

Implementing SB 1064, The Reuniting Immigrant Families Act:

**Seeking Legal Relief for Immigrant Youth and Families involved in the
Family and Juvenile Court Systems**

Erin Quinn, Staff Attorney, ILRC
&
Kristen Jackson, Senior Staff Attorney, Public Counsel
&
Elizabeth Thornton, Attorney, ABA Center on Children
and the Law

 December 2, 2013

Immigrant Legal Resource Center (ILRC)




LEGAL PROFESSIONALS & ADVOCATES
educating & providing expertise in immigration law

IMMIGRANTS
strengthening leaders & communities


LAWS, POLICIES, & PRACTICE
advocating for fairness to immigrants

 © 2013 Immigrant Legal Resource Center 2

ILRC Attorney of the Day

- **Free Attorney of the Day**
 - IOLTA Legal Services Programs in California
 - All San Francisco Bay Area Non-Profits
- **Other Attorney of the Day**
 - Hourly rate pro-rated to the minute, or
 - One-time consultation fee

 © 2013 Immigrant Legal Resource Center 3



ILRC Attorney of the Day

- Mon-Thu 10am-3pm
- Phone: (415) 255-9499 ext. 6263
- Email: aod@ilrc.org
- Fax: (415) 255-9792
- Website: www.ilrc.org





Training Topics

- Immigration Enforcement & Family Separation
- Overview of SB 1064
- Overview of ICE Parental Interests Directive
- Immigration Relief: What's at stake?
 - Special Immigrant Juvenile Status
 - Violence Against Women Act
 - U Visa (victims of crimes)
 - T Visa (trafficking victims)





Immigration Enforcement

- The U.S. has deported more people in the last 10 years than the preceding 107 years.
 - Record number of deportations in FY 2012 – 410,000
- The U.S. spends more on immigration enforcement than on FBI, DEA, Secret Service & all other federal criminal law enforcement agencies combined
 - Nearly \$187 Billion Spent on Federal Immigration Enforcement over Past 26 Years





Family Separation

- Between July 1, 2010 and Sept. 31, 2012, nearly **23 percent** of all **deportations**—or, 204,810 deportations—were issued for **parents with U.S. citizen children**.
- As of 2011, there were at least **5,100 children** currently living in foster care as a result of detained or deported parents.





Issues for Immigrant Parents

- ICE enforcement separates families, and children end up in the child welfare system
- ICE detention limits parental participation in the reunification process
- Immigration proceedings can result in parents' removal (though not always)





Immigrant Parents in Detention

Challenges facing immigrant parents in detention include:

- trauma exposure to children at time of arrest; abandonment of children; children coming home to empty homes
- difficulty in locating and staying in communication during detention
- logistical challenges at deportation
- immigration judges often have no discretion to consider the adverse impact of parental deportation on US citizen children





Other Issues for Immigrant Parents

Potential obstacles:

- Negative experience with authoritarian regimes;
- child-rearing practices that differ from those in the U.S.;
- stressors of the immigrant experience;
- differing understandings of physical and mental health/illness





Undocumented Children

- Many undocumented children in the juvenile court system are eligible for immigration relief options, but they may not be flagged.
 - SIJS was created over 20 years ago, but it is still an underused form of immigration relief. In 2010, a total of 1,492 immigrant youths obtained lawful permanent residency through SIJS. This was a 29% increase from 2009, but the number is small compared to the total of 265,808 immigrants under 21 who obtained lawful permanent residency in 2010.

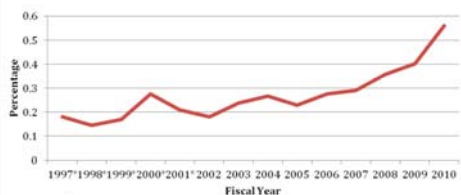


© 2013 Immigrant Legal Resource Center

11



Percent of Immigrants Under 21* Obtaining LPR through SIJS





* Because of available DHS provided age ranges, Fiscal Years 1997-2001 are a percentage of Total Immigrants Under 20 Who Obtained LPR through SIJS




© 2013 Immigrant Legal Resource Center

12






Training Topics

- Immigration Enforcement & Family Separation
 - **Overview of SB 1064**
- Overview of ICE Parental Interests Directive
- Immigration Relief: What's at stake?
 - Special Immigrant Juvenile Status
 - Violence Against Women Act
 - U Visa (victims of crimes)
 - T Visa (trafficking victims)




© 2013 Immigrant Legal Resource Center 13






SB 1064: The Reuniting Immigrant Families Act

- On Oct 1, 2012, SB1064 was signed into law by Governor Brown, making it the first bill in the country to address the barriers to family reunification for detained and deported immigrant families in the child welfare system.
 - SB1064 prioritizes keeping children with their families and out of the public child welfare system whenever possible and ensures that separated families receive appropriate care and due process.




