

**OTHER ELIGIBILITY REQUIREMENTS
CITIZENSHIP AND IMMIGRATION STATUS
QUALIFIED ALIENS**

BATTERED QUALIFIED ALIENS

Description: An immigrant who, or whose child or parent, has been battered or subjected to extreme cruelty in the United States by a U.S. citizen or lawful permanent resident spouse or parent can be considered a qualified alien. An immigrant whose child has been battered/abused by the child's U.S. citizen or lawful permanent resident other parent is similarly eligible, as are immigrant children, whose parent has been abused by the parent's U.S. citizen or lawful permanent resident spouse residing in the same household. The immigrant can be considered a qualified alien when it is determined that there is substantial connection between the battery, abuse or cruelty and the need for benefits.

Policy: Battered immigrants are considered qualified aliens and are said to be in satisfactory immigration status.

References:

SSL	Sect. 122 131-k
Dept Reg.	349.3 351.1 351.2 360-3.2(j)
ADMs	04 ADM-7 97 ADM-23 92 ADM-10 88 ADM-47 88 ADM-22 88 ADM-24
INFs	06 OMM-INF-5
GISs	08 MA/009

Interpretation: Battery or extreme cruelty is defined as including, but not limited to, being a victim of any act or threatened act of violence, including forceful detention, which results or threatens to result in physical or mental injury or psychological or sexual abuse or exploitation, including rape, molestation, incest, or forced prostitution.

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Immigrant victims of battery/abuse can be treated as a “qualified alien” for Medical Assistance benefit purposes if they meet the following four requirements:

1. Be a credible victim of battery/abuse or extreme cruelty, who or who’s child or parent has been battered, abused or subject to extreme cruelty in the U.S., by a spouse or a parent, or by a member of the spouse’s or parent’s family residing in the same household; and
2. Be able to show a substantial connection between the need for benefits sought and the battery or extreme cruelty; and
3. No longer resides in the same household as the abuser, and
4. Have an appropriate immigration status including a pending or approved I-130 petition for a alien relative (K or V visa status), a pending or approved I-360 self petition, or Notice of Prima Facie Case determination (I-797 Notice of Action), or an Executive Office for Immigration Review (EOIR) order/letter granting suspension or cancellation under 8 U.S.C 1229b(b)(2) and 8 U.S.C. 1254(a)(3) or evidence that an application for suspension of deportation/cancellation of removal has been made with evidence that sets forth a prima facie case.

EVIDENCE OF ABUSE:

An applicant who has an approved petition or court order granting him/her protection from the abuser has already shown battery or extreme cruelty and a new determination should not be made by the eligibility worker. Other evidence of battery/abuse that immigrants may present includes, but is not limited to: reports or affidavits from police, judges, court officials, medical personnel, school officials, clergy, social workers; counseling or mental health personnel; proof of a domestic violence conviction, and proof of seeking safe-haven in a battered shelter.

SUBSTANTIAL CONNECTION:

There must be a substantial connection between the battery/abuse or extreme cruelty to which the immigrant, immigrant's child, or immigrant child's parent has been subjected to and the need for the medical assistance. The following list demonstrates circumstances in which a substantial connection exists between the battery and the need for medical assistance benefits:

- where the benefits are needed to enable the immigrant, immigrant's child, or an immigrant child's parent to become self-sufficient following separation from the abuser;

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- where the benefits are needed to enable the immigrant, immigrant's child, or an immigrant child's parent to escape the abuser and/or the community in which the abuser lives and to ensure safety;
- where the benefits are needed due to a loss of financial support resulting from the immigrant's separation from the abuser;
- where the benefits are needed because the battery/abuser or extreme cruelty, separation from the abuser, work absences, or lower job performance resulting from the abuse or court-related proceeding cause the immigrant, the immigrant's child, or immigrant child's parent to leave or lose employment;
- where the benefits are needed because the battery/abuse or extreme cruelty has caused the immigrant, the immigrant's child, or immigrant child's parent to require medical attention/counseling or become disabled;
- where the benefits are needed because of the loss of a dwelling or source of income or because fear of the battery/abuse after separation diminishes the immigrant's, or immigrant child's parent's ability to care for the children;
- where the benefits are needed to alleviate nutritional risks and needs following battery/abuse and/or after separation;
- where the benefits are needed to provide medical care during pregnancy resulting from sexual assault or the relationship with the abuser; and
- where medical coverage or health care services for the immigrant, the immigrant's child, or immigrant child's parent are needed to replace the services provided while living with the abuser.

