



Immigration Issues for Children in Juvenile Court

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Overview



- ***Where Nebraska Fits in the Immigration Picture***
- ***Explanation of Immigration Terms***
- ***Immigration Relief: SIJS, Family-Based Immigration, VAWA, U & T Visas, Asylum***
- ***Impact of Juvenile Delinquency Dispositions***
- ***Immigration “Holds” and Removal Procedures***
- ***Working with Detained Parents and Immigrant Families in Juvenile Court***
- ***National & Local Resources***
- ***Organizing Immigration Services for Children***

The Immigration Picture



Nationally . . .

- According to 2009 Census Bureau figures, 38.5 million foreign-born people live in the U.S. This is approximately 12.5% of the total population.
- Estimates show that approximately 11.2 million of these people are undocumented.
- Approximately 1 in 6 people seeking asylum in industrialized countries comes to the U.S.
- *For more, see*
www.pbs.org/independentlens/newamericans/quiz.html.

The Immigration Picture



Nationally . . .

- In 2009, about 16.9 million children age 17 and under (23.8% of all children in that age group) had at least 1 immigrant parent.
- Approximately 86% of immigrant families with children have “mixed legal status” – that is, some individuals in the families are U.S. citizens while others are not.

The Immigration Picture



Where Does Nebraska Fit In?

- Nebraska ranks 29th in the nation in the percentage of foreign-born people in the state population as of 2009, and 38th in the total *number* of foreign-born people.
- According to the Census Bureau, in 2009 about 106,000 Nebraska residents were foreign born; this is about 5.9% of the state's population and up from 4.4% in 2000.
- Between 1990 and 2000, the foreign-born population in Nebraska grew 164.6% (compared to 57.4% nationally) and between 2000 and 2009 it grew 42.3% in Nebraska (compared to 22.8% nationally).

The Immigration Picture



Where Does Nebraska Fit In?

- Nebraska is considered a “new growth state” – 1 with a growing population of foreign-born people outside of the 6 major “destination states” (CA, TX, NY, FL, IL, NJ).
- In 2009 in Nebraska, of the foreign born 7.8% were from Africa, 26.2% Asia, 5.9% Europe, 57.4% Latin America and 2.7% Oceania/Northern America.
- Of the 1.04 million people who became lawful permanent residents in 2010, only 4,400 (0.4%) were in Nebraska.
- In 2005, it was estimated that between 35,000 and 55,000 undocumented persons lived in Nebraska.

The Immigration Picture



Where Does Nebraska Fit In?

- In Nebraska in 2009, 1.1% of children younger than 5 were born abroad, as were 3.5% of youth ages 6-17 and 7.6% of people ages 18-24.
- Of all children under the age of 18 in Nebraska in 2009, 57,265 or 13.5% lived with at least 1 foreign-born parent.

Immigration Terms



Organization of the Immigration System:

- On 03/01/03, the INS ceased to exist; the Department of Homeland Security (“DHS”) now handles immigration services and enforcement.
- DHS’s immigration functions are carried out by 3 divisions: Citizenship & Immigration Services (“CIS”); Immigration & Customs Enforcement (“ICE”); and Customs & Border Protection (“CPB”).
- DHS works with the Department of Health and Human Services (“U.S. HHS”) and the U.S. Attorney General (“U.S. AG”), and may also work with local law enforcement to identify deportable individuals.

Immigration Terms



Organization of the Immigration System:

- The U.S. Department of Justice, Executive Office for Immigration Review (“EOIR”) is the body that adjudicates the immigration court cases for people in removal (“deportation”) proceedings – both those detained by the federal government and those not in detention.
- EOIR is composed of more than 50 immigration courts throughout the country and the appellate body, the Board of Immigration Appeals (“BIA”).
- Immigration court decisions are appealed to the BIA, and BIA decisions are appealed to the U.S. Court of Appeals for the circuit where the immigration court is located, and then some appealed on to the U.S. Supreme Court.

Immigration Terms



United States Citizens (“USCs”)

- Those people born in the U.S. and subject to the jurisdiction of the U.S. are citizens at birth (excludes children of diplomats).
- Includes those born in Guam, Puerto Rico and the U.S. Virgin Islands; may include “legally qualified” CNMI residents.
- Includes a person born in the Panama Canal Zone if his mother or father was a USC.
- Includes a person born in the Republic of Panama if at least 1 parent was a USC working for the Panama Railroad Company or U.S. government.

Immigration Terms



USCs Born Abroad

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

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

- If both parents were USCs, and 1 resided in U.S. or outlying possessions, the child is USC.
- If 1 parent USC and 1 national, and USC was physically present in U.S. or outlying possessions for 1 year, the child is USC.
- If 1 parent USC and 1 alien, and USC has been physically present in U.S. or outlying possessions for 5 years, at least 2 of which are after parent's 14th birthday, the child is USC.

Immigration Terms



USCs Born Abroad

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

If parents were unmarried at child's birth:

- If birth was after 12/24/52 and mother was USC and continuously physically present in U.S. or outlying possession for 1 year before child's birth, child is USC.
- If birth after 11/15/71 and father was USC, blood relationship must be established, father must pledge support of child until child's 18th birthday, father must legitimate or establish paternity of child, and father must have been continuously present in U.S. for 1 year (if mother national) or 5 years (if mother is alien) in order for child to be USC.

Immigration Terms



USCs Who Derive U.S. Citizenship

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

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

Immigration Terms



Note: Children Adopted by USCs

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

- An adopted child *may* qualify to derive U.S. citizenship if he meets the requirements listed on the previous slide, if he is adopted before age 16 (exceptions for sibling groups) and has 2 years in legal/physical custody of USC parent.
- If an undocumented child is adopted (more later on the potential hurdles to doing this) before becoming an LPR, then the adoptive parents will have to immigrate the child – which in many cases means leaving the U.S. with the child to travel to the child’s country of origin and then obtaining permission to re-enter the U.S. with the child.

Immigration Terms



“Foundling” USCs

- The Immigration and Nationality Act (“INA”) § 301(f) reads: “[A] person of unknown parentage found in the United States while under the age of five years, until shown, prior to obtaining the age of twenty-one years, not to have been born in the United States,” shall be a citizen of the U.S.
- We know of only 1 case – in New Jersey in late 2006 – in which this statute has been used to recognize U.S. citizenship.

Immigration Terms



USCs Who Naturalize

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

- A person must be at least 18 years old to naturalize, so most children you work with will not be naturalized citizens.
- People must be LPRs for 5 years (3 for those who gained LPR status through marriage to a USC) before naturalizing.
- Naturalization has its own requirements, including good moral character, English/history/government test, loyalty oath, physically present for at least half of the 5 or 3 years required.

