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SPECIAL IMMIGRANT JUVENILE STATUS

A Step-By-Step Guide for Safe Passage Project Volunteer Attorneys

Updated November 23, 2014

DISCLAIMER: This manual is not a substitute for legal advice and is not intended to be used by people in place of legal advice.

This manual was created to assist volunteer attorneys who are working on juvenile cases with the legal support of Safe Passage Project Advocates.

Table of Contents

An Introduction to the Safe Passage Project	5
Becoming Familiar with Special Immigrant Juvenile Status	7
Special Immigrant Juvenile Status	7
FOCUS ON NEW YORK LAW	8
Illustration of a Typical Representation Process	9
Overview—The Attorney for the Child	10
Step 1: Initial Intake	10
Step 2: Beginning Your Representation – Meeting Your Young Client	11
Documents to Gather	11
Information to Collect	12
Ensure your Young Client Meets SIJS Criteria	12
Accompanying Family Members	13
Earning Your Young Client’s Trust	13
The State Court (Family Court) Process	14
Step 3: Identify a Guardian or Custodian	15
Who can be a Custodian?	15
Custodian Responsibilities & Requirements	16
Who can be a Guardian?	16
Guardian Responsibilities	16
Guardian Requirements	16
Case Examples	17
Guardian and Custodian FAQ	18
Step 4: Preparing the Guardianship or Custody Petition	19
Preparing Petition and Accompanying Forms: GUARDIANSHIP	19
Preparing Petition and Accompanying Forms: CUSTODY	21
5: Assist in Filing the Petition	21
Filing the Petition and Forms: GUARDIANSHIP	21
Filing the Petition and Forms: CUSTODY	22
Step 6: Attend the First Family Court Appearance	23
First Court Appearance: GUARDIANSHIP	23
The First Court Appearance: CUSTODY	24
Step 7: Serve the Respondents with Notice of the Proceeding	25
Step 8: Draft the Motion for Special Findings	25
Essential elements of the Order	25
Contents of the Motion	26
Finding Supporting New York Case Law	26
Notes on Procedure, Service on Parties, and Citation Style	27
Case Example	27

Step 9: Prepare for the Fact-Finding/Special Findings Hearing	29
Step 10: Second Appearance OR Fact-Finding/Special Findings Hearing	30
Step 11: Fact-Finding/Special Findings Hearing	30
Fact-Finding Hearing: GUARDIANSHIP	30
Calling Witnesses	31
Special Findings Hearing: Testimony	31
Special Findings Order: Grant of Order	31
Fact-Finding Hearing: CUSTODY	32
Special Findings FAQ	32
The Immigration Process for Young People in Removal Proceedings	34
Step 12: USCIS: Petition for Special Immigrant Juvenile Status	35
Form I-360: Petition for Special Immigrant Juvenile Status	36
Step 13: File the SIJS Petition with USCIS	37
Young Client <i>is</i> in Removal Proceedings: Defensive Filing	37
Client is <i>not</i> in Removal Proceedings: Affirmative Filing	37
General Filing Tips:	38
Filing FAQs	38
Step 14: Terminate Removal Proceedings in Immigration Court (EOIR)	39
Preparing a Written Motion for Termination of the Removal Proceedings	39
Step 15: Prepare and File Application for Adjustment of Status with USCIS	39
Step 16: Biometrics Appointment	42
Step 17: Adjustment of Status Interview	42
Adjustment Interview FAQs	43
APPENDICES	
Appendix A – INA “Special Immigrant” statute current through November 2014	44
Appendix B – Foreign Birth Certificates and Translations of Birth Certificates	45
Obtaining Foreign Birth Certificates	45
Translations of Birth Certificates:	45
Safe Passage Sample Affidavit of Translation:	45
Appendix C – New York Family Court Forms: Guardianship	46
Appendix D – New York Family Court Forms: Custody	47
Appendix E – Service On Respondents	48
Appendix F – Available Samples	49
Appendix G – Immigration Forms	50
Appendix H – Fee Waivers	50
Appendix I – Inadmissibility Issues	51
Appendix J – Useful Contact Information	53
Safe Passage Project	53
Executive Office for Immigration Review	53
New York City Family Courts	53
Long Island Family Courts	54
Other New York County Family Courts:	54
USCIS Information	55

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An Introduction to the Safe Passage Project

Professor Lenni B. Benson founded the Safe Passage Project in 2006 at the suggestion of Immigration Judge Patricia A. Rohan of the Executive Office of Immigration Review, who noted that an increasing number of children in immigration proceedings were in desperate need of pro bono representation. This comment motivated what would become one of the main objectives of the Safe Passage Project – to train pro bono attorneys to represent children in need of immigration assistance. Since 2006, Safe Passage has provided trainings, resources and mentoring to hundreds of volunteer attorneys and has assisted over 500 young people with their immigration needs.

Each year, thousands of children are apprehended upon entry by U.S. immigration officials. Between October 1, 2013 and September 30, 2014, over 65,000 unaccompanied children were apprehended at the U.S. border and taken into the care of the Office of Refugee Resettlement.¹

Many of these children are attempting to escape abuse or turmoil in their home countries, while others are victims of smugglers or trafficking. In other situations, children have lived most of their lives in the United States unaware that their parents or guardians failed to secure a form of legal immigration status for them. While these children are legally entitled to counsel in immigration proceedings, the federal government will not pay for their legal representation. As a result, more than half of unaccompanied children go through immigration proceedings without the assistance of a lawyer.

United States immigration law provides a special form of relief called Special Immigrant Juvenile Status (SIJS) for some, but not all, of these children. The Safe Passage Project conducts weekly screenings at the Immigration Court and helps existing social service providers and non-profit organizations screen juvenile populations to identify SIJS and other forms of possible immigration relief available to these children. Safe Passage Project mentor attorneys and professors assist pro bono attorneys and current law students in the provision of legal services to unaccompanied children. We are dedicated to providing unaccompanied children with the services they need to obtain immigration relief in the United States. In a small subset of cases, we also work with young people who wish to return to their countries of origin and mentor pro bono attorneys to assist them to end their removal proceedings and depart the United States.

Safe Passage Project separately incorporated in the Spring of 2013 in order to raise additional funds to support the growing project. Now a § 501(c)(3) non-profit organization, the Safe Passage Project is housed within New York Law School (“NYLS”). Further, the work of the Safe Passage Project is supported by a NYLS project-based learning course. In this course, law students have the opportunity to volunteer with the Safe Passage Project and are trained to conduct screenings at the immigration court and to serve as a “friend of the court” in aiding an immigrant youth to secure a continuance of the removal proceeding so that the Safe Passage has an opportunity to recruit pro bono counsel for the child.

¹ Source: <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children> (last accessed Nov. 15, 2014).

Students also have an opportunity to assist in developing training and intake materials for Special Immigrant Juvenile Status cases. In addition to the formal course, many more students complete our trainings and become pro bono volunteer law clerks. Many of our students also provide language interpretation and translation assistance between volunteer attorneys and clients, and assist in research and case preparation. In addition to their volunteer work with Safe Passage, students participate in other immigration events such as clinics and initiatives sponsored by the New York City Bar Association, SCO Family Services, Justice for Our Neighbors and the American Immigration Lawyers Association. Students are eligible to receive hours towards the Public Service Certificate for their volunteer efforts and fulfill the New York State Pro Bono Bar Admission Requirement.

In the spring of 2008, the New York State Bar Association recognized the innovative program provided by Safe Passage via its grant of the President's Pro Bono Award. The American Immigration Lawyers' Association (AILA) further honored Safe Passage in the fall of 2013 with the "Pro Bono Heroes" award for our promotion and contribution to the pro bono field. In 2014 we were selected to receive grants by New York City Council and the Robin Hood Foundation to support our team of mentor attorneys and to support the work of pro bono attorneys.

We do need additional financial support to manage our operations. New York Law School generously provides space and supports our work with some overhead expenses, but the attorneys and social workers are largely supported by private donations.

For more information about the Safe Passage Project, or to volunteer, please visit our website at: www.safepassageproject.org. Lawyers and students can complete the online volunteer registration forms to be added to our email lists. We use these email lists to send notifications about updates in our trainings and of particular volunteer opportunities.

Becoming Familiar with Special Immigrant Juvenile Status

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) allows undocumented children under the age of 21 who have been abused, neglected, or abandoned by one *or* both parents to obtain lawful, permanent immigration status within the United States. Qualifying children must meet the criteria codified in § 101(a)(27)(J) of the Immigration and Nationality Act:

1. The applicant must be under 21 years old;
2. He/she must be unmarried;
3. He/she must be declared dependent upon the state – this means that a state court has taken jurisdiction over a petition addressing the needs of the applicant;
4. Reunification with one *or* both of the applicant’s parents must no longer be a viable option; AND
5. It is not in the best interests of the applicant to return to his/her country of nationality or last habitual residence.

For the full text of INA § 101(a)(27)(J), codified as 8 U.S.C. § 1101(a)(27)(J) and its corresponding regulations, *see* **Appendix A**. **As of November of 2014 the immigration regulations are out of date and new pending regulations have not been issued.**

Special Immigrant Juvenile Status provides children with a number of benefits. Importantly, SIJS waives several types of inadmissibility that would otherwise prevent an immigrant from becoming a lawful permanent resident (i.e., getting a “green card”). For example, SIJS waives unlawful entry, working without authorization, status as a public charge, and certain other immigration violations. Upon receipt of SIJS, a child will be able to adjust his or her status to that of a lawful permanent resident, obtain work authorization, and eventually apply for U.S. citizenship. However, under SIJS he or she cannot petition for immigration benefits on behalf of birth parents, siblings, or other family members.

There are two main stages to obtaining Special Immigrant Juvenile Status. First, the child must engage in a proceeding within the State Court in the county where he or she resides. In New York, this court is most commonly the Family Court. As part of this proceeding, the child must obtain a “Special Findings Order” from the judge that declares the child’s factual eligibility for SIJS. Most often, SIJS clients request this order through a motion that accompanies a guardianship petition. The guardianship petition provides the Court with the jurisdiction necessary to issue the order and the youth benefits from the appointment of a legal guardian.

Although guardianship is the most common way for the Family Court to obtain jurisdiction over a child, it is also possible to bring a motion requesting the Special Findings order through a custody, neglect, adoption, permanency hearing for children in foster care (“Destitute Child” proceedings) or PINS (Person in Need of Supervision) proceeding. Regardless of the means to jurisdiction, receipt of the “Special Findings Order” is a pre-requisite for applying for SIJS status.

After receiving the order from the Family Court judge or referee, the child may then apply for SIJS, lawful permanent residence, and work authorization via the United States Citizenship and Immigration Service (USCIS). This manual provides detailed information and instructions for each stage of the multiple phases of a SIJS case.² Additional materials are available when you work directly with a Safe Passage Mentor Attorney. We do not post our pleadings on the public website.

