

Special Immigrant Juvenile Status: The Basics

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SIJS Basics: Overview

- **Special Immigrant Juvenile Status (SIJS)** provides legal protection for certain undocumented immigrant youth who have been abused, abandoned, or neglected, by allowing them to legalize their immigration status and become lawful permanent residents

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Special Immigrant Juvenile Status

- Created in 1990 after advocacy by Santa Clara child welfare agency
- Creates pathway to permanent residency
- Depends on findings by a state court to establish eligibility

Special Immigrant Juvenile Status

- Statutory Authority:
8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11
– Note: the regulations have not been updated since important changes in the law made in 2008. Proposed regulations are pending and not expected until late 2016
- *See also* California Code of Civil Procedure § 155
– Clarifies which Superior Courts have jurisdiction to make SIJS findings and mandates that courts make these findings where evidence has been presented to establish eligibility

Special Immigrant Juvenile Status – Eligibility Requirements

A youth may be eligible for SIJS if he/she:

1. Is under 21 years of age
2. Is unmarried
3. Has been declared dependent upon a juvenile court located in the United States or whom such a court has legally committed to or placed under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States

Special Immigrant Juvenile Status – Eligibility Requirements

The court must make two findings:

4. Reunification with one or both of the child's parents is not viable due to abuse, neglect, or abandonment, or a similar basis found under State law
5. It would not be in the child's best interest to be returned to the child's or parent's previous country of nationality or country of last habitual residence

The Path to a SIJS Visa & Legal Permanent Residence

1. Juvenile Court
 - a. Guardianship/Dependency/Delinquency/Family Petition
 - b. Petition for SIJS eligibility findings (form GC-220, FL-356, JV-356)
- SIJS Predicate Order—on form **FL-357/GC-224/JV-357**
2. Application to USCIS for Special Immigrant Juvenile Status
3. Application to USCIS or Immigration Court for Permanent Residency

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What Is a Juvenile Court?

- The term “juvenile court” is defined as a court located in the United States having jurisdiction under State law to **make judicial determinations about the custody and care of juveniles.**
 - 8 C.F.R. § 204.11(a).

What Is a Juvenile Court?

- In California, this includes, but is not limited to, the juvenile, probate, and family court divisions
 - California Code of Civil Procedure § 155
 - *B.F. v. Superior Court*, 207 Cal. App. 4th 621 (2012) (Superior Courts are divided into departments as a matter of convenience; but the subject matter jurisdiction of the Superior Court is vested as a whole, so any superior court making a determination about the custody and care of a juvenile qualifies as a “juvenile court” as defined by the SIJS statute)

Custody Determination

- Declared dependent upon a juvenile court located in the United States
 - Dependency
- Or whom such a court has legally committed to or placed under the custody of an agency or department of a State
 - Delinquency
- Or an individual or entity appointed by a State or juvenile court located in the United States
 - Probate and family

Reunification Not Viable with One or Both Parents

- Change to the SIJS law that was made by the Trafficking Victims Protection Reauthorization Act of 2008
- Under the current statute, children who live with one parent but have been abused, abandoned, or neglected by the other parent can be eligible for SIJS

Reunification Not Viable with One or Both Parents

- *In re Israel O.*, 233 Cal. App. 4th 279 (2015) (finding that a child may be eligible for SIJS even if a safe and suitable parental home in the United States is available)
- *Eddie E. v. Superior Court*, 234 Cal. App. 4th 319 (2015) (finding that the plain language of the [revised] SIJS statute means that a child can satisfy the second SIJS finding by showing an inability to reunify with one parent due to abuse, abandonment, neglect, or a similar basis)

Best Interests

- Court looks to state law on best interest factors
 - Welfare and Institutions Code § 202; Probate Code § 1514; Family Code § 3011
- Best interest determination may, and often is, based on facts beyond abuse, abandonment, or neglect
- Court may consider country conditions, family members or lack of them in home country, child’s safety, etc.

