PART II: SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN AND YOUTH UNDER JUVENILE COURT JURISDICTION

CHAPTER 3[1]

INTRODUCTION AND OVERVIEW TO SPECIAL IMMIGRANT JUVENILE STATUS

This chapter includes:

Special immigrant juvenile status (SIJS) is a federal law that helps certain undocumented young people obtain lawful immigration status. This chapter provides basic information about SIJS, and directs you to subsequent chapters that discuss different aspects of SIJS in more detail.

For many child welfare or probation workers seeking to understand the basics of SIJS, this chapter will provide all of the information you need. **Chapters 4**–**9** are designed to answer more specific questions on the nuances of eligibility, risks and benefits of applying, general background on state juvenile court systems and how immigration interfaces with them, and the application process for both affirmative and defensive cases. In particular, **Chapters 8** and **9** provide information on both the affirmative and defensive application processes and how to complete the forms.

The appendices to this manual contain many useful resources for SIJS cases, including a sample court order and other papers that you can present to a juvenile court judge, a handout in English and Spanish that you can use to discuss the risks and benefits of this program with the young

[1] Portions of this chapter were reprinted with permission from Katherine Brady & David Thronson, *Immigration Issues Representing Children Who Are Not United States Citizens*, in *Child Welfare Law and Practice Manual: Representing Children, Parents and State Agencies in Abuse, Neglect and Dependency Cases* (2004).

person, a copy of the law, regulations, U.S. Citizenship and Immigration Services (USCIS) policy guidance,[2] and sample completed copies of application forms. See **Appendices**. Note that it is easy to obtain the immigration forms you will need for the application for SIJS from the USCIS website at https://www.uscis.gov. See instructions in **Chapter 8**.

§ 3.1 Lawful Immigration Status: What Is It and Why Is It Important? The Stories of Julia, Martin, Eduardo, and Ramon

SIJS permits undocumented children who have come under the jurisdiction of a juvenile court and meet other requirements to become lawful permanent residents.

Examples: The stories of Julia, Martin, Eduardo, and Ramon. When "Julia" was fourteen years old, she became a dependent of a juvenile court due to her parents' abuse. The court terminated her father's parental rights and provided reunification services to Julia's mother. Her mother eventually successfully completed services and reunified with Julia (in other words, Julia was formally returned to her mother's custody). Julia recovered from her abuse and adjusted well to life. She got good grades and was accepted to a state university.

However, just before Julia's eighteenth birthday and before completion of reunification, the county social workers discovered that she had been born in Mexico and did not have immigration status in the United States. Although Julia spoke English perfectly and seemed very "American," she was an undocumented immigrant. Because of this, it looked like everything Julia had worked for would be destroyed. As an undocumented person, at that time Julia was not eligible to pay in-state tuition and so could not afford college. Further, she could not work legally, and so faced a future of being exploited in the underground economy or working with fake papers and hoping she would not be discovered. Finally, if immigration officials ever located her, they could deport her back to Mexico, where she had no one.

Luckily, one of her social workers had heard of SIJS. Although right before Julia's eighteenth birthday was a late date to apply and she was in reunification services with her mother, county social workers and local immigration attorneys working together were able to successfully complete the SIJS application process before Julia's dependency case was terminated, based on a claim of abuse by her father. Julia became a lawful permanent resident through SIJS. The end of the story is that the real "Julia" went on to a successful college career, became an accountant, and has made a great life for herself!

"Martin" was placed in juvenile delinquency proceedings when he was arrested after a school fight. The juvenile court ordered him placed home on probation, with a probation officer having regular check-ins with Martin. However, the probation department realized that there was an

[2] On October 26, 2016, USCIS updated sections of its Policy Manual (USCIS-PM), available online at https://www.uscis.gov/policymanual/HTML/PolicyManual.html, on SIJS and SIJS-based adjustment of status (*see* Volume 6, Part J for information on SIJS and Volume 7, Part F, Chapter 7 for information on SIJS-based adjustment of status). Per USCIS, this guidance supersedes all prior policy memoranda except for USCIS, *Policy Memorandum: Updated Implementation of the Special Immigrant Juvenile* Perez-Olano *Settlement Agreement* (Jun. 25, 2015), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf. However, we continue to include the prior policy memoranda on SIJS in Appendix D of this manual for their historical import.

issue with Martin's immigration status. Martin's public defender had heard of SIJS and, after learning that Martin's father had abandoned his family many years ago and had never provided support for Martin, realized that Martin might be eligible. Martin's public defender successfully requested that the juvenile court make the findings necessary to allow Martin to apply for SIJS. Martin is now a lawful permanent resident, which has contributed greatly to his rehabilitation by allowing him to plan for future education and employment.

"Eduardo" came to the United States at the age of sixteen, traveling with a guide, or "*coyote*." He was apprehended at the border, designated as "unaccompanied," and placed in an Office of Refugee Resettlement (ORR) immigration detention facility in Harlingen, Texas.[3] Eduardo was sent to the United States by his abusive father who wanted Eduardo to find work and send money home to the family. Eduardo had no plan for where he would live or how he would find work. He was later released from ORR custody to a maternal aunt who resides in San Jose, California. A local immigration non-profit in San Jose identified Eduardo as being SIJS-eligible based on the extreme physical and emotional abuse he suffered from his father, and his mother's failure to protect him. Eduardo also needed an adult guardian in the United States since he was sixteen years old and residing in the United States without a parent. Eduardo's attorney helped him file a petition in probate (guardianship) court to have his maternal aunt appointed to be his guardian, and also to request that the court make the eligibility findings for SIJS. After a successful guardianship petition and a positive outcome from his SIJS petition with USCIS, Eduardo is safely residing in his aunt's care and well on his way to becoming a lawful permanent resident.

After being assaulted and harassed by gang members in his neighborhood for months, "Ramon" fled Guatemala at the age of fourteen to reunite with his mother in Los Angeles, California. Ramon's father had physically abused both his mother and Ramon when he was a child. After his mother escaped to the United States, Ramon lived with his maternal grandparents. His father visited infrequently, usually while intoxicated, and never provided Ramon with emotional or financial support. Ramon had not seen his mother since he was five years old but successfully reunited with her after being apprehended by the border patrol and placed in ORR detention. Ramon's mother would like to request sole legal and physical custody of Ramon to protect him from any future abuse by his father. If a family court grants Ramon's mother's custody petition and also makes the eligibility findings for SIJS, Ramon will be eligible to petition for SIJS.

