Immigration Issues in Juvenile Court: An Introduction to Issues, Procedures, and Relief

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Kids need status too?!

- ~30,000 undocumented children 18 & under in Colorado
- ~80,000+ “entry apprehensions”* every year
- ~10,000+ children in immigration detention under Office of Refugee Resettlement custody & care on daily basis
- Child migration push (violence, gangs, poverty) & pull (parents/family already in U.S., opportunity, education) factors
And kids are also deported?!

- Children largely treated procedurally and substantively the same as adults under Immigration Law
- No right to counsel at government expense
- Kids identified for removal proceedings through CBP/ICE apprehensions, local LEA contact, family breakdown, CIS application denials, etc
- In Colorado: youth released to ORR “Sponsors”, paroling from DYC, or riding on a parent’s removal case are most common scenarios seen in immigration court.
But aren’t kids different from adults?!

- Children’s Docket at Denver Immigration Court
- Unaccompanied Alien Children (UACs)
  - Special Asylum Procedures
  - Voluntary Departure at no expense to child
- Unaccompanied Refugee Minors (URMs)
- Special Immigrant Juvenile Status (SIJS)
- VAWA, T, & U provisions specific to children
- Best Interests?!
- Potential for conflicts of interest? (YES!!)
“Unaccompanied Alien Child”
6 USC §279(g)

- no lawful immigration status
- has not attained 18 years of age
- no parent or legal guardian in the United States . . . available to provide care and physical custody
UAC Identification:

• Dep’t of Health & Human Services, Office of Refugee Resettlement is responsible for care and custody, including detention, of UACs.

• Any federal agency that apprehends or discovers a UAC shall notify HHS within 48 hours, and transfer the UAC within 72 hours.

• Any UAC* whom DHS seeks to remove is placed in removal proceedings under INA § 240

  *contiguous country exception means Mexican UACs repatriated, OTMs and Mexican youth who express fear of return become UACs

  – TVPRA (2008) § 235 (a), (b)
UAC? Who decides? Where? When? (and why is all this important?!)

• Child’s circumstances may frequently change: CBP apprehension, sponsor reunification, parental reunification, etc.

• When is a parent “available”? According to who?

• Important procedural benefit to UACs applying for asylum: get to first apply to USCIS asylum office instead of before IJ – not possible if child doesn’t meet UAC definition at time of filing I-589

• UACs get Voluntary Departure on DHS’ dime

• Can non-UACs be taken into immigration custody due to delinquency records?
Unaccompanied Refugee Minors

• Federal foster care & independent living programs
• Full asylee/refugee benefits+
• Eligibility:
  – Trafficked youth
  – Youth with an approved SIJS I-360
  – UACs who win asylum
  – Asylee/Refugee youth who experience familial breakdown after resettling in the U.S.
• Family reunification remains goal whenever possible
• Like “UAC”, “URM” is not an immigration status, but rather a designation that determines eligibility for certain procedural and HHS benefits
Thanks, But I Already Have a Lawyer

• Kids may have a variety of service providers involved in their “case”
• Role distinction/boundaries are very important
• Immigration attorney, Guardian Ad Litem, Court Appointed Special Advocate, Therapist, Caseworker, Foster Parent, Victims Advocates, LEA contacts, Parent-Respondent Counsel, ORR Caseworker, Local UAC/URM Caseworker/Liaison, Probation/Parole Officers, Client Managers, School Counselors, Etc... Etc... Etc....
• Remember confidentiality. Despite blanket releases, not everyone needs to know everything!
Service Providers Can Be VERY Helpful to a Child Client’s Immigration Case!

Rely on other service professionals for Information, Evaluations, Etc.. and take the time to build relationships with:

– Human Service Caseworkers
– Victims Advocates
– Public Defenders
– GALs
– CASA Volunteers
– Law Enforcement
– Housing/shelter services
– Mental/Medical health providers
– Former Service Providers
– Others

Respect confidentiality! Remember to confirm info with your client! Despite blanket releases, everyone doesn’t need to know everything!

Tips for communicating with service providers:

• No legal jargon
• Provide an overview of the process
• Consider the “Ask” a favor
• Acknowledge and accept red tape
• Give plenty of advance timing
• Show appreciation
• Respect confidentiality
• Seek assistance from experts (local/national) to strategize
Most Common Status Options for Children in the U.S.