Best Interests

- In determining whether it would be in the child’s best interests to be returned to his or her parent’s home country, the court must look at the *evidence* presented and cannot speculate about what might be in the child’s best interests or make determinations based on policy considerations.
 - See *Leslie H. v. Superior Court*, 224 Cal. App. 4th 340 (2014) (finding that the lower court erred in denying the request for SIJS findings for a delinquent youth based on policy considerations and that ample, uncontroverted evidence was presented to satisfy the statutory criteria)

Maintaining Juvenile Court Jurisdiction

- General rule: Child must remain under juvenile court jurisdiction until the adjustment of status application is approved unless such jurisdiction is terminated “based on age”

Maintaining Juvenile Court Jurisdiction

- Background: Regulations (now outdated) interpreting statute require that the child remain under juvenile court jurisdiction until adjustment of status is approved
 - 8 CFR § 204.11(c)(5) – requires child to continue to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency, or eligibility not having been vacated, terminated, or otherwise ended
 - 8 CFR § 205.1(a)(3)(iv)(C) – provides for automatic revocation of SIJS if the dependency on the juvenile court is terminated before adjustment of status is approved

Maintaining Juvenile Court Jurisdiction

- *Perez Olano Stipulation (2015), Case No. CV 05-3604*
 - USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition (1) the applicant is or was under 21 years of age, unmarried, and otherwise eligible, and (2) the applicant either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

Maintaining Juvenile Court Jurisdiction

- Means that juvenile court jurisdiction does not have to be extended if jurisdiction terminates based on age
 - E.g.: Guardian was appointed and SIJS findings made for the child at age 17. Although the child's application with USCIS is still pending when the child turns 18 and probate court jurisdiction ends, there is no need to extend probate court jurisdiction since the jurisdiction terminates due to the child's age.

Age Out

- Although a child is eligible to apply for SIJS under federal law until age 21, under California law children generally were not able to seek juvenile court protection after age 18
- AB 900 signed into law on October 9, 2015 to take effect January 1, 2016
 - Amends probate code to extend the jurisdiction of probate courts over guardianships of the person for 18-20 year olds who request a guardian in conjunction with a request for SIJS findings

Specific Consent

- Comes into play in a limited number of cases in which the child is *in the custody of the Office of Refugee Resettlement (ORR)*
- In those cases, the juvenile court cannot make custody or placement decisions about the child without ORR's permission
 - 8 U.S.C. § 1101(a)(27)(J)(iii)(I)
- Does *not* apply in cases where child has already been released from ORR custody

Juvenile Court Process – SB 873

- Codified in Code of Civil Procedure § 155, went into effect September 27, 2014
 - Reiterates jurisdiction of state court to make SIJS findings
 - Specifies that juvenile, probate, and family court divisions are able to make findings
 - Requires courts to make the predicate findings if the evidence supports them
 - Specifies that evidence may consist of a declaration from the child

Juvenile Court Process – SB 873

- Codified in Code of Civil Procedure § 155, went into effect September 27, 2014 (continued)
 - Provides confidentiality protections for information about child’s immigration status
 - Allows for sealing of records not otherwise protected by confidentiality protections
- See Judicial Council Memorandum, SB 873, dated September 30, 2014
 - <http://www.courts.ca.gov/documents/jc-20141028-item1.pdf>

Juvenile Court Process – SB 873

- Rules of court and forms to implement SB 873 <http://www.courts.ca.gov/documents/SPR15-28.pdf>
 - Just adopted by the Judicial Council, to go into effect January 1, 2016
 - New rule on procedural requirements for seeking SIJ predicate findings in guardianship proceedings - Rule 7.1020

Juvenile Court Process – SB 873

- Rules of court and forms to implement SB 873 (continued)
 - New mandatory Judicial Council SIJS petition (GC-220, FL-356, JV-356)
 - New unified SIJS order FL-357/GC-224/JV-357 (and revocation of GC-224 & JV-224)
- CA Courts Self Help webpage also has info on SIJS - <http://www.courts.ca.gov/selfhelp-sijs.htm>

HYPOTHETICAL CASE STUDIES

Hypo 1: Rosa

- **Rosa** is a 15-year-old girl from Nicaragua. She was brought to the United States when she was six years old and has been living with her parents in San Mateo County. You are a social worker for CPS. Over the years, there were multiple CPS reports of neglect and domestic violence in the home. Rosa's father was killed in a car accident when she was 11. When Rosa was 13, she was detained from her mother after your office substantiated a report that she had been physically abused by her mother, leaving bruises on her arms and back.

