
National Immigrant Justice Center
SPECIAL IMMIGRANT JUVENILE STATUS
IN ILLINOIS
A Guide for Pro Bono Attorneys



a HEARTLAND ALLIANCE partner

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INTRODUCTION AND OVERVIEW

The *Special Immigrant Juvenile Status in Illinois: A Guide for Pro Bono Attorneys* was developed through the coordinated efforts of the Illinois Task Force on Unaccompanied Immigrant Children (Task Force). This guide is intended to provide an overview of the process for obtaining Special Immigrant Juvenile Status (SIJS) for a qualifying immigrant child currently residing in Illinois. These materials are meant to assist legal advocates, social workers, accredited representatives, and advocates in identifying and assisting children that qualify for SIJS. Please note that this manual is not intended to be a substitute for experienced legal counsel. Readers should consult with qualified immigration and juvenile law practitioners regarding client or case-specific questions as certain actions may have a severe impact on a child's life. Although this manual provides an overview of federal SIJS practice, it is geared toward pursuing the case in Illinois Juvenile Court in Cook County. **Practitioners with cases outside Cook County, Illinois should investigate local practices.**

The Illinois Task Force on Unaccompanied Immigrant Children

In 1999, the Illinois Task Force on Unaccompanied Immigrant Children was formed to address the complex needs facing this vulnerable population. The Task Force is comprised of policymakers, government officials, academics, representatives of community-based organizations and a cross-section of Chicago's legal community, including attorneys from major law firms, representatives from the Chicago Bar Association, and others who are experts in the field of juvenile and immigration law. The Task Force develops policy, practice and legislative recommendations among other efforts to increase critical protections for unaccompanied immigrant children, both in the State of Illinois and nationally.¹

The National Immigrant Justice Center

The National Immigrant Justice Center (NIJC), formerly the Midwest Immigrant & Human Rights Center, is the immigrant legal services program of Heartland Alliance for Human Needs & Human Rights, a 501(c)(3) non-profit, non-governmental organization. Based in Chicago, Illinois, NIJC has been promoting the rights of and assisting immigrants since the 1970's. Each year, NIJC provides free or low-cost legal immigration services to thousands of immigrants and asylum seekers from more than 95 countries. NIJC seeks to ensure civil and human rights protections for immigrants, refugees and asylum seekers through its general immigration program, as well as its asylum, detention, human trafficking, immigrant children, and citizenship projects.

¹ Several Task Force members contributed to and helped to author this guide. The National Immigrant Justice Center (NIJC) specially thanks the following individuals: Janet Ahern, D. Jean Ortega-Piron and Sylvia Fonseca, Illinois Department of Children and Family Services (DCFS); Teresa Maganzini, formerly of Cook County State's Attorney Office; Nila Grahl, formerly of the Office of the Public Guardian, Julie Sollinger, Office of the Public Guardian; Vanessa Melendez Lucas, formerly of the Children and Family Justice Center at Northwestern University School of Law; Mereke Carrizosa, Latham & Watkins.

GOVERNMENT AND NON-GOVERNMENT ORGANIZATIONS INVOLVED IN AN UNACCOMPANIED IMMIGRANT CHILD'S CASE

There are many federal, state and non-governmental offices and organizations that may be potentially involved in an unaccompanied immigrant child's case. Below is a listing of the entities that you may encounter in representing an unaccompanied immigrant child in the United States. While you may not necessarily deal with every agency listed, it is helpful to be familiar with the various bodies involved:

Federal Government Organizations:

Department of Homeland Security (DHS):

- United States Citizenship and Immigration Services (USCIS)
 - National Service Center
 - Local Office
- United States Customs and Border Patrol (USCBP)
- United States Immigration and Customs Enforcement (USICE)
 - Office of the Chief Counsel
 - Office of Detention and Removal
 - Juvenile and Family Residential Management Unit

Department of Health and Human Services (DHHS):

- Office of Refugee Resettlement (ORR)
 - Division of Unaccompanied Children's Services (DUCS)
 - Unaccompanied Refugee Minors Program (URM)

Department of Justice (DOJ):

- Executive Office for Immigration Review (EOIR) (Immigration Judge's Office)

State Government Organizations:

States Attorney's Office

Department of Children and Family Services (DCFS)

Public Guardian's Office

Guardian *Ad Litem*

Non-Government Organizations:

Heartland Human Care Services' International Children's Center (ICC) and International Children's Crisis Response Center (CRC): The ICC and CRC provide housing for children in ORR custody until they can be safely reunified with family members in the United States.

United States Conference of Catholic Bishops (USCCB) & Lutheran Immigrants and Refugee Services (LIRS): These organizations are responsible for making recommendations to ORR regarding the release of children in ORR custody.

Immigrant Children's Advocacy Project (ICAP): ICAP provides advocates to certain unaccompanied immigrant children in ORR custody. The advocate acts akin to a guardian *ad litem* to advocate on behalf of the child's best interest. Often the advocate works with the attorney in identifying the child's best interests.

BACKGROUND OF SPECIAL IMMIGRANT JUVENILE STATUS

Special Immigrant Juvenile Status (SIJS) was created by Congress to enable undocumented immigrant children who have suffered parental abuse, neglect or abandonment to acquire lawful permanent residence in the United States when return to their home country would not be in their best interests. The abuse, neglect or abandonment may have occurred inside or outside of the United States. Children who are eligible for SIJS must be under the jurisdiction of a juvenile court. Obtaining juvenile court jurisdiction will depend on whether the Department of Homeland Security (DHS) is aware of a child's presence in the United States. In the case of children already in removal proceedings and in the custody of the Office of Refugee Resettlement (ORR), the attorney must obtain advance consent from DHS to bring the child's case to juvenile court. This special consent and the mechanism by which to obtain it is explained below. In order to be eligible for SIJS, a child must:

- Be under 21 years of age
 - Be unmarried
 - Be declared dependent on a "juvenile court" in the United States while the child is in the United States and under the jurisdiction of the court
 - Be deemed eligible for "long-term foster care"
 - Continue to be dependent on the "juvenile court" and eligible for "long term foster care"
 - Have been the subject of judicial or administrative proceedings in which it was determined that it is not in the best interest of the minor to be returned to his or her country of nationality or country of last habitual residence
- INA § 101(a)(27)(J), 8 USC § 1101 (a)(27)(J); 8 CFR § 204.11.

Each state defines abuse, neglect and abandonment differently. In some states, the Juvenile, Family or Probate Court can make the necessary SIJS findings in their orders. However, in Illinois, the juvenile courts are the appropriate court that can make the findings of eligibility for long-term foster care and abuse, neglect or abandonment, as well as retain jurisdiction over the child while the DHS adjudicates the SIJS petition.

Unaccompanied immigrant children arrive in the United States for various reasons. Some are fleeing persecution and egregious human rights abuses, such as forced recruitment as child soldiers, child labor, forced marriages, sexual servitude, and slavery. Some children arrive after having been abused, abandoned, or neglected by their parents in their home country. This manual will focus on the latter category of immigrant children, who have been declared dependent on a juvenile court based on parental abuse, neglect or abandonment.

Children that could benefit from SIJS can be found anywhere. They can be divided into three main categories: (1) immigrant children who are detained by the DHS and who are in the custody of the Office of Refugee Resettlement (ORR); (2) immigrant children who are non-detained and suspected of being abused, neglected or abandoned and are referred to an immigration practitioner by a caring relative, social worker or

teacher; and (3) immigrant children who are in delinquency proceedings.²

Children in Federal Custody³

When DHS apprehends unaccompanied immigrant children on suspected immigration violations, the agency usually places these children in removal proceedings. When an unaccompanied immigrant child is apprehended, DHS is required, within 72 hours, to transfer the child to ORR for care and custody. ORR then makes the most appropriate placement for the child pending release to a family member or resolution of the immigration proceedings.