Immigration Terms



USC Benefits

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

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

Immigration Terms



Lawful Permanent Residents (“LPRs”)

Who are LPRs?

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

Immigration Terms



LPR Benefits

Some benefits of LPR status:

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

Immigration Terms



Refugees/Asylees

- A person who is outside any country of that person’s nationality or, in the case of a person having no nationality, is outside any country in which that person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Immigration Terms



Refugees/Asylees

- Refugees are those granted status abroad by DHS and brought to the U.S. for resettlement.
- Asylees are those who come to the U.S. on their own and are granted this protected status by DHS or EOIR once they are here.
- They are not LPRs, but can apply for LPR status.
- The federal Office of Refugee Resettlement (“ORR”) is charged with assisting these people to adjust to life in the U.S. through various means of support.

Immigration Terms



Temporary Legal Status Holders

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

- ✓ Family Unity
- ✓ Parole
- ✓ K and V Visas
- ✓ Deferred Enforced Departure

Immigration Terms



Temporary Legal Status Holders

✓ Temporary Protected Status (“TPS”)

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

Current TPS countries (with residence dates) are:
El Salvador (02/13/01), Honduras (12/30/98),
Nicaragua (12/30/98), Somalia (09/04/2001),
Sudan (10/07/2004), and Haiti (01/12/10).

Immigration Terms



Nonimmigrant Visa Holders

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

Immigration Terms



Undocumented People

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

Immigration Relief: What Is at Stake?



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

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

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

Special Immigrant Juvenile Status (“SIJS”)



What is it?

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

Where do you find it?

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

Special Immigrant Juvenile Status (“SIJS”)



Important Note:

- ✓ The SIJS statutory requirements WERE CHANGED in late 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 – also known as the “TVPRA.”
- ✓ All SIJS cases must now comply with the new TVPRA requirements, which became effective on 03/23/09.
- ✓ The SIJS regulations are outdated; they have not been updated since the early 1990s.



Requirements for SIJS

- Under the jurisdiction of a juvenile court
- Dependent on a juvenile court or placed in the custody of a state agency or department **or an individual or entity**
- **Reunification with 1 or both parents** is not viable due to abuse, neglect, abandonment **or a similar basis found under state law**
- Not in the child's best interest to be returned to her home country



Requirement One

The child must be under the jurisdiction of a juvenile court – the child needs SIJS findings from the court to apply for immigration relief.

- “Juvenile court” is defined as a court “having jurisdiction under State law to make judicial determinations about the custody & care of juveniles.” 8 C.F.R. § 204.11(a).
- In practice, as recognized by CIS, this can include both Nebraska county courts and separate juvenile courts acting in both 3A cases and delinquency cases.
- It also can include Nebraska courts acting in cases to establish guardianships for minors or handle adoptions.



Requirement Two

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

- In Nebraska, as recognized by CIS, this has included wards and children who have been placed in the custody of individuals via guardianships; can include children placed in the custody of individuals via adoption proceedings.
- The TVPRA created the “individual or entity” category.



Requirement Two Cont'd

- CIS issued a memorandum for immigration service officers on the TVPRA’s SIJS changes dated March 24, 2009 (“CIS Memo”).
- The CIS Memo acknowledges that the TVPRA “expanded the group of aliens eligible for SIJ status” and states that “a petition filed by an alien on whose behalf a juvenile court has appointed a guardian now may be eligible.” CIS Memo at 2.
- The child can be in 1 of many settings: approved home of relative, foster family, OJS placement, with guardian or prospective adoptive family. See *In re Interest of Luis G.*, 17 Neb. App. 377, 378 (2009) (2 SIJS-eligible youth committed to OJS in group home and foster home).



Requirement Three

“[R]eunification with 1 or both of the [child]’s parents is not viable due to abuse, neglect, abandonment or a similar basis found under State law.” 8 U.S.C. § 1101(a)(27)(J)(i).

- The TVPRA deleted the phrase “eligible for long-term foster care” and replaced it with “reunification with 1 or both of the [child]’s parents is not viable.”
- This makes clear that the child need not be in formal state foster care in order to be eligible for SIJS. *See* CIS Memo at 2; *see also* CIS AAO decision (2011) (approving SIJS petition for child in guardianship through the County Court of Douglas County NE).



Requirement Three Cont’d

“[A]buse, neglect, abandonment or a similar basis found under State law.”

- The TVPRA added the “similar basis found under State law” language.
- The CIS Memo states that if the juvenile court order includes a finding relying upon a “similar basis found under State law” then the petitioner “must establish that such a basis is similar to a finding of abuse, neglect or abandonment.” CIS Memo at 2.
- Neither the statute nor the regulations define any of these terms.



Requirement Three In Practice

Examples of children for whom reunification with 1 or both parents is not viable due to abuse, abandonment, neglect or a similar basis include:

- A child whose parents are deceased and whose adult sibling is caring for her.
- A child who was abandoned by his parents and who now lives in a foster home.
- A child whose father abused her and who will emancipate after completing her OJS placement.
- In *Luis G.*, both parents physically abused the boys and their mother failed to and could not take care of them. 17 Neb. App. at 387.



Requirement Four

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

- This determination must be made in administrative or judicial proceedings. *Id.*
- The TVPRA did not change this requirement, and CIS notes that petitioners are “still required” to follow it. CIS Memo at 2.



Factors to Consider on Requirement Four

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

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



Issues Raised by the SIJS Regulations

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

- In the past, CIS took the position it could not approve a SIJS application for a youth after he turned 21.
- The TVPRA now states that no person can be denied SIJS on account of "age" as long as he was a child (under 21) when he filed his SIJS application. TVPRA § 235(d)(6).

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

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



Issues Raised by the SIJS Regulations

The child must remain under juvenile court jurisdiction for the entire time the immigration applications are pending. 8 C.F.R. § 204.11(c)(5).

- The TVPRA did not directly address this requirement, and CIS did not comment upon it in its memorandum.
- As of late 2010, under the *Perez-Olano* settlement agreement (the resolution of a federal class action on SIJS), if the child is no longer under juvenile court jurisdiction because of “age” (i.e., turning 19 in Nebraska), then CIS cannot deny him SIJS for this reason.



DHS “Consent”

- ❖ In order to qualify for SIJS, DHS must “consent[] to the grant of special immigrant juvenile status.” 8 U.S.C. § 1101(a)(27)(J)(iii).
- ❖ The consent determination is an acknowledgment that the request for SIJS is bona fide – that is, that the benefit was not “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse, abandonment or neglect.” CIS Memo at 3.
- ❖ CIS’s approval of the SIJS petition is evidence of DHS consent.



