



**Immigration Law Overview  
and Special Provisions for  
Immigrant Juveniles**

**Immigrant Law Center of Minnesota**

**Wednesday, May 23, 2007**



# Agenda

- I. Introduction & About ILCM (5 minutes)
- II. Immigration 101 and Overview (15 minutes)
- III. Immigrant Children – Who are they (5 minutes)
- IV. Potential Forms of Immigration Relief (25 minutes)
- V. Questions (10 minutes)

# What We Do



- Provide direct legal representation in immigration matters to low income immigrants in the state of Minnesota, free of charge.
- Community outreach and education
- Advocacy for positive immigration reform
- Education to youth in the Minneapolis and St. Paul public schools
- Training and education for professionals (law enforcement, social workers, teachers, politicians, faith groups, advocates, public defenders, private attorneys, etc.)

# IMMIGRATION 101

- Federal Law
- USCIS / USICE / CBP
- Asylum
- Family
- VAWA & U and T visa
- Deportation
- USDOS
- Refugee
- Visas
- Inadmissibility



# FAMILY IMMIGRATION

- Hierarchy – USC vs. LPR
- U.S. CITIZEN – spouse, children, sibling, parent (1 ½ - 20+ years)
- LEGAL PERM. RES. – spouse, unmarried children (7 ½ - unknown)
- Adjustment of Status (4/30/01) vs. Visa Processing
- Affidavit of Support
- 3 or 10 year bar for being undocumented
- Inadmissibility issues

# OTHER IMMIGRATION

- Employment
- Student
- Investment
- Athletes and Famous Performers
- Religious
- Tourist
- Undocumented and Overstays

# DEPORTATION

- USICE (DHS) priorities:
  - Terrorism – Patriot Act
  - Criminal conviction
  - Previous Deportation Order
  - Workplace enforcement
  - Other undocumented

# Deportation Defenses

- None – U.S. children and work history irrelevant
- Asylum/Withholding/CAT (persecut
- Cancellation of Removal
- Domestic Abuse / crime victims
- Case examples from Worthington





# JUVENILES AND IMMIGRATION



# Who Are These Children?

# Why Do These Children Leave Home?

Domestic violence

- Persecution
- Abandoned by their parents
- Reunifying with parents or other family
- Poverty
- Educational aspirations

# How Do They Get to the U.S.?

- Together with family members, with or without visas
- Guides, “coyotes”, “polleros”, “snakeheads” help bring them here by plane, train, car or by foot
- Children pay anywhere between \$1,500 – \$60,000 depending on country of origin
- Sometimes Immigration authorities apprehend them as they try to enter the U.S.



# Potential Forms of Legal Relief

Asylum/Withholding of Removal/Convention Against Torture

Special Immigrant Juvenile Status (SIJS)

Trafficking (T Visa) and Serious Crime Victims (U Visa)

Temporary Protected Status (TPS)

Violence Against Women Act (VAWA)

Citizenship ("acquired" and "derivative")

# Asylum Law

- US Asylum law is based on the 1951 Convention relating to the Status of Refugees.
- The Immigration and Nationality Act (INA) sets for the legal test for asylum eligibility:
  - INA §101 (a)(42)(A)

# Definition of Refugee

- Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided,
- and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because
- of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

# Common Asylum Claims for Children

- Forced Gang Recruitment
- Child abuse
- Street children
- Religion
- Gender (FGM, forced marriage, gang rape, honor killing)
- Sexual orientation/sexual identity



# Withholding of Removal

- A mandatory prohibition against the return of someone to a country where his/her life or freedom would be threatened.
- An individual must meet the standard that his/her life or freedom is “more likely than not” to be threatened.

# Convention Against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment

- CAT prohibits the return of a person to another country where substantial grounds exist that s/he would be tortured if returned.
- Individuals can seek protection under Article 3 of the U.N. Convention Against Torture (CAT), as codified in U.S. law.

