

EXPERT REPORT ON SPECIAL IMMIGRANT JUVENILE ELIGIBILITY

This Expert Report is the opinion of the author and is prepared for use in immigration, family and juvenile proceedings to inform courts and administrative agencies about eligibility for state court issuance of orders making Special Immigrant Juvenile factual findings when a juvenile has reached the age of 18. The author has prepared this report based on the law in existence as of the date of this report and encourages those seeking to use this report to contact the author to update this report as the law changes.

I, Jonathan S. Greene, Esquire, have provided this report in my capacity as an expert witness. Although I am a licensed attorney and I practice before the Immigration Courts (EOIR # MR882168), the submission of this report does not constitute an appearance as an attorney representing any party in any court action. In the event I am called to present opinion testimony at any court hearing, I would do so as a witness.

I. Opinion

In reaching this Opinion, I have based my opinions on my education, training and experience, as well as upon my review of materials and information relating to this case. I also have reviewed relevant sections of the Immigration and Nationality Act, federal regulations, federal guidance such as policy memoranda, case law and scholarly articles.

The Immigration and Nationality Act (“INA”) specifically delegates to state “juvenile courts” the authority to make special findings of fact regarding children eligible for Special Immigrant Juvenile Status, a designation that permits children to apply for permanent residence in

the United States. See 8 U.S.C. §1101(a)(27)(J)(i). A “juvenile court” is defined in federal regulation 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). In the State of Maryland, a circuit court as an equity court has jurisdiction over custody or guardianship of a child. MD. CODE ANN., FAM. LAW § 1-201. Maryland’s circuit courts are thus empowered to make Special Immigrant Juvenile findings in custody or guardianship proceedings pursuant to MD. CODE ANN., FAM. LAW § 1-201 and MD. CODE ANN., EST. & TRUSTS § 13-702.

Once a state juvenile court issues an order making Special Immigrant Juvenile factual findings, the subject of that order may submit it to USCIS with a Form I-360 Petition for Amerasian, Widow(er) or Special Immigrant. 8 C.F.R. § 204.11(b). In order to be eligible for Special Immigrant Juvenile classification, an applicant must also be unmarried and under 21 years of age. 8 C.F.R. § 204.11(c). If the Form I-360 Petition is filed before the applicant reaches 21 years of age, the applicant will not “age out” of eligibility while the matter is under consideration while USCIS, pursuant to federal statute. See TVPRA, Pub. L. 110-457, § 235(d)(6), 122 Stat. 5044.

Insofar as federal law permits filing the Form I-360 Petition at any time prior to the applicant’s 21st birthday, the applicant may obtain a state court order making Special Immigrant Juvenile factual findings at any point prior to filing the Petition with USCIS. The applicant may therefore obtain the state court order even a few days prior to his or her 21st birthday, if a state court will issue such an order.

State legislatures typically determine the subject matter jurisdiction of their courts, and

most juvenile courts across the country are restricted to matters involving children under the age of 18. Such courts cannot issue orders making Special Immigrant Juvenile factual findings if the children involved have reached the age of 18, even though federal immigration law generally defines a child as a person under the age of 21. See 8 U.S.C. §1101(b) and (c). A state court can only take jurisdiction over a juvenile matter for those reaching age 18 if the state's legislature has granted such jurisdictional authority to the court or the courts in a state have found that such jurisdiction is permitted under state law, as noted below.

Only a handful of states permit their courts to address juvenile matters for those who are 18 and over. Such states include New York, Massachusetts, Minnesota, New Jersey and Maryland. The New York legislature created such authority for guardianship matters. N. Y. Jud. Ct. Acts Law §661(a). The Massachusetts Probate and Family Court has been recognized by the Massachusetts Supreme Judicial Court to have such authority. See Mass. General Law. c. 215, §6. *Recinos v. Escobar*, 473 Mass 734 (2016). Minnesota's Court of Appeals has also recognized the jurisdiction of its probate court to hear a guardianship matter involving a 20-year-old person. See *In re Guardianship of Jose Maria Chimborazo Guaman*, (A15-1412) (May 16, 2016).

New Jersey's Superior Court Appellate Division has also directed that state Family Part courts must make SIJ findings for persons under 21 years old, even if those persons have reached the age of 18. *O.Y.P.C. v. J.C.P.*, 126 A.3d 349 (N.J. Super. App. Div. 2015). The Superior Court indicated that judges do not have to declare such juveniles dependent on the court or place the juvenile under the custody of an entity or individual if the person is over the age of 18 and judges can state such conclusions in their orders, but judges must still make all other SIJ-required

findings. The Superior Court recognized that the state's Family Part courts have some sources of jurisdiction over those who are 18 and over. The New Jersey Resource Family Parent Licensing Act allows group home and institutional placements for those between 18 and 21, and the Age of Majority Act has an exception for dependent and neglected persons between 18 and 21 who seek services and are enrolled in school below college level.

