



December 2013 Tip of the Month Special Immigrant Juvenile Status

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The information contained in this tip is designed for use by attorneys and is only for informational purposes. The information in this tip is not intended as legal advice. Each person's situation is different. Immigration law is complex and any person seeking to apply for an immigration benefit should consult with an experienced immigration attorney. If you are seeking legal assistance, please go to www.lawhelpmn.org to learn about legal resources in your area.

A relatively little known provision of the federal immigration law, called Special Immigrant Juvenile Status (SIJS), allows certain noncitizen children who have been abused, neglected, or abandoned by one or both parents to obtain lawful permanent resident (LPR) status.¹ For an eligible child, obtaining LPR status through SIJS can be life changing in terms of the stability it provides. Children who obtain LPR status through SIJS are protected from deportation, can live and work in the United States permanently, can apply for U.S. citizenship after 5 years, can obtain a Social Security number and a Minnesota driver's license, and are eligible for certain public benefits including financial aid for college and Medical Assistance.

Many children may not realize that they could be eligible for this important benefit; some age out of eligibility and miss this opportunity. The purpose of this Practice Tip is to provide information about the SIJS requirements and process, and to equip readers to identify potentially eligible children and assist them in accessing immigration legal help.

SIJS Requirements

Before a child can submit an application for SIJS with the U.S. Citizenship and Immigration Services (USCIS), the federal SIJS provision requires that a state court make certain findings about the child. Under the current law,² the requirements for SIJS include:

- The child must be under 21 at the time he or she files the SIJS application with USCIS³
- The child must be unmarried⁴

¹ 8 U.S.C. § 1101(a)(27)(J).

² Important changes were made to the SIJS statute through the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008) [hereinafter "TVPRA"], which significantly broadened the class of eligible children.

³ 8 CFR § 204.11(c)(1).

⁴ 8 CFR § 204.11(c)(2).

- The child must be the subject of a “juvenile court” proceeding where certain findings are made, and juvenile court jurisdiction must continue until the SIJS application is adjudicated⁵
- The juvenile court must find that the child’s reunification with one or both of her parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law⁶
- The juvenile court must find that it is not in the child’s best interest to be returned to her or her parent’s previous country of nationality or of last habitual residence⁷
- The child must be declared dependent on a juvenile court, or the court must have committed her to, or placed her under the custody of, a state agency or department, or an individual or entity appointed by the court⁸

The term “juvenile court” is defined broadly to include any court that has jurisdiction under state law “to make judicial determinations about the custody and care of juveniles.”⁹ In Minnesota, SIJS findings can be made in a variety of types of proceedings concerning children,¹⁰ including juvenile court CHIPS cases, juvenile delinquency proceedings, adoption proceedings, probate guardianship actions, and family court custody actions.

Seeking the SIJS Findings in State Court

An SIJS-eligible child’s first step is to obtain the required SIJS findings order in state court. If there is an existing state court proceeding concerning the child (such as a CHIPS or juvenile delinquency action), often the child’s juvenile court attorney may seek the findings, consulting with the child’s immigration attorney regarding the specific language required. Many SIJS-eligible children, however, are not subject to any existing state court proceeding. In these cases, state court jurisdiction must be initiated.

In the state court action, three core findings must be made to establish SIJS eligibility. They are that (1) reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; (2) that it is not in the child’s best interest to be returned to her country of origin; and (3) that the child is dependent on the juvenile court or has been legally committed to, or placed by the court under the custody of, a state agency or department, or an individual or entity appointed by the court.¹¹

It is important to point out to the state court adjudicator that, while the court’s factual findings about the child are a required precondition to a child submitting an SIJS application, the findings

⁵ 8 U.S.C. § 1101(a)(27)(J); 8 CFR § 204.11(a), (c). There may be an exception to the continuing jurisdiction requirement if juvenile court jurisdiction terminates because of age. See TVPRA § 235(d)(6).

⁶ 8 U.S.C. § 1101(a)(27)(J)(i).

⁷ 8 U.S.C. § 1101(a)(27)(J)(ii).

⁸ 8 U.S.C. § 1101(a)(27)(J)(i).

⁹ 8 C.F.R. § 204.11(a).

