

## **Manual of Procedures**

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### **Historical Background**

The United States first began to codify its Consular relations in international agreements with other countries through the treaty of Friendship, Commerce and Navigation. Subsequently, bilateral conventions dealing exclusively with Consular matters became more common.

In 1963, the multilateral Vienna Convention on Consular Relations was completed and countries throughout the world began ratifying it and on December 24, 1969 the Vienna Convention on Consular Relations entered into force in the United States.

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### **Vienna Convention on Consular Relations**

The Vienna Convention on Consular Relations, with its comprehensive nature and near-universal applicability, establishes the "baseline" for most obligations with respect to the treatment of foreign nationals in the United States and for the treatment of U.S. citizens abroad by foreign governments.

To comply with the agreement established for the purpose of international law, the County of Riverside Department of Public Social Services staff shall provide immediate Consular notification and access when foreign nationals are involved in legal proceedings, both criminal and civil.

The involvement of Consular authorities is essential, not only because the law dictates it, but also because the Consulate of Mexico in San Bernardino provides essential services such as legal representation, home studies and other vital information regarding nationals involved in legal proceedings.

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## **Manual of Procedures, Continued**

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**Applicable  
Treaties of the  
Vienna  
Convention on  
Consular  
Relations**

In the case of the United States, Article VI, clause 2 of the Constitution dictates that "*all treaties made....shall be the supreme law of the land*". The agreements herein reflect the status of treaties for purposes of international law. They are binding on federal, state, and local government officials to the extent that they pertain to matters within such officials' competence.

The following are the relevant portions of the Vienna Convention on Consular Relations:

- **Article 5, (a) and (h)**, provide that the Consular functions consist of
  - (a) Protecting, in the receiving State, the interests of the sending State and its nationals, both individuals and bodies corporate, within the limits permitted by international law.
  - (h) Safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons.
- **Article 36.1, (a)** on communication and contact with Nationals of the sending State.
  - (a) Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to Consular officers of the sending State.
- **Article 37, (b)** information in cases of death, guardianship or trusteeship, wreck, and air accident.
  - (b) To inform the competent Consular post without delay of any case where the appointment of guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;
- **Article 38**, communication with the authorities of the receiving State.

In the exercise of their functions, Consular officers may address the competent

  - local authorities of their Consular district
  - central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usage of the receiving State or by the relevant international agreements.

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## **Manual of Procedures, Continued**

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### **Implications of the Treaties**

Pursuant to Article VI of the Consular Convention between the United States of America and the United Mexican States, 57 Stat.800; Treaty Series 985 (Bilateral Convention), and Article 38 of the Vienna Convention on Consular Relations, 21 U.S.T. 77, T.I.A.S. No. 6820 grants the Consulate of Mexico in San Bernardino the right to

- address courts within the Consular circumscription (San Bernardino and Riverside counties)
  - appear on behalf of its citizens in matters involving the custody of Mexican children and cases where the parental rights of Mexican Citizens are terminated, and
  - information and access regarding all aspects of these proceedings.
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### **Confidentiality of Case Records**

Article VI and VIII of the Bilateral Convention expresses in relevant portion the right of Consular officers to information and access to nationals that shall be observed in cases involving the protection of children.

- Foreign dignitaries have a policy of maintaining all matters confidential that are related to legal affairs of its nationals, and particular care is placed with cases involving custody and adoption of children.
  - The Rule of the Superior Court authorizes the sharing of information with foreign and U.S. Consulates when complying with notice requirements, or requesting assistance and services.
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### **Dual Citizenship**

A child who is a citizen of the United States and another country may be treated exclusively as a U.S. citizen when in the United States. Consular notification is not required if the child is a U.S. citizen. This is true even if the child's other country of citizenship is a mandatory notification country.

On March 20<sup>th</sup> 1998 a constitutional reform was enacted in Mexico. It established that no Mexican by birth shall be free of his/her nationality. If a child is Mexican by birth or was born overseas to a Mexican parent then he/she can conserve the Mexican nationality while maintaining other nationalities.

**Note:** Although Consular notification is not required for a U.S. born child with dual citizenship, it is highly recommended in cases involving custody issues of a Mexican child with dual citizenship or born to a Mexican parent (s).

