

# Bulletin

May 14, 2010

Minnesota Department of Human Services -- P.O. Box 64941 -- St. Paul, MN 55164-0941

## OF INTEREST TO

- County Directors
- Social Services Supervisors and Staff
- County Attorney
- Public Defender
- Guardians ad Litem

## ACTION/DUE DATE

For your review.

## EXPIRATION DATE

May 14, 2012

## Special Immigrant Juvenile Status (SIJS)

### TOPIC

Special Immigrant Juvenile Status (SIJS) provides relief for undocumented children in foster care, and is a route to legal immigration status and permanency for children in foster care and other out-of-home placements, including adoption.

### PURPOSE

Ensure that undocumented children in foster care, who may qualify for Special Immigrant Juvenile Status, have access to consultation with a qualified immigration attorney to make the necessary application for SIJS prior to their 21<sup>st</sup> birthday. Early identification of a possible SIJS-eligible child/juvenile is key to a successful and expedited SIJS application.

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### SIGNED

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**Background:**

Special Immigrant Juvenile Status (SIJS) is granted for purposes of obtaining relief for a child (anyone under age 21 and unmarried) from abuse, neglect or abandonment. A child that may qualify for SIJS is one who is under the jurisdiction of a juvenile court as a result of abuse, neglect or abandonment, cannot be reunited with a parent, and for whom return to their country of nationality is not in their best interest.

Special Immigrant Juvenile Status allows a child to remain in the United States, to eventually obtain lawful permanent residency, and provides them with a government-issued photo identification card and employment authorization. Undocumented children who emancipate from foster care without SIJS risk deportation and cannot access employment or government services.

Other benefits include the following:

- Lawful permanent residency (LPR) or “green card”
- Work permission upon receipt of LPR status
- Minnesota identification card or driver’s license
- Ability to travel or visit relatives outside the United States
- Eventual path to U.S. citizenship (after five years)
- Access to federal financial aid for college
- Access to Chafee independent living funds, Support for Emancipation and Living Functionally (SELF) program in Minnesota
- Other federal and state benefits and services.

Caseworkers must be aware of the fundamental requirements of SIJS and arrange access to immigration services for youth, particularly when preparing for emancipation from foster care and prior to aging out of foster care. In addition, before this process is initiated, caseworkers should secure language interpretation services according to the state/county Limited English Proficiency (LEP) plan, where appropriate.

**Statutory Authority:**

The Immigration and Nationality Act (INA) at § 101(a)(27)(J), codified at 8 USC § 1101(a)(27)(J), established relief for undocumented, unaccompanied minor children through Special Immigrant Juvenile Status [www.uscis.gov](http://www.uscis.gov).

The Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008, Public Law 110-457, 122 Stat 5044, amended the INA, and made changes to requirements for SIJ status, streamlining SIJS procedures.

**Requirements for SIJS:**

Following amendments to the TVPRA in 2008, a special immigrant juvenile is defined as one who is present in the United States:

- Under age 21;
- Unmarried;

- Declared dependent in a juvenile court located in the U.S. for 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 U.S. and;
- Whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect or abandonment, or a similar basis found under state law; and
- 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 their or their parents' previous country of nationality or country of last habitual residence.

### **Establishing SIJS**

Application for SIJS should be made as soon as an undocumented youth is identified.

### **Age Requirements:**

A youth must be under age 21 to apply for SIJS. An application for SIJS must include proof of age at the time the application is submitted. No child can be denied SIJS because of age as long as s/he was a child (under 21) when s/he properly applied for SIJS, regardless of the individual's age at the time of adjudication. Special immigrant juvenile status cannot be revoked based on the age of a child on the date the SIJ petition was properly filed, if filed on or after Dec. 23, 2008, or if it was pending as of that date.

### **Best Interests:**

A prerequisite to SIJS is a finding by a court or administrative proceeding that it is not in a child's best interest to be returned to their or their parents' previous country of nationality or country of last habitual residence. Prior to making a finding that it is not in a child's best interest to return to their country of previous nationality or of last habitual residence, the agency must identify, locate and consider non-custodial parents and relatives. Factors such as family/friend support systems, emotional well-being, medical and educational resources are considered in determining what is in a child's best interest.

### **Inadmissibility Grounds:**

Some conditions may result in denial of an SIJS petition. However, the TVPRA of 2008 expands the exemption from inadmissibility grounds for SIJS applicants to include:

- 212(a)(4) (public charge)
- 212(a)(5)(A) (labor certification)
- 212(a)(6)(A) (aliens present without inspection)
- 212(a)(6)(C) (misrepresentation)
- 212(a)(6)(D) (stowaways)
- 212(a)(7)(A) (documentation requirements)
- 212(a)(9)(B) (aliens unlawfully present).

