NEW MEXICO LAW REVIEW

Volume 9
Issue 1 *Winter 1979*

Winter 1979

Medical Benefits Awarded to an Illegal Alien: Perez v. Health and Social Services

Jo Saxton Brayer

Recommended Citation
Jo S. Brayer, *Medical Benefits Awarded to an Illegal Alien: Perez v. Health and Social Services*, 9 N.M. L. Rev. 89 (1979).
Available at: https://digitalrepository.unm.edu/nmlr/vol9/iss1/6

This Notes and Comments is brought to you for free and open access by The University of New Mexico School of Law. For more information, please visit the *New Mexico Law Review* website: www.lawschool.unm.edu/nmlr

NOTES AND COMMENTS

MEDICAL BENEFITS AWARDED TO AN ILLEGAL ALIEN: *PEREZ v. HEALTH AND SOCIAL SERVICES*

In 1976, Ruben Perez was hospitalized in Espanola Hospital after receiving a serious gun shot wound. His bills were over $20,000.[1] Unable to pay the hospital, his wife applied to the Health and Social Services Department (hereinafter cited as HSSD)[2] for assistance under the Special Medical Needs Act.[3] The Act, wholly state funded, is designed to aid indigent New Mexico residents, not eligible for Medicaid, who are aged, blind, or disabled and have a serious medical condition which will likely result in death.[4] Mr. Perez seemingly met all eligibility requirements: he had lived in New Mexico for over seven years; he was indigent; he did not qualify for Medicaid; and he had a life threatening wound. He had, however, one additional characteristic not mentioned in the Act—he was an illegal alien. Solely because he was not a U.S. citizen or a lawfully admitted alien, Mr. Perez's request for medical assistance was denied.[5]

In *Perez v. Health and Social Services,*[6] the New Mexico Court of Appeals reversed HSSD's decision and held that Ruben Perez was entitled to the benefits of the Act. Overruling HSSD's contention that an illegal alien could not be a resident, the court found that the only two elements necessary to prove residency were physical presence and intent to remain.[7] Since Mr. Perez had demonstrated both, he met the residency requirements of the Act.

This note will analyze the *Perez* court's reasoning and discuss possible ramifications of the court's holding. It will conclude with a brief discussion of current legislative developments which could affect an illegal alien's access to medical assistance programs.

---

1. Letter from Clark de Schweinitz, attorney for Appellant in Perez v. Health and Social Servs. to author (Oct. 26, 1978).

2. The Health and Social Services Department was abolished by the 1978 reorganization laws and the Human Services Department was created in its place. N.M. Stat. Ann. § 9-8-4 (1978).

3. N.M. Stat. Ann. § § 27-4-1 to 5 (1978).

4. N.M. Stat. Ann. § § 27-4-3 to 5 (1978).

5. Record at 2, Perez v. HSSD, 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), *cert denied,* 91 N.M. 491, 576 P.2d 297 (1978).

6. 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), *cert. denied,* 91 N.M. 491, 576 P.2d 297 (1978).

7. 91 N.M. at 336-37, 573 P.2d at 691-92.

THE CASE

In deciding that Mr. Perez was eligible for medical assistance under the Act, the New Mexico court 1) established that an illegal alien is both a person and a resident for the purposes of the Act;[8] 2) decided that since the Act is wholly state funded, it is completely independent of federal immigration control;[9] and 3) reaffirmed previous New Mexico rulings that a state agency is bound by its own regulations.[10]

The focus of the opinion was whether an illegal alien is a person and a resident under the Act. The court decided that an illegal alien can be a person within the meaning of the Act. Citing *Torres v. Sierra*[11] for the proposition that an illegal alien is a person for the purposes of a wrongful death act, the court determined that an illegal alien is also a person for the purposes of the Special Medical Needs Act. The court next addressed the question of residency. Finding that resident has no fixed meaning, the court examined the Act itself and HSSD's regulations which were adopted pursuant to the Act[12] in order to determine what resident meant to the drafters and administrators of the Act. The Act does not define resident; it only requires that an applicant be a New Mexico resident.[13] HSSD's Regulation 351.6, however, states that to be eligible for Special Medical Needs Act benefits, a person must be physically present and have demonstrated an intent to remain in New Mexico.[14] Regulation 351.62(B) says that proof of intent to remain is shown by subjective manifestations of that intent.[15] The court also examined the common law for a definition of resident. The same two elements—physical presence and intent to remain—are the elements necessary to

---

8. *Id.*

9. 91 N.M. at 336, 573 P.2d at 692.

10. *Id.*

11. 89 N.M. 441, 553 P.2d 721 (Ct. App.), *cert. denied*, 90 N.M. 8, 558 P.2d 620 (1976).

12. N.M. Dep't. of Health & Soc. Serv. Manual § § 350-55 (1976).

13. N.M. Stat. Ann. § 27-4-5 (1978).

14. Regulation 351.6 was renumbered 352.5 on 1 April 1978 but otherwise was unchanged. N.M. Dep't of Human Serv. Manual § 352.5 (1978).

15. Regulation 351.62(B) was renumbered 352.521 on 1 April 1978 and was substantially changed. The regulation now reads:

> Since proof of intent to remain in the State involves proof of a state of mind, it is necessary to establish the intent through outward objective manifestations. Certain acts on the part of a person, such as enrolling a child in school, accepting employment within the state, payment of rent and/or utilities or otherwise establishing a household, are acceptable methods of proof.

N.M. Dep't of Human Serv. Manual § 352.521 (1978).

establish residency at New Mexico common law.[16] The court found that Mr. Perez met the Act's residency requirements. He had lived seven years in New Mexico and thereby satisfied the physical presence requirement. The uncontradicted testimony of a HSSD welfare worker that Mr. Perez had demonstrated an intent to remain was sufficient to establish the requisite intent to remain. Having met all the eligibility requirements, Mr. Perez was eligible for medical assistance under the Act.

The question of whether an illegal alien can be a resident for the purposes of a state supported medical assistance program had not been litigated before by New Mexico courts. Illegal aliens, fearing deportation, avoid applying for medical treatment[17] and seek assistance only in extreme emergencies.[18] Furthermore, the major medical assistance programs are regulated by federal laws which specifically deny benefits to illegal aliens.[19] Thus rarely do questions about illegal aliens' rights to assistance programs arise.[20]

There is no indication from the opinion that the *Perez* court looked to other jurisdictions to help it decide if an illegal alien could meet the residency requirements of a state supported medical assistance program. Instead, the court examined the language of the Act, the HSSD regulations and New Mexico's common law to establish the determinative elements in proving residency. It concluded that physical presence and intent to remain were the only essential elements.

HSSD contended that the question of physical presence and intent cannot be addressed until the threshold inquiry of whether the applicant is lawfully in the United States is answered. The Department maintained that only if the answer is yes, do the questions of

16. *See* Klutts v. Jones, 21 N.M. 720, 727, 158 P. 490, 492 (1916). The case has never been overruled and has been cited for the proposition that residency is largely a matter of intention. *See also* Allen v. Allen, 52 N.M. 174, 187, 194 P.2d. 270, 279 (1948) (Sadler, J., dissenting).

17. *Illegal Aliens: Hearings on HR 982 before Subcommittee No. 1 of the House Committee on the Judiciary,* 92d Cong., 1st & 2d Sess. 326 (1971-1972) (statement of Clifton D. Govan, M.D.).

18. *Medical Treatment of Illegal Aliens: Hearings on H.R. 2400, H.R. 3697, H.R. 5031, H.R. 5977, and H.R. 6440 Before the Subcommittee on Health and the Environment of the House Committee on Interstate and Foreign Commerce,* 95th Cong., 1st Sess. 10 (1977) (statement of B. F. Sisk, representative from California).

19. Education and Public Welfare Division Congressional Research Service, Illegal Aliens: Analysis and Background, 95th Cong., 1st Sess. 24 (Comm. Print 1977).

20. The question did arise in New York. New York's Social Service Laws said that each public welfare district was responsible for providing medical aid to any eligible person "found" in its territory. The New York court concluded that even though the plaintiff was an illegal alien, she was still "found" in the territory and was entitled to medical assistance. Dallas v. Lavine, 79 Misc. 395, 358 N.Y.S. 2d 297 (Sup. Ct. 1974).

physical presence and intent to remain arise. If the answer is no, then the applicant's presence is simply not recognized in the United States and he cannot be a resident.[21] In support of its argument, HSSD cited two immigration cases[22] which held that for the purposes of naturalization, "[a]n alien who enters this country unlawfully . . . cannot establish residence thereafter."[23] An alien must enter the U.S. in accordance with the federal immigration laws before he can begin "residing" in the U.S.[24] These cases were the only cases presented to the court which directly dealt with the question of whether an individual could establish residency once he has entered the country illegally. The *Perez* court, however, did not discuss these cases nor attempt to answer HSSD's threshold question. Instead it went immediately to the question of whether Mr. Perez satisfactorily demonstrated physical presence and intent to remain. There was little difficulty in establishing Mr. Perez's physical presence in the state. It was undisputed that he had lived seven years in northern New Mexico. The only proof offered to establish Mr. Perez's intent to remain was the uncontradicted testimony of an HSSD welfare worker that "there was no problem about Mr. Perez's intent to remain."[25] Since HSSD's regulations provide no specific guidelines for demonstrating intent,[26] the welfare worker's testimony was sufficient and the court was justified in accepting it.

The *Perez* court attempted to strengthen its findings by saying that New Mexico had already found that an illegal alien was a resident within the purview of the Workmen's Compensation Act. In *Gallup American Coal Co. v. Lira,*[27] the New Mexico Supreme Court decided that a widow, living in Mexico for the previous seven years, could be considered a resident and could therefore collect workmen's compensation benefits. The *Perez* court said that "[a]lthough not

21. The argument presented by HSSD was not as clear as this analysis suggests. Considering the cases cited and the arguments presented, however, the analysis reflects HSSD's underlying premises. *See,* Brief for Appellee, Perez v. HSSD, 91 N.M. 334, 573 P.2d 689 (Ct. App. 1977), *cert. denied,* 91 N.M. 491, 576 P.2d 297 (1978).

22. *In re* Gislason, 47 F. Supp. 46 (D. Mass. 1942); United States v. Kreticos, 40 F.2d 1020 (D.C. Cir. 1930).

23. *In re* Gislason, 47 F. Supp. 46, 51 (D. Mass. 1942).

24. These cases could have been distinguished. Both *Gislason* and *Kreticos* dealt with the establishment of residency requirements for naturalization purposes. It could be argued, therefore, that they are not determinative of the residency requirements of a wholly state administered and financed medical assistance program.

25. 91 N.M. at 337, 573 P.2d at 692.

26. N.M. Dep't. of Health & Soc. Serv. Manual § 351.62(B) (1976) requires only than an applicant must establish "the subjective intent through the existence of subjective manifestations of that intent."

27. 39 N.M. 496, 50 P.2d 430 (1935).

stated in the case,"[28] the facts indicate that both the deceased and the widow were illegal aliens. A careful reading of the facts gives no indications that the plaintiff or her deceased husband were in fact illegal aliens. It was, therefore, inappropriate for the *Perez* court to rely on the *Gallup American Coal* case to support its holding.

Despite its reliance on the *Gallup American Coal* case and despite its failure to discuss the federal immigration cases, the New Mexico Court of Appeals was justified in finding that Mr. Perez, an illegal alien, could meet the Special Medical Needs Act residency requirements. The immigration cases could have been distinguished[29] and the *Gallup American Coal* case was not needed. The regulations adopted pursuant to the Act require only that an applicant demonstrate physical presence and an intent to remain. Mr. Perez could demonstrate both.

The second part of the court's analysis addressed the question of whether federal immigration laws preempted New Mexico's application of the Special Medical Needs Act to an illegal alien. The court summarily disposed of the issue of preemption on the grounds that where a program is wholly state funded and was established and administered without cooperation from the federal government, federal immigration laws do not preempt the State's application of the Act to an illegal alien.[30] In this finding, the court was probably correct. The preemption doctrine insures that a state statute does not stand "as an obstacle to the accomplishment and execution of the full purposes and objections of Congress."[31] A recent memorandum from the Department of Justice[32] indicates that its position is that a state's granting medical assistance to illegal aliens does not interfere with the immigration laws. The Department of Justice was asked to determine if a county hospital violates the immigration laws by failing to require documentation of immigration status from suspected illegal aliens. The conclusion[33] reached was that failure to require documentation does not violate the criminal provision of the Immigration and Naturalization Act.[34] By stating that a county hospital can treat suspected applicants without questioning immigration status, the memo supports the *Perez* court's finding that "the

