RACHEL GONZALEZ SETTLAGE
ELIZABETH ANNE CAMPBELL
VERONICA TOBAR THRONSON

IMMIGRATION RELIEF

Legal Assistance for Noncitizen Crime Victims

AMERICAN BAR ASSOCIATION
Criminal Justice
Section

Chapter 5

Special Immigrant Juvenile Status

I. Introduction

In 1990, through an amendment to the Immigration and Nationality Act (INA), Congress created the classification of Special Immigrant Juvenile Status (SIJS) to provide immigration relief for certain undocumented children, in particular those who were abandoned, abused, or neglected in foster care, guardianship, or adoption situations.[1] Through subsequent amendments and case law, this form of relief has become available more broadly for undocumented children in a variety of settings in which state courts are involved in making determinations of custody, such as juvenile delinquency proceedings and the placement of unaccompanied minors.

The process of achieving SIJS involves a unique blend of responsibilities among state and federal systems, which requires working in both child welfare and immigration settings. This creates challenges for advocates and adjudicators, who are often unfamiliar with one of these legal areas and with this form of relief. Cross-jurisdictional complexities aside, SIJS also is an anomaly, as it is the only form of immigration relief that expressly turns on the best interests of the child.

1. *See* Immigration and Nationality Act (INA) § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012).

II. Jurisdiction: State Courts and Federal Agencies

The process of qualifying for SIJS generally begins in state court. In order for a child[2] present in the United States to establish eligibility for SIJS, a state juvenile court must first make certain factual findings. These preliminary state juvenile court findings are necessary for the filing of an SIJS application with U.S. Citizenship and Immigration Services (USCIS); however, the ultimate decision of whether to grant immigration relief in the form of SIJS rests with USCIS, not with a state court.[3]

A. The Role of the State Juvenile Court

For SIJS purposes, a "juvenile court" is defined as any "court located in the United States having jurisdiction under State law to make judicial determinations about custody and care of juveniles."[4] The actual name of the court used under the state system is unimportant, as it is the functional role of the court in determining the care and custody of children that determines whether a state court is a "juvenile court" for SIJS purposes. Any court, however denominated, that makes guardianship decisions or decisions about the custody and care of a child is a "juvenile court" under immigration law.[5] Thus, in many jurisdictions a probate or family court will qualify as a "juvenile court" for federal immigration purposes. For state courts that have not previously encountered SIJS petitions, often a critical first step in an SIJS case is educating the court about the fact that it is a juvenile court

2. An unmarried person may qualify as a child for immigration purposes until age 21 under most circumstances. *See id.* § 1101(b)(1).
3. *See In re* D.A.M., 2012 Minn. App. LEXIS 1158 (Minn. Ct. App. Dec. 10, 2012) (stating that "these findings by the state court do not bestow any immigration status on SIJ applicants").
4. 8 C.F.R. § 204.11(a) (2013). The SIJS regulation notes as an eligibility criterion that the applicant must be "under twenty-one years of age." 8 C.F.R. § 204.11(c) (2013). Note that even though eligibility for immigration purposes extends to age 21, state laws rarely permit state court systems to take initial jurisdiction over matters of care and custody for individuals over age 18.
5. Angie Junck, *Special Immigrant Juvenile Status: Relief for Neglected, Abused, and Abandoned Undocumented Children*, 63 JUV. & FAM. CT. 48, 54 (2012) (noting that "[w]hether a court is a 'juvenile court' under the federal definition is not determined by the label that the state gives to the court, but rather by the court's function").

for SIJS purposes and that it has a central fact-finding role in the federal statutory scheme.

In fact, without state court involvement it is not possible to even apply for SIJS given that the initial factual findings concerning the child are findings that "may only be made by the juvenile court."[6] The statutory delegation of this fact-finding role to the state courts seeks to draw upon the special expertise of state courts in matters of child welfare and recognizes the corresponding lack of such expertise in federal immigration systems. Specifically, when the federal government implemented the Special Immigrant Juvenile statutory scheme, the former Immigration and Nationality Service noted that it "does not intend to make determinations in the course of deportation proceedings regarding the 'best interest' of a child for the purpose of establishing eligibility for special immigrant juvenile classification. . . . It would be both impractical and inappropriate for the Service to routinely readjudicate judicial or social service agency administrative determinations as to the juvenile's best interest."[7] State court proceedings, therefore, are intentionally distinct and separate from federal immigration processes and are the proper venue for the required factual findings.[8] Indeed, so distinct are these proceedings that federal immigration authorities have no role at all in the state juvenile court proceedings.

