

# *IMMIGRATION STATUS MATTERS*

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A Guide to Addressing  
Immigration Status Issues  
for Children and Youth in Care

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Ontario Association of  
Children's Aid Societies

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The voice of child welfare in Ontario

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Anthony Fung  
**Children's Aid Society of Toronto**

Ronal Ibarra  
**Catholic Children's Aid Society of Toronto**

Liz Okai  
**Peel Children's Aid Society**

Bryan Shone  
**Peel Children's Aid Society**

Sal Salmena  
**Catholic Children's Aid Society of Toronto**

Wendy Miller  
**Ontario Association of Children's Aid Societies**

Caterina Tempesta  
**Office of the Children's Lawyer**

Michael Battista  
**Jordan Battista LLP**

Volunteer readers from provincial resource manager and senior counsel child welfare networks

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# INTRODUCTION

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Ontario's children's aid societies work to achieve a safe, permanent and stable family connection that promotes the well-being of children and youth in their care.

Children and youth with unresolved immigration issues face unique barriers to achieving such permanency. In many cases, these barriers can be overcome only by helping these young people obtain permanent residency and, ultimately, Canadian citizenship.

## ***Permanency includes citizenship.***

Some children and youth who come into the care of a children's aid society do not have permanent resident status or Canadian citizenship. Prior to coming into care, these young people may have arrived in Canada with their parents or other relatives; some will have fled political unrest, civil war or political oppression in their home countries. Others may have come to Canada as unaccompanied minors without legal guardians, while some will have been sponsored to enter the country by a Canadian guardian—but the sponsorship has since broken down. In all cases, these children and youth have come into care because they are in need of protection due to abuse, neglect or abandonment.

## ***Unresolved immigration status leads to a life of uncertainty.***

Youth who age out of care without permanent resident status or citizenship will enter a life filled with uncertainty: they will be unable to access essential health and social services, pursue education, gain legal employment or feel confident that they will be able to remain in Canada—a place they may have called home for most of their lives. As such, it is essential that children's aid societies develop the capacity to assist children and youth in resolving their immigration or citizenship issues *while* they are in care.

## ***Time is of the essence.***

The process of resolving immigration status issues to obtain permanent residency and Canadian citizenship can take many years to complete and involves very strict timelines and documentation requirements. If timely action is not taken to address a young person's immigration status issues, his or her chances of achieving permanency may be jeopardized.

## **About this guide**

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The purpose of this guide is to share what Ontario children's aid societies have learned about identifying and working to resolve immigration status issues for children and youth in care. Intended as a resource document for agencies and their staff, it offers practical ideas and advice for strengthening organizational capacity and practices to better address immigration status issues.

This guide includes the following core sections:

- The importance of addressing immigration status issues and the implications of leaving care without permanent residency or citizenship;
- Ideas for strengthening the organizational capacity and child welfare practices required to identify, address and resolve immigration status issues; and

- An overview of common immigration status issues and the considerations that need to be made when working to resolve them.

A glossary of common terms and links to helpful resources are also included to support a more in-depth understanding of immigration, residency and citizenship issues and processes. Because immigration laws and regulations change frequently, it is important that child welfare practitioners know how to access the most current information—and when it is necessary to seek the advice and services of a legal professional with experience in the areas of immigration and refugee law.

The guide reflects the range of experience children’s aid societies have with addressing unresolved immigration status issues. Agencies in communities with high levels of immigration or in close proximity to international airports or border crossings will encounter these issues with greater frequency; in fact, some have already developed enhanced capacity and practices to resolve these issues for the children and youth in their care. Their experiences can be of significant benefit to agencies that deal with these issues with less frequency.

### **A note about legal services**

Legal counsel to Ontario’s children’s aid societies cannot provide legal services to children and youth in care, including legal services pertaining to immigration issues. Agencies requiring such services will need to obtain them from an *external* legal counsel with specific expertise in the area of immigration and refugee law.

This guide does not provide legal advice and is not meant to be an alternative to legal support. The information contained is perceived to be current as of December 2014.

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## **A DIVERSE GROUP WITH COMPLEX NEEDS**

Children and youth in care with immigration issues do not constitute a single, uniform cohort. Some have lived in Canada for many years with their immediate or extended family; others have lived here for a shorter period of time or may have just recently arrived. Depending on their circumstances, they may be without legal immigration status in Canada, working toward legal immigration status, or already have legal immigration status but require additional support to achieve Canadian citizenship.

These children and youth may:

- Be permanent residents but lack Canadian citizenship, with some having started the application process and others not;
- Be permanent residents but lack documentation;
- Be permanent residents but be involved in serious criminal activities that have put them at risk of deportation<sup>1</sup>;

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<sup>1</sup> Although the term “deportation” is used throughout this document, there are actually three different types of removal orders: departure orders, exclusion orders and deportation orders. Each has different implications for a person’s ability

- Be ‘undocumented’ due to the expiration of their parents’ temporary work or visitor’s permit;
- Have parents who are unsuccessful refugee claimants now facing deportation;
- Have come to Canada as unaccompanied minors (or separated children), cut off from their parents and family;
- Have applied for or be in the process of applying for humanitarian and compassionate consideration;
- Be facing deportation;
- Have come to Canada as part of a sponsorship arrangement that has since broken down;
- Not have a valid visa to stay in Canada; or
- Be victims of human trafficking.

While some children and youth leave their home countries voluntarily with their families to pursue a better quality of life, others have been forced to separate from their families or flee their countries of origin due to a fear of persecution.