In Chicago, unaccompanied immigrant children are placed at the International Children's Center (ICC). The ICC is a minimum-security shelter care facility for children under the age of 18. The staff at the facility speaks a variety of languages and is able to provide care for small children and infants. While their cases are pending before the immigration court, the children either: 1) stay at the ICC; 2) are released to a close relative in the United States who agrees to care for them while they are in immigration proceedings; or 3) are placed into federal foster care. While a child remains in ORR custody (ICC and federal foster care under the Division of the Unaccompanied Children), she must seek permission to go to the juvenile courts.⁴

Children Not in Federal Custody

SIJS-eligible children may be identified in abuse or neglect proceedings, dependency actions, and even delinquency proceedings. It is important that social workers, teachers, attorneys, police officers, and caretakers are aware of this remedy. Child victims of trafficking – indentured servants in homes, factories and other workplaces; victims of commercial sexual exploitation including prostitution and pornography – may also be eligible for SIJS protection.⁵ **It is important to note that children who are not in ORR custody do not have to obtain DHS permission to go to juvenile court or receive advance DHS consent to proceed with an SIJS petition.**

When an immigrant child is identified as SIJS eligible, the first step is to ensure that the child is in a safe place. The next step should be to contact an immigration attorney to determine the child's legal options. Do not contact DHS. By doing so, you could trigger the detention of the child by DHS. An immigration attorney or advocate will be able to best determine how to proceed. This may require calling the DCFS hotline.

² This manual will only address the first two categories of children. For issues specific to children in delinquency proceedings, please contact the National Immigrant Justice Center or refer to www.ilrc.org.

³ Federal custody includes actual, i.e. ORR and constructive custody, which includes children with final removal orders or cases where a child is in criminal proceedings and DHS has issued a detainer. It is important to consult with an immigration practitioner to determine whether child is in federal custody.

⁴ For children who are placed in the foster care under the Unaccompanied Refugee Minors Program (URM) of ORR, specific consent is *not* required.

⁵ Additional information regarding human trafficking and child victims of trafficking can be found at <http://www.lirs.org/What/children/TCIbackground.htm>.

BEGINNING THE SIJS PROCESS FOR CHILDREN IN FEDERAL CUSTODY

Requesting Specific Consent for Children in Federal Custody

At the first stage in working toward acquiring SIJS, the process differs depending on whether the child is in federal custody or not. Because there is an additional step in the process for children in federal custody, the manual will begin by discussing that first step: obtaining specific consent from the DHS for the child to go into state juvenile court.

As amended in 1997, the SIJS statute provides that no state juvenile court:

has jurisdiction to determine custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction.

INA § 101(a)(27)(J)(i); 8 U.S.C. § 1101(a)(27)(J)(i). A recent memorandum issued by DHS clarifies that a detained minor must first obtain *specific* consent to progress with his case to juvenile court.⁶ Specific consent is granted by the Secretary of DHS, through the Juvenile and Family Residential Management Unit within the U.S. Immigration and Customs Enforcement (ICE). At this writing, the chief official of the unit is M. Yvonne Evans. Letters requesting consent should be sent to her at:

M. Yvonne Evans
Juvenile and Family Residential Management Unit
801 I Street NW, Suite 800
Washington, D.C. 20536
(202) 732-2966

Copies of the consent request should be sent to the local ICE Juvenile Coordinator, Chief Counsel, and Immigration Judge. At this writing, the addresses and contacts for ICE officials in Illinois are the following individuals:

Robert Podgorni
ICE Juvenile Coordinators
101 W. Congress Blvd.
Chicago, IL 60605
(312) 347-2400 ext. 2039

Karen Lundgren
Office of the Chief Counsel
Executive Office for Immigration Review

⁶ See William R. Yates, *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, U.S. Citizenship and Immigration Services (May 27, 2004) (“May 27, 2004 Memorandum”), included within the Appendices.

55 E. Monroe St., Ste. 1700
Chicago, IL 60603
(312) 353-7317

Immigration Judge
(letter should be sent to the immigration judge assigned to the case)
Executive Office for Immigration Review
55 E. Monroe St., Ste. 1900
Chicago, IL 60603
(312) 353-7313

Per the May 27, 2004 Memorandum, DHS should consent to juvenile court jurisdiction over the child if it appears that the child would be eligible for SIJS and that dependency proceeding would be in the best interest of the child.

Obtaining DHS's consent to take the child to juvenile court can be an arduous and lengthy process. In the past, DHS has requested access to the child's files through ORR and, in certain cases, requested interviews with the child, her caseworker, and others involved in the care of the child. Attorneys should be aware of confidentiality concerns that arise in this process. Currently, no formal procedures or policies exist to govern DHS's inquiry. Attorneys are encouraged to consult with experienced practitioners before filing a request for specific consent.

An attorney can request consent on behalf of a child by writing a letter to the DHS Secretary, outlining the reasons consent is being requested, and attaching documentation in support of the request for consent. In the letter requesting consent, it is important to include all factors that demonstrate how the child meets the requirements for SIJS and why it would not be in the child's best interest to be returned to his or her country of origin. Additionally, any and all documents that help corroborate the request should be attached as exhibits to the letter. It is also a good idea to inform the child's therapist and caseworker at the ICC about the pending request and seek letters of support for the consent request. In addition, it may be helpful to obtain letters of support from the child's advocate.

In the case where DHS refuses to grant consent to proceed to juvenile court, it may be appropriate to submit additional evidence to rebut the decision. Should additional evidence not be available, federal court action may be required. Such action may include filing a writ of mandamus to compel a decision or direct review of a denial of the consent request. Due to the scope of this manual, federal litigation is not discussed here. Please consult with an NIJC attorney or other experienced practitioner before taking such action.

**BEGINNING THE SIJS PROCESS FOR CHILDREN IN FEDERAL CUSTODY
OR CHILDREN GRANTED SPECIFIC CONSENT**

If a child was never in federal custody, or consent has been granted for those in ORR custody, the next step is to contact the Cook County State's Attorney's Office to request that the office prosecute the case.

Specifically, you need to contact the supervisor of the Juvenile Justice Bureau for Cook County State's Attorney's Office at the following address/telephone number:

Cook County State's Attorney Office
Supervisor of the Juvenile Justice Bureau
1100 S. Hamilton, 6th Floor
Chicago, IL 60612
(312) 433-7000

It is strongly recommended that the attorney representing the child gather all available evidence corroborating the child's abuse, neglect or abandonment, as well as information regarding the child's home situation to support the proposition that the child should be declared dependent on the juvenile court *before contacting the State's Attorney*. While each case will be unique, an attorney should, to the extent possible, compile the following supporting documentation:

- Relevant birth and death records
- A mental health assessment
- An affidavit from the child detailing the abuse, neglect or abandonment she suffered at the hands of her parents or care takers
- An affidavit or report from the child's social worker or advocate, if one has already been assigned
- Affidavits from family members (or other individuals) who might have witnessed the abuse or circumstances surrounding the abandonment or neglect.

After the attorney has gathered the evidence documenting the child's abuse, neglect or abandonment, the attorney should approach the State's Attorney with the evidence. Providing a cover letter or memorandum of law highlighting the evidence and delineating the child's SIJS eligibility is helpful in facilitating the State's Attorney's Office in determining whether to prosecute the case. The State's Attorney will then determine whether the presented documentation is enough for the office to prosecute the case in juvenile court.

If the State's Attorney's Office is not willing to prosecute the case, then the attorney should consider filing a private petition pursuant to the Illinois Juvenile Court Act. The preparation for the private petition should be the same as if you were to present the case to the State's Attorney's Office. Please contact NIJC for consultation and sample petition should this be an avenue that you need to pursue.

COOK COUNTY STATE'S ATTORNEY'S OFFICE⁷

What is the role of the Cook County State's Attorney?