It also is worth noting that most states do not specifically mention the state court's role in adjudication requests for SIJS findings in statutes or

6. Special Immigrant Status; Certain Aliens Declared Dependent on Juvenile Court, Final Rule, Department of Justice, Immigration and Naturalization Service, Supplementary Information, 58 Fed. Reg. 42,847 (Aug. 12, 1993).

7. Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status, 58 Fed. Reg. 42,843-01, 42,847 (Aug. 12, 1993). *See also* Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children under the Special Immigrant Juvenile Statute*, 27 HASTINGS CONST. L.Q. 597, 611–13 (2000).

8. *See In re* Juvenile 2002-098, 813 A.2d 1197 (2002) (upholding trial court's exercise of jurisdiction to issue Special Immigrant Juvenile findings in case where abuse occurred in Romania); SH v. Dep't of Children and Families, 880 So. 2d 1279, 1281 n.2 (Fla. Dist. Ct. App. 2004) (noting that the court did have subject matter jurisdiction over 16-year-old child's request for special immigrant juvenile findings based on abandonment in Guatemala).

regulations. Prominent exceptions include California[9] and Florida.[10] Still, every state court that has considered the matter has determined that making SIJS findings is an appropriate and necessary exercise of the juvenile court's jurisdiction.[11] This is true across a range of hearing types, from abuse and neglect matters to guardianships to juvenile delinquency proceedings.[12]

B. The Role of USCIS

The state juvenile court, however, does not make an immigration decision. This is because the federal role comes later in the process, and the juvenile court factual findings are not a final determination whether the child is eligible for SIJS or may stay in the United States.[13] The state juvenile court findings are preliminary factual determinations, limited to determinations regarding the care and custody of children. Once the juvenile court issues SIJS findings, a child who meets other requirements may apply to USCIS for SIJS and lawful permanent resident (LPR) status. After an SIJS petition is filed, USCIS conducts a full immigration analysis prior to making any determination regarding the child's legal immigration status.

9. Form JV-224.
10. FLA. STAT. § 39.5075 (2009).
11. *See In re* D.A.M., 2012 Minn. App. LEXIS 1158 (Minn. Ct. App. Dec. 10, 2012); *In re* J.J.X.C., 734 S.E.2d 120, 124 (Ga. Ct. App. 2012) (finding "the court had a duty to consider the SIJ factors and make findings"); *In re* Y.M., 144 Cal. Rptr. 3d 54, 73 (Cal. Ct. App. 2012) (child who is "potentially eligible for SIJ status, . . . was entitled to a hearing where the juvenile court would determine whether findings required for SIJ status existed"); *In re* Mohamed B., 921 N.Y.S.2d 145, 147 (N.Y. App. Div. 2011) (finding that in guardianship proceeding lower court "improperly denied Mohamed's motion for the issuance of an order declaring that he is dependent on the Family Court"); Matter of Ashley W., 85 A.D.3d 807, 809 (N.Y.A.D. 2d Dept., June 7, 2011); Matter of Mohamed B., 83 A.D.3d 829, 831–32 (N.Y.A.D. 2d Dept., Apr. 12, 2011); Matter of Sing W.C., 83 A.D.3d 84, 86 (N.Y.A.D. 2d Dept., Mar. 22, 2011); Matter of Alamgir A., 81 A.D.3d 937, 939–40 (N.Y.A.D. 2d Dept., Feb. 22, 2011); Matter of Jisun L. v. Young Sun P., 75 A.D.3d 510, 511–12 (N.Y.A.D. 2d Dept., July 6, 2010); Matter of Emma M., 74 A.D.3d 968, 969–70 (N.Y.A.D. 2d Dept., June 8, 2010); Matter of Trudy-Ann W. v. Joan W., 73 A.D.3d 793, 795–96 (N.Y.A.D. 2d Dept., May 4, 2010).
12. *See, e.g.*, Matter of M.C., N.Y. L.J., Mar. 4, 2010, at 25, col.3 (N.Y. Fam. Ct., Suffolk County 2010).
13. *Id.* (noting that "the ultimate determination as to an immigrant juvenile's status rests squarely within the purview of the federal government").

