ADVOCATING FOR THE INTERNATIONAL CHILD

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The perpetual drumbeat for every professional who touches a child protection case is the goal of permanency. If a child or youth was born overseas, many facets of a legal case may require special attention. Unresolved citizenship or immigration issues can create overwhelming barriers to permanency. An undocumented person does not qualify for most government benefits, cannot work legally or obtain student loans in most states, and lives under constant threat of deportation. The net effect is that undocumented youth almost invariably end up living on the margins and may never attain a stable and secure life in the U.S.

Even youth with lawful permanent resident status (holders of a "green card") face unique hurdles. Permanent residents generally face a five-year bar for access to "means-tested" benefits and are ineligible for many government benefits. Particularly for children and youth with significant physical and mental disabilities, access to critical benefits and services often requires U.S. citizenship.[1] The good news is that many children and youth in foster care may be eligible to obtain citizenship or permanent immigration status.

Without question, if a family involved with a child protection agency is also impacted by immigration enforcement efforts, the complexities increase exponentially. Familiarity with consular notification requirements, reunification services for a parent living outside the U.S., and repatriation procedures can also be important. An advocate armed with essential information, able to identify issues and locate resources, can dramatically improve the trajectory of a child protection case. This article is intended to provide an overview of legal options, advocacy strategies, and useful tools for navigating these waters.

I. Which Children and Youth Need Help?

Citizenship and immigration terms may seem confusing but there is one question that should be asked in every case. That question is: was this child born in the U.S.? If the answer is yes, there are no citizenship or immigration issues. Of course, if a child is reported to be born in the U.S. but there is no birth record available, it's essential to obtain this documentation.[2] There are many documents that can be used to prove U.S. citizenship, but the most common (other than a U.S. birth certificate) are: a naturalization certificate (N-550 or N-570); a certificate of citizenship (N-560 or N-561), or a U.S. passport. A child with these documents, just like a child with a U.S. birth record, will have no need for further inquiry regarding citizenship or immigration status.[3]

If a child does not have proof of U.S. citizenship, more information will be necessary. There are many ways to assess a child or youth's status, but in every case, it's essential to know:

- If one or both parents are or were U.S. citizens or permanent residents;
- If there are any documents (passports, visas, permanent resident card, notices from U.S. immigration) pertaining to the child;
- If anyone has filed an application or petition on the child's behalf with immigration authorities; and
- Whether the child is or has ever been in deportation proceedings.

With this information, it may be possible to confirm that a child is a U.S. citizen, has permanent resident status, or is pursuing other status in the U.S.

If a child or youth has permanent resident status (a "green card"), that's also a straightforward situation. If the card is lost or stolen, a replacement can be obtained from U.S. Citizenship and Immigration Services

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[1] *Overview of Immigrant Eligibility for Federal Programs (*Immigration Legal Resource Center) http: www.nilc.org/issues/economic-support/table_ovrw_fedprogs/ and *Public Benefits Flow* Charts (National Immigrant Women's Advocacy Project)http://niwaplibrary.wcl.american.edu/pubs/public-benefits-flow-charts/

[2] The Center for Disease Control, www.cdc.gov maintains a listing of vital statistics resources in all states.

[3] Do not mistake a state issued *certificate of foreign birth* with a U.S. birth certificate. Some states provide this type of record to children adopted internationally, who would otherwise not have a state issued English language birth document. Careful review of the caption and place of birth on a birth record will avoid unpleasant surprises.

("USCIS").[4] Otherwise, a permanent resident child likely requires no further assistance unless or until he or she is eligible to become a U.S. citizen. (*See* IV. U.S. Citizenship).

If a child or youth's status as a U.S. citizen or permanent resident is not confirmed, it's imperative that attorneys, advocates, and caseworkers cooperate and consult with immigration experts as needed to verify the child's status, and if the child is undocumented, to obtain legal status. Fortunately, there are many immigration options available and specialists willing to help these children and mentor advocates handling these cases. By focusing on these issues, every professional who touches a child's case can be a solid link in a chain that expands permanency options.

II. Legal Options for Children Without Immigration Status

Time is the adversary of children in the child protection system who do not have lawful immigration status. While there may be multiple paths to permanent immigration status for an immigrant child in the care of the state, advocates must move swiftly. A youth can lose eligibility for some benefits upon exiting the child protection system and increasingly, there are significant delays for many applicants as a result of visa backlogs.

What follows is not a comprehensive look at all options that could apply, but an overview of the requirements for the most common petitions that may be available to undocumented children and youth in the foster care system: Special Immigrant Juvenile Status ("SIJ") petition, U visa, Violence Against Women Act ("VAWA") petition, political asylum, and Deferred Action for Childhood Arrivals ("DACA"). In an era of rapidly shifting laws and policies, practitioners should always look for ongoing updates.

The process of obtaining lawful permanent resident status normally involves two steps: (1) obtaining a visa or petition and (2) applying for permanent residency, called "adjustment of status."[5] In many cases, a visa or petition may be approved but a child or youth can't apply for permanent resident status because, by statute, only a certain number of visas can be awarded in a single fiscal year. For instance, it takes it approximately 32 months from submission of a U visa petition until a final decision is issued because USCIS is statutorily limited to awarding only 10,000 visas per year.[6] SIJ and VAWA petitions also may have multi-year wait times, depending on the nationality of the applicant or the immigration status of the perpetrator of abuse, respectively.

Certain applicants may request *deferred action* while they await the opportunity to apply for permanent resident status. A child or youth with deferred action is considered legally present in the U.S. and is eligible to apply for work authorization.[7] This is extremely valuable, as it gives an applicant the ability to obtain a social security number and a state identification document in most states, as well as the right to work legally.

Unfortunately, there is no statutory right to deferred action and those applicants who do not receive deferred action remain in limbo status—neither legally present, nor authorized to work, and at risk of

[4] Form I-90, Application to Replace Permanent Resident Card, is available at: www.uscis.gov

[5] Immigrants who are not eligible for adjustment of status must travel to their home country for "consular processing" in order to obtain permanent residency. Fortunately, most immigration remedies available to children and youth in foster care allow for adjustment of status.

[6] Statistics current as of April 30, 2017, and made available by the Department of Homeland Security ("DHS").

[7] 8 C.F.R. §274a.12(c)(14).

deportation. This reality makes it important to temper expectations of undocumented clients, as some will likely remain on the path to permanency for many years with no guarantee of a positive outcome.

