SAVE THE DATE: THURSDAY, MARCH 25, 2010, FOCUS GROUP: IMPACT OF IMMIGRATION UPON CHILDREN AND FAMILIES IN SANTA CLARA COUNTY & RELEVANT LEGISLATION, A CHILD WELFARE PERSPECTIVE

Where: Family Resources Center
591 N. King Road, San Jose, CA 95133

When: Thursday, March 25, 2010 / 11:30 AM ~ 2:30 PM

Free Admission and Open to the Public / Lite lunch and water will be provided. Registration: Please contact Kathleen Dong at kdong@cacsc.org to RSVP by Friday, March 19th.

I. The purpose of this Focus Group is to respond to ongoing issues and emerging concerns regarding,
1) How immigration issues impact your work with children and families
2) What community resources are available to assist your clients?
3) Pending current legislation/proposals, where goes immigration reform
4) Trends and emerging issues such as refugees and trafficked children
5) Discussions / Dialogue and Q&A

II. To help us address these issues, there will be a panel composed of
1) Miday Tovar, MSW, Social Work Supervisor, DFCS / Co-Chair, Immigration Services Committee, DFCS
2) Andrew Cain, Supervising Attorney, Legal Advocates of Children and Youth
3) Richard Zapata, Office of Refugee Resettlement / Department of Unaccompanied Children Services (ORR / DUCS), Federal Field Specialist
4) Sergio Medina, MSW, LCSW, Program Director-Refugee Foster Care, Catholic Charities of Santa Clara County, Immigration Services
5) Ken Borelli, Moderator, Immigration and Child Welfare Consultant
SCREENING QUESTIONS FOR IMMIGRANT YOUTH: DETERMINING POTENTIAL AVENUES FOR LEGAL STATUS

1. Is the child a U.S. citizen without knowing it?

   A. Anyone born in the U.S. or Puerto Rico is a citizen, and born in Guam, American Samoa or Swain Island is a national who can’t be deported.

   B. If person born outside the U.S., ask two threshold questions to see if the person automatically is a U.S. citizen. If the answer to either might be yes, refer for immigration counseling.

   • Was there a USC parent or grandparent at time of person’s birth? Or,

   • Before person’s 18th birthday, did both of these events happen (in either order): child became a permanent resident, and at least one natural or adoptive (but not step-) parent having some form of custody over the child is or becomes a U.S. citizen. (Tip: Encourage the parent to become a citizen!)

2. Is the child currently under dependency court jurisdiction where the court has ruled that (a) the child is eligible for long term foster care (b) cannot be reunified with either parent because of abuse, neglect or abandonment and (c) that it would not be in the child’s best interest to be returned to the home country? Consider special immigrant juvenile status.

   • IMPORTANT: the child must stay in the jurisdiction of the dependency court until the SUS application is adjudicated so watch out for youth aging out of the system.

3. Has the child been abused by a U.S. citizen or permanent resident spouse or parent, including adoptive, natural or step-parent? Consider VAWA relief.

   • Child doesn’t need to be under current court jurisdiction, and may be reunited with the other parent.

   • Child will need to show “good moral character."

4. Has the child been a victim of serious crime, or of alien trafficking? Is the child willing to cooperate with authorities to investigate or prosecute the offense? Consider the S, T, or U visas.

5. Does the child have a U.S citizen or permanent resident parent or spouse who is willing to petition for her? Investigate family immigration.

   • To immigrate through an adoptive parent the adoption must be completed by the child’s 16th birthday.

6. Does the child come from a country that’s recently experienced civil war, natural disaster? Does the child fear return to home country because of persecution? Investigate various forms of relief such as asylum and temporary protective status.
RESOURCES

Technical Assistance in Individual Cases

Immigrant Legal Resource Center
Angie Junck, Staff Attorney or Attorney of the Day
1663 Mission St., Suite 602
San Francisco CA 94103
415.255.9499 x 586 or x 6263
Email: ajunck@ilrc.org or aod@ilrc.org
Website: www.ilrc.org

Written Materials and Resources
(all downloadable for free at www.ilrc.org - go to “Information on Immigration Law” and then “Remedies for Immigrant Children and Youth”):

Fact Sheets: Immigration Options for Undocumented Children
   A collection of Bay Area Resources and Fact Sheets on SIJS, VAWA, Family Visas, U visas, Asylum, U.S. Citizenship and TPS.

Manual on Special Immigrant Juvenile Status
   In depth discussion of the requirements of SIJS and instructions on how to file an SIJS petition.

Living in the United States: A Guide for Immigrant Youth
   Know Your Rights and Responsibilities Handbook for Immigrant Youth in English, Spanish, and Korean

Immigration Benchbook for Juvenile and Family Courts
FOCUS GROUP: Immigration issues and their impact on children and their families in Santa Clara County.

The Santa Clara County DFCS Model
Addressing the Immigration needs in the Child Welfare System

Santa Clara County
Department of Family and Children's Services
Immigration Services Committee
Miday Towner, MSW, Co-Chair
Jorge Gonzalez, LCSW, Co-Chair
DFCS Family Resource Center: Nuestra Casa
March 25, 2010

Addressing the Immigration needs in the Child Welfare System:

The Santa Clara County, DFCS Model
Immigration Services Committee

MISSION STATEMENT

To address the immigration needs of dependent immigrant children in the child welfare system.

OBJECTIVE
- To provide ongoing training and support to social workers on cultural and immigration needs
- To provide support and assistance to social workers to properly serve immigrant children and their families
- To provide social workers in working with the Mexican Consulate and other International Consulates.
- To provide internal contacts for resources and work with community agencies to share and access immigration resources

The Santa Clara County Model
Immigration Services Committee Members

- The Immigration Services Committee members include Managers, County Counsel, supervisors, Coordinators, social workers from the different areas such as Dependency Investigation, DI Emergency Response, ER, Court continuing Services, Adoption, ILP, Educational Rights, Eligibility, Medical Professionals, ETC
- The committee is monitored by our Deputy Director.

The Santa Clara County Model
Child Welfare Services for Dependent Immigrant Children and Their Families

- Addressing the Over-Representation of Children of Color
- DFCS Response
  - Immigration Services Committee
  - Children of Color Committee
  - Community Based Organizations
    - Path I and Path II
    - OBO Collaborations

The Santa Clara County Model
Child Welfare Services for Dependent Immigrant Children and Families

- Culturally Appropriate Services
- Identifying Families' Communication Needs, Mixed Status families, Children
- Assessment of Immigration Needs, Resources, Relief
- Placing and Returning Children in Abroad
- Information and Resources
- DFCS has provided Immigration Support to Children from Mexico, Central and South America, Africa Sierra Leon, Iran, Ethiopia, Philippines, ETC
The Santa Clara County Model
Integrating Culturally Appropriate Services in Santa Clara County

Guiding principles:
- Prompt provision of culturally appropriate services in necessary languages.
- DFCS staff is trained be sensitive to the fact that many immigrants are reluctant to interact with government officials or employees for fear of being reported to the USCIS.
- Support for out-of-home placements with relatives in the United States and abroad.
- Outreach to and participation from collaborative partners in decision-making and provision of services to children and families.

The Santa Clara County Model
Working with Dependent Immigrant Children

In Santa Clara County, when a social worker learns that the child's family was born in a country other than the United States:
- Advise the family to contact its local national consulate.
- Make efforts to find needed services.
- Document the information only if it pertains to needed services or the case plan.
- The best way to determine whether a dependent child might need immigration resources is to assess each child individually by examining various documents.
- Families with immigration needs should be referred to certain agencies for legal assistance or case consultation.

The Santa Clara County Model
Assessment of Children's Immigration Needs, Resources, and Relief In Child Welfare

- Mixed Status Families
  - Parents and siblings may belong to multiple immigration statuses
  - i.e. an older sibling may be a foreign citizen and the siblings may be a legal permanent resident (LPR) or born in the United States.
  - i.e. one parent may be an American citizen or LPR and the other parent may be a citizen of another country

Assessment of Children's Immigration Needs, Resources, and Relief In Child Welfare

PRUCOL - Permanent Residence Under Color of Law
- PRUCOL is a term defined by regulations and court decisions to describe categories of non-citizens who are potentially eligible for certain public benefits in California.
- When a child becomes a dependent of the court and is placed in out-of-home care, the social worker must explore PRUCOL status for the child, as soon as the Jurisdictional-Disposition Hearing is held.
- Under PRUCOL status, the child may be eligible for full-scope Medi-Cal and federal or state foster care funding.
- A PRUCOL response from the US Citizenship and Immigration Services is for entitlement purposes only and is not a real or implied legal resident status.

The Santa Clara County Model
Assessment of Children's Immigration Needs, Resources, and Relief In Child Welfare

Special Immigration Juvenile Status
- A special provision of the Immigration and Nationality Act allows certain qualifying minors to petition for immigrant status as a Special Immigrant Juvenile. This provision is reserved immigrant dependent children who have been declared dependent on a juvenile court who are in permanent placement and in whose best interest it is not to return to their home country.
- An applicant for SUS adjustment must be under 21 years old, not only at the time of application, but also at the time of adjustment, which may take 6-18 months from the date of submission. Applications must be submitted in a timely fashion to eliminate the possibility of a dependent child "aging out" and no longer qualifying for SUS.
- If a dependent child who is undocumented qualifies for SUS, the child's social worker should schedule a pre-referral screening with Micky Tover, SW5.
- Dependency must be established and the child must be receiving Permanency Planning Services to be eligible.

The Santa Clara County Model
Assessment of Children's Immigration Needs, Resources, and Relief In Child Welfare

Special Immigration Juvenile Status
- The social worker's role
  - Obtains necessary documents, such as child's birth certificate.
  - Prepares an Application and Order regarding the child's eligibility for SUS.
  - Works with the immigration counselor at Catholic Charities.
  - Submits funding requests for filing fees
  - Arranges for child's medical exam.
  - Accompanies the child for fingerprinting.
  - Prepares child and caregiver for final interview
  - Accompanies the child to the interview with USCIS.
### The Santa Clara County Model
#### Assessment of Children's Immigration Needs, Resources, and Relief in Child Welfare

#### Special Immigration Juvenile Status
- **Immigration counsel's role:**
  - Assists with completion of USCIS documents.
  - Takes picture of child to submit with application.
  - Schedules appointment for fingerprinting.
  - Schedules appointment for interview with USCIS.
  - Accompanies child and social worker to interview with USCIS.

#### Violence Against Women Act (VAWA)
Under VAWA passed by Congress in 1994, the spouses and children of United States citizens or LPR's may self-petition to obtain lawful permanent residency. The immigration provisions of VAWA allow certain battered immigrants to file for immigration relief without the abuser's assistance or knowledge, in order to seek safety and independence from the abuser.

#### U-Visas
- **U-Visas created by Victims of Trafficking and Violence Protection Act 2000**
- Applicants who have suffered substantial physical or mental abuse, must be able to cooperate with law enforcement in the prosecution of the crime where they were victims (Domestic Violence, battery and rape fall under this category) can also include their Applicants can include their children.
- Applicants must not have been convicted of aggravated felony.

#### T-Visas
The Victims of Trafficking and Violence Protection Act of 2000 provides a way for people who have been trafficked into the United States for illegal purposes to obtain temporary lawful status, provided they cooperate with any law enforcement officials and aid in prosecution. Individuals may adjust to lawful permanent resident status after they have been in T nonimmigrant status for three years; the USCIS will separately issue regulations concerning the process for this adjustment of status.

#### Family Finding
- **Team Decision Making (TDM's)**
  - Participants:
    - Children over the age of 10
    - Family members
    - Service Providers
    - Representatives from the Mexican Consulate or other consulate
    - Member of the Immigration Services Committee
    - Child Advocates
    - Representatives from the District Attorney's Office

#### Protocol with the Mexican Consulate
- Formal agreement between Santa Clara County DFCS and the Mexican Consulate signed by the Santa Clara County Board of Supervisors, Social Services and the Mexican Consulate
- Provide Best Practice for Mexican children and their families
- Ensure appropriate safe placement with family
- Guide for social workers and other staff
- Improved communication and collaboration between DFCS and the Mexican Consulate, DIF, and DFCS families
### The Santa Clara County Model

#### Placing and Returning Children from Mexico

**International Placements:**
Social workers may be required to travel to Mexico for the following reasons:

- Assessment of Placement
  - Accessing resources to meet the child's needs
- Placement of a child with relatives/preplacement visit
- Reunifying children with parents in Mexico or the U.S.
- Placement failures after a child is placed with relatives

### Placing and Returning Children from Mexico

- **DFCS** social workers must follow the regulations of the government agencies and the laws of Mexico.
- Two Mexican agencies with which social workers will have contact are:
  - Secretaría de Relaciones Exteriores (SRE)
  - Sistema Para el Desarrollo Integral de la Familia (DIF)
- A U.S. social worker cannot practice social work in the host country

### Placing and Returning Children from Mexico

The D.I.F. social worker from Mexico will:

- Complete home studies on families.
- Accompany U.S. social workers to visit families.
- Provide most of the resources needed by the child and the family.
- Provide periodic reports on the child's status.

### Mexican consulate will ask the court:

- Assist parent in the juvenile court process, once contacted by the family.
- Participate in TDM's and Family Conferences, once contacted by the family.
- Assist in obtaining documents.
- Obtain placement home studies
- Locate services in Mexico to meet the child's and family's needs.

### Home Study Process

- Social worker makes contact with relatives to assess their willingness to take the child.
- Requests the assistance of the Mexican consulate in completing a home study on the relatives.
- Works with the consulate's office and D.I.F to arrange needed services for the child and family.

### Travel arrangements include:

- Submitting an Application and Order for authorization for the child's travel.
- Informing the consulate of the intention to place the child and of the date of travel.
- Following Departmental travel authorization guidelines.
- Fisco: International Travel Policies
The Santa Clara County Model
Placing and Returning Children from Mexico

- Social workers should follow safety advisories, when traveling abroad.
- Social worker must be accompanied by the D.I.F. social worker in Mexico when proceeding to the relative home.
- D.I.F. social worker will provide courtesy supervision of the child, however, the DFCS social worker must make at least one in-person contact with the child every six months.

The Santa Clara County Model
Placing and Returning Children from Mexico

- To have a child returned to the U.S. after placement in Mexico, the social worker:
  - Notifies the Mexican consulate, as well as parents and the parents' attorneys.
  - Submits an Application and Order for a court order for the child's return.
  - Requests a notarized letter from the relatives in Mexico stating their agreement for the child to return to the U.S.
  - If the relatives are not in agreement of having the child return to the U.S., the issue must be brought before the Mexican court. Under the laws of the U.S. and Mexico, the court with jurisdiction is the one where the minor is residing.

Information and Resources
Definitions
- Immigrant Domestic Violence Survivor
  - A collection of federal laws, generally known as VAWA (Violence Against Women Act), which enable battered spouses and children to obtain lawful Immigration status without the abuser’s knowledge or permission.
- U.S. Citizenship and Immigration Services (USCIS)
  - Under the Department of Homeland Security, the agency that handles Immigration and residency, (formerly INS)
- Lawful Permanent Resident (LPR)
  - A non-citizen who is lawfully admitted for permanent residency under the Immigration and Nationality Act.

Assessment of Immigration Needs, Resources, and Relief
Other Issues Related to Immigration

- Dual Citizenship
  - The U.S. recognizes dual citizenship under some circumstances. Children who have dual citizenship should be considered U.S. citizens.
- Temporary (Protective) Custody
  - If a child who is not a U.S. citizen is taken into temporary custody, DFCS may be required to notify the consulate general of the child's country of citizenship.
- Kinship Care
  - Undocumented relatives can be considered as a placement resource for children.
- Travel Considerations
  - Important to consider their immigration status when crossing state and national borders.

Information and Resources

- Naturalized United States Citizen
  - A person who has become a U.S. citizen five years after being granted legal permanent residency.
- Parole
  - A person who is not a U.S. citizen but lawfully enters the country while the U.S. government decides what status to give them. Entry is usually based on urgent humanitarian reasons or a determination that entry is for significant public benefit.

Information and Resources

- VISA Holders
  - People with employment, student or tourist visas are in the U.S. legally for a fixed period of time.
- Refugees and Asylees
  - A person who comes to the U.S. fleeing persecution in his or her home country may have refugee or asylee status. It is a legal status, and the person has the right to apply to become a lawful permanent resident.
Information and Resources

- Undocumented Immigrants
  - A person who entered the U.S. unlawfully or whose legal immigrant or visitor status expired or was cancelled by the government.
- U.S. Citizen
  - Any person born in the United States and its territories is a citizen of the U.S., regardless of his/her parents' immigration status.
- American National
  - A person born in the U.S. territories are American nationals. Nationals can enter the U.S. at any time without going through immigration procedures.

Information and Resources

General requirements to become a U.S. citizen:
- Be a legal permanent resident (LPR)
- Be at least 18 years old
- Demonstrate good moral character
- Be able to read, write and speak English
- Be a legal resident for at least 4 years and 9 months
- Must not have disrupted residency requirements for any of the 5 years prior to applying for citizenship
- Pass a test in basic U.S. history and government
- Be able to take the loyalty oath

Information and Resources

The benefits of U.S. citizenship are:
- Right to vote
- Right to travel with a U.S. passport
- Right to live in another country
- Right to help family members immigrate
- Right to hold public office and obtain government jobs
- Right to serve on a jury
- Right to not be removed or deported from the U.S.

Resources and References

Government websites:
- U.S. Department of State: http://www.state.gov
- U.S. Citizenship and Immigration Services: http://www.uscis.gov

Other websites:
- http://www.immof.com/
- http://www.catholicbrittis.org
- http://www.legalize.org/
- http://www.employ.org/

References:
- Santa Clara County DFC: Immigration Services Committee
- Santa Clara County DFC: Online Policy and Procedures

Appendix A: Definitions
PROTECTING CHILDREN

A Social Worker's Toolkit For Working with Immigrant Families

A Child Welfare Flow Chart

Purpose:
- To recognize the importance of collecting culturally crucial information as part of the evaluation of the case plan.
- To identify and integrate relevant immigration information as it affects the sequence of decisions regarding a child welfare case.
- To understand when during the points within a child welfare case when it is appropriate to engage immigration professionals to pursue eligible immigration relief options.

Summary:
The purpose of this flow chart is to illustrate how and when immigration issues may arise during the chronology of a child welfare case. The flow chart begins at the point of a child abuse report, through assessment, diversion or intervention, removal, dependency issues, and permanency planning. At each stage of the flow chart, a "potential immigration issues" section is noted and explored in italics. The "green box" indicates a point at which the child welfare case may closed.

The Adoption and Safe Families Act (ASFA) is the federal timeline for permanency decisions regarding a child's reunification with his or her birth parent(s). This flow chart reaffirms key assessments within the ASFA federally mandated timelines. The public child welfare worker's knowledge (or lack of knowledge) regarding the immigrant population in their community and potential immigration relief options can profoundly affect the decisions made about a child welfare case. Understanding what immigrant families are saying about their situation requires acute listening skills, which can often be "lost in translation." It is also critical for public child welfare agencies to have integrated internal cultural/linguistic staff capacity as well as access to immigration legal counsel and community partners to assist in working with immigration and refugee communities.

Disclaimer: Please be advised that the information from this toolkit is intended only to provide a general overview on the intersection of immigration and child welfare. It should not be used as a substitute for legal or child welfare professional advice, which takes into account the specific circumstances of each situation. Immigration and child welfare policy and practice differ from state-to-state, so it is important to always consult with your local immigration and child welfare experts. This toolkit is not intended to be used as a self-help guide, or to provide legal advice. In addition, this flow chart does not include the federally mandated timelines for petition filings, court hearings, reviews, and other permanency decisions because the intention of the authors is to focus attention on the diversity of options presented in child welfare cases, not solely on the timelines.
Child Welfare System Flowchart

1) Report called into hotline: Report of suspected child abuse or neglect is called into the Child Abuse Hotline by a mandated reporter (often school or medical personnel) or concerned individual.
Potential Immigration Issues: CPS involvement may prohibit an undocumented immigrant from gaining legal status; fear of being reported and deported may cause the parents to flee. In addition, referrals may come from the Office of Refugee Resettlement—Division of Unaccompanied Children (DUCS). See Glossary in Immigration Status and Relief Options Toolkit.

2) Call screened: Hotline staff screens call to determine if an investigation is warranted. Some states have an "Alternative Response" or "Differential Response" assessment track.

2a) Cross-report filed: If evidence of abuse is found, a cross-report is sent to law enforcement for further action.
Potential Immigration Issues: Once law enforcement is involved, there is heightened risk that the parents may flee. This is especially true since many communities have begun to criminalize undocumented immigrants. Many immigrants left countries with harsh authoritarian regimes or corrupt government agencies and may distrust government agencies. Likewise, the parent may be crossed reported to state child abuse indexes that may impact employability and background clearance.

2b) Case not investigated: The hotline staff assesses the evidence and decides it is not sufficient to open a case. The case may be referred to a community-based organization.

3) In-person Investigation: Caseworker conducts an in-person investigation to assess evidence of child abuse or neglect.
Potential Immigration Issues: Cultural norms and child rearing practices may differ from U.S. practice. Communication problems and lack of appropriate translation services may lead to inaccurate or insufficient information about a case.

3a) Case closed: Investigation determines suspected abuse or neglect is unfounded or the evidence is inconclusive.

4) Case substantiated: Investigation confirms evidence of child abuse or neglect.
Potential Immigration Issues: An assessment by legal immigration experts may find that the child qualifies for a U-Visa as a victim of serious crime.

4a) Case closed: Investigation determines suspected abuse or neglect is unfounded or the evidence is inconclusive.

5) Child removed from home: Child is taken into custody and placed in an emergency shelter or foster home, or kinship care.
Potential Immigration Issues: The child may qualify for SIJS.* Kinship care should include international searches. TDMs and FGD may occur at this point. It is important to be mindful of emerging immigration issues in terms of placement, barriers to cooperation, and coordination of out-of-home placement.

5a) Child removed from home: Child is taken into custody and placed in an emergency shelter or foster home, or kinship care.
Potential Immigration Issues: The child may qualify for SIJS.* Kinship care should include international searches. TDMs and FGD may occur at this point. It is important to be mindful of emerging immigration issues in terms of placement, barriers to cooperation, and coordination of out-of-home placement.

5b) Voluntary services provided: Child remains at home. Family may receive in-home services for 3-8 months (or longer in some states) for voluntary in-home

6) Voluntary services fall: The abuse continues, a new report of abuse or neglect is confirmed, or voluntary services fail for other reasons.
Potential Immigration Issues: The child may qualify for SIJS, but the application must be submitted while the court has jurisdiction of the child.

6a) Voluntary services fall: The abuse continues, a new report of abuse or neglect is confirmed, or voluntary services fail for other reasons.

6b) Case closed: In-home services or voluntary in-home services succeed in providing a safe and secure environment for a child.

6(7) Dependency petition filed: SEE NEXT PAGE

8/7) Dependency petition filed: A petition is filed in juvenile dependency court by the child welfare agency, beginning a series of judicial hearings. All parties to the proceedings will have access to legal counsel, including children, parents, and the child welfare agency.

Potential Immigration Issues: The child may qualify for SIJS, but the application must be submitted while the court has jurisdiction of the child.

8) Child becomes a dependent of the court or child welfare agency: Court places child under its jurisdiction or that of the child welfare agency.

9a) Family maintenance: Court leaves child at home and orders child welfare agency to develop a case plan and provide services to the family.

9b) Family reunification: Court orders the child placed in out-of-home (foster) care to keep child safe, and orders child welfare agency to develop reunification plan with parents. Concurrent planning is required to prepare for an alternative permanent placement should reunification fail.

9a) Family maintenance exists: Court leaves child at home and orders child welfare agency to develop a case plan and provide services to the family.

9b) Family reunification: Court orders the child placed in out-of-home (foster) care to keep child safe, and orders child welfare agency to develop reunification plan with parents. Concurrent planning is required to prepare for an alternative permanent placement should reunification fail.

10a) Case dismissed or settled: Court finds problems that brought family into court have been remedied.

10b) Family maintenance fails: A petition for the removal of the child from its family is filed with dependency court.

10c) Permanency planning: Court decides child cannot safely be returned home and/or efforts to reunify with birth family should end. Court orders another permanent placement plan to be selected. Family reunification may be skipped in egregious situations and go straight to permanency planning.

Potential Immigration Issues: The SIJS application should be submitted while the court has jurisdiction of the child. For some states, dependency may be extended to 21 to extend the timeline for the SIJS application. Other options include U-visas, T-visas, and relative petitions. In the event of a denial, immigration legal representation needs to be explored.

10a) Case dismissed or settled: Family successfully completes service plan and child is returned home.

11a) Another Planned Permanent Living Arrangement (APPLA): This refers to a type of placement when a youth "ages out" and becomes too old to remain in foster care (mostly age 18, with some states allowing an extension to age 21).

11b) Permanent placement with relative/subsidized guardianship: Parental rights are transferred to a caretaker to become the child's legal guardian. Often an adult relative, the child's legal guardian must meet the state's standards for child protection.

11c) Adoption: All parental rights and responsibilities for the child are given to another person(s). Parental rights are terminated permanently.

Issues to Consider When Working With Immigrant Families

1) Report called into hotline

- The Child Abuse Hotline screeners need to understand all the possible reasons why there is a report. Key questions asked at this stage by the Hotline screeners include: Is the child in imminent danger? Risk of maltreatment? Prior history? What are the family's strengths and available resources? Is an in-person response required, and if so, how quickly?

- Many immigrant parents have long or difficult work schedules, financial pressures, or live in crowded housing, all of which can result in conflicts. There may be acculturation stressors or tensions between adolescents who do not share the cultural values of their immigrant parents. There may be homeopathic medical treatments not understood by the child welfare agency. Further, many communities are experiencing large and smaller scale immigration raids, with arrested parents unable to quickly arrange for alternative childcare. As mandated child abuse reporters, school district personnel often play an important role in ensuring that children are not dropped off to empty homes or left at school overnight. There is also stress and anxiety for those undocumented immigrant families left after a raid (for example, parents fearing the possibility of future raids will keep older children home from school to care for younger siblings).

- Statistics vary but it is estimated that well over 60% of child welfare cases have a co-occurrence of domestic violence and child abuse, according to “Effective Intervention in Domestic Violence and Child Maltreatment Cases” (commonly called the Greenbook) by the National Council of Juvenile and Family Court Judges. Identifying domestic violence during the initial report can help the child welfare agency decide on additional screening questions and create appropriate case plans and diversion opportunities. Different cultures have different definitions and approaches to domestic violence. When discussing abuse and/or violence, care must be taken not to label families’ patterns. Their cultural habits may be the norm in their home countries, but may be considered abusive in the United States.

- An emerging issue in terms of referral sources for child welfare agencies is the Office of Refugee Resettlement. This is the federal agency responsible for unaccompanied minors. In the course of their investigations, they may determine "cross-over" issues of abuse and neglect, trafficking, exploitation, etc., and may make a referral to a child welfare agency. For example, a teenager trafficked in the United States for sexual exploitation and in federal custody may be referred to public child welfare.

2) Call screened

If the call came from a mandated child abuse reporter, such as school, hospital, and law enforcement, immigration issues and status are not routinely evaluated or assessed at this initial stage. This issue may come up if the reporting party represents the Office of Refugee Resettlement, a domestic violence service provider, or an immigration service agency that has already provided this initial assessment.

2a) Cross-report filed

- If there are allegations of serious abuse or neglect, in some child welfare jurisdictions, a cross-report is filed with law enforcement. This report and the resulting charges, convictions, or temporary restraining orders can seriously impact immigrant family members’ current or potential petition for an immigration benefit, their existing lawful immigration status, and their employment options (i.e., barriers to getting an immigration application approved, eligibility for an immigration benefit, triggering deportation and loss of an immigration benefit, or an inability to find employment at certain employment sites). There may be confusion by immigrant families as to which child maltreatment charge will be reported. For example, general neglect does not necessarily lead to criminal charges and would not lead to a cross-report with
law enforcement. It is important that the child welfare caseworker help families understand this process and clarify any confusion.

2b) Case not investigated
- Many public child welfare agencies use a “Differential Response” modality to refer at-risk families to services. Differential Response, also referred to as “Alternative Response,” allows child welfare to respond differently to reports of generally low-to-moderate child abuse and neglect cases with services and programs often delivered via community-based agencies. Immigrant serving community-based agencies, which can offer culturally and linguistically sensitive support, could serve as partners to child welfare in serving immigrant families through Differential Response. However, these agencies are often under funded and resourced, and may need support/training to understand the complexity of the child welfare agency. The collaboration between child welfare and immigrant serving community based agencies is critical as these agencies are better able to serve immigrant clients through Differential Response referrals.

3) In-person investigation
- If during the investigation, an issue involving immigration status of either the child or family members emerges, the public child welfare agency needs to be able to refer the family to appropriate service providers with expertise on immigration law. The child welfare agency must contact foreign consulates and embassies (both locally abroad) with cases involving foreign nationals. These agencies may be helpful in gathering information and documentation from other countries. For example, if reunification efforts are not appropriate or have failed and the dependent minor’s permanent plan is long-term foster care, the minor may be eligible for Special Immigrant Juvenile Status (SIJS) and vital documents are a necessary part of the application process. For more information, see The Social Worker’s Toolkit for Working with Immigrant Families – Immigration Status and Relief Options, available at http://www.americanhumane.org/protecting-children/programs/child-welfare-migration/

4) Case substantiated
- If the investigation confirms evidence of abuse or neglect, many child welfare agencies have begun to use family or community centered models for decision-making, such as Team Decision Making (TDM), Family Group Decision Making (FGDM), or permanency mediation. Protocols for the TDM or FGDM models should be reviewed for their relevancy as they relate to immigration issues (i.e., what happens if a placement recommendation involves an undocumented relative? A relative living in a foreign country?). Empowering the broadest group of family members to use their knowledge, history and strengths to develop creative plans, identify resources, and develop partnerships can be helpful in developing the child welfare case plan. For tips on how to conduct TDM or FGDM meetings with immigrant families, see the Annie E Casey Foundation/Family to Family handout, Immigration Dynamics in Team Decisionmaking, available at http://www.f2f.ca.gov/res/pdf/ImmigrationDynamicsTDMwkshpNov06.pdf and American Humane Association Issue Brief, Using Family Group Conferencing to Assist Immigrant Children and Families in the Child Welfare System, available at http://www.americanhumane.org/assets/docs/protecting-children/PC-fgdm-immigrant-children-families.pdf.

5a) Child removed from home
- After the child is removed from home, the public child welfare agency should conduct the broadest searches for appropriate relative and family placements. Many immigrant communities may not understand “foster care” but the concept of “god parents” are commonly accepted in most cultures. The searches should include relatives living outside of the United States. Before sending a child outside the U.S., family placements must be assessed to determine whether the placement is in the child’s best interest. International home studies must be done and submitted to the court adjudicating the case. Social workers can work with embassies in foreign countries if they have a Memorandum of
Understanding (MOU) or a relationship already established. Agencies can also request the services of the International Social Services Agency, USA Branch (ISS-USA), who has cooperative home study arrangements in 150 countries worldwide (www.iss-usa.org). Should the court decide to return or place a child in a foreign country, safe repatriation should be coordinated on both ends, ensuring that someone will escort the minor back to his/her country, and that the appropriate person will meet and safely transport the child to his/her final destination. The court should also receive evidence that there are plans in place for on-going services as needed for the child, and that the family has access to these services. Arrangements for follow-up reports, should a child be placed, must be secured ahead of time to ensure the on-going safety, permanency and well being of the child. Many public child welfare agencies, particularly in the border communities, have developed MOUs with their regional Mexican Consulate so there are established protocol and policy for these cases. For other countries besides Mexico, ISS-USA is a viable option (see http://www.iss-usa.org/). Sample public child welfare MOUs with Mexican consulates can be downloaded at http://www.f2f.ca.gov/sampleMOUs.htm.

- With domestic violence cases, caseworkers should ask the victim to provide options for the children’s safety. In the case of immigrants and refugees, it is also critical to seek guidance from service providers in the community to explore every possible opportunity to keep children safely with the non-offending parent. Children may require violence assessments to establish the nature and degree of impact as well as the recommended course of treatment. Children may also need to be linked with specialized, culturally appropriate child witness to violence intervention programs. Children and the non-offending parent also may have specialized immigration legal options available to them and therefore, it is important to consult with an Immigration legal expert.

- At this point in the case, it is important for the public child welfare agency to search and secure all vital documents such as birth certificates, passports, and the formal full names of both parents and hometowns. Examples of vital documents needed for applications for immigration relief options include government-issued identification (ID), passport, and an original birth certificate. Some foreign governments issue identification cards through their Consulates and all foreign documents are required to be translated. It is important to start the process of collecting vital documents as soon as possible since many of these steps are time consuming. Many undocumented immigrant families often disappear at this point in the case for fears of deportation. These documents are vital for the child’s application for potential immigration relief options, as well as for conducting the broadest possible placement research. If an agency has difficulty with document searches, ISS-USA can also perform this service in 150 countries worldwide (see http://www.iss-usa.org/).

5b) Voluntary services

- Integrating immigration services with the need to respond to ongoing voluntary services is necessary to resolve the child abuse and neglect issues. Under the U.S. Department of Health and Human Services, every state child welfare agency is reviewed by the federal government to examine their service delivery and outcomes for children and family under their Program Improvement Plan (PIP). Under the PIP, there is a greater emphasis than ever before on front-end prevention/diversion services to avoid opening dependency cases. It is highly desirable to connect resources and supports to immigrant families as a prevention strategy so that child welfare problems can be solved at the lowest level of intervention. Service referrals could include Food Stamps (eligible for the U.S. citizen child of the undocumented immigrant), Head Start or subsidized child care programs (some which do not depend on immigration status), legal services, free health or mental health clinics, access to Victim/Witness Protection funding (which is available to eligible families, regardless of immigration status), etc.

- The primary goal of case planning with families experiencing domestic violence is to promote enhanced protection and safety, to hold perpetrators accountable, and to look for ways to support the well-being of the child. It is always best to offer treatment in a voluntary manner. However, it is necessary to have
multi-agency cooperation and communication—including the courts—to ensure that services are provided in the best interest of the immigrant child and family and in the least restrictive environment. Immigrant families encounter many barriers to protect themselves and their children. Successful case planning includes an assessment of available community resources and their effectiveness so that service recommendations are realistic for and accessible to family members. Assessment questions to consider include:

- Are there culturally sensitive resources, materials and services available for these immigrant groups, especially those tailored for non-English speaking clients?
- Are there specialized services for immigrant children?
- How will immigration status affect the ability to obtain services recommended in the case plan?
- Do the local service providers have living and food accommodations appropriate for ethnic families, disabled victims or victims of domestic violence with older male children?
- Do immigrant victims who live in rural communities have accessible transportation to advocacy programs and other supportive services?
- Are there culturally appropriate substance abuse programs? Do these programs provide living facilities for the children of domestic violence ordered into inpatient treatment?

It is often helpful to assess clients for important immigration legal relief options such as the Violence Against Women Act (VAWA), U- and T-Visas (see toolkit, "Immigration Status and Relief Option" for detailed definitions), at the voluntary intervention level since it may lead to the de-escalation of child welfare intervention. Domestic violence victims that are willing to cooperate with law enforcement demonstrate their ability to protect themselves and their children from harm.

6/07) Dependency petition filed

- In a child welfare dependency proceeding, an attorney is assigned to represent the child and is a crucial decision maker. The attorney of record in the juvenile dependency case needs to be notified whenever the family or the child welfare department has filed any legal action relevant to immigration. Some examples are when an immigration attorney is filing for SIJS or a child is placed with relatives abroad. At the court hearing, the attorney will evaluate and agree, or disagree, with the recommendations. It is critical that the immigration attorney have discussions with the assigned attorney of record prior to filing any applications and definitely before the court hearing.

- When the case is presented at a jurisdictional or dispositional hearing, the judge may ask about "obstacles towards reunification." Questions relating to reunification and immigration issues (such as locating parents and other relatives) may be asked. It is important that child welfare workers are able to clearly explain their due diligence in providing a comprehensive assessment for the immigrant child, as they would with any other case. The judge may ask about the immigration status of the child and whether the child welfare worker has reviewed this case with immigration legal counsel.

- Specialized attorneys/legal counsel for immigration, domestic violence, or crime/delinquency is not included in the child welfare proceedings. Community-based organizations and some foreign consulates may be able to provide free or low cost legal counsel for these specialized services.

- When there is a court hearing, the caseworker may need to work with a variety of government agencies in order to assure proper noticing and attendance at dependency hearings. This could include working with the United States Citizenship and Immigration Services (USCIS) or foreign child welfare agency such as Mexico’s child welfare agency, Desarrollo Integral de la Familia (DIF), to request a relative’s home evaluation for placement, coordinating a paternity test, or requesting parole letters (allowing a foreign national to enter the U.S. for court proceedings). Several juvenile court jurisdictions, particularly those located in border states, have developed protocols and procedures for child welfare cases involving foreign nationals. For examples of child welfare forms and policies, go to
9a) Family maintenance and 9b) Family reunification

- The difficulty in working with immigrant families is finding appropriate resources for the parent(s) to comply with the case plan. An undocumented immigrant or lawful permanent resident is often ineligible for income maintenance or direct public funded services. There are often insufficient language and culturally appropriate services available in the community. The key to assisting immigrant families is understanding the dynamics of totally undocumented or mixed-immigration status families and the eligibility criteria for the different statuses of each family member. For example, U.S. citizen born immigrant children are eligible for all service programs, regardless of the status of their undocumented parents. Certain governmental services, such as Victim/Witness Protection funding, can be accessed regardless of immigration status.

- Immigration status is not necessarily a barrier to visitation. Although child welfare law generally mandates family visitation, this becomes complicated if the parent is in the custody of the United States Immigration and Customs Enforcement (ICE) or their whereabouts are unknown. The "fear factor" of undocumented immigrant parents may be the compelling reason for why visitation plans are not completed.

- Many factors must be considered when making recommendations about visitation in immigrant families with domestic violence. Intimate partner violence does not automatically preclude the abusive partner from having contact with the children. However, prior to recommending contact, assessments should be completed regarding imminent safety concerns, presence of psychological trauma, risk for the children to continue to be exposed to violence, and the abusive partners' lethality. In domestic violence cases involving a U.S. citizen or legal permanent resident abuser and an undocumented victim, the abuser exercises power and control over the victim because the victim is relying on the abuser to obtain legal immigration status. Fortunately, federal immigration laws allow a domestic violence victim to obtain legal status on his/her own without relying on the abuser. It is important that the victim is referred to an immigration agency, as this may empower the victim to leave the abuser and protect his/her children. ASISTA is a federally funded website and clearinghouse available to provide technical assistance (TA) and legal advice on the intersection between immigration and domestic violence law (http://www.asistaonline.org).

- The T- and U-Visa may also be a potential immigration relief option and may be reflected in the case plan, as well as family petition. There are circumstances where relief options are not available and it is incumbent upon the social worker to review those difficult realities with their clients, including exploring the appeals process through immigration legal resources.

10c) Permanency planning

- If reunification efforts have not succeeded, child welfare agencies should explore the child's eligibility for Special Immigrant Juvenile Status (SIJS) as well as the T- and U-Visa. It is important that the immigration issue is resolved before adoption, guardianship or case closure. There are many training curricula for child welfare workers on understanding SIJS and how to work with immigration counsel to access this relief option, such as the comprehensive guide developed by the California Social Work Education Center/UC Berkeley (http://www.calswec.berkeley.edu/CalSWEC/OtherTraining.html) and SIJS Caseworker Toolkit for Children developed by the US Conference of Catholic Bishops/Migration and Refugee Services (http://www.brycs.org/sijs/default.htm).
Even if immigration relief is granted, it is important that family connections for the child emancipating from the child welfare system are maintained (with both domestic and international family members).

About the Migration and Child Welfare National Network

Formed in 2006, the Migration and Child Welfare Network is a national coalition focused on improving the child welfare system’s services to immigrant families. Membership to MCWNN is free and members learn from the experience and expertise of each other. Questions about joining MCWNN or about this toolkit can be referred to the Migration and Child Welfare National Network at CWMN@americanhumane.org. MCWNN funding partners are the Annie E. Casey Foundation, Casey Family Program, and the American Humane Association (funding and fiscal partner).

About the Toolkit


The toolkit is a work in process because of the fluctuating nature of both immigration and child welfare. Although this toolkit was written specifically for child welfare professionals, other agencies that work with immigrant clients may find this document useful. Please contact the MCWNN at CWMN@americanhumane.org with your feedback on how to improve this toolkit and make it relevant to child welfare practitioners.

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A Social Worker’s Toolkit for Working with Immigrant Families

Immigration Status and Relief Options

Objectives
- To understand the implications of immigration issues and how they impact outcomes in child welfare.
- To develop assessments to assist child welfare staff in gathering immigration facts and documentation.
- To understand the different immigration relief options available to assist a child or family member in resolving an immigration issue.
- To address issues of disparity and disproportionality due to a lack of understanding and familiarity of the dynamics of immigration.

Summary
The purpose of this toolkit is to provide public child welfare workers with a basic overview of the dynamics of the United States’ immigration system as it impacts their clients. The toolkit reviews basic immigration concepts and constructs such as:
- The Department of Homeland Security – its three branches and other relevant governmental entities
- Immigration status and classifications
- The migration experience
- Confidentiality
- The child welfare decision-making process (TDMs and FGDM), including cross reference to the child welfare flowchart that is available online at http://www.americanhumane.org/protecting-children/programs/child-welfare-immigration
- Immigration relief options

The toolkit also includes attachments with supporting website links:
Attachment 1: Vital Documents for Immigrant Children in the Child Welfare System
Attachment 2: Five Action Items to Facilitate Communication Between the Child Welfare System and Immigration Legal Counsel
Attachment 3: Screening Questions for Immigrant Youth: Determining Potential Avenues for Legal Status
Attachment 4: Summary of Immigration Relief Options Applicable to Youth in Dependency Proceedings
Attachment 5: Glossary of Immigration Terms
Attachment 6: For More Information

Disclaimer:
Please be advised that the information from this toolkit is intended only to provide a general overview on the intersection of immigration and child welfare. It should not be used as a substitute for legal or child welfare professional advice, which takes into account the specific circumstances of each situation. Immigration and child welfare policy and practice differ from state to state so it is important to always consult with your local immigration and child welfare experts. This toolkit is not intended to be used as a self-help guide, nor to provide legal advice.
About the US Department of Homeland Security (DHS)

Prior to September 11th, 2001 (9/11), immigration services used to be handled by one office, Immigration and Naturalization Services, commonly known as INS. After 9/11, INS was reorganized under the Department of Homeland Security (DHS). DHS has primary responsibility for administering and enforcing immigration laws and is divided into three branches:

1. **United States Citizenship and Immigration Services (CIS):** USCIS is responsible for processing and making decisions on all applications for immigration benefits, including applications for asylum, lawful permanent residency, and citizenship. It has the power to initiate removal proceedings, where appropriate, when it denies an application benefit (e.g. request for asylum).

2. **United States Customs and Border Protection (CBP):** CBP is responsible for inspecting visitors and cargo at ports of entry and tries to secure U.S. land, sea and air (airport) borders. The CBP concentrates on immigration violations at the ports of entry and borders, while the United States Immigration and Customs Enforcement (ICE) concentrates on violations of immigration and customs laws in the U.S. interior.

3. **United States Immigration and Customs Enforcement (ICE):** ICE is responsible for enforcement of U.S. immigration laws and concentrates the majority of its resources on “interior” enforcement (not at the border). ICE’s primary function focuses on apprehension of noncitizens and the initiation of removal proceedings against them. ICE also carries out the removal of noncitizens. ICE attorneys represent the U.S. government in removal proceedings.

While immigration courts oversee judicial decisions regarding the immigration process, CIS oversees the paper process (i.e., applications). CBP is charged with border entry issues and ICE is the enforcement arm of the Department of Homeland Security. For the child welfare system, the most relevant contact agency is CIS since this branch handles the Special Immigrant Juvenile Status (SIJS) applications submitted for some youth in foster care. Local CIS Immigration officials have discretionary authority regarding the assessment and interpretation of federal policies and practices. Therefore, it is important for child welfare agencies to develop professional relationships with their local USCIS agency staff.

**Understanding Immigration Status**

*NOTE: For a more detailed lexicon, see Appendix 5*

The term "immigration status" refers to a person’s classification under U.S. immigration laws. The following section outlines the basic classifications of immigration status. In many circumstances, a child will not know their immigration status or may have wrong information about their immigration status. Many adults also do not know their immigration status or characterize their status incorrectly.

A person’s immigration status will determine what immigration consequences he or she will face under the law, as well as what options, rights and privileges they are entitled to, such as whether they are subject to removal from the U.S. (i.e., deportation), and whether they are entitled to apply for citizenship or lawful immigration status. It also determines employment activities they can engage in while in the U.S., or whether they can be employed at all, and what access they have to U.S. public programs, resources and benefits.

Discerning a youth’s immigration status can be complicated and, as such, should be undertaken by an immigration attorney or advocate. Nevertheless, those who work in the child welfare system should be aware of the basic classifications of immigration status.

1. **U.S. Citizenship**

   U.S. citizenship, if validly acquired, may not be lost as a result of any violations. Citizens can never be deported or refused admission to the United States.
1a. **Citizenship by Birth, Parents or Naturalization**
A person can be granted citizenship in three primary ways: 1) birth in the U.S., 2) birth to a U.S. citizen parent(s), or 3) through the process of naturalization. Naturalization is the process whereby a person who has become a lawful permanent resident (i.e., greencard holder) applies to become a U.S. citizen. In most instances, a person must be a lawful permanent resident for five years before he or she is eligible to apply for citizenship. A person must also meet certain requirements before citizenship is granted (e.g. passing a civics test, establishing English proficiency, establishing that he or she is a person of "good moral character"). Certain acts can bar a person from becoming a U.S. citizen. If a person does not acquire citizenship by birth in the U.S. or through his or her parents, there is no way to obtain citizenship without first becoming a lawful permanent resident.

1b. **Acquired Citizenship**
Many persons born in other countries may unknowingly inherit U.S. citizenship from their parents under one of several provisions of nationality law. A person automatically acquires citizenship regardless of any violations (or other considerations) if the following four conditions are met:
- At least one parent is or becomes a U.S. citizen by birth or naturalization;
- The child is under 18;
- The child is a lawful permanent resident; and
- The child is in the legal and physical custody of the citizen parent at the time the parent becomes a U.S. citizen.¹

This provision of immigration law is not widely known; many people became U.S. citizens and are unaware of it. The best, most efficient way to obtain proof of acquired citizenship is to apply for a U.S. passport. See [http://travel.state.gov/passport/passport_1738.html](http://travel.state.gov/passport/passport_1738.html) for an application and information on how to do this.

2. **Noncitizens or "Aliens"**
A person who is not a U.S. citizen and falls within one of the categories listed below is a noncitizen. The immigration laws and immigration authorities often refer to such persons as "aliens." A noncitizen is always subject to the possibility of deportation/removal regardless of his or her circumstances.

2a. **Legal Permanent Resident or Greencard Holder**
A legal permanent resident (LPR) is not a U.S. citizen but is permitted to live and work permanently and legally in the U.S.² It is the most secure immigration status, short of being a U.S. citizen. However, LPRs are still subject to removal at any time if they violate immigration laws. Lawful permanent residents are given "greencards" which state "Resident Alien" across the top of the card (green cards actually are pink or white in color, not green). LPR status does not expire, although the greencard itself must be renewed every 10 years. LPR status can only be revoked by an immigration judge or by leaving the U.S. for such a period of time that it is deemed abandoned (generally more than one year).

2b. **Refugee or Asylee**
Both refugees and asylees (persons granted asylum) have been granted safe haven in the United States because they have established that they would suffer or have suffered persecution in their country of origin. Refugees are accorded refugee status abroad by a U.S. Consulate before relocating

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¹ A prior version of this provision required both parents to become U.S. citizens, or proof that the child was in the legal custody of the citizen parent if there had been divorce or separation. The new version of the law became effective on February 27, 2001. The courts have determined that it is not retroactive and that the person must have been under 18 on the effective date to benefit from the new provisions.

² There are two types of permanent residents: Legal Permanent Residents (LPR's) and Conditional Permanent Residents (CPR's). A conditional permanent resident (CPR) is a legal permanent resident that gains status through marriage to a U.S. citizen where the marriage is less than 24 months old at the time of adjudication of the application for residence. CPR status expires after two years and an additional petition must be filed to become a legal permanent resident.
to the U.S. Asylees come to the U.S. and request protection from persecution once they have arrived in the U.S. The decision on which immigrant group receives classification of refugee or asylee status is usually a policy decision by the U.S. State Department. For example, sometimes this is granted for immigrants from a country suffering a natural disaster or political persecution, but the status is generally time-limited and subject to change (e.g., Cuban and Vietnamese refugees, etc.).

Refugees and asylees are both entitled to apply for lawful permanent resident status after they have been in the U.S. for one year as a refugee/asylee. While in refugee or asylee status, these persons will be given work permits that state "Employment Authorization" across the top and are approximately the size of a driver's license. Despite the fact that they have established persecution (or threat of it), refugees and asylees are like any other non-citizens in that they are always subject to removal/deportation if they violate immigration laws.

2c. **Nonimmigrant Visa Holder**
A nonimmigrant visa holder is a person who obtained a temporary visa allowing them to enter and remain in the United States legally for a specific period of time under specific conditions. Some examples of nonimmigrant visas are tourist visas, student visas, temporary work visas (e.g., H1-B) and diplomatic visas. Nonimmigrant visa holders who violate the terms of their visa (e.g., students who drop out of school or tourists who stay longer than permitted) become "undocumented," meaning they no longer have lawful status in the U.S. and are subject to apprehension by immigration authorities and removal from the country.

3. **Undocumented Person (a.k.a. "Illegal Alien")**
An undocumented person is someone who does not have legal status under the immigration laws to be in the U.S. There are two categories of undocumented persons:
- A nonimmigrant visa holder (described above) whose visa has expired or been terminated (e.g., a foreign student who drops out of school or a tourist who overstays a visa); and
- A person who entered the United States illegally (i.e., crossed the border) and has never had lawful immigration status.

Just because a person is undocumented, however, does not mean that he or she will be removed. Many undocumented people are eligible to apply for legal immigration status through one of the avenues available under the immigration laws, such as someone who is undocumented but has married a U.S. citizen. An important note is that marriage to a U.S. citizen does not automatically confer any lawful status on someone. It simply entitles a person to apply for legal permanent resident status. This is a complex process involving numerous applications where in the noncitizen must prove various things. Various violations under immigration law can foreclose options for obtaining legal immigration status. Undocumented persons are always at risk of apprehension, detention and initiation of removal proceedings by immigration authorities.

**Work Permits or Employment Authorization Documents**
Immigration authorities issue work permits or employment authorization documents (EAD) of temporary duration to certain categories of noncitizens. Work permits do not confer legal status. The permit allows the person to work lawfully for the duration specified. Some examples of noncitizen categories for which work permits are issued include: (1) persons who are married to U.S. citizens and in the process of applying for their green cards based upon their marriage; (2) persons in the process of applying for, or who have been granted, asylum or refugee status; (3) persons who come from countries whom the U.S. has granted "temporary protected status" (e.g., persons from Honduras following Hurricane Mitch).

**About the Migration Experience**
Every immigrant has a unique story. Many of these tales include overcoming tremendous obstacles in order to establish themselves in the United States. Once finally here, interaction with the public child welfare system, and "the authorities,"

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*For the continuation, the text remains unchanged.*

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**A Social Worker's Toolkit: Immigration Status and Relief Options (3/26/09)**
will create a high level of anxiety, especially if it is perceived that it will jeopardize a tenuous stay in the United States. To provide relevant child welfare services to immigrant families, social workers need to be aware of this reality.

Many immigrant families are "mixed immigration" status families (i.e., younger children are U.S.-born citizens, older children are undocumented, parents are undocumented due to lapsed visitors' visa, etc.). While most children who enter the child welfare system, particularly young immigrant children, may be U.S. citizens, there may be others living in the household, including the parent(s), with undocumented immigrant status. Awareness of the immigration status of all the individuals within a family (i.e., parent, grandparent, siblings, extended relatives) is an important function of culturally competent child welfare practice. A critical prerequisite in the assessment is building trust with the family so they understand that obtaining the actual immigration facts is necessary for the assessment and service plan. It is important to emphasize that it will not be used to report the family to immigration for deportation.

Key immigration questions, which impact the family dynamics and the case planning, to consider include:
- Who in the family was born in the United States?
- Who are the naturalized U.S. citizens/American nationals?
- Who are the legal permanent residents?
- Who are the undocumented members of the household?
- Who are the identified extended families (here and abroad)?
- Who are the non-relative, extended families and what is their legal status?

Understanding the migration history for these children and family is important for the public child welfare staff for many reasons:
- Some immigration status is time limited and temporary, such as a student or tourist visa. Others are more permanent such as legal permanent residents, parolees, and asylees, subject to the condition of the entrance requirements and conduct of the immigrant during their tenure in the United States.
- The child or family may be legally present in the United States and may have lost or otherwise become separated from important documents such as their "green card" or an "asylum-granting" letter. A child may have been born in a foreign country and have one or more parents who are United States citizens, and they may be eligible for legal status through derived citizenship without knowing it.
- Some immigrant children may come through temporary (e.g. visitor) visas and overstay their visas and now be undocumented. Or, they may have come illegally through the border. These children may be staying with relatives or non-relatives.
- An increasing number may be "trafficked" illegally through the border for labor or sex trade.

Social workers need to determine a child and family's migration history and assess the risk factors for the child to remain with their family, in placement consideration, or eligibility to apply for benefits including special immigrant juvenile relief options as part of an overall case assessment.

Immigrant children enter the child welfare system with a variety of immigration statuses and their status will impact the different components of the case plans (i.e., child abuse referral, family maintenance, family reunification, permanency). When a child abuse referral is evaluated, a social worker must make an assessment based on a variety of safety and risk factors including how cooperative the family appears to be. This assessment will determine the next level of response, whether it is family reunification, family maintenance, informal supervision, etc. If a family appears to be uncooperative, perhaps it may be due to fear of discovery regarding their undocumented immigration status.

Understanding how immigration status may impact family dynamics will assist the social workers in making an appropriate determination for the disposition of the case.

Immigrants who are refugees or asylees have special protections and are eligible for services that are not available to other types of immigrants, such as cash, housing, and medical assistance upon arrival for up to eight months. When a refugee or asylee enters the child welfare system, their special immigration status needs to be documented and then integrated with local protocols for sponsoring agencies and relevant support systems (e.g., Catholic Charities and Lutheran Immigration and Refugee Services, amongst other sponsoring agencies). A sponsoring agency has a unique and special relationship to the refugee/asylee that undocumented immigrants do not have. For information about
contacting refugee or asylee services, please contact the federal contractor for refugee services, Bridging Refugee Youth and Children’s Services (BRYCS), a project of the United States Conference of Catholic Bishops (www.brycs.org).

In a U.S. climate that has become increasingly hostile to immigrants and where deportation fears prevent families from seeking services, it is important that the role of the public child welfare agency is clearly explained to immigrant families. Currently, no federal law requires state and local officials to affirmatively enforce federal immigration laws. Therefore, there is no duty under federal law for state or local officials to report noncitizens. However, state, county, or local policies may require officials to report suspected noncitizens. It is important that social workers become familiar with these policies and laws. In many states, however, enforcement of immigration laws against children and families in the child welfare system may violate provisions of state law and subject counties to liability. For example, most states have laws strictly limiting the release of information pertaining to minors because confidentiality has always been of paramount importance out of concern for the well-being of minors.

Confidentiality
In working with immigrant families, it is critical to underscore the agency’s commitment to resolving the immediate issues of protecting children from abuse and neglect. This mandate includes a certain confidentiality provision that is designed to promote and protect the working relationship and the child’s right to privacy. If the case were filed upon, issues of immigration status as it pertains to the case plan may need to be shared with the juvenile court system. For example, a child who is the dependent of the juvenile court based upon sexual abuse has the right to have this information remain confidential. In the event this information needs to be shared with an immigration agency, such as CIS, relating to certain immigration relief application options, this material needs to be reviewed with the juvenile court system to determine what can and cannot be disclosed to the immigration agency.

NOTE: Practice and protocols vary from state to state, and social workers should check with their agency’s legal counsel for clarification about their agency’s internal confidentiality guidelines. In general, the best practice to preserve confidentiality is to disclose the least amount of information necessary to support the immigration application. This can often be accomplished by working closely with an immigration advocate or legal counsel.

The Child Welfare Decision-Making Process (TDMs and FGDM)
NOTE: See Appendix 6 for more resources on TDMs and FGDM with immigrant families.
The essence of good child welfare service lies in the ability to make balanced decisions, which take into consideration the need for child safety, the benefit of keeping families together, and the importance of including the voice of family members and their support system at child welfare decision-making points. Team Decision Making (TDMs) and Family Group Decision Making (FGDM) are two commonly used tools in child protection and child welfare which are particularly relevant to good problem solving when there are overlaps of immigration issues impacting child welfare decisions. The following two case examples illustrate how TDM and FGDM can be helpful in immigrant cases.

• A social worker is trying to place a child with an aunt or uncle. The uncle’s brother lives with the family and is undocumented. In the process of doing a license clearance, the uncle’s brother is found to be undocumented and is in immigration removal proceedings. Had there been a TDM or FGDM conducted prior to placement, this issue may have been identified and evaluated to the benefit of all parties concerned.

• An undocumented teenager’s placement has failed. The social worker must look for another placement. In assessing additional placement options, the prospective new foster parent or relative placement are requesting from the social worker the agency’s plan for resolving the teenager’s immigration status. The youth’s permanency and placement plan is jeopardized unless there is resolution to his or her immigration status.

Assessment for Immigration Relief Options
NOTE: Please see Appendix 3 – Five Screening Questions for Immigrant Youth: Determining Potential Avenues for Legal Status and Appendix 4 – Summary of Immigration Relief Options Applicable to Youth in Dependency Proceedings.
Some immigrant children who have contact with the child welfare system are undocumented, without any lawful immigration status or papers. An undocumented youth will find it very hard to successfully transition to adulthood, because they cannot work legally or obtain a Social Security Card, a driver's license, or bank account and they could be deported to their country of origin if discovered by immigration authorities.

There are special immigration relief options available to assist undocumented children who have been abused or neglected to get lawful immigration status. Social workers may be the first, and only, persons an eligible immigrant child sees who are able to identify the issues and get help. If an immigration relief option is not identified early on, the child may forever lose the chance of obtaining legal immigration status in the U.S.

It is, therefore, important that social workers at least screen children for potential immigration relief. The screening necessary to determine eligibility for any of these various forms of immigration status, let alone the actual application process, is generally not recommended without intervention from a competent immigration advocate or attorney. However, basic familiarity with these avenues, as outlined below, provides a critical awareness that can enhance the capacity of the child welfare system to develop leadership and policies that can more effectively meet the needs of noncitizen youth. In particular, it can assist in efforts to work with local immigration-related community-based agencies as well as advocate that dependency attorneys be given training and resources to effectively screen their noncitizen clients and arrange for appropriate immigration advocacy to pursue their claims for lawful status.

The most effective way to ensure that noncitizen youth are screened for eligibility for any of the avenues outlined below is to build partnerships with local immigrant advocacy organizations who can assist the youth and ensure that the dependency attorney is addressing the youth’s immigration issues (and has the training and resources to do so). County agencies with expertise or with the assistance of a local community-based agency or attorney can also screen and file these applications themselves. It is crucial to identify the child as soon as possible. Securing vital documents and beginning the process early are often a big factor in a successful immigration relief application.

Peer-to-Peer Learnings
Many public child welfare agencies have developed protocols and guidelines to guide their social workers in appropriate interactions with immigrant families, foreign consulates, and community-based organizations/service agencies. All four sites listed below (New York, San Diego, Santa Clara, and Chicago) have developed protocols with the Mexican Consulates to enhance practice. These documents and many other samples are available at http://www.f2f.ca.gov/sampleMOUs.htm.

- IN NEW YORK CITY: Pursuant to Executive Order No. 41, signed by Mayor Bloomberg on September 17, 2003, the Administration of Children's Services (i.e., the public child welfare agency in New York City) stated that local government agencies are to "not inquire about a person's immigration status, among other things, unless that inquiry is needed to determine program, service or benefit eligibility or to provide City Services." ACS's child welfare services are provided to children and families without regard to immigration status. (See Immigration and Language Guides for Child Welfare Staff, Administration for Children's Services, http://www.f2f.ca.gov/res/immigration_language_guide.pdf).

- IN SAN DIEGO: As the world’s busiest border community, San Diego County Health and Human Services Agency (HHS) has developed an international liaison unit to work on issues related to immigrant children in the child welfare system. They coordinate social services with other agencies worldwide and cross-report child abuse allegations to other social services agencies internationally. They also conduct courtesy home evaluation for other countries. Samples of the internal forms from San Diego public child welfare such as a Memorandums of Understanding (MOUs) with the Mexican consulate, screening and assessment tools, etc., are available at http://www.f2f.ca.gov/sampleMOUs.htm.

- IN SANTA CLARA COUNTY, CA: A guidebook for child welfare workers was issued by the Santa Clara Department of Family and Children's Services (DFCS). The first page of the guidebook clearly explained that "child welfare services are provided to children and families without regard to immigration status. DFCS does not conduct
investigations into the immigration status of children and families brought to the Agency's attention; however, learning a family member's immigration status may be necessary in determining eligibility for services, may enable DFCS to obtain federal reimbursement for the provision of child welfare services including preventive and foster care services, and could indicate the family's eligibility to receive other services. Therefore, DFCS can only ask clients about immigration status if a program or service to which DFCS wishes to refer that client makes eligibility determinations based on immigration status or when an inquiry is necessary for reimbursement purposes. (See Immigration and Naturalization Resource and Practice Guide, Santa Clara County Department of Family and Children's Services, http://www.2f.ca.gov/res/ImmigrationGuidebook.pdf).

- **IN CHICAGO, IL:** A policy guideline was issued by the Illinois Department of Children and Family Services (DCFS) explaining immigration/legalization services for foreign-born DCFS wards. Detailed instructions regarding eligibility, referral to the Immigration Services Unit and requirements for completing the Legal Permanent Resident Application are included in their policy guidelines: http://www.2f.ca.gov/res/pdf/PolicyGuideImmigration.pdf.

**Tips:**

- It is important to gather the full name of all members of the family, including correct spelling and accents. Many Latino families have common last names and require the full middle/first names to do an accurate relative search.

- Social workers should never assume a child's or family's immigration status without thorough assessment. How well someone speaks English, for example, is not reflective of their immigration status. A child who has been living in the U.S. since they were a young age may speak perfect English and be undocumented while an elderly person without any English skills may be a legal permanent resident.

- In cases involving domestic violence, often the individual with the "green card" or legal status will use their sponsorship of the non-legal resident as a "power dynamic" against the victim. For that and other reasons, victims do not always readily admit (or even recognize) their victimization.

- Take into account language barriers. The language in which the child welfare decision-making process (e.g., TDMs or FGDMs) is held can be significant. For example, if the family speaks Spanish and the TDM is held in English with a Spanish-speaking interpreter, it is important to consider what is implied based on the language used for a TDM. It is also important to understand the language needs of the whole family, not just the parents (i.e. the child, relatives, etc).

- One issue with using interpreters in child welfare cases is that although they may be able to translate the language, they may not understand child welfare concepts. Access issues for non-English speakers goes beyond language, and also includes the culture, values, and faith of the immigrant community, as well as understanding events and experiences that may have an impact on the family's mental, physical, and emotional state. Community-based agencies could be engaged to help support immigrant families during the child welfare process.

- For counties that normally do not deal with immigration issues and no protocols have been developed in working with immigrant families, there are national clearinghouses to assist in finding competent advice regarding immigration legal issues (see Appendix 6 "For More Information," which includes referrals for national organizations which provide legal counsel, such as the Immigrant Legal Resource Center, American Bar Association Commission on Immigration, CLINIC and others).
APPENDIX 1

Vital Documents for Immigrant Children in the Child Welfare System

When an immigrant child becomes involved with the child welfare system, his or her consulate should be notified and are often able to assist with requests for assistance with vital document searches, home studies, parent locators, criminal record clearance, and other related services.

To Obtain an Original Birth Certificate:

- Request in writing a birth certificate from the consulate or embassy of the child's country of origin. Include as much detailed information about the child's birth as possible, such as date of birth, names of parents, place of birth and province, town and name of hospital. When applicable, send fees payable to the consulate/embassy of the child's country of origin for the birth certificate or the identification card.

- In some states, such as California, if a birth certificate cannot be obtained for an unaccompanied child, the child's immigration attorney can request a certificate referred to as a “delayed registration of birth document” from the state, which is used in lieu of a birth certificate. The process involves a relative taking an affidavit verifying the date and location of birth. A baptism certificate can also be used in some circumstances.

- International Social Services Agency – USA (ISS-USA) is a nonsectarian, nonprofit international social work agency. It is composed of an international network of over 150 national branches, affiliated bureaus and correspondents, with its General Secretariat in Geneva. ISS-USA has the federal contract with the State Department to provide repatriation services for American citizens. Their organization is available to assist family courts by responding to requests made by judges, lawyers, guardians ad litem, and child welfare agencies. [http://www.iss-usa.org](http://www.iss-usa.org)

To Obtain a Passport:

- To obtain a passport, a request must be submitted in person and all of the listed documents below must be presented at the time of the appointment:
  - a letter from the child welfare staff requesting a passport;
  - an original birth certificate;
  - a school identification or an identification card from the country of origin or issued by the consulate;
  - a court order or findings that support dependency;
  - the appropriate fees to pay for the passport (contact the consulate for the specific amounts and type of payment accepted); and
  - if the child has no form of identification, the child welfare staff must write a letter providing the information about the child, with a photo attached to the letter.

- Country-specific U.S. embassy information in countries other than the U.S is available on the U.S. Department of State’s websites of the U.S. Embassies, Consulates, and Diplomatic Missions - [http://www.usembassy.gov/](http://www.usembassy.gov/)

- Please note that care and sensitivity should be taken prior to contacting a Consulate or Embassy due to the potential impact this inquiry may have upon the client and his/her family system who may still reside in the country of origin. For example, when applying for a U-Visa, cooperation with law enforcement in the U.S. may cause reprisals to remaining family residing in the country of origin. Best practice is to get prior permission from the client, of consenting age, of any possible implications of contacting a consultant or embassy prior to initiating contact.
APPENDIX 2

Five Action Items to Facilitate Communication between the Child Welfare System and Immigration Legal Counsel


This document was written to assist frontline child welfare staff, such as the attorney of record, guardian ad litem, and social worker in working with immigration legal counsel who may not understand the dependency system. It is important that there is coordination and clear understanding between all parties involved in the case so mishaps, such as double or inappropriate filings, do not occur. What is the petition against the parent? What is the case plan? Before any action is filed with immigration officials, all parties need to understand their roles and how they relate to the child welfare/juvenile court case. This includes:

1) Knowing the referring agency/party, and understanding their relationship to your client within the context of the child welfare/juvenile court process. Is it a parent? Is it a friend? Is it a social worker? Who is making the referral?

2) Learning about the specifics of the child welfare case/service plan for the child immigrant victim, siblings, and parents, including key juvenile court review dates and proceedings.3

3) Actively participating in any joint immigration planning processes that may impact the child welfare case/service plan, especially as it relates to placement, family maintenance, family reunification, or independent living for emancipated minors. For example, Special Immigration Juvenile Status (SIJS) is only available for those children where family reunification has failed and the child is being placed in a permanency modality. It is important that the immigration attorney not inadvertently jeopardize the immigration status of the parent or siblings with an inappropriate SIJS filing.

4) Making sure to connect with the attorney of record for the client within the juvenile court proceedings and inquiring about any relevant court orders and/or warrants. Some common types of warrants are failure to pay child support and restraining orders.

5) Coordinating with the child welfare case manager (usually the caseworker) in the development of a case specific immigration safety plan, emergency options, securing vital documents and resources that are needed to support the immigration relief activities. Some examples of vital documents that need to be secured include birth, death, divorce, and baptismal certificates.

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3 Children and families in the child welfare system generally have a case and/or service plan that is specific to the needs of the family. The plans are based upon child welfare mandates and/or reviews, findings, and orders by the dependency and/or juvenile court. The case/service plan can be the same or in some agencies the case plan is a more global desired outcome with separate service plans for each family member or part in the case. For example, an immigration issue would emerge as an action item within the over all goal of “independent living.” The case specific service plan would be to apply for SIJS. The global case plan is to work with other family members for a “long term placement.”
Screening Questions for Immigrant Youth: Determining Potential Avenues for Legal Status

By Angie Junck, Immigration Attorney, Immigrant Legal Resource Center, www.ilrc.org (January 2009)

1. Is the child a U.S. citizen without knowing it?

   A. Anyone born in the U.S. or Puerto Rico is a citizen, and anyone born in Guam, American Samoa or Swain Island is a national who can't be deported.

   B. If the person is born outside the U.S., ask two threshold questions to see if the person automatically is a U.S. citizen. If the answer to either might be yes, refer for immigration counselling.
   • Was there a U.S. citizen parent or grandparent at the time of the person's birth?
   Or,
   • Before the person's 18th birthday, did both of these events happen (in either order): the child became a permanent resident, and at least one natural or adoptive (but not step) parent having some form of custody over the child is or became a U.S. citizen. (Tip: Encourage the parent to become a naturalized U.S. citizen!)

2. Is the child currently under dependency court jurisdiction where the court has ruled that (a) the child is eligible for long term foster care, (b) cannot be reunified with either parent because of abuse, neglect or abandonment, and (c) that it would not be in the child's best interest to be returned to the home country? If the answer to any of these questions is "yes," the child may qualify for Special Immigrant Juvenile Status (SIJS).
   • IMPORTANT: The child must stay in the jurisdiction of the dependency court until the SIJS application is adjudicated, so watch out for youth aging out of the system.
   • NOTE: As of March 23, 2009, a new law requires that the court rule that reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law.

3. Has the child been abused by a U.S. citizen or permanent resident spouse or parent, including adoptive, natural or stepparent? Has the child's parent been a victim of domestic violence by his/her U.S. citizen or permanent lawful resident spouse? The child may qualify for Violence Against Women Act (VAWA) relief.
   • Child doesn't need to be under current court jurisdiction, and may be reunited with the other parent.
   • Child will need to show "good moral character."

4. Has the child been a victim of a serious crime in the United States or of human trafficking? Is the child willing to cooperate with authorities to investigate or prosecute the offense? The child may qualify for the S-, T-, or U-visas.

5. Does the child have a U.S citizen or permanent resident parent or spouse who is willing to petition for them? The child may qualify for a family immigration petition.
   • To immigrate through an adoptive parent the adoption must be completed by the child's 16th birthday.

6. Does the child come from a country that has recently experienced civil war or natural disaster? Does the child fear return to his or her home country because of persecution? The child may qualify for other forms of relief such as asylum and temporary protective status.
Summary of Immigration Relief Options Applicable to Youth in Dependency Proceedings


1. U.S. Citizenship: Is the youth already unknowingly a U.S. citizen, or could he or she become a citizen if a parent naturalized?

Some people who were born outside the United States automatically inherited U.S. citizenship at birth from their U.S. citizen parents, often without knowing it. If at the time of a person's birth, his or her parent or even grandparent was a U.S. citizen, the person may have inherited citizenship and should obtain immigration counsel to analyze the laws governing "acquisition of citizenship."

A second way that many persons are citizens without knowing it is through "derivation of citizenship." A child automatically becomes a U.S. citizen if, before they reach the age of 18, the following three events happen in any order: (1) he or she is a permanent resident, (2) at least one of his or her parents becomes a U.S. citizen, and (3) he or she lives in the United States in that parent's legal and physical custody.

Where a child is a permanent resident, encourage a parent who has custody to naturalize and become a U.S. citizen. If this occurs before the child's 18th birthday, the child will become a U.S. citizen automatically without having to meet any other requirement and will be made safe against immigration consequences of any adult convictions that he or she may receive in the future.

2. SIJS and VAWA Relief - Was the Youth a Victim of Family Violence or Abuse?

Children are eligible for permanent residency through Special Immigrant Juvenile Status (SIJS) if they are under the jurisdiction of a juvenile court (including a delinquency court or probate guardianship) and the court has made a finding that it cannot reunite them with either of their parents due to abuse, neglect or abandonment. Instead the court might place the child in a foster home, foster care group home, or other rehabilitative setting. It is not necessary for the court to formally terminate the parents' rights. The immigration status of the parents is irrelevant. The SIJS application must be adjudicated while the child remains under juvenile court jurisdiction, so it is imperative that social workers, dependency attorneys and immigration advocates screen children for possible eligibility for relief early in the process. The juvenile court judge will have to sign an order making the required findings. One tactic is to encourage dependency until age 21 in states that allow this option.

To go through the SIJS application process, a minor needs to submit two different applications - an initial SIJS application followed by an application for adjustment of status (the process to become a lawful permanent resident, i.e. green card holder).

The benefits of SIJS are:

- SIJS may be the only means for a minor to ever obtain lawful permanent resident status, which will ultimately get the minor on the path to becoming a U.S. citizen.
- Many of the grounds of inadmissibility and deportability (i.e., the basis for deporting or denying immigration benefits to non-citizens) are often waived for SIJS applicants.

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4 Immigrant Legal Resource Center has free handouts on the forms of immigration relief for children on their website. The "Manual on Immigration Law for Family, Dependency and Delinquency Courts" covers all forms of relief and immigration factors in these proceedings. "Special Immigrant Juvenile Status" is a comprehensive manual on how to identify and analyze a case and submit the application. Go to www.ilrc.org and click on "online resources" and "special immigrant juvenile status." Materials on VAWA and the U Visa are also available. Click on "online resources" and "VAWA and U visa relief."
- Application for SIJS allows the minor to remain in the U.S. and be temporarily protected from deportation, until a determination to grant or deny the application is made.
- The application for adjustment of status can be submitted simultaneously with the application for SIJS.
- Employment authorization can be requested as soon as the application for adjustment of status is filed. This will allow a minor to work until application is adjudicate, obtain official picture identification, and receives a social security number.

There are some changes to the SIJS requirements that went into effect on March 23, 2009. On December 23, 2008, the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008, H.R. 7311 was signed into law. This new law makes some important changes to certain SIJS requirements and procedures to expand protections for noncitizen children and youth. Under this new law, the court order needed to file an SIJS application is more lenient. It will require that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law and that it is not in the best interest of the child to return to his/her home country. The current interpretation of the TVPRA is that a child also will no longer have to stay in the jurisdiction of the dependency court until the entire immigration application is adjudicated. No child can be denied SIJS as long as he/she was a child (under 21) when he/she applied.

A child is eligible for permanent residency under the immigration provisions of the Violence Against Women Act (VAWA) if they have been “battered or subject to extreme cruelty” (including purely emotional abuse) by a U.S. citizen or permanent resident parent or stepparent. The parent or stepparent must have the required immigration status, but there is no requirement that the child remain under juvenile court jurisdiction. In contrast with SIJS, under VAWA a child can reunite with one parent. For example, a child could live with the undocumented mother (who might also be eligible for VAWA) and apply for VAWA based on abuse by a U.S. citizen or resident stepfather. VAWA is also available due to abuse by a citizen or permanent resident spouse as well as to a child of a parent who has been a victim of domestic violence by his/her U.S. citizen or permanent resident spouse.

Children who were victims of serious crime or human trafficking but do not come within the SIJS or VAWA provisions might qualify for the U and T visas; see next section.

3. T- and U-Visas - Was the Child a Victim of Human Trafficking, or of a Serious Crime?

Often children charged in delinquency proceedings are themselves victims of serious crime. Child and adult victims of certain serious crimes, who cooperate with authorities in investigating or prosecuting the crimes, may be eligible for visas designed to protect victims and provide them with lawful status. The so-called “T” and “U” visas are temporary “nonimmigrant” visas, but the person can apply for permanent residency (a greencard) after 3 years in “T” or “U” status.

The “U” visa is available to noncitizens that suffer substantial physical or mental abuse resulting from a wide range of criminal activity, including assault, domestic abuse, incest, etc. The applicant (or, if the applicant is under age 18, his or her parent, guardian or next friend) must possess information concerning the criminal activity and must have been helpful, currently be helpful, or be likely to be helpful in the investigation or prosecution of the criminal activity. In order to qualify for the U-Visa, a judge, prosecutor, investigator or similar official must sign a certification regarding this requirement.

The “T” visa is more specialized. It is available to victims of severe forms of trafficking in persons (i.e., human trafficking). This includes (a) trafficked persons who were forced or defrauded into performing sex acts, or while under the age of 18 were induced to perform such an act, and (b) trafficked persons who were coerced or defrauded into involuntary servitude. The person must have complied with reasonable requests for assistance in investigation or prosecution of the offense (unless they are under the age of 16), and must show they have suffered extreme hardship. NOTE: In both T- and U-Visa relief action, be sensitive to the parent’s or relative’s situation in the home country. Assess the implications of any unintended issues related to harassment and
unintentional consequences. For example, placement issues abroad may bring attempts of extortion or kidnapping.

4. **Family Immigration - Does the Youth Have a Willing Citizen or Permanent Resident Spouse or Biological, Step, or Adoptive Parent?**

United States citizens and lawful permanent residents can help certain family members immigrate to the United States (i.e., become a permanent resident) by submitting a family visa petition for them. Children and spouses of citizens immigrate quickly, while children (unmarried) and spouses of permanent residents may have to wait for some years. To qualify as a stepchild, the marriage creating the step relationship must take place before age 18. To qualify as a natural child of a father, the father must acknowledge the child.

5. **Asylum and Temporary Protected Status - Does the Child Fear Return to the Home Country Based on Political, Economic or Other Factors?**

People who fear returning to their home country because of an individualized fear of persecution can apply for asylum or withholding of removal. A person who fears torture by the home government for any reason can apply for benefits under the *Convention Against Torture.*

Juveniles applying for asylum or withholding are entitled to specific protections and evidentiary rules under the government’s “*Guidelines for Children’s Asylum Claims.*” Formerly, the law required applicants to apply for asylum within one year of entering the United States, unless they were prevented from applying by extreme circumstances or conditions that affect their eligibility for asylum have changed. Presumably situations involving domestic violence could justify tolling that requirement. As of March 23, 2009, however a new law in the * Trafficking Victims Protection and Reauthorization Act (VPRA)* of 2008 eliminates the one-year bar to apply for asylum. The one-year bar does not apply to withholding or Convention Against Torture.

People from certain countries that have experienced devastating natural disaster or civil strife may be eligible for *Temporary Protected Status (TPS),* which provides temporary permission to be in the United States and temporary work authorization. In recent years the United States has designated countries such as Angola, Bosnia-Herzegovina, Burundi, El Salvador, Guinea-Bissau, Honduras, Kosovo, Liberia, Montserrat, Nicaragua, Sierra Leone, Sudan, and Somalia for TPS or similar relief. Applicants need not prove that they will be singled out for persecution. They need only prove that they are a national of a country that currently is designated TPS, and has been in the United States since a required date.

6. **Cancellation of Removal for Permanent Residents - Is the Youth a Long-Term Permanent Resident?**

Noncitizen youth who have lawful permanent residency and end up in removal proceedings may be eligible to be granted a cancellation of removal (CoR) by the immigration judge. To apply for CoR, the noncitizen must have been a permanent resident for at least five years and have resided in the United States for seven years since being admitted in any status. Every minor who is a permanent resident also should be screened for possible derivative citizenship. As described above, if one parent with custody of the minor is able to naturalize to U.S. citizenship before the minor’s 18th birthday, the minor automatically becomes a U.S. citizen and will be free of concerns about immigration.

**Cancellation of Removal for Non-Permanent Residents - Does an Undocumented Youth Have a Long History in the U.S. and Close Citizen or Permanent Resident Relatives?**

Noncitizens who have lived in the United States illegally for ten years or more and who are put into deportation/removal proceedings can apply to the immigration judge for cancellation of removal (CoR), if they have a parent, spouse or child who is a U.S. citizen or permanent resident and this qualifying relative would suffer extraordinary hardship if the person were deported. If the immigration judge as a matter of discretion decides to cancel the removal, then the applicant will become a permanent resident. Cancellation is a highly discretionary relief, and consultation with an expert immigration practitioner is required.
Glossary of Immigration Terms

Alien: A term often used in government documents referring to a foreign national who is not a United States citizen.

Asylee and Refugee: A person fleeing his or her country of origin because of political, religious, or physical persecution without the option to return to the country of origin. Asylees and refugees are in the U.S. legally, often have services that are not available to other types of immigrants, and have the right to work in the U.S. without a separate employment authorization card. They are provided this designation by DHS. Refugees receive their designated status prior to resettlement in the U.S. while asylees are granted their designation after their arrival in the U.S.

Arrival-Departure Card (also known as Form I-94, Arrival-Departure Record): The Customs and Border Protection official at the port-of-entry gives foreign visitors (all non-U.S. citizens) an Arrival-Departure Record (small white card) when they enter the U.S. Recorded on this card are the immigrant classification and the authorized period of stay in the U.S. This is either recorded as a date or the entry of D/S (meaning “duration of stay”). It is important to keep this card safe, kept with their passport, because it shows the length of time foreign visitors are permitted and authored by the Department of Homeland Security to stay in the U.S.

Certificate of Naturalization: A document issued by the Department of Homeland Security as proof that a person has become a U.S. citizen (naturalized) after immigration to the United States.

Deportation (i.e. immigration removal): This is the process whereby an immigration judge orders an immigrant removed from the U.S. If an immigrant is deported, this person could be barred from returning to the U.S. for many years.

Disparity and Disproportionality: Disparities refer to the gaps between racial/ethnic groups on specific indicators or in specific circumstances (e.g., access to health care). Disproportionality refers to the level of racial/ethnic group representation on specific indicators as compared to a group's level of representation in the population. Disproportionality is usually caused by disparities in treatment. This definition is from the "Race Matters" Facilitator’s Guide. More information about Race Matters is available on the Annie E Casey Foundation website, www.aecf.org.

Dual Citizenship: The United States recognizes dual citizenship in some circumstances. For guidance on relative searches and placement, documentation searches, etc., the public child welfare agency should contact the consulate general of the child's home country when a child enters the child welfare system with dual citizenship.

Dual Jurisdictional Status: This is a general child welfare term to denote the population of children who may be in either the child welfare dependency system or the juvenile delinquency system. Many of these children transfer into each system, depending on the circumstances and behavior of the child. These dual jurisdictional circumstances may impact an immigration matter. For example, the child welfare agency may be filing SIJS for a teen client and the client is arrested for a criminal activity such as drugs or theft and referred to juvenile delinquency. Once the criminal matter is brought up to immigration court, this may impact the outcome of the petition. Also, many pro bono immigration attorneys may be more hesitant to accept these cases.

Employment Authorization Document (EAD): An EAD is a work permit given by the immigration agency. An immigrant youth may be eligible for this card after applying for certain types of immigration relief. The card allows the immigrant to work in the U.S. legally until the expiration date.
First Generation Immigrant: A person born in a country of origin and is the first person in his or her family to move to and reside in the United States or another host country. A second-generation immigrant is a person born in the United States who is the child of parents who are first generation immigrants.

Human Trafficking: Human trafficking is the recruitment, transportation, harboring, or receipt of people for the purposes of slavery, forced labor (including bonded labor or debt bondage), and servitude.

Legal Permanent Resident (i.e., “green card holder”): A person who has legal documentation allowing him or her to live as a resident in the U.S. Lawful permanent residents are still citizens in their home country, but possess many of the same rights as a U.S. citizen. However, he or she cannot register or vote and until gaining his or her U.S. citizen status, remain deportable. He or she may be required to fulfill specific residence obligations to retain his or her status. In some cases, permanent residency may be conditional on a certain type of employment or maintenance of a business. NOTE: Selective Service is a compulsory registration for military service, which is required of all male residents ages 18-26, including U.S. citizens, legal permanent residents, and undocumented males.

Mixed Status Family (or “blended” status families): It is very common for immigrant households to have members with different levels of immigrant status, such as an undocumented parent(s) and older sibling(s) and younger children born in the U.S. with citizenship. The household may also include recently arrived relatives or visiting family members on a tourist or student visa.

Naturalized United States Citizens: Naturalization is the process through which an immigrant becomes a U.S. citizen. Generally, an immigrant must first be a legal permanent resident for five years before applying for naturalization, but some are eligible after three years through marriage to a US citizen. The process includes a moral character interview, English language exam, and a civics exam, which tests knowledge of history and government. Naturalized citizens possess the same rights and responsibilities as native-born citizens and cannot generally be deported. In some cases, lawful permanent resident children can become citizens automatically if their parents naturalize before the children turn 18. Lawful permanent residents 18 years and older must demonstrate five years of “good moral character” before seeking to naturalize.

Office of Refugee Resettlement (ORR): Under the U.S. Department of Health and Human Services – Administration of Children’s Services, the purpose of ORR is to provide assistance and support to refugees and asylees. The Unaccompanied Refugee Minor (URM) Foster Care Program is a program of ORR. ORR identifies refugee children who are eligible for resettlement in the U.S. but do not have a parent or a relative available and committed to providing for their long term care as eligible for this program. The refugee children are placed within a network of foster care services and programs, administered by the U.S. Conference of Catholic Bishops and Lutheran Immigration and Refugee Service. These two lead agencies conduct several important functions including identifying eligible children in need of URM services; providing technical assistance in the reclassification process; determining appropriate placements for children among their networks of affiliated agencies; and conducting training and assistance on URM services. Reunification of these children with their parents or other appropriate adult relatives is encouraged through family tracing and coordination with local refugee resettlement agencies. Refugee children who enter the U.S. with family but experience a family breakdown may also be eligible to participate in the URM program.

Public Charge: "Public charge" is a term used in immigration law that describes persons who cannot support themselves and who depend on benefits that provide cash (such as cash welfare or social security income) for their income. Non-cash assistance such as food stamps will not cause a public charge. Depending on their immigration status, DHS or the State Department consular officers abroad can refuse to let someone enter the U.S., re-enter the U.S., or become a legal permanent resident if they think they will not be able to support themselves without these benefits in the future. Public charge is not an issue for immigrants who are applying to become a citizen or for refugees or persons granted asylum.

PRUCOL (Permanently Resident Under Color of Law): The U.S. Citizenship and Immigration Services (USCIS) do not recognize PRUCOL as an immigration status; this category was created by the courts and is a public benefits
eligibility category. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 abolished the PRUCOL doctrine by creating a new statutory definition of "qualified alien." While the PRUCOL expression remains in many Federal, State, and City statutes and regulations, there are now only a few exceptions clearly specified by statute. An alien who is not a "qualified alien" is not eligible for any federal public benefit.

Qualified Alien: This term is often used in reference to eligibility for certain public benefits available to immigrant clients. The term is not a separate immigration category; rather, it refers to immigrants in many categories who are not qualified for certain federal government benefits but may be qualified for state or local government benefits.

Sanctuary City: This is a term given to U.S. cities and some states that follow certain practices that protect illegal immigrants, such as not allowing municipal funds or resources to be used to enforce federal immigration laws. These cities/states have adopted "sanctuary" ordinances banning city employees and police officers from asking people about their immigration status. The designation has no legal meaning.

Special Immigrant Juvenile Status: A special immigration relief option for abused, abandoned, or neglected children which is dependent upon the Family Court ordering that it is not in the young person's best interest to return to their home country. This status then qualifies them for long-term foster care or guardianship. This special designation must be achieved prior to the child "aging out" of the foster care system (age 18 in most states and can be extended to 21 in certain states). There are changes to this requirement by the Trafficking Victims Protection and Reauthorization Act (TVTPRA) of 2008, H.R. 7311, effective March 23, 2009. See Appendix 3.

T-Visa: A T-Visa may be available to a person who came to the U.S. as the victim of a severe form of human trafficking. This could mean that the person was brought into the country and then forced to pay off a debt, work, or perform sexual acts again his or her will. The applicant will need to help the police with the case against the trafficker in order to be eligible. A T-Visa is temporary, but can lead to permanent status.

U-Visa: A U-Visa may be an option for a victim of a serious crime in the U.S. It is intended to help overcome the victim's fear of immigration detection, encourage reporting and other cooperation with investigation or prosecution of crimes. It is also designed to protect vulnerable victims, assist domestic violence victims and other crime survivors. The applicant must get a law enforcement certification and assist in the investigation and/or prosecution of the crime.

Undocumented Immigrant (i.e. Illegal alien): A person who comes to the live in a host country without legal documentation. They may have entered the U.S. unlawfully or may have an expired or revoked visitor visa. Undocumented immigrants do not have permission to work and are not eligible for most health and social services programs. They may be eligible to apply for lawful immigration status through special relief options, or become a lawful permanent resident through the sponsorship of a family member or employer.

United States Citizenship and Immigration Services (USCIS, formerly known as Immigration and Naturalization Services or INS): USCIS is charged with processing immigrant visa petitions, naturalization petitions, and asylum and refugee applications, as well as making adjudicative decisions performed at the service centers, and managing all other immigration benefits functions (i.e., not immigration enforcement) performed by the former INS. There are many USCIS field offices located throughout the country where interviews are held for potential immigration options.

Violence Against Women Act (VAWA): A collection of federal laws, designed to protect abused immigrant spouses and children who are often afraid to seek police protection because the abuser often uses their legal status against the victim to coerce them and/or threaten them, especially with deportation. VAWA allows the victim to "self petition" separately from the USC/LPR spouse.

Visa: A citizen of a foreign country wishing to enter the U.S. generally must first obtain a visa - either a nonresident visa for temporary stay, or an immigrant visa for permanent residence. Visa applicants will need to apply overseas, at the U.S. Embassy or Consulate, generally in their country of permanent residency. The type of visa needed is defined by immigration law, and relates to the purpose of the travel.
Bridging Refugee Youths and Children's Services (BRYCS) is a national technical assistance project funded by the Office of Refugee Resettlement (ACF/DHHS) and a project of the United States Conference of Catholic Bishops. BRYCS provides one-on-one consultations, training and conference presentations, and the only website and Clearinghouse focused specifically on migration and child welfare. The searchable on-line Clearinghouse has over 2,000 resources and serves a number of audiences: practitioners, researchers/policymakers, educators, program managers/administrators, and refugees/immigrants. BRYCS has produced 35 publications, collected 60 "promising practices," and written dozens of Spotlight articles, all on migration and child welfare topics and available for free download at www.brycs.org.

Family to Family—A List of Internal Forms Developed by and for Public Child Welfare Agencies is available on the California Family to Family website, under "Immigrant in Child Welfare/Sample Forms from Public Child Welfare Agencies," including MOUs with the Mexican Consulates, internal immigration status assessment forms and SIJS checklists. http://www.f2f.ca.gov/sampleMOUs.htm

Lutheran Immigration & Refugee Services (LIRS) is one of the two refugee resettlement agencies authorized by the U.S. Dept of State to arrange foster care placement for unaccompanied refugee minors, primarily through their 25 affiliated child welfare programs across the country. www.lirs.org

The Language Portal: A Translation and Interpretation Digital Library, developed by the National Center on Immigration Integration Policy/Migration Policy Institute (MPI) is a searchable digital library of close to 600 resources relating to the use of language access services in social-service and public safety agencies. Geared towards government administrators who want to make their services available to limited English proficient individuals, the Portal provides sample documents, service models, hourly translation and interpretation rates for different languages in key U.S. regions, pay differentials for multilingual staff, and sample translated documents. http://www.migrationinformation.org/integration/language_portal/

Resources in Spanish section of the Child Welfare Information Gateway website
The Resources in Spanish section of the Child Welfare Information Gateway website, which replaces the En Español section, is now live. Designed for child welfare professionals who work with Spanish-speaking families, the section includes a dictionary of Spanish and English terms for child welfare, as well as topically organized resources on Child Abuse and Neglect, Preventing and Responding to Child Abuse and Neglect, Supporting and Preserving Families, Out-of-home Care, and Adoption. www.childwelfare.gov/spanish

Information on Team Decision-making and Family Group Decision-making with Immigrant Families:

Using Family Group Conferencing to Assist Immigrant Children and Families in the Child Welfare System
By Michelle Howard, MS, LPC, and Lara Bruce, MSW, American Humane Association (2008)

Immigration Dynamics in Team Decisionmaking Meetings—A Peer to Peer Discussion
California Family to Family Convening (November 3, 2006/San Francisco)
http://www.f2f.ca.gov/res/pdf/ImmigrationDynamicsTDMwkshpNov06.pdf

Family and Community Centered Child Welfare Practice with Refugees and Immigrants
Bridging Refugee Youth & Children's Services (BRYCS)—US Conference of Catholic Bishop (Fall 2007 Spotlight).
Training Resources on Immigration Relief Options:

CalSWEC (California Social Work Education Center), University of California, Berkeley, School of Social Work, has developed a training resource, "Legal Residency for Juveniles within the Child Welfare System: Special Immigrant Juvenile Status and the Violence Against Women Act." This brief training resource, developed for supervisors and managers, is designed to inform child welfare staff about SIJS and VAWA and the applicability of these laws to undocumented immigrant youth who are in the child welfare system. There is also a separate curriculum resource for child welfare workers and includes the following components: learning objectives, Title IV-E competencies, lesson plan, training activities, and supplemental handouts.
http://calswec.berkeley.edu/CalSWEC/OtherTraining.html

Special Immigrant Juvenile Status (SIJS) Caseworker's Toolkit for Children
Developed by the Children's Services Department of the U.S. Conference of Catholic Bishops / Migration and Refugee Services, this toolkit is primarily developed for foster care caseworkers assisting children in federal custody to ensure that SIJS-eligible children receive the assistance and case monitoring they need during the SIJS application process.
http://www.brycs.org/sijs/default.htm

Obtaining Special Immigrant Juvenile Status (SIJS) for Dependents and Wards of the Juvenile Court (April, 2008)
Written by the California Foster Care Ombudsman's program, this three-page fact sheet includes information about SIJS eligibility, process, and further resources.
http://www.f2f.ca.gov/res/pdf/ObtainingSpecialImmigrant.pdf

Benefits for Immigrant Victims of Trafficking, Domestic Violence and Other Serious Crimes in California
Produced by the California Immigrant Policy Center in June of 2008, this guide provides advocates, victims of trafficking and domestic violence, and their families with information on how to gain access to the resources that will help them find treatment, support, and aid to cope with the residual effects of abuse.

Immigration Legal Resources:

ASISTA is a collaborative between four nationally recognized legal experts who work to provide technical assistance (TA) on the intersection between immigration and domestic violence law. ASISTA maintains an online clearinghouse of resources, samples, and best practices and is physically located in Des Moines, Iowa. Their website includes the latest information on the Violence Against Women Act (VAWA) and other immigration relief options for victims of domestic violence. For more information, go to http://asistaonline.org/

American Bar Association (ABA) Commission on Immigration was established in 2002 and directs the ABA's efforts to ensure fair treatment and full due process rights for immigrants and refugees within the United States. Publications available from the ABA Commission on Immigration include, "Standards for the Custody, Placement, and Care of Unaccompanied Alien Children in the United States," "A Judge's Guide to Immigration Law," and "Immigration Detainee Pro Bono Opportunities Guide." A guide of free or low-cost legal services for immigrants and refugees, located by state, is available on the website at http://www.abanet.org/publicserv/immigration/legal_services_directory_map.shtml

CLINIC provides a range of legal and non-legal support services to 173 member agencies comprised mainly of Catholic diocesan immigration programs. The member agencies serve low-income immigrants seeking family reunification, citizenship, and protection from persecution and violence.

A Social Worker's Toolkit: Immigration Status and Relief Options (3/26/09)

The Immigrant Children Lawyers Network is a group of accredited representatives, lawyers and those providing technical assistance to accredited representatives and lawyers on immigration issues for children.

Immigrant Legal Resource Center, http://www.ilrc.org, 415.255.9499

ILRC provides training to various audiences including social workers as well as a unique “Attorney of the Day” service, a technical assistance (TA) service to assist via phone or email on immigration cases. They have many publications available online regarding potential immigration relief options for foster youth including:


About the Migration and Child Welfare National Network

Formed in 2006, the Migration and Child Welfare Network is a national coalition focused on improving the child welfare system’s services to immigrant families. Membership to MCWNN is free and members learn from the experience and expertise of each other. Questions about joining MCWNN or about this toolkit can be referred to the Migration and Child Welfare Network at CWMN@americanhumane.org. MCWNN funding partners are the Annie E. Casey Foundation, Casey Family Program, and the American Humane Association (funding and fiscal partner).

About the Toolkit

This resource is part of “The Social Worker’s Toolkit for Working with Immigrant Families” – a multi-component resource guide developed by the Migration and Child Welfare Network (MCWNN) and the Family to Family Initiative. The full toolkit can be downloaded at the MCWNN website at http://www.americanhumane.org/protection/children/programs/family-welfare-migration/.

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A Social Worker’s Toolkit: Immigration Status and Relief Options (3/26/09)
FACILITATING COORDINATION/COLLABORATION BETWEEN A CHILD’S IMMIGRATION ATTORNEY & THE CHILD WELFARE SYSTEM—April 2008


5 ACTION ITEMS TO ASSIST A CHILD’S IMMIGRATION ATTORNEY PROMOTE MORE PRODUCTIVE OUTCOMES FOR CHILDREN AND FAMILIES WITHIN THE CHILD WELFARE SYSTEM.

1) KNOW THE REFERRING AGENCY/PARTY, AND UNDERSTAND THEIR RELATIONSHIP TO YOUR CLIENT WITHIN THE CONTEXT OF THE CHILD WELFARE/JUVENILE COURT PROCESS.

2) LEARN ABOUT THE SPECIFICS OF THE CHILD WELFARE CASE/SERVICE PLAN FOR THE CHILD IMMIGRANT VICTIM, SIBLINGS AND PARENTS, INCLUDING KEY JUVENILE COURT REVIEW DATES AND PROCEEDINGS*

3) ACTIVELY PARTICIPATE IN ANY JOINT IMMIGRATION PLANNING PROCESS THAT MAY IMPACT THE CHILD WELFARE CASE/SERVICE PLAN, ESPECIALLY AS IT RELATES TO PLACEMENT, FAMILY MAINTENANCE, FAMILY REUNIFICATION, OR INDEPENDENT LIVING FOR EMANCIPATED MINORS.

4) MAKE SURE TO CONNECT WITH THE ATTORNEY OF RECORD FOR YOUR CLIENT(S) WITHIN THE JUVENILE COURT PROCEEDINGS AND INQUIRE TOO ABOUT ANY RELEVANT COURT ORDERS AND OR WARRANTS.

5) COORDINATE WITH THE CHILD WELFARE CASE MANAGER(USUALLY THE SOCIAL WORKER) IN THE DEVELOPMENT OF A CASE SPECIFIC IMMIGRATION SAFETY PLAN, EMERGENCY OPTIONS, SECURING VITAL DOCUMENTS AND RESOURCES THAT YOU NEED TO SUPPORT YOUR IMMIGRATION RELIEF ACTIVITIES.

* Children and families in the Child Welfare System generally have a case and or service plan that is specific to the needs of the family. The plans are based upon child welfare mandates and or reviews, findings, and orders by the juvenile court. The case/service plan can be the same or in some agencies the case plan is a more global desired outcome with separate service plans for each family member or part in the case. So, for example, an immigration issue would emerge as an action item within the over all goal of "independent living". The case specific service plan would be to apply for SIJS. The global Case Plan is to work with other family members for a "long term placement".
Immigration Options for Undocumented Immigrant Children

A collection of fact sheets on:
Special Immigrant Juvenile Status (SIJS)
Violence Against Women Act (VAWA)
Family Visas
U Visas
U.S. Citizenship
Asylum
Temporary Protected Status

Note: Advocates should only use these fact sheets for quick reference. For additional information and/or assistance, please see the Immigration Resources section at the back of this packet.

Immigrant Legal Resource Center
1663 Mission Street, Suite 602
San Francisco, CA 94110
www.ilrc.org
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SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and who will not be reunified with their parents due to abuse, neglect or abandonment.

What are the benefits of Special Immigrant Juvenile Status (SIJS)?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.

Who is eligible for SIJS?

A child who is under the jurisdiction of a juvenile court, where the court has found (a) that the child cannot be reunified with either parent because of abuse, neglect or abandonment, and (b) that it would not be in the child’s best interest to be returned to the home country.

What are the requirements for SIJS?

1. The juvenile court either must declare the child to be a court dependent or must legally commit the child to a state department or agency. This should include children in dependency proceedings, delinquency proceedings, and guardianship through a probate court.

2. The SIJS application will include a special order signed by the juvenile court finding that the child is “deemed eligible for long-term foster care,” because of abuse, neglect or abandonment. Eligible for long-term foster care means that family reunification is not an option, and generally the child will be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. The court’s order, or a social worker’s statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect or abandonment.

3. The juvenile court must find that it is not in the child’s best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.

4. The child must be under 21 and unmarried. The child’s age can be proven with a birth certificate, passport, official foreign identity document issued by a foreign government. The child can be a parent.

5. The child must remain under juvenile court jurisdiction until the immigration application is finally decided and the child receives the green card. This is important to keep in mind because the immigration interview may not be scheduled until three months to three years, or even longer, after the SIJS application is filed, depending on the local immigration office backlog and complexity of the case.

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VIOLENCE AGAINST WOMEN ACT (VAWA)

The Violence Against Women Act (VAWA) permits an abused child of a U.S. citizen or lawful permanent resident to self-petition for a green card without the cooperation of the abuser.

What are the benefits of VAWA?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a "green card").
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.
- Allows the child to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

Who is eligible?

- A noncitizen child abused by a U.S. citizen or lawful permanent resident parent
- A noncitizen abused by a U.S. citizen or lawful permanent resident spouse
- A child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse. In other words, a child can receive VAWA benefits even if he or she was not abused, as long as the child’s parent qualifies for VAWA due to abuse.

NOTE: Both male and female abused children (or spouses) are eligible to apply

What are the requirements for VAWA for children?

1. The abusive parent is or was a U.S. citizen or lawful permanent resident
2. The child resided at some point in time with the abusive U.S. citizen or lawful permanent resident parent, in or out of the United States. Any period of visitation will count.
3. The child qualifies as a "child" under immigration law
   - This means that the child is unmarried and under the age of 21
   - This includes:
     ✓ Natural born children born in wedlock
     ✓ Stepchildren where the marriage creating the step-relationship occurred before the child’s 18th birthday
     ✓ Adopted children where the adoption was finalized before the child’s 16th birthday and the child has been in the adoptive parent’s physical and legal custody for two years (the two year custody requirement can be waived if there is abuse)
     ✓ Children born out of wedlock where the child has been legitimated by the father or can show a bona fide parent-child relationship
     ✓ Children up to the age of 25 may qualify if abuse was a reason for filing delay
4. The child must be a person of "good moral character"
   - Children under the age of 14 are presumed to be of good moral character and are not required to submit any evidence of good moral character
   - Children over the age of 14 must prove good moral character with police clearance letters
5. The abuse must constitute battery or "extreme cruelty" which can include psychological or emotional abuse – the child need not suffer physical abuse to be eligible for VAWA

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June 2006
FAMILY VISAS

Some children may be able to immigrate legally through a U.S. citizen or lawful permanent resident family member.

