Special Immigrant Juvenile Status
For Children Under Juvenile Court Jurisdiction

Immigrant Legal Resource Center

May 2001

Chapter 1

Introduction and Overview

Special Immigrant Juvenile Status (SIJS) is a federal law that helps certain undocumented children in the state juvenile system obtain lawful immigration status. This chapter provides basic information about SIJS. It also directs you to other chapters that discuss different aspects of SIJS in more detail.

For many children's welfare workers, this chapter will provide all the information you need. Chapters 2 - 4 are designed to answer more specific questions. In particular, Chapter 4 provides information on the application process and how to complete the forms. Chapter 5 provides information on other ways besides SIJS that children can obtain lawful status, such as immigrating through an adoptive parent or applying for asylum.

The **Appendices** to this manual contain many useful items, such as a sample court order and other papers that you can present to a juvenile court judge, a handout in English and Spanish that you can use to discuss the risks and benefits of this program with the applicant, a copy of the law, regulations, and INS memoranda, and sample completed copies of application forms. See **Appendices.** Note that it is easy to obtain the INS forms you'll need for the application from the INS website, by calling a toll-free number, or from an immigration practitioner. See instructions in Chapter 4, § 4.4, below.

§ 1.1 Lawful Immigration Status: What is It and Why is It Important? The Stories of Julia and Martin

Immigration is controlled by a federal law -- the Immigration and Nationality Act[1] -- and enforced by a federal agency -- the Immigration and Naturalization Service (INS).

Under our immigration laws, any person who is not a U.S. citizen is referred to as an **alien**. An alien who has a **green card** has permanent lawful immigration status and is called a **lawful permanent resident**. An alien with no lawful immigration status is said to be **undocumented**.

Life in the United States can be terribly difficult for an undocumented person. He or she might be **deported** (forced to leave the United States) if caught by INS. Further, the person cannot obtain **employment authorization**, and so cannot work legally. Undocumented young people are not eligible for **in-state tuition at state colleges and universities**, and therefore usually cannot go to college.

[1] Abbreviated INA. The INA also appears in Title 8 of the United States Code. Citations to both the INA and the U.S. Code are provided throughout.

The Special Immigrant Juvenile Status law permits undocumented children who have come under the jurisdiction of a juvenile court and meet other requirements to become lawful permanent residents.

Examples: The Stories of Julia and Martin. When "Julia" was fourteen years old, she became a dependent of a juvenile court due to her parents' abuse. The court terminated her parents' rights and placed Julia in long-term foster care. She recovered from her abuse and adjusted well to life. She got good grades and was accepted to a state university.

However, just before Julia's eighteenth birthday the county workers discovered that she had been born in Mexico and brought into the U.S. illegally. Although Julia spoke English perfectly and seemed very "American," she was an undocumented immigrant. Because of this, it looked like everything Julia had worked for would be destroyed. As an undocumented person, Julia was not eligible to pay in-state tuition and so could not afford college. Further, she could not work legally, and so faced a future of being exploited in the underground economy or working with fake papers and hoping she was not discovered. Finally, if the INS ever located her, they could deport her back to Mexico, where she had no one.

Luckily, one of her social workers had heard of SIJS. Although right before Julia's eighteenth birthday was a very late date to apply, county social workers and local immigration attorneys working together were able to successfully complete the SIJS application process before Julia was released from dependency. Julia became a lawful permanent resident through SIJS. The end of the story is that the real "Julia" went on to a successful college career, became an accountant, and has made a great life for herself!

"Martin" was placed in juvenile delinquency proceedings when he was arrested after a fight. When it came time for the juvenile court to release him on probation, the court found that it could not send him back to his parents because of their record of physical abuse and illegal actions. The court instead placed Martin in a foster care group home. Although the INS has not published a guidance on this, under the statute and the regulation Martin also meets all the requirements for a green card through SIJS.

§ 1.2 Who is Eligible to Become a Permanent Resident Through "Special Immigrant Juvenile" Status?

Persons under the jurisdiction of a juvenile court who are "deemed eligible for long term foster care" may be able to obtain special immigrant juvenile status and, based on that, apply for lawful permanent residency (a green card).[2] To do this, they must submit two applications and meet two sets of requirements:

1) They must apply for **special immigrant juvenile status,** and

2) Based on the special immigrant juvenile application, they also must apply for **permanent residency** (the green card). In immigration terminology, applying for permanent residency is called applying for **adjustment of status** to that of a lawful permanent resident.

[2] " Special immigrant juvenile" is defined in INA § 101(a)(27)(J), 8 USC § 1101(a)(27)(J), reprinted in **Appendix G**. This section was added by § 153 of the Immigration Act of 1990 (IA90).

The two applications usually are filed at the same time, although in some circumstances the SIJS petition might be submitted first.

A. Petition for Special Immigrant Juvenile Status (SIJS)

A federal statute (law) provides that an applicant must meet the following criteria to qualify for SIJS.[3]

1. Dependency, Delinquency, or Other Juvenile Court Proceedings

The applicant must be under the jurisdiction of a juvenile court. While INS has not made a written policy about this, this should include children in delinquency as well as dependency proceedings. (The statute says that the applicant either must be a dependent of a juvenile court, or a juvenile court must have had the applicant legally committed to, or placed under the custody of, an agency or department of a state.) In either delinquency or dependency proceedings, the child applicant must meet all of the requirements for SIJS, including the requirement discussed below that she is "deemed eligible" for long term foster care.

> **Example**: Samy is a dependent of a juvenile court due to neglect by his parents. Rose is in delinquency proceedings for auto theft, and the court has found that it can't return her to her parents' custody on probation due to their abuse. Both children may be eligible for SIJS.

For further discussion of dependency and delinquency hearings, see § 2.2 in the next chapter.

2. The Applicant Must Have Been "Deemed Eligible For Long-Term Foster Care."

The statute says that the child must be "deemed eligible for long term foster care" by the court. This phrase has a specific legal meaning for SIJS. The INS regulation on SIJS defines "deemed eligible for long term foster care" to mean that the court has found that family reunification is not a viable option and, usually, the child will go on to foster care, adoption or guardianship.[4] Thus, the child generally must be in the permanent placement phase, and not reunified with a parent or still going through reunification.

> **Example:** Sondra is in permanent placement now that reunification efforts with both parents have ended. She is in long-term foster care but might be adopted. She is "deemed eligible for long-term foster care" and therefore eligible for SIJS. Esteban's mother is being offered reunification services. He has been living in foster care for

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[3] INA § 101(a)(27)(J), 8 USC § 1101(a)(27)(J), reprinted in **Appendix G**, which states in part that a special immigrant juvenile is:
(J) an immigrant who is present in the United States –
(i) who has been declared dependent on a juvenile court located in the United States or whom such court has legally committed to, or placed under the custody of, an agency or department of a state, and who has been deemed by the court eligible for long-term foster care due to abuse, neglect or abandonment,
(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence, and
(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status.

[4] See 8 CFR § 204.11(a)(1993), reprinted in **Appendix G.**

months, but since the judge has not yet found that reunification is not viable, he is not eligible for SIJS.

For further discussion, see § 2.3.

3. The court or some administrative agency must rule that it is not in the child's best interest to be returned to his or her home country.

Generally the juvenile court will include in its SIJS order (discussed below) that it is not in the child's best interest to be returned to the home country. The evidence for this finding may range from a home study conducted by a foreign social service agency to determine that a grandparent's home is not appropriate, to simply interviewing the child to learn that there are no known appropriate family in the home country. For further discussion, see § 2.4.

4. The court should make it clear that it made its findings and orders based on abuse, neglect or abandonment of the child, as opposed to just to get the child immigration status.

The requirement of a specific finding about "abuse, neglect and abandonment" was added to the SIJS law in 1997. The juvenile court judge's order should specifically identify whether abuse, neglect or abandonment was the basis for the dependency or placement order, and for "deeming the child eligible for long term foster care" (i.e., determining that reunion with the parents was not viable). For example, the judge's order could state, "The minor is deemed eligible by this Court for long term foster care, based on abuse" or "The above orders and findings were made due to abandonment and neglect of the minor." See sample judge's order in **Appendix C**. For further discussion, see § 2.5, below.

5. The juvenile court judge should sign an order making the above findings.

The juvenile court judge will sign a special order, usually prepared by the child's attorney or other advocate, stating that all the findings required for SIJS have been made. The child will submit this order to the INS as part of the child's application for special immigrant juvenile status. A sample judge's order appears in **Appendix C.**

6. Other Requirements: Juvenile Court Must Retain Jurisdiction, Applicant Must be Under Age 21 and Unmarried

The INS added some requirements of its own, that were not written in the federal law. Some of the INS requirements might be dropped in the future, but they apply to all applications now. For more information see § 2.8.

The Juvenile Court Must Retain Jurisdiction. Current INS regulation requires that the applicant remain under juvenile court jurisdiction until the immigration application is finally decided and the applicant is a lawful permanent resident.[5] *Juvenile court lawyers must ensure that judges retain jurisdiction over the applicant until INS grants the SIJS application after the interview. The INS interview may take place from six to thirty-six months, or even longer, after the SIJS application is filed.*

[5] 8 CFR § 204.11(c)(5), reprinted in **Appendix G**

Some juvenile court judges will want to, or must under state law, terminate dependency proceedings when the child reaches a certain age. Children's advocates need to fight to keep the child under juvenile court jurisdiction. Note that immigration attorneys may be able to persuade the INS to speed up ("expedite") the interview if the child is about to age out of the juvenile court system. When the child goes to the INS interview, s/he should have a copy of the minutes from his or her most recent court hearing to establish that s/he remains under juvenile court jurisdiction.

The INS regulation creates a difficult situation and needlessly costs juvenile systems time and energy by requiring children to stay in longer in the juvenile court system than they otherwise would. It is possible that better rules will appear in the future. The INS was considering regulations that would offer relief to persons who age out of juvenile court jurisdiction before the INS makes its final decision. Advocates should keep abreast of developments.

Applicants who are 18, or who are 21. State laws generally require that a youth be under age 18 at the time he or she first is declared a juvenile court dependent. State laws vary as to how long a child can remain a juvenile court dependent, once he or she has been declared a dependent. Some states end dependency at age 18, others extend it to age 19 especially if the child must complete high school, and others potentially can extend the age to 21. Similarly, different states have different laws for how old a young person must be to enter or stay under juvenile court jurisdiction in a delinquency case.

Under INS regulations, any person under 21 who meets the SIJS requirements can apply for SIJS.[6] Thus as far as the INS is concerned, a 19 year old could file a SIJS application and attend the INS interview -- *so long as s/he remains under the jurisdiction of a juvenile court, eligible for long term foster care*, and the subject of a court order declaring that it is not in his or her best interest to return to the home country.

> **Example:** Julia entered the foster care system when she was 14 years old. Because social workers had not heard about SIJS earlier, Julia did not apply for SIJS until she was 19. The juvenile court retained jurisdiction over Julia until she was 20 and the INS granted her SIJS application.

Marriage. Under INS regulations, applicants for SIJS must remain unmarried until the entire process is completed and the INS grants permanent residency.

B. Application for Permanent Resident Status

Besides meeting the above requirements for SIJS, the children must fulfill other requirements that apply to all persons who become lawful permanent residents of the United States (get a green card).

Applicants might be barred from permanent residency if they have a record of involvement with drugs, prostitution, or other crimes, if they are HIV positive, committed visa fraud, were previously deported, or have certain other "bad marks" against them. These children need advice from expert immigration counsel before applying. They may well win their case – but they need to get good advice to make sure of that before they apply. Immigration lawyers should note that special waivers of inadmissibility are available to special immigrant juveniles that do not require a qualifying relative. See discussion at § 2.11.

[6] 8 CFR § 204.11(c)(1). See reprint of regulation in **Appendix G**.

More detailed information on all eligibility requirements for special immigrant status and adjustment of status is provided in Chapter 2.

The following types of cases, discussed in Chapter 2, deserve special attention and expert advice:

- children who soon will turn 18, or are over 18
- children who soon will be released from juvenile court jurisdiction
- children who currently are in deportation ("removal") proceedings
- children who are or have been in juvenile delinquency proceedings or have a juvenile or adult criminal record
- children who are or might be HIV positive
- children who were "paroled" in to the United States by immigration authorities
- children who have been previously deported or removed

§ 1.3 What Are the Benefits of Applying For Special Immigrant Juvenile Status?

The most important benefit of applying for SIJS is obtaining lawful permanent resident status -- a green card. Special immigrant juvenile status might be the only route for an undocumented child to gain lawful permanent immigration status in the United States. (But see Chapter 5 for other ways that children can obtain lawful immigration status.)

A lawful permanent resident has the right to **live and work permanently** in the United States and to **travel in and out of the country**. While **public benefits** (e.g., welfare, MediCare) for permanent residents have been drastically curtailed since 1996, permanent residents are eligible for some benefits initially and more as time goes on. Also, after five years permanent residents can apply for **U. S. citizenship**.

Lawful permanent resident status is **permanent** -- a special immigrant juvenile who obtains permanent residency will keep it after he or she is no longer under juvenile court jurisdiction. The person remains a permanent resident for her entire life. The only reason it would end would be if the person became deportable for some reason, such as conviction as an adult of certain criminal offenses.

The above benefits come with the green card, but two important benefits come as soon as the person submits the application forms to the INS. Applicants who have submitted the application for SIJS and adjustment of status and are waiting for an interview are **protected against deportation** and are granted **employment authorization** until their cases are decided.

Counties benefit when a child wins SIJS because they can access federal foster care matching funds, which they cannot do for undocumented children.

See **Chapter 3** for further discussion of these benefits.

§ 1.4 What Are the Risks of Applying?

The greatest risk to the child is that, if the application is turned down, the INS might attempt to "remove" (deport) the child from the United States.

When a child files a petition for SIJS, the child is alerting the INS to the fact that he or she is in the U.S. Since these petitions are not confidential, the INS has the right to use that information to place the child into removal proceedings for deportation if the SIJS and adjustment of status applications are denied. See Chapter 3.

It is crucial to make sure that the child is likely to win the status before submitting an application, so that you don't unintentionally cause the child to be deported. Note that children who are not eligible for SIJS still may be eligible to get lawful status in some other way, such as through adoptive parents, or through abusive U.S. citizen or permanent resident parents even if the child does not come or remain under juvenile court jurisdiction. See Chapter 5.

§ 1.5 Who Should Apply?

Children who will qualify for both special immigrant status and adjustment of status to permanent residency should submit applications. Generally children should not apply under this program if the advocate is not confident that the applications will be granted. In case of doubt, the advocate should be sure to consult with competent immigration counsel. For example, children with juvenile delinquent or adult criminal records, records of extensive immigration violations, or children with HIV should consider strategy with an expert before filing.

There is one exception to this cautious advice: *children who are already in deportation ("removal") proceedings have nothing to lose by submitting an application*, since INS is already trying to deport them. They should apply for special immigrant status if there is any chance of qualifying, so that their deportation is stopped. Note that if these children are already in INS actual or constructive custody, juvenile courts will have to get permission to take jurisdiction over the children. See § 1.9.

§ 1.6 What is the Application Procedure?

