



Immigration Options for Undocumented Immigrant Children

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A collection of one-page fact sheets on:

Special Immigrant Juvenile Status (SIJS)

Violence Against Women Act (VAWA)

U Visa

Trafficking Visa (T Visa)

Asylum

Temporary Protected Status (TPS)

Family Visas

Conditional Permanent Residence

Deferred Action for Childhood Arrivals (DACA)

Non-LPR Cancellation of Removal

Note: Advocates should only use these fact sheets for quick reference, and keep in mind that a person may qualify for multiple forms of relief, or narrowly miss the criteria for one but qualify for another, related form of relief. Any time an undocumented person applies for immigration relief when they are not already in removal proceedings, they are affirmatively presenting themselves to the U.S. government and potentially putting themselves at risk. Under new June 2018 policy, the Trump Administration has stated that it may place all undocumented people who apply for immigration status but are denied into removal proceedings (with the exception of DACA, to which old rules from 2011 continue to apply). This makes it risky for anyone to submit an application for immigration status. Please consult with an immigration expert before filing any applications for relief with U.S. Citizenship & Immigration Services.

Immigrant Legal Resource Center

www.ilrc.org

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

Special Immigrant Juvenile Status (SIJS) provides a path to lawful permanent residency for 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 U.S. and eventually obtain lawful permanent residency (a “green card”).
- Once the child can file an application for adjustment of status (application for a green card), provides eligibility for 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 as a dependent, or where a juvenile court has legally committed the child to the custody of a state agency, department, entity, or individual after finding (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 (may include family courts, probate courts, and juvenile dependency and delinquency courts, among others).

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 custody of an individual or entity appointed by a state or juvenile court in the United States, including children in dependency, delinquency, custody, guardianship, or adoption proceedings.
2. The SIJS application must include a special order signed by the juvenile court judge finding that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. The court’s order should include a brief summary of the facts supporting (1) the declaration of dependency or custody, (2) the finding of abuse, neglect, abandonment or a similar basis in state law, and (3) the best interests finding (see item 3 below).
3. The juvenile court must find that it is not in the child’s best interest to return to their country of origin. This can be demonstrated to the court through a declaration from 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 can be a parent of their own children. SIJS cannot be denied based on age if the noncitizen was under 21 and unmarried on the date of the SIJS application. However, in some states juvenile court jurisdiction ends at 18 so it may not be possible to seek findings from a state court after that age. The juvenile court should retain jurisdiction over the case until the entire application is decided, unless jurisdiction is terminated solely due to age and if this is the case, the proceedings should indicate that.

Note: There is currently a visa backlog for youth from Mexico, Guatemala, Honduras, or El Salvador seeking a green card based on SIJS. This creates a long delay (potentially two years) between the time they file for SIJS and the time they can file their green card application.

For more information, see www.ilrc.org/immigrant-youth or www.ilrc.org/publications for our *SIJS Manual*.

VIOLENCE AGAINST WOMEN ACT (VAWA)

The Violence Against Women Act (VAWA) 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).

Who is eligible for VAWA?

- An abused noncitizen *child or spouse* of a U.S. citizen or permanent resident.
- 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.
- *Note:* Both male and female victims 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 with the abusive U.S. citizen or lawful permanent resident, 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. If the child is over 21, they may be able to qualify up to age 25 if the abuse was a central reason for not filing by age 21.
 - The definition of a child 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. Generally, to be considered a child in immigration law, adopted children must be in the adoptive parent’s physical and legal custody for two years, but that requirement is removed for abused adopted children.
 - 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.

Note: There is another related form of relief that is only available to noncitizens in removal proceedings, called **Special Rule Cancellation of Removal for Battered Spouses and Children** or “VAWA Cancellation.” Please see the **Non-LPR Cancellation of Removal** section of this resource for more information on Cancellation of Removal, including VAWA Cancellation.

For more information, see www.ilrc.org/u-visa-t-visa-vawa or www.ilrc.org/publications for our VAWA Manual.

U NONIMMIGRANT STATUS

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

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

- Allows the noncitizen to remain legally in the United States for four years with a temporary visa.
- Provides employment authorization that allows the noncitizen to work in the United States for four years.
- Certain family members (spouse, minor children, and if applicant is a minor, parents and siblings) can also receive U visas based on their relationship to the principal U visa applicant.
- In some states, allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks).
- After three years, the U visa holder can apply for lawful permanent residency (a “green card”).

Who is eligible for a U visa?