DHS “Specific Consent”

- ❖ The TVPRA overhauled this requirement.
- ❖ Children who are in the custody of U.S. HHS (specifically ORR) cannot have their custody status or placement altered by a juvenile court unless U.S. HHS specifically consents to juvenile court jurisdiction. 8 U.S.C. § 1101(a)(27)(J)(iii)(I).
- ❖ There are no ORR detention facilities for youth in Nebraska, so this will come up for you only if a Nebraska ward ends up in an ORR facility outside of Nebraska.
- ❖ This requirement does not apply to children who were formerly in ORR care but were released to sponsors in Nebraska.



Additionally...

- The child must qualify for adjustment of status (“AOS”).
- ❖ The child’s illegal entry into the U.S. is not a bar to AOS.
 - ❖ The child’s delinquency dispositions (unless for drug trafficking conduct) are not *bars* to AOS. [Note that in *Luis G.*, the children were pursuing SIJS despite 1 child’s shoplifting and the other’s trespassing, and alleged assault, resisting arrest, and disturbing the peace. 17 Neb. App. at 378.]
 - ❖ If the child has an outstanding order of removal entered by an immigration judge, she will have to reopen her immigration court case to obtain AOS.



Grounds of Inadmissibility

- ❖ To qualify for AOS, the child must not fall into a non-waivable ground of inadmissibility. *See* 8 U.S.C. § 1255(h).
- ❖ The TVPRA expanded the grounds of inadmissibility that are completely inapplicable to SIJ adjustment of status applicants – including false claims to U.S. citizenship.
- ❖ CIS has noted that nearly all grounds of inadmissibility are waivable for SIJ adjustment of status applicants. CIS Memo at 4-5.
- ❖ The waiver standard for these grounds is generous – “for humanitarian purposes, family unity, or when it is otherwise in the public interest.” 8 U.S.C. § 1255(h)(2).

The SIJS Procedure

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

- The Juvenile Court Stage

When the court makes the required SIJS findings.

- The Immigration Stage

When the immigration practitioner uses these SIJS findings as the basis for the filing and processing of the SIJS Petition and Adjustment of Status Application.





The Juvenile Court Stage

TASK ONE: IDENTIFY/SCREEN THE ELIGIBLE CHILD

- Screen each case for SIJS eligibility.
- Consider using the SIJS screening sheet.
- Contact local experts with questions.
- If the child has any prior contact with DHS, a deportation order, a serious delinquency record, or an age-out issue or is in removal proceedings, an expert should be contacted to handle the case.



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

Make sure to use the new TVPRA language.

The CIS Memo notes that immigration “[o]fficers should ensure that juvenile court orders submitted as evidence with an SIJ petition filed on or after March 23, 2009, include th[e] new language” of SIJS eligibility mandated by the TVPRA. CIS Memo at 2.



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

Procedures vary depending upon what type of proceeding the child is in.

3(A) Cases: Request might be made by GAL, HHS attorney or county attorney – perhaps CASA or HHS social worker.

Delinquency: Request might be made by defense attorney, GAL, HHS attorney or county attorney.

Guardianship/Adoption: Request typically made by person filing the guardianship/adoption petition.



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

Timing varies depending upon what type of juvenile court case the child has.

3(A)/Delinquency Cases: Request can be filed after reunification services are terminated and a determination is made that child will not reunify with parent/s.

Guardianship/Adoption: Request could be filed along with the guardianship or adoption petition.



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

Evidence in support of the request for SIJS findings may take many forms.

- Declarations attached to the request.
- Materials already in the juvenile court file, including social workers' reports.
- In-court testimony; in *Luis G.*, both children, their foster parents, and the HHS foster care case worker testified. 17 Neb. App. at 380-82.



The Juvenile Court Stage

TASK THREE: ASSEMBLE THE NECESSARY DOCUMENTS FROM COURT

- Certified copy of SIJS findings.
- Arrest record printout *for delinquency cases.*
- Certified copies of juvenile court minute orders corresponding to each petition filed *for delinquency cases.*



The Juvenile Court Stage

TASK FOUR: MAKE SURE THE CHILD REMAINS SIJS ELIGIBLE

- Keep the court case open to allow for approval of the immigration applications unless the court's jurisdiction is being terminated because of age.
- Resolve any delinquency petitions to avoid grounds of inadmissibility and contact an expert if the child is charged in adult criminal court.

The Immigration Stage

What does the immigration practitioner do – in concert with others – in the Immigration Stage?

STEP ONE: ASSEMBLE THE IMMIGRATION APPLICATION PACKET

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



The Immigration Stage

STEP ONE: ASSEMBLE THE IMMIGRATION APPLICATION PACKET

In Nebraska, the juvenile code specifically addresses assembling the packet:



- “If a court makes a foreign national minor or a minor having multiple nationalities a ward of the department and the minor has become eligible for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J), the consulate will assist the department in obtaining the necessary documentation for completion of the application for special immigrant juvenile status.”
Neb. Rev. Stat. § 43-3806.

The Immigration Stage

STEP ONE: SAMPLE APPLICATION PACKET

- Cover Letter
- SIJS Findings & Case Summary
- Form I-360 Petition for SIJS
- Form I-485 Application for Adjustment of Status
- Form I-765 Application for Employment Authorization
- Proof of Age & Identity (Birth Certificate)
- Additional CIS Forms (G-28, G-325A)
- CIS Medical Exam Form I-693 & Photos
- CIS Fees (\$1070.00 or \$985.00 (if child is under 14)) or Form I-912 Application for Fee Waiver



The Immigration Stage



STEP TWO: FILE THE APPLICATION PACKET

- The immigration practitioner should do this ASAP after obtaining the SIJS findings.
- She must check the CIS website for filing information – currently, the SIJS application packet is mailed to: USCIS, P.O. Box 805887, Chicago, IL 60680-4120.
- Before filing, she should be sure to remind her client not to get married or arrested or leave the country – or he can lose SIJS eligibility!

The Immigration Stage



STEP TWO: FILE THE APPLICATION PACKET

- Note that under the TVPRA, CIS now has the obligation to adjudicate SIJS-based I-360s within 180 days of filing. TVPRA § 235(d)(2).
- The CIS Memo underscores the importance of this requirement. It states that interviews, if necessary, must be scheduled as soon as possible and officers must ensure the proper completion of background checks, including biometric information clearances and name checks. CIS Memo at 4.

The Immigration Stage



STEP THREE: COMPLETE BIOMETRICS PROCESSING

- The immigration practitioner must wait for CIS to schedule the child for a biometrics appointment.
- The child should have valid government-issued ID – could be state identification or some sort of foreign ID.
- If the child is 14 or older, background checks are done for criminal and security clearance.
- The child’s work permit may be issued shortly after the appointment – and he can then get a Social Security number.

