghan individuals paroled into the United States between July 31, 2021 to September 30, 2022 are considered Qualified Non-Citizens to the same extent as refugees under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157). They are exempt from the five-year period of ineligibility. Afghan Parolees are considered Qualified Non-Citizens until March 31, 2023 or until the end of their parole term, whichever is later. Individuals who are paroled after September 30, 2022 must either be the parent, legal guardian, spouse or child of an Afghan parolee to be considered Qualified Non-Citizens to the same extent as refugees under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157).

Note: Non-citizens granted a specific humanitarian entrance status by the USCIS are exempt from the five-year bar for TennCare Medicaid and CoverKids eligibility, but they are subject to a seven-year eligibility time limit.

## **6. Seven-Year Eligibility Time Limit for Certain Non-Citizens**

### **a. General Rule**

Non-citizens admitted into the U.S. by the USCIS under a specific section of the INA identified below are qualified non-citizens and are potentially eligible for TennCare Medicaid and CoverKids for the first seven years after refugee, asylee, or other humanitarian status is granted.

### **b. Non-Citizens Subject to Seven-Year Eligibility Time Limit**

Non-citizens granted a specific humanitarian status and subject to the seven-year eligibility time limit include:

- i. Refugees admitted under Section 207 of the INA (8 USC 1157);
- ii. Non-citizens granted asylum under Section 208 of the INA (8 USC 1158);

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- iii. Cuban-Haitian Entrant, as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;
- iv. Non-citizens whose deportation is withheld under the INA (8 USC 1253) as in effect prior to April 1, 1997 or 8 USC 1231(b)(3), as amended;
- v. Non-citizens admitted to the U.S. as an Amerasian Immigrant pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988;
- vi. Afghan non-citizens granted Special Immigrant Status under Section 602(b) of the Afghan Allies Protection Act of 2009 as described in the INA (8 USC 1101(a)(27));
- vii. Iraqi non-citizens granted Special Immigrant Status under the National Defense Authorization Act for Fiscal Year 2008 as described in the INA (8 USC 1101(a)(27)); and
- viii. Spouses and unmarried children under age 21 of Afghan and Iraqi Special Immigrants who accompany or later join the Special Immigrant.

**c. Expiration of Seven-Year Eligibility Time Limit**

A non-citizen who is subject to the seven-year eligibility limit and does not have a change in immigration status or does not meet one of the exemptions listed in the following section will lose eligibility the first month after the seven-year anniversary date of entrance into the U.S. (or date that deportation was withheld under the INA (8 USC 1231 and 1253)).

**d. Continuing Eligibility After the Seven-Year Eligibility Time Limit**

A non-citizen who is subject to the seven-year eligibility time limit can remain eligible beyond the seven-year period if at the time of application or at any time during or after the seven-year period the USCIS determines that the non-citizen continues to be a qualified non-citizen and that she is one of the following:

- i. An LPR; or
- ii. An honorably discharged veteran, an active-duty member of the U.S. Armed Forces, or a spouse, an unmarried dependent child, or an unremarried surviving spouse of an honorably discharged veteran or active-duty member of the U.S. Armed Forces.

**e. Adjustment to LPR Status within Seven-Year Eligibility Period**

A qualified non-citizen subject to the seven-year eligibility time limit can adjust his status to LPR within the seven-year period. Non-citizens who adjust to LPR status within the seven-year period are not subject to the five-year bar and remain potentially eligible for benefits as an LPR beyond the seven-year period of eligibility.

**7. Victims of Trafficking**

The Trafficking Victims Protection Act (TVPA) of 2000 allows victims of human trafficking and non-citizens classified as nonimmigrants under Section 101(a)(15)(T) of the INA who are physically present in the U.S. to receive federally funded benefits and services to the same extent as refugees. Victims of

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human trafficking are non-citizens who are eligible to receive a special visa and benefits once they are identified.