The child must file two applications, one for special immigrant juvenile status and one to adjust status to lawful permanent residency. The applicant does not have to travel outside of the United States, but can apply locally.[7] Currently, both the SIJS and the adjustment of status applications are filed at the same time at the local INS district office with jurisdiction over the child's residence.[8] Besides the forms, the applicant must submit the results of a set medical exam

[7] Immigration practitioners should see INA § 245(h), which provides that SIJS applicants are deemed paroled in and therefore eligible for adjustment even if they entered without inspection. They do not have to qualify under § 245(i) or another special program, or pay a penalty fee: they are entitled to adjustment by virtue of their SIJS petition. Otherwise, immigration attorneys should note that an SIJS adjustment procedure is like that of a 245(a) adjustment for an immediate relative.

[8] In the future, it is possible that INS will change the procedure and have the applicant mail the petition for SIJS to a regional INS office, and once that is approved have the applicant file the application for adjustment of status in person at a local INS office. Counsel should stay alert for new filing rules.

conducted by an INS-approved doctor (which includes a test for HIV and tests for the presence of some illegal drugs), various filing fees unless they are waived, and some proof of age such as a birth certificate. Applicants generally are required to have a photo-identification at the interview.

As soon as the application is filed with INS, the applicant can obtain employment authorization. INS will schedule an appointment for the applicant to get fingerprinted for an FBI check of any criminal or delinquency record or prior deportation. The wait for the interview itself can be long – depending on the INS office, it may be from six months to three years, or even longer. When the applicant finally gets to the interview, he or she often can have a social worker, and certainly an attorney, attend if desired. The INS might approve the case right at the interview, or might request further information. If the INS denies the case, it might or might not refer the child to a judge for deportation ("removal") proceedings. The applicant can apply again in front of the judge, and can appeal denials at any stage.

The child will submit two applications at the same time:

One for special immigrant juvenile status, and
One for adjustment of status to permanent resident.

The application procedure is discussed in detail in Chapter 4. A sample application packet appears in **Appendices B** through **E**.

§ 1.7 Talking with the Child Applicant and Child's Attorney About SIJS

Before a petition for special immigrant juvenile status is filed for a child, the child should understand what the application is about, and what are the risks and benefits of filing. Any attorney for the children must be consulted, and the child's social worker, probation officer, CASA volunteer, foster parent, or other interested advocate should be involved. A one-page form in Spanish and English that you can use to help explain the program to the child appears in **Appendix A.**

§ 1.8 Original Parents, and Maybe Siblings, Cannot Benefit Through Grant of SIJS to Child

A child who immigrates as a special immigrant juvenile ceases to be the "child" of the original parents for immigration purposes. INA § 101(a)(27)(J). This means that the child will not be able to use her new lawful immigration status to help her original parents to get lawful status. For example, a special immigrant juvenile who becomes a permanent resident and then a U.S. citizen will not be able to immigrate his or her natural mother. Usually a U.S. citizen of at least 21 years of age would have that right.

Congress enacted this rule to make sure that parents who abused, neglected or abandoned their children would not benefit from the fact that the children qualified for SIJS. The parents don't lose any immigration benefit that they otherwise would have had, because without SIJS their undocumented child could not have helped his or her parents to immigrate.

Unfortunately, it also may be that the child is barred from using her new status to assist a brother or sister to immigrate. Immigration law defines siblings as persons with a common

parent. Since the SIJS recipient is no longer the "child" of the abusive parent, the INS may assert that he or she no longer has a sibling relationship with brothers and sisters. A U.S. citizen who is at least 21 years old can petition for permanent resident status for a sibling. The main drawback is that sibling or "fourth preference" petitions generally have a long waiting period of from 12 to 20 years after the petition was filed before the sibling receives any legal rights.

§ 1.9 Children in INS Actual or Constructive Custody

If an immigrant child is *already in INS actual or constructive custody* before coming to juvenile court, a juvenile court judge cannot make custody decisions about the child without INS' permission. This is a very unusual federal law, depriving state courts of jurisdiction over children within the state. As amended in 1997, the SIJS statute provides that no state juvenile court

> "has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General [INS] unless the Attorney General specifically consents to such jurisdiction."[9]

Thus, juveniles who are in INS actual or constructive custody must obtain INS consent before a juvenile court can take jurisdiction over the minor. Juvenile court orders made without this consent are invalid according to INS standards.

What is "actual or constructive" INS custody? Actual custody means that INS has the child in a detention facility run by INS. Constructive custody has not been defined in official INS memoranda, but INS authorities appear to agree that this refers only to children housed in a special INS-sponsored foster care setting that INS has created in some states as an alternative to regular detention for children. In these settings, the INS pays a private or non-profit group to run a "soft detention" group home expressly for unaccompanied immigrant children under INS authority. Often the home meets state foster care licensing requirements. If a child is not in such a setting, the child is not in "constructive" INS custody and a juvenile court judge does not need permission to rule on the child's placement. The INS does not appear to take the position that a child is in constructive custody if the child once was in INS custody but has since been released. Thus a child who was arrested by INS but was then released on bond or to a relative, and who still has to go to immigration court hearings, is not in actual or constructive custody, and a juvenile court should not have to get INS permission to take the child.[10]

Requests for INS consent for a court to take jurisdiction over a child in INS custody must be made in writing to the INS District Director with jurisdiction over the juvenile's place of residence.[11] According to an official INS Memorandum, the District Director should consent to the juvenile court taking jurisdiction over the child if:

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[9] INA § 101(a)(27)(J)(i), 8 USC § 1101(a)(27)(J)(i), reprinted in **Appendix G**.

[10] INS is expected to make this position explicit in future regulations. This information is based on conversations with national INS officials and Katherine Brady of the ILRC in 2000, as well as on the history leading up to the 1997 amendment. We are not aware of any local INS making any other interpretation, but if it does, please contact immigration or children's advocates and, if needed, national INS officials. You might start with Michael Biggs, INS Office of Adjudications, 202/353-7707, or Jo Anne London, INS Office of General Counsel, 202/514-0198.

[11] July 9, 1999 "Memorandum #2" issued by Thomas E. Cook, Acting Assistant Commissioner, reprinted in **Appendix J.** See ILRC memorandum in **Appendix K.**

1) it appears that the juvenile would be eligible for SIJ status if a juvenile court order is issued; and

2) in the judgment of the district director, the dependency proceeding would be in the best interest of the juvenile.[12]

Since dependency proceedings are expert governmental deliberations dedicated to identifying and implementing a plan that is in the best interests of the child, it should be an extremely rare case where the District Director decides that holding such proceedings are not in the child's best interest. In practice, however, some District Directors have denied such cases.

Judges and advocates dealing with children who may be in INS custody should contact a resource center for information on how to best prepare a request for consent from the District Director. See **Appendix H**, Resources.

[12] Id.

Chapter 2

Eligibility for Special Immigrant Juvenile Status and Adjustment of Status to Permanent Residency

This chapter takes a closer look at who is eligible to apply for special immigrant juvenile status and adjustment of status to permanent residency.

PART ONE: Eligibility for Special Immigrant Juvenile Status

§ 2.1 Statutory Requirements

Under the federal statute the requirements for special immigrant juvenile status are:

1) The child must be declared dependent on a juvenile court, or the court must have legally committed the child to or placed the child under the custody of a state department or agency (see § 2.2);

2) The child must be "deemed eligible for long-term foster care"(see § 2.3); and

3) A judge or administrative authority must have determined that return to the previous home country is not in the child's best interest (see § 2.4).

4) The judge should make clear that all of the above findings and determinations were made because of the neglect, abuse or abandonment of the child (see § 2.5).

The above findings should be set out specifically in an ***order signed by the juvenile court judge*** or other presiding judge. A sample order appears at **Appendix C**. It may be necessary to explain the need for such an order to the judge, since the factors may go beyond the usual formal requirements of dependency or delinquency proceedings. A memorandum discussing the program from the Presiding Judge of the Juvenile Court in Los Angeles and copies of the applicable law may be helpful. These are reproduced at **Appendix F** and **G**. It is often most efficient to draft and ***bring the court order to the hearing ready for the judge to use and sign***. A sample order appears at **Appendix C**. The signed order will be submitted to the INS with the application for special immigrant juvenile status.

Sections 2.2 through 2.9 examine these and other special immigrant juvenile requirements in detail.

§ 2.2 -- Under the Jurisdiction of a Juvenile Court: Dependency and Delinquency; Need to Retain Juvenile Court Jurisdiction

A. Dependency Proceedings

The immigration statute makes it clear that a child who is a dependent of juvenile court, and who meets the other requirements, is eligible for SIJS. (As discussed below, children who are not dependents but are under the jurisdiction of any juvenile court that makes custody

decisions for them – such as delinquency proceedings -- also are eligible.)

Getting a Child Into Dependency Proceedings. If you are evaluating a child that you feel should be made a dependent of a juvenile court, remember that the question is one of state children's law. Do not look to immigration law or immigration lawyers to define which children the juvenile court can "take in." The process may be different in each state or county. One can alert the county Child Protective Services (or, under whatever name, the part of the county social services network that evaluates children for dependency). Even if the county office does not want to recommend dependency, the court can hear petitions filed by others. See if there is a legal aid-type office in your area for children. If there is not, consult court-appointed attorneys who practice in dependency proceedings.

B. Juvenile Delinquency and Other Juvenile Court Proceedings.

Often SIJS is seen as a form of relief available only for children in dependency proceedings. As a result, relatively few children in delinquency proceedings apply for SIJS. However, the statue specifically makes SIJS available to children in juvenile court proceedings other than dependency. The statute defines a special immigrant juvenile as an immigrant who is in the U.S. and

> "who has been declared dependent on a juvenile court located in the United States *or whom such court has legally committed to, or placed in the custody of, an agency or department of a State,* and who has been deemed by that court eligible for long-term foster care due to abuse, neglect or abandonment"

INA § 101(a)(27(J)(i).

A child in delinquency proceedings comes squarely within the statute as someone whom a juvenile court "has legally committed to, or placed in the custody of, an agency or department of a State." (The second, separate issue, of when a delinquent child has been "deemed eligible for foster care" is discussed below.) Many children in delinquency have been granted SIJS, and local INS may well be sympathetic toward those children.[13]

The INS, however, has not addressed the delinquency issue in writing. Therefore, children in delinquency who apply for SIJS may be at greater risk of being denied by local INS. For this reason it is safest for children in delinquency who may be eligible for SIJS to secure placement in dependency or concurrent dependency/delinquency status, if this is permitted under state law. This eliminates any legal question. Children in delinquency who are unable to obtain placement in dependency and are considering applying for SIJS should be informed of the possible risks of submitting an application.

Deemed Eligible for Long-Term Foster Care. For the child to qualify for SIJS, the delinquency judge must issue a court order ruling on the child's eligibility for long-term foster care due to abuse, neglect or abandonment, and on the fact that it is in the child's best interest not to be returned to the home country. Remember that under INS regulation, "eligible for long-term foster care" means that family reunification is no longer a viable option, and that the child normally will go on to foster care, adoption or guardianship. In many states delinquency court judges frequently make rulings such as this, when it comes time to determine where to place the

[13] As one INS official remarked, "We took sociology. We know that a lot of kids end up in delinquency for the same reason they could have ended up in dependency: because of abuse in the home."

child on probation. For example, in California children in delinquency proceedings will be placed in long-term foster care, often in group homes, if parental reunification is not viable due to abuse, neglect, or abandonment. Or, the abused child may go on to guardianship or adoption, which are also acceptable alternatives under the SIJS regulation. (See discussion of guardianship and adoption in § 2.3, below.)

> **Example:** Samuel is brought to delinquency proceedings and the court finds that he has committed theft and battery. Because Samuel has been severely neglected by his parents, when it is time for Samuel's release from custody the court rules that parental reunification is not viable and places Samuel in foster care. The court is considering releasing Samuel to his uncle as guardian. Either way, Samuel should be found eligible for SIJS, even though he was never in dependency proceedings.

Dangers of Delinquency. Note that a few types of delinquency findings are dangerous because they are "grounds of inadmissibility" that can make a child ineligible for SIJS. The most dangerous finding is sale or possession for sale of drugs (as opposed to simple possession). A finding regarding prostitution or sex offenses can also cause problems. See further discussion in § 2.11. However, many juvenile delinquency dispositions, including many offenses involving violence or theft, do not cause immigration problems. Because of the danger that the local INS will not understand this legal issue and attempt to make a wrong ruling (e.g. try to deny a child based on a juvenile disposition of robbery), we advise that any child with a delinquency record have an expert immigration attorney on the case and at the INS interview.

3. Juvenile Court Must Retain Jurisdiction Until INS Final Decision

Under INS regulation, the SIJS applicant must remain under the juvenile court's jurisdiction until the SIJS petition and application for permanent residency both are approved.[14] In many jurisdictions, the INS interview at which this might occur does not take place until six months or even up to thirty-six months or more, after the SIJS application has been filed. Advocates must persuade juvenile court judges to retain jurisdiction over the SIJS applicant until the INS has finally approved the applications. In some cases the court might be willing to retain jurisdiction over an older child if foster care funds were no longer being paid out. Or, the INS might agree to move the interview date up if a child is about to "age out" of dependency. This difficult rule may improve in the future, through legislation or regulatory change. Advocates should keep abreast of developments.

§ 2.3 "Deemed Eligible for Long-Term Foster Care" Family Reunification, Foster Care, Adoption, Guardianship.

The statute provides that the applicant must be "deemed eligible for long term foster care due to abuse, neglect or abandonment." The regulation defines this term simply to mean that the court has found that family reunification is not a viable option, and the child normally would be placed in foster care, guardianship or adoption.

[14] 8 CFR § 204.11(c)(5), reprinted at **Appendix G.**

A. Definition of "Deemed Eligible for Long-Term Foster Care"

The INS regulation interpreting the statute provides that a child is deemed eligible for long-term foster care once the court has found that family reunification is no longer a viable option. The regulation states that "normally" this will mean that the child would remain in foster care until the age of majority, unless the child is adopted or placed in guardianship.[15] Thus a child who has been adopted or placed in a guardianship after parental reunification efforts have been ended will be considered to be "eligible for long term foster care." A child who remains a juvenile court dependent but is no longer supported by foster care might also qualify.

Abuse, Neglect or Abandonment: While the grammar is somewhat confusing, the 1997 amendment appears to add the requirement that the child is deemed eligible for long term foster care due to abuse, neglect or abandonment (as opposed to due to a desire to get SIJS status). See discussion in § 2.5, and sample judge's order in **Appendix C**.

Timing of the Order: Sometimes there is no parental involvement in juvenile court proceedings because the parent is dead or has conclusively abandoned the child. In these cases, some state courts may make a finding that family reunification efforts can be terminated earlier in the process than they would if the parents were actively involved. (See, for example, Calif. Welf. & Inst. Code § 36621(e)). This would allow the child to be "deemed eligible for long term foster care" and able to apply for SIJS earlier in the process. This would be especially helpful to older children who might "age out" of the system before becoming a permanent resident.

Parents Outside the United States. For a dependency court to terminate parental rights is of course a serious process requiring notice to the parents. In practice, if a court or children's agency thinks there is close family in the home country it will go through a process of investigating conditions there to evaluate whether it is in the child' best interest to return. For example, some county workers in California have developed a working relationship with the staff of the family welfare system in Mexico, and may obtain a home study of a parent or grandparent's house. Other agencies depend upon interviewing the child and/or adults who know the situation to determine whether such family exists and can be notified, and for information about the family. Foreign consulates may provide help to agencies in locating the child's parents in other countries to advise them of the proceedings. Children's welfare workers normally will describe efforts to locate and evaluate close family in other countries in their reports to the court. This information also may be relevant to the court's determination that it is not in the child's best interest to return to the home country (see sec. 2.4 below).