§ 3.2 What Is Special Immigrant Juvenile Status and Who Is Eligible to Become a Permanent Resident Through Special Immigrant Juvenile Status?

Special immigrant juvenile status (SIJS) is a federal law that assists certain undocumented children in obtaining lawful permanent residency. The statutory basis for SIJS can be found in the Immigration and Nationality Act (INA) at § 203(b)(4), which allocates a percentage of immigrant visas to individuals considered "special immigrants," and § 101(a)(27)(J), which defines special immigrant juveniles.[4] The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, enacted on December 23, 2008, clarified and expanded the definition of a

[3] ORR is the federal agency responsible for detaining children who are apprehended by immigration officials and classified as "unaccompanied." For further information, *see* **Chapter 18**.
[4] INA § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J) was added by § 153 of the Immigration Act of 1990 and amended most recently by the TVPRA in 2008.

special immigrant juvenile and supersedes the previous statutory definition. Before the TVPRA was enacted, federal regulations implementing the SIJS statute were promulgated and can be found at 8 CFR § 204.11. These regulations implement a previous version of the federal statute and have not been updated following the TVPRA's significant changes to the SIJS definition. In 2011, updated regulations were proposed and public comment was received.[5] The public comment period was reopened in 2019.[6] However, at the time of this writing, revised regulations have not been finalized. The portions of the regulations that conflict with the TVPRA are superseded by the statute. Those that do not conflict with the statute remain in effect.

In the absence of updated regulations; USCIS, the agency that adjudicates applications for immigration benefits, including SIJS; issued SIJS-related portions of its Policy Manual on October 26, 2016.[7] This guidance, contained in Volumes 6 and 7 of the USCIS Policy Manual is more comprehensive than any prior guidance issued by USCIS on SIJS, and is crucial reading for anyone representing young people applying for SIJS. However, the Policy Manual also contains guidance that in some places conflicts with or goes beyond the statutory or regulatory requirements for SIJS.[8] Because of this, it is important to read it in conjunction with the statute and regulations and know which of the Policy Manual's requirements may be "*ultra vires*," or beyond what the law allows USCIS to require.

Under the current law, young people 1) who are declared dependent upon a juvenile court *or* committed to the custody of agencies or departments of a state *or* to court-appointed individuals or entities, 2) whose "reunification with [one] or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," and 3) whose return to their country of nationality or last habitual residence is not in their best interest, may be able to obtain SIJS and, based on that, apply for lawful permanent residency (a green card).[9] To do this, they must submit two different applications and meet two sets of requirements:

1. They must apply for **special immigrant juvenile status**, and
2. Based on the special immigrant juvenile petition, they also must **apply for lawful permanent residency** (a green card). In immigration terminology, applying for permanent residency inside the United States is called applying for **adjustment of status** to that of a lawful permanent resident.

The two applications can be filed at the same time in an affirmative application. Sometimes, however, individuals granted SIJS must wait to apply for permanent residency, because visas for special immigrant juveniles are subject to an annual quota. This quota is based on the visa category from which SIJS visas are granted – the employment based fourth preference category (EB-4)[10] - and the applicant's country of origin. Since 2016, the EB-4 category has been

[5] 76 Fed. Reg. 54,978 (Sept. 6, 2011).
[6] 84 Fed. Reg. 55,250 (Oct. 16, 2019).
[7] 6 USCIS-PM J, 7 USCIS-PM F.7.
[8] USCIS interprets its consent function pursuant to INA § 101(a)(27)(J)(iii) to allow it to impose these additional requirements not found in the regulations or statute. See e.g., 6 USCIS-PM J.3(A)(3) (requiring that the juvenile court order include a statement of the factual basis behind the state juvenile court order).
[9] INA § 101(a)(27)(J).
[10] See Chapter 5 for more on SIJS-based adjustment of status.

oversubscribed for immigrants from El Salvador, Guatemala, Honduras, and Mexico.[11] This means that sometimes special immigrant juveniles from these countries must wait until a visa becomes available before they can submit their application for adjustment of status. In a defensive application (one in which the child is in removal (deportation) proceedings), the SIJS petition is submitted first, and the adjustment of status application is submitted later.

A. Petition for special immigrant juvenile status (SIJS)

The federal statute (law) provides that an applicant must meet the following criteria to qualify for SIJS.[12]

1. Juvenile court proceedings

The applicant must be a dependent of the juvenile court *or* the court must have legally committed the child to, or placed them under the custody of, an agency or department of a state, *or* an individual or entity appointed by a state or juvenile court. A juvenile court is defined as any "court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles."[13] The name of the court is not determinant; rather the role of the court is what matters for purposes of SIJS eligibility. The broad definition of juvenile court and the jurisdiction it may have under federal law includes young people in dependency (child welfare), guardianship, family court/custody, as well as delinquency (alleged violations of the law by youth) proceedings. It also includes children who enter into dependency or are committed to the custody of individuals and are later adopted.

Examples:

- **Dependency:** Samy is a dependent of a juvenile court and placed in foster care due to neglect by his parents. Following his parents' failure to comply with reunification services, Samy's parents' parental rights are terminated. Samy is eligible for SIJS.
- **Guardianship:** Miguel is living with a paternal uncle in New York after fleeing gang violence and parental abuse and neglect in his home country of Honduras. A state court appointed Miguel's uncle to be his guardian, and also found that reunification with Miguel's parents was not possible due to physical abuse and neglect and that it is not in his best interest to return to Honduras. Miguel is eligible for SIJS.
- **Delinquency:** Erika was brought to the United States at the age of two. As a teenager, she gets arrested for shoplifting, is charged in delinquency court, and committed to the care, custody, and control of the probation department. She is ordered home on probation and resides with her father. Her mother struggled with substance abuse and abandoned the family when Erika was seven years old. An advocate can argue that Erika is eligible

[11] India has been oversubscribed at times too.
[12] See INA § 101(a)(27)(J).
[13] See 8 CFR § 204.11(a). USCIS interprets this definition of juvenile court to also include courts that make judicial determinations about dependency. *See* 6-USCIS-PM J.2(C), FN 5 ("Consistent with the district court's decision in *R.F.M., et al. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and INA 101(a)(27)(J)(i), USCIS interprets the definition of juvenile court at 8 CFR 204.11(a) to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency or custody and care of juveniles (or both).").

for SIJS based on her mother's neglect and abandonment and the fact that it would not be in Erika's best interest to be returned to her home country of Mexico, where she has no one to provide care for her and where she has no other support system.

