

Immigration Options for Undocumented Immigrant Children

A collection of fact sheets on:

**Special Immigrant Juvenile Status (SIJS)
Violence Against Women Act (VAWA)**

Family Visas

U Visas

U.S. Citizenship

Asylum

Temporary Protected Status

Note: Advocates should only use these fact sheets for quick reference.
For additional information and/or assistance,
please see the Immigration Resources section at the back of this packet.



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SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and cannot be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis in state law.

What are the benefits of Special Immigrant Juvenile Status (SIJS)?

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.

Who is eligible for SIJS?

A child who is under the jurisdiction of a juvenile court or has been legally committed to the custody of a state agency, department, entity, or individual by such court, where the court has found (a) that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law, and (b) that it would not be in the child’s best interest to be returned to the home country. “Juvenile court” is a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. The Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA) broadened and clarified who is eligible for SIJS, although some ambiguities remain as the regulations have not been updated.

What are the requirements for SIJS?

1. The juvenile court must declare the child to be a court dependent, must legally commit the child to a state department or agency, or must legally commit the child to the care of an individual or entity appointed by a state or juvenile court in the United States, including children in dependency proceedings, delinquency proceedings, and guardianship through a probate court.
2. The SIJS application must include a special order signed by the juvenile court finding that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law. The court’s order, or a social worker’s statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect, abandonment or a similar basis in state law.
3. The juvenile court must find that it is not in the child's best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.
4. The child must be under 21 and unmarried. The child’s age can be proven with a birth certificate, passport, or other official foreign identity document issued by a foreign government. The child can be a parent of his or her own children. SIJS cannot be denied based on age if the noncitizen was under 21 and unmarried on the date of the SIJS application. Until further guidance is provided, the juvenile court should retain jurisdiction over the case until the entire application is decided.

For more information, download the ILRC’s publication “Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth” at www.ilrc.org/publications.

VIOLENCE AGAINST WOMEN ACT (VAWA)

The Violence Against Women Act permits certain abused family members of U.S. citizens or permanent residents to self-petition for a green card without the cooperation of the abuser.

What are the benefits of VAWA?

- Allows the abused family member to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the abused family member to work and serves as a government-issued identification card.
- Allows the abused family member to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

Who is eligible?

- An abused noncitizen child or spouse of a U.S. citizen or permanent resident parent.
- An abused noncitizen parent of a U.S. citizen.
- A child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse. In other words, a child can receive VAWA benefits even if he or she was not abused, as long as the child’s parent qualifies for VAWA due to abuse.

NOTE: Both male and female abused children (or spouses) are eligible to apply.

What are the requirements for VAWA?

1. The abusive family member is or was a U.S. citizen or lawful permanent resident.
2. The abused family member resided at some point in time with the abusive U.S. citizen or lawful permanent resident parent, in or out of the United States.
3. The child or spouse qualifies as a “child” or “spouse” under immigration law.
 - For children, the child must be unmarried and under the age of 21. Includes step-children if the relationship was established before the child’s 18th birthday and adopted children if the adoption was finalized before the child’s 16th birthday and the child has been in the adoptive parent’s physical and legal custody for two years.
 - For spouses, the marriage must have been legal and valid in the location in which it took place.
 - There are some exceptions to these requirements.
4. The abused family member must be a person of “good moral character.”
5. The abuse must constitute battery or “extreme cruelty” which can include psychological or emotional abuse – the abused family member need not suffer *physical* abuse to be eligible.

*For more information, order the ILRC’s publication
[“The VAWA Manual: Immigration Relief for Abused Immigrants.”](#)*

U NONIMMIGRANT STATUS

U nonimmigrant status (the “U Visa”) is for noncitizens who are victims of serious crimes and can be helpful in the investigation or prosecution of those crimes.

What are the benefits of U nonimmigrant status (also known as a “U visa”)?

- The U visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the U visa-holder can apply to obtain lawful permanent residency (a “green card”).
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a U visa to the eligible noncitizen and to certain other family members.
- In some states, allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

What are the requirements for the U visa?

1. The noncitizen must have suffered substantial physical or mental abuse as a result of having been the victim of one of the following crimes: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit these or similar offenses in violation of federal, state or local criminal law. In certain cases, where the victim is deceased due to murder or manslaughter or is incompetent or incapacitated, the child of the direct victim and siblings under 18 years of age of the direct victim (if the direct victim is under 21 years of age) may also qualify for U nonimmigrant status as indirect victims.

