§ 416.1618 When you are considered permanently residing in the United States under color of law.

(a) General. We will consider you to be permanently residing in the United States under color of law and you may be eligible for SSI benefits if you are an alien residing in the United States with the knowledge and permission of the Immigration and Naturalization Service and that agency does not contemplate enforcing your departure. The Immigration and Naturalization Service does not contemplate enforcing your departure if it is the policy or practice of that agency not to enforce the departure of aliens in the same category or if from all the facts and circumstances in your case it appears that the Immigration and Naturalization Service is otherwise permitting you to reside in the United States indefinitely. We make these decisions by verifying your status with the Immigration and Naturalization Service following the rules contained in paragraphs (b) through (e) of this section.

(b) Categories of aliens who are permanently residing in the United States under color of law. Aliens who are permanently residing in the United States under color of law are listed below. None of the categories includes applicants for an Immigration and Naturalization Service status other than those applicants listed in paragraph (b)(6) of this section or those covered under paragraph (b)(17) of this section. None of the categories allows SSI eligibility for nonimmigrants; for example, students or visitors. Also listed are the most common documents that the Immigration and Naturalization Service provides to aliens in these categories:


2. Aliens paroled into the United States pursuant to 8 U.S.C. 1182(d)(5) (section 212(d)(5) of the Immigration and Nationality Act) including Cuban/Haitian Entrants. We ask for INS Form I–94 with the notation that the alien was paroled pursuant to section 212(d)(5) of the Immigration and Nationality Act. For Cuban/Haitian Entrants, we ask for INS Form I–94 stamped “Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981.” (Although the forms bear this notation, Cuban/Haitian Entrants are admitted under section 212(d)(5) of the Immigration and Nationality Act);

3. Aliens residing in the United States pursuant to an indefinite stay of deportation. We ask for an Immigration and Naturalization Service letter with this information or INS Form I–94 with such a notation;

4. Aliens residing in the United States pursuant to an indefinite voluntary departure. We ask for an Immigration and Naturalization Service letter or INS Form I–94 showing that a voluntary departure has been granted for an indefinite time period;

5. Aliens on whose behalf an immediate relative petition has been approved and their families covered by the petition, who are entitled to voluntary departure (under 8 CFR 242.5(a)(2)(vi)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for a copy of INS Form I–94 or I–210 letter showing that status;

6. Aliens who have filed applications for adjustment of status pursuant to section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) that the Immigration and Naturalization Service has accepted as “properly filed” (within the meaning of 8 CFR 245.2(a)(1) or (2)) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I–181 or a passport properly endorsed;

7. Aliens granted stays of deportation by court order, statute or regulation, or by individual determination of the Immigration and Naturalization Service pursuant to section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) or relevant Immigration and Naturalization Service instructions, whose departure that agency does not contemplate enforcing. We ask for INS Form I–94 or a letter from the Immigration and Naturalization Service, or copy of a court order establishing the alien’s status;
(8) Aliens granted asylum pursuant to section 208 of the Immigration and Nationality Act (8 U.S.C. 1158). We ask for INS Form I–94 and a letter establishing this status;

(9) Aliens admitted as refugees pursuant to section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or section 203(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(7)). We ask for INS Form I–94 properly endorsed;

(10) Aliens granted voluntary departure pursuant to section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) or 8 CFR 242.5 whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for INS Form I–94 or I–210 bearing a departure date;

(11) Aliens granted deferred action status pursuant to Immigration and Naturalization Service Operations Instruction 103.1(a)(i) prior to June 15, 1984 or 242.1(a)(22) issued June 15, 1984 and later. We ask for INS Form I–210 or a letter showing that departure has been deferred;

(12) Aliens residing in the United States under orders of supervision pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252(d)). We ask for INS Form I–220B;

(13) Aliens who have entered and continuously resided in the United States since before January 1, 1972 (or any date established by section 249 of the Immigration and Nationality Act, 8 U.S.C. 1259). We ask for any proof establishing this entry and continuous residence;

(14) Aliens granted suspension of deportation pursuant to section 244 of the Immigration and Nationality Act (8 U.S.C. 1254) and whose departure the Immigration and Naturalization Service does not contemplate enforcing. We ask for an order from the immigration judge;

(15) Aliens whose deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act (8 U.S.C. 1253(h)). We ask for an order from an immigration judge showing that deportation has been withheld;

(16) Aliens granted lawful temporary resident status pursuant to section 245A of the Immigration and Nationality Act (8 U.S.C. 1255a). We ask for INS Form I–688 showing that status; or

(17) Any other aliens living in the United States with the knowledge and permission of the Immigration and Naturalization Service and whose departure that agency does not contemplate enforcing.

