

*Introduction to Immigration Law
for Employees of
The State of Florida
Department of Health and Rehabilitative Services*



Brauwerman & Brauwerman, P.A.
A progressive law firm dedicated to traditional values.



Miami Office:
Suite 300
2800 Biscayne Boulevard
Miami, Florida 33137
Dade: (305) 758-1234
Broward: (305) 527-1234
Fax: (305) 576-6251



Fort Lauderdale Office:
Suite 502, Executive Pavilion,
Plantation Fashion Mall
300 N.W. 82nd Avenue
Plantation, Florida 33324
Broward: (305) 527-1234
Dade: (305) 758-1234
Fax: (305) 424-8935

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Prepared by:

*Jeffrey N. Brauerman
Suzan C. Brauerman
Bradley O. June*

*(The Law Firm of
Brauerman & Brauerman, P. A.)*

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Preface

This document was prepared solely for a brief lecture regarding select basic tenets of immigration law for those involved with alien juveniles. It by no means seeks to cover most aspects of immigration law.

Not treated here are discussions relating to Employer Sanctions, Unfair Immigration Related Employment Practices, Actions Against Government Officials, Judicial Review, to name just a few other areas of immigration law.

The appendices were included as quick reference guides.

I. Citizenship

A. Native Born:

(1) A person born in the United States, and subject to the jurisdiction thereof, is a national and citizen of the United States at birth. [Immigration and Nationality Act, hereinafter "INA"] 301(a), 8 U.S.C. 1401(a)]

(2) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe; *Provided*, That the granting of citizenship under section 301(b) of the Immigration and Nationality Act [8 U.S.C. 1401] shall not in any manner impair or otherwise affect the right of such person to tribal or other property. [INA 301(b), 8 U.S.C. 1401(b)].

(3) A person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States. [INA 301(f), 8 U.S.C. 1401(f)].

B. Naturalization:

(1) See INA 301-339 [8 U.S.C. 1421-1450] for the law relating to naturalization. Naturalization and derivation, *infra*. always occur after birth.

(2) In general, naturalization, which was made administrative by the Immigration Act of 1990, requires the alien to be eighteen years or over, have five years residence subsequent to admission for lawful permanent residence ["LPR"] (or three years, if, married to and living with a United States citizen for three years subsequent to obtaining LPR status), good moral character, attachment to the principles of the United States Constitution, knowledge of principles of government and history, and in most cases, the attainment of basic reading, writing and English speaking skills.

(3) A child, who is an LPR, under eighteen years old may be petitioned by the United States parent or parents. The child need not have resided in the United States for any particular length of time and will be presumed to be of good moral character, if of tender age. [INA 322, 8 U.S.C. 1433]

C. Acquisition of Citizenship at Birth:

(1) Persons born outside of the United States and its outlying possessions to citizen parents or a citizen parent and an alien parent, may acquire citizenship at birth depending on the date of the person's birth, and the law in effect at that time, and the amount of time that the citizen parents or parent, either resided in or was physically present in, the United States prior to the birth of the person. [INA 301(c), (d), 8 U.S.C. 1401(c), (d)]

(2) See "(1)" immediately, above, which may be affected by a parent's United States' military service. [INA 301(g), 8 U.S.C. 1401(g)]. (See also, section 301a, INA, 8 U.S.C. 1401a.)

(3) See sections 301 through 307, INA [8 U.S.C. 1401-1408] for sections relating to citizenship at birth in outlying United States possessions, and during various time periods, in Puerto Rico, Canal Zone, Republic of Panama, Alaska, Hawaii, Virgin Islands, and Guam.

(4) Certain persons may be subject to retention requirements. These requirements mandate that the person, acquiring citizenship at birth, may lose his or citizenship, if he or she does not reside in, or is not physically present in, the United States between certain ages and for varying periods of time.

(5) See also, INA 308, 8 U.S.C. 1408 relating to persons who are nationals but not citizens of the United States at birth. National is defined at INA 101(a)(22), [8 U.S.C. 1101(a)(22)], a noncitizen who owes allegiance to the United States.

D. Derivation after Birth:

(1) See INA 321, 8 U.S.C. 1432. Actually a form of naturalization.

(2) Certain acts must take place. When the last act takes place, the law in effect at that time governs the requirements for derivation. To derive, the alien must be under a certain age (current law mandates age 18), be an LPR, and have the second parent or the surviving parent, or divorced parent with legal custody become naturalized.

II. Nonimmigrants vs. Immigrants

A. The term "immigrant" means every alien except an alien who is within one of the classes of nonimmigrants listed in INA subsection 101(a)(15)(a) through (r). These are aliens admitted for varying temporary periods of time. Examples are investors, students, journalists, tourists, religious workers, certain workers, etc. [INA 101(a)(15), 8 U.S.C. 1101(a)(15)].