Discretionary waivers are also available in some circumstances. The TVPRA makes discretionary waivers available to other immigrant groups, including persons with mental or physical disorders, HIV status, individuals with histories as prostitutes or procurers, drug addicts

or abusers, and those who helped others enter the United States illegally. A list of discretionary waivers is found at INA 245(h) (2) (B); 8 USC 1255(h)(2)(B). Immigration attorneys review case histories and assist youth in addressing grounds of inadmissibility or advocating for discretionary waivers.

**Criminal Bars:**

Most juvenile delinquency adjudications are not considered convictions for purposes of immigration and deportation, but they may be considered as evidence against admissibility in a discretionary waiver phase of SIJS approval. Some juvenile adjudications, however, may trigger inadmissibility grounds, such as conduct; be particularly aware of controlled substance and firearms offenses. In addition, juvenile delinquency determinations can serve as negative evidence in the discretionary phase of immigration relief and must be mitigated by positive equities. Special Immigrant Juvenile Status applicants may be inadmissible if they are tried and/or convicted as an adult.

**Other Considerations:**

Because the grounds for granting SIJS are based on a child's need for protection from abuse, neglect and abandonment, a child granted SIJS cannot later petition for their biological or prior adoptive parents to enter the United States.

An application for SIJS requires a copy of the juvenile court order establishing dependency upon the court. The court order must have the exact language showing that a child meets all immigration requirements. The court issuing the order may be a juvenile court that handles abuse and neglect matters, a family court, a juvenile delinquency court, a probate court, or some other state court making decisions regarding juveniles.

Children in guardianship arrangements may be SIJS-eligible, along with those in formal or informal kinship care. Special Immigrant Juvenile Status applications from children in kinship or guardianship arrangements do not require that the relative caregiver have a certain immigration status.

Be aware that a child may be eligible for other relief under immigration laws, such as a U Visa (for crime victims), a T Visa (for trafficking victims), protection under the Violence Against Women Act (VAWA), asylum (with special provisions for unaccompanied alien children), family-based immigration petitions, etc. (See attachment).

**Adoption:**

Undocumented children who are being adopted may also apply for SIJS as a faster route to legal status, since acquisition of legal status through adoption requires a two-year placement period prior to age 18, while SIJS applications must be adjudicated within six months.

**Failing to make a timely and appropriate application for SIJS means exposing a youth to deportation, and may prohibit them from establishing legal residency.**

**Those eligible for SIJS include:**

- Children abandoned by family members or other caretakers
- Children, in particular, teenagers who are working and alone in this country
- Children whose parents have been deported and with whom reunification is not possible
- Children in kinship care who cannot be reunited with one or both parents
- Children who have no legal relationship with a parent or guardian in the U.S.

### **Applying for SIJS:**

The juvenile court must first find that a child cannot be reunited with one or both parents as a result of abuse, neglect or abandonment, and that it is in their best interest to remain in the United States and not be returned to their home country.

### **The caseworker's role is to:**

- Identify, locate and consider relatives and non-custodial parents as resources for children and provide results to the juvenile court. Work with the consulate from the country where a child was born or where relatives reside in order to locate relatives. International Social Service-United States of America (ISS-USA: <http://WWW.ISS-USA.ORG>) will assist counties with tracking relatives and obtaining home studies (see resource guide attached to this bulletin).
- Provide the court with information related to a child's best interests, including efforts to identify, locate and consider parents and relatives as resources for a child; determine available social supports; and evaluate risk of harm upon return to home country (e.g., abusive caregivers/birth parents; recruitment by gangs or child sex traffickers).
- For children who cannot be reunited with one or both parents, the worker should help them apply for SIJS and refer them immediately to an immigration attorney, coordinate referrals to immigration attorneys with the county attorney assigned to the juvenile court case no later than the filing of the permanency petition and before a child turns 21, and optimally, well before they turn 18.
- Request that the court make the necessary findings for SIJS eligibility at the permanency hearing.
- Coordinate with a child's immigration attorney and a county attorney to ensure that the juvenile court order includes all SIJS requirements.

After the court makes a SIJS finding, caseworkers may assist in preparation for the SIJS application by collecting necessary key documents, including:

- Court order declaring dependency in the juvenile court or placing the juvenile under (or legally committing the juvenile to) the custody of an agency, department or state.
- Copy of the juvenile court order of SIJS, with the best interest determination not to be returned to their country
- Proof of child's age
- Biographic information (federal Form G-325A) if a juvenile is over the age of 14.
- A sealed medical examination (federal Form I-693)
- Documentation of citizenship/birth certificates/passport, green card or naturalization certificates

- History of youth's juvenile delinquency involvement, adult criminal convictions, and whether they had ever been arrested by immigration or come before the immigration court.

