

# Special Immigrant Juvenile Status

December 1, 2015



# Carlos' Story

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Carlos came to the U.S. with his parents when he was two years old. Carlos and his parents are undocumented. Carlos is now 12 and has two siblings born in the U.S. Carlos' parents have fallen on hard times in recent years and have begun abusing alcohol and drugs. Carlos' teacher at school notices that he is often absent and his clothes are dirty. One day she notices bruises on his arms and neck. Carlos tells his teacher that his parents hit him and his siblings. His teacher calls Child Protective Services.

# Mariana's Story

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Mariana left Guatemala for the U.S. when she was 15 years old. Her mother died when she was very young. Her father had a drinking problem and beat her frequently. When Mariana crossed the border, she was caught by Border Patrol. As a minor, she was placed in a shelter in Office of Refugee Resettlement custody. Luisa, Mariana's shelter case manager, began looking for a sponsor so that Mariana could be released. Luisa contacted Mariana's aunt, an LPR, who completed the paperwork for Mariana to be released to her. Mariana was released but is still in removal proceedings.

# Special Immigrant Juvenile Status

**1. Overview of the Law**

**2. Obtaining the Predicate Order**

**3. Screening Children for Eligibility**

**4. Adjudication of Immigration Applications**

# SIJS: Overview of the Law

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# What is SIJS?

- A pathway for a non-resident child to obtain permanent residence
- Based on a child's inability to reunify with at least one parent due to abuse, abandonment, neglect, or similar basis under state law
- Often faster, and less adversarial, than other applications for relief

# What is required to obtain SIJS?

Predicate  
order in  
probate or  
juvenile  
court



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graph LR; A[Predicate order in probate or juvenile court] --> B[Apply for SIJS to USCIS (form I-360)]; B --> C[Apply for permanent residence to USCIS or EOIR (form I-485)];
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Apply for  
SIJS to  
USCIS  
(form I-  
360)

Apply for  
permanent  
residence to  
USCIS or  
EOIR (form  
I-485)

# SIJS Statutory & Regulatory Authority

The legal requirements for SIJS can be found in **INA § 101(a)(27)(J)** and the regulations in **8 C.F.R. § 204.11**.

Note: Congress amended the statute governing Special Immigrant Juvenile Status when it passed the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. Law. 110-457 § 235(d)(1)-(3), 122 Stat 5044. Proposed regulations were released in September 2011 but have not yet been adopted as of September 2014 so parts of the CFR are out of date and refer to a previous version of the law.

# SIJS Eligibility Requirements

Under the INA, for a minor to be eligible for SIJS, s/he must be present in the United States and:

1. Be a child (meaning, unmarried & under 21 years old)
1. Have been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States,
1. Whose reunification with *one or both parents* is not viable due to abuse, neglect, abandonment or other similar basis under state law; and
1. It is not in the young person's best interest to be returned to his or his parents' country of nationality or last habitual residence.

# TVPRA Changes to SIJS Statutory Definition

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) expanded the SIJS definition.

- Significant TVPRA amendments to the SIJS definition:
  - Made it possible to pursue SIJS where “reunification with **one or both parents is not viable**” compared to the previous standard which required determination as to both parents.
  - Expanded definition by adding language for those not reunifying due to “similar basis under state law”
  - Eliminated the requirement where child needed to be “eligible for long-term foster care”
  - Added provision that no child can be denied SIJS on account of “age” as long as he/she is under 21 at the time of filing

# Hybrid between federal & state law

- State juvenile courts are charged with making the factual findings about whether reunification with one or both of the child's parents is not viable due to abuse, abandonment or neglect and whether it would be in the child's best interest to return to her (or her parents) home country
- A minor cannot apply for SIJS without a state court order making these factual findings (“predicate order”)

# Definition of a “Juvenile Court”

- A court located in the US having jurisdiction under State law to make judicial determinations about the custody and care of juveniles. - 8 C.F.R. § 204.11
- Depending on the state, could include Family, Probate, Juvenile, or District Courts
- Be aware of age limitations to state court jurisdiction, as there is often a disparity between jurisdictional age and age of SIJS eligibility