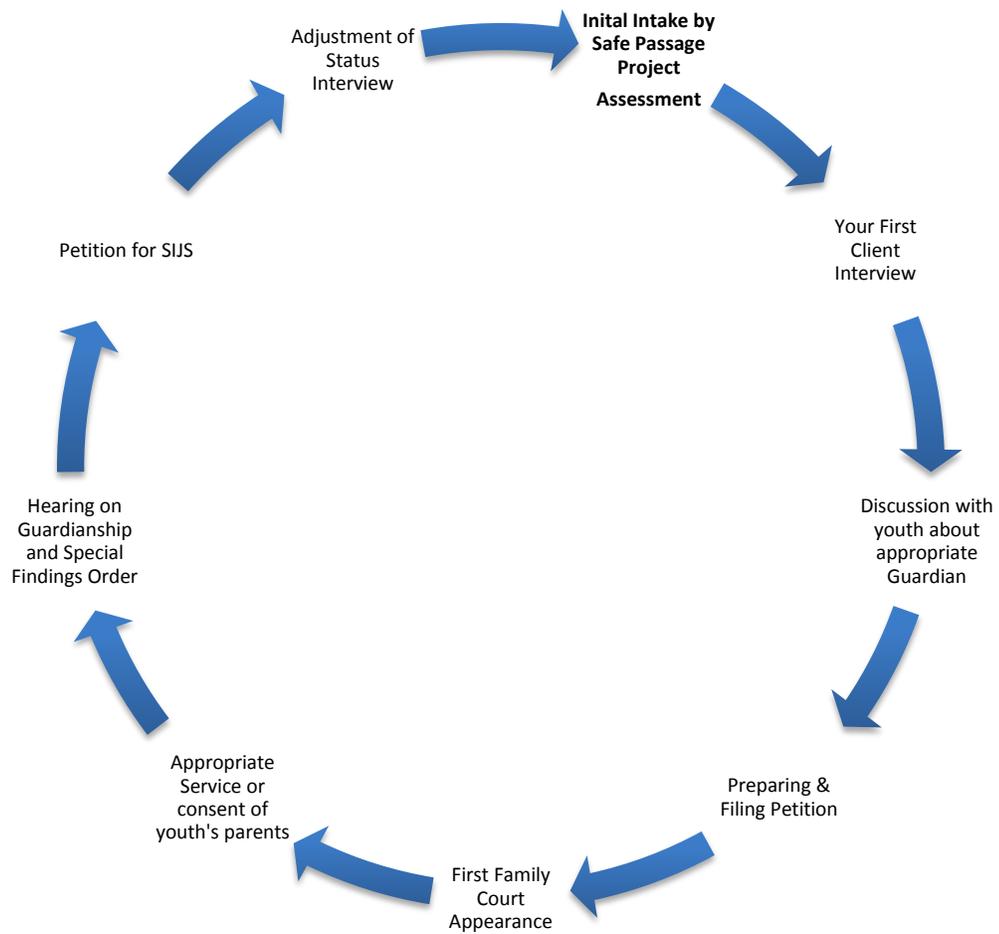
Please note that children may apply for SIJS both affirmatively and defensively. The majority of children under the Safe Passage Project umbrella will apply defensively. In this scenario, the child will already be in removal proceedings and the Department of Homeland of Security will have issued him a Notice to Appear (NTA) for any number of reasons (including being out of status, entering without inspection, or having committed a crime). Pro bono counsel will appear in Immigration Court with the child ask for a continuance of the child's removal proceedings to allow for additional time to file and subsequently adjudicate a petition with the Family Court and then with United States Citizenship and Immigration Services (USCIS) for SIJS. In contrast, if the child is not in immigration removal proceedings, he may apply for SIJS affirmatively. This means that after obtaining the necessary Family Court order, pro bono counsel may file an application for SIJS along with an application for adjustment of status with USCIS. The Immigration Court is not involved in affirmative SIJS cases.

FOCUS ON NEW YORK LAW

We have gathered and summarized most of the published New York Family law decisions that are relevant to the analysis of these cases. Rather than publish those summaries in this manual they are posted on our website at: <http://www.safepassageproject.org/what-is-sij-status/> Look under the caption Special Immigration Juvenile Resources on that page.

² Please note that **this manual is focused on New York State Law.** Other states use different procedures for child protection and use different vehicles to assist the child. Please consult experts and seek additional resources in your state if your practice is outside of New York. We may be able to direct you to an expert in your state.

Illustration of a Typical Representation Process



Overview—The Attorney for the Child

While you might have learned of the child’s need for representation because of an Immigration Court removal proceeding, the focus of your work as an attorney for the child, particularly an attorney who will be entering Family Court, is stability, planning, and permanency for the child – not immigration relief. Attorneys assisting immigrant youth need to understand that their primary role in representing the young person in a Family Court matter is to advocate for the welfare of the young person. Respect the Family Court’s role and refocus on the need of young person for the Family Court to appoint a custodian or guardian for him so that he is guided and protected in the United States. Immigration matters may be a part of the motivation for going to Family Court, but it is critical that you focus your representation under the traditional and necessary goals of Family Court matters. Family Courts in New York do not discriminate on immigration status and are available to help the young person build a more stable future by the appointment of an adult as the young person’s caretaker.

Phrased another way- if the young person is in the United States and is not living in a two parent household that can take full responsibility for him, then he may need the appointment of a custodian or a legal guardian. Children released from Immigration custody to “sponsors” may need a guardianship proceeding because the documents issued by the federal detention authorities upon release are not legally sufficient to authorize the adult to care for and make decisions for the young person. The young person needs your help in securing the appointment of a guardian or custodian in order to access healthcare services, educational opportunities, passports, banking services, etc. Even enrollment in school can be delayed or impeded if the young person’s custodial relationships have not been formally clarified by a state entity, such as the Family Court.

Step 1: Initial Intake

Prior to receiving your young client’s contact information from the Safe Passage Project, Safe Passage advocates will have already interviewed the child and made an initial assessment of his eligibility for immigration relief, including SIJS. We may also identify alternative forms of relief; we are always ready to discuss the relative advantages and disadvantages of various forms of immigration relief, *e.g.*, asylum, “U” visa status, “T” visa status, or other avenues to securing lawful immigration status.

Once you have agreed to represent an unaccompanied child through Safe Passage, you will receive an intake memorandum outlining your young client’s contact details, background, and possible forms of immigration relief. You will also receive any documentation collected from your young client during the initial screening/intake at the Immigration Court. Note that you will need to continue to gather more information about your young client throughout each subsequent meeting. The intake memo provides you with a starting point from which to begin your conversation.

Step 2: Beginning Your Representation – Meeting Your Young Client

Your first meeting with your young client should take place in person, preferably soon after you are assigned to the young client’s case. Safe Passage is happy to help with the scheduling of your first meeting. You may hold the meeting at your office or call us to schedule use of one of the conference rooms at NYLS. At this meeting, you will want to try to build rapport with your young client. Take some time to get to know the young person. It is likely that you may need to meet a few times in order for your young client to trust you enough to share intimate details of her story with you. Remember that he or she may have had a very difficult journey to the United States and/or suffered a great deal of harm at home. Safe Passage advocates often find that neutral topics such as subjects at school, favorite sports teams, music preferences, or favorite foods can help you begin to build rapport with your young client.

In our initial assessment, made after a brief interview at the Immigration Court, Safe Passage advocates try to identify whether the young person may qualify for Special Immigrant Juvenile Status. As the attorney representing the young client, you will want to reconfirm the basic eligibility during your initial interview. U.S. immigration law also contains many barriers to permanent resident status called “grounds of inadmissibility.” Many of these formal grounds are waived for youth qualifying for SIJS. As you proceed through your representation, let your Safe Passage Mentor Attorney know if your young client has any encounters with law enforcement or disciplinary actions in school. We can help you assess the possible immigration law consequences.

Documents to Gather:

Prior to your first meeting, be sure to request that your young client bring all relevant documents to the appointment. The most important documents to collect include:

- A copy of your young client’s birth certificate.
- A copy of the death certificates of your young client’s parents, if applicable.
- Any identification documents such a copy of your young client’s passport, visa, I-94, National ID cards from home country (“Matricula Consular”), school IDs, medical records, and any documents establishing your young client’s age.
 - N.B. In many Safe Passage cases, the young client does not have a passport. Your Safe Passage mentor attorney guide you through the process of obtaining a passport should one be desirable or necessary for your young client.

Please note that all documents not in English require a certified translation. Please contact Safe Passage if you need translation assistance. Certified translation can be completed by anyone competent to read and write in both languages. This means a translation with a certification stating that the translator is fluent in English and the foreign language, is competent to translate,

and that the translation is completed to the best of her ability. There is no need to hire a professional translation service. For more information about how to request copies of birth and death certificates from foreign countries, see **Appendix B**.

Information to Collect:

At her initial meeting with Safe Passage Project advocates at the Immigration Court, your young client will have answered many basic questions designed to assess her possible eligibility for relief. However, you may learn new information about your young client in your first meeting. It is important to review the Safe Passage memo with your young client in order to check for errors and inconsistencies, and to gather more information as needed. Safe Passage advocates frequently find that as the young person begins to trust her pro bono attorney, she will share more information which assists to build her legal case. Safe Passage Project advocates and mentor attorneys are available to discuss legal strategy as additional facts come forward.

Important information to confirm includes:

- Whether your young client's parents are alive and, if so, where they reside. This information will be crucial to the guardianship and/or custody paperwork.
- The level of contact your young client has with his or parents. For example: phone calls initiated by whom, emails, letters, gifts, or financial support.
- Your young client's updated contact information, as well as the contact information of the people with whom your young client lives. This is necessary in the event you need to contact your young client and his phone has been turned off due to lack of funds to pay for phone credits, etc. Be sure and ask for email or even "Facebook" messenger access.
- Safe Passage also recommends discussing travel costs with the client. We have sometimes had to supply subway cards or train tickets so that young people and their sponsors have sufficient funds to travel to Manhattan.

Ensure your Young Client Meets SIJS Criteria:

As previously noted, Special Immigrant Juvenile Status (SIJS) is an immigrant classification available to unmarried, undocumented immigrants under the age of 21 who have been abused, neglected, or abandoned by one or both parents. In order to qualify your young client must be:

- Under the age of 21;
- Unmarried;
- Be declared dependent on a State (Family) Court;
- Reunification with one *or* both parents must not be a viable option due to abuse, neglect, abandonment or another similar basis under state law; and
- It is not in the best interests of your young client to return to his or her country of nationality or prior residence

Accompanying Family Members:

It is common for your young client's family members or proposed guardian to accompany her to the interview. Frequently, the young person may not feel comfortable speaking to you alone until he or she has gotten to know you. Formally, the presence of anyone other than the child's parent may waive attorney/client privilege. Usually, this waiver is not a problem, however, you should check with your client to make sure he or she feels comfortable talking to you with others present. Additionally, it may be necessary to have an interpreter in the room if there is a language barrier. If a law student or interpreter is assisting you, they too are bound by the confidentiality requirements and you are not waiving attorney/client privilege by engaging the aid of these people.

Safe Passage suggest that at the onset of your first meeting with your young client, you explain that you will be meeting with the young client individually/alone for a portion of the meeting because this is "standard procedure" for when an attorney represents a client. This will allow your young client to begin to develop trust in you and to discuss elements of her story with you, her attorney, facts that she might not be comfortable discussing in the presence of her proposed guardian or other family members.

