

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 325 (Reyes)
Version: January 30, 2023
Hearing Date: July 6, 2023
Fiscal: Yes
Urgency: No
ID

SUBJECT

Human services: noncitizen victims

DIGEST

Provides that applicants for status or relief under the federal Violence Against Women Act (VAWA), special immigrant juvenile status (SIJS), T or U nonimmigrant status, or for asylum are eligible for certain public social services and health care services, and that those services shall not be terminated upon receiving a final administrative denial if the applicant is still eligible through different means.

EXECUTIVE SUMMARY

Federal immigration law includes various visas for survivors of violent crime, trafficking, familial abuse, and persecution. These include asylum, which is available for individuals who have a well-founded fear of persecution in their country of origin, U nonimmigrant status for victims of certain crimes in the United States who assist law enforcement in the investigation or prosecution of the crime, T nonimmigrant status for survivors of sex or labor trafficking, VAWA self-petitions for victims of battery or extreme cruelty at the hands of a U.S. Citizen or lawful permanent resident family member, and Special Immigrant Juvenile Status (SIJS) for minors who have been abused, neglected, or abandoned by one or both parents. While applicants and recipients of some of these visas are currently eligible for state public benefits programs like Medi-Cal, refugee services, or food benefits, not all are eligible. Additionally, there are often long wait times for such visas to be processed. This bill extends state public benefits to applicants of SIJS, asylum, and VAWA, specifies that such benefits should not be terminated if a recipient receives a final administrative denial of their immigration application if they are eligible for the benefits on another basis, and makes other conforming changes and specifications about implementation by the Department of Social Services.

AB 325 is sponsored by the Coalition for Humane Immigrant Rights (CHIRLA), the Coalition of California Welfare Rights Organizations, and the Western Center on Law and Poverty, and is supported by Disability Rights California, the California Academy of Preventive Medicine, and the National Association of Social Workers – California Chapter. It has no known opposition. This bill passed out of the Senate Human Services Committee on a vote of 5 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the federal “Supplemental Nutrition Assistance Program” (SNAP) pursuant to the Food Stamps Act of 1964 to provide benefits to families and individuals meeting specified criteria. (7 U.S.C. § 2011.)
- 2) Establishes the state “CalFresh program” for the administration of federal SNAP benefits to eligible individuals. Provides program requirements and eligibility, as specified. (Welfare & Inst. Code § 18900 et seq.)
- 3) Establishes under federal law the “Temporary Assistance for Needy Families” (TANF) program to provide aid and welfare-to-work (WTW) services to eligible families. (42 U.S.C. § 601 et seq.)
- 4) Establishes in state law the CalWORKs program to provide cash assistance and other social services for low-income families through TANF. Under CalWORKs, each county provides assistance through a combination of state, county and federal TANF funds. (Welfare & Inst. Code § 11120 et seq.)
- 5) Provides "refugee social services," which include, English language and employment training, funded through federal appropriations. (Welfare & Inst. Code § 13275(c).)
- 6) Requires CDSS to allocate appropriated federal funds for refugee social services programs to each eligible county and, if the department exercises its discretion, to a qualified nonprofit organization, based on the number of refugees receiving aid in the eligible county or the number of refugees that reside in the eligible county. (Welfare & Inst. Code § 13276.)
- 7) Requires that refugee social services programs be available to recipients of refugee cash assistance and refugees receiving county general assistance in eligible counties. If the county does not provide these services, a portion of the funds allocated to the county may be used to provide services to recipients of refugee cash assistance and refugee recipients of general assistance based on federal requirements and service needs. (Welfare & Inst. Code § 13279.)