# Role of State Government

- The SIJ statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests
  - *In re Dany G.*, Md. Ct. Sp. App. No. 1096 (July 6, 2015)
  - *Leslie H. v. The Superior Court of Orange County*, 224 Cal. App. 4th 340 (2014)
  - *In re Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012)

# Role of Federal Government

- The Secretary of Homeland Security must consent to the grant of Special Immigrant Juvenile Status. 8 USC § 1101(a)(27)(J)(iii)
  - Approval of the SIJS petition is evidence of the Secretary's consent
    - *See* USCIS Memorandum, Donald Neufeld and Pearl Chang, "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions" HQOPS 70, 8.5, p. 3 (Mar. 24, 2009)
- If child is in ORR custody at the time of seeking juvenile court order and the juvenile court order would determine or alter the child's custody status, the child must seek "specific consent" from The Secretary of Health and Human Services
  - [http://www.acf.hhs.gov/sites/default/files/orr/special\\_immigrant\\_juvenile\\_status\\_specific\\_consent\\_program.pdf](http://www.acf.hhs.gov/sites/default/files/orr/special_immigrant_juvenile_status_specific_consent_program.pdf)

# Rise in I-360 Petitions

 <b>U.S. Citizenship and Immigration Services</b>		Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year and Case Status 2010-2015			
		Petitions by Case Status			
Period	Special Immigrant Juvenile <sup>1</sup>				
	Petitions Received <sup>2</sup>	Approved <sup>3</sup>	Denied <sup>4</sup>	Pending <sup>5</sup>	
<b>Fiscal Year - Total</b>					
2010	1,646	1,590	97	35	
2011	2,226	1,869	84	47	
2012	2,968	2,726	119	220	
2013	3,994	3,431	190	702	
2014	5,776	4,606	247	1,826	
<b>Fiscal Year 2015 by Quarter</b>					
Q1. October - December	2,070	1,514	56	2,191	
Q2. January - March	2,513	1,782	84	2,544	
Q3. April - June	3,216	2,809	102	4,020	
Q4. July - September					

D Data withheld to protect applicants' privacy.

- Represents zero.

<sup>1</sup> Refers to foreign children in the United States who have been abused, abandoned, or neglected.

<sup>2</sup> The number of new petitions received and entered into a case-tracking system during the reporting period.

<sup>3</sup> The number of petitions approved during the reporting period.

<sup>4</sup> The number of petitions that were denied, terminated, or withdrawn during the reporting period.

<sup>5</sup> The number of applications awaiting a decision as of the end of the reporting period.

NOTE: 1) Some petitions approved or denied may have been received in previous reporting periods.

2) The report reflects the most up-to-date data available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, *CIS Consolidated Operational Repository (CISCOR)*, June 2015

# SIJS: Obtaining the Predicate Order

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# “Juvenile” Court Process

- 1. Which vehicle is most appropriate to your client’s situation:**
  - Guardianship
  - Divorce
  - Separate Support
  - Adoption
  - Child in Need of Services
  - Paternity/ Custody/Support/Visitation
  - Modification of Existing Order or Foreign Order
  - Care & Protection
  - Juvenile Delinquency
  - Equity and/or Declaratory Relief
- 2. Decide on your jurisdiction and venue:**
  - Does your vehicle limit you to a certain venue?
  - Does your venue prefer some vehicles over others?
- 3. Analyze your case under relevant state court definitions of abuse, abandonment, neglect or other similar bases.**
- 4. File petition & Supporting Documents**
- 5. Service and/or publication requirements**
- 6. Hearing on petition and motions**

# Examples of Venue Options:

- California: Probate, Family, Dependency, or Juvenile Court
- Colorado: District, Juvenile, or Probate Court
- District of Columbia: Superior Court
- Maryland: Circuit or Juvenile Court
- Massachusetts: Probate & Family, Juvenile (or District) Court
- New Jersey: Family Court
- New York: Family, Surrogate (or Supreme) Court
- Texas: Family, Juvenile, Probate or Civil District Court
- Virginia: Juvenile & Domestic Relations or Circuit Court
- Washington:

# How do I get into Court?

## 1. Which vehicle best suits my client's family or living situation:

- With whom does child live?
- Where are his/her parents? Are parents legally married?
- Is father named on birth certificate?
- Is child over or under the age of 18?
- What type of court order would most benefit my client?
- Are there parties that we do or do not want to involve?
- If I have more than 1 option, does my county court have a preference?

