

SPECIAL IMMIGRANT JUVENILE STATUS

Information for Child Welfare Professionals

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Disclaimer

- *The information provided in this presentation is for limited educational purposes only. It is not intended as legal advice. Consult with an experienced immigration attorney for specific immigration legal advice.*

Overview

- **Why** immigration issues are relevant to child welfare system professionals
- Special Immigrant Juvenile Status – a unique **opportunity** to help achieve permanency
- Other types of immigration **relief** for children
- What **role** child welfare system professionals can play in ensuring that noncitizen children's immigration needs are addressed

WHY IMMIGRATION ISSUES ARE RELEVANT TO CHILD WELFARE SYSTEM PROFESSIONALS

Immigration help is in the **Best Interests of the Child**

- Addressing immigration needs supports child welfare system goals of **safety**, **permanency**, and **well-being** for children
- Minnesota system recognizes the importance of addressing immigration needs as part of the case plan:
 - Minn. Stat. 260.203(e)(3)
 - Child Safety, Permanency & Wellbeing Checklist
 - MN-DHS Bulletin on Special Immigrant Juvenile Status

Child welfare involvement may create unique immigration opportunities for youth

- Federal immigration law creates specific legal relief for juvenile court-involved children
- Failure to address immigration needs and secure immigration assistance can result in child aging out of care and permanently losing the chance to obtain a benefit
- **Timely identification** and **referral** are key

Noncitizen Children in Minnesota

- 7.5% of MN population is foreign born in 2012
 - 57% increase from 2000 to 2012
- Includes:
 - Mixed status families
 - Refugee populations
- 16.7% of Minnesota's children are part of an immigrant family
 - Compare with 4.6% in 1990
- Estimated 95,000 undocumented (1.8% of population)
- Growing population of unaccompanied children in MN

**How many noncitizen children in Minnesota's child welfare system?

Common Types of Immigration Status Noncitizen Children May Have

- U.S. Citizen
 - Lawful Permanent Resident
 - Refugee/Asylee
 - Forms of Temporary Immigration Status
 - Undocumented
-
- Identification and referral to immigration legal help for noncitizen children

WHY DO NONCITIZEN
CHILDREN COME TO THE
UNITED STATES?



Children ON THE RUN

UNACCOMPANIED CHILDREN LEAVING CENTRAL AMERICA AND MEXICO
AND THE **NEED FOR INTERNATIONAL PROTECTION**

<http://www.unhcrwashington.org/children>

**“My grandmother is the one
who told me to leave.**

She said:

**‘If you don’t join, the gang will shoot you.
If you do, the rival gang or the cops will
shoot you.**

But if you leave, no one will shoot you.”

[Honduran boy, age 17]

SPECIAL IMMIGRANT JUVENILE STATUS

An opportunity to promote permanency for noncitizen children involved in the juvenile court system

What is Special Immigrant Juvenile Status?

- A federal immigration statute providing immigration relief for noncitizen children who have been **abused, abandoned, or neglected by a parent.**
 - “Child” in federal immigration law = 21 years old and unmarried
- Before child can apply for SIJS with the U.S. Citizenship & Immigration Services (USCIS), **child must be subject to a state juvenile court proceeding** where certain predicate findings are made.
 - Combination of federal and state law – federal statute directs that juvenile courts will make these findings

How does SIJS benefit a child?

- **Permanency**: lawful permanent resident status, path to citizenship
- Protection from deportation
- **Work** authorization
- Driver's **license**
- **Social Security** number
- Ability to travel
- Federal **financial aid** for college
- Certain public benefits including eligibility for **Medical Assistance, SELF** funds for independent living
- Helps achieve child welfare system's goals

- **CAVEAT**: Youth with SIJS cannot petition for parents for an immigration benefit. 8 U.S.C. § 1101(a)(27)(J)(iii)(I)

SIJS: History and Framework

- 1990: Congress created provision to help undocumented children who are juvenile court dependents. 8 U.S.C. § 1101(a)(27)(J)
- 2008: Amendments via Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), broadened class of eligible children
 - 1 parent cases
- Minnesota Court of Appeals decision interpreting the statute. Matter of DAM, No. A12-0427 (Minn. Ct. App. Dec. 10, 2012) (unpublished).