NON-RESIDENCY WITH THE BATTERER:

The following examples will serve as credible evidence to support the claim of non-residency with the batterer and include, but are not limited to:

- a civil protection order requiring the batterer to stay away from the battered immigrant, immigrant child, or immigrant child's parent;

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- an eviction notice removing the batterer from the immigrant's residence;
- employment records;
- utility receipts;
- school records;
- hospital or medical bills;
- rental records from a building or property manager;
- affidavit from a staff member at a battered or homeless shelter
- affidavits from witnesses, including landlords and neighbors; and
- any other records establishing that the immigrant, immigrant's child, or immigrant child's parent no longer resides with the abusive abuser.

NOTE: Districts should be cautioned that they should not contact the abuser for any verification or documentation of living arrangements or other factors of eligibility.

Information with respect to victims of domestic violence must not be released to any outside party or other governmental agencies unless the information is required to be disclosed by law, or unless authorized in writing by applicant/recipient. Districts need to be concerned about how information is shared (i.e., insure that information pertaining to good cause or domestic violence is mailed to the victims' homes). Notices and other information may be mailed to an alternate mailing address (i.e., shelter) or held at district office. The client must decide the safest way to obtain the information.

REFERRAL TO A DOMESTIC VIOLENCE LIAISON (AVL):

Battered Immigrants are "qualified aliens" and may receive Medical Assistance benefits if all of the following criteria are met, including financial requirements: A battered qualified alien must be:

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- an alien who has been battered or subjected to extreme cruelty (“abused”) in the U.S. by a spouse or parent or by a member of the spouse’s or parent’s family residing in the same household as the alien; or
- the parent of a battered or abused child; or
- the child of a battered or abused parent.

Applicants and recipients who cannot document that the United States Citizenship and Immigration Services (USCIS) or immigration court has determined the immigrant has in fact been subject to battery/abuse or extreme cruelty will need to see the district’s DVL for a credibility determination. These individuals must demonstrate that they are credible victims of domestic violence in order to be considered qualified for Medical Assistance as a “battered qualified alien”. If districts are unable to verify that an acceptable immigration document has been filed with USCIS, districts can accept the alien’s written attestation and then refer the alien to an immigration attorney or legal services for assistance. The DVL does not have the authority to determine eligibility for assistance.

VERIFICATION OF IMMIGRATION STATUS:

Battered or abused aliens will typically possess one or more of the following documents:

- I-797 Notice of Action indicating that the alien has an approved I-360 self-petition (entitled Petition for Amerasian, Widow(er) or Special Alien) under the Violence Against Women Act (VAWA) to obtain lawful permanent residence status as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident [Do not refer to the domestic violence liaison (DVL)]; or
- I-797 Notice of Action indicating that the alien has a pending I-360 self-petition under VAWA that has established the alien’s prima facie eligibility for obtaining lawful permanent resident status as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident (Do not refer to the DVL); or
- Order from the Executive Office for Immigration Review (EOIR) granting or finding a prima facie case for granting, suspension of deportation or cancellation of removal based on battery or abuse by a U.S. citizen or lawful permanent resident spouse or parent (Do not refer to the DVL); or
- I-797 Notice of Action indicating that the alien has a pending I-360 self-petition under VAWA to established lawful permanent resident status as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident and credible evidence of battery or abuse (Request alien’s permission to refer to the DVL); or