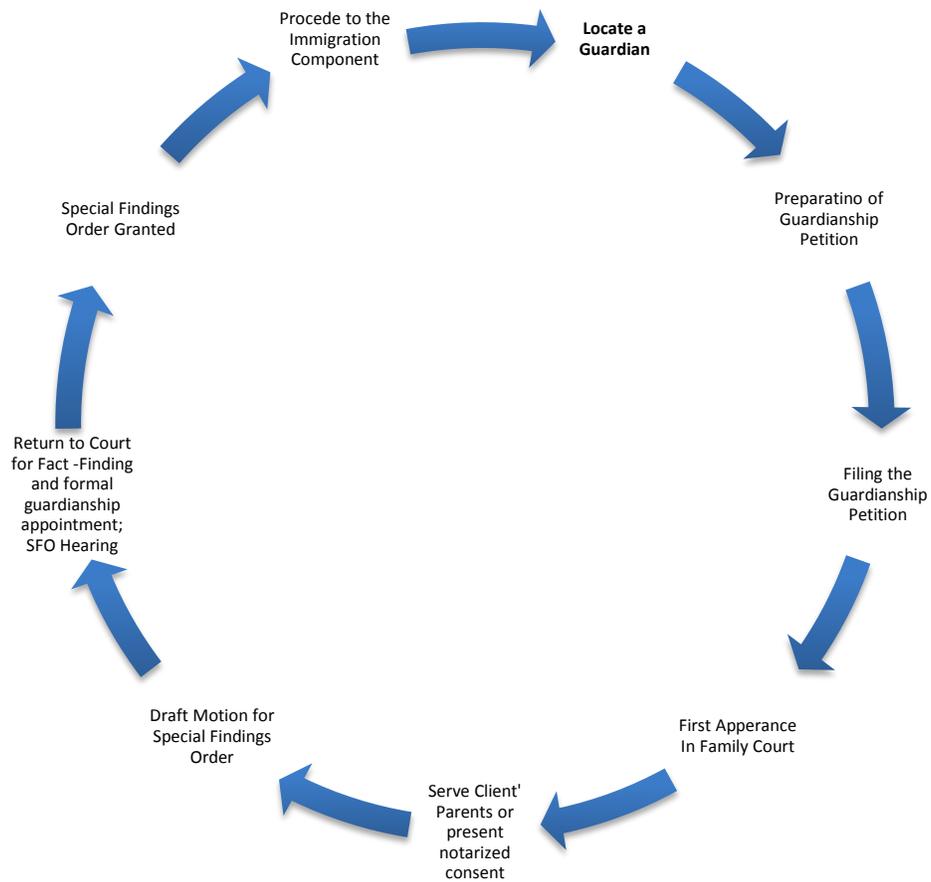
Earning Your Young Client's Trust:

One of the most important goals for your early meetings with your young client is to get to know her and make sure she is comfortable speaking with you. Earning your young client's trust may be difficult at first since the children often have endured multiple hardships. It often takes more than one meeting with your young client to gather information about her entire story as she is learning to trust you.

In addition, you might find it a bit difficult at first to communicate with your young client if you do not speak her native language. If you are working with an interpreter, it is important to continually remind yourself that you are not having a conversation with the interpreter, but rather with your young client. Speak directly to your young client, attempt to make eye contact if culturally appropriate, and don't automatically assume your young client understands legal terms or processes even if directly translated. Spend some time thinking about how you will describe your role, the legal remedies available, and the court process in terms that a newly arrived young person can understand. Continually check-in with your young client to make sure she understands. For example, rather than saying we will have to complete "service of process" on her parent in her home country, you might explain that U.S. law requires that parents have good notice about the guardianship and court hearings happening in the United States concerning their biological children.

Safe Passage advocates have found that some young clients worry that appointing another person as their guardian when their biological parents live in their home country means they are rejecting their parents. It may be helpful to your young client to explain that a guardianship is designed to help her with life decisions in the United States, such as permanency planning including medical care, housing, education and stability. In most of the Family Court proceedings involved in SIJS, neither party is seeking the formal termination of parental rights.

The State Court (Family Court) Process



Step 3: Identify a Guardian or Custodian

By the end of your first interview, your young client should have a general understanding of Special Immigrant Juvenile Status and the steps necessary to obtain it. She should also understand that her master calendar hearings at Immigration Court will continue while you move forward with the Family Court process and that the Immigration Judge will grant her additional time (continuances) for the Family Court process and filing of her SIJS petition (Form I-360) to be completed.

As her attorney, you should think as a child welfare attorney and consider her permanency and stability in the United States. Your young client who is eligible for SIJS is not living with both of her biological parents. Is there a person in her life who is caring for her and providing her with emotional and financial support? Could this person become her custodian (typically a biological parent) or her guardian (other adult, but can be biological parent)? As previously mentioned, while SIJS requires that a state court (Family Court) take jurisdiction over the young person, Safe Passage advocates find that young people eligible for SIJS are in need of a custodian or legal guardian to assist them in maintaining stability and permanency in the United States and with planning for their future.

Who can be a Custodian?

Absent a court order, both biological parents have equal rights to the legal and physical custody of their child. Legal custody refers to the ability to make decisions for the child, while physical custody refers to the parent responsible for taking care of the child. Often, one parent will have both legal and physical custody of the child. A custodian can be appointed up to the child's 18th birthday.

While anyone who has a role in the life of a young person can petition to be the young person's custodian, please note that under New York case law, there must be "extraordinary circumstances" for a non-biological parent to be appointed as the child's custodian (see *Matter of Bennett vs. Jeffreys*, 40 N.Y.S. 2d 543 (1976), available at http://www.courts.state.ny.us/reporter/archives/bennett_jeffreys.htm). As such, in circumstances when a non-biological parent wishes to care for and make decisions for a young person, that adult can seek to become the young person's legal guardian. Additionally, in New York, a young person who is over the age of 18 can no longer have a custodian appointed but can have a guardian appointed up until his 21st birthday.

N.B. If your young client's mother is seeking custody and she was not married to the father and he is not listed on your young client's birth certificate, please contact your Safe Passage Mentor Attorney to discuss strategy. In this situation, certain Family Court judges may request an additional proceeding to establish paternity.

Custodian Responsibilities & Requirements:

As stated above, in New York, a custodian is typically one of the child's biological parents. The custodial parent will be responsible for the housing, education, financial support, and general well-being of the child. Custodial parents do not have to have lawful immigration status.

Who can be a Guardian?

Any adult over the age of 18 who the court gives responsibility to care for a young person can be appointed as that young person's guardian. The guardian does not have to be biologically related to the young person. Guardians can be family friends, school teachers, religious figures, or any other adult in the young person's life with her "best interests" in mind. Guardians do not have to have lawful immigration status.

Guardian Responsibilities:

The person who currently cares for the child may have many questions about what it means to be appointed guardian by a court. Guardians have decision-making authority and legal responsibility for the child. This allows the guardian to secure medical treatment for the child, enroll him or her in school, obtain a passport for him or her, etc. **A guardian is not financially responsible for the child over whom he or she obtains guardianship.** However, if a youth is in need, a responsible guardian would take steps to find assistance for the youth.

The age limit up to which a child may be assigned a guardian varies from state to state. In New York, a young adult can be assigned a guardian up to the age of 21. Under a grant of guardianship, the legal relationship between a parent and child continues. A guardian does not become the child's parent, nor do the child's parents lose their parental rights simply because another individual is named guardian of their child.

Guardian Requirements:

State Central Registry Requirements:

- **Fingerprints:** The proposed guardian, as well as the members of the proposed guardian's household who are over 18, must be fingerprinted in the Family Court for the purpose of a background check looking for offenses against children. Certain criminal offenses will prevent a person from being named a guardian, so the proposed guardian's criminal history is certainly an area into which you should inquire.
- **Record of Past Residences:** The proposed guardian and the members of the household who are over 18 must provide all of their addresses for the past 28 years in order for a search to be done regarding any allegations of child abuse, neglect, and abandonment.

- **Court-Ordered Investigation (COI) or Possible Home Inspection:** The proposed guardian should be aware that a representative from Child Protective Services may visit their home and perform a Court-Ordered Investigation (COI) in order to evaluate the conditions of the household in which you young client lives (if he or she will be living with the guardian).
- **Willingness to Appear in Court:** Lastly, the proposed guardian, as well as your young client will have to appear in Family Court and provide testimony. The judge will ask the proposed guardian and the child questions about their relationship and living situation.

Case Examples:

FACTS	HOLDING
<p>Undocumented Biological Mother: An undocumented mother who had abandoned her children 15 years prior petitioned for guardianship of her undocumented children. Prior to joining her in the United States, the children had been residing with their maternal grandmother in El Salvador. The children’s father had also abandoned the children and was not in contact with either the children or the petitioning mother.</p>	<p>The judge determined that there is no reason a natural parent should not be able to be granted guardianship of their children. Furthermore, because the father had also abandoned the children, and because their temporary de-facto guardian (grandmother) had been recently murdered by a gang—naming the mother as guardian was in the best interests of the children. The mother’s prior abandonment was of no issue. <i>Matter of Marisol N.H.</i> 115 A.D.3d 185 (2014).</p>
<p>U.S. Citizen & Child Alone: The former U.S. schoolteacher of an 18-year-old boy who had overstayed his student visa, petitioned for guardianship of the boy. The boys’ parents remained in the Sierra Leone and his original host family had abandoned him.</p>	<p>Granted. There was not issue as to whether a non-familial relation could petition for guardianship of a child. <i>Matter of Mohamed B.</i>, 83 A.D. 3d 829 (2011).</p>
<p>Friend: A man petitioned for the guardianship of an 20-year-old boy. The boy’s father resided in the U.S. and mother in India. The boy was friends with the man’s son and had been living within their home for 3 years. The boy had had no contact with his father since moving to the United States 3-years prior.</p>	<p>Granted. The man has ensured that the boy attends school, has health insurance, and the support of an “uncle” to attend parent-teacher conference days and support him in his activities. It was in the best interests of the child to have him as a guardian. <i>Matter of Amandeep S.</i> 2014 NY Slip Op 50945.</p>

Guardian and Custodian FAQ

Q: Does a Guardian have to be related to the child?

A: No, a guardian does not have to be related to the child. In 2014, the Court ruled that no specific familial relationship is required to petition for guardianship. *See Matter of Marisol N.H.* 115 A.D. 3d 185 (2014).

Q: Does the Guardian have to live with the child?

A: No, the guardian does not have to live with child nor provide for him or her financially.

Q: Does the Guardian have to have legal status within the United States?

A: No, the guardian does not have to be a U.S. citizen, resident, or have any form of legal documented status within the United States. State courts will not inquire into a guardian's status nor relay such status onto USCIS. In *Matter of Lafontant*, the Court ruled that the petitioner's lack of immigration status did not preclude him from being appointed a guardian. *Matter of Lafontant*, 617 N.Y.S. 2d 292 (1994).

Q: Can a biological/natural parent petition for Guardianship?

A: Yes, a natural parent can petition for guardianship over her own biological child. Under the Surrogate's Court Procedure Act, any person may petition for the guardianship of an infant. SCPA §1703. In *Matter Marisol N.H.* the Court reasoned that because the statute does not impose any limitations, appointment of guardianship may be granted to a natural parent. *See Matter of Marisol N.H.*, 115 A.D.3d 185 (2014).

Q: What about Step-Parents? Can a Step-Parent be a custodian or guardian?

A: Yes! Step-parents can be custodians/guardians or co-custodians/co-guardians with their spouse (your young client's biological parent). Alternatively, if the step-parent is a lawful permanent resident or U.S. Citizen, there may be a way for the step-parent to file a family-based immigration petition for your young client. Please contact your Safe Passage Mentor Attorney for guidance.

Q: Where is the definition of "household"?

A. "Household" becomes important in guardianship cases as all individuals in the proposed guardian's household must undergo background checks and be fingerprinted to check for incidents of child abuse or mistreatment. If your young client is living in a shared home or boarding house, please contact your Safe Passage Mentor Attorney for guidance.

Step 4: Preparing the Guardianship or Custody Petition

Preparing Petition and Accompanying Forms: GUARDIANSHIP

In a guardianship proceeding, the petitioner is frequently the proposed guardian and the respondent(s) is/are the parents of your young client. Alternatively, a child over the age of 14 may “self-petition” for the appointment of a guardian.

It is important to understand is that you, as an attorney, **do not represent** the proposed guardian in this proceeding. However, you should talk to the proposed guardian about the process, assist him or her in filling out the paperwork, and discuss what to expect when filing the petition and appearing in Family Court. Nonetheless, the proposed guardian is not your client. If you would like to represent the proposed guardian in the family court proceedings you can choose to do so but you will not be able to represent the youth in the family court. An attorney will be appointed for the youth. But note that you may find your communication and access to the youth is now severely restricted because you will have to communicate through the attorney for the child. We recommend that you remain solely counsel for the youth.

