

FILED

FEB 12 2015

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

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DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-09690
APPEAL NO. 15F-00178

PETITIONER,

Vs.

CASE NO. 

FLORIDA DEPARTMENT OF
CHILDREN AND FAMILIES
CIRCUIT: 20 Lee
UNIT: 88231

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on January 14, 2015 at 11:58 a.m.

APPEARANCES

For the Petitioner 

For the Respondent: Shawnee Daniels, ES senior human services program specialist

STATEMENT OF ISSUE

The petitioner is appealing the denial of Cash Assistance and Medicaid Program benefits for his son.

PRELIMINARY STATEMENT

The respondent presented 11 exhibits which were accepted into evidence and marked as Respondent's Exhibits "1" through "11". The petitioner did not submit any exhibits.

FINDINGS OF FACT

1. The petitioner was born in Cuba. His son was born on [REDACTED] in Columbia. On September 6, 2014, the petitioner and his son entered the United States (U.S.). Department of Homeland Security stamped the son's Departure Record as Paroled until September 5, 2016, and his citizenship as Columbian. The son's passport was issued by Columbia.

2. On September 8, 2014, the petitioner applied for Cash Assistance Program benefits, Food Assistance Program benefits and Medicaid Program benefits for himself and his son. His son was 17 years old at the time of application.

3. The petitioner and his son were determined eligible for Food Assistance Program benefits. The petitioner was eligible for Cash Assistance Program benefits under the Refugee Assistance Program and Medicaid Program benefits as a Cuban parolee.

4. A Systemic Alien Verification for Entitlements (SAVE) inquiry was completed for the petitioner's son. The SAVE report indicated that the son's United States Citizenship and Immigration Services (USCIS) form I-94 number was [REDACTED] and his passport was issued by Colombia.

5. It was determined that the petitioner's son was not born in Cuba and did not meet the criteria as a Cuban parolee; he not meet the criteria as a Columbian parolee to

be eligible for Cash Assistance Program benefits under the Refugee Assistance Program nor was he eligible for Medicaid Program benefits. On September 17, 2014, a Notice of Case Action was sent to the petitioner informing him that his son was denied Cash Assistance Program benefits and Medicaid Program benefits.

6. The petitioner argued that his son meets the criteria to be eligible for Cash Assistance Program benefits and Medicaid Program as set forth in the Cuban Adjustment Act, as the son of a Cuban parolee.

CONCLUSIONS OF LAW

7. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under Fla. Stat. § 409.285.

8. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

9. In accordance with Fla. Admin. Code R.65-2.060(1), the burden of proof was assigned to the petitioner.

10. The U.S. Code at 8 U.S. Code § 1612, Limited eligibility of qualified aliens for certain Federal programs, sets forth:

(a) Limited eligibility for specified Federal programs

(1) In general

Notwithstanding any other provision of law and except as provided in paragraph (2), an alien who is a qualified alien (as defined in section 1641 of this title) is not eligible for any specified Federal program (as defined in paragraph (3)).

(2) Exceptions

(A) Time-limited exception for refugees and asylees

With respect to the specified Federal programs described in paragraph (3), paragraph (1) shall not apply to an alien until 7 years after the date—

- (i) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act [8 U.S.C. 1157];
- (ii) an alien is granted asylum under section 208 of such Act [8 U.S.C. 1158];
- (iii) an alien's deportation is withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208);
- (iv) an alien is granted status as a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); or
- (v) an alien is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100-202 and amended by the 9th proviso under migration and refugee assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100-461, as amended).

11. The Fla. Admin. Code R. 65A-1.301, Citizenship, sets forth:

(1) The individual whose needs are included must meet the citizenship and noncitizen status established in: P.L. 104-193, The Personal Responsibility and Work Opportunity Reconciliation Act of 1996; P.L. 105-33, the Balanced Budget Act of 1997; P.L. 105-185, the Agricultural Research, Extension, and Education Reform Act of 1998; P.L. 105-306, the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998; P.L. 109-171, the Deficit Reduction Act of 2005; and, the Immigration and Nationality Act...

(3) The eligibility specialist must verify the immigration status of noncitizens through the United States Citizenship and Immigration Service (USCIS), formerly the United States Bureau of Citizenship and Immigration Services. Verification will be requested electronically using the alien number, or based on a USCIS or prior Immigration and Naturalization Services (INS) document provided by the applicant. The system of verification is known as the Verification Information System-Customer Processing System (VIS-CPS), which is part of the Systematic Alien Verification for Entitlements (SAVE) Program...

12. The Fla. Admin. Code R. 65A-1.803 General Eligibility sets forth:

Determinations of eligibility for RAP and program specific definitions required in these eligibility determinations are conducted in accordance

with 45 C.F.R., Chapter IV, Part 400, Subparts A through G, and Part 401. Additionally, the specific definition of a Cuban/Haitian entrant as used in this program is found in Section 501e of the Refugee Education Assistance Act of 1980.

13. The Code of Federal Regulations 45 C.F.R. § 401.12, Cuban and Haitian entrant cash and medical assistance, sets forth:

(c) The number of months during which an entrant may be eligible for cash and medical assistance for which Federal reimbursement is available under this section shall be counted starting with the first month in which an individual meeting the definition of a Cuban and Haitian entrant in § 401.2 was first issued documentation by the Immigration and Naturalization Service indicating:

(1) That the entrant has been granted parole by the Attorney General under the Immigration and Nationality Act,

14. Public Law 89-732, November 2, 1966, also known as the Cuban Adjustment Act of 1986 sets forth in Section 1:

...the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1950, and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent resident if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence...The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth who are residing with such alien in the United States...

15. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement (ORR) State Letter number 07-14, dated October. 19, 2007 states:

In response to the U.S. Department of Homeland Security Cuban Medical Professional Program, Cuban medical professionals and their spouses and children have begun arriving in the United States and some are applying for ORR benefits and services. Many of the spouses and

children are non-Cuban, that is, are nationals or citizens of a country other than Cuba. **These non-Cuban spouses and children do not meet the definition of a "Cuban and Haitian entrant" as defined in the Refugee Education Assistance Act of 1980 (REAA), Pub. L. No. 96-422, because they are not Cubans and, therefore, unless they have another status qualifying them for ORR assistance, they are not eligible for ORR benefits and services.** Although the impetus for this State Letter is the rise in applications for ORR benefits and services from increasing arrivals of Cuban medical professionals and their non-Cuban spouses and non-Cuban children, the eligibility rules discussed here apply equally to the non-Cuban spouses and non-Cuban children of Cuban and Haitian entrants who are not medical professionals.

16. The Cuban Adjust Act sets forth the adjustment of alien status after two years of residency for permanent residence. There is nothing in any of the controlling authorities that conveys eligibility to a child of a Cuban parolee for public assistance benefits. The Department of Health and Human Service specifically states that non-Cuban children do not meet the definition of Cuban entrant. The evidence does not demonstrate that the petitioner's son is an eligible alien meeting the citizenship criteria for Cash Assistance Program benefits or Medicaid Program benefits. It is concluded that the petitioner's son is not eligible for Cash Assistance Program benefits or Medicaid Program benefits.

DECISION

Based upon the foregoing Findings of Fact and Conclusion of Law, the appeals are denied.

NOTICE OF RIGHT TO APPEAL

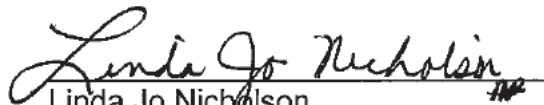
This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days

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of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

DONE and ORDERED this 12 day of Feb, 2015,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency