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I. SUBJECT

There are times when children with whom OCFS is intervening are not United States Citizens. This policy outlines the procedures and special considerations that must occur when working with a child who has a legal status other than U.S. Citizen or who are here without immigration status. Staff needs to be aware of the effects that the Department's actions can have on a child's immigration status and the importance of the child's immigration status in their OCFS involvement. It is important to remember, however, that child protection services are provided without regard to a parent or child's immigration status. *See*, 8 U.S.C. §1611(b)(1)(D). This policy highlights when it may be appropriate to apply for Special Immigration Juvenile Status (SIJS) in cases involving non-U.S. Citizen Children. However, SIJS is just one of many immigration statuses that may be used in OCFS interventions. Immigration is a complex field of law with many potential consequences and certain options may only be appropriate in certain cases. In all cases involving non-U.S. Citizen Children, the Supervisor, AAG, and Program Administrator must be notified.


II. PHILOSOPHY

OCFS is committed to ensuring child safety, permanency, and well-being regardless of legal citizenship status. OCFS is further committed to ensuring that children's cultural and ethnic traditions are respected and understood and that those working with the child are culturally competent.

III. PURPOSE

This policy will provide guidance to staff when working with children who may not be U.S. Citizens. SIJS may be a beneficial option for eligible children at many stages of OCFS intervention. For example, one of the effects of SIJS is that it can provide a faster route to legal status for children who are being adopted because SIJS applications must be adjudicated within six (6) months. Without SIJS, undocumented children must be placed for two (2) years prior to the age of eighteen (18) in order to acquire legal status through adoption.

Intervening on behalf of children who have legal status other than U.S Citizen, or who are here without immigration status requires OCFS staff to have knowledge of who to contact regarding particular Refugee and Immigration laws and systems.

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IV. PRACTICE MODEL

Permanency planning for children begins at first contact with Child and Family Services. We proceed with a sense of urgency until permanency is achieved.

Permanency is best achieved through a legal relationship such as parental custody, guardianship, or adoption. ‘Stability’ is not permanency.

V. LEGAL BASE

Special Immigration Juvenile Status (SIJS)

8 U.S.C. §1101(a)(27)(J). This status grants lawful permanent residence to non-US citizen children who are unmarried and under the age of twenty-one (21) (at the time of application) after a state court makes specific findings with regards to those children. SIJS can provide undocumented children in foster care and other out-of-home placements a path to legal immigration status and permanency.


It is important to establish a child’s immigration status as soon as possible so that no options are eliminated. For example, the definition of “child” under SIJS includes persons until they are twenty-one (21) years old, whereas under Maine law, a person is only a child until eighteen (18) years of age. There are also several things which can prevent the granting of SIJS, such as certain criminal activities. However, an individual may still be eligible for SIJS while being barred under other methods of admissibility. In addition to SIJS, there may be additional avenues for relief under immigration laws (U Visa, T visa, VAWA, asylum, family-based immigration petitions, etc.).

There are two components of the SIJS process:

The Maine District Court in a child protection case is responsible for making specific factual findings about the child so that the child may then use those findings to apply for SIJS from USCIS (U.S. Citizenship and Immigration Service, which is part of the Department Homeland Security). The USCIS is then responsible for making the immigration decision determining whether a child will be granted SIJS

Before a child can apply for SIJS from USCIS, the district court must find:

- 1.) That the child is physically in the United States, is unmarried, and less than 21 years old;

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- 2.) That the juvenile is a dependent of the court legally placed with a state agency, private agency, or private person;
- 3.) That it is not in the child's best interests to return to the juvenile's home country or the last country lived in; and
- 4.) The juvenile cannot be reunited with a parent because of abuse, abandonment, neglect, or similar reason under state law. (NOTE: does not require *serious* abuse and neglect required to get a jeopardy order. See, 22 M.R.S.A. §4002(6)).

Federal foster care and adoption assistance payments, however, can only be provided to Qualified Aliens and U.S. Citizens. All Permanent Residents (persons with a green card), refugees, and persons granted asylum (among others), are Qualified Aliens, See 8 U.S.C §1641

VI. DEFINITIONS:

Alien:

The term "alien" means any person not a citizen or national of the United States.
 8 U.S.C. §1101(a)(3)

Admission and Admitted:

The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer. 8 U.S.C. §1101(a)(13(A))


Child:

The Immigration and Nationality Act (INA) defines a "child" as an unmarried person under the age of twenty-one (21). See 8 U.S.C. §1101(b)(1).

However, Maine law defines a "child" as a person under the age of eighteen (18). See, 22 M.R.S.A. §4002(2).