28. 91 N.M. at 336, 573 P.2d at 691.
29. See note 24, *supra.*
30. 91 N.M. at 337, 573 P.2d at 692.
31. Hines v. Davidowitz, 312 U.S. 52, 67 (1941).
32. Memorandum from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Dep't. of Justice, County Hospital Admissions Procedures as Related to Illegal Aliens (July 6, 1978).
33. *Id.* at 1.
34. 8 U.S.C. § 1324(a)(3) (1976).

federal law (through the supremacy clause) [does not preempt] the State's application of the Special Medical Needs Act to Perez."[35]

The final part of the court's analysis reaffirmed the well recognized proposition that a department is bound by its own regulations.[36] Two recent N.M. Court of Appeals cases[37] which specifically held that HSSD must adhere to its own regulations were cited in support of the *Perez* court's determination that HSSD's "duty to human beings . . . cannot be thwarted by a misconstruction of the statute or a violation of its regulations."[38] This is a well accepted principle[39] and was not questioned by HSSD.

RAMIFICATIONS

During the 1977-78 fiscal year, 35,487 deportable aliens were located in New Mexico.[40] This number represents only the tip of the iceberg. The number actually present, but not located, may be as many as ten times the number apprehended.[41] The burden of financing health care for illegal aliens presently falls mainly on county hospitals. For example, Llano Estacado Medical Center, a 180 bed facility in Hobbs, New Mexico incurred $124,680 in bad debts attributable to its care of illegal aliens during a twelve month period in 1976-77.[42]

According to the *Perez* opinion, New Mexico "has assumed the responsibility of financing health care for illegal aliens."[43] This statement seems too optimistic. A narrow reading of the ruling simply means that illegal aliens who meet HSSD's financial eligibility requirements and who are blind, disabled, or aged and are terminally ill

35. 91 N.M. at 337, 573 P.2d at 692. A New York court also found that it was not preempted from applying its public assistance laws to an illegal alien. It found that although there was no constitutional requirement that a state furnish medical care to every alien, there was also "no legal prohibition . . . preventing the Legislature . . . from awarding relief" to an illegal alien. Dallas v. Lavine, 79 Misc. 395, ____, 358 N.Y.S.2d, 297, 302 (Sup. Ct. 1974).

36. 91 N.M. at 337, 573 P.2d at 692.

37. Chavez v. N.M. Health & Social Serv. Dep't., 84 N.M. 734, 507 P.2d 795 (Ct. App. 1973); Martinez v. Health & Social Serv. Dep't., 90 N.M. 345, 563 P.2d 608 (Ct. App.), *cert. denied,* 90 N.M. 636, 567 P.2d 485 (1977).

38. 91 N.M. at 338, 573 P.2d at 693.

39. *See, e.g.,* Pellman v. Heim, 87 N.M. 410, 534 P.2d 1122 (1975).

40. Telephone interview with J. Mario Salinas, Criminal Investigator, Albuquerque Immigration and Naturalization Service (Oct. 10, 1978).

41. Nationally, 766,600 aliens were deported in 1975. The total illegal alien population was estimated to be between one and twelve million at that time. See *Illegal Aliens, supra* note 17, at 2-3.

42. Letter from Michael D. Bromberg, Dir. of the Nat'l Offices of the Fed'n of Am. Hosps. to Paul G. Rogers (reprinted in *Hearings, on H.R. 2400,* note 18 *supra* at 119-20).

43. 91 N.M. at 337, 573 P.2d at 692.

may receive the benefits of the Special Medical Needs Act. This program, however, was initially funded with only $250,000 to cover a two year period,[44] and in reality will only be able to pay for a fraction of the health care needs of illegal aliens who meet the HSSD eligibility requirements.

