

TIPS FOR PROPOSED ORDERS IN SIJS CASES

General

- Do careful review for accuracy. Are names, dates of birth, addresses correct? Are facts supported by evidence in the record? Are statutory citations correct?
- Has immigration attorney reviewed the order and signed off on it?
- Is there any information in the order which conflicts with information in the child's immigration record or with other records? If so, be sure the information the order is based on is accurate and make sure the immigration attorney is aware of the discrepancy and can account for it. Common issues here include:
 - Immigration record says child lived with both parents in home country; family court pleadings say differently (e.g. that one parent abandoned long ago)
 - Immigration record says parent assisted child in coming to the United States and/or has supported child recently; family court pleadings say differently
- If child is close to 18, are we making sure to get case filed and seek hearing well before 18th birthday?
- Be wary of using words like "always" and "never" when recounting facts in the order, unless the client is absolutely sure. For example, if the order states, "father has never contacted the child," and it turns out that one time in the last 15 years the father called the child, USCIS may reject the order and say that the court did not make an informed decision.
- Avoid findings/conclusions in the alternative. For example, "father abandoned or neglected the child." Do not state in the alternative that one of the three bases for interested third party exists, without specifying which.

SIJS Finding – Best Interest

- *Sample language: It is not in CHILD's best interest to be returned to COUNTRY, the child's and HIS/HER parents' country of nationality or of last habitual residence. It is in CHILD's best interest to remain in the United States with the Petitioner. [Provide detailed factual basis for that finding.]*
- Is there a factual basis in the court order for this finding?
- The factual basis should cite to the relevant Minnesota statutory best interest factors. It should not look like an asylum decision.
- Does the order discuss why there are no other relatives in the home country that could care for the child appropriately, and/or why placement with petitioner in Minnesota is better for child than placement with those caregivers? Specifically, the pleadings and order should address why it's not best for child to return to whomever they were living with in the home country, as well as with any other family the child may have in the home country.
- This finding should go in the conclusions of law.

SIJS Finding – Parental Nonreunification

- *Sample language: CHILD's reunification with HIS/HER MOTHER is not viable due to [specify whether abuse, neglect, or abandonment, or a combination] under Minnesota law. [provide factual basis for AAN finding w/r/t MOTHER]. CHILD's reunification with HIS/HER FATHER is not viable due to [specify whether abuse, neglect, or abandonment, or a combination] under Minnesota law. [provide factual basis for AAN finding w/r/t FATHER].*

- Does the nonreunification language make an explicit finding for each parent, separately? (not sufficient to say “one or both parents”)
- Does the nonreunification language specify whether the basis is abuse, neglect, abandonment, similar basis, or a combination?
 - “Death” is not sufficient. Must say, e.g., “reunification with PARENT not viable due to abandonment, as CHILD’s PARENT is deceased.”
 - If using “similar basis” ground, be very careful and read the guidance on this closely.
- Are the conclusions of abuse, neglect, or abandonment explicitly based on Minnesota law definitions of these words?
 - Best practice: explain in pleadings and/or memo why the parental conduct meets the Minnesota definitions of these terms.
- If the nonreunification finding is based on a parent who is NOT on the birth certificate, has the court made a determination that the claimed parent is the parent under state law?
- This finding should go in the conclusions of law.

SIJS Finding: Custody/Dependency

- Make sure it is clear from the order that custody/dependency finding is based on Minnesota law. For example, if it’s a third party custody case, cite to the Minnesota statute governing third party custody.
- The custody/placement decision should not be temporary. USCIS will likely reject a temporary order.
- If meeting the requirement through the custody provision, rather than the dependency provision, the custody award must include physical custody.
- The order should specify with whom the court has placed the child and the factual basis for this finding.

Other Important Points

- The continuing jurisdiction requirement means that the court must maintain jurisdiction over the child until the child ages out, or completes the entire immigration process. Consider including language regarding the court’s continuing jurisdiction in the order.
- Be careful about language regarding parenting time and parental visitation. USCIS has at times cited this language to argue that the child’s reunification with the parent is in fact viable at some future point. For example, orders that state that the parent may have parenting time if practicable could cause USCIS to say that reunification may be viable with that parent in the future.