Immigrant:

The term "immigrant" means every alien except an alien who is within one of the classes of Nonimmigrant Aliens listed in 8 U.S.C §1101(a)(15)(A)-(V). See definition of Nonimmigrant alien, below.

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Lawfully Admitted for Permanent Residence (Permanent Resident Alien):

The term “lawfully admitted for permanent residence” means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. 8 U.S.C.A. §1101(a)(20)

Lawful Permanent Resident (LPR) or Permanent Resident Alien:


Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent resident status by the Department of Homeland Security in the United States. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant alien categories. See 8 U.S.C. §1101(a)(15). **Example:** An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien.

Nonimmigrant Alien:

A person, not a citizen of the United States, who enters the United States and is allowed to stay for a specific reason and for a limited amount of time. The nonimmigrant alien must have a permanent home outside of the United States and have Immigration and Naturalized Service (INS) approval as nonimmigrant (meaning the person cannot stay in the United States or become a United States citizen). Some examples include, government officials from other countries, individuals vacationing in the United States, students visiting the United States on foreign exchange, and persons engaged to be married to a United States citizen.

Refugee:

Any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country where they last habitually resided, and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Past persecution of others, or assisting in the persecution of others, based on race, religion, nationality, membership in a particular social group, or political opinion will bar an individual from “refugee” status. Individuals are granted refugee status overseas and brought to the United States for resettlement and are eligible for Office of Refugee Resettlement Services. A person must be

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outside the United States to be granted refugee status. Individuals already present in the U.S. may apply for asylum instead. 8 U.S.C. §1101(a)(42)

VII. PROCEDURE STATEMENT

Under the Vienna Convention on Consular Relations, when DHHS takes custody or transfers guardianship of a minor foreign national, DHHS must send notice to the appropriate consular post of that nation.

INTAKE


The intake caseworker should take steps to verify the citizenship or immigration status of a child as part of the initial intake procedure. Immigration issues often take years to resolve and may have impacts on not only the child's current welfare, but also on the child's adult life. Therefore, it is critical to clarify the immigration status of children as soon as possible, and inform the AAG, so that DHHS may decide whether to involve attorneys specializing in immigration matters.

CHILD PROTECTION ASSESSMENT

Caseworkers need to identify the citizenship of all children with whom the Department is working because if the assessment becomes a case (either a service or custody case) citizenship must be clearly identified. If the child is not a United States citizen, the AAG must be notified immediately and the caseworker must follow this agency policy carefully. The Supervisor and Program Administrator should also be notified.

The same assessment standards and tools apply to all cases regardless of the immigration status of the child as every child, regardless of immigration status, is entitled to be safe from the threat of serious harm. However, due to the complex nature of immigration law, the caseworker should consult with the AAG as soon as possible. Specific legal requirements must be met if the child is to be eligible for SIJS or other immigration relief.

Caseworkers must document all efforts to identify and locate, parents, relatives, and other social supports for children in the United States or internationally. If the child cannot be reunited with one or both parents, the caseworker should explore whether SIJS is appropriate. This decision should be made in consultation with the AAGs and outside immigration counsel, in accordance with this policy. Only the Attorney General's Office can authorize the hiring of outside immigration counsel to represent a child.

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After the required SIJS factual findings are made by the District Court, the child should file a FORM I-360 (“Petition for Amerasian, Widow(er), Special Immigrant”) and FORM I-485 (“Application to Register Permanent Residence or Adjust Status”). The Immigrant Legal Advocacy Project is an excellent resource for children who are going through the immigration process.

PERMANENCY PLANNING

If the child is in the Department’s custody, the child is entitled to permanency. A child’s immigration status should not stand in the way of achieving permanency in the same, expedient manner as a child who is a United States citizen. Undocumented children who emancipate from foster care without SIJS are at risk of deportation and cannot gain access to employment or government services.

The caseworker should check the case record for previous attempts to reach out to and engage parents, relatives, and other supports in the United States and internationally. The caseworker should consult with an AAG if there are any concerns about a child’s immigration status impacting permanency, whether or not those concerns were raised previously. Program Administrators should be made aware of these cases.

NOTE

Immigration law is a complex and dynamic field of law with far ranging implications. Additionally, many actions and decisions in the world of child welfare affairs may have adverse immigration consequences. Please consult an AAG with any questions.

RESOURCES

Pine Tree Legal Assistance Immigration Information
<http://ptla.org/immigration/family-law#childprotection>
 Immigrant Legal Advocacy Project
<http://www.ilapmaine.org/>