- **Family/custody:** Rosa is residing safely with her mother in Los Angeles after fleeing Guatemala. In Guatemala, her father had abused her when she was young, and then abandoned the family. Rosa's mother seeks legal and physical custody of her in a family court in Los Angeles so that she can have full custodial rights and protect her daughter from any further harm. If the family court also finds that reunification with Rosa's father is not viable due to abuse and abandonment and that it is not in Rosa's best interest to return to Guatemala, she will then be eligible to apply for SIJS.

All four of these children may be eligible for SIJS if they can meet all the other requirements.

For further discussion of dependency, delinquency, guardianship, custody, and adoption and their intersection with SIJS, see **Chapter 4**. For general background on these systems, see **Chapter 7**.

2. The juvenile court must find that reunification with one or both parents is not viable

For the child to qualify for SIJS, a judge must issue an order finding that *the child's reunification with one or both parents is not viable* due to abuse, neglect, abandonment, or a similar basis under state law.[14]

A finding for SIJS purposes that reunification is not viable does not require formal termination of parental rights or a determination that reunification will never be possible. While short separations from parents likely would not qualify, the possibility of future reunification need not deter a finding that reunification presently is not viable as long as there is a significant separation.[15] Likewise, under many states' family laws, sporadic or insignificant contact with a parent does not necessarily mean that reunification is viable.[16]

As the above examples of Erika and Rosa demonstrate, the "one or both parents" language, which was added by the 2008 TVPRA, means that the child need not be separated from both parents to be eligible for SIJS. In other words, the statute provides SIJS eligibility on the basis of the non-viability of reunification with one parent due to abuse, neglect, or abandonment, even while the child remains in the care of the other parent or while the court is actively trying to reunite the child with the other parent. Advocates should be aware, however, that the parent with whom the child remains or with whom they eventually reunify will not be eligible for legal status through the child at any point in the future, even after the child becomes a U.S. citizen.[17] There is very

[14] INA § 101(a)(27)(J); *see also* Manoj Govindaiah, Deborah Lee, Angela Morrison & David Thronson, *Update on Legal Relief Options for Unaccompanied Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, at 3–4, available at https://www.aila.org/ as AILA Doc. No. 09021830 (Feb. 19, 2009) [hereinafter *TVPRA Practice Advisory*].
[15] The USCIS Policy Manual (USCIS-PM) states that lack of viable reunification generally means the child cannot reunify with their parent(s) for the duration of the juvenile court jurisdiction, until the child ages out. *See* 6 USCIS-PM J.2(C)(2).
[16] *See, e.g.*, Cal. Fam. Code § 7822(b) ("If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents").
[17] *See* INA § 101(a)(27)(J)(iii)(II).

little legislative history on the meaning of this language and there has been some resistance from state courts to grant these "one-parent" SIJS claims. However, the plain language of the statute, various state court decisions, and the USCIS Policy Manual guidance on SIJS explicitly recognize that children can be eligible for SIJS based on their inability to reunify with only one parent.[18] See **Chapter 4** for further discussion of "one-parent" SIJS cases.

NOTE: Expansion of the scope of SIJS beyond foster care. Advocates should note that the former SIJS statute required an applicant to have been "deemed eligible for long-term foster care" by the court, which in turn was interpreted to require that family reunification *with both parents* must no longer be a viable option. The TVPRA eliminated this requirement, which had been a source of confusion for both juvenile courts and USCIS, especially because the outdated regulations still refer to it. In essence, the TVPRA clarified the terminology in the statute and made clear that the child need not be in actual state foster care to be SIJS-eligible.[19]

> **Example:** Sara lived with both her father and mother. Sara's father abused her, and her mother failed to protect her from his abuse. Sara's situation was reported to local child welfare authorities. Sara's mother left Sara's father. Subsequently, the juvenile court provided reunification services with Sara's mother. For SIJS eligibility, the juvenile court only needs to find that family reunification with one parent—here, Sara's father—is not viable and therefore, the court can enter SIJS findings even while reunification services are provided to Sara's mother. Sara would be eligible for SIJS.

While this example demonstrates the expansion of who may be eligible for SIJS while in dependency (child welfare) proceedings, there are additional avenues for children to come under the jurisdiction of a juvenile court and be eligible for SIJS. They include delinquency, guardianship, family/custody, and adoption proceedings. See examples in the prior section. For further discussion, see **Chapter 4**.

3. Due to abuse, neglect, abandonment, or similar basis under state law

The court order must make it clear that reunification with one or both parents is not viable *due to abuse, neglect, abandonment, or a similar basis under state law*.[20]Abuse, neglect, and abandonment are defined under the relevant state laws and do not have to take place within the United States for the child to be eligible for SIJS. The relevant question for SIJS eligibility is whether a judge, under the applicable law of the state, has found abuse, neglect, abandonment, or some other, similar ground under that state's law. This does not require that formal charges of abuse, neglect, or abandonment be levied against parents. For example, a child for whom the court appoints a guardian can qualify without a separate proceeding against the parents alleging abuse, neglect, or abandonment. USCIS policy requires that the court order be sought to protect the child and provide relief from the underlying abandonment, abuse, or neglect, and not "primarily to obtain an immigration benefit."[21] Advocates have challenged this requirement,

[18] *See* 6 USCIS-PM J.2(C)(2).
[19] *See* 6 USCIS-PM J.2(C)(2) n.15.
[20] *See* INA § 101(a)(27)(J)(i).
[21] 6 USCIS-PM J.2(D).

arguing that it is not part of the statutory requirements for SIJS. Nevertheless, it remains current USCIS policy.

Under changes made by the TVPRA, the SIJS statute allows for SIJS eligibility based on findings under state law "similar" to abuse, neglect, or abandonment. For example, some states use different legal terms, other than abuse and neglect, to describe the basis for refusing to reunify a child with their parents. Other courts, such as delinquency, may not normally enter abuse and neglect findings, but instead other findings for which they have jurisdiction. The TVPRA broadened the eligibility requirements such that these state law findings based on slightly different vocabulary may still meet the SIJS statutory requirements. However, the applicant must submit additional evidence to establish that such a basis is similar to a finding of abuse, neglect, or abandonment.[22] To avoid this extra step, if the child was subject to juvenile court jurisdiction under some other legal term it is best to ask the judge to also include in the SIJS order (discussed below) one of the designated statutory terms: "abuse, neglect, or abandonment." The judge should use the term whose plain meaning reflects what actually happened to the child.

