

# MENDOCINO COLLEGE

## **CALIFORNIA COMMUNITY COLLEGE RESIDENCY DETERMINATION GUIDE FOR TUITION PURPOSES**

*Short Guide for Non-Citizen Applicants*

Prepared by Kristie Anderson  
Director, Admissions and Records

## INTRODUCTION AND AUDIENCE INTENT

This manual is written for the Admissions and Records staff that accepts applications for admission and for coaches and counselors working with student inquiries into the residence and tuition requirements.

California Community College residency law, for tuition purposes, is heavily legislated with the main intent by our politicians to 1) attempt to continue to provide low cost higher education for our state citizens/residents and 2) not subsidize the education for non-residents. It is stated that those living in the state expressly for the purpose to attend college cannot be a resident of the state, no matter how long it takes them to reach their educational goal.

It is hoped that particular issues of concern to the reader are covered and understandable. At Mendocino College, the Director of Admissions and Records is responsible for the overall rules and interpretation for the determination of residency. All registration operators have the authority to determine residency. However, the director makes all exceptions to the rules. Students should be directed to meet with the director for the final determination.

This manual is a living document and, as such, changes are inevitable. Any and all changes should be sent to the director, who also acts as the editor of the manual. Any comments, corrections, and updates will be reviewed annually and the revisions will be sent out to known users of the document.

Sincerely,

Kristie Anderson  
Director, Admissions and Records

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# Mendocino College Admissions and Records

## NON-CITIZEN GUIDE

There are five steps in determining the residency (for fee purposes) status of a student. This document covers only the citizenship status rule and focuses on our non-citizen applicants.

### **Step 1 Determine the student's citizenship status**

The following citizenship categories are eligible to establish California residency:

- a. Citizen of the United States; **or**,
- b. Nonimmigrant with a visa that allows them to establish residency for tuition purposes (see page4); **or**,
- c. Legal Immigrant (alien card or authorization to work card).

An alien is precluded from establishing domicile in the United States if he or she entered the United States illegally or under a visa that requires residence outside the United States, or if he or she entered the United States only for a temporary purpose.

The following information may help establish the residency status of prospective students.

### **Nonimmigrants Precluded From Establishing Residency**

Undocumented aliens (people who have entered the United States illegally) and nonimmigrant visa holders are precluded from establishing domicile in the United States, and from establishing California residency for tuition purposes.

The following Visa categories are precluded from (cannot) establishing domicile in the United States:

B-1, B-2	Visitor for business or pleasure (no longer allowed admission to colleges and universities according to federal law)
C	Alien in transit
D-1, D-2	Alien crewmember
F-1, F-2	Academic student, spouse and children
H-2, H-3	Spouse and children of temporary worker or trainee
J-1, J-2	Exchange visitor, spouse and children
M-1, M-2	Nonacademic or vocational student, spouse and children
O-2	Alien accompanying and assisting an O-1 alien with extraordinary ability in the sciences, arts, education, business or athletics
P-1	Internationally recognized athlete or entertainer
P-2	Artist or entertainer entering the United States to perform under a reciprocal exchange program
P-3	Artist or entertainer entering the United States to perform under

P-4	a program that is culturally unique Spouse or child of P-1, P-2, or P-3 alien
Q	International cultural exchange program
T-N, T-D	Trader-Nafta, and dependent
T-C	Trader-Canada

Reference: *Immigration and Nationality Act, 8 U.S.C., 1101(a)(15), as amended by Immigration Act of 1990, Public Law 101-649, 11/29/90*

### **Change of Alien Status**

In order to be classified as a resident, the aliens previously listed must take the appropriate steps to obtain a change of status from the Immigration and Naturalization Service to a classification which does not preclude establishing domicile by:

1. Applying for permanent resident status.
2. Applying for and being granted a change of status to a visa category which permits establishing domicile.
3. Applying for asylum.
4. Applying for the Family Unity Program.
5. Applying for Temporary Protected Status.