By statute (the Juvenile Court Act) the Cook County State's Attorney's Office is assigned the responsibility of proceeding on all cases filed alleging violations of the Juvenile Court Act in Cook County, including, but not limited to, allegations of abuse, neglect or dependency involving children. In furtherance of this responsibility, the Cook County State's Attorney's Office reviews all materials referred regarding allegations of mistreatment of children for legal sufficiency. In accordance with Circuit Court Rules, the State's Attorney prepares, signs and files the petitions. The State's Attorney then prosecutes the cases through the various hearings required by the Juvenile Court Act, carrying the burden of proof in establishing the basis for temporary custody, adjudication and disposition.

In the context of SIJS cases, the referral to the State's Attorney's Office usually is made by the attorney representing the minor. It is useful to involve the State's Attorney early on in the process so that all parties can be informed of the ongoing status of the immigration proceedings, if all necessary approvals from federal authorities have been obtained, and to assure that all necessary evidence and documentation is available.

Who do you contact⁸?

You should contact the Cook County State's Attorney's Office Chief of the Child Protection Division in the Juvenile Justice Bureau at (312) 433-7000.

How does the State's Attorney determine whether to prosecute a case?

Generally, the State's Attorney will review all evidence and documentation available in order to determine whether the evidence is legally sufficient to prove by a preponderance of the evidence that the child is abused, neglected, or dependent as defined in the Juvenile Court Act. It is important to note that the mere fact that the minor is present in the United States and is unaccompanied by an adult is not sufficient to establish abuse, neglect or dependency. This is true even if the federal government has authorized the minor to seek the jurisdiction of the juvenile court. In order to meet the required burden of proof, abuse, neglect or dependency must be established independent of the child's immigration status.

The State's Attorney will also be looking for information regarding the whereabouts of all legal or putative parents and attempts made to work with the parents regarding the circumstances of the alleged abuse, neglect or dependency. The Juvenile Court Act requires diligent searches for parents, and jurisdiction cannot be obtained without proper notice to parents.

⁷ Teresa Maganzini, former Assistant State's Attorney for Cook County, contributed to this section.

⁸ Practitioners with cases outside Cook County, Illinois, should contact the appropriate person in the local prosecutor's office.

What documents should you present to the State's Attorney?

You should present all documents in your possession or reasonably attainable that will assist in the review of the case for filing and possible prosecution.

What is the process?

The process is initiated by either a letter or telephone call providing initial information about the case. A more thorough summary with supporting documentation should be provided as soon as is feasible. The State's Attorney will most likely schedule a meeting to review all documents with the attorney for the child, identify additional information which may be required, and, if the documents and other evidence are complete and legal sufficiency is established, develop a strategy for the filing of a petition.

Will the State's Attorney interview the child?

The State's Attorney's Office will not always interview the child. It will depend on the circumstances of the case. In many of these cases the Illinois Department of Children and Family Services (DCFS) is involved and will have interviewed the child. If DCFS is not involved, it is likely that the State's Attorney will involve DCFS in the process for purposes of an independent evaluation of the child's situation.

Will the State's Attorney interview family?

Again, it will depend on the circumstances of the case. It is likely that the DCFS worker will have interviewed available family members.

What happens if the State's Attorney cannot or will not prosecute the case?

In the large majority of cases, the State's Attorney and the attorney for the child have been successful in reaching a strategy that will meet the needs of the child. However, this may not always be the case. The State's Attorney may not be able to file a case if the evidence presented is not sufficient to meet the required burden of proof of abuse, neglect or dependency independent of the child's immigration status. Other legal issues may arise which would preclude the State's Attorney from filing a particular case.

The Juvenile Court Act permits any person to file a dependency petition on behalf of a minor, see 705 ILCS 405/2-13. However, the State's Attorney is the only party who may prosecute such a petition. See 705 ILCS 405/1-6. If another party files a petition, the State's Attorney, as the party required by statute to proceed, may decline to prosecute and may seek to dismiss the petition. However, if the State's Attorney moves to dismiss a filed petition, the court may conduct a best interest hearing to determine whether the State should be ordered to proceed on the case.

THE ROLE OF THE ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES

The Illinois Department of Children and Family Services (DCFS) is often involved with the cases of SIJS-eligible children in juvenile court. The following section was contributed by DCFS and explains another mechanism for getting an abused, abandoned or neglected child into juvenile court.⁹

Child Abuse and Neglect Reporting

The Department of Children and Family Services (DCFS) is the state agency given the responsibility by ANCRA (Abused and Neglected Child Reporting Act, 325 ILCS 2/1 et. seq.) to conduct investigations regarding child abuse, neglect and dependency.

Cases are initiated by a call to the DCFS hotline (1-800-25-ABUSE). The DCFS hotline (the State Central Register) is available to take reports of abuse or neglect 24 hours a day/7 days a week. Anyone with relevant information can call the hotline but certain individuals are mandated reporters. Mandated reporters are professionals and para-professionals who deal with children in professional or official capacities.

The hotline worker talks to the caller and gets as much information as possible about the allegation to determine whether the harm would constitute abuse or neglect. If so, the hotline worker gives the report to a Child Protection Services team to begin an investigation. If the hotline decides that the caller's information does not constitute a report of alleged child abuse or neglect, the caller will be informed of the decision. In some cases where the information does not constitute abuse or neglect and but constitutes a dependency situation or service need situation, the case can be referred to the Child Welfare Unit or Extended Family Services Program.

The following information is needed to refer a child abuse/neglect report for investigation:

- The reporter must have reasonable cause to believe that a child has been abused or neglected
- The alleged victim(s) must be less than 18 years of age
- The alleged victim must either have been harmed or there must exist substantial risk of physical injury
- There must be a specific abusive or neglectful incident that falls within the description of an allegation which caused the harm to the child or a set of circumstances that lead a reasonable person to believe that a child is at risk of harm

IDCFS Procedures 300.40.

⁹ Please remember that a child in actual or constructive custody of the federal government must *always* receive advance consent from DHS before proceeding to juvenile court. See prior section on Children in Federal Custody.

If the allegations presented were true, the situation would constitute abuse or neglect as defined in the Abuse and Neglected Child Reporting Act and as interpreted in the allegation definitions as defined by DCFS.

For abuse, the alleged perpetrator must be the child's parent, immediate family member, any individual who resides in the same home as the child, any person who is responsible for the child's welfare at the time of the incident, or the paramour of the child's parent.

For neglect, the alleged perpetrator must be the child's parent or any other person who was responsible for the child at the time of the alleged neglect.

Definitions of abuse, neglect and dependency

Abuse is the commission or omission by a parent, immediate family member or any person responsible for the child's welfare, which involves physical injury, such as bruises, human bites, bone fracture; substantial risk, such as choking, shaking or violently shoving; domestic violence; torture, such as systematically inflicting cruel and unusual treatment toward a child; excessive corporal punishment and/or sexual abuse, such as penetration, exploitation or molestation.

Neglect is behavior by the parent, immediate family member or any person responsible for the child's welfare in which that person fails to provide food, clothing or shelter; provides inadequate supervision; creates an environment injurious to the child's welfare; exposes an infant to a controlled substance; or demonstrates a blatant disregard for the child's safety, including situations where a caregiver should take safeguards and does not.

Dependency includes situations where the child is without a parent, guardian or legal custodian; without proper care because of the parent's mental disability; without proper medical care through "no fault" of the parent or the parent has "good cause" to want to be relieved of rights and responsibilities (*e.g.*, child with medical problems and the parent cannot physically care for the child).

Investigation of Abuse and Neglect Cases

If the hotline worker takes a report, an initial investigation by a child protection worker is commenced within 24 hours unless it is of an emergency nature, in which case the investigation can begin sooner. If the nature is one of immediate danger, the police should also be called. Investigations are usually completed within 60 days. Some serious allegations require notification to the local law enforcement agency as possible criminal acts.