It is not uncommon for children and youth to suffer from mental health issues and trauma after witnessing or experiencing violence, physical and psychological torture, death threats or extreme harassment before fleeing their home countries. Some will be dealing with grief and bereavement from the loss of their families, community and other social supports. They may also be facing language barriers and the shock of a changing cultural context—leading to social isolation, a loss of identity and a profound loss of control.

## Barriers affecting permanency

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Children who come into the care of a children’s aid society without permanent resident status or Canadian citizenship face multiple systemic barriers to achieving permanency. Failing to solve immigration issues for youth aging out of care can significantly affect their adult lives, limiting their ability to reach their full potential and possibly jeopardizing their ability to remain in Canada.

Because the laws and regulations governing access to services and supports change frequently, it is important that agencies and their staff are aware of their current status and implications. However, as a general rule, agencies should understand that children and youth who age out of care with unresolved immigration status may be:

- ***Denied access to federally or provincially funded health services.*** Older youth who are not permanent residents are not eligible for health coverage, which includes mental health services. As such, access may be limited—or completely denied—when they leave care.
- ***Restricted access to post-secondary educational opportunities.*** Youth without permanent resident status cannot access certain educational benefits, including financial support for post-secondary education or apprenticeship programs. Educational institutions

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to return to Canada—for example, whether or not they will require an Authorization to Return to Canada to seek re-entry into the country.

identify these youth as ‘visiting/foreign students’—and expect them to pay significantly higher international student fees.

- **Restricted access to financial assistance.** To be eligible for Ontario Works, youth must be Canadian citizens, permanent residents, refugee claimants or Convention refugees. Even then, they may not be eligible for subsidized housing or childcare.
- **Restricted from travelling.** Youth who do not have legal immigration status may not be able to return to Canada if they leave the country, affecting their ability to retain/regain strong familial connections or pursue employment opportunities or personal interests. Also, if their permanent resident card (which permits travel) expires when they are out of the country, they may be denied entry into Canada upon their return.
- **Limited employment prospects.** Youth who are not permanent residents cannot obtain social insurance numbers or work permits, limiting them to low-paying jobs in the ‘informal’ labour market with no employment benefits or job protections (e.g., employment insurance, disability insurance, maternity leave).
- **Limited access to legal support.** While they may have limited access to legal counsel, refugee claimants may not be eligible for legal aid for criminal or immigration matters other than as Convention refugees.
- **Living in fear.** Youth who are not permanent residents or Canadian citizens often live a life of fear: of being found out; of not getting their immigration status resolved; of being deported; of living and working in risky and potentially abusive situations in the informal economy.
- **At risk of deportation.** Youth who are not Canadian citizens and receive a criminal conviction in an adult court may face deportation. This places them at risk of being returned to a country in which they may not have lived since their early childhood—a place where they might not know the language or have any relationships or connections.

#### **Case study: Albert**

At age 14, Albert was sent to Canada by his mother to escape his abusive stepfather. The expectation was that an ‘uncle’ would care for him in Canada; however, as Albert suffers from mental health issues and experienced frequent run-ins with the police, this caregiver decided he could no longer cope with Albert’s behaviour. As a result, he was placed in care and is now a Crown ward.

Prior to coming into care, an application to stay in Canada on humanitarian and compassionate (H&C) grounds was submitted to Citizenship and Immigration Canada (CIC) on Albert’s behalf. Because the application was incomplete and its original sender was unknown, CIC considered the application to be abandoned because it was unable to follow up on the process.

Although the local children’s aid society has facilitated another H&C application on Albert’s behalf, gathering the information to support his application has been a challenge. Albert refuses to go back to his birth country—but if the agency does not secure permanent resident status for him, there is a chance he will be deported.

# DEVELOPING ORGANIZATIONAL CAPACITY

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*“They are in our care and it is our responsibility to assist them in acquiring legal immigration status. If a child or youth comes to us as a refugee, our goal is to help them become a permanent resident. If they come to us as a permanent resident, our responsibility is to assist them in becoming a Canadian citizen.”*

Resolving immigration status issues can be a complex, time-consuming process. As a result, agencies and their staff need to develop greater organizational capacity, which requires:

- Understanding the importance of immigration status;
- Committing to addressing issues of unresolved immigration status;
- Tracking data to better recognize the scope of the issue;
- Understanding the distinct roles within the child welfare system;
- Clarifying citizenship for all children and youth in care;
- Expanding internal capacity and expertise; and
- Establishing working relationships with external experts.

## Understanding the importance of immigration status

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*“It is important to be aware of the application status; the expiration of the process can create additional barriers to having applications processed in the future.”*

Understanding the importance of addressing unresolved issues of immigration status before children and youth leave care is essential to driving an organizational commitment to early identification and action.

The child welfare sector is deeply committed to achieving permanency for children and youth in care. Agency staff—from senior management to frontline practitioners—need to understand that unresolved immigration status is a significant barrier to achieving permanency. They also need to appreciate the consequences of youth leaving care in so-called ‘immigration limbo’—and realize the powerful role they can play in helping youth become permanent residents and, ultimately, Canadian citizens.

### **Case study: Janet**

Janet arrived in Canada in 1999 to be reunited with her mother. Shortly after arriving, however, her mother became abusive, forcing Janet to care for her sisters. Her performance at school suffered and teachers reported the situation to the local children’s aid society, which placed her in a foster home.

