

Immigration Law
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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?;
 - 4. Has the juvenile or have the juvenile's parent(s) or minor sibling(s), under 18, been the victim(s) of a crime committed in the United States?
 - B. Determining the immigration consequences of Juvenile Court proceedings to the juvenile;
 - C. Developing an immigration strategy for the juvenile to:
 - 1. Avoid an adverse impact from Juvenile Court proceedings on the juvenile's immigration status or eligibility for immigration status; and
 - 2. Obtain a valid immigration status for the juvenile through the Juvenile Court proceedings or otherwise;
- 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 of the U.S.;
 - a. determine the immigration status of the juveniles immediate relatives;
 - 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 to determine juvenile's immigration status;
 - 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 (one or both) abused, neglected or abandoned the juvenile or otherwise not been good parents?;
 - 2. Is reunification with one or both of 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 parents?;
- E. Has the juvenile or have the juvenile's parent(s) or minor sibling(s), under 18, been a victim of a crime committed in the United States, 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 are exceptions (not discussed here);
2. Generally do not make a client inadmissible (meaning they could not be a ground for denying an application or return from a trip abroad). There are exceptions (not all discussed here).
 - a. Delinquency adjudications, while not a conviction, might be an admission of the essential elements of a crime and result in inadmissibility or a reason to believe the juvenile is a drug trafficker; and
 - b. Delinquency evidencing a mental health condition which poses a danger to the delinquent or others;
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 an immigration status;

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 into the United States as infants and think they are U.S. citizens. They likely are not;
 - b. Some U.S. birth certificates issued a significant period after the birth or which evidence a home birth or mid-wife assisted birth may be fraudulent;
2. Some persons may have been born outside the U.S. but be derivative U.S. citizens. This is a complex area of immigration law;

B. Special Immigrant Juvenile Status (SIJ)

1. An immigration benefit which requires juvenile court proceedings;
2. Statute – 8 U.S. C. 1101(a)(27)(J) *et. seq.*
 - a. An immigrant who is present in the United States;
 - b. who has been declared dependent on a juvenile court located in the United States or
 - c. whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or
 - d. an individual or entity appointed by a State or juvenile court located in the United

States, and

- e. 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;
 - f. 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
 - g. 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
3. Regulations – 8 C.F.R. 204.11 *et. seq.* (Present regulations do not reflect amendments to the statute. Provisions from proposed amended regulations are in italics)
- a. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant to classify an alien as a special immigrant juvenile. *The alien, or an adult acting on the alien's behalf, may file the petition for special immigrant juvenile classification.*
 - b. Eligibility – An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:
 - (i) *Is physically present in the United States;*
 - (ii) *Is under twenty-one years of age at the time of filing;*
 - (iii) *Is unmarried;*
 - (iv) *Has been declared dependent on a juvenile court or has been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation;*
 - (v) *Is the subject of a State or juvenile court determination, under applicable State law, that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;*
 - (vi) *Has been the subject of judicial proceedings or administrative proceedings in which it has been determined, under applicable State law, that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the alien or his or her parent(s); and*
 - (vii) *Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile;*
 - (viii) *For the purposes of establishing classification as a special immigrant juvenile, a juvenile who has been adopted or placed under guardianship after having been found dependent upon a juvenile court in the United States, or having*

been committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court, is considered eligible for SIJ classification. Commitment to or placement under the custody of an individual can include adoption and guardianship;

- (ix) *In determining whether to provide consent to classification as a special immigrant juvenile as a matter of discretion, USCIS will consider, among other permissible discretionary factors, whether the alien has established, based on the evidence of record, that the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status; and that the evidence otherwise demonstrates that there is a bona fide basis for granting special immigrant juvenile status;*
- (x) The alien has the burden of proof to show that discretion should be exercised in his or her favor;
- (xi) *Approval by USCIS of the SIJ petition also will constitute the granting of consent on behalf of the Secretary.*
- (xii) *An alien in the custody of the Department of Health and Human Services, who seeks a juvenile court order determining or altering the alien's custody status or placement, must obtain specific consent from the Secretary of Health and Human Services to the State court's jurisdiction to determine or alter custody status prior to filing the SIJ petition with USCIS.*

4. Comments

- a. Under the SIJ 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 eligible for Special Immigrant Juvenile Status purposes;
- b. The application for special immigrant juvenile status is made without departing the U.S. A grant of special immigrant juvenile status results in lawful permanent residence (green card);
- c. A juvenile who entered the U.S. and remained without having proper immigration documentation is eligible to apply for special immigrant juvenile status;
- d. 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 of persons (use of force, fraud, coercion for sex trafficking, involuntary servitude, peonage, debt bondage, or slavery);
- 3. "U" visa for victims of criminal activity 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. Derivative immigration eligibility:

1. The juvenile may be a direct beneficiary or a derivative beneficiary of a pending
 - a. family-based immigrant petition;
 - b. employment-based immigrant petition;
 - c. VAWA (Violence Against Women Act) petition; or
 - d. Political asylum application;

V. Conclusion

A. Juvenile Court proceedings may result in removal (deportation) proceedings for the non-U.S. citizen juvenile;

1. The Juvenile Court and the parties to the parties should be aware of this possible consequence;
2. Steps should be taken to avoid an order of removal (deportation) being entered against the juvenile;

B. The best interests of the non-U.S. citizen juvenile may be to remain in the U.S.

1. If the juvenile has an immigration status which will achieve this goal, this must be preserved;
2. If the juvenile does not have an immigration status which will achieve this goal, appropriate available steps should be taken