The Immigration Stage

STEP FOUR: THE AOS INTERVIEW



At this interview, the CIS officer will determine if the child is SIJS eligible and is admissible.

The CIS Memo states that “During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law.” It also notes that AOS interviews can be waived for children under 14 or when an interviewed is deemed unnecessary. CIS Memo at 4.

The Immigration Stage

STEP FOUR: PREPARE THE CHILD FOR THE AOS INTERVIEW

The immigration practitioner must:

- Review all applications with the child.
- Update applications if necessary.
- Explain to the child what will happen at the interview and perform a mock interview with the child.



The Immigration Stage

STEP FOUR: ATTEND THE AOS INTERVIEW WITH THE CHILD

The immigration practitioner must:

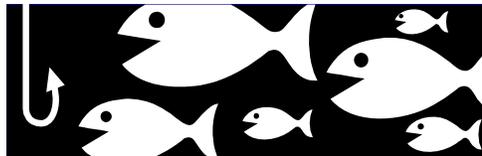
- Bring child's photo ID and birth certificate.
- Attend the interview with the child and assist him if he needs guidance.
- CIS may approve applications on the day of the interview or may have to wait for background checks.
- Remember to advocate for CIS to meet the 180-day adjudication deadline.



The Immigration Stage

STEP FIVE: MONITOR THE APPLICATIONS

- If the child is not approved on the interview date, the immigration practitioner should follow up on the case using local procedures.
- She should provide status reports to the juvenile court for hearings.



The Immigration Stage

STEP SIX: WRAP UP AFTER THE APPLICATIONS ARE APPROVED



Once the child is an LPR, the immigration practitioner should:

- Wait for the delivery of the child's green card from CIS.
- Provide a final status report to the juvenile court.
- Advise the child of his rights and responsibilities as a lawful permanent resident using the guide available at <http://www.uscis.gov/files/nativedocuments/M-618.pdf> and a child-specific guide at <http://www.ilrc.org>.

The Immigration Stage

STEP SIX: IF THE CASE IS NOT APPROVED



- The immigration practitioner can appeal a denial of an I-360 to an administrative appeals unit or file a new I-360 with CIS.
- She can re-file the I-485 with CIS if the child is not placed into removal proceedings.
- An immigration judge can adjudicate an I-485 anew if the child is placed in removal proceedings...

SIJS in Removal Proceedings

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



- First the SIJS findings must be made and the immigration practitioner files an I-360 packet with CIS.
- Once the I-360 is approved, the immigration practitioner must file an I-485 packet with the immigration judge.
- The case can either be completed in immigration court or the immigration judge can terminate proceedings to allow for AOS before CIS.
- In *Luis G.*, both children were in removal proceedings and seeking SIJS to prevent deportation. 17 Neb. App. at 382.

A Note on The DREAM Act(s)



- The DREAM Act was bipartisan federal legislation that was pending in the U.S. Congress with the support of Congressional leadership, all relevant committee chairs and President Obama – but was not passed in 2010.
- It addressed the problems faced by children who were brought to the United States years ago, who are without lawful immigration status, and who have grown up in the U.S., stayed in school and kept out of trouble.
- Its current prospects are uncertain, as it would need to be reintroduced and fought for in the divided Congress.
- But note the NE DREAM Act allows for in-state tuition.

Other Forms of Immigration Relief

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

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



Since there may be no juvenile court stage, those working within the system may be less involved – but can still help the child to identify her eligibility for relief.

Family-Based Immigration



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

Who can petition?

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

Family-Based Immigration



Immigrating a child through an adoption can be very complicated and may require expert assistance.

What are the challenges in Nebraska?

Nebraska law imposes additional requirements for the adoption petition of a child born in a foreign country:

- (1) A document from a court or agency in the country of origin describing the parents’ position and that the child is to immigrate to the U.S. for adoption; and
- (2) Written consent to the adoption by an HHS-licensed child placement agency that placed with child in the adoptive home.

Neb. Rev. Stat. § 43-104.07.

Family-Based Immigration



Immigrating a child through an adoption can be very complicated and may require expert assistance.

What are the federal challenges?

The Hague Adoption Convention bars the approval of an I-130 for a USC's post-04/01/08 adoption of a child from a signatory country to the Hague Convention unless that country has determined that the child is no longer "habitually resident" in that country – this must be reflected in the adoption order.

Otherwise, the family must comply with the complex requirements for a Hague Convention adoption process using forms I-800 and I-800A.

Family-Based Immigration



How does one petition for a family member ?

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

Family-Based Immigration



What are the preference categories?

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

Family-Based Immigration



When can an approved beneficiary apply for AOS?

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

Family-Based Immigration



How might a child qualify for AOS?

- INA § 245(i) allows AOS for those who entered the country without permission if the person is a beneficiary of a visa petition filed before April 30, 2001.
- INA § 245(a) allows AOS for those who entered legally, have remained in lawful status (unless they are an immediate relative), and have an approved visa petition and current priority date.

Otherwise, the child must go abroad and “consular process” to re-enter the U.S. as an LPR.



Violence Against Women Act (“VAWA”) Relief

What is it?

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

Where do you find it?

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



Requirements for VAWA Self-Petitioning

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

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



Immigration Process for VAWA Self-Petitioning

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

The child must wait for a Notice of Prima Facie Eligibility and eventually, after the I-360 is approved, for a Notice of Deferred Action.

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



Benefits of VAWA Self-Petitioning

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

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



U Nonimmigrant Visa

What is it?

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

Where do you find it?

- ✓ Section 101(a)(15)(U) of the Immigration & Nationality Act
- ✓ Regulations are at 8 C.F.R. § 214.14



Requirements for the U Visa

- ✓ Child has suffered substantial physical or mental abuse as a victim of certain criminal activity.
- ✓ Child possesses information about the criminal activity.
- ✓ Child provides certification – from a local, state or federal law enforcement official – that the child is being, has been or will be helpful in the investigation or prosecution of the crime.
- ✓ Criminal activity took place in the U.S. or otherwise violated U.S. law.

Note: If the child was under 16 when the crime occurred, requirements 2 and 3 can be met by parent, guardian or next friend.



Requirements for the U Visa

What kind of crimes are covered?

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



The Certification: Who?

Who can sign an I-918A U Nonimmigrant Status Certification?

A certifying official of a certifying agency!

A certifying agency is “a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.” This includes “child protective services.” 8 C.F.R. § 214.14(a)(2).



The Certification: Who?

A certifying official is “the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency” or a “Federal, State, or local judge.” 8 C.F.R. § 214.14(a)(3).

