

Encyclopedia of Social Work

Special Immigrant Juvenile Status

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Abstract and Keywords

Special Immigrant Juvenile Status (SIJS) is an immigration classification that provides a pathway to lawful permanent residency for non-citizen immigrant children in the United States who have experienced abuse, neglect, abandonment, or similar basis under state law; who cannot reunify with one or both parents; who are under state court jurisdiction; and for whom it is not in their best interests to be returned to their country of nationality or prior residence. Social workers have played a significant role in the development of SIJS, and they have an ongoing role in the identification and referral of potentially eligible children as well as in the refinement of SIJS policies. Social workers' roles with SIJS represent the profession's multifaceted capacity, including support and referral with individual children, advocacy across multiple systems, and policy practice in the creation and continued improvement of this protective status.

Keywords: special immigrant juvenile status, SIJS, immigrant children, immigration, non-citizen children, child welfare, direct practice, policy practice

History

Social workers' involvement with immigrants, and children in need, dates back to the early days of the profession in the United States with the founding of the New York Children's Aid Society in 1853 (Stuart, 2013), and the development of settlement houses in the 1880s (Stuart, 2013). These traditional areas of social work practice, combined with the resurgent professional involvement in public policy analysis and advocacy (McNutt, 2013), provided the necessary elements for social workers to conceptualize what ultimately came to be called Special Immigrant Juvenile Status (SIJS): a protective public policy for undocumented immigrant children who have experienced child maltreatment. When originally conceived, this statute specifically addressed the practical and ethical dilemma

Special Immigrant Juvenile Status

of undocumented youth served by the child welfare system who later emancipated from foster care without the ability to support themselves through work or most publicly funded services.

Social workers played a significant role in the original conceptualization of SIJS due to their professional struggles in assisting undocumented children in foster care in California. The SIJS statute is particularly identified with the lengthy public service of Carlos Sosa, a social worker and administrator employed by the Los Angeles County Department of Children and Family Services (University of Southern California School of Social Work [USC], 2012), and Ken Borelli, a social worker and administrator employed by Santa Clara County Social Services Agency (Congressional Record, 2006).

The idea for SIJS grew out of California social workers' recognition of both the successes and shortcomings of the so-called amnesty program that emerged from the Immigration Reform and Control Act (IRCA) of 1986, signed into law by former President Ronald Reagan. Under IRCA, social workers in Los Angeles were able to help several hundred children in foster care to regularize their immigration status, but IRCA did not resolve legal status issues for all of the undocumented children in care (University of Southern California School of Social Work [USC], 2012). In response, Congressman Don Edward's office drafted legislation, with the assistance of his then-aide (later Congresswoman) Zoe Lofgren, which would provide a route to permanent legal status for undocumented children under juvenile court jurisdiction. The SIJS statute was passed as Section 153 of the Immigration Act of 1990 (U.S. Department of Justice, 1990), and signed into law by President George H. W. Bush.

Legislative changes to the SIJS statute have occurred twice since its original passage in 1990. Changes in 1997, introduced by Senator Pete Domenici of Arizona as an amendment to an appropriations bill for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies (U.S. Government Printing Office, 2008) tightened eligibility requirements (Hlass, 2014). Later changes in 2008 broadened eligibility, as part of the Trafficking Victims Protection Reauthorization Act (TVPRA; Hlass, 2014), signed into law by President George W. Bush.

Other significant changes over the years have included the elimination of a fee charged to child applicants in conjunction with Form I-360, later deemed inappropriate for court-dependent children seeking protection (Schmidt & Bhabha, 2007); and the use of the child's age at filing as the child's eligibility age and the imposition of a six-month adjudicatory time frame in order to reduce ineligibility due to bureaucratic delays (Hlass, 2014). Removal of the original requirement that children be "deemed eligible . . . for long term foster care" (Wasem, 2014, p. 2), brought the statute into greater alignment with trends in the broader child welfare system, as adoption was promoted and foster care became viewed as more of a short-term intervention than a long-term solution following passage of the Adoption and Safe Families Act (Child Welfare Information Gateway, 2016).

