Special Immigrant Juvenile Status

Immigration Relief for Abused, Neglected and Abandoned Children

June 30, 2015
SIJ Overview

Scope and Benefits

- Humanitarian protection for children that cannot be reunified with one or both parents due to abuse, abandonment or neglect.

- An immigration classification that allows these children to immediately apply for LPR status (if otherwise eligible).
SIJ Eligibility

Eligibility

Petitioner must be:

✓ Under 21
✓ Unmarried
✓ Present in the U.S.
✓ Have a juvenile court order with required findings on:
  • dependency or custody
  • parental reunification
  • best interests
Age Issues

- A child must apply to USCIS for SIJ status before he or she turns 21 (even in states where juvenile court jurisdiction extends beyond 21).

- Note: Some children may also need SIJ status prior to turning 18 to access certain benefits (such as federally-funded foster care).
State and Federal Roles

Juvenile Court (State)

- Issue orders that help USCIS determine eligibility for immigration benefit
- Make factual findings based on state law on:
  - Dependency/Custody
  - Parental reunification
  - Best interests

USCIS (Federal)

- Review SIJ petition, including juvenile court order, to determine eligibility
- Determine if order was sought primarily for relief from child abuse, neglect, or abandonment, rather than immigration purposes
Evolution of SIJ Program

1990
SIJ program established.
Children originally had to be eligible for long term foster care.

1998
Evolved to be specifically for children that can’t be reunified due to abuse, abandonment, or neglect.

2008
Trafficking Victims Protection Reauthorization Act 2008 amended the definition of SIJs.

Present
Current statutory requirements at INA 101(a)(27)(J). Federal regulations at 8 CFR 204.11 are being updated.
Legal Basis

- INA § 101(a)(27)(J)—definition and INA § 245(h)—adjustment of status

Note: The regulation is outdated and USCIS is working on an updated rule.
INA §101 (a)(27)(J)

J) an immigrant who is present in the United States—

- (i) who has been declared dependent on 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, and

  whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

  (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Service specifically consents to such jurisdiction; and

  (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;
Policy Guidance

- Memo: Implementation of the Special Immigrant Juvenile
  *Perez-Olano* Settlement Agreement (June 25, 2015)

- Memo: Trafficking Victims Protection Reauthorization Act of
  2008: Special Immigrant Juvenile Status Provisions (March 24,
  2009)

- Consolidated Handbook of Adjudication Procedures (CHAP):
  HQ is currently working on Volumes 6 and 7 SIJ procedures

- Adjudicator’s Field Manual (AFM): Chapter 22.3 will be
  replaced by new Policy Manual

- Policy Manual: HQ is working on consolidated SIJ policy
  guidance in Volume 6 and Volume 7 of the new USCIS Policy
  Manual
Regulations Governing SIJ Eligibility

The regulation is outdated and parts are superseded by statutory changes. See USCIS memo issued March 24, 2009 on TVPRA 2008 changes.

- PRIOR REQUIREMENT: Child was deemed eligible for long term foster care by a juvenile court.
  CHANGE – Expanded to: Child cannot be reunited with one or both of the child’s parents due to abuse, neglect, abandonment, or similar basis under state law

- PRIOR REQUIREMENT: Child must be dependent upon the juvenile court
  CHANGE: Expanded eligibility to also include children under the custody of an agency or department of a State, or an individual or entity appointed by the court
Regulations Governing SIJ Eligibility (cont’d)

- PRIOR REQUIREMENT: Continues to be dependent on the juvenile court.
  
  CHANGE: If the juvenile court’s jurisdiction ends solely because the minor ages-out, this requirement does not apply.
Potentially Eligible Populations

- Abused while in the U.S.
- Abused in home country
- Live with one parent
- Live with a guardian
- Adopted
- In state foster care system
- In federal custody (ORR)
Annual SIJ Petitions to USCIS
Juvenile Court Orders

- Qualifying Courts
- Required Findings
- USCIS Consent and Establishing Factual Basis
- Age Issues
Qualifying “Juvenile” Courts

A court in the U.S. that has jurisdiction under state law to make judicial determinations about the custody and care of children.

Examples

- Juvenile
- Dependency
- Family
- Guardianship
- Orphans
- Delinquency
- Probate
## Required Findings

<table>
<thead>
<tr>
<th>Dependency or Custody</th>
<th>Family Reunification</th>
<th>Best Interests</th>
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<tr>
<td>● The child is dependent on the court, or under the custody of a state agency or department, or an individual or entity appointed by the court.</td>
<td>● Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.</td>
<td>● It would not be in the child’s best interest to be returned to the child’s or his/her parent’s country of nationality or last habitual residence.</td>
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USCIS Consent: Factual Basis

USCIS must determine that the juvenile court order was sought primarily to obtain relief from abuse, neglect or abandonment, rather than primarily to obtain an immigration benefit.

- Court order should include the factual basis for the court's findings.
- Findings do not need to be overly detailed but must reflect that the court made an informed decision.
- Template orders that recite the statutory requirements usually do not provide sufficient information for consent purposes.
Application to USCIS

- SIJ Status

- SIJ-Based Adjustment of Status (Green Card)
Applying to USCIS: SIJ Petition

- Form I-360
- Birth certificate or other evidence of age
- Juvenile court order and other document(s) that may establish eligibility
- HHS consent, if applicable
- No fee
SIJ-Based Green Card

- File Application to Register Permanent Residence or Adjust Status (Form I-485)
- Supporting evidence includes juvenile court order
- Supporting evidence may include certified court records if there have been any criminal convictions
- USCIS considers criminal convictions as part of determining admissibility to the U.S.
USCIS Processing

- USCIS generally considers Green Card application at same time as Form I-360 Petition
- USCIS generally makes decisions on SIJ petitions within 180 days. (Does not apply to Green Card.)
- Interviews as needed
- Fingerprints for those 14 and older
About this Presentation

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