

Special Immigrant Juvenile Training: Supplementary Materials

February 27, 2014

PART I: Current SIJ Requirements Hand-out

PART II: Court Orders Case Exercises and Discussion Guide

SIJ Petitions: Current Requirements Hand-out

Eligibility Requirements

To qualify for SIJ status, a child must meet the following eligibility requirements:

Marital Status: Be unmarried.

Physical Presence: Be physically present in the U.S.

Age: Be under 21 years of age at time of *filing* the SIJ petition. Under the age-out protections, petitioners remain eligible even if they turn 21 years of age prior to adjudication.

Juvenile Court Order: Have a qualifying order from a juvenile court.

USCIS Consent: Demonstrate that the order was sought primarily to obtain relief from abuse, neglect or abandonment (or a similar basis under state law).

Qualifying Court Order

The court order must meet the following requirements:

Qualifying Court: Was issued by a “juvenile court”. A “juvenile court” is defined as a court in the U.S. having jurisdiction under state law to make judicial determinations about the custody and care of children. Examples may include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency.

Current Validity: The order must be current at the time of filing and adjudication.

Exceptions:

- The petitioner was under 21 years of age and was the subject of a valid dependency order that was later terminated based solely on age.
- The otherwise qualifying juvenile court case ended because the child was adopted, or placed in a permanent guardianship or another permanent living situation (other than reunification with the abusive parent(s)).

Family Reunification Finding: Makes a finding that 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.

Note: The temporary unavailability of a child’s parent(s) does not meet this requirement. A child is generally eligible when his or her custody determination becomes permanent, such as in adoption, long term foster care, or permanent guardianship. However, actual termination of parental rights is not required.

Dependency/Custody Finding: Declares the child dependent on the court, or legally commits or places the child under the custody of either an agency, department of a state, or an individual or entity appointed by a state or juvenile court.

Note: The qualifying court-appointed placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, or abandonment of the child.

Best Interests Finding: Makes a finding that it would not be in the child’s best interest to be returned to his or her country of origin.

HHS Consent: If a child is currently in the custody of the U.S. Department of Health and Human Services and

seeks a juvenile court order that also alters his or her custody status or placement, the child must have HHS specific consent order simply restates the child's current HHS placement, specific consent is not required.

SAMPLE COURT ORDER #1

CUSTODY ORDER OF MINOR CHILD

This Court, having reviewed the relevant supporting material on file, and heard the arguments of counsel and other testimony, FINDS:

1. The child/juvenile is under the age of 21. Specifically, he is 17 years old.
DOB: 4/22/96.
2. The child/juvenile is unmarried.
3. The child/juvenile became the subject of these juvenile court proceedings in circuit court as of March 10, 2014.
4. The child/juvenile remains under this court's jurisdiction and this court shall continue to maintain said jurisdiction until the child obtains 18 years of age.
5. The child has been found dependent or legally committed to, or placed under the custody of, an agency or department of the State, or an individual or entity appointed by a juvenile court.
6. Reunification with one or both of the child's/juvenile's parents is no longer a viable option due to abuse, neglect, abandonment, or similar basis found under State law. Specifically, the child's father physically abused the child on several occasions.
7. It is not in the child's/juvenile's best interest to be returned to his/her or his/her parents' country of origin, previous country of nationality, or country of last habitual residence. Specifically, the child/juvenile is from Guatemala and should not be returned there because he has no relatives willing and able to care for him.

Court Order Case Exercise

Group Discussion Questions:

1. Was the child under the jurisdiction of the court at the time of filing assuming case was filed on 4/1/14?
2. Is the order current at the time of adjudication? Assume the child has an interview on 7/15/14.
3. Does it matter that the child went to court a month before turning 18 to get the order?
4. The paragraph on reunification only mentions the father. What questions does this raise?
5. The order finds that it is not in the child's best interest to return to Guatemala because there are not relatives willing to take care of him. Is this a sufficient factual basis?
6. What if the child is currently in HHS custody, do you need consent?

Trainer's Guide:

Questions 1 and 2

This order contains specific findings as to the court's jurisdiction. We know that the child will remain under the jurisdiction of the Court until his 18th birthday. This means the Court order will be in effect until he reaches the age of 18. As long as the petition was filed prior to the child's 18th birthday, the order was valid at the time of filing. Juvenile court orders generally remain in effect until the age of 18; however, many states have options for extended jurisdiction. The order may state that the court will retain jurisdiction for a particular amount of time.

The interview to adjudicate the Form I-360 and possibly a concurrently filed Form I-485 is after the child has turned 18. In accordance with the Perez Olano Settlement Agreement, USCIS will not, based on age or dependency status, deny or revoke any SIJ petition solely based on age if, at the time the class member files or filed the petition, the class member was under 21 years of age and was the subject of a valid dependency order that was later terminated based on age. Similarly, USCIS may not, based on age or dependency status, deny an SIJ-based application for adjustment of status if the application was filed when the applicant was under 21 and was the subject of a valid dependency order at the time of filing.

Question 3

The timing of the child seeking an order or filing for SIJ status is not a factor in determining whether or not the child meets the definition of SIJ. It may be considered as part of the consent

determination; however, if there was a reasonable factual basis for the court's rulings USCIS consent will usually be warranted.

Question 4

The Court order only mentions the child's father. In cases where only a father is mentioned you can look at the birth certificate to determine if the father is a legal parent. If not, determine if a factual basis exists for the court to reasonably find that the person named as abusing, neglecting or abandoning the child is the father. The order specifically finds that the child cannot be reunified with the father due to physical abuse. This is a reasonable factual basis for the purposes of consent.

Question 5

Yes, this is a sufficient factual basis. Orders that include or are supplemented by specific findings of fact will usually be sufficient to establish eligibility for consent. Such findings need not be overly detailed, but must reflect that the juvenile court made an informed decision.

Question 6

It is not clear from the order if specific consent from HHS is needed. The order is vague as to whether the court is ordering a change in placement or making a dependency finding. This can be resolved by either asking at the interview if the court had made any separate orders to determine a placement or through an RFE.