

# IMMIGRATION STATUS MATTERS

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Updated

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

*September 2019*

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Immigration Status Matters, a guide to addressing Immigration status issues for children and youth in care was first released in 2014. This guide was updated in 2019 to reflect recent changes in the immigration and child welfare sector. Edited by:

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# INTRODUCTION

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Ontario's child welfare organizations work to achieve a safe, permanent and stable family connection that promotes the well-being of children and youth in their care. Over the years, there have been several significant changes and emerging issues that highlight the intersection between immigration and child welfare. Children and youth with unresolved immigration issues face unique barriers to achieving permanency. In many cases, these barriers can be overcome only by helping these young people obtain permanent residency, and ultimately Canadian 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 may 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 or neglect.

## **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.

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

The only immigration status in Canada that provides permanency is citizenship.

Permanent residence status can be revoked due to serious criminality. For example, in June 2018, Bill C-46, an Act to amend the criminal code received Royal Assent. Bill C-46 increases the maximum penalty for impaired driving convictions from 5 to 10 years' imprisonment. Under section 36(1) of the Immigration Refugee Protection Act, an impaired driving conviction now constitutes serious criminality. A permanent resident convicted for an impaired driving offence can lose their status and face deportation, even for a first time driving under the influence offence, no matter the sentence.

## Child Welfare Immigration Centre of Excellence

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In Ontario, the child welfare sector has taken a leadership role recognizing the complexity of child protection cases dealing with immigration status issues. Children and youth with unresolved immigration issues face unique barriers to achieving permanency. Resolving immigration status issues in a timely manner has the potential to make a very significant difference in the lives of children and youth to ensure they have access to services such as education, health services and employment.

Peel Children's Aid and the Ontario Association of Children's Aid Societies have partnered to establish a Child Welfare Immigration Centre of Excellence (CWICE). The Centre is a new service created to help Children's Aid Societies in Ontario with the increasing number of issues related to immigration status associated with the children and families serviced by child welfare organizations.

The Child Welfare Immigration Centre of Excellence provides consultations, support and short-term interventions to assist child welfare organizations managing complex child protection and immigration cases.

Services are available to:

- Any child or youth under 18 receiving services from a child welfare organization in Ontario including children in care and/or children receiving kinship services.
- Youth 18 and over that are former crown wards or receive continued care and support from a child welfare organization.

In addition, services provided by the Child Welfare Immigration Centre of Excellence includes:

- Raising awareness on the scope and importance of immigration status issues
- Identifying and developing partnerships and protocols with local, provincial and federal partners to resolve immigration issues
- Collecting data and facilitating research to promote an improved understanding of the scope of immigration issues across the Child Welfare Sector
- Developing resources that can be used by child welfare organizations, children and families and former Crown Wards

The Child Welfare Immigration Centre of Excellence can be reached by submitting an online referral at <http://www.peelcas.org/cwiceform.asp>, or by telephone at 905-363-6131 Ext 2222

## About this guide

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The purpose of this guide is to share what Ontario child welfare organizations 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, when to consult with CWICE 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 Child Welfare Immigration Centre of Excellence can provide information, referrals and resources in various immigration, citizenship and settlement related issues. CWICE has staff with expertise in areas of settlement, refugee, immigration and citizenship and they are available to assist and provide to support child welfare organizations across Ontario.

This guide reflects the range of experience child welfare organizations have with addressing unresolved immigration status issues. Agencies in communities with high levels of immigration, 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 child welfare organizations cannot provide legal services to children and youth in care, including legal services pertaining to immigration issues. Agencies requiring such services can contact Legal Aid Ontario (1-800-668-8258) and apply for a legal aid certificate on behalf of children and youth in care. Legal Aid can provide referrals to legal counsels with expertise in areas of immigration and refugee law.

<https://www.legalaid.on.ca/en/>

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 August 2019.

## A DIVERSE GROUP WITH COMPLEX NEEDS

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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 to prove their status;
- Be permanent residents but be involved in serious criminal activities that have put them at risk of deportation<sup>1</sup>;
- 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, without a legal guardian to care for them;
- Have applied for or be in the process of applying for humanitarian and compassionate considerations;
- Be facing deportation / removal from Canada;
- 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.

### ***Unaccompanied Minors***

An unaccompanied minor is a minor under 18 years of age who does not have a parent, or an adult with legal guardianship, and is making a refugee claim in Canada. Even in cases where the child travels to Canada with another adult or extended family member, the child or youth\* is still considered an unaccompanied minor until guardianship has been clearly established.