III. Eligibility Requirements

To establish eligibility for SIJS, a state juvenile court must first make the following factual findings:

> (1) The child has been declared dependent on a juvenile court;
> (2) The child's reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and
> (3) The child's best interest would not be served by returning to his country of origin.[14]

Once the juvenile court issues SIJS findings, the child must meet other requirements before USCIS will grant SIJS and LPR status.[15]

A. Dependent on a Juvenile Court

To establish dependency on a juvenile court requires only that the child "[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court."[16] Merely "[t]he acceptance of jurisdiction over the custody of a child by a juvenile court . . . makes the child dependent upon the juvenile court, whether the child is placed by the court in foster care or, as here, in a guardianship situation."[17] These proceedings require neither official state intervention, as in child welfare or child protection proceedings, nor a decision to place the child in any particular form of care.[18] In fact, "the SIJ statute contemplates entry of the

14. INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2012).
15. *See infra* Chapter 5, Section III.D, USCIS Requirements.
16. 8 C.F.R. § 204.11(c)(6) (2013).
17. *In re* Menjivar, 29 Immig. Rptr. B2-37 (1994).
18. *In re* D.A.M., 2012 Minn. App. LEXIS 1158 (Minn. Ct. App. Dec. 10, 2012) (noting that "[t]he SIJ statute does not require child-protection proceedings as a prerequisite for determining whether reunification is viable"); Junck, *supra* note 5, at 57 ("Importantly, the abuse, neglect, abandonment, or similar condition language does not require that formal charges of abuse, neglect, or abandonment be levied against parents.").

requisite findings whenever juvenile courts have jurisdiction under state law to determine the care and custody of minors."[19]

While "children placed in formal foster care certainly are dependent on a juvenile court, so are children for whom a court has appointed a guardian."[20] Specifically, "[t]he court's placement of the beneficiary in a guardianship situation does not preclude a finding that the beneficiary is dependent upon the juvenile court."[21] In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)[22] amended portions of the INA pertaining to Special Immigrant Juveniles and affirmed SIJS eligibility of children placed in guardianships.[23] In particular, the law now provides

19. *In re* D.A.M., 2012 Minn. App. LEXIS 1158; *In re* J.J.X.C., 734 S.E.2d 120, 124 (Ga. Ct. App. 2012) (finding "the court had a duty to consider the SIJ factors and make findings"); *In re* Y.M., 207 Cal. App. 4th 892, 916, 144 Cal. Rptr. 3d 54, 73 (Cal. Ct. App. 2012) (child who is "potentially eligible for SIJ status, . . . was entitled to a hearing where the juvenile court would determine whether findings required for SIJ status existed"); *In re* Mohamed B., 921 N.Y.S.2d 145, 147 (N.Y. App. Div. 2011) (finding that in guardianship proceeding lower court "improperly denied Mohamed's motion for the issuance of an order declaring that he is dependent on the Family Court").

20. Katherine Brady & David B. Thronson, *Immigration Issues—Representing Children Who Are Not United States Citizens, in* CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 417 (Donald N. Duquette & Ann M. Maralambie eds., 2d ed. 2010); *In re* Menjivar, 29 Immig. Rptr. B2-37 (1994); *In re* Antowa McD., 856 N.Y.S.2d 576, 577 (N.Y. App. Div. 2008) (reversing guardianship court that "refused to make the factual findings that would enable appellant to apply for Special Immigrant Juvenile Status"); *In re J.J.X.C.*, 734 S.E.2d at 123 (finding juvenile court dependency based on guardianship action where "the child is within the borders of Georgia and without proper and adequate care and supervision from a biological parent or legal guardian"); Trudy-Ann W. v. Joan W., 901 N.Y.S.2d 296, 299 (N.Y. App. Div. 2011) ("Since we have appointed Alcie S. as Trudy-Ann's guardian, Trudy-Ann is dependent on a juvenile court within the meaning of 8 U.S.C. § 1101(a)(27)(J)(i).").

21. *In re* Menjivar, 29 Immig. Rptr. B2-37 (1994).

22. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5004, 5079–80 (2008).

23. Memorandum from Donald Neufeld, Action Associate Director of USCIS, Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions (Mar. 24, 2009) (noting SIJS eligibility where "a petition [is] filed by an alien on whose behalf a juvenile court appointed a guardian"), http://www.uscrirefugees.org/2010Website/5_Resources/5_4_For_Lawyers/5_4_2_Special_Immigrant_Juvenile_Status/5_4_2_2_General_Information/Neufeld_Memorandum_on_SIJS_Provisions.pdf.

that a juvenile eligible for SIJS is a child "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.*"[24] Courts in different jurisdictions have recognized that "[a]ppointment of a guardian constitutes the necessary declaration of dependency on a juvenile court."[25]

Likewise, in delinquency proceedings, when a court adjudicates a child to be delinquent and makes decisions related to custody, that can serve to establish dependency on a juvenile court.[26] In delinquency proceedings, practitioners must be aware of the different grounds of inadmissibility, discussed below, that may make a child ineligible for immigration benefits.

