

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) FINDINGS

PERTAINING TO STATE COURT JUDGES

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What is Special Immigrant Juvenile Status (SIJS)?¹

- Federal humanitarian protection created to promote child welfare by helping immigrant children living in the U.S. who have been abused, abandoned, **or** neglected by at least one parent and cannot reunify with that parent.
- Provides vulnerable children the opportunity to apply for legal permanent residence to gain stability.
- **Requires** that each child's application for Special Immigrant Juvenile Status (SIJS) include a copy of a predicate state court order issued by a court with jurisdiction over the custody or placement of the child.
- To issue a predicate order the state court applies state laws to make findings of fact that U.S. immigration laws require SIJS eligible children obtain from state court judges.
 - The federal statute intentionally does not define abuse, abandonment, or neglect, but rather relies upon State Court Judges expertise in applying each state law's definition of these terms, making factual findings, and promoting child welfare. The statute also allows judges to find a basis "similar" to abandonment, abuse, or neglect applies.
 - Congress created similar roles for State Court Judges in two other areas of immigration law:
 - U visa certification and T visa declaration.²
- *Statutory amendments currently supersede significant portions of the Code of Federal Regulations.*³

Federal Requirement: Child Must Have a State Court Order to File for SIJS:⁴

- To be eligible for SIJS a child must be: unmarried, under the age of 21 at filing, present in the U.S. at filing, and possess a state court order containing three findings⁵:
 1. A court with jurisdiction over a child, has adjudicated the child's dependency, committed the child, or placed the child in the care or custody of an individual, agency, department of state, entity appointed by the state/juvenile court. This can include acknowledging an existing custody placement.
 - a. This does **not** require the child to be in dependency court, judges may encounter SIJS eligible children and make SIJS findings in any state court proceeding they have jurisdiction over the care, custody, and/or placement of the child including but not limited to divorce, custody, guardianship, adoption, child support, protection orders, declaratory judgments, recognition of a foreign order.
 2. Reunification with **one OR both** of the child's parents is not viable due to **either** abuse, abandonment, neglect, **or** a similar basis under state law;
 3. It is not in the child's best interest to return to the home country.
- *All findings should be based on relevant state law*
 - Orders should not cite or quote the federal SIJS statute.
 - USCIS will review the order for sufficient information in the court order to show that the judge had a factual basis for the findings and the state court role in promoting the child's best interests.
 - For example: It would not be in Child's best interest to return to Country because Child is in the custody of Grandmother who resides in Pennsylvania.

Federal Procedure for Granting SIJ Status:

- Petitions are adjudicated by U.S. Citizenship & Immigration Services (USCIS), Department of Homeland Security (DHS) currently at field offices; a centralized adjudication unit projected 2016.
- Adjudication statutorily required in 180 days. USCIS can issue a request for further evidence. Appeals filed with Administrative Appeals Office USCIS.⁶

¹ See *Immigration Relief for Abused Children*, United States Citizenship & Immigration Services (April 2014) available at

https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf

² For more information on State Judges' role on U visa certification and T Visa declarations, see "U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies" United States Citizenship and Immigration Services, Nov. 2015, available at <http://library.niwap.org/wp-content/uploads/DHS-U-and-T-Visa-Law-Enforcement-Resource-Guide-11.30.15.pdf>

³ Amendments to INA § 101(a)(27)(J) made under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008) supersede 8 CFR 204.11; See also Memorandum from USCIS to Field Leadership re: TVPRA of 2008: Special Immigrant Juvenile Status Provisions (Mar. 24, 2009), available at http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf

⁴ See Immigration Nationality Act § 101(a)(27)(J) (defining Special Immigrant Juveniles); See also *Eligibility Status for SIJ*, United States Citizenship and Immigration Services, available at <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij>

⁵ INA § 101(a)(27)(J)

⁶ TVPRA §235(d)(2)

- Children granted SIJS next apply for lawful permanent residency (LPR). LPR and SIJS adjudications include extensive security screening and thorough background checks.

Public Benefits for SIJS children in Pennsylvania: (TANF, CHIP Healthcare). Upon receipt of LPR (Food Stamps, Educational grants and loans, Driver’s License, Housing, Work Authorization).

