

Will using public benefits hurt my chances or a family member's chances of getting a green card or becoming a United States citizen?

IF YOU DO NOT HAVE A GREEN CARD YET

It will not hurt your chances of getting a green card if YOU, your CHILDREN, or other FAMILY MEMBERS use:

- HEALTH CARE, such as Medicaid or Kids Connection;
- FOOD programs, such as food stamps or WIC;
- Other programs that do not give cash assistance, such as public housing, disaster relief, child care, job training, and transportation vouchers.

You might have a problem getting your green card later ONLY IF:

- You use CASH WELFARE, such as Employment First, Supplemental Security Income (SSI), and General Assistance or General Relief;
- Your family's only source of support is cash welfare received by your children or other family members;
- You are in a nursing home or other LONG-TERM CARE paid for by Medicaid or other government funds.

However, if you are a victim of abuse who has filed a self-petition under the Violence Against Women Act (VAWA), use of cash welfare and other benefits will not count against you.

IF YOU ARE A REFUGEE OR ASYLEE

You can use ANY benefits, including cash welfare, health care, food programs, and non-cash programs, without hurting your chances of getting a green card.

ONCE YOU RECEIVE YOUR GREEN CARD

You cannot lose your green card if YOU, your CHILDREN, or other FAMILY MEMBERS use:

- HEALTH CARE, FOOD, and other NON-CASH programs;
- CASH WELFARE;
- LONG-TERM CARE.

But you might have a problem:

- If you leave the U.S. for more than 6 months continuously and you have used cash welfare or long-term care;
- In extremely rare cases, if you use cash welfare or long-term care during your first five years in the U.S., for reasons that existed before you entered the country (such as an illness or disability) and you have a legal debt and refuse to pay it.

IF YOU WANT TO SPONSOR A RELATIVE

Using benefits, including cash welfare, health care, food programs, and non-cash programs should not prevent you from sponsoring your relative, but you must show that you earn enough income to support your relative. Any benefits you receive will not be counted as part of the income necessary to be a sponsor.

Public Benefits for Immigrants in Nebraska:

An explanation of rights for individuals

If I am an undocumented non-citizen, can I get welfare benefits for myself?

- No, except in medical emergencies. You are considered a “not qualified” immigrant.
- Yes, if you are a battered spouse or battered child or step-child of a Lawful Permanent Resident (also known as a “documented” or “legal” immigrant) or United States citizen. *These battered spouses and/or children are “qualified” even if she/they are undocumented if she/they have a pending or approved petition for an immigrant visa. See page on Battered Immigrant rights.*

I am a non-citizen legally in the USA. Am I eligible for welfare benefits in Nebraska?

- Yes, in most cases. You are considered a “qualified” immigrant.

I thought there were laws that made non-citizens legally in the USA ineligible for benefits. Is this true?

- Since 1996 there have been a number of federal laws that restrict federally-funded public services and benefits for non-citizens. *However, Nebraska uses state funds to provide welfare benefits to non-citizens who are legally in the United States, including food stamps, Medicaid, cash assistance, and SSI.*
- Therefore, if you are a non-citizen legally in the United States, are income and resource eligible and participate in any required program activities, you are eligible for the same amount of benefits as any citizen.

What welfare benefits am I eligible for?

- Food Stamps
- Medicaid
- Cash assistance – Temporary Assistance for Needy Families (TANF) or ADC
- Disability payments/Supplemental Security Income (SSI)

How do I get these benefits?

- You apply at your local Department of Health and Human Services office. You will fill out the same application as any citizen. If you don’t speak or read English, the Department *must* give you an application in your language or provide a translator.
- Remember, it is *illegal* for the government to treat you differently just because of the way you look, the way you talk, if you can’t speak English, or because you are from a particular country.

Public Benefits for Immigrants in Nebraska: An explanation of rights for families

If I am an undocumented non-citizen, can I still get welfare benefits for my citizen children?