Special Immigrant Juvenile Status

In addition, wording changes in the TVPRA stipulated that reunification be not viable with either one or both parents (Immigrant Legal Resource Center, N.D.).

SIJS holds a unique place in immigration legislation by introducing the “best interests of the child” concept into an immigration realm that largely lacks this foundational grounding for dealing with children (Carr, 2009; Nagda & Woltjen, 2015). While a fundamental concept in the Convention on the Rights of the Child (United Nations General Assembly, 1989), and central to child welfare approaches, the best interests language was previously absent from immigration law. The introduction of this language with the SIJS statute provided a valuable precedent from which to build, and continue building, other child-sensitive elements within the U.S. immigration system.

SIJS Within the Social Work Profession

While SIJS is an important legal provision for immigrant children, SIJS is also significant within the social work profession for several reasons, including the following: (1) the profession’s identification and referral role, (2) the intersection of micro and macro practice, and (3) the development of exemplary practice models within local child welfare systems.

First, social workers’ roles in working with children served by the child welfare system place them in a unique and opportune position to *identify and refer potentially eligible children*. A core potentially eligible population consists of non-citizen immigrant children involved in juvenile or family court proceedings. SIJS eligible children are not self-identifying and are dependent upon the adults who assist them to recognize their potential eligibility and to refer them for legal services. Social workers, guardians ad litem, attorneys, and judges may be the first professionals to recognize that an undocumented immigrant child should receive an immigration legal screening to determine eligibility for SIJS or other legal relief.

Second, the history of SIJS embodies the *intersection of micro and macro practice*, through direct practice and policy practice roles of the social worker. The profession of social work has wrestled with its dual history and identity as service providers to individuals, and as systemic change agents (Reisch & Staller, 2011). Social workers’ role in the creation of SIJS as a national policy, and in the ongoing identification of individual SIJS applicants, demonstrates the complementarity of these professional capacities. At the conceptualization stage, frontline social workers identified the problem of undocumented children emancipating from child welfare services without the legal status necessary to support themselves, and child welfare administrators helped to develop and advocate for a policy solution (University of Southern California School of Social Work, 2012). Today social workers play an important role in identifying potentially eligible children, referring them for legal assistance, and in some cases supporting and assisting

Special Immigrant Juvenile Status

children throughout the application process (C. Saco, personal communication, April 13, 2016).

Third, social workers in some locations have developed *exemplary practice models* for ensuring that potentially eligible children are identified and can apply for this immigration status. In Los Angeles County, the Department of Children and Family Services (DCFS) houses the “Special Immigrant Status Unit” that helps children with a variety of immigration issues, including SIJS applications. This special unit, supervised by a social worker, was started in 1986 as the “Undocumented Children’s Unit” and filed more than 400 amnesty applications on behalf of undocumented children served by DCFS following passage of the Immigration Reform and Control Act (C. Saco, personal communication, April 13, 2016; USC, 2012). The name of the unit was changed to the “Special Immigrant Status Unit” in 1991, the year after the SIJS statute was implemented as part of the Immigration Act of 1990.

Since then, this special unit has helped about 160 children per year to apply for SIJS, and another 90 children per year to apply for other types of immigration applications (C. Saco, personal communication, April 13, 2016). While referrals for services can come from both inside and outside DCFS, this office has developed proactive methods of using outreach and agency metrics to seek out children in the DCFS system who may be eligible for an immigration benefit, including making presentations to service providers, compiling lists of all the DCFS children born outside of the United States, and seeking out DCFS children who lack a Social Security number (C. Saco, personal communication, April 13, 2016). In the words of one immigration attorney, “DCFS’s approach is innovative. Indeed, it is rare to find legalization workers within a child welfare agency” (Jackson, 2012). This model is worthy of note for its innovation and proactive approach to seeking legal permanence for immigrant children involved in juvenile court proceedings. Such an approach embodies the values of professional competence and promotion of social justice enshrined in the profession’s Code of Ethics (National Association of Social Workers [NASW], 2008).

