

Chapter 4: Special Immigrant Juvenile Status (SIJS)

DISCLAIMER

This chapter is provided for informational purposes only, and does not constitute legal advice of any kind. Before proceeding with any legal matters under U.S. immigration law, please consult, as needed, both the primary source documents referenced in this chapter (statutes, regulations, cases, etc.) and your KIND pro bono coordinator.

Introduction

Special Immigrant Juvenile Status (SIJS) allows immigrant children in the state juvenile system who cannot reunify with their parents due to **abuse, abandonment or neglect**, and who meet certain other criteria, to obtain lawful permanent immigration status.¹

SIJS is unique among immigration remedies because a state court order is a prerequisite to filing for the SIJS-based I-360 petition with the immigration service (U.S. Citizenship and Immigration Services (USCIS)).

What is Special Immigrant Juvenile Status?

Special Immigrant Juvenile Status (SIJS) is unique among immigration remedies in that the application process requires the involvement of a state "juvenile court." Whereas applicants for other immigration remedies proceed solely before federal immigration authorities, a child seeking SIJS must first ask an appropriate state court judge in the state where the child is living to make certain findings. These findings involve determinations that, among other things, reunification with one or both parents is not viable for the child due to abuse, neglect, abandonment or similar grounds under state law. The involvement of state court in the SIJS process reflects Congress' judgment that an appropriate state court is best suited to make findings relating to family law or child protection - matters that lie within the state court's traditional expertise.

A child may not proceed to file her SIJS petition with USCIS until she first obtains an SIJS predicate

order from an appropriate state juvenile court. The state court is not being asked to grant a child lawful immigration status; that responsibility lies solely with USCIS. The state court's role in the SIJS process is simply to make the factual determinations necessary for SIJS eligibility. Once this takes place and a SIJS predicate order is entered that includes these specific determinations, the child may proceed with the immigration phase of the case by submitting the SIJS petition to USCIS.

Upon the adjudication and receipt of an approved SIJS petition (I-360) from USCIS, the last step is for the child to file an application for adjustment of status (I-485) to lawful permanent resident of the United States.

Why are state court decisions necessary for an immigration application?

The involvement of state court in the SIJS process reflects Congress' judgment that an appropriate state court is best suited to make findings relating to family law or child protection - matters that lie within the state court's traditional expertise.

What is required in the state court order?

An appropriate state court judge in the state where the child is living is required to make certain findings involving determinations that, among other things, reunification with one or both parents is not viable for the child due to abuse, neglect, abandonment, or similar grounds under state law. The state court judge includes these requisite findings in an order - referred to as the "SIJS predicate order."

What is considered a "juvenile court"?

The SIJS regulations define "juvenile court" as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles."² In many states, this means a traditional juvenile court, a family court, or the family division of a court of general jurisdiction. In some states, multiple courts share such jurisdiction and a probate court or surrogate court may be a "juvenile court" for immigration purposes.

Are state court judges deciding to grant a child lawful

immigration status?

No. The state court is not being asked to grant a child lawful immigration status; that responsibility lies solely with USCIS. The state court's role in the SIJS process is simply to make the factual determinations necessary for SIJS eligibility. Once this takes place and an SIJS predicate order is entered that includes these specific determinations, the child may proceed with the immigration phase of her case.

Who is a special immigrant juvenile?

The INA defines a special immigrant juvenile as a person who has been declared dependent on a juvenile court or who has been placed in the custody of an agency or individual because one or both of the child's parents are not able to care for the child due to abuse, neglect, abandonment, or a similar basis under state law.³ The child must continue to be dependent on care from the juvenile court. In addition, the child must show that the juvenile court determined it would not be in the child's best interest to be returned to the child's country of origin.⁴ Also, the child must be under the age of 21, in the United States,⁵ and remain unmarried⁶ throughout the immigration process to qualify as a special immigrant juvenile. Finally, the child cannot have committed certain crimes, such as crimes of moral turpitude or drug offenses, and cannot be otherwise inadmissible to the United States.

Child Practice Pointer:

If the child gets married before her I-360 is approved, the I-360 must be denied. If she gets married after the I-360 is approved but before the I-485 is granted, the I-360 will be revoked and thus the underlying basis for the I-485, the adjustment of status to legal permanent resident, will be lost.

How is abuse, abandonment, neglect, or a "similar basis" determined?

The SIJS statute requires a factual determination of abuse, abandonment, or neglect, or similar basis under state law. The SIJS regulations do not define these terms, and so you will have to consult the relevant state laws for guidance on what constitutes abuse, neglect, or abandonment. Further, the 2008 TVPRA provides an additional category, "similar basis under state law" that gives more latitude in states that use different terminology or recognize additional bases for foreclosing a child's reunification with parents. For example, there are situations in which a child may be mentally ill or physically incapacitated and the parent is unable to care for the child, but in which there was no

actual abuse, abandonment, or neglect.

Child Practice Pointer:

It is important to note that while a determination of abuse, abandonment, or neglect, or similar basis under state law individually will suffice, it is wise to argue for as many of the findings as you can support.

What does it mean to be declared dependent on a juvenile court or placed in custody?

A juvenile judge cannot make the requisite SIJS findings until a child is first declared dependent on the juvenile court. As set forth in the SIJS regulations, the declaration shall be "in accordance with state law governing such declarations of dependency."⁷ Of all the aspects of SIJS eligibility that are determined under state law, this element probably entails the most variation among states or within them.

It is important to understand that the above requirement does not limit SIJS eligibility to children who are financially dependent on the state or in state custody. In fact, there are a number of scenarios that will qualify under this element. One of the more common circumstances in which a child is declared dependent on the juvenile court include when she is placed into state foster care. However, SIJS eligibility can also be established in cases that do not fit the more "typical" models. For example, it can include the situation of a child in juvenile delinquency proceedings who has been placed under the state probation department. It can also include the situation where a responsible adult is made the guardian or custodian of the child.⁸

Child Practice Pointer:

The SIJS predicate order must contain language stating that a child is dependent on the court.⁹ If the judge you appear before is unwilling to state that the child is "dependent on the court," request that the court write "the child is dependent upon the court in that the child's parents have relinquished control over him or her and the court has accepted jurisdiction over the child's custody."

Practice Pointer:

You should contact your KIND pro bono coordinator for specific guidance on relevant state law.

What if the child has only one parent with whom she can't

reunify?

Your client may still qualify for special immigrant juvenile status. SIJS is available only where "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, or abandonment, or a similar basis found under state law."¹⁰ Before 2009, the law required that neglect or abandonment had to come from both parents; the new law greatly expands the number of vulnerable and neglected children who may now qualify for SIJS.