The juvenile court judge's order should specifically identify which ground(s) - abuse, neglect, abandonment, or a similar basis in law- was the foundation for the determination that reunification with one or both parents was not viable and provide facts to support the finding. It is not sufficient for the order to simply track the language of the SIJS statute. For example, the judge's order could state, "The minor's reunification with the mother is not viable based on physical abuse he suffered in the form of weekly beatings which left bruises on the minor's body. The minor's reunification is further not viable based on emotional abuse he endured, with his mother calling him 'good for nothing' and 'a burden' on a regular basis," or "The above orders and findings were made due to abandonment and neglect of the minor by the father, in that the father failed to provide support for the child and has not contacted the child in seven years. During this time, the minor has attempted to contact his father to request support, but has been told that his father 'does not care' about him and that the minor should 'go to hell.'" See sample judge's orders in **Appendix J**. According to USCIS guidance, the judge's order, or other documents submitted, must provide a basic statement of the facts that supported the order, sufficient to establish that there was a factual basis for the court's findings, as demonstrated by the above examples.[23] For further discussion, see **§ 4.5**.

PRACTICE TIP: Advocates who demonstrate that juvenile court proceedings are protected by state privacy/confidentiality laws should avoid giving USCIS any documents from the state court proceedings.

4. The court or administrative agency must determine that it is not in the child's best interest to be returned to their home country

The juvenile court should include in its SIJS order (discussed below) that it is not in the child's best interest to be returned to their country of nationality or last habitual residence. This finding is made based on state law. Both the downsides of the child returning to their home country and the upsides of remaining in the United States are relevant. The evidence for this finding may range

[22] *See* 6 USCIS-PM J.3(A)(1).
[23] 6 USCIS-PM J.3(A)(3).

from a foreign social service agency's home study determining that a grandparent's home is not appropriate, to simply interviewing the child to learn that there are no known appropriate family members in the home country or that no one is available to protect the child from harm in the home country. Other factors may include: family and friend support systems in the United States, the child's emotional and physical well-being, and access to medical and educational resources that the child may require. If the juvenile court does not include this language in its SIJS order, the applicant must submit evidence that this finding has been made in another administrative or judicial proceeding. For further discussion, see **§ 4.6**.

5. The juvenile court judge should sign an order making the above findings

In order for a child to qualify for SIJS, the juvenile court judge must sign a special order, usually prepared by the child's attorney or other advocate, stating that all the findings required for SIJS have been made. The child will submit this order to USCIS as part of the child's petition for SIJS. For more on the SIJS application process, see **Chapters 8** and **9**. Sample judge's orders appear in **Appendix J**.

PRACTICE TIP: Advocates should request input from SIJS experts before drafting the SIJS order. In recent years, USCIS has exercised increasing scrutiny of the SIJS state court order, and USCIS's concerns with the orders change frequently. Accordingly, before submitting a proposed SIJS order to the juvenile court judge, ensure that you are complying with the guidance in the Policy Manual, and get input from SIJS experts about the content of the order, as it will need to be acceptable not only to the juvenile court judge, but also to USCIS.

6. Consent to the grant of SIJS and specific consent

There are two requirements of consent under the SIJS law: (1) consent to the grant of SIJS in any case; and (2) specific consent for a juvenile court determination on a child's custody or placement status if the child is in federal custody during removal (deportation) proceedings.

The first type of consent requires that the Secretary of Homeland Security, through USCIS, consent to the grant of SIJS.[24] The Policy Manual states that in order to consent, "USCIS must review the juvenile court order and any supporting evidence submitted to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to protect the child and provide relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit."[25] USCIS conflates consent with the act of approving an SIJS petition and, therefore, there is no separate consent application that needs to be made. An approval of an SIJS petition itself is evidence of this consent.[26]

The second type of consent applies only to children in federal custody who seek a juvenile court determination of their custody status or placement, which is rare. Children in federal custody who are deemed "unaccompanied" will be placed in the custody of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Division of Children's Services (DCS) (hereinafter referred to as ORR). As such, children in federal custody seeking a juvenile

[24] INA § 101(a)(27)(J)(iii).
[25] 6 USCIS-PM J.2(D); *see also* H.R. Rep. No. 105-405, at 130 (1997).
[26] 6 USCIS-PM J.4(F)(1).

court determination that changes their custody or placement status must first obtain "specific consent" from ORR. Prior to the TVPRA, the specific consent had to be obtained from the Department of Homeland Security (DHS), which had policies and practices toward unaccompanied minors that were confusing, inconsistent, and detrimental for these youth.[27] For further discussion, see **§ 4.7**.

7. Other requirements: Applicant must be under age twenty-one at time of filing with USCIS, juvenile court should generally retain jurisdiction, and child must be unmarried

a. Under the age of twenty-one

Any person under the age of twenty-one who meets the other requirements can apply for SIJS.[28] Historically, this meant that applicants needed to complete the entire immigration adjudication process prior to turning twenty-one. However, under the TVPRA, as long as the applicant is a "child" (defined as an unmarried person less than twenty-one years of age) on the date the SIJS petition is properly filed with USCIS, USCIS cannot deny SIJS regardless of the applicant's age at the time of the petition's adjudication.[29] In other words, so long as the applicant is a "child" according to the immigration laws at the time of proper filing, the applicant's age will be locked in for purposes of the SIJS petition.

Note on applicants who are eighteen or older. State laws generally require that a child be under age eighteen at the time they are first under the jurisdiction of the juvenile court. State laws vary as to how long a child can remain under juvenile court jurisdiction once they have entered the system. Some states, for example, end dependency at age eighteen, others extend it to age nineteen (especially if the child must complete high school), and others potentially can extend dependency to age twenty-one or beyond. Similarly, different states have different laws on how old a young person must be to enter or stay under juvenile court jurisdiction in a delinquency case. In the guardianship and family law context, most state courts can only take jurisdiction of a minor who is under the age of eighteen, although there are some notable exceptions (for example, in New York, California, and several other states, a guardian may be appointed past the age of eighteen).[30]

Under the regulations, any person under twenty-one who meets the SIJS requirements can apply for SIJS.[31] Thus, it is possible that a nineteen-year-old could become a juvenile court dependent for the first time at age nineteen and could file an SIJS petition and have it approved—so long as