Purpose of Hearing & State Court Judge’s Role⁷:

- State Court Judge makes factual findings & conclusions of law under state law.⁸
- The Department of Homeland Security uses state court order as evidence in its adjudications.
- USCIS has exclusive jurisdiction to grant SIJS. The State Court Judge cannot grant SIJS.⁹

State Court Judge Applies State Law:

1. Decisions regarding care, custody, placement, dependency, affirming an existing custody placement:
 - If the matter is filed as a dependency case, child must be adjudicated a “dependent child” under the Juvenile Act (**42 Pa.C.S. §§6302-6341**) and legally committed or placed under the custody of either a state children and youth agency, the federal Department of Health & Human Services or an individual or entity appointed by a state court. (**42 Pa.C.S. §6351(a) and (b)**)
 - SIJS findings can also be made in other proceedings. Examples include: custody (**23 Pa.C.S.A. §§5321-5340**), divorce (**23 Pa.C.S.A. §§3101-3106**), guardianship (**23 Pa.C.S.A. §§5601-5603**), adoption (**23 Pa.C.S.A. §§2701-2742**), child support (**23 Pa.C.S.A. §§7301-7319**), protection from abuse (**23 Pa.C.S.A. §§6101-6122**); juvenile delinquency (**42 Pa.C.S. §6352**) or in any proceeding the court may recognize or affirm the custody or placement of a child: declaratory judgments (**42 Pa.C.S. §§7531-7541**), recognition of foreign orders or reconciliation of multiple orders. (**23 Pa.C.S.A. §§5454, 6104, 7105, 7612, 8202**).
 - Under the UCCJEA SIJS eligible children often qualify for emergency jurisdiction. (**23 Pa.C.S.A. §5424**) due to abuse, abandonment or neglect (mistreatment).
2. Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. Includes but is not limited to dependency: Juvenile Act (**42 Pa.C.S. §6302**) and/or the Child Protection Services law (**23 Pa.C.S. §6303(b.1)**).
 - Non-viability is a lower standard than dependency or termination of parental rights. May find non-viability when for example: final custody order grants one parent legal and physical custody and offending parent visitation; protection order grants abused parent custody and offending parent supervised visitation; custody or guardianship granted when offending parent has abandoned the child.
 - The abuse, neglect, or abandonment findings must apply state law definitions. Apply state law in adjudicating facts whether they occurred in the United States or abroad.
3. It is not in the child’s best interest to be returned to child’s home country using **23 Pa.C.S.A. §5328**. Court should consider if parents were indicated in or found responsible for child abuse (**23 Pa.C.S.A. §5329.1**).

Rules of Evidence:

- In adjudicatory hearings, the trial court applies the Pennsylvania Rules of Evidence.
- Best practice: Take evidence as the court would in default proceedings. Stipulations and agreements cannot substitute for the presentation of evidence.
- In some proceedings (e.g., dependency, child support) special evidence rules may apply:
 - The Juvenile Act (**42 Pa.C.S. §6302**) and/or the Child Protection Services law (**23 Pa.C.S. §6303(b.1)**) does not set forth specific details on the admissibility of evidence.
 - The statute provides that a party has the right to present evidence and to cross-examine witnesses (**42 Pa.C.S. § 6338**).
 - In disposition hearings, all evidence helpful in determining the questions presented may be utilized and relied upon to the extent of its probative value. Hearsay is allowed (**42 Pa.C.S. § 6341(d)**).

Other Considerations:

- Pa. Rules of Juvenile Court Procedure are relevant: **Pa.R.J.C.P. 1240-1243 (Shelter Care), 1340-1342 (Discovery Pre-Adjudicatory Conference), 1406 (Adjudicatory Hearing), 1408 (Findings), 1510 and 1512 (A)(1) (Dispositional Hearing)**. The court procedure rules that apply will vary based on the type of proceeding.

⁷ See generally National Immigrant Women’s Advocacy Project, *Training Manual for Courts* available at <http://niwaplibrary.wcl.american.edu/manual/judicial-training-manual/>

⁸ See 8 U.S.C.A § 1101(a)(27)(J)(i) and (ii)

⁹ The Secretary of Homeland Security has sole authority (consent power) to grant SIJ status petitions (8 U.S.C.A § 1101(a)(27)(J)(iii))