

### Federal Child Welfare Law & Resources

#### ***Child Protective Services***

Child protective services, which include prevention services, may be provided regardless of a parent's or child's immigration status if certain conditions are met.<sup>1</sup>

#### ***Reunification with Parents***

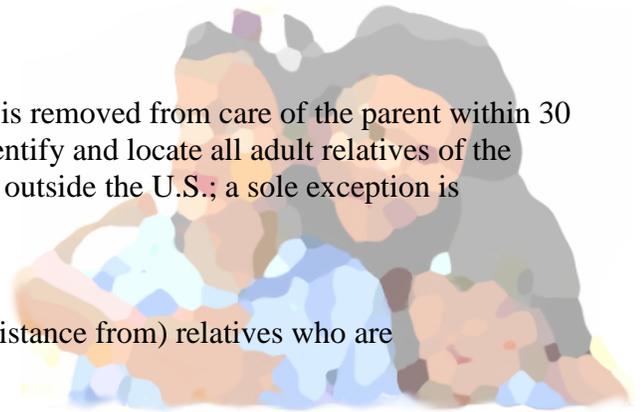
The first goal under the Adoption and Safe Families Act (ASFA) is reunification with parents, when consistent with the child's health and safety,<sup>2</sup> and no part of Title IV-E prohibits reunification with parents who are undocumented or who live outside the U.S.

#### ***Notice to Relatives***

Child welfare agencies must notify all adult relatives when a child is removed from care of the parent within 30 days of the removal. The agency must exercise due diligence to identify and locate all adult relatives of the child. No exception is included in the statute for relatives who live outside the U.S.; a sole exception is articulated for domestic violence cases.<sup>3</sup>

#### ***Relative Placements***

Title IV-E does not preclude placements with (or seeking other assistance from) relatives who are undocumented or living outside the U.S.<sup>4</sup>



### Immigration Relief Options

#### ***Special Immigrant Juvenile Status (SIJS)***<sup>5</sup>

SIJS is available for an unmarried non-citizen under age 21 under juvenile court jurisdiction for whom the court has made these findings:

- the child has been declared dependent on a juvenile court or the court has placed the child in the custody of a state agency, individual, or entity appointed by a state or juvenile court;
- the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and

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*This guide was created in 2015*

<sup>1</sup> 8 U.S.C. § 1611(b)(1)(D); Attorney General Order No. 2049 (1996) (see 61 Fed. Reg. 45985-01). Title IV-B parts 1 and 2 are not considered Federal public benefits and can be provided regardless of a parent's or child's immigration status; this includes preventive services. U.S. Department of Health and Human Services, Administration for Children's Services, Child Welfare Policy Manual section 7.1 #2; ACYF-CB-PIQ-99-01 (1/14/99).

<sup>2</sup> 42 U.S.C. § 671(a)(15)(A)&(B).

<sup>3</sup> 42 U.S.C. § 671(a)(29).

<sup>4</sup> 42 U.S.C. § 671(a)(19); ACF Child Welfare Policy Manual, 8.4B Title IV-E, General IV-E Requirements, Aliens/Immigrants.

<sup>5</sup> U.S. Citizenship and Immigration Services, Memorandum from Donald Neufeld re: TVPRA of 2008: Special Immigrant Juvenile Status Provisions (March 24, 2009); Immigration and Nationality Act ("INA") § 101(a)(27)(J); 8 C.F.R. § 204.11; see also USCIS, Immigration Relief for Abused Children: Special Immigrant Juvenile Status, Information for Juvenile Court Judges and Child Welfare Workers.

- the child’s best interest would not be served by being returned to his/her country of origin.

A “juvenile court” is defined as “a court located in the United States having jurisdiction under State law to make judicial decisions about the custody and care of juveniles.”<sup>6</sup> Without the findings from a State court, a child cannot petition the federal government for designation as a Special Immigrant Juvenile.

### ***Asylum***<sup>7</sup>

A person, including a child, may qualify for this status if he or she has a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion if returned to the home country or country of last permanent residence. After a year, an asylee may apply for lawful permanent residency (green card status). *Refugee* status is adjudicated while the person is outside the U.S.; *asylee* status is adjudicated while the person is in the U.S.

### ***Victims of Human Trafficking (T Visas)***<sup>8</sup>

The T Visa is available for a victim of human trafficking who meets the following requirements:

- the person is the victim of a severe form of trafficking<sup>9</sup> that occurred in the United States; and
- the person is helping investigating or prosecuting traffickers, unless it is unreasonable to do so or the victim is a child under 18.