B. A lawful permanent resident alien, ("green card" holder) is one who has been lawfully admitted for permanent residence. That term is defined as the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed [INA 101(a)(20), 8 U.S.C. 1101(a)(20)].

i. Family sponsored, employment based, diversity immigrants, etc., Numerical Limitations, Allocation of visas. [INA 201, 202, 203, 8 U.S.C. 1151, 1152, 1153.]

ii. (a) A Special Immigrant, includes among others, those juvenile aliens defined in INA 101(a)(15)(J), [8 U.S.C. 1101(a)(J)]. It is an immigrant,

(1) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by the court for long-term foster care, and

(2) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

(b) INA 245(h) [8 U.S.C. 1255(h)] provides that the juvenile alien shall be *deemed* paroled into the United States, for purposes of eligibility for adjustment of status. See also, 8 C.F.R. 245.1(a) [An alien must be inspected and either paroled or admitted into the United States to be eligible for adjustment. An alien who entered the United States without inspection would therefore, not be eligible for adjustment of status to LPR status.]

(c) The grounds of exclusion relating to public charge, not being in possession of a valid labor certification, not being in possession of a valid visa, shall not apply [INA 212(a)(4), (5)(A), and (7)(A), 8 U.S.C. 1182(a)(4), (5)(A), and (7)(A)] and

(d) The INS may waive grounds of exclusion

(i) other than those relating to crimes and controlled substances (except that which relates to a single offense of simple possession of marijuana of thirty grams or less, may be waived), espionage, sabotage, terrorist, adverse foreign policy consequences, Nazi persecution or genocide.

INA 212(a)(2)(A), (B), (C), (a)(3)(A), (B), (C), and (E), 8 U.S.C. 1182(a)(2)(A), (B), (C), (a)(3)(A), (B), (C), and (E).

(e) The relationship between the alien and his natural or former adoptive parents shall not be considered a factor in making a waiver under the section relating to exclusion on criminal grounds. [INA 245(h)(2)(B), 8 U.S.C. 1255(h)(2)(B).]

III. Detention and Release of Juveniles

A. When a juvenile alien is detained, the question of possible release is determined by applying 8 C.F.R. 242.24. The regulation permits release to immediate and extended family members. These members include, parent, legal guardian, adult relative, including brother, sister, aunt, uncle, grandparent.

B. In *Reno v. Flores*, 113 S.Ct. 1439 (1993), the United States Supreme Court upheld the limitation on release of juveniles to nonfamily members only for unusual and compelling circumstances.

The Court rejected a facial challenge on substantive and procedural due process, equal protection and statutory grounds.

C. Former Commission McNary issued a memorandum on December 19, 1991 providing indicating that no unaccompanied minor may be held in a detention facility for more than 72 hours unless he:

- (1) is charged or convicted of a criminal offense other than entry without inspection;
- (2) is adjudicated a delinquent or subject of pending delinquency proceeding;
- (3) is engaged in violent or extremely disruptive conduct;
- (4) has escaped from another facility;
- (5) is an unrepresented Salvadoran under Orantes provisions;

or there are

- (6) other extraordinary or compelling reasons.

IV. Deportation and Exclusion

Distinguished:

(1) Excludable aliens, aliens applying for admission and subject to the exclusion provisions, cannot assert a liberty interest under the Constitution to be admitted or released from detention. Only protections are those authorized by federal statute. See, *Shaughnessy v. Mezei*, 345 U.S. 206 (1953).

(2) Deportable aliens, aliens that have entered the United States, whether legally or illegally, are accorded full due process rights. See, *Plyler v. Doe*, 457 U.S. 202 (1982).

In that case, undocumented alien school children were held to be "persons" within the meaning of the Fifth and Fourteenth Amendments. They were considered within the "jurisdiction of the state" for purposes of the Fourteenth Amendment.

The Court applied an "intermediate scrutiny" test, something more than "rational basis" and less than "strict scrutiny" test, when discussing the Equal Protection Clause.

Naturalization Charts

CHART NO. 1

For determining whether LEGITIMATE CHILDREN BORN OUTSIDE THE U.S.
acquired U.S. citizenship at birth.

