

IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY

Inadmissibility (8 USC § 1182(a)) and Deportability (8 USC § 1227(a))

Although not a conviction for immigration purposes, a delinquency adjudication still can create problems for juvenile immigrants. Certain grounds of inadmissibility (bars to obtaining legal status) and deportability (loss of current legal status) do not depend upon conviction; mere “bad acts” or status can trigger the penalty. The following are commonly applied conduct-based grounds and the juvenile court dispositions that might provide the government with evidence that the person comes within the ground.

Delinquency Disposition

Immigration Penalty & Waiver

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| Drug Trafficking: Sale, possession for sale, cultivation, manufacture, distribution, delivery, other drug trafficking offenses | Inadmissible where DHS/ICE has “reason to believe” participation in drug trafficking No waivers except for the S, T, or U visa. But arguments are emerging that this ground should not apply to juvenile conduct. |
| Drug Abuse or Addiction: Repeated drug findings, finding of abuse (more than one time experimentation in the last year), addiction to drugs | Inadmissible and deportable for drug addict or abuser Waivers often available |
| Behavior showing a physical or mental condition that poses a current threat to self or others: including suicide attempt, torture, mayhem, repeated sexual offenses against younger children (predator), perhaps repeated alcohol offenses (showing alcoholism) | Inadmissible for physical or mental disability posing threat to self or other Waivers may be available |
| Prostitution (being the prostitute or the pimp, not the customer) | Inadmissible for engaging in prostitution Waivers often available |
| Violations of protective or “no-contact” orders designed to prevent repeated harassment, credible threats of violence or bodily injury | Deportable where court finds violation of domestic violence protective order designed to prevent repeated harassment, credible threats of violence or bodily injury Some waivers available |
| False Claim to U.S. Citizenship: Use of false documents and fraud offenses relating to false claim to citizenship | Inadmissible and deportable for false claim to U.S. citizenship Waivers may be available, e.g., SIJS and U Visa |

WARNING! Be aware that anyone 16 or older who intentionally participates in a gang to further the illegal activity of the gang is a top priority for immigration apprehension, detention, and deportation. Violent offenses and sex offenses can cause also problems for noncitizen youth including being placed in secure detention and denial of immigration applications as a matter of discretion. Go to www.ilrc.org for more information and resources on immigration consequences of delinquency.

Diagnostic Questions For Noncitizen Youth: Determining Potential Avenues For Legal Status

1. Is the child a U.S. citizen without knowing it?
 - A. Anyone born in the U.S. or Puerto Rico is a citizen, and born in Guam, American Samoa, or Swains Island is a national who can't be deported.
 - B. If person born outside the U.S., ask two threshold questions to see if the person automatically is a **U.S. citizen**. If the answer to either might be yes, refer for immigration counseling.
 - Was there a U.S. citizen parent or grandparent at time of person's birth? Or,
 - Before person's 18th birthday, did both of these events happen (in either order): child became a permanent resident, and at least one natural or adoptive (but not step-) parent having some form of custody over the child is or becomes a U.S. citizen. (Tip: Encourage the parent to naturalize!)
2. Is the child currently under juvenile court jurisdiction (including delinquency) where the court has ruled that the child (a) *cannot be reunified with one or both parents* because of abuse, neglect or abandonment or a similar basis under state law and (b) that it would not be in the child's best interest to be returned to the home country? The child may qualify for ***special immigrant juvenile status***.
 - **IMPORTANT:** If possible, the child should stay under the jurisdiction of the court until the entire SIJS application is adjudicated, so watch out for youth aging out. If this is not possible, request that the court explicitly state that termination of jurisdiction is being done based on age.
3. Has the child been abused by a *U.S. citizen or permanent resident* spouse or parent, including adoptive, natural, or step-parent? Has the child's parent been a victim of domestic violence by his/her U.S. citizen or permanent resident spouse? Consider ***VAWA relief***.
 - Child doesn't need to be under court jurisdiction, and may be residing with the other parent.
 - Child will need to show "good moral character." Violent crimes will be a negative factor, but can be offset if there is a connection between the abuse and the bad conduct.
4. Has the child been a victim of a serious crime or of human trafficking? Is the child willing to cooperate with authorities to investigate or prosecute the offense? Consider the ***S, T, or U visas***.
 - These are some of the few forms of relief available even if the child has a drug trafficking delinquency disposition.
5. Does the child have a *U.S. citizen or permanent resident parent or spouse* who is willing to petition for her? Investigate **family immigration**.
 - To immigrate through an adoptive parent the adoption must be completed by the child's 16th birthday. These laws are complicated if the Hague Convention applies.
6. Does the child come from a country that's recently experienced *civil war, natural disaster, or political persecution*? Investigate various forms of relief such as **asylum and temporary protective status**.
7. Did the child come to the U.S. before reaching the age of 16 and before June 15, 2007? Was she age 30 or younger as of June 15, 2012? Investigate **Deferred Action for Childhood Arrivals (DACA)**.
 - Juvenile delinquency adjudications do not automatically bar an individual from qualifying, however, they can and will be considered as a matter of discretion.
 - President Obama announced an expansion to DACA on November 20, 2014, intended to be implemented by February 18, 2015. However, due to a lawsuit, at the time of writing, this program has not been implemented. If the expansion goes into effect, it will remove the "age cap," meaning applicants will no longer need to have been under 30 as of June 15, 2012, and move the deadline for when a person must have been in the U.S. up to January 1, 2010.