B. Issues Relating to Adoption

This section will discuss several issues pertaining to adoption and immigration status. The material is relevant to any noncitizen adopted child, regardless of whether the child immigrates through the adoption or through SIJS.

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[15] 8 CFR § 204.11(a) states that "Eligible for long term foster care means that a determination has been made by a juvenile court that family reunification is no longer a viable option. A child who is eligible for long term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in a guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long term foster care." The regulation is reprinted in **Appendix G**.

For an SIJS Applicant, the Juvenile Court Must Retain Jurisdiction Until the INS Grants the Application, Presumably Even After Adoption. The federal immigration regulation permits children who have been adopted to apply for SIJS, but it still imposes the requirement that the juvenile court retain jurisdiction over the case for the months or years until the INS finally approves the application. Usually a juvenile court would terminate its jurisdiction over a child's case once an adoption was completed. To comply with the INS regulation, some juvenile courts have either delayed completing the final step of the adoption until the INS granted its approval, or simply retained jurisdiction over the case despite the completion of the adoption. This requirement may be eliminated in the future through legislative or regulatory change; advocates should keep abreast of developments.

Immigrating through Adoption as an Alternative to Immigrating Through SIJS. A child will be able to immigrate through adoptive parents instead of through SIJS if the child is under 16 years old when the adoption is completed and is not otherwise inadmissible. The child also must live in the legal custody of the adoptive parents for two years before the papers are filed.[16] However, immigration through adoptive parents has several disadvantages compared to SIJS. It may involve a long waiting period if the parents are permanent residents rather than citizens, it may require the child to return to the home country for at least a few days to obtain the immigrant visa, and the child will be subject to more grounds of inadmissibility, including the "public charge" ground in which the adoptive parents must prove they have certain income. For this reason, most children adopted after juvenile court custody choose to immigrate through SIJS rather than through their new parents, if possible. See discussion in Chapter 5.

If SIJS or the Violence Against Women Act provisions (see Chapter 5) are not an option, however, immigrating through an adoptive parent may be the best choice. See discussion below regarding (a) why any child going to be adopted would like the adoption to be completed by her 16th birthday, even if she doesn't immigrate through the adoptive parents and (b) how undocumented adoptive parents might be able to immigrate through their adopted child.

Any Immigrant Child Being Considered For Adoption by a U.S. Citizen May Benefit From Having the Adoption Completed By Their Sixteenth Birthday – Even if the Child Already Has a Green Card or Is Immigrating Through SIJS or Other Means. The advantage the child may gain is automatic U.S. citizenship. A child automatically becomes a U.S. citizen if, while under the age of 18, she (1) is a permanent resident, through SIJS, family immigration, or any means; (2) is legally adopted by a U.S. citizen before she reaches the age of 16, and has resided at any time in the legal custody of the citizen for two years;[17] and (3) is residing in the legal and physical custody of the U.S. citizen parent.[18]

States Should Not Oppose Adoption Based on the Adoptive Parents Undocumented Status. Adoptive Parents Potentially Could Immigrate Through The Adopted Child. At least in California, undocumented parents may adopt children despite the parents' lack of lawful immigration status. If you encounter problems with this issue anywhere in the country, contact

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[16] Please note that if a child is adopted as an orphan because of parental death or abandonment, then the child does not have the two-year legal custody and residence with the parents requirements. There are, however, other requirements for orphans. See INA § 101(b)(1)(F).

[17] There are different rules for someone who was adopted as an orphan. See INA § 101(b)(1)(F).

[18] See INA § 320 and the ILRC's manual entitled Naturalization: A Guide for Legal Practitioners and Other Community Advocates.

the National Immigration Law Center in Los Angeles, which brought successful legal action against California on this matter (213-487-2531).[19]

Note that an adopted child who becomes a permanent resident (through SIJS or some other means) will ultimately be able to help her undocumented adoptive parents to immigrate (get a green card), as long as the family meets certain requirements. First, a "parent/child" relationship for immigration purposes must be established, which means that the adoption must have occurred before the child's 16th birthday, and the child must have resided in the adoptive parent or parents' lawful custody for two years, at any time. Second, the child must become a U.S. citizen and be at least 21 years of age to file for her parents. See § 5.1 for more information on immigrating through family relationships in general.

§ 2.4 Not in the Child's Best Interest to be Returned to Previous Home Country

The court or administrative body must find that it is not in the child's best interest to return to the home country or country of most recent residence. Specifically, the immigration statute states that to qualify for SIJS, the applicant must be a person

> "for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence ..."[20]

The easiest course is to have the juvenile court judge include this finding along with the others in her order that will be submitted to INS. See sample judge's order, **Appendix C**.[21]

Obviously, the court must base this finding on evidence, so social workers, probation officers or others writing reports to the court should discuss their efforts to determine the conditions for the child in the home country, the conditions for the child in the United States, and the basis for their recommendation that it is not in the child's best interest to return. The "best interest of the child" determination is one to be made by state court or agency officials based on applicable children's law standards. The court or agency determination should be made on the wide range of factors usually considered in a "best interest of the child" finding, and is not limited merely to factors relating to abuse, neglect or abandonment.[22]

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[19] *Rodriguez-Mendez v. Anderson*, CN 948348 (San Francisco Superior Court, February 9, 1993), All County Letter 93-16 (March 2, 1993).

[20] INA § 101(a)(27)(J)(ii), 8 USC § 1101(a)(27)(J)(ii), reprinted in **Appendix G**.

[21] It may be necessary to explain the need for such an order to the judge, since a specific finding that it is not in the child's best interest to return to the home country may go beyond the usual formal requirements of dependency or delinquency proceedings. A memorandum discussing the program from the Presiding Judge of the Juvenile Court in Los Angeles and copies of the applicable law may be helpful. These are reproduced at **Appendix F** and **G**. It is often most efficient to draft and ***bring the court order to the hearing ready for the judge to use and sign***. A sample order appears at **Appendix C**.

[22] The statute does not limit the "best interests" determination to factors relating to abuse, neglect or abandonment of the child, as it does the determination that the child is deemed eligible for long-term foster care. Compare 8 USC § 1101(a)(27)(J)(i) (deemed eligible for long-term foster care "due to" abuse, neglect or abandonment) with § 1101(a)(27)(J)(ii) (administrative or judicial determination that it is not in the child's best interest to return to home country, with no mention of abuse, neglect or abandonment).

It is possible that some INS offices will demand details about the situation in the home country.[23] Such a demand conflicts with the plain language of the statute: the statute, quoted above, requires evidence that a judicial or administrative body *has determined* that it is not in a child's best interest to return, not direct evidence about the conditions in the home country itself.[24] Again, advocates will have to decide what information it is legal, ethical or advisable for them to disclose in the face of inappropriate INS demands. See discussion in § 2.5.

§ 2.5 Due to "Abuse, Neglect or Abandonment": Legal Standards, INS Requests for Evidence and Documentation

The statute provides that a special immigrant juvenile must have been the subject of juvenile court orders and deemed eligible for long-term foster care "due to abuse, neglect or abandonment."[25]

A. Requirement to Show Neglect, Abuse or Abandonment.

Under 1997 amendments to the SIJS law, the child must show that the reason that court made the various orders was due to the "neglect, abuse or abandonment" of the child, and not just to help the child gain lawful immigration status.[26] To people involved in juvenile court it seems obvious that abuse, neglect and abandonment would be the basis for such orders by a juvenile court, but the statute requires judges or others in the system to make this finding explicit. For that reason, every juvenile court order to be submitted to INS should include a statement identifying the basis for the order, e.g., "On January 4, 1998 the minor was deemed eligible for long term foster care due to abandonment," or "The above orders and findings were based on the abuse of the child." See sample judge's order in **Appendix C**.

Legal Terms Other than "Abuse, Neglect or Abandonment." Some states use different legal terms to describe the basis for refusing to place a child with his or her parents. For example, behavior that most state statutes would term neglect or abandonment might be called "destitution" under New York state law. To be safe, until clarifying regulations are published, if the child was declared a dependent under some other legal term it still may be best to ask the judge to also

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[23] Memorandum #2" is confusing about this issue. On the last page it states that applicants should present "Evidence that it would not be in the juvenile's best interest" to be returned to the home country. See page 3. This requirement goes beyond the statute and the regulation. Also, page 2 of "Memorandum #2" provides that this can be established by the dependency order. See **Appendix J**, and ILRC memorandum in **Appendix K.**

[24] See INA § 101(a)(27)(J)(ii), 8 USC § 1101(a)(27)(J)(ii), cited above. See also the regulation at 8 CFR § 204.11(a)(6), which simply repeats the statutory language that a court or administrative body must have made the finding. Both are reprinted in **Appendix G**.

[25] Section 101(a)(27)(J)(i), 8 USC § 1101(a)(27)(J)(i), defines a special immigrant juvenile as one "who has been declared dependent on a juvenile court located in the Unites States or whom such court has legally committed to, or placed under the custody of, an agency or department of a State, and who has been deemed by that court eligible for long-term foster care due to abuse, neglect or abandonment…" See **Appendix G** for full statute.

[26] The statute adds the requirement of abuse, neglect or abandonment to the section requiring dependency or commitment to a state agency, and eligibility for long term foster care. See INA § 101(a)(27)(J)(i), 8 USC § 1101(a)(27)(J)(i), as amended on November 27, 1997. While it is not clear from the grammar of the statute that the requirement applies to all of these factors, the safest course is to include it. See reprints in **Appendix G**.

include in the order one of the terms "abuse, neglect or abandonment." The judge should use the term whose plain meaning reflects what actually happened to the child.

Abuse, Neglect or Abandonment is Defined Under State Law. The state juvenile court decides whether to take custody of the child due to abuse, neglect or abandonment as a question of state law. The INS cannot assert that it disagrees with Oklahoma's definition of abuse or California's definition of neglect. It cannot attempt to impose some federal definition. The question remains whether a judge under the applicable law of the state has found abuse, neglect or abandonment.

Where the Abuse Occurred. There is no requirement in the statute, regulation or INS memoranda that the abuse, neglect or abandonment occurred in the United States. In fact, many immigrant children lost parents or escaped abusive parents in the country of origin and came alone to the United States. Many U.S. juvenile courts are open to accepting these unaccompanied or abandoned children (as they are open to accepting U.S. citizen children who are living on the street, as opposed to children directly removed from families). The only legal issue is whether the juvenile court has made its determinations based on abuse, neglect or abandonment of the child as defined under state law.

2. Evidence and Documentation Regarding Abuse, Neglect and Abandonment

In some areas of the country there has been controversy and confusion about what kind of evidence INS can require about abuse, neglect and abandonment of the child. *We feel that the best course is to provide only the judge's order, with the minimum amount of information needed to meet the legal elements of SIJS,* and not to supply a lot of details about abuse, family, living situation, etc. The statute provides that INS should be given *proof that judges have made certain findings*, not proof that children actually were abused. The reason for this is simple: INS officers are in no way trained to evaluate or interpret whether a child has been abused, is telling the truth, whether the abuse should be considered to have ended, state law definitions of children's terms, psychologist's reports, etc. Moreover giving the information to INS may violate legal and ethical rules regarding confidentiality.

However, some advocates are in a position where INS has said that without this evidence, it will not approve the case. Plus, the statute relating to INS "consent" to accept the judge's order is vague and could be read to support some INS inquiry. Hopefully in the future the INS will centralize its decision-making on this question, so that reasonable and consistent rules are applied. Until then, advocates need to decide how hard to fight and how to fight most efficiently if INS requires inappropriate information or documents. We recommend having a meeting with higher-up INS officials and personnel from the juvenile system, such as judges, court staff, directors of social work, or children's attorneys.

What evidence must the juvenile court include in its order to establish that it made the order due to abuse, neglect or abandonment? Many advocates feel a legal and/or ethical obligation to disclose only the legal basis for the dependency and not to give further factual information. For example, a court order could state that "the minor was made a dependent of this court and deemed eligible for long term foster care under Calif. W&I Code § 300(a) (physical abuse) and § 300(d) (sexual abuse)." This is evidence that the juvenile court deemed the juvenile eligible for long-term foster care due to abuse, neglect or abandonment.

Other advocates have provided more factual information, in response to INS threats to deny the SIJS application, and depending upon privacy rules in their courts. Some INS offices

routinely demand to obtain a copy, or review a copy, of the entire juvenile court file on the applicant. If the INS requests information that you believe is illegal or unethical to provide, we recommend that you speak with other groups in your area (including the Bar Association) and ask to meet with local INS about the issue, rather than simply give over confidential information for review by INS officers who, after all, have no training whatsoever to evaluate the information.

The INS' actions in this area are controlled by INS Memorandum #2 on Special Immigrant Juveniles, dated July 1999. Some INS offices may not have Memorandum #2. You should supply them with a copy. INS Memorandum #2 (and an ILRC memorandum discussing it) appear as **Appendices J and K** at the back of this manual. If the INS challenges your case and demands more evidence, you should closely examine Memorandum #2. While it is somewhat vaguely written, Memorandum #2 appears to provide that if the judge's order provides the basic information, the INS must "consent" to accepting the order as the basis for SIJS. If the order does not provide the necessary information, Memorandum #2 discusses alternative ways of obtaining evidence acceptable to INS, such as written statements by social workers. See Memorandum #2 and ILRC memo discussing it, in **Appendices J and K.**

Thus, we recommend that information about the elements of consent should be provided in the *juvenile court judge's order*, where possible. However, ***if a juvenile court order does not include information establishing all the SIJS requirements ("elements of consent")***, the INS will look to ***documents filed with the court*** *or* ***sworn statements by the court or state agency or department.***[27]

Regarding documents filed with the court, the INS recognizes that while such documents would be the most reliable evidence of the elements to be proved, in many States documents submitted to or issued by the juvenile court in dependency or delinquency proceedings may be subject to privacy restrictions.[28] *Advocates who demonstrate that juvenile court proceedings are protected by state privacy laws should be able to avoid giving INS documents filed with court.*

Regarding the sworn statement by court or state department or agency, this appears to be a safety device provided in case the juvenile court judge is not able or willing to provide sufficient information. According to the INS:

> *If* a dependency order does not include information establishing these crucial elements and State laws prevent court documents from being submitted to INS, a statement summarizing the evidence presented to the juvenile court during the dependency proceeding and the court's findings should be sufficient to establish the elements. In order for a statement to serve as acceptable evidence of these elements, the statement should be in the form of an affidavit or other signed, sworn statement, and be prepared by the court or the State agency or department in whose custody the juvenile has been placed. All other evidence the petitioner submits to establish the consent elements must also be considered in determining whether or not to consent to the dependency order.[29]

Thus when all else fails a social worker, department attorney, or other responsible party from court or state agency or department can submit a sworn statement. Immigration

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[27] July 9, 1999 "Memorandum #2" issued by Thomas E. Cook, Acting Assistant Commissioner. p. 3, in **Appendix J**, and ILRC memo discussing it in **Appendix K.**
[28] Id.
[29] Id.

proceedings regularly accept un-notarized sworn statements with the following signature statement: "I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief." Again, the person providing the sworn statement must consider legal and ethical confidentiality concerns when deciding what information to include.

