

EXPERT REPORT ON SPECIAL IMMIGRANT JUVENILE ELIGIBILITY

IN NEW YORK STATE

This Expert Report is the opinion of the author and is prepared for use in immigration and family court proceedings to inform the courts and administrative agencies about a juvenile's eligibility for New York State court issuance of Special Immigrant Juvenile factual findings when a juvenile has reached the age of 18 but is not yet 21 years old. 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, Beth A. T. Krause, Esq., have provided this report as an expert witness. Although I am a licensed attorney, admitted to practice law in New York and Connecticut, I submit this report as an expert only and 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

I base my opinion contained herein on my education, training, and extensive experience representing juveniles in New York State Family Court. I have also reviewed relevant sections of the New York Family court Act, New York Surrogate's Court Procedure Act, Immigration and Nationality Act, federal regulations, federal guidance such as policy memoranda, and case law. The Immigration and Nationality Act ("INA") specifically delegates to state "juvenile courts" the authority to make special findings of fact, which then permits children meeting the specific criteria to apply for permanent residence in the United States. See 8 U.S.C. § 1101(a)(27)(J)(i). This form of relief is commonly referred to as Special Immigrant Juvenile Status or "SIJS."

Federal regulations define “juvenile courts” 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 New York State, the Family Courts most frequently deal with matters concerning the custody and care of juveniles, see N.Y. Fam. Ct. Act §§ 115 & 141, although the Surrogate Courts have concurrent jurisdiction with Family Courts regarding matters of guardianship. See Fam. Ct. Act. § 661 and Surr. Ct. Proc. Act. § 1701.

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 Status 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 by 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 take jurisdiction over a juvenile matter for those age 18 and older only 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 New York has done.

In New York, the Family Court Act (FCA) § 661(a) governs “[g]uardianship of the person of a minor or infant,” which is a common proceeding where Special Immigrant Juvenile factual findings are often sought. See, e.g., Matter of Antowa McD., 50 A.D.3d 507 (1st Dep’t 2008) (overturning trial court’s refusal to make SIJS findings in a guardianship proceeding); Matter of Jean, N.Y.L.J., 5/27/2008, vol. 239, p. 18 (col. 3) (Fam. Ct. Kings County April 23, 2008) (“[T]he guardianship petition in New York includes the very component imposed by the INA, that there be a finding of an abandonment or abuse or neglect of the subject child”).

Until 2008, the FCA applied only to persons under the age of 18. However, in 2008, partially in response to the federal expansion of SIJS eligibility to age 21, see 8 USC § 1101(a)(27)(J)(i), the New York Legislature similarly amended the FCA expanding the Family Court’s jurisdiction to authorize the appointment of a guardian for a juvenile until the age of 21. Sobie, Practice Commentaries, McKinney's Laws of NY, Book 29A, 2014 Cum Ann Pocket Part.

The statute now provides, in pertinent part, that “[f]or purposes of appointment of a guardian of the person pursuant to this part, the terms infant or minor shall include a person who is less than twenty-one years old who consents to the appointment or continuation of a guardian after the age of eighteen.” Fam. Ct. Act § 661(a); see also Trudy–Ann W., 73 AD3d 793 (NY App. Div. 2d 2010); see also, Sing W.C., 83 AD3d 84 (NY App. Div. 2d 2011); cf., Matter of

Vanessa D., 51 AD3d 790 (NY App. Div. 2d 2008) (amendment of SCPA not yet applicable to guardianship proceedings in Family Court).

In accordance with the Family Court Act and the Surrogate's Court Procedure Act, the subject juvenile between 18 and 21 must consent to the appointment of a guardian and the court must determine that the appointment is in the juvenile's "best interests." Fam. Ct. Act § 661, Surr. Ct. Proc. Act § 1707. Thus, prior to issuing letters of guardianship and Special Immigrant Juvenile factual findings, New York Family Courts generally require in court testimony from both the subject child and the petitioning party. Testimony from the child is often of critical importance to SIJ cases because the child may be the only person who has direct personal knowledge of the most important details of abuse, neglect or abandonment necessary for the requisite factual findings.

Since 2008, New York Family Courts have routinely heard guardianship matters involving children over the age of 18. I have personally successfully represented at least a dozen children between the ages of 18 to 21 to obtain a guardian and Special Immigrant Juvenile factual findings in Family Court. My office, which currently employs seven attorneys who exclusively represent children seeking immigration relief, often through SIJS, has successfully represented several dozen 18 to 21 year olds in New York Family Court as well as immigration proceedings to obtain lawful permanent residence in the past two years alone.

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

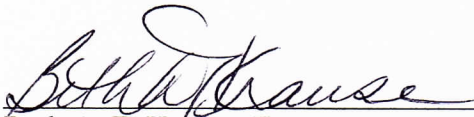
I am an attorney licensed to practice law in the states of New York and Connecticut. I graduated from the University of Maryland School of Law in 2008, *magna cum laude*. My current position is as Supervising Attorney of the Immigrant Youth Project of the Legal Aid Society located at 199 Water Street, New York, New York 10038. I supervise six fulltime attorneys whose practice consists of exclusively representing juveniles under the age of 21 to obtain legal immigration status in the United States.

Prior to my current position, from 2009 to 2013, I worked as Attorney for the Child at the Children's Law Center. In this position I was appointed by the court to represent children in all forms of Family Court and Supreme Court, Integrated Domestic Violence Part matters. In this position, I represented many children in the Family Court portion of SIJS proceedings. I also taught law school clinic courses each semester about the different forms of immigration relief available to children.

From 2013 to 2016 I had a solo law practice. As a certified member of the New York State Supreme Court, Appellate Division First Department Law Guardian Panel and a certified member of the Bronx County Panel of Attorneys for Children, I continued to represent children in the Family Court portion of SIJS proceedings. I also occasionally represented the petitioner in the Family Court portion of SIJS proceedings.

I am also the President of the Bronx Women's Bar Association (2015-2017). I presented as part of a CLE panel on The Basics of Refugee Law: From Displacement to Resettlement in June 2016 at the annual convention of the Women's Bar Association of the State of New York.

Dated: October 28, 2016


Beth A. T. Krause, Esq.