PERIOD	PARENTS	USC PARENT	RESIDENCE REQUIRED OF	CHILD
STEP 1	STEP 2	STEP 3	STEP 4	STEP 4
Select period in which child was born.	Select applicable parentage.	Measure citizen parent's residence against the requirements for the period in which child was born. (The child acquired U.S. citizenship at birth if, at time of the child's birth, citizen parent had met applicable residence requirements.)		Determine whether child has since lost U.S. citizenship. (The child lost on the date it became impossible to meet necessary requirements-- never before age 26.)
Prior to 5/24/34	Father citizen.	Citizen father had resided in the U.S. (Only father could transmit in this period.)		None.
On/after 5/24/34 & prior to 1/13/41	Both parents citizens.	One had resided in the U.S.		None.
On/after 1/13/41 and prior to 12/24/52.	One citizen and one alien parent.	Citizen had resided in the U.S.		5 years' residence in U.S. or its outlying possessions between ages 13 and 21-- or 2 years' continuous presence in U.S. between ages 14 and 28. (NONE, if at time of child's birth, citizen parent was employed by a specified U.S. organization. This exemption is not applicable if parent transmitted under (1) or (2) opposite.) (1) (2) (4)
	One citizen and one alien parent.	Citizen had resided in U.S. or its outlying possessions 10 years, at least 5 of which were after age 16, or if citizen parent served honorably in U.S. Armed Forces: (1) between 12/7/41 and 12/31/46, 5 of the required 10 years may have been after age 12; or (2) between 12/31/46 and 12/24/52, parent needed 10 years physical presence, at least 5 of which were after age 14.		
On/after 12/24/52 and prior to 11/14/86.	Both parents citizens.	One had resided in the U.S. or its outlying possessions.		None.
	One citizen and one alien parent.	One had resided in the U.S. or its outlying possessions. (3)		None.
On/after 11/14/86	Both parents citizens.	Citizen has been physically present in US or its outlying possessions 10 years, at least 5 of which were after age 14. (3)		None.
	One citizen and one alien parent.	One had resided in the U.S. or its outlying possessions. (3)		None.
	One citizen and one alien parent.	Citizen had been physically present in U.S. or its outlying possessions 5 years, at least 2 of which were after age 14. (3)		None.

NOTES: (1) Absence of less than 60 days in the aggregate will not break continuity of physical presence for this purpose. Honorable service in U.S. Armed Forces counts as residence or physical presence for this purpose.

(2) No specific period of residence is required if alien parent naturalized before child reaches 18 years and child begins to reside permanently in U.S. prior to 18th birthday.

(3) Physical presence abroad of dependent unmarried son or daughter as member of household of a person serving honorably in U.S. Armed Forces or employed by U.S. Government or international organization may be counted as physical presence.

(4) The retention requirement was repealed by Act of 10/10/78 (P.L. 95-432). Persons who had on 10/10/78 failed to retain are relieved from having to do so. P.L. 95-432 is prospective only. Those who have previously lost citizenship by a failure to satisfy the retention requirements of the Acts of 1934, 1940, and 1952 may not be reinstated.

For determining whether ILLEGITIMATE CHILDREN BORN OUTSIDE THE U.S. acquired U.S. citizenship as of the dates of their birth.

- PART 1 - Child not legitimated.
- PART 2 - Child legitimated by an alien father.
- PART 3 - Child legitimated by a U.S. citizen father.
- PART 4 - Child legitimated or acknowledged by U.S. citizen father.

PART 1 CHILD NOT LEGITIMATED	
Prior to 12/24/52.	Mother was a U.S. citizen who had resided in the U.S. or its outlying possessions prior to birth of child. NOTE: A child born before 5/24/34 acquired U.S. citizenship when the Nationality Act of 1940, effective 1/13/41, bestowed citizenship retroactive to date of birth.
On/after 12/24/52.	Mother was a U.S. citizen who had been physically present in the U.S. or its outlying possessions for a continuous period of 1 year prior to birth of child.
PART 2 CHILD LEGITIMATED BY AN ALIEN FATHER	
An illegitimate child did not acquire U.S. citizenship through its U.S. citizen mother if he were legitimated by an <u>alien father</u> and all three of the following elements were present:	
<ol style="list-style-type: none"> 1. Child was born before 5/24/34, 2. Child was legitimated before age 21, and 3. Such legitimation was before 1/13/41. 	
PART 3 CHILD LEGITIMATED BY U.S. CITIZEN FATHER	
Date of child's birth.	If the child did not acquire citizenship through its mother, but was legitimated by a U.S. citizen father under the following conditions, apply the law pertinent to legitimate children born in a foreign country. (Chart No. 1)
Prior to 1/13/41.	<ol style="list-style-type: none"> 1. Child legitimated at any time after birth under law of father's domicile. 2. Father had the required residence at time of child's birth. 3. No residence required for child to retain U.S. citizenship.
On/after 1/13/41 and prior to 12/24/52.	<ol style="list-style-type: none"> 1. Child legitimated before age 21 under law of father's domicile. 2. Father had the required residence at time of child's birth. 3. Child complies with residence requirements for retention.
On/after 12/24/52.	<ol style="list-style-type: none"> 1. Child legitimated before age 21 under law of father's domicile 2. Father had the required residence at time of child's birth. 3. Child must be unmarried.
PART 4 CHILD LEGITIMATED OR ACKNOWLEDGED BY U.S. CITIZEN FATHER	
Relationship established on/after 11/14/86	<ol style="list-style-type: none"> 1. Child/father blood relationship established. 2. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until child reaches 18. 3. Child must be legitimated under law of child's residence or domicile, <u>or</u> father must acknowledge paternity of child in writing under oath, <u>or</u> paternity must be established by competent court. 4. Father must have been the U.S. citizen and met the required residence requirements at time of child's birth. 5. Child must be under age 18.

