



Juvenile Immigration 101: Immigration Benefits for Children in the Juvenile Court System

*A Supplement to the Beyond the Bench XVIII
Preconference: A Dialogue on the Intersection of
Immigration and Child Welfare
San Diego CA December 12, 2007*

Overview



- *The Immigration Picture*
- *Explanation of Immigration Terms*
- *Immigration Relief: SIJS, Family-Based Immigration, VAWA, U & T Visas, Asylum*
- *Organizing Immigration Services for Children*
- *Resources*

The Immigration Picture



Nationally . . .

- According to the 2000 census, 31 million immigrants were in the U.S., and estimates show 7 million were undocumented (now higher).
- In 1900, 15% of the U.S. population was immigrant; in 2000, the number was 11% (now higher) (the decade 1901-1910 is one of the highest for immigration).
- Less than 1% of the 175 million migrants in the world come to the U.S.
- *See*
www.pbs.org/independentlens/newamericans/quiz.html.

The Immigration Picture



Where Does California Fit In?

- As of 2005, California ranked 1st in the nation in the percentage of immigrants in the state population.
- According to a recently-released Census Bureau report, in 2005 about 9,611,356 California residents were foreign-born; this is about 27.2% of the state's population.
- Approximately 7.4% of foreign-born persons in California are minors.
- The top three countries of origin for foreign-born persons in California are Mexico, the Philippines, and China.

For more details, *see* <http://www.migrationinformation.org>.

Immigration Terms



Organization of the Immigration System:

- On 03/01/03, the INS ceased to exist; the Department of Homeland Security (“DHS”) now handles immigration services and enforcement.
- DHS’s immigration functions are carried out by three bureaus: Citizenship & Immigration Services (“CIS”); Immigration & Customs Enforcement (“ICE”); and Customs & Border Protection (“CPB”).
- DHS works with the Department of Health and Human Services (“HHS”) and the Attorney General (“AG”), and may also work with local law enforcement to identify deportable individuals.

Immigration Terms



United States Citizens (“USCs”)

- Those people born in the U.S. and subject to the jurisdiction of the U.S. are citizens at birth (excludes children of diplomats).
- Includes those born in Guam, Puerto Rico or the U.S. Virgin Islands; may include “legally qualified” CNMI residents.
- Includes a person born in the Panama Canal Zone if his mother or father was a USC.
- Includes a person born in the Republic of Panama if at least one parent was a USC working for the Panama Railroad Company or U.S .government.

Immigration Terms



USCs Born Abroad

Some born abroad to USC parent/s are USCs at birth.

If parents were married at child's birth, and child born after 11/14/86, then:

- If both parents were USCs, and one resided in U.S. or outlying possessions, the child is USC.
- If one parent USC and one national, and USC was physically present in U.S. or outlying possessions for one year, the child is USC.
- If one parent USC and one alien, and USC has been physically present in U.S. or outlying possessions for five years, at least two of which are after parent's 14th birthday, the child is USC.

Immigration Terms



USCs Born Abroad

Some born abroad to USC parent/s are USCs at birth.

If parents were unmarried at child's birth:

- If birth was after 12/24/52 and mother was USC and continuously physically present in U.S. or outlying possession for one year before child's birth, child is USC.
- If birth after 11/15/71 and father was USC, blood relationship must be established, father must pledge support of child until child's 18th birthday, father must legitimate or establish paternity of child, and father must have been continuously present in U.S. for one year (if mother national) or five years (if mother is alien) in order for child to be USC.

Immigration Terms



USCs Who Derive U.S. Citizenship

Some children who are lawful permanent residents (“LPRs”) can gain citizenship automatically from their parents. On or after 02/27/2001, this applies if:

- Parent is USC by birth or naturalization.
- If child born out of wedlock, mother must be the USC and father not legitimated the child OR father is the USC and child is legitimated before the child’s 16th birthday.
- Child is under 18, unmarried, LPR, residing in legal and physical custody of USC parent.

Immigration Terms



Note: Children Adopted by USCs

Despite rumors to the contrary, children adopted by USCs do not automatically become USCs!

- An adopted child *may* qualify to derive U.S. citizenship if he meets the requirements listed on the previous slide, if he is adopted before age 16 (exceptions for sibling groups) and has two years in legal/physical custody of USC parent.
- If an undocumented child is adopted out of the system before becoming an LPR, then the adoptive parents will have to immigrate the child – which in many cases means leaving the U.S. with the child to travel to the child's country of origin and then obtaining permission to re-enter the U.S. with the child.

Immigration Terms



USCs Who Naturalize

Some people who are LPRs can apply to become USCs – to “naturalize.”

- A person must be at least 18 years old to naturalize, so most children you work with will not be naturalized citizens.
- People must be LPRs for five years (three for those who gained LPR status through marriage to a USC) before naturalizing.
- Naturalization has its own requirements, including good moral character, English/history/government test, loyalty oath, physically present for at least half of the five or three years required.

Immigration Terms



USC Benefits

Some benefits of U.S. citizenship that others lack:

- Right to vote in U.S. elections
- Right to obtain certain government jobs and benefits
- Right not to be deported or excluded from U.S.
- Right to help some relatives immigrate to the U.S. more quickly
- Right to move to another country and live there and still be able to legally return to the U.S. at any time

Immigration Terms

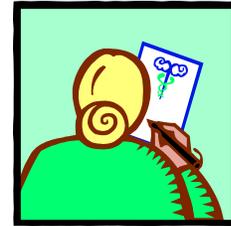


Lawful Permanent Residents (“LPRs”)

Who are LPRs?

- Those people who obtain lawful status through “adjustment of status” in the U.S. or “consular processing” outside the U.S.
- Also known as “green card” holders.
- Not just anyone can apply to be an LPR. They must have a basis for eligibility. Some bases include: family-based immigration, a grant of asylum, Special Immigrant Juvenile Status, U or T visas. More on these forms of relief later.

Immigration Terms



LPR Benefits

Some benefits of LPR status:

- Right to live and work in the U.S.
- Right to obtain certain government benefits, including federal financial aid
- Right to help some relatives immigrate to the U.S.
- Right to apply to become a U.S. citizen
- Right to travel outside the U.S. and re-enter the U.S. (provided the LPR has not “abandoned residence” or become “inadmissible”)

Immigration Terms



Temporary Legal Status

Those with permission to remain, and in some cases, to work in the U.S. – but not necessarily a path to becoming an LPR or USC.

- ✓ Family Unity
- ✓ Parole
- ✓ Deferred Action
- ✓ K, V, T and U Visas
- ✓ Extended voluntary departure

Immigration Terms



Temporary Legal Status

✓ Temporary Protected Status (“TPS”)

Provides a temporary safe haven to people who cannot safely return to their home countries due to ongoing armed conflict, natural disasters, or other extraordinary conditions that prevent safe return.

Current TPS countries (with residence dates) are: Burundi (11/04/97), El Salvador (02/13/01), Honduras (12/20/98), Liberia (10/01/02), Nicaragua (12/30/98), Somalia (09/16/1991), Sudan (11/04/1997).

Immigration Terms



Non-Immigrant Visa Holders

- Those people who come to the U.S. for limited amounts of time with permission from the U.S. government for a particular reason.
- Includes:
 - H visas (workers)
 - F visas (students)
 - B visas (tourists)
 - Q visas (international cultural exchange)

Immigration Terms



Undocumented People

- Those who are in the U.S. without legal permission.
- Sometimes referred to as “aliens” or “illegals.”
- They may have entered illegally or entered legally and overstayed their visas.
- Without an avenue to legalization, they cannot obtain work permission or the ability to live in the U.S. without fear of deportation.

Immigration Relief: What Is at Stake?



Many undocumented children in the juvenile court system face enormous obstacles.

- Threat of immigration holds and removal
- No Social Security number or state ID or driver license
- Limited access to government benefits
- Limited ability to take advantage of independent living programs
- No access to federal financial aid for college
- No ability to work legally



Solutions for Some: SIJS, Family-Based Immigration, VAWA, U Visas, T Visas, Asylum

Special Immigrant Juvenile Status (“SIJS”)



What is it?

- ✓ An avenue for certain abused, abandoned or neglected undocumented children in the juvenile court system to become LPRs – around since 1990, but little known.

Where do you find it?

- ✓ Section 101(a)(27)(J) of the Immigration & Nationality Act, codified at 8 U.S.C. §1101(a)(27)(J)
- ✓ Regulations are at 8 C.F.R. § 204.11



DHS “Consent”

- ❖ Children who are in actual or constructive DHS custody *cannot* seek SIJS without first getting DHS “specific consent” to juvenile court jurisdiction. *See* 8 U.S.C. § 1101(a)(27)(J)(iii)(I).
- ❖ This includes children in DHS’s own custody as well as children in Office of Refugee Resettlement (“ORR”) custody – and may include others (such as those with prior removal orders); it does not include children released by ORR to sponsors.
- ❖ Consent must be sought from, and granted by, DHS Headquarters in Washington DC; specific consent is difficult to obtain and granted cases tend to be strong.



Requirements for SIJS

- Under the jurisdiction of a juvenile court
- Dependent on a juvenile court or placed in the custody of a state agency or department
- Eligible for “long-term foster care” due to abuse, neglect or abandonment
- Not in the child’s best interest to be returned to her home country
- Under 21 and unmarried

Note: The CA juvenile court must make these findings in an order JV-224 before the child can file a petition for SIJS.



Requirement One

The child must be under the jurisdiction of a juvenile court.

- “Juvenile court” is defined as a court “having jurisdiction under State law to make judicial determinations about the custody & care of juveniles.” 8 C.F.R. § 204.11(a).
- In practice has included dependency and delinquency courts.
- **IMPORTANT:** The child must remain under juvenile court jurisdiction for the entire time the immigration applications are pending. *See* 8 C.F.R. § 204.11(c)(5).



Requirement Two

The child must be “dependent on a juvenile court” or “legally committed to, or placed under the custody of, an agency or department of the State” by a juvenile court. 8 U.S.C. § 1101(a)(27)(J)(i).

- Has included California Welfare & Institutions Code Section 300 dependents and WIC Section 601 and 602 wards.
- The child may be in one of many settings: foster home, approved relative or non-relative caregiver, foster family agency, community care facility.



Requirement Three

The child must be “deemed eligible . . . for long-term foster care due to abuse, abandonment or neglect.” 8 U.S.C. § 1101(a)(27)(J)(i).

- “Eligible for long-term foster care” means that “a determination has been made by the juvenile court that family reunification is no longer a viable option.” 8 C.F.R. § 204.11(a).
- Under California law, includes children for whom reunification services are not ordered under WIC §§ 361.5(b) or 727.2 or for whom reunification services are terminated under WIC §§ 366.21, 366.22, or 727.3 or who are placed in guardianships under WIC § 360.



Requirement Three

In Practice

Examples of children eligible for long-term foster care due to abuse, abandonment or neglect include:

- A child whose parents are deceased and whose adult sibling is caring for her
- A child who was abandoned by his parents and who now lives in a foster home
- A child whose parents abused her and who will emancipate after completing her probation placement

Note: “Abuse, abandonment or neglect” is not defined in the immigration statute or regulations.



Requirement Four

It must not be in the “[child]’s best interest to be returned to the [child]’s or parent’s previous country of nationality or country of last habitual residence.” 8 U.S.C. § 1101(a)(27)(J)(ii).

- This determination must be made in administrative or judicial proceedings. *Id.*



Factors to Consider on Requirement Four

Both the downsides of the child's returning to her home country and the upsides of remaining in the United States are relevant. For example:

- Child fears retaliation by abusive family members.
- Child has no responsible family members to provide her with care and protection.
- Child will have no access to medical, educational or social services.
- Child is acculturated to life in the United States.
- All of child's personal ties, perhaps siblings, are here.
- Child has been educated in the United States.



Requirements Five and Six

The child must be under 21 years of age. 8 C.F.R. § 204.11(c)(1).

- Absolute deadline: Once the child turns 21, there is no hope of getting SIJS – often the child’s only route to a green card.
- SIJS-eligible children must be identified early to avoid age-out problems.

The child must be unmarried. 8 C.F.R. § 204.11(c)(2).

- A child’s having her own children is not a bar to SIJS.



Additionally...

The child must qualify for adjustment of status (“AOS”).

- ❖ The child must be eligible for AOS – that is, she must not fall into a non-waivable ground of inadmissibility. *See* 8 U.S.C. § 1255(h).
- ❖ The child’s illegal entry into the U.S. is not a bar to AOS.
- ❖ The child’s delinquency dispositions (unless for drug trafficking conduct) are not *bars* to AOS.
- ❖ If the child has an outstanding order of removal entered by an immigration judge, she will have to reopen her immigration court case to obtain AOS.

The SIJS Procedure

Obtaining SIJS for the Child Proceeds in **Two Stages:**

- The Juvenile Court Stage

When the court makes the required SIJS findings

- The Immigration Stage

When immigration counsel or trained social workers use these SIJS findings as the basis for the filing and processing of the SIJS Petition and Adjustment of Status Application



The SIJS Procedure

IMPORTANT NOTE:

If the child has an outstanding removal order, is in actual or constructive federal custody, has a delinquency or adult criminal record, is HIV positive, is in removal proceedings, or whose juvenile court case may close soon, expert immigration counsel should handle the case as procedures in these situations vary. Remember, when you file immigration applications for a child, you put the child on the federal government's radar – and could risk the child's deportation if the applications are not approved.





The Juvenile Court Stage

What do those working with youth need to do in the juvenile court stage?

TASK ONE: IDENTIFY/SCREEN THE ELIGIBLE CHILD

- Screen each case for SIJS eligibility
- Consider using the SIJS screening sheet
- Contact Public Counsel/local experts with questions



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

- Use the sample motion for SIJS findings or a request in a court report
- Use the new JV-224 SIJS Order (effective 01/01/07)
- If your local U.S. Citizenship & Immigration Services (“CIS”) office requires more information, obtain more detailed findings



The Juvenile Court Stage

TASK THREE: ASSEMBLE COURT DOCUMENTS

- Certified copy of JV-224

If the child has a delinquency record, then also:

- Arrest record printout
- Certified copies of juvenile court minute orders corresponding to each petition filed
- Letter from clerk/DA corresponding to each arrest for which a petition was not filed



The Juvenile Court Stage

TASK FOUR: MAKE SURE THE CHILD REMAINS SIJS ELIGIBLE

- Keep the juvenile court case open until the immigration process is complete
- Resolve any subsequent delinquency petitions to avoid grounds of inadmissibility
- If the child is arrested as an adult, keep the juvenile court case open to preserve eligibility

The Immigration Stage

What do competent immigration counsel or trained social workers do – in concert with others – in the Immigration Service Stage?

STEP ONE: ASSESS THE CHILD'S IMMIGRATION HISTORY

- Obtain FBI background check
- Obtain Freedom of Information Act Request results from the Department of Homeland Security
- Obtain FOIA Request results from the Executive Office for Immigration Review



The Immigration Stage

What do competent immigration counsel or trained social workers do – in concert with others – in the Immigration Service Stage?

STEP TWO: ASSEMBLE THE IMMIGRATION APPLICATION PACKET

- Obtain birth certificate
- Arrange for payment of fees or fee waiver
- Arrange for photos as well as medical exam from CIS-approved doctor
- Prepare all immigration forms – available at <http://www.uscis.gov>



The Immigration Stage

STEP TWO: SAMPLE APPLICATION PACKET

- Cover Letter
- SIJS Order – JV-224
- Case Summary
- Form I-360 Petition for SIJS
- Form I-485 Application for Adjustment of Status
- Proof of Age & Identity (Birth Certificate)
- Additional CIS Forms (G-28, G-325A)
- CIS Medical Exam I-693 & Supplemental Exam
- Photos
- CIS Fees or Fee Waiver



The Immigration Stage



STEP THREE: FILE THE APPLICATION PACKET

- The immigration attorney or trained social worker should do this ASAP, particularly if there is an age-out issue.
- The packets should be mailed to: U.S. Citizenship and Immigration Services, P.O. Box 805887, Chicago, IL 60680-4120 UNLESS your local CIS Office allows you to file the packet directly with them – consult the CIS website and local experts for this information.

The Immigration Stage



STEP FOUR: OBTAIN APPOINTMENT NOTICES AND COMPLETE BIOMETRICS

- The immigration attorney or trained social worker must wait for CIS to schedule the child for an AOS interview and biometrics appointments; local times vary.
- If child is 14 or older biometrics must be completed.
- The child should have valid government-issued ID.
- Background checks are done for criminal and security clearance. Details at http://www.uscis.gov/graphics/publicaffairs/factsheets/security_checks_42506.pdf.

The Immigration Stage



STEP FIVE: PREPARE THE CHILD FOR THE AOS INTERVIEW AND ATTEND THE INTERVIEW WITH THE CHILD

The immigration attorney or trained social worker must:

- Review all applications with the child and update applications if necessary
- Bring photo ID, birth certificate, and most recent juvenile court order to the interview
- Attend the interview and assist the child if he needs help
- CIS may approve applications on the day of the interview or may have to wait for background checks.

The Immigration Stage

STEP SIX: MONITOR THE APPLICATIONS

- If the child is not approved on the interview date, the immigration attorney or trained social worker should follow up on the case using local procedures and expedite age-out cases.
- She should provide status reports to the juvenile court for hearings.



The Immigration Stage

STEP SEVEN: WRAP UP AFTER THE APPLICATIONS ARE APPROVED



Once the child is an LPR, the immigration attorney or trained social worker should:

- Wait for the delivery of the child's green card from CIS
- Provide a final status report to the juvenile court
- Advise the child of his rights and responsibilities as a lawful permanent resident using the guide available at:
<http://www.uscis.gov/graphics/citizenship/welcomeguide/index.htm>

SIJS in Removal Proceedings

SIJS is available for children in removal proceedings, but the process is different.

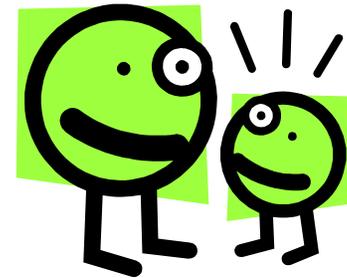


- First the SIJS findings must be made and the immigration attorney files an I-360 packet with CIS.
- Once the I-360 is approved, the immigration attorney must file an I-485 packet with the immigration judge.
- The case can either be completed in immigration court or the immigration judge can terminate proceedings to allow for AOS before CIS.
- Often SIJS is the best way for abused, abandoned or neglected children to prevent their deportation.

Other Forms of Immigration Relief

Unlike SIJS, these methods of immigrating do not involve findings from the juvenile court:

- Family-Based Immigration
- Violence Against Women Act Relief
- U Visas
- T Visas
- Asylum



Since there is no juvenile court stage, you may be less involved – but can still help the child identify her eligibility for relief.

Family-Based Immigration



A form of immigration relief that *may* be available to those children with USC or LPR relatives.

Who can petition?