2. The noncitizen has information about the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. If the child is under 16 years of age, a parent, guardian or next friend of the child may fill this role.

3. The noncitizen must obtain certification from a federal, state or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a USCIS official that shows that he or she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. A Child Protective Services (CPS) agency may also certify the noncitizen’s helpfulness if it has criminal investigative jurisdiction.

*For more information, order the ILRC’s publication
[“The U Visa: Obtaining Status for Immigrant Victims of Crime.”](#)*

TRAFFICKING VISA

T nonimmigrant status (the “T Visa) is for noncitizens who have been the victims of severe forms of human trafficking.

What are the benefits of a T Visa?

- The T visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the T visa-holder can apply to obtain lawful permanent residency (a “green card”).
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a T visa to the eligible noncitizen and to certain other family members.

What are the requirements for the T visa?

1. The noncitizen must be the victim of a severe form of human trafficking. Severe forms of human trafficking is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age, or 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. This severe form of trafficking requirement may be proven by a certification by law enforcement, evidence that immigration authorities have arranged for the individual’s continued presence in the United States as a victim of trafficking, or sufficient credible secondary evidence.

3. The noncitizen must be physically present in the United States, American Samoa, or the Commonwealth of North Mariana Islands on account of such trafficking.

4. The noncitizen must have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking. Children and youth under 18 years of age, however, are exempt from this requirement.

5. The noncitizen would experience extreme hardship involving unusual and severe harm upon removal.

Individuals who do not meet all the requirements for T nonimmigrant status may be eligible for U nonimmigrant status, VAWA relief, or even SIJS.

Identifying Trafficking Victims:

- Trafficking victims are often unlikely to self-identify or able to escape.
- They may not perceive themselves as victims.
- They may be working long hours, every day of the week and often live where they work.
- They may be more fearful of law enforcement than of their traffickers.
- They may be ashamed of what they have done.
- They may owe a debt to their traffickers.
- Their family members may have been threatened by the traffickers.

For more information, download the ILRC’s publication “Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth” at www.ilrc.org/publications.

ASYLUM

Asylum is for noncitizens who fear persecution in their home country because of their race, religion, nationality, political opinion or membership in a particular social group.

What are the benefits of asylum?

- Allows the noncitizen to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the noncitizen to work and serves as a government-issued identification card.
- Allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

What are the requirements for asylum?

1. Generally, a noncitizen must apply within one year of arriving in the United States unless he or she was prevented from applying by changed or extraordinary circumstances. Changes in home country conditions may constitute changed circumstances. Some forms of family abuse and domestic violence might be considered extraordinary circumstances. Status as a minor may also be considered a legal disability so as to qualify as an extraordinary circumstance. In addition, unaccompanied minors are exempt from the one-year bar. An unaccompanied minor is defined as an undocumented person under the age of 18 who does not have a parent or legal guardian who is willing or able to provide care and physical custody.

2. The noncitizen must fear persecution from the government of his or her home country or from a group that the government is unwilling or unable to control (for example, guerrillas or death squads).

3. The fear must be based on the noncitizen’s race, religion, political opinion, nationality or membership in a social group.

4. The noncitizen must not be subject to certain mandatory bars to asylum. These include persecution of others, conviction of a particularly serious crime, commission of a serious non-political crime before coming to the U.S., posing a risk to U.S. security, engaging in terrorist activity, firm resettlement in a third country, or removal to safe third country.

➔ In some cases, asylum has been granted based on severe domestic violence or issues involving gender (such as threat of female genital mutilation in the home country), even if the persecution and abuse was committed by family members.

Note: This form of relief is very complicated. Noncitizens who may qualify for asylum must consult with an expert immigration practitioner before applying.

For more information, order the ILRC’s publication, “Asylum and Related Immigration Protections” at www.ilrc.org/publications.

TEMPORARY PROTECTED STATUS

Noncitizens from certain countries that have experienced devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS).

What are the benefits of Temporary Protected Status (TPS)?

- Provides *temporary* permission to stay in the United States.
- Provides temporary work authorization.

What are the requirements for TPS?