He or she must also meet the physical presence requirement of one year, coupled with the intent to make California their home for anything other than a temporary purpose. **The one-year waiting period may not begin until application has been made for a change of status as noted above.**

However, **aliens seeking a change of status to a visa that permits establishing residency under #2 above cannot be classified as a resident until the application for a new visa has been granted.** Once the application has been granted, the one-year waiting period begins with the date of application.

Students who fall under these circumstances must provide evidence from INS that they are in the process of changing their status to either permanent resident or to a visa category that allows the establishment of residency.

### **Evidence of Intent to Establish Domicile in the United States**

Evidence that a nonimmigrant or undocumented alien is in the process of establishing domicile in the United States includes the following:

1. A Petition for Alien Relative, stamped as filed with INS (I-130);
2. An Employment Authorization Card (I-688A or I-766);
3. A Petition for Prospective Immigrant Employee, stamped as filed with INS (I-140)
4. An approved application for an A, E, G, H-1, H-4, I, K, L, O-1, O-3, or R Visa;

5. An INS stamped Request for Asylum in the United States (I-589);
6. An Application for Lawful Temporary Residence (I-687 or I-700);
7. An Application for the Family Unity Program (I-817);
8. An Application for Temporary Protected Status (I-821 or I-140);
9. Other appropriate documentation from INS indicating that an application for a change of status has been filed.

Reference: *ECS 68062(h); T5 54045; Regents of University of California v. Bradford*

### **Undocumented Aliens**

Undocumented aliens are citizens of other countries who have entered the United States illegally, and have not applied for legalization. Undocumented aliens are precluded by federal law from establishing domicile in the United States, and are ineligible to establish California residency. An undocumented alien must initiate a change of status with the Immigration and Naturalization Service to become eligible to establish domicile in the United States and become a California resident.

Reference: *ECS 68062(h), (i); T5 54045, Regents of the University of California V. Bradford*

### **AB540**

On October 12, 2001, Governor Davis signed into law Assembly Bill 540 (Stats. 2001, ch.814) which adds a new section 68130.5 to the California Education Code. Section 68130.5 creates a new exemption from payment of nonresident tuition for certain nonresident students who have attended three years of high school in California and received a high school diploma or its equivalent from a California High School.

This law does not affect current Title 5 regulations concerning residency. Those regulations remain in effect; changes are not anticipated. The law does not grant or amend current residency rules but rather provides for an exemption from nonresident tuition for certain nonresident students.

The law became effective on January 1, 2002. Until such time as regulations are final, districts are asked to operate under these guidelines and meet the provisions of the statute.

### Implementation Notes and Clarification of Provisions

1. The new law does not grant residency, it requires that certain nonresident students be exempted from paying nonresident tuition.
2. Students exempted from paying nonresident tuition pursuant to section 68130.5 do not become residents for eligibility purposes for any state-funded program (e.g., EOPS or for purposes of a BOG Fee Waiver).

3. The exemption from nonresident tuition is mandatory. If a district finds that a student meets all requirements in the law, nonresident tuition may not be charged.
4. If a student is determined eligible for this exemption subsequent to the payment of nonresident tuition, the tuition paid must be refunded to the student. A refund would also be required if a student pays nonresident tuition prior to January 1, 2002 for a term that begins on or after January 1, 2002.
5. Districts may claim apportionment for these nonresident students who are exempted from the payment of nonresident tuition pursuant to section 68130.5.
6. Students must meet all requirements in section 68130.5 (a) (1) – (4) to be eligible for the exemption. Each requirement is explored below:
  - a. The student must have attended a California high school for three or more years. There are no provisions for partial attendance (e.g. two years and 7 months). The law does not require consecutive attendance nor require that the student attended the *last* three years in California (in the case of four-year high schools). Such attendance could be at multiple California high schools. Attendance at continuation high schools, charter high schools and K-12 approved independent education is acceptable. Attendance at a home school is not acceptable unless the home schooling was provided in a manner recognized under state law. The law does not distinguish between public and private high schools. There is no time limit on how far in the past the student might have attended a California high school.
  - b. The student must have graduated from a California high school or attained the equivalent thereof (e.g., a GED or a high school proficiency exam). There is no time limit on how far in the past the student might have attained this status.
  - c. *In the case of a student without lawful immigration status*, an affidavit must be filed with the college that indicates the student has applied for legalization or will do so as soon as the student is eligible to do so. The law does not require the institution to explore the student's eligibility for legalization nor does it require the institution to monitor future changes in eligibility.
  - d. Except for nonimmigrant aliens, any nonresident student who meets the first two requirements shall be exempted from nonresident tuition even if he or she is a US citizen or lawful immigrant.
  - e. If the student has filed an application with the INS to legalize status, the student may already be eligible for resident fee status if the student has resided in California for more than one year since the time of INS application. (See Title 5 Section 54045.)