### ***Crime Victim (U Visas)***<sup>10</sup>

The U Visa is available to an undocumented person in the U.S. who:

- has suffered substantial physical or psychological injury as a victim of criminal activity in the United States;
- has been, is being, or is likely to be helpful to a federal, state, or local investigation of the criminal abuse; and
- has certification from a federal, state, or local judge, prosecutor, law enforcement officer, or other justice official involved in prosecuting the activity that he or she has been, is being, or is likely to be helpful to a federal, state, or local investigation of the criminal abuse.<sup>11</sup>

### ***Temporary Protected Status (TPS)***<sup>12</sup>

The Secretary of Homeland Security may designate a foreign country for TPS due to conditions that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.

<sup>6</sup> 8 C.F.R. § 204.11(a).

<sup>7</sup> U.S. Department of Justice, Memorandum for Asylum Officers: Guidelines for Child Asylum Claims (Dec. 10, 1998); U.S. Department of Homeland Security, Instruction Sheet for Unaccompanied Alien Child in Immigration Court to Submit an I-589 Asylum Application to USCIS; INA §§ 101(a)(42), 208; see also <http://www.uscis.gov/humanitarian/refugees-asylum/asylum>.

<sup>8</sup> 8 U.S.C. § 1101(a)(15)(T)(i)(III)(cc); see also <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status>

<sup>9</sup> Federal law defines “severe forms of trafficking in persons” to mean: “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” The William Wilberforce Trafficking Victims Reauthorization Act. P.L. 113-126 (2010), codified in 22 U.S.C. §7102.

<sup>10</sup> P. L. No. 106-386, 114 Stat. 1464 (2000) (including the Battered Immigrant Women’s Protection Act of 2000, P. L. No. 106-386, 114 Stat. 1518 (2000)); see also <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

<sup>11</sup> The U.S. Department of Homeland Security has indicated that child and adult protective services agencies may sign the certifications needed for the U Visa application process. See Dept. of Homeland Security U Visa Certification Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, at p. 9.

<sup>12</sup> <http://www.uscis.gov/humanitarian/temporary-protected-status-deferred-enforced-departure/temporary-protected-status>

### ***Violence Against Women Act (VAWA)***<sup>13</sup>

A victim of domestic violence married to or a child of a citizen or Lawful Permanent Resident (LPR) may petition for LPR Status without the involvement of the abusive spouse/parent under the self-petitioning provisions of VAWA.

### ***Deferred Action for Childhood Arrivals (DACA)***<sup>14</sup>

DACA<sup>15</sup> is available to an individual who:

- came to the U.S. before reaching his or her 16<sup>th</sup> birthday;
- has continuously resided in the U.S. since January 1, 2010, up to the present time;
- was physically present and not in lawful immigration status in the U.S. on June 15, 2012, and at the time of making the request for consideration of DACA with USCIS;
- is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a GED certificate, or is an honorably discharged veteran of the armed forces or Coast Guard of the U.S.; and
- has not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

### ***Deferred Action for Parents of U.S. Citizens and Lawful Permanent Residents (DAPA)***<sup>16</sup>

DAPA will be available in May 2015<sup>17</sup> to an individual who:

- had, on November 20, 2014, a son or daughter of any age who is a U.S. citizen or LPR;
- has continuously resided in the U.S. since January 1, 2010, up to the present time;
- was physically present and not in lawful immigration status in the U.S. on November 20, 2014, and at the time of making the request for consideration of DACA with USCIS; and

is not an enforcement priority for removal, has not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety.

### **Coordination of ICE, Child Welfare & the Courts**

- ***ICE Parental Interest Directive:***<sup>18</sup> The directive emphasizes that “ICE personnel should ensure that the agency’s immigration enforcement activities do not unnecessarily disrupt the parental rights of” parents and guardians.<sup>19</sup> The policy directs ICE, when appropriate, to consider parental/guardianship status in making decisions about deportation and detention and to:
  - attempt to keep detained parents/guardians near family and dependency courts;
  - identify, locate, and contact detained parents involved with immigration enforcement;
  - arrange and ensure parents’ court participation;

<sup>13</sup> INA § 204(a)(1)(A) & (B); see also <http://www.uscis.gov/humanitarian/battered-spouse-children-parents>

<sup>14</sup> <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca>. DACA protects a person from deportation and provides work authorization, but is not a permanent immigration status.

<sup>15</sup> This section describes DACA eligibility as expanded by President Obama’s Executive Action in 2014, which was scheduled to take effect mid-February 2015. Because of a federal court injunction against the expanded eligibility, it is unclear when USCIS will begin accepting DACA applications based on the expanded grounds. USCIS continues to consider applications for individuals who were under the age of 31 on June 15, 2012 and who have continuously resided in the U.S. since June 15, 2007.

