PROTECTING ASSETS & CHILD CUSTODY IN THE FACE OF DEPORTATION

A GUIDE FOR PRACTITIONERS ASSISTING IMMIGRANT FAMILIES

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APPLESEED
FOREWORD

Dear Friends,

Can you imagine being abruptly ejected from the United States — and leaving behind your home, your children, your job, your bank account, and everything else you’ve spent years to build? Can you imagine what your children would feel when they arrived home and you’re gone?

Deportation can be a cataclysm for families and communities, destroying decades of hard-earned assets and rupturing family development. But with advanced planning, immigrant families can prevent an enormous amount of this damage.

That’s why Appleseed is proud to present an updated version of its 2012 Manual, “Protecting Assets and Child Custody in the Face of Deportation.” This one-of-a-kind resource is designed for immigrants and those who work with them; the host of attorneys, nurses, social workers, religious workers who are stepping up in challenging times.

Appleseed’s Manual will help families develop plans in advance to deal with critical financial and family issues in the event of deportation, arrest, and other family emergencies. It will help immigrant families deal with child custody and related children’s issues, personal finances, assets and personal property, remittance payments, wages and benefits, business issues, and taxes. And it includes special guidance for family and children’s issues, including professional advice for parents to help their families deal with painful psychological issues, and for immigrant survivors of domestic violence and sexual assault.

Make no mistake: for vulnerable immigrant families, advance planning can make all the difference. Once an immigrant is detained or deported from the United States, navigating a legal proceeding or managing assets is much more difficult, or even impossible, especially since immigration laws bar immigrants from reentering the United States after deportation for several years.

We are grateful to our pro bono law firms, volunteer psychologists, translation companies, and more than 20 nonprofit partners across the country who wrote, researched, proofread, and translated this manual into Spanish. We could simply not have done it without you. Thank you so much to Adams and Reese LLP, the Asian Pacific Institute on Gender-based Violence, ASISTA, Ballard Spahr LLP, BGBG Abogados, Cooley LLP, Directum Translations, Hogan Lovells LLP, Mexico Appleseed, the Mexico
City Department of Labor, MomsRising/MamasConPoder, Norton Rose Fulbright, O’Melveny & Myers, The William Alanson White Institute Center for Public Mental Health, and White & Case for your commitment, careful drafting, and counsel during this process. We are also deeply grateful to the Annie E. Casey Foundation and the Ford Foundation for their support of these efforts.

Immigrants come to the United States to build a better future and to unite with family members. Most have lived in the United States for many years, paying taxes and joining the daily life of their communities. Over time, immigrants buy homes, start businesses and build personal assets. When they build better lives, they make our country stronger.

That’s why this Manual is a labor of love for all who worked on it. We are committed to fairness and compassion for the millions of immigrants living in our country. Our hope is that you can use this resource to help them build better lives.

Sincerely,

Annette LoVoi, Director, Financial Access and Asset Building, Appleseed
Disclaimers

Each Chapter is intended to provide generalized information on a particular topic. In many cases, laws may differ from state to state. Therefore, this information is not intended to replace state-specific legal assistance. Nothing in this manual is intended to create an attorney-client or fiduciary relationship.

Appleseed recognizes and understands the legal term “alien,” used to describe any person born in another country to parents who are not American and who has not become a naturalized citizen, but is living or staying in the United States. However, throughout this Manual, we will primarily use the term “immigrant” in place of the term “alien” based on AP Stylebook guidance and the recommendations of our partners. The exception will be when citing laws, codes, or regulations that specifically use the term “alien.”
19. SOCIAL SECURITY

For immigrants who are Non-U.S. Citizens, there are steps they can take to determine their eligibility for U.S. Social Security Benefits (“SS Benefits”). The section, which is only relevant to a small subset of immigrants, either Insured Workers or dependents or survivors, addresses both the legal and practical considerations. This chapter addresses the following issues:


Understanding Social Security – Basic Definitions

“Dependents and Survivors Benefits” include (i) Wife’s / Husband’s Insurance Benefits; (ii) Child’s Insurance Benefits; (iii) Widow’s / Widower’s Insurance Benefits; (iv) Mother’s and Father’s Insurance Benefits; (v) Parent’s Insurance Benefits; and (vi) Lump-Sum Death Payments.