• Family based adjustment of status
• Asylum – procedural, not substantive, accommodations
• U Visas – parents can provide LEA cooperation
• T Visas – under 18 in sex industry? Per se victim of trafficking?
• Special Immigrant Juvenile Status
• Voluntary Departure/Repatriation
Family-Based Petitions

• A U.S. Citizen may “petition” for his/her spouse, child (unmarried and under 21), or parent (if USC is over 21)

• Unless the “beneficiary” of the petition can prove he/she entered the U.S. legally OR had a petition submitted on his/her behalf before April 30, 2001, he/she MUST return to home country for “consular processing”
Family-Based Petitions
Continued

• Other categories of family petitions:
  – Siblings and “sons or daughters” (over 21) of U.S. Citizens
  – Spouses, children, and unmarried “sons or daughters” of Lawful Permanent Residents (LPRS)

• There are very long wait times for these petitions (4–20+ years)

• Beneficiaries typically cannot legally visit or reside in U.S. while these cases are processed
Adjustment v. Consular Processing

• If the beneficiary of an approved petition entered the U.S. *legally* or if someone submitted a petition on his/her behalf before April 30, 2001 – the beneficiary *probably* can apply for residency inside the U.S.

• If the beneficiary entered the U.S. without permission and nobody submitted a petition on his/her behalf prior to 4/30/2001, he/she will have to return to the country of origin and apply for residency with the U.S. Consulate there.
Warning About Unlawful Presence!

• There is a penalty for people who are living in the U.S. without permission
  – It only affects people age 18 and older
  – It only affects people who leave the country (including people leaving to “consular process” their immigrant visa petitions)
  – 180 – 364 days unlawful presence = 3 year bar to re-entry
  – 365+ days unlawful presence = 10 year bar to re-entry
Unlawful Presence Penalty, Continued

- There is a pardon/waiver available for people who have spouses or parents who are citizens or residents – you can apply for the waiver at the U.S. Consulate in the home country. Only about 60% are approved

- There is NO pardon for parents of citizens or residents (Meant to deter “anchor babies”)
Special Immigrant Juvenile Status

• Allows abused, abandoned, and neglected juvenile court dependents to become lawful permanent residents
• Created by Congress in 1990
• Requires a juvenile or State court to make several special findings of fact; also known as an “SIJS Order.” This Order is a prerequisite to petitioning USCIS for SIJ Status. 8 CFR 204.11(d)(2)
• “Juvenile” court = “a court located in the U.S. having jurisdiction under State law to make judicial decisions about the care and custody of juveniles.” 8 CFR 201.11(a)
SIJS: Core Requirements
INA §101(a)(27)(J) & 8 C.F.R. §204.11*

• Under 21 & Unmarried
• Juvenile Court “Dependent”
• Reunification with One or Both Parents is Not a Viable Option Due to Abuse, Abandonment, Neglect, or Similar
• Not in Child’s Best Interest to Return to Country of Origin

*Draft regulations published to enact 12/08 amendment of §101(a)(27)(J) via TVPRA
SIJS Petition & Adjustment of Status

• Two separate applications are filed with Citizenship & Immigration Services (USCIS) at the same time, unless client is in removal proceedings.
• SIJS petition establishes child falls within a legal category of individuals who *may apply* for residency
• AOS application establishes child is eligible for LPR status
Benefits of LPR Status for SIJS Applicants:

• Live and work permanently in the U.S.
• Travel in and out of the country
• Eligible for U.S. citizenship upon turning 18 and completing 5 years as LPR with good moral character
• Eligible for URM designation & benefits
• Become a “Qualified Alien” and is thereafter eligible for Medicaid and Title IV-E Foster Care reimbursement funds (presuming qualified placement)
Risks of Applying for SIJS:

- If the applications are denied, child could be placed in removal proceedings and eventually deported from U.S.
- As with any affirmative immigration case, it is crucial to determine child’s eligibility and probability of being approved *before* applying!
- Child granted LPR status via SIJS can NEVER confer any immigration benefit to her biological parents (and possibly her biological siblings)
Juvenile Judge is Fact-Finder

• A juvenile judge or magistrate must issue an order with special findings:

  – Age and Marital Status
  – Fact of Court Dependency
  – Reunification w/ One or Both Parents No Longer Viable Due to Abuse, Abandonment, Neglect, or Similar
  – Not in Child’s interests to return to home country (& explanation why)
  – Court agrees to maintain jurisdiction for entire pendency of SIJS process... at a minimum, to be able to verify, again, if needed, ongoing validity of findings in order
Juvenile Courts in Colorado?