The critical determination is whether the juvenile court has taken jurisdiction over a decision regarding the care and custody of a child. For example, where the only issue before the court was child support, a New York court denied a finding that the children were dependent on the juvenile court, reasoning that the children "have not been committed to the custody of any individual by any court."[27] Under New York law, the children were not parties to the child support action, and a "child support action does not address custody issues, rather it addresses a parent's failure to pay child support to the custodial parent."[28]

24. INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J)(i) (2012) (emphasis added).
25. *In re* Antowa McD., 50 A.D.3d 507, 856 N.Y.S.2d at 577 (1st Dept. 2008) (reversing guardianship court that "refused to make the factual findings that would enable appellant to apply for Special Immigrant Juvenile Status"); *see also In re* K.B., 872 N.Y.S.2d 691 (N.Y. Surr. Ct. 2008) (unreported disposition) (finding that "the court's appointment of A.D. as KB's guardian works to automatically create a declaration of dependency upon this juvenile court for the purposes of 8 C.F.R. 204.11(a)").
26. Brady & Thronson, *supra* note 20, at 418; *In re* Mario S., 954 N.Y.S.2d 843, 849 (N.Y. Fam. Ct., Queens County 2012) (noting that "at the time the [SIJ] motion was filed and granted, the juvenile was a dependent child under New York law as he was a juvenile delinquent placed in the legal custody of a state agency and was under the continuing jurisdiction of the Family Court"); *In re* D.A.M., 2012 Minn. App. LEXIS 1158 (Minn. Ct. App. Dec. 10, 2012) (finding juvenile court dependency in delinquency proceeding).
27. Matter of Hei Ting, 109 A.D.3d 100, 6 (N.Y. App. Div. July 17, 2013).
28. *Id.* at 7.

B. Reunification with Parent Not Viable

Eligibility for SIJS requires a state court finding that "reunification with [one] or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law."[29] A finding that reunification is not viable for SIJS purposes does not require formal termination of parental rights or a determination that reunification in the future will not be possible.[30] Family reunification is the initial and often ultimate goal in most child welfare proceedings. Even with the goal of reunification, that possibility in the future should not deter a finding that reunification at the present time is not viable for purposes of SIJS.[31]

Moreover, the nonviability of reunification does not require that formal proceedings be initiated against the parents. For example, a child for whom the court appoints a guardian can qualify without a separate proceeding against the parents based on abuse, neglect, or abandonment.[32] The requirement that reunification must not be viable "due to abuse, neglect, abandonment, or a similar basis found under State law" merely provides the opportunity to include the range of statutory language used in various jurisdictions to determine when a juvenile court can intervene to make decisions about the child.[33] The addition of the "similar basis under state law" language allows for SIJS eligibility despite the fact that some jurisdictions may use different terminology when making decisions about the care and custody determinations.[34]

29. INA § 101(a)(27)(J)(i), 8 U.S.C. § 1101(a)(27)(J)(i) (2012).
30. Brady & Thronson, *supra* note 20, at 418; *In re* D.A.M., 2012 Minn. App. LEXIS 1158 (rejecting the argument that it must apply "state-law definitions of 'reunification' pertinent to child protective proceedings").
31. Junck, *supra* note 5, at 56; *see also In re* D.A.M., 2012 Minn. App. LEXIS 1158 ("That the [government] intends to return appellant to the custody of his mother at the end of his current placement does not, standing alone, establish that reunification with the mother is viable. Planning for the return of appellant to his mother after his placement does not answer the question of whether appellant will be able to successfully live in her care.").
32. *See* Brady & Thronson, *supra* note 20, at 419.
33. Brady & Thronson, *supra* note 20, at 419; *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d), 122 Stat. 5044, 5079–80 (2008).
34. Junck, *supra* note 5, at 57.