- Yes.

How do I get benefits for my citizen child?

- You apply at your local Department of Health and Human Services office. You will fill out the same application as any citizen.
- Remember, it is *illegal* for the government to treat you differently just because of the way you look, the way you talk, if you can't speak English or because you are from a particular country.

Applications often ask for the Social Security Number or immigration status of everyone in the household. Is all this information required in order for anyone in the household to receive benefits?

- No. Again, the agency need only determine if the *applicant* is “qualified” or “not qualified.” This is determined by asking if the applicant fits into any of “qualified” categories.
- You should write “unavailable” in a blank asking for the Social Security Number of an individual in the house who is not applying for benefits. That is all that the agency needs to know about their immigration status and it will not affect the ability of any “qualified” individual from receiving benefits.
- *You should scratch out anything on any form or application that says “undocumented” or “illegal” and write, “not qualified.” That is all the agency needs to know.*

Applications ask for *income and resource information* for everyone in the household. Is all this information required in order for anyone in the household to receive benefits?

- Yes.

For example: You are a non-citizen legally in the U.S. applying for food stamps for your family. You have a “household” of four people – you, your two citizen children, and your undocumented spouse. You will be required to give *income and resource information about your 4-person household*. However, you will only be eligible for food stamps for a three-person household. The agency need only know if your spouse is “qualified” or “not qualified”.

When applying for welfare benefits, what information must I give about my immigration status or my family's immigration status?

- Nothing requires that a non-citizen applying for benefits (for him/herself or for other family members) reveal any information about whether they or any other family member is in the USA *lawfully*.
- The welfare office need only determine if you or your family members are “*qualified*” or “*not qualified*” for benefits.
- “Qualified” is determined by asking if you or the family member needing benefits falls into any of the categories defining “qualified” immigrants
For example: You are “qualified” if you or your child
 1. are a Lawful Permanent Resident, or
 2. are a refugee, asylee, or
 3. you have been granted a withholding of deportation, or
 4. you are a battered spouse, child, or step-child of a Lawful Permanent Resident or U.S. citizen. *If you are a **battered** spouse or child, you are “qualified” even if you are undocumented if: 1) you have a pending or approved petition for an immigrant visa, and 2) your husband/parent/step-parent is a “documented” immigrant (Lawful Permanent Resident) or a U.S. citizen. See page on Battered Immigrant rights.*
- The welfare office may only seek information about the “qualified immigrant” status of the person who will actually be receiving benefits.
For example: You are a “not qualified” mother and have applied for benefits only for your “qualified” child (that means your child is a citizen or Lawful Permanent Resident). The welfare office may only ask immigration questions about the “qualified” status of your child. **The welfare office may not ask any questions about *your* immigration status.**
- *If anyone from these agencies asks you about your immigration status, be careful. You never need to tell anyone that you are **undocumented**. Simply tell them you are a “not qualified” non-citizen. That is all the agencies need to know.*
- If you or the family member does not fit into any “qualified” category, you are ineligible for benefits and no further information about anyone’s immigration status is necessary. Being defined as “ineligible” or “not qualified” does not in any way put individuals at risk for any further immigration status questions.

Public Benefits for Immigrants in Nebraska:

An explanation of Public Charge

What is “public charge”?

- If an immigrant is ruled to be a “public charge” s/he has been determined by the INS to be a person who cannot support his/herself and who is primarily dependent on the government for his/her subsistence. Being considered a “public charge” jeopardizes chances of becoming a Lawful Permanent Resident or a citizen.

Will I be considered a public charge if I apply for public benefits for *myself*?