## 2. Which state court has jurisdiction over that petition?

# 1. Dependency Upon the State Court

- Because there is no direct petition for the predicate order, you must file the most appropriate petition, in the context of which you will seek “special findings” or a “predicate order.”

# Guardianship:

- Child is of an age for which state court can enter a guardianship.
- Appropriate adult is willing to assume legal responsibility.
- Adult is willing to provide home for minor.
- Adult does not have criminal record, particularly for crimes of violence, domestic abuse, or drugs.
- Adult has financial ability to provide for the minor.
- Depending upon your jurisdiction:
  - Does adult need immigration status?
  - May child obtain consent of parents ahead of time of filing to satisfy service?
  - May child 14 or older self-petition?

# Paternity

- Paternity is not known – meaning father is not listed on birth certificate, or the father listed is incorrect.
- Parents are NOT married to each other.
- Custody can be requested in connection with paternity.
- Depending upon your jurisdiction:
  - May child 14 or older self-petition?
  - Is a DNA test or consent to paternity required?

# Custody, Support, Visitation, or Parental Rights and Responsibilities

- Paternity is known.
- Parents are not living together.
- For custody & visitation, child is under 18; for support, child is under 21 or 23, depending upon the state
- In most jurisdictions: child was born out of wedlock.
- Custody petitions for married/formerly married parents generally fall under divorce, separate support, or modification of a prior order
- In some jurisdictions:
  - Mother of child born out of wedlock is presumed to have custody – will this preclude filing custody petition?
  - Child 14 or older can self-petition – must name both parents as defendants for purposes of notice.

# Divorce

- Child lives with 1 parent.
- Child's parents are legally married.
- Parents are not living together.
- Custodial parent wants to be legally divorced from other parent.
- Custodial parent desires legal and physical custody and/or support.
- Custody can be ordered for child under 18; support for child under 21/23, depending upon the jurisdiction.

# Separate Support

- Child lives with 1 parent.
- Child's parents are legally married.
- Parents are NOT living together.
- Custodial parent does not want to be legally divorced from other parent.
- Custodial parent desires legal and physical custody and/or support.
- Custody can be ordered for child under 18; support for child under 21/23, depending upon the jurisdiction.
- Consider: some states have separate statutes for separate support and married parents seeking custody only.

# Divorce Modifications

- Usually is a different cause of action when the divorce sought to be modified was:
  - A) in the forum state
  - B) in a foreign statute (domestically or abroad)
- Changed circumstances warrant modification, i.e.:
  - Previous judgment did not address custody of children
  - Children now reside in a different location or with different parent

# Complaint for Equitable/Declaratory Relief

- Equity: a remedy at law when no other remedy exists
- Request declaratory relief in the form of special findings and/or other remedies that would provide stability to a child
  - *See, e.g., Eccleston v. Bankosky*, 438 Mass. 428 (2003)
- Look to case law on:
  - Adjudicating paternity, custody or support for same-sex parents prior to marriage equality laws
  - Adjudicating visitation for surrogate parents
  - Adjudicating paternity for fathers not on birth certificate
- Caution to make sure court issuing declaratory relief traditionally has power to enter declaratory relief for children of the age of your client in their capacity as children

## Be aware of:

- State rules regarding duration of residence of that child before state may exercise jurisdiction over that child
  - Exceptions to that rule
- Uniform Child Custody Jurisdiction & Enforcement Act
  - Especially important when asking to modify prior order adjudicating child custody
- Uniform Interstate Family Support Act
  - Especially important when asking for a child support order against an out-of-state defendant

# Juvenile Court Vehicles

- **Juvenile Delinquency Proceedings**
  - Initiated by the state, but child may file a motion for findings
- **Care & Protection**
  - Child generally being placed in foster care, including federally-funded foster care (URM & DUCS)
  - Will involve court-appointed investigator and/or Department of Children & Families (DCF)
  - May be a private petition, but generally initiated by the agency who has custody of the minor
- **Child Requiring Assistance**
  - Generally, child is residing with one parent, but parent, school, or DCF asks for court involvement to help family
- **Truancy**
  - School files petition to enforce school attendance

