



# The Rights of Immigrants in Family Court

This guide discusses the rights of immigrants in New York State Family Court.

## Table of Contents

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### Page 1:

- Definitions of key terms used in this guide
  - If I am a non-citizen or an undocumented person, can I file a petition in Family Court?
  - Is it legal for a parent to take a child out of the U.S.?
  - If a parent paying child support moves outside of the U.S. and stops paying, how can I get the money?
- 

### Page 2:

- If I am not a U.S. citizen, can I get an order of protection?
  - I am an undocumented immigrant and a victim of domestic violence. Can I become a lawful permanent resident without help or permission from my spouse?
  - If I am undocumented and a victim of domestic violence, could I become a lawful permanent resident even if I am not married?
- 

### Page 3:

- Can an undocumented immigrant child in foster care or in a guardianship situation get lawful permanent residency?
- If a U.S. citizen adopts a foreign-born child, does the child automatically become a U.S. citizen?
- Will the Family Court report me to immigration if it finds out that I am undocumented?

### Page 4:

- Can Family Court proceedings harm my immigration status?
- Where can I get more information?



## If I am a non-citizen or an undocumented person, can I file a petition in Family Court?

Yes. Your legal status does not matter. You have the right to file a **petition** in Family Court. Petitions are written requests that ask the court to do something.

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## Is it legal for a parent to take a child out of the U.S.?

If a parent has full **custody** of a child, or if there is no custody **order** from the court, he or she can legally take the child out of the U.S. An order is a decision made by the court. Sometimes parents who split up have **joint custody**, which means they share custody. If they do, it may be a crime for one parent to take the child from the U.S. when the other parent does not want the child to go. Sometimes a parent gets a court order that says the child cannot travel without permission from that parent or from the court.

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## If a parent paying child support moves outside of the U.S. and stops paying, how can I get the money?

Local child support offices can provide information about child support agreements with foreign countries. They can tell you how you might get the support.

For more information, contact New York State's Child Support Helpline at (888) 208-4485.

### Definitions of key terms

**Non-citizen:** Any person in the U.S. who is not a U.S. citizen, even if that person has legal immigration documents.

**Undocumented:** Non-citizens who entered the U.S. illegally or have legal immigration documents that have expired. Expired means they are too old and can not be used any more.

**Lawful Permanent Resident or LPR:** Non-citizens who have permission from the government to make the U.S. their permanent home. This is the most secure immigration status. It is sometimes called having a "green card."

**U.S. Citizens:** Anyone who was born in the U.S., its territories, and certain possessions, such as Puerto Rico. This includes children born to undocumented parents.

Some immigrants become U.S. citizens through a process called **naturalization**.



## If I am not a U.S. citizen, can I get an order of protection?

Yes. If you want help filing for an **order of protection**, speak to someone in the Safe Horizon office located in the Family Court.

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## I am an undocumented immigrant and a victim of domestic violence. Can I become a lawful permanent resident without help or permission from my spouse?

Yes. If you are a non-citizen or undocumented immigrant, and are married to a U.S. citizen or a lawful permanent resident, you might qualify through the **Violence Against Women Act (VAWA)**. VAWA provides two ways in which you can become a lawful permanent resident:

- If you are a battered immigrant you can apply for residency for yourself and your children with the **U.S. Citizenship and Immigration Services (USCIS, formerly INS)**. Your spouse will play no role in the application process. You can even apply without your spouse knowing.
- If you are a battered immigrant and are in deportation proceedings, and if you have lived in the U.S. for at least 3 years, are a person of “good moral character,” and can show that you will have a very hard time if you are sent back to your home country, you may go to Immigration Court and ask for a **cancellation of removal**. The Immigration Court can stop your deportation and grant you legal status.

Please note: You do not have to be a woman to ask to become a lawful permanent resident under VAWA.

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## If I am undocumented and a victim of domestic violence, could I become a lawful permanent resident even if I am not married?

If you are not married to a US citizen or lawful permanent resident, you may qualify for a **U visa**, through which you can become a permanent resident.

U visas are available to people who:

- have suffered a lot of physical or mental abuse from certain crimes. These crimes include domestic violence, rape and sexual assault, human trafficking, torture, and many others; and
- have been helpful, are being helpful, or are likely to be helpful to a law enforcement agency with the investigation or **prosecution** of a crime. Law enforcement agencies include the police department, the District Attorney's Office, or the U.S. Attorney's Office. Prosecution means bringing someone to court for committing a crime.



## Can an undocumented immigrant child in foster care or in a guardianship situation get lawful permanent residency?

Yes. An undocumented immigrant child can get **Special Immigrant Juvenile Status (SIJS)** by applying with USCIS. SIJS is a way for some immigrant children to become lawful permanent residents. The requirements include:

- The child must be in long-term foster care or in a **guardianship** or adoption situation.
- The child must have been **abused, abandoned, or neglected** and be unable to go back to his or her parent(s).
- It must be in the **best interest** of the child to remain in the U.S.
- The child must be unmarried and be under 21 when the application is decided by USCIS.

To demonstrate the items above, the child must have a written Family Court order or an **affidavit** from the **Administration for Children's Services (ACS)**. An affidavit is a written legal document.

Applications should be filed as early as possible since the process may take a long time to complete. It is especially important because children lose eligibility when they turn 21.

Please note: The child must not get married, have certain criminal convictions, leave the country without permission, or have certain criminal issues. Also, children in foster care must remain in care while their applications are decided by USCIS.

If children are not eligible for SIJS, they may still be able to get a green card. They can be sponsored by close relatives or by parents who adopted them. In most cases, the adoption must occur before the child's 16th birthday. They can also get a green card with **political asylum**, or by marriage to a U.S. citizen or lawful permanent resident.

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## If a U.S. citizen adopts a foreign-born child, does the child automatically become a U.S. citizen?

Yes, if they meet certain requirements:

- At least one of the adoptive parents of the child is a U.S. citizen.
- The child is younger than 18 years old.
- The child is in the U.S. as a permanent resident.
- The child is in the legal and **physical custody** of the adoptive parent. Physical custody means living with.

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## Will the Family Court report me to immigration if it finds out that I am undocumented?

Probably not. The Family Court is not supposed to report your immigration status. However, if the police become involved with your case (because, for example, you **violate** an order of protection), and you are arrested, your immigration status may cause you problems. Violate means not follow the rules.



## Can Family Court proceedings harm my immigration status?

Yes. Family Court decisions are not the same as criminal convictions, but they can be harmful to your immigration status.

Some Family Court decisions – such as a decision that someone is a juvenile delinquent – can have a negative impact on some immigration applications for **discretionary benefits**. Discretionary benefits are things that the government decides whether or not you will receive, like green cards or citizenship.

If the Family Court decides that you have violated certain orders of protection, and you have a green card, you might be at risk for being **deported**. Deported means forced to leave the country.

If you are seeking temporary benefits under the **Family Unity program**, certain delinquency **findings** can make you **ineligible**. Findings are decisions made by the court. Ineligible means not able to participate. Family Unity is a program that allows spouses and children of individuals who obtained green cards through the 1986 amnesty program to live and work in the U.S. for a period of time.

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## Where can I get more information?

For guidance on immigration matters, contact the New York Immigration Hotline Monday – Friday from 9am to 6pm at (800) 566-7636.



### You have the right . . .

to a court interpreter who is fluent in the language you speak both in the Family Court petition room and in the courtroom.

### Notes

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**Need more help?** Family Legal Care offers free legal information and advice on New York family law and court procedure.



Call our Helpline: 212-343-1122 or 800-696-8629

Visit: [familylegalcare.org](https://familylegalcare.org)