In Nebraska, police chiefs, county attorneys, & the AG’s office have signed I-918As. This may be extended to juvenile court judges and a designated person in HHS.



The Certification: When?

The certification can be signed once the certifying official has determined that the child is a victim of the criminal activity, she or her parent/guardian/next friend has information and was, is or will be helpful, and the crime occurred in the U.S. or otherwise violated U.S. law.

The certifying official need not wait for any charges to be filed or sentences to be handed down – that is not required for U Visa eligibility.



The Certification: How?

For children in juvenile court, many options:

GALs or defense attorneys may approach HHS attorneys or county attorneys to coordinate signing by the certifying agency.

GALS or defense attorneys may file motions for certifications by the juvenile court judge or the judge in the adult criminal case, if one, against the perpetrator.

HHS certifying officials or county attorneys may sign the certifications on their own initiative.



Immigration Process for the U Visa

The child must submit an I-918 to the CIS Vermont Service Center along with the certification and evidence showing she meets each of the U Visa requirements. NOTE: This must be done less than 6 months after the certification is signed.

The child must have her biometrics taken.

The child must then wait for an approval of the U Visa, which is good for 4 years.



Benefits of the U Visa

- Once her U Visa application is found bona fide, she is eligible for a work permit.
- Once she has had her U Visa and been continuously present in the U.S. for 3 years, she can apply to become an LPR.

Note: Children (under 21) can be included on a parent's or (if they are unmarried and under 18) a sibling's U Visa applications.



TVPRA U Visa Changes

Key changes related to the U Visa:

- The U Visa is extended past the 4 years if an I-485 is pending.
- Work permits are now available to those with pending, bona fide U Visa applications.
- All application fees related to U Visas and U-based AOS can be waived.
- Stays of final orders of removal are available to prima facie U Visa applicants.

TVPRA §§ 201(c)-(d), 204.



T Nonimmigrant Visa

What is it?

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

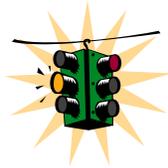
Where do you find it?

- ✓ Section 101(a)(15)(T) of the Immigration & Nationality Act
- ✓ Regulations are at 8 C.F.R. § 214.11



Requirements for the T Visa

- ✓ Child must be or have been a victim of a “severe form of trafficking in persons” which is defined as (1) sex trafficking by fraud or coercion or of someone under 18 or (2) involvement in recruitment, harboring, transportation, provision or obtaining, through fraud or coercion, of a person to be subjected to involuntary servitude, slavery, peonage or debt bondage.
- ✓ Child is physically in the U.S. on account of the trafficking or to assist in its investigation or prosecution.
- ✓ Child would suffer extreme hardship involving unusual and severe harm upon removal from the U.S.



Immigration Process for the T Visa

The child must submit an I-914 to the CIS Vermont Service Center along with evidence showing she meets each of the requirements.

The child must have her biometrics taken and may have to complete an interview.

The child must then wait for an approval of the T Visa, which is good for 4 years.



Benefits of the T Visa

- Once she has established her prima facie T Visa case to CIS, she is eligible for refugee benefits.
- Once she has an approved T Visa, she is issued a work permit.
- Once she has had her T Visa and been continuously present in the U.S. for 3 years (or has a letter from DOJ stating that the criminal trafficking matter is closed), she can apply to become an LPR.

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



TVPRA T Visa Changes

Key changes related to the T Visa:

- The T Visa is extended past the 4 years if an I-485 is pending.
- Federal benefits are extended to those with prima facie eligibility for T Visas.
- All application fees related to T Visas and T-based AOS can be waived.
- Stays of final orders of removal are available to prima facie T Visa applicants.

TVPRA §§ 201(b)-(d), 204.

Asylum



What is it?

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

Where do you find it, primarily?

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

Requirements for Asylum



- ✓ Child must have a well-founded fear of persecution; the fear has both an objective and subjective component.
- ✓ Persecution must be “on account of” race, religion, political opinion, nationality or membership in a particular social group.
- ✓ Persecution must be by the government or by a group that the government is unable or unwilling to control.
- ✓ Child must not have persecuted others and must not pose a danger to U.S. security, among other restrictions.
- ✓ Child must merit a favorable exercise of discretion.

Immigration Process for Asylum



For a child who is not in removal proceedings:

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

For a child who is in removal proceedings:

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

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

TVPRAs Asylum Changes



Three key changes for Unaccompanied Alien Children (“UACs”) (those under 18 lacking lawful immigration status with no parent or legal guardian in the U.S. who is available to provide care and physical custody):

- Unlike other asylum applicants, UACs need not file for asylum within 1 year of their arrival in the U.S.
- The Asylum Offices have initial jurisdiction over all UACs' asylum applications, even those of UACs in removal proceedings.
- Regulations taking into account the special procedural and substantive aspects of UACs' claims will govern.

TVPRAs § 235(d)(7)-(8).

Immigration Consequences of Juvenile Delinquency Dispositions

KEY Concept:

Juvenile delinquency dispositions are not “convictions” for immigration purposes.



See Matter of Devison-Charles, 22 I. & N. Dec. 1362, 1365-66 (BIA 2000).

This is good news for children – since “convictions” often carry dire immigration consequences – but it does not mean that delinquency dispositions have *no* immigration consequences...

Immigration Consequences of Juvenile Delinquency Dispositions

AND REMEMBER:

The Sixth Amendment right to effective assistance of counsel extends to advice on immigration consequences of dispositions – both avoiding deportability and preserving eligibility for immigration relief.



Padilla v. Kentucky, 130 S.Ct. 1473, 1482 (2010).



Consequences for Undocumented Youth Grounds of Inadmissibility

The *criminal grounds of inadmissibility*, which depend upon “convictions” or formal admissions to crimes, are not implicated by juvenile delinquency dispositions – but certain delinquency dispositions may provide evidence that the child falls into a *conduct-based ground of inadmissibility*. Meaning, it is not the disposition itself that would make the child inadmissible, but the conduct underlying the disposition.



Consequences for Undocumented Youth Grounds of Inadmissibility

What are grounds of inadmissibility that could be implicated by delinquency dispositions?

- **Drug addiction or abuse under HHS regulations. See INA § 212(a)(1)(A)(iv).**

Drug abuse is non-medical use of controlled substance not necessarily resulting in dependence.

Abuse is “characterized by a pattern of recurrent substance use despite adverse consequences and impairment.”



Consequences for Undocumented Youth Grounds of Inadmissibility

- **Physical or mental disorders under HHS regulations. See INA § 212(a)(1)(A)(iii)(I), (II).**

Current physical or mental disorder (with associated harmful behavior) that “may pose or has posed a threat to the property, safety or welfare of the alien or others” OR past disorders (with associated harmful behavior) that are likely to recur or lead to other harmful behavior.