¹⁰ See Matter of the Welfare of D.A.M., No. A12-0427, at 10-11, 2012 WL 6097225, at *5 (Minn. Ct. App. Dec. 10, 2012) (unpublished) [hereinafter Matter of D.A.M.].

¹¹ See 8 U.S.C. § 1101(a)(27)(J).

themselves do not confer any immigration benefit on the child. Rather, USCIS has exclusive authority to grant or deny SIJS in its discretion.¹²

Preparing and Submitting the SIJS Application: Federal Immigration Process¹³

Once the state court makes the SIJS findings, the child can work with her immigration attorney to prepare and file the SIJS application. In addition to completing the immigration forms, the child will need to submit the state court SIJS findings order, proof of age, the results of a medical examination performed by a designated civil surgeon, the filing fee or a fee waiver request, and passport photos. It is important that the child be carefully screened by a qualified immigration attorney before submitting an SIJS application. For some children, filing the application may pose a serious risk of being placed into removal proceedings.¹⁴ Further, a child who is approved for SIJS can never petition her parents for any immigration benefit.¹⁵ It is thus important that the child work with an experienced immigration attorney in screening, preparing, and filing her SIJS application.

Once the SIJS application is filed, USCIS will schedule the child for an appointment to take photographs and digital fingerprints, which USCIS will use to conduct background checks. Next, USCIS will schedule an interview before an immigration officer. Finally, USCIS will issue a decision to approve or deny the SIJS application. Once approved, the child will receive a lawful permanent resident card and be able to apply for U.S. citizenship after five years.

Increasing Access to SIJS for Eligible Children in Minnesota

Anecdotal evidence suggests that SIJS-eligible children in Minnesota are significantly under-identified, and that many slip through the cracks and lose the opportunity to apply for this important benefit. It can be crucial to identify SIJS-eligible children before they turn 18, since under state law it may be difficult to initiate court jurisdiction once the child has reached her 18th birthday. Some indicators that might suggest that a child is potentially SIJS-eligible include where a child is undocumented or lacks permanent resident status; is living with nonparents; and has been abused, neglected, or abandoned by one or both parents.

¹² See Matter of D.A.M., No. A12-0427, at 4; 2012 WL 6097225.

¹³ Note that this section describes the application process for a child who is not in removal proceedings. If the child is in removal proceedings, the process looks different. The child will first file only the Petition for Special Immigrant Juvenile Status (Form I-360) and supporting documentation with USCIS. Once the I-360 is approved, the child can apply for adjustment of status before the immigration court, or alternatively can seek to have her removal proceedings terminated and then apply for adjustment of status with USCIS.

¹⁴ The grounds of inadmissibility, found in the federal immigration statute at 8 U.S.C. § 1182, list the classes of “aliens ineligible to receive visas and ineligible to be admitted to the United States.” The grounds include, among other categories, certain criminal convictions and conduct, health-related grounds, and certain immigration violations. While SIJS applicants are entitled to generous waivers of some of the grounds of inadmissibility (and some grounds do not apply to SIJS applicants at all), other grounds cannot be waived.

¹⁵ See 8 U.S.C. § 1101(a)(27)(J)(iii)(II).

Potentially SIJS-eligible children should be referred to an immigration attorney for further screening. In Minnesota, Mid-Minnesota Legal Aid¹⁶ (serving a 21-county area in central Minnesota) and the Immigrant Law Center of Minnesota¹⁷ (statewide) handle SIJS cases and provide free representation to low-income individuals. There are also many private immigration attorneys who handle SIJS cases.

SIJS Third Party Custody Pro Bono Pilot Project. A volunteer attorney project has recently launched to help low-income households with an SIJS eligible child access pro bono family law representation and obtain the required state court findings necessary for the child's subsequent SIJS application with USCIS. The project is a collaboration among Volunteer Lawyers Network, Faegre Baker Daniels, and Mid-Minnesota Legal Aid. Through the project, volunteer attorneys represent low-income proposed custodians of SIJS-eligible children in family court third party custody actions. The project accepts referrals from immigration legal service providers and from private immigration attorneys.

To find out more about this project, or if you are interested in becoming a volunteer, please contact Tom Walsh, VLN Resource Attorney, at (612) 752-6675.

¹⁶ www.mylegalaid.org

¹⁷ www.ilcm.org