

Special Immigrant Juvenile Status

An unauthorized immigrant juvenile may be eligible for lawful permanent resident status as a Special Immigrant Juvenile (SIJ) under certain conditions specified by Federal immigration law. The juvenile must file with the United States Citizenship and Immigration Services (USCIS) for the grant of SIJ status, and the granting of status is discretionary with USCIS. Any unmarried person under the age of 21 who meets the conditions listed below may apply for SIJ Status.

Required Court Findings for Eligibility

For eligibility for SIJ status, there must be a finding by a court in the United States with juvenile jurisdiction, signed by the judge, that:

- The juvenile is declared dependent on the court and placed in the custody of an agency or department of a state or an individual or entity appointed by the state or a juvenile court located in the United States;
- Reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis found under state law; and
- There has been an administrative or judicial finding that it would not be in the best interest of the juvenile to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence;

Note that the juvenile is eligible to apply for SIJ status if reunification is not viable with one parent. A juvenile may be eligible to apply for SIJS if declared dependent due to abuse, neglect, or abandonment by one parent even if the juvenile is still living with the other parent.

The statute allows a finding of abuse, neglect, or abandonment or other similar basis under state law. This allows a court that is not authorized by a state to determine abuse or neglect, such as a delinquency court, to make findings that could support an SIJS application.

Additional Requirements

In addition, the following requirements must be met:

- The juvenile must file for SIJ status before reaching the age of 21;
- The juvenile must be unmarried at filing and remain so until SIJ status is granted;
- The juvenile court must retain jurisdiction until SIJ status has been granted by USCIS;
- The juvenile has concurrently applied for lawful permanent resident status;
- The dependency case was not filed as a sham solely to obtain immigrant status; and
- If the juvenile is in ICE custody, the consent of ICE has been obtained, or in the case of unaccompanied minors, the Office of Refugee Resettlement (ORR).

The process for obtaining SIJ status begins with a finding in a court in the United States with juvenile jurisdiction that the juvenile meets the above conditions. A court with juvenile jurisdiction means any court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles. Some examples include dependency, guardianship, probate, and delinquency courts.

If the juvenile is an unaccompanied minor in the actual or constructive custody of the U.S. Department of Health and Human Services (DHHS) and the juvenile seeks to have custody transferred from DHHS to the juvenile court for placement, the juvenile needs the consent of DHHS to apply for SIJ status prior to initiating proceedings in a state dependency court.

As the juvenile must concurrently apply for adjustment to lawful permanent resident status, most of the grounds for inadmissibility also apply to eligibility for SIJS. An alien juvenile who engages in any of the following areas of conduct may be ineligible for SIJS:

- Known or reasonably believed to have engaged in drug trafficking;
- Being a drug addict;
- Having engaged in prostitution;
- Violation of protection order;
- Use of false documents; or
- Having a mental condition that is a threat to others.

The Issue of Age

To assure that the juvenile remains eligible for SIJ status, the juvenile court must retain jurisdiction until the juvenile is granted SIJ status. If juvenile jurisdiction terminates at age 18 under state law, USCIS will not deny the petition if the record shows that the termination of jurisdiction was solely due to age.

While a person under the age of 21 may file for SIJ status under Federal immigration law, some states do not permit a finding of dependency for a person who has reached the age of 18. In those states a person who has not been declared dependent before reaching the age of 18 will not be eligible to apply for SIJ status.

Proving the age of an immigrant juvenile can be problematic, as records in the country of birth may not be available or reliable. The juvenile must submit some documentary proof of age to USCIS as part of the SIJS filing.

The Effects of Juvenile Delinquency Proceedings

A delinquency court can be the source of findings making a juvenile eligible for SIJ status. Further, juvenile delinquency is generally not a bar to SIJS status, as delinquency is not considered adult criminal activity.

- What constitutes juvenile delinquency is to be determined by Federal law.
- Federal law defines a juvenile as anyone under the age of 18, and juvenile delinquency as an act committed by a juvenile that would be a crime if committed by an adult.
- Certain crimes committed by juveniles may be considered adult criminal convictions under Federal law.

Juvenile delinquency proceedings may still carry risks for a juvenile. The disqualifying factors for SIJ status listed above do not require a criminal conviction to make an alien inadmissible or deportable, so a juvenile who admits to any of those areas of conduct in the context of a delinquency proceeding may then be ineligible for SIJ status.

Further, USCIS may look at evidence of bad acts, including evidence from a delinquency proceeding, in determining whether to exercise discretion on behalf of an applicant for a variety of forms of discretionary immigration relief, including special immigrant juvenile status and naturalization.

Engaging in Prostitution

Engaging in prostitution makes a juvenile ineligible for SIJ status, even if the juvenile's behavior is not classified as criminal under state law. On the other hand, the juvenile may be eligible for a T visa under 8 U.S.C 1101(a)(15)(T) as a trafficking victim as defined by the Trafficking Victims Protection Act (TVPA), 22 U.S.C 7102 and 7105.

Model Juvenile Court Order (New York State)

PRESENT: Hon.

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Docket No.

Family File No.

ORDER-Special Immigrant Juvenile Status

This Court, after examining the motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony, finds, in accordance with 8 U.S.C. 1101(a)(27)(J), that:

1. The above-named child is under 21 years of age.
2. The above-named child is unmarried.
3. The above-named child is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court.
4. Reunification with one or both of his/her parents is not viable due to [check applicable box(es)]: abuse; neglect; abandonment; and/or a similar basis under New York law because [specify the basis for the determination]:

5. It is not in the child's best interest to be removed from the United States and returned to [specify country]: _____, his/her country of nationality or country of last habitual residence of the child or of his/her birth parent or parents.

Dated: _____

Judge of the Family Court