- USCs can file I-130 petitions for their spouses, children (including stepchildren and adopted children who meet certain requirements), siblings and parents.
- USCs can immigrate “immediate” family members quickly since they are not subject to quotas; they include spouses, parents, unmarried children (under 21 years old).
- LPRs can file I-130 petitions for their spouses and unmarried children.

Family-Based Immigration



How does one petition for a family member ?

- Petitioner must submit an I-130 petition to the CIS office with jurisdiction over the petitioner's place of residence.
- A fee, proof of family relationship, and proof of petitioner's LPR or USC status must be included.
- The timing of the adjudication of the I-130 is based upon the "preference category."

Family-Based Immigration



What are the preference categories?

- 1: Unmarried son or daughter, 21 or over, of USC
- 2A: Spouse or child of an LPR
- 2B: Unmarried son or daughter, 21 or over, of LPR
- 3: Married son or daughter of USC
- 4: Brother or sister of USC

Family-Based Immigration



When can an approved beneficiary apply for AOS?

- If an “immediate relative” of a USC, can apply as soon as I-130 is approved.
- Otherwise, timing is dictated by preference category and “priority date” – the filing date.
- Children can immigrate as derivatives if their parent/s are immigrating under a preference category.

Family-Based Immigration



How might a child qualify for AOS?

- INA § 245(i) allows AOS for those who entered the country without permission if the person is a beneficiary of a visa petition filed before April 30, 2001.
 - INA § 245(a) allows AOS for those who entered legally, have remained in lawful status (unless they are an immediate relative), and have an approved visa petition and current priority date.
- Otherwise*, the child must go abroad and “consular process” to re-enter the U.S. as an LPR.



Violence Against Women Act (“VAWA”) Relief

What is it?

- ✓ Among other things, an avenue for abused undocumented children of LPRs or USCs to become LPRs by a self-petitioning process – with no need to rely upon the abuser for immigration help.

Where do you find it?

- ✓ Sections 204(a)(1)(A)(iv) and 204(a)(1)(B)(iii) of the Immigration & Nationality Act
- ✓ Regulations are at 8 C.F.R. § 204.2(e)



Requirements for VAWA Self-Petitioning

- ✓ Child has an abusive USC or LPR parent.
- ✓ Child lived with this abusive parent, in or out of the U.S., and currently is in the U.S.
- ✓ Child is unmarried and under 21 – and a “child” under immigration law.
- ✓ Child has “good moral character.”
- ✓ Child must have suffered abuse that amounts to battery or extreme cruelty.

Note: Self-petitioning based on abuse or incest can be done up to age 25 if the abuse and the delay are linked.



Immigration Process for VAWA Self-Petitioning

The child must submit an I-360 (the same form as for SIJS) to the CIS Vermont Service Center along with evidence showing she meets each of the requirements.

The child must wait for a Notice of Prima Facie Eligibility and eventually for a Notice of Deferred Action.

If the I-360 is approved, the child must then submit an I-485 AOS Application when she is eligible to adjust status (depending upon whether the abuser is an LPR or USC).



Benefits of VAWA Self-Petitioning

- Once she has a Notice of Prima Facie Eligibility, the child can access increased government benefits.
- Once she has a Notice of Deferred Action, she does not need to fear imminent deportation and is eligible for a work permit.
- Once she has an approved I-360 and then an approved I-485, she is a lawful permanent resident and can later apply to become a USC.

Note: Children (under 21) can be included on a parent's VAWA I-360 as derivative beneficiaries.



U Non-Immigrant Visa

What is it?

- ✓ An avenue for undocumented children who have been victims of serious crimes and who cooperate with law enforcement to obtain temporary lawful status and the possibility to become LPRs.

Where do you find it?

- ✓ Section 101(a)(15)(U) of the Immigration & Nationality Act
- ✓ Interim regulations were published in September 2007



Requirements for the U Visa

- ✓ Child has suffered substantial physical or mental abuse as a victim of certain criminal activity.
- ✓ Child possesses information about the criminal activity.
- ✓ Child provides official certification that the child is being, has been or will be helpful in the investigation or prosecution of the crime (if the child is under 16, this requirement may be met by a parent or guardian or next friend).
- ✓ Criminal activity took place in U.S., its territories or possessions, or otherwise violated U.S. law.