Consequences for Undocumented Youth Grounds of Inadmissibility

- **“Reason to believe” drug trafficking. See INA § 212(a)(2)(C).**

People whom the U.S. AG “knows or has reason to believe” “is or has been an illicit trafficker in any controlled substance” or “is or has been a knowing aider, abettor, assister, conspirator, or colluder with others in [] illicit trafficking.”

Note that this ground does not require even a charge related to drug trafficking.



Consequences for Undocumented Youth Grounds of Inadmissibility

- **Prostitution.** *See* INA § 212(a)(2)(D).

Applies to those who have engaged in prostitution within 10 years of applying for immigration relief (for “visa, admission or adjustment of status”).

Also applies to those who directly or indirectly procure or attempt to procure persons for prostitution or have received proceeds of prostitution.



Consequences for Undocumented Youth Grounds of Inadmissibility

- **False claim to U.S. citizenship.** *See* INA § 212(a)(6)(C)(ii).

“Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit” under the INA or under “any other [f]ederal or [s]tate law is inadmissible.”



Consequences for Undocumented Youth

Family Unity

Family Unity benefits, designed for relatives of those granted amnesty in the 1980s, are barred for those with juvenile delinquency dispositions that, if committed by an adult, would be a felony of violence or involving threat of force against another. *See* 8 C.F.R. § 236.13.



Consequences for Undocumented Youth

The Immigration Radar

Many children cannot apply to adjust status because they lack a basis for eligibility (such as a family petition, SIJS, asylee status, VAWA benefits). Even so, involvement in the juvenile delinquency system may have negative consequences.

How? Contact with the juvenile delinquency system may put undocumented children on the immigration radar (bring them to the attention of DHS). Without eligibility for immigration relief, they may be deportable – *with or without* sustained delinquency petitions.



Consequences for Undocumented Youth

The Immigration Radar

Certain undocumented children placed in removal proceedings *may* be able to prevent their deportation via “cancellation of removal.” *See* INA § 240A(b).

Requirements? 10 years continuous physical presence; good moral character for 10 years; no convictions under INA § 212(a)(2); “exceptional and extremely unusual hardship” to a USC or LPR spouse, parent or child.

Delinquency dispositions may compromise good moral character or factor negatively into exercise of discretion.



Consequences for LPRs

Grounds of Deportability

Lawful permanent residents are not immune. They may be ordered removed from the U.S. if they fall into a ground of deportability. *See* INA § 237.

What are grounds of deportability that could be implicated by delinquency dispositions?

- **Drug addiction or abuse.** *See* INA § 237(a)(2)(B)(ii).

“Any alien who is, or at any time after admission has been, a drug abuser or addict is deportable.”



Consequences for LPRs
Grounds of Deportability

- **False claim to U.S. citizenship.** *See* INA § 237(a)(3)(D).
Same as the inadmissibility ground.
- **Violation of a protection order against violence, stalking, and similar behaviors.** *See* INA § 237(a)(2)(E)(ii).
The child must have violated a court-ordered protective order designed to protect someone against “credible threats of violence, repeated harassment, or bodily injury.”



Consequences for LPRs
Grounds of Deportability

Cancellation of removal may be available for some LPRs. *See* INA § 240A(a). This cancellation requires 5 years as an LPR, continual residence in the U.S. for 7 years since being admitted in any status, and no aggravated felony conviction.

Delinquency dispositions, however, may factor into the immigration judge’s discretionary decision to grant or deny cancellation. *See, e.g., Wallace v. Gonzales*, 463 F.3d 135, 139 (2d Cir. 2006); *In re Morales-Castillo*, No. A72-940-465, 2005 WL 3802090 (BIA Dec. 8, 2005) (unpublished).



Consequences for LPRs Naturalization Hurdles

Unless an LPR has acquired U.S. citizenship by operation of law, available to some, that person must apply to “naturalize” if she wants to become a USC.

What are some naturalization issues implicated by juvenile delinquency dispositions?

- The naturalization process can trigger investigation, and if DHS discovers the person is deportable her application will be denied and she can be placed in removal proceedings (see grounds of deportability above).



Consequences for LPRs Naturalization Hurdles

- Good moral character during residency requirement (typically the last 5 years)
Although delinquency dispositions are not criminal bars to establishing good moral character, they may reveal conduct-based bars to good moral character and they can also factor into the discretionary component of good moral character.



Consequences for USC's Limits on Petitioning

Some juvenile delinquency dispositions can limit a USC's ability to petition for family members.

- The Adam Walsh Child Protection and Safety Act of 2006 prohibits USC's convicted of any "specified offenses against a minor" from filing a family-based petition, unless the U.S. AG decides the petitioner poses no risk to the beneficiary.
- "Convictions" can include juvenile delinquency dispositions of some types of sexual abuse by children 14 or older.



Interactions Between DHS & the Juvenile Court

Remember:

- Referral to DHS is not the appropriate method for screening a child for immigration status or benefits; ICE's emphasis is on deportation, not relief from removal.
- Consultation with an experienced immigration practitioner or submission of a Freedom of Information Act request or document verification request can yield the needed immigration information.



ICE Enforcement Priorities

The reality is that ICE cannot remove the 11.2 million undocumented people in the U.S. or all of the people who may have lawful status but are nonetheless deportable.

As a result, ICE has articulated its enforcement priorities in a March 2011 Memo from John Morton, ICE Director available at <http://www.ice.gov>.



ICE Enforcement Priorities

Priorities for enforcement include:

- People who pose a danger to national security or threaten public safety (including persons convicted of crimes and those 16 or older involved in gangs)
- Recent illegal entrants
- People who are fugitives or otherwise obstruct immigration controls

ICE should use particular care when dealing with juveniles. Morton Memo at 4.

Apprehensions of Undocumented or Deportable Persons



Persons – including children – that DHS seeks to remove from the U.S. may come into DHS custody in a number of ways. They may be apprehended at borders/ports of entry, may be picked up in targeted arrests or large-scale raids on workplaces, or may be turned over to DHS by local law enforcement agencies pursuant to an immigration hold...

Immigration “Holds”



Called a “detainer,” it is a formal instruction from ICE to a local law enforcement agency regarding a particular person. It requires that ICE must be notified (1) of the person’s transfer to another institution *and* (2) of the time of the person’s release as far in advance as possible or at least 30 days prior to release.