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**Annex to the Memorandum of Understanding on Consular Protection of Mexican Nationals between the County of Riverside Department of Public Social Services, California, and the Consulate of Mexico in San Bernardino, California**

**Manual of Procedures, Continued**

**Staff Responsibilities**

The following table describes the process for ensuring compliance with the Vienna Convention on Consular Relations:

Stage	Description
1	<p>The case-carrying social worker shall</p> <ul style="list-style-type: none"> <li>▪ provide the Consulate of Mexico in San Bernardino with immediate notification and access when                             <ul style="list-style-type: none"> <li>- foreign nationals are involved in legal proceedings, both criminal and civil.</li> <li>- a child is taken into custody or when a guardianship or trusteeship is being considered with respect to a foreign national who is a child.</li> </ul> </li> <li>▪ provide the Consulate of Mexico with access to case records</li> <li>▪ inform the Department of Public Social Services Liaison to the Consulate, ( herein and after known as the Liaison to the Consulate), that a notification form is necessary for submission to the Consulate of Mexico in San Bernardino.</li> </ul> <p><b>Note:</b> The Emergency Response worker must provide immediate Consular notification when it is evident that a child is a foreign national. However, if the Emergency Response worker did not provide notice, it is the responsibility of the case-carrying social worker to provide such notice expeditiously.</p>
2	<p>Upon receipt of a referral from the case-carrying social worker, the Liaison to the Consulate shall</p> <ul style="list-style-type: none"> <li>▪ complete and forward requests between the case-carrying social worker and the Consulate of Mexico in San Bernardino for the following items:                             <ul style="list-style-type: none"> <li>- home study, the Department of Public Social Services DPSS 3345</li> <li>- parent search, the Department of Public Social Services DPSS 3343</li> <li>- notification to Consulate, the Department of Public Social Services DPSS 3344</li> <li>- supervisory report when child is placed out-of-country, the Department of Public Social Services DPSS 3342</li> <li>- Matricula ( Mexican Consular identification card).</li> <li>- criminal record</li> </ul> </li> <li>▪ complete the request for a birth certificate or dual citizenship and forward the information to the case-carrying social worker when available, and</li> <li>▪ coordinate with the Consulate of Mexico in San Bernardino and secure a visa when needed for social workers designated to transport and place children in Mexico, herein and after referred to as Delegates, traveling out-of-country in the company of a child.</li> </ul>

**Note:** When available the Consulate of Mexico in San Bernardino will provide the Liaison to the Consulate with

- information on the various requests, and
- requested birth certificate and the required visa.

*Continued on next page*

**Manual of Procedures, Continued**

**Working with Desarrollo Integral de la Familia (DIF) through the Mexican Consulate**

Employees of the Department of Public Social Services *shall not* conduct business outside the United States without making special arrangements with the Consulate of Mexico in San Bernardino and the social service agency of that country.

The Consulate of Mexico in San Bernardino is committed to assisting the Department of Public Social Services through its social service agency in Mexico, called DIF (Desarrollo Integral de la Familia) with

- home study requests
- parent locator requests
- transporting and relative placement, and
- monitoring relative placement of children in Mexico.

**Services Provided by the Mexican Consulate**

The Consulate of Mexico in San Bernardino in coordination with the Liaison to the Consulate will provide the following:

- Visas and work permits for designated social workers (delegates) to be able to conduct Department of Public Social Services business while transporting and placing children in Mexico.
- Birth Certificates and passports.
- Dual Citizenship.
- Matricula ( Mexican Consular identification card).
- Criminal records.
- Assistance with the immigration application process.

**Requesting Services**

The following staff shall be responsible for providing the services listed below in conjunction with the Consulate.

<b>Service</b>	<b>Description</b>
<b>Delegate</b>	
1	Coordinate with the Consulate of Mexico in San Bernardino and case-carrying social worker to make travel arrangements for the transportation of children for out-of-country placement.
2	Complete a home evaluation when needed.
3	Transport and place children internationally.