# Sample of State Court Vehicles

- **California:**

- Probate Court: Guardianship
- Family Court: Custody/Support/Visitation, Paternity, Divorce, Separate Support
- Juvenile Court: Delinquency
- Dependency Court; Adoptions Court

- **Colorado:**

- District Court: Guardianship, Custody/Support/Visitation, Paternity, Divorce, Adoption, Delinquency, Care & Protection
- Juvenile Court (Denver County only): Delinquency, Dependency & Neglect
- Denver Probate Court: Guardianship

# Sample of State Court Vehicles

- **District of Columbia:**
  - Superior Court: Custody, Third Party Custody, Divorce, Registration of a Foreign Order, Adoption
- **Maryland:**
  - Circuit Court: Guardianship, Custody, Divorce, Adoption, Registration of a Foreign Custody Order
  - Juvenile Court: Child in Need of Assistance, Delinquency
- **Virginia:**
  - Juvenile & Domestic Relations Court: Custody, Third Party Custody, Divorce, Registration of a Foreign Custody Order
  - Circuit Court: Adoption

# Sample of State Court Vehicles

- **New York:**

- Family Court: Custody, Guardianship, Registration of Foreign Custody Order, Delinquency, Person in Need of Supervision, Destitute Child, (brought by child protective services) Abuse & Neglect Petitions
  - \*on appeal: Child Support, Protective Order
- Surrogate Court: guardianship
- Supreme Court: divorce or adoption

- **New Jersey:**

- Family Court: Custody, Delinquency, Adoption, Paternity, Kinship Legal Guardianship
  - \*unsuccessful: Divorce

# Sample of Other State Court Vehicles

- **Texas:**
  - Family Court: Custody/Support, Divorce, Adoption, Modification of a Prior Foreign Custody Order
  - Juvenile Court: Delinquency, Declaratory Judgment, Custody, Dependency
  - Probate Court: Guardianship
  - Civil District Court: Declaratory Judgment for under 18-year-olds only

Having chosen vehicle that will establish state court dependency or place child in custody, next step is to show:

## 2. Reunification with 1 or both parents not viable due to:

Abuse,  
abandonment,  
or neglect (or  
similar basis)

- Defined by state law

<https://www.childwelfare.gov/pubPDFs/define.pdf>

# Examples:

## Abuse

- “the non-accidental commission of any act by a caretaker upon a child . . . which causes, or creates a substantial risk of physical or emotional injury . . . .” 110 CMR § 2.
- Parent knowing left child with an abusive relative
- Dad throws kid out of house in dangerous area of town

## Neglect

- “failure by a caretaker, either deliberately or through negligence or **inability**, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and grown, or other essential care.”
- Child not allowed to go to school, even though siblings were.
- Parent unable to protect child from gang violence.

## Abandonment

- Child is abandoned if “left without any provision for support and without any person responsible to maintain care, custody, and control.” MGL c. 210 § 3.
- Went abroad to support family but maintained no relationship with child
- Let child go unaccompanied to US

## Other similar bases?

- Death of parent without provisions made for child’s custody or support leaves child in same position as child who is abandoned

# “One-Parent” cases

- **Standard:** reunification with one or both parents is not viable due to abuse, abandonment, or neglect.
  - Child may be living with one parent in the US
  - Standard is satisfied so long as child cannot reunify with one parent due to abuse, abandonment, or neglect
  - No requirement that parent(s) with whom child cannot reunify be abroad

# Split regarding “One Parent” cases

- The Supreme Court of Nebraska found that the federal SIJS statute intended to cover only a child who has two problem parents.
  - *In re Erick M.*, 820 N.W.2d 639 (Neb. 2012)
- The New York Family Court and Minnesota Court of Appeals held that having one problem parent suffices under the federal statute.
  - *In re Mario S.*, 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012)
  - *See also Matter of E.G.*, 2009 N.Y. Slip Op. 51797(U) (Aug. 14, 2009)
  - *Matter of D.A.M.* (December 10, 2012)
- The New Jersey Supreme Court decided that findings regarding each parent must be made, and USCIS will decide whether the findings suffice under the statute.
  - *H.S.P. v. J.K.*, No. 074241 (Aug. 26, 2015)