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[27] *TVPRA Practice Advisory*, at footnote 14 above, at 4.
[28] 8 CFR § 204.11(c)(1).
[29] TVPRA § 235(d)(6); *see also* 6 USCIS-PM J.2(B) ("If a petitioner was under [twenty-one] years of age on the date of the proper filing of the [petition for SIJS], and all other eligibility requirements under the statute are met, USCIS cannot deny SIJ classification solely because the petitioner is older than [twenty-one] years of age at the time of adjudication.").
[30] *See* Project Lifeline, Predicate Order State-by-State Age-Out Analysis, https://projectlifeline.us/resources/state-by-state-analysis/.
[31] 8 CFR § 204.11(c)(1); *see also J.L v. Cuccinelli*, 5:18-CV-4914 (N.D. Cal.); *RFM v. Nielsen*, 18-CV-5068 (S.D.N.Y.). The class settlements in *J.L.* and *R.F.M.* ended a USCIS practice that began in April 2018 and pursuant to which it systematically denied SIJS for youth over the age of eighteen but under twenty-one at the time they were placed in California and New York guardianships.

they meet the other SIJS requirements. In reality, however, this can be very difficult to achieve. Most states will not declare a young person dependent, appoint them a guardian, or make a custody determination once they are eighteen or older. This misalignment between federal and state law creates a class of young people, ages eighteen to twenty, who are otherwise eligible for SIJS under federal law, but are effectively barred from applying for this status because no state court can take jurisdiction of them and make the SIJS findings. In fact, advocates report significant difficulties in obtaining juvenile court jurisdiction even for older children who are not yet eighteen but who are close to their eighteenth birthdays.

b. Continuing juvenile court jurisdiction until the entire immigration process is complete

The regulations provide that the person applying for SIJS must remain under juvenile court jurisdiction throughout the entire immigration process—that is, until USCIS approves the petition for SIJS *and* the application for adjustment to lawful permanent residency.[32] This provision predates changes enacted by the TVPRA, and at this time it is unclear whether this requirement will continue to exist once new SIJS regulations are issued.[33]

When this requirement is read in tandem with the TVPRA's age-out protection (described above), it appears that this continuing jurisdiction requirement is eliminated altogether for children whose juvenile court cases close due to age. If USCIS cannot deny SIJS to any person on account of "age," as long as they were under the age of twenty-one when the SIJS petition was filed, USCIS cannot then refuse to approve an SIJS petition or revoke an approved SIJS petition simply because the child's juvenile court case has been closed if this closure is because of "age." The USCIS Policy Manual confirms this interpretation.[34] This issue comes into play, for example, under state law where dependency, delinquency, guardianship, family, or other juvenile court jurisdiction ends when a child reaches that jurisdiction's maximum age.

> **Example:** Julia entered the child welfare system when she was fourteen years old. Because social workers had not heard about SIJS earlier and did not know her immigration status, Julia did not apply for SIJS until she was seventeen. The juvenile court retained jurisdiction over Julia until she was twenty and USCIS granted her SIJS and adjustment of status applications.
>
> **Example:** Mario entered the delinquency system when he was fifteen years old and resided in a foster care group home for years. Mario did not apply for SIJS until he was seventeen years old. The juvenile court terminated jurisdiction on Mario's nineteenth birthday due to his age and the fact that he had completed probation. Mario should remain eligible for SIJS because he was under twenty-one on the date he applied for SIJS and a denial based on a lack of continuing juvenile court jurisdiction would be "based on age"—something the TVPRA prohibits. Note: if the court had terminated jurisdiction due

[32] 8 CFR §§ 204.11(c)(5), 205.1(a)(3)(iv)(C).
[33] The proposed SIJS regulations, which have not been finalized, provide that an individual is eligible for SIJS classification so long as the dependency, commitment, or custody underlying the state court order is in effect at the time of filing and continues through the time of adjudication, "unless the age of the petitioner prevents such continuation." 76 Fed. Reg. 54,978 (Sept. 6, 2011).
[34] 6 USCIS-PM J.2(B).

to completion of probation and not because of age, Mario would be in jeopardy of having his SIJS application denied even if he filed it before the age of twenty-one.

Example: Thelma arrived in the United States at the age of seventeen-and-a-half. She had been abandoned by both parents as a young child and was raised by her grandmother who was no longer able to care for her. She reunified with a loving maternal aunt who petitioned the court to be appointed her guardian. By the time Thelma's hearing in guardianship court came and her aunt was appointed her guardian, she was weeks away from her eighteenth birthday, when the court's jurisdiction ends by operation of law. Thelma should remain eligible for SIJS because she was under twenty-one on the date she applied for SIJS and a denial based on a lack of continuing juvenile court jurisdiction would be "based on age," which is prohibited by the TVPRA.

c. The applicant cannot be married

Under USCIS regulations, applicants for SIJS must remain unmarried until the entire immigration process is complete and USCIS grants permanent residency.[35] Because of the visa backlog for special immigrant juveniles from certain countries (discussed in **§ 3.2**), many young people face a years-long wait before they can adjust status to permanent residency. *They must remain unmarried this entire time, even if they are over the age of twenty-one and their petition for SIJS has already been approved.* For additional information, see **§ 4.8**). An applicant's being divorced or having their own children does not bar SIJS eligibility.[36]

B. Application for permanent resident status

Besides meeting the above requirements for SIJS, the young person must fulfill other requirements that apply to all persons who seek to become lawful permanent residents of the United States (green card holders).

Applicants might have a difficult time gaining permanent residency or may even be barred from doing so if they have a record of involvement with drugs, sex work, or other crimes, have engaged in alien smuggling, were previously deported, or have certain other "bad marks" against them. These young people need advice from expert immigration counsel before applying. They may well win their case—but they need to get good advice to make sure of that before they apply. Immigration lawyers should note that young people seeking SIJS-based adjustment of status are automatically exempt from many grounds of inadmissibility. Also, special waivers of inadmissibility are available to special immigrant juveniles. Unlike many other immigration waivers, the SIJS waiver does not require that the young person have a qualifying relative.[37] See discussion at **§ 5.3**.

More detailed information on all eligibility requirements for SIJS and adjustment of status is provided in **Chapters 4** and **5**, as well as discussions on the following types of cases that deserve special attention and expert advice:

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[35] 8 CFR § 205.1(a)(3)(iv)(B).
[36] USCIS, Special Immigrant Juveniles, https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4/special-immigrant-juveniles (last accessed Jul. 28, 2021).
[37] INA § 245(h)(2)(B).