Immigration “Holds”



It requires that the law enforcement agency detain the person **FOR A PERIOD NOT EXCEEDING 48 HOURS** (excluding Saturdays, Sundays and federal holidays) to allow ICE to assume custody of the person. *See* 8 C.F.R. § 287.7.

People should know that:

- They have the right to remain silent in the face of DHS questioning.
- DHS officials may be able to use any information the person gives them to establish her removability from the United States.



Custody Decisions for Children in Removal Proceedings

When a child is picked up by ICE:

- If she is deemed to be “accompanied” then she may be released to a parent or guardian or kept in ICE detention.
- If she is deemed to be “unaccompanied” then she might be kept in ICE custody, but usually will be transferred to an ORR facility – note there are none of these facilities in Nebraska.



Custody Decisions for Children in Removal Proceedings

If the child is transferred to ORR care:

- ORR has an obligation to ensure placement in the least restrictive setting possible while the child is in federal custody.
- ORR provides services to the child to facilitate safe and timely release, and to ensure that the child is released to family members or other sponsors that can care for the child's physical and mental well-being.



Custody Decisions for Adults in Removal Proceedings

When ICE picks up an adult, the process is different.

- ICE officers make initial determinations about detention vs. release (on own recognizance or electronic monitoring), but this is ad hoc.
- Generally, detention resources should not be spent on those with “serious physical or mental illness, or who are disabled, elderly, pregnant. or nursing, or demonstrate that they are primary caretakers of children or an infirm person.” Morton Memo at 3-4. Exceptions to this policy require approval. *Id.*



Custody Decisions for Adults in Removal Proceedings

- Yet many people are subject to mandatory detention or are otherwise detained.
- They may later have their custody decision re-determined, but the lowest bond an immigration judge can set is \$1,500.
- Those who remain detained may be transferred to facilities (federal, private or state/county jail facilities) far from the apprehension site with little access to phones, lawyers, or visitation.



Removal Procedures

Once placed in removal proceedings by the filing of the Notice to Appear with the immigration court (presuming no voluntary departure paperwork is signed up front):

- The person, even if a child, has no right counsel at government expense.
- She will be required to appear before an immigration judge, who will determine over the course of several hearings if she is removable from the U.S. and whether she qualifies for immigration relief (or voluntary departure).



Removal Procedures

Note:

- A child's being a state ward does not prevent her from getting a removal order or being removed by DHS.
- A parent's having a USC child/ren does not prevent that parent from getting a removal order or being removed by DHS.
- A parent's having a pending state court case where parental rights are at stake does not prevent DHS from removing that parent.



Removal Procedures

- Failure to appear results in a removal order.
- If a non-detained person is ordered removed then she will be sent a "bag and baggage" letter with a date upon which she has to appear for removal; if a detained person is ordered removed, she will be removed once arrangements are made.
- The person does have the right to appeal the immigration judge's decision to the BIA – within 30 days – and can request a stay of removal. Denials by the BIA can be appealed to the U.S. Court of Appeals for the appropriate circuit.



Assistance to Children

Those in the juvenile court system may be able to assist a child in her removal proceedings by...

- ✓ Providing her and her family with referrals to free immigration legal services providers.
- ✓ Facilitating release from ORR care.
- ✓ Assisting with immigration relief (SIJS, U Visa).
- ✓ Helping the child or her immigration attorney to obtain juvenile court documents.
- ✓ Resolving any subsequent juvenile delinquency petitions in ways that create the least damaging immigration consequences.



Assistance to Parents

Those in the juvenile court system may be able to assist a parent in her removal proceedings by...

- ✓ Providing her with referrals to free immigration legal services providers.
- ✓ Facilitating release from detention.
- ✓ Assisting with immigration relief (U Visa).
- ✓ Helping her or her immigration attorney to obtain documents in support of family-based immigration or cancellation of removal.
- ✓ Coordinating return of children to home country with parent's deportation if they are to be reunited.

Juvenile Court with Detained Parents



Ideas for maintaining integrity of the juvenile court process while a parent is detained by ICE:

Locating and Communicating with the Parent!

- ✓ ICE Detainee Locator at <https://locator.ice.gov/odls/homePage.do>
- ✓ Facility list at <http://www.ice.gov/detention-facilities/>
- ✓ Local Deportation Officer through Enforcement & Removal Office at <http://www.ice.gov/contact/ero/>
- ✓ Note communication can be difficult for the detainee.

Juvenile Court with Detained Parents



Ensuring Parental Involvement in Hearings!

- ✓ Attorneys should arrange contact with the parent through the detention facility or the ICE deportation officer.
- ✓ ICE should be notified and requested to facilitate parent participation in juvenile court hearings (video or in-person).
- ✓ ICE Performance-Based National Detention Standards 2010, not yet fully in effect, allow ICE to transport parents to “attend a family-related state court proceeding” but on a “case-by-case basis.”

Juvenile Court with Detained Parents



Developing Effective Case Plans!

To avoid “implementing a case plan that precludes a parent’s compliance” keep in mind:

- ✓ Facilities may have very limited visitation, no contact visits, and require identification of visitors – and may be so far as to make visitation impracticable.
- ✓ Facilities may have limitations on phone calls and mail.
- ✓ Facilities likely do not have reunification parenting programs or other assistance for parents.

Juvenile Court with Immigrant Families



Ideas for maintaining integrity of the juvenile court process for families with 1 or more immigrants:

Involvement of the Foreign Consulate

- ✓ Notification and involvement can ensure the child’s and parents’ interests are represented.
- ✓ Consulates may help to arrange assistance for families.
- ✓ “[T]he guardian ad litem or the juvenile court should act to ensure that the consulate is notified and involved” if HHS does not. *In re Interest of Angelica L*, 767 NW.2d 74, 97 (Neb. 2009) (concurrence).

Juvenile Court with Immigrant Families



Proper Translation and Interpretation

- ✓ Communication in the language/s the parents and child can fully understand is an essential part of due process – including for hearings and case plans.
- ✓ It is also key to an attorney's duty to communicate with her client under Neb. R. Prof. Conduct 3-501.4.
- ✓ Be very clear about confidentiality with interpreters.
- ✓ Do not use children to interpret for adults, or others as go-betweens in place of speaking directly with the child or parents.

Juvenile Court with Immigrant Families



Cultural Competence and Sensitivity to the Dynamics of Immigration

- ✓ Knowledge (or lack of knowledge) of a community's immigrant population can seriously affect the decisions made in a case.
- ✓ Areas of sensitivity include: experience with authoritarian regimes in home countries, cultural norms and child-rearing practices that differ from those in the U.S., stressors of the immigrant experience, differing understandings of physical and mental health and illness.