Practice Pointer:

Since this change in the law is fairly recent, we recommend that you attempt to obtain findings of abuse, neglect or abandonment, or a similar basis with respect to both parents whenever appropriate under the facts. This finding should be expressly stated in the juvenile court's order (as was made clear under the previous wording of the statute).

What do I need to show to prove that return is not in the child's "best interests"?

For a child to qualify for SIJS, it must be "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."¹¹ The standard of "the best interests of the child" is a familiar one under the laws of almost every state. You should contrast the advantages of the client's present situation with the mistreatment that she experienced previously or would face in the future to demonstrate that the current situation would best serve the child's interests.

Be sure to determine what factors may be taken into account under the law of the state when considering the "best interests" of a child. Normally, there are a wide range of factors that may be taken into consideration that do not necessarily just relate to abuse or abandonment. Such factors may include family/friend support systems, emotional/mental well being, medical considerations, and educational resources.

How do I get DHS express consent for my client's application for SIJ status?

Under current law, the Secretary of Homeland Security must consent to the grant of special immigrant

juvenile status.¹² An approval of the underlying petition for SIJ status by DHS/USCIS is evidence of the Secretary's consent. The consent determination by the Secretary (through the USCIS District Director) is simply an acknowledgement that the request for SIJ classification is bona fide (sought primarily for the purpose of obtaining relief from abuse, abandonment, or neglect, or similar basis under state law, and not solely for immigration purposes).¹³

NOTE: KIND works primarily with released children. Be aware that there is a separate process for "express consent" when a child is in federal immigration custody (non-released child). The Department of Health and Human Services (HHS) must give its consent before the state court is allowed to change the child's custody status or placement.¹⁴ This is referred to as "specific consent."

If you are representing a child in federal immigration custody (non-released child), consult with your KIND pro bono coordinator for additional resources.

What if my child client turns 21 after I file the application for SIJS?

Fortunately, an "age-out" provision (referred to as "transition protection") included in the 2008 TVPRA rectifies this issue. As of December 23, 2008 (date of TVPRA enactment), a child who is under 21 years old at the time of filing her SIJS petition (Form I-360) may not later be denied on the basis of age.¹⁵

Is SIJS permanent immigration relief?

No. Obtaining SIJ status is not an end in itself. Rather, being classified as a "Special Immigrant Juvenile" enables a child to immediately apply to become a lawful permanent resident (LPR) of the United States. It is this complete process - SIJ status and then eventual lawful permanent residency - that is referred to as a "remedy" or form of relief for an undocumented child.

To summarize, the process for gaining LPR status through SIJS entails several steps with both state law and immigration law components:

1. Obtain a SIJS predicate order in state juvenile court.

2. File a petition with USCIS for Special Immigrant Juvenile Status.
3. Once SIJ status is granted, apply for legal permanent resident status.

How should I evaluate my case for SIJS and determine eligibility?

In addition to the above legal requirements for special immigrant juvenile status, there are numerous factors that must be considered when evaluating whether the client is in fact eligible for SIJS. It would be unfortunate to take a child through the lengthy and complicated application process of SIJS only to discover at the end that the child is in fact inadmissible and therefore ineligible for the final step of adjustment to lawful permanent residency immigration status. In addition, if a child is applying affirmatively for SIJ status, a denial of her application could put her at risk for possible detention and/or removal.

Further, even if a child is eligible for SIJS, such status may not be in the child's best interest. SIJS can offer a pathway to permanent lawful immigration status for children who may have few other viable options for security and stability. However, by definition, SIJS-eligible children have endured maltreatment or other traumatic experiences and the process of evaluating and preparing their cases must take the child's trauma into account.

A careful evaluation of the risks and benefits of SIJS for the child is required so that a thoughtful decision can be made about whether to initiate the SIJS process.

What are the benefits of SIJS?

Most importantly, it provides the basis for your client to apply for adjustment of status to lawful permanent resident (LPR). A person with LPR status can live and work permanently in the United States, travel outside of the United States, is eligible for certain public benefits, and can ultimately apply for U.S. citizenship.

A child who files for legal permanent status with USCIS is eligible for a work permit during the time it takes USCIS to decide the application. Your client may not be legally allowed to work under state and federal labor laws depending on your client's age. A work authorization card however can also serve as a valid form of identification. In addition, if the application is backlogged, your client may become

eligible to work.

Your client is also eligible (contingent on funding) for Title IV and other programs and states can seek reimbursement for foster care funds.

What are the drawbacks to SIJS?

A child who immigrates as an SIJ ceases to be a "child" of her parents for immigration purposes. That means that the parents cannot receive lawful status through the child. Even if the child becomes a United States citizen, she cannot file for her parents when she reaches 21.¹⁶ If the child wants to use her immigration status to file for a parent, SIJ status might not be the best option for your child client.

What about children who are not in removal proceedings?

Children who are not in removal proceedings must carefully consider the potential risks and benefits of filing a SIJS petition. The application will bring the child to the attention of USCIS, which may lead to the initiation of removal proceedings against the child should the petition be denied. If there are strong reasons to believe that the application may be denied - for example, if the child has a substantial criminal record - the risk of applying for SIJS may be too great. Yet at the same time, remaining without lawful status in the United States and facing an unstable and precarious existence may have severe consequences for the child. The child's decision to apply affirmatively must be made carefully; you must make certain that she has a full understanding of the risks involved.

How does SIJS compare to asylum?

In evaluating potential remedies, it is important to understand how SIJS overlaps with, and differs from, asylum. Preparing both types of cases will entail discussing and documenting experiences that were traumatic for the child. However, there are also important distinctions.

A successful asylum claim is based on conduct by the government or an entity the government failed to control. In SIJS, the harmful conduct was by the child's own parent(s). Thus, a child applying for SIJS must be prepared to make such allegations against her parent(s), both on paper and in person, both in state court and before immigration authorities. Some children, even those badly mistreated by parents, may be reluctant to make such allegations, at least initially. Moreover, state court papers will generally be served upon the parent(s), if living. You should explain this to SIJS clients early on in the

process.

Children granted SIJS status will never be permitted to petition for any immigration benefit on behalf of their parents.¹⁷ Plainly put, a child with SIJS who becomes an LPR and later a U.S. citizen cannot file a petition for immigration status on behalf of either parent. Asylees who become LPRs (and USCIs) can later petition for certain family members to immigrate to the United States.

A child granted asylum can apply for LPR status after one year, and if successful, may apply to naturalize four years after her LPR status is granted.¹⁸ In comparison, a child may apply for LPR status immediately upon being granted SIJS.

Asylum is a discretionary remedy. In contrast, the SIJS statute (with the exception of express consent by USCIS) does not provide for a large discretionary role in adjudicating Form I-360. Thus, if a child meets the eligibility requirements for SIJS, her petition should be granted.