- Children who soon will turn eighteen, or are over eighteen
- Children who are married or have been married
- Children who soon will be released from juvenile court jurisdiction
- Children who currently are in removal (deportation) proceedings
- Children who are or have been in juvenile delinquency proceedings or have a juvenile or adult criminal record
- Children who have encountered law enforcement even if they have never been formally arrested and/or placed in delinquency proceedings
- Children who have engaged in drug use or drug dealing
- Children who may be in a gang database or flagged as a gang member or associate
- Children who have been previously deported or removed
- Children who have been involved in smuggling

§ 3.3 What Are the Benefits of Applying for Special Immigrant Juvenile Status?

The most important benefit of applying for SIJS is obtaining lawful permanent resident status—a green card. SIJS might be the only route for an undocumented child to gain lawful permanent immigration status in the United States. (But see **Part III** of this manual for other important and, in some instances, more viable ways that some children can obtain lawful immigration status.)

A lawful permanent resident has the right to **live and work permanently** in the United States and to **travel in and out of the country**. While access to public benefits (e.g., welfare, Medicare) for permanent residents has been drastically curtailed since 1996, permanent residents are eligible for some benefits initially and more as time goes on. In particular, young people may be eligible for Title IV-E funds and federal financial aid to go to college. Additionally, after five years (and in some cases sooner) permanent residents can apply for **U.S. citizenship**, which provides additional benefits such as the ability to vote and a more secure immigration status.

Lawful permanent resident status is **permanent**—a special immigrant juvenile who obtains permanent residency will keep it after they are no longer under juvenile court jurisdiction. They remain a permanent resident for their entire life (unless they choose to become a U.S. citizen). The only reason someone's permanent residency might end would be if the person became deportable for some reason, such as violation of certain laws and convictions *as an adult* of certain criminal offenses.

The above benefits come with the green card, but once applicants have submitted the adjustment of status application, they may be granted **employment authorization** until their case is decided.

If the young person is in the child welfare system, the county will also benefit when the young person gains SIJS because they may be able to access federal foster care matching funds, which they cannot access for undocumented youth.

See **Chapter 6** for a further discussion of these benefits.

§ 3.4 What Are the Risks of Applying?

A. Affirmative Cases

The greatest risk to the child is that, if an affirmative application is turned down, Immigration and Customs Enforcement (ICE) might attempt to remove (deport) the child from the United States.

When a child files an affirmative petition for SIJS, the child is alerting immigration officials in USCIS to the fact that they are present in the United States unlawfully. Since these petitions are not confidential, if the SIJS petition and/or the adjustment of status application is denied, USCIS may issue the child a Notice to Appear (NTA), placing the child in removal proceedings for deportation.[38]

It is crucial to make sure that the child is likely to gain SIJS and adjustment of status before submitting an SIJS packet to USCIS so that you do not unintentionally cause the child to be deported. Note that children who are not eligible for SIJS may still be eligible to get lawful status in some other way, such as through asylum, U nonimmigrant status (a visa for victims of crime), or through an abusive U.S. citizen or permanent resident parent under Violence Against Women Act ("VAWA") provisions, even if the child does not come or remain under juvenile court jurisdiction. See **Chapters 10, 11, and 12**.

B. Defensive Cases

In cases in which a young person is already in removal (deportation) proceedings and is applying for SIJS and adjustment of status defensively, this risk does not exist because immigration authorities are already aware of their presence in the United States. They should apply for SIJS if there is any chance of qualifying since approval of the SIJS petition and adjustment of status application would stop their deportation.

In these cases, however, there may be significant barriers to obtaining SIJS and adjustment of status—including getting the children into juvenile court and time pressures created by immigration court deadlines. For further guidance on seeking SIJS in removal proceedings, see **Chapter 9**. Note that if these children are already in federal custody (ORR custody), juvenile courts will have to get permission ("specific consent") from ORR if they make any determination that changes the child's custody or placement status. No consent is needed if such a determination is not regarding custody or placement status and merely to enter SIJS findings. See **§ 4.7**.

§ 3.5 Who Should Apply?

Young people who meet all of the statutory and regulatory requirements for SIJS and adjustment of status and who merit a favorable exercise of discretion should file for these forms of relief. They should first understand what they are applying for, as well as the risks and benefits of applying, including the fact that people who are granted status through SIJS cannot help their parents gain lawful status. See **§§ 3.8 and 3.9**.

[38] USCIS, Policy Memorandum 602-0050, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, Policy Memorandum of (Nov. 7, 2011).

Young people who are not in removal proceedings should generally submit the SIJS petition and the adjustment of status application together, affirmatively, if visa availability allows them to.[39] Generally, children should only affirmatively apply if the advocate is confident that the applications will be granted. In case of doubt, the advocate should consult with an expert in SIJS. For example, children with juvenile delinquent or adult criminal records or records of extensive immigration violations should strategize with an expert before filing.

There is one exception to this cautious advice: children who are already in removal (deportation) proceedings have nothing to lose by submitting an SIJS petition and a corresponding application for adjustment of status since ICE is already trying to deport them.[40] See **§ 3.4**.

§ 3.6 What Is the Application Procedure?

The process for applying for SIJS and adjustment of status depends upon whether the young person is applying affirmatively (not in removal proceedings) or defensively (while in removal proceedings, as a defense to deportation). The application procedure is discussed in greater detail in **Chapters 8** (affirmative) and **9** (defensive). Sample application packets appear in **Appendices M** and **T**–**W**.

In both cases, the child will file two different applications. To apply for SIJS, they must file a **Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant**. To apply for permanent residence, either concurrently or after having already applied for SIJS, they must file a **Form I-485, Application to Register Permanent Residence or Adjust Status**. In addition to the forms themselves, both filings will require additional supporting documentation.

Affirmative case. The child must file two applications, one for SIJS and one to adjust status to lawful permanent residency. Unlike many other bases of eligibility for adjustment of status,[41] an applicant for lawful permanent residence based on SIJS can apply while remaining in the United States, even if they were not inspected and admitted or paroled into the United States.[42] Currently, both the SIJS and the adjustment of status applications are filed at the USCIS Chicago Lockbox and adjudicated by the USCIS National Benefits Center. For the SIJS petition, in addition to the applicable immigration form (Form I-360), the applicant must submit the juvenile court order and

[39] Note that in an affirmative SIJS case, both the I-360 and I-485 forms can be filed concurrently with USCIS assuming there is a visa available to the child, unless there is a reason to file the I-360 alone in advance of the I-485 (for example, if the child has a prior executed removal order and the approved I-360 is needed to prevent reinstatement of the removal order, or if it may be helpful for an applicant to have additional time to demonstrate rehabilitation if there are any negative factors in the case, such as a delinquency history).

