



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Department of Transitional Assistance
600 Washington Street • Boston, MA 02111


MITT ROMNEY
Governor

KERRY HEALEY
Lieutenant Governor

RONALD PRESTON
Secretary

JOHN A. WAGNER
Commissioner

Field Operations Memo 2005-22
June 1, 2005

To: Transitional Assistance Office Staff
From:  Cescia Derderian, Assistant Commissioner for Field Operations
Re: TAFDC and FS Program Eligibility for Battered Noncitizens

Purpose of Memo

Battered noncitizens have additional rights under federal law. **Persons who may ordinarily be ineligible for benefits might be eligible because of their domestic violence history.** The purpose of this memo is to clarify the process for determining if a noncitizen is eligible for TAFDC and Food Stamp benefits as a battered noncitizen. It also contains detailed Qs & As to help AU Managers understand this often complex subject.

Important Battered Noncitizen Tips

-
- Applying under the Violence Against Women Act (VAWA) is only one of the ways to obtain “battered noncitizen” status.
 - An LPR who is a battered noncitizen should **not be** denied TAFDC or Food Stamp benefits solely because he or she has not been in the United States for five years. For TAFDC, there is **no** five year wait for LPRs who meet the battered noncitizen requirements.
 - Children of battered noncitizens are “derivative beneficiaries” meaning that they are eligible for benefits if one parent meets the regulatory requirements.
 - **All** individuals who disclose domestic violence should be referred to a Domestic Violence Specialist, even if they are not eligible for TAFDC or Food Stamp benefits.
 - Although individuals cannot qualify as battered noncitizens if they are not in the country lawfully, they should still be referred to the DV Specialist who may be able to connect them with an organization that can assist them with their immigration status.
-

**The Role of
the Domestic
Violence
Specialist**

When a noncitizen identifies himself or herself as battered or a dependent child as battered, immediately refer the battered noncitizen to the Domestic Violence Specialist whether or not the noncitizen is eligible for DTA cash or FS benefits. The Specialist will:

- Develop a safety plan;
- Connect battered noncitizens to domestic violence programs for services;
- Refer battered noncitizens to organizations (listed in the *Noncitizens Resources Brochure*) for help with issues related to immigration status;
- If appropriate, assist battered noncitizens in establishing good cause reasons regarding non-cooperation with child support requirements;
- Initiate domestic violence waivers, if applicable; and
- Connect battered noncitizens with other local resources.

**Who is a
Battered
Noncitizen?**

The following questions must be answered to determine whether the applicant is eligible for benefits under battered noncitizen regulations.

1. WHAT ARE THE NONCITIZEN'S CIRCUMSTANCES REGARDING THE DOMESTIC VIOLENCE?

- a. *TAFDC and FS:* **Has the noncitizen (either the parent or a dependent child) been battered or subjected to extreme cruelty within the U.S. by his or her spouse, parent, or other family member residing in the same household?**
- b. *TAFDC and FS:* **Is the noncitizen no longer residing with the batterer?**
- c. *FS Only:* **Is there a connection between the battery and the need for public benefits?**

Note: This “connection” requirement should be construed broadly and will be met in most cases.

If the answer to any of the questions under #1 is “No,” the noncitizen does not qualify as a battered noncitizen under federal law. If all the answers to the above questions are “Yes,” **then go to question #2.**

2. WHAT IS THE BATTERED NONCITIZEN'S IMMIGRATION STATUS? To be eligible for TAFDC or FS, as a battered noncitizen, the applicant must have one of the following:

- A pending or approved I-130 petition to immigrate as:
 - a spouse or child under age 21 of a U.S. citizen; or
 - a spouse, child under age 21, or unmarried child over 21 of a LPR; or**Note:** See coding on Permanent Resident Card section later in this memo for instructions on determining if the noncitizen has a pending or approved I-130 petition;
-

**Who is a
Battered
Noncitizen?
(Continued)**

- A pending or approved I-360 self-petition to immigrate under the VAWA. A pending self-petition is verified by a notice of a “prima facie determination,” I-797 *Notice of Action* form. A *prima facie determination* is an interim decision pending an approval or denial of the petition; or
- A pending or approved application for cancellation, removal or suspension of deportation filed under VAWA.

In many situations, the applicant will not possess the documents specified above, but will have others that provide the necessary proof (e.g., there are other documents that demonstrate that the applicant received his or her status through an I-130 petition). Therefore, the AU Manager should request any other documentation the applicant has pertaining to his or her noncitizen status, such as permanent resident card, employment authorization card, notices of approved petitions, etc., to help determine eligibility.