\*Also referred in literature as Unaccompanied and Separated Minors (USM).

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 war or 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 may be dealing with post-migration issues including a lack of trust, 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.

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<sup>1</sup> Although the term “deportation” is utilized throughout this document, there are actually three different types of removal orders: departure orders, exclusion orders and deportation orders.

## 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 and consult with CWICE. 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 identify these youths as 'visitors/foreign students'—and expect them to pay significantly higher international student fees.

***Restricted access to financial assistance.*** To be eligible for Ontario Works, or welfare, youth must be Canadian citizens, permanent residents, refugee claimants, Convention refugees or have received confirmation from immigration that an application for permanent residence under humanitarian and compassionate considerations has been received. 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. Permanent residents need a passport to travel outside Canada, including the USA, and a valid permanent residence card to re-enter Canada.

***Limited employment prospects.*** Youth who are not permanent residents cannot obtain a social insurance number without a work permit. Work permits are issued by Immigration Refugee Citizenship Canada (IRCC) to those eligible based on their immigration status in Canada. Youth without a SIN number are limited 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.*** Refugee claimants may have limited access to legal counsel and may not be eligible for immigration appeal matters.

***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.** Youths who are not Canadian citizens and receive a criminal conviction in an adult court may face deportation. This places youth 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 relationship connections.

**Restricted from applying for Citizenship.** A youth on probation or parole is restricted from applying for Canadian citizenship.

Tougher penalties in the criminal law can lead to having their permanent residence status revoked and face deportation. As of Dec 2018, impaired driving and cannabis related crimes are now considered serious crimes. Immigration Canada can find a person inadmissible to Canada based on convictions inside or outside Canada.

## Removal Orders

There are three types of Removal Orders issued by Immigration, Refugees and Citizenship Canada (IRCC) or the Canada Border Services Agency (CBSA). These are Departure Orders, Exclusion Orders and Deportation Orders. The form number on the Removal Order indicates what type of order you received. Each has different implications for a person's ability to return to Canada.

**Departure Order**, the person must leave Canada within 30 days after the order takes effect.

- When a person is issued a departure order they must confirm with CBSA their departure at the port of exit, otherwise the departure order will automatically become a Deportation Order.
- Refugee claimants are issued a *Conditional Departure* upon making a refugee claim. The order states that a failed refugee must leave Canada within 30 days of the claim or appeal is denied.

**Exclusion Order**, the person cannot return to Canada for one year.

- A person can not return to Canada for the specified period stated in the order. If an exclusion order has been issued for misrepresentation, you cannot return to Canada for five years. If the CBSA paid for your removal from Canada, you must repay that cost.
- To return to Canada before the time has passed, the person must apply for an Authorization to Return to Canada (ARC)

**Deportation Order**, the person is permanently barred from returning to Canada and cannot return unless he/she applies for an ARC

- If the CBSA paid for the removal from Canada, the person must also repay that cost before they are eligible to return.

# 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.

In June 2018, the Child Welfare Immigration Centre of Excellence was established as a partnership between Peel Children’s Aid Society and the Ontario Association for Children’s Aid Societies. The goal of CWICE is to assist and support all child welfare organizations in Ontario dealing with child welfare cases with complex immigration issues.

### **Case Study: Janet**

Janet came to Canada to be reunited with her mother. Shortly after arriving, her mother became abusive, and the local children's aid society became involved and eventually brought her into care.

The Society learned that Janet did not have legal immigration status in Canada and hired an immigration lawyer to seek legal status for Janet on humanitarian and compassionate grounds. While her application was being processed, Janet became an adult and did not have access to post-secondary education, employment opportunities or health care coverage. The application process took several years, while Janet tried to obtain identity documents. The Society advocated for financial support so Janet could secure safe housing. Ultimately, her application was approved and Janet received permanent resident status.

Janet's story demonstrates the lengthy and sometimes complex immigration processes in Canada. In addition, when there is a lack of identity documents or the applications are not complete this can add additional processing times that can turn into years.

## **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, track and resolve immigration status issues. This work is supported by a provincial effort to develop field-wide capacity and expertise through CWICE.

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>*

As it was true in 2014, very few agencies collected and monitored 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, in kinship service placement and former crown wards 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.

