Immigration
Consequences for Juveniles

CPCS Juvenile Training 2014
Topics of Discussion

- Immigration Basics
- Special Immigrant Juvenile Status (SIJ)
- Deferred Action for Childhood Arrivals (DACA)
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- Immigration Basics
- Special Immigrant Juvenile Status (SIJ)
- Deferred Action for Childhood Arrivals (DACA)
Types of Immigration Status

U.S. Citizen

U.S. Born

Naturalization

Derivative Status
Types of Immigration Status

Other forms of status

- Lawful Permanent Resident ("green card" holder)
- Asylee/refugee
- Undocumented
- Out of status
- Temporary non-immigrant (student, visitor, TPS, DACA)
If child has no status

Possible procedural postures for immigration case

• In removal proceedings
  • Because previously detected by immigration
  • Know deadlines
• Never in proceedings
  • And otherwise undetected by immigration
• Has removal order
  • May or may not have been physically deported previously
Inadmissibility v. Deportability

**Inadmissible** (8 USC 1182):

- Client leaves U.S. and tries to return, he can be stopped at the border if inadmissible.
- Client never lawfully admitted to the U.S. (i.e. crossed the border illegally) can be removed based on grounds of inadmissibility.
- Client can be denied green card based on grounds of inadmissibility.

**Deportable** (8 USC 1227):

- If client was lawfully admitted to the U.S., she can be removed based on grounds of deportability.
Juvenile Dispositions

A finding of delinquency is not a conviction for immigration purposes.

Some grounds of inadmissibility/deportability don’t require a conviction, so juvenile dispositions can still have immigration consequences.
Juvenile Dispositions (cont’d)

No conviction necessary…

<table>
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<tr>
<th>Inadmissibility</th>
<th>Deportability</th>
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<tbody>
<tr>
<td>• “Reason to believe” drug trafficker</td>
<td>• “Drug abuser”/addict</td>
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<td>• “Drug abuser”/addict</td>
<td>• 209A violations</td>
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<td>• Engaging in prostitution</td>
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A youthful offender adjudication *may* be a conviction for immigration purposes

Discretion

• Delinquency adjudications will be considered as negative factors in discretionary determinations - Matter of Devison, 22 I & N Dec. 1362 (BIA 2000).

• Minimize negative factors, increase positive ones.
Gangs

• Gang involvement most likely will undermine a child’s ability to obtain immigration relief:
  • Negative discretionary factor
  • Commission of a serious nonpolitical crime outside the US (bar to asylum), if gang involvement preceded entry into US

• Things to consider
  • Challenge alleged gang affiliation in juvenile court
  • Demand government evidence of gang involvement
  • Rehabilitative programs
  • Tattoo removal
  • Don’t “rep” in police presence, DYS custody, or in school
Immigration Enforcement

• Child in DYS custody has increased risk of being taken into immigration custody in New York, even before delinquency case finished.
  • Counsel may look at probation file at court to see if it contains an ICE detainer
  • If detainer is discovered, advocate with ICE that child should not be an enforcement priority
• Other factors may increase risk of enforcement:
  • Serious charges
  • Gang involvement
  • Prior order of removal
• Alternatives, like house arrest, may deter ICE from taking kids into custody
Topics of Discussion

- Immigration Basics
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What is SIJ?

SIJ is a pathway for an undocumented child to pursue a green card.
What is SIJ?

Based on child’s “abuse, abandonment, or neglect” by parent, child can apply to remain in the U.S.
What is required to obtain SIJ?

1. Predicate findings in juvenile court
2. Apply for SIJ status with USCIS (I-360)
3. Apply for a green card with USCIS (I-485)
Why consider getting the predicate order?

- Kid already in court – no need to find another mechanism
  - Must get predicate order before they are 21, but since juvenile courts (and probate courts) only have jurisdiction to make such findings until they are 19, in practice kids must get predicate orders before they age out of the juvenile system.

- Court only has jurisdiction until 19, so even though the statute says until 21, opportunity is lost if findings not obtained before age 19
Why consider this for your clients? (cont’d)

• Gives kid options in the future

• This may be MORE important than the delinquency issues

• May improve access to rehabilitative programs, esp. after age 18, which could improve their chances at staying out of trouble
What is the predicate finding?

Predicate findings:

8 USC § 1101(a)(27)(J)

- Meets definition of child;
- Dependent upon a juvenile court;
- Reunification with one or both parents is not viable due to abuse, neglect, abandonment, or other similar grounds;
- Not in the child’s best interest to be returned to previous country of nationality (or parent’s country of nationality)
Who is a child?

- An unmarried person under 21 years old. 8 USC 1101(b)(1)

- BUT! Juvenile courts only have jurisdiction until they turn 19, limiting the ability to obtain findings

- NB: If juvenile remains under the jurisdiction of the juvenile court past age 19 (DYS commitment, probation, etc.) arguably the juvenile court maintains the ability to make SIJ findings.
“Dependent upon a court”

• That the court has jurisdiction over the child.

