

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 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 of inadmissibility and/or deportability and the juvenile court dispositions that might provide the government with evidence that the person comes within the ground.

Delinquency Disposition

Immigration Penalty & Waiver

Drug Trafficking: Sale, possession for sale, and other conduct such as cultivation, manufacture, delivery, with a commercial element	Inadmissible where DHS/ICE has “reason to believe” participation in drug trafficking No waivers except for the S, T, or U visa. There are arguments that this ground should not apply to juvenile conduct, but there is no precedent on this issue.
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), 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 civil or criminal court finds any violation of domestic violence “stay away” 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 & U Visa

WARNING! Be aware that anyone who participates in a gang or is alleged by the government to be gang-involved is a priority for immigration apprehension, detention, and deportation. Please contact the ILRC for assistance if gang membership or association is alleged. Violent offenses and sex offenses can also cause problems for noncitizen youth including being placed in secure detention and denial of immigration applications as a matter of discretion. Go to <https://www.ilrc.org/immigrant-youth> for more information and resources on immigration consequences of delinquency.

**Screening 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 anyone born in Guam, American Samoa or Swains Island is a national who can't be deported.
 - B. If a person is born outside the U.S., ask two threshold questions to see if the person might automatically be 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 the time of the person's birth? Or,
 - Before the person's 18th birthday, did both of these events happen (in either order): the 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 become a naturalized U.S. citizen!)
2. Is the child currently under juvenile court jurisdiction (including delinquency) where the court has ruled (or could rule) 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 country of origin? The child may qualify for **Special Immigrant Juvenile Status (SIJS)**.
 - The child need not be in foster care, and may be living with the non-abusive parent.
 - The child should stay under the jurisdiction of the court until their petition for SIJS has been approved. If this is not possible, the court should 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 stepparent? Has the child's parent been a victim of domestic violence by their U.S. citizen or permanent resident spouse? The child may qualify for **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."
4. Has the child been a victim of serious crime, including domestic violence, in the United States, or of human trafficking? The child may qualify for an **S, T, or U visa**.
5. Does the child have a *U.S. citizen or permanent resident parent or spouse* who is willing to petition for them? The child may qualify for a **family immigration petition**.
 - To immigrate through an adoptive parent the adoption must be completed by the child's 16th birthday. These laws are complicated if the child is from a country that is a signatory to the Hague Convention.
6. Does the child fear return to their country of birth because of *persecution*? Does the child come from a country that has recently experienced *civil war or natural disaster*? The child may qualify for other forms of relief such as **asylum or temporary protected status**.
7. Did the child enter the U.S. before June 15, 2007 and while under the age of 16? The child might be eligible for **Deferred Action for Childhood Arrivals (DACA)**. After various executive actions and lawsuits, the DACA program is currently available *only for renewal applicants*. For more information, see <https://www.ilrc.org/daca>.

*Note that this is not an exhaustive screening guide. All youth with immigration concerns should seek an individualized consultation with an immigration legal services provider. To find providers in your area, visit: <https://bit.ly/ianimmhelp>.