When Janet turned 18 she learned she did not have legal immigration status in Canada. She could not attend college or university because she lacked documentation and could not afford to pay the higher tuition of an international student. She was also unable to work because she did not have a social insurance number. Janet struggled with feelings of loss, boredom and depression.

The children’s aid society hired an immigration lawyer to seek legal status for Janet on humanitarian and compassionate grounds. It also advocated for financial support so Janet would not be forced into a homeless shelter. Ultimately, it was able to expedite her application; three months after she turned 18, Janet was granted permanent resident status. Janet’s self-esteem quickly improved—and she was able to obtain a job and apply for financial assistance to help pay for her university studies.



## Committing to addressing issues of unresolved immigration status

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*“Identify the issues early so the appropriate steps can be taken. Agencies need to commit to taking the steps necessary to resolve immigration status issues and to engaging the youth in the resolution of these issues.”*

Agencies need to establish practices to identify and resolve immigration status issues. This work could be supported by a provincial effort to develop field-wide capacity and expertise.

Some immigration issues are relatively simple to resolve if they are identified early, supporting documentation is accessible, and the process to address the issue is understood and followed by everyone involved. Other issues are more complicated and resource-intensive. In all cases, however, the long-term positive impact of achieving immigration status for children and youth in care is well worth the effort.

## Tracking data to better recognize the scope of the issue

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*“Children’s aid societies generally lack the systems required to ask important questions and gather relevant data on children’s immigration status.”<sup>2</sup>*

Very few agencies today collect and monitor the kind of data that could determine exactly how many children and youth have unresolved immigration status issues across Ontario. As a result, the number of children and youth in care who do not have permanent resident status or Canadian citizenship is unknown.

More work is needed to ensure information-management systems are tracking this data. Doing so will help individual agencies shift practice as needed.

## Understanding the distinct roles within the child welfare system

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Ontario’s children’s aid societies deliver their services within the provincial legislative framework of the *Child and Family Services Act* (CFSA). As stated in the legislation, the paramount purpose of the CFSA is to “promote the best interests, protection and well-being of children.”<sup>3</sup>

By comparison, Citizenship and Immigration Canada is a federal department with the mandate to assess an individual’s eligibility to remain in Canada and the potential risks they may face if they were to return to their country of origin. In the immigration and refugee law context, there are no overriding ‘best interests of the child’ considerations; however, immigration legislation does require the child’s best interests to be taken into account in very specific situations.

There are also important considerations with respect to information sharing in both the child protection and immigration contexts. For example, in addition to following the privacy provisions of the CFSA that prohibit making public information that would identify the child or youth, child welfare practitioners must also exercise caution when providing information to immigration officials if they are not fully aware of the information that has already been filed in support of a refugee

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<sup>2</sup> Ontario Association of Children’s Aid Societies. (2012). *Building capacity for children’s aid societies to achieve permanency for children in care with immigration issues: Report and recommendations.*

<sup>3</sup> Government of Ontario. (1990). *Child and Family Services Act.*

claim or application for permanent residence. Any inconsistencies in the information provided may jeopardize the child's ability to remain in Canada.

## **Clarifying citizenship for all children and youth in care**

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Learning to address immigration issues will require a shift in approach with children, youth and families. Applying an 'anti-oppressive lens' to their work, it will be important for agencies to adopt the practice of asking *all* families about their citizenship and immigration status when a child is admitted into care. This will avoid having individual child welfare practitioners make inferences about when to probe for immigration status based on racial or ethnic identity.

While some child welfare practitioners may question the need to explore citizenship with all children and youth, the long-term impact of not resolving immigration status issues is severe enough that it warrants the effort to shift practice.

## **Expanding internal capacity and expertise**

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*"While many agencies have limited experience in helping children and youth in care resolve immigration issues, some have developed considerable expertise."*

Agencies have different capacity challenges depending on the profile of the families they serve and the volume of children and youth in care with unresolved immigration issues.

Agencies managing high volumes of youth from immigrant families take a number of different approaches to developing staff competencies so they can respond effectively and efficiently to immigration issues. Agencies with relatively low numbers of youth in care experiencing immigration status issues have different challenges and will need to find the right balance between developing internal capacity and using external expertise to resolve issues.

### **Agency-wide competency**

Identifying children and youth facing immigration challenges will require all staff to develop some sensitivity to the issues and how to resolve them beyond the mere baseline knowledge required for early identification (which is still the first essential step). Training may be needed for staff to develop the required sensitivity and skill.

### **Case study: Kyle**

Kyle, 13, came to Canada with his parents in 2003. The family filed a refugee claim when they arrived; it was denied and a deportation order was issued for the entire family. Kyle was admitted into care without legal status in 2006.

In 2009, an application was filed for permanent residency on humanitarian and compassionate grounds; however, the government indicated it would not process the application unless Kyle had a valid passport (as his previous one had expired). The local children's aid society started the process to renew the passport, but the consulate delayed the renewal because of concerns of child trafficking and abductions. It also demanded the signature of Kyle's father, even though his whereabouts were unknown. A new passport was eventually issued a year later.

In 2011, Citizenship and Immigration Canada sent a letter indicating concern about Kyle's health and emotional challenges, citing the potential for excessive demands on Canada's health and social services. It appeared that Kyle's application might be denied. The children's aid society responded in writing with supporting documentation, but there has been no response as of yet.

If Kyle's application is refused, there is a significant possibility that he will be returned to a country where he has no family support and his medical needs will not be met. His close relatives are all in Canada. He remains in limbo.

