

PRESENTED AT

40th Annual Conference on Immigration and Nationality Law

October 27-28, 2016

Austin, Texas

Special Immigrant Juvenile Status

Alexandra Minnaar

Megan Sheffield

Author Contact Information:

Alexandra Minnaar

RAICES

Austin, TX

aminnaar@raices.org

512.994.2199 x. 41

Megan Sheffield

Equal Justice Center

Austin, TX

msheffield@equaljusticecenter.org

512.474.0007 x. 112

TABLE OF CONTENTS

I.	BACKGROUND	1
A.	What is Special Immigrant Juvenile Status?	1
B.	Statutory Authority and Definition	1
C.	Evolution of SIJS Law	1
i.	Enactment	1
ii.	Early Amendments	2
iii.	2006 Amendments – Protection from Contacting Abuser	3
iv.	2008 Amendments – Expanded Eligibility and other Changes under the Trafficking Victims Protection Reauthorization Act of 2008	3
D.	Regulations	4
i.	Current Regulations	4
ii.	2011 Proposed Regulations	5
II.	STATE COURT PROCEEDINGS	5
A.	Dependent on a Juvenile Court or Legally Committed to/Placed in the Custody of a State Agency/Department or Individual	5
B.	Parental Reunification due to Abuse, Abandonment, or Neglect, or a Similar Basis under State Law	6
C.	Best Interests of the Child	8
D.	Filing the State Court Petition	8
E.	Obtaining a Final Order in State Court	8
III.	FILING FORM I-360, PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS	9
A.	Initial Filing	9
B.	Trends in Requests for Evidence and Notices of Intent to Deny	9
i.	Consent – Bona Fide Request; Primary Purpose	9
ii.	Challenges Based on the Form I-213	10
iii.	Temporary Orders	11
iv.	Post-18 Predicate Orders	11
IV.	FILING FORM I-485, APPLICATION FOR U.S. LEGAL PERMANENT RESIDENCE	12
A.	Immigrant Visa Availability in the EB-4 Visa Category	12
B.	Filing the I-485 Application with USCIS	13
V.	GROUND OF INADMISSIBILITY	14
VI.	CRIMINAL ISSUES	15
VII.	AGE-OUT PROTECTION	15
VIII.	INDIVIDUALS IN REMOVAL PROCEEDINGS	16
A.	I-360 Stage	16
B.	I-485 Stage	17
IX.	RELATED CONSIDERATIONS	18
X.	CONCLUSION	18

I. BACKGROUND

A. What is Special Immigrant Juvenile Status?

Special Immigrant Juvenile Status (“SIJS”) is a form of immigration relief for children (under age 21 and unmarried) who have been subjected to parental abuse, neglect or abandonment. It allows a child to self-petition to remain in the United States and apply for lawful permanent residence.

B. Statutory Authority and Definition

Special Immigrant Juvenile Status is established under the Immigration and Nationality Act (“INA”) at § 101(a)(27)(J), and codified at 8 U.S.C. § 1101(a)(27)(J).

Under current law, a special immigrant juvenile is defined as one who is:

- Present in the United States;
- Under 21 years of age;
- Unmarried;
- 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;
- 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.¹

The INA requires that the Secretary of the U.S. Department of Homeland Security (“DHS”) consent to the grant of SIJS.² This consent function has been delegated to U.S. Citizenship and Immigration Services (“USCIS”).³ For a child who is currently in custody of the U.S. Department of Health and Human Services (“HHS”), the INA also requires that the Secretary of HHS specifically consent to any juvenile court’s jurisdiction over custody or placement of the child.⁴ The statute further provides that no natural or prior adoptive parent of a child with SIJS may derive any immigration rights, privilege or status through parentage of the child.⁵

C. Evolution of SIJS Law

i. Enactment

The Immigration Act of 1990 (the “1990 Act”) created a new classification of “special immigrants” for certain juveniles,⁶ which classification is commonly referred to as Special Immigrant Juvenile Status (“SIJS”). This classification provides eligibility for lawful permanent residence and hence a pathway to U.S. citizenship. To qualify for

¹ INA § 101(a)(27)(J).

² *Id.*

³ Memorandum from Assoc. Dir. for Operations, William R. Yates, *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004) (“Yates Memorandum”), available at: https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files/Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf, at p. 2

⁴ INA § 101(a)(27)(J).

⁵ *Id.*

⁶ Immigration Act of 1990, 101 Pub. L. No. 649, 104 Stat. 4978, 5005 (Nov. 29, 1990) (“1990 Act”).

SIJS, the 1990 Act required the child to be “declared dependent on a juvenile court in the U.S.” and be “deemed eligible by that court for long-term foster care.”⁷

Pursuant to existing INA § 203(b)(4), a percentage of immigrant visas are available to “special immigrants” under the employment-based fourth preference category.⁸ Thus, as special immigrants, SIJS recipients were provided a channel through which to become lawful permanent residents. However, while the 1990 Act exempted SIJS recipients from certain grounds of deportation (now, removability), it did not exempt SIJS recipients from any grounds of exclusion (now, inadmissibility).⁹ Therefore, even though there were visas available, many SIJS recipients would have been ineligible for lawful permanent residence due to various grounds of inadmissibility. Furthermore, SIJS recipients who entered the U.S. without inspection would have been statutorily ineligible to adjust status under INA § 245 due to not having been admitted or paroled.¹⁰

ii. Early Amendments

Fortunately, through a series of amendments to the statute in the 1990s, Congress made SIJS a more viable form of long-term relief for children in need of protection. First, Congress amended the INA to provide that, for purposes of adjustment of status to lawful permanent residence, individuals classified with SIJS shall be “deemed... to have been paroled

into the United States.”¹¹ The amendments further provided that SIJS recipients were exempt from the INA § 245 provisions that prohibit adjustment of status for individuals who work without authorization or who fail to maintain lawful nonimmigrant status.¹² These amendments enabled SIJS recipients who had entered the U.S. without inspection or who had worked without authorization, to nonetheless be permitted to adjust under § 245 of the INA.¹³ In addition, the amendments exempted SIJS recipients from certain grounds of excludability (now, inadmissibility),¹⁴ lifting significant barriers to adjustment of status for many children. The amendments also provided for a waiver of many other grounds of inadmissibility.¹⁵

The early amendments also expanded eligibility for SIJS by including children who have been placed under state custody by a juvenile court, regardless of whether they have been “declared dependent” on the court.¹⁶ However, Congress later narrowed eligibility somewhat by requiring that the child’s eligibility for long-term foster care be specifically based on “abuse, neglect, or

¹¹ Immigration Technical Corrections Act of 1991, 102 Pub. L. No. 232, 105 Stat. 1733, 1744 (Dec. 12, 1991) (“1991 Amendments”).

¹² *Id.*

¹³ *See* INA 245(a).

¹⁴ 1991 Amendments, *supra* note 11, at 1744.

¹⁵ *Id.* at 1744-45.

¹⁶ Immigration and Nationality Technical Corrections Act of 1994, 103 Pub. L. No. 416, 108 Stat. 4305, 4316 (Oct. 25, 1994). The amendment provided, specifically, that a child may be “declared dependent on a juvenile 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...” (emphasis added). *Id.*

⁷ 1990 Act, *supra* note 6, at 5005.

⁸ INA § 203(b)(4).

⁹ 1990 Act, *supra* note 6, at 5005.

¹⁰ *See* INA § 245(a).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Special Immigrant Juvenile Status (SIJS)

First appeared as part of the conference materials for the
40th Annual Conference on Immigration and Nationality Law session
"Special Immigrant Juvenile Status (SIJS)"