In what types of state court proceedings can SIJS findings be made?

- Federal law defines “**juvenile court**” broadly
 - Any court “having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11. Minnesota examples include:
 - Juvenile
 - Family
 - Probate
- “Wide range” of proceedings contemplated by TVPRA amendments.
Matter of DAM at 10, 11

Examples of Minnesota Court Actions Where SIJS Findings Can Be Sought

- CHIPS
- Adoption
- Delinquency
- Guardianship
- Family court custody actions

Findings required in predicate state court order for SIJS

- Reunification with **one or both parents** is not viable due to abuse, neglect, abandonment, or similar basis under state law.
- It is not in the child's best interest to be returned to the home country.
- The child has been declared **dependent on the court** or legally committed to, or placed by the court under the custody of a state agency or department, or an individual or entity appointed by the court.
 - (8 U.S.C. § 1101(a)(27)(J))

Other SIJS Requirements:

Age & Marital Status

- Child must be under age 21 and unmarried at time of application
 - Child must remain unmarried throughout adjudication process
 - Child can be divorced
 - Child can be a parent
- TVPRA protects children who turn 21 after filing
 - Applicant may not be denied SIJS “based on age if the alien was a child on the date on which the alien applied.” TVPRA § 235(d)(6).
- State Court Jurisdiction: Child may need state court findings before turning age 18

Other SIJS Requirements: Continuing Juvenile Court Jurisdiction

- Typically jurisdiction must continue in the juvenile court matter until the SIJS application has been adjudicated. See 8 C.F.R. § 204.11(c)(5).
- BUT: Under TVPRA amendments and 2015 *Perez-Olano* Settlement Agreement, if juvenile court jurisdiction terminates based on age, SIJS application may not be denied on that basis

SIJS and Grounds of Inadmissibility

- What is inadmissibility? (8 U.S.C. § 1182)
- Inadmissibility and SIJS applicants (8 U.S.C. § 1255(h))
 - Some do not apply at all to SIJS applicants
 - Others can be waived
 - Others, including drug trafficking, cannot be waived
 - Delinquency adjudications are not “convictions” for immigration purposes, but conduct based grounds may be triggered
- **IMPORTANT:** Child should be screened by qualified immigration attorney.
 - In some cases, may be advisable not to apply, as application could result in placement in removal proceedings if unsuccessful

SIJS findings do not bestow any immigration status on the child

- “These findings by the state court do not bestow any immigration status on SIJS applicants. The findings are one step in the application process. The United States Citizenship and Immigration Services (USCIS) determines whether the applicant meets the requirements for SIJS under federal law. . . . Its decision whether to grant SIJS is discretionary.”
 - Matter of DAM at 4.

Sample SIJS Order

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT COURT
FAMILY COURT DIVISION

In Re the Custody of: ABC

Third Party Custodian,
Petitioner,

Parents,
Respondents.

File No. _____

**SPECIAL FINDINGS REGARDING
CHILD'S ELIGIBILITY FOR SPECIAL
IMMIGRANT JUVENILE STATUS**

Upon the foregoing Motion for Special Findings, and upon all the files, records and proceedings herein, the Court makes the following FINDINGS:

THE COURT FINDS that this child's name is _____. [His/her] date of birth is _____. [He/she] was born in [country] and is a citizen and national of [country].

THE COURT FURTHER FINDS that [child's name] is unmarried and under twenty-one years of age.

THE COURT FURTHER FINDS that it has jurisdiction under Minnesota law to "make judicial determinations about the custody and care of juveniles" within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(a). [Child's name] remains under this Court's jurisdiction.

THE COURT FURTHER FINDS that [child's name] has been declared dependent upon this Court or has been 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 within the meaning of INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

[Optional: include details about child's placement status].

THE COURT FURTHER FINDS that reunification of [child's name] with one or both of [his/her] parents is not viable due to abandonment, abuse, or neglect, or similar basis found under state law, within the meaning of INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

[Optional: include brief explanation of why reunification with one or both parents is not viable].

