

[REDACTED]

[REDACTED]

[REDACTED]

**Via Federal Express**

**Board of Immigration Appeals  
Clerk's Office**

[REDACTED]

**Re: Matter of [REDACTED] z [REDACTED]  
[REDACTED] z [REDACTED]  
Respondents' Motion to Reopen**

Dear Sir or Madame:

I represent Respondents [REDACTED] z [REDACTED] and [REDACTED] z [REDACTED] through the BIA Pro Bono Appeal Project. Enclosed are EOIR-27 Attorney Representation forms and a motion to reopen Respondents' removal proceedings so that they may pursue their Special Immigrant Juvenile Status petitions.

Thank you for your assistance, and please contact me at [REDACTED] 5 [REDACTED] you have any questions.

Sincerely,

[REDACTED]

[REDACTED]  
**Attorney for Respondents  
EOIR ID [REDACTED]**

**Attachments**

[REDACTED]

[REDACTED]

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS**

In the Matter of:

[REDACTED] z [REDACTED],  
[REDACTED] z [REDACTED], A [REDACTED]

In Removal Proceedings

San Francisco, California

**MOTION TO REOPEN**  
**BY RESPONDENTS [REDACTED] AND [REDACTED] z [REDACTED]**

**MOTION TO REOPEN  
BY RESPONDENTS [REDACTED] AND [REDACTED]**

Respondents [REDACTED] and [REDACTED] move the Board of Immigration Appeals to reopen and remand their removal proceedings to the Immigration Judge for a new hearing on their petitions for Special Immigrant Juvenile status (“SIJ”).

**FACTS**

Respondents [REDACTED] age 14, and [REDACTED] age 13, are citizens of Mexico. They entered the United States without inspection on [REDACTED] 2015, with their mother, [REDACTED]. During removal proceedings, they filed for asylum, but were denied and ordered removed. I.J. at 12. At no time during these proceedings did the Immigration Judge inform them that [REDACTED] and [REDACTED] could be eligible for Special Immigrant Juvenile (“SIJ”) status. *See generally* Tr. 35–40; 60–141.

After the Immigration Judge’s order, [REDACTED] and [REDACTED] mother learned about SIJ status from a lawyer, [REDACTED], and appealed their removal order. **Motion to Reopen Exh. A ¶ 4; Notice of Appeal.** But on [REDACTED] 2017, the Board affirmed the Immigration Judge.<sup>1</sup> **Motion to Reopen Exh. B.** In its opinion, the Board included a footnote stating the following:

In her Notice Of Appeal, the respondent mentions that her children would like their records remanded in order to pursue special immigrant juvenile status because their biological father abandoned them. She does not address this issue in her brief and we will not address it further except to point out that it does not appear applicable given that the children are in proceedings with their mother and are under her care.

**Motion to Reopen Exh. B n. 1.**

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<sup>1</sup> The Board affirmed the Immigration Judge’s removal of [REDACTED], [REDACTED], and their mother, [REDACTED]. Only [REDACTED] and [REDACTED] are seeking to reopen their removal proceedings. *See Motion to Reopen Exh. A ¶ 2.*

While [REDACTED] and [REDACTED] appeals were pending, an attorney, [REDACTED], began work on their SIJ cases. On [REDACTED] 2017, Mr. [REDACTED] started the process for obtaining SIJ status, as shown by the following documents:

- Petition for child custody in the Superior Court of [REDACTED] County. **Motion to Reopen Exh. C.**
- Superior Court order declaring that [REDACTED] and [REDACTED] are dependent on the court and eligible for long-term foster care due to abandonment, and that it would not be in their best interest to be returned to their home country. **Motion to Reopen Exh. D.**
- Forms I-360 Petitions for Special Immigrant Juvenile Status, filed on or about [REDACTED] 2017. **Motion to Reopen Exh. E.**

### ARGUMENT

The Board may grant a motion to reopen so that a respondent can apply for discretionary relief. *Bhasin v. Gonzales*, 423 F.3d 977, 984 (9th Cir. 2005); 8 C.F.R. § 1003.2(c)(1). The respondent supports the motion by alleging new facts and offering new, material evidence. *Bhasin*, 423 F.3d at 984; § 1003.2(c)(1). Evidence is “new” if the Immigration Judge never fully explained the respondent’s right to apply for the relief, and if she never gave the respondent an opportunity to apply for it. *See* § 1003.2(c)(1). Evidence is “material” when it establishes that the respondent is prima facie eligible for the relief because she has a reasonable likelihood of success on the merits. *See Bhasin*, 423 F.3d at 984; § 1003.2(c)(1); *Matter of M-S-*, 22 I. & N. Dec. 349, 356 (BIA 1998).