During the course of an investigation, the child protection worker gathers information about the specific allegation(s) of harm to the child. At the end of the investigative process, the worker with his supervisor must determine if the child

abuse/neglect report is indicated¹⁰ or unfounded. The standard of proof is credible evidence. If a report is indicated, the worker can decide whether to refer the case for an intact case or screen the case into the Juvenile Court. Intact cases offer services to stabilize the family and protect the child without court involvement. If the case is unfounded the report will be removed from the DCFS database.

Protective Custody and Juvenile Court Involvement

The primary concern is the immediate safety of the child. During the course of the investigation a safety plan may be developed with the parent(s). If a safety plan cannot be developed or it is determined that a minor is in imminent danger, protective custody may be taken. Temporary protective custody may be taken in the following situations: (1) by a child protection worker who is investigating a report if the child is in immediate danger, (2) by a physician who is treating a child who appears to be abused or neglected or (3) by a law enforcement officer responding to a call involving a child who appears to be abused, neglected or dependent. If a child is taken into temporary protective custody, this decision must be reviewed by the juvenile court within two working days. If temporary protective custody lapses without court involvement, the child needs to be returned to his parent(s).

All cases come before the juvenile court on a Petition for Adjudication of Wardship, usually accompanied by a Petition for Temporary Custody. DCFS child protection workers screen the case with the State's Attorney's Office. The State Attorney's Office reviews the facts of the investigation and files a petition for adjudication of wardship with the juvenile court if the allegations meet the criteria for court involvement and enough evidence appears to be present to prove abuse, neglect or dependency.

¹⁰ "Indicated" is a term of art, meaning that there is enough credible evidence to support a claim that abuse or neglect occurred.

THE ROLE OF THE PUBLIC GUARDIAN¹¹

In the Juvenile Division of the Circuit Court, the Public Guardian serves as the legal representative for each child who is the subject of an abuse and neglect petition. The role of the guardian *ad litem* (GAL) is to represent the best interests of the minor. In Cook County, this person acts as the attorney as well as the guardian *ad litem*. (If there would be a conflict of interest in the Public Guardian's Office accepting an appointment, an attorney in private practice who is eligible to practice in Juvenile Court would be appointed instead).

The Public Guardian is appointed to represent these children as soon as their case is brought to court based on allegations of abuse, neglect or dependency. At adjudication, evidence is presented to determine whether the child is abused, neglected or dependent. Once the court determines there has been abuse or neglect, or that the child is dependent, the court generally makes the child a ward of the court. Frequently, a public agency becomes the legal guardian of the child. In Illinois, the Illinois Department of Children & Family Services (DCFS) is assigned this role.

The job of the attorney and guardian *ad litem* for the child becomes more complex as the court process continues. The attorney/GAL then advocates for the child's best interest on a variety of issues involving visitation, return home, and in some cases, termination of parental rights and ultimately adoption. Throughout the life of the case, the attorney/GAL may also advocate for the child regarding other issues including the child's safety in foster care and obtaining necessary services from DCFS.

Who do you contact?

The Cook County Office of the Public Guardian is located in the Juvenile Court building at 2245 W. Ogden Avenue, 4th Floor, Chicago, IL 60612. The general number is (312) 433-4300. If a child has been assigned an attorney and GAL, ask to speak with that attorney. General questions and information can also be obtained by viewing the office website at www.publicguardian.org.

How are Attorneys/GALs assigned?

There are currently 14 Child Protection Courtrooms in Cook County. In general, a staff of approximately six attorneys/GALs and one Supervising Attorney is assigned to each courtroom. Ideally, one attorney/GAL will be assigned to represent a child throughout these proceedings.

¹¹ Nila Grahl, formerly of the Office of the Public Guardian, contributed to this section.

THE JUVENILE COURT PROCESS¹²

This section provides a general overview of what happens after the State's Attorney decides to prosecute the case. In juvenile court, the State's Attorney and the Guardian *ad litem* move the case along and communicate with the judge. DCFS is also involved. The role of the pro bono attorney is both to explain to the juvenile court judge what, if anything, is happening with the child's immigration case, as well as to provide details about the child's history and background of abuse, abandonment or neglect, where necessary. In this manner, though the pro bono attorney may not retain a formal role in juvenile court, he or she continues to act as the child's advocate.

Temporary Custody Hearing

The Temporary Custody Hearing is the first juvenile court hearing in a child protection case. It is referred to as the temporary custody hearing even when temporary custody is not sought. The purpose of the temporary custody hearing is to determine whether a child is dependent, a victim of abuse or neglect or at risk of abuse or neglect such that the juvenile court should intervene for the safety and protection of the child.

A temporary custody hearing occurs in juvenile court as a result of a petition for adjudication of wardship being filed by the State's Attorney's Office. A separate petition must be filed for each child the State is requesting be made a ward of the juvenile court.

The filing of this petition requires the juvenile court to conduct a hearing to determine whether there is **probable cause** to believe the child was abused, neglected or is dependent. If so, and when a motion for temporary custody is filed along with this petition, the juvenile court must also decide whether the child can remain safely within the family setting, pending further juvenile court proceedings.

If the juvenile court believes a child cannot remain safely at home, the focus of the temporary custody hearing shifts to options for out-of-home placement and family reunification services. At this time DCFS or, in some cases, a private party, will be named the temporary custodian for the minor(s). This designation gives the temporary custodian, among other things, the right to make decisions involving the placement of the child and the right to consent to routine medical treatment.

The law requires that a temporary custody hearing be held whenever a petition alleging abuse, neglect, or dependency has been filed on behalf of a child. The temporary custody hearing date is set at the time the case is screened by the State's Attorney's Office. If protective custody was taken in order to preserve a child's safety, the law requires that the temporary custody hearing be conducted "within 48 hours, exclusive of Saturdays, Sundays, and court designated holidays" from when protective custody was taken.

¹² Information provided in part from the *Cook County Child Protection Division's Court Guide for Caseworkers* prepared by the Office of the Presiding Judge.

In cases where protective custody is not taken, the temporary custody hearing date is held approximately three weeks after screening in order to serve notice on the parties.

Juvenile Court Family Conference

The Court Family Conference is a non-adversarial problem-solving conference intended to reduce the length of time a family is involved in the courts. This conference is conducted in the courtroom of the calendar to which it has been assigned, and is chaired by the judge. It occurs only in Cook County. This conference is usually informal in nature and held off the record.

At the Court Family Conference, the parties review and discuss the service plan and the services that have been offered and provided to date. The parties may agree to amend the service plan or the juvenile court may make recommendations regarding amendments to the plan. If the child or children have been removed from home and placed in temporary custody, the judge will review the results that the juvenile court expects to see prior to making decisions regarding return home. If the child or children remained at home under an order of protection, the judge may review the results the juvenile court expects in order to close the juvenile court case. The judge may also set a target date for return home of the child or children or case closure.

If the juvenile court determines that setting a target date for return home or case closure is not possible or is premature, the judge will make clear to the parties and to the caseworker what needs to be accomplished before considering setting a target return home date. The judge will set out clear time frames in which the juvenile court expects the parties and the caseworker to accomplish what must be done.

Generally, the Court Family Conference is conducted 55 days after the temporary custody hearing. The specific date and time of the Court Family Conference is set at the temporary custody hearing. The Court Family Conference will be conducted whether or not parents are present, and regardless of whether parents are in services.

Adjudicatory Hearing

The adjudicatory hearing is the “trial.” At adjudication the Assistant State’s Attorney is required to prove the allegations contained in the petition for adjudication of wardship. Generally, the petition includes more than one allegation and each allegation must be proven by a **preponderance of the evidence**.