<sup>16</sup> [http://www.uscis.gov/sites/default/files/USCIS/ExecutiveActions/EAFlier\\_DAPA.pdf](http://www.uscis.gov/sites/default/files/USCIS/ExecutiveActions/EAFlier_DAPA.pdf)

<sup>17</sup> This section describes DAPA as created by President Obama’s Executive Action in 2014. Because of a federal court injunction blocking DAPA, it is unclear when USCIS will accept DAPA applications.

<sup>18</sup> U.S. Immigration and Customs Enforcement, *111064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities*, August 2013 (“ICE Directive”).

<sup>19</sup> ICE Directive at 1.

- arrange visitation with children as required by the court or the child welfare agency; and
  - if a parents or guardians will be deported, allow them to contact others to help plan for their children.
- **Online Detainee Locator System** to locate parents: [www.ice.gov/locator](http://www.ice.gov/locator)
  - **Immigration Enforcement and Child Welfare; Case Planning; Foster Care:**<sup>20</sup> This Children’s Bureau Information Memorandum (IM) guides agencies’ work with families when a parent has been or is at risk of being detained or deported. The IM encourages: screening children for Special Immigrant Juvenile Status; working with ICE; training staff to perform culturally competent services; and adopting best practices.

## New York Law & Resources

### State Office of Children and Family Services Policies

- **Destitute Child Placement Procedures and Guidelines (September 19, 2012)**<sup>21</sup>
  - When a destitute child<sup>22</sup> is on his own “with no parent, caretaker, or relative caring for” him or her, several considerations must be made.
    - When the parent is in deportation proceedings in the U.S., the agency must make its best effort to discuss with the parent a “placement and permanency plan for the child, including the possibility of executing a voluntary placement agreement.”
    - The parent must be asked about relatives or other individuals who may be able and willing to obtain custody or guardianship of the child or become a foster parent to the child, if financial/medical support is provided for the child.
    - Parental rights should not be terminated solely based on the parent’s deportation status.
    - Interpreters should be provided to help communicate with a parent whose first language is not English.
- **Incarcerated Parents and Parents in Residential Substance Abuse Treatment with Children in Foster Care: Termination of Parental Rights and Other Issues (June 15, 2011)**<sup>23</sup>
  - When a child has been in foster care for 15 of the most recent 22 months, an exception to the requirement to file a TPR may apply to parents who: are incarcerated or are in a residential substance abuse treatment program, or those whose absence due to past incarceration or residence in a substance abuse treatment program was a significant factor in the child’s remaining in foster care for the duration. In such cases, before filing a TPR petition, the agency must assess whether the parent has maintained a meaningful role in the child’s life and whether the TPR is in the best interests of the child.

<sup>20</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, Administration for Children and Families, U.S. Department of Health and Human Services, [ACYF-CB-IM-15-02](#), February 20, 2015.

<sup>21</sup> [http://www.ocfs.state.ny.us/main/policies/external/OCFS\\_2012/ADMs/12-OCFS-ADM-08%20Destitute%20Child%20Placement%20Procedures%20and%20Guidelines.pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2012/ADMs/12-OCFS-ADM-08%20Destitute%20Child%20Placement%20Procedures%20and%20Guidelines.pdf); see also N.Y. Fam. Ct. Act §§ 1092-1095, N.Y. Soc. Servs. L. § 371(3).

<sup>22</sup> Ibid. See p.3 for definition.

<sup>23</sup> [http://www.ocfs.state.ny.us/main/policies/external/OCFS\\_2011/ADMs/11-OCFS-ADM-07%20Incarcerated%20Parents%20and%20Parents%20in%20Residential%20Substance%20Abuse%20Treatment%20with%20Children%20in%20Foster%20Care%20Termination%20of%20Parental%20Rights%20and%20Other%20Issues.pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-07%20Incarcerated%20Parents%20and%20Parents%20in%20Residential%20Substance%20Abuse%20Treatment%20with%20Children%20in%20Foster%20Care%20Termination%20of%20Parental%20Rights%20and%20Other%20Issues.pdf); see also N.Y. Soc. Servs. L. § 384-b(3)(1)(i)(D).

- Immigration detention would likely be considered as “incarceration” for the purposes of this policy and statute.
- The agency must consider the particular barriers and challenges faced by the parent.
- The family’s service plan must reflect those special challenges and allow the use of technology, such as video or teleconferencing, as a means for parental participation.

