



820 First Street, NE, Suite 510, Washington, DC 20002
Tel: 202-408-1080 Fax: 202-408-1056 center@cbpp.org www.cbpp.org

Revised November 14, 2003

THOUSANDS OF REFUGEES WHO ARE ELDERLY OR DISABLED COULD LOSE SUPPLEMENTAL SECURITY INCOME IN THE COMING MONTHS

Many Could Lose Medicaid As Well — Congress Could Address Issue Before It Adjourns for the Year

By Shawn Fremstad

Recent data from the Social Security Administration (SSA) show that thousands of the most vulnerable refugees and other “humanitarian” immigrants in the United States — all of whom are elderly or disabled — could lose Supplemental Security Income (SSI) in the coming months. These legal immigrants — including refugees, persons granted asylum, and Cubans and Haitians with refugee-like status — who have fled persecution, often including violence and torture, in their home countries, are subject to a provision in the 1996 welfare law that limits their SSI eligibility to their first seven years in the United States unless they are able to become naturalized citizens. Some of the refugees and other humanitarian immigrants who lose SSI as a result of this provision also will lose Medicaid assistance.

Refugees and other humanitarian immigrants generally arrive in the United States with little more than the clothes on their backs and often have no relatives here. SSI benefits are the sole source of income for many refugees and humanitarian immigrants who receive SSI. These people are elderly or disabled, generally unable to work, and rarely qualify for Social Security or other retirement benefits. If they are terminated from SSI and Medicaid, they will face extreme hardships and likely destitution.

Congress could prevent these cut-offs by delinking SSI eligibility for refugees and other humanitarian immigrants from length of residence in the United States. The bipartisan U.S. Commission on Immigration Reform repeatedly called for such a delinking after the limits were placed on humanitarian immigrants’ eligibility for safety net assistance in the 1990s. Such a change would bring SSI in line with other federal programs, including food stamps, in which refugees’ and other humanitarian immigrants’ eligibility for benefits is not linked to their length of residency in the United States.

Congress has the opportunity to act before the end of the year to prevent these cut-offs. Congress should either delink SSI eligibility from these individuals’ length of residence in the U.S. or, at minimum, provide a short-term extension of benefits so that refugees and other humanitarian immigrants can retain SSI and health care benefits until the President and Congress have time to fully address this issue next year.

SSI Program Provides Basic Assistance to Individuals who are Disabled or Aged and Have Little or No Income and Assets

The SSI program provides modest monthly income support to meet basic needs for food, clothing, and shelter to people who both have little or no resources *and* are age 65 or over, have a severe disability, or are blind. SSI beneficiaries also can get Medicaid to pay for hospital stays, doctor bills, prescription drugs, and other health costs. Unlike Social Security benefits, SSI eligibility is not based on prior work history. For individuals or couples who live alone, SSI benefits are \$552 a month for individuals and \$829 a month for couples in 2003.

SSI has a strict standard for disability. To be considered disabled for SSI purposes, a person must show that he or she is unable to engage in *any* substantial gainful employment as a result of a medically determinable disability which can be expected to result in death, or has lasted, or can be expected to last, for a continuous period of at least 12 months.

Background: Refugees and Other Humanitarian Immigrants in the United States

The United States admits immigrants to the United States for long-term residence for three main types of reasons: to join family members already here (“family reunification”), to fill specific labor market needs (“employment-based immigration”), and to escape persecution on the basis of race, religion, nationality, political opinion or membership in a particular social group (refugees and other “humanitarian” immigrants). Most legal immigrants enter for family reunification purposes. A much smaller share of immigrants — typically around 10 percent or less of legal immigrants admitted each year — are granted entry by the United States government for humanitarian reasons. These “humanitarian” immigrants include refugees, persons granted asylum in the United States, certain Cubans and Haitians with refugee-like status, certain victims of trafficking in persons, and certain Vietnamese “Amerasian” immigrants.¹

Examples of groups of refugees and related humanitarian immigrants who have been allowed to resettle in the United States in recent years include:

- Russian Jews who fled the former Soviet Union;
- Iraqi Kurds fleeing persecution under the Saddam Hussein regime;
- Cubans fleeing the Castro regime;
- Hmong immigrants from the highlands of Laos who served on the side of the United States military during the Vietnam War;

¹ Amerasian immigrants are children born in certain countries of Southeast Asia to U.S.-citizen fathers. Certain Vietnamese Amerasian immigrants are subject to the seven-year limitation.

