

Special Immigrant Juvenile Status

SIJS



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OBJECTIVES

- ❖ Understanding the different ways in which immigrant children enter the U.S.
- ❖ Identifying Areas of Concerns
- ❖ Understanding UAC/UC
- ❖ Introduction to SIJS
- ❖ Understanding the Different Ways in Which Immigrant Children Appear in Juvenile Court
- ❖ Identifying who can help these children
- ❖ How to obtain the required Predicate Order
- ❖ What happens after Predicate Order is obtained

CHILDREN'S ENTRY TO U.S.

- ❖ Enter with a parent – either lawfully or unlawfully
- ❖ Enter without a parent – Unaccompanied Minor – UC/UAC
- ❖ If they enter without a parent, even if they enter with another adult, still considered an UC/UAC
- ❖ If they enter unlawfully, and have an immigration encounter then NTA/ORR
- ❖ Problem – many children enter unlawfully without immigration encounter

CONCERN

- ❖ Not all Undocumented or Out of Status children are in the Courts' radar

UAC/UC

“Unaccompanied alien child” (UAC) – Unaccompanied child – technical term defined by law describing a child who -

- ❖ (A) has no lawful immigration status in the United States;
- ❖ (B) has not attained 18 years of age; and
- ❖ (C) with respect to whom—
 - (i) there is no parent or legal guardian in the United States; or
 - (ii) no parent or legal guardian in the United States is available to provide care and physical custody.” Due to their vulnerability, these young migrants receive certain protections under U.S. law.

American Immigration Council – Special Report
June 26, 2015



SIJS

**8 U.S.C. § 1101(a)(27)(J) (2011 Edition)
& INA § 101(a)(27)(J)**



(27) (j) Special Immigrant - an immigrant who is present in the United States—
(i) 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 located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

SIJS Statute continued...



- ❖ (ii) for whom 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; and
- ❖ (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

SIJS Statute continued ...

- (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
- (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

TN State Law Protection

- ❖ Attorney General's Memo – Guardianships for Undocumented Alien Minors
“If an undocumented alien minor, the minor's parents, or the minor's custodial parent has established domicile in Tennessee, a probate court may establish guardianship of the person for the undocumented alien minor.”
- ❖ Opinion No. 14-84, September 16, 2014

State Law Protection continued ...

- ❖ *In Re Danely C.* –
- ❖ “[t]here is no statutory bar to declaring Mother the legal guardian of Danely, nor is such a judgment precluded by considerations of logic or equity.”
- ❖ *In Re Danely C.* – M2016-02054-COA-R3-JV
- ❖ Available at: <https://www.tncourts.gov/courts/court-appeals/opinions/2017/11/29/re-danely-c>

State law protection continued ...

- ❖ *In Re Domingo C.L.* –
- ❖ “The Trial Court, however, failed to make a finding with regard to whether it is in the best interest of the Minor to be returned to Guatemala.”
- ❖ *“We find and hold that the Trial Court had jurisdiction to make this requested finding.”*
- ❖ *In Re Domingo C.L.* – M2016-02383-COA-R3-JV
- ❖ Available at: <https://www.tncourts.gov/courts/court-appeals/opinions/2017/08/30/re-domingo-c-l>

WAYS IN WHICH UNDOCUMENTED CHILDREN OR OUT OF STATUS CHILDREN APPEAR BEFORE THE JUVENILE COURT

- ❖ Within *D&N/Juvenile Delinquent/Truancy & Unruly dockets
- ❖ Private Guardianship Petitions (by parent or third party)
- ❖ *According to the TN Rules of Juvenile Practice and Procedure – a D&N may be initiated by DCS, the Court, or by a Private Party. If filed by a private party, the Court is to refer matter to DCS for investigation – Tenn. R. Juv. P. 301

WHO CAN HELP THESE CHILDREN IN JUVENILE COURT?

- ❖ Depending on the type of case:
- ❖ CPS, FSW, DCS, GAL, AAL, CASA, Parents' Atty.,
Court Intake Officer, Judge, Magistrate

Obtaining a Predicate Order

- ❖ IF DCS IS INVOLVED (Custodial or Non-Custodial) :
- ❖ The language needed in the Predicate Order can be included in the Adjudicatory Order ...
- ❖ This means that CPS, FSW, GAL, AAL, or DCS Case Manager should have been communicating with immigration attorney since at least the preliminary hearing

Obtaining a Predicate Order continued ...

- ❖ If not able to communicate in time to have SIJS language added to adjudicatory order, immigration attorney may communicate with parties involved to file an agreed order containing required SIJS language
- ❖ If not willing to agree, the immigration attorney may file a motion for SIJS findings

Obtaining a Predicate Order continued ...

- ❖ IF NO DCS INVOLVEMENT:
- ❖ Private party may file a Petition for D&N and include the required SIJS language in the order
- ❖ If not a D&N case a private party such as, Mother, Father, Relative, etc., may file a petition to establish a guardianship / appointment of a legal guardian

Obtaining a Predicate Order continued ...

- ❖ Often times the fact pattern of a particular case would allow for either a D&N filing or just a guardianship filing
- ❖ Typically a petition to establish a guardianship or to appoint legal guardian will be adjudicated faster than a D&N petition

Obtaining a Predicate Order continued ...

- ❖ **HOWEVER:** We as attorneys have the ethical responsibility and duty to advocate for the child's best interest. We may NOT seek the appointment of an unsafe guardian.
- ❖ We shall make sufficient inquiry as to determine the guardian we are seeking is the appropriate guardian for the child
- ❖ If we later determine that the guardian we sought has been abusing, mistreating, or trafficking the child, we are to seek remedy immediately within the confines of the law.

Key Language Needed In The Predicate Order

- ❖ Court has jurisdiction and authority to establish placement
- ❖ Child is in need of the Court's protection
- ❖ Reunification with child's parent(s) not viable under one of the mentioned grounds
- ❖ It is not in the child's best interest to return his/her country of nationality or last habitual residence
- ❖ ***USCIS TYPICALLY WANTS TO SEE THE STATE STATUTES UNDER WHICH FINDINGS ARE MADE***

What Happens After The Predicate Order Is Issued?

- ❖ Attorney applies for SIJS with USCIS on child's behalf – file I-360, G-28, Predicate Order, Birth Certificate with translation
- ❖ Typically, USCIS takes anywhere from 6 months to 1 yr. and sometimes longer to approve I-360 even though TVPRA says within 180 days!
- ❖ Provides a “Priority Date” (date to request AOS/Green Card)
- ❖ If there are issues with Predicate Order, USCIS issues RFE or NOID

What Happens After The Predicate Order Is Issued – continued ...

- ❖ Once priority date is current, child/young adult, applies for Adjustment of Status (AOS) (green card)
- ❖ Priority dates are currently 2 ½ yrs. behind
- ❖ Depending on the posture of the case, the young adult may or may not be able to obtain EAD prior to priority date becoming current

IN CLOSING

- ❖ Remember most of these children who are in need of immigration assistance are already in the court's dockets and no one is the wiser –
- ❖ Make inquiries to help these children – they need you!

