

City of New York
Administration for Children's Services

Guidance 2009/07

SUBJECT: Special Immigrant Juvenile Status

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IMPLEMENTATION RESPONSIBILITY:
Children's Services Divisions of Child Protection,
Financial Services, Family Support, Family Permanency,
Policy and Planning, Family Court Legal Services, and
Provider Agency staff

PURPOSE: The purpose of this policy is to ensure that no child leaves foster care without the opportunity of consideration for Special Immigrant Juvenile Status (SIJS), to permit him/her to stay in the US legally as a permanent resident.

SCOPE: This guidance is effective immediately and it applies to Children's Services Divisions of Child Protection (DCP), Financial Services (DFS), Family Support (FSS), Family Permanency (FPS), Policy and Planning (P&P), Family Court Legal Services (FCLS), and all provider agencies involved in the provision of services to children in foster care who are not lawful permanent residents or US citizens. This guidance should be used to determine a child's resident status in the US, and, when appropriate, to submit an application to the United States Citizenship and Immigration Services (USCIS) for SIJS to enable child to gain permanent resident status. This guidance supplements the Special Immigrant Juvenile Status Commissioner's Memorandum dated 1/26/07.

POLICY: **GENERAL POLICY**
Children's Services and our foster care provider agencies must ensure that any child in care who is eligible to acquire permanent resident status through Special Immigrant Juvenile Status (SIJS), to permit him/her to stay in the US legally, is granted a fair opportunity to do so.

It is essential that foster care provider agencies identify all children and youth that are eligible for SIJS.¹ This immigration status permits an approved applicant to live permanently in the United States, work legally, be eligible for certain government jobs, including the armed forces, receive financial aid for college, and access some forms of public benefits, including Public Assistance, Medicaid, and Food Stamps.

SIJS was created through a special immigration law designed to help youth in foster care obtain legal residence status in the United States. All youth in foster care who are not US citizens or do not have documentation of lawful residence (such as a valid green card) may be eligible for SIJS status and should be referred to legal service providers for screening and if appropriate, assistance in applying for SIJS. Emphasis should especially

¹ As stated in Commissioner Mattingly's Special Immigrant Juvenile Status Memorandum dated 1/26/07.

be placed on SIJS-eligible youth with a goal of Another Planned Permanency Living Arrangement (APPLA). If a child is final discharged before receiving this relief to which he or she is entitled, he or she may face possible deportation.

Note: Under the new Trafficking Victim Protection Reauthorization Act of 2008 (TVPRA) the Department of Homeland Security must adjudicate a SIJS application **within 180 days** from the date the application is filed.

I. Applying for Special Immigrant Juvenile Status (SIJS)

The application process for permanent residency is time-consuming; it is therefore recommended that agencies teach their staff to identify children in care for SIJS eligibility early into the child's placement. SIJS applications must be submitted before the youth turns 21. Additionally, unless the youth has aged out of care he/she must be in foster care when the application is filed and must remain in foster care throughout the process of obtaining SIJS status and the permanent resident card.

Regarding age and time deadlines, any youth deemed eligible for SIJS should be informed of the consequence of leaving foster care after reaching the age of 18 and should be counseled against doing so. If a youth voluntarily leaves care before his/her SIJS application is adjudicated and approved, he/she may forfeit eligibility for this benefit.

Before submitting an SIJS application, it should be known that the notification of immigration officials of a youth's immigration status will alert the USCIS to the youth's unlawful presence in the US and could lead to deportation. **For this reason, provider Agency and Children's Services must NEVER contact USCIS to discuss a youth's SIJS status or application for SIJS. All SIJS inquiries and applications must be done through a qualified immigration attorney (see list of referrals attached). The attorney will assess the youth's eligibility based on the criteria listed below and provide advice accordingly.**

Prompt referral to immigration counsel is important so that the application process can be commenced in a timely fashion. Immigration counsel will inquire privately and confidentially of the child regarding the child's background and history, and may later ask the foster care agency to assist in this regard, as well as in matters of obtaining documentation, application fees, etc.

II. Indicators for Determining Immigration Status

The following is a list of indicators that foster care provider agencies should use to assist in determining if a child is residing legally in the US.

- Information gathered from child;
- Social security number;
- Birth certificate.

Information Gathered from Child

Provider agencies should utilize casework contacts, Family Team Conferences and other meetings with a child in care as opportunities to ask the child about his/her country of origin, language spoken at home, and length of time in the US, so as to help determine the youth's eligibility for SIJS as well as any need for assistance with language/dialect or culturally sensitive issues. It is suggested that provider agency staff

document SIJS eligibility information in CONNECTIONS to inform other case planners if the youth moves to a new agency. This will ensure that the new agency will be aware of the youth's immigration issues.