There are three or four forms (depending on the age of the minor) that you should help the proposed guardian prepare. Each of these New York Court forms are located in **Appendix C**. Please take a moment to be sure the court has not updated the forms. You can find the forms directly at: <http://nycourts.gov/forms/familycourt/index.shtml>

Petition for Guardianship of the Person

Form 6-1

This form asks for information about the proposed guardian, the people residing with the proposed guardian, the child, and the child’s parents.

OR

Form 6-1(a): Petition by Person Over the Age of 14 for Appointment of Guardian

This form is used if a young person over the age of 14 is self-petitioning for the appointment of a specific guardian. We recommend you pursue this option for youth over 14. It allows counsel for the youth greater control and direction over the proceeding.

Form 6-2: Oath and Designation for Service of Process

This form is an oath by the proposed guardian that he/she will faithfully and honestly discharge the duties of a guardian. It also includes the proposed guardian's address so that the court knows where to send any information about the guardianship.

Form 6-3: Consent of Person Over 18/Preference of Minor Over 14

If your young client is over 14, he or she is allowed to voice her preference on the guardianship. If your young client is 18 or older, she will need to consent to the guardianship.

Form: OCFS-3909, Request for Information ("Fingerprints Form")

The proposed guardian and members of his/her household who are over the age of 18 must **list each of their addresses for the past 28 years**, even if those addresses were outside the United States. This form is extremely important and used as part of the background check process to ensure no prior allegations of child abuse exist. Please encouraged your young client's proposed guardian and those in the household to complete the form with you to the best of their ability. **Without the full completion of this form, the guardianship process cannot move forward.** If there are any gaps in the dates, the State Central Registry (SCR) will not accept the form. Please contact your Safe Passage Mentor Attorney should you have questions about the OCFS-3909 Form.

Copy of Birth Certificate and Affidavit of Translation

You must also include a copy of your young client's birth certificate (or another proof of her age). If not in English, the birth certificate must be translated and be accompanied by an affidavit of translation. For more information about affidavits of translation for birth certificates, *see* **Appendix B.**

Finally, in **Appendix C** we have provided a sample Notice of Appearance that indicates that you are representing your young client in the guardianship or custody proceeding. You may print and bring this form to the first court appearance, or you will be provided with the opportunity to fill this out in the courtroom. You will need only one copy to give to the court.

Preparing Petition and Accompanying Forms: CUSTODY

In contrast to the numerous forms necessary to commence a guardianship proceeding, there is only one form that the petitioner will have to bring to the Family Court to file for custody. For a sample Petition for Custody or Visitation, *see* **Exhibit D**.

General Form 17: Petition – Custody, Visitation

This form provides the court with the names and relationships of all the parties involved, and requests a grant of custody.

Copy of Birth Certificate and Affidavit of Translation

You must also include a copy of your young client's birth certificate (or another proof of her age). If not in English, the birth certificate must be translated and be accompanied by an affidavit of translation. For more information about affidavits of translation for birth certificates, *see* **Appendix B**.

Finally, in **Appendix C** we have provided a sample Notice of Appearance that indicates that you are representing your young client in the custody proceeding. You may print and bring this form to the first court appearance, or you will be provided with the opportunity to fill this out in the courtroom. You will need only one copy to give to the court.

Step 5: Assist in Filing the Petition

Filing the Petition and Forms: GUARDIANSHIP

Once all the forms have been completed, it is time to file them at the New York State Family Court with jurisdiction over your young client's place of residence, meaning in the county where your young client lives. For Family Court contact information, *see* **Appendix J**.

Procedure for who has to appear to file depends on the Family Court in which the petition will be filed. Contact your Safe Passage Mentor Attorney for details. While in some counties you are not required to go with the petitioner to file the petition if filing Form 6-1 (as opposed to 6-1a where the child self-petitions), it is still recommended. Courthouses are often overwhelming and intimidating for people who are not used to them and an attorney can help to expedite the filing process.

It is a good idea to get to the courthouse early in the morning in order to minimize wait time. Avoid filing on Mondays if at all possible as these are generally very busy days in Family Court. Be sure to bring:

The Notice of Appearance

Remember you will be appearing on behalf of the child, NOT on behalf of the proposed guardian.

The original petition and accompanying documents along with four (4) copies.

The proposed guardian should also bring photo identification and a proof of residence.

Upon arrival at court, go to the petition room and file the petition. Make sure that you obtain a copy of the petition that is time-stamped with a file and docket number hand-written on it by the clerk. Please remember to contact your Safe Passage Mentor Attorney for court-specific information. In some cases, you or the proposed guardian will need to return in a few days to pick up the summons for the initial hearing date. In other instances, before you leave the window, the clerk will tell you which courtroom you should go to for your case to be called. This room is referred to as a “part.” Go to that part and let the court officer know that you are there. After checking in wait until your docket number is called. You may have to wait for several hours, so remember to bring something to occupy your and the child’s time.

While waiting, remind the proposed guardian that the judge or referee will ask if he/she wants a lawyer and he/she needs to be prepared to answer this question audibly before the judge. The proposed guardian has a right to a lawyer, but not at state expense. However, many Family Courts use their discretion to appoint counsel.

Filing the Petition and Forms: CUSTODY

The procedure for filing a custody petition is very similar to the process of filing a guardianship petition and the same procedures should be followed. Remember, the petition must be filed in the Family Court of the county in which the child has been living for the past six months pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (N.Y.DOM. LAW § 75).

Step 6: Attend the First Family Court Appearance

First Court Appearance: GUARDIANSHIP

Upon arrival at the courthouse, you will need to check in with the Court Officer and then wait for your young client's case to be called. Although attorneys may enter the courtroom, clients must remain in the waiting room until their case is called. It is your choice as to whether you remain with your young client in the waiting room or wait inside the courtroom. If you have little experience in Family Court, it is recommended you enter the courtroom, called a "part," and observe a few hearings. This will give you a good sense of the particular judge and procedures. When your young client's case is called, enter the courtroom with the proposed guardian and your young client and proceed to the seating area as directed by the Court Officer.

Please note that it is customary for attorneys to stand when addressing the judge or referee in Family Court. The judge or referee will be asked to orally note your appearance, after which you should offer your Notice of Appearance to the clerk.

The judge may ask several questions about the guardianship, the proposed guardian, and your young client to determine that it is in the best interests of your young client for the proposed guardian to take responsibility for him or her. You will have the opportunity to explain that you will be making a **Motion for Special Findings** and that a **Special Findings Order** is needed for Special Immigrant Juvenile Status. You may also be called upon by the judge or referee to explain Special Immigrant Juvenile Status.

During the appearance, the court will usually do the following:

Order service of the summons on the child's parents (respondents);

Before leaving the courtroom, be sure to establish what type of service the court will accept. It may not be possible to personally serve the parents if their whereabouts are unknown or they reside in a foreign country. For this reason, you should know where your young client's parents reside prior to appearing in court, and be able to suggest an appropriate method of service to the judge.

For example, you can request service by first class mail to the last known address of your young client's parents. Alternatively, it is possible that your young client's parents could waive service by signing a formal written consent to the guardianship, *see* **Appendix E**. If you are able to obtain the parents' consent to the guardianship, bring the signed and notarized form with you to the first court appearance. For a sample Consent to Guardianship see the final document in **Appendix D**. Please note, for guardianship owing to abandonment, service by mail is acceptable (*See* NY SCPA § 1705(2)).

- ***Fingerprinting for Background:*** Explain that the proposed guardian and people over the age of 18 living within the proposed guardian’s house need to be fingerprinted for the State Central Registry (SCR) background check for child abuse and mistreatment.

- ***[Possible] Order a Court-Ordered Investigation (COI) of the proposed guardian’s home.*** The COI is waived in certain Family Courts and is sometimes waived for young people over 18 years of age.

- ***Set a return date.***

The First Court Appearance: CUSTODY

In child custody matters, the initial appearance is referred to as a “preliminary hearing” and is the first court date that you will attend. The hearing is typically brief and is intended to provide the judge an opportunity to familiarize herself with the case.

Plan to arrive at least 15 to 30 minutes earlier than your scheduled time. Upon arrival you will need to check-in with the Court Officer.

Once your case name is called, the judge will ask all individuals to identify themselves and their relationship to the child. You will also state your name and appearance for the record. The judge may ask you to provide a short initial statement. The judge will ask if the other parent of your young client has been served.

The judge will then ask several questions about custody, the proposed custodian, and your young client. Here, you will have the opportunity to explain that you will be making a **Motion for Special Findings** so that your young client may apply for SIJS.

Step 7: Serve the Respondents with Notice of the Proceeding

As noted, you should establish the means of service on the respondents (your young client's parent(s)) at the time that the guardianship or custody petition is filed with the Family Court. While waiting for your court date, do your best to complete service on the respondents. If when you return for your hearing you have been unable to complete service, you may ask the judge for more time to serve. Alternatively, you may ask the judge to order a different means of service if the respondents cannot be served by the initial method.

For information about serving parties living abroad, *see* [Appendix E](#).

Remember to prepare an affirmation of service or an affidavit of service following service upon the respondents. The affidavit of service must be signed and notarized.

Step 8: Draft the Motion for Special Findings

Although SIJS is a form of relief granted under federal immigration law, prior to petitioning for the relief, a State Court (Family Court) must first make the factual finding that your young client is unable to reunify with one or both of her parents due to abandonment, abuse, or neglect. The court must also determine that it is not within the best interest of your young client to return to her home country. These determinations are referred to as a 'Special Findings Order' (SFO). The Family Court is not granting the child immigration status; rather they are simply making factual determinations.

In order to obtain this Order, you will have to make a motion before the Family Court requesting that they make such findings.

Essential elements of the Order must establish:

- The young person is under 21 years old;**
- The young person is unmarried;**
- The young person is dependent upon the juvenile court;**
- Reunification with one *or* both parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law; AND**
- It is not in the young person's best interest to be returned to his/her home country.**

Contents of the Motion:

The motion package that you file must include a Litigation Back (*i.e.*, be “**blue-backed**”)³ as well as:

- A Notice of Motion;**
- Memorandum of law in support of the motion and the guardianship petition;**
- A proposed Special Findings Order (GF-42); and**
- Relevant exhibits, such as:**
 - The client’s affidavit;
 - The proposed guardian’s affidavit;
 - Copies of birth certificates, foreign passports, National ID cards;
 - Death certificates of the client’s parents, if applicable
 - Relevant statutes, regulations, and case law; and
 - Country reports⁴ relating to the client’s home country.

For samples of these documents, see **Appendix F**.

Finding Supporting New York Case Law

Students and staff of Safe Passage Project have summarized almost every case published in New York that addresses the key elements of family law relevant to your Special Immigrant Juvenile Motion. These materials have been organized into summaries and provide direct links to the cases available through the New York State Courts websites.

For summaries of New York cases on abuse, abandonment and neglect, please visit the “resources” section of Safe Passage’s website at www.safepassageproject.org. Look under the subcategory for Special Immigrant Juvenile Status. <http://www.safepassageproject.org/what-is-sij-status/>

It is important that you use the relevant New York family law materials to help contextualize the facts in your case.

³ For a sample Litigation Back (printed on blue paper in black ink and often referred to as a “Blue Back”), contact your Safe Passage Mentor Attorney.

⁴ Examples of “Country Conditions Reports” are: U.S. State Department Human Rights Reports, reports by Human Rights Watch, Amnesty International, UNICEF and other United Nations agencies.

