

## **DIAGNOSTIC QUESTIONS FOR NONCITIZEN YOUTH: DETERMINING POTENTIAL AVENUES FOR LEGAL STATUS**

1. Is the child a U.S. citizen without knowing it?
  - A. Anyone born in the U.S. or Puerto Rico is a citizen, and born in Guam, American Samoa or Swains Island is a national who can't be deported.
  - B. If person born outside the U.S., ask two threshold questions to see if the person automatically is a U.S. citizen. If the answer to either might be yes, refer for immigration counseling.
    - Was there a USC parent or grandparent at time of person's birth? Or,
    - Before person's 18<sup>th</sup> birthday, did both of these events happen (in either order): child became a permanent resident, and at least one natural or adoptive (but not step-) parent having some form of custody over the child is or becomes a U.S. citizen. (Tip: Encourage the parent to naturalize!)
2. Is the child currently under delinquency court jurisdiction where the court has ruled that the child (a) *cannot be reunified with one or both parents* because of abuse, neglect or abandonment or a similar basis under state law and (b) that it would not be in the child's best interest to be returned to the home country? The child may qualify for ***special immigrant juvenile status***.
  - **IMPORTANT:** the child must stay in the jurisdiction of the delinquency court until the entire SIJS application is adjudicated so watch out for youth aging out of the system. Note, however, a change in the law effective March 23, 2009 eliminates this requirement and maintains eligibility as long as the time of filing the child was eligible for SIJS.
3. Has the child been abused by a *U.S. citizen or permanent resident* spouse or parent, including adoptive, natural or step-parent? Has the child's parent been a victim of domestic violence by his/her U.S. citizen or permanent resident spouse? Consider ***VAWA relief***.
  - Child doesn't need to be under current court jurisdiction, and may be reunited with the other parent.
  - Child will need to show "good moral character." Violent crimes will be a negative factor, but can be offset if there is a connection between the abuse and the bad conduct.
4. Has the child been a victim of serious crime, or of alien trafficking? Is the child willing to cooperate with authorities to investigate or prosecute the offense? Consider the ***S, T, or U visas***.
  - This is one of the few forms of relief available even if the child has a drug trafficking delinquency disposition.
5. Does the child have a *U.S. citizen or permanent resident parent or spouse* who is willing to petition for her? Investigate **family immigration**.
  - To immigrate through an adoptive parent the adoption must be completed by the child's 16<sup>th</sup> birthday.
6. Does the child come from a country that's recently experienced *civil war, natural disaster, or political persecution*? Investigate various forms of relief such as **asylum and temporary protective status**.

## **IMMIGRATION CONSEQUENCES OF JUVENILE COURT DISPOSITIONS:**

### **Inadmissibility (8 USC § 1182(a)) and Deportability (8 USC § 1227(a))**

1. **Drug trafficking.** Inadmissible for sale, possession for sale. No waivers except for the S, T, or U visa.
2. **Drug abuse or addiction.** Deportable and inadmissible, but waivers are often available.
3. **Violation of DV protective order.** Deportable, some waivers.
4. **Sexual predator or any behavior showing a mental condition that poses a current threat to self or others including suicide attempt, torture or mayhem, and repeated offenses linked to alcohol abuse.** Inadmissible but waivers may be available.
5. **Prostitution.** Inadmissible for engaging in prostitution (not customer), but waivers are often available.
6. **False claim to U.S. citizenship, false documents.** Deportable and inadmissible, no waivers. Note: There is an automatic waiver of this ground for SIJS applicants under a new law and is effective March 23, 2009.

### **Resources**

Immigrant Legal Resource Center  
1663 Mission St., Suite 602, San Francisco CA 94103  
415.255.9499, [www.ilrc.org](http://www.ilrc.org)

Website includes free resources: “Benchbook on Immigration Law” and “Special Immigrant Juvenile Status” manuals (click “programs” and “advocating for children”), Fact Sheets on Immigration Relief for Youth, Know Your Rights Handbook for Noncitizen Youth, and “Quick Reference Chart” of immigration consequences of adult criminal convictions in California and Arizona (go to [www.ilrc.org/criminal.php](http://www.ilrc.org/criminal.php)). Order “Defending Immigrants in the Ninth Circuit,” (2008 edition), a manual with a chapter on effective representation of noncitizen youth (2008 edition) at <https://www.ilrc.org/publications.php>. Contract services are available to public defender offices and criminal defense attorneys who wish to consult on pleas – go to <http://www.ilrc.org/contract.php>.

Resource library on immigration consequences of juvenile delinquency go to [www.defendingimmigrants.org](http://www.defendingimmigrants.org) and click on “Library.”

National Immigration Project  
14 Beacon Street  
Suite 506, Boston MA 02108  
617 227 9727, [dan@nationalimmigrationproject.org](mailto:dan@nationalimmigrationproject.org)

Free advice on immigration consequences of crimes; resources on website  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org).

Law Offices of Norton Tooby – [www.nortontooby.com](http://www.nortontooby.com)  
Free newsletter, paid area of the website, archived articles