

6700 International Issues

6710 Immigration Issues

6711 Services to Children and Families Who Are Not U.S. Citizens

CPS 2000-1

Law

Child protective services can be provided without regard to a parent or child's immigration status.

8 U.S.C. § 1611(b)(1)(D);
Attorney General Order No. 2049, 61 F.R. 985 (1996)

Federal foster care and adoption assistance payments, however, can only be provided to Qualified Aliens and U.S. citizens. All Permanent Residents (persons with a green card), refugees and persons granted asylum (among others), are Qualified Aliens.

8 U.S.C. § 1641

Management Policy

All investigative, family based safety and reunification services can be provided without regard to the immigration status of parents or children. However, compliance with federal funding restrictions and other legal requirements makes it essential that CPS determine the immigration status of all children in care. Depending on what the child's immigration status is, the caseworker's duties will vary. Detailed instructions for caseworkers are included in the policies that follow. For a quick reference, see Form 6580, Checklist of Immigration Issues for Caseworkers, available under the Smiley Face CPS/Child Placement buttons.

6712 Undocumented Youth Who Are 16 or Older

CPS March 2010

For a youth age 16 or older who is an undocumented immigrant, or whose immigration status in the IMPACT system is *Undetermined*, the child's worker must review with the DFPS regional attorney the youth's eligibility for:

- special immigrant juvenile status (SIJS); or
- any other appropriate immigration option.

The assessment is made as part of the permanency planning activities for developing the youth's child plan of service.

6713 Notification to Foreign Consulate

CPS 2000-1

Law

If CPS obtains legal custody of a child who is a foreign national, federal treaty obligations require that the foreign consulate be given notice.

Vienna Convention on Consular Relations, 21 U.S.T. 77, Art. 37 (b)

Management Policy

When CPS obtains legal custody of a child from another country, the foreign consulate of the child's home country must be notified as soon as possible. A sample letter is available for staff use (see Form 2650, Letter to Foreign Consulates, under the Smiley Face CPS/Child Placement buttons). If it is unclear whether a child is a citizen of a foreign country, the best practice is to give the consul notice. In addition to satisfying the legal requirement, contact with the consul may facilitate locating family members or other resources in a foreign country. Whether or not the consulate responds, CPS staff should continue permanency planning for the child.

Note: The address of the nearest consular office for a foreign country can be found in a publication entitled Foreign Consular Offices in the United States (U.S. Dept. of State), available at all regional offices. For assistance staff may contact the Regional Attorney designated for immigration issues.

Confidentiality:

If the consulate responds to the notice, CPS staff should cooperate and provide information about the case. This will allow the consular staff to determine what assistance they can offer. Examples of information CPS staff can share are: the reason for removal of the child, names and addresses of relatives, the court orders, and the plan of service. The name of the party who reported the abuse or neglect should not be released without approval of the Regional Attorney, and any questions regarding what specific information can be shared should be directed to the Regional Attorney. Requests from the consuls office for copies of any documents from the case file should be submitted in writing and forwarded to the Regional Attorneys office.

CPS staff should ask the foreign consulate to designate the appropriate agency in the child's home country to aid in identifying permanent placement options, including possible relative placements in the child's home country. See Item [6715](#) to assess whether to return a child to his or her country of origin or to plan for a child to remain in the U.S.

6714 Requesting Home Studies in Foreign Countries

CPS 2000-1

Management Policy

If a potential placement for a child is identified in a foreign country, the CPS caseworker, after consultation with the supervisor, should request that the appropriate social service agency in that country provide a home study. To obtain information about the proper agency contact for social services assistance in the child's home country, the caseworker should contact the foreign consular representative in Texas. (Note: The process in Mexico is more specific; for those instructions see the note below.) Given that the format of home studies will vary greatly in different countries, caseworkers may want to specify any issues that need to be addressed in a particular case.

Note: Staff should refer to Item [6713](#), Notification to Foreign Consulate, for information about how to obtain addresses of consular offices for foreign countries.