- You can apply for and get health care, food stamps, and other *non-cash benefits* without being considered a public charge. You *will not* risk your chances of becoming a citizen or Lawful Permanent Resident.
- Your own application and use of *cash* benefits such as: a cash welfare grant, Supplemental Security Income (SSI), or General Assistance (GA) *might* put you at risk of being considered a public charge, depending on your situation, but generally is not a problem.
- If you need cash benefits because you are a *battered immigrant*, this will absolutely *not* put you at risk of being considered a public charge. You will not risk your chances of becoming a citizen or obtaining lawful permanent residency through either a self-petition or a family based visa petition filed by an abusive spouse or parent/step-parent.

Will I be considered a public charge if I apply for public benefits for *my family*?

- You can apply for benefits *for your family* and get health care, food stamps, and other *non-cash benefits* for them without being considered a public charge. You *will not* risk your chances of becoming a citizen or Lawful Permanent Resident.
- Application for and receipt of *cash benefits* such as: a cash welfare grant, Supplemental Security Income (SSI), or General Assistance (GA) *by your children or other family members will not affect your* immigration status *unless these benefits are your family’s only income*.

Will a member of my family be considered a public charge if I apply for public benefits for *them*?

- You can apply for benefits *for your family* and get health care, food stamps, and other *non-cash benefits* for *them* without their being considered a public charge. You will not be risking *their* chances of becoming a citizen or Lawful Permanent Resident.
- Application and use of *cash* benefits by your family such as: a cash welfare grant, Supplemental Security Income (SSI), or General Assistance (GA) *might* affect their immigration status, depending on their situation, but generally is not a problem.
- If the family member needs cash benefits because s/he is a *battered immigrant*, this will absolutely *not* put them at risk for being considered a public charge. It will not jeopardize his/her chance of becoming a citizen or obtaining lawful permanent residency through either a self-petition or a family based visa petition filed by an abusive spouse or parent/step-parent.

Remember, nothing requires that a non-citizen applying for benefits reveal any information about whether s/he or any other family member is in the USA *lawfully*. *If anyone from these agencies asks you about your immigration status, be careful. You never need to tell anyone that you are undocumented. In order to determine eligibility, the agency only needs to know if the person applying for benefits is “qualified” or “not qualified”.*

Public Benefits for Immigrants in Nebraska: An explanation of rights for Battered Victims

Are battered undocumented immigrant women and children eligible for welfare benefits in Nebraska?

Yes, under certain circumstances they are considered “qualified” for benefits. They are “qualified” if:

- 1) The abused woman/parent is married to a Lawful Permanent Resident or she is married to a U.S. citizen, or the abused child is the child or step-child of a U.S. citizen or Lawful Permanent Resident, **AND**
- 2) She and/or the child is battered by a *member of the household*, not necessarily by the U.S. citizen or LPR spouse/parent, **AND**
- 3) She and/or the child has a *pending* or *approved* self-petition or family based petition filed by her husband or the abused child’s father or step-father, **AND**
- 4) She and/or the child need benefits because of the abuse, **AND**
- 5) She and/or the child either no longer live with the batterer or plan to leave when they get benefits.

NOTE: Being “**qualified**” for benefits is a broader category than being eligible to self-petition! For example, a woman who is married to a Lawful Permanent Resident but is being battered by her brother who lives with them may not file a self-petition, but she **is** eligible for public benefits if she has a visa petition pending through her husband. The date of entry into the United States should not affect the immigrant’s eligibility for benefits in Nebraska.

Please see Nebraska Applesseed’s Brochure on Battered Immigrants & Public Benefits for more information on “qualified” status and the petition process for battered immigrants.

Battered Immigrants & Public Benefits in Nebraska:

How undocumented battered women and children can gain legal status and become eligible for welfare in Nebraska.

**Throughout this brochure, we refer to battered/abused immigrants as women and/or children, and to batterers/abusers as men, because in almost all domestic violence cases, the batterer is male and the victim is a woman or child. However, the policies discussed here do not exclusively apply to only one gender.*

How do battered undocumented spouses and children gain legal status in the United States?