“Deportable Aliens” are individuals who are removed or deported. Individuals who fall within this category will have their Social Security Benefits suspended.

“Insured Workers” are any individual immigrants who have a Social Security number (“SSN”) and contribute to Social Security while working for U.S. employers or foreign affiliates under certain circumstances.

“Qualified Aliens” are any Non-U.S. Citizens who, at the time they apply for, receive, or attempt to receive a federal public benefit, fall within of any of the seven categories of the Department of Homeland Security immigration statuses.
“Retirement Benefits” are Old-Age Insurance Benefits.

“SSA” is the abbreviation for the Social Security Administration.

“SS Benefits” are Retirement Benefits, Dependent and Survivor Benefits, Social Security Disability (SSD) Benefits or Supplemental Security Income (SSI) Benefits.

“SSD Benefits” are Social Security Disability Benefits. The Social Security disability insurance program is designed to help people who can’t work because they have a medical condition that’s expected to last at least one year or result in death.

“SSI Benefits” are Supplemental Security Income Benefits. A federal income supplement program designed to help aged, blind, and persons with disabilities who have little or no income. Supplemental Security Income Benefits can never be received by dependents.

“SSN” is the abbreviation for Social Security Number.

“Voluntary Departure” is an option that may be granted by either the Department of Homeland Security or an immigration court judge to immigrants facing deportation who meet the following requirements: (i) Presence in the U.S. for at least one year immediately prior to the date notice to appear was served; (ii) Person of good moral character for at least five years immediately preceding application for voluntary departure; (iii) Not accused of an aggravated felony; and (iv) Not deportable for public safety or national security reasons. Immigrants granted Voluntary Departure are not deemed “deported” or “removed” and may be able to receive benefits once back in their home country.

Which Immigrants Are Eligible to Receive Social Security Benefits?

Insured Workers

If you are an Insured Worker, to be eligible to receive Social Security Benefits you must meet the following criteria:

- Retirement Benefits if worked for 10 years and obtain retirement age (age 66 or 67);
• Social Security Disability Benefits (“SSD Benefits”) if a person with disabilities is not able to work and typically worked 10 years;
• Depending on your age, you may be able to receive Social Security Disability Benefits with fewer years of work.

Additionally, you can receive Supplemental Security Income Benefits (“SSI Benefits”) if you are a qualified immigrant who has limited income and resources and is either aged 65 or older, blind or has disabilities.

Dependents or Survivors
If you are a dependent or survivor of an Insured Worker, to be eligible to receive Social Security Benefits you must meet the following criteria:

• Spouse (including former) age 62 or older;
• Spouse younger than 62 taking care of an entitled child under 16 or with disabilities (Spouses who have never worked or have low earnings get up to half of a retired worker’s full benefit);
• Children up to age 18, or 19 if full-time student and has not graduated from high school; and
• Children with disabilities, even if 18 or older.

What Should You Do if You are Already Receiving Social Security Benefits?

If you are an Insured Worker planning to stay in the U.S. you should continue contributing to the Social Security Administration, and check with the Social Security Administration to see if you or any of your family members are eligible to apply for benefits. You should have their Social Security numbers and their birth certificates readily available. You should explain to your family members that they may be entitled to survivor benefits if you pass away and confirm that they know how to apply for Social Security Benefits in such case.

If you are an Insured Worker considering a Voluntary Return to your home country (not to be confused with a grant of “Voluntary Departure”), you may continue receiving Social Security Benefits payments while you are outside the U.S. depending on which country the payments are to be sent. You must confirm with the Social Security Administration (SSA) that payments can be sent to your destination country. If the country is eligible, once you are outside the U.S. you will need to (i) complete an annual questionnaire sent by the Social Security Administration between May and June; and (ii) report any changes in address, work, improvement in disability, marriage, divorce, annulment, adoption, child leaving the care of a spouse, child nearing age 18 is a full-time student or is disabled, death,
inability to manage funds, deportation or removal from the U.S., changes in parental circumstances, and eligibility for a pension from work. Consider signing up for direct deposit to avoid problems with lost checks. Supplemental Security Income Benefits can never be received if you are outside of the U.S. for more than one month.

