

# **Immigration Options for Undocumented Immigrant Children**

**A collection of fact sheets on:**

**Special Immigrant Juvenile Status (SIJS)  
Violence Against Women Act (VAWA)**

**Family Visas**

**U Visas**

**U.S. Citizenship**

**Asylum**

**Temporary Protected Status**

Note: Advocates should only use these fact sheets for quick reference.  
For additional information and/or assistance,  
please see the Immigration Resources section at the back of this packet.



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## **SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)**

*Special Immigrant Juvenile Status (SIJS) provides lawful permanent residency to children who are under the jurisdiction of a juvenile court and will not be reunified with one or both parents due to abuse, neglect, abandonment or a similar basis in state law.*

### **What are the benefits of Special Immigrant Juvenile Status (SIJS)?**

- Allows the child to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the child to work and serves as a government-issued identification card.

### **Who is eligible for SIJS?**

A child who is under the jurisdiction of a juvenile court, where the court has found (a) that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law, and (b) that it would not be in the child’s best interest to be returned to the home country. “Juvenile court” is a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.

### **What are the requirements for SIJS?**

1. The juvenile court must declare the child to be a court dependent, must legally commit the child to a state department or agency, or must legally commit the child to the care of an individual or entity appointed by a state or juvenile court in the United States, including children in dependency proceedings, delinquency proceedings, and guardianship through a probate court.
2. The SIJS application must include a special order signed by the juvenile court finding that the child cannot be reunified with one or both parents because of abuse, neglect, abandonment or a similar basis in state law. The court’s order, or a social worker’s statement, must provide at least a brief reference to facts supporting the finding of abuse, neglect, abandonment or a similar basis in state law.
3. The juvenile court must find that it is not in the child's best interest to return to her/his country of origin. This can be proven through an interview with the child, a home study in the home country, or other evidence showing there is no known appropriate family in the home country.
4. The child must be under 21 and unmarried. The child’s age can be proven with a birth certificate, passport, or other official foreign identity document issued by a foreign government. The child can be a parent of his or her own children. SIJS cannot be denied based on age if the noncitizen was under 21 and unmarried on the date of the SIJS application.

*For more information, download the ILRC’s publication “[Special Immigrant Juvenile Status](#).”*

## **VIOLENCE AGAINST WOMEN ACT (VAWA)**

*The Violence Against Women Act permits certain abused family members of U.S. citizens or permanent residents to self-petition for a green card without the cooperation of the abuser.*

### **What are the benefits of VAWA?**

- Allows the abused family member to remain in the United States and eventually obtain lawful permanent residency (a “green card”).
- Provides an employment authorization document that allows the abused family member to work and serves as a government-issued identification card.
- Allows the abused family member to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

### **Who is eligible?**

- An abused noncitizen child or spouse of a U.S. citizen or permanent resident parent.
- An abused noncitizen parent of a U.S. citizen.
- A child (whether abused or not) of a parent who was abused by a U.S. citizen or permanent resident spouse. In other words, a 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.

*NOTE:* Both male and female abused children (or spouses) are eligible to apply.

### **What are the requirements for VAWA?**

1. The abusive family member is or was a U.S. citizen or lawful permanent resident.
2. The abused family member resided at some point in time with the abusive U.S. citizen or lawful permanent resident parent, in or out of the United States.
3. The child or spouse qualifies as a “child” or “spouse” under immigration law.
  - For children, the child must be unmarried and under the age of 21.
  - For spouses, the marriage must have been legal and valid in the location in which it took place.
  - There are some exceptions to these requirements.
4. The abused family member must be a person of “good moral character.”
5. The abuse must constitute battery or “extreme cruelty” which can include psychological or emotional abuse – the abused family member need not suffer *physical* abuse to be eligible.

*For more information, order the ILRC’s publication  
“[The VAWA Manual: Immigration Relief for Abused Immigrants.](#)”*

# FAMILY VISAS

*Some noncitizens may be able to immigrate legally through a U.S. citizen or lawful permanent resident family member.*

## **What are the benefits of immigrating through a family member?**

A family visa permits a noncitizen to immigrate to the United States through a family member. To immigrate means to become a lawful permanent resident (“green card” holder).