Eligibility and Application Requirements

The basic eligibility requirements for SIJS include the following (Kids In Need of Defense [KIND], 2015; U.S. Government Publishing Office, 2014; USCIS, 2011; USCIS, N.D.-B):

- **Court dependent:** The child is present in the United States and has been declared dependent upon a state court that handles juvenile matters, or the child has been “legally committed to, or placed in the custody of, an agency or department of a State, or an individual or entity” (8 U.S.C. §1101(a)(27)(J)). These courts may include juvenile, family, delinquency, probate, and other types of courts.

Special Immigrant Juvenile Status

- **Abuse, neglect, abandonment:** Reunification of the child with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.
- **Best interest to not return:** It is not in the child's best interests to be returned to the child's country of nationality or last habitual residence.
- **Age, marital status:** The applicant is under age 21 at the time of application and remains unmarried at the time the application is adjudicated.

To receive permanent residency based on SIJS, a child must complete two steps: (1) demonstrate eligibility for the SIJS classification by meeting the criteria listed above and by filing the form I-360 described below; and (2) adjust status to lawful permanent residency with form I-485 described below, once approved for the SIJS classification. Bars to adjustment of status, such as certain criminal convictions or medical conditions, can make an individual ineligible for lawful permanent residency. Some of these barriers may be waived for SIJS-eligible children, but sorting through the process requires skilled legal assistance.

Immigrant children applying for SIJS typically file some or all of the forms listed below. These forms are available on the USCIS website (www.uscis.gov) and are rather complex; ***they should be completed with the assistance of an immigration attorney or an expert authorized to practice immigration law (such as an accredited representative by the Board of Immigration Appeals)***. In the words of the NASW, "While social workers are not expected to be experts on immigration issues, they can familiarize themselves with immigration terminology, relief options, new policies and available resources" (NASW, 2013, p. 1).

Completion of each form may involve additional expenses for copies or photos, transportation to appointments, and accompaniment by an adult. Social workers may be involved in coordinating these steps, in brokering information and resources for child applicants and those who are helping them, in accompanying SIJS applicants to the necessary appointments, or in acquiring relevant documents such as birth certificates or passports (USCIS, N.D.-A; American Humane Association, 2009). Compiling all of the necessary information can be time consuming and should be initiated as soon as possible.

- **I-360 (required):** The **I-360, Petition for Amerasian, Widow(er), or Special Immigrant** is the primary application for SIJS that is filed with U.S. Citizenship and Immigration Services (USCIS). Along with form I-360, applicants must submit a birth certificate (with English translation), or other proof of age (other possibilities might include a baptismal certificate, or school documents), and a copy of the court order indicating that the child is subject to court jurisdiction; has experienced abuse, neglect, or abandonment; cannot reunify with one or both parents; and that return to the country of origin is not in the child's best interests. Some state courts have developed court order templates specifically for SIJS applicants, to ensure that all of the required information is included in the court order (California Courts, 2016; New York State Unified Court System, 2015).

Special Immigrant Juvenile Status

- **I-485 (required, although sometimes must be filed at a later date):** Applicants approved for SIJS are generally immediately eligible to adjust status to Lawful Permanent Resident (LPR) status, also known as a “green card,” although certain yearly caps may apply to children from certain countries. Immigrant children who are not already subject to immigration court proceedings will typically file **Form I-485, Application to Register Permanent Residence or Adjust Status** simultaneously with their application for (Form I-360). This form requires a fee (\$985)* that may be waived by filing Form I-912 (see below) depending on a child’s financial circumstances. In addition, children must submit two passport-size photos.
- **G-325A (required with I-485):** Applicants must file this **Biographic Information Sheet** with the I-485.
- **I-693 (required with I-485):** Applicants must file **Form I-693, Report of Medical Examination and Vaccination Record**, completed by an approved doctor. There typically are fees charged for this medical exam that will vary by provider; however there is no fee waiver for this process.
- **I-765 (optional):** Applicants may file **Form I-765, Application for Employment Authorization**, also known as a work permit or Employment Authorization Document (EAD). Work permit applications should typically be approved within 90 days, which may be faster than the application for SIJS itself. The I-765 can serve as official identification and can allow SIJS applicants to legally work in the United States. They are typically good for one year and require a fee of \$380.* Children must submit two additional passport-size photos with this application.
- **I-912 (optional):** Applicants who receive a means tested benefit, whose household is below 150% of the poverty line, or who are experiencing financial hardship, may file **Form I-912, Request for Fee Waiver** to forgo the fees for forms I-485 and I-765.
- **Biometrics appointment (required for I-485 or I-765):** Besides filing the requisite forms, SIJS applicants will be given an appointment at a U.S. Citizenship and Immigration Service office, or at an Application Support Center, to have fingerprints and photos taken. Applicants who are age 14 or older will be charged a biometrics fee of \$85.*