If you are a dependent or survivor considering a Voluntary Return to your home country, you may continue receiving Social Security Benefits payments while you are outside the U.S. depending on your destination country. If the country is eligible, once you are outside the U.S. you will need to: (i) show that you lived in the U.S. for at least five years; (ii) during those five years, the family relationship on which benefits are based must have continued to exist (unless your entitlement is based on a worker who died during U.S. military service or because of service. These requirements are automatically met for a child if the worker or other parent meets them); and (iii) complete the Social Security Administration annual questionnaire and notify the Social Security Administration about changes as mentioned above.

Are Immigrants Facing Deportation Eligible for Social Security Benefits?

If you are an immigrant who has been classified as a “Qualified Alien” in the past and qualified for Social Security Benefits, but have since had your legal status revoked and face deportation, you may be eligible to make claims for Social Security Benefits only if you meet the following criteria:

- Lawfully admitted for permanent residence; and
- Granted non-citizen classification within the last seven years through a withholding of deportation or removal.

If you are an immigrant not lawfully admitted for permanent residence, but your deportation is being withheld, you may still receive Social Security Benefits if you fulfill any of the following:

- If you were lawfully residing in the U.S. on August 22, 1996, and you are blind or disabled;
- If you were lawfully residing in the U.S. and you were receiving Social Security Benefits on August 22, 1996; or
- Your deportation or removal was withheld within the last seven years.

If non-U.S. citizens meet one of these criteria, they are eligible to receive Social Security Benefits, provided their noncitizen statuses remain legal and they are not deported.
If you are a Detained Immigrant who was already receiving Social Security Benefits, the government may suspend your Social Security Benefits while you are detained. Nevertheless, you may appeal a decision by the Social Security Administration to suspend your Social Security Benefits while you are in immigration detention. While you are in detention you should take the following steps:

1. **Have the person you designated make copies of all letters you receive from the Social Security Administration.**

2. **Create a log of every communication with the Social Security Administration, the date of the communication, the content of it, and the follow up steps the Social Security Administration or you will make.**

3. **Add copies of your checks from the Social Security Administration to the log. Also, watch your bank account (or have the person you designated do it) if you are receiving direct deposit.**

4. **If the Social Security Administration sends a letter telling you that your benefits have been suspended because you are in detention, you should be prepared to appeal. You will then follow the steps outlined below.**

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**My Social Security Benefits Have Been Suspended Since I Have Been in Detention, What Should I Do?**

If the Social Security Administration sends a letter telling you that your benefits have been suspended because you are in detention, you should be prepared to appeal. You should follow the steps outlined below:

1. **The first step in the appeal process is a request for reconsideration. The request should be made in writing within 60 days of receipt of the original letter from the Social Security Administration suspending benefits. Try to have someone outside (not in detention) send it in, since mail in detention facilities can be unreliable.**

2. **The letter must include: (i) the name of the wage earner (you); (ii) the Social Security Number of the wage earner (your SSN); (iii) an address and a current day-time phone number; (iv) where the Social Security Administration may reach you; (v) the type of decision on which you wish reconsideration (suspension of retirement benefits); and (vi) why you disagree with the determination.**

3. **If your request for reconsideration has been denied, the next step is to request a hearing in front of an administrative judge.**
4. The next step is to request a review of the decision by the Appeal Council.

5. The next step after that would be to request a hearing in the federal District Court.

At these stages, you will have to proceed pro se (on your own without a lawyer) unless you can afford a lawyer or can obtain the services of a free legal services agency. There is no filing fee at the administrative level. There is a filing fee at the District Court level, but you can file "in forma pauperis," which means the court will waive the filing fee.

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**Can Immigrants Continue Receiving Social Security Benefits After Deportation?**

If you are a non-U.S. citizen Insured Worker, once you are deported, you cannot receive any benefits for any month after the Social Security Administration receives notice of your deportation from the Secretary of the Department of Homeland Security or the Attorney General. If you are subsequently lawfully readmitted to the U.S. for permanent residence after being deported, any unpaid benefits may be payable upon readmission.

If you are a dependent or survivor and the Insured Worker is deported, then you can continue receiving Retirement Benefits payments only if: (i) you are a U.S. citizen, or (ii) you were lawfully present in the U.S. for the entire month. However, if you are a dependent and a non-U.S. citizen, you are not entitled to receive benefits during any period where you are not present in the U.S.