### 3. In the best interest of the child not to return to country of origin

#### Consider:

- School
- Rehabilitative services
- Caring parent or relative in US
  - Parent/relative in the U.S. provides for child, while in home country child would have to work.
- Abuse, abandonment, neglect of parent(s) abroad
- Other violence in country of origin
- Child's personal goals

# Erik & Arely

- Erik is now 18, Arely is 17; they are from El Salvador. Erik and Arely live with their mother in Chelsea, MA. Their father, who is listed on their birth certificates, lives in East Boston, MA. Both of their parents came to the United States shortly after Arely was born, though they are not married. Both of their parents have TPS. Erik and Arely grew up with their maternal grandmother. Throughout their childhood, their mother visited and sent money to support them. Erik and Arely's father has never financially supported them, visited, or maintained a relationship with them. Erik and Arely came to the United States when they began being threatened by gangs and their grandmother could not protect them.

# Filing of Petition or Complaint

- File to receive docket number & summons
  - Petition or Complaint (often a form)
  - Legal Memorandum
  - Affidavit of Child and/or Adult
  - Birth, Marriage, Death Certificates & Translations
  - Notice of Appearance
  - Affidavit of Indigency to Waive Filing & Service Fees
  - Motions
  - Proposed Orders & Decrees
  - Background check?
  - Other required forms?

# Service & Motions

- Must serve copy of summons or citation & all filings on respondents/defendants
- If have motions, need to:
  - Ask for motion date
  - “Mark up” motions with that date
  - Serve on other party
  - File motions & proposed orders with certificate of service requesting hearing & interpreter
- May need to serve by publication if Defendant’s location unknown
  - \*Read State Rules of Civil Procedure & Domestic Relations Procedure

# Common Motions

- Motion for Special Findings
- Motion for Acceptance of Copy of Birth/Marriage Certificate or for Return of Original
- Motion for Acceptance of Alternative Service
  - Many jurisdictions require service by constable or sheriff, so need to seek permission for alternative
- Motion for Speedy or Emergency Hearing
  - Some courts adjudicate administratively, others require you to argue
  - Some require you to argue at motion session, others at any date judge is hearing cases
  - Can't have same-day hearing on merits if still need to accomplish service, unless court permits temporary orders

# Presentation to Court

- What is being brought before the court
- How has service been accomplished
- How the court has jurisdiction, if unclear
- How the child satisfies requirements of INA 101(a)(27)(J)
- Be prepared to direct your client and/or his/her parent and/or proposed guardian

# Legislative Fixes - Maryland

- Age disparity between SIJS eligibility & state court jurisdiction:
  - Maryland: HB0315/SB0396 (effective Oct. 1, 2014)
    - Alters the jurisdiction of an equity court to include custody or guardianship of an immigrant child pursuant to a motion for SIJ factual findings requesting a specified determination; and defining the term “child” to mean an unmarried individual under the age of 21 years under specified circumstances.

# California: CA SB 873

- On September 27, 2014, California Governor Jerry Brown signed into law Senate Bill 873
  - Provides \$3 million in legal aid to unaccompanied minors in removal proceedings
  - Clarifies state court roles in considering Special Immigrant Juvenile Status (SIJS) petitions filed by immigrant children

*“Helping these young people navigate our legal system is the decent thing to do and it's consistent with the progressive spirit of California.”— Gov.*

*Brown*

# California: CA SB 873

- With respect to SIJS petitions in state court:
  - Eliminates any ambiguity that California Superior Courts, including family courts, have jurisdiction to make the findings necessary for SIJS;
  - Creates an affirmative responsibility of Superior Courts to make the SIJS findings when there is evidence to support those findings;
  - Clarifies that the evidence to support the SIJS findings may consist of (but is not limited to) a declaration by the child;

# California: CA SB 873

- Lists the specific SIJS findings that a court order should include and makes clear that when requested, the court may make additional findings;
- Increases confidentiality protections for proceedings in which SIJS findings are requested;
- Clarifies that courts may provide interpreters in proceedings requesting SIJS findings.