1. The noncitizen only needs to prove that he or she is a national of a current TPS designated country and has been in the United States since a required date.
2. The noncitizen does not need to prove that he or she will be singled out for persecution in the home country.
3. The noncitizen cannot be subject to one of the criminal (no conviction of any felony or two or more misdemeanors in the U.S.), security-related, or other bars to TPS.
4. The noncitizen has met all the requirements for TPS registration or re-registration as specified for the country including filing during the open registration or re-registration period, or meeting the requirements for late initial registration regardless of whether there is currently an open registration or re-registration period.

Which countries are currently designated for Temporary Protected Status?

The countries on the TPS list change. Recently they have included:

- El Salvador
- Haiti
- Honduras
- Nicaragua
- Somalia
- Sudan
- Note that Liberia was previously a TPS designated country, but is no longer. Now Liberians formerly granted TPS may be eligible for Deferred Enforced Departure, which is not an immigration status, but rather a designation in discretion of the President that eligible individuals are not deportable.

For updated information about which countries are currently designated TPS and what requirements nationals of those countries must meet to qualify, go to the USCIS website at www.uscis.gov and follow the directions to get to information about Temporary Protected Status.

For more information, order the ILRC's publication "[A Guide for Immigration Advocates.](#)"

FAMILY VISAS

Some noncitizens may be able to immigrate legally through a U.S. citizen or lawful permanent resident family member.

What are the benefits of immigrating through a family member?

A family visa permits a noncitizen to immigrate to the United States through a family member. To immigrate means to become a lawful permanent resident (“green card” holder).

Who is eligible to immigrate through a family member?

Children and youth who have certain qualifying family relationships with U.S. citizen (USC) or lawful permanent resident (LPR) family members may be eligible for family visas to obtain lawful status. They may qualify as **immediate relatives** if they are the spouse, unmarried child under 21, or parent (if the son or daughter is 21 years or older) of a U.S. citizen. These persons can immigrate quickly. Others may have to wait up to several years to immigrate. They may qualify to immigrate through the **preference categories** which includes sons or daughters of U.S. citizens who are married or over the age of 21; spouses and unmarried sons and daughters of permanent residents; and siblings of U.S. citizens where the citizen is 21 years or older. How long a family member will have to wait to immigrate through a family petition depends upon the noncitizen’s native country and the relationship to the family member who submitted the visa petition. The family-based immigration application process generally involves two steps, filing of the family visa petition and then the adjustment of status application to become a lawful permanent resident.

What are the requirements for immigrating through a family member?

1. The U.S. citizen or lawful permanent resident parent must prove his or her citizen or resident status and must prove the required family relationship with the noncitizen.
2. The U.S. citizen or lawful permanent resident family member must be willing to help the noncitizen through the process by attending immigration interviews and submitting an affidavit of support.
3. Some noncitizen family members will have to wait many years (approximately 4-22 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they may not be able to remain in the United States.

*For more information, order the ILRC’s publication
[“Families & Immigration: A Practical Guide.”](#)*

CONDITIONAL PERMANENT RESIDENCE

Conditional permanent residence is for noncitizens who have immigrated through a spouse within the first two years of the marriage. Because of immigration processing times, this is effectively only available to the spouses of U.S. citizens.

What are the benefits of Conditional Permanent Residence?

- Provides two years of resident status in the United States that may be extended to lawful permanent residence.
- Provides work authorization.

What makes this type of status “conditional?”

The conditional permanent resident and his or her spouse must apply together to remove the conditions on this residence within the 90 days prior to the second anniversary of being granted conditional permanent residence. If the conditional permanent resident does not do this, he or she may lose conditional permanent residence and be removed from the United States. If the conditional permanent resident does this successfully, he or she will become a lawful permanent resident (have a regular “green card”).

Are there any exceptions to the rule above?

Yes. There are waivers available to those conditional permanent resident spouses who cannot apply with the petitioning (U.S. citizen) spouse to have the conditions removed. They are available in the following situations:

- The conditional permanent resident spouse entered the marriage in good faith, but the petitioning spouse subsequently died.
- The conditional permanent resident spouse entered the marriage in good faith, but the marriage was later terminated due to divorce or annulment.
- The conditional permanent resident spouse entered the marriage in good faith, but has been battered or subjected to extreme cruelty by the petitioning spouse.
- The termination of permanent resident status and removal of the conditional resident spouse would result in extreme hardship to the conditional permanent resident spouse.