National Resources



- ILRC SIJS Materials at <http://www.ilrc.org>
- ILRC Immigration Benchbook for Juvenile & Family Courts at <http://www.ilrc.org>
- National Center for Immigrant & Refugee Children Resource Library at <http://www.refugees.org>
- SIJS TVPRA Practice Advisory at <http://www.ilrc.org>
- SIJS TVPRA CIS Memorandum at <http://www.uscis.gov>
- SIJS Caseworker's Toolkit at <http://www.brycs.org/sijs>
- Expert child welfare/immigration technical assistance at <http://www.brycs.org/askBrycs/index.cfm> or info@brycs.org

National Resources



- LIRR Publication on Working with Immigrant Children at <http://www.lirs.org/InfoRes/pub.htm>
- Annie E. Casey Foundation Report *Undercounted. Underserved. Immigrant and Refugee Families in the Child Welfare System* at <http://www.aecf.org>
- *Migration: A Critical Issue for Child Welfare* Report and Migration and Child Welfare National Network at <http://www.americanhumane.org>
- Family to Family Collected Immigration Materials at <http://www.f2f.ca.gov/Immigrants.htm>

National Resources



- A Social Worker's Tool Kit for Working with Immigrant Families – Healing the Trauma and Immigrant Families in the Child Welfare System (2010)
 - A Social Worker's Tool Kit for Working with Immigrant Families – A Child Welfare Flowchart (2009)
 - A Social Worker's Tool Kit for Working with Immigrant Families – Immigration Status and Relief Options (2009)
- All available through the Migration and Children Welfare National Network at <http://www.americanhumane.org>

National Resources



- Women's Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* (2010) at <http://www.womenscommission.org>
- First Focus, *The Impact of Immigration Enforcement on Child Welfare* (2010) at <http://www.firstfocus.net>
- Dorsey & Whitney LLP, *Severing a Lifeline: The Neglect of Citizen Children in America's Immigration Enforcement Policy* (2009) at <http://www.urban.org>
- Appleseed, *Protecting Assets and Child Custody in the Face of Deportation* (2009) at <http://www.appleseednetwork.org>

Local Resources



- To speak with people who have handled SIJS cases, contact Diana McFarland of Justice for Our Neighbors at (402) 898-1349 or Kevin Ruser of University of Nebraska at (402) 472-3271 or Bassel El-Kasaby of KasabyNicholls at (402) 884-0700.
- For naturalizations, U, VAWA, and family-based immigration including through adoptions contact Catholic Charities/Juan Diego Center at (402) 731-5413 or (402) 939-4615.
- The Nebraska Domestic Violence Sexual Assault Coalition does VAWA and U cases and has locations in Lincoln and Lexington; they are at (402) 476-6256.

Local Resources



- The Center for Legal Immigration Assistance in Lincoln, with a clinic in Lexington, handles VAWA, U, asylum and family-based cases and will consider SIJS cases at (402) 471-1777.
- University of Nebraska College of Law Immigration Clinic handles cases including asylum, SIJS, VAWA, removal and family-based; they are at (402) 472-3271.
- Lutheran Family Services handles SIJS, VAWA, U, T, asylum, SIJS, family-based and removal cases. The main office in Omaha can be reached at (402) 346-6100; the Lexington office is (308) 324-6788, the Grand Island office is (308) 382-4255, and refugee services office in Lincoln is (402) 435-2910.

Local Resources



- St. Mary's Cathedral in Grand Island at (308) 381-2855 handles family-based immigration.
- For representation of DHS detainees without criminal issues, contact the Volunteer Lawyers Project of the Nebraska State Bar Association at (402) 475-7091.
- Contact Centro Hispano Comunitario de Nebraska in Columbus at (402) 564-2110 about their services.
- Contact Benedictine Mission House in Schuyler (402) 352-3436 and Catholic Social Services in Lincoln (402) 474-1600/Hastings (402) 463-2112 about their services.

Local Resources



- Nebraska Appleseed has an Immigrant Integration and Civic Participation Program with an excellent website of resources and listing of immigration legal services at <http://neappleseed.org/immigrants>
- The Urban Institute, *Paying the Price: The Impact of Immigration Raids on America's Children* (2007) profiles 3 study sites including Grand Island NE at http://www.urban.org/UploadedPDF/411566_immigration_raids.pdf

Local Resources



- University of Nebraska Public Policy Center, *Immigration Controversies in Nebraska: Policies, Politics, and Public Perspectives* (2009) at <http://ppc.unl.edu>
- University of Nebraska – Lincoln, *Strategic Discussions for Nebraska: Immigration in Nebraska* (2008) at <http://www.unl.edu/sdn/immigration>
- Mary Pipher, *The Middle of Everywhere: Helping Refugees Enter the American Community* (2002) (focus on Lincoln NE)



ORGANIZE!

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

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



Specifics: 3(A) Cases

Often the most welcoming system.

- Challenges:
 - Greater numbers
 - Misconception that all undocumented children automatically become USCs when adopted by USCs
- Incentives:
 - More effective preparation of children for independent living and better situation for adoptive parents
 - Increased possibility for federal reimbursement for children's care



Specifics: 3(A) Cases

Tips for organizing an immigration program:

- Models:
 - Court appointment of immigration counsel
 - Specialized unit of social workers in the child welfare agency that can handle the basic immigration cases
 - Referral to local immigration practitioners
- Outreach:
 - Educate participants (judges, county/HHS counsel, GALs, CASAs, social workers) to refer cases
 - Involve adoption and emancipation units in HHS with immigration planning



Specifics: Delinquency

Often the most difficult system.

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



Specifics: Delinquency

Tips for organizing an immigration program:

- Models:
 - Court appointment of immigration counsel
 - Referral to local immigration practitioners
- Outreach:
 - Educate participants in system (judges, defense counsel, HHS/county attorneys, GALs) to refer cases
 - Work to ensure that emancipation programs include plans for immigration relief
 - Meet with OJS/probation officials to identify immigration relief and avoid immigration detainers



Specifics:

Guardianship/Adoption

A good system if the child can get into it.

- Challenges:
 - Difficulty identifying children because of lack of sustained state involvement
 - Misconception that courts that handle these cases are not “juvenile courts” for immigration purposes
- Incentives:
 - Legalizing children’s status may allow their guardians or new parents to better perform their duties
 - May reduce the chance that children will end up with a 3(A) case because their status is too great a burden for their guardians or new parents



Specifics:

Guardianship/Adoption

Tips for organizing an immigration program:

- Models:
 - Court appointment of immigration counsel
 - *Pro per* guardianship or adoption clinic staffed by attorneys who can also take on immigration cases
- Outreach:
 - Educate participants in system (judges, investigators) to refer cases
 - Make immigration evaluation part of *pro per* screening