A lump sum death payment cannot be based on the record of a person who died after the Social Security Administration received notice of his deportation and before he was thereafter lawfully admitted.

If you are a dependent who is deported and the Insured Worker is not, the Insured Worker will continue to receive benefits but you will not.

It is difficult to receive Social Security Disability Benefits if the Insured Worker is abroad for logistical reasons (the Social Security Administration may not accept a re-evaluation done abroad).

Finally, if you are a dependent and the Insured Worker dies during or after the month the Social Security Administration receives notice of the immigrant's deportation or removal, you cannot receive a standard lump-sum death payment based on the Insured Worker's earnings unless the
Insured Worker was subsequently admitted for permanent residence after deportation or removal.

**What Should Immigrants Do Before Leaving the U.S.?**

If you are an immigrant Insured Worker with dependents and you face the possibility of future removal from the U.S., you should take measures to obtain U.S. citizenship for your dependents. If your dependents cannot obtain U.S. citizenship, they should understand that if they leave the U.S. for any period after you are deported, they will waive their rights to Social Security Benefits for their period of absence.

If you are an Insured Worker and your dependents are deported but you are not, you should arrange for the means to wire or otherwise transfer the benefits to your dependent to their home countries, if necessary.

If you have already received a notice of hearing on removal, consider asking for “Voluntary Departure,” as immigrants granted Voluntary Departure are not deemed “deported” or “removed” and may be able to receive benefits once back in their home country.

To qualify for Voluntary Departure, the following criteria must be met: (i) presence in the U.S. for at least one year prior to the date notice to appear was served; (ii) person of good moral character for at least 5 years directly before applying for Voluntary Departure; (iii) not accused of an aggravated felony; and (iv) not deportable for public safety or national security reasons.

**What Can Detained Immigrants Do After Deportation?**

If Detained Immigrant Insured Workers are removed from the U.S. all Social Security Benefits will end. However, their dependents may be entitled to continue receiving benefits if they are U.S. citizens and they were present in the U.S. for the entire month.

The dependents should understand that they waive their dependent benefits for any month that they spend any part of that month outside the U.S.

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58 Immigrants have to pay for their own expenses to leave and post a bond and if they fail to leave within the specified timeframe there is a large fine, the bond is lost, and the immigrants face a 10-year bar to lawful re-entry.
CHECKLIST: SOCIAL SECURITY

☐ If you are an Insured Worker or the dependent or survivor of an Insured Worker, you are eligible to receive Social Security Benefits. To obtain those benefits, you must apply (at the website www.socialsecurity.gov or in person) with the following documentation and information (If you disagree with a decision made on your claim, you can appeal it):

- Your SSN;
- Your birth certificate;
- Your W-2 forms or self-employment tax return for last year;
- Your military discharge papers if you had military service;
- Your spouse’s birth certificate and SSN if they’re applying for benefits;
- Your children’s birth certificates and SSN, if you’re applying on your children’s behalf;
- Proof of U.S. citizenship or lawful immigration status if you (or a spouse or child applying for benefits) were not born in the U.S.; and
- The name of your financial institution, the routing number, and your account number for direct deposit. If you don’t have an account at a financial institution, or prefer to do so, you can sign up to get your benefits on a prepaid card.

KEY TAKEAWAYS

☐ Deportation of an immigrant Insured Worker or his dependents or survivors can affect Social Security benefits.

☐ If you were an Insured Worker in the U.S. and received Social Security Benefits, your children and other dependents can continue receiving benefits if they are U.S. citizens.

☐ If you were an Insured Worker in the U.S. and received Social Security Benefits and your dependents do not have legal status in the U.S., you and they should understand that they cannot receive benefits for any month that they are outside the U.S. for any length of time.

☐ You will not be able to receive Social Security Benefits once the Social Security Administration is notified that you have been deported. However, if you are lawfully admitted to the U.S. for permanent residence after being deported, any benefits that were unpaid because of your deportation may be payable when you are readmitted.
☐ If you are an Insured Worker, a lump sum death payment cannot be made to your survivor on your record if you died after the Social Security Administration received notice of your removal and before you were thereafter lawfully admitted.

☐ If you receive Social Security Benefits as the dependent of an Insured Worker, and you are deported but the wage earner is not, the Insured Worker will continue to receive benefits but you will not.