At adjudication, the juvenile court looks back to the original circumstances that required court intervention and determines whether the child is abused, neglected, or dependent.

The adjudicatory hearing is different from other child protection hearings because strict rules of evidence must be followed. This means that hearsay evidence is not allowed.

The adjudicatory hearing is conducted approximately 90 days from when the child's parents, legal guardian or legal custodian received notice about the allegations requiring juvenile court involvement. However, delays can and do occur.

Dispositional Hearing

At the dispositional hearing the juvenile court determines whether a child can remain at home or can be returned home at this time, whether the child should be placed under the guardianship of DCFS or a person other than a parent, and whether the child should be adjudged a ward of the juvenile court. A dispositional hearing will be conducted after the juvenile court has made findings at adjudication that the child is abused, neglected, or dependent.

If the juvenile court determines at the dispositional hearing that the child should be adjudged a ward of the court, the juvenile court must then determine what arrangements should be made on behalf of that child. Possible arrangements include allowing a child to remain at home or returning a child home under an order of protection, emancipating the child, or appointing a guardian (either a private guardian or the DCFS guardianship administrator) on behalf of the child.

If the juvenile court determines that conditions do not allow the child to remain or return home at this time, then the juvenile court must decide whether the child requires further placement. If placement is required, the juvenile court must find that the parent, guardian or legal custodian is unwilling, unfit, and/or unable (for a reason other than financial circumstances alone) to care for, protect, train, or discipline the child. It is not necessary to find a parent unwilling, unable and unfit - a finding of only one is required.

Unlike the limited evidence allowed at the adjudicatory hearing, all evidence relevant to the best interest of the child and helpful to the juvenile court's decisions is allowed at the dispositional hearing. If wardship is ordered and the child remains in substitute care with guardianship to the DCFS guardianship administrator, at the conclusion of the dispositional hearing the juvenile court sets the date for the first permanency hearing.

The dispositional hearing is conducted approximately 30 days following the adjudication. In an emergency situation, for example, when the child is at risk of aging-out the juvenile court jurisdiction, the temporary custody hearing, the adjudicatory hearing and the dispositional hearing will occur on the same day. However, these three hearings have very different functions and usually the dispositional hearing is conducted on a later date.

Permanency Hearing

The Permanency Hearing is a court hearing conducted within a year of removing a minor from home and every six months thereafter for as long as the child remains a ward of the court.

At the permanency hearing the juvenile court reviews evidence on the progress made toward returning a child home and determines the future status of the child. If it appears that the parents are not working to correct the conditions necessitating placement of the child, the juvenile court reviews other permanency options for the child. The juvenile court must select one of eight goals authorized by the Illinois Juvenile Court Act at Section 2-28(2):

- Return Home within 5 months
- Return Home within 12 months
- Return Home pending status hearing
- Substitute Care Pending Court Determination on Termination of Parental Rights
- Adoption
- Private Guardianship
- Substitute Care Pending Independence
- Substitute Care, Home Environment Not Appropriate

At permanency hearings, which are conducted by either a judge or hearing officer, the juvenile court reviews and determines:

- The permanency goal
- The appropriateness of the services contained in the service plan
- Whether the services contained in the plan have been provided
- Whether reasonable efforts have been made by all the parties to the service plan to achieve the goal
- Whether the plan and goal have been achieved

At the conclusion of the permanency hearing, the juvenile court sets a goal and a planned achievement date of the permanency goal. All services must support the goal set by the juvenile court. Once the juvenile court has set a permanency goal, only the juvenile court can change the goal.

A judge must conduct the first permanency hearing, but a hearing officer may conduct subsequent hearings. Permanency hearings may occur more frequently than every six months if the juvenile court believes it is necessary.

THE IMPORTANCE OF THE JUVENILE COURT ORDER

The culmination of the dependency proceedings in juvenile court is that the juvenile court will issue an order outlining certain findings as pertain to the child. The May 27, 2004 U.S. Citizenship and Immigration Services (USCIS) Memorandum delineates the types of findings that a juvenile court must make regarding a child in order for the child to be deemed eligible for SIJS. It is essential for the child's attorney to work with the State's Attorney and the GAL to ensure that the juvenile court order contains language in keeping with its findings that will meet the requirements for SIJS. A sample of such order is included at Tab L.

According to the May 27, 2004 Memorandum, the juvenile court order *must establish* the following:

- The juvenile has been declared a dependent of the juvenile court or the court has placed the juvenile under (or legally committed the juvenile to) the custody of an agency or department of a State
- The juvenile has been deemed eligible for long-term foster care due to abuse, neglect, or abandonment

The juvenile court order will also *preferably establish* the following:

- Specific findings of fact in support of the order, sufficient to establish a basis for USCIS express consent¹³
- That it would not be in the child's best interest to be returned to his or her home country.

See May 27, 2004 Memorandum. Please consult with the National Immigrant Justice Center if you have any questions as to what should be included in the juvenile court order.

¹³ "Express consent" will be discussed below, in the immigration section.

FILING THE PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS AND APPLICATION TO ADJUST STATUS

After your client has received an order from the juvenile court declaring her dependency on the juvenile court and eligibility for long-term foster care, the next part of the process involves dealing once again with the federal immigration agencies.

Express Consent

In addition to procuring specific consent for detained children, DHS also requires the USCIS District Director to grant express consent. Express consent is defined in the May 27, 2004 Memorandum as when the:

Secretary [of DHS], through the CIS District Director, has ‘determine[d] that neither the dependency order nor the administrative or judicial determination of the alien’s best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect [or abandonment]’...In other words, express consent is an acknowledgement that the request for SIJ classification is bona fide.

Express consent occurs concurrent with the adjudication of the SIJ Petition itself (outlined below). The Memorandum adds that the USCIS officer adjudicating the petition should refer to the juvenile court order in making his determination whether to grant express consent.

The USCIS officer generally should not second-guess the court rulings and the role in granting express consent is limited to determining special immigration juvenile status, and does not involve making determinations of dependency status. It is only when the juvenile court order is not sufficient to establish a reasonable basis for express consent, that the USCIS officer can request additional evidence to determine reasonable factual basis for the juvenile court order. This again emphasizes the importance of the language contained in the juvenile court order.

It should be noted that sometimes USCIS will conduct an in-person interview with the child in granting express consent. It is important that the child’s attorney be present at the interview and advocate on behalf of the child. The adjudicating officer may ask the child difficult questions relating to the abuse, neglect or abandonment she suffered. In this regard, is the attorney’s role to politely direct the officer to the specific findings contained in the juvenile court order.

Filing Procedures

Note that the procedures for filing the SIJS petition and the application for lawful permanent residence differ depending on whether the child is in removal proceedings or not. However, regardless of whether the child is in removal proceedings or not, please note that the Petition for Special Immigrant Juvenile Status is always filed with USCIS. The SIJS petition is made on Form I-360 and can be found on-line at www.uscis.gov, the website for USCIS, in the “Immigration Forms, Fees and Fingerprints” section

Filing for children who are in removal proceedings:

If a child is in removal proceedings, please note that the immigration court does not have jurisdiction to adjudicate the SIJS petition (Form I-360). As outlined above, the SIJS petition should be filed directly with the local office of USCIS, either in person or via certified mail. In Chicago, the address is:

U.S. Citizenship and Immigration Services
Attn: SIJS Unit
101 W. Congress
Chicago, IL 60605

Attorneys should provide the court with a copy of the SIJS petition that has been filed with USCIS. Often, the court will continue or administratively close the proceedings pending adjudication of the SIJS petition by USCIS. Once the SIJS petition is approved, an attorney can choose one of two courses of action. The attorney can continue proceedings before the immigration court, and have the court adjudicate the application for adjustment of status (lawful permanent residence), Form I-485, also available online at www.uscis.gov. (Please refer to Tab S for instructions on procedures for filing the I-485 with the immigration court.) Alternatively, the attorney can ask the immigration court to terminate removal proceedings so that the child may proceed with her application before USCIS. If the attorney chooses this route, the immigration judge will terminate proceedings and counsel for DHS will forward the child’s file to USCIS for her to be scheduled for an interview before an immigration officer.

