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Special Immigrant Juvenile Status

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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

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).

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.*

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