# Age-out issues in other states

- **CA, CO, DC & VA** – 18 is generally the age-limit to state court jx
- **MA:** likely to succeed before Supreme Judicial Court that abused/abandoned/neglected children are dependent upon state court until 21 to equate to provisions of support.
- **NJ:** In guardianship case, where child ages out, courts will enter findings other than dependency, and leave dependency question for USCIS
- **NY:** guardianship jurisdiction continues until age 21
- **TX:** declaratory judgment in Juvenile & Civil District Court are available but.... Also, child support may extend until 21 or high school graduation, whichever is first.
- **WA:** jx available to 18-20 year olds unclear outside of foster-care context

# Some Considerations in Preparing Client & Petition

- Abuse/abandonment/neglect is “US standard”
- If probate petitioner is someone other than child, consider conflicts of interest & asking parties to sign agreement
- Consider requesting ORR file right away; prep client to explain inconsistencies between file and story for USCIS.
- Counsel clients on inability to petition for parents, even in one-parent cases
- Connect the child with outside resources – helps to show best interests
- May pursue SIJS in tandem with other applications (Asylum, Withholding of Removal, CAT).

# Identifying & Representing SIJS Eligible Children



# Abuse, Neglect, Abandonment

Determining whether a child has been abused, neglected or abandoned is a case-by-case, fact-based determination.

You should not ask the child whether she has been abused, abandoned or neglected but should rather seek to determine the nature of her relationship with her parent(s).

# Sample Screening Questions I

- With whom did you live growing up?
- Where is your mother/father now?
- When is the last time you spoke to your mother/father?
- How often do you speak to your parent(s)?
- If you speak to your parent(s), what is the nature of the conversation?
- Did you always have enough food, clothing, etc. growing up?
- Did you ever have to stop attending school? If so, why?
- Did you ever have to work growing up? In what kind of work?
- When your parent(s)/caregiver(s) were upset with you, how did they treat you?
- Did your parent(s)/caregiver(s) ever say or do anything to you that made you feel badly?
- Were you treated differently than your siblings/others in your house?
- Did you ever feel unsafe in your home growing up?
- If your parent(s) left you with other caregiver(s), did they know how the caregiver mis/treated you?

# Sample Screening Questions II

- With whom do you live in the United States?
- How does that person treat you?
- Do you feel unsafe in your home now?
- Are you attending school?
- Have you been to the doctor since you came to the United States?
- If you are working, what are your motivations for doing so? Is someone forcing you to work?
- Are any social workers helping you? (is there DCF involvement?)
- What were your motivations for coming to the United States?
- Do you want to remain in the United States? Why?
- What do you worry might happen if you returned to your country?

# Abuse, Neglect, Abandonment

Some examples of children for whom reunification with 1 or both parents may not be viable due to abuse, abandonment, neglect, or a similar basis include:

- A child whose parents are deceased and who is living with an adult family member or friend
- A child who experienced domestic violence in the home and who is living with an extended relative or family friend
- A child who was abandoned by his parents and who now lives in a foster home
- A child who was abused by one parent and who is living safely with the other parent or another family member
- A child who has never known one parent and is now living with the known parent

# SIJS: Application Process & Termination of Proceedings

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# Step Two: Immigration Forms & Applications

- I-360: Petition for Special Immigrant Juvenile Status with:
  - G-28
  - Cover letter & Brief Case Summary
  - Copy of State Court Order
  - Copy of Juvenile's Birth Certificate
- I-485: Application for Adjustment of Status with:
  - G-325 Biographical Information
  - Fees or fee waiver request on I-912 (USCIS) or E-26A (EOIR)
  - I-693 Medical Exam (can often be submitted at interview)
  - I-765 Application for Employment Authorization
  - Records of juvenile adjudications (if permitted under state law)/ criminal convictions & evidence of rehabilitation
  - Other evidence of equities
  - 4 photos