Filing for children who are not in removal proceedings:

If the child is **not** in removal proceedings, it is **very important** to file both the petition for SIJS (Form I-360) and the application for adjustment of status (Form I-485) simultaneously. The I-360 and I-485 must be filed with the USCIS direct mail address. The address is:

U.S. Citizenship and Immigration Services
P.O. Box 805887
Chicago, IL 60680-4120

If you are using private courier deliveries, the address is:

U.S. Citizenship and Immigration Services
Attn: FBASI
427 S. LaSalle – 3rd Floor
Chicago, IL 60605-1098

Filing Fees:

There is no longer a filing fee for the SIJS petition, Form I-360. The application for adjustment of status (lawful permanent residence), Form I-485, does require a filing fee, as well as a biometrics fee. Please note that both fees may be waived if requested, at the discretion of USCIS.

What documents do you need to support the SIJS Petition, Form I-360?

The May 27, 2004 memo explicitly lays out the required documentation for the I-360 and I-485:

The Petition for Special Immigrant Juvenile Status, Form I-360, must be supported by:

- Court order declaring dependency on the juvenile court or placing the juvenile under (or legally committing the juvenile to) the custody of an agency or department of a State
- Court order deeming the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment
- Determination from an administrative or judicial proceeding that it is in the juvenile's best interest not to be returned to his/her country of nationality or last habitual resident or the juvenile's parents' country of nationality or last habitual residence (hereinafter "home country")¹⁴
- Proof of juvenile's age¹⁵

The Application for Adjustment of Status, Form I-485, must also be supported by documentation:

- Birth certificate or other proof of identify in compliance with 8 CFR § 103.2
- A sealed medical examination (Form I-639)
- Two passport-style color photographs

¹⁴ INA §101 (a)(27)(J)(ii). This requirement can be satisfied through a determination made by the juvenile court and incorporated in the juvenile court order.

¹⁵ Examples include an official birth certificate, passport, or foreign identity document issued by a foreign government, such as a *cedula* or *cartilla*. 8 CFR § 204.11 (d).

Where applicable, the Application for Adjustment of Status, Form I-485, must also be supported by:

- Evidence of inspection, admission or parole (if available; by law an individual with SIJS classification is deemed to be paroled for purposes of adjustment of status).¹⁶
- If the child is over 14, s/he must also submit a Form G-325A (Biographic Information).
- If the child has an arrest record, s/he must also submit certified copies of the records of disposition.
- If the child is seeking a waiver of a ground of inadmissibility that is not otherwise automatically waived under INA § 245 (h)(2)(A), s/he must submit a Form I-601 (Application for Waiver of Ground of Excludability) and supporting documents establishing that waiver is warranted for humanitarian purposes, family unity, or in the public interest (supporting documents could include affidavits, letters, press clippings, etc.).

Is an SIJS applicant eligible to work?

Applying for SIJS alone does not entitle a child to work. Once an adjustment of status application, Form I-485, is filed and pending, however, a child may apply for work authorization. The form for applying for employment authorization, Form I-765, is also available online and also has a filing fee. For this reason, it is generally a good idea to file the I-765 along with the I-360 and I-485 to expedite the entire process. (*Remember: this only applies to children who are not in removal proceedings*). Although a child with a pending SIJS petition (Form I-360) is ineligible for employment authorization¹⁷, the child becomes eligible once the application for adjustment of status (Form I-485) is filed. See 8 C.F.R. §214.1(c)(4).

What happens next?¹⁸

If the child is not in immigration proceedings, or if the immigration judge terminates the child's immigration proceedings, he or she will be scheduled for an interview with USCIS in Chicago.²¹ The attorney should accompany the child to the interview. Generally, the adjudication officer will review the application for adjustment

¹⁶ INA § 245 (h)(1).

¹⁷ NOTE: The SIJ applicant is not authorized to work without an employment authorization. However, if the child has engaged in unauthorized employment, it is not a bar to adjustment, as the child is exempted from this bar. See INA § 245 (c)(2); 8 C.F.R. § 214.1 (b)(4)(ii). Specifically, children who are seeking to adjust under the Special Immigrant Juvenile status under INA §245(h), 8 USC § 1255(h) are exempted from the bars under INA §245(c), 8 USC § 1255(c) for having accepted unauthorized employment. *Matter of Hall*, 18 I & N Dec. 203 (BIA 1982), INA § 245 (c)(2); 8 CFR §§ 245.1(b)(4)(ii), 1245.1(b)(4). Also see Tab DD for other exceptions applied to SIJS adjustment applicants.

¹⁸ For an overview on basic chronology of SIJS cases involving two different tracks for detained and non-detained children, please refer to Tab N.

with the child and ask questions related to inadmissibility. Shortly after the interview, USCIS will notify the child and the attorney as to whether the child has been granted adjustment of status. If so, the child will receive his or her lawful permanent resident card, usually within three months. Once a child has become a lawful permanent resident, or a green card holder, he or she is on the path to become a citizen of the United States.

Special consideration: Fees

The fees for filing the I-360, I-485 and I-765 can be high, especially for a child without support. To that end, pursuant to 8 CFR § 103.7(c), SIJS applicants may be eligible for fee waivers. The attorney may attach a request for fee waiver for each of the forms. Please note, however, that requests for fee waivers may slow down the approval process, sometimes dramatically. Therefore, a fee waiver should only be requested when absolutely necessary.

ELIGIBILITY REQUIREMENTS FOR THE I-360 ADJUDICATION

IMPORTANT THINGS TO REMEMBER

To remain eligible for SIJS throughout the process, the child must continue to meet the requirements of the regulations. Therefore, it is extremely important to keep the following in mind:

- In Illinois, the child ***must*** obtain the state dependency order prior to her 18th birthday.
- The child ***must*** complete the entire process, including adjusting to lawful permanent resident status ***before*** her 21st birthday. If she does not adjust before her 21st birthday, she will face the possibility of deportation.
- The child ***must*** remain dependent upon the juvenile court and eligible for long-term foster care until adjustment to permanent resident status is granted. In a situation where the court decides that the child is no longer dependent on the court or eligible for foster care (whether or not she is in foster care), the child ***will no longer be eligible for SIJS***.
- The child ***cannot*** get married before adjustment of status is completed.
- The child ***must not*** get arrested, use illegal drugs, or leave the country.

If the child finds herself in any of the above situations, or the child is in danger of turning 21 before adjustment to lawful permanent resident status, please consult with the National Immigrant Justice Center as quickly as possible.

SPECIAL TIPS FOR PRO BONO ATTORNEYS¹⁹

- Your client may not initially trust you or feel comfortable explaining the details of his/her situation. The questions by an attorney about a child's past, particularly those that are highly relevant to an SIJS case, such as how the child came to the United States, what his/her living situation is/was like, what family members were detrimental in the child's life, etc., are often extremely difficult for children to discuss, particularly if the attorney-client relationship is newly formed and the child does not know that the lawyer is 100% on his/her side. A child may love the parent/family member that abused or neglected him/her and not be initially willing to discuss any mistreatment by that parent to a stranger. It is important to take things slowly, visiting the child regularly and drawing the full story out over a series of several sessions, rather than trying to gather all the facts in one long meeting. Keeping meetings brief and at least partly light-hearted is less stressful for the child and allows you to go over what has been discussed and focus in on what else you will need to know about in greater detail. It also confirms to the child that you are a semi-permanent rather than temporary fixture in his/her life and will see his/her case through to the end, something that is much more critical to child clients than adult clients.
- Your client may not be able to consistently tell his/her life story. Details about things like the family tree (i.e. whether Juan is an uncle, cousin or family friend) may not be clear to the child, particularly if the cultural terminology used in the client's home country is not equivalent to U.S. terms. Moreover, recollections about the timeline of the journey to the United States or memories about certain situations of abuse may not be clear in the child's mind (and certainly not easy for a child to describe in a calculated manner on a repeated basis.)