NOTE: Adjustment of status, however, always entails discretion. Thus, a child granted SIJ status may ultimately be denied adjustment of status based on negative factors in her case, such as criminal or other activities.

What if my client is inadmissible?

In general, applicants for LPR status bear the burden of showing they are "admissible" and that they are not "inadmissible" for any of the reasons set forth in the INA, at 8 U.S.C. § 1255.

Are there any exceptions if my client is subject to a ground of inadmissibility?

Yes. Children with SIJ status are exempt from several of the statutory bars to adjustment of status.¹⁹ For example, many SIJS-eligible children admit to having entered the United States without inspection (EWI). Entry without inspection usually renders a person inadmissible and bars adjustment of status. However, children with SIJS are exempt from that particular bar. Likewise, unauthorized employment in the United States is usually a bar to adjustment, but not for children who are granted SIJS.

SIJS applicants are exempt from the following grounds (not a complete list) and no waiver is necessary if: the child is a public charge; lacks a valid entry document; is working without

authorization; is present without admission or parole (entry without inspection); engaged in document fraud and misrepresentation, including false claim to U.S. citizenship; or is a stowaway.

What if my client has a ground of inadmissibility that is not exempt?

A waiver may be available. There are a few inadmissibility grounds that are still applicable to children with SIJS²⁰ but for which they may apply for a discretionary waiver based on "humanitarian purposes, family unity" or "the public interest." Examples of grounds that would require a waiver include HIV-positive applicants, applicants who have a drug addiction, or applicants who have a mental or physical disorder that poses a risk to people or property.

Practice Pointer:

The waiver is extremely broad and the standard is the same as that for refugees.²¹ There is no requirement that the applicant show "extreme hardship" to U.S. citizen or LPR relatives as required with other waivers.

What if my client has committed a crime?

Adult crimes

SIJS applicants may be inadmissible if they have been convicted of any number of adult offenses, e.g., drug offenses or crimes of moral turpitude. While it may be less common for children to be charged as adults, it is still possible.

Juvenile Delinquency Crimes

In general, a juvenile delinquency disposition is not considered a "conviction" for immigration purposes. However, some juvenile delinquency dispositions may denote an inadmissibility ground for which the child will need a waiver. For example, (depending on the circumstances), a drug offense may not be a bar to adjusting status under SIJS; however, "drug addicts" and "drug abusers" need to file a waiver of inadmissibility. Please refer to the KIND manual chapter on crimes and juvenile delinquency for more discussion of this issue.

What if there is "reason to believe" my client has been involved in drug trafficking?

A noncitizen is inadmissible if immigration authorities have probative and substantial "reason to believe" that she has ever trafficked drugs or assisted a drug trafficker in trafficking activities. INA § 212(a)(2)(C). A conviction is not necessary. For example, a delinquency adjudication or substantial underlying evidence showing a sale or a related drug trafficking offense may result in a child becoming inadmissible and can be a permanent bar to obtaining lawful status despite significant equities. Drug trafficking activity is a very serious ground that applies to juveniles as well as adults and cannot be waived in an application for SIJS status.

What happens in the state juvenile court proceedings?

In the state court phase of an SIJS case, a child must first enter the jurisdiction of the state juvenile court and then obtain the SIJS predicate order. You should look to state case law in the child's jurisdiction for precedent supporting issuance of an SIJS predicate order, and dependency and custody determinations in connection with SIJS. Generally, to the greatest extent possible, you will want to demonstrate that the particular facts of the client's case fit squarely within the mainstream of the state's case law on the standards for abuse, neglect, abandonment, and related concepts.

How does a child become subject to the jurisdiction of a state court?

There are several different paths for obtaining state court jurisdiction over your child client to meet this eligibility requirement for SIJS. For example, if the child already has an open dependency or delinquency case, no action is needed because the child is already under the court's jurisdiction. Some other examples of state court jurisdiction over a child include:

State foster care

SIJS may be available to a child who is in state-funded foster care or in some other type of state-sponsored care or custody, arranged through a state court, agency, department, or contractor. State law may provide for state foster care placements for the protection of children in circumstances including abuse, neglect, abandonment, or other instances of maltreatment or crisis. In most states, an appropriate state or county agency (such as Child Protective Services or a Department of Children and Family Services) is responsible for initiating child protective proceedings that result in foster care placements; in some states, a private individual is permitted to initiate such a proceeding. In some localities, child protective workers are trained to identify children who may be SIJS eligible.

Guardianship

If a child has a caretaker other than a parent, that caretaker may follow the state's procedure for being appointed guardian or custodian of the child. This is another way for a child to enter state court proceedings and to be committed to and placed in the custody of an individual appointed by the state court for SIJS purposes. This may be an option for children released from Office of Refugee Resettlement (ORR) custody to the care of a sponsor, as well as to children who have not been in ORR custody.

Adoption

Adoption by a non-parent caretaker is another circumstance in which a child may be able to come under the jurisdiction of a juvenile court. Again, like a guardianship, it is a scenario in which the court may place the child in the custody of an individual - here, the prospective adoptive parent - and thus be in a position to issue an SIJS predicate order if the parental reunification is non-viable due to abuse, abandonment, or neglect, or similar basis under state law.²²

Delinquency

A child in a delinquency proceeding (or an equivalent state juvenile law proceeding) may be committed to or placed in the custody of an appropriate state agency. Typically, when a delinquency judge sends a child to an out-of-home placement, the judge is required to order family reunification services and eventually to determine whether the child will return to her parents, or go on to an alternative permanent placement. Although delinquency proceedings are most often initiated after a child's arrest, rather than after a report of child maltreatment, the delinquency court must factor in to its decisions the child's best interests - which may include issuing a SIJS predicate order. Indeed, under the law of some states, it may be possible to convert a delinquency proceeding to a proceeding focused on child protection if it appears that the child was abandoned or subjected to abuse, neglect, or other maltreatment.

How do I move for the SIJS predicate order in state juvenile court?

State law, local practice, and the needs of the case will determine at which stage of the proceedings you can and should file a motion for this order.

Your motion for an SIJS predicate order should be supported by documentary evidence. You may want to use an attorney affirmation and attached exhibits to help the juvenile court understand the child's age, living situation, family history, the abuse, abandonment or neglect she has suffered and (to the extent necessary) her immigration situation. For any document not in English, you should attach a certified translation.

Along with the motion, you should submit a proposed SIJS predicate order to the judge containing language that is as close as possible to the SIJS statutory and regulatory requirements.

What type of evidence should be filed in support of the request for a predicate order?

The list below is a suggestion as to what supporting evidence may be helpful - such evidence is not necessarily required. You will want to balance the value of each piece of evidence with the time and effort it will take to secure such evidence.

