OVERVIEW

Caseworkers must verify the citizenship or immigration status of all children entering foster care. Foreign-born children, particularly those who are residing in the United States with an undocumented status should be identified as early as possible to ensure proper services are received.

Legal Authority

**Tax Relief and Health Care Act (P.L. 109-432)**

Amends SSA title IV-E to require a state plan to have procedures for verifying the citizenship or immigration status of a child in foster care.

**The Immigration and Nationality Act at (8 USC 1101(a) (27) (J))**

Addresses immigrants present in the U.S. who have been made a dependent of a juvenile court, have had a best interest determination to not return to their home country, and to whom the Secretary of Homeland Security has granted status.

**In re B & J, Minors, 279 Mich App 12; 756 NW2d 234 (2008)**

Affirmed it is a violation of a parent’s due process rights for a caseworker to deliberately take action with the purpose of virtually assuring the creation of a ground for termination of parental rights.


Establishes protocols and provisions for the treatment of unaccompanied minors and services for victims of severe forms of trafficking. Michigan Department of Health and Human Services has published a [Human Trafficking of Children Protocol](#) that can be reviewed for more information.

**Vienna Convention on Consular Relations and Optional Protocol on Disputes, 21 UST 77 (U.S. Treaty), ratified December 14, 1969. Article 36**

When a foreign national is taken into protective custody, or placed with the department for care and supervision, caseworkers are required to notify the appropriate consular office within 48 hours.
Definition

**Asylee** - an individual already in the U.S., from any country of origin, and is seeking admission based on a humanitarian claim for asylum.

**Foreign national** - a foreign-born individual who is residing in the United States regardless of immigration status.

**Qualified Alien** - see [FOM 902, Verifying Qualified Alien Status](#).

**Refugee** - an individual from any country admitted as a refugee under section 207 of the Immigration and Nationality Act, 8 USC 1152. To qualify as a refugee one must have a well-founded fear of returning to their country due to persecution based on race, religion, nationality, or affiliation with a political or social group.

**Unaccompanied children** - children who are apprehended by the U.S. Department of Homeland Security and transferred to the care and custody of the U.S. Office of Refugee Resettlement (ORR). ORR makes and implements placement decisions in the best interests of the child to ensure placement in the least restrictive setting possible while in federal custody.

**Unaccompanied Refugee Minor (URM)** - refugee minors, identified by the U.S. Department of State, who are eligible for resettlement in the U.S. but do not have a parent or adult relative available/willing to commit to provide long-term care.

**Note**: There are other unaccompanied minors with additional specific immigration statuses that may be eligible for the URM program; see URM Reclassification in this item.

**Undocumented resident** - a foreign-born individual who is residing in the United States without permission or authorization from the United States Citizenship and Immigration Service (USCIS) or the U.S. Department of State.

**VERIFICATION OF CITIZENSHIP OR IMMIGRATION STATUS**

During initial meetings with all parent(s), regardless of citizenship, the caseworker must obtain and record information regarding the child’s background, including his/her place of birth, in order to acquire the child’s birth certificate for the case record.
For foreign-born children, the caseworker must ask the parent(s) to provide documentation to verify U.S. citizenship or immigration status of the child. **The request for this information must be conducted in a non-judgmental, non-discriminatory way.** Detailed information on documentation requirements can be found in **FOM 902, Verification/Documentation Procedures**. Caseworkers must scan both sides of any verification document(s) and upload it to MiSACWIS using the Documents hyperlink.

**Note:** A parent’s citizenship or immigration status is **not** used to determine a child’s status.

### NOTIFICATION TO USCIS

Parents who are not U.S. citizens or lawful permanent residents (*undocumented*) are **not** to be reported to the United States Citizenship and Immigration Services (USCIS), as it is a violation of their due process rights for the supervising agency to deliberately take action with the purpose of virtually assuring the creation of a ground for termination of parental rights.

Additionally, *undocumented* children and any identified relatives are not to be reported to USCIS.

### NOTIFICATION TO CONSULATE

When a *foreign national* is taken into protective custody, or placed with the department for care and supervision, Article 36 of the Vienna Convention on Consular Relations requires that the appropriate consulate receive notification **within 48 hours**. Caseworkers are required to complete and submit the DHS-914, Notice to Foreign Consul/Embassy, to the appropriate consulate. A listing of foreign consular offices in the United States may be found at:

[http://www.state.gov/s/cpr/rls/fco/index.htm](http://www.state.gov/s/cpr/rls/fco/index.htm)

After entering the U.S. Department of State’s Foreign Consular Offices website, click on the box on the right-hand side of the page to access consular offices by country.
Consulates’ Assistance with Placement in Foreign Countries

In addition to complying with legal requirements, notifying a foreign consulate may facilitate the location of family members, as well as the identification of an agency or resources in the child’s home country, which may be able to assist in finding permanent placement options.

If a potential placement in a foreign country is identified, the caseworker must communicate with the relevant consul to determine the social service agency in the area of the potential placement and request the agency provide a home study.

Note: Caseworkers must specify desired content when requesting a home study in a foreign country. Caseworkers may use the DHS-197, Home Study Outline, as a guide.

Notification to Foster Care Program Office

Undocumented children in the child welfare system, may be eligible for immigration and legalization services. If it is determined that a child is not a U.S. citizen or a lawful permanent resident, caseworkers must immediately contact the Child Welfare Policy Mailbox, to determine whether a referral to an immigration clinic or an immigration attorney is appropriate.