In addition, the TVPRA modified the SIJS statute by inserting language regarding reunification with "[one] or both of the child's parents." Previously, the statute required a finding that the child is "eligible for long-term foster care," a confusing term that was defined by regulation to mean "that family reunification is no longer a viable option."[35] The shift in language from the regulatory term "family reunification" to the current statutory term "reunification with [one] or both parents" was accomplished without a trace of legislative history.[36] Courts have differed on its meaning, although a number have agreed that the "plain language of the statute provides SIJS eligibility based on the non-viability of reunification with one parent due to abuse, neglect, or abandonment, even while the child remains in the care of the other parent or while the court is actively trying to reunite the child with the other parent."[37]

Despite the adoption of this interpretation by a number of state courts and SIJS approvals by USCIS in such cases,[38] the Nebraska Supreme Court adopted a more limited reading, finding that "[a]lthough a literal reading of the statute would seem to permit a state court to ignore whether

35. 8 C.F.R. § 204.11(a) (2013).
36. Similarly, there is "no contemporaneous legislative history . . . which explains why SIJ status was originally created in 1990." Yu v. Brown, 92 F. Supp. 2d 1236, 1246 (D.N.M. 2000).
37. *Id.*; *see also In re* D.A.M., 2012 Minn. App. LEXIS 1158 (Minn. Ct. App. Dec. 10, 2012) (noting that the "federal statute confers SIJS eligibility when reunification with one parent is not viable. A finding of viability of reunification with appellant's mother therefore does not dispense with the need to determine viability of reunification with appellant's father."); *see also In re* Mario S., 954 N.Y.S.2d 843, 851 (N.Y. Fam. Ct., Queens County 2012) ("Although respondent was able to be returned to the custody of his mother upon his discharge from agency custody and the jurisdiction of the Family Court, he was both dependent upon the Family Court and abandoned by his biological father at the time of the motion. The fact that respondent was returned to the care of his mother should not be determinative of his application for SIJ findings."); *see also* Matter of Marcelina M.-G. v. Israel, 973 N.Y.S.2d 714 (Oct. 23, 2013), 2013 WL 5733616, at *6 ("We interpret the '1 or both' language to provide SIJS eligibility where reunification with just one parent is not viable as a result of abuse, neglect, abandonment, or a similar State law basis.").
38. Junck, *supra* note 5, at 54 (noting that "USCIS has approved such applications"). The proposed regulations implementing the statutory revisions of the TVPRA were silent on the issue of the one parent versus two parent question. *See* Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54,978 (Sept. 6, 2011) (proposed rule).

reunification with an absent parent is feasible, in practice, courts and USCIS officials normally consider whether the petitioner has shown that an absent parent abused, neglected, or abandoned the juvenile."[39] The Nebraska court finds, therefore, that "when ruling on a petitioner's motion for an eligibility order under § 1101(a)(27)(J), a court should generally consider whether reunification with either parent is feasible."[40]

C. The Child's Best Interests

Eligibility for SIJS also requires a state court finding that it is in the child's best interest not to be returned to his "previous country of nationality or country of last habitual residence."[41] A court is not required to "make a determination as to whether the minor child would be at risk of harm if returned to the country of origin; [this] Court needs to find that return would not be in the child's best interest."[42] Thus, this is a factual determination about the child's situation, not an immigration decision.

This best interest of the child analysis is one of the reasons that this portion of the decision is made at the juvenile court level rather than in immigration proceedings, as this is a type of analysis in which juvenile courts have extensive expertise.[43] Both the former Immigration and Naturalization Service (INS) and USCIS have emphasized over the years that state courts, not federal immigration agencies, are the institutions with expertise in issues of child welfare and that their findings related to these issues need not, indeed must not, be second-guessed or readjudicated by USCIS adjudicators.

In a best interest of the child analysis, the absence of family in the child's home country capable of providing an appropriate home environment for

39. *In re* Erick M., 284 Neb. 340, 349 (2012).
40. *Id.* at 351. In at least one instance the Nebraska court does not require inquiry into the viability of reunification with both parents, finding that "if the juvenile lives in the United States with only one parent and never knew the other parent, the reunification component is satisfied if reunification with the known parent is not feasible." *Id.* at 349.
41. INA § 101(a)(27)(J)(ii), 8 U.S.C. § 1101(a)(27)(J)(ii) (2012).
42. *In re* E.G., 24 Misc. 3d 1238(A) (N.Y. Fam. Ct., Nassau County 2009).
43. *See* Brady & Thronson, *supra* note 20, at 420.

the child provides sufficient justification to find that the child should not return.[44] Moreover, it is "entirely appropriate for the court to consider potential future opportunities for the child in the United States in comparison with the home country."[45]

D. USCIS Requirements

In addition to obtaining the state juvenile court order with the necessary findings, often referred to as the "predicate order," a child applying for SIJS also must be present in the United States and must be under 21 years of age and unmarried.[46]

E. Admissibility

A child who wishes to adjust his status to LPR must be admissible to the United States. For Special Immigrant Juveniles, certain grounds of inadmissibility do not apply and are automatically waived.[47] Specifically, inadmissibility based on grounds of public charge,[48] absence of labor certification,[49] presence without inspection,[50] misrepresentation,[51] stowaways,[52] failure to possess a valid visa,[53] and unlawful presence[54] are waived. Further, in order to qualify to adjust their status and avoid having to leave the country for consular processing, these children are deemed "to have been paroled into the United States"[55] even if they entered without inspection.

