

§N.15 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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| Prostitution (being the prostitute, not the customer) | Inadmissible for engaging in prostitution Waivers often available |
| Drug Trafficking: Sale, possession for sale, cultivation, manufacture, distribution, delivery, other drug trafficking offenses. Does not include distribution without remuneration | Inadmissible where DHS/ICE has “reason to believe” participation in drug trafficking No waivers except for the S, T, or U visa. |
| Drug Abuse or Addiction: Repeated drug findings, finding of abuse (more than one time experimentation in last three years), addiction to drugs | Inadmissible and deportable for drug addict or abuser Waivers often available |
| Behavior showing a 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 mental disability posing threat to self or other Waivers may be 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 |
| 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 |

WARNING! Be aware that *gang membership, affiliation, and activity, violent offenses, and sex offenses* can cause also problems for noncitizen youth including secure detention and denial of immigration applications as a matter of discretion. Go to www.defendingimmigrants.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*?
 - Anyone born in the United States, Puerto Rico, Guam, American Samoa, Swains Island or Northern Mariana Islands is a U.S. citizen or national, and cannot be deported.
 - If the person was born outside the U.S., ask two threshold questions to see might already be a U.S. citizen, or able to become one. If the answer to either might be yes, refer for immigration counseling.
 - a. Was there a USC parent or grandparent at time of person's birth? *Or:*
 - b. 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 of the child became a U.S. citizen. (Tip: Encourage the parent to naturalize!)
2. Is the child currently under delinquency court jurisdiction where the court has ruled that the child (a) *cannot be reunified with one or both parents* because of abuse, neglect, 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 in the jurisdiction of the delinquency court until the entire SIJS application is adjudicated, so watch out for youth aging out of the system. If this is not possible, the court should explicitly state that termination of jurisdiction is 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? Or, 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 current court jurisdiction; may be reunited 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 serious crime, or of alien trafficking? Is the child willing to cooperate with authorities to investigate or prosecute the offense? Consider the *S, T, or U visas*.
 - This is one 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, adoption must be completed by child's 16th birthday.
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 or Temporary Protective Status*.
7. Did the child come to the U.S. before age 16 and before June 15, 2007? Was he or she under age 31 as of June 15, 2012? Investigate *DACA (Deferred Action for Childhood Arrivals)*.
 - Strict crime requirements beyond what is listed on previous page; be sure to see that information before plea. See <http://www.ilrc.org/info-on-immigration-law/deferred-action-for-childhood-arrivals>