- The **U.S. citizen or Lawful Permanent Resident** spouse and/or parent in the family can file an immigration visa petition for the spouse and/or child. This is called an “I-130” petition or a *family-based petition*.
- The battered woman and/or abused child can file an I-360 *self-petition*. A woman can include all of her undocumented unmarried children who are under 21 in her self-petition.

Where are these petitions filed?

Petitions for legal status are filed with the Immigration and Naturalization Service (INS).

What if the husband uses the petition process as a form of control or threat over his wife or child?

Spouses and children caught in this dangerous situation can file the I-360 *self-petition* to become Lawful Permanent Residents themselves. This eliminates dependence on the batterer. The I-360 self-petition filed by victims of abuse (or their family) is also known as a *VAWA petition* (VAWA stands for the Violence Against Women Act of 1994).

Under what conditions can the spouse of a U.S. citizen or Lawful Permanent Resident file a self-petition?

- A spouse can self-petition if she is battered or subjected to extreme cruelty, and is or was married to a U.S. citizen or Lawful Permanent Resident within the past two years. Unmarried children of the self-petitioner who are under age 21 may be included in the petition, **OR**
- The parent of a child who has been battered or subjected to extreme cruelty by that parent’s U.S. citizen or Lawful Permanent Resident spouse may self-petition and include all of her unmarried children under age 21 who live in the U.S. in her petition.

The spouse/parent must also meet the following requirements:

- She is legally married to a U.S. citizen or Lawful Permanent Resident batterer at the time of filing, or she has filed her self-petition within two years of divorce or her abuser’s loss of status, or in the case of a U.S. citizen spouse death.
- She must live in the U.S., have been abused in the U.S., or must be the spouse of a U.S. government employee or military member.
- She must have lived with the U.S. citizen or Lawful Permanent Resident spouse.
- She was battered or subjected to extreme cruelty during the marriage, or is the parent of a child who was so treated by the U.S. citizen or Lawful Permanent Resident spouse during the marriage.
- She must be of “good moral character” (If the petitioner has committed certain crimes, she may not be considered to be of good moral character. There are only limited exceptions to this definition.)
- She must demonstrate that the marriage was entered into in good faith, not for immigration purposes.

Talk to a domestic violence advocate or someone who is familiar with INS guidelines about what documentation of abuse is necessary for a woman to file a self-petition under VAWA.

Under what conditions can a child who is battered file a self-petition?

- A battered child under 21 who is not married and who has been abused by a U.S. citizen or Lawful Permanent Resident parent may self-petition. The battered child's own children may be included in the petition.

The child must also meet the following requirements:

- The child must be an under 21 year old child or step-child of the U.S. citizen or Lawful Permanent Resident abuser.
- The child must present evidence proving the relationship to the parent.
- The child must move that he/she was battered or subjected to extreme cruelty by his/her U.S. citizen or Lawful Permanent Resident parent or step-parent.

Talk to a domestic violence advocate or someone who is familiar with INS guidelines about what documentation of abuse is necessary for a child to file a self-petition under VAWA.

Are battered undocumented immigrant women and children eligible for welfare benefits in Nebraska?

Yes, under certain circumstances they are considered "qualified" for benefits. They are "qualified" if:

- 1) The abused woman/parent is married to a Lawful Permanent Resident or she is married to a U.S. citizen, or the abused child is the child or step-child or a U.S. citizen or Lawful Permanent Resident, **AND**
- 2) She and/or the child is battered by a *member of the household*, not necessarily by the U.S. citizen or LPR spouse/parent, **AND**
- 3) She and/or the child has a *pending* or *approved* self-petition or family based petition filed by her husband or the abused child's father or step-father, **AND**
- 4) She and/or the child need benefits because of the abuse, **AND**
- 5) She and/or the child either no longer live with the batterer or plan to leave when they get benefits.

NOTE: Being "**qualified**" for benefits is a broader category than being eligible to self-petition! For example, a woman who is married to a Lawful Permanent Resident but is being battered by her brother who lives with them may not file a self-petition, but she is eligible for public benefits if she has a visa petition pending through her husband. The date of entry into the United States should not affect the immigrant's eligibility for benefits in Nebraska.