DFPS has signed a Memorandum of Understanding (MOU) with social service representatives in Mexico from DIF (Desarrollo Integral de la Familia) in the four Mexican states that border Texas. Requests for home studies for placements throughout Mexico should be sent to one of the DFPS staff designated as border contacts, who will forward it to the appropriate office of DIF in Mexico. The Regional Director or CPS Program Administrator can provide the names of border contacts in the regions. Regions 8, 10 and 11 have designated border contacts. A Sample Letter to Request a Home Study in a Foreign Country is available as Form 6582, under the Smiley Face CPS/Child Placement buttons. Under the same button also see Form 2651, a copy of the format for home studies performed pursuant to the MOUs between DFPS and DIF (available in Spanish and English).

6715 Deciding Whether to Repatriate or to Plan for a Child to Remain in the U.S.

CPS 2000-1

Management Policy

The decision to return a child to his or her country of origin (repatriation) for placement on a permanent basis or to plan for a child to remain in the U.S. must be made on a case by case basis. As in all cases, CPS staff must explore all available permanency options, including return to parents, relatives and/or significant others in the U.S. or in the country of origin. Consular representatives may be able to assist in locating possible placements or contacting appropriate social service representatives in the country of origin for this type of assistance. See [6713](#), Notification to Foreign Consulate. If there is a potential placement in a foreign country, a home study can be requested. See [6714](#), Requesting Home Studies in Foreign Countries.

Staff must meet with the supervisor to evaluate the case. It may also be necessary to consult with the Regional Attorney. All of the following factors

need to be considered when making the decision of whether to repatriate or plan for the child to remain in the U.S.:

- Circumstances of the parents, relatives or significant others, including immigration status and options, living arrangement, interest and relationship with the child, any criminal history of potential caregivers and ability to meet any therapeutic or special medical needs the child may have;
- Safety of a placement abroad without CPS supervision;
- Child's circumstances, including age, ability to protect self, medical needs, length of time spent in each country, language ability, degree of acculturation, cultural identity, familiarity with relatives, and eligibility for Special Immigrant Juvenile Status/Permanent Resident status, including any juvenile delinquency, prior deportation or medical condition that may make a child ineligible. See Section [6717](#), Immigration Opportunities for Undocumented CPS Children.

In assessing whether to repatriate a child, staff should consider that CPS has no legal authority to act outside of the United States. If a problem develops with a placement after a child is placed in a foreign country, CPS primary recourse is to request that the social services agency in that country take appropriate action. Assessment of the child's safety should include any supervision available in the home country, without continuing CPS supervision. While a short transition period may be appropriate, the CPS legal case should be dismissed as soon as possible after placement.

The process for seeking recognition of a Texas court order in a foreign country varies depending on the country. In all cases, the parties should be advised that CPS is not able to assist in this process beyond providing documentation of the Texas court order and cannot represent the family or pay for legal services in a foreign country.

6715.1 Repatriation Procedures

CPS 2000-1

The process of repatriation requires that the caseworker:

- Obtain a favorable home study as described in Item [6714](#), Requesting Home Studies in Foreign Countries;
- Inform the court, the child's guardian and attorney ad litem, CASA representative, the foster family/facility, the foreign consulate and any other parties of the planned placement;
- Ensure that sufficient safeguards, monitoring and supervision, are in place through local social services, family, or others;
- Obtain certified copies of the court order authorizing the placement (if needed, consult with the Regional Attorney to determine what additional steps should be taken to facilitate recognition of the judgment in the country of placement); and

- Once the child is permanently placed request dismissal of the CPS legal case as soon as possible.

6716 Verifying Immigration Status of Children in Care

CPS 2000-1

Law

Agencies providing federal benefits, including foster care and adoption subsidy payments are required to verify the immigration status of recipients.

8 U.S.C. § 1613; 62 F.R. 61433 (1997)

Management Policy

CPS duty to protect the best interests of children and to achieve compliance with federal funding restrictions make it essential that caseworkers determine the immigration status of children in the agency's care. For children in substitute care, the caseworker must make this determination as part of the Foster Care Assistance Application.

Item [6716.1](#), Caps Immigration Status Categories, describes the four immigration status categories available on the CVS/FA/Person Detail window on CAPS. Use the procedures in Item [6716.2](#), Immigration Assessment Guide, to determine a child's immigration status.

6716.1 CAPS Immigration Status Categories

CPS 2000-1

Use the procedures in Item [6716.2](#), Immigration Assessment Guide, to determine a child's immigration status.