**Other issues to be aware of:**

Section 235 (d) (2) of the TVPRA 2008 requires the U.S. Citizenship and Immigration Services (USCIS) to adjudicate SIJ petitions within 180 days of filing (although it may take longer). Under 8 CFR 245.6, an interview may be waived for SIJ petitioners under age 14, or when it is determined that an interview is unnecessary.

Note that fraud at entry into the U.S. through or with individuals with whom there is no legal relationship is not an absolute bar for SIJS eligibility. However, the use of false documents (birth certificate, Social Security number) for purposes of obtaining a benefit may create a permanent bar to SIJS eligibility.

Early identification of potentially eligible children in foster care is important because the SIJS process can take more than a year, thus notify the court and immigration attorney if there is a risk of a child aging out of care. Early identification of potentially eligible children is important to ensure that undocumented children receive legal status as soon as possible, and do not miss their window of eligibility for this or any other type of relief.

**Immigration law is a highly complex and dynamic federal law. The information in this bulletin is intended for limited educational purposes only.**

**RESOURCES:**

- Immigrant Legal Resource Center: [www.ilrc.org](http://www.ilrc.org)
- A Social Worker's Took Kit for Working with Immigrant Families; A Child Welfare Flowchart; August 2009. American Humane and the Annie E. Casey Foundation.
- USCIS Memorandum: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions, March 24, 2009.

**Americans with Disabilities Act (ADA) Advisory**

This information is available in alternative formats to individuals with disabilities by calling (651) 431-4671. TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services programs, contact your agency's ADA coordinator.

## Quick Links for Immigration/Refugee and Child Welfare Information

A collection of available resources for immigration practitioners, community organizations, law enforcement, social workers, judges, family advocates and attorneys working in immigrant child welfare matters:

### Websites:

Immigrant Law Center of Minnesota:

<http://www.immigrantlawcentermn.org/>

Provides comprehensive immigration services to low income immigrants; training, consultation and outreach on immigration affairs/issues, including Special Immigrant Juvenile Status (SIJS); policy, educational articles and other resources.

Asista:

<http://www.asistahelp.org/>

Provides information on violence against women and immigrant survivors of domestic violence and sexual assault, torture and human trafficking, etc; Violence Against Women Act (VAWA), U visas, and T visas (women and children).

Immigration Legal Resource Center:

<http://ilrc.org/>

Provides information on remedies for immigrant youth, etc: Living in the United States: A Guide for Youth (English, Spanish and Korean); Special Immigrant Juvenile Status (SIJS): Highlighting Changes Implemented by the Trafficking Victims Protection and Reauthorization Act (March 2009), Immigration Bench Book for Juvenile and Family Courts (PDF, 1.7 MB, 2005), Fact Sheets: Immigration Options for Undocumented Children (PDF, 118 K).

Helping Low Income Minnesotans Solve Civil Legal Problems:

[LawHelpMn.org](http://LawHelpMn.org)

Has resources and documents in 22 languages; glossary of legal terms such as right to an interpreter, green card, becoming a U.S. citizen; immigration bonds; website search feature for legal resources/agencies; and Immigration and Customs Enforcement (ICE) offices in Minnesota.

Legal Aid Society of Minneapolis:

[midmnlegal.org](http://midmnlegal.org)

Immigration Law Project: provides direct legal client services for low income immigrants or seniors residing in Hennepin County and Immigration Status for Juveniles.

Southern Minnesota Regional Law Services:

<http://www.smrls.org/>

Provides legal services for low income people; addresses some immigration issues. Services listed in various languages on the website.

Minnesota Supreme Court:

Minnesota Judicial Branch – Judges Bench Book (Immigration chapter):

<http://www.mncourts.gov/?page=178>

This website provides the Minnesota judges Juvenile Protection Bench Book. Chapter 32 highlights immigration issues.

MinnesotaHelp Information:

<http://MinnesotaHelp.info/public>

Website provides contact information for a host of services, legal, child and family client services, housing for battered immigrant women, etc. Enter “immigration” in the key word search engine.

United States Citizenship and Immigration Services (USCIS) Home Page:

<http://www.uscis.gov/portal/site/uscis>

All immigration forms, documents, requirements, visas (U and T), refugee and asylum; humanitarian; on the website enter “child welfare” in search engine to find child welfare related memorandums; in particular, enter “TVPRA” for a field guide memorandum to USCIS personnel on Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions, March 24, 2009.