If I am an undocumented immigrant woman or child, and am "qualified" for benefits, what benefits am I eligible for in Nebraska?

- Food Stamps
- Medicaid
- Cash assistance – Temporary Assistance for Needy Families (TANF)
- Disability payments/Supplemental Security Income (SSI)

Please see Nebraska Appleseed's Brochure on Immigrants & Public Benefits for more information on how to apply.

Does the "pending" or "approved" petition have to be a VAWA self-petition in order to get public benefits?

No, it can be a family-based petition filed by a spouse, or if for a child, a parent or step-parent.

If a woman and/or child is battered, but did not self-petition under VAWA, is there a way for them to be “qualified” for public benefits?

Yes. There are three ways to fulfill the requirement of having a *pending or approved petition* for an immigration visa to be a “qualified” immigrant and eligible for public benefits. A woman or child will fulfill the requirement for having a pending or approved petition if:

- 1) The **petition is a VAWA self-petition (I-360), OR**
- 2) The **petition is for “cancellation of removal,”** which stops deportation under VAWA (guidelines for obtaining “cancellation of removal” differ from those for self-petitioning, so check with an immigration lawyer, domestic violence advocate, or someone familiar with INS guidelines for details), **OR**
- 3) The **abusive U.S. citizen or Lawful Permanent Resident spouse or parent filed the petition for his family members (I-130 petition).** In this case, since the petition process did not require battering to be established, the battered spouse/parent wanting public benefits must prove to the Nebraska Department of Health and Human Services that she and/or the child is battered. This may include affidavits, protection orders, medical records, police reports, statements from a domestic violence program, or other credible evidence.

What is a “pending or approved petition”?

- A petition is “pending” if there is not yet a final decision about the applicant’s permanent status, and if the petition has not been resolved. However, on a pending petition, the INS has verified that the application/petition contained all of the necessary elements and was valid.
- The petition may also be “approved”, and the battered immigrant may be awaiting her turn to file for her green card.

How does a woman or child prove she has a “pending or approved petition”?

- To verify that the petition was valid and it is indeed pending, the INS gives the petitioner a “Notice of Prima Facie Determination” that is valid for 150 days. This document outlines how the requirements for a valid petition were met. *The “Notice of Prima Facie Determination” must be presented to agencies that provide public benefits to prove that an immigrant is “qualified” for benefits. If 150 days passes before status is granted, the INS can grant an extension.*
- Once the petition has been approved, the applicant will need to present the approval notice to qualify for benefits.

For a woman or child to be a “qualified” immigrant, does the batterer have to be her spouse/parent?

No, in the case of an immigrant with a pending or approved family-based visa petition filed by a U.S. citizen or Lawful Permanent Resident. She may be battered by another household member to qualify for benefits.

If a battered woman or child’s currently pending petition was filed by the batterer (I-130 family-based petition), does a VAWA petition (I-360 self-petition) need to be filed additionally in order to be qualified for public assistance?

- It is not necessary for there to be a VAWA petition in order to receive public benefits. However, filing a self-petition is a good idea, because the *priority date* given to the original I-130 family-based petition will be transferred to the new I-360 self-petition for that family.
- Further, filing the self-petition interferes with the abuser’s ability to control the battered woman or child’s immigration case. Once the self-petition is filed, INS cannot use any negative information provided by the abuser against the self-petitioner and the abuser can never find out from INS that a self-petition has been filed.

What should a woman do who thinks she is a “qualified” immigrant, but has been denied welfare benefits?

Anyone has the right to apply for benefits. If an immigrant is told that her family is not “qualified” ask questions or contact a supervisor. If this does not resolve the issue, or you are not satisfied with the answer, call the Nebraska Department of Health and Human Services Central Office in Lincoln, at 402-471-3121.