Questions about these categories or documents not listed here should be referred to the Regional Attorney. When in doubt about which category to use, use the Undetermined Immigration Status Category and forward Form 6584, Immigration Referral Form, to the Regional Attorney. (Form 6584 is available under the Smiley Face CPS/Child Placement buttons.)

U.S. Citizen: A person who is either born in the United States (or in some cases, born abroad to a U.S. citizen parent) or who becomes a citizen through the naturalization process.

Permanent Resident: A person who is entitled to live and work in the U.S. indefinitely, but cannot vote. Permanent Residents are one type of Qualified Aliens and are eligible to receive many government benefits (see Item [6711](#), Services to Children and Families Who Are Not U.S. Citizens). After five years (or three years in some cases) a Permanent Resident who is otherwise eligible can apply to become a naturalized U.S. citizen at age 18.

Other Categories of Qualified Alien: In addition to Permanent Residents (above), persons admitted as refugees or granted asylum, among others, are Qualified Aliens and are entitled to certain federal public benefits.

Undetermined Immigration Status: Children for whom further assessment needs to be done to verify immigration status or who appear to be undocumented should be entered in the Undetermined Immigration Status category. Undocumented means a person is not a U.S. citizen and is present in the U.S. without the authorization of the Immigration and Naturalization Service (INS). Every child in this category should be assessed regularly to determine what needs to be done to verify the child's status or, if appropriate, to obtain Permanent Resident status for an undocumented child.

6716.2 Immigration Assessment Guide

CPS 2000-1

Use the four steps described below to assess a child's immigration status. If a child does not have the documents listed, or the criteria described do not apply, then proceed to the next step. If a child meets the criteria and has the required documentation, staff must follow the directions in that step and not proceed to the next step.

STEP 1. Is the Child a U.S. Citizen?

A. DOES THE CHILD HAVE one of the following documents?

- Birth certificate from one of the 50 states or U.S. territories;
- Naturalization Certificate (N-550 or N-570);
- Certificate of Citizenship (N-560- of N-561);
- U.S. passport;
- Hospital certificate; or
- Baptismal certificate.

IF YES: attach a photocopy of the document to the Foster Care Assistance Application and enter the child on CAPS as U.S. citizen.

Note: Warnings on naturalization and citizenship certificates indicating that it is illegal to make copies do not apply if the purpose is to verify eligibility for benefits [63 F.R. 41670 (1998)]. The best practice is to indicate copy for verification purposes only on the photocopy.

B. DOES THE CASE MEET the criteria for evaluative conclusion?

Evaluative conclusion can only be used to determine that a child is a U.S. citizen if there is at least:

- one credible person with knowledge of the family's history who indicates that the child was born in the U.S.; or
- one document (i.e. medical, insurance or school record) created before the removal of the child showing the child's place of birth in the U.S.

IF YES: provide the information requested to support an evaluative conclusion on the Foster Care Assistance Application, attach photocopies of any documents and enter the child on CAPS as U.S. citizen.

Note: If evaluative conclusion is used to determine U.S. citizenship, the caseworker *must* request any additional available birth records as soon as possible. For information on how to obtain birth records outside of Texas, contact the eligibility specialist. Unless the eligibility specialist receives further documentation within six months, the child's category *must* be changed to Undetermined Immigration Status.

C. WAS THE CHILD FOUND in the U.S. under the age of 5 and the parents are unknown?

If a child under the age of five is found in the United States and the child's parents are unknown, there is a presumption that he or she is a citizen (unless before the child turns age 21, there is proof of birth outside the U.S.) [8 U.S.C. §1401 (f)].

IF YES: attach documentation that the child was found in the U.S., under the age of five and no parent information is known (i.e. affidavit of caseworker attached to the original petition for removal or police report) with the Foster Care Assistance Application, enter the child on CAPS as U.S. citizen and refer the case to the Regional Attorney using the Immigration Referral Form (Form 6584 under the Smiley Face CPS/Child Placement buttons).

Note: Unless an application for a certificate of citizenship is filed, a child in this situation will have *no* proof of citizenship status. Therefore, it is essential that the referral to the Regional Attorney is made, so that an application for certificate of citizenship can be requested.

STEP 2. Is the Child a Permanent Resident?