*Continued on next page*

**Manual of Procedures, Continued**

**Requesting Services (continued)**

<b>Service</b>	<b>Description</b>
<b>Liaison to the Consulate</b>	
1	Process requests for <ul style="list-style-type: none"> <li>▪ home study</li> <li>▪ parent search</li> <li>▪ notification to Consulate of Mexico in San Bernardino</li> <li>▪ supervisory report when child is placed out-of-country</li> <li>▪ birth certificate or dual citizenship</li> <li>▪ matricula ( Mexican Consular identification card).</li> <li>▪ criminal record</li> <li>▪ assistance with the immigration application process.</li> </ul>
2	Forward the information to the case-carrying social worker when available.

**Consulate’s Role in Providing Services**

The Consulate of Mexico in San Bernardino is committed to working with the Department of Public Social Services in providing needed services to ensure the safe placement of Mexican nationals.

In an effort to meet the goal of safe placement, the Consulate of Mexico in San Bernardino shall

- provide the appropriate travel documents needed to transport and place children out-of-country
- facilitate/coordinate the placement of children with DIF
- process requests for
  - home study (to be completed in approximately four (4) to six (6) weeks depending on the region where the home is located)
  - parent search
  - notification to Consulate of Mexico in San Bernardino
  - supervisory report when child is placed out-of-country
  - birth certificate or dual citizenship
  - visa
  - matricula ( Mexican Consular identification card).
  - criminal record (to be completed in approximately eight (8) weeks), and
- provide legal advice/assistance, when needed, with the U.S. immigration application process.

**Note:** The agreed upon time frame is subject to negotiation to accommodate Mexican holidays. The above time frames exclude Mexican holidays.

*Continued on next page*

**Manual of Procedures, Continued**

**Requesting Matriculas and Criminal Records**

The case-carrying social worker shall provide the Liaison to the Consulate with the following information when requesting Matriculas for children to be placed in Mexico and criminal record checks on potential caregivers.

<b>Type of Request</b>	<b>Required Information</b>
Matricula for child to be placed in Mexico.	<ul style="list-style-type: none"> <li>▪ child identification card, passport, or school identification card</li> <li>▪ letter on department letter head stating that the case-carrying social worker is requesting the Matricula with attached photo of the child, and</li> <li>▪ money order for applicable fee.</li> </ul>
Criminal records check for potential caregiver.	<ul style="list-style-type: none"> <li>▪ birth certificate (when available)</li> <li>▪ identification card, voting card, passport, Matricula, driver’s license, military card or school identification card</li> <li>▪ fingerprints of both hands (may be taken at the Sheriff’s Department or at the Consulate of Mexico in San Bernardino)</li> <li>▪ six (6) photographs                             <ul style="list-style-type: none"> <li>- three (3) front view</li> <li>- three (3) side view, and</li> </ul> </li> <li>▪ money order to cover the expense for the criminal records check.</li> </ul> <p><b>Note:</b> See Attachment I - Datos Del Solicitante - Personal Information Form to a Consulate - available for use by the Liaison to the Consulate.</p>

**Process For Criminal Records Check**

The following table describes the process involved following receipt of a request for a criminal records check by the Liaison to the Consulate.

<b>Stage</b>	<b>Description</b>
1	The Liaison to the Consulate sends the request to the Consulate of Mexico in San Bernardino.
2	The Consulate of Mexico in San Bernardino forwards the request for criminal records clearance to the “Procuraduria General de La Republica” or the Ministry of Foreign Affairs in Mexico.

*Continued on next page*

**Manual of Procedures, Continued**

**Process For Criminal Records Check (continued)**

<b>Stage</b>	<b>Description</b>
3	The "Procuraduria General de La Republica" and/ or the Ministry of Foreign Affairs provides the Consulate of Mexico in San Bernardino with the criminal record information within approximately eight (8) weeks from the date of receipt of the request by the Consulate.
4	The Consulate of Mexico in San Bernardino supplies the information to the Liaison to the Consulate.
5	The Liaison to the Consulate forwards provided information to the case-carrying social worker.

**Requesting Visa, Birth Certificate and Registering a Foreign Born Child**

Required documents and information shall be provided to the Liaison to the Consulate when requesting a visa to Mexico, a birth certificate or dual citizenship for a Mexican National.

**Note:** United States citizens traveling to Mexico as tourists do not have to apply for a visa. A tourist card is issued upon entry to Mexico and is good for up to 180 days. Citizens of other countries may require a visa when visiting Mexico depending on the Bilateral agreements signed between their countries and Mexico.