Requirements for the U Visa

What kind of crimes are covered?

Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit any of the above-mentioned crimes, or any similar activity in violation of federal, state or local criminal law.



Immigration Process for the U Visa

As of October 17, 2007, victims and certain family members may apply.

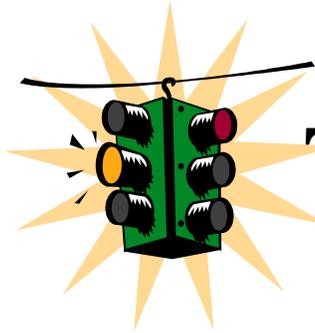
To do so, the child must submit a request to the CIS Vermont Service Center along with the law enforcement certification and evidence showing she meets each of the requirements.



Benefits of the U Visa Interim Relief

- The child can have U status in the U.S. for four years, or longer if law enforcement certifies she is needed here.
- Once the child has the U status for three years, she has the possibility of AOS to become an LPR.

Note: Children (under 21) who are not crime victims nonetheless can be included on a parent's or (if they are unmarried and under 18) a sibling's U visa applications.



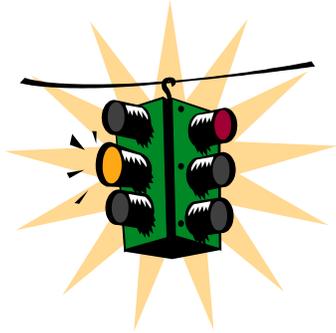
T Non-Immigrant Visa

What is it?

- ✓ An avenue for undocumented children who have been victims of severe forms of trafficking in persons to obtain temporary lawful status and the possibility to become LPRs.

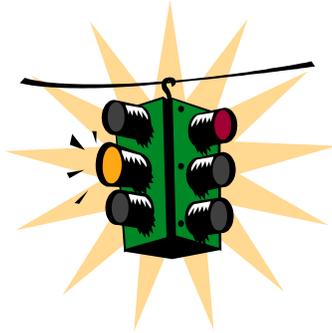
Where do you find it?

- ✓ Section 101(a)(15)(T) of the Immigration & Nationality Act
- ✓ Interim regulations are at 65 Fed. Reg. 4784 (Jan. 31, 2002)



Requirements for the T Visa

- ✓ Child must be or have been a victim of a “severe form of trafficking in persons” which is defined as (1) sex trafficking by fraud or coercion or of someone under 18 or (2) involvement in recruitment, harboring, transportation, provision or obtaining, through fraud or coercion, of a person to be subjected to involuntary servitude, slavery, peonage or debt bondage.
- ✓ Child is either (1) under 15 or (2) has complied with any reasonable request from a federal law enforcement agency for help in investigating or prosecuting traffickers.
- ✓ Child is in the U.S. and would suffer a very high level of hardship upon removal from the U.S.

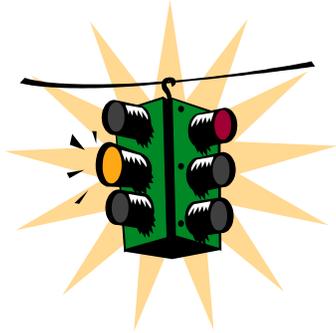


Immigration Process for the T Visa

The child must submit an I-914 to the CIS Vermont Service Center along with evidence showing she meets each of the requirements, including a personal statement and, if available, a law enforcement certification.

The child must wait for a notice regarding the application's bona fides.

The child must then wait for an approval of the T Visa; it is good for three years and she can, after that time, apply for AOS to become an LPR.