**a. Assistance Available to Victims of Human Trafficking**

Adult victims of human trafficking who are certified by the U.S. Department of Health and Human Services (HHS) and are otherwise eligible may receive Medicaid in any Medicaid category available. Children under age 18 do not have to be certified by HHS to receive benefits. For an adult victim of trafficking to receive certification, she must:

- i. Be a victim of human trafficking as defined by the TVPA or a non-citizen classified as a nonimmigrant under Section 101(a)(15)(T) of the INA;
- ii. Be willing to assist with the investigation and prosecution of traffickers; and
- iii. Have completed a bona fide application for a T Visa that has not been denied, or have received continued presence status from the U.S. Department of Homeland Security.

**b. The T Visa - Under the TVPA of 2000**

The T Visa was established to allow victims of severe forms of trafficking to become temporary residents of the U.S. The Trafficking Victims Protection Act recognizes that returning victims to their country of origin is often not in the best interest of victims and those victims need the opportunity to rebuild their lives without the threat of deportation. After three years since the first date of admission as a T-1 nonimmigrant, a recipient of a T Visa may be eligible for permanent residence status if he:

- i. Is a person of good moral character;
- ii. Has complied with any reasonable request for assistance in the investigation during the three-year period; and
- iii. Will suffer extreme hardship if removed from this country.

**c. The Certification Process**

The certification process typically takes a few days after HHS is notified that a person has made a bona fide T Visa application or has been granted continued presence status (both of these actions are completed by the U.S. Department of Homeland Security). If the status of a person who has received HHS certification changes so that they are no longer eligible, HHS may be required to decertify that individual.

**d. Verification of Victim Certification**

A toll-free number can be used to verify victims of trafficking: 1-866-401-5510. Before victims can receive benefits, the Eligibility Specialist must call the toll-free trafficking victim verification line to verify the validity of the certification letter and to inform HHS that the individual has applied for program benefits.

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## **8. Battered Immigrants and Children**

### **a. Battered Immigrant Defined**

Certain immigrants who have been subjected to battery or extreme cruelty in the U.S. by a family member with whom they reside are qualified non-citizens and are potentially eligible for TennCare Medicaid and CoverKids. The non-citizen must be either:

- i.** The individual battered; or
- ii.** The parent of a child who is battered; or
- iii.** A child whose parent has been battered.

A family member includes a spouse, parent, or member of the spouse or parent's family residing in the same household.

If admitted to the U.S. on or after August 22, 1996, a battered immigrant and/or child is subject to the five-year period of ineligibility for TennCare Medicaid and CoverKids benefits. The five-year period of ineligibility begins on the date she obtains qualified non-citizen status.

### **b. Eligibility Conditions**

In order to be considered as a qualified non-citizen and become potentially eligible for TennCare Medicaid (subject to five-year bar) or CoverKids (subject to five-year bar), a battered immigrant must meet all of the requirements provided below.

- i.** The immigrant has been approved or has a pending petition which sets forth a prima facie case for:
  - 1.** Immigrant status as a battered spouse or child of a U.S. citizen or LPR (Form I-360);
  - 2.** Immediate Relative status (Form I-130);
  - 3.** Cancellation of removal pursuant to 8 U.S.C. 1229b(b)(2); or
  - 4.** Suspension of deportation and adjustment to LPR status;
- ii.** The immigrant must show that there is a substantial connection between such battery or cruelty and the need for benefits; and
- iii.** The immigrant must no longer be residing in the same household as the abuser.

Battered immigrants may be granted good cause for non-cooperation with child support when cooperation requires the involvement of the abuser.

## **9. American Indians**

An Indian born in Canada who is at least one-half American Indian blood may enter and reside lawfully in the U.S., but this does not extend to the spouse or child of the Indian unless the child or spouse is



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also at least one-half American Indian. An Indian meeting the above criteria may be eligible for full TennCare Medicaid coverage if all other eligibility requirements are met.

The following documents may be used to verify an Indian is at least one-half American Indian blood:

- i.** Birth or baptismal certificate issued on reservation;
- ii.** Tribal record;
- iii.** Letter from the Canadian Department of Indian Affairs; or
- iv.** School records.

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