

POP-UP BOXES: **To Accompany SIJS PowerPoint Flow Chart**

Introduction

Special Immigrant Juvenile Status (SIJS) is a legal path for abused, abandoned, and neglected children without legal immigration status to remain in the United States lawfully. SIJS is available to children who have been declared dependent on a juvenile court or who were legally committed to or placed under the custody of a state agency, or an individual or entity appointed by the state or the court; for whom reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis; and for whom return to their country of nationality or last habitual residence is not in the child's best interest. A grant of SIJS makes a child eligible for "adjustment of status" to lawful permanent resident status (also called a "green card"), which in turn can lead to U.S. citizenship.

SIJS can be a legal lifeline to some of the children who are in long term foster care through the Office of Refugee Resettlement's (ORR) Division of Children's Services programs (hereafter referred to as "DCS.") However, it also can be a complicated and confusing process. To help clarify the SIJS process for a UAC child, we have created four (4) PowerPoint flow charts which lay out the general steps in an SIJS case for children in federal custody. The first chart provides an overview of the process, while charts two through four provide more detailed descriptions of particular steps in the process.

Chart 1: *Basic SIJS Case Flow for Children in the Custody of the Federal Government*

Chart 2: *Establishing Jurisdiction of Local Juvenile Court*

Chart 3: *Terminating Immigration Court (EOIR) Proceedings*

Chart 4: *Permanent Residency Application and Adjustment of Status*

Please remember that this flowchart lays out the idealized process, but individual case variations can and will occur. With these flowcharts we endeavor to simplify a very complex process, but users of this flowchart (and the SIJS-applicant children with whom they work) must also recognize that these complexities make each individual case somewhat unpredictable. In addition, policy, practice and procedure implemented by the Office of Refugee Resettlement (ORR), the Executive Office for Immigration Review (EOIR), and the Department of Homeland Security (DHS) may: change and evolve; vary from region to region; and vary from government employee to employee. As one attorney put it, it is difficult to provide certainty in an uncertain process. Nonetheless, to the extent that there are broad similarities across SIJS cases, we have tried to capture those here.

These flowcharts are intended as background information for caseworkers assisting UAC children in ORR-funded foster care. They are not intended to provide legal advice, and should not be used as such. These were created for DCS foster care caseworkers, but others may find them useful as well.¹

¹ The Immigrant Legal Resource Center (ILRC) provides excellent SIJS materials on its website, including a link to order the ILRC manual, *Special Immigrant Juvenile Status and Other*

[NOTE: Pop-up box numbers correspond to the flow chart box with the same number. Comments are labeled as either a “Practice Note” or “Legal Note” though both types are written to aid caseworkers.]

Chart 1: Juvenile Court

Practice Note: As child welfare laws and regulations are established locally, terms and procedures will vary from place to place. The court may be called family, juvenile, district, superior, probate or circuit court. The court process may be referred to as establishing dependency, court wardship, guardianship, or having a child declared in need of protective services—which in some places may be called “CHIPS” (child in need of protection and services), “CHINS” (child in need of supervision or services), or “PINS” (person in need of supervision or services). The entity responsible for initiating the dependency process may be the child’s attorney, guardian ad litem (GAL) or law guardian, foster care agency, or public child welfare entity.

Legal Note: The child’s immigration attorney may not wish to also handle the dependency proceedings, either because the immigration attorney is unfamiliar with juvenile court law and procedure, or because the involvement of an immigration attorney in the dependency process may limit the success of an SIJS application. Field Guidance from the U.S. Citizenship and Immigration Services (USCIS) on SIJS notes that dependency court findings should not be made solely for the purpose of an immigration benefit. In some DHS districts, the involvement of an immigration attorney at the dependency court stage can cause greater skepticism and scrutiny when it comes time for the USCIS review of a child’s SIJS application. Hence, the child may need a separate attorney for juvenile court dependency proceedings. Some courts in some jurisdictions may appoint an attorney to represent a child in dependency proceedings.

Chart 1: Immigration Court

Legal Note: Children have the right to be represented by an attorney in immigration court. The federal government does not fund or guarantee representation; however various agencies are working to improve legal representation for children, including the American Bar Association, the Catholic Legal Immigration Network, Inc. (CLINIC), Kids in Need of Defense (KIND), and the Vera Institute of Justice.

Chart 2: Petition

Legal Note: Children in DCS foster care will typically petition the juvenile court for dependency, however some children in legal guardianship arrangements recognized by probate court, or in juvenile delinquency proceedings, may also be eligible for SIJS.

In places where the foster care agency is involved in petitioning the juvenile court for dependency, it is important to know what elements should be included in the judge’s court order, as this can ultimately affect the success or failure of the child’s SIJS application.

Immigration Options for Children and Youth. <http://www.ilrc.org/info-on-immigration-law/remedies-for-immigrant-children-and-youth>.

