

WESTERN NEW YORK IMMIGRATION ASSISTANCE CENTER

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We are funded by the New York State Office of Indigent Legal Services (through Erie County) to assist you in your representation of noncitizens accused of crimes or facing findings in Family Court following the Supreme Court ruling in Padilla v. Kentucky, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. Our Center was established so that we can share our knowledge of immigration law with public defenders and 18b providers to help you determine the immigration consequences of any particular case you may be handling. There is no fee for our services.

Immigration Issues for the Noncitizen Defendant

Thanks to all who have registered for our upcoming CLE trainings. We look forward to seeing you soon. Details are below for those who have not yet registered.

Contact Information

In the 8th Judicial District:

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Upcoming CLE Trainings

June 23, 2017 from 1 to 3 pm in the Ontario County Safety Training Facility for public defenders and assigned counsel in Yates, Ontario and Wayne counties.

July 28, 2017 from 1 to 3 pm in the Erie County Bar Association Sun Room Auditorium for public defenders and assigned counsel in Erie county.

August 18, 2017 from 1 to 3 pm for public defenders and assigned counsel in Chautauqua county. Location to be determined.

These CLEs are free. To register, email your contact information and affiliation to mvaleri@ecbavlp.com with date you will attend.

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A joint collaboration between the Erie County Bar Association Volunteer Lawyers Project, Inc. and The Legal Aid Society of Rochester, New York.

FAMILY COURT FINDINGS HELP MAY HELP UNACCOMPANIED MINORS OBTAIN IMMIGRATION STATUS

By JENNIFER MORGAN, ESQ., Immigration Staff Attorney at The Legal Aid Society of Rochester, New York

Recently, we have seen an increase in the number of unaccompanied minors in need of immigration assistance. Some of these children entered the United States on their own, while others have been orphaned as a result of their parents being deported. Many of these children are without immigration status. Fortunately, there is way for some of them to seek adjustment to lawful permanent resident status and obtain a green card.

Special immigrant juvenile (SIJ) status is a classification available to certain children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. Congress created SIJ status in 1990, but it was the passage of the Trafficking Victims Protection and Reauthorization Act in 2008 which streamlined the process for obtaining SIJ findings and expanded the group of eligible children, thus making it easier for unaccompanied minors to apply for lawful status.

This special immigrant classification is unique among immigration relief in that the process requires the involvement of state juvenile court proceedings. The state court does not grant any immigration status, but simply makes a factual determination as to whether the child is eligible for special immigrant juvenile status. Therefore, it is important for attorneys working with these young clients to be aware of the necessary family court findings as well as the effect of criminal convictions on the child's ability to obtain SIJ status.

SIJ Eligibility and State Court Findings

In order to apply for SIJ status, a child must be under 21 years of age, unmarried, and have a state court order containing certain findings. The state court making the findings must have the authority under state law to decide on the custody and care of children. Some of the ways a child could come under state court jurisdiction to obtain SIJ findings include dependency or delinquency cases, guardianship appointments and adoption. During these proceedings the Judge must find the following:

1. That the child is dependent on the court or must be placed with a state agency, private agency or a private person; and
2. That it is not in the child's best interest to return to their home country, or the last country where the child lived; and
3. That the child cannot be reunited with a parent because of abuse, abandonment, neglect, or similar reasons under state law.

The state court judge includes these findings in an order that is then submitted with the child's immigration petition for special immigrant juvenile status. Once the child's SIJ petition is granted, he or she may apply for legal permanent resident status.

Special Immigrant Juvenile findings allow a child without status to apply for lawful permanent residence (a green card) without having to leave the United States. It also gives the child a path to citizenship. Unlike other applications for legal permanent

residence, however, the child cannot include any other derivative family members in his or her application. Additionally, since the application is based on a finding that the child has been abused, abandoned or neglected, the child can never petition for his or her parents to obtain lawful status.

Criminal Bars to SIJ Status

Children with SIJ status are exempt from many of the usual statutory bars to adjustment of status. For example, SIJ applicants are exempt from the following grounds of inadmissibility: being a public charge, lacking valid entry documents, entering the United States without inspection, working without authorization, using fraudulent documents or making false claims to U.S. citizenship. No waiver is required in these cases for SIJ applicants. There are discretionary waivers available for those grounds of inadmissibility for which SIJ applicants are not exempt, such as drug addiction or mental disorders.

SIJ applicants may be found inadmissible, and ineligible for relief, if they have been convicted of certain crimes. Drug offenses and crimes involving moral turpitude in adult criminal court may make a child inadmissible for adjustment of status. The convictions must be for crimes where the child was charged as an adult. In general, dispositions in juvenile court are not considered convictions for immigration purposes. There are, however, certain dispositions in juvenile court, although not considered convictions, which would render the child inadmissible. Juvenile drug offenses, for example, would not be a bar to adjust status through SIJ, however the child would need to file waiver of inadmissibility for drug abusers in order to apply.

The analysis of the immigration consequences for criminal convictions is complicated. Therefore, if you represent an undocumented child in criminal or juvenile court proceedings, you should contact an immigration attorney for assistance.

What You Can Do to Ensure Effective Representation of Your Juvenile Clients

First, if you represent a child in family court or criminal court proceedings, ask the child about their immigration status. The child may not know their exact status, so start by asking them where they were born and proceed from there.

Second, if your client is undocumented or in need of immigration assistance, contact our office for advice before resolving the family court or criminal court proceedings. This will allow us to determine if the child has any immigration relief, such as SIJ status, available to them. It is important to know this from the outset so that you can try to fashion a favorable disposition which would not bar the child from obtaining immigration benefits.

Finally, advise your client of the immigration consequences of any criminal conviction or family court disposition before resolving the case.

If you have a non-citizen client and you would like to discuss their family court or criminal court matter, please feel free to contact us at the numbers listed on the front of this newsletter.