- 8) Provides that, in counties receiving federal refugee social services funding, the county welfare department shall include in its CalWORKs plan a section that specifically addresses the provision of services for refugee applicants for, and recipients of, aid and the orderly transition of those applicants and recipients into the CalWORKs program. (Welfare & Inst. Code § 13280.)
- 9) Authorizes the provision of aid to eligible noncitizens who have been lawfully admitted for permanent residence or are otherwise permanently residing in the United States, to the extent permitted by federal law. (Welfare & Inst. Code § 11104.)
- 10) Defines, under federal law, a "special immigrant juvenile" as a person under 21 who is declared a dependent by a juvenile court or committed to the custody of a state agency or a court-appointed individual, whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and whose return to their country of nationality or last habitual residence is not in the juvenile's best interest. Allows such person to obtain SIJS and, based on that, apply for a visa for lawful permanent residency. (8 U.S.C. § 1101(a)(27)(J).)
- 11) Establishes the "Violence Against Women Act" and contains provisions including the protections and rights of petitioners. (42 USC 12131 et seq.)
- 12) Prohibits the federal government from returning to their country of origin people whose life or freedom would be threatened because of the person's race, religion, nationality, membership in a particular social group, or political opinion. (8 USC 1231(b)(3).)
- 13) Provides eligibility for public social services, benefits, and health care services provided through the state to noncitizen victims of trafficking, domestic violence, and other serious crimes, as specified. (Welfare & Inst. Code § 18945.)

This bill:

- 1) Expands eligibility for refugee cash assistance, refugee social services, Medi-Cal, and the California Health Families Program under current provisions for noncitizen victims to individuals who have filed an application with the United States Citizenship and Immigration Services (USCIS) for:
 - a) immigration status under the Violence Against Women Act (VAWA);
 - b) special Immigrant Juvenile Status (SIJS); and
 - c) asylum.
- 2) Expands qualifying individuals to noncitizen victims of "parental maltreatment", and "noncitizen children who have been abused, neglected, or abandoned, and noncitizens who fear persecution."

- 3) Clarifies that such public benefits shall not be discontinued if the individual receives a final administrative denial of their relevant immigration visa application if the individual is eligible on another basis.
- 4) Requires the California Department of Social Services (CDSS) to implement the provisions relating to the expansion of public social services to VAWA petitioners, those applying for SIJS, and asylum seekers before July 1, 2024; further, provides that emergency regulations may be adopted by the department, as specified.
- 5) Permits CDSS to implement and administer the applicable provisions of the act through an all-county letter or similar instruction while regulations are being adopted.
- 6) Makes technical and conforming changes.

COMMENTS

1. Applicants for asylum, VAWA, and U and T nonimmigrant status

The United States immigration system is a myriad of complex laws and rules. Some of the rules operate to bar noncitizens from eligibility for any immigration status, and others make it difficult to maintain status and meet one's basic needs. For example, many types of temporary, "nonimmigrant" statuses do not allow for authorization to work in the United States, and every time an individual applies for a visa or entry into the United States, they must show that they have not triggered more than a dozen grounds for being "inadmissible," or ineligible to be admitted into the United States. A number of grounds of "inadmissibility," once triggered, permanently bar someone from obtaining immigration status in the United States.

In addition, visas for temporary and permanent immigration status and permission to enter and reside in the United States have large numbers of requirements and restrictions to eligibility and their use. Most types of visas have significant processing and wait times, often resulting in five to even twenty-five year waits to obtain immigration status even when someone qualifies for a visa.

The incredibly restrictive nature of the immigration system, along with the extreme levels of violence, persecution, and poverty throughout Latin America and the World that have caused large amounts of forced migration to the United States over the last few decades, have resulted in over 11 million undocumented individuals living in the United States. Individuals without immigration status live throughout California, and most have resided in the United States for more than five years. They are a part of their communities, contribute taxes, and strengthen the economy. Despite this reality, the

United States Congress has not made substantial changes to the immigration system since 1996, and processing and wait times for current visa programs continue to grow.

When a noncitizen fears persecution in their country of origin, is a survivor of violent crime or human trafficking, is a survivor of abuse by a close family member, or is a child that was abused, neglected or abandoned by a parent, they sometimes qualify for one of a few specific types of immigration status meant to protect them from harm and support the work of law enforcement in investigating or prosecuting serious crimes.