- persecuted minorities in Somalia who are the descendents of persons abducted from their homes in Tanzania and Mozambique and enslaved; and
- persons from various regions of the former Yugoslavia displaced by the Balkan war.

Refugees and other humanitarian immigrants can apply for citizenship. Before submitting a citizenship application, however, they must both obtain status as “lawful permanent residents” (LPRs) in the United States *and* reside continuously in the United States for at least five years. Refugees are able to adjust automatically to LPR status after one year in the United States, but the number of persons granted asylum (“asylees”) that can adjust each year is limited. (As this paper explains, this limit and problems with the management of the limit by the federal government mean that many asylees wait several years before they are able to adjust to LPR status.)

The naturalization process itself can be quite arduous and lengthy. The complicated process includes a lengthy application, background checks, and tests of English language proficiency and U.S. history and civics. Backlogs in processing citizenship applications caused by increases in the number of applications, computer problems, insufficient staffing levels in some areas, and lengthy background checks put in place after the September 11 attack have led to significant delays.² For immigrants who are able to meet the various citizenship requirements, it generally takes more than a year after a citizenship application is submitted for the U.S. Citizenship and Immigration Services (USCIS, formerly INS) to complete processing of it. In some USCIS offices, processing times average between two to three years. In Washington, DC/Arlington (VA), for example, the American Immigration Lawyers Association (AILA) estimates that immigrants typically wait between three to four years after they submit a citizenship application for USCIS to process the application.³

SSI Eligibility Rules for Refugees and Other Humanitarian Immigrants

Prior to 1996, legal immigrants, including refugees and other humanitarian immigrants, were eligible for SSI on the same basis as U.S. citizens.⁴ As part of the 1996 welfare law, Congress made nearly all legal immigrants ineligible for SSI, except for refugees and other humanitarian immigrants who were allowed to receive SSI during their first five years in the United States. In 1997, in response to significant, bipartisan concern about the effects of these

² For example, in mid-1999, approximately 1.8 million immigrants were awaiting action on citizenship applications. Susan Sachs, “Pressed by Backlog, U.S. Rethinks Citizenship Test,” *New York Times*, July 5, 1999, page A1.

³ “October 2003 Report Card on USCIS Adjudications,” American Immigration Lawyers Association, www.aila.org/fileViewer.aspx?docID=11540.

⁴ Immigrants with individual “sponsors” in the United States were subject to “sponsor deeming” rules — meaning their sponsor’s income was counted in determining the immigrant’s eligibility for SSI — during their first three to five years in the United States. Sponsor deeming rules did not apply to refugees and other humanitarian immigrants who did not have individual sponsors.

eligibility restrictions, Congress restored some of these cuts, preserving SSI eligibility for all immigrants who were receiving SSI as of August 22, 1996, and for legal immigrants with disabilities who entered the United States prior to August 22, 1996. (Benefits were not restored for elderly persons without a disability who were not already receiving SSI.) Congress also extended the eligibility period for refugees and other humanitarian immigrants from up to five years after entry to up to seven years after entry.

The current SSI eligibility rules for refugees and asylees are as follows:

- Refugees and other humanitarian immigrants who entered the United States on or after August 22, 1996 are eligible for SSI during their first seven years in the United States. (The seven-year period starts running from the date the individual obtained status as a refugee or other humanitarian immigrant.) After this seven-year period, to be eligible for SSI, they must either have obtained U.S. citizenship or have both adjusted to LPR status *and* worked at sufficient levels in the United States for 40 quarters (10 years).⁵
- Elderly refugees and asylees who entered the United States *prior* to August 22, 1996, but do not meet SSI disability standards are eligible for SSI during their first seven years in the United States.
- Refugees and asylees who entered the United States *prior* to August 22, 1996 are eligible for SSI regardless of their length of residency in the United States if they can prove that a disability renders them unable to work. Unlike other citizens, they are not eligible if they are elderly but do not meet SSI disability standards.
- Refugees and asylees who were already receiving SSI as of August 22, 1996 remain eligible regardless of their length of residency in the United States.