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- I-797 Notice of Action indicating that the alien is the beneficiary of a pending or approved I-130 Petition for Alien Relative as the battered or abused spouse or child of a U.S. citizen or lawful permanent resident **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL); **or**
- I-94 Arrival/Departure Record stamped "K3", "K4", "V1", "V2", or "V3" and credible evidence of battery or abuse (Request alien's permission to refer to the DVL); **or**
- Any other USCIS document indicating that the alien has a "K" or "V" visa and a pending or approved I-130 Petition for Alien Relative and credible evidence of battery or abuse (Request alien's permission to refer to the DVL); **or**
- I-94 Arrival/Departure Record or foreign passport stamped "CR-1", "CR-2", "CR-6" or "CR-7" **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL); **or**
- I-688B Employment Authorization Card coded "274a.12(a)(9)," "274a.12(a)(15)" or "274a.12(c)(10)" **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL); **or**
- I-766 Employment Authorization Document coded "A9", "A15" or "C10" **and** credible evidence of battery or abuse (Request alien's permission to refer to the DVL).

Districts must determine if the USCIS or the EOIR has approved an applicant's I-360 self-petition or has found that an applicant's pending petition set-forth a prima facie case by reviewing the applicant's documents.

- The worker must carefully examine the documents provided by the immigrant applicant.
- If based on the documentation provided to show citizenship, immigration or qualified alien status the worker can conclude that the applicant is not a "qualified alien" (i.e. the applicant presents documents such as a tourist visa or other documents that do not make them eligible for Medical Assistance), the worker does not need to verify the applicant's status.
- If the documentation provided does not appear on its face to be genuine or does not appear to relate to the person presenting it, this should not serve as a basis to conclusively deny benefits without first checking with the USCIS. (Through SAVE or by filing a G-845 "Verification Request" [non-SAVE agencies] with USCIS. Refer to 04 ADM-7).

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- If the USCIS notifies the applicant that they have an immigration status that makes him/her a qualified alien the eligibility worker should accept the USCIS verification and proceed to determine whether the applicant satisfies the remaining program requirements. If the USCIS notifies the applicant that she/he does not have immigration status that makes him/her a qualified alien, the worker should notify the applicant of her appeal rights.

If the applicant is a battered immigrant and the documentation provided does not appear on its face to be genuine or does not appear to relate to the person presenting it, the worker should contact the Immigration Court that is handling the case or the USCIS Vermont Service Center at 75 Lower Welden Street, Saint Albans, Vermont, 05479.

THE FIVE YEAR BAN TO BENEFITS ACCESS:

Battered immigrants who first entered the United States after 8/22/96 and become "qualified aliens" are not eligible to receive federal Medical Assistance benefits until they have attained five years in a qualified alien status. This is called the federal "five year bar." This bar applies to all immigrants who entered the United States after 8/22/96.

New York State covers "battered" qualified aliens with State only funds until the five-year ban expires.

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SOCIAL SECURITY NUMBERS (SSNs) FOR BATTERED QUALIFIED ALIENS:

The Social Security Administration (SSA) does not routinely assign new SSNs. However, SSA will do so when evidence shows the immigrant is being harassed, a victim of family violence, abused or their life is endangered.

Qualified aliens must provide a social security number. If they do not have a SSN, they must apply for one. An exception applied to pregnant women. Pregnant women are not required to provide or apply for a SSN for the duration of the pregnancy and the sixty-day period that begins on the last day of the pregnancy and including, but not exceeding, the last day of the month in which the sixty-day post-partum period ends.

If a qualified alien applies for a SSN, but is denied a SSN based on immigration status, the alien is not required to reapply for a SSN until his or her status changes. In these situations districts are to use WMS Social Security Code N, "State Benefits Eligible Alien".

ALIEN NUMBER (A#) REQUIREMENT FOR BATTERED QUALIFIED ALIENS:

Providing an alien registration number is no longer an eligibility requirement for Public Assistance, Medical Assistance or Food Stamp Assistance for battered aliens (ACI Code "B"). This change is a result of MKB litigation.