THE COURT FURTHER FINDS that it is not in [child's name]'s best interest to be returned to [his/her] or [his/her] parents' previous country of nationality or of last habitual residence ([country]) within the meaning of INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J). It is in [child's name]'s best interest to remain in the United States.

BY THE COURT:

Dated: _____

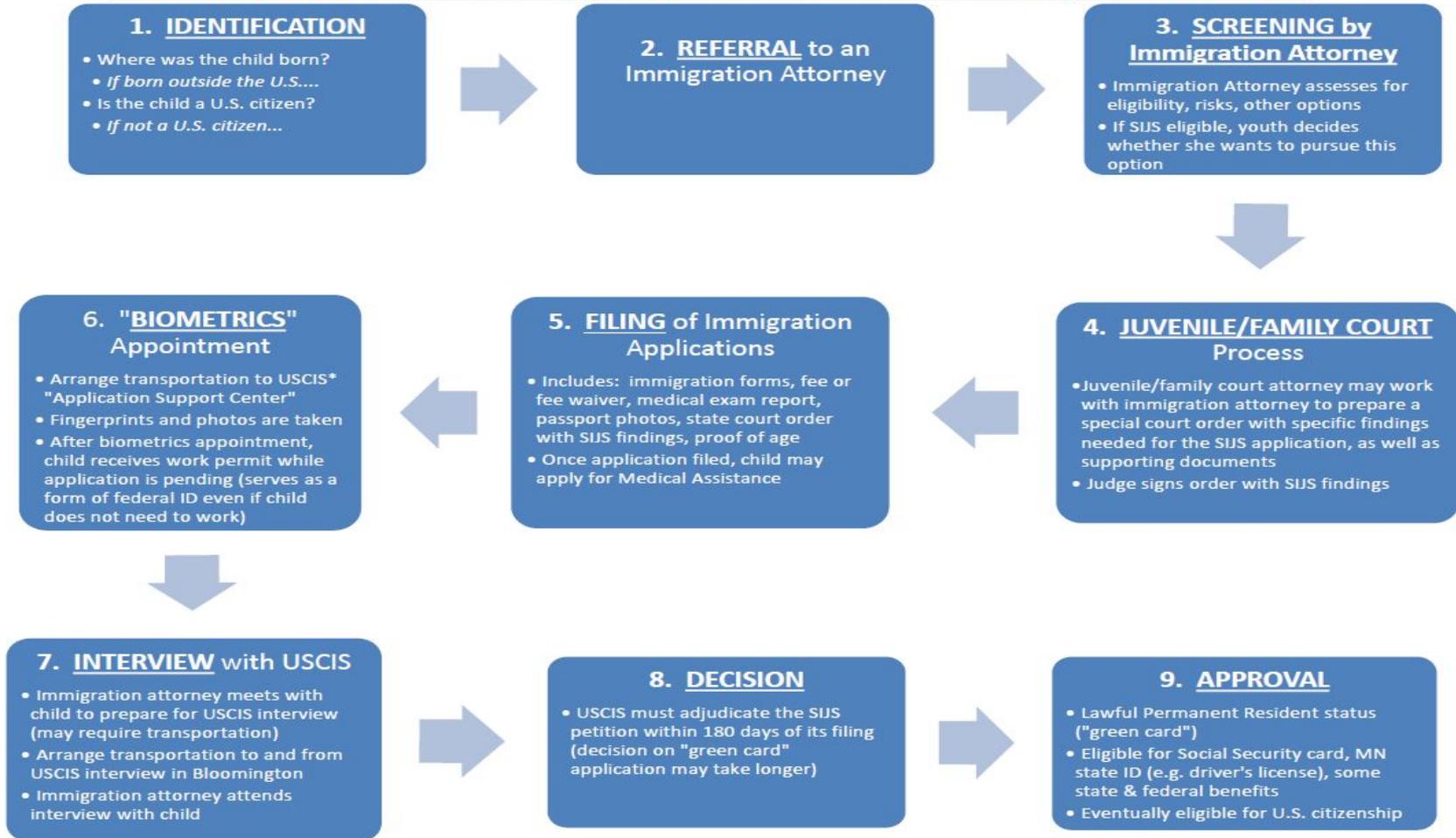
Judge of District Court

SIJS Procedure: Seeking the Special Findings in Juvenile Court

- **Identify** foreign-born / non-citizen child
 - Timing
- **Refer** to immigration attorney for screening
- **Request SIJS findings** in juvenile court
 - Evidence in support of request may include:
 - Declarations
 - Materials already in court files, such as GAL report
 - In-court testimony
 - Who should request the findings?
 - What role would an immigration attorney play?
- After getting SIJS order, **maintain child's continuing eligibility for SIJS** until USCIS makes a decision
 - Keep state court case open while USCIS is adjudicating SIJS petition

The SIJS Process - Flowchart

FLOWCHART OF AFFIRMATIVE SIJS PROCESS: CHILD IN MN JUVENILE/FAMILY COURT



*USCIS = U.S. Citizenship & Immigration Services

For more information, contact: rscholtz@mylegalaid.org

Putting it all together: Hypothetical Cases

- Eligible for SIJS? Why or why not?
- What next steps should be taken?

OTHER COMMON IMMIGRATION OPTIONS FOR CHILDREN

Common Immigration Options for Children

- Family Based Immigration
- U Visa
- T Visa
- Deferred Action for Childhood Arrivals
- Violence Against Women Act Relief
- Asylum
- Refugee/asylee adjustment of status
- Derivative Citizenship

**** Comprehensive immigration screening should look at all possible options.****

The Immigration Application Process: Assessing Risk and Inadmissibility

Important that child be carefully screened by experienced immigration attorney

- For some youth, filing for an immigration benefit could result in **deportation**
 - Only youth likely to be granted should apply
 - Youth with serious delinquency history, gang involvement, allegations of drug trafficking, etc., need careful screening
- Some youth may be inadmissible

Note: Adoption of Noncitizen Children

- **Adoption alone has no immigration impact.**
 - Need to work with immigration attorney during (and after) adoption
- In order for adoption to create parent/child relationship for immigration purposes:
 - Adoption must be completed prior to 16th birthday
