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CHEATSHEET FOR SPECIAL IMMIGRANT JUVENILE STATUS

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- **Summary**

- Special Immigrant Juvenile Status (“SIJS”) is a humanitarian immigration status that leads to a permanent visa (a “green card”) for abused, neglected, and abandoned children in state foster care and/or similar juvenile proceedings, *e.g.*, child protection, guardianship, and TPR.

- **Relevant authorities**

- Immigration and Nationality Act § 101(a)(27)(J) (codified at 8 U.S.C. § 1101(a)(27)(J)) (“INA”)
- INA § 245(h)
- Trafficking Victims Protection and Reauthorization Act of 12/23/2008, Pub. L. No. 110-457, 122 Stat. 5044 (“TVPRA”) – took effect 12/23/2008 and 3/23/2009
- USCIS Policy Manual, Volume 6, Part J and Volume 7, Part F
- 10/27/2016 Policy Alert from USCIS
 - AFM repealed
 - All memos repealed except for the Perez-Olano Policy Memo
- 8 CFR § 204.11 – outdated and not helpful
- 76 Fed. Reg. 54,978 (Sept. 6, 2011) – proposed regulations, which are helpful
- Kurzban’s at Ch. 7, section V.I. – very helpful

- **7 elements of SIJS**

- Child must be present in the United States.
- Child must be unmarried.

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- Child must be under 21 years of age.
 - Age of child is frozen on date of USCIS filing.
 - A state “juvenile court” must enter an order finding all of the SIJS elements satisfied by the child.
 - The term “juvenile court” is defined in the regulations: “[a] court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”
 - Child must be declared “**dependent**” on a juvenile court.
 - There is no federal definition of what constitutes a “dependent” of a juvenile state court. The INA defers to state law on this issue.
 - *E.g.*, child protection/foster care, termination of parental rights, and some juvenile delinquency cases.
 - Or, the child may satisfy this element by being “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.”
 - *E.g.*, minor guardianships, pre-adoption proceedings under certain circumstances.
 - The child cannot age out of this element, so long as the child was dependent on the juvenile court at the time of filing the USCIS filing.
 - Child’s **reunification** with one or both parents is not viable due to abuse, neglect, or abandonment, or a similar basis found under state law.
 - There is no federal definition or guidance regarding this element. In the state court’s discretion.
 - State juvenile court has determined that it is **not in the child’s best interests** to be returned to the child’s or the parent’s country of nationality or country of last habitual residence.
 - Again, there is no federal definition or guidance regarding this element. In the state court’s discretion.
 - There is an additional requirement for children in federal custody: the “specific consent” of the Secretary of the Department of Health and Human Services (“HHS”) must be obtained before the SIJS order is entered in the state juvenile court.
- **Overview of 2-part process**
 - State juvenile court proceeding
 - Child’s immigration attorney files a Limited Notice of Appearance in child’s state court juvenile proceedings, or consults with the child’s advocacy counsel.
 - Or a guardian *ad litem* with SIJS experience could be appointed as the child’s guardian *ad litem*.

- Or the guardian *ad litem* could seek permission from the Court to retain an immigration attorney as an expert “necessary to assist the guardian *ad litem* in performing his or her functions or duties under this chapter.” Wis. Stat. § 48.235(8).
 - Child’s immigration attorney files a Motion for Order Regarding Special Immigrant Juvenile Status.
 - Hearing on motion held in state juvenile court.
 - State juvenile court enters Order Regarding Special Immigrant Juvenile Status.
 - Federal immigration filing
 - After obtaining the state juvenile court order, the child’s immigration attorney files a Petition for Special Immigrant Juvenile Status with U.S. Citizenship and Immigration Services (“USCIS”), along with other immigration applications and petitions as necessary.
 - Child undergoes a physical exam by a doctor certified by the U.S. Department of Homeland Security (“DHS”).
 - Child attends a biometrics appointment (fingerprints, picture) at local DHS office.
 - Child is interviewed by a USCIS adjudication officer, or immigration judge, as the case may be. Child’s attorney should be present.
 - Child’s SIJS petition and other applications are adjudicated by USCIS. SIJS petition must be adjudicated within six months’ of acceptance by USCIS, but this requirement is ignored.
 - Child receives green card.
 - Child may naturalize and become a U.S. citizen eventually. For some SIJS children, there is an opportunity for derivation of U.S. citizenship under the Child Citizenship Act (“CCA”) based on an adoption following SIJS.
- **WARNING re: adoptions**
 - Beware of finalizing an adoption of a child potentially eligible for SIJS before you have their green card in your hand. In fact, beware of even terminating parental rights before a child’s immigration status is fixed, or at a minimum, before an immigration attorney has devised a strategy to fix it. If done incorrectly, an adoption can make a child ineligible for SIJS and even adoption-based immigration relief.