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SIJ Updates

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SIJ Updates

By: Dalia Castillo-Granados

Potential clients, Elsa and Rodrigo, walk into your office to discuss filing for a family-based petition. Elsa is from Nicaragua and overstayed her visitor visa. She married her high school sweetheart back in Nicaragua 20 years ago. Unfortunately, after having a daughter together, Marco began to drink heavily and would beat her and their daughter, Eva. Elsa fled Nicaragua and left Eva in the care of a maternal aunt, Elsa's younger sister Miriam. Three years ago, Miriam married her boyfriend Jarmino and he moved into Miriam's home. Eva no longer felt comfortable living with her aunt because she did not like Jarmino. It was also becoming harder for Eva to go to school because local troublemakers were regularly harassing students walking to and from the school. Eva told her mom she was unhappy and Elsa arranged for her daughter to travel to the U.S. Eva joined her mother in the U.S. two years ago, and is doing well, but she is also undocumented. She entered the U.S. without permission, and Elsa tells you she is worried about how Eva is going to go to college with no status. Elsa wants to marry her long-term partner Rodrigo now, a U.S. citizen, but needs to obtain a divorce first and would like sole managing conservatorship over Eva. After fleeing the domestic violence, Elsa has not heard from Marco and he has only called Eva three times over the last 15 years when he happened to remember it was her birthday. Elsa has no idea how to contact him as he never tells Eva where he is calling from.

If Elsa walked into your office, would you be able to identify separate potential immigration relief for her daughter Eva?

Since Elsa will need to obtain a divorce from Marco to proceed with her own case, it may be the perfect opportunity to obtain independent relief for Eva that will help her avoid having to consular process.

A child in Eva's situation may be eligible for a humanitarian form of immigration relief known as Special Immigrant Juvenile status, which is defined in the Immigration and Nationality Act (INA) at § 101(a)(27)(J). This form of relief is available to foreign-born children who have been subjected to parental abuse, abandonment, or neglect and who are under the jurisdiction of a juvenile court.

What is Special Immigrant Juvenile Status?

Special Immigrant Juvenile (SIJ) status was created by Congress to address children in the state foster care system. When the statute was created in 1990, it allowed children who were eligible for long-term foster care and whom it was found not to be in their best interest to return to their home country to apply for SIJ status. In 1997, the law was amended to require abuse, abandonment, or neglect as the reason for eligibility for long-term foster care. In 2008, SIJ status was expanded to include children who are unable to reunify with one or both of their parents due to abuse, abandonment, or neglect. Eligibility for long-term foster care is no longer part of the statute. Now, children may qualify for SIJ status if they live with one parent while being unable to reunify with the other parent due to parental mistreatment. The accompanying regulations for SIJ are found at 8 C.F.R. § 204.11. The regulations were promulgated in 1993 and have yet to be updated to reflect the statutory changes.

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