

Immigrant Children In the Dependency System

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) is a special visa category Congress created in 1990 that permits immigrant children who are dependent upon a juvenile court in the United States to “self petition” and obtain lawful permanent resident status or a “green card”. An immigrant child can apply for this relief.

First identify the status of the child:

Assess the citizenship or immigration status of every child. Documents that should be reviewed are the child’s birth certificate, the parent’s birth certificates or any documents relating to the parents citizenship, foreign passports, visas, green cards and any immigration documents. If the child does NOT have one of the following:

- U.S. birth certificate
- Naturalization papers
- Lawful Permanent Resident status a/k/a “green card”

then the child’s immigration status NEEDS to be evaluated. For example, work authorizations and student visas do not permit a child to remain in the U.S. indefinitely.

CAVEAT: if the Department of Children and Families is seeking Termination of Parental Rights (TPR) for an immigrant child, please determine the status of any immigration paperwork pending with the immigration authorities that may have been filed by the parent(s). The status of this paperwork NEEDS to be evaluated prior to any TPR. A child may be able to attain an adjustment of status faster through paperwork that has already been filed by the parents, than re-starting the process. Since TPR severs the parent-child relationship, TPR may not be in the best interest of the child at that point in time.

Second the child must obtain a Court Order entered by the Juvenile Court that finds the following:

- (1) The child must be declared dependent on a juvenile court in the United States or legally committed to, or placed under the custody of, an agency or department of a state.
- (2) The child must be “deemed eligible for long-term foster care, due to **abuse, neglect or abandonment.**”
 - As interpreted by the U.S. Immigration and Naturalization Service, this requires that a court find that family **reunification is no longer a viable option**; however, it does not mean that parental rights must be terminated.
- (3) The juvenile court must find that it is not in the child’s best interest to be returned to the home country.
 - For example, to support the best interest findings, sufficient basis may include that there is no placement for the child in the home country, or evidence of the home country conditions.

(4) The juvenile court **MUST** retain jurisdiction until the SIJS petition and application for permanent resident are both approved. 8 C.F.R. § 204.11 (c)(5).

- For example, if the Department of Children and Families is seeking to terminate their supervision and shut their case down, please be sure that the court will retain jurisdiction.
- Since the court can NOT retain its jurisdiction beyond the child's 18th birthday, it is important to start the SIJS process as early as possible.

In order to remain eligible for this relief, the child must be under 21 years of age, the child **MUST NOT** be adopted and **CANNOT** marry until the Bureau of Citizenship and Immigration Services (f/k/a INS) has approved the petition, which can take up to two years or more. The Legal Aid Society has sample Motions and Orders to share with child advocates who are interested in pursuing this relief for a dependent child.

Third the child should apply for Special Immigrant Juvenile Status with the local BCIS office with jurisdiction over the child.

To apply for Special Immigrant Juvenile Status the child or a person acting on behalf of the child must complete BCIS form I-360 and form I-485 with supporting documents. These documents include

- Evidence of the juvenile's date and place of birth
- Evidence of the juvenile's date and manner of entry into the United States
- And if the child entered legally, then Evidence of the juvenile's date and manner of entry into the United States

There is also a filing fee for these applications. The children may be eligible for a waiver of these fees. The Legal Aid Society of the OCBA has attorneys on staff that has agreed to represent these children through the process of obtaining Legal Permanent Residency. Please contact LAS at (407) 841-8310.

Questions to ask the case worker include the following:

1. Place and Date of Birth of the child(ren)?
2. Current case plan goal and current placement of child(ren)?
3. Whether the child(ren) has/ have one of the following: U.S. birth certificate, naturalization papers, or Permanent Legal Resident card a/k/a green card or any type of visa?
4. Where the parents are located and their immigration status?
5. Whether the parents or any other person has filed any immigration paperwork on behalf of this child?
6. How long has/ have the child(ren) been in the U.S. and how did they enter the U.S.?
7. What family do they have in the country of nationality and what type of relationship(s) do(es) the child(ren) have with the family member(s)?
8. Are any family members in the country of nationality available to take the child(ren)?
9. Does it appear to be in the best interest of the child(ren) to remain in the U.S.? And their reason(s) why or why not.