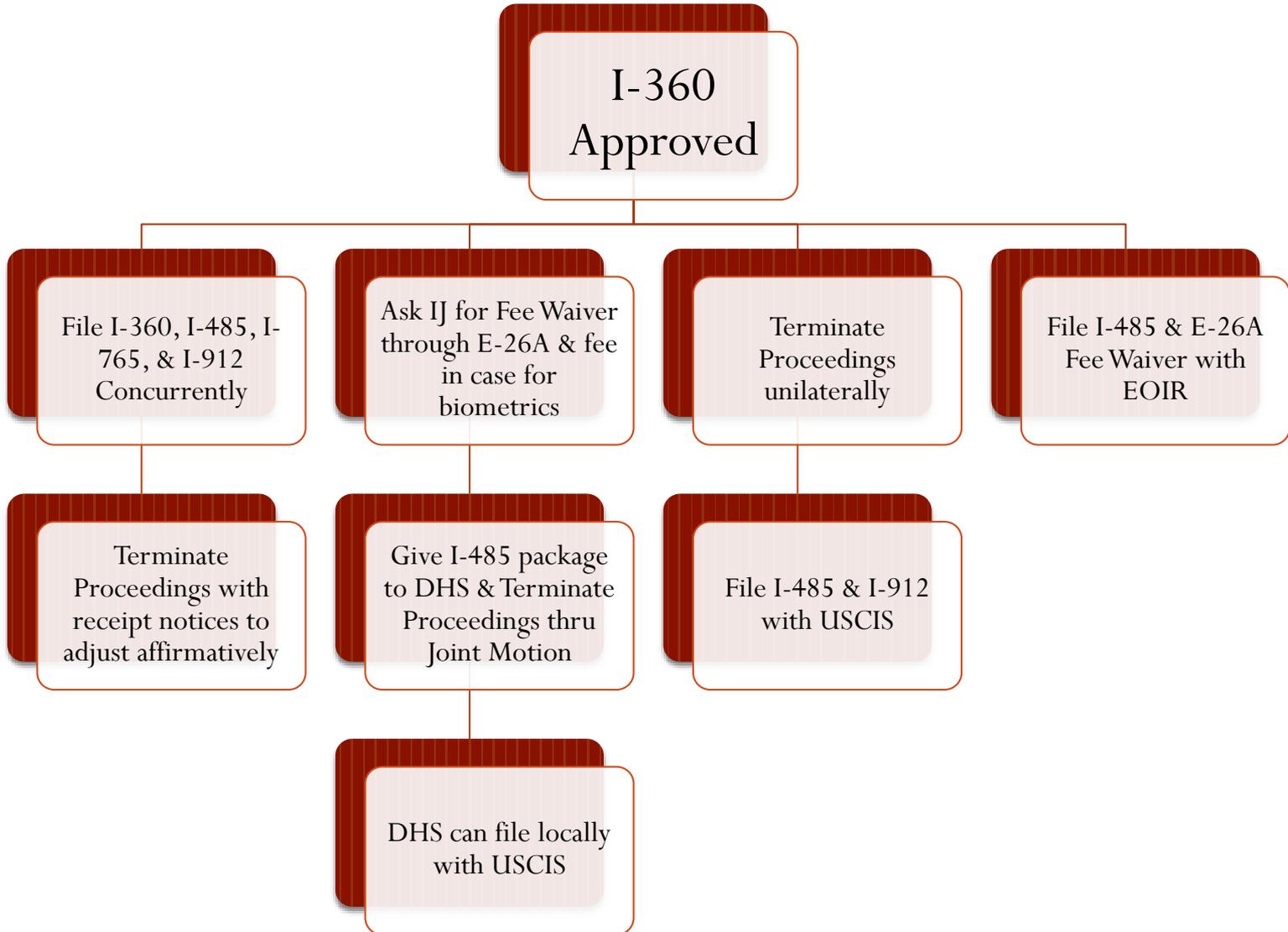
## Step Two: Immigration Procedure

- If minor is not in immigration custody or removal proceedings, I-360 & I-485 can be filed together with USCIS
- If minor is in removal proceedings, but not in immigration custody, I-360 must be filed with USCIS (IJs do not have jurisdiction to adjudicate I-360)
  - if approved, child can seek adjustment before the immigration judge or
  - Terminate removal proceedings to adjust before USCIS
- If minor is in ORR custody, will need “specific consent” from ORR if state court is seeking to determine/change custody status or placement of youth. – INA § 101(a)(27)(J)(iii)(I)