It is worth noting that SSI eligibility rules for refugees and other humanitarian immigrants are much more restrictive than the eligibility rules in the Food Stamp Program. Refugees and other humanitarian immigrants who meet other food stamp eligibility criteria are now eligible for food stamps regardless of their length of residence in the United States, whether they have become U.S. citizens, or whether they have worked for 40 quarters.

Thousands of Refugees and Other Humanitarian Immigrants Projected to Lose SSI Assistance This Year Due to the Seven-Year Limitation

As the box on page 5 shows, SSA data indicate that 5,331 refugees and other humanitarian immigrants receiving SSI will have lived in the United States for seven years by the end of 2003 and will lose eligibility for SSI unless they have become naturalized citizens.

⁵ Veterans of the U.S. Armed Forces also are exempt from the seven-year limitation. However, this exemption has not been interpreted to apply to members of Hmong or Highland Laotian tribes that provided assistance to the U.S. military during the Vietnam War or to other refugees or humanitarian immigrants who have provided assistance to the United States that likely contributed to their persecution or fear of persecution in their countries of origin.

This number is projected to increase in each subsequent year until it peaks at nearly 10,000 a year in 2007. These data represent the number of refugees and other immigrants projected to become newly ineligible for SSI *each* year as a result of the seven-year limitation unless they have naturalized.

The actual number of refugees and other humanitarian immigrants who will be cut off SSI at the seven-year point likely will be modestly lower than these numbers. Some of the individuals will have

naturalized within the seven-year period, while others will have left SSI for other reasons, most commonly because they have died or left the United States.⁶

No hard data are yet available on naturalization rates for these individuals, however, anecdotal evidence suggests that a substantial number have *not* been able to naturalize within their first seven years in the United States. As explained below, the seven-year window provides insufficient time to naturalize for many refugees and humanitarian immigrants, both because of delays in the adjustment-of-status and citizenship processes at USCIS and because of the formidable obstacles to naturalization that some immigrants who are elderly or disabled face.

Many Refugees and Other Humanitarian Immigrants Cannot Become U.S. Citizens in Seven Years

Proponents of the immigrant restrictions in the 1996 welfare law acknowledged that refugees and other humanitarian immigrants should not be subject to the same restrictions on SSI eligibility as other legal immigrants. Instead of making these immigrants eligible for SSI on the same basis as U.S. citizens, however, they limited SSI eligibility for humanitarian immigrants to their first seven years in the United States. The rationale for that limitation was the belief that all refugees and humanitarian immigrants could obtain U.S. citizenship (and thus retain SSI eligibility) by the seven-year point.

To obtain U.S. citizenship, refugees and other humanitarian immigrants must first become LPRs. After living for five years in the United States as LPRs, they are eligible to *apply* for citizenship. Thus, it is technically possible for humanitarian immigrants to obtain U.S. citizenship before the seven-year point. As a practical matter, however, for many, if not the

Number of Humanitarian Immigrants Receiving SSI Projected to Reach Seven-Year Cut-off

2003:	5,331
2004:	8,317
2005:	7,140
2006:	7,689
2007:	9,817
2008:	5,545
2009:	2,434

Source: Social Security Administration, August 2003.

⁶ In addition, a very small number of refugees and other humanitarian immigrants may be able to retain eligibility if they have become lawful permanent residents (LPRs) and can be credited with 40 quarters of work — including, under certain circumstances, work by spouses — in the United States. All of the immigrants currently hitting the seven-year limit are either elderly or disabled and have lived in the United States as LPRs for less than 10 years. Thus, it is unlikely that more than an extremely small number of them will have worked for 40 quarters (i.e., 10 years) in the United States, even when quarters worked by spouses are taken into account.

majority of humanitarian immigrants, obtaining citizenship within this time frame (or at all for some immigrants) is either impossible or extremely difficult.