## **Who is eligible to immigrate through a family member?**

Some noncitizens can immigrate quickly through a relative. These include the spouse, unmarried child under 21, or parent (if the son or daughter is 21 years or older) of a U.S. citizen. Others may have to wait up to several years to immigrate. These include sons or daughters of U.S. citizens who are married or over age 21; spouses and unmarried sons and daughters of permanent residents; and siblings of U.S. citizens where the citizen is 21 years or older. How long a family member will have to wait to immigrate through a family petition depends upon the noncitizen’s native country and the relationship to the family member who submitted the visa petition.

## **What are the requirements for immigrating through a family member?**

1. The U.S. citizen or lawful permanent resident parent must prove his or her citizen or resident status and must prove the required family relationship with the noncitizen.
2. The U.S. citizen or lawful permanent resident family member must be willing to help the noncitizen through the process by attending immigration interviews and submitting an affidavit of support.
3. Some noncitizen family members will have to wait many years (approximately 4-22 years) before they are eligible to apply for lawful permanent residency. During that waiting time, they may not be able to remain in the United States.

*For more information, order the ILRC’s publication  
“Families & Immigration: A Practical Guide.”*

# U VISAS

*U visas are for noncitizens who are victims of serious crimes and can be helpful in the investigation or prosecution of those crimes.*

## **What are the benefits of the U visa?**

- The U visa begins as a temporary visa that allows the noncitizen to remain legally in the United States for four years. After three years in this status, the U visa-holder can apply to obtain lawful permanent residency (a “green card”).
- Provides employment authorization to allow the noncitizen to work.
- The U.S. Citizenship and Immigration Service (USCIS) can issue a U visa to the eligible noncitizen and to certain other family members.
- In some states, allows the noncitizen to receive some public benefits (in California this includes Medi-Cal, food stamps, CalWorks, etc.)

## **What are the requirements for the U visa?**

1. The noncitizen must have suffered substantial physical or mental abuse as a result of having been the victim of one of the following crimes: rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail, extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, perjury, or attempt, conspiracy, or solicitation to commit these or similar offenses in violation of federal, state or local criminal law.

2. The noncitizen 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 noncitizen must obtain certification from a federal, state or local law enforcement official, prosecutor, judge, or other authority investigating criminal activity, or from a USCIS official that shows that he or she has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime. A Child Protective Services (CPS) agency may also certify the noncitizen’s helpfulness if it has criminal investigative jurisdiction.

*For more information, order the ILRC’s publication  
[“The U Visa: Obtaining Status for Immigrant Victims of Crime.”](#)*

# ASYLUM

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

## **What are the benefits of asylum?**

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

## **What are the requirements for asylum?**

1. The noncitizen 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.

2. The noncitizen must fear persecution from the government of his or her home country or from a group that the government is unwilling or unable to control (for example, guerrillas or death squads).

3. The fear must be based on the noncitizen’s race, religion, political opinion, nationality or membership in a 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.

*Note: This form of relief is very complicated. Noncitizens who may qualify for asylum must consult with an expert immigration practitioner before applying.*

*For more information, order the ILRC’s publication “[Winning Asylum Cases.](#)”*

## **TEMPORARY PROTECTED STATUS**

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

### **What are the benefits of Temporary Protected Status (TPS)?**

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

### **What are the requirements for TPS?**

1. The noncitizen 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.
2. The noncitizen does not need to prove that he or she will be singled out for persecution in the home country.
3. The noncitizen cannot be subject to one of the criminal, security-related, or other bars to TPS.

### **Which countries are currently designated for Temporary Protected Status?**

The countries on the TPS list change. Recently they have included:

- Burundi
- El Salvador
- Honduras
- Liberia
- Nicaragua
- Somalia
- Sudan

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](http://www.uscis.gov) and follow the directions to get to information about Temporary Protected Status.

