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DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE
Attorney General
A EUGENE CRUMP
Deputy Attorney General

113

July 17, 1985



SUBJECT: Eligibility of Nonresident Aliens to Receive Public Aid to the Poor

REQUESTED BY: Ted S. Griess
Clay County Attorney
Sutton, Nebraska

OPINION BY: Robert M. Spire
Attorney General

Royce N. Harper
Assistant Attorney General

QUESTION: Is a nonresident alien eligible to receive public assistance available to the poor under either Neb.Rev.Stat. §§68-114 or 68-115 (Cum.Supp. 1984) in the event such nonresident alien has resided within a county for more than one year continuously?

CONCLUSION: Yes.

The term "nonresident alien" is synonymous with the term "nonimmigrant alien." Included within this class of aliens are those lawfully admitted to the county to work or study, or for any other purpose outlined in 8 U.S.C.A. §1101(a)(15)(A-L). Aliens who have obtained the status of permanent United States resident are referred to as "resident" or "immigrant" aliens. A third class of aliens, of course, are those who have entered or remain in this country unlawfully and whose status is "undocumented."

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The state's political subdivisions are unauthorized to deny public assistance to those persons otherwise eligible to receive aid to the poor under Neb.Rev.Stat. §§68-114 and 68-115 (Cum.Supp. 1984) due to the fact that they have not been admitted as permanent United States residents. This conclusion is based upon two considerations.

First, provisions of the Nebraska statutes which govern a county's duty to provide assistance to the poor do not exclude nonimmigrant or undocumented aliens from coming within its terms. Under Neb.Rev.Stat. §68-114 it is the duty of the county to furnish assistance to any poor person who falls ill or is found in distress in that county whether or not they are residents of the county or are in fact residents of another state. See also, Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 227 N.W.2d (1979).

If a resident of the state becomes destitute, provisions in Article I of Chapter 68 provide that the county wherein said resident has established legal settlement is ultimately liable for the costs of providing assistance. Neb.Rev.Stat. §68-115 provides that "every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a legal settlement therein." Nothing in the statute precludes a nonimmigrant or undocumented alien from establishing a legal settlement in a county. See also, Village of Litchfield v. County of Meeker, 182 Minn. 150, 233 N.W. 804 (1930), where the Minnesota Supreme Court held that that state's similarly worded statute made no distinction between citizens and aliens.

Moreover, there is no federal impediment which would preclude a nonimmigrant alien or even an undocumented alien from obtaining domicile within a state or establishing residence or legal settlement in a county. Eligibility to be declared a permanent United States resident must be distinguished from eligibility to become a resident of a state or county. Courts in other states have been careful to make such a distinction and have allowed even undocumented aliens to receive public assistance.

In Dermegerdich v. Rank, 199 Cal.Rptr. 30 (Cal.App.Dist. 1984), the Court of Appeals held that where an Iranian national was not under an order of deportation and was otherwise eligible for state medical assistance, she was entitled to assistance under that state's statute notwithstanding her

admitted illegal status. The court noted that public health is traditionally a state function and requirements for eligibility to federal assistance programs does not preclude state legislatures from providing assistance to additional state residents.

A similar case on point is St. Joseph's Hospital and Medical Center v. Maricopa County, 142 Ariz. 94, 688 P.2d 986 (1984), in which the Arizona Supreme Court held that counties within that state were obligated to reimburse a hospital for care given to indigent illegal aliens since illegal entry into the country does not disqualify one from becoming a resident of a county for purposes of receiving medical assistance.

Since there is no federal impediment to an undocumented alien from becoming a resident of a county or state, then a fortiori, there would be no federal bar to a lawfully admitted nonimmigrant alien from obtaining similar residency. Furthermore, we find nothing in Nebraska's statutes which would prohibit a nonimmigrant or undocumented alien from establishing a legal settlement in a county or which would relieve a county of its duty to provide assistance to those aliens who meet the statutes' eligibility requirements.

It should be noted, however, that undocumented aliens and nonimmigrant aliens who, within five years of entry, become public charges are subject to deportation. 8 U.S.C.A. §§1251-1252. Federal power in this area is exclusive and the structure of the federal law is complicated. A state could not therefore deny assistance to otherwise eligible aliens merely because they are subject to deportation, since a state cannot in fact determine whether or not an alien will ever be deported until deportation proceedings have been completed.

Secondly, the state's political subdivisions may be unauthorized to deny public assistance to otherwise eligible nonimmigrant aliens, since such action is constitutionally suspect. With regard to resident aliens, the Supreme Court held in Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848 (1971), that states could not deny this class of aliens public assistance because they were not citizens or had not resided within the United States for a specified number of years. This decision left open the question of a state's responsibility to nonimmigrant aliens and those aliens present in the country unlawfully.

In Matthews v. Diaz, 426 U.S. 67, 96 S.Ct. 1883 (1976), the court held that Congress had no constitutional duty to provide all aliens with benefits provided to citizens and could, therefore, condition an alien's eligibility to receive federal assistance upon both the character and duration of his residence. The Supreme Court noted, however, that:

Insofar as state welfare policy is concerned, there is little, if any, basis for treating persons who are citizens of another state differently from persons who are citizens of another country. Both groups are noncitizens as far as the state's interests in administering its welfare programs are concerned. Thus, a division by a state of the category of persons who are not citizens of that state into subcategories of United States citizens and aliens has no apparent justification, whereas, a comparable classification by the Federal government is a routine and normally legitimate part of its business.

426 U.S. at 85. Since Neb.Rev.Stat. §68-114 provides that counties shall assist residents of other states and other counties as well as its own residents, there is, according to Diaz, little justification for treating citizens of another country any differently.

In Diaz, the court pointed out that "the class of aliens is itself a heterogeneous multitude of persons with a wide ranging variety of ties to this country." 426 U.S. at 78. In Plyler v. Doe, 457 U.S. 202, 102 S.Ct. 2382 (1982), the court emphasized that the classification of aliens is exclusively within the federal power and only rarely are such matters relevant to legislation by a state. The court held in Plyler that states could not withhold from local school districts any state funds for the education of children who were not legally admitted into the United States. Illegal aliens are not a suspect class, however, and the court noted that "persuasive arguments support a view that a state may withhold its beneficence from those whose very presence within the United States is the product of their own unlawful conduct."

Thus, had Nebraska's Legislature amended the statutes to preclude illegal aliens from establishing legal settlement within a county for the purpose of receiving assistance, such action would probably have been within constitutional limits.

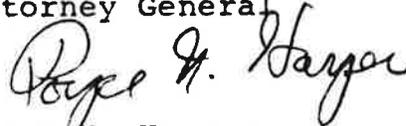
With respect to all other aliens lawfully admitted to this country, whether they are admitted for permanent residency or not, it is our opinion that the United States Constitution

Mr. Ted S. Griess
July 17, 1985
Page -5-

forbids a state to discriminate between them. It is within exclusive federal power to regulate the admittance of aliens into this country and the conditions and duration of their stay here. As the statutes within Article I, Chapter 68 of the Nebraska Revised Statutes now read, however, lawfully admitted nonimmigrant aliens as well as undocumented aliens come within its terms.

Sincerely,

ROBERT M. SPIRE
Attorney General



Royce N. Harper
Assistant Attorney General

RNH:cw

APPROVED:


Attorney General