<b>Type of Request</b>	<b>Information Provided by</b>	<b>Required Documents/Information</b>
Tourist Card	Delegate	<ul style="list-style-type: none"> <li>▪ a valid U.S. passport for a U.S. Citizen (original and a copy of passport)</li> <li>▪ a valid U.S. passport for a Permanent Resident issued by country of origin (original and a copy)</li> <li>▪ three (3) photos front view</li> <li>▪ letter on Department of Public Social Services letterhead stating purpose of trip and assuming financial responsibility for case-carrying social worker while in Mexico (original and one (1) copy)</li> <li>▪ copy of minute order authorizing placement in Mexico</li> <li>▪ the Department of Public Social Services Identification Card (original and a copy)</li> <li>▪ trip itinerary</li> <li>▪ cash for applicable fee, and</li> <li>▪ letter from the Consulate of Mexico in San Bernardino Department of Protection including all the necessary travel documents for the delegate and child.</li> </ul>

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**Manual of Procedures, Continued**

**Requesting Visa, Birth Certificate and Registering a Foreign Born Child (continued)**

<b>Type of Request</b>	<b>Information Provided by</b>	<b>Required Documents/Information</b>
Birth Certificate	Case-carrying social worker	<ul style="list-style-type: none"> <li>▪ name of the child as it appears on the birth certificate</li> <li>▪ date and place of the child’s birth in Mexico</li> <li>▪ name of the child’s parents, and</li> <li>▪ money order to cover the request expense when applicable.</li> </ul> <p><b>Note:</b> Some areas in Mexico don’t charge a fee for a birth certificate while others do.</p>
Registering a Foreign Born Child	Case-carrying social worker	<ul style="list-style-type: none"> <li>▪ an original certified birth certificate of the applicant child, issued by the Recorder of Vital Statistics, duly certified by the Secretary of State, of the State of California, bearing an original seal of the state of California “Apostille”</li> <li>▪ identification cards of the parents, and</li> <li>▪ money order for appropriate fee if requesting a certified copy of a Mexican birth certificate.</li> </ul>

**Process For Visa and Birth Certificate**

The following table describes the process involved in obtaining a visa, a birth certificate following receipt of a request by Liaison to the Consulate.

<b>Stage</b>	<b>Description</b>
1	The Liaison to the Consulate sends the required documents/information to the Consulate of Mexico in San Bernardino.
2	The Consulate of Mexico in San Bernardino processes the request for visa and/or birth certificate.
3	The Consulate of Mexico in San Bernardino provides the Liaison to the Consulate with the required visa and/or birth certificate. <b>Note:</b> When requesting a birth certificate for a Mexican born child, the request is sent to Mexico. When the birth certificate is issued it is sent to the Consulate of Mexico in San Bernardino. However, when the request is to register a foreign born child and upon the presentation of the proper documentation, the Consulate of Mexico in San Bernardino will register the child (non-Mexican born) and issue a Mexican birth certificate.
4	The Liaison to the Consulate forwards provided documents to the delegate and/or case-carrying social worker.

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**Manual of Procedures, Continued**

**Delegates**

Selected social workers from the five (5) regions of Riverside County have been chosen to represent their region with the Consulate of Mexico in San Bernardino for the purpose of facilitating the transport and placement of dependent children in Mexico.

When transporting and placing children in Mexico, the delegates shall coordinate with the Consulate of Mexico in San Bernardino and DIF (Desarrollo Integral de la Familia) the travel and placement arrangements.

The delegates shall be able to

- transport and place dependent children out-of-country
- perform their role as social workers, and
- assess/investigate the placement when needed.

<b>If...</b>	<b>and the...</b>	<b>then the...</b>
it is in the best interest of a child to be placed out-of-country	Juvenile Court has ordered such placement	case-carrying social worker shall <ul style="list-style-type: none"> <li>▪ contact the delegates, and</li> <li>▪ jointly arrange for the transport and safe placement of the child.</li> </ul>

**Out-of-Country Placement**

The following staff shall be responsible for completing the activities listed below when placing children out-of-country.

