



SPAN Parent Advocacy Network, 570 Broad St, Newark, NJ 07102
(973) 642-8100 www.spanadvocacy.org
Empowered Parents: Educated, Engaged, Effective!

Tips for Immigrant Parents: Ensuring a Guardian for your Child

As an immigrant parent, you may have a child who was born in the United States and is a citizen. You may have concerns about what might happen to your child if you are forced to leave the country unexpectedly because of your immigration status. This tip sheet can help you plan for that situation.

Is there a reason for your child to remain in the U.S. even if you leave?

As a parent, you may know that the education and health care system in the United States is better for your child than the system in your country of origin. This may especially be true if your child has a disability or special health care need, because many countries do not have the same range of services available in the United States. These issues may lead you to consider having your child stay in the U.S. with a guardian that you select even if you are forced to leave.

However, you should also consider the possible consequences on your child of being separated from you. For many children, this would be a traumatic experience that could lead to emotional problems, behavior issues in school, or even running away from their guardian. If the situation worsens, the guardian might decide they no longer want this responsibility. Your child could end up being referred to your state's child welfare system and being placed in foster care.

If you consider all of these issues and still decide that it would be better for your child to stay in the U.S. if you are forced to leave, use these tips to make decisions and protect your child.

Selecting a Guardian

If you leave your child in the U.S. and are forced to return to your country of origin, you need to identify a guardian who will agree to accept responsibility for raising your child in your absence. Some things to consider are:

- **Existing Relationship:** *Who already has a positive, supporting relationship with your child?* Living without you will be difficult for your child, so it's important that they already know the person who will be their guardian and have a good relationship with them.
- **Family Connection:** *Can an extended family member serve as guardian?* While you have the right to identify a non-family member as your child's guardian, having an extended family member (sister, brother, aunt, etc.) serve as guardian can be seen as more "legitimate" in the eyes of state agencies. It would be harder to challenge your decision in selecting a guardian if you chose a member of your extended family. If the child welfare system gets involved, they or a judge would be more likely to agree with a relative as a guardian as long as the relative is responsible.
- **Financial Stability:** *Is there someone who can afford to raise your child?* If you return to your country of origin, you may have difficulty getting a job that pays enough to send enough money to the guardian to pay for your child's living expenses. If you select a guardian with a sufficient income,

home, etc. you won't have to worry about whether your child is getting enough to eat or has enough clothes to wear. A guardian who can afford to raise your child is also less likely to back out of their agreement due to financial considerations.

- **Shared Values:** *Is there someone who shares your philosophy about child-rearing?* You want your child's guardian to deal with issues such as discipline, independence, religion, and other important philosophical issues in a way that you can feel good about. If you believe that children should go to church every Sunday, then finding a guardian who will do their best to take your child to church is important. If your child has a disability, and you have advocated for them to be educated in classes with their non-disabled peers, you don't want a guardian who is going to agree to have your child placed in a segregated setting. If you don't believe in hitting children or punishing them with physical violence, then you don't want a guardian who will spank or consent to the use of aversives or restraints with your child.
- **Legal Status:** *Is there a potential guardian who is a citizen or a legal resident?* The best situation is if you can identify a potential guardian who is a citizen, just as your child is a citizen. At the very least, you need to identify someone who is a legal resident, and not someone who is here on a short-term visa or without documentation. You don't want to have to change the guardianship or your child's living situation if you can help it. If you select someone who could be deported, then you run a serious risk of your child being deported, being placed in a foster care or group home, or even being placed in a juvenile institution if there are no other spaces for him/her.

By thinking about these factors, you can choose a guardian who will keep your child safe, cared for, and supported in your absence.

Talking with the Potential Guardian(s) and Your Child

Once you have identified a person or couple that you feel would be a good guardian for your child, you need to talk to the potential guardian(s) and your child about how they feel. Have the first conversation individually with each of them. It could be very damaging to their ongoing relationship if it turns out that the potential guardian is not willing to raise your child, or your child has serious problems with the guardian(s) you have selected. When you speak with the potential guardian, make sure you cover issues such as:

- **Reasons for Guardianship:** Why you are considering having your child stay in the U.S. if you have to leave;
- **Responsibilities:** Exactly what it is you are asking them to do (have your child live with them, for how long; pay for all, some, or none your child's living expenses; agree to raise your child in a way consistent with your child-rearing philosophy);
- **Communication/Decision Making:** How you will stay in touch with each other and make decisions if changes have to be made in the guardianship/living situation;
- **Visits:** Whether you will want them to bring your child to visit you in your country of origin, and if so, how often and who will pay for these visits;
- Their "Legal" Status: Their citizenship/immigration status;
- **Special Needs:** Your child's special needs, if any, and your expectations for the guardian to advocate for your child's education, health, etc.;
- **Decision Making:** What decisions they may make without consulting you, what types of questions require your input and/or decision, and how that consultation will take place;
- **Emergency Instructions:** What your instructions are regarding taking extraordinary measures to keep your child alive should your child be in an accident or other emergency;
- **Contingency Plans:** What will happen if you should die while your child is under their care; and

- Any questions or concerns they may have. | Questions/Concerns: Encourage them to ask any questions or express concerns they might have

When you speak with your child, cover these points:

- **Reasons for Guardianship:** Explain why you are considering having them stay in the U.S. if you have to leave;
- **Responsibilities:** Clearly state what you;
- **Communication:** Discuss how you will stay in touch;
- **Visits:** Inform them of any plans for visits to your country of origin
- **Feelings and Concerns:** Ask how they feel about the plan to leave them in the U.S. if you have to leave, and about the potential guardians, and address any questions or concerns they may have

Of course, your conversation with your child will vary depending on their age, disability, etc.