Asylum is one of these immigration statuses. Asylum allows a person to receive asylee status and eventually apply for permanent immigration status and U.S. Citizenship if they have a well-founded fear of death, torture, or other grave harm in their country of origin because of their political opinion, religion, race or nationality, or other immutable part of their identity.¹ Asylum seekers are often fleeing persecution by a powerful criminal organization like a Cartel, violence directed toward specific groups of which they are a member, or targeting by their own government. Most have endured serious persecution before fleeing to the United States. Asylum can be applied for directly to the government, commonly called “affirmative asylum,” in which a regional asylum office of the United States Citizenship and Immigration Services (USCIS) will adjudicate the application and schedule an interview, or in immigration court if an applicant is in a deportation proceeding. Deportation proceedings begin when an authorized agency, like USCIS or Customs and Border Patrol (CBP) issue a “Notice To Appear” alleging that a noncitizen in the United States or requesting admission to the United States is either not eligible for admission or is deportable from the United States. Asylum is one of a number of available defenses against deportation in a deportation proceeding, and this type of asylum is commonly referred to as “defensive asylum.” When an applicant applies for asylum affirmatively, and the asylum office does not grant the asylum application, the office will not deny it. Instead, they will issue a Notice To Appear and refer the asylum application to the immigration court for the immigration judge to hear and decide whether to grant or deny. If asylum is denied by an immigration judge, an applicant may sometimes have grounds to appeal the decision to an administrative appeals board, called the Board of Immigration Appeals (BIA). The BIA is the final administrative avenue for an asylum application; a BIA decision can only be appealed to a regular appellate court like the Ninth Circuit Court of Appeals.

However, qualifying for asylum does not necessarily mean an individual will immediately receive asylee status; at the start of 2022, there were more than 87,100 pending asylum applications at the San Francisco and Los Angeles asylum offices, and more than 133,000 pending asylum requests before immigration judges in removal proceedings.² Applications in front of asylum offices can take as long as five years to

¹ 8 U.S.C. § 1158; 8 U.S.C. § 1101(a)(42)(A).

² U.S. Citizenship & Immigr. Svcs., “Asylum Division Quarterly Statistics Report – FY 2022 Q1,” Dept. of Homeland Security, Appendix VI (2022), available at www.uscis.gov; Transactional Records Access

receive a decision, and immigration courts are backlogged at least the same amount of time. Usually an asylum applicant will be waiting in limbo without immigration status this entire time.

The immigration laws also include two visas for those who are survivors of serious violent crimes or human trafficking. A U-visa is one such visa, which is available if a noncitizen was a victim of certain crimes (such as serious assault, attempted murder, or domestic violence) in the United States, cooperated with law enforcement in the investigation or prosecution of that crime, and suffered substantial physical or mental abuse as a result of the crime.³ U-visas require the law enforcement agency that investigated the crime to certify the crime investigated and that the visa applicant cooperated in their investigation. However, because the number of U-visas that can be granted annually is capped by the United States Congress, there is a significant wait to actually receive U-visa status. For the last number of years, the wait time has been about ten years from time of submitting the application to receiving a visa. While a U-visa applicant may receive a “bona fide” determination before the final approval or denial of their application, which provides temporary protections and work authorization, the processing times to receive the bona fide determination itself is five years.⁴

The other type of visa available to survivors of crime is the T-visa, which is available if a noncitizen has been subjected to severe sex or labor trafficking, reasonably cooperated in an investigation of the trafficking, is in the United States on account of that trafficking, and would suffer extreme hardship involving unusual and severe harm if they were to be deported.⁵ While T-visas also are capped in the number that can be provided each year, that cap has never been reached; nonetheless, the processing time for T-visas is currently more than 18 months.⁶

Noncitizen minors in the United States who have been abused, neglected or abandoned by one or both of their parents may be able receive a special type of immigration status called Special Immigrant Juvenile Status (SIJS). SIJS is available if the minor has gone through a state court process and been made a dependent of the court or placed under the custody of an individual, a state agency, or a supportive parent, received specific findings from a probate or family court judge relating to their best interests and that they cannot be reunited with one or both of their parents because they were abandoned, abused, or neglected.⁷ SIJS applications typically are approved in about six months, but

Clearinghouse (TRAC), “A Sober Assessment of the Growing U.S. Asylum Backlog,” Syracuse Univ. (Dec. 22, 2022), available at <https://trac.syr.edu/reports/705/>.