It is very important not to rush to summarize the story that your client initially tells you, only to find out later that many key details were left out or that you assumed too much. For this reason, an attorney will need to meet with the client on an initial basis to make introductions, explain his/her role and get the basics of the client's story. Two or more follow-up meetings will then be necessary to flush out all of the details and to repeatedly go over the facts so that the attorney can be confident he/she has understood the full story and that no ambiguities remain.

It is important in these meetings not to jump to conclusions, but to ask questions from many angles so you don't overlook a salient fact. Your client will not know which facts about his/her life are important to the case. It is very important to confirm every story more than once and to go over any written summary of the child's life that you create in great detail with your client to confirm that you have accurately described what you have heard and not missed any important facts. It is also very useful if you can try to confirm any information you hear from the

¹⁹ This section was prepared by Mereke Carrizosa, former National Immigrant Justice Center *pro bono* attorney from the law firm of Latham & Watkins LLP.

child with trustworthy family members or friends of the child or through written evidence (i.e. an arrest warrant that verifies when the client entered the United States, a death certificate of a parent, the birth certificate of the child) It would be a tragedy if the USCIS denied a perfectly valid case by pointing out an irrelevant inconsistency by using it as evidence of a false claim – something you can avoid if you verify facts from several sources.

- You may not be able to trust the people your client trusts. It is important to be very careful not to disclose or rely on information from your client's family, friends or former caregivers too extensively or until you are certain that such family members have your client's best interests at heart. There is always the risk that the "concerned uncle" may not in fact be the client's uncle or that if he is, he may be more interested in the return of the capital used to finance your client's trip to the United States than to making sure your client is placed in a safe and healthy living environment once SIJS is obtained. Unaccompanied children who come to the United States often owe huge sums of money to relatives or the smuggling rings that brought them to this country. Your client may feel obligated to pay this money back and his/her family may suffer the consequences if he/she does not. Thus, it is particularly important to stay aware of how and what a child's family members are communicating to him and to keep an eye out for fishy behavior.
- Your client will not understand the U.S. legal system. You will need to explain to your client what rights he/she may have as a juvenile in the immigration system, what SIJS is and what it may entitle the child to, what the outcome may look like for the child if SIJS is obtained (i.e. where he might live, what his day might be like, how often he will be able to see his family, etc.), what the outcome may look like if SIJS cannot be obtained (i.e. if there are other options such as asylum or if deportation is likely and what potential deportation may mean), what the role of the juvenile court will be, what the roles of USCIS and U.S. Immigration and Customs Enforcement (ICE) are, what information USCIS or ICE may obtain from you as the attorney and most importantly what the attorney-client privilege is. It is critical to communicate to the child that you represent only his/her interests and not the interests of any of the other players involved in the child's life and/or case, including parents, USCIS, ICE, a coyote/human smuggler, etc.
- Your client will not know the boundaries of your representation. From the outset you should describe your role as the attorney and when/where that role will end and what it does/does not entail so that the child understands the scope/duration of the representation. Child clients may not understand that your relationship with them is professional rather than personal. They may also not understand that a professional relationship can still mean one in which you are concerned for his/her well-being. It is very important that the client understand that he/she has a right to contact you and that you welcome such contact.

- You are the link between the immigration and family law aspects of the case. As a lawyer representing a child who may be eligible for SIJS but who is also in need of social services and/or protection of the juvenile court you wear two hats and are responsible for coordinating two simultaneous events with players that are not intimately familiar with each other. The various parties involved on either side may not see the whole picture of your client's case and you are responsible for making sure that both pieces of the puzzle will ultimately fit together at the end so that your client's immigration and social service needs are met.

IMPORTANT PHONE NUMBERS AND ADDRESSES

National Immigrant Justice Center

208 S. LaSalle Street, Suite 1818

Chicago, Illinois 60604

Telephone: 312-660-1370

Fax: 312-660-1505

<http://www.immigrantjustice.org/>

Contacts: Claudia Valenzuela (x1308), cvalenzuela@heartlandalliance.org

Sarah Diaz (x1335), sdiaz@heartlandalliance.org

Bing Luo (x 1358), bluo@heartlandalliance.org

Child Welfare-Related Contacts

Illinois Department of Children & Family Services (DCFS)

100 West Randolph Street, Suite 6-100

Chicago, Illinois 60601

Telephone: 312-814-6800

DCFS Hotline Number: 1-800-25-ABUSE

<http://www.state.il.us/dcfs>

Cook County Juvenile Court

2245 West Ogden Avenue

Juvenile Center, West Addition

Chicago, Illinois 60612

General Information: 312-433-4401

General Office Number: 312-433-6872

Office of the State's Attorney for Cook County

2245 West Ogden Avenue, 6th Floor

Juvenile Center, West Addition

Chicago, Illinois 60612

Telephone: 312-433-7000

Contact: Joan Podernke

Office of the Public Guardian

2245 West Ogden Avenue, 4th Floor

Juvenile Center, West Addition

Chicago, Illinois 60612

Telephone: 312-433-4300

Faxes: 312-433-4336/5129

<http://www.publicguardian.org/>

Contact: Julie Gerber Sollinger

Immigration-Related Contacts

Juvenile & Family Residential Management Unit

U.S. Department of Homeland Security
801 I Street NW, Suite 800
Washington, D.C. 20536
Telephone: (202) 732-2966
Contact: M. Yvonne Evans, Director

U.S. Immigration & Customs Enforcement (ICE)

Department of Homeland Security
101 W. Congress Blvd.
Chicago, IL 60605
Telephone: (312) 347-2400
Contacts: Robert Podgorni, Juvenile Coordinator

U.S. Citizenship & Immigration Services (USCIS)

101 W. Congress Blvd.
Chicago, IL 60605
Telephone: (312) 239-5607
Contact: Officer Ubaldo
Supervisor: Martha Medina

Office of the Chief Counsel

55 E. Monroe St., Suite 1700
Chicago, IL 60603
Telephone: (312) 353-7317

Chicago Immigration Court

Executive Office for Immigration Review
55 E. Monroe, Suite 1900
Chicago, IL 60603
Telephone: (312) 353-7313

FURTHER READING

Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction, Immigrant Legal Resource Center (January 2005), available at www.ilrc.org.

Immigration Benchbook for Juvenile and Family Courts, Katherine Brady and Sally Kinoshita (January 2005), available at www.ilrc.org.

Public Counsel Law Center Special Immigrant Juvenile Status Removal Manual, Public Counsel Law Center (2006), available by contacting Public Counsel at www.publiccounsel.org.

Special Immigrant Juvenile Status Background and Eligibility, by Ragini Shah, Columbia University, available at http://www.refugees.org/uploadedFiles/Participate/National_Center/Resource_Library/Columbia%20University%20Manual.doc

Sample Petitions and Other Materials on Special Immigrant Juvenile Status for Children in Various States Court Jurisdiction, U.S. Committee for Refugee and Immigrants, at <http://www.refugees.org/article.aspx?id=1556&subm=75&area=Participate&ssm=118>

Special Immigrant Juvenile Training Manual, Covenant House Youth Advocacy Center, available by contacting Covenant House at www.covenanthousenj.org.

Special Immigrant Juvenile Status Application Guidebook, The Door—A Center of Alternatives Legal Services Center (May 7, 2004), available by contacting The Door at (212) 941-9090; www.door.org.

