

*Immigration Options for
Undocumented Immigrant Children*

A collection of fact sheets on:

Special Immigrant Juvenile Status (SIJS)

Violence Against Women Act (VAWA)

Family Visas

U Visas

U.S. Citizenship

Asylum

Temporary Protected Status

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



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**Funding Provided by Morris Stulsaft Foundation
and the Zellerbach Family Foundation**

June 2008

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

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

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

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

Who is eligible for SIJS?

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

What are the requirements for SIJS?

1. The juvenile court either must declare the child to be a court dependent or must legally commit the child to a state department or agency. This should include children in dependency proceedings, delinquency proceedings, and guardianship through a probate court.
2. The SIJS application must include a special order signed by the juvenile court finding that the child is “deemed *eligible for long-term foster care*,” because of abuse, neglect or abandonment. *Eligible for long-term foster care* means that family reunification is not an option, and generally the child will be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. The court’s order, or a social worker’s statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect or abandonment.
3. The juvenile court must find that it is not in the child's best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.
4. The child must be under 21 and unmarried. The child’s age can be proven with a birth certificate, passport, or other official foreign identity document issued by a foreign government. The child can be a parent of his or her own children.
5. The child must remain under juvenile court jurisdiction until the immigration application is finally decided and the child receives the green card. This is important to keep in mind because the immigration interview may not be scheduled until three months to three years, or even longer, after the SIJS application is filed, depending on the local immigration office backlog and complexity of the case.

VIOLENCE AGAINST WOMEN ACT (VAWA)

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

What are the benefits of VAWA?

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

Who is eligible?

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

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

What are the requirements for VAWA for children?

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

FAMILY VISAS

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

What are the benefits of immigrating through a family member?

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

Who is eligible to immigrate through a family member?

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

What are the requirements for immigrating through a family member?

Immigration through a parent

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

Immigration through a sibling

1. The sibling must be a U.S. citizen and must be at least 21 years old to petition for the child.
2. The U.S. citizen sibling must prove his or her citizenship status and must prove the required sibling relationship with the child.
3. The U.S. citizen sibling must be willing to help the child through the process by attending immigration interviews and submitting an affidavit of support.
4. Children who are siblings of U.S. citizens will have to wait many years (approximately 11-22 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they may not be able to remain in the United States.

U VISAS

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

What are the benefits of the U visa?

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

What are the requirements for the U visa?

1. The child must have suffered substantial physical or mental abuse as a result of having been the victim of one of the following crimes: rape, 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 these or similar offenses in violation of federal, state or local criminal law.
2. The child or his or her parent, guardian, or next friend has information about the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
3. The child must obtain certification from a federal, state or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a USCIS official that shows that he or she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. A Child Protective Services (CPS) agency may also certify the child's helpfulness if it has criminal investigative jurisdiction.

U.S. CITIZENSHIP

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

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

- Provides most of the rights and privileges available to children born in the United States, including the right to vote (when 18 years old) and certain constitutional protections.

How might a child acquire U.S. citizenship?

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

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

How might a child derive U.S. citizenship?

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

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

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

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

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

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

ASYLUM

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

What are the benefits of asylum?

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

What are the requirements for asylum?

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

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

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

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

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

TEMPORARY PROTECTED STATUS

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

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

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

What are the requirements for TPS?

1. The child only needs to prove that he or she is a national of a current TPS country and has been in the United States since a required date.
2. The child does not need to prove that he or she will be singled out for persecution in the home country.
3. The child cannot be subject to one of the criminal, security-related, or other bars to TPS.

Which countries are currently designated for Temporary Protected Status?

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

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

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

IMMIGRATION RESOURCES

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

1. Technical assistance and direct service providers

A. Special Immigrant Juvenile Status, VAWA and U visas

Asista

515 28th Street
Des Moines, IA 50312
Tel. (515) 244-2469
questions@asistaonline.org

Asista's purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault. They provide free technical assistance and training to legal services providers that receive grant funding from the U.S. Department of Justice Office on Violence Against Women.

National Immigration Project of the National Lawyers Guild

Ellen Kemp
14 Beacon Street, Suite 602
Boston, MA 02108
Tel. (617) 227-9727
ellen@nationalimmigrationproject.org
www.nationalimmigrationproject.org

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

National Immigration Law Center (NILC)

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

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

B. Asylum

The Center for Gender and Refugee Studies

U.C. Hastings College of the Law

200 McAllister Street

San Francisco, CA 94102

Tel. (415) 565-4791

Fax (415) 565-4865

<http://cgrs.uchastings.edu/>

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

2. Written and other materials

A. Written Materials

Immigrant Legal Resource Center Publications

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

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

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

A Guide for Immigration Advocates is a large and comprehensive book about immigration law, written for paralegals. It includes clearly written material

discussing forms of relief that would apply to children such as family visa petitions, suspension and asylum.

Family Unity: A Guide for Practitioners and Community Organizers discusses the Family Unity program which could benefit children whose parents became permanent residents through one of the amnesty programs.

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

B. Videos

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

C. Listserves

ILRC's Special Immigrant Juvenile Status listserv

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

VAWA Updates

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

D. Websites

Immigrant Legal Resource Center (ILRC)

www.ilrc.org

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

U.S. Citizenship and Immigration Services

www.uscis.gov

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

National Immigration Law Center (NILC)

www.nilc.org

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

National Immigration Project of the National Lawyers Guild

www.nationalimmigrationproject.org

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