7. Students who are nonimmigrant aliens (the most common being the F series student visas, are not eligible for this exemption. (A full description of nonimmigrant alien classification may be found in paragraph 15 of subsection (a) of Section 1101 of Title 8 of the U.S. Code.) People who entered the country as nonimmigrant aliens but subsequently have gone out of status are not eligible for this exemption until they apply to INS to change their status to something other than nonimmigrant.
8. If the district is in possession of conflicting information, the college should pursue additional verification (e.g. high school transcript, diploma, etc.) to resolve discrepancies prior to granting this exemption.
9. If a student certifies that all requirements have been met and this certification is subsequently determined to be false, the student shall be liable for the repayment of the nonresident tuition that would have been applicable for all relevant terms of attendance. The student may be subject to disciplinary proceedings per district policy. The student self-certification shall contain a student acknowledgement of this potential liability.
10. Students who meet the exemption requirements and who are unlawful immigrants are not eligible for any federal or state financial aid program. Efforts by private foundations to obtain private funds are encouraged to help these students reach their educational goals.
11. Students exempted from paying nonresident tuition pursuant to section 68130.5 are not eligible for the Governor's Merit Scholar Programs because these scholarships are only available for California residents.
12. The law requires that all information obtained in the implementation of this program be held confidential. The law provides for no exceptions. Districts should be vigilant in protecting this confidentiality. Districts must ensure that all information relating to this tuition exemption remains strictly confidential and is shared only on an absolute "need to know" basis unless disclosure is required by law. Districts are urged to be cautious in outreach, exemption notifications, business transactions, scholarship announcements and other activities to ensure confidentiality.

### **Nonimmigrants Eligible to Establish Residency**

The following nonimmigrant visa categories are eligible to establish California residency for tuition fee purposes:

A-1, A-2, A-3 servants	Foreign government official or employee, family and
E-1, E-2	Treaty trader and treaty investor, spouse and children
G-1, G-2, G-3	Representative of foreign government, officer
G-4, G-5	Employee of International Organization, family and

	attendants or servants
H-1, H-1B, H-4*	Temporary worker or trainee, spouse and children
I	Representative of foreign information media, spouse
and	
	children
K-1, K-2	Fiancé and fiancée of U.S. citizen
L-1, L-2	Inter-company transferee, spouse and children
O-1, O-3*	Alien with extraordinary ability in the sciences, arts, education, business, or athletics spouse and children
R	Religious occupations
NATO	Representative and staff of member states to NATO
N/W	Have applied for a green card, but do not need employment authorization.
I-R2	A child born of a naturalized U.S. Citizen, the child for
whom	
child	the parent has applied for a change of status. If the
minor	is a minor and the parent is a California resident the
	would immediately derive residence from the parent. If the I-R2 holder is an adult and dependent on the California resident parent, under ECS 68076 he or she may have resident classification for one-year after entering the state. After the one year exception, the student would have to show objective intent to establish residence, coupled with physical presence.

\*Even though dependent children holding an H-4 or O-3 visa are not precluded, their residence is derived from that of their parents.