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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.*

## 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 Youth and Family Services Act* (CYFSA). As stated in the legislation, the paramount purpose of the CYFSA is to "promote the best interests, protection and well-being of children."<sup>3</sup>

By comparison, Immigration, Refugees and Citizenship Canada (IRCC) 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 CYFSA 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 claim or application for permanent residence. Any inconsistencies in the information provided to IRCC may jeopardize the child's ability to remain in Canada. CWICE recommends consulting and obtaining consent in situations where sharing information is required.

## 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 a diversity, equity and inclusion lens' to their work, it will be important for agencies to adopt the practice of asking *all* families about their citizenship and immigration status. 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 benefit of resolving immigration status issues warrants the effort to shift practice.

## Expanding internal capacity and expertise

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Agencies have different capacity challenges depending on the profile of the families they serve and the volume of children and youth with unresolved immigration issues. CWICE was created to assist child welfare organizations and ensure accessibility to settlement, immigration and citizenship expertise for all child welfare professionals in Ontario.

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 will be available through CWICE to develop capacity building across the province.

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<sup>3</sup> Government of Ontario. (2017). *Child and Youth Family Services Act*.

### ***CWICE: Citizenship Case***

Shortly after the Centre opened, a call was received from a foster parent requesting support for two youth she was caring for. The brothers, aged 13 and 15 were under the care of a CAS in Ontario and had been living in Canada without immigration status for over 10 years.

When a meeting was scheduled the older brother who was turning 16 wanted to apply for a job but had no documentation to apply for a Social Insurance Number. He shared that he was afraid he would be deported from Canada and returned to a country he did not know. While supporting the boys, their foster parent and the CAS worker, it was learned the boys' birth mother was born in Canada. This meant that the youths might be eligible to apply for citizenship instead of permanent residence.

To move forward, identity documents were needed to prove the boys were born to a Canadian citizen, therefore, the mother's birth certificate and the boys' birth certificates were gathered. Sometimes it can be very challenging to obtain identity documents when children are not in the care of their parents. In this case, their worker and CWICE were able to gather the documents. Thanks to strong relationships CWICE has developed over years of working with immigration partners, CWICE was able to expedite and receive the citizenship certificates within a few weeks of submission.

The CAS worker shared that the boys were so happy, relieved and thankful for the help provided in resolving their immigration status. The foster mother reported that the older sibling has begun making plans for his future. He applied for a Social Insurance Number and can now pursue post-secondary education, employment and most importantly not live in fear that he may be deported to a country he doesn't know or remember.

## **Dedicated expertise**

Resolving immigration status issues for children and youth in care, former crown wards, children and youth in kinship service homes 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;
- Consult with the Child Welfare Immigration Centre of Excellence for early intervention.

The Child Welfare Immigration Centre of Excellence functions as the centralized service in Ontario for expertise related to immigration issues in child welfare. CWICE has a dedicated team of immigration specialists with expertise in child welfare, immigration, refugees, citizenship and settlement issues. Specialists provide general consultation services to child welfare organizations, working to assist youth in securing legal status or Canadian citizenship. CWICE maintains up-to-date knowledge on the immigration laws and regulations affecting the agency's clients and can provide the following services:

- Screen and evaluate the need for immigration supports or interventions;
- Provide information on settlement that assist in the integration into society and the intersection of child protection and immigration;
- Assist workers when conducting child protection investigations involving immigration challenges;
- Assist and support children and youth through the immigration process;
- Identify when outside legal assistance may be required in the completion of immigration related applications;

- Work collaboratively with workers, immigration lawyers, designated representatives and other external resources;
- Provide support to workers when attending immigration meetings and hearings with youth;<sup>4</sup>
- Provide referrals to resources in the community to support families caring for children without status;
- Support workers in obtaining social insurance number, health card and passport for children and youth in care or replacement documents;
- Adding to the agency's professional expertise related to immigration, including knowledge on the latest trends and practices of Immigration, Refugees and Citizenship Canada;
- 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;
- Developing and maintaining a more accurate, up-to-date database;
- Informing the development systems and practices in this specialized area of service; and
- Provide training on immigration and the intersection with child welfare.

## **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 in their regions to identify and establish working relationships with these organizations. CWICE can be asked to, and will, help facilitate and develop these partnerships.

As they co-operate together over time, partnering organizations will develop a shared understanding of how best to respond to the needs of children and youth. 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.

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

## 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.

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 Immigration, Refugees and Citizenship 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, child tax benefits and financial assistance from Ontario Works. 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—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 living in out of home placements, 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 this in the court process to have documentation released by parents or guardians.

When families have fled conflict and persecution, original documentation may not be available. In these situations, agencies will need to gather the required documentation, often with support from embassies and consulates. CWICE has developed the expertise in developing 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 permanent residence under 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 claim 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.

**Identity documents are crucial for any type of refugee, immigration or citizenship application.**

## 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 and in kin service placements, 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.)

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. Permanency includes immigration pathways and plans.

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.

CWICE offers services to former crown wards. Former crown wards can be referred or be encouraged to self-refer for consultation and for brief service.

## 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.

**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	RECOMMENDED FOR A REFERRAL TO CWICE
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 is meant to move quickly, however, backlogs have created longer waiting times for hearing.</p> <p>Hearings are meant 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 IRCC or the Canadian Border Services Agency.</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>	People under removal orders are not eligible to make refugee claims.	✓

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER	RECOMMENDED FOR A REFERRAL TO CWICE
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)	<p>Determine status of the application.</p> <p>Determine if the conditions exist to support an H&amp;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&amp;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.</p>	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	<p>No action is required if the child returns to country of origin.</p> <p>Determine if the conditions exist to support an H&amp;C application.</p>	Depending on country of origin there may not be a physical document.	✓

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER	RECOMMENDED FOR A REFERRAL TO CWICE
Without legal immigration status in Canada	Sponsorship arrangement has broken down	Sponsorship application (if available)	Determine if the conditions exist to support an H&C or refugee application.		✓
	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)	Determine if a refugee claim will be made.  If yes, the Immigration and Refugee Board will appoint a designated representative to guide/assist in the process.	When CBSA identifies an unaccompanied minor who they suspect is a child at risk under the provisions of the Child, Youth and Family Services Act, they contact a children's aid society.  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.	✓
	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.		✓

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER	RECOMMENDED FOR A REFERRAL TO CWICE
Working toward legal immigration status	Refugee claimant	Copy of refugee claimant application (Basis of Claim Form)	Determine when the application was made. Obtain a copy of the application if it is available.	If the youth is a Crown ward, separate the application from the parents/guardian.	✓
	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 H7C 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 IRCC	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 in the extended society's care, separate the application from the parents/guardian.	✓
	Permanent Resident (PR)	Confirmation of permanent resident document or record of landing Application for citizenship (if eligible) PR card	Determine if and when an application for citizenship has been made. Obtain a copy of the application if it is available Check the status of the application	Societies can now apply for citizenship on behalf of children and youth in care.	✓

IMMIGRATION STATUS	SITUATION	KEY DOCUMENTS TO CONFIRM/OBTAIN	ACTION REQUIRED ON PATH TO CITIZENSHIP	IMPORTANT THINGS TO CONSIDER	RECOMMENDED FOR A REFERRAL TO CWICE
	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.

### *Questions to consider:*

1. Does your agency know how many children and youth in care and in kin service have unresolved immigration issues?
2. Is there a standard process in place to determine the citizenship and immigration status of children and youth in care?
3. Does your agency refer to CWICE?
4. Do agency staff have a baseline knowledge and competency in early identification of immigration status issues?
5. 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?
6. Is the progress toward achieving resolution of immigration issues monitored in clinical work and permanency planning?
7. Has the agency clarified what is possible to youth with unresolved immigration status issues who are aging out of care?
8. 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)?
9. Has the agency clarified what is possible to support children, youth and families receiving ongoing service and experiencing unresolved immigration status?

## 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

Immigration, Refugees and Citizenship Canada

<https://www.canada.ca/en/services/immigration-citizenship.html>

Government of Canada - Make an access to information or personal information request

<https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/access-information/request-information.html>

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>

Ombudsman Ontario

<https://www.ombudsman.on.ca/what-we-do/topics/children-youth>

Pro Bono Law Ontario

<https://www.probonoontario.org/>

Canadian Centre for Victims of Torture

<http://ccvt.org>

University of Ottawa Refugee Assistance Project

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

Ontario Association of Children's Aid Societies

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

United Nations High Commissioner for Refugees  
<https://www.unhcr.org/about-us.html>

## Settlement services

Canadian Red Cross First Contact Program  
<https://www.redcross.ca/how-we-help/migrant-and-refugee-services/first-contact/first-contact-ontario>

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 <https://www.ontario.ca/page/community-health-centres>

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

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.

**Canada Border Services Agency (CBSA):** The Canada Border Services Agency is a federal agency that is responsible for border protection and surveillance, immigration enforcement and customs services in 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.)

**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, Refugees and Citizenship Canada (IRCC):** 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*.

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

**Immigration and Refugee Board (IRB):** 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.