Article: Kids Will Be Kids? Reconsidering Conceptions of Children's Rights Underlying Immigration Law, David B. Thronson, 63 OHIO ST. L.J. 979 (2002)

Note: In the Best Interests of the INS: An Analysis of the 1997 Amendment to the Special Immigrant Juvenile Law, Katherine Porter, 27 J. LEGIS. 441 (2001)

Article: Elian or Alien? The Contradictions of Protecting Undocumented Children under the Special Immigrant Juvenile Statute, Gregory Zhong Tian Chen, 27 HASTINGS CONST. L.Q. 597 (Summer 2000)

Children in Legal Guardianships Eligible for Special Immigrant Juvenile Status, Youth Law News (Jan.-Mar. 2004), available at www.youthlaw.org/downloads/juvenile_status.pdf

Guidelines for Children's Asylum Claims, Immigration and Naturalization Service (1998), available at www.asylumlaw.org

National Immigrant Justice Center, Basic Procedural Manual for Asylum Representation Affirmatively and in Removal Proceedings, National Immigrant Justice Center (January 2006), available at <http://www.immigrantjustice.org/>

Children Alone and Scared, Fighting Deportation, Nina Bernstein, N.Y. TIMES (Mar. 28, 2004).

Immigration Law and Unaccompanied Minors: an Imperfect Fit, Micaela Guthrie & Angelica Rubio, TEXAS LAWYER (Mar. 22, 2004).

Decision of Interest; United States District Court, Southern New York; No Jurisdiction Over Alien's Challenge to Agency Decision Regarding Status Adjustment Application, N.Y. LAW JOURNAL (Jan. 13, 2004).

M.B. v. Quarantillo, Immigration Law, N.J. LAW JOURNAL (Sept. 2, 2002).

Additional resources available at www.asylumlaw.org

ADDENDUM: WORKING WITH A CONSULAR OFFICE²⁰**How can a consular office assist you?**

Each consular office has a unit that works on protection issues.

A consular office can often offer assistance in locating family members overseas, locating birth and death certificates, and school records.

Depending on the size of the consulate and the resources available to them, some consular offices will be able to provide greater assistance than others.

Some consular offices, such as the Mexican Consulate, can provide home assessment of a child's home in Mexico. The consulate will conduct psychological assessments of the family members of the home to determine if this is a safe and appropriate home for the child.

Memorandum of Understanding Between the State of Illinois Department of Children and Family Services (DCFS) and the Consulate General of Mexico in Chicago Regarding Consular Notification and Access in Cases Involving Minors

DCFS and the Mexican government signed a memorandum of understanding to protect Mexican minors as a fundamental human element of Mexican communities in the State of Illinois by providing a method of early identification of Mexican children and their families, in order to provide services which assure all the protections afforded by the Vienna Convention, the Bilateral Convention and all other applicable treaties and laws. The Memorandum of Understanding is the first of its kind in the nation.

Highlights of the Memorandum of Understanding

1. *Determination of Mexican Lineage*—DCFS shall determine at the time a decision to take protective custody is made if possible or within 10 days of protective custody, if a minor has any Mexican lineage. The DCFS will inform any Mexican minor, and any parent or custodian of a Mexican or Mexican American minor of the rights afforded under the Vienna and Bilateral Conventions.
2. *Notification to the Mexican Consulate*—Under the Illinois Juvenile Court Act, the State's Attorney has primary notification responsibility. However, DCFS will notify the consulate in writing of the following:
 - The Department identifies a Mexican minor in its custody
 - When the parent/custodian of a Mexican or Mexican American minor has requested that the consulate be notified
 - The Department learns that a non-custodial parent resides in Mexico

²⁰ Jean Ortega-Piron, Illinois Department of Children and Family Services, contributed to this section.

3. *Shared Information/Contact*—Initially, DCFS will provide to the consulate limited identifying information such as the name and birth date of the minor, the name of the parent/custodian and the name and telephone number of the caseworker directly responsible for the case. DCFS will also allow the consulate to interview the minor with appropriate consent. Applicable confidentiality laws will be followed.
4. The consulate will assist the DCFS with the following:
 - Obtaining necessary documentation from Mexico for the completion of Special Immigration Juvenile Status application
 - Obtaining Mexican birth certificate of Mexican American minor in the Department's custody
 - Obtaining appropriate home studies of potential families in Mexico from the Mexican Agency For Integral Family Development ²¹
 - Obtaining DIF's cooperation to ensure the minor's welfare when placed in Mexico and provide whatever services are necessary
 - Obtaining and forwarding to the Department monitoring reports prepared by DIF concerning the minor's welfare
5. DCFS and the consulate shall work together to locate individuals that reside in Mexico and must appear in an Illinois court regarding cases of minors.
6. Consular officers and DCFS staff will meet three times a year to discuss, clarify and coordinate activities in areas of mutual interest and concern.
7. The Consul General and the director of DCFS will meet once a year, in order to assess the progress and direction of the Memorandum.

²¹ This is the agency in Mexico charged with ensuring the welfare of children.

APPENDICES

Federal Law

- A. Code of Federal Regulations, Title 8—Aliens and Nationality §204.11
- B. Immigration & Nationality Act, 8 U.S.C. §1101(a)(27)(J)

USCIS Guidelines and Memorandums

- C. Copy of U.S. Department of Homeland Security Interoffice Memorandum from William R. Yates, Associate Director for Operations, Regarding “Memorandum #3 -- Field Guidance on Special Immigrant Juvenile Status Petitions,” May 27, 2004.²²
- D. Memorandum from William R. Yates, Associate Director for Operations, Regarding Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7 (c), dated March 4, 2004
- E. Memorandum from William J. Howard, Principal Legal Advisor, Regarding Exercising Prosecutorial Discretion To Dismiss Adjustment Cases, October 6, 2005

State Law

- F. Illinois Juvenile Court Act, 705 ILCS 405

Sample Juvenile Court Documents

- G. Temporary Custody Hearing Order
- H. Adjudication Orders
- I. Disposition Orders
- J. Permanency Orders
- K. Order Regarding Services on Parents/Guardian/Custodian
- L. Affidavit of Due Diligence
- M. Juvenile Court Orders with necessary SIJS Language

Sample Immigration Documents

- N. Flowchart Demonstrating the Basic Chronology of SIJ Case
- O. SIJ Consent Packet²³
- P. Grant and Denial of SIJ Consent Letters
- Q. G-28, Notice of Entry of Appearance as Attorney or Representative
- R. I-360 SIJS petition, cover letter and checklist
- S. Notice of Action Approving I-360 Petition
- T. Instruction on I-485 Submission for Clients in Removal Proceedings

²² This memorandum supercedes the memoranda of August 7, 1998 and July 9, 1999.

²³ Including attorney’s letter, juvenile’s affidavit, caseworker’s letter of support, field coordinator’s letter of support, and child advocate’s letter of support.

- U. I-485 Adjustment of Status Petition and checklist
- V. G-325 Biographic Information
- W. I-765 Application for Employment Authorization and checklist
- X. Fee Waiver Request
- Y. Birth Certificate Translation Form
- Z. Death Certificate Translation Form
- AA. Letter of Fingerprint Notification
- BB. Notification for Application for Adjustment of Status Appointment
- CC. Letter Granting Permanent Resident Status and Acknowledgement of Lawful Permanent Residence

Other Resources

- DD. *EOIR Operating Policies and Procedures Memorandum 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children*
- EE. Charts on Exceptions for Adjustment and Waivers of Inadmissibilities for Special Immigrant Juvenile
- FF. Guidelines for Working with an Interpreter
- GG. Lutheran Immigration and Refugee Service, *Working with Refugee and Immigrant Children: Issues of Culture, Law and Development* (selected excerpts)
- HH. Memorandum of Understanding Regarding Consular Notification and Access in Cases Involving Minors between the State of Illinois, Department of Family Services and the Consulate General of Mexico in Chicago