[40] If the child's immigration attorney contests removability and puts DHS to its burden to establish the child's alienage, however, then the attorney would not want to submit an SIJS petition on the child's behalf until that issue is resolved since the SIJS petition does require the child to admit alienage.

[41] Generally, applicants for lawful permanent residence can only apply for adjustment of status inside the United States if they have already been inspected and admitted or paroled into the United States. Applicants who have not cannot adjust status and must instead travel outside the United States to apply for permanent residence at a U.S. embassy or consulate abroad, referred to as "consular processing."

[42] See INA § 245(h), which provides that special immigrant juveniles are deemed paroled in and therefore eligible for adjustment even if they entered without inspection.

some proof of age such as a birth certificate.[43] If also filing for adjustment of status, the applicant submits the applicable adjustment immigration forms (Form I-485, as well as Form I-765 if seeking employment authorization), two passport-style photographs (four if applying for employment authorization), photo identification, birth certificate if available, and filing fees (though for many SIJS-based adjustment applicants, the fees can be waived).[44] The young person must also submit the Form I-693 Report of Medical Examination and Vaccination Record following a medical exam conducted by a USCIS-approved doctor.[45] The validity of the Form I-693 is time-limited. As a result, it is often submitted separately after the adjustment immigration forms have already been filed, typically in response to an RFE. If a visa is not available, the child will have to wait until one becomes available before filing for adjustment of status.[46]

USCIS is required by the TVPRA to adjudicate SIJS petitions within 180 days of filing, however, USCIS has failed at various time to comply with this requirement. See **§ 3.7**. USCIS may adjudicate the SIJS petition with or without interviewing the young person. If USCIS decides to conduct an interview, the young person often can have a social worker, and certainly an attorney, attend the interview with them if desired. USCIS might approve the SIJS petition at the interview, or might request further information. If USCIS denies the case, USCIS may issue the child an NTA, placing them in removal (deportation) proceedings. The child can appeal the SIJS petition's denial to a higher unit at USCIS called the Administrative Appeals Office (AAO). They may also consider filing an action in federal district court challenging the denial.

Once the adjustment application is filed with USCIS, the child can obtain employment authorization. USCIS will schedule an appointment for the child to be photographed and fingerprinted ("biometrics") at an Application Support Center ("ASC"), and the FBI will complete a check of any criminal or delinquency record or prior deportation for young people ages fourteen and older. Applicants who do not have a photo identification may have trouble completing their biometrics at the ASC.[47] USCIS may also adjudicate the application for adjustment of status with or without an interview. If USCIS interviews the SIJ adjustment applicant, USCIS may approve the application at the interview, or may request additional information. As with the SIJS petition, if USCIS denies the adjustment application, USCIS may issue an NTA, placing the child in removal (deportation) proceedings. The child cannot appeal the denial of the adjustment of status application. Instead, the adjustment of status application can only be renewed before the immigration court.

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[43] 6 USCIS-PM J.3.

[44] *See* 8 CFR § 106.3(a)(2)(i), (f)(6). There is no filing fee for the Form I-360. Under the current fee waiver instructions, SIJS-based adjustment applicants may request to have the adjustment filing fee waived without having to show proof of income. USCIS, Instructions for Request for Fee Waiver, 7, https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf.

[45] 8 USCIS-PM B.3.

[46] The exception to this general rule is that at times, USCIS permits the filing of I-485s (applications to adjust status) even though visas are not currently available because USCIS has determined that there are more visas available for the fiscal year than there are known applicants. The client will not be able to adjust status until there is a visa available, but the benefit of filing the I-485 (even though it cannot yet be adjudicated) is that it will allow the client to apply for work authorization based on having a pending application for adjustment. See § 5.4 for further information.

[47] *See* 1 USCIS-PM C.2(A).

If desired and if visa availability allows, the child will submit two applications at the same time to USCIS if applying for SIJS affirmatively: Form I-360 for SIJS and Form I-485 for adjustment of status to permanent residency.

Defensive case. The child still must file two applications, one for SIJS and one to adjust status to lawful permanent residency. Unlike in affirmative cases, however, these applications are generally not filed together even when visa availability would normally allow for it. Instead, the child first files their SIJS petition with the supporting materials discussed above with USCIS at the Chicago Lockbox—since USCIS alone has the power to grant or deny a child's SIJS petition. If USCIS denies the child's SIJS petition, the child can appeal to a higher unit at USCIS (the AAO). They can also consider filing an action in federal district court. If USCIS approves the child's SIJS petition, they proceed to the next step.

Once USCIS has approved the SIJS petition, then the young person can file their adjustment of status application with the immigration judge—since the immigration judge alone has the power to grant or deny a child's adjustment of status if the child is in removal proceedings.[48] Alternatively, the immigration judge may be willing to dismiss the removal proceedings, allowing the young person to file their adjustment of status application with USCIS. Under new guidance on prosecutorial discretion,[49] ICE attorneys may agree to join a motion to dismiss, and the immigration judge may grant such dismissal of the removal proceedings upon the issuance of the juvenile court order, filing or approval of the SIJS petition, or once a visa is available to the young person.[50] If the removal proceedings are dismissed, the child can proceed affirmatively with their case and seek their adjustment of status before USCIS rather than in immigration court. This may be preferable because it allows the child's adjustment of status application to be adjudicated in a non-adversarial setting.

If the removal proceedings are not dismissed and the young person files for adjustment of status in court. The young person's immigration attorney must also submit a biometrics packet to USCIS so that they can have their background checks completed. After these steps are complete, the immigration judge will schedule a merits hearing. At that hearing, the immigration judge may

[48] The only exception is if the child is charged as an "arriving alien" in their removal proceedings. In that case, USCIS has jurisdiction to adjudicate the child's adjustment of status application. 8 CFR §§ 245.2(a)(1), 1245.2(a)(1).

[49] ICE, *Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities* (May 27, 2021), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_interim-guidance.pdf. Note that the enforcement priorities on which the prosecutorial discretion memo is based are currently being litigated.