# SIJS Overview

- Combination of federal immigration law and state family/juvenile state law
- Children who have been abused, abandoned or neglected by parent or legal guardian in their home country or in the U.S.
- U.S. state law standard of abuse, neglect or abandonment (changes by state)
- Type of “juvenile court” varies: Juvenile, Family or Probate Court
- Apply through USCIS, IJ cannot adjudicate

# Determine Child's SIJS Eligibility

- Child is unmarried and under the age of 21.
- Child must be declared dependent on the Juvenile Court and be appointed a legal guardian
- The child is "eligible for long-term foster care due to abuse, abandonment or neglect" (not necessarily in foster care)
- It is not in the best interests of the child to return to his/her country of origin or country of last habitual residence (within meaning of INA).
- Juvenile court must retain jurisdiction until adjustment is adjudicated

# T Visa Eligibility

- Victim of a “severe form” of trafficking in persons
- Physically present in the US (including US Territories) as a result of trafficking
- Complies with reasonable requests for assistance in the investigation or prosecution trafficking OR is under 18 years old and files T Visa before then
- Would suffer extreme hardship involving unusual and severe harm upon removal

# U VISA

- No regulations (for obtaining the U Visa)
- File with USCIS
- Eligibility:
  - Victims of certain crimes
  - Who have suffered substantial physical or mental abuse because of being a victim
  - Who are helpful or are likely to be helpful in the investigation or prosecution of the enumerated crime or similar activity

# Children with Parent(s) who have TPS

- US Attorney General has authorized TPS based on extraordinary & temporary conditions (civil war/environmental devastation):
  - Burundi
  - El Salvador
  - Honduras
  - Liberia
  - Nicaragua
  - Somalia
  - Sudan
- In certain jurisdictions, attorneys have been able to convince trial attorneys (opposing counsel) to utilize their prosecutorial discretion to terminate or administratively close proceedings when young children with compelling cases reunify with parent(s) who have TPS.

# Basic VAWA Eligibility

- Non-citizen child abused by their USC or LPR parent or spouse
- Non-abused non-citizen child of a VAWA eligible parent
- Child lived with abuser at some point
- Child need not suffer physical abuse but it must constitute battery or “extreme cruelty”
- NOTE: Both male and female children can qualify



# Acquiring US Citizenship

- Under most circumstances, the following children would be U.S. citizens even if they are born outside the United States.
  - Children of two U.S. citizen parents
  - Children with one U.S. citizen parent and one U.S. national parent if the citizen parent had been physically present in the United States for a continuous period of one year
  - Children of one U.S. citizen parent and one non-citizen parent if the citizen parent was physically present in the U.S. for at least 5 years, at least 2 of which were after age 14

# Deriving US Citizenship

- Under most circumstances a child will automatically become a U.S. citizen if, before he or she reaches the age of 18, all of the following events happen:
  - Child's mother or father is or becomes a US citizen and child becomes a lawful permanent resident
  - Child lives in the US and in the US citizen parent's legal and physical custody

# Deriving Citizenship as an Adoptee

- Under most circumstances, an adopted child automatically becomes a U.S. citizen if:
  - Adopted child becomes a lawful permanent resident before the age of 18; and
  - Child is legally adopted by a U.S. citizen before the age of 16; and
  - Adopted child has been in the US citizen's legal and physical custody for at least two years; and
  - The adopted child is currently residing in the legal and physical custody of the U.S. citizen adoptive parent.

# IMMIGRATION LEGISLATION

- 109<sup>th</sup> Congress
  - H.R. 4437
  - S. 2611
- 110<sup>th</sup> Congress
  - H.R. 1465
  - Senate
- President
- State of Minnesota



# IMMIGRANT LAW CENTER OF MINNESOTA

- John C. Keller, Executive Director (651-641-1011, ext. 203)

[john.keller@ilcm.org](mailto:john.keller@ilcm.org)

- ILCM OFFICE CONTACT INFORMATION

- Phone Metro: 651-641-1011

- Outstate: 1-800-223-1868

- Fax 651-651-1131

- [www.immigrantlawcentermn.org](http://www.immigrantlawcentermn.org)

