



2011 Annual Training Conference



Immigration Law: How Does it Impact Children in Foster Care





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Immigrant Children and Child Welfare Practice in Oregon

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Child Welfare Mission/Values:

- **Mission:** The mission of Children, Adults, and Families is to improve family capacity to be self-sustaining while creating a safe and permanent living environment for children.
- **Values:** *Every* child in Oregon has the right to grow up in a safe, permanent and nurturing family home. Oregon's child welfare practice focuses on each child's individualized needs for safety, permanency and well-being.

The following are *some* of the core values which are the foundation for policies, procedures and practices:

- Child safety is the fundamental right of every child in our state and the paramount concern of the child welfare system.
- Identifying and understanding children's individual needs are the first steps toward meeting those needs.

Core Values continued

- Identifying and reinforcing parental strengths and capacities to keep their children safe are the first steps in mobilizing them to meet children's needs.
- Children's needs for safety and permanency are urgent, requiring that the child welfare system activate and complete with corresponding urgency child-specific plans to meet those needs.

POPULATION BEING SERVED

- US Citizens;
- Legal Permanent Residents (LPRs) - legal permanent residents are permitted to live and work in the US but have not yet become citizens;
- Naturalized citizens - immigrants who have applied for and obtained citizenship;
- Legal non immigrants - temporary visitors such as students and temporary workers;
- Undocumented immigrants or undocumented aliens – these individuals **have entered the U.S.A. without inspection or authorization, overstayed their entry visas or had visas cancelled by the government. These are the children we are focusing our conversation on today.**

REQUIRED DHS WORK WITH FOREIGN CHILDREN

- Consular Notification as per the Vienna Convention on Consular Relations (1963) Articles 36 and 37; ORS 109.119; 419B;
- Reunification efforts and culturally appropriate services are provided;

REQUIRED..continued

- Concurrent planning and Relative Search is conducted; appropriate Consular communication is maintained for possible assistance in studying relatives from country of birth; possible placement and/or supervision requirements under the Hague Inter-country adoption requirements.

Special Immigrant Juvenile Status (SIJS)

- Statutory Authority – the federal law that governs SIJS is found at 8USC 1101(a)(27)(J) and the federal SIJS regulations are found at 8 CFR 204.11.
- Expanded Definition for Special Immigrant Juvenile – under Section 235(d)(1) of the TVPRA a special Immigrant Juvenile is now defined as: an immigrant who is present in the USA :

SIJS continued

- Who has been declared dependent on a juvenile court located in the US or whom such a court has legally committed to or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; and

SIJS continued

- for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to their or their parent's previous country of nationality or country of last habitual residence.

SIJS continued

- This Status is based on issues of deprivation, maltreatment or abandonment rather than a desire to secure legal immigration for the minor/youth.

EXERCISE

- Which of the following youths, both undocumented immigrants, would be a candidate for SIJS?
- CASE : # 1 Minh Kao Lee, 12 was removed because of acute physical and emotional abuse. After six months in care his case plan was changed to a non-reunification plan with a permanency plan option of long term foster care in the Oregon. His grandparents overseas have refused to acknowledge their mixed race grandchild. Response ??

EXERCISE continued

- CASE # 2
- Mauricio Jimenez - 6 was placed in foster care due to chronic neglect. The permanency plan is reunification. His parents have been making only marginal improvements in the case plan.
- RESPONSE ?

Other trends

- U-Visa cases
- Unaccompanied Minors

THANK YOU



- CASE : # 1: Minh Kao Lee, age 12, was removed because of acute physical and emotional abuse. After six months in care his case plan was changed to a non-reunification plan with a permanency plan option of long term foster care in the Oregon. His grandparents overseas have refused to acknowledge their mixed race grandchild. Your board is now reviewing the case for the second time. Response ??
-
- CASE # 2: Mauricio Jimenez, age 6, was placed in foster care due to chronic neglect. The permanency plan is reunification. His parents have been making only marginal improvements in the case plan. This is the first CRB on the case, and Mauricio has been in care five and a half months.
- RESPONSE ?