© 2013 Immigrant Legal Resource Center 14

Four Components of SB1064

1. Authorizes the courts to provide an extension in the family reunification period so that child welfare agencies can provide a more diligent search for parents who may be detained or deported, or help find a potential relative placement.
 - Court ordered services may be extended up to a maximum time period not to exceed 18 months. In making such a determination, the Court shall consider a parent who has been arrested and issued an immigration hold, detained by the U.S. ICE, or deported to his or her country of origin.



© 2013 Immigrant Legal Resource Center 15



Four Components of SB1064

1. Extension of family reunification period

- Welf. & Inst. Code § 361.5
- "... In determining whether court-ordered services may be extended, the court shall consider the special circumstances of . . . a parent who has been arrested and issued an immigration hold, detained by the United State Department of Homeland Security, or deported to his or her country of origin, including, but not limited to, barriers to the parent's or guardian's access to services and the ability to maintain contact with his or her child."





Four Components of SB1064

1. Reunification period and reasonable efforts

- Welf. & Inst. Code § 361.5
- "When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services . . . Unless a parent or guardian is incarcerated or detained by the United States Department of Homeland Security and the corrections facility in which he or she is incarcerated does not provide access to the treatment services ordered by the court, or has been deported to his or her country of origin and services ordered by the court are not accessible in that country."





Four Components of SB1064

1. Reunification period and reasonable efforts

- Welf. & Inst. Code § 361.5
- "An incarcerated or detained parent may be required to attend counseling, parenting classes, or vocational training programs as part of the reunification plan if actual access to these services is provided."
- "Reasonable efforts to assist parents who have been deported to contact child welfare authorities in their country of origin, to identify any available services that would substantially comply with the case plan requirements, to document the parents' participation in those services, and to accept reports from local child welfare authorities..."
- *In re Maria S.* (California Court of Appeals, Second District, 98 Cal.Rptr.2d 655, Aug. 4, 2000).





Four Components of SB1064

2. Prohibits immigration status alone from being used as a disqualifying factor in determining an individual's suitability to be a placement for a child (including their own parent).
 - Authorizes use of a relative's foreign consulate identification card or passport to be used to initiate fingerprint clearance so that a relative can be a placement for their relative child in the foster care system.





Four Components of SB1064

2. Immigration status and placement
 - Welf. & Inst. Code § 309. "Upon delivery to the social worker of a child who has been taken into temporary custody . . . The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative, regardless of the parent's, guardian's or relative's immigration status . . .
 - Welf. & Inst. Code § 361.3. "In any case in which a child is removed . . . Preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative, regardless of the relative's immigration status.





Four Components of SB1064

2. Immigration status and placement
 - Does federal law prohibit undocumented adults providing foster care from receiving IV-E foster care payments? No, as long as the child is IV-E eligible.
 - "Foster and adoptive parents are not recipients of federal foster care and adoption assistance payments; rather, foster care and adoption assistance payments are made on the child's behalf to meet his or her needs" and "Foster care and adoptive home licenses/approvals are not considered a Federal, State or local public benefit." ACYF-CB-PIQ-99-01 (1/14/99) – and note that Title IV-E, Sec. 471 (19) mandates preference of relatives over non-relatives in child placements.





Four Components of SB1064

2. Immigration status and placement

- MEPA (P.L. 103-382, 42 U.S. Code Section 622; also a Title IV-E state plan requirement) says that: A state or other entity covered by MEPA may not delay or deny placement of a child for adoption or into foster care on the basis of the race, color or national origin of the adoptive or foster parent, or the child involved.
- Fostering Connections Act, Public Law 110-351, Sec. 3, requires within 30 days after removal of a child from custody of a parent, due diligence to identify and provide notice to adult relatives of the child (no mention of only providing notice to relatives within the U.S).





Four Components of SB1064

3. Requires California Department of Social Services to provide guidance to counties and municipalities to establish Memorandums of Understanding with appropriate foreign consulates in child custody cases.