Notes on Procedure, Service on Parties, and Citation Style

Please see **New York Civil Law Practice and Rules Article 22** for more detailed discussion of motion practice.

Remember that motion papers must be served upon all the parties (your young client's parents). Following service, the person serving the papers must fill out an Affidavit of Service, which must be filed together with the motion papers to place the motion on the court's calendar.

Once you have all of these documents prepared, make sure to file them in Family Court. Bring the original and two copies to the court. Retain one time-stamped copy.

You may also mail a copy to the judge in advance of the return date with a cover letter that explains why you are filing the motion. For a sample cover letter, see **Appendix F**.

Please note, when the assisting your young client in drafting the guardianship petition is being drafted, **you will want to provide a detailed description of the circumstances surrounding the abandonment, abuse, or neglect of your young client**. These details will be helpful when USCIS reviews the Special Findings Order as part of the SIJS Petition. At such time, USCIS will examine the juvenile court order only to ensure that the decision contains the requisite findings and that the record contains a reasonable factual basis for the Special Findings Order (SFO).

Case Example:

FACTS	HOLDING
<p>No Details in the SFO: A 19-year old self-petitioned for SIJS. She included the Special Findings Order from the court with her petition. The order stated that “reunification with one or both of [the petitioner’s] parents was not viable due to abuse, neglect, or abandonment.” The order did not state on which ground family reunification was not viable and provided no factual findings as to why. The order also stated it was not in the petitioner’s interest to return to her home country, but did not state any specific factual allegations as to why. Thus the Court turned to evidence within the record to confirm factual basis. Evidence within the record included a copy of the guardianship petition that contained one sentence stating that a “temporary guardian is necessary because both parents have abandoned the minor.”</p>	<p>The evidence submitted failed to demonstrate that the petitioner was the subject of a qualifying juvenile court dependency or custody order. The director denied the petition because he found that the petitioner sought a juvenile court order primarily for immigration purposes and not out of need or want of care. <i>In Re: Self-Petitioner</i>, 2013 WL 8117603 (AAO Dec. 4, 2013), Available at http://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2013/DEC042013_01C6101.pdf</p>

Case Examples

FACTS	HOLDING
<p>Abandonment – Little Contact: The only contact a mother had with her daughter in the past 6 months was one visit and one phone call.</p>	<p>Infrequent/ no contact of mother with child qualifies as abandonment. <i>In re Maddison B.</i>, 74 A.D.3d 1856, 902 N.Y.S.2d 471 (2010).</p>
<p>Abandonment – Lack of Support: A 17-year-old child came into the country with his father, while his mother stayed behind. The father kicked the child out of the house, leaving the child without a home or any resources. The child no longer knows of his father’s whereabouts or contact information. The father has not contacted the child in three years, nor provided any support.</p>	<p>Parents moving without providing child with contact information and/or financial support equals abandonment. <i>In re Amandeep S.</i>, 44 Misc. 3d 1201(A) (N.Y. Fam. Ct. 2014).</p>
<p>Abuse – Physical: The petitioner’s medical experts declared that the rib fractures suffered by the child had been inflicted intentionally, and the record reflects that the child was in the parents’ care when he suffered the fractures. The father failed to provide a reasonable and adequate explanation for the child’s injuries.</p>	<p>Abuse is found where a doctor finds injuries to be purposeful and inflicted under parents’ care. <i>In re Robert A.</i>, 109 A.D.3d 611, 971 N.Y.S.2d 12, 2013 N.Y. Slip Op. 05689 (2013).</p>
<p>Abuse – Sexual: Allegations against a father that he had repeatedly sexually abused his 8-year-old natural daughter. The evidence consisted of the child’s repeated out of court descriptions to four different adults as well as witnesses’ testimony of her behavior. The child also testified unsworn in camera and corroborated her out of court statements.</p>	<p>Father sexually abused child, mother neglects child by allowing abuse. <i>Matter of Telsa Z. (Rickey Z.--Denise Z.)</i>, 71 A.D.3d 1246, 897 N.Y.S.2d 281, 2010 NY Slip Op 1859 (2010).</p>
<p>Neglect – Dangerous Requests: The father demanded that the son get the father a knife, which he then held to the mother’s neck in the presence of the son. A daughter also witnessed the action. This action created an imminent danger of impairment to the son’s physical, emotional and mental condition.</p>	<p>A father neglected his son and derivatively neglected his daughter by asking the children to place their mother in danger. <i>Matter of Briana F. v Oswaldo F.</i>, 69 A.D.3d 718 (N.Y. App. Div. 2d Dep’t 2010).</p>
<p>Neglect – Lack of School Attendance: Two children had a significant unexcused absentee rate that had affected their education. The father provided no proof to justify their absences or to show that they were being educated elsewhere.</p>	<p>Educational neglect by significant unexcused absences. <i>In re Cunntrrel A.</i>, 70 A.D.3d 1308, 894 N.Y.S.2d 800 (2010).</p>

Please note the following rules requiring citation to official reports in New York Courts:

"New York decisions shall be cited from the official reports, if any." (CPLR 5529 [e].)"Where New York authorities are cited in any submissions, New York Official Law Report citations shall be included, if available." (Rules of Ct of Appeals [22 NYCRR] § 500.1 [g].)"Where New York authorities are cited in any paper, New York Official Law Report citations must be included." (Rules of Ct of Appeals [22 NYCRR] § 510.1 [a].)"New York decisions shall be cited from the official reports, if any." (Rules of App Div, 1st Dept [22 NYCRR] § 600.10 [a] [11].)"New York decisions shall be cited from the official reports, if any." (Rules of App Div, 4th Dept [22 NYCRR] § 1000.4 [f] [7].)

http://www.courts.state.ny.us/reporter/new_styman.htm

Step 9: Prepare for the Fact-Finding/Special Findings Hearing

During the fact-finding hearing, the judge will determine guardianship/custody and hear the motion for Special Findings Order. Schedule a meeting with the proposed guardian and your client approximately one week prior to the hearing.

Remind the proposed guardian and your client that they need to respond truthfully to all questions and dress nicely for court.

You will prepare a brief direct examination of your young client and the proposed guardian concerning their relationship as well as the young person's eligibility for a Special Findings Order leading to SIJS. Your young client and proposed guardian should be prepared to answer questions on the following topics:

- The relationship between the proposed guardian and your young client;**
- The proposed guardian's employment, family relationships, and household members;**
- Your young client's age and marital status;**
- The whereabouts of your young client's parents;**
- Why the proposed guardian/custodian is an appropriate person to care for your young client;**
- The type of abuse, neglect, or abandonment that your young client suffered;**
- What your young client would like to achieve in the future; and**
- The proposed guardian's plans to assist your young client in his or her future.**

Step 10: Second Appearance OR Fact-Finding/Special Findings Hearing

One of three things will happen on the return date, typically your second appearance in Family Court:

First, you will all return to court to simply report that the respondents have been served, and that no issues were found during the Court-Ordered Investigations (COIs). The judge will then issue another return date at which the guardianship petition will be adjudicated.

Alternatively, the judge may accept the proof of service, investigation reports, and hear the merits of the guardianship petition and the motion for Special Findings during this return date – see Step 11 below.

Finally, if on the return date some of the results of the investigations are still outstanding or the child's parents have yet to be served, the judge will either issue you another return date or hear the merits of the case without the missing information. If the case is heard with missing information, the judge will not make a final decision or sign an order until those matters are completed, but the merits may be heard regardless.

Step 11: Fact-Finding/Special Findings Hearing

Under most circumstances, the judge will attend to both the fact-finding hearing and Special Findings Order simultaneously. Alternatively, the judge will attend solely to the fact-finding hearing and issue a subsequent return date to evaluate the Special Findings Order.

On the day of the hearing, check in with the Court Officer and wait for the case to be called. Once your case is called, you may make your appearance and if the judge requests, give a brief opening statement. At this time, you may also request that the guardianship/custody hearing and the hearing on the Special Findings Motion be adjudicated together in the interest of judicial economy.

Fact-Finding Hearing: GUARDIANSHIP

During the fact-finding hearing, the judge will determine the issue of guardianship. The judge will likely ask questions about the relationship between the proposed guardian and the child. He or she might also inquire into the proposed guardian's employment, family relationships, and household members. Finally, the judge may ask about the Court Ordered Investigation (COI) and fingerprinting results. It is imperative that you remind your young client and the proposed guardian to answer truthfully to all questions.

Calling Witnesses:

Absent a specific request by the judge, you may either call the proposed guardian or your young client as your first witness. With respect to the proposed guardian, the judge will be concerned about examining his or her character to serve as a guardian. If any troublesome issues arose in the investigation you will want to address them here. It is also important to question the guardian on his or her relationship to your young client (remember that they do not have to be related). Lastly, you may want to examine how your young client's life has changed now that the proposed guardian is present.

When you call your young client, you will want to ask questions concerning the relationship between the proposed guardian and your young client and have her explain why she wishes for the proposed guardian to be appointed to care for her.

Finally, in your summation make sure to explain why it is in your client's best interest for the proposed guardian to be appointed.

[N.B. Most guardianship hearings are combined with the Special Findings Hearing. As such, incorporate the questions below into your direct examination of your young client.]

Special Findings Hearing: Testimony

During your questioning of the guardian and child (noted above) you will want to ensure you elicit testimony that establishes all five elements of Special Immigrant Juvenile Status. Practice your direct with your young client to make sure she understands the questions you will be asking her in court. You will also want to reiterate each of these points in your summation. Please note, at any point during testimony the judge may interject with questions. Please advise the proposed guardian and your young client of this possibility.

Special Findings Order: Grant of Order

If the court grants the special findings order, the court will either make the findings on the record and sign an order that day or issue a written decision that you will receive in the mail. If the order is granted that day, you should offer a proposed Special Findings Order to the court. Remember that the Special Findings Order is a General Form (GF-42), but that it needs to be specific to your young client. For a sample Special Findings Order specific to a young person, see [Exhibit F](#). Remember the Order must have the exact language showing that your young client meets all immigration requirements and should include your young client's name and date of birth and specify which parent(s) abused, abandoned, or neglected her.

Before you leave court, make sure to get two copies of the Special Findings Order with the court's raised seal and two copies of the guardianship/custody order (if the motions are done at the same hearing) with the raised seal. Double-check that:

- Your young client's name is spelled correctly.**
- Your young client's date of birth is accurate.**
- That the Order includes which parent (father or mother) abused, abandoned or neglected your young client and has information specific to your young client.**

Fact-Finding Hearing: CUSTODY

The custody fact-finding hearing is similar to the guardianship hearing. However unlike in guardianship, the custodian will be responsible for the housing, education and wellbeing of the child. Therefore, questions pertaining to the custodian's household and income will be relevant. If the custodian has any other children, calling them as witnesses may evidence the stability of the home and the fitness of the proposed custodian. As mentioned above, remember to explain in your summation why this household is in the best interests of the child.

- **For information on Calling Witnesses, Special Findings Hearing, Special Finding Order for Custody Proceedings, please review the Guardianship sections above.**

Special Findings FAQ

Q: What if my client is supported by, or able to reunified with *one*, but *not both* of his or her parents?

A: Your client may still be eligible for SIJS provided he or she meets the remaining criteria. In 2013, the Court concluded that the "one or both" language present within the statute, *i.e.* reunification with "one or both" of the juvenile's parent "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law"—requires only a finding that reunification with *one* parent is not viable. *In the Matter of Marcelina M.-G v. Israel S.*, 112 A.D. 3d 100 (N.Y. App. Div. 2d Dep't 2013).

Q: Is prison considered abandonment?