# USCIS I-360 Interview Process

- I-360 – Some jurisdictions regularly require an interview, others do not.
  - May be waived (age of child, mental disabilities, discretion)
  - Proposed regulations outline interview guidelines
    - Nonthreatening interview environment
    - Generally not necessary to interview about facts regarding abuse/abandonment/neglect that form the basis for the predicate order
- USCIS Adjudicators should not “look beyond” the SIJS Order unless it does not provide a “reasonable basis.”
  - USCIS consent = Request for SIJ classification is bona fide, reasonable factual basis for juvenile court’s ruling.
    - *See USCIS Yates Memo #3*

# Various Procedures for I-485



# Fee Waiver for the I-485 Obtained from Entity with Jx over I-485

- USCIS = Form I-912 Request for Fee Waiver
  - Often enough just to include the form and an explanation
  - Regularly approved for SIJ Petitioners
  - May help to include 3/13/2011 USCIS Memo on Fee Waiver Guidelines – see pages 6-7
- EOIR = Form E-26A
  - Many judges require short supporting declaration

# Adjustment of Status

- If still in removal proceedings, before Immigration Judge:
  - Some attorneys rest on application & proceed to cross by DHS
  - Others will do direct
- If before USCIS, questions asked by officer, as in I-360 interview
  - Ask local practitioners for questions typically asked by officers
- Prepare client to address inadmissibility issues
- INA § 245(h)(2)
  - Some inadmissibility provisions automatically waived
  - Other provisions waivable with I-601 waiver for “humanitarian purposes, family unity, or when otherwise in the public interest”
  - Other provisions not waivable

# Reminders

- USCIS Adjudicators should not “look beyond” the SIJS Order
- Juvenile adjudications are not criminal convictions for immigration purposes, but may trigger conduct-based grounds of inadmissibility (i.e., drug use/abuse) and may weigh negatively in the discretionary analysis.
  - Learn state rules regarding confidentiality of juvenile records
- A child granted SIJS cannot later petition for his/her biological or prior adoptive parents.

# Case Examples

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## Roberta

Roberta is 16 years old and was born in Guatemala. Her father kicked Roberta's mother out of his house when Roberta was just a toddler and they went to live with her grandparents. Roberta's father did not help support her in any way while she was growing up even though he lived in a nearby village. Roberta's grandfather physically abused her, her mother, and her grandmother throughout her childhood. When Roberta was 14, her grandmother died and her mother went to the United States, leaving Roberta in her grandfather's care. The physical abuse by Roberta's grandfather worsened until she fled Guatemala and came to the U.S. to be reunited with her mother. After being apprehended at the border, she was released to her mother's care.

Is Roberta eligible for SIJS?

## Oscar

Oscar's father died when he was a baby in Honduras. When Oscar was a teenager, his mother became ill and was too sick to work. Oscar began working at a construction site to help support his mother and siblings. Gang members in the area began targeting him on his way home, demanding *renta*. Fearing for her son's life, Oscar's mother used her life savings to pay a coyote to bring him to the United States. Oscar was apprehended at the border and then released to live with his uncle. His next master calendar hearing at the immigration court is on February 12, 2015.

Is Oscar eligible for relief?

What steps would you take in his case?

## How to File a Complaint?

Local USCIS Office Procedures

File written complaint with the USCIS Field Office Director

USCIS Ombudsman's Office

<http://www.dhs.gov/case-assistance>

Submit an electronic Form DHS-7001 through Ombudsman Case Assistance Online which provides a direct, paperless submission of requests for assistance to the Ombudsman.

# Some SIJS Resources

- SIJS Manual, available at [www.ilrc.org](http://www.ilrc.org)
- USCIS website: [www.uscis.gov](http://www.uscis.gov)
  - USCIS Factsheet for Juvenile Courts and for Child Welfare Workers at [www.uscis.gov](http://www.uscis.gov)
- National Children's Center SIJS Resources at [www.refugees.org](http://www.refugees.org)
- SIJS Caseworker's Toolkit at [www.brycs.org/sijs](http://www.brycs.org/sijs) (for children in federal custody)
- Public Counsel SIJS Manual at [www.publiccounsel.org](http://www.publiccounsel.org)
- KIND Pro Bono Manual Chapter 4 at [www.supportkind.org](http://www.supportkind.org)

# Questions & Answers

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