### **Dedicated expertise**

Resolving immigration status issues for children and youth in care requires agencies to:

- Determine the immigration status prior to or at admission into care (and document cases where immigration status cannot be determined);
- Obtain identification and documentation from the family or embassy/consulate as early as possible;
- Screen and evaluate the need for immigration supports or interventions;
- Assist the child to complete, submit and monitor the status of immigration-related applications;
- Identify when outside legal assistance may be required in the completion of immigration-related applications;
- Work collaboratively with immigration lawyers, designated representatives and other external resources;
- Attend immigration meetings and hearings with youth;<sup>4</sup>
- Assist and support children and youth through the immigration process;
- Help children and youth obtain a social insurance number, health card and passport; and
- Ensure staff are trained on immigration legislation, policies and procedures.

Some agencies have dedicated individuals or teams responsible for working with immigrant children and youth—both in the community and in care. Over time these practitioners develop enhanced capacity to address immigration status issues. Some agencies with high volumes and

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<sup>4</sup> As noted earlier in this guide, caution must be exercised when sharing information with immigration officials.

complexity of situations have added specialists responsible for providing expert advice and general consultation services to agency staff, working to assist youth in securing legal status or Canadian citizenship, and maintaining up-to-date knowledge on the immigration laws and regulations affecting the agency's clients.

The benefits of this immigration specialist position to an agency and its clients include:

- Increasing overall efficiency and effectiveness in resolving immigration issues;
- Adding to the agency's professional expertise related to immigration, including knowledge on the latest trends and practices of Citizenship and Immigration Canada;
- Providing much-needed support to the agency's child protection staff;
- Addressing issues that are particularly complex or problematic, including (but not limited to) establishing identity, admissibility due to criminal or medical issues, or when the federal government considers the child's country of origin to pose a lower risk of persecution in comparison to other countries;
- Helping the agency advocate more effectively on behalf of individual clients;
- Having a knowledgeable and consistent representative in the community with regard to immigration issues;
- Developing and maintaining a more accurate, up-to-date database;
- Informing the development systems and practices in this specialized area of service; and
- Reducing costs and improving effectiveness when working with outside legal counsel.

*"We are more effective at dealing with immigration issues now and we have absolutely saved in legal costs. Our immigration specialist has been a valuable resource to build overall staff capacity and address cases that are very complex."*

## **Establishing working relationships with external experts**

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Various organizations in the community offer support for children and youth in care with unresolved immigration issues, including those that provide translation services, settlement support or legal aid. Child welfare agencies must work to identify and establish working relationships with these organizations.

As they cooperate together over time, partnering organizations will develop a shared understanding of how best to respond to the needs of children and youth in care. In some instances, protocols can be developed to clarify roles and responsibilities.

External lawyers and other professionals working through their own associations or private practices can also provide valuable expertise. Agencies should identify professionals who understand the unique circumstances of children and youth in care and are competent in the areas of immigration and refugee law. It is also important to understand that legal counsel for children's aid societies are prohibited by the rules governing their profession from providing legal advice to anyone other than their employer.

## WORKING WITH CHILDREN AND YOUTH IN CARE

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Agencies across Ontario have effectively resolved immigration status issues for many children and youth in care—and their experience can inform how others should work to resolve these issues.

Effective practices include:

- Exploring citizenship/immigration status early and with sensitivity;
- Gathering critical documentation;
- Working to resolve immigration status issues quickly;
- Engaging the necessary expertise when issues are complex;
- Reviewing progress in case conferencing and permanency planning;
- Ensuring access to appropriate immigration services and supports;
- Providing support for immigration status issues beyond age 18; and
- Responding to unique circumstances beyond age 21.

Depending on the history of the agency's work in this area, additional effort may be required to identify and resolve immigration status issues for children and youth at the following stages:

- Entering care with potential issues to be identified and resolved;
- Already in care with known issues to be resolved;
- Already in care and have issues that have not been identified; and
- Exiting care with unresolved issues.

Different—but often inter-related—strategies are required to address the needs of each group.

### **Case study: Mary**

When she was in care, Mary filed a humanitarian and compassionate (H&C) application with support from her local children's aid society; however, her partner (and the father of her two sons) convinced her to call Citizenship and Immigration Canada to cancel the application process. As a permanent resident of Canada, he promised to sponsor her—and a member of her community told her that a sponsorship application would be approved much faster than an H&C application.

Mary's relationship with her partner began to deteriorate and they later separated. He then backed out of his commitment of sponsorship.

Now 22 years old and with two children to care for—one of whom has special needs—Mary cannot work legally and is not eligible for subsidized daycare. She cannot go to school and she cannot travel. Due to her age, she no longer receives services from the children's aid society. She is also ineligible for provincial health coverage. At last contact, she was staying in a shelter for women who are victims of domestic violence.

## Exploring citizenship/immigration status early and with sensitivity

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*"Identifying immigration status issues early is a critical step on the journey to permanency."*

It is important to explore citizenship and immigration history and status as early as possible in the engagement process. Child welfare practitioners must be sensitive in how they explore these issues—but at the same time, they need to be focused on getting a clear understanding of the situation. Adopting a practice of asking *all* families about their citizenship and immigration status at the point of a child's admission to care—rather than making inferences about when to probe about citizenship based on racial or ethnic identity—can help ensure critical issues are identified in a timely way.