* Fees as of 2016

Significance and Statistics

SIJS provides non-citizen youth with a pathway to lawful permanent residency (also called a “green card”). In the words of one SIJS-recipient from the New York City foster care system, receiving a “green card” was the “happiest day of my life” (New York City Administration for Children’s Services, 2013). This legal status provides access to important building blocks of independence, as well as freedom from the fear of

Special Immigrant Juvenile Status

deportation. Lawful permanent residents may become eligible for the following, among other benefits.

- Permission to work.
- Social Security number.
- Eligibility for federal financial aid for college.
- Eligibility for the Healthcare Marketplace under the Affordable Care Act, beginning while an SIJS application is pending (U.S. Centers for Medicare and Medicaid Services, N.D.).
- A driver's license, in states that require some form of documented immigration status in order to receive a license (National Conference of State Legislatures, 2015).
- Eligibility for other federal benefits, such as housing subsidies.

SIJS applications have slowly increased over more than two decades since its inception. The Congressional Research Service (Wasem, 2014) cites unpublished federal data showing 311 SIJS applicants in Fiscal Year 2005, rising to 3,994 in Fiscal Year 2013. Data from Citizenship and Immigration Services Ombudsman's office (2015) indicates there were 6,334 SIJS applicants in Fiscal Year 2015.

While increases in SIJS applications in some ways parallel increased arrivals of unaccompanied minors from Central America (Rosenblum, 2015; UNHCR, 2014), notable differences exist. SIJS applications have increased at a more gradual rate over time, with significant applicant variability by state. Hlass (2014) found in a state-by-state analysis that states with higher SIJS application rates had the following factors in common: (1) local child welfare policies that incorporated immigration screenings and services, (2) juvenile courts that were familiar with SIJS, (3) and access to legal counsel. These findings suggest that SIJS application increases have more to do with professionals' effective implementation of the statutory provisions than with factors related to the children themselves.

Furthermore, SIJS-applicant demographics reveal greater diversity than among the unaccompanied minor population apprehended by federal immigration agents. For example, cumulative SIJS-applicant data for 1999 to 2012 show that about one-third of applicants (34%) came from Mexico, about one-third (34%) from Central America (El Salvador, Guatemala, and Honduras), and about one-third (32%) from 136 other countries or more (some countries of origin were unknown) (Hlass, 2014). Cumulative data of unaccompanied children in federal custody for the same period is unavailable, but Office of Refugee Resettlement (ORR) data shows that in federal fiscal year 2012, 88% of unaccompanied children in ORR custody were from Central America (El Salvador, Guatemala, and Honduras), 8% were from Mexico, and 4% from other countries (ORR, 2016).

In May 2016, U.S. Citizenship and Immigration Services (USCIS) announced that SIJS applicants from El Salvador, Guatemala, and Honduras had exhausted their allotment of

Special Immigrant Juvenile Status

visas for this category (USCIS, 2016A). Long-term implications of this change are unclear. SIJS applicants after this time should consult with an immigration attorney regarding the impact of this USCIS announcement.

Variations in Application of the SIJS Statute

As federal law, immigration statutes apply uniformly across the United States. Nonetheless, regional variations can occur in a variety of ways. SIJS applications require a juvenile court order establishing a child's dependence upon a state court that handles juvenile matters, yet there exist variations in state terminology regarding child abuse and neglect that can cause confusion between the state and federal procedures. For example, the state of Iowa uses the term "denial of critical care" rather than the term neglect, though these are conceptually equivalent. While the SIJS statute explicitly identifies "abuse, neglect, abandonment" as qualifying forms of maltreatment, the statute includes the additional proviso of "or a similar basis found under State law" (8 U.S. Code. §1101(a)(27)(J)), to account for these state variations in the definition of child maltreatment.