§ 2.6 INS "Consent" to Accept the Judge's Order

The following discussion is somewhat complex, and for many SIJS cases is not needed. The "consent" issue need not worry you, and you do not necessarily even need to read this section, unless you are in one of two situations: (a) the child you are assisting is in some form of INS custody, or (b) the INS is stating that it intends to deny your SIJS application because it is refusing to "consent" to accept your juvenile court judge's order.

A. INS Consent that Children in INS Custody Proceed to Juvenile Court Jurisdiction.

The SIJS law provides for two types of INS "consent." One consent involves the fairly unusual case in which a child was first in the INS' custody, and now wants to go on to juvenile court jurisdiction. For a discussion of this kind of consent, see § 1.9 and information in **Appendix L**.

B. General INS Consent for SIJS.

The other kind of consent, which we'll call "general" consent, applies to every SIJS case. Basically, the law provides that the INS must "consent" to (i.e., accept) the juvenile court judge's order to serve as the basis for SIJS if the applicant establishes the required legal elements, and not consent if the applicant doesn't. The INS makes this "consent" just in the act of approving the SIJS petition; there is no separate application for consent. That is why in the majority of cases the consent issue does not come up; the INS just "consents" when it grants the SIJS petition. Unless there is a problem, advocates do not need to concern themselves with the issue, or to write the INS anything about it. We present the following fairly detailed discussion of consent only to help advocates in situations in which the INS is threatening to withhold consent or may be misinterpreting the consent provision. If this is happening, you should also see further discussion in the July 1999 "Memorandum #2" on Special Immigrant Juveniles, and ILRC discussion of the Memorandum, at **Appendices J and K.**

A 1997 amendment to the SIJS law provides that the INS must "consent" to granting SIJS to an applicant based on the juvenile court judge's order.[30] This kind of consent is linked to whether there was abuse, neglect or abandonment. The legislative history to this amendment states that to consent, the INS must find that the court's actions were made due to abuse, neglect and abandonment of the child, rather than primarily for the purpose of obtaining SIJS.[31] The INS has stated that it agrees that the only reason it would not "consent" would be some doubt about the issue of abuse, neglect or abandonment. In its 1999 "Memorandum #2" on SIJS, the INS noted that the dependency order should establish that the juvenile is deemed eligible for long term foster care due to abuse, neglect or abandonment and that it is not in the child's best interest to be returned to the home country. The INS states, "If both elements are established, consent to the

[30] See INS § 101(a)(27)(J)(iii), 8 USC § 1101(a)(27)(iii), in **Appendix G**.

[31] See Conference Committee Report, section 113, reproduced in **Appendix G**.

order serving as [a basis for SIJS] must be granted." Memorandum #2, page 2, "Juveniles Not in INS Custody."

You might meet an INS officer who wrongly asserts that INS "consent" can be based on anything, such as his not liking the child's demeanor, the fact that the child is in delinquency not dependency proceedings, or other reason. Or, an officer might wrongly assert that the juvenile court must obtain INS consent even if the child had not been in INS custody before coming to juvenile court. If this occurs, get the assistance of an attorney and arrange a meeting with INS to discuss consent and the 1999 Memorandum #2.

§ 2.7 Proof of Age; Obtaining Documentation

Proof of Age. The INS regulation requires every applicant for special immigrant juvenile status to submit some documentary proof of age. The evidence can take the form of a "birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age..."[32]

Immigration practitioners should note that the requirement is for some proof of *age*, a much looser standard than the usual proof of birth. There is no requirement that the person submit a birth certificate. Children have been granted SIJS who did not even know what country they were born in, and did not personally know their year of birth. The statute recognizes that these children come from abusive, chaotic, or interrupted homes, and does not impose the strict requirements of proof of birth that appear in regular family immigration.

Obtaining Documentation to Prove Age. The following practice tips may help you to obtain documents. Because the search for documents can be time consuming (for example, it might take several weeks to hear back from a foreign registry), it is critical to start as soon as the application for SIJS becomes a possibility. For example, if a social worker or probation officer identifies that the child is undocumented and is waiting to transfer the matter to another part of the agency for handling, that person could do the child a tremendous service by immediately beginning the search for documents.

Foreign birth certificates, if you can obtain them, are the ideal proof of age.

(1) The easiest way to obtain a foreign birth certificate is to contact helpful family or friends in the home country who will travel to the local or national registry to obtain a certified copy. Unfortunately, abused children often lack these connections.

(2) Send away for the birth certificate yourself. You will need a letter written in the language of the country and addressed to the registrar in the town where the child was born (or, more importantly, where she believes her birth was registered) or to national registry. You will need an international money order. The letter should state the name, birth date and birthplace of the child and if possible the names of both parents. There are relatively inexpensive "express mail" services to Mexico and Central America in most large cities.

[32] 8 CFR § 204.11(d)(1), reprinted in **Appendix G**.

The Foreign Affairs Manual (FAM) of the Department of State is an important resource. The FAM provides information on how to how to obtain foreign birth certificates from various countries. If birth certificates from a particular country appear in a different form, such as family registration certificates, or if they are generally unavailable and therefore not required, the FAM will state this. To find the FAM, go to a local law library[33] or contact a local immigration agency or attorney. If you are in northern California, you may contact the Immigrant Legal Resource Center, Attorney of the Day at (415) 255-9499, ext. 6263. The Attorney of the Day will send you copies of the pages from the FAM that relate to the country you're dealing with.

(3) Contact the local consulate from the child's country and ask for their assistance.

Foreign identity documents: Any foreign identity document, including a military document and perhaps a school identity card, should be accepted as proof of age.

Other substitute documents: If you cannot obtain a birth certificate, the regulation provides that the applicant can submit any "other document which in the discretion of the [INS district director] establishes the person's age." The regulation creates a generous standard because it is well known that some of these children will not have necessary information or will have a hard time obtaining documents.

One good guide for what definitely must be acceptable substitute documents is the INS regulation defining substitute documents for birth certificates in family visa petitions. See 8 CFR § 204.1(f) and (g)(2), reprinted in **Appendix G**. This is a fairly strict standard for substitute documents that is imposed in regular family immigration cases. Substitute documents may include (1) a baptismal certificate with the seal of the church, showing date and place of birth and date of baptism; (2) affidavits from people who are personally aware of the birth;[34] (3) early school records showing date of admission to the school, the child's date and place of birth, and the name and place of birth of the parent or parents. You must also describe the efforts you made to locate the birth certificate. The best proof is a statement from the registrar explaining that the child's birth certificate cannot be found there.[35]

But that guide is not a requirement for SIJS. The INS District Director can accept *any* document in his or her discretion to prove age in an SIJS case. If you have nothing else, offer a state court order on the child's age. Regular civil courts can make all kinds of findings, including age. For example, under California Welf. & Inst. Code § 362, a juvenile court can make any and all reasonable orders for the care of a minor. At least some INS offices have accepted such an

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[33] This part of the FAM is reproduced in volume 11 of Gordon and Mailman, Immigration Law and Procedure (Matthew Bender Publishing Co.). Ask your county law library if they have this multi-volume set.

[34] INS regulations for substitute documents in regular family visa petitions may provide some guidelines here. See 8 CFR § 204.1(g)(2), reprinted in **Appendix G**. In that context, a third party who was aware of the birth should state in the affidavit that s/he was alive at the time of the birth and had personal knowledge of it. The affidavit should include the person's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant knows of the birth. In fact it is a good idea to include other details that they know about the person's life. For instant, the affiant can say that she knew the parents, was present at the wedding, visited the mother when she was pregnant, knew the neighborhood the family lived in, and saw the family and the child on a regular basis.

[35] These are the "secondary evidence" acceptable under federal regulation to prove birth in the U.S. in family visa cases when "primary evidence" (birth certificate, etc.) is not available. See 8 CFR § 204.1(f), (g)(2).

order as proof of age. Offer an official doctor and psychologist's evaluation. The INS itself conducts dental exams on youth in its custody to determine if they are under the age of 18, so this is a strong document. (Be aware, however, that the INS then may want to have its own dentist examine the child and you may end up with dueling dental exams.) Always remind the INS that the regulation purposely gave INS wide discretion on what documents will suffice as proof of age.

When submitting foreign documents, **be sure to demonstrate that you diligently searched for original documents and were unable to find them**. This is required. Be prepared to show correspondence with a registrar in the home country, and/or a declaration by the worker of the steps taken to locate documents or information.

Must submit proof of age with initial filing? INS regulation lists proof of age under "Initial documents which must be submitted in support of the petition." While you should be able to file without a birth certificate, it is possible that a local INS will refuse to accept the application without some evidence. If possible, present proof that the birth certificate is not available -- such as a letter from a registrar or other in the home country saying it is not available – and/or proof that you are pursuing other means. If nothing else, include a sworn statement by the child or social worker and cite the regulation stating that the INS District Director has discretion to accept any document. With that, the INS should accept the papers for filing and leave it to the interview officer to decide whether the document is sufficient, and hopefully by the interview you will have something more.

§ 2.8 Additional INS Requirements-- How Long Must Juvenile Court Jurisdiction Be Maintained? What Happens When the Applicant Turns 18 or 21? What if the Applicant Marries?

The federal statute sets out requirements a child must meet in order to qualify for special immigrant status. The INS, in its own regulations, adds more requirements. Those INS-imposed requirements will be discussed in this section.

Advocates should make every possible effort to comply with these INS requirements. However, if compliance is impossible, keep in mind that the requirements in the INS regulation might be vulnerable to a lawsuit in federal court, charging that INS overstepped its authority by imposing requirements that weren't stated in the statute.

A. Jurisdiction Until The Entire Application Is Decided.

The INS regulation states that the person applying for special immigrant status must remain under juvenile court jurisdiction throughout the entire application process, i.e. until INS approves the applications for special immigrant juvenile status and adjustment to permanent residency. Thus, if an applicant is under juvenile court jurisdiction when he or she files the SIJS and adjustment applications with INS, but leaves court jurisdiction during the several month long wait for the INS interview, the INS will deny the application.

This regulation has caused tremendous problems by requiring juvenile courts to retain jurisdiction over older youth longer than the courts normally would. Hopefully a new statute or regulation will change the rule, so that the applicant only needs to be under juvenile court jurisdiction at the time she files the application with INS, not all the way until the INS gets

around to deciding the application. But until the rule is changed, you must attempt to comply. Advocates who are running out of time should pursue two strategies simultaneously:

1) **Ask the juvenile court judge to retain jurisdiction** over the child and schedule a last hearing a few weeks after the interview date.

   - Some courts have taken an affirmative stand on this issue. In Los Angeles, the presiding judge of juvenile court, Jaime R. Corral, distributed a memorandum to all juvenile court judges requesting that they maintain jurisdiction past the age of 18 for juveniles who may qualify for this relief; this may be of use in informing or convincing other judges. See **Appendix F**.

   - Advocates report that in some instances, judges have agreed to retain the children as dependents while stopping other forms of foster care support.

2) **Ask the INS to expedite the application** (give a quicker date for the interview). This is a discretionary decision. In some areas of the country, the INS has agreed to move up the SIJS adjustment interview if the applicant is about to age out of juvenile court.

   - Find out from local immigration practitioners if the INS has a history of doing this in other time-urgent cases, to use as a precedent (for example, family immigration cases in which a child is about to turn 21 and go into a less advantageous immigration category.)

   - If you believe that the INS may not immediately be open to your request, it may be helpful to ask civic organizations such as the local bar association volunteer services program to join in the request and ask for a meeting, ask a respected local immigration lawyer, who may have good contacts in the INS, to take on the case and make the request, or ask the member of the United States Congress that represents the district where your client lives to intervene on your client's behalf with the INS.

In some areas, immigration and children's agencies and civic organizations have formed an ongoing local **Task Force on SIJS**. In San Francisco, children's and immigration law staff, county workers, city attorneys, probation officers, the Bar Association and other civic groups formed a Bay Area Task Force to exchange information and discuss problems. This became useful in policy work, as both the INS and the local county systems were responsive to considering concerns raised by the Task Force.

When the applicant goes to the INS adjustment interview, s/he **bring a copy of the minutes from his or her most recent court hearing to establish that s/he remains under juvenile court jurisdiction.**

Mandatory injunction and/or writ of mandamus: If the applicant can establish that INS has taken an unreasonable amount of time to process the application, a lawyer acting on behalf of the client may ask a federal court to order a mandatory injunction and/or writ of mandamus to force INS to act on the case. Whether INS has taken an unreasonable time in

processing an application will depend on the facts of the particular case. It will be the court's discretion to decide if the agency delay is unreasonable.[36]

In the case of *Yu v. Brown*, the plaintiff filed an application for SIJS and adjustment to legal permanent resident. INS had taken no action on the application for more than a year. As a result, the plaintiff alleged that the INS had unreasonably delayed the processing of the SIJS application and sought a writ of mandamus/injunction to compel the INS to act on the application.[37] The court in this case found that the delay was unreasonable. Further, the court determined that whether a delay is unreasonable will depend on the facts of the particular case. However, a writ of mandamus/injunction was determined to be an appropriate remedy for the unreasonable delay.

B. The Age of 18 or 21.

Under the INS regulations, any person under 21 years of age who meets the requirements can apply for SIJS.[38] Thus an 18- or 19-year old can file an SIJS application and attend the INS interview as long as s/he remains under juvenile court jurisdiction, "eligible for long term foster care," and the subject of a court order that it would not be in his or her best interests to return to the home country.

Note: Some court staff and practitioners wrongly believe that lawful permanent residency status terminates at age 18. Once a person becomes a permanent resident (a "green card" holder), that status continues for the person's entire life unless s/he becomes deportable for some reason, such as serious criminal conviction.

C. The Applicant Cannot Be Married.

Under INS regulation, if the child marries prior to receiving special immigrant status, the petition will be denied. If the child marries after receiving special immigrant status but before receiving permanent residency, the status automatically will be revoked. (See § 2.9 for discussion of revocation.)

Children over 18 and under 21 who are under juvenile court jurisdiction still qualify.

Ask the juvenile court to maintain jurisdiction over children 18 years or over if needed. Jurisdiction should be maintained until the application for adjustment of status has been finally approved.

If an eligible child will be terminated from juvenile court jurisdiction before adjusting, ask the INS to move up the adjustment interview date. Get advice immediately

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[36] *See Yu v. Brown*, 36 F.Supp.2d 922

[37] Id.

[38] 8 CFR § 204.11(c)(1). See reprint of regulation in **Appendix G**.

§ 2.9 How the Applicant Can Lose Special Immigrant Status: Revocation of Approval

The INS can revoke special immigrant juvenile status at any point before the applicant completes final processing for adjustment of status (the green card). Under the regulations, INS will revoke an applicant's special immigrant status if, prior to obtaining permanent residency, the applicant

- becomes 21 years old;
- marries;
- ceases to be under juvenile court jurisdiction;
- ceases to be deemed eligible for long-term foster care; or
- is the subject of a determination in an administrative or judicial hearing that it is in the applicant's best interests to return to their or their parents' country of nationality or last habitual residence.[39]

Advocates argue that the INS does not have the authority to revoke special immigrant status when the person marries since that reason exceeds the scope of the statute passed by Congress. See § 2.8.

If an applicant is about to leave juvenile court jurisdiction because of age, advocates must work hard to persuade the judge to retain juvenile court jurisdiction, and/or persuade the INS to move up the interview date. See discussion in § 2.2, above.