Remember: Asylees, Cuban/Haitians, Amerasians, Refugees and Deportation Withheld noncitizens are automatically eligible for TAFDC and FS benefits and do not need to pursue a battered noncitizen status. However, these noncitizens, if battered, should also be referred to the Domestic Violence Specialist for other services.

**Coding on
Permanent
Resident
Card**

If the battered noncitizen presents a Permanent Resident Card (I-551 or I-151), be sure to check the code on the card. The code can be found under the heading “Category” between the headings “Birthdate” and “Sex.” The code is useful in determining whether the noncitizen immigrated through a family member (thus meeting the I-130 requirement above) or by some other means. Some common codes on Permanent Resident Cards which show that the noncitizen obtained LPR status through a petition by a U.S. citizen spouse or parent or an LPR spouse or parent include, but are not limited to:

- **IR1 or IR6** - the noncitizen obtained the LPR status through a petition by a U.S. citizen spouse;
- **IR2 or IR7** - the noncitizen obtained the LPR status through a petition by a U.S. citizen parent.
- **F21 or F26** - the noncitizen obtained the LPR status through a petition by an LPR spouse;
- **F22, F24, F27, F29** - the noncitizen obtained the LPR status through a petition by an LPR parent.

Please note that these codes mean the same thing even if they contain a dash (e.g., IR-1, F2-1).

**Noncitizen
Liaison**

Contact the Noncitizen Liaison for the TAO for assistance in determining whether the applicant meets the regulatory requirements if:

- the card contains a code other than those stated above;
- the battered noncitizen presents documentation other than the Permanent Resident Card (I-551 or I-151); or
- the battered noncitizen states that he or she does not have any documentation but claims to have the necessary status. The battered noncitizen must demonstrate steps taken to obtain the documentation, such as written confirmation from Legal Services, one of the agencies listed on the Noncitizen Resource Brochure (NCRB) and/or the United States Citizenship and Immigration Services (USCIS). If the noncitizen complies with the steps to obtain the necessary documentation, but is still unable to provide written documentation, the Department can accept a signed self-declaration, as specified in 106 CMR 702.340(C) and approve the application for benefits pending receipt of the necessary verifications. The Department may make an inquiry by calling (802) 527-4888, the telephone line for victim-related case types at the Bureau of Citizenship and Immigration Service, Vermont Service Center.

The Noncitizen Liaison should refer unresolved issues to the Policy Hotline for clarification.

**Battered
Noncitizens
Qs & As**

The following pages list questions and answers to help the AU Manager determine whether a noncitizen is an eligible battered noncitizen.

1. Q. A noncitizen TAFDC and FS applicant states that she has been abused by her husband, a U.S. citizen. She has verified abuse by her husband in the U.S., and she and her two minor children no longer live with him. She and her children present Permanent Resident Cards showing that they have been LPRs since October 1, 2003. The applicant's I-551 card has the code IR1 on it and her children's cards have the code IR2. The applicant has not filed a petition under the Violence Against Women Act (VAWA). Is the applicant eligible for either TAFDC or FS?
 - A. **TAFDC: Yes. A TAFDC applicant does not have to self-petition under VAWA to qualify for TAFDC.** In this case, she and her children qualify under the battered noncitizen regulations. The code IR1 shows that the applicant obtained her LPR status through an I-130 petition by a U.S. citizen spouse, and the code IR2 verifies that the children were petitioned for by a U.S. citizen parent. Therefore they meet the requirements of 106 CMR 203.675(A)(8).
 - the applicant has been battered by his or her spouse - 106 CMR 203.675(A)(8)(a);
 - she no longer resides with him - 106 CMR 203.675(A)(8)(b); and
 - she has status as a spouse or child of a U.S. citizen pursuant to clause (i) of section 204(a)(1)(A) of the INA -106 CMR 203.675(A)(8)(c)(4).
-

**Battered
Noncitizens
Qs & As
(Continued)**

Food Stamps: Only partly. As in TAFDC, a FS applicant does not have to self-petition under VAWA to qualify for FS. However, under the FS battered noncitizen regulations, the applicant must have resided in the U.S. as a qualified noncitizen for five years or meet one of the other requirements in 106 CMR 362.220(B)(8)(e)--such as being elderly, disabled or having a military connection--to be eligible for FS. She would therefore not be eligible until she resided in the U.S. for five years. Her children are eligible under 106 CMR 362.220 (B)(7)(d)--as they are lawful permanent residents under the age of 18, and not subject to the five year wait. Please note: These LPR children would be eligible even if their mother was **not** a battered noncitizen.

