

An Overview of Immigration Law Issues and Child Welfare

Beyond the Bench XVIII Preconference

A Dialogue on the Intersection of Immigration
and Child Welfare

San Diego, CA

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Five Things to Know About Immigration Law

- Adoption
- Mixed Citizen-Immigrant Families:
Deportation and Petitions
- Delinquency Dispositions
- How to Make a Kid a Citizen
- Parents: Termination of Parental Rights,
Criminal Convictions,, TRO's

Adoption and Immigration

- To get the benefit of being someone's "child" for immigration purposes, *the adoption must be completed before the child's 16th birthday.*
- Exception for siblings adopted to same family: as long as one child adopted before 16th birthday, other/s can be adopted before 18th birthday.

Mixed Families: Deportation

- Immigrant parents can be deported despite having U.S. citizen children.
- Just because a parent is undocumented does not mean that he or she faces immediate deportation.

Mixed Families: Getting a Green Card

- A citizen child can file a petition to get a green card for a parent when s/he is 21.
- A U.S. citizen or permanent resident step-parent can file a petition for an undocumented child as long as the marriage that created the step-relationship occurred before the child's 18th birthday.

Delinquency Dispositions

- The worst: any drug trafficking, e.g. sale or possession for sale
 - An undocumented child with this JD disposition might never get lawful status, except thru a U visa or a very strong asylum case.
- Problematic but not fatal:
 - drug possession or abuse; prostitution; “mental disorder” such as suicide, alcohol, sexual predator; violation of DV TRO

How to Make a Kid a Citizen

- A non-citizen becomes a U.S. citizen if the following two events occur, *in either order*, before the person's 18th birthday:
 - The person becomes a permanent resident (“green card” holder), and
 - A parent with custody naturalizes to U.S. citizenship.
- Therefore, to make a permanent resident kid into a citizen, encourage the parent to naturalize.

Parents: Termination of Parental Rights, Convictions, TRO's

- *Termination of parental rights* does not make a parent legally deportable.
- *Convictions.* Even a misdemeanor conviction can make a permanent resident deportable, but often there are good alternate plea bargains. Parents must tell PD that they need to avoid immigration consequences.
- *TRO:* Court finding of certain violations of a protective order can cause a noncitizen to become deportable. Get advice before the civil or criminal hearing.

Forms of Immigration Relief

- Many undocumented youth are eligible to adjust their immigration status
 - Special Immigrant Juvenile Status
 - Political Asylum
 - Trafficking Victims Protection Act
 - U Visas for Victims of Crime
 - Violence Against Women Act (VAWA)



Special Immigrant Juvenile Status (SIJS)

- Victim of abuse, neglect or abandonment
- Dependent on a juvenile court (dependency, delinquency or guardianship)
- Eligible for long-term foster care (no reunification services)
- Not in the minor's interest to return to his or her home country
- Under 21 and unmarried



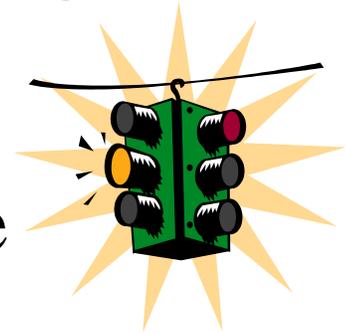
Asylum



- Must be a victim of past persecution or have a well-founded fear of future persecution based on *race, religion, political opinion, membership in a particular social group, or nationality*
- Persecution by government or private group that the government is unable or unwilling to control

“T” Visas for Trafficking Victims

- Must be a victim of human trafficking (sex or labor trafficking)
- Physical presence on account of the trafficking activity
- Would suffer extreme hardship involving unusual and severe harm upon removal



“U” Visas for Victims of Violence

- Suffered substantial physical or mental abuse as having been victim of certain crimes
- Possesses information concerning the criminal activity
- Helpful in the investigation or prosecution of the criminal activity
- The criminal activity described violated the laws of the United States or occurred in the United States or the territories and possessions of the United States



Violence Against Women Act (VAWA)



- For children being abused by a parent/stepparent who is a LPR or citizen
- For children whose parent is being abused by her LPR/citizen spouse
- For parents of abusive adult US citizen children (over 21)
- Abuse = physical or subjected to extreme cruelty
- Can petition for non-abusive parent subsequently



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>