A. Special Immigration Juvenile Status

One of the most common immigration benefits for foster children is the Special Immigrant Juvenile Status ("SIJ") petition. The SIJ law permits eligible foster children to "self-petition."

SIJ eligibility requires that the court with jurisdiction over custody matters (which may be a juvenile, family, probate, or other court), find:

- That the child is a dependent of the court, or has been placed by the court in the custody of a person or entity;
- That reunification with one or both parents is not viable due to abuse, neglect, or abandonment, or a similar basis under state law; and
- That it is not in the child's interest to be returned to the country of origin.[8]

In addition, SIJ eligibility requires:

- That an applicant be considered a *child* under immigration law, defined as being unmarried and under age 21;[9] and
- The consent of USCIS.

If the applicant is a *child* on the date the petition is filed, an applicant cannot be denied SIJ based on age. However, state law may limit court jurisdiction based on age and consequently, youth in different states may be barred from applying for SIJ well before they turn 21.

In most cases USCIS construes consent to be "an acknowledgement that the request for SIJ classification is bona fide," and was obtained from the court to obtain relief from abuse, neglect or abandonment or a similar basis under state law and was not requested primarily for immigration relief.[10] The best strategy is to anticipate this requirement in advance of obtaining a state court order and request that the court order with the SIJ findings cite the specific factual bases for each finding under appropriate state law. The SIJ order should specify *as to each parent*, whether reunification is viable and if not, whether abuse, neglect or abandonment applies.

The best interest finding also requires evidence that the judge considered specific, individualized facts. Evidence of a lack of any family or other potential placement in the home country, a child's inability to speak the language, acculturation and ties in the U.S., and particular medical, educational, or other needs that cannot be met in the home country can all support a best interest finding and should be noted in the order when applicable.

Advocates Smooth the Way for SIJ

Unlike most immigrants, SIJ immigrants are forever barred from filing a visa petition for a parent in the future. This is true even if that parent protected the child from abuse or was awarded the custody after

[8] Immigration & Nationality Act ("INA") §101(a)(27)(J); 8 C.F.R. §204.11.

[9] USCIS Memo, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, Donald Neufeld, March 24, 2009, at 3.

[10] USCIS Policy Manual, Vol. 6, Part J, Chap. 2—Special Immigrants, available at: https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter2.html.

a child was removed from the other parent.[11] Given this, everyone involved in the decision to seek SIJ (including a youth old enough to participate in the discussion) should be aware of this limitation.

If the state court judge is unfamiliar with the SIJ process, it's also important to lay the necessary groundwork by explaining the SIJ law. One significant point is that by signing a SIJ order, the state court does not confer any immigration status. The SIJ order is a prerequisite to immigration relief, but immigration authorities determine if a SIJ petition or permanent resident status is ultimately granted.

From SIJ to Permanent Resident Status

Once the SIJ findings are made by a state court judge, an application for adjustment of status can be filed concurrently with a SIJ petition, if a visa is immediately available. Unfortunately, for applicants from Mexico, Honduras, El Salvador and Guatemala, there is a significant SIJ backlog. This population may obtain an approval on their SIJ petition, but cannot file for adjustment of status until a visa is available, which is sometimes referred to as their petition being *current*. For children awaiting adoption and for youth wanting to work, this delay in obtaining permanent resident status can be excruciating, but unless an applicant has another immigration option or until Congress acts to change the visa quotas, there is not a viable alternative.

Once USCIS adjudicates the SIJ petition, if an adjustment application has been filed, USCIS will schedule a biometric appointment for fingerprinting and schedule an interview at the USCIS offices (unless the applicant is under 14, in which case the interview may be waived).[12] If the SIJ petition or the adjustment application is not approved, the USCIS may issue a Request for Evidence, a Notice of Intent to Deny, or a Denial, in that order.[13] In any of these circumstances, the best strategy is to consult with an immigration specialist for guidance on how to best respond. If the SIJ petition and adjustment application are both approved, a notice may be provided at the interview or mailed. The actual permanent resident card is mailed later.

B. The Origins and Impact of Violence Against Women Act (VAWA) Self-Petitions

The Violence Against Women Act ("VAWA") provides another "self-petition" option for victims of abuse.[14] The passage of VAWA heralded a recognition in the immigration system that perpetrators of domestic violence may continue their violence by controlling a victimized family member's access to lawful immigration status. A VAWA self-petition allows the immigrant child, parent, or spouse of an abusive U.S. citizen or permanent resident to file a petition without involving the abusive family member. In the child protection context, a VAWA self-petition is a useful option for an immigrant child of a U.S. citizen or permanent resident parent where the child is a survivor of abuse or extreme cruelty.

To qualify for VAWA, a child applicant must demonstrate:

- A qualifying family relationship with a U.S. citizen or permanent resident parent;

[11] INA §101(a)(27)(J)(iii)(II).

[12] 8 C.F.R. §245.6.

[13] The Request for Evidence, Notice of Intent to Deny, and Denial may also be issued in other visa and petition cases. The above advice applies to any case in which these documents are issued by USCIS.

[14] VAWA was originally passed in 1994 and codified at 42 U.S.C. §13701 through 14040, Pub.L. 103–322 (Sept. 13, 1994). The original VAWA was followed by multiple reauthorizations, some of which altered the provisions of the Act. This article refers to law as it stands under the current iteration of VAWA, last reauthorized in 2013. Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013).

- The qualifying parent inflicted battery (abuse) or extreme cruelty on the child;
- The child resided with the abusive parent;[15] and
- Good moral character.[16]

A biological parent and a step-parent are both recognized as having a qualifying relationship with a child.[17] However, a step-parent must be legally married to a biological parent of the abused child; cohabitation or partnership without marriage will not create a qualifying parent-child relationship for VAWA eligibility. Also, note that termination of parental rights does not end a child's ability to self-petition based on conduct by the parent whose rights have been terminated.[18]

Documenting Abuse and Extreme Cruelty

Battery or extreme cruelty includes virtually any form of child abuse which causes or threatens physical or mental injury.[19] The same evidence and documentation used to substantiate removal of a child from the home can be employed to document abuse and extreme cruelty in a VAWA self-petition. Medical records, caseworker affidavits, forensic interviews, psychiatric studies, photographs, police reports and similar evidence of physical and emotional harm to a child are all potentially relevant for a VAWA claim. However, the most important item of evidence in a VAWA self-petition, and the one over which the self-petitioner has the most control, is the self-petitioner's own affidavit. It is important for child advocates to work with their clients on drafting comprehensive affidavits that discuss specific incidents of abuse and cruelty in detail, including how these incidents made the child feel.

