ABA Commission on Immigration
Defending Children
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This presentation is for informational purposes only. It is not legal advice and does not create an attorney-client relationship. The presentation should not replace an individualized legal assessment of a particular case.
Objective and Outline

- **Objective:** Learn available forms of immigration relief and special considerations in representing children

- **Outline:**
  - Introduction to presenters
  - Concerns for immigrant children and detained children/youth
  - Special Immigrant Juvenile Status
  - U Nonimmigrant Status
  - T nonimmigrant Status
  - VAWA
  - Asylum
  - Deferred Action for Childhood Arrivals
Legal Services for Children

Legal Services for Children provides free legal services for Bay Area children in dependency, immigration, guardianship and education cases.

We represent children in their affirmative and defensive SIJS through dependency, delinquency and guardianships, as well as children in U visa cases and DACA applications.

We also provide legal screenings and know your rights presentations to children in Office of Refugee Resettlement (ORR) detention in Northern California and represent children in immigration court as friend of the court on the detained juvenile docket.
Asian Pacific Islander Legal Outreach

- Founded in 1975 as a community based social justice organization that provides direct legal services
- Offices in San Francisco and Oakland
- Legal Service Areas:
  - Domestic Violence, Family Law, Immigration, Human Trafficking, Elder Law, Disability Rights, Housing, Civil Rights, Tax Controversies, and Other Social Justice Issues
  - Founding member of Anti-Trafficking Collaborative of the Bay Area
- Preventative Services: Youth Advisory Council Program
- Community Outreach and Education: Trainings, Technical Assistance, and Legal Clinics
Why Children Are Migrated

- Family reunification;
- Victims of trafficking, forced labor and/or sexual exploitation;
- Arranged marriages/forced marriages;
- Survivors of domestic violence, neglect, abandonment, orphans;
- Street children;
- War (particularly Central America);
- Refugees;
- Violence and fear in community or country of origin;
- Environmental disasters;
- Economic needs;
- Etc.
Why is it important for an undocumented child to obtain lawful immigration status?

- Avoid deportation based on lack of status
- A child with lawful immigration status may:
  - Work lawfully in the U.S.
  - Obtain a state-issued ID or Driver’s License
  - Obtain a social security number
  - Receive public benefits, such as Medicaid
  - Receive financial assistance for college education
  - Obtaining lawful immigration status is critical for children to be protected from deportation and to achieve permanency.
Best Interests of the Child and Children’s Rights

- Being integrated into some procedural aspects of immigration system
- Have been integrated into procedural handling of removal cases (i.e. juvenile dockets);
- Are now part of custodial determinations for youth in proceedings;
- Largely absent from substantive protections from removal.
Federal Definitions

● Child:
  – unmarried and under 21, 8 U.S.C. § 1101(b)(1);

● Juvenile:
  – an alien under 18 years of age, 8 C.F.R. § 236.3;

● “Unaccompanied Alien Child,” 6 U.S.C. § 279(g);

● Accompanied Child:
  – No definition.
“Unaccompanied” Alien Child

- 6 U.S.C. § 279(g) defines an “unaccompanied alien child” as a child who:
  (A) Has no lawful immigration status in the United States;
  (B) Has not attained 18 years of age; and
  (C) With respect to whom-
     (i) there is no parent or legal guardian in the United States;
     (ii) no parent or legal guardian in the United States is available to provide care and physical custody.

- This definition has given rise to varying interpretations from government agencies and advocates for children
  - Central issue is when determination is made, i.e. at apprehension, when NTA issued, when proceedings begin, etc.
How are children detained?

Initial contact with DHS
- Border apprehension
- Interior apprehension
  - ICE contact
  - Law enforcement contact/ Juvenile halls

DHS processing
- No right to counsel
- Notice to Appear (NTA)
- Accompanied v. Unaccompanied determination
ORR Basics

- FS 2009 – 6,092 children entered ORR care. In 2010 - 8,207 entered ORR care. In FY12 - 10,969 children were referred to ORR.
- Majority are returning to their communities while immigration cases are pending (65%).
- Approximately 40% of children admitted into ORR custody are identified as eligible for legal relief from removal. Fewer than 1% of children are granted relief from removal during their stay in ORR custody.
- 77% male, 23% female, majority between 14-17 years old. 17% under 14 years old.
- FY11 – Guatemala (36%), El Salvador (25%). Honduras (20%), Mexico (12%), Ecuador (3%), Other (4%)
Raymond has contacted you for legal representation of his niece, Betina. She is sixteen years old and in removal proceedings. Once you meet with Betina in person, she eventually opens up to you and starts telling you about her life in Honduras. She describes the physical abuse her father perpetrated upon her and her mother, who passed away last year. Betina is afraid of you telling Raymond anything about her father’s behavior since he is her paternal uncle and she is worried he may get mad her, accuse her of lying or try to send her back to Honduras.
Child-Sensitive Interviewing

- Identify best language for communication
- Interview youth alone (without parents/friends)
- Explain your role
- Explain confidentiality
- Use simple words
- Check in regularly to confirm understanding
- Explain risks and benefits
- Make clear that no one has to apply and this is their decision
Child-Sensitive Interviewing