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PART TWO: Eligibility for Adjustment of Status to Permanent Residency

§ 2.10 Statutory Requirements for Adjustment of Status

Adjustment of status is the procedure through which a person becomes a lawful permanent resident (green card-holder) *without leaving the United States*. (The other procedure, called **consular processing**, requires the person to travel to his or her home country and have an interview at the U.S. consulate there). Some people who entered the U.S. illegally and immigrate through family members are not permitted to adjust status in the United States, and instead must go to the home country to do consular processing. This is not a problem for special immigrant juveniles, because the statute provides an exception for special immigrant juveniles so that they can apply for adjustment of status at the INS in the United States despite having entered or worked illegally.[40]

[39] 8 CFR § 101.6(c), (f).

[40] See INA § 245(h), 8 USC § 245(h). The statute as passed in November 1990 in the Immigration Act of 1990 was mistakenly written in a way that would have required most children to travel outside of the United States in order to apply for permanent residency. This error was corrected in the Technical Amendments of 1991 (§ 302(d)(2)).

§ 2.11 Grounds for Deportation and Inadmissibility: Criminal Record, HIV Positive Status, Public Charge Issues; Waivers of Inadmissibility

Grounds of Deportability and Inadmissibility. People who come within certain categories are penalized under the immigration laws. An alien can be forced to leave the United States (be deported or removed) if he or she comes within a "ground of deportability." The person can be denied admission to the U.S. or denied adjustment to lawful permanent resident status (a green card) if she comes within a "ground of inadmissibility." The grounds of inadmissibility and deportability are listed in the federal immigration law.[41] Most apply to persons who have committed or been convicted of certain crimes, have committed certain immigration offenses, have certain diseases, cannot financially support themselves (the "public charge" ground), are judged subversive, or have other problems.

Comparing Immigration Through SIJS to Immigration Through Family Members. Many grounds for inadmissibility and deportation do not apply to special immigrant juveniles.[42] This is an advantage that special immigrant juvenile applicants have over children who immigrate through their natural or adoptive parents. Children immigrating through their parents are subject to most grounds of inadmissibility, including the **public charge** ground. (To meet the public charge ground, their adoptive family must at a minimum show that they earn 125% of the Poverty Income Guidelines.) Also, unless the petitions were filed on or before April 30, 2001, these children must go through consular processing outside the U.S. instead of adjustment of status in the U.S. if they entered the U.S. illegally. Finally, a person immigrating through SIJS can apply to have certain grounds of inadmissibility waived that a person immigrating through family is not eligible to waive.

Grounds of Inadmissibility That Can Be Waived. Some inadmissibility grounds do apply to special immigrant juveniles, but the applicant can ask for a discretionary "waiver." [43]The applicant will submit a special waiver application asking the INS to "forgive" the ground of inadmissibility. It is probable, but not guaranteed, that INS will approve such waiver applications. The waivable inadmissibility grounds include:

- -- people who have been prostitutes or procurers ("pimps")
- -- people who were convicted as adults once of simple possession of 30 grams or less of marijuana
- -- people who are HIV positive
- -- people who were deported and did not remain outside the U.S. for five years before returning
- -- persons who committed fraud to enter the U.S. or to get a visa

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[41] The grounds for deportation appear at INA § 237(a), 8 USC § 1227(a). The grounds for inadmissibility appear at INA § 212(a), 8 USC § 1182(a).

[42] See INA § 237(c), 8 USC § 1227(c) excepting various grounds of deportation, including grounds relating to entry without proper documents, termination of conditional residency, and failure to report change of address; and INA § 245(h)(1), (2)(A), 8 USC § 1255(h)(1), (2)(A), added by Miscellaneous and Technical Corrections Act of 1991 § 301(d)(2), creating eligibility for adjustment by deeming special immigrant juveniles to have been paroled in to the U.S. and exempting them from the public charge ground of inadmissibility.

[43] See INA § 245(h)(2)(B), 8 USC § 1255(h)(2)(B) (reprinted in **Appendix G**), as amended by the Miscellaneous and Technical Corrections Act of 1991, § 301(d)(2).

-- people who are alcoholics or have a "mental or physical disorder" that poses a risk to people or property (e.g., suicidal behavior, psychopathy, disorder that causes the person to prey sexually on other minors)
-- people who are or have been drug addicts or abusers[44]
-- people who helped other aliens to enter the U.S. illegally.

If a child might come within any of these grounds, you will need the help of an immigration expert to file a waiver. As stated above, since it is possible the waiver will not be granted, the application carries some risk. This may be especially true for people with problems related to drugs, since INS takes a severe approach to drug offenses.

Note to Immigration Attorneys: Special SIJS Provisions for Inadmissibility, Deportability, Waivers, and Adjustment. Congress provided a special waiver, available only to SIJS applicants, of many of the grounds of inadmissibility.[45] Unlike traditional inadmissibility waivers such as INA §§ 212(i) or 212(h), the SIJS waiver does not require the child to have a qualifying relative with lawful status. The Attorney General is authorized to waive the designated grounds for "humanitarian purposes, family unity, or when it is otherwise in the public interest." See INA § 245(h)(2). The legislation proposed by Senator Feinstein in 2001 (S. 121) would add additional waivers. See Appendix M.

All SIJS applicants are by law deemed to be paroled in and therefore eligible for adjustment of status. See INA § 245(h)(1).[46] They do not need to qualify for adjustment under INA § 245(i) or pay a penalty fee; they are eligible to adjust by virtue of being special immigrant juveniles. Noncitizens who qualify as special immigrant juveniles are exempted from the grounds of deportability that relate to unlawful presence.[47] Therefore even children who were wrongly admitted or are now out of status cannot be charged under those grounds. This could lead to an interesting argument in an unusual situation: arguably a child who qualifies for SIJS but for some reason cannot adjust status – for example, because the government denied an HIV waiver or had "reason to believe" the child was a drug trafficker and therefore inadmissible -- cannot be deported just for unlawful status.

Grounds That Cannot Be Waived. Other grounds of deportation or inadmissibility are not waivable. A person who comes within one of these grounds should not submit an application,

[44] "Drug abuse" may mean anything more than one-time experimentation with illegal drugs. Immigration practitioners may note that no waiver of the deportation ground relating to abuse or addiction is provided to special immigrant juveniles, but if the juvenile is able to obtain a waiver of the inadmissibility ground in the context of the adjustment application, that waiver should protect against deportation as well.

[45] See inadmissibility waiver at INA § 245(h)(2)(B), 8 USC § 1255(h)(2)(B), as amended by the Miscellaneous and Technical Corrections Act of 1991, § 301(d)(2), reprinted at Appendix G, supra. and INA § 245(h)(1), (2)(A), 8 USC § 1255(h)(1), (2)(A), added by Miscellaneous and Technical Corrections Act of 1991 § 301(d)(2), creating eligibility for adjustment by deeming special immigrant juveniles to have been paroled in to the U.S. and exempting them from the public charge ground of inadmissibility.

[46] The statute as passed in November 1990 in the Immigration Act of 1990 was mistakenly written in a way that would have required most children to travel outside of the United states in order to apply for permanent residency. This error was corrected in the Technical Amendments of 1991 § 302(d)(2)), adding § 245(h).

[47] INA § 237(h), 8 USC § 1227(h) See also INA § 237(c), 8 USC § 1227(c) excepting various grounds of deportation, including grounds relating to entry without proper documents, termination of conditional residency, and failure to report change of address provides that "Paragraphs (1)(A)(1)(B), (1)(C).

since the application will almost surely be denied and the person can be placed in deportation proceedings. These grounds of inadmissibility include:

-- people who INS has "reason to believe" are or have been drug traffickers[48]
-- people convicted as adults of a wide range of offenses, or who have made a formal admission of any drug offense or a "crime involving moral turpitude" (such as shop lifting, assault with a deadly weapon, or sex crimes).[49]

If an eligible child might come within any of these categories, *do not file an application until you have consulted with an expert in this area*.

Drug trafficking is especially dangerous. Immigration authorities recognize that a disposition in juvenile court is not a "conviction" for any purpose.[50] However, some actions can be the basis for inadmissibility (disqualification from immigrating) even if there is no conviction.[50] Drug trafficking can be grounds for inadmissibility if the INS has strong evidence that they occurred, such as a juvenile court disposition. In some cases, where the INS has become aware that the child has participated in trafficking, either through the child's own admission in the interview or on the application form or through some other means. Although advocates can argue that a minor cannot form the intent necessary to commit drug trafficking, the INS probably will hold that if an INS officer has good "reason to believe" that the child has ever been a drug trafficker, then s/he is ineligible for special immigrant juvenile status. If the child just possessed or used drugs, this should not be a basis for inadmissibility.

A juvenile delinquency finding of prostitution or of behavior that indicates a "mental or physical disorder" or drug abuse/addiction also can support a finding of inadmissibility. But unlike drug trafficking, these grounds of inadmissibility can be waived (forgiven) in the discretion of the INS. See discussion of "Grounds of Inadmissibility That Can Be Waived," above.

This area is quite complex and this information is only introductory. If you are at all unsure of the implications of a specific criminal disposition, consult with an expert in the area. For more information on criminal grounds of inadmissibility see the ILRC manual, *California Criminal Law and Immigration* or see *Immigration Law and Crimes* listed in **Appendix H** and obtain legal assistance.

Children who were involved with prostitution, drugs, or other crimes, or who are HIV positive, or who have been deported in the past may face special problems. Get assistance before filing the application.

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[48] Cases have held "drug trafficking" to mean that a person must have been a knowing and conscious participant or conduit in the transfer, passage, or delivery of narcotic drugs. The "reason to believe" means that INS should have reasonable, substantial and probative evidence of the trafficking.

[49] A crime involving moral turpitude is not a basis for inadmissibility if it is the first offense, the offense was a misdemeanor, and the person received a formal sentence of six months or less.

[50] *Matter of Ramirez-Ri*vero, 18 I&N 135 (BIA 1981).

[51] The BIA has held that persons who plead guilty to drug trafficking in juvenile proceedings are inadmissible as drug traffickers despite the fact that there is no conviction. *Matter of Favela*, 16 I&N 753 (BIA 1979).

§ 2.12 Who Should Not Apply for Special Immigrant Juvenile Status

A child who is not already in deportation proceedings and who is ineligible either for special immigrant juvenile status or for adjustment of status should not even apply for special immigrant status, since he will be risking deportation for no reason. If a child would be eligible for adjustment if he could obtain a waiver of inadmissibility or deportation (as discussed in § 2.11), the case should be discussed with an immigration attorney or advocate before filing either application.

However, a child who already is in deportation proceedings and for whom special immigrant status is the only possible road towards a legal immigration status, should apply for special immigrant status, even if s/he will not be able to adjust status to lawful permanent resident. Since the INS already know the child, a denial of the petition will not prejudice the child any more. On the other hand, it may draw the INS' attention to the child's specific circumstances, which may lead to some other type of immigration relief that relies on the INS' discretion. Also, it is not clear that a special immigrant juvenile can be removed from the United States even if she is deportable and is not eligible for adjustment of status.

Chapter 3
Risks and Benefits of Applying

§ 3.1 Overview

People who obtain "special immigrant juvenile" status (the first step toward becoming a lawful permanent resident) enjoy some **benefits**. They enjoy temporary protection from deportation; they are eligible for limited public benefits (but the counties housing them are eligible for federal foster care matching funds); and, once they have submitted an application for adjustment of status, they are eligible for employment authorization.

Persons who complete the process and become lawful permanent residents enjoy far greater benefits. They can live and work permanently in the United States, can travel outside the country, and are eligible for limited public benefits. In five years, if they wish, they can apply for U.S. citizenship.

The **risk** of submitting an application is that, if either special immigration status or lawful permanent residency is denied and the child has no other way to immigrate, INS could try to deport the child. By applying for special immigrant status, the child is making him or herself known to INS.

After an applicant has submitted the application for SIJS and adjustment of status, but before the INS has decided the application, the applicant gets some important benefits. The person qualifies for employment authorization during the whole period that the application is pending. Even a child who does not plan on working may want to obtain an employment authorization card: it enables the child to get a valid social security number, and has use of a government-issued photo identification card. The person also is protected from deportation while the application is pending. Even if the INS denies the adjustment application, the person is entitled to employment authorization and protection from deportation while the case is before the immigration judge. Also, the county may be able to access benefits such as federal foster care matching funds for the child while the application is pending.

Once the INS approves the application and the child becomes a lawful permanent resident, he or she enjoys far greater benefits. These include:

Permanent Lawful Status. Once a person obtains lawful permanent resident status, s/he can keep that status permanently. The person will lose the status only is s/he does something to come within a ground of deportation (for example, if the person is convicted of a drug offense), or travels while he is inadmissible because of a crime, or abandons U.S. residency by moving to another country or, potentially, by remaining outside of the U.S. for over one year. Once a special immigrant juvenile becomes a permanent resident, s/he will not lose permanent resident status by becoming an adult, marrying, or by being emancipated from juvenile court jurisdiction.

Permanent Employment Authorization. Permanent residents automatically are entitled to unlimited employment authorization.

Travel Outside of the United States--But with Caution! Permanent residents may travel in and out of the United States. However, certain grounds of inadmissibility apply to

permanent residents every time they enter the U.S., and all grounds apply if the trip is six months or more. INS officers at all entry points to the U.S. may question returning permanent residents to see if they are inadmissible. A court dependent should consult with an immigration expert before leaving the United States.

Public Benefits. Permanent residents are eligible for some public benefits, although this was severely curtailed by the Welfare Reform Act of 1996. If you have questions about public benefits eligibility contact a resource center. The National Immigration Law Center (213) 938-6452 is especially expert in this area, as is the National Center for Youth Law (Lucy Quacinella) at (510) 835-8098.

Ability to Become a U.S. Citizen. A person over the age of 18 can apply for U.S. citizenship if he or she has been a permanent resident for five years (or possibly less time, if the person marries a U.S. citizen or is the U.S. armed forces). Thus a person who became a permanent resident through SIJS at age 14 can apply for naturalization to U.S. citizenship five years later, at age 19.

Note that if the child also was adopted by a U.S. citizen or citizens, she might become a citizen much sooner. A child automatically becomes a U.S. citizen if, while under the age of 18, she (1) is a permanent resident, through SIJS, family immigration, or any means; (2) is legally adopted by a U.S. citizen before she reaches the age of 16, and has resided at any time in the legal custody of the citizen for two years;[52] and (3) is residing in the legal and physical custody of the U.S. citizen parent.[53] For more on citizenship and adoption, see discussion in § 2.3.

§ 3.2 Temporary Protection from Deportation

A person who has filed an application for SIJS and/or an application for adjustment of status has temporary protection from deportation, which should last until there is a final denial of the petition for special immigrant status or the application for adjustment of status to permanent residency.

A person granted special immigrant juvenile status is not deportable for illegal entry into the U.S. nor for most other acts committed prior to the granting of that status. This is because the law states that many bases for deportation do not apply (are automatically "waived") if the person is a special immigrant juvenile.[54] Some grounds of deportation relating to crimes are <u>not</u> waivable and applicants with criminal or drug problems might <u>not</u> be protected. See § 2.11

If a person granted special immigrant status is in deportation proceedings based on a ground of deportation that is automatically waived, the person should ask the judge to terminate

[52] There are different rules for someone who was adopted as an orphan. See INA section 101(b)(1)(F).