(c) **How to prove you are in a category listed in paragraph (b) of this section.** You must give us proof that you are in one of the categories in paragraph (b) of this section. You may give us:

1. Any of the documents listed in paragraph (b) of this section; or
2. Other information which shows that you are in one of the categories listed in paragraph (b) of this section.

(d) **We must contact the Immigration and Naturalization Service.** (1) We must contact the Immigration and Naturalization Service to verify the information you give us to prove you are permanently residing in the United States under color of law.

2. If you give us any of the documents listed in paragraphs (b) (1), (2), (3), (4), (8), (9), (11), (12), (13), (15), or (16) of this section, we will pay you benefits if you meet all other eligibility requirements. We will contact the Immigration and Naturalization Service to verify that the document you give us is currently valid.

3. If you give us any of the documents listed in paragraphs (b) (5), (6), (7), (10), or (14) of this section, or documents that indicate that you meet paragraph (b)(17) of this section, or any other information to prove you are permanently residing in the United States under color of law, we will contact the Immigration and Naturalization Service to verify that the document or other information is currently valid. We must also get information from the Immigration and Naturalization Service as to whether that agency contemplates enforcing your departure. We will apply the following rules:

1. If you have a document that shows that you have an Immigration and Naturalization Service status that is valid for an indefinite period we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. Therefore, we will pay you benefits if you meet all
other eligibility requirements. If, based on the information we get from the Immigration and Naturalization Service, we find that your document is currently valid, we will consider this sufficient proof that the Immigration and Naturalization Service does not contemplate enforcing your departure. We will continue your benefits. However, if we find that your document is not currently valid, we will suspend your benefits under §416.1320.

(ii) If you have a document that appears currently valid and shows you have an Immigration and Naturalization Service status for at least 1 year, or that shows the Immigration and Naturalization Service is allowing you to remain in the United States for a specified period due to conditions in your home country, we will assume that the Immigration and Naturalization Service does not contemplate enforcing your departure. Therefore, we will pay you benefits if you meet all other eligibility requirements. If, based on the information we get from the Immigration and Naturalization Service, we learn that your document is currently valid and that agency does not contemplate enforcing your departure, we will continue your benefits. However, if we learn that your document is not currently valid or that the Immigration and Naturalization Service does contemplate enforcing your departure, we will suspend your benefits under §416.1320.

(iii) If you have a document that shows you have an Immigration and Naturalization Service status valid for less than 1 year, or if your document has no expiration date, or if you have no document, we will not pay you benefits until the Immigration and Naturalization Service confirms that your document is currently valid and we get information from that agency that indicates whether it contemplates enforcing your departure. If that agency does not contemplate enforcing your departure, we will pay you benefits if you meet all other eligibility requirements.

(iv) If at any time after you begin receiving benefits we receive information from the Immigration and Naturalization Service which indicates that the Immigration and Naturalization Service contemplates enforcing your departure, we will suspend your benefits under §416.1320 and any benefits you have received after the date that the Immigration and Naturalization Service began contemplating enforcing departure will be overpayments under subpart E of this part.

(e) What “United States” means. We use the term United States in this section to mean the 50 States, the District of Columbia, and the Northern Mariana Islands.

(Approved by the Office of Management and Budget under control number 0960–0451)

§416.1619 When you cannot be considered permanently residing in the United States under color of law.

We will not consider you to be permanently residing in the United States under color of law and you are not eligible for SSI benefits during a period in which you have been granted temporary protected status by the Immigration and Naturalization Service under section 244A of the Immigration and Nationality Act.

(Approved by the Office of Management and Budget under control number 0960–0451)

§416.1701 Scope of subpart.

This subpart describes whom we refer to agencies for (a) vocational rehabilitation services or (b) treatment for alcoholism or drug addiction. The purpose of these services or treatments is to restore your ability to work. This subpart also describes the conditions under which you can refuse treatment after we have referred you. If these conditions are not met, this subpart