

SPECIAL IMMIGRANT JUVENILE STATUS

Presented by:

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September 21, 2018

AGENDA

- RMIAN's services
- Overview of the Law on SIJS—
purpose, eligibility and procedure
- Obtaining the State Court Order
- Representation in Removal
- Updates and practice pointers

RMIAN'S PROGRAMS

□ DETENTION PROGRAM:

Serves adult immigrants detained at the GEO/ICE immigration detention center in Aurora, Colorado.

□ SOCIAL SERVICE PROJECT

□ ANTI-TRAFFICKING PROJECT

□ CHILDREN'S PROGRAM

Serves immigrant youth and families who have suffered abuse, abandonment, neglect, trafficking or crime with free legal services:

- Case screenings and assessments.
- Direct legal representation.
- Referral to pro bono attorneys.
- Education and outreach.
- OCR litigation support



SIJS: Purpose

- Allows abused, abandoned, and neglected children under the jurisdiction of a State court to become lawful permanent residents
- SIJS is a pathway **ONLY** for the child--a child granted SIJS cannot ever petition for his/her biological or prior adoptive parents—even a non-offending parent.

Background on the law

- Created by Congress in 1990
- Substantially amended and expanded in 2008 by the Trafficking Victims Protection and Reauthorization Act (TVPRA)
- **Requires a juvenile or State court to make several special findings of fact; also known as an “SIJS Order.”** This Order is a prerequisite to petitioning USCIS for SIJ Status. 8 CFR 204.11(d)(2)
- Requires participation of state courts and immigration authorities

Special Immigrant Juvenile Status: Statutes, Regulations, Policy Manual

- INA Section 101(a)(27)(J), 8 USC Section 1101(a)(27)(J)
- 8 CFR Section 204.11*
- Proposed Regulations: 76 Fed. Reg 54978 (Sept. 6, 2011)
- *USCIS Policy Manual, Volume 6—Immigrants, Part. J—Special Immigrant Juveniles*
 - *Replaced all prior policy memos on SIJS except one on age-out protections*

SIJS Definition: INA 101(a)(27)(J)

An immigrant who is present in the United States-- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status

Core Requirements

- Child must be present in the US
- Child = under 21 years of age & unmarried
- Juvenile or State Court must enter an order with factual findings establishing eligibility
- DHS “consents” to SIJS—DHS must determine that the application is “*bona fide*”:
 - That the underlying State Court order was not sought primarily for SIJS but to seek relief from abuse, abandonment, neglect
 - That there is a ***sufficient factual basis*** for the court’s findings
 - That the court made its findings in accordance with ***state law***

SIJS: Overview of the Process

- Immigration attorney screens child as SIJS eligible →
- Family law attorney drafts/submits motion & SIJS order into APR or guardianship with required factual findings and citations to Colorado law regarding:
 - jurisdiction; custody; abuse/abandonment/neglect →
- State court enters order →
- Child files petition for SIJ designation with USCIS →
 - SUPPOSED to be 180 days, really over a year and counting...
- If approved, file for permanent residency once greencard numbers are available for that country
 - BACKLOG= LONG wait for permanent residency, work permit, actual protected status for kids from Guatemala, Honduras, El Salvador (and Mexico) currently processing Feb 2016 (Oct for MX)
- Throughout this process, many children still in removal proceedings, fighting against deportation
- 5 years after permanent residency—apply for citizenship
- Pathway ONLY for the child--Child can NEVER petition for either parent

Step One: Predicate Order from Juvenile or State Court

“Juvenile” court = “a court located in the U.S. having jurisdiction under State law to make judicial decisions about the care and custody of juveniles.” 8 CFR 204.11(a)

Function of the Court not the Court’s title is the key.

Juvenile and State Courts in CO

In Colorado, the Predicate Order has been issued in:

- Dependency & Neglect Proceedings
 - Foster Care, Social Services Involvement, URM
- Delinquency Proceedings
- Adoption Proceedings
- **Probate Court / Guardianship Proceedings**
 - Reunified UACs in placement with extended family
 - Ground the SIJS findings in Title 15, probate code
- **District Court / APR - Custody Proceedings**
 - Especially in “one-parent” cases
 - Ground the SIJS findings in Title 14, UDMA

In all proceedings, must meet statutory criteria for State court jurisdiction + meet requirements for SIJS order

SIJS Findings:

1. **CUSTODY**: The child is dependent on a juvenile or State court or has been legally committed or placed by a juvenile or State court in the custody of an agency or department of the State or an individual or entity;
2. **REUNIFICATION**: Reunification of the minor child with “one or both parents” is not viable “due to abuse, neglect, abandonment, or similar basis found under State law”;
3. **BEST INTEREST**: It is not in the child’s best interest to be returned to his or her country of origin or last habitual residence;
4. **JURISDICTION**: Court will maintain jurisdiction over the child unless child ages out or is adopted.

Finding 1: Custody/ Placement

Juvenile is Court “dependent” or “has been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court”

- Court dependent (D&N)
- Agency or department (D&N or delinquency)
- **Individual (guardian/custodian/adoptive parent)**

Finding 2: Reunification

Reunification with “one or both parents” is not viable “due to abuse, neglect, abandonment, or a similar basis found under State law”

- ❑ Terms abuse, neglect, abandonment are not defined in the immigration law. USCIS relies on State definitions. State law, not foreign law applies to define these.
 - ❑ Doesn't matter where or when the abuse, neglect, abandonment happened
- ❑ “One or both parents” language means ONLY need to show abuse, abandonment, neglect by ONE parent.
- ❑ “Or similar basis under State law” language gives courts greater leeway to enter findings within their jurisdiction.
 - ❑ Example: Title 15, guardianship “parents unable or unwilling to exercise parental rights”= similar basis to neglect/abandonment

Finding 3: Best Interests

- Juvenile or State court must determine (through briefing, testimony, documentary evidence) that it is in the minor's best interest to not return to home country.
- Factors to consider/include: family/community support system in US and in home country, emotional well-being and psychological health, medical resources, educational opportunities.
- Courts have jurisdiction to determine best interests of the child under each Title of the CRS.

