

## QUICK GUIDE ON SPECIAL IMMIGRANT JUVENILE STATUS

SC Appleseed Legal Justice Center prepared this information as an overview on Special Immigrant Juvenile Status (SIJS). This is a general guide meant for non-immigration attorneys and advocates. It is not legal advice. Consult an immigration attorney when considering immigration issues.

### Basic Immigration Information

A child born in the United States, Puerto Rico or certain US territories is a US citizen, even if the child was raised in another country. Children born abroad to a US citizen mother or father can inherit citizenship. Also, a person who naturalizes through immigration proceedings can acquire it. An immigrant is anyone living in the US who is not a United States citizen. An immigrant may have arrived in the US with or without permission from the US government. The US government determines the type of status an immigrant has or doesn't have.

People present in the US without legal status or who overstayed the terms of a visa are in the United States without permission. They are undocumented. These immigrants do not have permission to live or work in the US and are subject to removal (deportation) proceedings at any time. Sometimes undocumented people are eligible for lawful immigration status. Examples of options include visas for crime victims, asylum, Deferred Action for Childhood Arrivals, lawful permanent residence through a family member or an employer or through Special Immigrant Juvenile Status (SIJS). Each route has strict rules and special requirements that must be met. For a good overview of each one visit <http://www.uscis.gov/>.

### Special Immigrant Juvenile Status (SIJS)

Children who lack legal status cannot obtain legal employment and face the constant threat of deportation to their countries of origin. One way Congress tried to address this problem was by creating an immigration classification known as Special Immigrant Juvenile Status (SIJS). SIJS is an immigration option for children, dependent on a state juvenile court, who meet many additional criteria. For SIJS in SC, a "juvenile court" typically refers to family court.

Children who receive SIJS are eligible to receive work authorization. They can also obtain lawful permanent residence, that is become "green card" holders. A green card allows a person to work and live in the US, as long as s/he obeys all immigration and criminal laws. Eventually, a green card holder can apply for US citizenship.

### Routes to SIJS

SIJS is a two part process. The first part requires a final court order from family court that an attorney must obtain. It cannot be a temporary order. The second part involves immigration proceedings. There are two ways to access family court for SIJS. Many cases involve youth in the custody of the Department of Social Services (DSS), due to allegations of abuse, neglect or abandonment at the hands of at least one parent or guardian. Youth, who are not in state custody or under the jurisdiction of family court, can have an attorney file for them. Usually an attorney will seek full custody for the fit parent/guardian and ask for a SIJS order while in court. Youth in family court for juvenile delinquency proceedings can sometimes qualify for SIJS. However, criminal adjudications can impact a youth's eligibility for SIJS.

### Who is eligible for SIJS?

A child is eligible for SIJS if s/he:

- Is dependent upon the court or has been legally committed to the care of an individual or entity by a state or juvenile court, including children in dependency, adoption or delinquency proceedings and
- Is under twenty-one years of age; For SC family court the youth have to be under court jurisdiction before age 18. Youth age 18 and up to 21 would not fall under the court's jurisdiction

and therefore could not apply. The age being up to 21 allows for delays in the process for youth who applied timely and before age 18.

- Is unmarried;
- Cannot be reunified with one or both parents as a result of court findings that s/he was abused, neglected, abandoned under state law;
- Would be best served by remaining in the US. The court must determine it is not in the child's best interests to return to the country of origin or last habitual residence.

A child should remain under court jurisdiction until receipt of his or her green card. Otherwise, the child may lose claims to SIJS. A child should also apply for SIJS well before their 18<sup>th</sup> birthday to avoid possible delays in the application process. Even then, sometimes the immigration authorities will question a youth's application more vigorously when applying close to age 18. Recently immigration authorities began rejecting several cases where the youth were close to age 18 or already were 18. In addition, some family courts in SC have rejected jurisdiction of youth age 17 seeking SIJS. This has been seen with cases of unaccompanied minors who came across the border and are now staying with a single parent or other relative in the United States.

### **Risks of Applying for SIJS**

There are risks involved when applying for SIJS. SIJS applications are not confidential. Applying for SIJS alerts United States Citizenship and Immigration Services (USCIS), the agency that usually (but now always) reviews SIJS applications, that the child is present, without permission, in the United States. USCIS may use the information in the application to initiate removal proceedings against the child if the petition is denied. This is not a common occurrence, but can happen, especially if the child has a criminal history or other factors that make them a "security risk". Due to the complexity involved in identifying "red flags" under immigration law, it is important to have an immigration attorney process the SIJS petition to determine SIJS eligibility and risks when applying. Failure to identify certain issues may lead to the deportation or removal of the child.