A primary barrier to citizenship within the seven-year period is lengthy delays in processing of citizenship and adjustment applications by USCIS. Even for those humanitarian immigrants who are able to meet all of the citizenship requirements, delays in processing have made it impossible for many refugees or asylees to naturalize before reaching the seven-year point. These backlogs have been caused by increases in the number of applications, computer problems, insufficient staffing levels in some areas, lengthy background checks put in place after the September 11 attack have led to significant delays, and, even, in one regional office, the deliberate destruction of documents by USCIS employees.⁷

- It generally takes more than a year for USCIS to process an application for citizenship — *this time is in addition to the five years* that an immigrant must have lived in the United States as an LPR before he or she can even apply for citizenship.⁸ In some USCIS offices, average processing times exceed two or three years. As noted above, in Washington, DC/Arlington (VA), it typically takes USCIS between three or four years to process a citizenship application after it has been submitted.
- Persons granted asylum in the United States face an additional hurdle before they can even submit an application for citizenship.⁹ Federal law limits to 10,000 the number of asylees who may become lawful permanent residents each year, regardless of the number of asylees that actually have been granted asylum in the United States.¹⁰ In the last half of the 1990s, the annual number of individuals granted asylum in the United States exceeded the 10,000-person cap. In addition, the USCIS has failed to properly use all of the slots available, resulting in a long waiting list of asylees seeking to adjust to LPR status. According to the American Immigration Lawyers Association, more than 100,000 asylees are currently waiting to have their applications adjusted.¹¹ Given the 10,000-person cap on adjustments, some asylees could wait *as long as 10 years* to have their adjustment

⁷ In January 2003, two USSIS employees were indicted for destroying thousands of documents received by immigrants, including passports, birth and marriage certificates, and INS applications and notices. According to court files, when the backlog of unprocessed documents reached 90,000, a manager ordered employers to shred the unprocessed documents to eliminate the backlog. "I.N.S. Employees Shred 90,000 Thousand Documents," La Prensa San Diego, February 7, 2003, www.laprensa-sandiego.org/archieve/february07-03/ins.htm.

⁸ See "Becoming American: The Reality of the American Dream," American Immigration Lawyers Association, July 3, 2002, www.aila.org/contentViewer.aspx?bc=9,594,3220.

⁹ Asylees, like refugees, are admitted to the United States because they have a well-founded fear of persecution based on race, religion, political opinion, or certain other factors if they return to their home countries.

¹⁰ The cap was established by Congress in 1990.

¹¹ "AILA Issue Paper on Asylee Adjustment Cap," American Immigration Lawyers Association, March 2003.

applications processed. These delays are currently the subject of a lawsuit filed in federal court last year.¹²

For elderly and disabled humanitarian immigrants who are able to adjust to LPR status, there are a number of formal and informal barriers to citizenship that may make it difficult or impossible to complete the citizenship process within the first seven years in the United States, even if the USCIS is able to process their application quickly. The application process involves multiple steps including a lengthy application, an in-person interview with the USCIS, a test of English proficiency and civic knowledge, and fingerprinting. Applicants also must pay a \$250 fee.

The English language and civics test presents a significant barrier to citizenship for many humanitarian immigrants. Many humanitarian immigrants have low education levels and limited or no proficiency in English. Some even lack literacy in their own language.

Census data illustrates the impact of these factors on naturalization. Naturalization rates are especially low among immigrants who do not speak English or have limited proficiency in English. According to Census data from 1990, only 16 percent of immigrants who did not speak English had naturalized, compared to 52 percent of immigrants who spoke English well.¹³ Census data also suggests that many of the immigrants coming from major refugee-sending countries, particularly Southeast Asian countries impacted by the Vietnam War, have difficulties naturalizing. For example, 1990 Census data show that only 29 percent of Cambodians and 23 percent of Laotians had naturalized. While citizenship trends have changed somewhat over the last several years — most notably, there was a substantial increase in naturalization rates in the last half of the 1990s — analyses of more recent Census data by the Urban Institute show that immigrants who are eligible to naturalize but have not yet become citizens have more limited English skills and lower levels of education than those who have become citizens.¹⁴

Immigrants who are elderly or have disabilities face additional challenges. Many refugees and humanitarian entrants have fled their homelands after suffering great physical deprivation and psychological trauma, and in some cases, torture, rape, or other forms of physical violence. Health problems and lack of social support may prevent these immigrants from attending English language classes or even traveling to and from the USCIS office to take the required tests. Very ill immigrants — such as those who may have developed Alzheimer's or other serious diseases — may be unable even to understand or initiate the naturalization process.