### Questions to ask during the engagement process:

- Were you born in Canada? If not, how long have you been in Canada?
- Are you a Canadian citizen?
- (If not) Are you a permanent resident?
- (If not) Are you a Convention refugee or protected person?
- (If not) Are you a refugee claimant? If so, what is the status of your application?
- (If not) What is your current situation and immigration status?
- What documents do you have?

## Gathering critical documentation

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It is important to ask for and review documentation related to citizenship and immigration status. The documentation that is available can confirm or provide valuable insight into a young person's immigration status if there is uncertainty.

When a child or youth is being apprehended or entering care, it is critical that practitioners get all of the original documentation that is available. The federal government has rigorous expectations related to documentation, with original documentation typically required to resolve immigration status issues. Some agencies have negotiated to make it a condition in the court process to have documentation released by parents or guardians if they are unwilling or unable to provide the information voluntarily.

When families have fled conflict and persecution, original documentation may not be available. In these situations, agencies will need to go the extra mile to gather the required documentation, often with support from embassies and consulates. Some agencies have tasked this kind of work to staff that have or are in the processes of developing the expertise and necessary relationships to facilitate this effort.

## Working to resolve issues quickly

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The process to resolve immigration status issues can be quite complex and often involves very strict timelines. In fact, it can take years to complete every step in the process—and if an application is allowed to lapse, there is a significant risk that youth will age out of care before

achieving permanent residency or citizenship. It is therefore extremely important that child welfare practitioners responsible for addressing these issues fully understand the process and timelines for addressing specific circumstances.

## Engaging the necessary expertise

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While the proper actions to take in certain situations are relatively clear (such as the process to apply for a citizenship card with proper identification), others can be more complex (such as the process to apply for humanitarian and compassionate consideration).

Child welfare practitioners must know how to discern when additional expertise is required to address a particular situation—such as legal expertise, immigration expertise, cultural interpretation—and how to make arrangements to do so. This expertise may be internal or external to the agency.

### Ester

Ester, 14, came to Canada with her mother and grandmother to escape discrimination and abuse in her birth country. Ester's grandmother has been hospitalized with Alzheimer's and her mother suffers from schizophrenia—and she does not have any other family either in Canada or back home.

Her refugee claimant application was refused on the grounds that her home country is considered to have a better child welfare system than Canada. Owing to the complexity of the case the local children's aid society retained an immigration lawyer to represent Ester before the Immigration and Refugee Board of Canada.

Both a humanitarian and compassionate application and a work permit were filed, but because Ester does not have the necessary documentation to support the work permit application, it is likely to be denied. Ester is a smart girl with hopes of finding a part-time job and attending university—but with her status still uncertain, these plans are in limbo.

## Reviewing progress in case conference and permanency planning

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It is essential to review immigration status as part of all existing processes in place to monitor the status of children and youth in care, including clinical supervision, plan-of-care reviews, case conferences and permanency conferences. Consistent focus will ensure the process to resolve immigration status issues is not delayed unnecessarily and that every avenue is being pursued to address the barriers that may be prohibiting progress.

## Ensuring access to appropriate services and supports

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*“After witnessing or experiencing violence or extreme harassment in their home countries, some youth suffer from post-traumatic stress disorder and other mental health problems. They often require counselling to support their healing.”*

All children and youth in care require access to services and supports that are age-appropriate and tailored to their unique needs, including social services, health services (including mental health), education, employment training, and social supports and cultural connections. When their immigration status is tenuous, more support may be required. (For example, psychological reports may support a child's application to remain in Canada; however, the advisability of sharing such information must be carefully considered on a case-by-case basis.)



Child welfare practitioners need to understand the immigration status and migration journey of children and youth so they can identify their needs and work to ensure that the child or youth has access to the right services and supports.

The relationships that practitioners develop with the staff of partner agencies are critical, allowing them to bridge children and youth in care to critical services and supports.

## **Providing support for immigration status issues beyond age 18**

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*“Every effort needs to be made to address immigration status issues long before the eighteenth birthday.”*

At age 18, youth transition to the Continued Care and Support for Youth program, where they may continue to receive service through a range of financial and non-financial supports until they reach age 21. Given the duration of time often required to resolve immigration status issues, the years between ages 18 and 21 represent a critical period in which child welfare agencies and their staff should consider working to help youth to address any outstanding issues, including applications for Canadian citizenship, before they stop receiving service.

It is important that youth leave care with the documentation that proves their immigration status, along with copies of the appropriate applications and supporting documentation if they are still working toward immigration status.

## **Responding to unique circumstances beyond age 21**

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Despite the best efforts of child welfare agencies, some youth will transition out of service at age 21 with unresolved immigration status issues. Child welfare practitioners should assist youth in identifying the types of support they will require to address their unresolved immigration issues before they turn 21. Practitioners can help youth establish the necessary connections and access appropriate resources and support from partner agencies to help them pursue their immigration status.

In unique circumstances, some youth may reach out to agencies for support to address immigration status issues *after* they have transitioned out of service. Given their history with the youth, practitioners can respond to provide the necessary support on a case-by-case basis, including support in applying for legal aid.



## RESOLVING SPECIFIC ISSUES

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Children and youth who come into care have different migration histories and a range of immigration status issues. Some are without legal immigration status and some are working toward legal immigration status. Others have legal immigration status and need support to achieve citizenship: the last step to becoming a full member of Canadian society with all of its rights, privileges and responsibilities.