- 1. What questions would your board want to ask at the review regarding possible immigration issues?**
- 2. Under which of the findings would your board ask the questions?**
- 3. What recommendations would your board be likely to make?**

Findings:

1. DHS has made reasonable efforts to prevent or eliminate the need for removal of the child from the home.
2. DHS has made diligent efforts to place the child with a relative or a person who has a caregiver relationship.
3. DHS has ensured that appropriate services are in place to safeguard the child's safety, health and well-being.
4. DHS has made reasonable efforts to provide services to make it possible for the child to safely return home.
5. DHS has made active efforts in accordance with the case plan to place the child in a timely manner, and complete the steps necessary to finalize the permanent placement, including interstate placement if appropriate.
6. The parents have made sufficient progress to make it possible for the child to return home safely.
7. DHS has made sufficient efforts in developing the concurrent permanency plan.
8. DHS is in compliance with the case plan and court orders.
9. The permanency plan is the most appropriate plan for the child.
10. There is a continuing need for placement.

CHECKING PASSPORTS

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I. INTRODUCTION

A. Getting the facts

1. What is the immigration status of the juvenile;
2. What is the immigration status of the juvenile's immediate family members;
3. How have the parents treated the juvenile?

B. Learning the consequences of Juvenile Court proceedings to the juvenile's immigration status;

C. Developing an immigration strategy

1. Is a valid immigration status available to the juvenile?
2. What can be done in Juvenile Court to
 - a. Protect or improve the juvenile's immigration status?
 - b. Avoid an adverse impact from Juvenile Court proceedings on the juvenile's immigration status or eligibility for immigration status?

II. GETTING THE FACTS—WHAT IS THE IMMIGRATION STATUS OF THE JUVENILE?

A. The juvenile is not a reliable source of information

B. The juvenile may

1. Be a U.S. citizen by birth
2. Have been born abroad but be a derivative U.S. citizen
3. Be a lawful permanent resident of the U.S.
4. Have a pending application for lawful permanent residence in the U.S.
5. Be eligible to apply for lawful permanent residence in the U.S. through an application or petition filed by another on behalf of the juvenile or a family member

C. Determine if the juvenile is a U.S. Citizen

1. Get proof
 - a. Copy of the juvenile's U.S. birth certificate or U.S. passport
2. If not a U.S. citizen, ask more questions
 - a. Get the immigration history of the juvenile and the juvenile's family (see attached sample screening sheet)

D. Determine how the parents have treated the juvenile

1. Have the parents abused, neglected or abandoned the juvenile or otherwise not been good parents?
2. Is reunification with the parents viable and in the juvenile's best interests?
3. Would it be in the juvenile's best interests to return to the previous country of nationality or the last habitual residence of the juvenile or the juvenile's parent?

- E. **Has the juvenile been a victim of a crime and if so, has this been reported to law enforcement?**

III. IMMIGRATION CONSEQUENCES OF JUVENILE COURT PROCEEDINGS

A. **Delinquency adjudications**

- 1. Generally do not make the juvenile removable (deportable). There may be exceptions (not discussed here);
- 2. Generally do not make a client inadmissible (meaning there could be a ground for denying return from a trip abroad). There may be exceptions (not discussed here);
 - a. A delinquency adjudication, while not a conviction, might be an admission of the essential elements of a crime;
- 3. Could color the exercise of discretion in a naturalization application

- B. **Dependency adjudications should not have a negative impact on immigration status or the ability to apply for immigration status or naturalization;**

- C. **Has the juvenile’s presence in the U.S. been reported to the Department of Homeland Security as a result juvenile court proceedings ?**

IV. DEVELOPING A STRATEGY

A. **Citizenship**

- 1. Some juveniles may have been born in the U.S. and taken out of the country as infants. They are U.S. citizens;
 - a. Some juveniles may have been born abroad and brought in as infants and mistakenly think they are U.S. citizens;
 - b. Some late-issued U.S. birth certificates or which evidence a home or mid-wife assisted birth may be fraudulent;
 - c. Some juveniles may have been born outside the U.S. but be derivative U.S. citizens. This is a complicated area of immigration law;

B. **Special Immigrant Juvenile Status**

- 1. An immigration benefit which requires juvenile court proceedings
- 2. Statute—8 U.S. C. 1101(a)(27)(J) *et. seq.* (outline does not track statutory sub-parts)
 - a. An immigrant who is present in the United States
 - i. who has been declared dependent on a juvenile court located in the United States or
 - ii. whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or
 - iii. an individual or entity appointed by a State or juvenile court located in the United States, and

iv. whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

b. for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

c. in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

i. no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

ii. [omitted]

3. Regulations—8 C.F.R. 204.11 *et. seq.* (selected—outline does not track regulatory sub-parts)

a. The juvenile, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

b. Eligibility—An juvenile is eligible for classification as a special immigrant if:

i. Under twenty one years of age;

ii. Unmarried;

iii. Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

iv. Continues to be dependent upon the juvenile court . . . such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

v. Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or the last habitual residence of the beneficiary or his or her parent or parents;

4. Comments

a. The regulation at 8 C.F.R. 204.11 does not reflect amendment of the statute at 8 U.S. C. 1101(a)(27)(J);

b. Under the statute, a person ceases being a juvenile at age 21. Oregon Juvenile Court jurisdiction ends when the child turns 18. Juvenile courts have kept cases open for the purpose of allowing the juvenile to remain a dependent of the juvenile court for Special Immigrant Juvenile Status purposes;

c. The application for special immigrant juvenile status is made without departing the U.S. Consular processing is not required. A grant of special immigrant juvenile status results in lawful permanent residence (green card);

d. A juvenile who entered the U.S. or remained without having proper immigration documentation is eligible to apply for special immigrant juvenile status;

e. Several grounds of inadmissibility do not apply to applicants for special immigrant juvenile status (i.e. likely to become a public charge)

C. “T” visa & “U” visa

1. These are relatively new immigration benefits for victims of crimes. They can lead to a grant of lawful permanent resident status.

2. “T” visa for victims of severe form of trafficking in persons (use of force, fraud, coercion for sex trafficking, involuntary servitude, peonage, debt bondage, or slavery);

3. “U” visa for victims of criminal activity (in the U.S.) enumerated in the statute who have suffered substantial physical or mental abuse, who have assisted or may assist law enforcement in the investigation or prosecution of the crime.

a. “U” visa crimes are enumerated at 8 U.S.C. §1101(a)(15)(U)(iii) and include the following in violations of Federal, State, or local criminal law:

i. 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

D. The juvenile may be eligible for lawful permanent resident status through adoption by a U.S. citizen;

1. The adoption must be final prior to the juvenile’s 16th birthday (or 18th birthday if a sibling under 16 years of age is also adopted)

2. The U.S. citizen must have had two years of both legal and physical custody of the juvenile;

3. The juvenile may have to apply for lawful permanent residence at a U.S. consulate abroad;

E. The juvenile present in the U.S. would not meet the definition of an orphan for immigration purposes;

F. Derivative immigration eligibility

1. The juvenile may be a direct beneficiary or a derivative beneficiary of a pending

a. family-based petition immigrant petition;

b. employment-based immigrant petition;

c. VAWA (Violence Against Women Act) petition; or

d. Political asylum application

APPENDIX A—IMMIGRATION SCREENING SHEET FOR JUVENILE

First name:
Middle name(s):
Surname(s):

Date of birth (mm/dd/yyyy): ____/____/
Place of birth:
Immigration status:

Immigration file #: A
Contact with Department of Homeland Security: no yes (with details):

Number of entries to U.S.:
Date of 1st entry to U.S.: ____/____/
Manner of entry (visa type, fraudulent document or w/o documents):

Date of most recent entry to U.S.: ____/____/
Manner of entry (visa type, fraudulent document or w/o documents):

Father's full name:
Father's immigration status:

Where is the father living?

Mother's full name:
Mother's immigration status:

Where is the mother living?

Did grandparents ever have immigration status? no yes (with details):

Marital status: single married divorced widowed
Immigration status of spouse:

Victim of a crime? no yes (with details):

Ever applied for an immigration benefit? no yes (with details):

Included on someone else's petition or application for an immigration benefit? no
yes (with details):

Has either parent abused, neglected or abandoned the juvenile? no yes (with
details):

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