Some immigrants who are disabled may obtain waivers of the civics and English proficiency requirements if they can obtain a doctor's statement that they are disabled and that their disability prevents them from learning new information. The waiver process is relatively

¹² The lawsuit is *Ngwanyia v. Ashcroft*, No. 02-CV-502 (D. Minn.). For more information about the current status of the lawsuit, see www.aifl.org/lac/lac_lit_index.asp.

¹³ Hans P. Johnson, et al., *Taking the Oath: An Analysis of Naturalization in California and the United States*, Public Policy Institute of California (1999).

¹⁴ Michael Fix, et al., "Trends in Naturalization," Urban Institute, September 2003.

recent and involves additional paperwork and processing. Anecdotal accounts suggest that the waivers are difficult to obtain and that few immigrants are aware of the availability of waivers. In addition to lack of knowledge about the waiver, barriers of language and culture prevent some immigrants from talking about their disabilities, and sometimes doctors are not familiar with the process to adequately document the problems to meet USCIS requirements, leading to further delays and unnecessary denials.

At least two additional factors have limited the extent to which refugees and other humanitarian immigrants have been able to naturalize within the seven-year period.

- Some refugees and humanitarian immigrants receiving SSI may not know that the seven-year test applies to them. Especially for immigrants approved for SSI shortly after the 1996 restrictions were put in place — immigrants who started hitting the seven-year late this year — most SSA staff were not familiar enough with the provision to warn them. In addition, because the refugee eligibility rules have changed on various occasions since 1996 and also are not consistent in their treatment of refugees and other humanitarian immigrants, a great deal of confusion remains about their applicability.
- Some immigrants have been afraid to apply for citizenship, mistakenly believing that they would be denied or even deported because they are receiving public assistance. A survey of immigrant families conducted in New York and Los Angeles found that about 50 percent of low-income immigrants either believed that immigrants who received welfare could not become citizens or didn't know whether immigrants who received could become citizens.¹⁵ The federal government has clarified that an immigrant seeking to naturalize does not need to show that they are not or will not become a “public charge,” but many immigrants are not aware of this clarification and remain afraid to apply.

Steps Congress Could Take to Prevent Cut-offs Before Adjourning for the Year

Recent media reports suggest that the cut-offs are beginning to impose considerable hardship on refugees and humanitarian immigrants who have little or no recourse to other forms of support.¹⁶ If Congress fails to address this issue before the end of the year, drastic consequences could result.

Elderly and disabled immigrants who lose SSI benefits could be left with no cash income at all. Most of these immigrants are unable to work and many do not have family that could help

¹⁵ Randy Capps, et al., *How Are Immigrants Faring After Welfare Reform? Preliminary Evidence from Los Angeles and New York City*, Urban Institute, February 2001, Table 1.3.

¹⁶ See, e.g., Suzanne Gamboa, “U.S. Cutting Off Disability to Refugees,” Associated Press, November 10, 2003, and Rona Marech, “Hundreds of refugees are losing benefits, Government payments cut off after deadline for citizenship passed,” San Francisco Chronicle, November 11, 2003.

SSI Restrictions Opposed by Bipartisan U.S. Commission on Immigration Reform

In addition to the practical problems identified in this paper with making SSI eligibility contingent on citizenship, such a policy is wrong-headed both for reasons of equity and also because it provides the wrong kind of incentive for legal immigrants to become U.S. citizens. In a series of reports issued in the mid-1990s, the bipartisan U.S. Commission on Immigration Reform cited both of these factors in support of its consistent recommendations against denying safety net benefits to legal immigrants.

In a report issued after the 1996 welfare law was enacted, the Commission explained that “deny[ing] legal immigrants access to ... safety nets based solely on alienage would lead to gross inequities between very similar individuals and undermine our immigration goals to reunite families and quickly integrate immigrants into American society.”

It also opposed linking benefit eligibility to naturalization, stating that:

Basing eligibility for assistance on citizenship debases citizenship. We encourage immigrants to become citizens in order to participate fully in the civic life of the country. We do not want immigrants to become citizens solely because the alternative is the serious economic hardship that may result if benefits are lost or unavailable.

Finally, in a special report on refugee policy, the Commission called time limits on eligibility of humanitarian immigrants “inappropriate” explaining that:

...many elderly and some disabled persons will have great difficulty passing the naturalization requirements. Refugees are not subject to public charge grounds for exclusion and many do not have family sponsors to provide support. Providing continuing coverage under SSI, food stamps, and other means-tested federal benefit programs to elderly and disabled refugees would strengthen the U.S. capacity to offer resettlement to some of the world’s most vulnerable refugees — the aged and disabled.