### **New York City Administration for Children’s Services**

- ***Immigration and Language Guidelines for Child Welfare Staff (NYC ACS Division of Child Protection)***<sup>24</sup>

- Immigration Status Information
  - Pursuant to Executive Order No. 41 (<http://research.jacsw.uic.edu/icwnn/files/2013/03/eo-41-1.pdf>), ACS child welfare services are provided to children and families without regard to immigration status.
  - ACS does not ask immigration status of children and families brought to the agency’s attention unless necessary to determine their eligibility for services that include Title IV-E eligibility, adoption assistance, subsidized guardianship assistance, and preventive services.
  - Information acquired by ACS about immigration status of family members is confidential unless disclosure is authorized by the client, required by law, required in order to fulfill the agency’s mission, or the client is suspected of engaging in illegal activity.
- Relative Kinship Care
  - Undocumented relatives, even the ones living outside the U.S., can be considered for a placement of the child.
  - Organizations are available to arrange for home studies in the child’s country of origin.
- Notice
  - ACS may be required to notify the consulate of the child’s country of citizenship when a non-U.S. citizen child (or dual citizen child) is taken into protective custody of ACS.<sup>25</sup>
- Language
  - Pursuant to Local Law 73 (<http://research.jacsw.uic.edu/icwnn/files/2013/03/ll-73.pdf>), the CPS worker is required to determine the primary language spoken by children and families. The worker should use the ACS Language Identification Tool (Pg. 15) and the ACS Translation/Interpretation procedure.
  - Language Access Policy and Implementation Plan (New York City Children’s Services) ([www.nyc.gov/html/acs/downloads/pdf/lap\\_acs.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lap_acs.pdf).)

- ***Other State and Local Resources on SIJS***

- New York State OCFS Policy on SIJS<sup>26</sup>
- NYC ACS Policy on SIJS (Links are not yet available):
  - Special Immigrant Juvenile Status and Immigration Services (June 2013), City of New York, Administration for Children’s Services
  - Special Immigrant Juvenile Status: Green Cards for Youth in Foster Care, NYC Administration for Children’s Services



<sup>24</sup> [http://www.nyc.gov/html/acs/downloads/pdf/immigration\\_language\\_guide.pdf](http://www.nyc.gov/html/acs/downloads/pdf/immigration_language_guide.pdf)

<sup>25</sup> See The Vienna Convention on Consular Relations, 21 U.S.T. 77, ratified by the United States Dec. 24, 1969, Arts. 37(b), 5(h).

<sup>26</sup> [http://www.ocfs.state.ny.us/main/policies/external/OCFS\\_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20\(SIJS\).pdf](http://www.ocfs.state.ny.us/main/policies/external/OCFS_2011/ADMs/11-OCFS-ADM-01%20Special%20Immigrant%20Juvenile%20Status%20(SIJS).pdf)

## **State Law and Other Resources**

- Non-qualified aliens may receive child and adult protective services, foster care, and residential services for victims of domestic violence. N.Y. Soc. Servs. L. § 398-e.
- *New York State Office for New Americans* provides a hotline for immigration legal services referrals: 1-800-566-7636.

## **Federal Financial Supports & Services That May Affect Case Planning<sup>27</sup>**

Consistent with applicable statute and regulation, states are obligated to provide for the well-being and safety of immigrant children. Federal reimbursement is available for many services that support children and their families; when it is not, funds must come from state or local agencies.

- Public benefits available regardless of immigration status include: Migrant Head Start, Victim Witness or Violence of Crime Assistance (VOCA), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), immunization and/or treatment of communicable disease, and the Early Periodic Screening, Diagnosis, and Treatment (EPSD&T) program.
- Undocumented immigrants are generally not eligible for federal nonemergency Medicaid, for food stamps, Supplement Security Income (SSI), and Temporary Assistance for Needy Families (TANF).
- Federal support for foster care: Children must be citizens or qualified aliens in order to receive federal Title IV-E foster care or adoption assistance reimbursement. (Federal law does allow for federal reimbursement for the state cost of foster care for children granted SIJS or U nonimmigrant status, though that would not alter the child's IV-E eligibility status. See 8 U.S.C. §1232(d)(4)(B). And no funds are currently appropriated for that purpose.) See Child Welfare Policy Manual, 8.4B Title IV-E, General IV-E Requirements, Aliens/Immigrants.<sup>28</sup>
- Chafee Independent Living Services: For eligibility for Chafee Services, the youth must have qualified alien status as defined at 8 U.S.C. § 1641.



<sup>27</sup> [www.firstfocus.net/sites/default/files/PublicBenefits\\_0.pdf](http://www.firstfocus.net/sites/default/files/PublicBenefits_0.pdf)

<sup>28</sup> [www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp\\_pf.jsp?citID=45](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?citID=45)