### **Identifying Eligible Children**

SIJS cases take time to prepare and process. Identify eligible youth early to prevent aging out of the system and better ensure a family court will take jurisdiction of the case. Early identification is also necessary to obtain critical documents, such as: birth certificates and passports; medical examinations; fee waiver letters; and to prevent children from missing out on important educational and work-related opportunities.

The best way to determine eligibility is through the child's birth certificate. A US birth certificate or passport confirms that the child is a United States citizen and does not require immigration assistance. If a child does not have a US birth certificate or passport then inquire into the child's family background, including place of birth and immigration history and length of time in the United States. Also, request any documentation that can be used to identify the child's immigration status. For children who are not US citizens or lawful permanent residents, the consulate of the youth's home country, located in the United States, may be able to provide various types of assistance, including helping obtain necessary documents, locating family members in the child's home country, obtaining information from the home country, and/or facilitating communication for children or families who speak uncommon dialects. If a child received assistance from the Office of Refugee Resettlement (ORR) upon entry into the US, then that office may have documents that can assist in the process.

Remain sensitive to several factors when working with a potential SIJS-eligible child. Many immigrants are reluctant to interact with government officials or employees for fear of being reported to USCIS. Therefore, inquiries about immigration and/or US citizenship should be made after establishing a rapport with the child. Explain the purpose of the inquiry to the the child.

### **Supporting Documentation**

The DSS or Guardian ad Litem (GAL) attorney should make efforts to obtain any records pertaining to the child that will assist the immigration attorney with the filing of the SIJS petition, for youth in the foster care system. For youth in the delinquency process, the defense attorney should obtain documents. Request that the parent(s)/guardian turn over any documents such as: birth certificate,

immunization records, passport, etc. to facilitate the process. For youth who had contact with ORR, the parent/guardian should have or gather all necessary documents.

Supporting evidence the immigration attorney will need include:

1. A **final** court order from the family court judge that states the following:
  - a. The child is under the jurisdiction of the court due to abuse, neglect or abandonment;
  - b. that that child cannot be returned to at least one parent due to the abuse, neglect or abandonment the parent inflicted;
  - c. the reasons it is not in the child's best interest to return to the country or origin or a different country. This may be because there is no one able or willing to care for him or her in the country of origin or because of the conditions in the country.
2. A passport from the country of origin. This can be obtained from their consulate here in the United States. Usually both parents, with very few exceptions, must give consent for minors to obtain their passport. If the parents are uncooperative, then seek a court order to obtain the passport. One can also call and discuss the impediments with a person at the consulate. The passport is required for identification, so that the child can go to biometrics appointments and interviews at immigration offices.
3. The child's birth certificate. It must be translated into English and a translator must attach a signed certificate/affidavit stating his or her qualifications. If no one can locate the child's birth certificate, then work with the consulate to obtain one. It is best to have a certified copy of the birth certificate from the consulate rather than a photo copy a school might have.
4. At least 4 passport size photos. USCIS requires these.
5. Letter of indigency (for children in foster care), if possible. This can help get immigration fees waived for the child.
6. A special medical exam by a civil surgeon. The civil surgeon will fill out a required immigration form about the medical examination and seal it in an envelope, as required by law. This form must remain sealed until opened by the immigration official reviewing the case.

#### **After the Filing of the Packet**

An immigration attorney will complete the second part of the SIJS process. He or she will file all necessary forms and keep the child aware of the progress of the case. This includes information about biometrics appointments and possible interviews.

#### **Conclusion**

The opportunity to apply for Special Immigrant Juvenile Status can have a significant impact on a child's life. An approved petition means the child becomes a lawful permanent resident (LPR), and will be able to: access financial aid for college; attend and pay state school tuition; work legally; and have the option to apply for US Citizenship. Note that youth cannot apply for legal status for their parent(s). This is not all the information you need to know about SIJS. Consult an immigration attorney to learn more about this and other legal immigration options. You can locate an immigration attorney from the [American Immigration Lawyers Association](#) website. Click on "find an immigration lawyer"

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