Noncitizens who have been the victim of a qualifying crime in the United States and have indicated their willingness to be helpful in the investigation or prosecution of the crime.

Qualifying crimes include 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, stalking, fraud in foreign labor contracting, 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 direct victim is deceased due to murder or manslaughter or is incompetent or incapacitated, certain family members (if the direct victim is under 21 years of age) may also qualify for the U visa.

What are the requirements for the U visa?

1. The noncitizen was the victim of a qualifying crime, and suffered substantial physical or mental abuse as a result of the crime.
2. The noncitizen (or in the case of a noncitizen child under the age of 16, the parent or guardian) possesses information concerning the crime and has been, is being, or is likely to be helpful in the investigation or prosecution of the crime.
3. The federal, state, or local law enforcement authority (includes a Child Protective Service (CPS) agency if it has criminal investigative jurisdiction) has signed a specific form certifying the noncitizen’s helpfulness in the investigation or prosecution of the crime.
4. The criminal activity violated the laws of the United States.
5. The noncitizen is admissible, or any applicable inadmissibility grounds are waived.

Note: The law only permits 10,000 U visas to be issued per year. The number of U visa petitions has outpaced this limit for many years, creating a long backlog (multiple years). However, once individuals are added to the U visa wait-list, they are eligible for employment authorization.

For more information, see www.ilrc.org/u-visa-t-visa-vawa or www.ilrc.org/publications for our *U Visa Manual*.

TRAFFICKING VISA

The trafficking visa, also called T nonimmigrant status or the “T visa,” is for noncitizens who have been the victims of severe forms of human trafficking.

What are the benefits of T Nonimmigrant Status (also known as a “T visa”)?

- Allows the noncitizen to remain legally in the United States for four years with a temporary visa.
- Provides employment authorization that allows the noncitizen to work in the United States for four years.
- In some states, allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, *even before filing* an application for a T visa).
- Certain family members can also receive T visas based on their relationship to the principal applicant trafficking victim.
- After three years in this status, the T visa holder can apply for lawful permanent residency (a “green card”). They may be able to apply for lawful permanent residency earlier if they are able to obtain a letter from the U.S. Department of Justice confirming that the investigation or prosecution is complete.

What are the requirements for the T visa?

1. The noncitizen must have been the victim of a severe form of human trafficking. Severe form of human trafficking is defined as either sex trafficking or labor trafficking. Sex trafficking occurs when someone recruits, harbors, transports, provides, solicits, patronizes, or obtains a person for the purpose of a commercial sex act, where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age. Labor trafficking occurs when someone recruits, harbors, transports, provides, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of 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 any other evidence.
2. The noncitizen is physically present in the United States or at a port of entry on account of the trafficking.
3. The noncitizen must have complied with any reasonable request for assistance in the investigation or prosecution of the trafficking. However, children under 18 years old and individuals unable to cooperate due to physical or psychological trauma are exempt from this requirement.
4. The noncitizen would suffer extreme hardship involving unusual and severe harm if removed.
5. The noncitizen is admissible, or any applicable inadmissibility grounds are waived.

Identifying Trafficking Victims:

- Trafficking victims are often unlikely to self-identify.
- 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.

*For more information, see www.ilrc.org/u-visa-t-visa-vawa or www.ilrc.org/publications for our *Trafficking Manual*.*

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 travel outside the United States with a refugee travel document, but generally one cannot return to their home country.
- A person granted asylum can petition for spouse and children under 21 to enter as asylees (or include them as part of their asylum application).
- Allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks).

What are the requirements for asylum?

1. Generally, a noncitizen must apply within one year of arriving in the United States unless they were prevented from applying by extraordinary circumstances, or can later demonstrate a change in 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 and qualify as an extraordinary circumstance. In addition, unaccompanied minors are exempt from the requirement that they apply within one year. 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 have suffered persecution or fear future persecution by the government of their home country, or by a group or individual that the government is unwilling or unable to control (for example, guerrillas or death squads).

3. The persecution must be on account of the noncitizen’s race, religion, political opinion, nationality or membership in a particular 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, having firmly resettled in a third country, or the possibility of removal to a safe third country.

➔ In some cases, asylum has been granted based on severe domestic violence or issues involving gender (such as LGBTQ identity or threat of female genital mutilation in the home country), even if the persecution and abuse was committed by private individuals, such as family members. The Trump Administration is trying to limit such claims, but people with legitimate asylum claims should still pursue these, with expert assistance.

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, see www.ilrc.org/asylum or www.ilrc.org/publications for our Asylum Manual.

TEMPORARY PROTECTED STATUS

Noncitizens from certain designated 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 (typically, up to 18 months, and renewable as long as the designation persists).
- Provides temporary work authorization.

What are the requirements for TPS?

1. The noncitizen must prove that they are a national of a country with current TPS designation and have been in the United States since a required date.
2. The noncitizen cannot be subject to any of the bars to TPS, including criminal offenses (can have no felony conviction and no more than one misdemeanor conviction in the U.S.), activities that threaten national security, or any of the bars to applying for asylum (see **Asylum** section in this resource for further details).
3. The noncitizen must meet 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 TPS?

The countries on the TPS list change, and the present administration has been ending many of these designations when they come up for review. Countries currently designated for TPS: (those marked with an asterisk are ending in the near future, which means there will be no future re-registration periods beyond the listed end-date)

- Sudan* *ends November 2, 2018*
- Nicaragua* *ends January 5, 2019*
- Haiti* *ends July 22, 2019*
- El Salvador* *ends September 9, 2019*
- Syria
- Nepal* *ends June 24, 2019*
- Honduras* *ends January 5, 2020*
- Somalia
- Yemen
- South Sudan

Liberia was also previously designated for TPS. When Liberia's TPS designation ended, Liberians formerly granted TPS were eligible for another program, called Deferred Enforced Departure (DED), which is not an immigration status but rather a designation in the discretion of the President that eligible individuals are not deportable. However, in March 2018 President Trump announced that he is ending DED for Liberians after a 12-month "wind-down" that expires March 31, 2019.

For updated information about which countries currently are designated for TPS and what requirements nationals of those countries must meet to qualify, go to the USCIS website at www.uscis.gov/TPS.

For more information, see www.ilrc.org and www.ilrc.org/publications for our 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 (become a lawful permanent resident, or “green card” holder) through a family member.

Who is eligible to immigrate through a family member?

People 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. Some 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 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. These persons may have to wait up to several years to immigrate. How long a family member will have to wait to immigrate through a family petition depends upon the noncitizen’s native country, the relationship to the family member who submitted the visa petition, and that family member’s immigration status. The family-based immigration application process generally involves two steps, filing of the family visa petition and then the application for permanent residence. The second step can happen in the United States for some people who are already here—this process is called adjustment of status. Others will have to consular process, meaning that they will have to attend an interview at the U.S. consulate in their home country. Those who entered the United States without inspection often have to leave the United States to consular process, but this should be discussed with an attorney.

What are the requirements for immigrating through a family member?

1. The U.S. citizen or lawful permanent resident must prove their 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, in many cases, filing an affidavit of financial support for the immigrant.
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, see www.ilrc.org/family-based or www.ilrc.org/publications for our Families & Immigration Manual.

CONDITIONAL PERMANENT RESIDENCE

Conditional permanent residence is a two-year green card, rather than a full-term green card, for noncitizens who immigrated through a spouse within the first two years of marriage.

What are the benefits of Conditional Permanent Residence?

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

Who is eligible for Conditional Permanent Residence?

People do not choose to apply for conditional permanent residence. Instead, those who immigrate through a spouse where they have not yet been married to that spouse for at least two years are automatically given conditional permanent residence, and a two-year green card, instead of full-term permanent residence. This includes the immigrant spouse's children who immigrate with them. If by the time a person immigrates through their spouse they have already been married at least two years, they skip this step of conditional permanent residency.

What makes this type of status “conditional”?

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

Children may receive conditional permanent residency along with a parent. Children who received conditional permanent resident status with a parent at the same time or within 90 days after the parent do not need to submit a separate application to remove the conditions on their residency.

Are there any exceptions to the rule above?

Yes. Conditional permanent resident spouses who cannot apply to remove the conditions together with the petitioning (U.S. citizen) spouse can apply for a waiver of this joint filing requirement. In these cases, the conditional resident spouse files on their own. A waiver is available where:

- The conditional permanent resident spouse entered into the marriage in good faith, but the petitioning spouse subsequently died.
- The conditional permanent resident spouse entered into the marriage in good faith, but the marriage was later terminated due to divorce or annulment.
- The conditional permanent resident spouse entered into 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, see www.ilrc.org/family-based or www.ilrc.org/publications for our Families & Immigration Manual.

DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

Deferred Action for Childhood Arrivals (DACA) is a form of prosecutorial discretion that provides a work permit and relief from removal for two years to certain eligible undocumented youth.