### Legal Immigrants

Legal immigrants, defined as follows, are eligible to establish California residency:

1. Permanent residents, including conditional permanent residents
2. Special Agricultural Workers (SAW) status; *Immigration and Nationality Act*, *INA, Section 210*
3. Temporary resident status; *INA Section 245A*
4. Cuban/Haitian status; *Immigration and Control Act (IRCA), Section 202*
5. Spouses and unmarried children of legal immigrants who have been granted a temporary stay of deportation and work authorization - Family Unity Program; *Immigration Act of 1990, Section 301*
6. Aliens in Temporary Protected Status (Salvadorans, Kuwaitis, Lebanese, Liberians, Somalians); *INA, Section 244A*



7. Asylees and asylum applicants; *INA, Section 208*
8. I-688A or I-766/Employment Authorization Document – This document indicates that an alien has applied for permanent residence. The card is given to aliens seeking legalization while the applications are being reviewed by the Immigration and Naturalization Service. **Such aliens have the ability to establish residence.**
9. I-688B/Employment Authorization Document (EAD) – This document is one of several that indicate an alien has been granted permission to work in the U.S. Codes on the card also indicate the person’s immigration status. On the front of the card will be “274a” followed by other numbers and letters that refer to the section of the regulation authorizing employment. The list of the categories of non-citizens who can apply for employment authorization is found in 8Code of Federal Regulation (CFR) 274.a.12.

**Key to Employment Authorization Card – I-688B**

“Provision of Law” on the front of the card indicates the section of 8CFR under which the person was granted work authorization. The categories are as follows:

Subsection 274a.12(a): **Automatic permission to work**

Code	Meaning	Ability to Establish Residence
(a)(3)	Refugee	Yes
(a)(4)	Paroled as refugee	Yes
(a)(5)	Granted asylum	Yes
(a)(6)	Fiancée of US Citizen Or dependent of Fiancée	Yes, but can be a problem; have to get married within 3 months of application
(a)(7)	Son or daughter or former international organization employee	No, unless steps have been taken to change status to one that is permitted to establish residence
(a)(8)	Citizen of the Federated States of Micronesia or the Marshall Islands	Yes, unless the student has applied for a student visa (F-1)
(a)(10)	Granted withholding of Deportation	Yes or No; depends on visa or other document from Immigration Service
(a)(11)	Granted extended voluntary departure or DED	Yes or No; depends on visa or other document from Immigration Service
(a)(12)	Granted temporary protected status (TPS)	Yes
(a)(13)	Voluntary Departure	Yes, but review documents from Immigration Service to verify status

Subsection 274a.12(c): **Must establish eligibility for permission to work**

<b>Code</b>	<b>Meaning</b>	<b>Ability to Establish Residence</b>
(c)(1)	Dependent of foreign Government Official	Yes or No, depends on visa or other document from Immigration Service
(c)(2)	E-1 nonimmigrant	Yes
(c)(3)(I)-(iii)	Foreign student	No
(c)(4)	Dependent of employee of international organization	Yes or No, depends on visa or other document from Immigration Service
(c)(5)	Dependent of exchange visitor	No
(c)(6)	Foreign student	No
(c)(7)	Dependent of NATO Employee	Yes
(c)(8)	Asylum applicant	Yes
(c)(9)	Applicant for adjustment of lawful permanent resident status	Yes
(c)(10)	Applicant for suspension of deportation	Yes or No, depends on visa or other document from Immigration Service
(c)(11)	Paroled for emergent or public interest reason	Yes or No, depends on visa or other document from Immigration Service
(c)(12)	Granted voluntary departure	Yes
(c)(13)	Deportation or exclusion proceedings pending	No
(c)(14)	Granted deferred action	Yes or No, depends on visa or other document from Immigration Service
(c)(16)	Applicant for registry (resided in U.S. since before January 1, 1972)	Yes, but verify documents from Immigration Service
(c)(17)(i)	Employee of business visitor	No
(c)(18)	Deportable alien under order of supervision	No
(c)(19)	Temporary protected status (TPS)	Yes but must apply through Immigration Service

**Subsection 274a.13: Family Unity Recipient** (spouse or child of legalized alien)  
Eligible to establish residency, but must apply through Immigration Service

Resource: *Guide to Alien Eligibility for Federal Programs, by the National Immigration Law Center, 1636 W. 8<sup>th</sup> Street, Suite 205, Los Angeles, California 90017 (213) 487-2531*

**Minor Aliens**

An unmarried minor alien derives their residency from his or her parents. A minor alien, whose parent is precluded from establishing domicile, may be eligible for residency if the parent has taken appropriate steps to obtain a change of status from the Immigration and Naturalization Service to one that allows establishing permanent domicile.

