

## Procedural Guide

1200-500.86

### IMMIGRATION OPTIONS FOR UNDOCUMENTED CHILDREN & FAMILIES

Date Issued: 11/13/08

New Policy Release

Revision of Existing Procedural Guide dated

**Revision Made:** **NOTE:** Current Revisions are Highlighted

Cancels:

#### DEPARTMENTAL VALUES

This Procedural Guide supports the Departments goal of ensuring a child's safety by referring children to immigration relief programs if eligible.

#### WHAT CASES ARE AFFECTED

This Procedural Guide is applicable to all new and existing referrals and cases. Children and families do not need to have an open case with DCFS or be dependents of the court to be eligible for the immigration programs listed in this policy.

#### OPERATIONAL IMPACT

Section 153 of the Federal Immigration Act of 1990 provides Special Immigrant Status to undocumented children who are dependents of the juvenile court and deemed eligible for a Planned Permanent Living Arrangement (AKA long-term foster care) and for whom the court has declared that it is not in the child's best interest to be returned to their country of origin. Special Immigrant Juvenile Status is a grant of lawful permanent resident status. Legal status will afford these children the right to remain in the United States thus eliminating the fear of deportation upon emancipation from the child welfare system. See Procedural Guide 1200-500.85, Special Immigration Status (SIS) for more information on this program.

However, there are other immigration options that families may qualify for that can eliminate their fear of deportation and in most situations keep them safe. These

immigration options do not require a child to be a dependent of the court and are available for all qualified families. The following programs may provide immigration relief to undocumented children/families: U visa, Violence Against Women Act (VAWA), T visa, Asylum, and Temporary Protected Status (TPS).

Family Visas are also an immigration relief option however this program has very specific requirements and the waiting period depends on what country the undocumented person is from and their relationship to the petitioner.

**NOTE:** When a CSW closes a referral on a family because there are no safety concerns, but the family may qualify for any of the immigration options listed below, they are to contact the SIS unit, (323) 725-4464, to request a list of legal service organizations that can assist the family in their area.

Senate Bill 1569 (2006) extends eligibility for certain public social services to noncertified, noncitizen victims of a severe form of human trafficking and noncitizen victims of domestic violence and other serious crimes, to the same extent as refugees.

**Families do not need to have an open case with DCFS or be dependents of the court to be eligible for the following immigration programs.**

### **U Visa for Victims of Crime**

The U visa is available to undocumented people who 1) have suffered substantial physical or mental abuse resulting from a wide range of criminal activity, and 2) have been helpful, are being helpful or are likely to be helpful with the investigation or prosecution of the crime. The U visa is a temporary “nonimmigrant” visa, but a person awarded a U nonimmigrant visa may apply three years later to become a lawful permanent resident

#### Benefits of the U visa:

- The U visa begins as a temporary visa that allows the undocumented person to remain legally in the United States. After three years, the U visa-holder can apply to obtain lawful permanent residency.
- Provides an employment authorization document that allows the undocumented person to work and serves as a government-issued identification card.
- The U.S. Citizenship and Immigration Service (CIS) can issue a U visa to the eligible child and to the child’s parents and siblings.
- Allows the undocumented person to receive some public benefits.

#### Requirements for the U visa

1. The undocumented person has suffered substantial physical or mental abuse as a result of having been a victim of any of the following or similar criminal activity:
  - Rape
  - Torture
  - Trafficking
  - Incest
  - Domestic Violence
  - Sexual Assault
  - Unlawful Criminal Restraint
  - Abusive Sexual Conduct
  - Prostitution
  - Sexual Exploitation
  - Female Genital Mutilation
  - Being Held Hostage
  - Abduction
  - False Imprisonment
  - Kidnapping
  - Blackmail
  - Extortion
  - Manslaughter
  - Murder
  - Felonious assault
  - Involuntary Servitude
  - Slavery
  - Witness Tampering
  - Obstruction of Justice
  - Perjury
  - Attempt, solicitation to commit any of the above mentioned crimes
  - Any similar activity in violation of federal, state, or local criminal law
  - ❖ The criminal activity must also have occurred in the United States or in its territories or violated United States law abroad.
  
2. The child or his or her parent, or guardian has information about the criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
  
3. The undocumented person must obtain certification from a federal, state or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a child protective services or CIS official that shows that he or she has been helpful, or is likely to be helpful in the investigation or prosecution of the crime.