- Client's birth certificate.
- Death certificate(s) for parent(s), with translation if applicable.
- If the child was adopted before making the motion, proof of adoption.
- If the sponsor is petitioning for guardianship, documentation of the child's release from immigration custody to a sponsor (ORR Division of Children's Services (DCS) Interim Notification to the Office of the Immigration Judge is suitable).
- Proof of current school enrollment (e.g., letter from an administrator stating enrollment date and status; school identification; report card, if strong).
- Medical or treatment records showing a parent's history of substance abuse and/or noncompliance with rehabilitation.
- A medical expert's evaluation to show that scars or other physical conditions are consistent with the child's explanation of how she was injured.
- A psychiatric or other expert report explaining how your client's behavior, affect, etc. is related to previous maltreatment.
- Police reports of incidents involving maltreatment of the child.
- Affidavits of relatives, friends, neighbors, teachers, priests or others in the child's country of origin describing the circumstances of the child's maltreatment. Affidavits must be based on personal knowledge; use of detail may enhance credibility and usefulness.
- Although not required, in certain cases, it may be advisable for the client to submit an affidavit. Over a series of interviews and using her own words, you should help the child assemble the facts of her life into a coherent, persuasive narrative supporting the SIJS findings you will be requesting from the juvenile court. You should review the statement with the client multiple times to ensure accuracy.

You should be sure to follow court requirements for submitting such documents and/or admitting them into evidence (e.g., notarization, translation, etc.). As with any evidentiary showing, the goal is to provide the juvenile court with adequate support for each element of each conclusion you are asking

the court to make, pursuant to the state's legal standards. As an example of the elements of a claim, and the variety of evidence that may be used in support of each element, consider the following case study.

Case Study: Below is an example of the utility of additional supporting documentation in support of a child's case.

Martin, age 14, wants to apply for SIJS on the basis of recurring physical abuse by his only living parent, an alcoholic father. In the U.S. state where Martin now lives, a parent's substance abuse may give rise to a finding of neglect if: (i) it impairs the parent's ability to care for the child, (ii) it exposes the child to severe harm or a risk thereof, and (iii) if the parent is not pursuing in good faith a course of substance abuse treatment. In preparing to apply for an SIJS predicate order making a finding of neglect, Martin's lawyer learns the following:

Martin was abused in his country of origin, where his father still lives. Most of Martin's injuries were bruises, welts and cuts that have since healed, and he never received any medical attention for them. However, in many jurisdictions, the lack of medical attention is in no way fatal to a claim that a child was physically abused. Martin's own affidavit contains a detailed account of the nature and frequency of the beatings his father inflicted, and states that his father angrily denied having a drinking problem.

Martin's father was once hospitalized after a collapse, and a relative was able to obtain a hospital record reflecting a diagnosis of cirrhosis caused by chronic alcohol abuse and recommending that the father stop drinking. The father's next door neighbor is willing to attest in writing that he witnessed the father's frequent and undiminished public drunkenness, saw Martin left unattended for days at a time, saw Martin with unexplained bruises and cuts on his face and arms, and got into shouting matches with Martin's father after suggesting that he should quit drinking.

Although Martin was reluctant to describe his feelings in interviews with his lawyer, he agreed to be evaluated by a psychiatrist to support his case. The psychiatrist learned that Martin still had recurring nightmares about his father's drunken rages. The psychiatrist provided an expert opinion linking Martin's nightmares and withdrawn behavior to his long-term exposure to actual and threatened violence.

If the juvenile court grants the motion for an SIJS predicate order, the judge may issue one or two orders, depending on local practice and the method by which the matter came before the juvenile court. For example, in the context of a guardianship proceeding, an order appointing a guardian is separate from the SIJS predicate order. When you receive the order(s), you should be sure to obtain

at least two originals or certified copies of the orders. (In some states, the court applies a raised seal). One set is for the client; you should keep the other, since USCIS may ask to see the order(s) at the interview.

What should I include in a sample predicate order I provide to the state court?

1. The above-named child, NAME, is under 21 years of age.
2. NAME, is unmarried.
3. NAME, is dependent upon the juvenile court (e.g., Springfield County Family Court).
4. NAME's reunification with his or her parents is not viable due to the fact that they have neglected, abused and/or abandoned him or in the following ways: the child's father has abandoned the child, in that he has not had any contact with the child since the child was two years old, and he has never provided any material, financial, or emotional support for the child; the child's mother neglected him, in that she failed to take any action to protect the child from regular beatings and physical abuse by her paramour in Nicaragua.
5. It is not in the best interests of the above-named child, NAME, to be returned to his country of origin, Nicaragua.

Child Practice Pointer:

Confirm that the spelling of the child's name and the child's date of birth match the birth certificate. If the child has been known by other names or other spellings (including in ICE records), confer with your KIND pro bono coordinator in advance on how to handle this.

Are there any deadlines or timelines I should be concerned about?

Yes. Although the outside deadline for filing an SIJS petition with USCIS is the child's 21st birthday, a much earlier deadline may apply under state law for fulfilling the state law prerequisites to a SIJS filing.

In many states, a person is no longer defined as a "child" after her 18th birthday and may have fewer available options for court protection under state law. It is crucial to comply with state law and practice to ensure that the client is not time-barred from applying for SIJS.

What is the immigration and adjudication process for SIJS?

Once a child receives an SIJS predicate order from the state court, the next step is to apply for SIJS before USCIS. The child applies for SIJS on Form I-360 and includes a copy of the predicate order as supporting evidence. See below for further details on submitting an SIJS petition.

It is important to understand that even if an SIJS petition is granted, thereby conferring on the child status as a "special immigrant juvenile," this alone does not confer a right to live permanently and work legally in the United States. Rather, upon approval of the I-360, a child must apply to adjust her status to that of a lawful permanent resident. Note: Often the I-360 petition and application to adjust status I-485 are filed at the same time. However, USCIS will not adjudicate the I-485 until the underlying petition is approved.

What should I consider in a potential SIJS case?

Children formerly in ORR custody

A few matters bear special mention with respect to children previously held in ORR custody. First, it is especially important to become familiar with the contents of the child's ORR file. The file may yield insight into the child's family background, contacts (or lack thereof) with family members while in custody, and medical or psychological findings, among other useful information. Second, you should make a point to meet early on with the child's sponsor to discuss any significant or pertinent background information.

Meeting with your client

Your early meetings with the child will lay the foundation for a successful attorney-client relationship. Among other things, this entails clarifying the respective roles of you and of the child, and explaining to the child the vital importance of confidentiality and truthfulness. By definition, children applying for SIJS often lack responsible adult supervision in their lives, so you may want to emphasize some ground rules such as having the child agree to promptly update you on any changes in contact information or life circumstances.