Bridging Refugee Youth and Children's Services:

<http://www.brycs.org/>

Provides guidance to states serving refugee and immigrant children; see child welfare page. Website has many publications, including a list of suggestions (publications) for interviewing recently arrived refugee and or immigrant children for child abuse, education, health, etc.

International Social Service-United States of America – ISS USA:

<http://WWW.ISS-USA.ORG>

The following services are available to children in the child welfare system:

- Home studies – In collaboration with the ISS federation, home studies are performed by qualified social workers living in, and with specific knowledge of, the country being considered for placement of a child.
- Family tracings are performed to locate adoptive or extended family members living in other countries for the purpose of permanency planning, or to request communication between separated family members.
- Searches – Examples of the documents ISS-USA can often obtain in other countries include criminal background and child abuse registry checks, as well as birth, death and marriage certificates.

American Red Cross:

<http://www.redcross.org/> (click “Getting Assistance/Contact Family Members”)

American Red Cross can provide family tracing and communication in war zones.

Embassies, Consulates:

<http://www.state.gov/s/cpr/rls/dpl/32122.htm>

Embassies and consulates can sometimes provide birth and death certificates, or other documentation; website has an international listing of consulates and embassies.



United Nations High Commissioner for Refugees (UNHCR, the U.N. refugee agency):

<http://www.unhcr.org>

Oversees refugee camps in many countries; registers refugees; establishes broad policy/practice in the treatment of refugees.

Mexican Consulate:

<http://www.sre.gob.mx/saintpaul>

The consulate assists counties with locating and contacting parents and relatives in Mexico. E-mail: [conspaul@sre.gob.mx](mailto:conspaul@sre.gob.mx).

Embassy of Liberia:

<http://www.embassyofliberia.org/>.

Provides help with birth certificates, visas, etc.

Minnesota School of Social Work, Advanced Study:

<http://www.cehd.umn.edu/ssw/cascw/>.

Website provides research articles and PowerPoint on a variety of best practices in immigration and child welfare issues. Enter “immigration and child welfare” in the keyword search.

American Humane Association (AHA), Child Welfare and Migration Program:

<http://www.americanhumane.org/protecting-children/programs/child-welfare-migration/>

AHA’s website offers information on several child welfare-related programs focused on immigration issues and child welfare. Website has relevant articles, PowerPoint presentations, and a link to two “tool kits” for social workers on child welfare and immigration issues.

The Family to Family Program in California:

<http://www.f2f.ca.gov/Immigrants.htm>

Family to Family has pulled together a variety of immigration and child welfare related materials from a variety of states, and also includes a sample Memorandum of Understanding (MOU) from the Mexican Consulate. Also includes “Bulletin on Best Practices in Working with Immigrant Families.”

## **Practice Guides, Articles and Tools**

Sample MOUs:

<http://www.f2f.ca.gov/sampleMOUs.htm>

Working With Immigrant Children and Families: A Practice Model:

<http://www.f2f.ca.gov/res/pdf/ParticipantGuide.pdf>.

Working with Undocumented and Mixed Status Immigrant Children and Families (New Mexico):

<http://www.f2f.ca.gov/res/pdf/Bulletin-BestPractices.pdf>.

Procedural Guide for Immigration Options for Undocumented Children and Families (California):

<http://www.f2f.ca.gov/res/pdf/ProceduralGuideForImmigration.pdf>.

Immigration and Language Guidelines for Child Welfare Staff (New York State):

<http://www.f2f.ca.gov/res/pdf/ImmigrationLanguageGuide.pdf>.

Working with Clients who are Immigrants: A Guide for Connecticut Department of Children and Families' Social Workers:

<http://www.f2f.ca.gov/res/pdf/WorkingWithClients.pdf>.

Immigration Benchbook: For Juvenile and Family Court Judges (California):

<http://www.ilrc.org/resources/sijs/2005%20SIJS%20benchbook.pdf>.

Raising Children in a New Country: A Toolkit for Working with Newcomer Parents:

[http://www.brycs.org/documents/raisingchildreninnewcountry\\_web.pdf](http://www.brycs.org/documents/raisingchildreninnewcountry_web.pdf).

A Social Worker's Tool Kit for Working with Immigrant Families: Immigration Status and Relief Options:

<http://www.americanhumane.org/assets/docs/protecting-children/PC-migration-sw-toolkit-status-relief.pdf>.

A Social Worker's Tool Kit for Working with Immigrant Families: A Child Welfare Flowchart:

<http://www.americanhumane.org/assets/docs/protecting-children/PC-migration-sw-toolkit-flowchart.pdf>.