

## § N. 15 IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY

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

A delinquency adjudication is not a conviction for immigration purposes, but it 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 and the juvenile court dispositions that might provide the government with evidence that the person comes within the ground.

#### Delinquency Disposition

#### Immigration Penalty & Waiver

<p><b>Drug Trafficking:</b> Sale, possession for sale, cultivation, manufacture, distribution, delivery, other drug trafficking offenses. (Possession or use has far fewer consequences, although see “Drug Abuse,” next)</p>	<p>Inadmissible where DHS/ICE has “reason to believe” participation in drug trafficking</p> <p>No waivers except for the S, T, or U visa. But arguments are emerging that this ground should not apply to juvenile conduct.</p>
<p><b>Drug Abuse or Addiction:</b> Repeated drug findings, admit to being in danger of being an addict, addiction to drugs</p>	<p>Inadmissible and deportable for drug addict or abuser</p> <p>Waivers often available</p>
<p><b>Behavior showing a physical or mental condition that poses a current threat to self or others:</b> including suicide attempt, torture, mayhem, repeated sexual offenses against younger children (predator), repeated DUI’s (showing alcoholism)</p>	<p>Inadmissible for physical or mental disability posing threat to self or other</p> <p>Waivers may be available</p>
<p><b>Prostitution</b> (being the prostitute or the pimp, not the customer)</p>	<p>Inadmissible for engaging in prostitution, but investigate possible relief as a victim of human trafficking (T visa).</p> <p>Waivers often available</p>
<p><b>Judge finds any violation of a domestic violence “stay away” order</b> or other order designed to prevent repeated harassment, credible threats of violence or bodily injury in domestic situations</p>	<p>Deportable if family, juvenile, or other civil or criminal court makes this finding, even if the conduct is not onerous. Instead, plead to a new offense, or to violation of, e.g., counseling or visitation conditions of the order.</p> <p>Some waivers available</p>
<p><b>False Claim to U.S. Citizenship:</b> Use of false documents and fraud offenses relating to false claim to citizenship</p>	<p>Inadmissible and deportable for false claim to U.S. citizenship</p> <p>Waivers may be available, e.g., SIJS and U Visa</p>

**WARNING: GANG FINDINGS.** Anyone who participates in a gang or is alleged by the government to be gang-involved is a top 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 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/immigrant-youth](http://www.ilrc.org/immigrant-youth) for more information and resources on immigration consequences of delinquency.

## Diagnostic Questions For Noncitizen Youth: Spotting Potential Avenues For Legal Status or Relief

For more information on each of these, see [www.ilrc.org/immigrant-youth](http://www.ilrc.org/immigrant-youth) and see § N.17 *Defenders' Relief Toolkit* at [www.ilrc.org/chart](http://www.ilrc.org/chart).

1. Is the child a U.S. citizen without knowing it?
  - A. Anyone born in the U.S. or Puerto Rico is a citizen. Anyone born in Guam, American Samoa, or Swains Island is a U.S. national who can't be deported.
  - B. If person born outside the U.S., ask two threshold questions to see if the person might already 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 time of person's birth? Or,
    - Before person's 18<sup>th</sup> 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 (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 home country? The child may qualify for **special immigrant juvenile status**.
  - The child need not be in foster care to be eligible, and may be living with the non-abusive parent.
  - **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 abused by their 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 if the child has a drug trafficking 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 16<sup>th</sup> birthday. These laws are complicated if the child is from a country that is a signatory to the Hague Convention.
6. Does the child come from a country that's recently experienced *civil war or natural disaster*? Does the child fear return to their home country because of *persecution*? Investigate various forms of relief such as **asylum and 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)**. DACA's fate is before the U.S. Supreme Court in fall 2019, and renewals, but no new applications, currently are being accepted. See [www.ilrc.org/daca](http://www.ilrc.org/daca).