There are many other grounds of inadmissibility that may be waived for Special Immigrant Juveniles at the Department of Homeland Security's

44. Brady & Thronson, *supra* note 20.
45. Brady & Thronson, *supra* note 20.
46. 8 C.F.R. § 204.11(c) (2013).
47. *See* INA § 245(h), 8 U.S.C. § 1255(h) (2012).
48. *See* INA § 212(a)(4), 8 U.S.C. § 1182(a)(4) (2012).
49. *See id.* § 1182(a)(5)(A).
50. *See id.* § 1182(a)(6)(A).
51. *See id.* § 1182(a)(6)(C).
52. *See id.* § 1182(a)(6)(D).
53. *See id.* § 1182(a)(7)(A).
54. *See* INA § 212(a)(9)(B), 8 U.S.C. § 1182(a)(9)(B) (2012).
55. INA § 245(h)(1), 8 U.S.C. § 1255(h)(1) (2012).

discretion. These grounds include health-related grounds,[56] prostitution and commercialized vice,[57] involvement in serious criminal activity where the person has asserted immunity from prosecution,[58] foreign government officials who have committed particularly severe violations of religious freedom,[59] significant traffickers in persons,[60] money laundering,[61] membership in a totalitarian party,[62] association with terrorist organizations,[63] unqualified physicians,[64] uncertified foreign health-care workers,[65] failure to attend removal proceedings,[66] smugglers,[67] a person subject to a civil penalty,[68] student visa abusers,[69] nonimmigrants,[70] ineligibility for citizenship,[71] certain aliens previously removed,[72] aliens unlawfully present after previous immigration violations,[73] and miscellaneous grounds such as polygamists and unlawful voters.[74] In addition, with respect to prior involvement with law enforcement, adjudications in juvenile proceedings are not considered "convictions" for immigration purposes.[75]

There are inadmissibility grounds that apply to Special Immigrant Juveniles that are not waivable. These grounds include conviction of certain

56. INA § 212(a)(1), 8 U.S.C. § 1182(a)(1) (2012).
57. *Id.* § 1182(a)(2)(D).
58. *Id.* § 1182(a)(2)(E).
59. *Id.* § 1182(a)(2)(G).
60. *Id.* § 1182(a)(2)(H).
61. *Id.* § 1182(a)(2)(I).
62. INA § 212(a)(3)(D), 8 U.S.C. § 1182(a)(3)(D) (2012).
63. *Id.* § 1182(a)(3)(F).
64. *Id.* § 1182(a)(5)(B).
65. *Id.* § 1182(a)(5)(C).
66. *Id.* § 1182(a)(6)(B).
67. *Id.* § 1182(a)(6)(E).
68. INA § 212(a)(6)(F), 8 U.S.C. § 1182(a)(6)(F) (2012).
69. *Id.* § 1182(a)(6)(G).
70. *Id.* § 1182(a)(7)(B).
71. *Id.* § 1182(a)(8).
72. *Id.* § 1182(a)(9)(A).
73. *Id.* § 1182(a)(9)(C).
74. INA § 212(a)(10), 8 U.S.C. § 1182(a)(10) (2012).
75. *See* Matter of Devison-Charles, 22 I. & N. Dec. 1362, 1365–66 (B.I.A. 2000); Matter of Ramirez-Rivero, 18 I. & N. Dec. 135 (B.I.A. 1981).

crimes;[76] multiple criminal convictions;[77] controlled substance trafficking;[78] anyone the attorney general knows or has reasonable ground to believe is seeking to enter the United States to engage in any activity related to sabotage or espionage or to violate or evade laws prohibiting the export of goods, technology, or sensitive information;[79] terrorist activities;[80] serious adverse foreign policy consequences for the United States;[81] and participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.[82]

Thus while SIJS is among the most generous provisions of immigration law with respect to grounds of inadmissibility, there are some grounds that simply may not be waived or that will not be waived in a particular case in the exercise of discretion. Further, adjustment of status itself requires a positive exercise of discretion, and even children who are not inadmissible may not warrant a positive exercise of discretion. In such cases, it is important to compare and contrast admissibility and adjustment grounds for SIJS petitioners with those available under other forms of relief that might apply to the child.