See U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy* (1997) and U.S. Commission on Immigration Reform, *U.S. Refugee Policy: Taking Leadership* (1997).

support them. Faced with no source of support, many may not be able to meet their most basic needs, including paying for rent and essential medications. In fact, after the passage of the 1996 restrictions, the Wall Street Journal and other papers reported that some immigrants who were facing SSI terminations committed suicide.¹⁷ Partially in response to these stories, Congress restored SSI eligibility for most immigrants who were receiving SSI prior to August 22, 1996.

To forestall the imposition of serious hardships on these vulnerable humanitarian immigrants, Congress should act before adjourning to address this growing problem. The best

¹⁷ See, e.g., “Immigrant Welfare Benefits,” Public Policy Institute of California, December 1998 (describing reports of suicides by Wall Street Journal and other papers), and Bert Eljera, “Among Desperate on Welfare Reform: Suicides lead to a test case for welfare reform,” Asian Week, December 4-10, 1997 (describing suicides attributed to restrictions in California, New York, and Wisconsin) www.asianweek.com/120497/cover_story.html.

approach would be to lift completely the restriction on SSI eligibility for refugees and other humanitarian immigrants who have lived in the United States for more than seven years. This change would be consistent with the changes Congress made in the 2002 Farm Bill to ensure that all immigrant adults are eligible for food stamps after they have lived in the United States as legal immigrants for five years. It also would be consistent with the Refugee Convention of 1951, an international treaty signed by the United States and 141 other nations. Article 23 of the Refugee Convention provides that “contracting states shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.”

**Refugees and other Humanitarian Immigrants
Do Not Have Individual “Sponsors”**

Some proponents of immigrant eligibility restrictions may be under the misconception that refugees and other humanitarian immigrants have “sponsors”—individuals who have pledged to help them settle in the United States—that could help provide support for them. Refugees and other humanitarian immigrants do not have sponsors, and many do not even have relatives in the United States. See Jennifer Daskel and David Super, “Why Can’t All Immigrants be Cared for by Sponsors?,” Center on Budget and Policy Priorities, April 1997, www.cbpp.org/imm-spon.htm.

If such a change is not possible in the remaining days of the Congressional session, a short-term fix also could be enacted to forestall serious hardships among these immigrants. Such a short-term measure would provide an additional year of SSI eligibility for all refugees and humanitarian immigrants who have lived in the United States for more than seven years and are subject to the restriction. A one-year extension would allow the Congress and Administration time to address the issue next year while ensuring that refugees, asylees, and other humanitarian immigrants do not lose needed aid this year.

While it is likely too late to introduce stand-alone legislation to address this problem, a fix could be included either in the omnibus appropriations legislation that Congress almost certainly will pass before the end of the session or in the appropriations bill for Labor and Health and Human Services programs (if that bill is not incorporated in an omnibus bill). Alternatively, a fix could be included in either the “Social Security Protection Act of 2003” (H.R. 743) or the “CARE Act,” both of which are pending in Congress and may be passed this year. (Passage of these bills is much less certain than passage of the appropriations bills, which Congress must finalize before the end of the year.)

Conclusion

Thousands of the most vulnerable refugees and other “humanitarian” immigrants in the United States — all of whom are elderly or disabled — could lose Supplemental Security Income (SSI) in the coming months. SSI benefits constitute the sole source of income for most of these individuals, who are generally unable to work and rarely eligible for Social Security or other retirement benefits. Substantial barriers to adjustment and naturalization and federal government mismanagement of the adjustment and naturalization processes have made it impossible for many elderly and disabled legal immigrants to retain SSI eligibility by becoming

citizens. Congress has the opportunity to act before the end of the year to prevent these cut-offs. Congress should either delink SSI eligibility from humanitarian immigrants' length of residence in the United States as the bipartisan U.S. Commission on Immigration Reform has recommended, or, at minimum, provide a short-term extension of benefits so that refugees and other humanitarian immigrants can retain SSI and health care benefits until the President and Congress have time to fully address this issue next year.