Chart 2: Investigation

Practice Note: Public child welfare entities will generally make some investigation into the child's circumstances in the home country. In some places this may be called a "diligent search" for the parents. Local practice will vary, but this may involve requesting information from the foster care caseworker about the child's family background, correspondence or phone calls to the family in the country of origin, publishing information about the search in a local newspaper or broadcasting it on the radio, or attempting to make contact with the parent or guardian through a social service provider in the country of origin.

Chart 2: Hearing Occurs

Practice Note: Some children may find the dependency court hearing process very stressful, especially if they must recount painful treatment at the hands of parents or guardians. Like victims of other forms of maltreatment, many children have conflicted feelings about their parents or guardians and may find it difficult to publicly accuse their parent or guardian of maltreatment. Requirements that documentation of the court proceedings be served on the parent or guardian may also cause anxiety for children. All of this may have an impact on the child's physical, mental, or emotional health, and it may cause some children to reconsider whether they wish to pursue SIJS.

Chart 2: Court Decision

Legal Note: Other forms of immigration relief may include asylum, T and U visas, the Violence Against Women Act (VAWA), or family immigration. More information on these other forms of legal relief is available in, *Immigration Options for Undocumented Children*, by the Immigrant Legal Resource Center (ILRC):

<http://www.ilrc.org/resources/sijs/Fact%20sheets%20immigrant%20children.pdf>

Chart 2: Court Order

Legal Note: Dependency court orders should include the specific language required by the SIJS statute. The ILRC's "SIJS Manual" also details the dependency order requirements.

The statute (INA § 101(a)(27)(J)) says that children must obtain an order from a court of competent jurisdiction in the U.S., declaring that:

- a. The child is dependent on a juvenile court, or has been legally committed to, or placed under the custody of an agency, or an individual or entity appointed by a State or juvenile court;
- b. The child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis found under State law; and
- c. It is not in the child's best interest to be returned to the country of nationality or last habitual residence.

Chart 2: SIJS Application

Practice Note: The SIJS application process can be lengthy, depending on the child's circumstances and jurisdiction. Uncertainty about legal status and permanence in the U.S. can take a psychological toll on SIJS-applicant youth, while also limiting their ability to plan for the future. A successful SIJS application can be a tangible symbol of permanence for a

child in foster care, while the lengthy application process—combined with the prolonged state of legal limbo—can simultaneously undermine a child’s sense of permanence. SIJS applicants may be encouraged to know that other SIJS-applicant youth have experienced similar struggles, and ultimately prevailed.

Chart 3: Is the Child in Removal Proceedings

Practice Note: Children who are in removal proceedings before the immigration court will be involved in two types of court proceedings at the same time: local juvenile court and federal immigration court. These are two very different court systems that may not cooperate or communicate about a child’s case.

Chart 3: Apply Simultaneously (Child NOT in Removal Proceedings)

Legal Note: Most SIJS applicants submit the *I-360 Petition for Special Immigrant; the I-485 Application for Adjustment of Status (Green Card); and the I-765 Application for Employment Authorization (Work Permit)*; though only children who are no longer in removal proceedings can submit all three at the same time. For more on this topic, see “Forms and Fees.”

Chart 3: Terminate Proceedings

Legal Note: To “terminate” a case means the case is finished. The immigration judge will consider whether the trial attorney (the government attorney representing the interests of DHS) agrees with termination.

Some attorneys may ask the immigration judge to terminate proceedings after the I-360 is submitted. Other attorneys will wait until after the I-360 is approved. Typically after a child’s I-360 is approved, the immigration judge and trial attorney will agree to terminate a child’s removal proceedings, so that the child can pursue adjustment of status to permanent residency before USCIS. However, some attorneys may decide to keep the adjustment of status application before the immigration judge rather than seeking termination and adjustment before USCIS. Considerations may include:

- ✓ Which system can adjudicate the application more quickly?
- ✓ Which process, or adjudicator, is likely to be more child-friendly?
- ✓ Which system will better handle any complicating factors, such as juvenile delinquency charges?

Some immigration judges may insist that the child continue with court proceedings, despite the child’s pending SIJS case. This could mean that the child, if eligible, may need to apply for asylum in the immigration court, at the same time the SIJS case is proceeding with USCIS. If the child does not have a viable asylum claim, or if the child loses the asylum case in court, the immigration judge could issue a removal order against the child while the SIJS application is still pending. If the I-360 is later approved by USCIS, the child’s attorney can use that approval to “re-open” the removal proceedings in court and then apply for adjustment of status before the immigration judge, based on the approved SIJS application. In this scenario, USCIS and EOIR have separate proceedings unfolding simultaneously that may not act in concert with one another. (For an explanation of the government agencies involved in an SIJS case, see “Key Government Players.”)