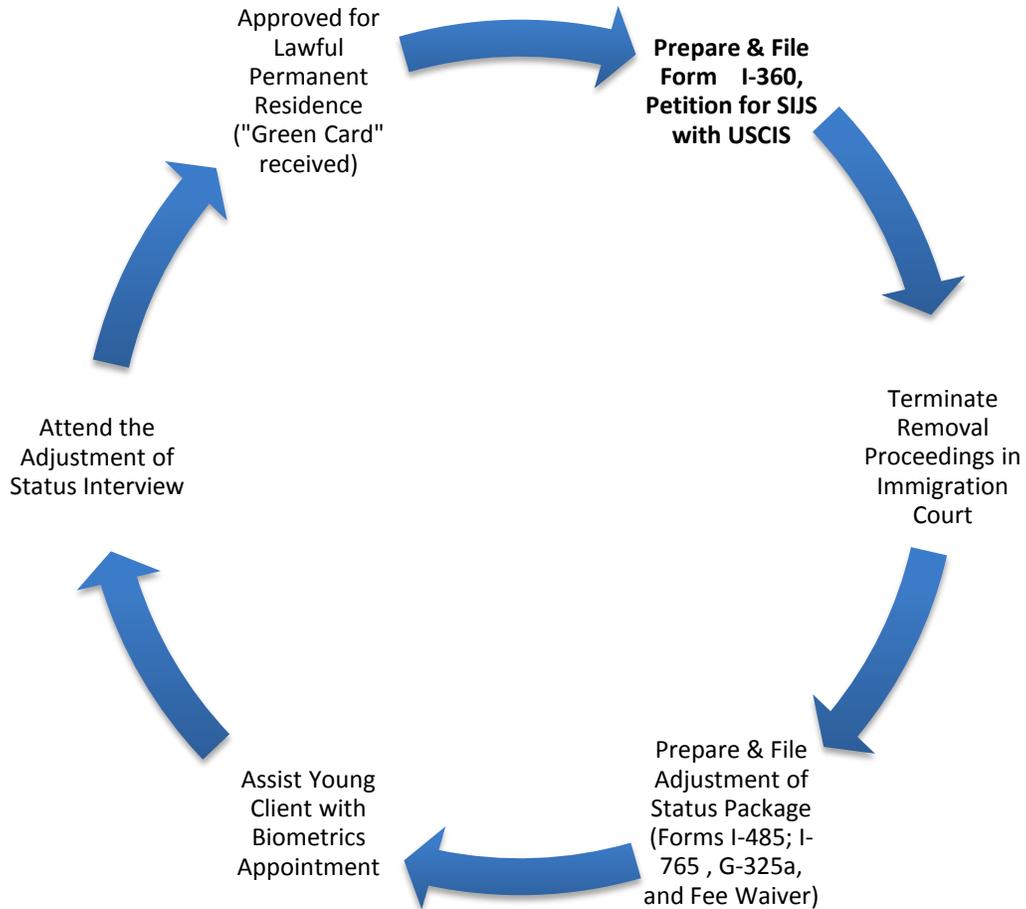
A: Possibly. In the *Matter of Jackie B. v. Dennis B.*, 75 A.D.3d 692, 903 N.Y.S.2d 612 (2010), the Court found abandonment when the jailed respondent did not attempt to contact the child within a 6-month period. The Court ruled the burden is upon the jailed parent to prove an inability to maintain contact, or evidence that he or she is prevented from doing so.

Q: What do I need to show to evidence that it is not within the best interest of my client to be returned to his or her country of nationality or last not residence?

A: The “best interests” standard present within the SIJS statute is determined by the State standard. In New York this amounts to a review of the “totality of the circumstances” – psychological, health, wealth, and happiness. *Matter of White*, 118 A.D. 2d 336, 342 (1st Dep’t 1986).

For example, in 2013, the Court in *Matter of Marisol* weighed the children’s lives as existing in their home country of El Salvador against their new lives in the United States in the care of their undocumented mother. While in El Salvador, the children’s guardian (grandmother) had been murdered by the Mara (gang). Despite arrests being made in connection to the murder, threats continued against the family. The children were forced to drop out of the school and were unable to ever leave the home. In contrast, since arriving in the United States, the children attended school, made friends, and their mother was present to provide for them financially and emotionally. Thus the court determined it was in the best interests of the children not to return to their home country of origin. *Matter of Marisol N.H.*, 115 A.D.3d 185 (2014).

The Immigration Process for Young People in Removal Proceedings



Step 12: USCIS: Petition for Special Immigrant Juvenile Status

Following the grant of the guardianship or custody and the issuance of a Special Findings Order, you will proceed with the immigration portion of SIJS. Please note that the United States Citizenship and Immigration Service (USCIS) must receive the SIJS Petition submitted on behalf of your young client before she turns 21 years of age. USCIS may adjudicate the petition after the age of 21 because her age will be “locked in” on the date the SIJS Petition is received by USCIS. [Remember that state law varies as to the maximum age for filing guardianship.]

The immigration portion of SIJS includes the petition SIJS status, the termination of removal proceedings in the Immigration Court, and an Application for Adjustment of Status (*i.e.*, a green card).

Form I-360, Petition for Special Immigrant Juvenile Status

N.B. If your young client is in removal proceedings, you will need to file a motion to terminate removal proceedings before you can proceed with filing for Adjustment of Status before USCIS.

Form I-485, Application for Adjustment of Status

Form I-765, Application for Employment Authorization

N.B. This form is submitted regardless of the child’s age and ability to work as the document also acts as a form of identification for the child.

When and where to submit these forms depend on whether you client is filing “affirmatively” or “defensively”. Please note the majority of children under the umbrella of the Safe Passage Project are in removal proceedings and thus filing for SIJS “defensively”.

Please visit our website, www.safepassageproject.org, for a link to videos of one of our Safe Passage Mentor Attorneys completing these immigration forms.

Form I-360: Petition for Special Immigrant Juvenile Status

- Cover Letter**
- Form G-28, Notice of Entry of Appearance as an Attorney**
- Form I-360, Petition for SIJS**

Part 1: Information about the person or organization filling this Petition

In the lower right corner check “attorney or representative and insert your attorney license number.

Box 2c: SIJS filers are exempt from the standard filing fee

Part 4: Processing Information

You do not need to designate a consulate. You may leave this blank.

Signatures

If the Child is under the age of 14, a parent/guardian may sign on their behalf.

- Copy of the Special Findings Order**
- Copy of the Letter of Guardianship or Custody Order**
- Copy of Birth Certificate or Other Proof of Age and Identity with Certified English Translations**

N.B. Copies of documents are acceptable. Do not mail originals to USCIS. Keep originals in a safe place for use in the Adjustment of Status Interview.

Step 13: File the SIJS Petition with USCIS

Young Client *is* in Removal Proceedings: Defensive Filing

If your young client is in removal proceedings, you will first file the I-360 alone. Once you receive the approved I-360, you must then file a motion to terminate your young client's removal proceedings. Then, you may file the forms required for Adjustment of Status (I-485, I-765, G-325a, and fee waiver, if applicable).

As of November 2014, Forms I-360 for SIJS should be mailed to:

USCIS
P.O. Box 805887
Chicago, IL 60680-4120

For Express Mail or Courier Deliveries:

USCIS
Attn: FBAS
131 South Dearborn 3rd Floor
Chicago, IL 60603-5517

*****Always review uscis.gov for updated filing instructions prior to filing a petition*****

Use a mailing method that will provide proof of delivery, such as FedEx or USPS Express Mail.

After you have filed the I-360, USCIS will send an I-797C letter confirming the date that they received the petition. According to Section 235 (d) (2) of the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA), USCIS must adjudicate SIJS cases 180 days after receipt. Once the decision is made, you will receive a second letter from USCIS either approving or denying SIJS to your young client. In the event that SIJS is approved, if your client is in removal proceedings, you can now file a motion to terminate the removal proceedings on her behalf and subsequently file her application for adjustment of status. If USCIS denies the I-360, it is possible to appeal the denial. USCIS will attach instructions to the denial on how to file an appeal.

Client is *not* in Removal Proceedings: Affirmative Filing

In contrast, if your young client is not in removal proceedings, then you may submit the I-360 SIJS Petition and the Adjustment of Status Application (Forms I-485, I-765, G-325a and fee waiver) simultaneously to the USCIS.

Do NOT depart the United States: It is important to inform your **young client that he or she must not depart the United States until permanent residency is granted.** If your young client leaves the United States before such time he or she may not be allowed to reenter for 3 or 10 years, depending on his or her prior length of unlawful status within the United States.

Possible Inadmissibility Issues: If your young client is not in removal proceedings, he or she may have grounds of inadmissibility. If this is the case the previously noted directions will vary. You will need to apply for a waiver to waive the grounds of inadmissibility. See below for a determination as to whether your client may have waivable grounds of inadmissibility. Please note that some waivers require qualifying United States Citizen or Lawful Permanent Resident relatives. If your young client does not have a qualifying relative he or she CANNOT qualify for *that* waiver.

In filing for clients in removal proceedings with inadmissibility issues, you will first need to submit the form I-360 by itself. Once the I-360 is approved, you will then submit forms I-485, I-765 and I-601. The I-601 form requests a waiver of the inadmissibility grounds.

General Filing Tips:

- A guardian may sign on behalf of children under the age of 14.
- Do not mail original birth certificates, etc. – copies will suffice. However, original documents are needed at the interview.
- If the answer space for a question is insufficient, you may prepare a supplementary page to include within the application. Be sure to follow instructions on the USCIS website for each form and include the child's name, A-number, signature, and question number it refers to on any supplementary pages.

Filing FAQs

Q: How will I know USCIS has received my client's petition?

A: Upon receipt USCIS will mail you, as the attorney of record, a Form I-797C (Notice of Action) confirming they are processing your client's case.

Q: How I can check on the status of my client's case?

A: Use USCIS's online [Case Status Online system](#), "My Case Status," to check the status of your client's case. We recommend you create a free account with the Case Status Online as a representative and set up an email or text message alert for status updates on your young client's case. In the alternative, telephone the National Customer Service Center at 1-800-375-5283. Both options will require you to provide your client's I-797C receipt number and A number and to have a Form G-28, Notice of Entry of Appearance as an Attorney, on file.

Q: What is the typical processing time?

A: Typically 4-6 months. However, some Form I-360 SIJS Petitions are processed in 1-2 months. To check processing times on the USCIS website, visit <https://egov.uscis.gov/cris/processTimesDisplayInit.do>

Step 14: Terminate Removal Proceedings in Immigration Court (EOIR)

Preparing a Written Motion for Termination of the Removal Proceedings

After your young client's Form I-360, Petition for SIJS, has been approved by USCIS, you may now make a motion before the Immigration Judge to terminate your young client's removal proceedings. Please contact your Safe Passage Mentor Attorney for sample motions to terminate.

In the past the ICE Counsel sometimes agreed to a motion to terminate when you could provide a receipt for the I-360 petition filing you can prepare your motion to terminate. Policies have changed in the fall of 2014 but may vary case by case and some judges will grant termination over ICE Counsel objection if you provide evidence of the I-130 filing receipt.

You cannot move on to the adjustment of status to permanent resident phase of the case until the court closes the case. Immigration Judges prefer to receive the motion to terminate in writing. ICE District Counsel usually does not oppose the written motion to terminate. In the fall of 2014, ICE began to orally oppose termination if the visa petition is still pending. The ICE counsel asked for approval before terminating the case. USCIS has six months to adjudicate the I-360 petition. Given the lengthy period of time to adjudicate the visa petition, you may want to at least submit a written request for a long adjournment so that you do not need to appear at the immigration court while the petition is pending.