³ 8 U.S.C. § 1101(a)(15)(U).

⁴ See U.S. Cit. & Immigr. Svcs., “Check Case Processing Times,” Dept. of Homeland Sec. (checked Jun. 17, 2023), <https://egov.uscis.gov/processing-times/>.

⁵ 8 U.S.C. § 1101(a)(15)(T).

⁶ See U.S. Cit. & Immigr. Svcs., “Check Case Processing Times,” Dept. of Homeland Sec. (checked Jun. 17, 2023), <https://egov.uscis.gov/processing-times/>.

⁷ 8 U.S.C. § 1101(a)(27)(J).

a grant of SIJS does not actually itself provide immigration status. Instead, it provides the opportunity to “adjust status” from SIJS to a lawful permanent resident. Adjustment of Status applications based on SIJS also have an annual cap that results in a wait that is currently about five years.⁸

The Violence Against Women Act provides another visa available for survivors of abuse by a lawful permanent resident or U.S. Citizen spouse, parent, or adult child that is commonly referred to as VAWA (for the act that created it). To qualify for VAWA, an applicant must have been subjected to battery or extreme cruelty by their U.S. Citizen or lawful permanent resident relative, be residing or have resided with their abusive relative, and be a person of good moral character. VAWA applications take almost three years to be processed.⁹

Unlike affirmative asylum applications, these other affirmative immigration applications sometimes can be appealed for reconsideration before USCIS if they are initially denied by the agency, can be appealed to the Administrative Appeals Office (AAO), or can be appealed to the BIA. Thus, while USCIS will ultimately issue a decision either granting or denying the application, that is not necessarily the end of the administrative process.

2. The current landscape and restrictions of the social safety net for immigrants

Various government-funded programs help support low-income Californian’s experiencing poverty or hardship. The goal of the majority of these programs are to provide support through financial benefits or services to individuals as they work to address barriers and gain financial security. These programs include the Supplemental Security Income (SSI) program, Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF).

SNAP is a federal program that provides states funds to offer a nutritional benefit to low-income individuals and families. SNAP eligibility standards are set by the United States Department of Agriculture (USDA) and include income tests, work requirements, and required documentation. The benefit is meant to assist with access to healthy and nutritious foods, and may be used to purchase food, as well as seeds and plants that can be utilized to grow food. In California, SNAP funds are administered through the

⁸ See Bureau of Consular Affairs, “Visa Bulletin for July 2023,” U.S. Dept. of State, 5 (Jun. 2, 2023), available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2023/visa-bulletin-for-july-2023.html>. See 4th category in table B, “Dates for filing of employment-based visa applications” for current application dates for filing. The dates listed in the chart is the date that must be on the date or later than the date the SIJS application was filed to be considered “current” and eligible for submitting a SIJS-based adjustment of status application for residency. The current date of September 2018 indicates that individuals currently with SIJS must have filed their SIJS application in September 2018 or earlier to now be eligible to request lawful permanent residency in the month of July 2023.

⁹ See U.S. Cit. & Immigr. Svcs., “Check Case Processing Times,” Dept. of Homeland Sec. (checked Jun. 17, 2023), <https://egov.uscis.gov/processing-times/>.

CalFresh program of the Department of Social Services (CDSS) and facilitated through county human services agencies.

The federal TANF program provides states with block grants to create their own program rules as long as those rules are within federal guidelines. California uses TANF funds for the California Work Opportunity and Responsibility to Kids (CalWORKS) program, through which families have access to various services aimed at helping the family achieve self-sufficiency, including: childcare; homelessness assistance; mental health and addiction services; domestic violence counseling; among others. CalWORKs benefits are time limited.

The SSI program provides a monthly cash benefit to qualified low-income individuals and couples in order to help them pay for basic living expenses, such as food, clothing and shelter. In order to be eligible for SSI, a person must be at least 65 years old, blind or disabled (including disabled children) and meet certain income and resource requirements. While SSI is a federally funded benefit, California also provides a similar benefit called State Supplementary Payment (SSP) with state funds.