Does the child have a Permanent Resident Card/Alien Registration Receipt Card (commonly known as a green card or INS Form I-551)? A Permanent Resident is one type of Qualified Alien.

IF YES: attach a photocopy of the front and back of the card with the Foster Care Assistance Application and enter the child on CAPS as Permanent Resident.

Note: If a child is reported to be a Permanent Resident, but the card cannot be located, ask if there is a record of the A (alien registration) number. With this number, the child's status can be confirmed and a replacement card obtained. However, do not assume that a child with an A number is a Permanent Resident. Every alien who submits an application to the INS (whether or not it is granted), is assigned an A number. Until the child's status as a Permanent Resident can be verified, he or she should not be entered as Permanent Resident on CAPS.

STEP 3. Is the Child Another Type of Qualified Alien?

Does the child have some other form of immigration documentation other than those listed in Step 2, above?

IF YES: copy all documents the child has (including all pages of a foreign passport) and use the Immigration Referral Form (Form 6584) to request that the Regional Attorney determine if the child may be another type of Qualified Alien. In addition to Permanent Residents, persons admitted as refugees or granted asylum are Qualified Aliens, among others.

If the Regional Attorney confirms that the child is a Qualified Alien, attach the relevant documentation with the Foster Care Application and enter the child on CAPS as Other Category of Qualified Alien.

STEP 4. Is the Child's Status Unknown or Is Child Undocumented?

IF A CHILD DOES NOT MEET THE REQUIREMENTS FOR THE ABOVE CATEGORIES (Citizen, Permanent Resident or Other Qualified Alien), or if it is unclear what category is appropriate, enter the child on CAPS as Undetermined Immigration Status and refer the case to the Regional Attorney using the Immigration Referral Form (Form 6584).

Note: If a child was not born in the U.S., but one or both of the child's parents is a U.S. citizen, the child may be entitled to U.S. citizenship. In this situation, include this information in an Immigration Referral Form (Form 6584) and request that the Regional Attorney determine if the child is entitled to citizenship. Do *not* enter the child on CAPS as a U.S. citizen until the child has obtained either a U.S. passport or a certificate of citizenship.

6717 Immigration Opportunities for Undocumented CPS Children

CPS 2000-1

Law

Eligible undocumented children in the care of CPS can become Permanent Residents by applying for Special Immigrant Juvenile Status (SIJS). Once a person has been a Permanent Resident for at least five (or three years in some cases) and is at least 18 years old, he or she can apply to become a U.S. citizen, if otherwise eligible. Note: In some situations children that are adopted may become citizens before their 18th birthday.

8 U.S.C. § 1101(a)(27)(J); 8 U.S.C. §§ 1427 (a); 1430 (a); 1445 (b)

Management Policy

A child in CPS care is not eligible to apply for SIJS status until a decision is made not to pursue family reunification efforts. At that point, if an undocumented child will remain in the U.S., every effort should be made to help the child become a Permanent Resident.

For most undocumented children in CPS care who will remain in the U.S., SIJS represents their only chance for obtaining Permanent Resident status. To be able to work legally, to avoid deportation and to receive most government benefits, a child must have Permanent Resident status.

In summary, the SIJS process requires that (1) a child's eligibility be assessed by the Regional Attorney; (2) a motion and proposed order regarding the child's status be filed with the district court, (3) an application be filed with the INS; and (4) the applicant appear for an INS interview.

A detailed guide to the SIJS process entitled *Special Immigrant Juvenile Status for Children in the Dependency System*, a publication of the Immigrant Legal Resource Center (San Francisco, CA), is available from the State Office legal division. A portion of this publication concerning questions and answers about the SIJS process is reprinted in English and Spanish in [Appendix 6717-A](#) and [6717-B](#), respectively.

Sample legal forms for use in Texas courts are included in the DFPS Legal Forms Manual, Ancillary Forms Section. Staff may contact the Regional Attorney for these forms.

6717.1 Staff Responsibility for Monitoring a Child's Immigration Status

CPS 2000-1

To ensure that an eligible child who will remain in the U.S. does not lose the opportunity to obtain Permanent Resident status as a Special Immigrant Juvenile, the caseworker must:

REFER every child with an Undetermined Immigration Status to the Regional Attorney. Use the Immigration Referral Form (Form 6584, available under the Smiley Face CPS/Child Placement buttons).