*For more information, order the ILRC's publication "[A Guide for Immigration Advocates.](#)"*

## **CONDITIONAL PERMANENT RESIDENCE**

*Conditional permanent residence is for noncitizens who have immigrated through a spouse within the first two years of the marriage. Because of immigration processing times, this is effectively only available to the spouses of U.S. citizens.*

### **What are the benefits of Conditional Permanent Residence?**

- Provides two years of resident status in the United States that may be extended to lawful permanent residence.
- Provides work authorization.

### **What makes this type of status “conditional?”**

The conditional permanent resident and his or her spouse must apply together to remove the conditions on this residence within the 90 days prior to the second anniversary of being granted conditional permanent residence. If the conditional permanent resident does not do this, he or she may lose conditional permanent residence and be removed from the United States. If the conditional permanent resident does do this successfully, he or she will become a legal permanent resident (have a regular “green card”).

### **Are there any exceptions to the rule above?**

Yes. There are waivers available to those conditional permanent resident spouses who cannot apply with the petitioning (U.S. citizen) spouse to have the conditions removed. They are available in the following situations:

- The conditional permanent resident spouse entered the marriage in good faith but the petitioning spouse subsequently died.
- The conditional permanent resident spouse entered the marriage in good faith, but the marriage was later terminated due to divorce or annulment.
- The conditional permanent resident spouse entered the marriage in good faith but has been battered or subjected to extreme cruelty by the petitioning spouse.
- The termination of permanent resident status and removal of the conditional resident spouse would result in extreme hardship to the conditional permanent resident spouse.

*For more information, order the ILRC’s publication  
[“Families & Immigration: A Practical Guide.”](#)*



# IMMIGRATION RESOURCES

*This list of resources is by no means exhaustive but provides some services available and national organizations willing to provide technical assistance and materials.*

## TECHNICAL ASSISTANCE PROVIDERS

### SPECIAL IMMIGRANT JUVENILE STATUS, VAWA AND U VISAS

#### **Asista**

515 28<sup>th</sup> Street  
Des Moines, IA 50312  
Tel. (515) 244-2469  
[questions@asistahelp.org](mailto:questions@asistahelp.org)

Asista's purpose is to centralize assistance for advocates and attorneys facing complex legal problems in advocating for immigrant survivors of domestic violence and sexual assault. They provide free technical assistance and training to legal services providers that receive grant funding from the U.S. Department of Justice Office on Violence Against Women.

#### **Immigrant Legal Resource Center (ILRC)**

1663 Mission Street, Suite 602  
San Francisco, CA 94103  
Tel. (415) 255-9499 ext. 6263  
[aod@ilrc.org](mailto:aod@ilrc.org)

The ILRC provides technical assistance via email, phone or fax Monday through Thursday from 10:00am to 3:00pm through its Attorney of the Day (AOD) service. This service is free to all California IOLTA-funded legal services programs and all San Francisco Bay Area nonprofit agencies.

#### **National Immigration Project of the National Lawyers Guild**

Ellen Kemp  
14 Beacon Street, Suite 602  
Boston, MA 02108  
Tel. (617) 227-9727  
[ellen@nationalimmigrationproject.org](mailto:ellen@nationalimmigrationproject.org)  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

The Project provides technical assistance, advice and resources to its members. It sponsors seminars and produces publications on a variety of subjects to develop and improve legal and advocacy skills.

**National Immigration Law Center (NILC)**  
3435 Wilshire Blvd., Suite 2850  
Los Angeles, CA 90010  
Tel. (213) 639-3900  
Fax (213) 639-3911  
[www.nilc.org](http://www.nilc.org)

NILC provides advice over the telephone and some training in the Los Angeles area. Special expertise in public benefits law and in T visas for victims of human trafficking.

## **B. Asylum**

**The Center for Gender and Refugee Studies**  
U.C. Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102  
Tel. (415) 565-4791  
Fax (415) 565-4865  
<http://cgrs.uchastings.edu/>

The Center for Gender and Refugee Studies (CGRS) provides legal expertise and resources to attorneys representing women asylum-seekers fleeing gender related harm, at both the practice and policy levels, and seeks to track decisions in these cases. CGRS also works to coordinate legal and public policy advocacy efforts through domestic and international networking, and engages in public education efforts in order to educate decision makers and the public and contribute to the formulation of national and international policy and practice.