Dependency & Neglect

Delinquency

Probate

Domestic Relations/APR

Adoption
Maintaining Juvenile Court Jurisdiction:

- Counsel should try to ensure SIJS applicant remains under juvenile court’s jurisdiction until LPR status is granted
- SIJS adjudication by USCIS should occur in fewer than 180 days
- Jurisdictional requirement may be at odds with permanency planning and case completion goals – if so, ask court to maintain limited jurisdiction pursuant to 8 CFR §204.11(c)(5) for purpose of verifying ongoing validity of findings.
Juveniles At Risk of Aging-Out* of Juvenile Court Jurisdiction

• In Colorado, juvenile courts typically may maintain jurisdiction until teen turns 18.
• Under some circumstances jurisdiction may be extended beyond 18 (delinquency to finish probation or D&N to supervise transition into independent living)
• TVPRA 2008 §235(d) contains language indicating that so long as petitioner is a child at time of petitioning, should still be AOS eligible, regardless of age @ time of adjustment
• Jurisdiction, aging out... what about cases that close for reasons other than age? Adoption? Resolution of dependency concerns but still no parental reunification? (Gaps in draft regs)
Admissibility for Special Immigrant Juveniles

• Answers on Adjustment of Status application must demonstrate that applicant is “admissible” to the U.S. (statutorily eligible for LPR status)

• Enumerated grounds of inadmissibility may be found at 8 USC §1182(a) or INA §212(a)

• Many grounds of inadmissibility do not apply to Special Immigrant Juveniles. Some apply but may be waived. Others apply, and are not waivable...
Admissibility for SIJS AOS Applicants

• Most immigration-based and other typically applicable grounds waived automatically (entry without inspection, lack of valid visa/passport, public charge, etc)!

• All other grounds but terrorism, reason to believe drug trafficker, certain or multiple criminal convictions, and espionage are waivable!
U VISAS: Requirements

• U Nonimmigrant Status is a temporary (4 years) visa for immigrant victims of certain qualifying crimes or criminal activities where:
  – Victim has been, is being, or is likely to be helpful in the investigation or prosecution of the crime or criminal activity.
  – Cooperation with law enforcement must be verified, or “certified.” Must include a “law enforcement certification” with the application to USCIS.

• The victim must have suffered substantial physical or mental abuse as a result of the criminal activity.

• Crime must have occurred within the U.S.
Qualifying Criminal Activities for UVisas

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Felonious Assault
- FGM
- Hostage Taking
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter

- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Torture
- Trafficking
- Unlawful criminal restraint
- Witness Tampering
Purpose of the U Visa

• To strengthen the ability of law enforcement to investigate and prosecute crimes

• To provide humanitarian relief to crime victims and their family members

Benefits of the U Visa

• Generous waiver available as a part of the application process
• If granted, allows non-citizen victims of criminal activity to live and work in the U.S. legally
• The victim can include certain family members as derivatives
• After three years, a U Visa holder many be able to adjust status to lawful permanent resident
T VISA REQUIREMENTS

• Is or has been a victim of a severe form of trafficking in persons;
• Is physically present in the U.S. on account of such trafficking;
• Has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking-related crimes;
• And would suffer extreme hardship involving unusual and severe harm in the event of removal.
**Trafficking Definitions**

- **Sex trafficking**: the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, 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.

- **Labor trafficking**: 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.
Elements of Trafficking  (Steglich, 2003)

**ACTION**
- Recruit
- Harbor
- Transport
- Provide
- Obtain

**MEANS ***
- (Force, Fraud, Coercion)
- Causing serious harm
- Physical restraint
- Threats to physical restraint
- Withholding documents
- Psychological threats and manipulation

**PURPOSE**
- Commercial sex acts
- Labor or Services

- Trafficking does NOT have to involve the transport or movement of victims.
- Trafficking can originate in person’s country of origin OR after they are in U.S.

* Means not required for minors under age 18 for commercial sex acts; unable to “consent”
Trafficking Venues

- Labor:
  - Nannies & Maids
  - Sweatshop Factories
  - Janitorial Jobs
  - Construction Sites
  - Farm & Landscaping
  - Hotels & Restaurants
  - Drug Trafficking
  - Panhandling

- Sex:
  - Street Prostitution
  - Brothels
  - Strip Clubs
  - Pornography
  - Spas
  - Escort Services
  - Massage Parlors

- INTRAFAMILIAL TRAFFICKING!!!
Comparison of U and T Visas

• U Visa requires law enforcement certification, whereas T Visa does not (though must document your work with law enforcement)
• U Visa covers a broad range of crimes, whereas T Visa is for victims of trafficking only
• Waivers and adjustment of status process is similar
• T Visa holders qualify for refugee-like benefits; U Visa holders do not
Protections under VAWA