In Maryland, the state's circuit courts lacked jurisdiction to hear custody and guardianship matters involving 18-year-olds prior to October 1, 2014. In that year, the Maryland General Assembly amended MD. CODE ANN., FAM. LAW § 1-201 to expressly permit such jurisdiction in the circuit courts:

(a) *“Child defined.* – For the purposes of subsection (b)(10) of this section, “child” means an unmarried individual under the age of 21 years.

(b) *In general.* - An equity court has jurisdiction over:

(10) custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(J) of the federal Immigration and Nationality Act.

Since 2014, Maryland's circuit courts have routinely heard custody and guardianship matters involving children over the age of 18. I have personally obtained orders from these courts pertaining to special immigrant juvenile matters for several dozen children, many of whom were over the age of 18 at the time such orders were issued. The change in Maryland's statutory age has been recognized by USCIS in two non-precedent decisions of the Administrative Appeals Office issued on April 20, 2016 (Matter of E-D-J-B-F-) and (Matter of R-A-C-M-).

Maryland courts will not typically issue SIJ orders without taking testimony in court,

including from the juvenile, unless the juvenile is of very young age and determined by the trial court not competent to testify. Testimony from the juvenile is often of critical importance to SIJ cases because the juvenile may be the only person at the hearing who has direct personal knowledge of the most important details of abuse, neglect or abandonment.

In addition to the opinions contained herein, I may provide expert testimony if so requested. I further reserve the right to amend or revise the opinions contained herein in the event that other fact, evidence or law is presented that has a substantial impact on the opinions expressed herein.

II. Professional Credentials

I am an attorney and owner of the Greene Law Firm, LLC, located at 10500 Little Patuxent Parkway, Suite 420, Columbia, Maryland 21044. My practice emphasizes immigration law and Maryland family law. I graduated from the University of Maryland Law School in 1996 and was admitted to practice in the Court of Appeals of Maryland that same year. I am also admitted to practice before the U.S. District Court for the District of Maryland, the U.S. Courts of Appeals for the Fourth Circuit and the Sixth Circuit, and the U.S. Supreme Court. I regularly appear as an attorney before Maryland state court, U.S. Immigration Courts, the U.S. Department of Homeland Security, the State Department and the U.S. Department of Labor.

I have previously submitted an expert report similar to this one in the Immigration Court in Florence, Arizona. I have testified as a qualified expert witness on immigration law matters in one case before the Circuit Court for Baltimore County, Maryland. I have testified as a qualified expert

witness on family law counsel fees in one case before the Circuit Court for Baltimore County, Maryland. I have submitted an Expert Opinion on family-based immigration law in one case before the U.S. District Court of Maryland. I have been retained more than a dozen times as an expert on immigration law matters for state court cases in which I was not called to testify.

I have practiced in trial and appellate courts in immigration and family law for 20 years, including reported cases *Simbaina v. Bunay*, 221 Md. App. 440 (2015); *Kuusk v. Holder*, 732 F.3d 302 (4th Cir. 2013); and *Fox v. Fox*, 167 F.3d 880 (4th Cir. 1999). The *Simbaina* decision is the first reported case in Maryland addressing Special Immigrant Juvenile issues, and it has been cited in other court cases in states such as New Jersey, Minnesota and Maryland.

I have served as Chairman of the Maryland State Bar Association (MSBA) Immigration Law Section and as Chairman of the American Immigration Lawyers Association (AILA) Chapter for the District of Columbia, Maryland and Virginia, as well as a member of the AILA Board of Governors. I have served on the MSBA Immigration Law Section Council since its founding in 2008. I also served as AILA chapter chair-elect, vice chair, chapter secretary, Maryland bar liaison, ICE liaison twice, CBP liaison, annual conference committee chair, Maryland advocacy coordinator and ICE raid response coordinator. I have served on five national AILA committees as well. I received the 2008 AILA Washington D.C. Chapter Advocate of the Year Award.

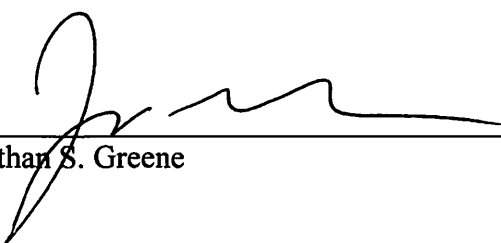
I am also an Adjunct Professor of Immigration Law at Stevenson University and I have appeared on numerous occasions as a guest lecturer in immigration law for courses at the University of Maryland and University of Baltimore Law Schools. I have also testified regarding immigration law many times before the General Assembly of Maryland.