The table on the following pages outlines the:

- Stages of immigration status;
- Common situations in each stage;
- Documents to look for and obtain;
- Actions to be taken; and
- Important things to consider at each stage.

### **Case study: Jake**

Jake, 11, came to Canada with his mother and is now a Crown ward. He and his mother received a removal order, which was cancelled for Jake when the local children's aid society informed the Canada Border Security Agency that he is a Crown ward. A humanitarian and compassionate (H&C) application has been filed with Citizenship and Immigration Canada on Jake's behalf.

The school board's special education committee has found that Jake's intellectual development disability might reasonably be expected to cause an excessive demand on Canada's social services. As a result, Jake has been declared inadmissible under the *Immigration and Refugee Act*.

If Jake's H&C application is denied, he is at risk of being removed from Canada. He has no contact with anyone from his home country. If this happens, he would not be able to receive the medical assistance he currently receives in Canada. He would also lose any contact with his mother and brother, who was born in Canada.

**Table 1. Immigration status and action required for citizenship**

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER
Without legal immigration status in Canada	Application for refugee status has not been made	Documents from country of origin (identify through relatives in Canada or home country, if possible)	<p>Consider whether to assist child in making refugee claim.</p> <p>Basis of Claim form must be prepared/submitted during the eligibility interview if the claim is made at an office in Canada, or within 15 days if the claim is made at a port of entry.</p>	<p>The refugee process moves quickly. Hearings for most people are to be held no later than 60 days after the claim is referred to the Immigration and Refugee Board, or 30 days for those who make a claim at an inland office of Citizenship and Immigrant Canada or the Canadian Border Services Agency.</p> <p>Is the child from a designated country of origin (i.e., one deemed by the government to be 'non-refugee producing')? If so, legal representation is critical. Hearings in these cases must be held no later than 45 days after referral.</p>
	Application for refugee status has been suspended or abandoned	Copy of refugee claimant application (the Basis of Claim Form or, if the application was made before December 2012, the Personal Information Form)	<p>Determine status of the application.</p> <p>Assess if the refugee application should be re-opened or if an H&amp;C application is appropriate.</p>	<p>People under removal orders are not eligible to make refugee claims.</p>

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER
Without legal immigration status in Canada	Application for humanitarian and compassionate (H&C) consideration has been refused or abandoned	Copy of the H&C application, including the Application for Permanent Residence and any written submissions in support of the application, as well as any other supporting documents (e.g., letters from schools, doctors)	Determine status of the application.  Determine if the conditions exist to support an H&C application or if it should be re-opened, looking at factors such as the age of the child, the level of dependency between the child and the H&C applicant, how established the child is in Canada, the child's links to the country of origin, the conditions in the country of origin and the potential impact on the child, any medical issues or special needs the child may have, the impact to the child's education, and matters related to the child's gender.	Reasons to separate a child's refugee/H&C application or to remove the file from the parent(s) include avoiding the trauma or anxiety to the child that may be caused by participating in proceedings with a parent who has abused or neglected them, ensuring the child is not prejudiced by a parent's immigration or criminal acts, and advancing a child's independent grounds for claiming immigration/refugee status.
	Temporary resident status of the youth or parent/guardian has expired and they are now undocumented	Temporary resident visa, visitor record and/or stamped pages of passport	No action is required if the child returns to country of origin.  Determine if the conditions exist to support an H&C application.	Depending on country of origin there may not be a physical document.
	Sponsorship arrangement has broken down	Sponsorship application (if available)	Determine if the conditions exist to support an H&C or refugee application.	

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER
Without legal immigration status in Canada	Abandoned child or unaccompanied minor without documentation presents at border	Documents from country of origin (identify through relatives in Canada or home country, if possible)	<p>Determine if a refugee claim will be made.</p> <p>If yes, the Immigration and Refugee Board will appoint a designated representative to guide/assist in the process.</p>	<p>When the Canadian Border Services Agency identifies an unaccompanied minor who they suspect is a child at risk under the provisions of the <i>Child and Family Services Act</i>, they contact a children's aid society.</p> <p>Being a child from a country where child abuse is common can support a refugee claim. Unaccompanied minors entering Canada can be supported to make refugee claims.</p>
	Stay in Canada is illegal (i.e., refugee status refused and person has gone underground)		Determine if the conditions exist to support an application for H&C.	
Working toward legal immigration status	Refugee claimant	Copy of refugee claimant application (the Basis of Claim Form or, if the application was made before December 2012, the Personal Information Form)	<p>Determine when the application was made.</p> <p>Obtain a copy of the application if it is available.</p> <p>Check the status of the application.</p>	If the youth is a Crown ward, separate the application from the parents/guardian.

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER
Working toward legal immigration status	Humanitarian and compassionate (H&C) considerations applicant	Copy of the H&C application, including the Application for Permanent Residence and any written submissions in support of the application, as well as any other supporting documents (e.g., letters from schools, doctors)	Determine when the application was made. Obtain a copy of the application if it is available. Check the status of the application.	If the H&C application was filed with the parent/guardian, consider the separation of the child's application from that of the parent/guardian.
With legal immigration status	Convention refugee or protected person	Notice of Decision from the Immigration and Refugee Board  Verification of Status document from Citizenship and Immigration Canada	Determine if and when an application for permanent residency has been made by the parents/guardian.  Obtain a copy of that application if it is available.  Check the status of the application.	If the youth is a Crown ward, separate the application from the parents/guardian.
	Permanent resident	Confirmation of permanent resident document or record of landing  Application for citizenship (if eligible)  Permanent resident card	Determine if and when an application for citizenship has been made by the parents/guardian.  Obtain a copy of the application if it is available.  Check the status of the application.  If the youth does not have a permanent resident card, apply for that card to allow travel (if needed).	Youth can apply for citizenship at age 18 years or older. Biological or adoptive parents who are permanent residents can apply on behalf of a minor after a period of physical residency in Canada. A children's aid society can apply on behalf of Crown wards if one of the biological parents is a citizen and is willing to cooperate in the process. If the youth is a Crown ward, separate the application from the parents/guardian.