[53] See INA § 320 and the ILRC's manual entitled <u>Naturalization: A Guide for Legal Practitioners and Other Community Advocates.</u>

[54] Deportation proceedings should be terminated if brought under the following grounds since these grounds are waived for purpose of applying for permanent residency through special immigrant juvenile status under INA § 241(h): entry without inspection [INA § 241(a)(1)(B)]; failure to maintain status/violation of nonimmigrant status [INA § 241(a)(1)(C)]; inadmissible at time of entry or adjustment of status [INA § 241(a)(1)(A)], unless for certain criminal activities and national security (See § 2.11); termination of conditional permanent resident status [INA § 241(a)(1)(D)]; and failure to notify INS of change of address [INA § 241(a)(3)(A)].

proceedings. A person who has submitted an application for special immigrant status can ask the judge to terminate or conditionally terminate proceedings, or at least continue proceedings pending a decision on the application.

Denials and Appeals. If INS denies the child's application for either special immigrant status or adjustment for status to permanent residency, the child loses protection against deportation and can be brought before a judge for deportation ("removal") proceedings. At the hearing the child may be able to apply again, and appeal any denials. See § 4.3 on denials and appeals.

The child has the right to appeal. If an appeal is necessary, the county should immediately retain or assign an attorney, preferably one with immigration experience, if this has not been done already. *INS decisions often are reversed on appeal* and it would be a violation of the county's duty to the child to not fully investigate appeal possibilities. For discussion of appeals see § 4.3.

§ 3.3 Employment Authorization

A person who files an application for adjustment of status is eligible for employment authorization during the time it takes INS to decide the applications.[55] Often the person files the application for employment authorization (form I-765) at the time of submitting the adjustment application, and the application is approved immediately or within a few weeks.

Even children too young to work might benefit from obtaining employment authorization. For one thing, it provides an official picture identification card for them, months before they will receive their green card. They can also obtain a social security number.

§ 3.4 Limited Eligibility for Public Benefits

People who have applied for or been granted SIJS but who are not yet permanent residents no longer qualify for federal public benefits as aliens who are "permanently residing under color of law" (PRUCOL). Welfare and immigration legislation enacted in 1996 has at least cut back on the federal PRUCOL category. However, some states might make benefits available to these children. If you have questions about public benefits eligibility contact a resource center. The National Immigration Law Center (213) 938-6452 is especially expert in this area.

PART THREE: Risks of Applying -- Deportation Based on Denial or Revocation of Status

Denial of the Application and Deportation. A person who applies for special immigrant status is identifying him or herself to INS. If the person is undocumented, INS can bring deportation ("removal") proceedings if it denies the application for special immigrant status or adjustment of status. For this reason, an application should only be submitted if you believe that it will be granted.

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[55] 8 CFR § 274a.12(c)(9). It is not clear how a person applying for or granted special immigrant juvenile status can obtain work authorization if no application for adjustment can be filed. One way would be for the applicant to request a grant of "voluntary departure" from the INS District Director and apply for work authorization under 8 CFR § 274a.12(c)(12).

On the other hand, some INS offices have agreed not to initiate deportation proceedings against children who are county dependents, even if the INS denies SIJS or adjustment.

Deportation after Special Immigrant Status is Revoked. INS regulations require that a child be under 21, single, under the jurisdiction of a juvenile court, and eligible for long term foster care up until the application for adjustment of status is decided. Otherwise, it may revoke special immigrant status and place the child under deportation proceedings. This poses a special risk to older applicants especially if the application will not be decided for a long period of time either because of bureaucratic delay or the creation of a waiting list for adjustment of status.

Special immigrant status also can be revoked if the Secretary of State terminates the person's registration for a visa for failure to file for permanent residency within one year of being eligible for the immigrant visa. This would happen only if your office lost track of the case and forgot to apply for adjustment of status within one year of the person becoming eligible to do so.

People Who Obtain Permanent Residents from SIJS Cannot Petition for *Original* Parents to Immigrate; They Can Petition for New, Adoptive Parents. Generally a U.S. citizen who is over twenty-one years old can file a petition to immigrate a mother or father. A child who becomes a permanent resident as a special immigrant juvenile loses the right to file a visa petition to immigrate his or her natural parent or original adoptive parent (i.e., the parent with whom the judge found the child could not be reunified). While this is not "risk" of applying, applicants should understand this. In general the applicant's parent does not lose anything, because without SIJS s/he would not have become a permanent resident or a U.S. citizen in any event.

Because undocumented people are permitted to adopt children in many parts of the U.S., the question may arise whether the SIJS recipient can file a petition to immigrate her new, adoptive parents (i.e., parents who adopted her after the court found she could not be reunified with her original parents). The answer is yes, as long as family meets various requirements. First, a "parent/child" relationship for immigration purposes must be established, which means that the adoption must have occurred before the child's 16th birthday, and the child has resided in the adoptive parent or parents' lawful custody for two years (unless the child was an orphan when adopted[56]). Once the parent/child relationship is established, the regular rules of family immigration apply: the child must be a U.S. citizen and be 21 years of age in order to immigrate a parent.

[56] For the definition of orphans and special rules pertaining to orphans, please see INA § 101(b)(1)(F).

Chapter 4

Completing and Submitting the Applications: Petition for Special Immigrant Juvenile Status and Application for Adjustment of Status

This chapter first will discuss the basic procedure for completing and submitting the applications and having the case decided. In brief, this involves submitting the application packet; attending an interview at INS; and receiving a decision. If the case is denied, the applicant can file an appeal.

Part One of this chapter provides an overview of the application process. Part Two is a discussion about how to complete the petition for special immigrant juvenile status (Form I-360); and applications for adjustment of status (Form I-485) and employment authorization (Form I-765).

Some children's welfare workers might not complete any part of these applications. They might be able to find volunteer attorneys, or the county may agree to retain attorneys or paralegals to handle this section. Still, they should at least read Part One so that they can understand the application process and explain it to the child. Other welfare workers may handle the entire case; in several cities, welfare workers have become experts in SIJS and have large successful caseloads with INS.

NOTE to Social Workers, Probation Officers: Even if you do not complete the forms, you can provide a tremendous service by helping to collect some of the documents the applicant will have to produce which include: birth certificate and translation; results of a medical exam that must be performed by an INS-approved doctor; three "green card" photos made to certain specifications; application fees (see § 4.11 for information on fees); and the order signed by the juvenile court judge. See § 4.4 for information on obtaining documents and § 4.7 for a list of documents required.

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PART ONE: OVERVIEW OF THE APPLICATION PROCESS

§ 4.1 Submit the Two Applications to Local INS District Office; Obtaining Employment Authorization

Currently, in almost all cases the petition for special immigrant juvenile status and supporting documentation (Form I-360 packet) and the adjustment of status application and supporting documentation (Form I-485 packet) should be submitted to INS together as one packet. (There are some exceptions to this for persons already in removal proceedings.) In the

future, the INS may change its procedure and have the two applications filed at different offices. The following is a discussion of the current procedure for filing the two applications at the same time, at the local INS office.

Getting the Application to the INS Office: the Option of Mailing. You must submit the applications to the local INS District Office or Sub-Office with jurisdiction over the place where the applicant lives. 8 CFR § 101.6(b)(2).

In some locations it may be possible to submit the applications to local INS by mail. Depending on the INS office, this might be a tremendously convenient option, since otherwise the person might have to come to the INS building very early in the morning to stand in line for several hours to file it in person.

It takes some networking to be able to mail the application in: you must either join with a local immigration bar, or make your own arrangement with INS. In many cities the local immigration bar has worked out a mailing arrangement with INS. Contact the local chapter of the American Immigration Lawyers Association (AILA); to get contact information, call the national AILA office in Washington D.C. at 202/216-2400. As long as you're on the phone with a local immigration attorney, see if the person might be interested in advising you. Some attorneys are willing to do this for no money. In other cases, counties have decided to retain immigration attorneys to entirely take over the case.

If you can't mail the application with local AILA chapter, you might be able to work out your own arrangement with INS. We suggest you get the support of your county and some other group, such as a local children's law group or bar association. If you can't file by mail, you may have to go extremely early in the morning (this could range from 4 a.m. to 7 a.m., depending on the INS office) to get in line to file. Each INS office may have different rules -- you need to find out the local office arrangement, which is best done by talking with a local immigration attorney or trustworthy INS contact. Going in person does have some advantages: generally the child can obtain employment authorization that same day, and you can also make sure that the INS accepts the application. But bring something to read, and bring the child.

After INS receives the application packet it will set a date for the interview. It may notify you by mail of this date. Depending on the backlog at the local INS office, the interview date may be from six to thirty-six months, or even longer, from the date you filed. (If you need the interview quicker because the child may age out of the juvenile court system, see § 2.8 on asking for an expedited interview.) If the child files a request for work authorization (Form I-765) with the application packet, INS may give this the same day if you have gone in person. If you have mailed in the application, the child still will receive the work authorization card quickly, within a few weeks.

We recommend filing for employment authorization even if the child does not necessarily plan to work. It gives the child a government picture identification and a means to get a social security number.

§ 4.2 Adjustment Interview

When the interview finally arrives, the child will meet at the INS office with the INS officer. An attorney can be present, and it is almost never a problem for the social worker or "next friend" to be present as well. If the officer attempts to bar a non-attorney from accompanying the interview with the child, ask to see a supervisor.

During the interview the INS officer will ask routine questions about the adjustment application. He may go through each question on the I-360 and I-485 forms. Practice all of these questions with the child in a role-play beforehand. Some of the questions are quite strange ("Are you a Communist? A drug dealer?") and the child should be prepared.

The INS officer already will have received the report from the FBI describing any criminal or juvenile delinquency record the person may have. The officer also will have the medical exam, which will tell if the person is HIV positive or has venereal disease or tuberculosis, or had illegal drugs in her system. (For more information on problems caused by these conditions, see Chapter 2).

Hopefully the interview will be short and courteous, and just cover basic information on the form. In some cases, however, over-zealous INS officers have tried to ask about the details of abuse or abandonment, or other family issues such as when the father last visited. While we hope that this does not occur, you should be prepared just in case, in order to avoid possibly re-traumatizing the child at the INS interview. Our position is that such questioning is not appropriate, and isn't legally relevant. First, the INS does not need the details, but only needs to know that the juvenile court made certain findings. Second, even if it did need details, it should not get them from interviewing the child. If you do decide to provide the INS with more details about the child's difficult situation, tell the INS officer that you will provide these in writing or with your own statements, so that the officer does not question the child. This is the INS' own policy, and in its "Memorandum #2" it sets out a procedure for how a social worker or other agency employee should give written information.[57] The child should not be present for these discussions.

Again, bad interviews are relatively rare, and most INS officers understand the need not to interrogate the child. To prevent bad INS interviews, your office may wish to establish a relationship with the local INS office and discuss what the interview will be like. Most importantly, make sure that a lawyer or other advocate attends the interview with the child. If the interviewer insists on asking the child about sensitive subjects, insist on speaking with a supervisor and if needed, end the interview (especially if you are not in a very bad time crunch). It can be rescheduled. If needed, you can request a meeting with a higher-level INS officer to work out a system for these interviews. If you do this, it is a good idea to get children's and/or immigrants' rights organizations, the bar association, local officials, member of congress, etc. on your side to meet with INS.

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[57] See "Memorandum #2," supra, pages 2 and 3, providing that any further needed information should be taken in writing from state agency staff. Memorandum #2 is reprinted as **Appendix J**, and ILRC memo at **Appendix K**. Note that an INS officer not familiar with SIJS could easily become confused. In most of her interviews, the INS officer is the original fact-finder: she conducts an intense interview to decide if a marriage is real or fake, or an asylum applicant is telling the truth about persecution. The officer may be accustomed to "cracking" fraud, i.e. getting tough on an individual who it thinks is lying. The INS officer might not understand that special immigrant juvenile law is different. The statute says that the important legal issue is the *juvenile court's* decisions and orders, and the basis for those decisions. See INA § 101(A)(27)(J)(1) – (2). An abused child's own statements, opinions, memories, etc., given to an INS officer who lacks any training in interviewing or interpreting the answers of such children, is not appropriate, relevant or probative.

§ 4.3 Notice of Decision: Approvals, Denials and Appeals

The INS officer may tell you right at the interview that the applications for special immigrant status and adjustment of status have been granted. Otherwise, INS will mail out the decision. The INS decides both the special immigrant juvenile status and permanent residency applications.

Approval. If the applications are granted, the child may receive a written document stating this. The child will be a permanent resident as of the date on the notice. With some convincing, you should be able to use the form to obtain lawful permanent resident benefits, such as in-state tuition or student loans only available to permanent residents. The "green card" (which have been different colors including pink and blue) will arrive in the mail two to six months, or even longer, after the interview.

If possible, obtain a passport for the child from the child's home country and bring it to the interview. When INS approves the case, the child can receive a lawful permanent resident stamp in her passport that is easily accepted as proof of residency and "green card" status. (But don't delay the interview to get the passport – a passport is not a requirement, just something that may help you.)

Denial. If the petition for special immigrant status is denied, the decision must state the reasons for the denial. The INS must notify the applicant of the right to appeal the decision to the Associate Commissioner, Examinations. The INS also may ask the applicant to leave the country. Instead of leaving, the applicant should consider appeals and other forms of relief. The INS might issue a "Notice to Appear" to immigration court for deportation proceedings (which are officially called "removal" proceedings). Depending on the posture of the case, as discussed below, the applicant may be able to apply for relief from the judge. (It may well be possible to work out an agreement with local INS that applicants currently under juvenile court protection should not be put in deportation proceedings.)

It is important to remember that *many INS decisions are incorrect and are overturned on appeal*. The county has a duty to retain or assign counsel to investigate appeal possibilities and, if the appeal is warranted, to handle an appeal. For a lengthy appeal, volunteer counsel may be available through Bar Association, Legal Aid, or other sources. See Resources, **Appendix H**.

Appeal Procedure. The following information is directed at attorneys handling appeals under this program. The INS and immigration judge have jurisdiction over different parts of the case. Under the regulations, the INS and not the immigration judge can decide the *petition for special immigrant status*. The petition must be submitted to INS, and if denied, appealed to the INS Associate Commissioner, Examinations. 8 CFR § 106(b)(2)(e). See generally 8 CFR § 103.3.

If, on the other hand, INS approves the petition for immigrant status but denies the application for adjustment of status (for example, based on an inadmissibility ground) and the applicant is placed in deportation/removal proceedings, the immigration judge has the authority to rule on the application for adjustment of status and any application for a waiver of inadmissibility involved in the application.[58] If the judge denies the application for adjustment of status, an appeal can be taken to the Board of Immigration Appeals in Virginia.

[58] See, e.g., *Hamid v. INS*, 538 F.2d 1389 (9th Cir. 1976).

Rules governing federal court appeals of these decisions have changed greatly since 1996, and many questions are unresolved. If you are considering a federal appeal, contact an expert immigration attorney or a resource center such as the ACLU Immigrant Rights Projects in New York or San Francisco. See Resources, **Appendix H**.

PART TWO: HANDLING THE CASE-- Completing the Application Forms, Preparing Documents

§ 4.4 General Guidelines for INS Applications: How to Get Forms; Original Documents; Translating Foreign Documents; Answering Each Question

The INS has several general rules about preparing applications.

A. How to Get INS Forms

Luckily, it is not difficult to get INS forms, and INS accepts photocopies of its original forms. If you have access to a computer, go to www.ins.gov and go to the "Forms, Fees and Fingerprints" area. You can download all the forms needed for SIJS, and you can obtain up-to-date information about which dated versions of the forms are acceptable and about fees. You can also order forms from INS by calling 800/870-3676.