I am currently preparing a book for the American Bar Association's Family Law Section on immigration law. I have spoken on professional responsibility at three conferences in 2015, and I addressed immigration issues affecting the Latino community at a conference at the American University Washington College of Law in 2014. I have presented three AILA web seminars in 2013 on marriage fraud issues and a webinar on immigration court to the Maryland State Bar Association. In 2011-2012, I presented four seminars to the Maryland Public Defenders office. I spoke on legal professionalism issues for national AILA conferences in 2011 and 2013, and I have spoken on advanced naturalization and family immigration issues at the national AILA 2003, 2005, 2006, 2008, 2009, 2010 and 2014 Annual Conferences. I spoke on state immigration legislation for a 2008 AILA national podcast. I addressed family issues for AILA national audio seminars in July 2009 and March 2011, a web seminar in November 2006 and the New York Chapter conference in December 2006. I spoke on immigration law ethics at the AILA New England Regional Conference in 2006 and the AILA Washington D.C. Chapter 2004, 2012, 2013, 2014 and 2015 Fall Conferences. I spoke about client development at the AILA Washington D.C. Chapter 2002 Legal Practice Series and served as a moderator for the chapter's Fall 2001 conference and again in 2008. I have spoken on immigration issues both to the Family Law Committee of the Baltimore City Bar Association in 2004 and as presenter of the association's Milton Talkin lecture in 1999. I gave private seminars for Sterling Educational Services in 2006-7 and a seminar to Baltimore County Circuit Court judges in 2007. I spoke at MSBA annual conferences in 2008-11 and presented on criminal and immigration law for the Maryland Institute for Continuing Legal Education in 2008. I presented immigration seminars for the American Law

Institute-American Bar Association in 2004 -2006. In 2009, I spoke about immigration issues at the conference of the National Consortium for Racial & Ethnic Fairness in the Courts and at the Family Law Hot Tips seminar of the Maryland Institute for Continuing Legal Education. I have given presentations on domestic violence to the Domestic Violence Center of Howard County and the Baltimore County Social Services Department in 1996. I have also taught private seminars in 1999-2008 for the National Business Institute.

My publications include “The Tricky Triangle: Marriage, Divorce and Permanent Residence,” Thompson Immigration Briefings (Mar. 2015); “Preparing Clients for the Marriage Interview,” Voice Magazine (Mar. 2015); “Visa Options for International Business,” Maryland Bar Bulletin (Aug. 2014); “Spousal Green Cards: The Golden Ticket,” Maryland Bar Bulletin (Aug. 2014); “Increasing Importance of Immigration in Family Law,” MAJ Journal (July 2014); “Adjustment of Status vs. Consular Processing” AILA’s Guide to Immigration Law for Paralegals 2013-14 (Nov. 2013); “Family Feuds: The Impact of Domestic Relations Law on Naturalization,” West Immigration Briefings (Aug. 2013); “Immigration Issues in Criminal Law,” Maryland Bar Bulletin (Aug. 2012); “Immigration Opportunities for 2012,” Maryland Bar Bulletin (Aug. 2012); “Unfortunate Fairy Tale” Unhappy Marriage of Immigration and Family Law,” Maryland Bar Journal, Vol. XLI, No. 5 (2008); “All in the Family: How Messy Divorces Can Make a Mess of Naturalization,” Immigration & Nationality Law Handbook 717 (2006); “When Immigration Meets Family Law: An International Collision,” Family Law News, MD State Bar Association Section Council of Family & Juvenile Law (July 2005); “Immigration Issues for the Family Law Attorney,” Maryland Bar Bulletin (Sept. 2004); “H Nonimmigrants,” 2 Immigration & Nationality

Law Handbook 1 (2003); and the conclusion to the Fall 1999 Cardozo School of Law Journal of International and Comparative Law Fall issue focusing on international violence against women. I also lead coauthored “V Nonimmigrant Visas: A New Breath of LIFE,” Immigration & Nationality Law Handbook 575 (2005); “The Vagabond Life of the V Visa Kids,” Immigration Law Today Vol. 24. No. 5 (2005); “Marital Disharmony: Immigration Consequences of Separation and Divorce,” Immigration Law Today Vol. 26 No 6 (2007); and “Every Rose Has Its Thorn: Issues in Difficult Marriage Adjustment Cases,” Immigration & Nationality Law Handbook 563 (2008). I also coauthored “Increasing Remedies for Domestic Violence” for the Maryland Journal of Contemporary Legal Issues (1995). In 1996, I wrote the chapter on Sports and Entertainment Law for The Impact of Domestic Violence on Your Legal Practice: A Lawyer’s Handbook, published by the American Bar Association Commission on Domestic Violence. I also wrote frequently for the Maryland Domestic Law Report and the Maryland Family Law Monthly from 1996 to 2000.



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