Working with sponsors or caseworkers

In an SIJS case, you may also have an important relationship with a third party: the child's sponsor or agency caseworker. You should make clear to all that your undivided duty of loyalty is to the child, not to the sponsor or caseworker. You can do this without alienating the potentially helpful third party. Local practice and the scope of the agency's duties will help determine the nature of your dealings with the caseworker. In working with sponsors, many variables are in play:

- How close and trusting is the relationship between the child and the sponsor?
- How well did the two know each other before the child came to live with the sponsor?
- How much (if anything) does the sponsor know (first-hand, or from the client, or from others) about the facts underlying the client's claim for relief?
- How much support is the sponsor able and willing to contribute to the child's well being and to her immigration case?
- Does the sponsor have legal immigration status? If not, he or she may still be qualified to act as a legal guardian, but he or she may be (understandably) unwilling to attend immigration court.

The range of possible answers is wide, so err on the side of caution in getting to know the situation. In working with sponsors, observe several points:

- You will want to hold most of the client meetings without the sponsor present to ensure confidentiality and promote an open dialogue with the child. Explain to both the sponsor and child why this is necessary. You should take care not to risk a waiver of privilege or impair the child's trust by disclosing information to the sponsor without the child's permission.
- Even if the child's and the sponsor's interests appear perfectly aligned, you should not assume that they are or will remain so. Sponsor-child relationships have been known to turn sour for any number of reasons - including child abuse or exploitation by the sponsor him or herself. Again, you should use good judgment about disclosing anything (e.g., the work product or opinions) to the sponsor. The relationship is generally not one of privilege.
- You should remind the sponsor that you are not the sponsor's lawyer and that the sponsor is free to retain his or her own lawyer for representation in the state court proceedings or consultation on involvement in the child's removal proceedings - particularly if the sponsor is undocumented. (In some family court proceedings, the state may afford representation to a

person in the sponsor's posture at no charge.)

- At the same time, the sponsor may be able to provide contacts in the home country and information unknown to the child or corroborate facts offered by the child. The sponsor may also be a major source of emotional, financial, and logistical support to the child during the course of what may be a difficult and emotional case.

What happens if my client has committed a crime?

A juvenile delinquency or adult criminal record may damage or derail the client's case for SIJS. Above all, law-breaking conduct will have not only juvenile or criminal justice consequences but also serious immigration consequences. Please refer to the chapter of the KIND manual on crimes and delinquency.

You should make clear to the child that during her pursuit of immigration relief, DHS will conduct a complete background check. In addition to the damage the law-breaking conduct may create, the child's failure to disclose any arrests beforehand will seriously damage her credibility. Before you file any immigration applications, you should question the child comprehensively and thoroughly, asking the same question in several different ways in order to get accurate facts. Ask if the child has ever been arrested, issued a ticket or summons, including from transit or motor vehicles authorities, stopped by the police, placed in a police car, handcuffed or fingerprinted, taken to a police station or court, placed in delinquency proceedings, questioned by a police officer, or required to pay a fine.

After this initial questioning, you should encourage the child to contact you immediately if the child has any contact with law enforcement - particularly before she pleads guilty to a delinquency offense or adult crime - so that you can best address the situation. You should check in on this important issue at each client meeting.

What if my client moves while in removal proceedings or after filing an affirmative application?

Children in removal proceedings and/or sponsors must inform the immigration court of any change in address or telephone number within five days after the change takes place. This should be done using form EOIR-33/IC.

If the client is not in proceedings but has a pending immigration application, she must notify USCIS within 10 days of any change of address using form AR-11. In either case, you need to be apprised of the child's whereabouts and must be able to contact her at all times.

Should my client be enrolled in school?

Although not required for SIJS, USCIS and the judges of both the juvenile court and immigration court generally look on school attendance favorably. Many states mandate school attendance for children up to a certain age. School achievement may help establish that it is in the child's best interest not to return to her country of origin. No state may bar a student from public schools on the basis of immigration status.

How do I prove my client's age and identity?

The child should provide a certified copy of her birth certificate to USCIS at the SIJS I-360 interview (although an interview is not required in all cases). Obtaining a birth certificate can take a long time, so you should start the process immediately. A foster care agency worker (if applicable) and family or friends in the home country may be able to help. If not, ask the child (or her sponsor) to inquire at the local consulate of her country of origin.²³ (Note: This is not advisable if the child is also seeking asylum). The consulate may have a process for helping to obtain documents, although some consulates ask for parental consent on behalf of children under 18. Consult with KIND about alternatives if this is the case. Another possibility is to directly contact the appropriate agency, such as the civil registry, in the state where the child was born.²⁴

If you are unable to obtain a birth certificate, the immigration regulations permit the use of a passport or official identity documents such as a cartilla or cedula.²⁵ The Legal Aid Society offers the following guidance:

When attempting to obtain birth certificates, keep a detailed record of all attempts/activities in case it is necessary to provide proof of your efforts to USCIS. . . .Secondary evidence of a child's age may include a juvenile court order, doctor's evaluation, psychologist evaluation, dental exam, school records, affidavits from someone who has known the applicant since birth, etc. To use secondary evidence you must obtain a letter from the country of origin stating that a birth certificate is unobtainable. Foreign consulates may be able to help with this letter. (8 CFR 103.2(b)(2)) Once again, you must document all steps taken in order to convince USCIS that diligent efforts were made. If time constraints require you to file the SIJS application packet prior to getting proof of age, indicate in the letter to USCIS that you are actively trying to obtain this

evidence. Make sure to include language from the CFR and a declaration from the child attesting to his or her age.²⁶

A passport is an acceptable form of identification at the USCIS Application Support Centers (ASCs) where adjustment-of-status applicants are fingerprinted. In some local USCIS offices, the USCIS officer will also stamp the child's passport after approving her I-485 as proof of status that can be used during the months the child is waiting the arrival of her "green card."

The child should also obtain death certificates for deceased parents and documentation of adoption as applicable. Again, you should start with the consulate and/or local authorities and keep records in case you must prove to USCIS efforts to obtain the documents (unless the child is also seeking asylum).

What happens if my client is already in removal proceedings and wants to file an SIJS application?

USCIS is the only government entity that has jurisdiction to adjudicate the SIJS-based I-360 petition. Further, if the child is in removal proceedings, the immigration judge (IJ) is the only person with jurisdiction to adjudicate the I-485 application.²⁷ Therefore, a child in removal proceedings who has an I-360 pending (or will submit an I-360) has several options.

First, she could ask the IJ for a continuance(s) of the removal proceedings to allow USCIS to adjudicate the I-360. Once the I-360 is approved, the IJ would then proceed with adjudicating the I-485.