- Be sensitive and thorough on law enforcement questions.
- Ask questions in multiple different ways and be sure that clients know that immigration will get all their arrest data through fingerprints:
  - Have you ever been in a courtroom?
  - Have you ever talked to a Judge?
  - Have you ever had a lawyer:
  - Have you ever talked to a police officer?
  - Have you ever gotten a ticket of any kind?
- Don’t answer questions if you aren’t 100% sure your answer is correct. Just ask for help!
Child-Sensitive Interviewing

- Bridging Refugee Youth and Children’s Services at http://www.brycs.org/sijs
- Lisa Aronson Fontes, Interviewing Clients Across Cultures (Guilford Press 2008).
Attorneys vs. Child Advocates

- As attorney for the minor, the minor is your client and you owe the same duties to the minor as you would to any other client. This means that you must abide by the minor’s stated interest and zealously advocate for your client.

- TVPRA authorized ORR to appoint independent child advocates for child victims of trafficking and other vulnerable unaccompanied children. TVPRA§ 235(c)(6). This is a best interest model and differs from the attorney’s role.
  - University of Chicago’s Young Center for Immigrant Children’s Rights, www.theyoungcenter.org
Immigration Court

Special Immigrant Juvenile Status

1) under twenty-one years of age;
2) unmarried;
3) Have been declared dependent upon a juvenile court in the United States or a juvenile court in the United States has legally committed to or placed in the custody of...an individual or entity appointed by a state or juvenile court.

The juvenile court must also find that:
4) reunification with one or both parents is not viable due to abuse, neglect or abandonment, or other similar basis under state law; and
5) It is not in the young person's best interest to be returned to his country of nationality or last residence.

INA § 101(a)(27)(J) and 8 C.F.R. § 204.11.
What is a juvenile court?

- The regulations at 8 C.F.R. §204.11(a) define “juvenile court” as a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

- In California all superior courts have general jurisdiction but the branches that generally make these custody and SIJS findings are probate courts (in guardianship proceedings), dependency courts (for youth in state foster care), juvenile courts (in delinquency proceedings), and family courts (in custody proceedings).
When is reunification not viable?

Some examples of children for whom reunification with 1 or both parents may not be viable due to abuse, abandonment, neglect or a similar basis include:

- A child whose parents are deceased and whose adult sibling is caring for her.
- A child who experienced domestic violence in the home and who is living with an extended relative or family friend.
- A child who was abandoned by his parents and who now lives in a foster home.
- A child whose father abused her and who will emancipate after completing her group home placement.
- A child who was abused by one parent and who is living safely with the other parent or another family member.
Best Interests Finding

It must not be in the “[child]’s best interest to be returned to the [child]’s or parent’s previous country of nationality or country of last habitual residence.” INA §101 (a)(27)(J)(ii).

For this requirement, both the downsides of the child returning to her home country and the upsides of remaining in the U.S. are relevant. For example:

- Child fears retaliation by abusive family members in home country.
- Child has no responsible family members to provide her with care and protection in home country.
- Child will have no access to medical, educational or social services in home country.
- Child is acculturated to life in the U.S.
- Child’s personal ties, e.g. guardian, siblings, supportive relatives, in U.S.
- Child has been educated in the U.S.
SIJS Cont’d

- Timeline
  - TVPRA mandates expeditious adjudication of SIJS applications and requires USCIS to process these applications within 180 days of filing. TVPRA §235(d)(2)
  - USCIS regional offices should have an SIJS point of contact to ensure that applications are being processed in accordance with the timeline.
- In SF you can contact Richard Valeika (Richard.T.Valeika@uscis.dhs.gov) re any problems regarding SIJS cases and he will pass the requests on to the SIJS point of contact.
Resources for SIJS cases:

- USCRI’s SIJS clearinghouse website http://www.refugees.org/resources/for-lawyers/special-immigrant-juvenile-status/ (includes memos from USCIS, samples from many states, etc.)
Benita, age 16, is dating her boyfriend Joe. Neither of them have any documents. Joe is possessive, and gets jealous easily. One day, Joe finds Benita in a photo with another guy, and so he threatens to kill her, and begins to stalk her. Although Benita is afraid to get Joe deported, she gets a restraining order against Joe. When Joe violates the restraining order and gets arrested, Benita cooperates with the police about the past threats and stalking. With this testimony, the prosecutors are able to negotiate a plea with Joe.
U Nonimmigrant Status

- U nonimmigrant status protects victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. INA § 101(a)(15)(U)
- Requirements:
  - victim of qualifying criminal activity.
  - suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
  - have information about the criminal activity.
    *For minors under the age of 16, a parent, guardian, or next friend may possess the information about the crime on their behalf.*
  - were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime.
    *If minors under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on their behalf.*
  - The crime occurred in the United States or violated U.S. laws
U Nonimmigrant Status Qualifying Criminal Activity

Codified in INA § 101(a)(15)(U), involves one or more of the following or any similar activity in violation of Federal, State, or local criminal law:

- Domestic Violence (ANY intimate relationship, no marriage required)
- Torture
- Trafficking, peonage, involuntary servitude, slave trade
- Prostitution, sexual exploitation
- Incest
- Rape, sexual assault, abusive sexual contact
- Female Genital Mutilation
- Being held, kidnapping, abduction, unlawful criminal restraint, false imprisonment
- Blackmail, extortion
- Manslaughter, murder
- Felonious Assault
- Witness Tampering, obstruction of Justice, perjury
- As of VAWA 2013: Stalking and fraud in foreign labor contracting
- Includes attempts, conspiracy, or solicitation to commit any of the above
Juan, who is 16 years old, is from Mexico and can’t afford to pay for school. He gets recruited by the local drug cartels to transport some drugs across the border for a large sum of money. Juan agrees at first, but then changes his mind and decides he doesn’t want to transport drugs. The drug traffickers show up at his school and tell him he doesn’t have a choice. They carry guns and take him to the border. Juan is arrested on the other side in Arizona for possession of drugs and intent to sell drugs.
1. **Victim of a severe form of trafficking in persons**
2. **Present in U.S. on account of trafficking**
3. Complied with **reasonable requests for assistance in investigation or prosecution of acts of trafficking** (if over 18 - adult)**
4. Would suffer **extreme hardship** involving unusual and severe harm if removed from U.S.

**Exception under VAWA 2005 for physical or psychological trauma impeding ability to cooperate**
Jiali, age 17, came over to the U.S. from China with her mother. Her new stepfather, a U.S. citizen, told them to just come on tourist visas and he would take care of the papers for her and her mother once she got here. But several months passed, and her stepfather made no moves to help her apply for paperwork. Her mother slapped her in the face when Jiali told her that her stepfather was sexually assaulting her at night. Jiali decides to run away from her mother and stepfather but decides she wants to stay in the U.S.
VAWA Self-Petition (I-360) Eligibility

- Requirements for all victims:
  - Has or had a qualifying relationship to the abuser
  - Subjected to battery or extreme cruelty by the abuser
  - Resides or Resided with the abuser
  - Good moral character

- Special Requirements for abused children
  - Is child of USC or LPR

- Special Requirements for abused parents:
  - Is parent of USC

- Special Requirements for abused spouses:
  - Is or was married to USC or LPR
  - Marriage was in good faith
Asylum

- A particular social group asylum claim may be an option for some children who have been the subject of child abuse in their home country.

- Helpful Resources
  - Center for Gender & Refugee Studies (GGRS)
  - Immigrant Legal Resource Center (ILRC)
UAC Asylum

- TVPRA provided additional protections UAC’s applying for asylum.
  - Asylum office now has initial jurisdiction over UAC asylum applications. TVPRA §235(d)(7)(B)
    - Provides non-adversarial asylum interview. Asylum officers are supposed to take into account the child’s status and developmental needs of UACs.
    - Must file a UAC asylum cover sheet when submitting application – The OCC should serve you with a copy but you can also find one if you do an online search
  - UAC’s are exempted from the standard safe third country limitations on asylum and from the one year filing deadline. TVPRA §235(d)(7)(A)
- Regulations are still pending
Children Asylum Standards

- Joseph Langlois, USCIS asylum office, memorandum regarding implementation of statutory change providing USCIS with initial jurisdiction over asylum applications filed by unaccompanied alien children, March 2009

- Asylum Officer Basic Training, Guidelines for Children’s Asylum Claims, September 2009

  http://www.unhcr.org/refworld/docid/3ae6b3360.html
Adoption

- Citizens and lawful permanent residents may be eligible to petition for immigration status for adopted children
- Problems with adoption in these kinds of cases:
  - Can be long process (especially under Hague Adoption Convention)
  - Requires severing parental ties with biological parent
  - Inadmissibility is an issue for minors who have entered without inspection – supposed to apply and visa process in
  - USCIS is alert to adoption fraud (adoption only done for the purpose of an immigration benefit) and is especially skeptical of adoptions begun once a minor is in removal proceedings
Deferred Action for Childhood Arrivals (DACA)

- On June 15, 2012 President Obama announced that certain immigrant youth will be granted the ability to work and remain in the United States without the threat of deportation for periods of two years. This program is called Deferred Action for Childhood Arrivals (DACA).
- DACA is a discretionary determination by Department of Homeland Security.
DACA – Basic Eligibility Requirements

• Be at least 15 years old and have been under 31 on June 15, 2012
  • if applicants are in deportation proceedings or have been in the past, they can apply even if they are under 15
• Have come to the U.S. before you turned 16;
• Have been present in the U.S. on June 15th, 2012;
• Be in the U.S. when submitting their application;
• Have lived in the U.S. since June 15th, 2007;
• Have entered the U.S. without inspection before June 15th, 2012 or have immigration status (like a visa) that expired on or before June 15th, 2012; AND
• currently be in school (or in a GED program or other vocational program), have graduated or completed high school, have obtained a GED, or are a veteran when applying.
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