- Article 37 of the Vienna Convention on Consular Relations clearly states that consular officers have the right to assist their nationals in cases of death, guardianship or trusteeships and that consular post shall be informed without delay. However, there is inconsistent and under-utilization of the consular offices.
- Sample child welfare agencies' policies and procedures <http://www.f2f.ca.gov/sampleMOUs.htm>







Four Components of SB1064

4. Requires the California Department of Social Services provide guidance by January 1, 2014 to social workers on assisting children eligible to apply for Special Immigrant Juvenile Status (SIJS), U and T visas, and the Violence Against Women Act.


- Case workers and court staff are sometimes the first and only person an immigrant child or family encounters who may be able to identify their eligibility for these immigration relief options.








Training Topics

- Immigration Enforcement & Family Separation
- Overview of SB 1064
- **Overview of ICE Parental Interests Directive**
- Immigration Relief: What's at stake?
 - Special Immigrant Juvenile Status
 - Violence Against Women Act
 - U Visa (victims of crimes)
 - T Visa (trafficking victims)




© 2013 Immigrant Legal Resource Center 25






ICE Parental Interests Directive

Why is it needed?

- Immigrant parents' inability to be present for and resource their children
- Immigration system has very little protections in place to ensure wellbeing of the family
- Enforcement actions carried out without regard to children at home







Where are the parents?

ICE Enforcement = Detained

- Workplace raids
- Transfer from state systems – typically law enforcement (detainers)
- Referral by CIS

Note: CBP handles border apprehensions (air/land)





ICE Enforcement

ICE's enforcement priorities:

- People who pose a danger to national security or a risk to public safety
- People who recently arrived illegally
- People who are "fugitives"





ICE Enforcement

ICE's enforcement realities:

- Of the people transferred from local law enforcement to ICE, recently no more than 14% met the first priority
- Roughly half of them had no criminal conviction, not even a traffic violation





ICE Enforcement

ICE's enforcement procedures:

- ICE takes the immigrant into custody
- Can exercise **prosecutorial discretion**, otherwise...
 - Immigrant placed into EOIR removal proceedings (immigration court) or, in some cases, removed





ICE Detention

ICE's detention priorities:

Absent "extraordinary circumstances" or triggering of mandatory detention provisions, ICE should not detain people who are pregnant, nursing or the primary caretakers of children





ICE Detention

Initial consequences for parents:

- Parents in initial ICE custody may be difficult to locate
 - see ICE detainee locator
- If there is no rapid care plan, children may wind up in the child welfare system





ICE Detention

Where are parents detained?

- Can be detained in any federal immigration detention center
- Use the ICE Detainee Locator, and links to information pages





ICE Detention

What do they face in detention?

- Some may be removed if they choose or have a prior removal order
- Many will fight their removal case in immigration court – which can take months at least
- Some may eventually bond out





ICE Detention

- If placed in immigration court, might get bond and release
- Might be placed on a supervision program
- Might stay detained
- Might not get proceedings, and be subject to removal without further court process.





ICE Detention

Typical issues parents have faced:

- Lack of notice of juvenile court hearings
- Inability to attend juvenile hearings
- Inability to speak with counsel
- Inability to visit with children or comply with court-ordered plans given lack of services





Immigration Court Proceedings

An overview:

- The proceedings have two stages: removability and relief
- The immigration judge must determine removability and whether the parent qualifies for relief (for example, asylum)





Immigration Court Proceedings

Challenges parents face:

- No right to government-appointed counsel in adversarial proceedings
- Lengthy proceedings (months or years), especially if appeal is needed
- Immigration judges' very limited ability to consider children's interests





Immigration Court Proceedings

If a person is ordered removed:

- ICE sends the non-detained person a "bag and baggage" letter with instructions to report for removal
- ICE will remove a detained person once arrangements are made (no removal during admin appeal)





Issues for Immigrant Parents

Significance for juvenile proceedings

- The two courts operate on different time lines
- Not all parents will be removed, though that is often presumed
- Removed parents may lose parental rights because of procedural hurdles





Other Issues for Immigrant Parents

If U.S. citizen children:

- Obtaining U.S. passports for children if relocation is planned
- Assessing children’s immigration status in parents’ home country
- Coordination of removal and relocation





ICE Parental Interest Directive

Issued August 2013, focusing on:

Better practices for detained parents

- make decisions regarding their child’s care
- maintain contact with their children
- participate in family court proceedings impacting upon their parental rights.