• Similar to SIJS, the victim “self-petitions” because the normal family-based petitioning process is unavailable due to batterer’s abuse

• Congress intended to remove immigration status (or lack thereof) from the arsenal of tools available to a batterer to control the victim

• Victims may submit “one-step” application (I-360 & I-485) to USCIS without need to rely on batter

• VAWA Cancellation of Removal also available if victim is in removal proceedings

• USCIS is charged with fact-finding here, so extensive, detailed declaration and mental health evaluations are crucial
VAWA Eligibility

• Eligibility hinges on relationship to, and status of, the batterer
  – The batterer must be a USC or LPR
  – The victim/self-petitioner must be the spouse, child, or parent of the batterer
  – The parent of an abused child may also self-petition

• Must demonstrate physical battery or extreme cruelty

• Victim must demonstrate good moral character
DACA: WHO QUALIFIES?

1) Not more than 31 years old by June 15, 2012 and at least 15 years old at the time of application (unless in removal proceedings already);
2) Arrived to U.S. under the age of 16;
3) Have continuously resided in U.S. for 5 years prior to June 15, 2012;
4) Were physically present in the United States on June 15, 2012 without lawful status and have remained in the United States since DACA was announced;
5) Are currently in school, have graduated high school, or are honorably discharged from the Armed Forces;
6) Not convicted of certain criminal offenses.
WHAT CRIMINAL OFFENSES BAR SOMEONE FROM QUALIFYING FOR DACA?

• Felonies;
• Significant misdemeanors;
• Multiple non-significant misdemeanors;
• Or any activity considered to be a national-security or public-safety threat.

Possible Evidence:
- Arrest records
- Charging documents
- Tickets
- Court records of disposition and sentence
- Form asks about all arrests, even if outside of the U.S., even if no conviction, so you will want to be up-front
**FELONIES**
A “felony” is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one (1) year.

**SIGNIFICANT MISDEMEANOR**
- *Any* misdemeanor offense that is punishable by a maximum term of imprisonment of 1 year or less, but greater than 5 days, where the person was *actually sentenced* to more than 90 days of jail, or
- Any one of the following crimes, regardless of the sentence imposed:
  - Domestic Violence
  - Offenses that involve violence, threats, or assault
  - Sexual Abuse or Exploitation
  - Burglary, Larceny, or Fraud
  - Driving Under the Influence
  - Obstruction of justice or Bribery
  - Unlawful flight from arrest, prosecution or the scene of an accident
  - Unlawful possession or use of a firearm
  - Drug distribution/trafficking
  - Unlawful possession of drugs
MULTIPLE NON-SIGNIFICANT MISDEMEANORS
Misdemeanor = Offense with a maximum term of imprisonment is one year or less, but more than 5 days.

Not eligible if convicted of having committed 3 or more misdemeanors that were not:
  o  Committed on the same day; or
  o  Part of the same act, omission, or scheme of misconduct.

• Minor violations with a possible sentence of 5 days of jail time or less are not “misdemeanors.”
• Driving without a license and other minor traffic violations are not “misdemeanors.”

NATIONAL-SECURITY OR PUBLIC-SAFETY THREATS
Includes gang membership, participation in criminal activities, or participation in activities that threaten the United States. Based on “indicia uncovered during review of the request or in the background check.”
SOME “STICKY” ISSUES

• Claim to U.S. Citizenship upon entry or other fraudulent entry

• Use of another’s social security number
  - If invented, leave blank on form
  - If knowingly used another’s real number, then may include, but with informed consent
  - Don’t use employment documents if have enough other evidence
  - Don’t know how DHS will deal with this issue!

• Juvenile delinquency adjudications
BENEFITS:

- Two year permission to stay in U.S.
- Work permit
- Possible administrative closure of removal case

...and once have work permit, may obtain:

- Social Security number
- Driver’s license

No deadline to apply
**RISKS**

- DHS may place the person in removal proceedings if the person falls under one of the enforcement criteria.
  - Fraud
  - Egregious public safety issues
  - Inadmissible or removable due to criminal history

- If an applicant attempts to commit fraud in the process of applying for DACA, they will be “prosecuted to the fullest extent of the law.”

- If eligible, information not shared with ICE/ERO unless necessary for national security concerns or the investigation or prosecution of a crime (includes information about family members included in application).

- Even if granted deferred action, future administrations may revoke the program and it is not known what will happen to those who applied.
Immigration Issues in Juvenile Courts

• What about parents? Detained parents?
• What about Consulates?
• What about voluntary repatriation?
• What are YOUR questions?!!

THANKS FOR ALL THE INCREDIBLE WORK YOU DO!!!!!