Proof of extreme cruelty requires evidence of both how the perpetrator's actions of extreme cruelty were perceived by the victim and how they would be perceived by an objective observer. Especially in cases where there is no physical abuse, it is crucial to document the subjective and objective description of incidents of cruelty.

As a practice tip, be certain to read carefully through all documents before submitting to USCIS to ensure they do not contain information prejudicial to your client.

Good Moral Character:

Good moral character is the final element required for a successful VAWA self-petition.[20] Police clearances from each jurisdiction where an applicant has resided for six months or more during the three years prior to filing, required to meet the good moral character requirement, can usually be obtained from local police jurisdictions. If a police clearance reveals no incidents, this element likely won't be an issue. If an applicant has prior arrests, careful research is important. Some criminal convictions can be waived under

[15] The self-petitioner must be residing in the U.S. at the time of filing. However, there is no statutorily determined minimum time that the self-petitioner must have resided with the abuser. 8 C.F.R. §204.2(e)(1)(v).
[16] INA §204(a)(1)(A)(iii)-(iv).
[17] The definition of child is a useful guide to determine when a parent-child relationship exists for purposes of VAWA eligibility. If an applicant can be considered the child of an abuser, then the relationship qualifies for VAWA eligibility purposes. INA §101(b)(1).
[18] 8 C.F.R. §204.2(e)(1)(ii).
[19] 8 C.F.R. §204.2(e)(vi).
[20] 8 C.F.R. §204.2(e)(vii).

the VAWA statute, but not all.[21] If the actions precipitating the need for a waiver can be traced back to the abuse or cruelty perpetrated against the self-petitioner, it is more likely that a waiver may be granted.

Role of a Child Advocate?

A child will likely not have the documents she needs to file a VAWA self-petition. An informed advocate can make the difference between a successful application and a failed attempt. The elements that must be proven to qualify for VAWA provide a clear template for the evidence needed to support a VAWA petition.

Evidence of a family relationship will include birth certificates or marriage and divorce certificates to prove a legal stepparent-child relationship. Evidence of U.S. citizenship of an abuser may include birth certificates, a naturalization certificate, or a U.S. passport. The best evidence of permanent residency is an I-551 lawful permanent resident card, also known as a 'green card.'

If the perpetrator is a permanent resident or obtained citizenship through naturalization, USCIS will have this evidence but may not always be willing to search their records for a VAWA applicant. The best strategy is to ask the court in the child protection suit to order production of these records.

If an applicant for VAWA is the child of a U.S. citizen, current guidance favors submitting the self-petition concurrently with the adjustment application. If the perpetrator is a permanent resident, the visa backlog requires that the applicant wait for a visa to become current to apply for permanent residency.

Once again, time is of the essence in immigration applications for a child in state care. A child who qualifies to file a VAWA self-petition may file up to age 21. At age 21, a grace period may apply until age 25, if abuse was a central reason for the delay.[22] This will be judged by the USCIS adjudicating official who is trained to review "any credible evidence."[23] Nonetheless, swift submission remains preferable, if only to ensure that the child receives lawful permanent status while still in the care of trained advocates.

C. U Nonimmigrant Visas

To qualify for a U visa, an applicant must:

- Be a victim of a qualifying crime;
- Have been or be willing to be helpful to law enforcement, including judges, in "investigating or prosecuting" criminal activity; and
- Have suffered substantial physical or mental abuse.[24]

Not every individual who has been a victim of violent crime will qualify for a U visa; the statute lists only certain crimes that qualify, primarily those relating to physical or sexual violence. The complete list of qualifying crimes is: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false

[21] VAWA self-petitioners have access to multiple waivers that are codified throughout the INA. *See e.g*. INA §245(c) (waiver of employment without authorization); INA §212(a)(4)(E) (waiver of public charge ground of inadmissibility);INA §212(h) (waiver for certain criminal grounds of inadmissibility with unique requirements for VAWA applicants); and INA §212(a)(6)(A)(ii) (waiver for unlawful entry to the United States.)

[22] INA §204(a)(1)(D)(v).

[23] INA §204(a)(1)(J).

[24] INA §101(a)(15)(U).

imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting. Attempt, conspiracy or solicitation to commit any of the named crimes will also be deemed a qualifying crime. [25]

An essential requirement for a U visa application is certification by law enforcement that the victim of a crime has been, is, or is likely to be helpful to the investigation or prosecution of the crime. "*Investigation or prosecution* refers to the detection or investigation of a qualifying crime or criminal activity, as well as to the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity." (Emphasis in original.)[26] There is no requirement that an actual prosecution be pursued for a law enforcement agency to issue a U visa certification.[27]

Helpfulness can occur in a variety of ways, depending on the capabilities of the victim and the investigating or prosecuting agency's protocol. A victim with credible and reliable information who is helpful or likely to be helpful and who has not refused to provide information or assistance nor requested that charges be dropped may satisfy this requirement.[28] In the case of a child under age 16 (or a person who is incompetent or lacking capacity) a parent, guardian, or next friend can submit a statement on the victim's behalf.[29]

"*Physical or mental abuse* means injury or harm to the victim's physical person, or harm to or impairment of the emotional or psychological soundness of the victim." (Emphasis in original.)[30] Evidence of harm may include psychological reports, medical records, forensic evaluations, and the written testimony of the victim. Once again, evidence from the child protection proceedings may be appropriate to use in proving the substantial harm required for a successful "U" visa application.

How to Help a Potential U Visa Petitioner?

A child advocate may be able to assist the child or youth in reporting the crime and in communicating with law enforcement. An advocate may also become aware of qualifying criminal activity that was never reported to law enforcement. While law enforcement may need to be reminded, reports of a crime need not be contemporaneous and there is no statute of limitations for requesting a U visa certification.[31] Also, keep in mind that judges can certify that a qualifying crime has occurred.[32]

Law enforcement agencies may have a designated "certifier"—a single individual authorized to sign all U visa certifications issued by the agency. When requesting a certification, it is important to ask who the certifier is for the agency as well as to learn about local procedures to ensure the certification is requested in the correct format. Certain agencies prefer to receive requests by mail or email and may want a

[25] INA §101(a)(15)(U)(iii).
[26] 8 C.F.R. §214.14(a)(5).
[27] U Visa Law Enforcement Certification Resource Guide for Federal, Local, Tribal and Territorial Law Enforcement, U.S. Dept. of Homeland Security, p.4, available at: https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.
[28] 8 C.F.R. 8214.14(b)(3). Note that individual law enforcement agencies may have their own internal guidelines to determine which cases are eligible to receive U visa certification that may designate a narrower class of cases than federal regulations would permit.
[29] 8 C.F.R. §214.14(c)(2)(ii).
[30] 8 C.F.R. §214.14(a)(8).
[31] *See* footnote 27.
[32] 8 C.F.R. §214.14(a)(3)(ii).

template submitted with the request, whereas others may simply require an email with the applicant's name and contact information. It is worthwhile to talk with the local advocate community before requesting a certification. They will be familiar with individual agency protocols for the U certifications and obstacles can be averted.

Unlike SIJ, the U visa allows for a principal applicant to include derivative family members as beneficiaries. If a caregiver and a child both need immigration status, a U visa may be a good choice. A child under 21 years of age can include her parents in her application for a U visa. Similarly, a parent can include a child up to age 21 years old. It is important, and perhaps not unexpected, that the perpetrator of the crime can never qualify as a derivative beneficiary.[33] Keep the U visa in mind in cases where a child is removed from a home due to domestic violence of a parent or sexual abuse of a child, as this may open doors for multiple family members to obtain lawful status and thus preserve elements of the family unit.

D. Political Asylum

In compliance with international law, the U.S. has incorporated international standards of asylum into our federal immigration laws. Asylum relief is one of those standards, protecting immigrants who cannot return to their home countries due to persecution.

While often referred to as political asylum, an applicant need not be "political" in the ordinary sense. To qualify for asylum an applicant must prove past persecution or a risk of future persecution on account of political opinion, nationality, race, religion, or membership in a particular social group.[34]

The definition of "particular social group" and the entire body of asylum law is quite complex. Suffice to say that if a child in state custody expresses a fear of return to her home country, or if there is any reason to think there is a risk of persecution in the home country, consultation with an experienced immigration lawyer needs to be a top priority.

In most cases, an application for asylum must be filed within 364 days of arriving in the US.[35] This standard may be relaxed for children, especially unaccompanied minors, or those who can show "extraordinary circumstances."[36] Nonetheless, extensive delays may not be excused. For this reason, and because the process can take years, it is important to move swiftly if a child may be eligible for asylum. In addition, the adversarial nature of the process is relaxed for minors who file while they remain minors, which is yet another reason that expedient assessment and filing are important.

E. DACA: Deferred Action for Childhood Arrivals- A Temporary Immigration Program

To qualify for DACA, a youth must:

- Be born after June 15, 1981;
- Have arrived in the U.S. prior to one's 16th birthday;
- Have continuously resided in the U.S. from June 15, 2007 through the time of application;
- Have been physically present in the U.S. on June 15, 2012 with no lawful status;
- Have obtained, or be in the process of obtaining, certain educational requirements; and

[33] 8 C.F.R. §214.14(f)(1).
[34] INA §208(b).
[35] INA §208(a)(2)(B).
[36] 8 C.F.R. §208.4(a).

- Not have any disqualifying criminal convictions.[37]

A grant of DACA does not award the recipient lawful status; DACA is a policy concerning the exercise of prosecutorial discretion by the Department of Homeland Security ("DHS"). An otherwise deportable youth may apply to have her deportation temporarily suspended if she meets the DACA qualifications. This suspension remains in force for two-year intervals and is currently renewable. DACA is an inherently temporary benefit because it is not a statutory remedy, and DACA as a policy could be revoked without the same procedures required to change a law. Advocates should consult the USCIS website and other news sources for the latest information and updates on the DACA program.

Despite the uncertainty inherent to the program, for many undocumented youth, DACA is a lifeline as it provides a way of remaining in the U.S. and obtaining work authorization. For youth in state custody, DACA should be viewed primarily as a last resort for children who do not qualify for any other immigration relief or as a supplementary application that will allow youth to receive work authorization while applications for permanent status are in progress.

F. Obstacles & Ineligibility for Visa Applicants

These visas and petitions- with the exception of DACA- all allow for a beneficiary to apply for permanent resident status. One huge benefit afforded to SIJ, VAWA, U visa, and asylum beneficiaries is the ability to "adjust status," or obtain permanent resident status without leaving the U.S.[38]

All applicants for permanent residency are subject to a long list of grounds of inadmissibility ranging from illegal entry to money laundering and prostitution.[39] For each category of visa or petition, some grounds of inadmissibility do not apply at all and there may be waivers for other grounds based on humanitarian and related reasons.[40]

For the youngest foster children, there are rarely inadmissibility issues. If a youth has substance abuse problems, arrests, convictions, a mental disorder that presents a danger to self or others, or a prior deportation, caution is warranted before filing for residency. While these issues will not necessarily disqualify an applicant, they are red flags that require further research. If a youth has an arrest history, no decision on applying for residency should be made without looking at a complete record of arrests and dispositions. Juvenile adjudications are not treated as criminal convictions for purposes of immigration.[41] However, simply because an arrest occurred when a youth was still a minor does not guarantee that any resulting charges were filed in juvenile court. Criminal convictions, even for minor offenses, such as petty shoplifting or riding public transportation without payment, may trigger grounds of statutory ineligibility.[42] Note that *all arrests and convictions* are considered in applications for permanent resident status, because in addition to statutory eligibility, approval requires the favorable exercise of discretion.

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[37] The USCIS website provides a useful overview of DACA eligibility. https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca#guidelines.

[38] INA §245 (different subsections apply depending on the type of visa or petition.)

[39] INA §212(a).

[40] While multiple waivers may apply across visa categories, differing admissibility criteria apply to the following visa holders: VAWA applicants, *See* footnote 21; SIJ applicants, INA §245(h); U visa applicants, INA §245(m).

[41] *Matter of Devison-Charles*, 22 I & N Dec. 1362 (BIA 2000).