*For more information, order the ILRC’s publication
[“Families & Immigration: A Practical Guide.”](#)*

IMMIGRATION RESOURCES

This list of resources is by no means exhaustive but provides some services available and national organizations willing to provide technical assistance and materials.

TECHNICAL ASSISTANCE PROVIDERS & PRO BONO SUPPORT

SPECIAL IMMIGRANT JUVENILE STATUS, VAWA AND U VISAS

Asista

515 28th Street
Des Moines, IA 50312
Tel. (515) 244-2469
questions@asistahelp.org

Asista's purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault. They provide free technical assistance and training to legal services providers that receive grant funding from the U.S. Department of Justice Office on Violence Against Women.

Immigrant Legal Resource Center (ILRC)

1663 Mission Street, Suite 602
San Francisco, CA 94103
Tel. (415) 255-9499 ext. 6263
aod@ilrc.org

The ILRC provides technical assistance via email, phone or fax Monday through Thursday from 10:00am to 3:00pm through its Attorney of the Day (AOD) service. This service is free to all California IOLTA-funded legal services programs, all San Francisco Bay Area nonprofit agencies, and Vera DUCS project subcontractors and pro bono attorneys assisting these subcontractors.

National Immigration Project of the National Lawyers Guild

14 Beacon Street, Suite 602
Boston, MA 02108
Tel. (617) 227-9727
ellen@nationalimmigrationproject.org
www.nationalimmigrationproject.org

The Project provides technical assistance, advice and resources to its members. It sponsors seminars and produces publications on a variety of subjects to develop and improve legal and advocacy skills.

National Immigration Law Center (NILC)

3435 Wilshire Blvd., Suite 2850

Los Angeles, CA 90010

Tel. (213) 639-3900

Fax (213) 639-3911

www.nilc.org

NILC provides advice over the telephone and some training in the Los Angeles area. Special expertise in public benefits law and in T visas for victims of human trafficking.

ASYLUM

The Center for Gender and Refugee Studies

U.C. Hastings College of the Law

200 McAllister Street

San Francisco, CA 94102

Tel. (415) 565-4791

Fax (415) 565-4865

<http://cgrs.uchastings.edu/>

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

CHILDREN'S ISSUES

Public Counsel

601 South Ardmore Avenue

Los Angeles, CA 90005

Tel. (213) 385-2977

www.publiccounsel.org

Public Counsel provides legal services to immigrant children and youth in the Los Angeles area; advice over the telephone and some training available.

CLINIC National Pro Bono Project for Children

415 Michigan Ave. NE, Suite 200

Washington, DC 20017

Tel. (202) 635-2556

www.cliniclegal.org

CLINIC matches unaccompanied immigrant children who have recently been

released from government custody with pro bono attorneys; trains and supports pro bono attorneys across the country to assist unaccompanied children in need of legal representation.

Kids in Need of Defense (KIND)

1331 G Street NW, Suite 900
Washington, DC 20005
Tel. (202) 824-8680
www.supportkind.org

KIND has an infrastructure of pro bono coordinators that assign, monitor, mentor and coordinate legal representation for unaccompanied minors provided by law firms and corporate legal departments in targeted cities. KIND also partners with NGOs with expertise in working with unaccompanied children.

National Center for Refugee and Immigrant Children

U.S. Committee for Refugees and Immigrants
2231 Crystal Drive, Suite 350, Arlington, VA 22202
Tel. (703) 310-1130
www.nationalchildrenscenter.org

The National Center provides pro bono legal and social services for unaccompanied immigrant children in the immigration process.

WRITTEN AND OTHER MATERIALS

Immigrant Legal Resource Center Publications

The ILRC publishes the following books about areas of immigration law relevant to family and juvenile court issues. For a more complete list of ILRC publications, and for information on the most current pricing and editions available, please call (415) 255-9499 ext. 782, or visit the ILRC website at <http://ilrc.org/publications.php>.

Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth. This practical manual includes a detailed and clear explanation of SIJS since the enactment of the Trafficking Victims Protection and Reauthorization Act of 2008, step-by-step guidance on SIJS procedure for both affirmative and defensive cases, sample completed application forms, sample juvenile court judge's orders, and chapters on working with children and youth, other types of immigration relief for children, the immigration consequences of delinquency, and an overview of immigration detention of children and youth.

