



**ADMINISTRATIVE OFFICE OF THE COURTS
GUARDIAN AD LITEM**

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**TO: District Administrators
Attorney Advocates**

FROM: Deana Fleming

DATE: July 27, 2006

RE: Special Immigrant Juvenile Status

Judicial districts statewide have seen an increase in petitions involving children who are not citizens of the United States. These undocumented children who have been subject to abuse, neglect or dependency may be eligible for Special Immigrant Juvenile Status (SIJS); however, such eligibility depends upon continuing juvenile court jurisdiction and a specific finding that the child is eligible for long-term foster care due to abuse, neglect or abandonment.

For your convenience and reference, attached please find the following documents:

- **Special Immigrant Juvenile Status: An Overview** (pages 2-3)
 - This reference document outlines SIJS application requirements
- **Sample Order Regarding a Child's SIJS Eligibility** (page 4)
- **Sample Order Allowing Release of Confidential Information to Immigrant Attorney** (page 5)

As a reminder, SIJS is governed by federal immigration law and is a collateral proceeding outside of juvenile court. If pursuing SIJS is deemed to be in a child's best interest, it is important to have the requisite court orders from juvenile court and a referral to an immigration attorney. If you have any questions about Special Immigrant Juvenile Status or are interested in names of immigration attorneys who may be willing to assist with a child's eligibility, please do not hesitate to contact me.

Special Immigrant Juvenile Status: An Overview

Application Requirements for Special Immigrant Juvenile Status & Preparation of Relevant Order

See attached sample court order.

1. The child must be under the jurisdiction of a juvenile court in juvenile court proceedings such as abuse, neglect, or dependency.
2. The child must have been “**deemed eligible for long-term foster care.**”
 - a. This term means the court has found that family reunification is not a viable option and the child would normally be placed in foster care, guardianship or adoption.
3. The court or some administrative agency must rule that it is **not in the child’s best interest to be returned to his or her home county.**
 - a. This finding must be based on evidence such as the written reports of social workers, probation officers or others discussing their efforts to determine the conditions for the child in the home country, the conditions for the child in the U.S., and their basis for their recommendation that it is not in the child’s best interest to return.
 - b. It is often easiest to have the juvenile court judge include this finding along with the others in the order that will be submitted to CIS. However, other judicial or administrative bodies authorized or recognized by the juvenile court may make such a determination.
4. The court should make it clear that it made its findings and orders **based on abuse, neglect or abandonment of the child**, as opposed to just to get the child immigration status.
 - a. The child must have been the subject of juvenile court orders and deemed eligible for long-term foster care “due to abuse, neglect or abandonment.”
 - b. Judges must make this finding explicit. Every juvenile court order that will be submitted to Citizenship and Immigration Services (“CIS”) should include a statement identifying the basis for the order.
 - c. The judge’s finding of abuse, neglect or abandonment should be based on applicable state law.
5. The juvenile court judge should sign an order making the above findings.
6. The juvenile court must retain jurisdiction over the child.
7. The child must be under the age of 21 and unmarried. If the child is between the ages of 18 and 21 and/or considering emancipation, please consult with an immigration specialist.

Adoption and SIJS

- Children who have been adopted may still apply for Special Immigrant Juvenile Status (“SIJS”).
- Potential Issue: The federal immigration regulation imposes the requirement that the juvenile court retain jurisdiction until the SIJS case is approved.

- Some juvenile courts have complied with this regulation by delaying completion of the final step of adoption until CIS has approved the application, or by retaining jurisdiction over the case despite the completion of adoption.
- The above measures may not be necessary according to the most recent CIS policy commentary which provides that CIS will consider the child a juvenile court dependent based on the prior dependency order.
- Please consult an immigration attorney regarding this issue if the child may be adopted before her SIJS application is filed or approved.
- If the child is under 16 years old when the adoption is completed, she may be able to immigrate through her adoptive parents rather than SIJS. It is important to discuss these options with an immigration attorney as immigration through adoptive parents may have various disadvantages as compared to immigrating through SIJS.

Family Member Benefits

If the child is granted SIJS, the natural parents cannot receive any immigration benefit based on their relationship to the child. Most likely, the child will be unable to assist a brother or sister to immigrate since he or she ceases to be the “child” of the original parents for immigration purposes.

Grounds of Inadmissibility

A foreign national can be denied a green card if she comes within a “ground of inadmissibility.”

Waivable Grounds

The foreign national can ask for a discretionary waiver. Waivable grounds of inadmissibility that apply to special immigrant juveniles are:

- people who have been prostitutes or procurers (“pimps”)
- people who were convicted as adults once of simple possession of 30 grams or less of marijuana
- people who are HIV positive
- people who were deported and did not remain outside the US for five (5) years before returning
- people who committed fraud to enter the US or to get a visa
- people who are alcoholics or have a mental or physical disorder that poses a risk to people or property
- people who are or have been drug addicts or abusers
- people who helped other aliens to enter the US illegally

It is possible the waiver will not be granted. Thus, the SIJS application will carry additional risk for children who fall under one of the above categories.

Nonwaivable Grounds

A child who falls within one of these grounds and submits an SIJS application may be subject to deportation proceedings. It is important to consult an immigration expert before submitting an application.

Nonwaivable grounds of inadmissibility are:

- people who CIS has “reason to believe” are or have been drug traffickers.

- People convicted as adults of a wide range of offenses or who have made a formal admission of any drug offense or a “crime involving moral turpitude” (such as shoplifting, assault with a deadly weapon, or sex crimes).

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

_____ COUNTY

FILE NO. _____

In the Matter of)	
)	
_____,)	ORDER REGARDING MINOR’S
A minor child)	ELIGIBILITY FOR SPECIAL
)	IMMIGRANT JUVENILE STATUS
Date of Birth:)	
)	

The Court having reviewed the supporting material in the court file and heard arguments of counsel hereby makes the following

FINDINGS OF FACT

1. That the minor child became subject to the jurisdiction of juvenile court upon an adjudication of abuse/neglect/dependency entered _____.
2. That the minor child has been in the custody of the Department of Social Services since _____ and continues to remain in the custody of the Department of Social Services.
3. That the minor child is eligible for long term foster care as a result of the adjudication of abuse/neglect/dependency and subsequent review hearings held on _____ that held _____ (ex: that reunification efforts cease).
4. That it is not in the best interest of the minor child to be returned to his/her or his/her parents’ previous country of nationality or country of last habitual residence, _____. It is in the best interest of the minor child to remain in the United States.
5. That the above findings were made due to abuse, neglect and/or dependency of the minor child as defined pursuant to NCGS §7B-101.

WHEREFORE IT IS ORDERED THAT THE MINOR CHILD IS ELIGIBLE FOR SPECIAL IMMIGRANT JUVENILE STATUS.

This the _____ day of _____, 200__.

North Carolina
_____ County

District Court Judge Presiding
In the General Court of Justice
District Court Division
File No. _____

[Case Caption]

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ORDER TO DISCLOSE
CONFIDENTIAL
INFORMATION

Upon good cause shown, the Guardian ad Litem appointed pursuant to NCGS §7B-601 is hereby ordered to disclose confidential information to promote the best interests of the child represented. Such disclosure is limited to information necessary to assist the child in obtaining Special Juvenile Immigrant Status, and to the immigration attorney assisting in obtaining such status.

This the _____ day of 200__.

District Court Judge Presiding