This manual includes blank copies of forms, but it is best to make sure that you are using the most recent version. The INS updates versions of its forms from time to time, and may only accept certain, recent versions for filing. *As of June 2001,* the I-360 dated September 11, 2000 is the most recent version of the form, but INS also is accepting the March 7, 1996 version. You must submit the February 7, 2000 version of the I-485 form. The October 2, 2000 version of the I-765 is the most updated, but you can also submit the April 28, 2000 version. The medical exam, form I-693, should be the September 1, 1987 version. If an attorney or BIA-accredited representative is representing the child before the INS, he or she should submit a form G-28. The G-325A form (for applicants 14 years of age and older) can be the version dated September 11, 2000, May 1, 2000, or October 1, 1982. It is best to check the website or order new forms from the 800 line if you are unsure of the date.

B. Submit a Photocopy of Birth Certificates and Other Original Documents

This section discusses dealing with "original" and photocopies of documents. A copy certified by a government office in the applicant's country of birth is considered an original (i.e., a photocopy with an original government stamp on it is acceptable as an "original").

It is wise to submit a photocopy of the original document with an application and keep the original yourself. The INS doesn't require the original document, and generally it will not return it to you if you submit it. You don't need to certify that the photocopy you're submitting is an accurate copy. INS views the signing of the application form as certification that the copy is accurate. When INS decides it wants to inspect the original, the person has 12 weeks to produce it. 8 CFR § 103.2(b)(4). But you should plan to bring the original to the interview so that an INS official can examine it.

C. Translate Documents into English

Any document not in English must be accompanied by a certified translation in English. The INS no longer accepts abbreviated translations. The entire document must be translated. Anyone who is competent to translate (for example, the child's social services worker, paralegal, or volunteer) can certify the translation by signing and dating the following statement: "I certify that I am competent to translate from (the foreign language) to English and that the above is a true and correct translation."

D. Answer All Questions

Be sure to answer all questions on the form, using a black pen or typewriter. If an item is not applicable, write "N/A". If an answer is none, write "none." If extra space is needed to answer any item, attach a sheet of paper with the applicant's name and INS alien registration number (if any) and indicate the item number that you are answering.

§ 4.5 The Form I-360/Petition for Special Immigrant Juvenile Status

The petition for special immigrant juvenile is requested on Form I-360, *Petition for Amerasian, Widow or Special Immigrant*. The INS will accept either the September 11, 2000 or the March 7, 1996 version (the date is found on the bottom left corner of the form).

A photocopy of a blank Form I-360 appears in **Appendix N**. The form is not difficult to complete. A sample completed I-360 appears at **Appendix B**. Special immigrant juvenile applicants must complete Parts 1-4, and Parts 6, 8 and 9. It must be signed by the juvenile applicant or "any person acting on the alien juvenile's behalf." This would include a children's welfare worker. The person filing the petition does not have to be a citizen or permanent resident.[59] See § 4.4 for more information about obtaining and completing INS forms.

The fee for filing the I-360 is $110.00. See § 4.11 for more information about fees.

§ 4.6 Form I-360 and Supporting Documents (Court Order and Form G-28)

The I-360 petition must be filed with evidence of the child's eligibility for special immigrant juvenile status. This includes a court order, signed by the juvenile court judge, that specifically sets out all of the requirements for special immigrant juvenile status. In other words, the judge should sign one order, which you will prepare, identifying the child and stating that s/he is under the jurisdiction of a juvenile court, eligible for long term foster care, and it is in his or her best interest not to be returned to the country of origin, due to abuse, neglect or abandonment. See **Appendix C** for a sample order, and Chapter 2 for a more thorough discussion of supporting evidence.

A Form G-28 “Notice Of Appearance” of attorney should also be attached to the I-360 if an attorney is representing the child in the immigration process. There is no fee for this form. If neither an attorney nor a BIA-accredited representative (paralegal who has been certified by the government to handle immigration matters) is representing the child – for example, if a social worker is handling the application -- do not file the form G-28.

[59] 8 CFR § 101.6(b)(1).

See **Appendix B and C** for a complete packet for petitioning for special immigrant status.

§ 4.7 The Application for Adjustment of Status to Lawful Permanent Resident: The I-485 Packet

Usually the adjustment of status application will be filed with the special immigrant petition. The application contains several forms and requires documentation. You can obtain from INS or an immigration community agency an adjustment of status "packet" containing all of the forms required.

An application for adjustment of status must contain the following completed forms and documents. Note that multiple copies are required in some cases; follow the instructions on the form.

* Form I-485/Application for Permanent Residence (adjustment of status application);

* Form G-325A/Biographical Information (in quadruplicate), if the applicant is 14 years or older;

* 3 "green card" size photographs that meet specified requirements;

* I-485 Filing fees ($220, or $160 for children under 14) or request for waiver of fees;

* $25 fingerprinting fee (only children 14 years old or older need to be fingerprinted);

* Birth certificate or other proof of age (translation into English is required)

* Form I-693 medical exam completed by INS-approved doctor (while the I-485 instruction sheet directs applicants to wait until after filing the I-485 form before getting a medical exam, apparently some INS offices want the medical exam at the time of the I-485 filing);

* Form I-765/Request for Work Authorization, if desired ($100 fee)

* A passport, Form I-94, or I-186 card showing lawful entry into the U.S., if any exist (in many cases, children will have entered the U.S. without papers, won't have these documents, and don't need to show them);

* "Adit" sheet -- Some INS offices have an administrative sheet they ask applicants to complete. Talk with local practitioners to see if your office has such a form. The form may describe the exact order in which documents should be placed.

* The I-360 application packet, described above.

CAUTION: You are completing several forms that ask for much of the same information. Make sure that the information on all the forms is consistent, e.g., list of addressees, birth date, and etc.

NOTE: You do not need to submit a fingerprint card to the local INS office with your I-485 packet. INS will give you instructions on submitting that at a later date. For information about the medical exam and fingerprinting see §§ 4.8, following, and § 2.11.

See **Appendix E** for a sample completed packet of all forms for adjustment of status application.

§ 4.8 Fingerprint Card and Medical Exam

After the applicant files the adjustment and SIJS application, the INS will direct the applicant to an appointment to have fingerprints taken. The applicant may be directed to take an INS-approved medical exam *either before or after* filing, depending on local procedure.

Every applicant over the age of 14 must be fingerprinted so that the FBI can inform the INS of any criminal record (often including juvenile delinquency record) or record of prior deportation or removal. At some point after the applicant files the adjustment of status and SIJS application with INS, INS will direct the person to a special center that takes prints for immigration applications. The fee for fingerprints is $25, which is due at the time of submitting the I-485.

Every applicant must take a medical exam from a specially approved INS-doctor. The medical exam often costs upwards of $100. The doctor will complete INS Form I-693, which can be downloaded from the website as described in § 4.4, above. At the medical exam the doctor will take tests and ask questions to see if the applicant has certain conditions. These include, among other things, chronic alcoholism, mental retardation, insanity, drug addiction, venereal disease, Hansen's disease, HIV and tuberculosis. (See form I-693.) The doctor will also check to see if several required immunizations have been provided. The doctor will recommend follow-up steps if needed, such as getting further evaluation or treatment for TB, obtaining a psychological or psychiatric evaluation for a suspected medical condition, or obtaining needed vaccinations.

Note that to determine whether a person is a drug abuser or addict, the doctor may simply ask whether the applicant has taken any illegal drugs within the last few years. Outside the U.S., consular officials regard any use of drugs more than one-time experimentation within the previous three years to be "abuse." Inside the U.S. the standards appear more reasonable, but may vary. If the doctor feels there is abuse, the child must obtain a psychologist's evaluation. At this point, advocates should obtain expert advice about INS standards and what is required.

§ 4.9 Application for Employment Authorization

The INS is authorized to grant work authorization to applicants for adjustment of status. The request is made on Form I-765. The form is available from INS. The filing fee is $100.00. Applicants mark (C)(c)(9) as the grounds of eligibility at Number 16 on the form.

Even children who cannot or do not want to work (for example, are too young) may benefit from applying for employment authorization, since it will provide them with a government picture identification card and the ability to obtain a social security number.

§ 4.10 Change of Address

The INS must be informed of an applicant's change of address on Form I-697A. At this time the form is not available by computer. If you do not have access to the form, send a letter with the person's alien registration number (nine or ten digit number beginning with "A") to INS informing them of the change of address. Send the letter certified mail, return receipt requested.

§ 4.11 Filing Fees and Fee Waivers

A. Fees

Fees may be paid by check or money order, drawn from a bank in the United States. The fee for filing the I-360 Special Immigrant Petition is $110.00. The fee for filing the Application for Adjustment of Status is $220.00, or $160.00 for children under 14 years. An application for employment authorization (optional) has a fee of $100.00. Children who are 14 years old or older must be fingerprinted. The fingerprinting fee is $25.00. *Be sure to keep the INS receipts for the filing fee*. This is your proof of filing.

B. Fee waivers.

Under INS regulations, immigrants who are indigent and submit certain applications -- including the application for special immigrant juvenile status -- can ask the INS to waive application fees. See 8 CFR 103.7(c), reprinted in **Appendix G**.

In California, some INS offices used to deny these applications for fee waivers on the ground that the children were wards of the county and therefore had access to county funds. Through the work of the Bay Area Task Force on Immigrant Children, the INS in Northern California reversed its position and has granted at least one fee waiver.

Fee waivers can be granted for the I-360 petition for special immigrant juvenile status, the I-485 application for adjustment of status, and the I-765 application for employment authorization. To apply for a fee waiver, submit a cover letter and affidavit by the child stating that s/he is indigent at the same time you submit the application whose fee you want waived. See **Appendix I** for a sample fee waiver application.

The INS may not be used to dealing with fee waivers for special immigrant juveniles and might deny the waiver or delay in making a decision. For this reason, workers may choose to bring a check for the fee with them when they file, in case the waiver is denied and they want the application to be filed immediately. It is clear, however, that children in foster care are indigent and should qualify for a fee waiver, unless they have access to some independent funds through a trust fund or bank account in their name.

Chapter 5

Other Ways that Children Can Obtain Lawful Immigration Status

What can be done for children who do not qualify for special immigrant juvenile status (SIJS)? For example, children who have aged out of juvenile court, who never came into juvenile court, or who were taken in but then reunified with a parent do not qualify for SIJS. What can they do? Several other options are available.

§ 5.1 Family Visa Petition Through Natural, Step or Adoptive Relatives

Some children who could immigrate through SIJS also have the option of immigrating through a relative who has legal status. As is discussed below, in almost every case it is better and easier to choose the SIJS option instead of family immigration. Other children do not qualify for SIJS, and family immigration is their best or only option.

A. Who Can Immigrate Through Family

If a member of the child's family is a permanent resident or U.S. citizen and is willing to help the child, he or she might be able to submit a **family visa petition** (I-130 form) for the child, even though they do not live together. A parent who is a lawful permanent resident (green card holder) can petition for an unmarried son or daughter of any age; a U.S. citizen parent can petition for a married or unmarried son or daughter. For immigration purposes, the parent-child relationship includes **stepchildren** (if the marriage creating the step relationship occurred before the child was 18[60]), **adopted children** (if the adoption was complete by age 16[61]), and **children born out of wedlock**.[62] A U.S. citizen brother or sister over 21 years of age can file a petition, as can a permanent resident or U.S. citizen spouse.[63]

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[60] The marriage which creates the stepchild relationship must occur before the child is 18. It does not matter whether the child is adopted or natural born. See INA § 101(b)(1)(B), 8 USC § 1101(b)(1)(B)

[61] Eligibility for immigration can be established through adoption if the child is adopted under the law of the child's residence or domicile while under the age of 16, and if the child has been in the legal custody of and has resided with the adoptive parent for at least two years. The two-year requirement can be fulfilled either before or after the adoption is complete. For example, a child could be adopted at age 15, reside with the adoptive parent for two years, and then immigrate through the parent at age 17. If the child were with the parents sooner under foster care, guardianship, or some other legal arrangement, the two-year period would begin sooner. See INA § 101(b)(1)(E), 8 USC § 1101(b)(1)(E); 8 CFR 204.2(c)(7). Note that a child who is adopted by a U.S. citizen under the above requirements and is a permanent resident all before reaching the age of 18 automatically gains U.S. citizenship. See § 5.7 on Automatic U.S. Citizenship, below.

[62] An illegitimate child automatically will be held to be the "child" of the mother, for immigration purposes. To be the "child" of the father, the father must have or have had a "bona fide parent-child relationship" with the child, established while the child was still unmarried and under 21 years of age. See INA § 101(b)(1)(D), 8 USC § 1101(b)(1)(D). This relationship can be shown just by the fact that the father "evinces or has evinced an active concern for the child's support, instruction, and general welfare." See 8 CFR § 204.2(c)(3).

[63] The statutory language which describes the term "child" and the family-based methods of immigrating to the United States are found in INA § 201(b)(2)(A)(i), 8 USC §1151; INA § 203(a), 8 USC §1153; and INA § 101(b)(1), 8 USC § 1101.

Example: Thanh's stepfather is a U.S. citizen. Although Thanh is angry with his father and lives only with his mother, the father can immigrate Thanh if he's willing to submit a visa petition. (Thanh doesn't qualify for SIJS because he is with his mother.) Thanh's father will have to really want to do his stepson a favor, however. Like anyone petitioning a family member, Thanh's father has to be willing to submit an "affidavit of support" that makes him liable to pay back any public benefits that Thanh uses until a certain time.

Example: Starr's parents decided to give her up in a private adoption. The adoption was completed on her sixth birthday. Her adoptive parents are "parents" for immigration purposes and can petition for her. (Starr does not qualify for SIJS because she was never in the juvenile court system.) See § 2.3 for more information on adoption.

B. Difficulties in Immigrating Through Family as Compared to Through SIJS

There are serious disadvantages to immigrating as described above, through a family visa rather than special immigrant juvenile status. Depending on the type of petition and the child's country of origin, the child might wait from several months to several years before becoming a permanent resident. During that waiting period the child does not have a legal right to be in the United States or to receive work authorization, and could be subject to deportation proceedings if discovered by INS. In many cases the child eventually must travel outside the U.S. for a few days to complete processing for permanent residency.[64] Also, all of the grounds for inadmissibility, including the public charge ground, will apply so that a child supported by public benefits probably would not qualify. If the family relationship is at all shaky (for example, with a parent from whom the child is somewhat estranged) the parent may not want to submit the binding "affidavit of support" that makes him or her liable if the child accepts any public benefits. If the child has spent any time in undocumented status in the U.S. after reaching the age of 18, it may be difficult to immigrate because of "unlawful presence bars."[65]

Children whose parents became permanent residents through an amnesty or legalization program of the 1980's have a somewhat easier time. Besides being eligible to immigrate through a family visa petition, the children also may be eligible for temporary **family unity** status. To qualify for family unity status, the child need not reside with the parents but must have resided in the United States since May 5, 1988, must not be inadmissible (see § 2.11), and must meet other requirements.[66] Family Unity status gives them permission to remain in the U.S. and to have work authorization during all or part of the time they are waiting to immigrate through the visa petition.

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[64] Children immigrating through family members must leave the United States to process their papers unless the child's parent is a U.S. citizen and the child entered the U.S. legally. There is an exception to this rule for children whose visa petitions were filed by April 30, 2001.

[65] See INA § 212(a)(9), 8 USC § 1182(a)(9). These apply only if the child has to leave the U.S. in order to immigrate.

