



TEXAS CENTER  
FOR THE JUDICIARY

Special Immigrant Juvenile Status  
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ABA's Children's Immigration Law Academy (CILA)  
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SIJS Overview & Eligibility Requirements

SIJS Eligible Populations

USCIS Policy Manual on SIJS

Post-Order Agency Challenges



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### What is Special Immigrant Juvenile Status (SIJS)?

Special Immigrant Juvenile Status (SIJS) is a form of relief for non-citizens in the U.S. who:

- Are under 21, unmarried, and under the jurisdiction of a state "juvenile court."
- Pursuant to Immigration & Nationality Act § 101(a)(27)(J) the juvenile court must:
  - Declare the juvenile dependent on the court or legally place juvenile under the custody of a state agency or department, or an individual or entity;
  - Find that the juvenile cannot be reunified with one or both parents due to abuse, abandonment, neglect or a similar basis under state law; and
  - Determine that it is not in the juvenile's best interest to return to juvenile's or parent's previous country of nationality or country of last habitual residence.

Once SIJS is granted, individual is eligible to adjust status to that of a lawful permanent resident if a visa number is available.



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### HISTORY OF SIJS

**1990** SIJS is created to address children in state foster care.

**1997** Added requirement that state court must find eligibility for long-term foster care *because of* "abuse, neglect, or abandonment."

**2008** Eliminated "eligibility for long-term foster care" language & expanded relief to those who can show "reunification with 1 or both of the immigrant's parents is not viable."



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### SIJS REGULATIONS

Code of Federal Regulations at 8 CFR § 204.11

Promulgated in 1993. The regulations have not yet been updated to reflect changes made to the underlying statute, which was significantly amended in 2008.

DHS proposed new regulations in September 2011 but they yet to be finalized.

Provisions that are still applicable from 1993 regulations:

Definition of "juvenile court"- a court located in the US having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.  
Eligibility requirements- under 21 years of age, unmarried, etc.



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### THREE KEY PHASES IN SIJS CASES



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### SIJS Eligibility Requirements

- Physically present in the US
- Unmarried
- Under 21 on the date of filing
- Valid juvenile court order with findings
- DHS consent



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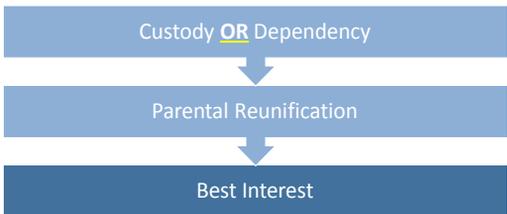
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### Necessary Findings



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### SIJS Eligible Populations

Children who have never had contact with the immigration authorities (affirmative applications):

- May be new arrivals who entered the U.S. undetected by the authorities, and suffered parental mistreatment in their home country.
- May have entered many years ago but never been detected, and suffered parental mistreatment here in the U.S.

Children who have had contact with the immigration authorities (defensive applications):

- May be new arrivals to the US who were apprehended upon unlawful entry into the country (unaccompanied children).
- May have been here several years, came in unaccompanied or with a parent, have outstanding removal orders or are otherwise in proceedings.




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### CPS Children in Immigration Proceedings

- Child will have to make appearances in immigration court.
- Immigration judge and opposing counsel (ICE attorney) may be unwilling to agree to continuances in order for the state court process to play out.
- For children with prior removal orders, urgency exists to file Motion to Reopen with approved SIJ status as basis for reopening case; but without visa currently available, ICE may not join Motion to Reopen.
- Visa backlog complicates matters for all parties involved – at what point does representation end, should immigration court keep case open, ICE's opposition to administrative closing/termination of removal proceedings...
- Need to stay apprised of policy changes by CIS despite no change in laws or regulations.




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### Valid Juvenile Court Order



Issued under state law



Continuing jurisdiction



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ARGUMENTS SHOULD BE  
MADE UNDER TEXAS LAW.  
IMMIGRATION LAWS  
**SHOULD NOT** BE CITED IN  
COURT PLEADINGS.



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### USCIS Consent- Factual basis

USCIS Policy Manual:



- "The order or supporting evidence should specifically indicate:
  - With whom the child is placed (for example, the name of the person, or entity, or agency if the child is adjudicated dependent) and the **factual basis** for this finding;
  - Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent (or parents) and the **factual basis** for the court's findings on non-viability of parental reunification; and
  - The **factual basis** for the determination that it is not in the petitioner's best interest to return to (a placement in) the petitioner's or his or her parents' country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child's country of nationality or last habitual residence)."



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### CPS Challenges



#### Flexibility in switching course for relief

- Change in SIJS adjudication policy
- USCIS requiring more information from the state court

#### More children in removal proceedings

- Requires expertise in deportation defense
- Immigration court timeline to consider

#### Visa backlog

- Adoptive parents facing new dilemma
- Years-long wait time before relief obtained
- Public benefits issues



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