Minor children of nonimmigrants precluded from establishing domicile (including undocumented aliens) are not eligible to establish residency even if the child was born in the United States and is a United States citizen. These students may be classified as residents once they reach the age of 19 and show evidence of intent to establish California as their permanent place of residence.

Reference: *ECS 68062 (f), (h), (i); T5 54045*

**Residency Questions Relating to Citizenship Status**

**1. When an alien student holds employment authorization documents, such as I-688A, I-688B, or I-766, is he or she capable of establishing residence?**

The **I-688A** is for employment authorization, and is an indication that the alien has applied for permanent residence.

The **I-688B** is for employment authorization, and the person may, or may not be eligible for resident status. The codes on the front of the card indicate the person's immigration status. (see table on pg. 9)

The **I-766**, according to the INS, is the new "state-of-the-art, more secure Employment Authorization Document." It is issued to aliens who have been granted temporary permission to work in the United States, and is designed to ultimately replace the I-688B. It allows the recipient to remain and work in

the U.S., but does not grant any other benefits.

The **I-766** unfortunately does not include any of the coding that was on the I-688B.

Therefore, it will be more difficult to determine the status of the holder. Some people

will be here temporarily, but others will have applied for permanent residence or other status. The request by the admissions office for further information substantiating the person's status would be in order.

**2. Can an unmarried minor on a visa which precludes establishing residence derive residence from a parent who is a California resident?**

Generally, the residence of an unmarried minor alien may be immediately derived from his or her parents. However, minors who are in this country on visas which preclude establishing domicile or are undocumented, are residents of their country of origin as a matter of federal law. Since there can be only one residence, such alien minors cannot be residents of California, even though state law would otherwise permit them to derive residence from their parents. Once steps are taken to change their status to one that allows residence, they would immediately derive the parent(s) residence (no waiting period).

**3. What residence status would be given a minor child born in the U.S. (a citizen) but whose parents are precluded from establishing domicile in the U.S. (for instance, the parents may be undocumented or on visas that preclude domicile)?**

The minor child of alien parents who are precluded from establishing domicile, is allowed to establish residence separate from their parents if the child was born in the United States, and thus citizens, and otherwise meet applicable residency laws. (Note: These individuals are entitled to the full rights that U.S. citizenship brings.)

**4. Are aliens required to provide their green card to the admissions staff?**

No. However, the burden of proof is with the student. The district may indicate what kind of documentation it needs in the way of proof, but it is inappropriate to just ask to see the green card unless the student volunteers to show it. The person should have documents from INS showing that he or she was admitted legally and/or has applied for permanent status (they will probably voluntarily show the "green card").

**5. What is the residence capability of persons from Guam or Puerto Rico (Trust Territories), the Federated States of Micronesia, Pulau, Kofrae, Ponape, Truk, Yap, Marshall Islands, Western Samoa, and Tonga?**

Persons from these geographic areas do not have visas, and are eligible to establish residency, unless they have applied for an F-1 (Student visa), which would preclude them from establishing domicile in the U.S.

Resource: *1998 CACCRAO Residency Workshop Handout*, prepared by Helen Simmons of the California Community College Chancellor's Office.

**How Do I Complete the Application for Admission Relating to My Citizenship Status?**

1. For Question 5 on the Application for Admission: If you are not a U.S. Citizen and check #2 Permanent Resident, #3 Temporary Resident/Amnesty, or #4 Refugee/Asylee write your Alien # and the expiration date from your INS card in the box for question 5.
2. If you check #5, Student Visa, please contact the Office of Admissions and Records for more information on your non-resident fees.
3. If you check #6, Other Visa, please write the visa type (such as A1, E1, H1), the date it was issued and the date it expires in the box for question 5.
4. If you have any other type of documentation, please bring the documentation into the Office of Admissions and Records so a determination of residency can be made.

Be sure to complete the entire application. If you need a student identification number please come to the office and we can provide one for you. Contact us at 707-468-3101.

Last Updated April 2, 2003 to include "Completing the Application for Admission"