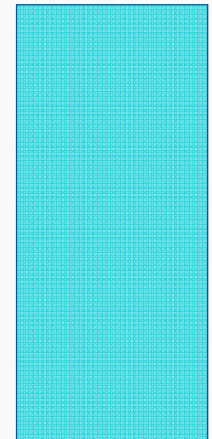


WORKING WITH IMMIGRANT CHILDREN & FAMILIES: OBSTACLES AND OPPORTUNITIES ON THE PATH TO LAWFUL STATUS IN THE UNITED STATES



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ROCKY MOUNTAIN IMMIGRANT ADVOCACY NETWORK (RMIAN)

DETENTION PROGRAM

SOCIAL SERVICE PROJECT

CHILDREN'S PROGRAM

RMIAN offers immigration-related legal services to non-citizen children and youth in Colorado who have suffered persecution, abuse, abandonment, neglect, family violence, forced labor, or violent crime.

HUMAN TRAFFICKING PROJECT

RMIAN evaluates cases of possible survivors of human trafficking through the Detention and Children's Programs.

WARNING ABOUT LEGAL ADVICE

- Immigration law is very complicated and it changes frequently. Nothing can substitute for consulting individually with an experienced immigration attorney about an individual case.
- Beware of “notarios” and the 1-800 Immigration help line. These are NOT attorneys and following their advice may cause major problems to a person’s case!
- Colorado members of the American Immigration Lawyers Association (AILA) are listed at www.ailalawyer.com

IMMIGRATION 101: TYPES OF STATUS

- U.S. Citizens – by birth, naturalization, or derived from parents
- Lawful Permanent Resident (“green card” holders)
- Immigrant Visas (family-based petitions for residency) v. Non-Immigrant Visas (tourist, student, temporary work)
- Asylees & Refugees – suffered or fear persecution
- DACA
- Undocumented Immigrants
 - Entry Without Inspection (EWI)
 - Visa overstays/violations

* Being present in the U.S. without immigration documentation is a CIVIL violation, not a crime!

IMMIGRATION 101: DEFINITIONS OF “CHILD”

- Under 21 & unmarried for family-based immigration categories
- Unaccompanied Alien Child (UAC), 6 U.S.C. § 279(g)(2)
 - No status
 - Under 18
 - No parent or legal guardian in US providing care
 - Not a status, but designation given at border or in interior with certain advantages
- Unaccompanied Refugee Minor (URM)
 - Federal foster (Office for Refugee Resettlement) care for UACs who are granted asylum, SIJS, are eligible for a T Visa, suffer refugee family breakdown, or entered alone as refugees.
 - Applications to State Refugee Coordinator (no guarantee “home state” will provide placement)
 - Colorado: LFS URM Program for 5+ years
 - not status, but a designation that makes child eligible for federal foster care placement and public benefits
- Federal custody determinations (ORR v. DHS) depends on age

AND KIDS WITHOUT STATUS ARE REALLY DEPORTED?!

- Weekly “priority docket” for kids and families
- 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 (2014 surge of new arrivals), local LEA contact, family breakdown, CIS application denials, etc.
- In Colorado: youth released to ORR “Sponsors,” paroling from DYC, or in removal with a parent are most common scenarios seen in immigration court.

COLORADO CHILDREN'S CODE

- State authority to implement and administer child protective services originates in traditionally recognized state role of *parens patriae* with regard to children who are not adequately cared for by their guardians.
- Colorado's Children's Code neither creates nor recognizes distinctions based on alienage or immigration status and mandates provision of appropriate services to any child found in Colorado.

AVENUES TO LAWFUL IMMIGRATION STATUS



COMMON PATHS TO STATUS

■ Citizenship/Naturalization

- Born in US; Born abroad to a US citizen parent; Parent became citizen; Entered as resident

■ Family-Based Petitions

- Citizen or resident parent, spouse, child or sibling applying for family

■ VAWA

- Spouses or children abused by citizen or resident spouse, parent or child

■ U Visa

- Victims of certain crimes who participate in investigation, prosecution of crime

■ T Visa

- Victims of human trafficking: commercial sex or labor by force, fraud, coercion

■ Asylum

- Fear of return home because of past harm or future harm

SPECIAL IMMIGRANT JUVENILE STATUS

- An avenue for certain abused, abandoned, or neglected undocumented children in the juvenile court system to become lawful permanent residents.
- 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 Section 204.11(d)(2).
 - Intersection of Federal & State law.
- “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 Section 204.11(a). In Colorado, can be D&N proceeding, delinquency, APR, guardianship via probate, adoption.

CORE REQUIREMENTS OF SIJS ORDER

- Juvenile is under 21 years of age & unmarried
- Juvenile Court “dependent” or Juvenile Court has legally committed or placed minor under the custody of an agency or department of a State or an individual or entity appointed by a court
- Reunification with “one or both parents” is not viable “due to abuse, neglect, abandonment or a similar basis found under State law”
- Not in child’s best interest to return to country of origin
- Court will maintain jurisdiction unless state law requires closure due to “aging out”

DACA

- Not “status,” but permission to stay
 - Not a pathway to LPR or citizenship
- 2-years of Employment Authorization, can renew



Who qualifies?

- 1) Arrival in U.S. before turning 16 years old
- 2) Continuous residence from 6/15/2007 to Present
- 3) Physically present 6/15/12
- 4) In school, graduated from high school, or obtained GED (or in process of obtaining GED)
- 5) At least 15 at time of applying (unless in deportation proceedings) and under 31 as of 6/15/12
- 6) No serious criminal convictions or gang activity—adjudications aren't crimes, but discretionary



THANK YOU!

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