Furthermore, variations can occur between juvenile court judges and their willingness to incorporate the specific USCIS-required language into a juvenile court order. Some judges view immigration matters as part of a holistic consideration of a child's best interests, while others may raise questions about addressing immigration concerns within the context of the juvenile court. USCIS created specific educational materials for juvenile courts and child welfare professionals to explain each entity's role in the SIJS process and to describe the specific statutory requirements for the SIJS applicant (USCIS, N.D.-A, N.D.-B).

Finally, regional variations can arise in how USCIS field offices process SIJS applications, in how field offices interpret the statute, and in how individual government employees adjudicate an application. On November 1, 2016, USCIS shifted to a centralized adjudication process, with all new SIJS applications undergoing review at the USCIS National Benefits Center (USCIS, 2016B). This centralization of application adjudications follows earlier recommendations of the Citizenship and Immigration Service Ombudsman's office (2015), and it potentially imposes greater uniformity on the adjudication of SIJS applications.

Limitations

While SIJS provides eligible young people with a pathway to legal permanence, it also has limitations. The biological or adoptive parents of SIJS recipients will not be able to receive any derivative immigration benefits through SIJS recipients themselves. On the one hand, this prohibition may be intended to prevent fraudulent usage. On the other hand, it may serve to keep certain youth isolated from potentially supportive family members. A more nuanced approach—limiting ineligibility to just the parent (or parents) deemed by a state court to be abusive, neglectful, or abandoning—might be one alternative to the current one-size-fits-all approach. Furthermore, SIJS makes no provision for recipients to file derivative claims for siblings, a recurring limitation within much of immigration law that reflects significant family relationships from an adult’s perspective (e.g. spouse, parent, child), rather than significant family relationships from a child’s perspective (e.g. parent, siblings, grandparents). The desire to prevent fraud and the misuse of SIJS applicants as “anchors” in the United States must be balanced against a recognition of the importance of maintaining family connections, where possible, for children who have experienced abuse, neglect, or abandonment.

Another limitation is the inability to file retroactively for young people who met the criteria but went unidentified and emancipated from juvenile court jurisdiction before being able to apply for SIJS. Such cases suggest a failure of the current identification system, rather than a failure of the would-be applicant. At present no retroactive provision exists.

A further limitation is the lack of knowledge and education regarding SIJS within the social work profession. Viewed as more of a legal matter, SIJS has primarily been the purview of immigration attorneys. Given the history and relevance of SIJS to social work and child welfare work, schools of social work should more intentionally integrate SIJS and other immigration issues into training and curricula. Several authors note the importance of educating social workers about immigration policies, in addition to practice skills for working with immigrant clients (Bhuyan, Park, & Rundle, 2012; Martinez-Brawley & Zorita, 2011; Pulitano, 2013), and SIJS represents a cogent example of an important policy area to be incorporated into social work education. For example, information about SIJS could be incorporated into courses on practice with children and families, social policy, and child welfare, to name a few. Furthermore, SIJS could be an important practice, policy, and advocacy issue for social work educators teaching migration, child welfare, or Title IV-E scholars (NASW, 2004).

Finally, some of the core benefits of SIJS—providing legal permanency and access to needed services—have been undermined by an insufficient number of visas available to SIJS petitioners. Oddly enough, the SIJS visa falls under an “Employment Based” visa category. This congressionally established visa cap includes SIJS applicants as well as other forms of “Special Immigrants.” In 2016, this visa category became oversubscribed,

Special Immigrant Juvenile Status

leading to a hold on adjudications of SIJS-based adjustment of status applications from children originally from El Salvador, Guatemala, and Honduras. This shortfall has created uncertainty about what status SIJS grantees will hold while awaiting the availability of a visa (USCIS, 2016A; KIND, 2016; Catholic Legal Immigration Network, Inc., N.D.). Treating SIJS as a humanitarian form of legal relief without a numerical limitation could provide a policy fix to this problem. Social work advocates for both children and immigrants should collaborate for policy advocacy that might address this shortfall.