Long-Term Placement Decisions for Undocumented Children

The child’s caseworker must consult with his/her supervisor, the child (if age appropriate), the child’s guardian ad litem, and the child’s assigned immigration attorney, to collectively decide whether it is in the child’s best interests to return to his/her country of nationality or former residence. When making this determination the following conditions must be considered and documented in the case service plan:

- Circumstances of the child.
**Age.**
**Ability to protect self.**
**Medical needs.**
**Time spent in each country.**
**Language ability.**
**Cultural identity.**
**Familial and other significant relationships.**
**Eligibility for a legal immigrant status in the U.S.**

- Circumstances of the child’s parents, relatives, and if applicable, fictive kin.
  
  **Immigration statuses and options.**
  **Living arrangements.**
  **Relationship with child.**
  **Interest in becoming the child’s caregiver.**
  **Criminal history.**
  **Ability to meet any special needs of the child.**

- Safety of placement possibilities abroad without the supervision typically provided by MDHHS.

**Return to Country of Nationality or Former Residence**

If it is determined that it is in the child’s best interest to return to his or her country of nationality or former residence, the caseworker must make arrangements to obtain an appropriate home study for a placement in the relevant country; see Consulates’ Assistance with Placement in Foreign Countries in this item.

**Remain in the United States**

If it is determined that it is not in the child’s best interest to return to his/her country of nationality or former residence, and it is determined by the child’s assigned immigration attorney that the child is eligible for a legal immigration status, then the application process for legal immigration status will be initiated by the assigned immigration attorney.

**Note:** If the application process for a legal immigration status is initiated, the caseworker must assist the assigned immigration
attorney in obtaining information required to apply for a legal immigration status.

**Special Immigrant Juvenile Status**

Special Immigrant Juvenile Status (SIJS) allows undocumented children a legal presence. To be eligible, youth must be under the jurisdiction of a juvenile court and cannot be reunified with one or both parents due to abuse, neglect, or abandonment.

Youth who have been granted SIJS will have the opportunity to apply for an adjustment of status to that of a lawful permanent resident. Acquiring a lawful permanent resident status can benefit youth in many ways, including the receipt of the following rights:

- Remain in the U.S. without threat of deportation.
- Receive governmental benefits.
- Permanently work legally in the U.S.
- Qualify for in-state tuition when attending a state college.
- Have the opportunity to apply for U.S. citizenship.

**Helpful Links**

See the Immigrant Legal Resource Center webpage for more information about Special Immigrant Juvenile Status.

[http://www.ilrc.org/resources/special-immigrant-juvenile-status-sijs](http://www.ilrc.org/resources/special-immigrant-juvenile-status-sijs)

**MEDICAID**

Medical assistance coverage for children who are not U.S. citizens or who do not meet the definition of a qualified alien is limited to emergency services only; see [FOM 803, Medicaid - Foster Care](#).

**FUNDING**

Receipt of title IV-E funds is limited to U.S. citizens and qualified aliens. If the caseworker determines that a child is not a U.S citizen or a qualified alien at the time of removal, the child is not title IV-E eligible and the procedures outlined in [FOM 902-05, Title IV-E Funding Denial or Cancellation](#) must be followed.
SERVICES FOR NON-URM REFUGEE MINORS

Generally, refugee minors arrive in the U.S. as part of a family unit. Refugee minors who are part of a family unit and who subsequently enter foster care are not undocumented or unaccompanied and are not eligible for the Unaccompanied Refugee Minors (URM) program. They also are not to be termed URM or coded as such in MISACWIS. The supervising agency must serve refugee minors, who are not in the URM program, in the same manner as they would serve any other child in the general foster care population.

Note: In certain cases a refugee minor may be eligible for reclassification as an URM. Upon reclassification, they would then be URM program-eligible; see URM Reclassification in this item.

URM RECLASSIFICATION

When a caseworker identifies a minor with one of the verified humanitarian statuses identified below, who is in need of culturally appropriate foster care services, the caseworker must contact the MDHHS Office of Refugee Services (ORS) regarding a referral for reclassification. The ORS will review the request and if appropriate, initiate the request to the Director of the U.S. Office of Refugee Resettlement (ORR) for reclassification. Contact information for the ORS is listed below:

MDHHS Office of Refugee Services  
235 S. Grand Ave. Ste. 1404  
Lansing, Michigan 48933  
517-241-7820

ORR will reclassify a minor to unaccompanied status if the following conditions are met:

- The minor is eligible for ORR-funded benefits and services; that is, s/he must have one of the following humanitarian statuses:
  - Refugee.
  - Asylee.
  - Cuban or Haitian entrant.
  - An ORR certified victim of a severe form of trafficking.
Note: See FOM 902, Funding Determinations and Title IV-E Eligibility, for acceptable forms of verification.

- No parent of the minor has lived in the U.S. since the child's arrival here or the parental rights have been terminated or the parent is deceased.

- No relative or non-related adult has ever established legal custody of the child in the U.S.

- With respect to a child who entered the U.S. accompanied by a non-parental relative or non-related adult, or who entered the U.S. for the purpose of joining a non-parental relative or non-related adult, the child is not currently living in the home of such a relative or adult.

- An appropriate court has placed legal responsibility for the child with the Department or local public child welfare agency or with a licensed non-public agency under contract with the State to provide services to unaccompanied minors.

Requests for reclassification are considered on a case-by-case basis. Once ORR receives all pertinent information, requests are evaluated and processed promptly. In some cases, the director of the ORR may waive one or more conditions of eligibility.

Example: ORR has waived the second condition for refugee children whose parents died shortly after arrival in the U.S.

If the ORR approves the reclassification request, the determination is effective with the date of ORS' request. ORS is responsible for arranging the transition of the minor's case to the receiving agency; see FOM 722-17, Unaccompanied Refugee Minor (URM) Program.