ICE Parental Interest Directive

Directive focus:

- parents or legal guardians who are **primary** caretakers (regardless of status of child)
- parents or legal guardians who are involved in **family court or child welfare proceedings**
- parents or legal guardians whose minor children are physically present in the United States and are **U.S. citizens or LPRs**





ICE Parental Interest Directive

Covers topics including:

- Location of detention
- Parent-child visitation
- Participation in juvenile court hearings (transport/video/phone)
- Paroling deported parents back into the U.S. for TPR court proceedings
- Provisions for coordinated removal





ICE Parental Interest Directive

What can you do?

- **Communicate:** Let all players in the juvenile division court proceedings know of the ICE directive and the need to contact parents in ICE custody





ICE Parental Interest Directive

What can you do?

- **Visitation:** Make certain parents receive “[a] reunification plan; [a] scheduling letter; or [o]ther documentation issued stating the visitation requirement” so detained parents can obtain visits with children





ICE Parental Interest Directive

What can you do?

- **Hearing participation:**
 - Make certain parents have evidence of hearings so they may ask for physical transportation; arrange phone or video participation where ICE will not transport
 - Plenty of notice before hearings to make this happen





ICE Parental Interest Directive

What can you do?

- **Termination of parental rights:** Make certain parents have evidence of the hearing and that physical presence is required (“A state court minute order directing the parent to appear at the [TPR] hearing.”)





Other Issues for Immigrant Parents

Effective case plan development

- Recognize that parents may be unable to work or access benefits
- Acknowledge that ICE detention can impede visits, communication and participation in hearings and reunification plans





Other Issues for Immigrant Parents

Involvement of foreign consulate

- Notification and involvement can help ensure the parents' (and perhaps child's) interests are represented – unless parents are pursuing asylum
- Consulates may help to arrange assistance for families







Other Issues for Immigrant Parents

Proper translation/interpretation


- Communication in a language the parent fully understands is an essential part of due process
- Be clear about confidentiality with interpreters and do not use family, particularly children, as interpreters








Training Topics

- Immigration Enforcement & Family Separation
- Overview of SB 1064
- Overview of ICE Parental Interests Directive
- **Immigration Relief: What's at stake?**
 - Special Immigrant Juvenile Status
 - Violence Against Women Act
 - U Visa (victims of crimes)
 - T Visa (trafficking victims)



© 2013 Immigrant Legal Resource Center 52





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! Or VAWA, U & T Visas. Or Asylum, DACA, Family-based immigration.



53

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: Dependency



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 eligibility for benefits



Specifics: Dependency



Tips for organizing an immigration program:

- Models:
 - Court appointment of immigration counsel
 - Specialized unit of social workers in the child welfare agency that can handle the basic immigration cases
 - Referral to local immigration practitioners
- Outreach:
 - Educate participants (judges, county counsel, attorneys, CASAs, social workers) to refer cases
 - Involve adoption and emancipation units within child welfare 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 eligibility for benefits
 - 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, probation officers) to refer cases
 - Work to ensure that emancipation programs include plans for immigration relief
 - Meet with probation officials to identify immigration relief and avoid immigration detainees



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 dependency 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



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



61



Special Immigrant Juvenile Status (“SIJS”)

Important Note: Changes

- ✓ 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. DHS published proposed regulations and took public commentary last year.



62



Special Immigrant Juvenile Status (“SIJS”)

Important Note: Children’s Rights & Mandatory Duties Related to SIJS

- ✓ This year, in two decisions, the California Court of Appeal determined that children have the “right” to petition the court for SIJS findings. They are entitled to a hearing in which the court would determine whether the findings required for SIJS exist. The court’s duty to make the findings is “mandatory” where these facts exist. See *B.F. v. Superior Court* and *In re Y.M.* (citations follow).



63



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 dependency and delinquency courts.
- It also can include courts acting in cases to establish guardianships for minors or handle adoptions.





Requirement One Cont’d

A recent Court of Appeal decision makes clear that any California court making judicial determinations about the custody and care of juveniles is a “juvenile court” for SIJS purposes.

- See *B.F. v. Superior Court*, 143 Cal. Rptr. 3d 730, 736 (App. 2012) (“a superior court sitting as a probate court – not just a juvenile court exercising its jurisdiction set forth in the Welfare and Institutions Code – can make findings required pursuant to [8 U.S.C.] section 1101(a)(27)(J)”).
- This case involved a guardianship proceeding.





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).

- This has included court dependents and 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, delinquency placement, with guardian or prospective adoptive family.





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.





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 who was abandoned by his parents and who now lives in a foster home.
- A juvenile court dependent who lives with her mother and whose father's whereabouts are unknown.
- A child whose parents are deceased and whose adult sibling is caring for her.
- A child whose father abused her and who will emancipate after completing her delinquency placement.