2. Q. In the same case, what if the husband was an LPR instead of a U.S. citizen? The codes on the I-551 cards are F26 and F27. Is the family eligible?
- A. **TAFDC:** Yes. They meet the requirements of 106 CMR 203.675(A)(8)(a), (b), and (c)(4). The code F26 verifies that the wife was petitioned for by an LPR spouse and F27 verifies that the child was petitioned for by an LPR parent. Please note that these are not the only codes that will show eligibility. See Question 5.

Food Stamps: Again, the children are eligible as they are LPRs under age 18, but their mother's eligibility will still depend on how long she has lived in the U.S. as a qualified noncitizen or whether she meets one of the other requirements in 106 CMR 362.220(B)(8)(e).

3. Q. What if the husband's father, who lived with the family, was the abuser, and not the husband himself? Is the family eligible?
- A. **TAFDC:** Yes. The applicant is eligible if she tells the worker that her spouse consented or did not intervene to stop the battery and the applicant no longer lives with her father-in-law. See 106 CMR 203.675(A)(8)(a). Such abuse could be verified by police reports, witness statements, affidavits, etc.

Food Stamps: The children are eligible as they are LPRs under age 18. Again, the applicant's eligibility will depend on how long she has resided in the U.S. as a qualified noncitizen or if she meets one of the other requirements in 106 CMR 362.220(B)(8)(e).

**Battered
Noncitizens
Qs & As
(Continued)**

-
4. Q. A TAFDC applicant is an unmarried LPR who was petitioned for by her mother who is also an LPR. The applicant presents an I-551 showing that she obtained LPR status on February 28, 2003, with the code F24. She lived with her mother until she gave birth to her U.S. citizen daughter, after which her mother became abusive. Is the applicant eligible for TAFDC and/or FS as a battered noncitizen?
- A. **TAFDC:** Yes. She meets the requirements of 106 CMR 203.675(A)(8)(a), (b), and (c)(4). The F24 code verified that she was petitioned for by her LPR parent. Her daughter is eligible because she is a citizen.
- Food Stamps:** It depends. Again, the applicant must have resided in the U.S. as a qualified noncitizen for five years or meet one of the other requirements in 106 CMR 362.220(B)(8)(e) to be eligible for FS. Her five-year period starts from the date the I-130 relative petition was filed, not the date the noncitizen obtained LPR status. (See Question 10.) Her daughter is eligible because she is a citizen.
5. Q. How do I figure out the codes on the Permanent Resident Card (I-551 or I-151)? What codes confirm eligibility for TAFDC and FS under the Battered Noncitizen provisions?
- A. The Permanent Resident Card (I-551 or I-151) shows LPR status. The code on the card indicates how the person obtained LPR status. The code can be found under the heading "Category" – between the headings "Birthdate and Sex." IR1, IR2, IR6, IR7, F21, F22, F24, F26, F27, F29 are common codes which show that the immigrant obtained LPR status through a petition by a U.S. citizen spouse or parent or an LPR spouse or parent. However, there is a longer list of codes which may indicate that an immigrant meets the criteria to receive TAFDC or FS as a battered noncitizen. In addition, a noncitizen may have other immigration documents besides a Permanent Resident Card (I-551 or I-151) which have important information regarding status. If a battered noncitizen presents any documentation regarding his or her status and you are unsure as to their meaning, please contact your TAO's Noncitizen Liaison.
6. Q. What if the abusive husband of the applicant in question #1 has filed petitions for her and the children, but the Permanent Resident card (I-551 or I-151) has not been issued yet. She is no longer with him. Are she and her children eligible for TAFDC and/or FS?
- A. **TAFDC:** Yes. She and her children meet the requirements of 106 CMR 203.675(A)(8). There only has to be a **pending** petition for LPR status; it does not matter if the applicant has already left her husband prior to her receiving her status.
-

**Battered
Noncitizens
Qs & As
(Continued)**

Food Stamps: Her children are eligible as they meet the requirements of 106 CMR 362.220(B)(8) because:

- there is a petition filed by their mother's spouse, see 362.220(B)(8)(a);
- their mother has been battered by her spouse, see 362.220(B)(8)(b);
- there is a substantial connection between the abuse and the need for FS, see 362.220(B)(8)(c);
- they no longer live with their mother's spouse - 362.220(B)(8)(d); and
- they are under age 18, see 106 CMR 362.220(B)(8)(e).

