

Special Immigrant Juvenile Status (SIJS)

What is SIJS? [1:10]

Special Immigrant Juvenile Status (SIJS) is an immigration classification available to certain undocumented immigrants under the age of 21 who have been abused, neglected, or abandoned by one or both parents. The following are points to keep in mind:

- SIJS is a form of immigration relief for unaccompanied minors.
- It is an opportunity for minors to become Legal Permanent residents (LPRs) and eventually obtain U.S. Citizenship.
- Eligible minors may receive a Social Security Number, work authorization, financial aid for college, and may have certain grounds of inadmissibility excused.
- SIJS does not provide the child's family with any derivative benefits. This means that once a child becomes a legal permanent resident, he cannot petition for immigration benefits for parents, siblings, or other family members.

Criteria & Eligibility Requirements [3:40]

There are very specific requirements for a minor to qualify for SIJS, and the criteria are codified in INA § 101(a)(27)(J):

1. The applicant must be under 21 years old when the application is filed;
2. He/she must be unmarried;
3. He/she must be declared dependent in a juvenile court. This means that the Family Court must take jurisdiction over a petition addressing the needs of the applicant;
4. Reunification with one or both of the child's parents must no longer be a viable option; AND
5. It is not in the best interests of the minor to return to his/her country of nationality or last habitual residence.

Two-Step Process to SIJS [8:50]

1. Family Court proceeding in the county where he/she resides, where the applicant requests a Special Findings Order [9:05/17:21]
2. Adjudication of Immigration Application [32:54]
 - See <http://www.nyls.edu/immigration> for application websites and forms

Representing the Child [15:45]

- As an attorney you do not represent the petitioner/proposed guardian in the guardianship proceeding, you represent the child. The guardian may appear pro se.
- However, you should talk to the petitioner about the responsibilities of the guardian the process and discuss what to expect when filing the petition and appearing in Family Court. *Nonetheless, the proposed guardian is not your client.*
- Note that custody-based SIJS are facing resistance in some counties.

Family Court Jurisdiction over a Minor [17:21]

- Although guardianship is the most common way for the Family Court to obtain jurisdiction over a minor, it is also possible to bring a motion requesting the order through a custody, neglect, adoption, permanency hearing for children in foster care, or PINS (Person in Need of Supervision) proceeding.
- However it is done, receipt of this order is a pre-requisite to applying for SIJS status.

Neglect, Abuse, and Abandonment Standards [19:11]

- The findings of neglect, abuse, and abandonment are made in a Family Court proceeding under State law.
- Definitions of abuse/neglect/abandonment can be found in FCA §1012 as well as § 384-b of Social Services Law (SSL).

Completing the SIJS application [32:54]

There are two ways to file SIJS for the immigration component:

1. If your client is in removal proceedings you should only file the I-360 (the Petition for Special Immigrant Status).
2. If your client is not in removal proceedings one should file the I-360 and I-485 (the Application to Adjust Status) simultaneously.
 - It is possible to submit the I-765 (application for employment authorization, with the I-485.
 - However, there is a fee to file the I-485. Though you may request a waiver of the USCIS filing fees by using Form I-912.
 - Usually, it is a 4-8 month process to complete the Adjustment of Status final adjudication, after which a child will secure permanent resident status (at least in the New York district).

Negative Aspects of SIJS [45:50]

- The Immigration Statute says that a child who secures permanent resident status through SIJS is no longer a child for the purposes of later sponsoring their parents or their siblings for legal status in the United States — even if parent was not abusive or neglectful.
- Until they become citizens, youth are still vulnerable to removal. Therefore, encouraging them to avoid criminal convictions is necessary.
- Youth cannot get married while an SIJS case is pending.
- Youth in foster care should not “sign out” after they turn 18.

Q&A — Is there a limit to a child’s involvement in the court system? [51:37]

- It is possible that a child involved in a criminal (or juvenile dependency) matter could still be involved in a family court proceeding in order to obtain special immigrant findings in order to apply for SIJS.

Q&A — In a guardianship proceeding, does the guardian need to be a relative and must they have legal status themselves? [53:50]

- A guardian is anybody who is willing to take on the responsibility of being a guardian. He or she must be an adult (over the age of 18).
- Most family courts require a background check to be done on the guardian, and in some situations, the court will order the ACS (or equivalent county agency) to do a home study.
- In New York and in most states, guardians do not have to have legal immigrant status.

- As a pro bono lawyer seeking a guardianship petition, you may choose to serve as guardian of the child, but must relinquish legal representation of the child.
- It is possible for someone who does not live with the child to petition for guardianship, however the most appropriate guardian is someone who provides the child with emotional and financial support and helps plan for their future.

Q&A — *Can New York Law School’s Safe Passage Project help you if the child is not a resident of New York?* [1:1:40]

- While Safe Passage wants to help everyone secure representation, if you’re beyond our tri-state area, what we are likely to do is refer you to another non-profit organization or pro-bono network that is located and more experienced in your jurisdiction.

Q&A — *How do you compare eligibility for SIJS as opposed to President Obama’s announcement that some immigrant youth qualify for Deferred Action?* [1:02:54]

- As of July 17th 2012, there are no regulations or detailed information about how Deferred Action will work.
- SIJS is much better than Deferred Action. It will allow your client to obtain permanent resident status and be on the path to full citizenship should they choose to naturalize.
- Deferred Action is only a holding place for two years under the youth program. It means that the government knows about you but has decided not to actively pursue your removal from the United States.
 - In the case of the immigrant youth, the government has said that it will also allow these young people to qualify for work authorization (complete with a federal ID card that also allows for drivers licenses).
 - However, there is no absolute guarantee that the program won’t terminate and the youth will not find themselves in removal proceedings. Moreover, it does not include a path to full legal status.

Q&A — *Does the work from the Safe Passage Project count towards the recommended pro bono hours by the New York State Bar Association?* [1:08:14]

- As a recently graduated law student who wishes to volunteer pro bono but has not yet been admitted to the bar, your representation of the child must be a partnership under the supervision of an admitted attorney.

The Safe Passage Immigration Project

The Project helps existing social service providers and non-profit organizations screen juvenile populations and identify immigration relief available to these children. The Project also works to provide legal representation for children such as:

- Derivative U.S. citizenship
- Naturalization applications
- Asylum
- Family-based immigration cases
- Special Immigrant Juvenile Status, both affirmative and defensive
- Provides training, resources, information for pro bono attorneys who represent Safe Passage clients
- Provides law students with the opportunity to work with pro bono attorneys on a case.