Naturalization Charts

CHART NO. 3

DERIVATIVE CITIZENSHIP OF CHILDREN

If, during an indicated historical period while the child was under statutory age, the specified parent(s) naturalized as U.S. citizens and the child was lawfully admitted for permanent residence, the child derived U.S. citizenship upon the completion of these two actions, except as noted in the Remarks column. It is immaterial which of the actions occurred last.

PERIOD IN WHICH LAST CONDITION WAS FULFILLED	STATUTORY AGE BEFORE WHICH LAST CONDITION MUST BE FULFILLED	IMMIGRATION STATUS OF CHILD	NATURALIZATION OF PARENTS	REMARKS
Prior to 5/24/34	21 years	LAWFUL ADMISSION OF THE CHILD TO THE UNITED STATES FOR PERMANENT RESIDENCE	Either parent	
On or after 5/24/34 and prior to 1/13/41.	21 years		Either parent	U.S. citizenship began 5 years after child began to reside permanently in U.S.
On or after 1/13/41 and prior to 12/24/52.	18 years		Both parents (1)	None.
On or after 12/24/52.	16 years		Both parents (1)	Illegitimate child did not derive in this period. (2)
On or after 10/5/78.	18 years		Both parents (1)	Marriage bars derivation in this period.
			Both parents (1) (3)	Marriage bars derivation in this period.
ADMINISTRATIVE NATURALIZATION				
On or after 11/14/86	18 years	ADMISSION AS LPR	Both parents (1) (4)	Marriage bars citizenship in this period.

NOTES: (1) Includes the surviving parent; the parent having legal custody of the child where there has been a legal separation of the parents; the alien parent when the other parent is a U.S. citizen; or, except during the period 1/13/41 to 12/23/52 inclusive the mother of an illegitimate child.

(2) The illegitimate child who did not derive in this period derived U.S. citizenship on 12/24/52 if under the age of 16 years on that date and if the two necessary actions still existed.

(3) After 10/5/78, adopted children can derive in the same manner as natural-born children if they were adopted by alien parent(s) while under age 16 and are residing in the custody of their adoptive parent(s) pursuant to a lawful admission for permanent residence when their adoptive parent(s) are naturalized. The adopted child must be under age 18 years at time of parent(s) naturalization. As of 12/29/81, the requirement that an alien child be adopted while under age 16 years was eliminated. All other requirements must be satisfied in order for derivation to occur.

(4) Public Law 99-653 provided that on or after 11/14/86, adopted children may obtain a certificate of citizenship in the same manner as natural-born children if they were adopted by U.S. citizen parent(s) while under age 16 and are residing in the custody of their adoptive parent(s) pursuant to a lawful admission for permanent residence; the adopting parent and spouse, if married, are both U.S. citizens at the time N-643 is filed; and the children are under age 18 at the time N-643 is completed. Child is not a U.S. citizen until oath of allegiance has been administered.

Public Benefits

OVERVIEW OF
ELIGIBILITY FOR PUBLIC BENEFITS

PROGRAM	ALIEN'S STATUS							
	LPR	FAMILY UNITY	REFUGEE/ ASYLEE	PAROLEE, CUBAN/ HAITIAN ENTRANT	TPS	DED	ASYLUM APPLICANT	UNDOCU- MENTED
CASH								
AFDC	Yes	Same as amnesty alien	Yes	Yes	No	Arguably yes as PRUCOL*	No**	No
SSI	Yes	Yes	Yes	Yes	No	Yes	Arguably yes as PRUCOL*	No
Unemployment Insurance	Yes	Yes	Yes	Yes	Yes	Yes	Yes (if work- authorized)	No
Refugee Assistance	Yes, if Amer- asian, former refugee or asylee	No	Yes	Yes, if paroled as refugee or asylee or if national of Cuba or Haiti	No	No	No, unless national of Cuba or Haiti	No, unless national of Cuba or Haiti
MEDICAL CARE								
Medicaid	Yes	Same as amnesty alien	Yes	Yes	Emergency services	Yes	Emergency services**	Emergency services
FOOD								
Food Stamps	Yes	Yes	Yes	Yes	No	No	No	No
WIC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
School Lunch & Breakfast	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
EDUCATION								
Headstart, K-12	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Title IV Federal Loans	Yes	Yes	Yes	Yes	Arguably yes	Arguably yes	Arguably yes	No
JTPA	Yes	Yes (if work- authorized)	Yes	Yes	Yes (if work- authorized)	Yes (if work- authorized)	Yes (if work- authorized)	No
HOUSING								
Federal Housing	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

*PRUCOL=permanently residing in the U.S. under color of law

**Some states, such as Florida and Massachusetts, recognize as PRUCOL.

(27) The term "special immigrant" means

(J) an immigrant (i) who has been declared dependent on a juvenile court located in the United States and has been deemed eligible by that court for long-term foster care, and (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; except that no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

**Adjustment of Status of Nonimmigrant to That of Person
Admitted for Permanent Residence**

Section 245, 8 U.S.C. 1255⁴⁰

(a) The status of an alien who was inspected and admitted or paroled into the United States⁴¹ may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed:

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant—

(A) paragraphs (4), (5)(A), and (7)(A) of section 212(a) shall not apply, and

(B) the Attorney General may waive other paragraphs of section 212(a) (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 101(a)(27)(J) shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(h) In applying this section to a special immigrant described in section 101(a)(27)(J)—

204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

[8 C.F.R. § 204.11(a)] *Definitions.*

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

[8 C.F.R. § 204.11(b)] *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) *Who may file.* The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

[8 C.F.R. § 204.11(c)] *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

[8 C.F.R. § 204.11(c)(1)] Is under twenty-one years of age;

[8 C.F.R. § 204.11(c)(2)] Is unmarried;

(Rel.27-10/93 Pub.695)

[8 C.F.R. § 204.11(c)(3)] Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

[8 C.F.R. § 204.11(c)(4)] Has been deemed eligible by the juvenile court for long-term foster care;

[8 C.F.R. § 204.11(c)(5)] Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

[8 C.F.R. § 204.11(c)(6)] Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

[8 C.F.R. § 204.11(c)(7)] On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

[8 C.F.R. § 204.11(d)] *Initial documents which must be submitted in support of the petition.* (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or

last habitual residence of the beneficiary or of his or her parent or parents.

[8 C.F.R. § 204.11(e)] *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

[58 FR 42843, August 12, 1993]

§ 242.24 Detention and release of juveniles.

(a) *Juveniles.* A juvenile is defined as an alien under the age of eighteen (19) years. rwn

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to: (i) A parent; (ii) legal guardian; or (iii) adult relative (brother, sister, aunt, uncle, grandparent) who are not presently in INS detention, unless a determination is made that the detention of such juvenile is required to secure his timely appearance before the Service or the immigration court or to ensure the juvenile's safety or that of others. In cases where the parent, legal guardian or adult relative resides at a location distant from where the juvenile is detained, he or she

(Rel.24-3/93 Pub.695)

cated near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraph (b)(1) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in INS detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in INS detention or outside the United States, the juvenile may be released to such person as designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraph (b)(1) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the INS or an immigration judge.

(c) *Juvenile Coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the "Juvenile Coordinator," whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the INS, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by INS authorities or placed in any INS detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the INS can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his/her parent, the parent(s) shall be notified

the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from deportation, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile apprehended in the immediate vicinity of the border who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. Each other juvenile apprehended shall be provided access to a telephone and must in fact communicate with either a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If the juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact the requirements of this section are satisfied.

(h) *Notice and Request for Disposition.* When a juvenile alien is apprehended, he or she must be given a Notice and Request for Disposition. If the juvenile is under fourteen years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language the juvenile understands. In the event a juvenile who has requested a hearing pursuant to the Notice subsequently decides to accept voluntary departure, a new Notice and Request for Disposition shall be given to, and signed by the juvenile.

[Added 53 FR 17449, May 17, 1988]

Sec.

§ 245.1 Eligibility.

[8 C.F.R. § 245.1(a)] *General.* Any alien who was inspected and admitted or paroled into the United States, except an alien who is ineligible to apply for adjustment of status as noted in paragraph (b) of this section, may apply for adjustment of status to permanent resident if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application. A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States.