[42] Crimes of moral turpitude are defined by case law and the specific statutes that implicate moral turpitude will vary by jurisdiction.

When in doubt about any inadmissibility issue, the best course of action is research and consultation with an experienced immigration attorney.

Special Warning for Undocumented Youth

Given that undocumented youth may face draconian consequences for minor transgressions, it is important to warn undocumented clients about the possible negative consequences of arrests, substance use, and other misconduct. A warning that these actions will cause more serious consequences for undocumented youth than for their U.S.-born peers because of the potential impact on eligibility for permanent resident status can avert huge problems.

III. Children in Deportation/Removal Proceedings

If an applicant for adjustment of status is in deportation (or removal) proceedings, or is the subject of a prior deportation order, this will complicate the case significantly. If there is information indicating that there may be ongoing or prior deportation proceedings, it may be possible to verify where and when a final order was entered or when the next hearing will be held, using the applicant's identification number for immigration purposes (known as an "A" number, or "alien" number).[43] The Executive Office of Immigration Review ("immigration court") maintains an automated phone number for access to this information.[44]

If there is an upcoming deportation hearing, and the applicant is awaiting adjudication of a visa or petition, it is imperative that the youth attend the hearing, unless the judge grants counsel's request to waive a youth's presence. The immigration judge may grant a continuance upon a showing of a prima facie application for a visa or petition to allow adjudication by USCIS, especially if the judge lacks jurisdiction over the pending application. For instance, USCIS, not the immigration judge, has exclusive jurisdiction over U, SIJ, and VAWA petitions. An immigration judge has jurisdiction to adjudicate adjustment of status in most cases, but in practice generally defers to USCIS.

If there is a prior deportation order or a pending immigration court hearing, USCIS may lack jurisdiction to grant adjustment of status until the immigration court terminates proceedings. In the case of a prior order entered *in absentia* (essentially a default order entered when a person fails to appear for an immigration hearing), it may be possible to make a joint motion, with the attorney for the Immigration and Customs Enforcement ("ICE") to set aside that order and terminate the original deportation proceedings without prejudice to the child.

IV. U.S. Citizenship

If a child or youth enters foster care with permanent resident status or obtains a "green card" while in care, the next step to consider is U.S. citizenship. As mentioned, U.S. citizenship removes all immigration-related restrictions on access to government benefits. Citizens also gain the right to vote. In addition, while a permanent resident who commits certain serious crimes can be stripped of this status and deported, a U.S. citizen cannot lose this status (unless the citizenship application involved fraud or

[43] If the A number is not known, the best course of action is to file a Freedom of Information Act (FOIA) request to obtain the youth's "A file" from EOIR. The EOIR website contains information on FOIA procedures and links to the required forms. https://www.justice.gov/eoir/foia-facts.

[44] 1 (800) 898- 7180.

misrepresentation). Common paths to citizenship for foster youth include the Child Citizenship Act, naturalization, or acquisition of citizenship.

A. Child Citizenship Act

Under the Child Citizenship Act of 2000 ("CCA"), effective February 27, 2001, many foreign-born children become U.S. citizens without knowing it.[45] The CCA provides for "automatic citizenship" if a foreign-born child:

- Has at least one U.S. citizen parent (by birth or naturalization);
- Is unmarried and under age 18;
- Is residing in the U.S. in the legal and physical custody of the citizen parent; and
- Has been admitted for lawful permanent residence.[46]

Citizenship is conferred automatically when the last statutory requirement is met, even if no affirmative action is taken by the child. To receive proof of citizenship, the child or parent must file an application for either a certificate of citizenship (from USCIS) or for a U.S. passport (from the U.S. Department of State). A U.S. passport application should be the first application filed because it is less expensive and often relatively quick.[47] However, it is always advisable to obtain a certificate of citizenship because unlike a passport, the certificate does not expire.

The CCA also applies to adopted children and underscores the importance of obtaining permanent resident status for a child *before* an adoption. If a child with permanent resident status is adopted by a U.S. citizen before the age of 16 and resides with the parent, the Child Citizenship Act requirements are fulfilled and the child obtains automatic citizenship at the time the adoption is finalized.[48] In contrast, if an undocumented child is adopted, to obtain permanent resident status for the child, the parent must file an immediate relative petition and most likely must travel with the child to an interview at the U.S. consulate in the child's home country. In addition to the additional cost entailed, once an undocumented child leaves the U.S., any unforeseen problems must be resolved at the consulate before the child can reenter the U.S.[49]

B. Naturalization

If a permanent resident foster child is not adopted, the best option for becoming a U.S. citizen is naturalization. If a youth wants to become a U.S. citizen, naturalization eligibility requires:

- Five years as a permanent resident;
- 18 years of age; and

[45] P.L. 106-395, 114 Stat. 1361 (Oct. 30, 2000).
[46] INA §320(a).
[47] Form DS-11 is for first time passport applicants. This and other passport forms are available on the U.S. Department of State website. https://travel.state.gov/content/passports/en/passports/forms.html.
[48] INA §320(b); INA §101(b)(1)(E) ("child" includes a child adopted while under 16, if in the custody of the adoptive parent (or battered or subject to extreme cruelty by the adoptive parent) and the natural sibling of such a child adopted while under age 18).
[49] Further complicating the resolution of problems arising at overseas consulates is the fact that consulates need not allow applicants to have judicial representation and often have policies limiting counsel's access to consular proceedings.

- Good moral character.[50]

Applicants must meet requirements for physical presence and residence,[51] pass a knowledge test on U.S. government and civics, and demonstrate English proficiency in speech, reading, and writing. The USCIS provides naturalization applicants a copy of all questions that may be asked and, particularly for recent high school graduates, passing these tests is not a difficult hurdle.[52] For youth with a physical or mental impairment that can be documented by a physician, the knowledge test and English requirements can be waived.[53] If an applicant has an arrest record, do not file for naturalization without collecting documentation of all arrests and dispositions and consulting with an immigration specialist, as certain criminal history may trigger grounds for loss of permanent resident status and deportation.

C. Acquisition of Citizenship

Contrary to sometimes popular belief, every child born to a U.S. citizen parent overseas is not entitled to U.S. citizenship. However, many foreign-born children do *acquire* U.S. citizenship through a U.S. citizen biological parent. If a child meets the requirements for acquisition of citizenship, the child is automatically a citizen from the moment of birth.