Future Considerations

The SIJS application requirement of a state juvenile court proceeding, in addition to a federal immigration proceeding (which may include an interview with an immigration officer, or a court hearing before an immigration judge in addition to an officer interview, depending upon whether the child is already in immigration removal proceedings), provides an interesting contrast of these two adjudication systems, particularly in relation to child representation.

Though imperfect, the juvenile court system has required legal counsel since the 1967 Supreme Court case *In re Gault* afforded children in delinquency proceedings the same protections as adults, including legal counsel (National Juvenile Defender Center, N.D.; Administrative Office of the U.S. Courts, N.D.). Soon after, the Child Abuse Prevention and Treatment Act (CAPTA) of 1974 implemented guardians ad litem and court-appointed special advocates (CASAs) for children in abuse and neglect proceedings (Stoltzfus, 2015). By comparison, children in the immigration system have no such guarantees of legal representation or best interests advocacy, leading to what one legal scholar has deemed “the worst of both worlds,” by lacking a specialized immigration court for children and by immigration laws that treat children more as property than as individual actors (Thronson, 2002, p. 1003). Legal representation is provided on a voluntary basis largely by pro bono organizations, with less than one-third of children represented in their immigration proceedings (TRAC, 2014).

Since SIJS applicants must by definition originate in a state court process (because a juvenile court order is a prerequisite proof required for a SIJS application), the vast majority of cases involve legal counsel for at least part of the process. Furthermore, the majority of SIJS applicants are approved. An average of 80% of cases were approved in Fiscal Years 2014–2015, with only 4% of applications outright denied (Citizenship and Immigration Services Ombudsman, 2015). Similarly, low denial rates were identified in 2010–2012 (Hlass, 2014). This positive model of effective and successful representation of children can perhaps serve as a model for what immigration representation can and should look like for children involved in other forms of immigration legal proceedings. Put another way, the United States has an existing successful model of legal representation for children in one type of immigration matter on which to build a more robust system of

Special Immigrant Juvenile Status

child representation in other areas of immigration proceedings. Analysis of state-by-state SIJS data also demonstrates that states with greater access to immigration legal resources for children have higher SIJS application rates (Hlass, 2014), further indicating the necessity of legal representation for pursuing immigration status.

Despite these successes, access to SIJS protection is applied unevenly across the United States, with striking variability by state (Hlass, 2014). Hlass found that states with higher SIJS application rates had the following factors in common: (1) local child welfare policies that required immigration screenings and services, (2) juvenile courts that were familiar with SIJS, (3) and access to legal counsel. Legislative measures to ameliorate these imbalances have been suggested in the Foster Children Opportunity Act, a bill introduced to the U.S. House of Representatives in 2013 but not passed (Library of Congress, 2013). In the meantime, social workers can collaborate with legal advocates to propose state or local policies that require screening and referral for SIJS and other immigration matters as part of standard child welfare services, in order to support immigrant children's long-term safety, permanency and well-being. Furthermore, social work educators can incorporate SIJS and other immigration policies into bachelor's and master's level education.

SIJS is a protective migration status for children that has been held up as a positive model for other countries (Bhabha, Crock, Finch, & Schmidt, 2006). SIJS has been an underutilized visa for years (Hlass, 2014; Jackson, 2012), with more recent increases in applications (Wasem, 2014) along with improved identification procedures in immigrant-rich states. SIJS represents an important problem solving and advocacy contribution by social workers to the promotion of the best interests of immigrant children. Social workers should remain at the forefront of educating themselves and other service providers about this legal protection, and should seek out ways to continue improving the availability and application of this important route to legal status for vulnerable immigrant children.

SIJS represents the protective potential of U.S. immigration policies for vulnerable populations, and it provides a worthwhile model of social workers' involvement in advocacy for positive change. Inequitable access to SIJS as a legal protection points to a social justice disparity about which social workers should be concerned and contributing to its continued fine-tuning.

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Special Immigrant Juvenile Status

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