What are the benefits of Deferred Action for Childhood Arrivals (DACA)?

- Provides grantees with employment authorization that allows them to work and serves as a government-issued identification card.
- Enables grantees to obtain a Social Security Number, state I.D. card and driver's license.
- Can be renewed after two years.

Who is eligible for DACA?

As of January 2018, only individuals who have previously been granted DACA are eligible. However, at the time of this writing there is pending litigation on whether the DACA program is lawful, and whether USCIS must accept new DACA applications for those who have never previously been granted DACA. These cases, when decided, may change who is eligible for the DACA program. For up-to-date information, please visit: www.ilrc.org/daca.

What are the requirements for DACA?

1. The applicant must be at least 15 years old at the time of filing their request, and also have been under age 31 as of June 15, 2012.
2. The applicant must have come to the United States (established residence) before their 16th birthday.
3. They must have continuously resided in the United States since at least June 15, 2007, to the present.
4. They must have been physically present in the United States on June 15, 2012, and at the time of making their request for DACA.
5. The applicant must have entered without inspection before June 15, 2012, or their lawful immigration status expired as of June 15, 2012 (i.e. they were undocumented as of June 15, 2012 even though they previously had a visa).
6. They must be currently in school, have graduated or obtained a certificate of completion from high school or GED certificate, or be an honorably discharged veteran of U.S. Coast Guard or Armed Forces.
7. They cannot have been convicted (as an adult) of a felony, significant misdemeanor, or three or more other misdemeanors, and cannot otherwise pose a threat to national security or public safety.
8. DACA renewal applicants must show that they have been granted DACA before, continuously resided in the United States since their last DACA application, have not left after August 15, 2012 without advance parole, and continue to meet the criminal requirements (see above).

For more information, see www.ilrc.org/daca or www.ilrc.org/publications for our DACA Manual.

NON-LPR CANCELLATION OF REMOVAL

Cancellation of Removal for Non-Permanent Residents, also called Non-LPR Cancellation of Removal, is a defense to removal for certain noncitizens who have been living in the United States for a specified period of time, have certain family members with U.S. citizenship or green cards, and meet other requirements. If granted, the applicant gains lawful permanent residency (a “green card”) and is no longer in danger of removal.

What are the benefits of Non-LPR Cancellation of Removal?

- Prevents immigration authorities from deporting a noncitizen and terminates removal proceedings.
- Allows the noncitizen to obtain lawful permanent residency (a “green card”).
- Upon filing an application, provides a way to obtain an employment authorization document that allows the noncitizen to work and serves as a government-issued identification card.

Who is eligible for Non-LPR Cancellation of Removal?

Noncitizens who are currently in removal proceedings and meet the requirements in the next section are eligible. Additionally, they cannot have already been granted cancellation of removal (or related forms of relief) in the past. Noncitizens who entered as crewmen and certain people who entered on a “J” visa are also ineligible.

What are the requirements for Non-LPR Cancellation of Removal?

1. The noncitizen must have been physically present in the United States for a continuous period of at least 10 years prior to being placed in removal proceedings based on a proper charging document (called a Notice to Appear, or “NTA”) that specifies the date and place of the removal proceedings.
2. The noncitizen must have had “good moral character” (a legal term of art with a specific definition in immigration law) during the 10-year period.
3. The noncitizen cannot have been convicted of certain criminal offenses, persecuted others, or have participated in activities related to terrorism or that threaten national security.
4. The noncitizen must be able to show that their deportation would cause exceptional and extremely unusual hardship to their U.S. citizen (USC) or lawful permanent resident (LPR) spouse, parent, or child. This hardship must be more than what is caused by “typical” family separation and is often the most difficult part of a non-LPR cancellation case.

Note: There is a related form of relief for abused family members of USCs or LPRs, called **Special Rule Cancellation of Removal for Battered Spouse or Child**, or “VAWA Cancellation.” Unlike Non-LPR Cancellation of Removal discussed above, for VAWA Cancellation the noncitizen only has to show three years of physical presence, three years of good moral character, no convictions of certain criminal offenses, and battery or extreme cruelty by a USC or LPR spouse or parent (or is the parent of a child who was battered or subject to extreme cruelty by the USC or LPR parent). These applicants need only show extreme hardship to themselves, their child, or their parent.

For more information, see www.ilrc.org/removal-defense or www.ilrc.org/publications for our Removal Defense Manual.