Even though citizenship is automatic, as with the Child Citizenship Act, obtaining proof generally requires either applying for a U.S. passport or for a certificate of citizenship. As the requirements for acquisition of citizenship have changed over time and vary based upon year of birth, eligibility can't be neatly summarized. There are excellent reference charts that offer a starting point for assessing acquisition of citizenship.[54]

Child advocates should always ask clients about each parent's birthplace, as well as whether either parent ever became a U.S. citizen. Notably, even a deceased parent or one whose parental rights have been terminated may transmit U.S. citizenship to a child, so questions about parental immigration status are always relevant. If it is determined that a child may qualify for acquisition of citizenship, it is always best to consult with a knowledgeable immigration specialist.

V. Advocacy Across Borders

A. International Families

For children with family members outside the U.S., there are additional requirements, which can be navigated to present opportunities rather than obstacles. If a child or youth removed by child protection authorities has a parent or another placement option outside the U.S., there are several resources advocates can use to promote permanency.

Jurisdiction and Due Process

State courts have taken a variety of approaches to the issue of a court's authority to proceed with a suit involving a child if one or both parent lives overseas (*See* Case Law Summary, Jurisdiction, Due Process). Courts don't necessarily construe a parent's deportation as evidence of unfitness, but look at any

[50] INA §316.

[51] INA §316(a)

[52] The USCIS website provides valuable resources for naturalization applicants. https://www.uscis.gov/citizenship/learners/study-test.

[53] 8 C.F.R. §312.1(b)(2);(b)(3).

[54] *See* Acquisition & Derivation of Citizenship Charts, produced by the Immigrant Legal Resource Center, Collected Resources & Links.

underlying crime, and the parent's overall conduct and demonstrated ability to parent the child (*See* Case Law Summary, Impact of Deportation). The best practice is to be aware of the issues and to accommodate a parent's participation in the case to the greatest extent possible.

Reunification services for a parent abroad

If there is a viable parent outside of the U.S. willing to take custody of a child, any necessary reunification plan can be designed using locally available services. Foreign consular staff may be able to help, and private or government social services organizations can be located using an internet search.[55]

Repatriation

If a child or youth is being placed with a parent or relative in a foreign country, the planning process will likely involve the foreign consulate, social services staff in the home country, as well as the state court and parties to that suit. It's important to anticipate and plan for how a child's medical, educational, and other particular needs will be met and to collect relevant documents so that parents, as well as school and medical professionals will have access to a child's history. Documentation of a child's U.S. and/or dual citizenship is essential, as well as obtaining necessary travel documents for entry to and residency in the home country. The parent or other relative should be provided with the U.S. court order authorizing the placement. All parties must recognize that once a child is placed abroad, a U.S. state court loses jurisdiction and enforcement of a U.S. custody order may be limited by the parent or caretaker's ability to access the local courts and differences in local law.

B. Consular Notification

If a child or youth born outside the U.S. comes into foster care, notice to the consul of the child's home country is generally required by the Vienna Convention on Consular Relations ("VCCR").[56] Article 37 of this treaty requires that the authorities give notice to the consul without delay if "the appointment of a guardian or trustee appears to be in the interests of minor or other person lacking full capacity who is a national of the sending State."[57]

The biggest challenge can be simply remembering to think about consular notification if a child is born outside the United States. Notification is required at the point when permanent appointment of a guardian or the equivalent will be requested for any foreign-born child, without regard to the child's immigration status. The only exception is if the child is already a U.S. citizen—in this case consular notification is not required. While most child protection agencies do not seek permanent orders, such as a guardianship, when a child is first removed, there is an advantage to providing consular notification early in the proceedings. Consular resources will vary, but many consulates can assist with locating relatives, obtaining documents or home studies in the home country, authenticating documents, and, at times, providing cultural insights that may be relevant to determining a child's best interest. The sooner consular staff can begin to assist, the more likely that future delays can be avoided.

The mechanics of giving notice are straightforward. Consular offices routinely communicate by fax and this is the most common method for providing notice. The U.S. Department of State maintains contact

[55] One such provider is International Social Services, www.iss-usa.org.
[56] This treaty entered into force for the United States December 24, 1969; Art. 37, 21 U.S.T. 77.
[57] 21 U.S.T. 77., Art. 37.

information for all foreign consular offices in the U.S. and offers a suggested fax sheet for this notice.[58] Whatever method is used, proof that notice was sent should be entered into the record of any child protection suit as evidence of treaty compliance.

Notice under the VCCR does not give the consular representative substantive rights in a pending lawsuit. A consular representative does have a right to meet with the child or youth, but participation in any hearing is subject to the court's determination. Subject to applicable confidentiality requirements, providing consular staff with essential documents regarding a child protection case will enable the consular staff to assist more effectively in speedily arriving at a permanent outcome for the child.

In addition to fulfilling a treaty obligation, consular notification eliminates a potential appellate issue. To date appellate courts have not found failure to give consular notice to be reversible error (*See* Case Law Summary, Consular Notification), nonetheless, compliance with this requirement eliminates the potential issue on appeal.

VI. When ICE Knocks

The intersection of immigration enforcement (Immigration and Customs Enforcement, "ICE") and child protection efforts can present a huge challenge. Advocates must rely on DHS guidance in strategizing about timing and applications for relief while keeping in mind that this guidance may change without notice.

The DHS-ICE directive Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities (Parental Interests Directive) is a tool for advocates trying to keep a parent detained by ICE involved in child protection proceedings.[59] This directive identifies practices that *may* be available in specific circumstances, subject to ICE discretion, including:

- Facilitation of parent–child visits, to the extent practicable, if required by a court or child welfare authority;
- Transport of detained parents to family court or to child welfare proceedings or facilitating video or teleconference participation from detention; and
- For a parent facing removal, accommodating his or her efforts to arrange for a child's care or travel to a parent's home country.

For children or youth facing deportation, ICE retains the ability to grant prosecutorial discretion on a case-by-case basis. Advocates for child victims of crime may have a stronger basis to argue for prosecutorial discretion in deportation proceedings.[60] Without knowing exactly which DHS policy guidance remains in effect, pursuing prosecutorial discretion is advisable, but should never be the only option sought. New guidance seems to encourage ICE attorneys to pursue every case to a final decision: a finding that a child is not removable, a grant of immigration status, or a final removal order.[61] Hopefully at least one of the

[58] U.S. Department of State https://travel.state.gov (use search function to locate consular notification notice).
[59] DHS-ICE, *Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* (2013): https://www.ice.gov/parental-interest. As of June 6, 2017, ICE confirmed that this guidance remains in effect.
[60] DHS-ICE, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (2011): https://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf.
[61] Notes provided by the American Immigration Lawyers' Association from a meeting with the ICE Liaison Committee, April 6, 2017.

immigration remedies detailed in this article will provide a path to permanent status for immigrant children in state care and allow them to avoid deportation.

VII. Conclusion

Child advocates routinely confront legal problems with staggering, life-long implications for children and families. If a child is born outside the U.S. or an international border separates family members, the puzzle of a child protection case often becomes more complex with additional decisions to be made. Fortunately, there are multiple options, a wealth of resources, and qualified experts available to make sure the road to permanency remains open to all children and youth.

VIII. Collected Resources & Links

1. *Overview of Immigrant Eligibility for Federal Programs* – Immigrant Legal Resource Center (ILRC): www.nilc.org/issues/economic-support/table_ovrw_fedprogs/
2. *Public Benefits Flow Charts*- National Immigrant Women's Advocacy Project (NIWAP): http://niwaplibrary.wcl.american.edu/pubs/public-benefits-flow-charts/
3. Acquisition & Derivation of Citizenship Charts – Immigrant Legal Resource Center (ILRC):
   - *Determining Whether Children Born Outside the U.S. Acquired Citizenship At Birth*: https://www.ilrc.org/sites/default/files/resources/natz_chart-a-2016-10-29.pdf
   - *Determining If Children Born Abroad and Out Of Wedlock Acquired U.S. Citizenship At Birth:* https://www.ilrc.org/sites/default/files/resources/natz_chart-b-2016-10-28.pdf
   - *Derivative Citizenship—Lawful Permanent Resident Children Gaining Citizenship Through Parents' Citizenship:* https://www.ilrc.org/sites/default/files/resources/natz_chart_c-20170627.pdf
4. Department of Homeland Security (DHS) memoranda & policy guidance:
   - *DHS-ICE, Enforcement Actions at or Focused on Sensitive Locations* (2011): https://www.ice.gov/ero/enforcement/sensitive-loc
   - *DHS-ICE, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (2011): https://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf
   - *DHS-ICE, Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities* (2013): https://www.ice.gov/parental-interest
   - DHS, Implementing the President's Border Security and Immigration Enforcement Improvements Policies (2017): https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf
   - *U Visa Law Enforcement Certification Resource Guide for Federal, Local, Tribal and Territorial Law Enforcement*, U.S. Dept. of Homeland Security, available at: https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf
5. *What if I'm Picked up by ICE: Preparing for the Possibility of Being Detained, Deported, and Separated from Your Children*: http://www.steptoe.com/assets/htmldocuments/Immigrant_Parents_Rights_Guide.pdf
6. *Consular Notification*, U.S. Department of State, https://travel.state.gov- (use search function to locate consular notification).

Case Law Summary

The complexity of a child protection case may increase substantially if a child or one or both parents is a foreign citizen, if a parent lives outside the U.S., or a parent or caretaker lacks legal status in the U.S. The cases below offer an overview of selected issues.

Subject Matter Jurisdiction

In Interest of E.E.B.W., 733 S.E. 2d 369 (Ga. Ct. App. 2012) (challenge by adoptive parents to subject matter jurisdiction in proceeding for termination of parental rights of Zambian child rejected where Georgia was the child's home state at the time of the initial intervention, and the court had exclusive continuing jurisdiction to modify the initial determination under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"))

In re Welfare of Children of D.M.T.R., 802 N.W. 2d 759 (Minn. Ct. App. 2011) (UCCJEA confers subject matter jurisdiction over action to terminate parental rights on Minnesota court where non-U.S. citizen refugee children reside)

In re Y.M., 144 Cal. Rptr. 3d 54 (Cal. Ct. App. 2012) (error to dismiss dependency case involving special needs Guatemalan child victim of sex trafficking; neither her status in the federal unaccompanied refugee minor ("URM") program nor a Guatemalan trafficking protocol preempted state court's jurisdiction)

In re Angelica L., 767 S.W. 74 (Neb. 2009) (state court retains jurisdiction based on authority as *parens patriae* as to every child within its borders, even where parent faces deportation)

Adoption of Peggy, 767 N.E.2d 29 (Mass. 2002) (challenge to jurisdiction based on parent and child's Indian nationality rejected in action for termination of parental rights, in view of child's presence in the state, multiple serious and unexplained injuries, and need for protection)

Personal Jurisdiction

*In re R.W.***,** 39 A.3d 682 (Vt. 2011) (where Sri Lankan mother and children reside in Vermont, state has jurisdiction to make status determination, including termination of parental rights, despite father's residence in Sri Lanka and lack of minimum contacts)

Div. of Youth & Family Services v. M.Y.J.P., 823 A.2d 817 (N.J. Super. Ct. App. Div. 2003) (status exception to the personal jurisdiction requirement in a termination of parental rights recognized where child present in the state for over eight years, mother in Haiti assented to child's departure to U.S., expressed desire that child remain in New Jersey and made only a single, fleeting request for child to be returned to Haiti)

In re Doe, 926 P.2d 1290 (Haw. 1996) (where mother in Philippines had no prior contact with Hawaii, reluctantly agreed to let child travel to Hawaii, communicated regularly with court and social services and consistently pleaded for child's return, termination of parental rights reversed for lack of personal jurisdiction)

Due Process

In re P.S.S.C., 32 A.3d 1281 (Pa. Super Ct. 2011) (termination of parental rights violated due process where permanency plans and hearing notices were mailed to father incarcerated in Puerto Rico without access to an interpreter and counsel was appointed less than four months before termination hearing)

In re B. and J., 756 N.W.2d 234 (Mich. Ct. App. 2008) (where Department of Human Services reported Guatemalan family to immigration authorities, termination of parental rights following deportation violates due process)

In re Adrianna A.E., 745 N.W. 2d 701 (Wis. Ct. App. 2007) (use of system of dual webcams connections between Wisconsin courtroom and father in Mexico, with instant messaging available for communication between father and his attorney, and advance delivery of summaries of anticipated testimony and copies of all exhibits afforded father deported to Mexico an opportunity to participate in the trial)

Impact of Deportation

In re R.A.G., No. 08-16-00178-CV, 2017 WL 105131 (Tex. App.—El Paso, 2017, no pet.) (deportation standing alone does not constitute endangering conduct, but drug trafficking during the pregnancy, followed by arrest, incarceration and deportation and failure to communicate with the child constitutes course of conduct that endangered child)

In re Oreoluwa O., 321 Conn. 523 (Conn. 2016) (termination of parental rights reversed and remanded based on agency's failure to make reasonable efforts to reunify infant with congenital heart defect with father in Nigeria, where he paid for hotel for infant and mother, repeatedly tried to contact the treating physicians, requested Skype contact with his child and agency failed to submit evidence regarding whether the infant could travel)

Children, Youth and Families Dept., State ex. Rel. v. Alfonso M.-E., 366 P.3d 282 (N.M. Ct. App. 2015) (lack of evidence that neglect unlikely to change or that department made reasonable efforts to reunify warrants reversal of termination after father deported to Mexico; also, language barrier between father and 18-month-old not an insurmountable obstacle to reunification)

In re B.S.O, 760 S.E.2d 59 (N.C. App. 2014) (deported father's single phone call during six-month period does not undercut finding of willful abandonment)

*In re Larice N. Mc.,*108 A.D. 3d 675 (N.Y. App. Div. 2013) (father's dangerous criminal activity after child removed by child protection authorities that lead to incarceration and deportation warranted termination of parental rights based on permanent neglect)

In re Doe, 281 P.3d 95 (Idaho 2012) (termination reversed where father had been deported before child was born, he repeatedly expressed desire to have custody of her and there was no evidence of unfitness, the court observing that "[t]he fact that a child may enjoy a higher standard of living in the United States than in the country where the child's parent resides is not a reason to terminate the parental rights of a foreign national.")

In re E.N.C., 384 S.W.3d 796 (Tex. 2012) (termination of parental rights of father in Mexico reversed, where inference that prior conviction involved sex with a child not reasonable, given father's testimony that the

offense involved an underage girlfriend and father voluntarily provided his children with money and clothing, and complied with once a month telephone visits with his children until the Department moved the children without informing him)

In the Adoption of C.M.B.R., 332 S.W.3d 793 (Mo. 2011) (termination and adoption proceeding brought by couple who became caretakers of infant after Guatemalan mother detained during workplace raid reversed and remanded for failure to comply with mandatory investigation and reporting requirements; mother convicted of aggravated identity theft and failed to show interest in the child during the proceedings)

In re Angelica L., 767 N.W.2d 74 (Neb. 2009) (termination reversed where agency believed children would be better off staying in the U.S. after mother was deported to Guatemala and made no effort to reunify mother and children)

In re Adrianna A.E., 745 N.W.2d 701 (Wis. Ct. App. 2007) (termination of parental rights affirmed where father was free to work and meet many conditions for return of his child in Mexico, but failed to do so)

In re M.M., 587 S.E.2d 825 (Ga. Ct. App. 2003) (possibility that father might someday be deported insufficient to support termination where father paid child support, worked to obtain legal residency, maintained employment, consistently visited his child and made arrangements for child care on her return to his care)

Immigration Status of Caretaker

Ramirez v. Ramirez, 124 So.3d 8 (La. App. 5 Cir. 2013) (award of sole custody to child's aunt affirmed, citing mother's possible deportation, history of delegating child rearing responsibilities, failure to support and keep in contact with child)

In the Matter of M.R., 270 P.3d 607(Wash. Ct. App. 2012) (error to disrupt placement of child placed with grandparents solely based on their undocumented status where grandparents had lived in the U.S. for eighteen years, child had strong bond and move would be detrimental)

Immigration Court

Matter of Devison-Charles, 22 I&N Dec. 1326 (BIA 2000) (a juvenile adjudication does not constitute a crime and therefore cannot constitute a conviction for immigration law purposes)

Matter of Sanchez-Sosa, 25 I&N Dec. 807 (BIA 2012) (an immigration judge should consider the DHS position, whether an application is approvable, and the reason for the continuance in determining whether to continue proceedings to await a U visa adjudication, but ordinarily, a prima facie approvable U visa application will warrant a continuance for a reasonable period)

Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012) (an immigration judge may order administrative closure of removal proceedings upon weighing the following factors: reasons for closure, basis for opposition, likelihood of success on pending relief applications, duration of closure, actions of either party in causing delays, and the ultimate outcome in removal proceedings)

Consular Notification

In re J.O., 886 N.W. 3d 618 (Iowa Ct. App. 2016) (failure to give notice to German consul does not warrant

reversal of termination of parental rights)

In re Antonio O., 784 N.W.2d 457 (Neb. Ct. App. 2010) (compliance with Vienna Convention consular notification requirement is not jurisdictional and where father represented by counsel for three years and had contact with children during this period but failed to contact the agency, no harm resulted from failure to give consul notice)

In re Angelica L., 767 N.W.2d 74 (Neb. 2009) (despite conflicting evidence, court concludes State complied with the Vienna Convention in termination proceeding involving Guatemalan immigrant; concurring opinion by Gerrard, J. criticizes agency's "cursory compliance with what was apparently regarded as a legal technicality" observing that "[t]he full participation of the consulate can help the juvenile and the juvenile's parents by ensuring that their interests are represented, and can also assist DHHS, the guardian ad litem, and the juvenile court by providing information and experience helpful to determining the juvenile's best interest.")

E.R. v. Marion County Office of Family & Children, 729 N.E. 2d 1052 (Ind. Ct. App. 2000) (purpose of Vienna Convention notice requirement fulfilled where father notified Mexican consul)

In re L.A.M., 996 P. 2d 839 (Kan. 2000) (notice to Mexican consulate provided by minor's aunt's attorney sufficient)

Arteaga v. Texas Dep't of Protective & Regulatory Services, 924 S.W. 2d 756 (Tex. App. 1996) (claim that termination of parental rights void for failure to give notice to Mexican consul rejected, although court notes series telephone calls and letter constitute the "bare minimum of acceptable notice")

In re Stephanie M., 867 P. 2d 706 (Cal. 1994) (failure to give notice to Mexican consulate neither deprives court of jurisdiction nor supports due process claim; actual notice provided by child's grandmother defeats such claim in any event)