Finding 4: Jurisdiction

- Current regulations still require that a minor remain under the juvenile or State court's jurisdiction until the entire immigration process is complete. HOWEVER:
- USCIS Policy Manual and the *Perez-Olano* Settlement Agreement provide **age-out protections**: USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition:
 - (1) the applicant is or was under 21 years of age, unmarried, and otherwise eligible, and
 - (2) the applicant either is or was the subject of a valid order that was terminated based on age.

SIJS Orders: Tips for Success

- **MUST have detailed facts to support each finding.**
 - ie) Finding 1– Here, the child is placed in the custody of the Petitioner, his aunt; Finding 2- Here, the Minor’s mother frequently hit the Minor and failed to provide him with adequate food, clothing, supervision or medical care
- **MUST Cite to Colorado law to support each finding:**
 - ie) The Minor’s mother subjected the minor to child abuse and neglect as defined under CRS § 14-10-124(4)(a)(I) (citing CRS § 18-6-401)
- **Parents must be named in the Order** (see Policy Manual)

Step Two: File for SIJS & Adjustment

- File petition for SIJS with US Citizenship and Immigration Services
- WAIT.....WAIT SOME MORE
 - Request continuances of removal proceedings while pending, then while waiting for visa number to become available to file for adjustment of status
- File application for adjustment of status (greencard)
 - NOTE for kids not in removal; not from MX, GT, HON, ES can file together with SIJS or immediately after
- Terminate removal proceedings

Updates and Practice Pointers

- FOLLOW most updated SIJS Order templates—
contact RMIAN for review!
 - Make sure there are DETAILED FACTS and CITES TO CO
LAW in the order!
- FILE before your client turns 18!
- BEWARE new NTA guidance!—if denied, will be placed
in removal, IJ has no jurisdiction to review denial of SIJS—
other relief? Get informed consent.
- Be ready for long delays—set reasonable expectations!
- Stay attuned to developments, changes in the law!

RESOURCES



SIJS Resources

- SIJS Manual, available at www.ilrc.org
 - ILRC, *Obtaining Special Immigrant Juvenile Findings in Delinquency Courts*
- USCIS website: www.uscis.gov
- National Children's Center SIJS Resources at www.refugees.org
- SIJS Caseworker's Toolkit at www.brycs.org/sijs (for children in federal custody)
- www.rmian.org

Prior memos replaced by manual

- USCIS Neufeld Memorandum, *Trafficking Victims Protection Reauthorization Act of 2008*, HQOPS 70/8.5 (March 24, 2009).
- USCIS Yates Memorandum, *Memo #3 – Field Guidance on Special Immigrant Juvenile Status Provisions*, HQADN 70/23 (May 27, 2004).
- INS Cook Memorandum, *Special Immigrant Juveniles – Memo #2 Clarification of Interim Field Guidance*, HQADN 70/6.1-7-8 (July 9, 1999).
- INS Cook Memo, *INS on Interim Field Guidance Relating to Public Law 105-119 (Section 113) amending Section 101(a)(27)(J) of the INA – Special Immigrant Juveniles* (Aug. 7, 1998). INS Memo from 1998 specifically contemplates that the requisite SIJS findings can be made in delinquency proceedings.

ADDITIONAL RESOURCES

- A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System, http://www.uchastings.edu/centers/cgrs-docs/treacherous_journey_cgrs_kind_report.pdf
- Children in Danger: A Guide to the Humanitarian Challenge at the Border, American Immigration Council (July 2014) <http://www.immigrationpolicy.org/special-reports/children-danger-guide-humanitarian-challenge-border>
- Halfway Home: Unaccompanied Children in Immigration Custody, Women's Refugee Commission and Orrick Herrington & Sutcliffe LLP (February 2009) - <http://www.refworld.org/pdfid/498c41bf2.pdf>
- Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection, UNHCR (2014)
- Forced From Home: The Lost Boys and Girls of Central America (report), available at www.womensrefugeecommission.org
- The Flow of Unaccompanied Children through the Immigration System: A Resource for Practitioners, Policy Makers, and Researchers (report), available at <http://www.vera.org/download?file=3483/the-flow-of-unaccompanied-children-through-the-immigration-system.pdf>

ADDITIONAL RESOURCES

- ALA's Resources on the Central American Humanitarian Crisis
<http://www.aila.org/content/default.aspx?docid=49082>
- ALA's Special Immigrant Juvenile Resource Page
<http://www.aila.org/Issues/Issue.aspx?docid=23300>
- www.acf.hhs.gov/programs/orr/resource/ucs
 - Request for UAC Case File Information
 - *Perez-Olano v. Holder* Settlement Agreement
- TVPRA practice advisory, Deborah Lee, Manoj Govindaiah, Angela Morrison & David Thronson (February 2009)
http://www.ilrc.org/files/235_tvpra_practice_advisory.infonet.pdf

THANK YOU!

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