Hypo 1: Rosa

- After a settlement conference, Rosa's mother admitted two (b) counts and Rosa was placed under the supervision of the Department of Family Services and placed with a foster family. Rosa's mother received 12 months of reunification services but she failed to participate in services or make substantial progress. At the upcoming 12 month review hearing, you are recommending terminating reunification services and setting a permanent plan in long term foster care.

Hypo 1: Rosa

- Does Rosa appear eligible for SIJS?
- Why or why not?
- If she does appear eligible, when in the proceedings can you request SIJS findings?
- What should be your next steps in Rosa's case?

Hypo 1: Rosa

- How would the analysis be different if Rosa's mother had participated in reunification services and seemed likely to reunify with Rosa at the twelve month review?
- Would it make a difference if Rosa were about to turn 18 and become a non minor dependent?

Hypo 2: Joshua

- **Joshua** is a 17-year-old boy from Mexico. He came to the United States when he was only two years old. You represent him in his delinquency proceedings. He was charged with burglary and with drug possession. Consistent with *Padilla*, you researched the immigration consequences of his proposed plea and advised him of those consequences. He pled and was adjudicated delinquent on the burglary charge.

Hypo 2: Joshua

- He is now a Section 602 ward of the delinquency court and has been sent to a suitable placement. Joshua's mother is receiving reunification services. Joshua's father, who has been absent from Joshua's life since Joshua was three years old, is not. Joshua wants to remain in suitable placement and then transition into an independent living program. This seems likely to be the plan.

Hypo 2: Joshua

- Does Joshua appear eligible for SIJS?
- Why or why not?
- How, if at all, will Joshua's juvenile delinquency record affect his eligibility for immigration relief?

Hypo 2: Joshua

- What should be your next steps in Joshua's case?
- How, if at all, would the analysis be different if Joshua were 19 years old and a non minor dependent of the delinquency court?

Hypo 3: Thuy

- **Thuy** is a 16-year-old girl from Vietnam. She lived in Vietnam with her parents as a young child but her parents were very poor and unable to provide for her. Thuy has a cousin of the same age who is a U.S. citizen. When Thuy was five years old, Thuy's parents sent her to the United States with her aunt and uncle. Thuy entered using her cousin's birth certificate. Thuy has been living with her aunt, uncle, and cousin in San Francisco since she was five.

Hypo 3: Thuy

- Thuy initially kept in touch with her parents by phone but her parents split up when she was 12 and she has not heard from her father since then and does not know where he is. She talks to her mother occasionally. Thuy did not realize that she was undocumented until this year, when she wanted to get a part time job after school and realized that she did not have a social security number. She consults you, an immigration attorney, about her options.

Hypo 3: Thuy

- Does Thuy appear eligible for SIJS?
- Why or why not?
- What should be your next steps in Thuy's case?
- How would the analysis be different if Thuy were already 18?

Hypo 4: Daniel

- **Daniel** is a 17-year-old boy from Honduras. Daniel was apprehended crossing the U.S.-Mexico border in October 2014. He was placed in ORR custody and later reunified with his mother in Fresno. Daniel had not seen his mother since he was eight, when she came to the United States to work and send money home to provide for Daniel. But they are now adjusting well to life together.

Hypo 4: Daniel

- Daniel's father left the family when Daniel was three years old, and has not been in the picture since then, or provided any financial or emotional support. Daniel's maternal grandparents cared for him in Honduras, but they were unable to protect him from gang violence and threats as he grew older. You are a family court judge who is reviewing Daniel's mother's parentage petition and request for sole custody.

Hypo 4: Daniel

- Does Daniel appear eligible for SIJS?
- Why or why not?
- Does the fact that Daniel's father resides abroad affect the parentage case?
- Does Daniel need to demonstrate that he has received specific consent from ORR before you can make SIJS findings?