Unfortunately, since 1996, these Federal public benefits have restrictions as to which noncitizens can access them based on their immigration status. They are only available to noncitizens who have held lawful permanent residency for five years, have asylee status, or received a preliminary “bona fide determination of eligibility” on their T-visa or VAWA application.¹⁰ Applicants for U-visas and asylum are generally excluded from the major federal public benefits programs, and T-visa and VAWA applicants are not eligible during the extensive waiting period for receiving a bona fide determination on their applications. Noncitizens with SIJS may qualify for some in limited circumstances due to their age or status as an unaccompanied minor.

In response to the 1996 federal changes in eligibility rules based on immigration status, California created the California Food Assistance Program (CFAP) to provide nutrition benefits to immigrants who lost access to CalFresh. CFAP utilizes state funding to provide aid to families not eligible for the federally-funded CalFresh. Income and eligibility requirements for CFAP are aligned with CalFresh, as are benefit amounts. California also fills the gap with other programs, such as the Refugee Resettlement Program, state Medi-Cal, Refugee Cash Assistance and Refugee Social Services. But these programs still are currently limited to those granted refugee or asylee status, survivors of trafficking, and applicants for and holders of U-visa status. They are not available for those with SIJS, VAWA, or those who have applied for asylum and not yet received an approval.

¹⁰ Tanya Broder and Gabrielle Lessard, “Overview of Immigrant Eligibility for Federal Programs,” Nat’l Immigr. Law Center (Mar. 2023), available at https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/#_ftn26.

3. AB 325 extends California's state public benefits to over vulnerable asylum applicants and survivors of trafficking, serious crime, and familial abuse or abandonment

Considering the long processing and wait times for SIJS, asylum, and U and T-visa applications, many applicants wait many years in the United States without receiving a final decision on their applications. Often that means many years without authorization to work in the United States. While asylum applicants can apply for employment authorization once their application has been pending for 150 days, applicants for VAWA, U and T-visas, and SIJS generally are not eligible for employment authorization until their applications are granted or they receive a "bona fide determination." They may therefore be without many opportunities to generate income for many months or years. Such applicants also have endured serious harm and abuse. Thus, they are often in great need for supportive public benefits and services. Yet they are not eligible for most federal public benefits while waiting for a decision on their immigration applications. California public benefits programs, while more inclusive of noncitizens, still do not cover those who are awaiting adjudication on their applications for asylum, U-nonimmigrant (U-visa) status, VAWA, or SIJS.

It is this serious gap in services and support for many immigrants awaiting a decision on humanitarian immigration applications that AB 325 aims to fix. It does so by amending the Welfare and Institutions Code to include all VAWA applicants, applicants for SIJS, and asylum applicants as those eligible for California state public benefits programs. Specifically, it amends the sections of the code relating to those eligible for refugee social services and cash assistance, Medi-Cal, and the California Healthy Families program for low-cost health insurance for children (Welfare & Inst. Code §§ 13282, 14005, 18945.)

4. AB 325 clarifies that benefits should not be automatically terminated if a recipient is still eligible through other means

Under current law, an individual receiving the specified public benefits through their status as an applicant for a T or U visa must have their benefits discontinued if they receive a "final administrative denial" of their T or U visa application. (Welfare & Inst. Code § 18945.) The plain language of "final administrative denial" clearly states that the denial must be one that is administratively final; as in, there are no more avenues for it to be considered administratively. Thus, this would include a denial from USCIS if the applicant does not appeal that decision, or a denial from the AAO or the BIA if the applicant does appeal. In the case of an asylum application, referral by an Asylum Office to an immigration judge is not currently considered a denial of the asylum application, and even if the immigration judge denies asylum the applicant can appeal that denial to the BIA. Therefore, by the plain language in the statute, an asylum applicant would receive a final administrative denial of their asylum claim only if the immigration judge denies their asylum and they do not appeal, if the BIA denies the

immigration judge's denial, or if the applicant's application is referred to an immigration judge and the applicant abandons the application once in immigration court.