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER
	Canadian citizen	Canadian birth certificate Certificate of Canadian Citizenship Canadian passport OHIP card SIN card	No action is required.	If necessary, apply for copies of the required documents through the appropriate government body.

## MOVING FORWARD

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The need to address immigration status issues for children and youth in care is well established. Achieving permanency ultimately requires Canadian citizenship.

Agencies will be in different stages in their work to ensure immigration status issues for children and youth in care are addressed. Each agency will need to assess their own unique situation and develop a plan to put the necessary policies and practices in place.

### **Questions to consider when developing your plan:**

1. Is there a shared understanding of the importance of addressing unresolved immigration status issues for children and youth in care across all levels of the agency?
2. Does the agency know how many children and youth in care have unresolved immigration issues?
3. Is there a standard process in place to determine the citizenship and immigration status of children and youth in care?
4. Do agency staff have a baseline knowledge and competency in early identification of immigration status issues?
5. Has the agency identified the most cost-effective approach to accessing the required expertise to work toward resolving immigration status issues for children and youth in care?
6. Has the agency established clear guidelines about when and how staff should access additional expertise?
7. Has the agency identified the community partnerships that need to be established or strengthened to better support children and youth in care with immigration status issues?
8. Is the progress toward achieving resolution of immigration issues monitored in clinical work and permanency planning?
9. Has the agency clarified what is possible to support youth with unresolved immigration status issues who are aging out of care?
10. Is the agency aware of and committing the resources needed to cover the costs to resolve immigration status issues (e.g., immigration fees, legal expenses, travel expenses to visit a consulate out of town)?

## APPENDIX A: RESOURCES

The following websites and resources may be of assistance for child welfare agencies dealing with immigration, residency and citizenship issues.

### Federal government

Citizenship & Immigration Canada

<http://www.cic.gc.ca/english/department/atip/infosource/>

Public Safety Canada

<http://www.publicsafety.gc.ca/index-eng.aspx>

Immigration Settlement and Adaptation Program

<http://www.cic.gc.ca/english/resources/evaluation/isap/2011/section2.asp>

### Provincial government

Ontario Ministry of Citizenship & Immigration

<http://www.citizenship.gov.on.ca>

Government of Ontario – Resources for Newcomers

<http://www.ontario.ca/home-and-community/newcomers>

Ontario Ministry of Citizenship & Immigration

<http://www.citizenship.gov.on.ca/english/newcomers/preparetowork.shtml>

### Legal services

Legal Aid Ontario

[http://www.legalaid.on.ca/en/getting/type\\_immigration.asp](http://www.legalaid.on.ca/en/getting/type_immigration.asp)

Community Legal Education Ontario

<http://www.cleo.on.ca>

Community legal clinics funded by the Legal Aid Ontario

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

Office of the Provincial Advocate for Children & Youth Ontario

<http://provincialadvocate.on.ca>

Pro Bono Law Ontario

<http://www.pblo.org/our-impact>

Law Help Ontario

<http://www.lawhelpontario.org>

Canadian Centre for Victims of Torture

<http://ccvt.org>

University of Ottawa Refugee Assistance Project

<http://ccrweb.ca/en/uorap>



Canadian Council for Refugees  
<http://ccrweb.ca>

Webinars and online training from the Canadian Council for Refugees  
<http://ccrweb.ca/en/webinar/legal-training-temporary-resident-permits>

United Nations High Commissioner for Refugees  
<http://www.unhcr.org/cgi-bin/texis/vtx/home>

## Settlement services

Canadian Red Cross First Contact Program  
<http://www.redcross.ca/what-we-do/migrant-and-refugee-services>

Canadian Immigrant Settlement Sector Alliance  
<http://cissa-acsei.org/en/who-we-are>

Settlement.org  
<http://www.settlement.org>

Welcome Pack Canada  
<http://welcomepackcanada.com>

## Health and social services

Community Health Centres  
[http://www.ontariochc.org/index.php?ci\\_id=3175&la\\_id=1](http://www.ontariochc.org/index.php?ci_id=3175&la_id=1)

Ontario Council of Agencies Serving Immigrants  
<http://www.ocasi.org>

Ontario Non-Profit Network  
<http://ontarioelections2011.ca>

Citizenship Counts  
[www.citizenshipcounts.ca](http://www.citizenshipcounts.ca)

211 Ontario  
<http://www.211ontario.ca/#home:m=QUICK&r=0&z=contextUrl:resources>

## Language services

Centre for Canadian Language Benchmarks  
<http://www.language.ca>

In My language  
<http://www.inmylanguage.org>

## Education services

Maytree Foundation  
<http://maytree.com>

## APPENDIX B: GLOSSARY OF TERMS

**Applicant:** A person who applies to immigrate to Canada.

**Certificate of Canadian citizenship:** A document issued by the Government of Canada proving that the holder is a Canadian citizen.