Note: Caseworkers should *also* use the Immigration Referral Form to refer any children in unpaid placements who are not either U.S. citizens or Permanent Residents to the Regional Attorney. For children who are not assessed for foster care eligibility, this referral is the only way to ensure that the immigration status of these children will be assessed.

REVIEW the immigration status of every child with an Undetermined Immigration Status at every Permanency Planning meeting.

NOTIFY the Regional Attorney *immediately* if the decision is made not to reunify a child with Undetermined Immigration Status with his or her family *or* the child turns age 16 or older (and the child will not be returning to his or her country or origin). Even if a referral was made previously, a new referral is very helpful in informing the Regional Attorney that the SIJS application process needs to be initiated.

Note: It is not necessary for the child to be in Permanent Managing Conservatorship to make the referral. In the case of a 16 year old, if the child is not eligible for SIJS, the Regional Attorney will assess whether

there are any other immigration alternatives that can be pursued before the child leaves CPS care.

ASSIST in obtaining the information and documents needed for the SIJS application. Consult the Regional Attorney for guidance.

FOLLOW UP on each SIJS application until it is approved. If a child turns 18 years old while the SIJS application is pending (a process which typically takes 14 months or more), the application may be denied. If there are unusual delays or if the child will turn 18 years old within the next twelve months, contact the Regional Attorney immediately.

UPDATE the Eligibility Specialist if a child is granted Permanent Resident status or if there is another change in the child's status so that appropriate changes can be made to the child's eligibility status.

6718 Transportation of Undocumented Persons

CPS 2000-1

Law

Federal law prohibits inducing aliens to enter the U.S. illegally, concealing or harboring illegal aliens or transporting aliens *as a means of furthering the aliens illegal presence*. Willful transportation of an illegal alien is not a violation of the law, unless the transportation is intended to further the aliens illegal presence.

8 U.S.C. § 1324 (a)(1)(A);

U.S. v. Morales-Rosales (5th Cir. 1988) 838 F. 2d 1359, 1361

Management Policy

In the course of providing services to children and parents, caseworkers may at times find it necessary to transport undocumented persons. Sometimes, as in the case of an emergency removal, the child or family's immigration status may be unknown. Other times, the caseworker may be aware that a child or parent is undocumented. If a caseworker has reason to believe that a child or parent may not be in this country legally, the following precautions must be observed:

- Consider transportation by the agency to be the last option, not the first. If public transportation is available or there are family members or neighbors who can provide transportation, these are better alternatives. **Note:** In situations involving the emergency removal of a child, the agency should provide transportation.
- If transportation will be an ongoing part of services, staff should request that the court order specify the duty of DFPS to provide transportation.
- Within the U.S., caseworkers should carry state identification cards and documentation of the agency's legal relationship to the child or parents. This should include a copy of the order awarding DFPS conservatorship which necessitates the transportation. Note: Staff in border areas may

need to carry proof that they are U.S. citizens or permanent residents of the U.S.

- If caseworkers must cross the U.S. - Mexico border with a documented U.S. citizen or Permanent Resident for any reason, the caseworker should carry their proof of U.S. Citizenship or lawful Permanent Resident status and should verify that the person accompanied has his or her documentation.
- Caseworkers should *never* cross the U.S. - Mexico border with an undocumented person or take any action to evade INS representatives or to aid a client in doing so.

Occasionally, a staff person may need to provide transportation to an undocumented person for whom there is no open court case and no court order, but services to the family are being offered. In this instance, staff should carry the letter of explanation to the Border Patrol/INS. See Smiley Face Form 6586, Letter to Border Patrol/INS Regarding Transportation.

6719 Contacts with the Immigration and Naturalization Service (INS)

CPS 2000-1

Management Policy

It may become necessary to contact the INS for information in the course of work with a child or family. While routine contact by caseworkers and eligibility staff with the INS regarding the Special Immigrant Juvenile Status process is authorized, any other contact with the INS should be approved in advance by the Regional Attorney. All questions about a child or parents immigration status or eligibility should be directed to the Regional Attorney. Any notice of an immigration hearing, an INS hold on a child in the agency's care or any other action by the INS should be forwarded to the Regional Attorney immediately.