What are the benefits of immigrating through a family member?

A family visa permits a child to immigrate to the United States through a family member. To immigrate means to become a lawful permanent resident ("green card" holder).

Who is eligible to immigrate through a family member?

Some noncitizens can immigrate quickly through a relative. These include the spouse, unmarried child under 21, or parent (if the child is 21 years or older) of a U.S. citizen. Others may have to waive up to several years to immigrate. These include sons or daughters of U.S. citizens who are married or over age 21; spouses and unmarried sons and daughters of permanent residents; and siblings of U.S. citizens where the citizen is 21 years or older. How long a child will have to wait to immigrate through a family member depends upon what country the child was born in and the relationship to the family member who submitted the visa petition.

What are the requirements for immigrating through a family member?

Immigration through a parent
1. The U.S. citizen or lawful permanent resident parent must prove his or her citizen or resident status and must prove the required parent-child relationship with the child
   - Parent-child relationship includes natural born children born in wedlock, stepchildren (if marriage creating the step-relationship occurred before the child turned 18), adopted children (if the adoption was complete before the child turned 16 and the child has been in the legal and physical custody of the adoptive parent for at least 2 years), and children born out wedlock (if legitimated by the father or can prove a bona fide parent-child relationship)
2. The U.S. citizen or lawful permanent resident parent must be willing to help the child through the process by attending immigration interviews and submitting an affidavit of support.
3. The children of lawful permanent residents will have to wait many years (approximately 4-7 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they cannot remain in the United States.

Immigration through a sibling
1. The sibling must be a U.S. citizen and must be at least 21 years old to petition for the child.
2. The U.S. citizen sibling must prove his or her U.S. citizenship status and must prove the required sibling relationship with the child
3. The U.S. citizen sibling must be willing to help the child through the process by attending immigration interviews and submitting an affidavit of support
4. Children who are siblings of U.S. citizens will have to wait many years (approximately 12-22 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they cannot remain in the United States.
U VISAS

_U visas_ is for children who are victims of serious crimes and can be helpful in the investigation or prosecution of those crimes.

What are the benefits of the U visa?

- The U visa begins as a temporary visa that allows the child to remain legally in the United States. After three years, the child U visa-holder can apply to obtain lawful permanent residency.
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.
- The U.S. Citizenship and Immigration Service (CIS) can issue a U visa to the eligible child and to the child’s parents and siblings.

What are the requirements for the U visa?

1. The child must have suffered substantial physical or mental abuse as a result of having been the victim of one of the following crimes: rape, incest, domestic violence, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, abduction, unlawful criminal restraint, false imprisonment, felonious assault, witness tampering, or attempt, conspiracy, or solicitation to commit these or similar offenses in violation of federal, state or local criminal law.

2. The child or his or her parent, guardian, or next friend has information about the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.

3. The child must obtain certification from a federal, state of local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a CIS official that shows that he or she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
U.S. CITIZENSHIP

Some children born outside the United States may already be U.S. citizens without knowing it.

What are the benefits of deriving or acquiring U.S. citizenship?

- Provides most of the rights and privileges available to children born in the United States, including the right to vote and certain constitutional protections

How might a child acquire U.S. citizenship?

Some children who were born outside of the United States to a U.S. citizen parent inherited U.S. citizenship at the time they were born. If a child's parent, or even grandparent, may have been a U.S. citizen at the time the child was born, the child should consult an immigration specialist to see if the child in fact is a U.S. citizen. Under most circumstances, the following children would be U.S. citizens even if they are born outside of the United States:

- Children of two U.S. citizen parents
- Children with one U.S. citizen parent and one U.S. national parent if the citizen parent had been physically present in the United States for a continuous period of one year
- Children of one U.S. citizen parent and one noncitizen parent if the citizen parent was physically present in the U.S. for at least 5 years, at least 2 of which were after age 14

How might a child derive U.S. citizenship?

Under most circumstances, a child automatically becomes a U.S. citizen if, before he or she reaches the age of 18 all of the following events happen (in any order):

- The child becomes a lawful permanent resident,
- The child’s mother or father is or becomes a U.S. citizen, and
- The child lives in the United States in the U.S. citizen parent’s legal and physical custody

Under most circumstances, an adopted child automatically becomes a U.S. citizen if:

- The adopted child becomes a lawful permanent resident before the age of 18,
- The adopted child is legally adopted by a U.S. citizen before the age of 16,
- The adopted child has been in the U.S. citizen’s legal and physical custody for at least two years, AND
- The adopted child is currently residing in the legal and physical custody of the U.S. citizen adoptive parent

How can a child prove his or her U.S. citizenship?

The child can apply for a "certificate of citizenship" (Form N-600) through CIS. Additionally, we suggest obtaining a U.S. passport through the U.S. passport office as proof.

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ASYLUM

Asylum is for children who fear persecution in their home country because of their race, religion, nationality, political opinion or membership in a particular social group.

What are the benefits of asylum?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.
- Allows the child to receive some public benefits (Medi-Cal, food stamps, CalWorks, etc.)

What are the requirements for asylum?

1. The child must apply within one year of arriving in the United States unless he or she was prevented from applying by changed or extraordinary circumstances. Some forms of family abuse and domestic violence might be considered extraordinary circumstances. Detention by immigration officials can also be considered extraordinary circumstances.

2. The child must fear persecution from the government of the home country or from a group that the government is unwilling or unable to control (for example, guerrillas or death squads).

3. The fear must be based on the child’s race, religion, political opinion, nationality or social group.

- In some cases, asylum has been granted based on severe domestic violence or issues involving gender (such as threat of female genital mutilation in the home country), even if the persecution and abuse was committed by family members.

Note: This form of relief is very complicated. Children who may qualify for asylum must consult with an expert immigration practitioner before applying.
TEMPORARY PROTECTED STATUS

Children from certain countries that have experienced devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS).

What are the benefits of Temporary Protected Status (TPS)?

- Provides temporary permission to stay in the United States
- Provides temporary work authorization

What are the requirements for TPS?

1. The child only needs to prove that he or she is a national of a current TPS country and has been in the United States since a required date.

2. The child does not need to prove that he or she will be singled out for persecution in the home country.

3. The child cannot be subject to one of the criminal, security-related, or other bars to TPS.

Which countries are currently designated for Temporary Protected Status?

The countries on the TPS list change. Recently they have included:

- Burundi
- El Salvador
- Honduras
- Liberia
- Nicaragua
- Somalia
- Sudan

For updated information about which countries are currently designated TPS and what requirements nationals of those countries must meet to qualify, go to the CIS website at www.cis.gov and follow the directions to get to information about Temporary Protected Status.
IMMIGRATION RESOURCES

This list of resources is by no means exhaustive but provides some services available and national organizations willing to provide technical assistance and materials.

1. Technical assistance and direct service providers

A. Special Immigrant Juvenile Status and VAWA

National Immigration Project of the National Lawyers Guild
Ellen Kemp
14 Beacon Street, Suite 602
Boston, MA 02108
Tel. (617) 227-9727
ellen@nationalimmigrationproject.org
www.nationalimmigrationproject.org

The Project provides technical assistance, advice and resources to its members. It sponsors seminars and produces publications on a variety of subjects to develop and improve legal and advocacy skills.

National Immigration Law Center (NILC)
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
Tel. (213) 639-3900
Fax (213) 639-3911
www.nilc.org

NILC provides advice over the telephone and some training in Los Angeles area. Special expertise in public benefits law and in T visas for victims of human trafficking.

B. Asylum

The Center for Gender and Refugee Studies
U.C. Hastings College of the Law
200 McAllister Street
San Francisco, CA 94102
Tel. (415) 565-4791
Fax (415) 565-4865
http://www.uchastings.edu/cgrs/

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these

Immigrant Legal Resource Center
www.ilrc.org
June 2006
cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

2. Written and other materials

A. Written Materials

Immigrant Legal Resource Center Publications

The ILRC publishes the following books about areas of immigration law relevant to family and juvenile court issues. For a more complete list of ILRC publications, and for information on the most current pricing and editions available, please call (415) 255-9499 ext. 782, or visit the ILRC website at www.ilrc.org.

The VAWA Manual: Immigration Relief for Battered Immigrants is a comprehensive guide for advocates working with immigrant survivors of domestic violence. This manual includes in-depth information on the VAWA self-petitioning requirements and process, adjustment of status, inadmissibility and waivers, consular processing, conditional permanent residency, VAWA cancellation of removal, special immigrant juvenile status, the new T and U visas, gender-related asylum, and public benefits.

Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction. This practical manual includes a clear explanation of the law and a discussion of problem cases, a sample completed application form, sample juvenile court judge's order, and a summary both of immigration adjustment of status applications and other types of immigration relief for children. Also available as a free download at www.ilrc.org.

How to Obtain U Interim Relief: A Brief Manual for Advocates Assisting Immigrant Victims of Crime. In 2000, Congress created a form of immigration relief for immigrant victims of certain crimes including rape, domestic violence, felonious assault and others. However, since regulations have not been issued making these U visas available, only U interim relief has been made available through internal CIS policy guidance. This brief manual provides a clear explanation of the policy as it now stands and easy to follow directions for submitting a U interim relief request. Approximately, 25 pages long, this manual is available for free on the ILRC website at www.ilrc.org.

A Guide for Immigration Advocates is a large and comprehensive book about immigration law, written for paralegals. It includes clearly written material discussing forms of relief that would apply to children such as family visa petitions, suspension and asylum.
Family Unity: A Guide for Practitioners and Community Organizers discusses the Family Unity program which could benefit children whose parents became permanent residents through one of the amnesty programs.

California Criminal Law and Immigration. This is a comprehensive manual on the representation of non-citizens who have been accused or convicted of crimes. Using California law as a model, it discusses all the grounds of inadmissibility and deportability related to criminal offenses. Topics include drug convictions, admissions, addiction and abuse, aggravated felon status, crimes involving moral turpitude, and firearms offenses, as well as recent legislation. The manual includes an annotated chart analyzing 70 offenses under California law. It also features a comprehensive chapter on how to obtain post-conviction relief, including a discussion of legal requirements, practice tips, and sample briefs and papers, as well as a chapter on immigration holds and detainers.

B. Videos

Special Immigrant Juvenile Status 40-minute Training Video, 2002: This 40-minute training is designed for social workers, probation officers, bench staff, attorneys, CASA volunteers and others who work with non-citizen children who are in dependency or delinquency proceedings. It covers Special Immigrant Juvenile Status (SIJS) and other options for non-citizen children to gain lawful permanent residency (a green card). A note-taking guide is included to outline the topics and major points discussed in the video.

C. Listserves

ILRC’s Special Immigrant Juvenile Status listserv

The ILRC SIJS listserv provides periodic legal and policy updates on Special Immigrant Juvenile Status. To join the listserv, go to: http://ilrc.org/listserv.html.

VAWA Updates

The VAWA Updates listserv is maintained by the ASISTA Technical Assistance Project and provides ongoing updates about changes in VAWA and the new U visa provisions. To join the listserv, contact ASISTA at questions@asistaonline.org.
D. Websites

Immigrant Legal Resource Center
www.ilrc.org

The ILRC website includes information about ongoing ILRC seminars and publications on aspects of immigration law, as well as manuals and materials that can be downloaded and information about the Center’s activities and policy work.

U.S. Citizenship and Immigration Services
www.cis.gov

The CIS website includes many links to the latest CIS policy and procedural information, the status of applications, and easy access to downloadable CIS forms.

National Immigration Law Center (NILC)
www.nilc.org

NILC staff specializes in immigration law, and the employment and public benefits rights of immigrants. Their website contains links to their policy analysis and impact litigation, publications, technical advice, and trainings information.

National Immigration Project of the National Lawyers Guild
www.nationalimmigrationproject.org

The “domestic violence” link on the website of the National Immigration Project of the National Lawyers Guild contains extensive materials on VAWA, SIJS and U visas, including links to background information, CIS policy memoranda and strategy articles.
ORR

- ORR has two divisions that work with unaccompanied refugee and immigrant children.

- DUCS
- DRA

DUCS

- The Division of Unaccompanied Children's Services (DUCS) provides child welfare services to Unaccompanied Alien Children. UACs are defined as* children who—
  - Have no lawful immigration status in the United States;
  - Have not attained 18 years of age; and
  - with respect to whom—
    - there is no parent or legal guardian in the United States; or
    - no parent or legal guardian in the United States is available to provide care and physical custody.

*CITATION: Section 462 of the Homeland Security Act
DRA and the URM program

ORR's Division of Refugee Assitances (DRA) administers the Unaccompanied Refugee Minor (URM) program and serves:

- Refugees
- Asylees
- Qualified Cubans and Haitians
- Victims of Human Trafficking
- SPECIAL IMMIGRANT JUVENILE STATUS GRANTEE*  

*SIJS

...is a visa an undocumented immigrant child may qualify for if they:

- Are abused, abandoned or neglected
- Are not able to reunify with 1 or both parents
- Are deemed a ward of a juvenile court:
  - Dependency (section 300 of the Welfare & Institutions Code)
  - Delinquency (section 602 of the W&l)
  - Probate (under guardianship)

SIJS Visa applicants and grantees are not automatically eligible for lawful permanent residence (green card). Grounds of inadmissibility pertain to adjudication of certain crimes.
Trafficking Victims Protection
Reauthorization Act of 2008

...was a landmark piece of legislation that affected SIJS grantees and applicants in the following ways:

- Codified visa adjudication time (180 days).
- Changed eligibility language from "eligible for foster care" to "cannot reunify with at least 1 parent."
- Extended eligibility for URM to SIJS grantees (on the condition that the juvenile court determination was made while the child was in HHS custody).

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Undocumented children in DFCS custody

- Children in county DFCS custody may qualify for URM program if they:
  - Are refugees, Asylees, Victims of Human Trafficking, or SIJS grantees*
  - Continue to meet the definition of unaccompanied

- SIJS grantees in county care may qualify for Title IV-E federal funding once they become lawful permanent residents. Pre-SIJS grant, they are considered undocumented and ineligible for federal benefits; the state funds their placement entirely with the State's general fund.

  *SIJS grantees must have been deemed a ward of the court while in ORR custody

Catholic Charities of Santa Clara County

- Our Immigration Legal Services department files for SIJS and adjustment of status for some undocumented children in county custody.

- Our Refugee Foster Care program is available to consult on refugee, asylee, trafficking, and SIJS cases of unaccompanied immigrant children.

- Contact Information:
  Sergio Medina, MSW, LCSW
  Program Director, Refugee Foster Care
  Catholic Charities of Santa Clara County
  2625 Zanker Road
  San Jose, CA 95134
  smedina@catholiccharitiesSCC.org
  (408) 325-5155
Paths to SIJS

Detained

Non-detained

Eligible

Eligible

Eligible

Juvenile court findings

SIJS Petition

Adjustment of Status Petition

Ineligible

Ineligible
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# URM vs. DUCS benefits

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