The VAWA Manual: Immigration Relief for Battered Immigrants is a comprehensive guide for advocates working with immigrant survivors of domestic violence. This manual includes in-depth information on the VAWA self-petitioning requirements and process, adjustment of status, inadmissibility

and waivers, consular processing, conditional permanent residency, VAWA cancellation of removal, special immigrant juvenile status, and U visas.

The U Visa: Obtaining Status for Immigrant Victims of Crime can guide you through the entire process of handling an immigration case for a U visa applicant – from eligibility screening through adjustment of status to assisting eligible family members.

A Guide for Immigration Advocates is a large and comprehensive book about immigration law, written for paralegals. It includes clearly written material discussing forms of relief that would apply to noncitizens such as family visa petitions, suspension and asylum.

Defending Immigrants in the Ninth Circuit: Impact of Crimes Under California and Other State Laws. This is a comprehensive manual on the representation of non-citizens who have been accused or convicted of crimes. It discusses all the grounds of inadmissibility and deportability related to criminal offenses. Topics include drug convictions, admissions, addiction and abuse, aggravated felon status, crimes involving moral turpitude, and firearms offenses, as well as recent legislation. The manual includes an annotated chart analyzing 70 offenses under California law. It also features a comprehensive chapter on how to obtain post-conviction relief, including a discussion of legal requirements, practice tips, and sample briefs and papers, as well as a chapter on immigration holds and detainers.

Free Online Materials

In addition to publishing the manuals described above, the ILRC provides free materials and publications on immigrant children and youth issues at www.ilrc.org, click on “Immigrant Youth” tab. These materials include:

Immigration Benchbook for Juvenile and Family Courts. A manual discussing immigration issues that affect juvenile and family courts.

Living in the United States: Guide for Immigrant Youth. A know your rights and responsibilities guide for both undocumented and documented immigrant youth in the United States in English, Spanish, and Korean.

LISTSERVES

VAWA Updates

The VAWA Updates listserv is maintained by the ASISTA Technical Assistance Project and provides ongoing updates about changes in VAWA and the new U visa provisions. To join the listserv, contact ASISTA at questions@asistahelp.org.

Child Immigration Updates

The Lutheran Immigration and Refugee Service (LIRS) maintains a listserv for advocates working with children in immigration proceedings. To join the listserv, go to <http://lists.lirs.org/mailman/listinfo/childimmigration>.

WEBSITES

Asista

www.asistahelp.org

The Asista website includes a resource library of all of the INS and USCIS policy memoranda relevant to VAWA, U visa and T visa cases as well as many sample materials, motions, declarations, etc.

Immigrant Legal Resource Center (ILRC)

www.ilrc.org

The ILRC website includes information about ongoing ILRC seminars and publications on aspects of immigration law, as well as manuals and materials that can be downloaded and information about the ILRC's activities and policy work.

National Center for Refugee and Immigrant Children

www.nationalchildrenscenter.org

The National Center's website contains a resource library on various legal topics affecting immigrant children and youth.

Migration and Child Welfare National Network (MCWNN)

www.americanhumane.org

The MCWNN website is hosted on American Humane's website and has information and resources on improving the child welfare system's services to immigrant families including a *Social Worker's Tool Kit for Working With Immigrant Families -- A Child Welfare Flowchart* (August 2009) and *A Social Worker's Tool Kit for Working With Immigrant Families -- Immigration Status and Relief Options* (June 2009).

U.S. Citizenship and Immigration Service

www.uscis.gov

The USCIS website includes many links to the latest USCIS policy and procedural information, the status of applications, and easy access to downloadable USCIS forms.

National Immigration Law Center (NILC)

www.nilc.org

NILC staff specializes in immigration law, and the employment and public benefits rights of immigrants. Their website contains links to their policy analysis and impact litigation, publications, technical advice, and trainings information.

National Immigration Project of the National Lawyers Guild
www.nationalimmigrationproject.org

The “domestic violence” link on the website of the National Immigration Project of the National Lawyers Guild contains extensive materials on VAWA, SIJS and U visas, including links to background information, USCIS policy memoranda and strategy articles.