

APPENDIX A

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

BENCH CARD

What is SIJS?

- a visa status available for certain immigrant children who are unable to reunify with one or both of their parents for reasons of abuse, neglect, abandonment, or some similar basis under state law. Such status enables certain eligible children to apply for lawful permanent resident status (“green card”).¹

Who is eligible?

- all children who meet the eligibility requirements, regardless of whether or not a child is in removal proceedings, in federal immigration custody or even known to immigration authorities prior to submitting the SIJS petition.

What are the eligibility requirements?

- The child must be present in the U.S. and show that:²
 - The child is under 21 years of age;
 - The child is unmarried;
 - The child has been declared dependent on a juvenile court located in the United States 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;
 - Reunification with **1 or both** of the child’s parents is not viable due to **abuse, neglect, abandonment, or a similar basis found under State law**;
 - It would not be in the child’s **best interest** to be returned to the child’s or parent’s previous country of nationality or country of last habitual residence.

What is the process to obtain SIJS?

- Obtain predicate factual findings from a state “juvenile” court, specifically, any court with authority under state law to make determinations about the custody or care of juveniles.
- File an application for SIJS visa status with U.S. Citizenship and Immigration Services
 - If the SIJS visa is approved, the child may file an application for Lawful Permanent Residence (a “green card”) with U.S. Citizenship and Immigration Services, or in some cases, with the Immigration Court

What is the state court’s role in SIJS cases?

- The state court is not being asked to make any immigration decisions. Congress simply requires that findings of fact related to child protective issues such as “abuse,” “neglect,”

¹ See 8 U.S.C. 1152 and 8 U.S.C. § 1101.

² 8 USC section 1101(a)(27)(J), as amended by section 235 of the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008.

“abandonment,” and “best interests,” be made by the adjudicators who are the most qualified to do so.

- The predicate order is simply a finding of fact. It does not confer any immigration status or immigration benefit to a child, nor is it a court opinion on whether a child should be granted immigration status. Only USCIS, upon specific application by the child, can determine whether or not a child qualifies for an immigration benefit such as SIJS.

In what types of state court proceedings may SIJS findings be entered?

- SIJS findings can be requested and issued in any type of proceedings in which a court has authority under state law to make judicial determinations about the **care and custody** of juveniles.³ In Washington, this includes, but is not limited to: dependency proceedings; offender (delinquency) proceedings; family law proceedings such as nonparental custody, dissolution, or parenting plan proceedings; CHINS or ARY proceedings, etc.

Can SIJS findings be made if the child is living with a non-offending parent?

- Yes, the TVPRA of 2008 made changes to the eligibility requirements. The federal statute’s plain language currently requires that the inability to reunify must be with **one or both** of the child’s parents.⁴ Case law in other jurisdictions has upheld this interpretation.⁵

What is the relevance of a child turning 18 years of age?

- Children are eligible to apply for SIJS until their 21st birthday, but only if they first obtain the predicate order from state court. In many proceedings, a state court may only have jurisdiction over a child until the age of 18.

Does a child’s parent/s benefit from SIJS?

- A child who gains lawful status through SIJS may never petition for lawful status for either of his/her parent(s), regardless of whether the SIJS findings were only made as to 1 parent.
- Many SIJS-eligible children also qualify for other forms of immigration relief. A child may apply for multiple forms of relief simultaneously. Some other forms of immigration relief might offer benefits that SIJS does not and thus might be preferable to qualifying children (i.e. the ability to petition for siblings or parents).

Is there a model SIJS Eligibility Findings and Order form?

- Yes. The WA AOC has adopted an order that can be found at: <http://www.courts.wa.gov/forms/?fa=forms.static&staticID=14>, under Juvenile Court Forms, Miscellaneous, Form JU11.0500. See attached form.

Adapted from “Special Immigrant Juvenile Status: Frequently Asked Questions for State Court Judges,” The Vera Institute of Justice.

³ 8 C.F.R. 204.11(a).

⁴ 8 USC 1101(a)(27)(J) as amended by 235 of the TVPRA of 2008; 8 CFR 204.11. The regulations have not yet been amended to reflect the statutory changes; thus, to the extent that the regulations reflect the old statute or contradict the statutory amendments, such regulations are no longer valid.

⁵ See *Matter of Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012); (*Marcelina M.-G. v. Israel S.*, 112 A.D. 3d 100, 973 N.Y.S.2d 714 (N.Y. Fam. Ct. 2013); and *In Re Israel O.*, 233 Cal.App. 4th 279 (2015).