AB 325 clarifies that, if a designated applicant were to receive a final administrative denial of their T-visa, U-visa, SIJS, VAWA, or asylum application, their benefits would not be automatically terminated if they are eligible for the benefits on another basis. This will ensure that applicants in need of these services do not have their benefits automatically cut off when they can qualify another way, thereby eliminating unnecessary interruptions and administrative hurdles to continued services.

To effectuate the purposes of the act, AB 325 directs the Director of the Department of Social Services to adopt regulations to implement its provisions no later than July 1, 2024. It also allows that such implementation can be accomplished through emergency regulations or by an all-county letter while regulations are being drafted.

5. How AB 325 addresses the deficiencies of AB 1461

AB 325 is substantially similar to AB 1461 that passed the Legislature in 2022. However, AB 1461 was vetoed by the Governor. The Governor's veto message stated:

This bill would codify existing practices of the Trafficking and Crime Victim Assistance Program, and would expand the population eligible to receive these benefits to include those who have applied for immigration relief under the Violence Against Women Act, Special Immigrant Juvenile Status, or asylum status.

While I share the author's goal of ensuring that vulnerable populations have the resources necessary to meet their needs while they await adjudication of their application for immigration relief, bills with a significant fiscal impact, such as this, are best considered in the annual budget process.

To address the governor's concerns with AB 1461, AB 325 was introduced with an accompanying budget request of \$25 million continuing funds to fund the expanded services created by its provisions.

SUPPORT

Western Center on Law & Poverty (Co-sponsor)
Coalition for Humane Immigrant Rights (Co-sponsor)
Coalition of California Welfare Rights Organizations (Co-sponsor)
Disability Rights California
California Academy of Preventive Medicine
National Association of Social Workers – California Chapter
Carlsbad Citizens for Community Oversight

California Pan-Ethnic Health Network
Having Our Say Coalition
Bay Area Legal Aid

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 85 (Weiner, 2023) would extend state funds to recent refugee arrivals who exhaust their three-month Federally-funded refugee social services to cover additional months of refugee social services for the recipient. SB 85 was held in the Senate Appropriations Committee.

AB 1261 (Santiago, 2023) would amend various rules relating to state law enforcement agencies' certification of a victim, indirect victim, or bystander victim's helpfulness as required by federal law for applications for U nonimmigrant status. AB 1261 is pending before the Senate Appropriations Committee.

Prior Legislation:

AB 1461 (Reyes, 2021) would have provided that specific applicants are eligible for certain public social services, as specified. AB 1461 was a substantially similar to this bill and was vetoed by Governor Newsom because "bills with a significant fiscal impact, such as this, are best considered in the annual budget process."

SB 464 (Hurtado, 2021) would have made noncitizens eligible for the CFAP. SB 464 was held on the Assembly Floor.

AB 2027 (Quirk, Ch. 749, Stats. 2016) required an agency to certify victim cooperation on the appropriate form upon request so that an individual may apply for a T-Visa to live and work in the country temporarily.

SB 674 (DeLeón, Ch. 721, Stats. 2015) provides that, upon request of a victim or victim's family member, a certifying official from a certifying law enforcement agency shall certify victim helpfulness on the applicable U-Visa certification form when the victim was a victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to a law enforcement agency on the detection, investigation, or prosecution of that criminal activity.

AB 2345 (Gonzalez, 2014) would have expanded eligibility for noncitizens who are lawfully in the United States for aid under the CalWORKs program and nutrition

assistance under the California Food Assistance Program. AB 2345 was held on the Assembly Appropriations Committee suspense file.

SB 1569 (Kuehl, Ch. 672, Stats. 2006) provided temporary and immediate access to social services, including CalWORKs and CFAP, for noncitizen survivors of human trafficking, domestic violence, and other serious crimes.

PRIOR VOTES:

Senate Human Services (Ayes 5, Noes 0)

Assembly Floor (Ayes 72, Noes 0)

Assembly Appropriations Committee (Ayes 13, Noes 0)

Assembly Human Services Committee (Ayes 7, Noes 0)
