

Understanding Special Immigrant Juvenile Status and What it Means for Immigrant Children in Foster Care

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Imagine that you are five years old and have spent the first years of your life in a country where English is not widely spoken. This country is where your network of family and friends are located. Suddenly, your parents send you to the U.S. with a family friend because they believe that you will have more opportunities there. The transition is hard because you have to learn to speak a new language and a new way of life; but, eventually, you succeed.

After living with your guardian for five years, he abandons you, telling you that he will no longer care for you. You are 10 years old, alone, and hardly able to care for yourself. Your teacher discovers that you are living on your own, and suddenly, Child Protection becomes involved in your life; you have a new guardian, the State of Minnesota.

It is now your nineteenth birthday and you are about to be released from foster care. These last nine years have not been easy, especially because you have not been in contact with your family and have no idea where they are. In fact, you do not remember your home country and do not speak the language. You have made the best of this difficult situation and the U.S. has become your home. You are nervous about being on your own but think that you are ready to begin your life. Sadly, just as you are about to start this new chapter, Immigration Services discovers that you are undocumented and begins deportation proceedings to send you back to your country of origin.

This is, unfortunately, a common situation for the many undocumented children in our foster care system. Undocumented children who have become enmeshed in the child protection system because they are the victims of abuse, neglect or abandonment are among the most vulnerable people in the United States. Fortunately, there is a program called Special Immigrant Juvenile Status ('SIJS') that can keep these children from being deported and help them gain legal immigration and permanent resident status in the United States.

Requirements for Special Immigrant Juvenile Status

Special Immigrant Juvenile Status is a federal law that assists undocumented children in the state juvenile court system who have been abused, neglected or abandoned, obtain lawful immigration status and permanency.¹ To obtain an SIJS visa, the child must file two applications, one for the SIJS visa, and one for lawful permanent residence (also known as a green card).

¹ The statutory basis for SIJS can be found in the Immigration and Nationality Act (INA) at 8 U.S.C. § 203 (b)(4) and § 101(a)(27)(J). The INA was amended in 2008 by the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPPRA), Public Law 110-437, 122 Stat. 5044.

To be eligible for SIJS, the child must be: (1) under the age of 21 at the time of filing the SIJS application; (2) unmarried; and (3) under the jurisdiction of a juvenile court or be legally committed to a state department or agency or an individual appointed by the court as a result of abuse, neglect, or abandonment (this includes children in foster care, legal guardianships, kinship placements, and children going through the adoption process). In addition, the child should remain under juvenile court jurisdiction until the SIJS application is decided and a green card issued.²

In addition, an undocumented child seeking SIJS status must also meet the requirements for obtaining lawful permanent residency in the U.S. The requirements for lawful permanent residence status are complex and include certain disqualifiers, some of which may be applicable to children applying for SIJS. These include drug-related criminal charges, participation in the smuggling of aliens, having been deported previously, or using false documents. Children who have these types of offenses on their record will need advice from an experienced immigration lawyer. It is imperative, when counseling your child protection client, that they understand that having these types of offenses on their record may prevent them from achieving their goal.

Juvenile Court Requirements for Special Immigrant Juvenile Status

Because the grounds for granting SIJS are based on a child's need for protection from abuse, neglect or abandonment, the juvenile court must make the following findings in a special SIJS order before the child applies for SIJS:

1. The child is under juvenile court jurisdiction and is declared a dependent of the juvenile court (this includes both dependency and delinquency proceedings);
2. The child is eligible for foster care, adoption, or guardianship due to abuse, neglect or abandonment;
3. That reunification with one or both³ of the child's parents is not viable, due to abuse, neglect or abandonment, or some similar basis under state law; and
4. It is not in the child's best interest to return to his or her country of origin or country of last habitual residence. In other words, the court must find it is in child's best interest to remain in the U.S.

The juvenile court must sign a special SIJS order clearly stating each of these findings. This order must accompany the SIJS application filed with U.S. Citizenship and Immigration Services ("USCIS"). As an attorney representing an immigrant child in the child protection system, you must ensure that the court order reflects this statutory language from the SIJS statute. Failure to do so exposes the child to deportation and may prohibit them from establishing legal residency.

As the child's attorney, you should communicate to the child that the order from the juvenile court merely reports its findings to USCIS and that satisfaction of the requirements does not entitle the child to receive SIJS or lawful permanent residence in the United States. The decision on the SIJS immigration issue is up to USCIS.

Benefits of Special Immigrant Juvenile Status

Application for SIJS should be made as quickly as possible after an undocumented child is identified, especially if the child is older or preparing to leave the child protection system. Once the SIJS application has been submitted the child is protected against deportation and granted employment authorization until the SIJS case is decided.

Benefits for the child, once the SIJS application has been approved, include:

- Legal permanency for the child.

² If it is not possible for the child to remain under juvenile court jurisdiction while the application is pending, a request should be made to include in the termination order, language that the case is being closed due to age.

³ It is not necessary that the child be separated from both parents in order to qualify for SIJS.

- The right to live and work permanently in the United States.
- The right to travel into and out of the country.
- The right to apply for United States citizenship after five years of legal permanency.
- Eligibility for certain federal benefits such as, Chafee Foster Care Independence Act funds, transitional housing, mental health services, and financial aid for college.

Counties also benefit when a child gains SIJS because they may be able to access federal foster care matching funds that are available for undocumented children in the system.

The Role of the Foster Child's Lawyer

As the lawyer for a child in the child protection system, you can play a critical role in securing legal protection for an undocumented immigrant child client. You are able to identify an SIJS eligible foster child and ensure the client gets immediate access to qualified, experienced immigration counsel. Immigration law is complex, fact-specific, and constantly changing. It includes innumerable pitfalls that can result in detention and/or deportation of the child. Coordination with qualified counsel is essential for the success of obtaining SIJS for the child client.

If you think your client may have an immigration issue, review the file for the following information and/or ask your client the following questions:

- Does the child have a birth certificate, social security number or passport? Or any other documentation?
- What is the child's date of birth?
- Where was the child born?
- Is English the child's second language?
- When did the child come to the United States?
- How did the child get to Minnesota?
- Has the child lived in any states other than Minnesota?
- Does the child know who his or her biological parents or other family members are and where they live?
- Does the child know his or her current immigration status?

If, after reviewing this information, you believe that your child client is an undocumented immigrant, or has a potential immigration issue, contact CLC immediately. We have established connections with several highly experienced immigration lawyers in the Twin Cities who are willing to review your client's situation and to provide pro bono legal representation on the immigration issue. The immigration attorney will assist the child in the navigation of the complicated world of the immigration law component of the case. You will be there every step of the way to continue advocating for what your client wants in the child protection matter and to ensure the court enters the appropriate SIJS order.