NOTE: Like all I-485 applications filed before the Executive Office of Immigration Review (EOIR), a copy of the adjustment application must be filed with the Texas Service Center to comply with biometrics requirements.

Second, the child could ask the IJ - with the ICE trial attorney's agreement - to administratively close the removal proceedings until the I-360 is adjudicated. This prevents the child from having to repeatedly return to court while USCIS is still considering the child's petition. Once approved, removal proceedings would move forward and the IJ would adjudicate the I-485.

The child could ask the IJ to terminate the removal proceedings before EOIR to allow the child to complete her entire immigration process (including their filing and adjudication of I-360 and I-485)

before USCIS. In this case, the child could apply for an EAD/work permit while the I-485 is pending. This is opposed to adjusting before the IJ where the child must first wait for I-360 approval before filing the I-485 and work authorization request. Case termination is also beneficial to the child as the child would no longer be in active removal proceedings.

Remember, local court practices will vary.

What if my client is not in removal proceedings?

Children who are not in removal proceedings will have to file an I-360 petition with USCIS. Typically the package will include a petition for adjustment of status, I-485, and other supporting materials. Make sure to consult with your KIND pro bono coordinator regarding current filing procedures.

What are the general rules for filling out immigration forms?

Local practices of both USCIS and the immigration court vary (and may change periodically), so consult in advance of filing with your KIND pro bono coordinator.

- When preparing immigration forms, allow sufficient time for your KIND pro bono coordinator to review the draft before it is signed and submitted.
- Fill in "None" or "n/a" to questions not applicable to the client, instead of leaving blanks.
- If the space on the form is insufficient for your answer, prepare a supplementary page with the date, child's full name, A-number, and question and page number.
- Explain to the child (and guardian, if applicable) what it means to sign under oath.
- Children 14 and older must sign their own forms; children under 14 may have a guardian sign instead.
- When mailing forms, always use a method that provides a receipt (e.g., certified mail).
- Two-hole punch the top of the applications.
- Never mail an original birth certificate, passport, juvenile court order or certificate of disposition. Bring the originals to interviews.

What should be included in the I-360 petition package?

The original I-360 petition package will contain:

- **Cover letter**

In the cover letter, you may want to include a brief case summary in order to give USCIS context for the case. The letter should concisely explain the basis for the child's claim and should itemize the enclosed documents. Especially if there will be no I-360 interview, this will be the one chance to present the facts. However, you should be certain the information in the case summary is consistent with the facts in the rest of the A-file, or provide an explanation for any inconsistencies.

- **Original signed I-360.**

- **Original signed G-28.**

- Copy (not original) of **birth certificate** and its English translation (or, if the attorney absolutely cannot get a birth certificate, other acceptable proof of age as discussed above).
- Certified copy (not original) of the juvenile court's SIJS predicate order(s).
- No fee is required for the submission of the I-360 (You may want to highlight this fact in the cover letter).

Child Practice Pointer:

Form I-360 is designed for several purposes, so parts of the form do not apply to Special Immigrant Juveniles. Some pointers:

- In the lower right corner of page one, check the "attorney or representative" box and fill in license number.
- In part four, you need not designate a consulate for notification, nor give a foreign address if the child doesn't have one.
- In part four, if you answer "yes" to the third and fourth questions, you should attach a

supplementary page to explain.

- Both you and the child must sign the form.

How should I prepare for the interview with USCIS?

Whether or not the child is required to attend an I-360 interview depends on what USCIS district is adjudicating the petition.²⁸ Some USCIS districts approve I-360s on paper alone; others require an interview. If the child is pursuing SIJS affirmatively, she usually will be called for just one adjustment of status interview in which the USCIS officer will adjudicate the I-360 and the I-485 together.

Any time you receive a notice from USCIS, you should discuss it with your KIND pro bono coordinator and schedule a preparation session with the child. Review everything stated in the application package with the child. If there are changed circumstances or errors in the application, discuss with KIND how to amend the application. If the child has been working in the United States without authorization, it is best that she not be working at the time of the interview. For more on the preparation and interview, refer to the section below on the adjustment of status interview.

For an I-360 interview, be particularly aware that the USCIS officer may want to determine whether the petition was filed in good faith and may explore whether the child obtained the juvenile court order primarily for immigration purposes rather than for protection from abuse, neglect, or abandonment, or similar basis under state law.²⁹ The petition will be denied if USCIS feels that no abuse, abandonment, or neglect took place and that the child is simply trying to qualify for immigration relief.

The child must be ready to answer questions on how and when she entered the United States, any contacts with the parent(s) since arriving in the United States, circumstances of siblings still in the country of origin, etc.

How am I notified of USCIS's decision regarding my client's petition and application?

If you do not receive a written decision at the end of the interview, ask the USCIS officer when and how he or she will issue a decision. If you have an I-360 receipt number, you can check the case status on the USCIS website. If the local USCIS office adjudicates I-360s without interviews, you should discuss with your KIND pro bono coordinator how you could expect to receive a decision.

Current law requires USCIS to adjudicate and decide the I-360 petition within 180 days after the application is filed.³⁰ However, the statute does not provide any remedy if the deadline is not met. Consult your KIND pro bono coordinator if this happens.

If the child is still in removal proceedings and receives an I-360 approval, you should prepare and file an I-485 adjustment of status application packet (which will include a copy of the I-360 approval). Remind the child that because her request to adjust status will be based on the grant of SIJS, the child must remain eligible for SIJS to be able to adjust (e.g., the child does not get married or commit a serious crime).

The denial of the I-360 petition can be appealed to the Administrative Appeals Office (AAO), part of USCIS.

How do I help my client apply for lawful permanent resident status?

The entity that will adjudicate the I-485 will be determined by whether or not the child is in removal proceedings. If the child is in removal proceedings, her I-485 package will be filed before the court. As with all other I-485 applications before the court, the child is required to submit a copy of the I-485 application and the fee or immigration judge-issued fee waiver to the USCIS Texas Service Center. This is procedurally required so that the child will receive an appointment to have her biometrics taken.

If the child is not in proceedings, or has been charged as an arriving alien on her NTA, the attorney can file the I-360 and I-485 together with USCIS. In any case, however, the I-485 cannot be adjudicated until the I-360 has been approved.

It is important to plan in advance for the adjustment of status stage of the process because several components require some lead time - including obtaining delinquency records, if necessary, and a USCIS-approved medical examination. Note that the I-485 includes a long list of questions about the child's conduct and history. Any unfavorable answers must be explained on a separate page headed with the child's name and A-number. As stated in the instructions, a "yes" answer is not an automatic disqualifier, but you should discuss the explanations with your KIND pro bono coordinator.

What should be included in the I-485 adjustment of status application package?

The following items should be included in an application for adjustment of status. For a full and complete list, please consult the USCIS website and your KIND pro bono coordinator:

- **Form I-485.**
- **Copy of I-360 approval** (if the adjustment application is being filed separately from the I-360 petition).
- **Filing fee (or fee waiver)** including biometrics fee.
 - If the child is in removal proceedings and is filing the application in court, she will have to "fee in" the application. This means that you submit the fee to the USCIS Texas Service Center in advance of filing the I-485 with the court. By filing this packet, USCIS also schedules the child for a biometrics appointment. When you get the fee receipt, you file a copy of the fee receipt with the court along with the other adjustment materials. If you want an I-485 fee waiver for a client in proceedings, you need to file a motion with the IJ and get the order granting the fee waiver, and then file that with the Texas Service Center.
- **Form G-325A** for any applicant 14 or over.
 - In the required chronology of the client's former addresses, you should try not to leave any time gaps. Submit all four copies.
 - If the child is in removal proceedings, the original signed G-325A goes to the ICE attorney so he or she can use it to conduct background checks.
- **Form I-693** medical report.
 - The examining doctor or "civil surgeon" will give this to the child in a sealed envelope after completing the form. You can help the child get a list of local civil surgeons from USCIS's website. Only a designated civil surgeon can complete the form. The child should ask about fees in advance of making an appointment, as they can vary widely. The child should also bring photo ID and records of any past immunizations. The list of required immunizations is extensive, and if the civil surgeon finds that the child needs follow-up visits, this may take a while to accomplish. Further, the completed form will be valid for a specific period of time. In addition to the sealed original, the child should ask the doctor for an extra copy of the form for you so you can review it for any concerns that may require a waiver of inadmissibility.
- **Certified copies of records of disposition**, if the child has any record of arrests, summons or

tickets. You can obtain these records from the relevant criminal court or tribunal.

- **Optional for initial filing: Form I-601**, Application for Waiver of Ground of Inadmissibility.
 - If a child has any potential grounds of inadmissibility for which she will be required to submit a waiver, this is done through Form I-601 along with the relevant fee and any supporting documents such as affidavits and letters of recommendation.

NOTE: Most practitioners do not submit the I-601 waiver with the initial packet but instead wait for USCIS or the IJ to inform the child of the grounds for which she will be required to submit a waiver. In other words, you don't want to concede that the child is inadmissible for any grounds beyond what the government has deemed applicable.

- **Optional: Form I-765**, if the client wishes to apply for permission to work while the application is pending.

NOTE: If you are filing the I-485 in court, you will file the I-765 separately with a service center, depending on the child's residence, only after the I-485 is on file with the court.

What can I expect at the biometrics appointment?

USCIS may send notices for the child's biometrics appointment and/or interview to either you or the client, so both should be watching for their arrival. Lead time may be short, so if you will be away from the office, you should make sure someone can handle the matter in your absence. If the notice has not arrived about eight weeks after filing the application, check with your KIND pro bono coordinator.

The biometrics appointment will entail the client's being fingerprinted and photographed at an Application Support Center (ASC). The child must bring photo identification (ideally a passport but other forms, such as a school identification card, may also be accepted) to the appointment, and must obtain a stamped copy of the appointment notice, as proof of attending the appointment.

NOTE: It may be advisable to fill out the application information worksheet for the child to take to the appointment to avoid creating inadvertent biographical inconsistencies in her case.

The I-485 cannot be approved until the background check is completed, which may take two months or more.

How should I prepare my client for the adjustment of status interview?

Before the interview, you should review the key facts of your client's case (date of birth, date of entry, etc.). Depending on whether the I-485 was filed affirmatively or defensively, the interview will take place before the USCIS officer or an immigration judge. Schedule preparation time with your client and practice a mock interview or hearing. Among other things, be sure to cover the following:

- Remind the child that she will be questioned under oath.
- Make sure the child is familiar with the complete contents of the application package. Confirm that all statements in the package remain true and accurate. The child may be asked at the interview to affirm her understanding of the application papers.
- If adjusting before USCIS, the child must bring an interpreter. If adjusting in immigration court, an interpreter will be provided upon request.
- The child should give clear and succinct verbal answers while looking at the interviewer or judge, avoid volunteering irrelevant information, and be polite.
- In cases where the child is applying for adjustment of status in court, make sure the child is well aware of the fact that the ICE trial attorney will be cross-examining her and make sure to practice ahead of time so that the child is comfortable with the process.
- The child may be questioned about anything relating to the application, even if not on the form.
- Particularly, be sure the child is prepared to answer questions about:
 - how she traveled to the United States and crossed the border (You should warn the child about not inadvertently implicating caretakers in alien smuggling if indeed they helped to bring the child to the United States)
 - illegal activity, whether or not shown in the record, including gambling and drug use
 - gang membership, contacts or associations
 - contacts with parents while in the United States
 - school attendance and future plans

You should specifically tell the child to arrive for the interview well rested, properly dressed (no jeans),

and on time. In some cases, the child may have to wait several hours to be called for her interview or hearing, so you may want to tell the child to eat beforehand and bring along school work or something to read.

If USCIS is adjudicating the I-485, you may receive a decision at the interview or by mail. If the IJ is adjudicating the I-485, you will receive a decision at the end of the merits hearing; in rare cases the IJ may mail out a decision.

What discretionary factors does the adjudicator consider?

Although juvenile delinquency dispositions are not grounds of inadmissibility for children and do not bar them from adjustment of status, they may play a role in the discretionary portion of an adjustment of status adjudication. In other words, the government grants adjustment of status in its discretion and in doing so, may take into consideration numerous factors - including past juvenile crimes. This is particularly relevant when a child has been convicted of a sexual offense or an offense related to gang activity. While a juvenile crime may not bar the child from adjusting her status, it still can be taken into consideration in the overall decision. In that case, it must be mitigated by positive equities.

Any history of criminal conduct must be disclosed in connection with the application. A criminal record can make the client inadmissible and therefore ineligible to adjust status. Form I-485 also asks (and the adjudicator may ask) about criminal conduct for which the applicant was not arrested. An admission of such conduct can result in denial of the application, so you should make sure to determine how the child will respond if asked. Through a background check, USCIS (and potentially Immigrations and Customs Enforcement (ICE) and the immigration judge) will be aware of the child's entire criminal history, so the failure to disclose any arrest will only magnify it. Drug-related offenses receive special scrutiny. You should explain to the child that it is in her interest to tell you everything about past criminal conduct so that together you and the child can evaluate the risks of proceeding with the application, and/or disclose the information in a way that contextualizes it.

If the child has ever been cited, even for minor violations, you will need to obtain original certificates of disposition or certificates of dismissal. This applies to any arrests or tickets or summonses for things as minor as fare evasion on public transportation. Depending upon the state laws, you may need to file a petition with the juvenile court for permission to obtain and release these records. You should make sure the child understands that ignoring such tickets or summonses only worsens the problem; typically, they will remain on the child's record and may result in bench warrants. It is hoped that the dispositions of any charges will be dismissal or payment of a small fine. If the child has a

juvenile delinquency or criminal history, you must confer with your KIND pro bono coordinator far in advance of an interview or other proceeding to obtain expert advice on the immigration consequences of the criminal matters.

What proof will my client have of her LPR Status?

It will depend on what agency grants the status to your client. USCIS will issue an approval order. In contrast, an immigration judge will sign an order indicating that your client has been granted legal permanent resident status.

USCIS grant

If USCIS grants the child's adjustment of status, you should receive an approval notice in person or by mail. The child's LPR card (commonly referred to as a "green card") should arrive by mail soon afterwards.

Immigration judge order

If an immigration judge grants the child's adjustment of status, the child's immigration court order serves as immediate proof of her LPR status. The child will, however, need to visit the local USCIS office to trigger processing of her LPR card. In most locations, the mechanism for doing this is InfoPass, the USCIS online appointment scheduler accessible through the USCIS homepage. To make an appointment, you must enter some basic information about the child and choose an appointment date and time to attend with the child. The child must bring the original IJ's decision granting adjustment of status. If the child has a passport, (depending on the jurisdiction), she may have it stamped at the InfoPass appointment to indicate that she is an LPR. Employers should accept the passport stamp as the child's authorization to work. The actual "green card" will arrive by mail several weeks or months later. If it is not received within a reasonable time, the client should contact you for follow up.

Is lawful permanent resident status permanent?

It can be revoked. Unlike citizenship, lawful permanent residency can be terminated on certain grounds. In particular, the child needs to be aware of two issues in particular:

- **Criminal conduct.** Certain criminal convictions may result in termination of LPR status and removal. A background check may be run when an LPR returns to the United States after an absence or renews her green card; any arrests will be discovered.
- **Absence from the United States.** An LPR can be deemed to have abandoned LPR status by not maintaining continuous U.S. residence. Absences for more than 90 days at a time, or more than 180 days total per year, can trigger this finding.

What are the benefits of lawful permanent status?

An LPR is entitled to obtain a Social Security number.³¹ The child may apply through the local Social Security office even before receiving the green card, as long as she has proof of her LPR status. After five years in LPR status, the client may be eligible to apply for naturalization, and should consult an attorney in connection with that step.

Citations

¹The statutory authority for SIJS is found at INA 101(a)(27)(J). SIJS regulations are found at 8 CFR 204.11 but have not yet been amended to reflect statutory changes made by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 (nor do the regulations reflect previous statutory changes enacted in 1997).

²8 C.F.R. § 204.11(a).

³INA § 101(a)(27)(J); see also Deborah Lee, et al., Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, (Feb. 19, 2009), (clarifying that the Trafficking Victims Protection Reauthorization Act of 2008 expanded the definition of special immigrant juvenile to include children who were eligible for long term foster care regardless if the child is or has ever been placed in long term foster care).

⁴INA § 101(a)(27)(J)

⁵8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c)(3).

⁶8 C.F.R. § 204.11(c)(1), (2).

⁷8 C.F.R. § 204.11 (c)(3).

⁸This premise was previously supported by the USCIS Administrative Appeals Unit (AAU) case, *In re Menjivar*, Case No. A70 117 167, at 4 (A.A.U. Dec. 27, 1994)(stating, "[t]he acceptance of jurisdiction over the custody of a child by a juvenile court, when the child's parents have effectively relinquished control of the child, makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or . . . in a guardianship situation") . In *Menjivar*, a child was placed in the custody of a guardian and the initial instinct of legacy INS was to conclude that the child was no longer dependent on the juvenile court as a result. However, because it was under the direction of the court in which the child was ordered into the guardianship situation, the AAU found that the child still qualified as dependent on the juvenile court.

⁹You should not rely on the language in *Menjivar* that says no "specific statement" on dependency is

required. *Id.*

¹⁰8 U.S.C. § 1101(a)(27)(J)(i).

¹¹8 U.S.C. § 1101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c).

¹²8 USC 1101(a)(27)(J)(iii), as modified by TVPRA § 235(d)(1)(B)(i).

¹³USCIS Neufeld Memo, March 24, 2009, *supra*.

¹⁴TVPRA 234(d)(1).

¹⁵TVPRA (2008) § 235 (d)(6). See also USCIS Memo, Neufeld, "Trafficking Victims Protection Reauthorization Act of 2008; Special Immigrant Status Provisions," (March 24, 2009), HQOPS 70/8.5. Note that although the statute characterizes this provision as a "transition rule," it is unclear at present, which, if any, aspects are "transitional."

¹⁶There is not a mechanism for SIJS-eligible children to apply for siblings as derivatives (this is unlike, for example, the U visa). However, after a child granted SIJS becomes a U.S. citizen and turns 21, she could file a family-based petition for a sibling. This sibling might be able to later petition for the parent-in-common of the siblings; this might amount to a benefit conferred indirectly to a parent by a child granted SIJS - although through the petitioner sibling, again not directly.

¹⁷INA § 101(a)(27)(J) (iii)(II).

¹⁸Asylees have their grant of legal permanent residence backdated one year, so that they only need to wait an additional four years before applying for citizenship.

¹⁹See 8 USC § 1255(c)(2), 1255(h)(2).

²⁰8 USC § 1242.

²¹See INA 209(c).

²²Note: In adoption situations, the timing and age of the child affects a child's immigration options. For example, if the child is under 16 years old at the time of adjustment based on SIJS and adopted by a United States citizen (with additional qualifications), the child will gain automatic U.S. citizenship.

²³See http://www.embassyworld.com/embassy/inside_usa.htm

²⁴See, e.g. Department of State's Foreign Affairs Manual.

²⁵8 CFR 204.11(d), 204.1(g)(2).

²⁶The Legal Aid Society, Special Immigrant Juvenile Status (March 4, 2008) at 9.

²⁷The one exception to this rule is a child charged as an arriving alien on the NTA (they entered with inspection); in that case, only USCIS has jurisdiction to adjudicate the I-485.

²⁸The interview notice sometimes says that the interview is for adjustment of status, even if your client has not yet filed Form I-485.

²⁹See the discussions of express consent in USCIS Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions, ("Yates Memo"), William R. Yates, Associate Director for Operations, USCIS, May 24, 2004.

³⁰See TVPRA 235(d)(2)

³¹Technically, a client with only a work permit is also allowed to apply for a SSN.