



Immigration Options for Unaccompanied Children

Ellen Messali, Esq.
Staff Attorney
International Institute of Connecticut

Immigration Options for Unaccompanied Children



- *Special Immigrant Juvenile Status (SIJS)*
- **What is SIJS?** – A form of relief for abused, abandoned, neglected or otherwise mistreated children under the age of 21.
- **Eligibility Criteria**
 - Must be under the age of 18 (for conservatorship – 21)
 - Must be unmarried
 - Must establish that child has been abused, abandoned or neglected by one or both parents.
 - Must establish that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis found under state law.
 - Must establish that it is not in the child’s best interest to return to his/her home country.

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- **SIJS Process**

- Step One: Filing Petition in State Court (Juvenile or Probate)
- Step Two: Special Findings Order
- Step Three: Filing for Special Immigrant Juvenile Classification & Adjustment of Status
 - Three forms must be submitted – I-360, I-485, and I-765.
 - I-360 – Application for Special Immigrant Juvenile Status (No fee)
 - I-485 – Application for Adjustment of Status (Fee may be waived)
 - Note: Many inadmissibility grounds are waived (e.g. public charge).
 - I-765 – Application for Employment Authorization

- **Jurisdiction**

- Not in Removal Proceedings – USCIS adjudicates complete package. Applicant is called for an interview on adjustment application.
- In Removal Proceedings – Court has jurisdiction to adjudicate adjustment application. However, attorney may request termination of proceedings, in which case USCIS will adjudicate, and applicant is called for an interview on adjustment application.

- **Benefits of SIJS**

- Allows recipient to remain in the country and quickly become a permanent resident.
- Recipient is given work authorization before interview, which serves as gov't issued identification.

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- *Deferred Action for Childhood Arrivals (DACA)*
- **What is DACA?** – A discretionary grant of relief for certain undocumented young people who came to the U.S. as children and have pursued education or military service here.
- **Eligibility Criteria**
 - Must have come to the U.S. before reaching the age of 16
 - Must have been under the age of 31 on June 15, 2012
 - Must have continuous residence from June 15, 2007 – Present
 - Must have EWI before June 15, 2012 OR have lawful status that expired prior to June 15, 2012
 - Must have been present in the U.S. on June 15, 2012 and at the time of application
 - Must be in school, high school grad, GED recipient, or have been honorably discharged from the Coast Guard or Armed Forces of the US
 - Must not have felony conviction, a significant misdemeanor conviction, or more than three misdemeanors, and must not pose a threat to public or national security

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- **DACA Process**
 - Each applicant must submit the following to USCIS (even if in removal)
 - Form I-821D – Consideration of Deferred Action for Childhood Arrivals
 - Form I-765 – Application for Employment Authorization
 - Form I-765 Worksheet – EAD Economic Need Supplement Form (Determines economic need for employment)
 - Documentary evidence showing that applicant meets all eligibility criteria (age, continuous presence, school enrollment or diploma, etc.)
 - \$465.00 filing fee
- **DACA Benefits**
 - Prevents recipient from being removed to home country
 - Granted employment authorization document (also SSN)
 - Does not forgive prior periods of unlawful presence, but recipient is no longer accruing unlawful status
 - DACA can be renewed after 2 years
- **DACA Risks**
 - DACA is completely discretionary and can be revoked in the future
 - An unsuccessful DACA application could lead to an NTA (initiation of removal proceedings)
 - The denial of a DACA application cannot be appealed, though one can file again, which means paying the filing fee again.

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- **Asylum (*Withholding of Removal & CAT*)**
- **What is Asylum?** - A form of protection granted to eligible individuals, which confers legal status and the ability to apply for work authorization, permanent residence and citizenship.
- **Eligibility Criteria**
 - Must be a refugee, meaning →
 - No longer in his/her country of origin
 - Suffered past persecution, OR
 - Have a well-founded fear of future persecution on account of his/her –
 - Race
 - Religion
 - Nationality
 - Political Opinion
 - Membership in a Particular Social Group (Gender, Sexuality, Forced Marriage, FGM, etc.)
 - Government is unable or unwilling to protect him/her from persecutor(s)
 - Must not have any bars to asylum eligibility
 - One-year deadline – Must apply for asylum within one year of last entry.
 - Exceptions: Extraordinary or Changed Circumstances
 - Firm Resettlement – Must not have offer of residence or citizenship from another country.
 - Particularly Serious Crime – Must not have a felony or other particularly serious criminal conviction

Immigration Options for Unaccompanied Children



- **Applying for Asylum**
 - Affirmative Application – Not in removal proceedings – apply with USCIS
 - Defensive Application – In removal proceedings – application filed in court
- **Asylum Benefits**
 - Eligible to receive refugee transitional assistance for a period of 8 months
 - Eligible to apply for work authorization and a social security card
 - Eligible to sponsor immediate family members outside of U.S.; immediate family inside U.S. and included on application also receive asylee status
 - Eligible to apply for permanent residence one year after asylum is granted
 - Eligible to naturalize five years after becoming a permanent resident
- **Withholding of Removal**
 - Must demonstrate that it is “more likely than not” that one would be subject to persecution on the basis of one of the five statutory grounds if removed from this country
 - Mandatory Protection
 - Several bars to asylum do not apply (one-year bar, firm resettlement, prior asylum denied)
- **Relief under the Convention Against Torture (CAT)**
 - Must demonstrate that one would “more likely than not” be tortured if forced to return to his country.
 - Torture DOES NOT need to be on account of one of the five statutory grounds.
 - Mandatory Protection
 - No bars to eligibility apply