Chart 3: Admin Closure/Continuance

Legal Note: Administrative closure allows an immigration judge to put a case on long-term hold pending the results of administrative action. This is akin to putting the case on a shelf, but the child is still considered to be in removal proceedings and the case can be re-calendared (restarted) at any time by any party. A continuance means the court agrees to postpone the next hearing for a certain period of time. Each immigration court has different policies and practices about continuances – some courts may grant a child a continuance of three to six months, other courts may only grant a continuance of several weeks, or may only grant a certain number of continuances per case.

In order for the immigration judge to administratively close the case, both parties (the child’s attorney and the government’s attorney) must agree. In the case of a continuance, it is always better if the trial attorney agrees to the continuance, but if he or she does not, the immigration judge can still grant the continuance.

Immigration judges function under certain “case completion goals,” or standard timelines for certain types of cases. In general, cases of people who are detained move more quickly than cases of people who are not detained; UAC children in ORR-funded foster care are usually treated as non-detained cases. However, EOIR has said “all juvenile cases have been exempted from case completion goals,” so that judges can give children’s cases the time they need. [Source: EOIR letter from Larry Dean, Assistant Chief Immigration Judge, to Robert Evans, American Bar Association, dated June 15, 2005.]

Chart 3: Apply Simultaneously (Termination Granted)

Legal Note: While children are still in removal proceedings, the immigration judge has jurisdiction over adjudication of the I-485 (also called adjustment of status to lawful permanent resident (LPR) status). The I-485 generally cannot be filed or adjudicated until the I-360 is first approved (however, local practice can sometimes vary). If removal proceedings are terminated, the I-360 and the I-485 can be submitted together to USCIS.

Chart 3: Apply Separately

Legal Note: Most SIJS applicants submit the *I-360 Petition for Special Immigrant*; the *I-485 Application for Adjustment of Status (Green Card)*; and the *I-765 Application for Employment Authorization (Work Permit)*; though only children who are no longer in removal proceedings can submit all three at the same time. For more on this topic, see “Forms and Fees.”

Chart 4: Child STILL in Removal Proceedings, with I-360 Granted by USCIS

Legal Note: There are a variety of things that can make an I-485 applicant inadmissible (ineligible to adjust status). These include, but are not limited to, criminal convictions, suspicion of criminal activity, some health-related reasons, or that the person may be a danger to the public. SIJS applicants are eligible to waive (or have forgiven) some, but not all, grounds of inadmissibility. However, this is a very complex area of immigration law, with potentially serious consequences. Attorneys for SIJS applicants with criminal or delinquent histories should consult with an expert in criminal and immigration law.

Chart 4: Terminate

Legal Note: Most judges will be willing to terminate or administratively close the removal proceedings against a child once the SIJS application has been approved by USCIS. However, judges are not required to do this.

Chart 4: Submit I-485 Application to Immigration Judge

Practice Note: For more on the I-485, see “Forms and Fees.”

Chart 4: Child NOT in Removal Proceedings

Legal Note: Applying for SIJS and adjustment of status simultaneously speeds the child’s adjustment to permanent residency. Aside from children still in removal proceedings (who are not permitted to apply for Permanent Residency simultaneously with their SIJS application), another situation in which the two applications might be submitted separately is for younger children who will lose their federal funding once SIJS and permanent residency are granted, particularly in places where the local child welfare entity is reluctant or unlikely to take over care of the child.

Chart 4: Interview Notice

Practice Note: The child’s attorney should attend the adjustment of status interview. A social worker or “next friend” can usually attend as well. The USCIS officer may go through all or most of the questions on the I-360 and I-485 application forms, so the child should role-play responding to the questions beforehand, to reduce anxiety.

Chart 4: USCIS Grants I-485?

Legal Note: There are a variety of things that can make an I-485 applicant inadmissible (ineligible to adjust status). These include, but are not limited to, criminal convictions, suspicion of criminal activity, some health-related reasons, or that the person may be a danger to the public. SIJS applicants are eligible to waive (or have forgiven) some, but not all, grounds of inadmissibility. However, this is a very complex area of immigration law, with potentially serious consequences. Attorneys for SIJS applicants with criminal or delinquent histories should consult with an expert in criminal and immigration law.

Chart 4: Status Granted

Practice Note: At some point before a child receives final approval for adjustment of status—and thereby becomes ineligible for continued ORR-funding—DCS foster care programs are urged to meet with their local child welfare entity to develop a care plan, or a transition of care plan, from ORR-funded care to locally-funded care.

Legal Note: If adjustment of status is granted, the USCIS officer may inform the child and attorney right away during the interview or the child may receive notice sometime later by mail.

A child whose I-485 is denied by USCIS could be referred back to the immigration court to restart, or continue, removal proceedings.

In the following circumstances, USCIS may revoke SIJS before the child completes final processing for permanent residency status:

- d. If the applicant marries;
- e. If the applicant is no longer under state court jurisdiction (for some reason other than the age of the applicant);
- f. If it is determined that it is in his/her best interest to return to the country of origin.