

# UNACCOMPANIED IMMIGRANT CHILDREN AND THE STATE COURTS

## Information Card

Unaccompanied immigrant children, defined as Unaccompanied Alien Children (UACs) in federal immigration law, are children who: (1) have no lawful immigration status in the United States; (2) have not attained 18 years of age; and (3) have no parent or legal guardian in the U.S.; or have no parent or legal guardian in the U.S. available to provide care and physical custody. UACs are a highly vulnerable population at serious risk for abuse, neglect, and becoming victims of crime and human trafficking. These risks are exacerbated by their undocumented immigration status.

Once UACs are detained by the U.S. Department of Homeland Security (DHS), they are then delivered to the custody of the U.S. Department of Health and Human Services/Office of Refugee Resettlement (ORR). Children who are not deported will remain in ORR custody until they can be released to sponsors in the U.S. When the child is released to a sponsor, ORR considers its responsibility terminated. At that point, the sponsor becomes responsible for the care and safety of the child. If the child becomes involved in a state court dependency, delinquency, abuse and neglect, or guardianship case, any services required will fall under the jurisdiction of the state juvenile court.

This information card focuses on federal Special Immigrant Juvenile Status (SIJS), which provides UACs with a temporary right to remain in the U.S. and apply for lawful permanent resident status. There are three main types of cases where UACs may seek findings supporting applications for SIJS:

- dependency/child protection;
- delinquency and status offenses; and
- guardianships.

## ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS

SIJS provides a means for UACs potentially to obtain lawful immigration status. SIJS requires an application to the DHS/United States Citizenship and Immigration Service (USCIS). As part of that process, a juvenile court judge will be faced with a request to provide certain findings or certifications as described below, based on information received in the context of the juvenile court proceeding.

For SIJS purposes, a juvenile court is a court in the U.S. having jurisdiction under state law to make judicial determinations about the care and custody of children. Examples of juvenile courts include: juvenile, family, orphans, dependency, guardianship, probate, and delinquency courts.

State juvenile court judges should be aware that they cannot decide whether or not the UAC will be allowed to remain in the U.S. The juvenile court judge's findings in a dependency proceeding, which are described in this information card, do not constitute a grant of SIJS. It is USCIS, and not the juvenile court, who determines if the UAC is eligible for SIJS. Furthermore, the juvenile court findings do not guarantee that USCIS will grant the UAC SIJS as there are other considerations that enter into that decision.

In cases where the UAC wants to apply to USCIS for SIJS, the juvenile must supply USCIS with a juvenile court order making the following three factual findings based on state law:

1. The juvenile 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 located in the United States;

2. 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; and
3. it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence. See 8 U.S.C. 1101(a)(27)(J).

The court order should recite the factual basis for each of the three findings, even if the UAC's testimony is the only basis for the findings, and no other evidence is available.

The applicant for SIJS may want a change in the timing of a juvenile court proceeding due to issues that arise during the SIJS process. For example, if the UAC is in a removal proceeding in federal immigration court, the juvenile court judge may be faced with a request for continuances to allow the immigration court to complete its hearing before the dependency case is closed. The UAC may also request that the juvenile court retain dependency jurisdiction pending the USCIS's consideration of the SIJS application.

## DEPENDENCY/CHILD PROTECTION

UACs may appear in a dependency case in two main circumstances: (1) if the UAC develops problems with an ORR sponsor, a dependency case may be filed in the local juvenile court to remove the UAC from the ORR sponsor and find a new placement; or (2) a request may be filed in the juvenile court for a court order specifying the three findings required as part of an application by the UAC to USCIS for SIJS.

For change of custody or placement, ORR consent is required for a UAC that is in the physical and legal custody of ORR. However, such consent is not required once ORR places the child with a sponsor.

In making determinations of dependency or placement of UACs, particularly if termination of parental rights may be a possible outcome, the juvenile court may need to determine whether notice to natural parents in another country is required.

## DELINQUENCY AND STATUS OFFENSES

UACs are at great risk of becoming involved in delinquent behavior. They may be particularly susceptible to gang involvement or victimization by traffickers, which can lead to a variety of delinquency activities, such as prostitution, theft, drug use, and drug sales. This susceptibility to victimization may be a consideration for a juvenile court judge in dealing with delinquency matters involving UACs. UACs who are runaways or truants are also at a high risk for victimization.

Under federal immigration law, a delinquency case can be the source of the required findings for SIJS eligibility.

## GUARDIANSHIPS

The state court in a guardianship case, which could be a probate, family, or juvenile court, qualifies as a court with juvenile jurisdiction for the purpose of making the findings for SIJS eligibility. A major issue with regard to petitions for guardianship in probate and family courts is that in some jurisdictions those courts may not have the resources that juvenile courts have for obtaining the evidence to back up the findings.

As noted earlier, if a UAC is in the physical and legal custody of ORR, the juvenile court needs the specific consent of ORR before it can make custody or placement decisions for the juvenile. Once a child is released to a sponsor, ORR no longer has care and custody over the child; therefore the juvenile court does not need the consent of ORR to convert the placement to legal custody.

For more information: [contact@sjj.gov](mailto:contact@sjj.gov).