Discretionary relief includes adjustment of status, which a respondent can obtain by petitioning for SIJ status. *Singh v. Holder*, 771 F.3d 647, 649 (9th Cir. 2014); USCIS Policy Manual Vol. 6, Part J, Ch. 2.A, available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ-Chapter2.html#footnote-1> (stating that individuals may file Form I-360 together with Form I-485 to obtain both SIJ status and adjustment of status). A

person is eligible for SIJ status when she is an unmarried juvenile under twenty-one years old, and a court with state-law jurisdiction to determine the custody and care of children issues an order meeting SIJ requirements. INA §§ 101(b)(1), 101(a)(27)(J); 8 C.F.R. § 204.11(a), (c). Specifically, the court (1) places the juvenile in the custody of someone it appoints, (2) declares under the state child welfare law that she cannot reunify with one or both of her parents because of abandonment, and (3) finds that it would not be in her best interest to be returned to her country of nationality. INA §§ 101(b)(1), 101(a)(27)(J); 8 C.F.R. § 204.11(a), (c).

In this case, the Board should grant the motion to reopen by Respondents [REDACTED] and [REDACTED] [REDACTED] because they have alleged new facts and have provided new, material evidence. Respondents' evidence is new because the Immigration Judge never explained their right to apply for SIJ status and never gave them an opportunity to apply for it. Once Respondents learned about SIJ status, they acted on this information by seeking help from two attorneys, one of whom was finally able to start the process after the Board's decision. **See Motion to Reopen Exh. A ¶¶ 4–6; Motion to Reopen Exh. C.** Although Respondents knew of SIJ status when they filed their notice of appeal, they could not argue in their appeal brief that their cases should be remanded on this ground—they did not yet have the requisite state court order.

Respondents' evidence is also material because it establishes that they are prima facie eligible for SIJ status, which will enable them to adjust status. **See Motion to Reopen Exhs. D–E.** They have a reasonable likelihood of success on the merits because they meet all of the requirements for SIJ status. They are both eligible for SIJ status because are both juveniles under twenty-one years old: [REDACTED] is 12 years old, and [REDACTED] is 14 years old. **Motion to Reopen Exh. C at 2.** Further, a court with jurisdiction under state law to determine the custody and care of children [REDACTED] Court—has issued an order meeting SIJ

requirements. **Motion to Reopen Exh. D.** Specifically, it has (1) placed [REDACTED] and [REDACTED] in their mother's custody, (2) declared under California's child welfare law that [REDACTED] and [REDACTED] cannot reunify with their father because of abandonment, and (3) found that it would not be in [REDACTED]s and [REDACTED]s best interests to be returned to Mexico. *Id.*

Although the Board's decision states that SIJ status may not apply because [REDACTED] and [REDACTED] are in their mother's care, California courts, U.S. Citizenship and Immigration Services, and even the Executive Office of Immigration Review have all flatly disagreed. These authorities have all stated that juveniles qualify for SIJ status as long as one parent has abandoned them, even if the other parent can still care for them. *See, e.g., In re Israel O.*, 233 Cal. App. 4th 279, 291 (2015) (approving of USCIS's interpretation of 8 U.S.C. § 1101(a)(27)(J) to accord SIJ status to juveniles who can reunify with one parent); **Motion to Reopen Exh. F at 5–6** (*In re [Redacted]*, No. [Redacted] (AAO Mar. 26, 2015) (concluding that the petitioner warranted SIJ status because he had been abandoned when his father died, even though the state court gave custody to his mother and stepfather)); **Motion to Reopen Exh. G at 1** (USCIS, Immigration Relief for Abused Children, available at [https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration\\_Relief\\_for\\_Abused\\_Children-FINAL.pdf](https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf) (stating that children may be eligible for SIJ status if they have been abandoned by one or both parents)); **Motion to Reopen Exh. H at 4** (Laura Ploeg, *Special Immigrant Juveniles: All the Special Rules*, 8 Immig. Law Advisor 1, 4 (Jan. 2014), available at <https://www.justice.gov/sites/default/files/eoir/legacy/2014/08/27/vol8no1.pdf> (last visited Dec. 7, 2017) (noting that the statute governing SIJ status formerly required a state court to find that reunification was not viable with either parent, but that the current statute grants this status even if juveniles are living with one parent).

## CONCLUSION

For the foregoing reasons, Respondents [REDACTED] and [REDACTED] [REDACTED] respectfully request that the Board reopen their removal proceedings so that they may apply for Special Immigrant Juvenile status.

Respectfully Submitted,

[REDACTED]

[REDACTED]

### PROOF OF SERVICE

On [REDACTED], 20[REDACTED] I, [REDACTED] a copy of the Motion to Reopen by Respondents [REDACTED] and [REDACTED] and any attached pages to the DHS/ICE Office of Chief Counsel – SFR at [REDACTED], by first-class mail.

[REDACTED]

[REDACTED]

[REDACTED]