## **WRITTEN AND OTHER MATERIALS**

### **A. Written Materials**

#### **Immigrant Legal Resource Center Publications**

The ILRC publishes the following books about areas of immigration law relevant to family and juvenile court issues. For a more complete list of ILRC publications, and for information on the most current pricing and editions available, please call (415) 255-9499 ext. 782, or visit the ILRC website at <http://ilrc.org/publications.php>.

*The VAWA Manual: Immigration Relief for Battered Immigrants* is a comprehensive guide for advocates working with immigrant survivors of domestic violence. This manual includes in-depth information on the VAWA self-petitioning requirements and process, adjustment of status, inadmissibility

and waivers, consular processing, conditional permanent residency, VAWA cancellation of removal, special immigrant juvenile status, and U visas.

*Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction.* This practical manual includes a clear explanation of the law and a discussion of problem cases, a sample completed application form, sample juvenile court judge's order, and a summary both of immigration adjustment of status applications and other types of immigration relief for children. *Also available as a free download at [www.ilrc.org](http://www.ilrc.org).*

*The U Visa: Obtaining Status for Immigrant Victims of Crime* can guide you through the entire process of handling an immigration case for a U visa applicant – from eligibility screening through adjustment of status to assisting eligible family members.

*A Guide for Immigration Advocates* is a large and comprehensive book about immigration law, written for paralegals. It includes clearly written material discussing forms of relief that would apply to noncitizens such as family visa petitions, suspension and asylum.

*Defending Immigrants in the Ninth Circuit: Impact of Crimes Under California and Other State Laws.* This is a comprehensive manual on the representation of non-citizens who have been accused or convicted of crimes. It discusses all the grounds of inadmissibility and deportability related to criminal offenses. Topics include drug convictions, admissions, addiction and abuse, aggravated felon status, crimes involving moral turpitude, and firearms offenses, as well as recent legislation. The manual includes an annotated chart analyzing 70 offenses under California law. It also features a comprehensive chapter on how to obtain post-conviction relief, including a discussion of legal requirements, practice tips, and sample briefs and papers, as well as a chapter on immigration holds and detainees.

## LISTSERVES

### **ILRC's Special Immigrant Juvenile Status listserve**

The ILRC SIJS listserve provides periodic legal and policy updates on Special Immigrant Juvenile Status. To join the listserve, go to: <http://ilrc.org/listserv.html>.

### **VAWA Updates**

The VAWA Updates listserve is maintained by the ASISTA Technical Assistance Project and provides ongoing updates about changes in VAWA and the new U visa provisions. To join the listserve, contact ASISTA at [questions@asistahelp.org](mailto:questions@asistahelp.org).

## WEBSITES

### **Asista**

[www.asistahelp.org](http://www.asistahelp.org)

The Asista website includes a resource library of all of the INS and USCIS policy memoranda relevant to VAWA, U visa and T visa cases as well as many sample materials, motions, declarations, etc.

### **Immigrant Legal Resource Center (ILRC)**

[www.ilrc.org](http://www.ilrc.org)

The ILRC website includes information about ongoing ILRC seminars and publications on aspects of immigration law, as well as manuals and materials that can be downloaded and information about the ILRC's activities and policy work.

### **U.S. Citizenship and Immigration Services**

[www.uscis.gov](http://www.uscis.gov)

The USCIS website includes many links to the latest USCIS policy and procedural information, the status of applications, and easy access to downloadable USCIS forms.

### **National Immigration Law Center (NILC)**

[www.nilc.org](http://www.nilc.org)

NILC staff specializes in immigration law, and the employment and public benefits rights of immigrants. Their website contains links to their policy analysis and impact litigation, publications, technical advice, and trainings information.

### **National Immigration Project of the National Lawyers Guild**

[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

The "domestic violence" link on the website of the National Immigration Project of the National Lawyers Guild contains extensive materials on VAWA, SIJS and U visas, including links to background information, USCIS policy memoranda and strategy articles.