IV. Nature of Relief

With the requisite finding from a juvenile court, a child is able to petition USCIS for recognition as a Special Immigrant Juvenile. This, in turn, permits the child to adjust status to become an LPR. In contrast with other forms of relief for which abused and neglected children might qualify, such as U or T visas, SIJS has the benefit of providing LPR status directly rather than having to wait for years in an interim nonimmigrant status. Because the grant of SIJS provides children with the opportunity to apply to adjust to

76. INA § 212(a)(2)(A), 8 U.S.C. § 1182(a)(2)(A) (2012).
77. *Id.* § 1182(a)(2)(B).
78. *Id.* § 1182(a)(2)(C).
79. *Id.* § 1182(a)(3)(A).
80. *Id.* § 1182(a)(3)(B).
81. INA § 212(a)(3)(C), 8 U.S.C. § 1182(a)(3)(C) (2012).
82. *Id.* § 1182(a)(3)(E).

LPR status without waiting, it can facilitate long-term planning for living, studying, and working in the United States.

However, SIJS relief benefits only the child and not the child's immediate relatives. This limitation is permanent, and unlike with other forms of relief it will continue into adulthood. A child granted LPR status as an SIJS is not able to petition for his or her parents, even after he becomes an adult USC.[83] It is unclear whether this prohibition would apply to siblings of someone who has been granted status. Other remedies discussed in this book have derivative provisions that are far more generous to reunite the child with relatives, either immediately or upon the child reaching adulthood. Among those remedies, T or U visas may be better options for children for whom family reunification is an issue.

In addition, even as LPRs, most unaccompanied children who receive SIJS status will have initial time limitations on their eligibility to obtain public benefits, as do other LPRs.[84] In contrast, a T visa or asylum grantee will be able to apply for public benefits that are not available to LPRs.

V. Applying for Relief

A. Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant

Once the predicate order has been obtained, it can be filed with USCIS along with Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.[85] This, together with proof of the child's age, is sufficient for the adjudication

83. *See* INA § 101(a)(27)(J)(iii)(II), 8 U.S.C. § 1101(a)(27)(J)(iii)(II) (2012).
84. The Public Responsibility and Work Opportunity Act of 1996 prohibits the receipt of public benefits by LPRs until they become USCs and/or can show 40 qualifying quarters of work. For an overview of immigrant eligibility, *see* NILC.ORG, NATIONAL IMMIGRATION LAW CENTER, OVERVIEW OF IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS, http://nilc.org/table_ovrw_fedprogs.html (last visited Apr. 9, 2014).
85. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT, OMB No. 1615-0020 (rev. 03/05/13), http://www.uscis.gov/sites/default/files/files/form/i-360.pdf.

of Form I-360.[86] There is no fee associated with Form I-360 for Special Immigrant Juvenile petitioners.[87]

B. Form I-485, Application to Register Permanent Residence or Adjust Status

If the child is not in removal proceedings, USCIS encourages the filing of an application to adjust status—Form I-485, Application to Register Permanent Residence or Adjust Status[88]—with Form I-360. The approval of Form I-360 makes the child eligible to immigrate, which is accomplished by adjustment of status.[89] A medical exam performed by a civil surgeon authorized by USCIS and proof of vaccinations is also required.[90] There are fees for filing an I-485 adjustment of status application of $985 plus an $85 biometrics fee (as of November 16, 2013).[91] However, USCIS may waive the fees for the I-485 application upon submission of Form I-912, Request

86. In the absence of a birth certificate issued by the government of the child's country, the Secretary of Health and Human Services, in consultation with the Secretary of Homeland Security, is charged with developing procedures to determine the age of a child. These procedures "shall take into account multiple forms of evidence, including the non-exclusive use of radiographs, to determine the age of the unaccompanied alien." 8 U.S.C. § 1232(b)(4) (2012).

87. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT, OMB No. 1615-0020 (rev. 03/05/13), http://www.uscis.gov/sites/default/files/files/form/i-360.pdf.

88. *See* Memorandum from William Yates, Associate Director of Operations, U.S. Citizenship and Immigration Serv., Memorandum #3—Field Guidance on Special Immigrant Juvenile Petitions (May 27, 2004) (encouraging the filing of both Form I-360 and I-485, concurrently); *see also* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, OMB No. 1615-0023 (rev. 06/20/13), http://www.uscis.gov/sites/default/files/files/form/i-485.pdf.