<b>Activities</b>	<b>Description</b>
<b>Case-carrying Social Worker</b>	
1	Provide the delegate with <ul style="list-style-type: none"> <li>▪ certified court order authorizing out-of-country placement</li> <li>▪ copy of latest court report, and</li> <li>▪ child's                             <ul style="list-style-type: none"> <li>- passport</li> <li>- birth certificate</li> <li>- social security card (for U.S. born)</li> <li>- immunization records</li> <li>- school records.</li> </ul> </li> </ul> <p><b>Note:</b> A United States passport must be obtained for children with United States or dual citizenship prior to a Judicial Officer signing the order authorizing out-of-country placement. A passport shall not be processed once a placement order has been signed.</p>
2	Coordinate travel arrangements with the delegate.

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**Manual of Procedures, Continued**

**Out-of-Country Placement (continued)**

<b>Activities</b>	<b>Description</b>
<b>Delegate</b>	
1	Provide the Consulate of Mexico in San Bernardino, three (3) weeks prior to traveling, with the <ul style="list-style-type: none"> <li>▪ documents provided by the case-carrying social worker, and</li> <li>▪ travel itinerary.</li> </ul>
2	Appear at the Consulate of Mexico in San Bernardino with the child three (3) days prior to traveling, to obtain proper travel documentation.
3	Inform the <ul style="list-style-type: none"> <li>▪ regional manager</li> <li>▪ supervisor, and</li> <li>▪ stand by call back supervisor of the impending out-of-country travel.</li> </ul>
4	Provide the regional manager and supervisor with a copy of the travel itinerary.
5	Obtain the international cell phone from Operational Deputy Director.
6	Upon successful placement, provide <ul style="list-style-type: none"> <li>▪ the original letter confirming placement, the Department of Public Social Services 3317 – Acta de Recepcion del Minor/Menores Repatriados, to the case-carrying social worker, and</li> <li>▪ a copy of the letter to the Consulate of Mexico in San Bernardino and receiving agency.</li> </ul>
7	Notify the United States Consulate/Embassy in the receiving country of the placement when the case involves a United States citizen.

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## **Manual of Procedures, Continued**

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- Consulate's Role** To assist in an out-of-country placement, the role of the Consulate of Mexico in San Bernardino shall include
- preparing a file on the child and contacting the appropriate child protective services agency in the receiving country to arrange for the child's placement
  - providing the delegate with
    - a letter and all necessary travel documents
    - contact numbers for child protective services and other governmental agencies, and
  - coordinating with the child protective services agency in the receiving country with the arrangements for ground transportation and hotel reservations.
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**Special Immigrant Status and Eligibility Requirements**

Dependent children who do not have legal United States residency status may be eligible for special provisions to gain a special immigrant status that would allow lawful stay in the country. Thus an undocumented child who has been declared dependent of the Juvenile Court and has a court-approved permanent placement service plan is eligible for classification as a special immigrant (Immigration Act of 1990, Section 101(a)(27)(J)(ii)) if **all** of the following conditions are met:

- The child is under twenty-one (21) years of age.
- The child is unmarried.
- The Juvenile Court order **must** reflect the following findings:
  - That the child continues to be a dependent of the Juvenile Court.
  - That the beneficiary (child) is eligible for permanent placement due to abuse, neglect or abandonment.
  - That it is not in the child's best interest to be returned to the country of nationality or country of last habitual residence.

A referral to Liaison to the Consulate shall be completed immediately following the hearing in which the Selection and Implementation Hearing Welfare and Institutions Code (W&IC) 366.26 date has been set.

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**Maintaining Dependency Status**

A child **will not be eligible** under the Immigration Act of 1990 if the court has terminated dependency.

To prevent jeopardizing the eligibility of undocumented children who have existing dependency petitions under this act, case-carrying social workers shall recommend the dependency be maintained until the interview by the Immigration and Naturalization Service (or the proper Agency) is completed.

**Note:** Dependency must be continued until the Liaison to the Consulate sends the case-carrying social worker and supervisor a copy of the approval notice of status as a Lawful Permanent Resident form I-181 to indicate that dependency may be terminated.