**NOTE:** The Special Immigration Status Unit will complete the certifications for the U visa.

U visa protection is available even when:

- The investigation does not result in prosecution
- The victim who is helpful in the investigation does not testify at trial
- The perpetrator eludes arrest
- The criminal case is dismissed
- The victim comes forward to report and prosecutors decide not to prosecute

- The case is prosecuted but the perpetrator is not convicted
- The applicant is a victim of a listed criminal activity but another crime is prosecuted
- The prosecution cannot take place

### **Violence Against Women Act (VAWA)**

The VAWA permits an abused (domestic violence, battery and extreme cruelty) undocumented spouse or child of a U.S. citizen or lawful permanent resident to self-petition for a green card without the cooperation of the abuser. An undocumented child can receive VAWA benefits even if he or she was not abused, as long as the child's parent qualifies for VAWA due to abuse.

#### **Benefits of VAWA:**

- Allows the undocumented person to remain in the United States and eventually obtain lawful permanent residency.
- Provides an employment authorization document that allows the undocumented person to work and serves as a government-issued identification card.
- Allows the undocumented person to receive some public benefits.

#### **Eligibility for VAWA**

- An undocumented child abused by a U.S. citizen or lawful permanent resident parent.
- An undocumented person abused by a U.S. citizen or lawful permanent resident spouse.
- An undocumented elder abused by a U.S. citizen son or daughter (21 or over).
- An undocumented child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse.
- The undocumented child resided at some point in time with the abusive U.S. citizen or lawful permanent resident parent, in or out of the United States. Any period of visitation will count.
- The child qualifies as a "child" under immigration law. This means that the child is unmarried and under the age of 21. This includes:
  - Natural born children born in wedlock
  - Stepchildren where the marriage creating the step-relationship occurred before the child's 18<sup>th</sup> birthday
  - Adopted children where the adoption was finalized before the child's 16<sup>th</sup> birthday and the child has been in the adoptive parent's physical and legal custody for two years (the two year custody requirement can be waived if there is abuse)
  - Children born out of wedlock where the child has been legitimated by the father or can show a bona fide parent-child relationship

- Children up to the age of 25 may qualify if abuse was a reason for filing delay
- The child must be a person of “good moral character”
  - Children under the age of 14 are presumed to be of good moral character and are not required to submit any evidence of good moral character
  - Children over the age of 14 must prove good moral character with police clearance letters.
- The abuse must constitute battery or “extreme cruelty” which can include psychological or emotional abuse-the child need not suffer physical abuse to be eligible for VAWA.

### **T Visa**

The T visa is available for victims of severe form of trafficking in persons. The T visa is a temporary “nonimmigrant” visa, but a person awarded a T nonimmigrant visa may apply three years later to become a lawful permanent resident. Another benefit of the T visa is that it allows the recipient to receive some public benefits.

#### **Eligibility for T visa:**

The applicant must have been a victim of a “severe form of trafficking in person.” That term is defined as:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act is under 18 years of age, or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

In addition to showing that the applicant is or was a victim of a severe form of trafficking in person, the applicant must demonstrate that he or she:

- Is physically present in the United States, or at a port of entry, or certain territories on account of the trafficking;
- Has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, unless he or she is under 18 years of age, in which case compliance is not a requirement;
- Would suffer extreme hardship involving unusual and severe harm if he or she were removed from the United States;
- Has not committed a severe form of trafficking in persons;
- Is not admissible

### **Asylum**

Asylum is for undocumented people who fear persecution in their home country because of their race, religion, nationality, political opinion or membership in a particular social group.

#### Benefits of Asylum:

- Allows the undocumented person to remain in the United States and eventually obtain lawful permanent residency.
- Provides an employment authorization document that allows the undocumented person to work and serves as a government-issued identification card.
- Allows the undocumented person to receive some public benefits (Medi-Cal, food stamps, CalWorks. etc.)

#### Requirements for Asylum:

- The undocumented person must apply within one year of arriving in the United States unless he or she was prevented from applying by changed or extraordinary circumstances. Some forms of family abuse and domestic violence might be considered extraordinary circumstances. Detention by immigration officials can also be considered extraordinary circumstances.
- The undocumented person must fear persecution from the government of the home country or from a group that the government is unwilling or unable to control (for example; guerrillas or death squads).
- The fear must be based on the child's race, religion, political opinion, nationality or social group.
- ❖ In some cases, asylum has been granted based on severe domestic violence or issues involving gender (such as threat of female genital mutilation in the home country), even if the persecution and abuse was committed by family members.

#### **Temporary Protected Status (TPS)**

Undocumented people from certain countries that have experience devastating natural disaster, civil war or other unstable circumstances may be able to obtain Temporary Protected Status (TPS).

