

New Practices Advisory on Special Immigrant Juvenile Status Applications Published

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The Immigration Legal Resource Center recently published a helpful Practice Advisory on “Risk of Applying for Special Immigrant Juvenile Status in Affirmative Cases”¹ due to the recently updated USCIS guidance on when it will refer a person to Immigration & Customs Enforcement (ICE) or issue a Notice to Appear (NTA, the charging document that begins a case in immigration court). This Practice Advisory includes information that is very useful for attorneys representing immigrant children applying for SIJS. It also contains information based on current USCIS decisions in SIJS cases that provide important direction to judges about how the level of detail and the information that USCIS is seeking in state court SIJS findings and court orders.

Additional Information for Attorneys and Advocates

We would like to share some additional information not included on the ILRC Practice Advisory. It is important to point out that attorneys should be screening their clients’ eligibility for other forms of immigration relief² as a backup option, such as:

- VAWA self-petitioning
- VAWA cancellation of removal
- U visa and
- T visa

Additional Information for Judges

For a state order to effectively support a child’s SIJS application, a state court must make factual findings based on state law about abuse, abandonment, or neglect of an immigrant child, the viability of parental reunification, and best interests of the child. Most states have no provision for special proceedings to adjudicate requests for SIJS findings. Rather, the findings are made as part of the orders the court issues in underlying matters in which the court is exercising jurisdiction over children under state law. Best practices are to include in the state court order a statement of the court’s jurisdiction citing the state statute, court rule, or other authority under which it is exercising jurisdiction.

¹ Rachel Prandini and Alison Kamhi, *Risks of Applying for Special Immigrant Juvenile Status (SIJS) In Affirmative Cases*, IMMIGRANT LEGAL RES. CTR. (Sep. 2018) https://www.ilrc.org/sites/default/files/resources/risks_apply_sijs_affirm_cases-20180831.pdf

² See page 2, number 3 and page 6, section F on the ILRC Practice Advisory. For more information on options of Immigration Relief for Immigrants see *Appendix F: DHS Interactive Infographic on Protections for Immigrant Victims*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (hereinafter, SIJS BENCH BOOK) (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-f-dhs-interactive-infographic-on-protections-for-immigrant-victims/>; Nat’l Immigrant Women’s Advocacy Project, *Comparing Forms of Immigration Relief for Immigrant Victims of Crime* (September 12, 2017), <http://niwaplibrary.wcl.american.edu/pubs/imm-relief-forms-comparison/>

The SIJS order should include findings of fact in sufficient detail to provide evidence of the factual basis for each of the courts SIJS findings regarding

- The abuse of the child suffered by one or both parents³
- Why the court made its placement/custody decision to place the child with a person who is in the court's jurisdiction in the U.S. and how that decision is supported by the state best interest of the child laws⁴
- How in light of the best interests finding and the placement decision and for other reasons (e.g., The help the child is receiving to heal from trauma available in the U.S. vs. the child's home country, no safe custodian for the child in the child's home country) it is not in the child's best interests to be returned to the child's home country⁵
- That reunification with the child's parent who committed the abuse, abandonment or neglect is not viable.⁶
- The order must cite the state statutes that the court's placement/custody determination and other findings are based on. Cites to state laws should include:
 - Best interests laws
 - Laws governing custody or placement determinations
 - State law definitions of abuse, abandonment, neglect⁷
 - State law giving the state court jurisdiction over the child (custody, dependency, delinquency, protection order, guardianship, etc.)⁸
 - State law defining who is a parent if an abuser is not the child's natural parent (e.g., In the case of adoption)⁹
- When the perpetrator parent's name is not on the child's birth certificate, the court order must make findings that the abuser is the child's parent and cite the state laws under which the court is making that determination

³ Leslye E. Orloff, *Chapter I: Introduction to Special Immigrant Juvenile Status*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-2 (2017), <http://niwaplibrary.wcl.american.edu/pubs/ch-i-intro-to-sijs/>.

⁴ Leslye E. Orloff, *Chapter IV: Application of the Best Interest of the Child Standard in Special Immigrant Juvenile Status Cases*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-15 (2017), <http://niwaplibrary.wcl.american.edu/pubs/application-of-the-best-interest-of-the-child-standard-in-sijs-2/>.

⁵ Id.

⁶ Rafaela Rodrigues & Leslye E. Orloff, *Chapter III: Abuse, Abandonment, or Neglect: The Role of State Law Definitions in Special Immigrant Juvenile Status Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-7 (2017), <http://niwaplibrary.wcl.american.edu/pubs/abuse-abandonment-or-neglect/>.

⁷ *Appendix K: State Law Definitions of Child Abuse*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-33 (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-k-state-law-definitions-of-child-abuse-chart/>; *Appendix L: State Law Definitions of Abandonment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-l-abandonment-of-children-statutes-definitions/>; *Appendix M: State Law Definitions of Child Neglect*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-m-state-law-definitions-of-child-neglect-chart/>.

⁸ *Chapter V-I: Quick Reference Guides by Type of State Court Proceeding*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-12 (2017), <http://niwaplibrary.wcl.american.edu/sijs-manual-table-of-contents/>

⁹ Zoe Baker, Muhammad Fadel & Leslye E. Orloff, *Chapter V-I: Quick Reference Guide: Special Immigrant Juvenile Status Findings in Proceedings Involving Termination of Parental Rights and Adoption*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-12 (2017), <http://niwaplibrary.wcl.american.edu/pubs/chapter-v-1-adoption-quick-reference/>.

- The state court should make explicate findings as to the age of the child and discuss the evidence upon which the court's determination is based¹⁰

Furthermore, it is best practices to include the SIJS order as part of the state court order of custody, guardianship, dependency, delinquency, declaratory judgment, protection order, adoption, termination of parental rights. If the child is requesting an SIJS order after a prior order was issued regarding custody, guardianship, placement, then the court order containing the findings should cite and incorporate by reference the previous court findings/orders regarding the child. Consolidation of the cases may also be helpful where that is an option available to the court. It can be helpful when the court issues a separate order containing SIJS findings to attach a copy of the prior court order.

¹⁰ Leslye E. Orloff, *Chapter II: Details about Special Immigrant Juvenile Status (SIJS) Findings*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK 1-9 (2017), <http://niwaplibrary.wcl.american.edu/pubs/details-about-special-immigrant-juvenile-status-sijs-findings/>.