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## Manual of Procedures, Continued

### Referring Cases for Special Immigrant Classification

The case-carrying social worker shall complete the following steps when the Welfare and Institutions Code (W&IC) 366.26 Selection and Implementation Hearing is set.

Step	Action
1	Review the case and determine if the undocumented child is eligible under the Immigration Act of 1990.
2	Complete the Case Information Checklist for an eligible child.
3	Submit the completed Case Information Checklist and the following attachments to the Liaison to the Consulate : <ul style="list-style-type: none"> <li>▪ copy of the Petition (Jurisdictional/Dispositional Hearing)</li> <li>▪ copy of the Minute Order stating the Permanent Plan status</li> <li>▪ copy of the updated Face Sheet</li> <li>▪ copy of the detention court report</li> <li>▪ copy of the latest court report</li> <li>▪ placement history</li> <li>▪ copy of Birth Certificate, baptismal records or any other I.D. from the country of origin</li> <li>▪ date of entry and port of entry into the United States</li> </ul>
4	Provide additional information upon the request of the Liaison to the Consulate .
5	Send inquiries regarding status of referrals to the Liaison to the Consulate.

### Processing Special Immigrant Cases

Upon the receipt of the necessary information to process the adjustment of status request the Liaison to the Consulate shall complete the following:

Step	Action
1	Complete and file the adjustment of status application packet with the Immigration and Naturalization Service (or the proper Agency). <b>Note:</b> For expedited cases the Liaison to the Consulate shall request Immigration and Naturalization Service (or the proper Agency) to expedite the application request or request the assistance of the Consulate of Mexico in San Bernardino in filing expeditiously through the Department of Protection.
2	Provide/arrange for the transportation of a child to Immigration and Naturalization Service (or the proper Agency) related appointments.
3	Send a copy of the Lawful Permanent Resident card - I-181 to the case-carrying social worker and supervisor to indicate that dependency may be terminated.
4	Mail the Lawful Permanent Resident Card to the child by certified mail, send a copy to the case-carrying social worker and retain a copy on file.

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## **Manual of Procedures, Continued**

**Processing  
Special  
Immigrant  
Cases with the  
Assistance of  
the Mexican  
Consulate**

Upon requesting the assistance of the Consulate of Mexico in San Bernardino, Department of Consulate Protection of Mexican Nationals in filing for the adjustment of status, the Liaison to the Consulate shall provide additional information as required by the Consulate. The Liaison to the Consulate shall complete the following:

<b>Step</b>	<b>Action</b>
1	Provide the Consulate of Mexico in San Bernardino, Department of Consulate Protection of Mexican Nationals with the completed adjustment of status application packet.
2	Coordinate/provide/arrange with the Consulate of Mexico in San Bernardino Department of Protection for the transportation of a child to the Immigration and Naturalization Service (or the proper Agency) related appointments.
3	Send a copy of the lawful Permanent Resident I-181 to the case-carrying social worker and supervisor to indicate that dependency may be terminated.
4	Mail the Lawful Permanent Resident Card to the child by certified mail, send a copy to the case-carrying social worker and retain a copy on file.

**Eligibility Under  
Violence against  
Women's Act  
(VAWA)**

A child in out-of-home placement who does not qualify for a legal status under the Act of 1990 may qualify under the Violence Against Women Act (VAWA).

To be eligible for Violence Against Women Act the child must demonstrate that he or she has been "battered" or "subjected to extreme cruelty" by the parent with legal United States resident status and

- is the child or stepchild of a lawful permanent resident or United States citizen
- is living in the United States, and
- will suffer extreme hardship if the child had to go back to his/her country.

**Note:** If the above conditions are met, the child's petition does not have to be supported by the abusive parent. The abuse does not need to have occurred in the U.S.

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## **Manual of Procedures, Continued**

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**Filing Process Under VAWA**

While individual applicants are responsible for filing under Violence Against Women Act, case-carrying social workers shall

- inform the dependent child and the caregiver regarding the Violence Against Women Act provisions to adjust one's immigration status, and
- refer for more information and assistance on the Violence Against Women Act application to Consulate of Mexico in San Bernardino Department of Protection.

To be considered for Violence Against Women Act, the child applicant can file one (1) of the following petitions:

- Self-Petition
  - Suspension of Deportation/Cancellation of Removal
-