Social Security Number

If a youth has a social security number that is verified with the Social Security Administration as valid, this generally indicates that he or she is a US citizen, a lawfully admitted permanent resident, or a lawful temporary resident (e.g. child is in the US on a student visa or some temporary permit that allows issuance of a valid social security card). If the youth does not have a social security number, or if the visa permitting the use of a social security card has expired, provider agencies should contact an immigration attorney or immigration legal service for advice on this matter before contacting any immigration authorities.

Birth Certificate

Difficulty acquiring a birth certificate could be considered as a flag for illegal status.² Provider agencies should utilize the following avenues to obtain a copy of the child's birth certificate:

- i. Contact the Division of Child Protection (DCP) and when practicable Children's Services Division of Policy and Planning's Title IV-E unit to establish whether or not a birth certificate was obtained at the initiation of the case.³
- ii. Attempt to obtain the birth certificate through the youth's family or by requesting a copy from the local vital records office in the state or city in which the youth was born (see *SIJS Applications, Section IV*, page 4 for additional information).
- iii. Another avenue that can be explored is public assistance records. Public Assistance programs administered by the Human Resources Administration provide a list of acceptable documentation to prove US citizenship and/or qualified immigrant status.

Note: If any of the above listed indicators leads the provider agency to believe that a child does not have legal residence status in the US, the provider agency must refer the youth to an immigration attorney or legal service provider to be screened for SIJS or other possible immigration relief. If an immigration legal service finds that a child in care qualifies for SIJS, Children's Services DCP, FPS, FSS or Central Eligibility Unit and provider agency staff should cooperate in the provision of documents and application fees (if any) necessary to proceed with the application for SIJS.

III. Criteria for Special Immigrant Juvenile Status (SIJS) Eligibility

The following is a list of factors that should be used to determine the child's potential eligibility for SIJS:

- At the time of application for SIJS the youth must be under 21 years old however, if the child turns 21 and is final discharged from care after filing the application for SIJS he or she will still be eligible to receive SIJS status.

² Refer to Process for Obtaining and Correcting Birth Certificates, for Obtaining Reports of Foundling and Death Certificates - 10/07/05 for further instructions.

³ The DCP and the Title IV-E Unit are the primary areas in Children's Services that are responsible for acquiring information pertaining to the child's nationality when the child enters care.

- Under the federal statute, the court order submitted on behalf of a child in care in support of a SIJS application (often called a Special Findings Order) must establish that the youth has been declared a dependent of the Family Court in New York. It should also establish that the court has placed the youth under the custody of an agency or department of a state, or to an entity or individual appointed by a state juvenile court.
- A youth initially placed voluntarily in foster care, or adjudicated as a Juvenile Delinquent (JD), or Person in Need of Supervision (PINS), may still be eligible for SIJS, as long as the court makes a finding that the youth is eligible for long-term foster care due to abuse, neglect, or abandonment.
- There must be a finding by the Family Court that the youth was abused, neglected, or abandoned.
- The court must determine that due to abuse, neglect, abandonment, or a similar basis found under State law, reunification with one or both of the immigrant's parents is not a viable option.
- The court must determine that it would not be in the best interest of the youth to be returned to the youth's or parent's previous country of nationality or country of last habitual residence.

Provider agencies must first consult with an immigration attorney specializing in SIJS to predetermine if the child can apply to the Family Court to get a Special Findings Order. Once it has been established that the child can apply to the Family Court the provider agency must contact the youth's Law Guardian who will petition the court on his/her behalf. The Law Guardian must be informed that the child needs a Special Findings Order so that the application can be presented to the Family Court immediately.

IV. Special Immigrant Juvenile Status (SIJS) Applications

Having determined potential SIJS eligibility and acquired the Special Findings Order, the child's immigration attorney will initiate the application for SIJS. The provider agency should at all times utilize an approved SIJS immigration attorney to submit the application to the United States Citizenship and Immigration Service (USCIS). Please refer to *Applying for SIJS* above for further information on using immigration attorneys. A list of some legal service providers and immigration/SIJS technical assistance resources is provided in Attachment 1 of this Guidance.

It is the provider agency's responsibility to provide the SIJS immigration attorney with necessary documents (such as passport, birth certificates, Family Court Orders, etc.) needed to supplement the SIJS application, and/or to assist in obtaining those documents. The local consulate of the youth's home country may be able to provide the agency with various types of assistance, including assistance obtaining these necessary documents, locating family members in the youth's home country, obtaining information from the home country, and/or facilitating communication for youth or families who speak uncommon dialects. Once the provider agency obtains the supplemental documents, the immigration attorney will submit them to the USCIS along with the following forms:

- i. Application for SIJS (Form I-360)
- ii. Application for Legal Permanent Residency (Form I-485)
- iii. Employment Authorization Application (Form I-765 –Working Papers) must be submitted in conjunction with Forms I-485 and I-360.

Note: If an agency has difficulty obtaining assistance from the local consulate of the youth's country, they should contact the ACS Vital Records Unit at (212) 442-1589.

V. The Adjustment of Status Interview

After the immigration attorney submits the SIJS application, USCIS will notify the youth in writing whether or not he or she meets the eligibility requirements for SIJS, and indicate the scheduled date for an "adjustment of status" interview at a district immigration office.

The immigration attorney will prepare the youth for the "adjustment of status" interview and represent the youth during the interview. A provider agency worker can also accompany the youth to provide moral support and guidance, but may not be allowed into the interview. Timely attendance at this interview is extremely important as lateness is excused only in very limited circumstances.

VI. Decision Notification

Sometimes the decision of approval is made at the interview, but the notification can also occur at a later date. USCIS may request additional documents or evidence and offer additional time to respond. Once any requested additional documents are submitted, the youth will receive a decision as to whether the application has been granted or denied. If the adjustment of status application is denied, the notice of denial will inform the applicant of his or her appellate rights.

VII. Fees

There are several fees associated with the SIJS application process such as application fees, fees for the medical examination, birth certificate, and passport and legal fees. The provider agency must issue payment for these fees immediately upon request of the child's immigration attorney. These costs are refundable by Children's Services, and should be claimed as a special payment directly from ACS Payment Services using the Standard Detail Sheet. Please see Attachment II for a list of applicable fees

For additional information on SIJS immigration issues please contact Mark Lewis, Director of Immigrant Services for Children's Services, at (212) 487-8636 or Mohammed Essayoufi, Immigrant Advocate, at (212) 487-9574.

For additional information on Family Court Legal Services (FCLS) related SIJS issues please contact Harry Gelb, Assistant Supervising Attorney FCLS at (718) 590-5438 or (718) 590-5944.

SIJS-Approved Legal Services Organizations:

Legal Aid Society
Immigration Law Unit
SIJS Contact: Katie Fleet, Esq.
(212) 577-3328
kafleet@legal-aid.org

Lawyers for Children
Immigrant Rights Project
SIJS Contact: Myra Elgabry, Esq.
(212) 966-6420 ext. 638
melgabry@lawyersforchildren.org

Catholic Charities Community Services
Immigration Services Department
SIJS Contact: Emiko Furuya-Cortes, Esq.
(212) 419-3749
emiko.furuya@archny.org

Sanctuary for Families
Brooklyn Family Justice Center Project
SIJS Contact: Molly Bowen, Esq.
(718) 250-5081
mbowen@sffny.org

Urban Justice Center
Peter Cicchino Youth Project
(serving lesbian, gay, bisexual, transgender or questioning youth)
SIJS Contact: Susan Hazeldean, Esq.
(646) 602-5636
shazeldean@urbanjustice.org

Safe Horizon Immigration Law Project
SIJS Contact: Lynn Neugebauer, Esq.
(718) 899-1233 ext. 126
lneugebauer@safehorizon.org

The Door Legal Services
SIJS Contacts: Camila Sosman Palmer, Esq.
(212) 941-9090 ext. 3219
cpalmer@Door.org

Brooklyn Catholic Migration Services
SIJS Contact: Paul Shonk, Esq.
(718) 236-3000
pshonk@DOB.org

Additionally a listing of the Foreign Consular Offices in the United States can be obtained at the Department of State website: <http://www.state.gov/s/cpr/rls/fco/>.

Special Immigrant Juvenile Status (SIJS) Fees

SIJS fees are subject to change by the United States Citizenship and Immigration Services USCIS; therefore all SIJS fees should be verified by the immigration attorney before submitting application with payment. The current SIJS fees are as follows¹:

- i. Application for SIJS (Form I-360) Fee- \$375²;
- ii. Application for Legal Permanent Residency (Form I-485) Fee- \$930;
- iii. Biometrics (fingerprinting) Fee- \$80;
- iv. There is a requirement for a medical examination by authorized providers and the costs will vary from as low as \$80 if the child or provider agency can document vaccinations, to as high as \$300;
- v. Passport photos, approximately \$10-\$20;
- vi. Passports and birth certificates from the native country may also be required, and these costs will vary by consulate;
- vii. Additionally, Children's Services will reimburse provider agencies for up to \$700 for legal services associated with assisting youth in care through the SIJS process. As indicated above, provider agencies should pay the legal services provider directly and Children's Services will reimburse these costs.

¹ Fees quoted are as of 7/08

² Form I-360 is waived for Special Immigrant Juveniles