#### Benefits of TPS:

- Provides temporary permission to stay in the United States
- Provides temporary work authorization

#### Requirements for TPS:

- The undocumented person only needs to prove that he or she is a national of a current TPS country and has been in the United States since a required date.
- The undocumented person does not need to prove that he or she will be singled out for persecution in the home country.
- The undocumented person cannot be subject to one of the criminal, security-related, or other bars to TPS.

Nationals of the following designated countries are eligible for TPS:

- |               |                          |
|---------------|--------------------------|
| • Burundi     | • Sierra Leone           |
| • El Salvador | • Somalia                |
| • Honduras    | • Sudan                  |
| • Liberia     | • Bosnia and Herzegovina |
| • Nicaragua   |                          |

For updated information about which countries are currently designated TPS and what requirements nationals of those countries must meet to qualify, go to the USCIS website at [www.uscis.gov/portal/site/uscis](http://www.uscis.gov/portal/site/uscis).

## Procedures

### **A. WHEN: AN UNDOCUMENTED FAMILY/CHILD WITH AN OPEN DCFS CASE (COURT OR VOLUNTARY CASE) MAY BE ELIGIBLE FOR IMMIGRATION RELIEF**

#### **CSW Responsibilities**

1. Complete the DCFS 190, Immigration Options for Undocumented Youth Referral.
2. Fax the DCFS 190 to SIS Unit at (323)728-9189.
3. Provide the SIS Unit with all requested documents to process the request. Required documents will vary depending on what immigration relief program the child is being referred to. The SIS unit may request the following documents:
 

• Police Report	• Minute Order
• Detention Report	• Sustained Petition

#### **Special Immigration Status Unit Staff Responsibilities**

The SIS Unit handles the entire paperwork process for referred cases and will refer the cases which require immigration counsel to appropriate legal service organizations.

1. Request from referring CSW all documentation needed for the immigration relief program to process the case.
2. Once all required documentation is received, send the case to the legal service organization to file the petition.

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- 3. Maintain communication with the CSW and keep them updated as to the status of the case.

**APPROVAL LEVELS**

<b>Section</b>	<b>Level</b>	<b>Approval</b>
<b>A.</b>	SCSW	DCFS 190
<b>B.</b>		None

**OVERVIEW OF STATUTES/REGULATIONS**

**Code of Federal Regulations (CFR), 8, 214.11**-Nonimmigrant Classes for alien victims of severe forms of trafficking for in persons. Provides eligibility requirements for T visa.

**Code of Federal Regulations (CFR), 8, 244**- Provides information and eligibility requirements for Temporary Protected Status for Nationals of Designated States.

**Immigration & Naturalization Act, Section 101(a) (15) (U)**-Provides eligibility requirements for U visa.

**Immigration & Naturalization Act, Section 204(a) (1) (A)**-Provides eligibility requirement for Violence Against Women Act.

**Immigration & Naturalization Act, Section 208**-Provides information and eligibility requirements for Asylum.

**Violence Against Women Act 1994**-Under this act, the spouses and children of United States citizens or lawful permanent residents may self-petition to obtain lawful permanent residency. VAWA allows certain battered immigrants to file for immigrant relief without the abuser’s assistance or knowledge, in order to seek safety and independence from the abuser.

**California Department of Social Services (CDSS) All-County Letter (ACL) No. 08-15:** Department of Homeland Security Interim Final Rule on New Classification for Victims of Criminal Activity: Eligibility for “U” Nonimmigrant Status.

**California Department of Social Services (CDSS) All-County Letter (ACL) No. 06-60:** Eligibility for Aid and Services for Noncitizen Victims of Human Trafficking, Domestic Violence, and Other Serious Crimes.

**LINKS**



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California Code <http://www.leginfo.ca.gov/calaw.html>  
Division 31 Regulations <http://www.cdss.ca.gov/ord/PG309.htm>  
Title 22 Regulations <http://www.dss.cahwnet.gov/ord/PG295.htm>  
A guide for immigrant youth [www.ilrc.org/resources/sijs/Youth\\_Handbook\\_English.pdf](http://www.ilrc.org/resources/sijs/Youth_Handbook_English.pdf)  
U.S. Citizenship & Immigration Services [www.uscis.gov/portal/site/uscis](http://www.uscis.gov/portal/site/uscis)

**RELATED POLICIES**

**Procedural Guide 1200-500.85, Special Immigration Status (SIS)**

**FORM(S) REQUIRED/LOCATION**

<b>HARD COPY</b>	None
<b>LA Kids:</b>	<b>DCFS 190</b> , Immigration Options for Undocumented Youth Referral
<b>CWS/CMS:</b>	None
<b>SDM:</b>	None