[50] The stages at which SIJS applicants can move to terminate proceedings has shifted in recent years. Prior to the SIJS visa backlog, some judges terminated removal proceedings upon the issuance of the state court predicate order or the filing of the I-360. More recently, many judges would wait until the I-360 approval or for the visa priority date to become current before terminating proceedings. Currently, under the new guidance on prosecutorial discretion, DHS has been willing to join motions to dismiss at earlier stages – upon filing or approval of the I-360, or even sooner once the state court predicate order is issued.

take testimony and will likely issue a decision on the child's case.[51] If the immigration judge approves the case, the child becomes a lawful permanent resident. If the case is denied, the child can file an appeal with the Board of Immigration Appeals (BIA). BIA rulings can then be appealed to the federal appellate courts, depending upon the circumstances.

The child will submit two applications *at different times and to different entities* if applying for SIJS defensively: Form I-360 for SIJS to USCIS, and then, if the SIJS petition is approved, Form I-485 for adjustment of status to permanent residency to the immigration judge (or, if removal proceedings are terminated, USCIS).

§ 3.7 Expeditious Adjudication

SIJS petitions are required to be adjudicated expeditiously, within 180 days after the date on which the application is filed.[52] USCIS interprets this expeditious requirement as only applying to the SIJS petition (I-360) and not the entire application packet, which includes the adjustment of status application (I-485).[53] In order to comply with this requirement, USCIS has the discretion to waive interviews with applicants under the age of fourteen or when it is determined that an interview is not otherwise necessary. Advocates should contact the National Benefits Center (the USCIS office responsible for adjudicating SIJS petitions and SIJS-based adjustment of status applications) if SIJS petitions are not adjudicated on time, and they should then go up the chain of command at USCIS until the issue is resolved. Action in federal court may be possible if USCIS does not adjudicate a child's SIJS petition within the 180-day timeframe. Advocates may also make a congressional inquiry with the child's member of Congress. See **Chapter 8** for further information.

§ 3.8 Talking with the Young Person About SIJS

Before a petition for SIJS is filed, the young person should understand what the application is about, and the risks and benefits of filing. Any attorney for the child must be consulted. The young person's social worker, probation officer, CASA (court-appointed special advocate) volunteer, foster parent, or other interested advocate may be involved. A one-page form in Spanish and English that you can use to help explain SIJS appears in **Appendix F**. A more in-depth discussion about working with immigrant youth is in **Chapter 2**.

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[51] Some immigration courts' standing orders address the option of having applications for relief adjudicated on the papers—that is, without an evidentiary hearing at which the respondent testifies and is subject to cross-examination. For more information see **§ 9.15**.

[52] TVPRA § 235(d)(2).

[53] *See* 6 USCIS-PM J.4(B). USCIS temporarily pauses the 180-day adjudication clock when it issues a request for additional evidence (RFE). Note, however, that the court in in *Galvez v. Cuccinelli* rejected this approach. *Galvez v. Cuccinelli,* 492 F. Supp. 3d 1169, 1182 (W.D. Wash. 2020) (granting summary judgment in favor of a class of immigrant youth who secured predicate orders in Washington state, finding that USCIS's delayed consideration of SIJ petitions for periods past the 180 days was unlawful because its redefinition of "filed" to authorize delays that Congress had proscribed was not reasonable).

§ 3.9 Natural Parents, or Prior Adoptive Parents, and Maybe Siblings, Cannot Benefit Through Grant of SIJS to Child

A child who immigrates as a special immigrant juvenile can no longer help to obtain any immigration benefit for their natural parents or prior adoptive parents.[54] The statutory definition of SIJS bars natural parents or prior adoptive parents from receiving any "right, privilege, or status" under the INA by virtue of their relationship to the child.[55] This means that the child will not be able to use their new lawful immigration status to help their parents to get lawful status, even if parental rights were not terminated. For example, although a U.S. citizen who is at least twenty-one years old can ordinarily file a family petition for their mother, a special immigrant juvenile who becomes a permanent resident and then a U.S. citizen will not be able to do so.

Congress enacted this rule to make sure that parents who abused, neglected, or abandoned their children would not benefit from the fact that the children qualified for SIJS. These parents generally do not lose any immigration benefit that they otherwise would have had, because without SIJS their undocumented child usually could not have helped their parents to immigrate. Even though under the TVPRA a child may qualify for SIJS if only one parent is abusive, neglectful, or has abandoned them, the other non-offending parent still faces this same bar. They cannot gain any immigration benefit through a child who obtains immigration status based on SIJS. In some cases where children want to help a non-offending parent to also obtain lawful immigration status, U or T nonimmigrant status, for example, may be better options because there is no bar to immigrating parents for these forms of relief, as there is with SIJS, and these options allow the child to include their parents as derivative beneficiaries.

A U.S. citizen who is at least twenty-one years old can petition for permanent resident status for a sibling.[56] Unfortunately, it is unclear whether a U.S. citizen who gained lawful permanent residency through SIJS is barred from using their status to assist a brother or sister to immigrate. Immigration law defines siblings as persons with a common parent.[57] There is a concern that USCIS may assert that a special immigrant juvenile no longer has a sibling relationship with brothers and sisters for immigration purposes. However, the statutory definition of SIJS only restricts natural parents or prior adoptive parents from receiving an immigration benefit by virtue of such parentage. It does not expressly bar a sibling from receiving such a benefit by virtue of their shared parentage.

Even if the child can apply for siblings, the main drawback is that the sibling's petition falls under the family-based fourth preference category. These petitions generally have a long waiting period (anywhere from thirteen to upwards of twenty or more years after the petition is filed) before the sibling receives any legal rights. See **Chapter 13** for more on family-based immigration.

§ 3.10 Children in Immigration Custody

If an unaccompanied immigrant child is in immigration custody when they come to juvenile court, a juvenile court judge cannot make custody or care decisions that change the child's

[54] INA § 101(a)(27)(J)(iii)(II).
[55] *Id.*
[56] INA § 203(a)(4).
[57] *See* INA § 101(b).

custody status or placement without ORR's permission. Specifically, the SIJS statute states that "no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction."[58] This is referred to as the "specific consent" requirement.

Importantly, specific consent is not required for a juvenile court to take jurisdiction over a child's case or to enter SIJS findings. Custody or placement decisions are not always ones that arise in the process of obtaining the SIJS order. Specific consent is only required when a juvenile court will determine or alter a child's custody or placement status. This would arise, for example, if the child was petitioning to be moved from a federal ORR facility to a local facility, such as a group home that is under local, and not federal, jurisdiction.

Requests for consent for a juvenile court to order a change in custody or placement determination over a child in ORR custody must be made in writing to ORR. Instructions are found at **§ 7.6**.

[58] INA § 101(a)(27)(J)(iii)(I).