• Court need not make care and custody determinations in order for child to be dependent upon court.
What is abuse, abandonment, and neglect?

- Defined by state law, so may not be considered abuse, abandonment, or neglect under the norms of the child’s country.
Definitions

• **Abuse**: “the non-accidental commission of any act by a caretaker upon a child . . . which causes, or creates a substantial risk of physical or emotional injury . . . .” 110 CMR § 2.
  • Dad throws kid out of house in dangerous area of town

• **Neglect**: “failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and grown, or other essential care.” 110 CMR § 2
  • Child not allowed to go to school, even though siblings were
Definitions continued

• **Abandonment**: child is abandoned if “left without any provision for support and without any person responsible to maintain care, custody, and control.” MGL c. 210 § 3.
  
  • (defined for purpose of adoption)
  • Parents left child with relative who mistreated them
  • Went abroad to support family but maintained no relationship with child?
  • Let child go unaccompanied to US?
“One-Parent” cases

• **Standard**: reunification with one or both parents is not viable due to abuse, abandonment, or neglect.
  • Child may be living with one parent in the US
  • Standard is satisfied so long as child cannot reunify with one parent due to abuse, abandonment, or neglect
  • No requirement that parent(s) with whom child cannot reunify be abroad
In the best interest of the child not to return to country of origin

- **Consider:**
  - School
  - Rehabilitative services
  - Caring parent or relative in US
  - Abuse, abandonment, neglect of parent(s) abroad
  - Other violence in country of origin
  - Child’s personal goals
How to get the predicate order...

- Make motion for findings supported by:
  - Affidavit of child
  - Legal memorandum
  - Proposed order
  - Copy of USCIS Memorandum explaining law & jurisdiction?
  - Copy of statute and regulation?
  - Affidavit of non-abusive parent or other relative?
  - Acknowledgment of Notice to Abusive Parent?
- Understand that federal law grants state juvenile court exclusive jurisdiction to make findings
- Juvenile court concerned with best interests of child is further an appropriate venue for such findings
Common Issues...

• Jurisdiction
  • The regulations define “juvenile court” as a “court located in the U.S. having jurisdiction under state law to make judicial determinations about the care and custody of juveniles.” 8 CFR § 204.11. (so it is probate and juvenile court)

• Gatekeeper concerns
  • Judge is not giving the child legal status by granting SIJ findings. Federal law requires USCIS to adjudicate the SIJ application separately; USCIS requires additional information for SIJ application and typically conducts an interview of the child before making a decision on SIJ application.
Things kids should know

- Must apply for green card by the time they are 21
- Grounds of inadmissibility
- Can’t petition for EITHER parent (even if that parent is not basis of SIJ petition)
Inadmissibility in SIJ

Waiver available in some circumstances

- Prostitution
- Drug abuse/addiction
- Smuggler
- Conviction/admission of adult crime involving moral turpitude
- Multiple adult criminal convictions for which the aggregate sentences to confinement was five years or more

No waiver available

- Adult controlled substance offense
- Drug traffickers
- U.S. security threat
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- Deferred Action for Childhood Arrivals (DACA)
DACA – What is DACA?

• Deferred Action for Childhood Arrivals is not a change in law

• “Discretionary decision to defer removal action as an act of prosecutorial discretion”

• Not lawful status

• Permission to remain in the U.S. for two years

• May also receive work authorization
DACA Eligibility Requirements

1. Under age 31 on 6/15/12;

2. Arrived in the U.S. before 16\textsuperscript{th} birthday;

3. Continuously resided in the U.S. since 6/15/07;

4. Present on 6/15/12 and at time of filing for DACA;

5. Out of status on 6/15/12;
DACA Eligibility Requirements

6. At time of filing for DACA, in school, have graduated or completed high school or obtained GED certificate or honorably discharged from Coast Guard or Armed Forces; and,

7. Have not been convicted of a felony (defined as any offense with max. penalty greater than 1 year), significant misdemeanor, 3+ other misdemeanors, and do not otherwise pose a threat to national security or public safety.
DACA – juvenile offenses

Juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted.

---USCIS FAQs
## Other Forms of Relief

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<tr>
<th>Form of Relief</th>
<th>Question(s)</th>
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<tbody>
<tr>
<td><strong>VAWA</strong></td>
<td>- Was the child or his/her parent a victim of domestic violence?</td>
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<td><strong>Asylum</strong></td>
<td>- Does the child fear return to home country?</td>
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<tr>
<td><strong>U-visas</strong></td>
<td>- Was the child or his/her parent a victim of a crime?</td>
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If yes to ANY of these questions, contact the IIU or an immigration attorney.
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