Although not required, if an alien number is presented by the applicant/recipient, the alien number should be entered into the Welfare Management System (WMS).

BATTERED QUALIFIED ALIENS DESK AID

Category	Documentation	WMS ACI Code	Federal Financial Participation (FFP)	Social Security Number (SSN) Requirement
<p>Victims of Battery/Abuse</p> <p>The term “battered qualified alien” includes the following immigrants described at 8 U.S.C. §1641(c):</p> <ul style="list-style-type: none"> ▪ an alien who has been battered or abused in the U.S. by a spouse or parent, or by a member of the spouse’s or parent’s family residing in the same household as the alien; or • the parent of a battered or abused child; or • the child of a battered or abused parent. <p>A substantial connection must also exist between the battery or abuse and the need for public benefits such as Medicaid. The alien must no longer be living with the batterer or abuser.</p>	<p>A variety of documents provide evidence that an alien meets this definition.</p> <ul style="list-style-type: none"> ▶ I-797 Notice of Action indicating that the alien has an approved I-360 self petition (Do not refer to DVL); ▶ I-797 Notice of Action indicating that the alien has a pending I-360 self-petition that has established a prima facie case (Do not refer to DVL); ▶ Order from the Executive Office for Immigration Review (“EOIR”) granting or finding a prima facie case for granting, suspension of deportation or cancellation of removal (Do not refer to DVL); or ▶ I-797 Notice of Action indicating that the alien has a pending I-360 self petition AND credible evidence of battery or abuse (Request alien’s permission to refer to DVL); or ▶ I-797 Notice of Action indicating the alien is the beneficiary of a pending or approved I-130 petition and credible evidence of battery and/or abuse (Request alien permission to refer to DVL); or ▶ I-94 coded, K3, K4, V1 V2 or V3 and credible evidence of battery or abuse (Request alien’s permission to refer to DVL); or ▶ Any other USCIS document indicating the alien has a K or V visa and a pending or approved I-130 petition with credible evidence of battery or abuse (Request alien’s permission to refer to DVL); or ▶ I-94 or Foreign passport annotated CR1, CR2, CR6, CR7 with credible evidence of battery or abuse (Request alien’s permission to refer to DVL); or ▶ I-688B Employment Authorization Card annotated 274a.12(a)(9)-spouse/children of USC or LPR (K or V visa), 274a.12(a)(15)-spouses and dependents of LPR (K or V visa), 274a.12(c)(10)-applicant for suspension of deportation with credible evidence of battery or abuse (Request alien’s permission to refer to DVL); or ▶ I-766 Employment Authorization Document annotated A9, A15 or C10 with credible evidence of battery or abuse (Request alien’s permission to refer to DVL). 	<p>B</p>	<p>YES</p> <p>After 5 yrs in a qualified status</p>	<p>Immigrants with or without work authorization are required to apply for a Social Security Number.</p> <p>LDSS must provide immigrants with a letter addressed to SSA for those immigrants without work authorization who met all the eligibility requirements for federal or state benefits, except for having an SSN. (08 OHIP INF-2)</p> <p>Note: Pregnant women are excluded from this requirement.</p>

NOTE: Referral to a domestic violence liaison (DVL): Medicaid-only offices must refer alien applicants and recipients who must demonstrate that they are credible victims of domestic violence to be considered qualified for medical assistance as “battered aliens” to the DVL for a credibility assessment. Those applicants and recipients who cannot document eligibility in any other category and cannot document that the United States Citizenship and Immigration Services (USCIS) or immigration court has determined the alien has in fact been subject to battery or extreme cruelty will need to see the district’s DVL for a credibility determination. If districts are unable to verify that an acceptable immigration document has been filed with USCIS, districts can accept the alien’s written attestation and then refer the alien to an immigration attorney or legal services for assistance. The DVL does not have the authority to determine eligibility for assistance.