We have samples of written motions for continuance and termination. Remember you must serve a copy of the motion on the ICE District Counsel and that all motions must be received at least 15 days before the next master calendar hearing.

Once the Immigration Judge grants the termination of removal proceedings, your young client's case before the Immigration Court is concluded. You may now proceed to assist her to file her Application for Adjustment of Status to become a Lawful Permanent Resident.

Step 15: Prepare and File Application for Adjustment of Status with USCIS

This last step is the important step where you client transitions to full permanent resident status. We list the forms and briefly outline the procedures here. This process takes time and getting the details right is important. To aid our pro bono attorneys, we have additional resources at: <https://docs.google.com/a/safepassageproject.org/file/d/0B7jn6rd7GsVEeWg40EJxQnh5aXc/edit?pli=1>

All of our mentor attorneys are happy to answer questions about this last stage in the process. Conceptually, you might think of it as a way that the USCIS vets the child and makes sure that

all background and biographical data is correct and that the child does qualify for an immigrant visa as a special immigrant juvenile.

One of the key elements in filing for adjustment of status is that there is a visa currently available in the appropriate immigrant category. Special Immigrant Juvenile visas are charged to the Employment Based Fourth Preference. There has not been a backlog in this category in the past. It is possible that a category backlog will develop. Safe Passage Project advocates can help you with these questions if you have concerns. You can also check the availability of the immigrant category by visiting the monthly postings of the State Department *Visa Bulletin*. You would look to see if the “priority date” or date of filing of the I-360 is *before* the date of the visa category. Again, we are mentioning this here because the demand for these visas is growing and we want you to realize that you cannot complete the immigration process until a visa becomes available. You can find the *Visa Bulletin* here:

<http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html>.

Here are the essential forms:

Form I-485, Application for Adjustment of Status

If extra space is required to complete an item, attach an additional sheet to the application and write the client’s name and Alien Registration Number (A-Number) at the top of each sheet. Be sure to indicate which Part and Item Number the answer refers to and have your young client sign the additional sheet as well, following the instructions for Form I-485, available on the USCIS website.

Form G-325A, Biographic Information

Form I-765, Application for Employment Authorization

Question 16:

Write (c)(9).

Signatures:

If the child is under the age of 14, the guardian may sign on their behalf.

Four (4) Passport-Style Photos

Copy of Birth Certificate or Other Proof of Age and Identity with Certified English Translations

Remember, a copy of the birth certificate with certified translation is acceptable. Do not send an original, but keep it in a safe place for the Adjustment of Status interview.

Filing Fee or Form I-912, Application for Fee Waiver

Fees are to be made payable to Department of Homeland Security. Note fees change regularly. For the most current information locate the “Forms Filing Fees” on the USCIS website. Please contact your Safe Passage Mentor Attorney for sample fee waivers.

Form I-693 Medical Exam and Supplemental Exam in a Sealed Envelope

The medical doctor or “civil surgeon” will give this to your young client upon completion of his or her medical examination. Advise your young client to also obtain an additional copy of the medical examination for his own records. With your young client’s permission, you can review the exam results to confirm that there are no issues with inadmissibility owing to medical conditions.

Please note your young client must visit a USCIS-approved civil surgeon. A list of civil surgeons can be found on USCIS’s website. When making an appointment with a civil surgeon, advise your young client to inquire about the fees. Fees are not regulated by USCIS and can vary between civil surgeons. **Be advised that the Form I-693 is only valid for one year.** Please contact your Safe Passage Mentor Attorney with any questions.

Certified Copies of Criminal Court Findings or other Violations

If your young client has had prior arrests, violations, or criminal charges, obtain copies of the dispositions from the appropriate court. Please consult with your Safe Passage Mentor Attorney if your young client has had any arrests or interactions with the police.

Form I-601 Waiver of Inadmissibility

If your young client has any inadmissibility issues (see [Appendix I](#)) you can at this time submit a waiver of inadmissibility along with the appropriate fee and any supporting documentation. In the alternative, if a possible inadmissibility might exist you can wait to submit this documentation until requested to do so by USCIS in response to a “Request for Evidence.” Contact your Safe Passage Mentor Attorney for advice on how to proceed if an inadmissibility issue is present.

Step 16: Biometrics Appointment

After USCIS receives your young client's Application for Adjustment of Status, USCIS will send your young client an appointment letter with the location of the nearest Application Service Center site. USCIS will collect your client's fingerprints, photo and signature at the Application Service Center appointment. Your young client must attend this appointment and bring a type of identification, such as a school ID or ORR Release form with photo. A parent/guardian or another person can accompany your young client to the appointment.

The appointment will take approximately 20 minutes. At the end of the appointment, your young client will receive a stamp on their biometrics notice confirming their appearance. Remind your young client to keep this document in a safe location.

Step 17: Adjustment of Status Interview

After the biometrics appointment, USCIS will schedule your young client for an interview at the local office. In or around New York City, interviews typically occur at 26 Federal Plaza or the Long Island Field Office. Oftentimes, your young client will actually receive her Employment Authorization Document while awaiting her adjustment of status interview. It is at this interview when USCIS will adjudicate the I-485 form previously submitted. USCIS will send your client a notification in the mail with the date and time of his or her interview. You will also receive this notice as the attorney of record.

Prepare your young client for the interview by going over all the questions in the Form I-485 and making sure that your young client understands the complicated language used in this form. You will serve an important role as both legal counsel and support system. Remember to bring your Form G-28 Notice of Entry of Appearance as Attorney, and a valid form of photo identification. If your young client does not speak English, an interpreter may need to accompany you. Contact your Safe Passage Mentor Attorney for guidance as practices for interpreters differ at various local offices. Advise your young client to have a good night's sleep beforehand, to arrive on time, and to dress nicely. You and your young client should bring originals or certified copies of all documents previously submitted in your young client's immigration case, including birth certificates and Family Court orders. In addition, your young client should bring her passport (if she has obtained one).

After the interview, USCIS will mail a notice of approval, denial, or request additional evidence in the matter. If your young client's application for adjustment of status is approved, she will receive a "green card," or Permanent Resident Card, and notice of approval of her adjustment of status within 90 days. Alternatively, at the adjustment of status interview, the immigration officer may also choose to place a I-551 stamp inside your young client's passport or print out a letter with similar information to demonstrate evidence of lawful permanent residence.

If USCIS denies your young client's application, they will attach specific notice as to their decision letter as to why it was denied. USCIS will also provide Form I-290B to be completed to request they reopen or reconsider the decision. There are specific deadlines involved; please contact your Safe Passage Project Mentor Attorney as soon as you receive the denial notice.

Adjustment Interview FAQs

Q: How should I prepare my young client for the adjustment of status interview?

A: It is important to schedule a "mock" interview with your young client to help her better understand the process and lessen her nerves. Go through all the questions on the Form I-485 with her. Make sure she understand the complicated language used in the questions. Have your young client practice telling you her basic biographical information, how she entered the United States, whether she is in school, is working, and ensure that she is able to explain any arrests, etc.

Q: How will I know when my young client's Adjustment of Status Application is approved?

A: If USCIS does not issue an approval at the end of the interview, you can use USCIS's online Case Status Online system, "My Case Status," to check the status of your client's case. We recommend you create a free account with the Case Status Online as a representative and set up an email or text message alert for status updates on your young client's case. In the alternative, telephone the National Customer Service Center at 1-800-375-5283. Both options will require you to provide your client's I-797C receipt number and A number and to have a Form G-28, Notice of Entry of Appearance as an Attorney, on file.

Appendix A – INA “Special Immigrant” statute current through November 2014

INA § 101(a)(27) The term “special immigrant” means—

(J) an immigrant who is present in the United States—

(i) who 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;

(ii) 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; and

(ii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

Please check 8 C.F.R. § 1101(a)(27)(J) for regulations defining special immigrant. As of November of 2014 the published regulations are out of date because they do not reflect the 2008 statutory changes. Proposed regulations are expected. Still it is wise to read over the regulations and to ask questions if you have questions about the agency’s interpretation of the statutory provisions.

Appendix B – Foreign Birth Certificates and Translations of Birth Certificates

Obtaining Foreign Birth Certificates: Although the easiest way to obtain a foreign birth certificate is via the helpful assistance of family or friends in the child’s home country, this is not always possible.

To obtain a foreign birth certificate on behalf of your client, you should first research the country’s system for record keeping. One of the main sources of for details on obtaining foreign birth certificates is the Foreign Affairs Manual: <http://www.state.gov/m/a/dir/regs/fam/>

Please note that Safe Passage volunteer students can aid pro-bono attorneys in requesting these documents. To request a volunteer’s assistance, please send a request to: help@safepassageproject.org

Translations of Birth Certificates: Note that the New York Civil Practice Law and Rules (CPLR) do not require translations to be made by individuals who have a special certification in translation. CPLR 2101(b) only requires that an affidavit in a foreign language be accompanied by an English translation of the document with an affidavit from the translator stating (1) her qualifications and (2) that the translation is accurate.

Safe Passage Sample Affidavit of Translation:

I, _____, being duly sworn, depose and say that I am fluent in both the English and Spanish languages. I swear that I translated the attached document from Spanish into English and hereby certify that it is a true and complete translation to the best of my knowledge, ability, and belief.

Signature of Translator: _____ Date: _____

Subscribed and sworn before me this ____ day of _____ of the year ____/

NOTARY PUBLIC

Appendix C – New York Family Court Forms: Guardianship

These forms are from the NY Family Court. For the most recent information and forms please visit the NY Courts' website directly: <http://www.nycourts.gov/courts/nyc/family/index.shtml>. Always check the website for the most recent version of forms prior to filling any documentation with the Court.

Form 6-1, Petition for Appointment of Guardian of a Person:

<http://www.nycourts.gov/forms/familycourt/pdfs/6-1.pdf>

Form 6-1(a), Petition by Person Over 14 for Appointment of Guardian of a Person:

<https://www.nycourts.gov/forms/familycourt/pdfs/6-1-a.pdf>

Form 6-2: Oath and Designation for Service of Process:

<http://www.nycourts.gov/forms/familycourt/pdfs/6-2.pdf>

Form 6-3: Consent of Person Over 18 and Preference of Person Over 14 Regarding Appointment of Guardian:

<http://www.nycourts.gov/forms/familycourt/pdfs/6-3.pdf>

Form 6-4: Waiver of Process, Renunciation or Consent to Letters of Guardianship:

<http://nycourts.gov/forms/familycourt/pdfs/6-4.pdf>

Form OCFS-3909:

<http://cqc.ny.gov/uploads/guardianship/ocfs3909.pdf>

For all remaining forms, including the **GF-29, Notice of Appearance**, and **Form GF-42 Special Findings Order**, see: <http://www.nycourts.gov/forms/familycourt/general.shtml>

To keep current with updated versions of the forms cited above visit:

<http://www.nycourts.gov/forms/familycourt/guardianship.shtml>

For sample guardianship petitions and Special Findings filings specific to guardianship, please contact your Safe Passage Mentor Attorney. We have samples that can assist our cooperating attorneys. We do not make these samples available to the public.

Appendix D – New York Family Court Forms: Custody

General Form 17, Petition for Custody: <http://www.nycourts.gov/forms/familycourt/pdfs/gf-17.pdf>

For all remaining forms, including the **GF-29, Notice of Appearance**, and **Form GF-42 Special Findings Order**, see: <http://www.nycourts.gov/forms/familycourt/general.shtml>

To keep current with updated versions of the forms cited above visit:
<http://www.nycourts.gov/forms/familycourt/guardianship.shtml>

For sample custody petitions and Special Findings filings specific to custody, please contact your Safe Passage Mentor Attorney.