Even if the *Perez* ruling is construed broadly, it can hardly be said to mean that the state has accepted the responsibility of providing medical care for its illegal aliens. At most, it says that benefits will be granted to illegal aliens from entirely state supported medical programs when the programs's only requirements for assistance are residency and financial need. The majority of medical assistance programs administered in New Mexico are, however, not wholly state funded. Instead they are primarily federally funded and are governed by federal laws and regulations.[45] In the early 1970's, federal legislation was passed specifically barring illegal aliens from participating in the major federal assistance programs. Supplemental Security Income,[46] Aid to Families with Dependent Children,[47] Medicaid,[48] and Food Stamps[49] are all governed by federal laws or regulations which limit benefits to U.S. citizens, aliens lawfully admitted for permanent residence, or aliens permanently residing in the U.S. under color of law.[50] The major financial assistance programs designed to benefit the indigent and disabled are, therefore, completely closed to the indigent illegal alien.

There are a limited number of wholly state funded medical assistance programs which arguably are now available to illegal aliens. For example, the Division of Vocational Rehabilitation administers two programs, the Medical Eye Care and the Northern New Mexico Rehabilitation Center,[51] which are wholly state funded and have no residency requirements for eligibility.[52] The Division of Special Education regulates school programs for physically, hearing or

44. 1973 N.M. Laws, ch. 311 § 6.
45. N.M. Stat. Ann. § 27-2-4 (1978).
46. Social Security Act § 1614(a)(1)(B), 42 U.S.C. § 1382c(a)(1)(B) (1976).
47. Healthcare Financing Admin. Citizenship & Alienage, 42 C.F.R. § 448.50 (1977).
48. *Id.*
49. Food & Nutrition Service Residency & Citizenship, 7 C.F.R. § 271.1(e) (1977).
50. The basic eligibility requirements are the same for the four listed federal assistance programs. To qualify, an individual must be "a resident of the United States, and [must be] either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law." Social Security Act § 1614(a)(1)(B), 42 U.S.C. § 1382c(a)(1)(B) (1976).
51. Letter from William McEuen, General Counsel for the Department of Education, to author (Oct. 26, 1978).
52. Telephone interview with Terry Lujan, Secretary for Counsel, Division of Vocational Rehabilitation (Nov. 1, 1978).

visually impaired students. All such programs, except those administered by the Albuquerque School District, are wholly state funded.[53] The only residency requirement for the special education programs is that the student live in the state.[54] Thus, to the extent that wholly state funded programs have no residency requirements or require only New Mexico residency, the state "has assumed the responsibility of financing health care for illegal aliens."[55] Such programs are few[56] and are not major medical assistance programs, but after the *Perez* decision they will offer some help to the illegal alien.[57]

CONCLUSION

There are presently thousands of illegal aliens residing in New Mexico.[58] Most are indigent[59] and many require medical care. Since most medical assistance programs are federally funded, they are closed to illegal aliens.[60] Counties cannot afford to finance the treatment of illegal aliens and few state programs are available to them.[61] And yet, because few illegal aliens are immunized,[62] because they frequently live in crowded and unsanitary conditions[63] and because

53. Letter from William McEuen, *supra* note 51.

54. "For the purpose of public school education, a child is considered a resident of the state, if he lives in the state." Memorandum from Deborah A. Moll, Assistant Attorney General, N.M. Dep't. of Justice, at 2 (July 7, 1978).

55. 91 N.M. at 337, 573 P.2d at 692.

56. "[T]he Division of Vocational Rehabilitation directly administers many service programs" but of these only two are wholly state funded. Letters from William McEuen, General Counsel for the Department of Education, to author (Oct. 24, 1978 and Oct. 26, 1978).

57. There are also medical programs, wholly or partially federally funded, which are available to illegal aliens. For example, the State Hospital at Las Vegas "serves all residents of New Mexico and does not differentiate between undocumented aliens and other residents." Letter from Marshall D. Fitz, M.D., Chief, Mental Health Bureau, to author (Oct. 27, 1978). The Health Services Division of the Department of Health and Environment provides programs for communicable and chronic disease control, dental services and family services. There are "no state or federal regulations requiring residency or citizenship as a condition for receiving benefits" of these programs administered by the Health Services Division. Florenceruth J. Brown, Division Attorney, Health Services Division, Provision of Health Services to Undocumented Aliens, at 2 (Nov. 3, 1978).

58. See text accompanying note 41, *supra*.

59. The average hourly wages of Southwest illegal aliens is $1.98. D. North and M. Houston, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study*, Report for the Labor Department (March 1976) (cited in 1977 Comm. Print, *supra* note 19, at 15).

60. See notes 46 through 50, *supra*.

61. See text accompanying notes 51 through 56, *supra*.

62. *Hearings on HR 982, supra* note 17, at 326 (testimony of Clifton D. Govan, M.D.).

63. *Id.*

many work in the food industry,[64] they represent a potentially explosive health hazard. For public health and humanitarian reasons,[65] some governmental body should accept the responsibility of financing the health care of illegal aliens.

Two bills have been introduced in the United States Congress which would provide that the federal government accept limited responsibility for the medical care of illegal aliens. California representative B. F. Sisk's bill would authorize the Secretary of Health, Education and Welfare to reimburse hospitals for emergency care treatment provided for an illegal alien if the alien is unable to pay all or part of his bill, is not eligible for other assistance programs which would cover his costs, and if the Attorney General certifies that the alien is in the U.S. unlawfully.[66] The bill represents only a partial solution because it provides that the federal government pay only for emergency medical treatment.

Legislation introduction by New Jersey representative Peter Rodino offers another partial solution. The Rodino bill includes amnesty provisions for aliens illegally in the United States who entered prior to June 30, 1968 and who are close relatives of United States citizens or permanent resident aliens or whose departure would result in unusual hardships.[67] If the bill is passed, illegal aliens present in the U.S. since 1968 presumably would be in the U.S. under color of law and would be eligible for the major federal medical programs. This bill also represents only a partial solution because it provides no funding for treatment of illegal aliens who have entered the United States since 1968.

Presently, the federal government has not accepted the responsibility for financing health care and there is no indication that it will do

64. Article, *Health Care for Indigent Illegal Aliens: Whose Responsibility?*, 8 U.C.D. L. Rev., 107, 109 (1975).

65. Some New Mexico agencies do recognize the necessity of providing health care to illegal aliens. The Dep't. of Health and Environment states that its function is to supervise the health and hygiene of New Mexico residents whether they are citizens, lawfully admitted aliens or illegal aliens. The Department's position is that:

> Public health practice is essentially preventative in nature, and the diagnosis and treatment of a public health condition is essential, wherever found, in order to protect the health of all the people; therefore, denial of service to a person found in the community to be suffering from such a condition, because of some other factor, such as the individual's nationality, would not only be impermissible, but constitute a possible danger to the public health.

Supra note 57, at 2.

66. H.R. 2400, H.R. 3697, H.R. 5031, H.R. 5977, H.R. 6440 (identical bills), 95th Cong. 1st Sess. (1977) reproduced in *Hearings on H.R. 2400, supra* note 18, at 3-5.

67. H.R. 8713, 94th Cong., 1st Sess. (1975).

so in the immediate future. There are indications that a bill[68] will be introduced in the 1979 New Mexico legislative session which would deny all medical and welfare benefits to illegal aliens, including those provided by the Special Medical Needs Act. If such a bill is proposed the legislature should seriously consider the consequences of its passage. In emergency situations county hospitals provide medical assistance to anyone. If the state government as well as the federal government denies all responsibility for financing health care for illegal aliens, then the counties, who can ill afford to write off the costs, must inevitably absorb these expenses.

JO SAXTON BRAYER

68. Letter from Paul Kelly, Jr., Chavez County Representative, to author (Nov. 20, 1978). A bill limiting medical benefits to legal aliens and citizens was introduced in the 1978 New Mexico Legislative Session. This bill read as follows:

> An Act relating to Public Welfare; providing that no public welfare benefits shall be paid to illegal aliens; providing for a reporting requirement.
>
> Be it enacted by the legislature of the State of New Mexico:
>
> Section 1. PUBLIC ASSISTANCE TO ILLEGAL ALIENS–REPORTING–
>
> A. An alien, who is unlawfully residing within the United States or who fails to furnish evidence that he is lawfully residing in the United States, shall not be eligible for any public welfare payments or services provided by the state of New Mexico. Public welfare payments include, but are not limited to, aid to families with dependent children, federal food coupons, to the extent the state may refuse to assist in this matter, and assistance under the Indigent Hospital Claims Act.
>
> B. An otherwise eligible applicant or recipient who has been determined to be ineligible for public welfare assistance pursuant to the provisions of Subsection A of this section, shall be immediately referred to the United States immigration and naturalization service or the nearest consulate of the country of the applicant or the recipient.