Benefits of the T Visa

- Once she has a notice regarding the application's bona fides, the child can access government certification for public benefits.
- Once she has an approved T Visa, she is eligible for a work permit.
- Once she has had her T Visa for three years, she can apply for AOS to become an LPR.

Note: Children (under 21) can be included on a parent's or (if they are unmarried and under 18) a sibling's T visa applications.

Asylum



What is it?

- ✓ A form of immigration relief available to those who fear persecution in their home countries due to their race, religion, nationality, political opinion or membership in a particular social group.

Where do you find it, primarily?

- ✓ Section 208 of the Immigration and Nationality Act
- ✓ Regulations are at 8 C.F.R. § 208

Requirements for Asylum



- ✓ Child must have a well-founded fear of persecution; the fear has both an objective and subjective component.
- ✓ Persecution must be “on account of” race, religion, political opinion, nationality or membership in a particular social group.
- ✓ Persecution must be by the government or by a group that the government cannot control.
- ✓ Asylum applications must be filed within one year of arrival in the U.S., with some exceptions.
- ✓ Child must not have persecuted others and must not pose a danger to U.S. security, among other restrictions.

Immigration Process for Asylum



For a child who is not in removal proceedings:

- Child must submit the asylum application (Form I-589) to CIS.
- An interview is scheduled at the Asylum Office.
- If not granted asylum, the child will be placed in removal proceedings and may pursue the asylum claim before the immigration court.

For a child who is in removal proceedings:

- Child must submit the asylum application directly to the immigration court.

Note: Children (under 21) can be included on a parent's asylum application.



ORGANIZE!

What are some characteristics of successful immigration programs for abused, abandoned or neglected children?

- Capable immigration advocates who can evaluate cases and file applications with CIS
- Efficient and *early* identification of eligible children
- Juvenile courts knowledgeable and supportive of immigration benefits for children
- State commitment to helping undocumented children
- Immigration officers familiar with adjudicating children's cases



Specifics: Dependency

Often the most welcoming system.

- Challenges:
 - Sheer numbers
 - Misconception that all undocumented children automatically become USC's when adopted by USC's
- Incentives:
 - More effective preparation of children for independent living and better situation for adoptive parents
 - Federal reimbursement for children's care



Specifics: Dependency

Tips for organizing an immigration program:

- Models:
 - Court appointment of immigration counsel
 - Specialized unit of social workers in the child welfare agency that can handle the basic immigration cases
- Outreach:
 - Educate participants in system (judges, county counsel, dependency attorneys, social workers) to refer cases
 - Involve adoption and emancipation units in the child welfare systems with immigration planning
 - Meet with CIS if large numbers of cases are anticipated



Specifics: Delinquency

Often the most difficult system.

- Challenges:
 - Impression that delinquent children are not “deserving”
 - “Easy route”: Turn children over to ICE for deportation
- Incentives:
 - More effective preparation of children for independent living
 - Federal reimbursement for children’s care
 - Increase children’s motivation for rehabilitation/law-abiding behavior



Specifics: Delinquency

Tips for organizing an immigration program:

- Models:
 - Court appointment of immigration counsel
 - *Pro bono* counsel taking cases through referrals
- Outreach:
 - Educate participants in system (judges, public defenders, group home staff) to refer cases
 - Work to ensure that emancipation programs include plans for immigration relief
 - Meet with the probation department to identify immigration relief and avoid immigration detainers

Resources



- ILRC SIJS Handbook at <http://www.ilrc.org>
- ILRC Immigration Benchbook for Juvenile & Family Courts at <http://www.ilrc.org>
- ILRC Living in the United States: A Guide for Immigrant Youth Handbook at <http://www.ilrc.org>
- National Center for Immigrant & Refugee Children Resource Library at <http://www.refugees.org>
- LIRR Publication on Working with Immigrant Children at <http://www.lirs.org/InfoRes/pub.htm>
- Annie E. Casey Foundation Report *Undercounted. Underserved. Immigrant and Refugee Families in the Child Welfare System* at <http://www.aecf.org>