Appendix E – Service On Respondents

The most common form of service is direct in-person service, many times accomplished by a family member or acquaintance of the child- who is age 18 or older and not a party- physically taking the documents and delivering them directly to the parents in the home country. Another common form of service is via international carriers such as DHL or Federal Express. Additionally, judges are becoming more comfortable with facsimile and email as forms of service. Please contact your Safe Passage Mentor Attorney to discuss the best method of service in your case, and to obtain sample service and consent documents in English, Spanish or French (other languages upon request).

- N.B. In some parts of El Salvador, Fed Ex will not deliver documents because they have found it too dangerous.

If a country is a state party to the Hague Convention on International Service, then service must comply with the Convention. The Hague Convention is incorporated in Federal Rule of Civil Procedure 4(f). The Convention provides for three methods of service: 1) by a Central Authority of the individual country; 2) by International Registered Mail; or 3) through direct service through an agent of the receiving country. It is important to research the individual country where service will occur to determine if that country has “reserved” any part of the Convention. If it has “reserved” a particular form of service, then that form of service would not be acceptable.

- To determine if a country is a party to the Hague Convention on International Service, please visit http://www.hcch.net/index_en.php?act=conventions.text&cid=17
- N.B. Guatemala, El Salvador, Honduras, and Ecuador are NOT parties to this Convention. Mexico, however, is a state party to the Convention.

However, there is confusion amongst Family Court judges as to when the Hague Convention applies. Please contact your Safe Passage Mentor Attorney for guidance.

Service through the Central Authority of the Individual Country

To affect this type of service the attorney must complete form USM-94 and attach two copies of the document one wishes to serve in the language of the country. The attorney may choose to provide “formal” service – which is sending the documents to the Central Authority, usually the Ministry of Justice, who will then send those documents to the individual. The attorney may also choose to provide “informal service” whereby the documents are sent directly to the party. This informal service must be consented to as per Rule 4(d) of FRCP.

Service by Internationally Registered Mail

This service may be affected by simply sending the documents in the registered mail. This method of service, however, is somewhat contended and requires research on whether the individual country “reserved.” If, in fact they did reserve service should not be affected in this manner.

Service through a State Agent

An attorney may serve an individual through an agent of the foreign state. The individuals must be “judicial officers, officers, officials or other component persons of the State of Destination.” See <http://www.hagueservice.net/forms.html>

Affidavit of Service

Finally, please remember that **you must file an Affidavit of Service** following successful service upon the respondents.

Appendix F – Available Samples

Please contact Safe Passage for any of the below samples:

Family Court

- Guardianship Petition
- Custody Petition
- Notice of Motion
- Special Findings Motion
- Sample Attorney Affirmation
- Memorandum of Law
- Affidavit of the Child
- Special Findings Order
- Cover Letter to Judge

Immigration Court (EOIR)

- Motion to Continue Removal Proceedings
- Motion to Terminate Removal Proceedings
- Motion to Administratively Close Removal Proceedings
- Motion to Re-calendar and Terminate Removal Proceedings

N.B. We do not post these online because Safe Passage Mentor Attorneys work closely with our pro bono attorneys to discuss the appropriate motions and pleadings for each case.

Appendix G – Immigration Forms

All forms are available online. **Always ensure you are using the most up-to-date version of the form. Contact your Safe Passage Mentor Attorney for guidance.**

Fee Schedule: <http://www.uscis.gov/fees>

Form G-28, Notice of Entry of Appearance as an Attorney: <http://www.uscis.gov/g-28>

Form I-360, Petition for Special Immigrant Juvenile Status: <http://www.uscis.gov/i-360>

Form I-485, Application for Adjustment of Status: <http://www.uscis.gov/i-485>

Form I-765, Application for Employment Authorization: <http://www.uscis.gov/i-765>

Form G-325A, Biographic Information: <http://www.uscis.gov/g-325a>

Form I-601, Application for Waiver of Grounds of Inadmissibility:
<http://www.uscis.gov/i-601>

Appendix H – Fee Waivers

United States Citizenship and Immigration Services will waive fees for certain applications under certain circumstances. The individual must demonstrate that he or she is unable to pay the fee and USCIS will take all factors into consideration. Remember Form I-360, Petition for Special Immigrant Juvenile Status, does not have a filing fee for young people filing for SIJS. There is a fee waiver available for Forms I-485, I-765, and I-601 for the Special Immigrant Juvenile since he or she does not need to demonstrate that he will become a public charge for admission or adjustment of status. There are currently two ways to file for a fee waiver. An individual may file Form I-912, Request for Fee Waiver, or submit a statement detailing why he or she is requesting the waiver.

Please contact your Safe Passage Mentor Attorney for a sample fee waiver affidavit to support your request.

Form I-912, Request for Fee Wavier: <http://www.uscis.gov/i-912>

Appendix I – Inadmissibility Issues

There are grounds of inadmissibility that SIJS statutorily waives and there are grounds of inadmissibility that are not waived. For grounds that SIJS *does not* waive under the statute, you must file Form I-601, Application for Waiver of Ground of Inadmissibility.

The following are grounds of inadmissibility automatically waived for SIJS applicants. You do not need a waiver if your client has done any of the following:

- Public Charge** (INA § 212(a)(4))
- Worked without Authorization** (INA § 212(a)(5)(A))
- Entered Illegally or has incurred Immigration Violations** (INA § 212(a)(6)(A))
- Material Misrepresentation of Fact** (INA § 212(a)(6)(C))
- Stowaway or Smuggler** (INA § 212(a)(6)(D))
- Entered without Proper Documentation** (INA § 212(a)(7)(A))
- Is Unlawfully Present** (INA § 212(a)(9)(B))

Finally, waivers *are* available for aliens previously removed (INA § 212(a)(9)(A)) and for previous immigration violations (INA § 212(a)(9)(C)) but these are advanced topics and require some research; please consult with Safe Passage Project or refer to *The Waivers Book: Advanced Issues in Immigration Law Practice*, published by AILA in 2011; editor-in-chief, Irene Scharf.

Example: A child from Honduras arrives at the U.S. border and is stopped by a U.S. Immigration Officer. He lies, says he is Mexican (misrepresentation-(INA § 212(a)(6)(C))), and is sent back into Mexico (expedited removal-(INA § 212(a)(9)(A))). He then re-enters the US-(INA § 212(a)(9)(C))). The I-601 waiver may waive all three (3) grounds of inadmissibility. Under certain circumstances form I-212 may (or should) be used instead to apply for the exceptions listed in INA § 212(a)(9)(A)(iii) and INA § 212(a)(9)(C)(ii).

Waivers of Inadmissibility May be Possible

**** Please be sure to discuss with your Safe Passage Mentor Attorney****

- Health related grounds** (INA § 212(a)(1))
 - 212(g) waiver

- Crimes** (INA § 212(a)(2))
 - Be particularly aware of controlled substances and firearms offenses. (INA §212(a)(2))
 - The Attorney General can waive criminal offenses for humanitarian purposes.
 - There is also the waiver if the conviction is for one possession of marijuana less than 30 grams.

- Security related grounds** (INA § 212(a)(3))

There is no waiver for this except for the 212(d)(3) waiver. To qualify for this waiver the juvenile must have entered with a non-immigrant visa. This would be an unusual situation for these children. Please contact us for more guidance. The Board of Immigration Appeals (*Matter of Hranka*) has said that DHS will grant this waiver by weighing three factors:

1. The risk of harm to society if the applicant is admitted;
2. The seriousness of the applicant's prior immigration law or criminal law violations AND
3. The reasons why the individual wants to enter the U.S.

- No waiver for draft evaders.** (INA § 212(a)(8)(B))

The only grounds of inadmissibility that are not waivable for SIJS applicants are those listed in INA § 212(a)(2)(A), (B) and (C) (except for a single instance of simple possession of 30 grams or less of marijuana) and INA § 212(a)(3)(A), (B), (C) and (E).

Appendix J – Useful Contact Information

Safe Passage Project

Phone Number: 212-324-6558

Address: 185 West Broadway, New York, NY 10013

Email: help@safepassageproject.org

Website: www.safepassageproject.org

Ongoing Support & Law Student Assistance: The Safe Passage Project provides ongoing support throughout your entire pro bono representation of a young person. In addition to providing manuals, samples, and mentorship, we have a number of law students and interpreters ready to assist you with client intakes, translations, and research. To be paired with a law student, please email Safe Passage at help@safepassageproject.org

Interpreting & Translation Support: If you would like a volunteer interpreter to assist you in communicating with your young client, please email Safe Passage at: help@safepassageproject.org. You do not need to hire a professional translation service for documents. Please let us know how we can support you with language services.

Meeting Space: If you would like to reserve a room at New York Law School for client meetings, please email Safe Passage at: help@safepassageproject.org

Executive Office for Immigration Review

The Immigration Court at 26 Federal Plaza

The Executive Office for Immigration Review in New York

Phone Number: 917-454-1040

Address: 26 Federal Plaza, Room 1237, New York, NY 10278.

To check an A # and learn the status of the next hearing you can use an automated number system. Dial 1-800- 898-7180.

New York City Family Courts

Bronx

Phone Number: 718-618-2098

Address: 900 Sheridan Ave., Bronx , NY 10451.

New York (Manhattan)

Phone Number: 646-386-5200

Address: 60 Lafayette St., New York, NY 10013.

Kings (Brooklyn)

Phone Number: 347-401-9610

Address: 330 Jay Street, Brooklyn, NY 11201.

Queens

Phone Number: 718-298-0197

Address: 151-20 Jamaica Ave., Jamaica, NY 11432.

Richmond (Staten Island)

Phone Number: 718-675-8800

Address: 100 Richmond Terrace, Staten Island, NY 10301.

Long Island Family Courts:

Nassau

Phone Number: 516-493-4000

Address: 1200 Old Country Road, Westbury, NY 11590

Suffolk

Central Islip

Phone Number: 61-853-4375

Address: 400 Carleton Ave., Central Islip, NY 11722

Riverhead

Phone Number: 631-852-3906

Address: 889 E. Main St., #308, Riverhead, NY 11901

Other New York County Family Courts:

Westchester

White Plains

Phone Number: 914-824-5500

Address: 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601

Yonkers

Phone Number: 914-831-6555

Address: 53 South Broadway, 3rd Floor, Yonkers, NY 10701

New Rochelle

Phone Number: 914-831-6590

Address: 420 North Avenue, New Rochelle, NY 10801

Rockland

Phone Number: 845-483-8210

Address: 1 South Main Street, Suite 300, New City, NY 10956

Putnam

Phone Number: 845-208-7800

Address: 20 County Center, Carmel, NY 10512

Orange

Phone Number: 845-476-3520

Address: 285 Main Street, Goshen, NY 10924

Dutchess

Phone Number: 845-431-1850

Address: 50 Market Street, Poughkeepsie, NY 12601

For updated information please see:

<http://www.nycourts.gov/courts/nyc/family/infobycounty.shtml>

USCIS Information

Phone Number: 1-800-375-5283 for the National Customer Service Center

USCIS Civil Surgeon Locator

Young people who are applying for adjustment of status through SIJS are required to have a medical examination by a civil surgeon. A civil surgeon is a doctor who has been designated by the United States Citizenship and Immigration Services must conduct this type of medical examination. To locate a civil surgeon, please visit:

https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=CIV

USCIS Case Status Check

https://egov.uscis.gov/cris/Dashboard.do;jsessionid=bacra_3mIBPgG6p3163Iu

Address Changes: Non-citizens must file a formal change their address form with immigration (EOIR, USCIS, ICE) within 10 days of moving.

USCIS Online Change of Address: <https://egov.uscis.gov/coa/displayCOAForm.do>

EOIR Change of Address: <http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm>