

CATASTROPHIC ILLNESS IN CHILDREN RELIEF FUND COMMISSION
POLICY/ADMINISTRATIVE PROCEDURE

SUBJECT: Residency and Legal Domicile
EFFECTIVE DATE: September 28, 2022
AUTHORITY: N.J.S.A. 26:2-149(2)(g) N.J.A.C. 10:155-1.3(c)

I. POLICY STATEMENT:

N.J.A.C. 10:155-1.3(c) codifies the residency requirements of N.J.S.A. 26:2-149(2)(g) as follows:

To be eligible for assistance, a child must be a resident of the State of New Jersey. "Resident" means a person legally domiciled in New Jersey for a period of three months immediately preceding the date of application for assistance to the Fund.

1. A child's state of residence is that state in which the child resides, either with a parent or legal guardian, or alone if the child has reached the age of 18 or is emancipated from the care and custody of a parent or guardian.

2. Establishing proof of legal domicile within New Jersey is a responsibility of the parent or legal guardian of a child, or the child, if the child has reached the age of 18, or is emancipated from the care and custody of a parent or guardian. For the definition of domicile, see N.J.A.C. 9A:5-1.1.

3. Absence from New Jersey for a period of 12 months or more is prima facie evidence of abandonment of domicile.

4. Seasonal or temporary residence within the State, of whatever duration, does not constitute domicile.

N.J.A.C. 9A:5-1.1(a) defines domicile as “the place where a person has their true, fixed, permanent home and principal establishment, and to which, whenever they are absent, they have the intention of returning.”

The State Office interprets “legally domiciled” in the definition of resident from N.J.S.A. 26:2-149(2)(g) and N.J.A.C. 10:155-1.3(c) as requiring legal immigration status in addition to domicile. Federal law states that, with certain exceptions, an individual without legal immigration status is prohibited from receiving State or local public benefit. See 8 U.S.C. §1621.

In Toll v. Moreno, the U.S. Supreme Court ruled that when a state regulation, not congressionally sanctioned, discriminates against aliens lawfully admitted to the country

and imposes additional burdens not contemplated by Congress (in the case before the court, charging out-of-state tuition to visa holders who were domiciled in the State of Maryland), that regulation is impermissible. 441 U.S. 458 (1979). Therefore, in addition to citizens and holders of a current green card (indicating lawful permanent residency status), holding a current visa issued by the U.S. Department of State indicates legal immigration status.

Visas are divided into two categories, Immigrant Visas (IV) and Non-immigrant Visas. See <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/all-visa-categories.html> for information on visa types. These categories are further divided into class; the visa class can be found in the upper right of the visa document, below the control number. See <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html> for an example of a US visa.

All individuals with Immigrant Visas are capable of establishing domicile in New Jersey.

The following classes of Non-immigrant Visas are capable of establishing domicile in New Jersey:

Visa Class	Description
A-1	Ambassadors, public ministers or career diplomats and their immediate family members
A-2	Other accredited officials or employees of foreign governments and their immediate family members
A-3	Personal attendants, servants or employees and their immediate family members of A-1 and A-2 visa holders
E-1	Treaty traders
E-2	Treaty investors
G-1	Designated principal resident representatives of foreign governments coming to the United States to work for an international organization, their staff members and immediate family members
G-2	Other accredited representatives of foreign governments coming to the United States to work for an international organization and their immediate family members
G-3	Representatives of foreign governments, and their immediate family members who would ordinarily qualify for G-1 or G-2 visas except that their governments are not members of an international organization
G-4	Officers or employees of international organizations and their immediate family members
G-5	Attendants, servants and personal employees of G-1 through G-4 visa holders and their immediate family members
H-1B	Persons working in specialty occupations requiring at least a bachelor's degree or its equivalent in on-the-job experience, and distinguished fashion models.
H-4	Immediate family member of H-1B visa holders
I	Bona fide representatives of the foreign press coming to the United States to work solely in that capacity and their immediate family members

K-1	Fiancé(e)s of U.S. citizens coming to the United States for the purpose of getting married
K-2	Minor, unmarried children of K-1 visa holders
K-3	Spouse of a U.S. citizen
K-4	Child of a U.S. citizen
L-1, L-1a, L-1b	Intracompany transferees who work in positions as managers, executives of persons with specialized knowledge
L-2	Immediate family member of L-1 visa holders
NATO	Associates, members of civilian components accompanying military forces, attendants, servants or personal employees, and their immediate family members coming to the United States under applicable provisions of the NATO Treaty
O-1	Persons of extraordinary ability in the sciences, arts, education, business or athletics
O-3	Immediate family members of O-1 visa holders
R-1	Ministers and other workers of recognized religions
R-2	Immediate family members of R-1 visa holders
T-1	Victims of international (human) trafficking
T-2	Dependents of victims of international (human) trafficking
V	Spouse or minor child of a legal permanent resident or U.S. citizen, whose application for permanent residence is part of the backlog of immigration work

Legal immigration status and domicile in New Jersey must be determined independently. Holding an Immigrant Visa or one of the Nonimmigrant Visas listed above grants an individual the opportunity to establish domicile in the United States, but the child applicant must still be domiciled in New Jersey for a period of three months prior to the date of application to the Fund to be considered potentially eligible.

II. STATE OFFICE PROCEDURE TO DETERMINE DOMICILE:

Legal immigration status

- Review the child applicant's birth certificate. If the birth certificate indicates the child is a U.S. citizen, proceed to verifying the child's domicile.
- If the child is not a U.S. citizen, the analyst will request proof of lawful permanent residency status (the green card). The expiration date of the green card must be after the date of application to the Fund. If child is a lawful permanent resident, proceed to verifying the child's domicile.
- If the child is not a U.S. citizen or lawful permanent resident, the analyst should request proof of (current) legal immigration status (their visa). Holders of immigrant visas (IV) are eligible to establish domicile; some holders of nonimmigrant visas (NIV) are eligible to establish domicile. See the policy above for further guidance. If child has current legal immigration status, proceed to verifying the child's domicile.
- If the child is not a U.S. citizen, lawful permanent resident, or does not hold a visa that allows them to establish domicile, the child's application should be recommended as ineligible.

Domicile

Following N.J.A.C. 9A:5-1.2, the State Office will accept the following as proof of domicile:

- a. New Jersey income tax return or evidence of withholding of New Jersey income tax;
- b. Evidence of ownership of or a long-term lease on a permanent residence in this State;
- c. New Jersey driver's license;
- d. New Jersey motor vehicle registration;
- e. New Jersey voter registration card; or
- f. A sworn, notarized statement from the child applicant and/or their parent(s) or legal guardian(s) declaring domicile in New Jersey.

Establishing proof of legal domicile within New Jersey is a responsibility of the parent or legal guardian of a child, or the child, if the child has reached the age of 18, or is emancipated from the care and custody of a parent or guardian.

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