 - Sibling exception
 - 2-year custody requirement
 - If Hague country, additional requirements must be completed for adoption to be recognized
- Alternative option: Child can obtain SIJS through custody placement and special findings during adoption

MEETING THE NEEDS OF NON-CITIZEN CHILDREN

Roles of child welfare system professionals

Meeting the Immigration Needs of Children in Juvenile Court - Roles

- **Who can identify that a child is a noncitizen and make a referral for an immigration consultation?**
 - Social Worker
 - Guardian ad Litem
 - Public Defender
 - Judge
 - All can play a role in ensuring that children do not slip through the cracks!
- **Public Defender/Juvenile/Family Court Attorney Role**
 - Identify immigration needs
 - Refer for immigration screening
 - In SIJS case:
 - Move for SIJS findings in state court proceeding
 - Consult with/collaborate with immigration attorney

Roles (Continued)

- **Judge**

- Identify immigration needs; provide an opportunity for child to pursue immigration options
- Where necessary, order turnover of child's immigration/identity documents
- SIJS case: make findings for SIJS predicate order

- **Child's caseworker / guardian ad litem (GAL)**

- Identify that child is non-citizen
- Refer for immigration screening
 - Early screening is key! (doors may close at age 16/18/21)
- Help gather documentation
- Moral support

Roles (Continued)

- **Immigration attorney**

- Screen child for immigration benefits eligibility; assess options
- Collaborate in state court case
- Represent child in immigration proceedings

Best Practices

- Early identification of immigration needs and ensuring referral to immigration attorney
 - How can we ensure system-wide identification?
- Providing child and family with referrals to free immigration legal services providers.
- Providing supports for vulnerable noncitizen children in juvenile court
 - Assisting with immigration relief
 - Helping the child or her immigration attorney to obtain juvenile court documents.
 - Resolving any juvenile delinquency issues in ways that create the least damaging immigration consequences.
- Proper interpretation and translation

Handouts/Resources

- Resources for Child Welfare Professionals regarding SIJS: <http://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status>
- Child Safety, Permanency, & Wellbeing Checklist
- MN SIJS Bulletin

Questions?

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