89. *See* INA § 203(b)(4), 8 U.S.C. § 1153(4) (2012); INA § 245(h), 8 U.S.C. § 1255(h) (2012). The section under which these children are eligible to immigrate generally is always current, which permits immediate adjustment of status.

90. 8 C.F.R. § 232(b) (2013).

91. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, OMB No. 1615-0023 (rev. 06/20/13), http://www.uscis.gov/sites/default/files/files/form/i-485.pdf; *see also* U.S. CITIZENSHIP & IMMIGR. SERV., INSTRUCTIONS FOR I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS, OMB No. 1615-0023 (rev. 06/20/13), http://www.uscis.gov/sites/default/files/files/form/i-485instr.pdf.

for Fee Waiver.[92] The instructions on Form I-912 specifically require that if a child is filing for adjustment under SIJS, a copy of the state court dependency order, approval of Form I-360, or a letter from a foster care home or similar agency should be submitted explaining the child's inability to pay.[93]

C. Employment Authorization

In addition, the child may concurrently submit Form I-765, Application for Employment Authorization, as part of the combined I-360/I-485 application.[94] Even for very young children who will not work, it often is useful to apply for an employment authorization document to obtain a federally issued photo identification document.

D. Inadmissibility Waivers

Certain grounds of inadmissibility do not apply to Special Immigrant Juveniles and are automatically waived.[95] For other grounds of inadmissibility that may be waived at the Department of Homeland Security's discretion,[96] USCIS or the immigration judge may require the juvenile to file Form I-601, Application for Waiver of Grounds of Inadmissibility,[97] to apply for a waiver of these grounds. The fee for filing an I-601 application is $585;[98] however,

92. *See* USCIS.GOV, FEE WAIVER GUIDANCE, http://www.uscis.gov/feewaiver (last visited Apr. 9, 2014).
93. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-912, INSTRUCTIONS FOR REQUEST FOR FEE WAIVER 5, OMB No. 1615-0116 (rev. 05/10/13), http://www.uscis.gov/sites/default/files/files/form/i-912instr.pdf.
94. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, OMB No. 1615-0040 (rev. 04/01/13), http://www.uscis.gov/sites/default/files/files/form/i-765.pdf.
95. *See* INA § 245(h), 8 U.S.C. § 1255(h) (2012); *see supra*, Section III.E, Admissibility.
96. *See supra*, Section III.E, Admissibility.
97. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY, OMB No. 1615-0029 (rev. 12/16/12), http://www.uscis.gov/sites/default/files/files/form/i-601.pdf; *see also* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-601, INSTRUCTIONS FOR APPLICATION FOR WAIVER OF GROUNDS OF INADMISSIBILITY, OMB No. 1615-0029 (rev. 12/16/12), http://www.uscis.gov/sites/default/files/files/form/i-601instr.pdf.
98. *Id.*

Special Immigrant Juveniles may ask for a fee waiver by filing Form I-912, Request for Fee Waiver.[99]

As in all areas of immigration law, it is very important that an applicant find a lawyer to help with the application. Inadmissibility issues in particular are exceedingly complex, and in the event that an SIJS petitioner faces inadmissibility grounds, it is strongly recommended that he find help from an experienced immigration attorney.

E. Petitioners Already in Removal Proceedings

If the child is in removal proceedings, the child may submit an I-360 petition for Special Immigrant Juvenile Status to USCIS, but it is not possible to submit the I-485 application to adjust status concurrently, as USCIS has no jurisdiction to adjudicate the adjustment of status application while the applicant is in removal proceedings.[100] In removal proceedings, the immigration judge has jurisdiction to grant an order waiving the fees to file Form I-485. Practitioners must check their local immigration court practice regarding termination of proceedings. Though local practice varies greatly, in most jurisdictions it is possible to terminate removal proceedings upon proof of an approved Form I-360 and subsequent filing of Form I-485, which permits transfer of the adjustment of status application to USCIS.

99. *See* U.S. CITIZENSHIP & IMMIGR. SERV., FORM I-192, APPLICATION FOR ADVANCE PERMISSION TO ENTER AS NONIMMIGRANT, OMB No. 1615-0017 (rev. 04/15/13), http://www.uscis.gov/sites/default/files/files/form/i-192.pdf; *see also* USCIS.GOV, FEE WAIVER GUIDANCE, http://www.uscis.gov/feewaiver (last visited Apr. 9, 2014).
100. *See* 8 C.F.R. § 1245.2(a)(1)(i) (2013).