Immigration Options for Unaccompanied Children



- **T Visas**
- **What is a T Visa?** – Immigration status granted to noncitizen victims of a severe form of trafficking.
- **Eligibility Criteria**
 - Must be a victim of a severe form of trafficking –
 - Sex Trafficking – Commercial sex act is induced by force, fraud or coercion, or the individual is under the age of 18
 - Labor Trafficking – Recruitment, harboring, transportation, provision, or obtaining of a person for labor services, though the use of force, fraud, or coercion or the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - Must be physically present in the United States on account of such trafficking
 - Does *not* have to establish that this is why one came to U.S., rather must show that this is why one is still in the U.S.
 - Must be:
 - Cooperating with authorities investigating or prosecuting the trafficking
 - Must comply with reasonable requests for assistance
 - Unable to cooperate due to physical or psychological trauma, OR
 - 17 or younger
 - Must show extreme hardship involving unusual and severe harm upon removal
 - Cannot be based on current or future economic detriment or lack of social or economic opportunities

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- **T Visa Application Process**

- Each applicant must submit the following to USCIS (even if in removal)
 - Form I-914 – Application for T Nonimmigrant Status
 - Form I-914 Supplement B – Declaration of Law Enforcement Officer for Victim of Trafficking in Persons
 - Form I-192 – Application for Advance Permission to Enter as a Nonimmigrant (for waiver of inadmissibility, if needed)
 - \$585.00 filing fee (can be waived)
 - Evidence of eligibility for visa, including applicant’s personal statement

- **T Visa Benefits**

- A T Visa is an immigration status that is generally granted for four years
- T Visa holders have access to the same public benefits as refugees
- T Visa holders are given employment authorization documents
- Close family members of T Visa holders may be granted T status as derivatives
- T Visa holders may apply for lawful permanent resident status after three years

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- *U Visas*

- **What is a U Visa?** – Immigration status granted to noncitizen victims of certain criminal activities.
- **Eligibility Criteria**
 - Must be a victim of qualifying criminal activity

• Rape	• Domestic Violence	• Sexual Exploitation	• Involuntary Servitude
• Torture	• Sexual Assault	• Female Genital Mutilation (FGM)	• Slave Trade
• Trafficking	• Abusive Sexual Contact	• Being held hostage	• Kidnapping
• Incest	• Prostitution	• Peonage	• Abduction
• Unlawful criminal restraint	• False Imprisonment	• Blackmail	• Extortion
• Manslaughter	• Murder	• Felonious Assault	• Witness Tampering
• Obstruction of Justice	• Perjury		

Immigration Options for Unaccompanied Children



- **Eligibility Criteria Continued**
 - Must suffer substantial physical or mental harm as a result of the criminal activity
 - Must have information about the criminal activity
 - Must cooperate with the investigation or prosecution of the criminal activity
- **U Visa Application Process**
 - Each applicant must submit the following to USCIS (even if in removal)
 - Form I-918 – Petition for U Nonimmigrant Status
 - Form I-918 Supplement B – U Nonimmigrant Status Certification
 - Form I-192 – Application for Advance Permission to Enter as a Nonimmigrant (for waiver of inadmissibility, if needed)
 - \$585.00 filing fee (can be waived)
 - Evidence of eligibility for visa, including applicant’s personal statement
- **U Visa Benefits**
 - A U Visa is an immigration status generally granted for four years
 - U Visa holders are given employment authorization documents
 - If 20 years or younger when petitioning, then may petition for – parents, spouse, unmarried siblings under 17 years old, and children
 - If 21 years or older when petitioning, then may petition for – spouse and children
 - U Visa holders can apply for lawful permanent residence after three years

Immigration Options for Unaccompanied Children



- *Violence Against Women Act (VAWA) Self Petitions*
- **What is a VAWA Self-Petition?** – Allows individuals with close family relationships to abusive U.S. citizens and lawful permanent residents to petition for immigration status without the support of their abusive family member.
- **Eligibility Criteria**
 - Qualifying Relationship
 - Must be the spouse, child or parent of an abusive USC or LPR
 - Must have suffered battery or extreme cruelty at the hands of the abuser
 - Must have jointly resided with the abuser
 - Must have good moral character

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- **VAWA Application Process**

- Each applicant must submit the following to USCIS (even if in removal)
 - Form I-360 – Petition for Amerasian, widow(er), or Special Immigrant
- If visa is immediately available, VAWA petitions can be filed concurrently with applications for adjustment of status. If doing so, file the following with I-360 –
 - Form I-485 – Application for Adjustment of Status
 - Form G-325A – Biographic Information
 - Form I-693 – Report of Medical Examination and Vaccination Record
 - Form I-864W – Intending Immigrant’s Affidavit of Support Exemption
 - Form I-765 – Application for Employment Authorization

- **VAWA Benefits**

- Allows abused spouse, child, or parent to petition for their own permanent residence
- Can include children of abused spouses and children of abused children as derivatives on VAWA self-petitions
- Approved VAWA = deferred action status
- Petitioner and derivatives are eligible for employment authorization documents
- Petitioner and derivatives may apply for adjustment of status, even if EWI