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" 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.



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.
- ❖ 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 filing and processing of the SIJS Petition and Adjustment of Status Application.




 79



 

The Juvenile Court Stage

TASK ONE: IDENTIFY/SCREEN THE ELIGIBLE CHILD

- Screen each case for SIJS eligibility.
- 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.

 80


 

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.

 81



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

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

Dependency: Request may be made by county counsel or the child's attorney – or by the child's social worker, as appropriate. Use the California Judicial Council's JV-224 (07/01/11).



82



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

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

Delinquency: Request may be made by defense attorney, probation officer, or district attorney.

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



83



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

Timing varies depending upon what type of proceeding the child is in.

Dependency/Delinquency Cases: Request can be filed after a determination is made that child will not reunify with at least one parent (typically after reunification services are terminated as to that parent).

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



84



The Juvenile Court Stage

TASK TWO: OBTAIN THE SIJS FINDINGS

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

- In dependency cases, often all of the evidence needed to support the SIJS request is already in the court file.
- In some instances, declarations may be attached to the request and in-court testimony is taken – particularly outside the dependency context.



85



The Juvenile Court Stage

TASK THREE: ASSEMBLE THE NECESSARY DOCUMENTS FROM COURT

- Certified copy of SIJS findings.
- If the child has a delinquency record, he will need court permission to disclose certified copies of his juvenile court dispositions to CIS.



86





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.
- Make sure that any delinquency petitions are resolved to avoid grounds of inadmissibility and contact an expert if the child is charged in adult criminal court.



87


 


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>.




 88


 



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




 89


 



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!




 90



 

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.


 Center on Children and the Law 91



 

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.

 Center on Children and the Law 92


 



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.

 Center on Children and the Law 93


 


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.



 94


 


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.



 95


 


The Immigration Stage

STEP FOUR: ATTEND THE AOS INTERVIEW WITH THE CHILD

In California, CIS holds interviews:

- In about 10 locations around the state.
- The main offices are in:
 - Los Angeles (4 sub-offices)
 - Sacramento & San Francisco & San Diego (2 sub-offices each)
- The child will be scheduled at the office that has jurisdiction over her place of residence.



 96



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 (which happens in limited circumstances under 2011 DHS Notice to Appear guidance).





Other Forms of Immigration Relief



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


- Violence Against Women Act Relief
- U Visas
- T Visas
- Asylum
- Family-Based Immigration
- Deferred Action for Childhood Arrivals (DACA)



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.

 Center on Children and the Law 100




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)

 Center on Children and the Law 101


 






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.

 Center on Children and the Law 102






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).




103




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.



104


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



© 2013 Immigrant Legal Resource Center


105




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.




© 2013 Immigrant Legal Resource Center 106








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.




107

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).



108



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).





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:

Children’s attorneys may approach agency attorneys to coordinate signing by the certifying agency.

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

Agencies 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.



© 2013 Immigrant Legal Resource Center 118






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.




© 2013 Immigrant Legal Resource Center 119

Walter S. Johnson/ABA/ILRC Child Welfare and Immigration Project

- Court/Attorney survey focused on implementation of SB 1064
- Focus groups and policy review
- Training tools and resources tailored to county needs
- Contact Information
 - Erin Quinn, ILRC equinn@ilrc.org
 - Howard Davidson, ABA, Howard.Davidson@americanbar.org



© 2013 Immigrant Legal Resource Center 120



Resources from ILRC

<http://www.ilrc.org/info-on-immigration-law/remedies-for-immigrant-children-and-youth>

- Remedies for Children and Youth (ILRC), Includes SIJS materials, fact sheet, etc
<http://www.ilrc.org/resources/special-immigrant-juvenile-status-sijs>
- Fact sheets on immigration options for undocumented children
<http://www.ilrc.org/resources/fact-sheets-immigration-options-for-undocumented-children-updated-for-2010>
- "Living in the US: Guide for Immigrant Youth"
<http://www.ilrc.org/resources/living-in-the-united-states-a-guide-for-immigrant-youth>





Additional Resources

Falling Through the Cracks: The Impact of Immigration Enforcement on Children Caught up in the Child Welfare System (Immigration Policy Center/First Focus Fact Check, Dec 2012)
<http://www.immigrationpolicy.org/just-facts/falling-through-cracks>

Migration and Child Welfare National Network – Toolkits for Social Workers
<http://www.americanhumane.org/children/professional-resources/program-publications/child-welfare-migration/toolkits.html>





Thank You!