The applicant's eligibility will depend on how long she has resided in the U.S. as a qualified noncitizen or if she meets one of the other requirements in 106 CMR 362.220(B)(8)(e). As with TAFDC regulations, there only has to be a petition filed; it does not matter if the applicant left her husband before receiving her status.

7. Q. An unmarried TAFDC and FS applicant has a son who is a U.S. citizen. She has verified abuse by her son's father, also a U.S. citizen. She obtained her I-551 card on May 1, 2002 and was petitioned for status by her brother. Is she eligible for TAFDC and FS?

A. **TAFDC:** No, she is not eligible for TAFDC because she did not receive her LPR status as the spouse or child of a U.S. citizen or LPR. She is subject to the five-year wait and not eligible for TAFDC until May 1, 2007. However, she can receive TAFDC for her U.S. citizen son.

Food Stamps: No, she is not eligible for FS for the same reasons she is not eligible for TAFDC. However, she can receive FS for her U.S. citizen son.

8. Q. A TAFDC and FS applicant and her son lawfully entered the U.S. after she married a U.S. citizen. Her husband promised to file a petition for them to become LPRs but he never did. After her husband became abusive toward her son, the applicant and her son fled the home. Are they eligible for TAFDC and FS as battered noncitizens?

A. **TAFDC:** No. The applicant and her son are not eligible because there is no petition pending on their behalf. However, if she files a petition (form I-360) for LPR status under VAWA, and receives a "prima facie" determination of approval (form I-797), they will be eligible under 106 CMR 203.675(A)(8)(a), (b) and (c)(1). Under VAWA, certain battered spouses and children of U.S. citizens or LPRs may self-petition to obtain LPR status, without the abuser's assistance or knowledge. If an applicant without permanent status has suffered abuse and is the spouse or child of a U.S. citizen or LPR, refer her to Legal Services for information about filing this petition and to one of the agencies listed in the *Noncitizen Resource Brochure* (NCRB).

**Battered
Noncitizens
Qs & As
(Continued)**

Food Stamps: No, the applicant and her son are not eligible because there is no petition pending on their behalf. However, if she files a petition (form I-360) under VAWA and receives a “prima facie” determination of approval, her son -- as long as he is under 18--will be eligible, as he will meet the requirements of 106 CMR 362.220(B)(8). To meet the food stamp eligibility requirements in this case, the applicant must have resided in the U.S. for at least five years from the date of the prima facie approval of her self-petition under VAWA.

9. Q. In the previous case, what if the applicant’s husband was an LPR?

A. **TAFDC:** The answer is the same, but if she receives a notice of prima facie determination (I-797 form), she will be eligible under 106 CMR 203.675(A)(8)(a), (b) and (c)(2).

Food Stamps: The answer is the same.

10. Q. In the Food Stamp Program, when does the five-year waiting period for battered noncitizen adults begin?

A. The date that the five-year period begins (the date that the battered noncitizen became a qualified noncitizen) is the earlier of:

- the date of the prima facie determination of eligibility under VAWA; or
- the date that the spouse (U.S. citizen or LPR) or parent filed an I-130 relative petition on behalf of the noncitizen. (This date will be before the date that the noncitizen was granted LPR status or the date on their I-551 card).

11. Q. A battered noncitizen is applying for benefits. She states that her husband filed a petition on her behalf but she does not have any documentation. SAVE does not show her status and she does not have an alien registration number. What should I do?

A. In this case, the AU Manager must refer the AU to the TAO’s Noncitizen Liaison. Because of the nature of abusive relationships, battered noncitizens may not have copies of documents that have been filed by them or on their behalf. The Department may be able to accept a self-declaration which states that the applicant’s husband filed a petition on her behalf pending receipt of the necessary verification.

12. Q. A battered noncitizen was sponsored by her spouse in August 1999. He also signed a legally enforceable affidavit of support (I-864). Can she get an exception to sponsor deeming?

**Battered
Noncitizens
Qs & As
(Continued)**

A. **TAFDC**: She may get an exception for 12 months from sponsor deeming, provided she meets the requirements of 106 CMR 203.681(D)(2)(a). Benefits may be extended after the 12 month period if certain conditions are met. See 106 CMR 203.681(D)(2)(a)(4).

Food Stamps: Until further notice, there is no sponsor deeming for households that contain children under age 18. For households only containing adults, an exception may be granted provided he or she meets the requirements of 106 CMR 362.270(D)(2)(a). Benefits may be extended after the 12 month period if certain conditions are met. See 106 CMR 362.270(D)(2)(a)(4).

Questions

If you have any questions, your Hotline designee may call the Policy Hotline at 617-348-8478.