**Citizenship:** Citizens have rights and responsibilities in Canada that others do not. According to the *Citizenship Act*, citizenship can be acquired by birth or through the naturalization process. Individuals may apply for citizenship after they have been a permanent resident in Canada for three years or more. (As of June 2015, the requirement will change to having four years of physical residency in Canada, as a permanent resident, within the last six years.)

**Citizenship and Immigration Canada:** A department of the Government of Canada with responsibility for issues dealing with immigration, refugees and citizenship. Its mandate comes from the *Department of Citizenship and Immigration Act*. The Minister for Citizenship and Immigration is responsible for the *Citizenship Act* and shares responsibility for the *Immigration and Refugee Protection Act*.

**Convention refugee:** One of the three refugee classes defined by Citizenship and Immigration Canada, a Convention refugee is a person who is outside their country of nationality or habitual residence and is unable/unwilling to avail themselves of the protection of that country due to a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.

**Designated representative:** The Immigration and Refugee Board appoints a designated representative when the subject of the proceedings is a child under the age of 18 (i.e., a minor) or an adult who is unable to appreciate the nature of the proceedings. The designated representative is responsible for protecting the interests of the subject of the proceedings and for explaining the process to them.

A designated representative is not the same as a lawyer; however, they may make decisions about whether to retain/instruct a lawyer. The designated representative is often the child's parent, although another family member, legal guardian, friend or social worker can also act as a designated representative. A designated representative must not have interests that conflict with those of the person they represent; this may preclude a parent or family member from acting as a designated representative where there have been allegations of abuse or neglect.

**Humanitarian and compassionate considerations:** A foreign national, including a refugee protection claimant found by the Immigration and Refugee Board not to be a protected person, may apply for permanent residence from within Canada by seeking exceptional consideration under immigration legislation on humanitarian or compassionate (H&C) grounds. While there are restrictions on when such applications can be made, these restrictions do not apply to applicants who have children under the age of 18 who would be adversely affected if the parent were removed from Canada.

Citizenship and Immigration Canada reviews applications for permanent residence in Canada under humanitarian and compassionate considerations, taking into account factors relating to the age of the child, the level of dependency between the child and the applicant, the degree of the child's establishment in Canada, the child's links to the country of origin, the conditions in the

country of origin and the potential impact on the child, medical issues or special needs the child may have, the impact to the child's education, and matters related to the child's gender.

**Immigration and Refugee Protection Act:** The Government of Canada's legislation on immigration and refugee matters.

**Immigration and Refugee Board:** An independent administrative tribunal responsible for making decisions on immigration and refugee matters. It decides who is a Convention refugee or a person in need of protection.

**Permanent resident:** A person lawfully in Canada as an immigrant who is not yet eligible to become, or has not yet become, a Canadian citizen.

**Permanent resident card:** A card issued to all permanent residents that serves as the official proof of their status as permanent residents of Canada. The card is required by permanent residents, including children, who plan on travelling outside of Canada by any commercial transporter, as they must have their permanent resident card in order to re-enter Canada.

**Protected person:** An immigrant who has been granted refugee protection by Citizenship and Immigration Canada. Such persons may include Convention refugees as well as persons in need of protection—that is, removal to their home country would subject them to a danger of torture, a risk to their life, or a risk of cruel and unusual treatment or punishment).

**Refugee:** A person, inside or outside of Canada, who is afraid to return to their home country because they may be harmed. Canada provides protection to thousands of refugees every year.

**Refugee claimant:** An individual who has applied for refugee status while in Canada and is currently waiting for the Immigration and Refugee Board to determine whether or not refugee status should be granted.

**Sponsor:** A Canadian citizen or permanent resident living in Canada, 18 years of age or older, who promises to support a relative or family member who wants to become a permanent resident of Canada. Anyone who applies to sponsor a relative may need to meet certain income requirements. The sponsor must agree to financially support their relative or family member (and their accompanying family members) for three to 10 years to help them settle in Canada. The length of time of this support can depend on the age of the sponsored person and how they are related to the sponsor.

**Sponsorship agreement:** A signed agreement between a sponsored immigrant and their sponsor outlining the obligations and commitments of both parties. This agreement is required before immigration.

**Sponsorship breakdown:** Breakdown occurs when the sponsor refuses or is unable to meet their obligation to provide for some or all of the sponsored person's basic needs. If the person they are sponsoring does not yet have permanent resident (landed) status, the sponsor may withdraw the sponsorship. If so, Citizenship and Immigration Canada will stop processing the application for landing. However, if the person being sponsored is already landed, the sponsor can no longer choose to stop supporting that individual. In an effort to enforce such obligation, Citizenship and Immigration Canada may take legal action against the sponsor for failure or refusal to honour their financial responsibilities.

People have the right to leave their sponsor if they experience physical or emotional abuse or makes unreasonable demands, such as being forced to work for no money. The sponsored person cannot be deported from Canada due to a sponsorship breakdown if they were sponsored before October 20, 2012. If they were sponsored after that date, there is a risk that they may lose their permanent resident status in limited circumstances; however, this is unlikely to occur if they are able to prove that they were a victim of abuse or neglect.

**Temporary resident:** A person from another country who is in Canada for a short period of time. Temporary residents include students, tourists and temporary foreign workers. In most cases, a temporary resident visa is required.

**Temporary resident visa:** Residents of many countries require a visa to travel to Canada. The visa will specify how long an individual is able to stay in Canada.