

CRIMMIGRATION COMMUNICATION



Immigration Consequences for Attorneys to Consider when Working with a SIJS Client

United States immigration law allows certain immigrant children to obtain Lawful Permanent Resident (LPR) status through a special visa category known as Special Immigrant Juvenile Status (SIJS). To be eligible, the child must be:

1. Under 21 years old;
2. Unmarried;
3. Declared dependent upon a **juvenile court** (i.e. Family, Surrogate's or Supreme Court);
4. Reunification with one or both of the applicant's parents must no longer be a viable option due to **abuse, abandonment, neglect or a similar basis under state law**; AND
5. A juvenile court judge must find that it is not in the best interests of the applicant to return to his/her country of nationality or last habitual residence.

Pursuing SIJS is a two-step process that requires action at the state/family court level, as well as through U.S. Citizenship and Immigration Services (USCIS). Once a state court issues the "Special Findings Order" declaring factual SIJS eligibility, a child may petition USCIS for classification as a "Special Immigrant Juvenile." A child who is granted SIJS may then apply for LPR status (a green card).

There is a limit on the number of people per country who can get a green card through SIJS in a given fiscal year. At this time, there is a significant backlog for some countries, and the child must wait until the priority date is current, before pursuing the adjustment of status. Currently, there is a visa backlog for nationals of **El Salvador, Guatemala, Honduras, and Mexico**.

Family Court Attorneys – If you are representing an undocumented child in family court, you can file a Special Findings Motion asking the court to make findings on all SIJS elements. Some of the proceedings where Special Findings are available include:

- Article 10 Proceedings (Abuse & Neglect)
- Voluntary Placement/Destitute Child Cases
- Adoptions (note a child under 16 adopted by a US citizen does not need SIJS, she becomes a US citizen by another process)
- Guardianship Proceedings
- Custody/Support Proceedings (varies by judicial department)
- PINS Proceedings
- Juvenile Delinquency Proceedings
- Family Offense Proceedings

Once a Special Findings Order is issued, the child will need to be referred to an immigration attorney to file a SIJS petition with USCIS. Please reach out to the LIRIAC for a referral list of pro bono immigration legal services providers.

Family Court Attorneys should also reach out to the LIRIAC to consult on the immigration consequences of the Special Findings Order for your noncitizen clients (parent or child). Generally, some of the immigration consequences of Special Findings Orders are:

- For immigration purposes, the SIJS beneficiary will not be considered to be the parents' "child" and cannot confer immigration benefits on any parent.
- A parent may experience a negative exercise of discretion by the immigration authorities for admissions made during these proceedings.

Criminal Defense Attorneys – Please note that the child's law enforcement contacts and crime-related issues are important factors in getting LPR status (a Green Card) based on SIJS. Please reach out to the RIAC to discuss these issues in detail and make sure your client is properly advised of all immigration consequences.

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