After your initial conversation with the potential guardian(s) and your child, it's time to bring everyone together to have an open discussion about what is going to happen. You will want to talk about all of the things you already discussed. You will also want to talk about what will happen if you have to leave the country suddenly. How will arrangements be made for your child to get to the guardian? How will the guardian know that they need to get your child? You will also want to leave plenty of time for questions from the potential guardian(s) and your child.

Making it Official

Once the final decision has been made about who your child's guardian(s) will be, it's time to make it official. In most states, you can identify someone to serve as your child's guardian simply by writing up a statement indicating the circumstances under which they have your permission to act as your child's guardian and then getting that statement notarized. You can usually find a notary at your local bank. It's not required, but it's a good idea to have the identified guardian(s) write a statement indicating their willingness to act as your child's guardian and to get that statement notarized as well. Have several copies of each made with original signatures. If you have a safe deposit box or other place where you keep your important papers, keep at least one copy there. If your child is old enough or responsible enough, give him/her a copy of each of the statements. Make sure that the potential guardian also has a copy of each of the statements.

If you have a will, you will want to change your will to make sure that your wishes are clear. For example:

- If you want the guardian to keep guardianship of your child after your death, put that in the will.
- If you want your child to go to her/his grandmother or extended family members in your country of origin if you die, put that in the will.

It's a good idea to leave any property or money that you may have to your child, but name the guardian or some other person as a trustee of those funds until your child becomes an adult or use an ABLE account/special needs trust for a child with a disability. That way your wishes will be known to everyone and your child will be protected.

Keeping It Current

It's a good idea to revisit these discussions and the documents at least every year. Is the guardian still willing to act in that capacity? Things may have changed; they may have lost their job, moved, become disabled, or have a different relationship with you.

It's also a good idea to build up the relationship between the guardian(s) and your child, so that they become close and the relationship is strong if the time comes when you need to leave your child. You want your child to feel as comfortable, safe and secure as possible with the guardian(s) since they will definitely be feeling upset, confused, and scared by your leaving. Spend time with each other, do things together, let your child spend some time with the guardian(s) without you so they can develop their own relationship. Talk frequently. Let the guardian(s) and your child know where your important documents are and how to access them if needed. Everyone will be in an emotional state if you have to leave quickly, so everything needs to be clear in advance.

Getting Help from Professionals

There are national, state and local immigrant advocacy organizations throughout the United States. There are also free and reduced cost legal services offices. These organizations can help you understand if there are special rules about guardianship in your state that you need to think about in making your decisions. "Pro bono" lawyers (lawyers who volunteer to represent low-income people), Legal Services offices, National Lawyers Guild lawyers, law school clinics, and sometimes State or County bar associations can help you with legal documents to make sure that they are valid in your state. For low-cost immigration consultations, families can use the National Immigration Legal Services Directory, which lists nonprofit legal service providers approved by the U.S. Immigration Board of Appeals. In New Jersey, refer to the Immigration Advocates Legal Directory for local resources.

For more information, or to find out about immigrant rights organizations in your area, you can contact the Alliance for Immigrant Justice (NJ) at info@njimmigrantjustice.org, the National Immigration Law Center at 202-216-0261 or reply@nilc.org, the National Network for Immigrant and Refugee Rights at 510-465-1984 or nnirinfo@nnirr.org, the American Immigration Lawyers Association at 202-507-7600 or www.aila.org, the Lawyers Committee for Human Rights at 212-629-6170, and the American Civil Liberties Union Immigrant Rights project at their New York office, 212-549-2500. See also tools from the Women's Refugee Commission, Resources for Families Facing Deportation and Separation, at www.womensrefugeecommission.org/research-resources/resources-for-families-facing-deportation-separation/.

This tip sheet was developed by the SPAN Parent Advocacy Network of New Jersey (SPAN), a member of the New Jersey Alliance for Immigrant Justice and New Jersey's Parent Training and Information Center and Family-to-Family Health Information Resource Center, and home of Family Voices-New Jersey, New Jersey Statewide Parent to Parent, and a chapter of the National Federation of Families (for Children's Mental Health).

This information is intended to be educational to help immigrant parents who may be faced with a situation where they must leave the U.S. and are considering leaving their children, who are U.S. citizens, in the U.S. with a guardian. The tip sheet is not intended to be legal advice. For legal information, please contact a lawyer or legal advocacy organization.

© SPAN Parent Advocacy Network, 2025