[66] See § 301 of the Immigration Act of 1990, Publ. L. 101-649, 104 Stat. 4978 (11/29/90). For further information, order Family Unity Law (ILRC, call 415/255-9499 x782 for pricing information). See **Appendix H**, Resources.

A child who was born outside the U.S. to a parent who already was a permanent resident may be a permanent resident or be able to immigrate quickly through the parent.[67]

The bottom line is: Family immigration has become complex and various bars apply. Consult an expert immigration practitioner before choosing this option. And in almost every case, it is better to immigrate through SIJS (instead of, for example, the new adoptive family) or the Violence Against Women Act, if that is an option. The exception, of course, is if the INS is aggressively contesting the SIJS status and family immigration contains no legal blocks.

§ 5.2 Violence Against Women Act Petition (VAWA)

If the child was **abused by a U.S. citizen or permanent resident parent** (including step-parent) who is not willing to file a visa petition on behalf of the child, and the child meets some other requirements, the child can "self-petition" through VAWA provisions. (This relief also is available to abused spouses.) Many children passing through juvenile courts are eligible for VAWA but are not identified. For example, the citizen stepfather might abuse the child, but the child later is reunited with her mother. In that case, both child and mother probably are eligible for VAWA. Persons working with juvenile courts should understand VAWA, and should spread the word to their colleagues. People working with adult victims of domestic violence also need to understand VAWA.

In order to qualify for VAWA the child must establish that:

- The child has been battered by or been the subject of extreme mental cruelty committed by a parent who is a U.S. citizen or lawful permanent resident of the U.S.;
- The child has resided with the citizen or permanent resident parent ("resided" can include any period of visitation)
- The child has good moral character and
- The child currently resides in the U.S., with some exceptions [68]

Even if the child herself was not abused, if her parent was abused and qualifies for this relief, the child may qualify as a "derivative" VAWA beneficiary.

> **Example:** When Kim was 16 her mother married Steve, a U.S. citizen. Kim and her mother are undocumented immigrants (have no lawful immigration status). Steve refused to petition to get his new wife and stepdaughter their immigration papers. When Steve began to sexually abuse Kim, the county removed Kim from the home. Kim's mother left Steve, and eventually the county gave Kim back into her mother's care.
>
> Kim does not qualify for SIJS, because she was reunified with a parent (her mother). However, Kim qualifies for a green card under VAWA. She can "self-petition" through her U.S. citizen stepfather Steve even without his cooperation because she meets the VAWA requirements: he's a citizen or permanent resident, he abused her, she resided with him, she's currently in the U.S., and she has good moral character.

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[67] Immigration practitioners note that children born abroad of permanent resident parents can immigrate as immediate relatives under INA § 201(b)(2)(B). If the parent applied for a visa waiver for the child within two years of the child's birth, the child may be a permanent resident and need not be petitioned for. See FAM § 42.1.N3.1.

[68] If living abroad, the child may still qualify if he/she was abused in the U.S. and the abusing parent is an employee of the U.S. government or a member of the uniformed services

In this example, Kim's mother also could apply for VAWA even if Steve did not abuse her. Kim's mother could qualify for VAWA as the mother of an abused child. Likewise, if Steve had abused her mother but not Kim, Kim would have been able to qualify as a derivative of her mother's VAWA self-petition.

Note that VAWA only works if the abuser was a U.S. citizen or permanent resident. If Steve had been undocumented or had any other immigration status less than a green card, Kim and her mother would not be eligible for VAWA relief. (See, however, the discussion of the "U" visa at § 5.5 below, for victims of crime such as sexual or other physical assault.)

The definition of "parent" as it pertains to stepparents, adoptive parents, and children born out of wedlock is the same as described in the section above in family immigration (described in § 5.1 above), with one exception. A spouse for VAWA purposes includes an intended spouse, that is someone who thought she was legally married to the abuser, but who really wasn't because he was secretly married to someone else at the time. A women also can qualify for VAWA if her child is abused, even if the mother is not married to the abuser.

The National Immigration Project of the National Lawyers Guild provides free technical assistance on VAWA applications. Contact nipgail@nlg.org. To download a manual and valuable information about VAWA off the Internet, go to www.nlg.org, select the National Immigration Project, and then select the domestic violence section. Also see "cancellation of removal," following, for another kind of VAWA relief.

§ 5.3 Cancellation of Removal

A. General Cancellation.

Persons who have lived in the United States illegally for ten years or more and who are put into deportation ("removal") proceedings can apply to the immigration judge for **cancellation of removal**, if they have close relatives who are U.S. citizens or permanent residents and who would suffer hardship if the person was deported.[69]

Example: Marta is 17 years old and has a U.S. citizen baby with serious medical problems. She has lived undocumented in the U.S. since she was five years old. If she were placed in removal proceedings, Marta could apply for cancellation of removal by showing that her baby would suffer if they went back to Marta's home country. Marta would not have to show that she had been abused or been under the jurisdiction of a juvenile court judge.

B. Cancellation for Victims of Abuse.

The Violence Against Women Act (VAWA) described above created a special cancellation of removal for a spouse or child who has been abused by a U.S. citizen or permanent resident parent. The person only has to have resided in the U.S. for three years, but she must show that deportation would cause extreme hardship to her, her children, or her parents.[70]

[69] INA § 240A(b), 8 USC 1230a(b).
[70] INA § 240A(b)(2), 8 USC 1230a(b)(2).

Example: Esteban is a 19 years old and undocumented. He has lived in the U.S. for four years. Esteban's mother, who is a permanent resident, has physically abused him for some time. Esteban is in removal proceedings. He can apply for cancellation of removal under VAWA.

Sara is 14 years old and has lived in the U.S. for three years. Her permanent resident father never married her undocumented mother. Her father abused Sara, and she was placed in her mother's custody. Sara is eligible for VAWA cancellation of removal.

If the judge as a matter of discretion decides to cancel the removal (stop the deportation), then the applicant will become a permanent resident. Cancellation is a highly discretionary relief, and consultation with an expert immigration practitioner is required. Also, see the option of "self-petitioning" under VAWA, described in § 5.2, above.

§ 5.4 Asylum and Temporary Protected Status

People who fear returning to their home country can apply for **asylum or withholding of removal**.[71] In some cases the courts have granted asylum based on severe domestic violence or issues involving gender, even if the persecution and abuse was committed just by family members. Applicants *must* obtain expert representation before applying for asylum. The test for asylum is complex: the person must fear persecution from the government or a group that it is unwilling or unable to control, based on the person's race, religion, political opinion, nationality, or social group.

In addition, people from certain countries of natural disaster or civil strife may be able to obtain **Temporary Protected Status (TPS)**,[72] which provides temporary permission to be in the United States and temporary work authorization. Recently countries such as Angola, Bosnia-Herzegovina, Burundi, El Salvador, Guinea-Bissau, Honduras, Kosovo, Liberia, Montserrat, Nicaragua, Sierra Leone, Sudan, and Somalia have been designated for TPS or similar relief. For example, any person from El Salvador who can prove that he or she was in the United States as of February 2001 can apply for TPS. For up-to-date TPS information, go to www.ins.usdoj.gov/graphics/services/tps_inter.htm.

§ 5.5 "U" Visa for a Victim of, and Witness Against, a Serious Crime

Persons who are the victim of a serious crime, and who have been or will be helpful in the investigation or prosecution of the crime, may be able to obtain a "U" visa.[73] This may be crucial relief for people who do not qualify for VAWA or SIJS because they are not in the juvenile court system, or because the abuser was not a citizen or permanent resident.

Example: Marsha and her parents are undocumented. Marsha's father sexually abused her. Marsha and her mother left the father. Marsha is not eligible for SIJS because she is with a parent and not in the juvenile court system. She is not eligible for VAWA because her abusive parent was not a citizen or permanent resident. But if she or her mother cooperate in a criminal investigation against her father, they may be eligible for a "U" visa. The temporary "U" visa status would give them employment authorization and protection against deportation, and might lead to a green card.

---

[71] INA §§ 208, 243(h); 8 USC §§ 1158, 1253(h).

[72] INA § 244A, 8 USC § 1254a. See also Immigration Act of 1990 § 303, for Salvadoran TPS.

[73] See INA § 101(a)(15)(U).

There is no requirement of any family relationship between the victim and criminal.

Example: Sonya is an undocumented woman. A doctor in her rural area sexually abused many undocumented women patients. Sonya is participating in an investigation and prosecution of the doctor for sexual assault. Sonya may be eligible for a U visa, even though she is not related to the doctor.

Tara was mugged on the street outside her home. She picked the mugger out of a line-up and is cooperating with the prosecution in other ways. She may be eligible for the U visa.

To qualify for a U visa the applicant must establish the following:

- The applicant suffered substantial physical or mental abuse as a result of being a victim of serious criminal activity that occurred in the U.S. or its territories. Serious criminal activity includes crimes such as domestic violence, rape, incest, abusive sexual contact, prostitution, kidnapping, abduction, extortion, serious assault, etc.;

- The applicant (or if the applicant is a child under age 16, the parent, guardian or next friend of the applicant) possesses information concerning this criminal activity;

- The applicant (or if the applicant is a child under age 16, the parent, guardian, or next friend) has or will be helpful in investigation or prosecution of criminal activity; an judge, prosecutor or other official must certify that this is true.

Ten thousand "U" visas will be awarded each year. They are temporary, but they can lead to lawful permanent residency. Because this visa was just created in the fall of 2001, there is not yet detailed information on how to apply. Contact an immigration specialist for up-to-date information.

§ 5.6 "T" Visa – Assistance for Victims of Alien Trafficking

A person who is or has been a victim of a "severe form of trafficking in persons" may be able to apply for a "T" Trafficking Crime Visa.[74] This includes victims of sex trafficking, which is defined as the recruitment, harboring, or transportation of a person for the purpose of a commercial sex act such as prostitution. Also, it can include the recruitment, harboring or transportation of a person for labor services, involuntary servitude, slavery or debt bondage through the use of force, fraud or coercion. An applicant must establish the following to qualify for a T visa:

- The applicant is or has been a victim of a severe form of trafficking in persons.

- The applicant is physically present in the United States on account of such trafficking[75]

- The applicant has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or has not attained 15 years of ago, and

[74] To be codified at 8 USC § 101(a)(15)(T), 214(n), and 245(I)(1).

[75] The applicant can also be physically present in American Samoa, or the Commonwealth of the Northern Mariana Islands

- The applicant would suffer extreme hardship involving unusual and severe harm if removed from the U.S.

Example: Chan was brought into New York by a violent gang of Chinese smugglers. He is 14. He understood that he must work in a sweatshop basement for years to pay them back for his passage. He believes that they will kill him if he is sent back to China. They said that they would find him and torture him if he tried to escape. His older sister was smuggled in to work as a prostitute. She is cooperating in a criminal case against the smugglers, and has even greater fear of them. Chan and his sister should be eligible for the T visa.

Five thousand "T" visas will be awarded each year. They are temporary but lead to lawful permanent residency. Because this visa was just created in the fall of 2001, there is not yet detailed information on how to apply. Contact an immigration specialist for up-to-date information.

§ 5.7 Inherited or Derived U.S. Citizenship

Some people who were born outside the United States **inherited U.S. citizenship** from their parents without knowing it. If a child has a parent or grandparent who was a U.S. citizen, you should obtain help from expert immigration counsel to analyze the complicated laws governing "acquisition of citizenship."

Also, a child may automatically become a U.S. citizen if, before he reaches the age of 18, he becomes a permanent resident, at least one of his parents is a U.S. citizen, and he lives in the U.S. in that parent's legal and physical custody.

This automatic "derivation of citizenship" rule applies to adopted children. A child automatically becomes a U.S. citizen if, while under the age of 18, she (1) is a permanent resident, through SIJS, family immigration, or any means; (2) is legally adopted by a U.S. citizen before she reaches the age of 16, and has resided at any time in the legal custody of the citizen for two years;[76] and (3) is residing in the legal and physical custody of the U.S. citizen parent.[77]

For more information on immigration relief, contact an **immigration attorney** or **community agency**. You may be able to obtain free assistance. Or, in some cases counties have retained immigration lawyers to process the cases. See **Appendix H**, Resources, for information on how to find attorneys and community agencies near you and for a list of **practice manuals** about immigration law.

[76] There are different rules for someone who was adopted as an orphan. See INA section 101(b)(1)(F).
[77] See INA section 320 and the ILRC's manual entitled Naturalization: A Guide for Legal Practitioners and Other Community Advocates.

APPENDIX A

Understanding the Risks and Benefits of Applying for Special Immigrant Juvenile Status

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

It is a way for someone who is not a U.S. citizen and who is under the jurisdiction of a juvenile court to become a permanent resident of the United States (get a green card).

Who Qualifies? What Do I Have To Do To Apply For My Green Card?

One important requirement is that a juvenile court must have found that you cannot return to live with your parents, because they abused, abandoned or neglected you. There are other requirements as well. The application procedure is fairly simple. You must fill out several forms, submit fingerprints and photographs, and have a medical examination. As soon as you submit the application to the immigration authorities, you can obtain a card that lets you work legally in the United States. Several months or even a few years later you will have an interview at INS, where they will approve or deny your application. If they deny it you can file an appeal. A social service worker, attorney, or other responsible adult will help you through the process.

What Benefits Do I Get As a Permanent Resident?

You get the right to live and work permanently in the United States, free of the fear of deportation. You can qualify for the cheaper in-state tuition if you attend state college, and may qualify for other college assistance. You will have the right to apply for U.S. citizenship *5* years after becoming a permanent resident. You will not get the right to help your natural parents to get their immigration papers. But if you later marry a non-citizen, you will be able to help him or her get a green card.

What Are the Risks of Applying for Special Immigrant Juvenile?

If the immigration authorities deny your case, they can put you into deportation proceedings. Your social worker or lawyer will evaluate your case carefully before filing anything with immigration. *It is extremely important to be completely honest with the adult helping you with the application.*

Is There Any Other Way For Me to Get My Green Card?

There are many ways to get a green card. If you do not qualify for SIJS, ask for a professional analysis of your situation to see if you might get a green card in some other way. For example, your spouse, parent, stepparent or adoptive parent can apply for you if they are U.S. citizens or permanent residents, even if you don't live with them. If a U.S. citizen or permanent resident parent or spouse was abusive to you, you may be able to "self-petition" to get a green card even if they refuse to submit papers for you. If you fear returning to your home country, you might qualify for asylum. Also, the U.S. designates "temporary protected status" ("TPS") for people from certain countries where civil war or natural disaster has occurred recently. For example, anyone from El Salvador who was in the U.S. as of February 13, 2001 can apply for TPS, at least up until September 9, 2002.

Appendix A

Entendiendo los Riesgos y Beneficios de Aplicar para el Estado de Inmigrante Juvenil Especial

Que es el "Estado de Inmigrante Juvenil Especial?"

Es una manera por la que una persona que no es ciudadano y que esta bajo la jurisdicción de la corte juvenil, puede llegar a ser residente permanente de los Estados Unidos y obtener su tarjeta verde.

Quien califica? Que Tengo Que Hacer Para Obtener Mi Tarjeta Verde?

Un requisito importante es que la corte juvenil concluya que usted no puede regresar a convivir con sus papas porque ellos le han abusado, abandonado, o descuidado. También existen otros requisitos. El proceso para aplicar no es difícil. Usted tendrá que llenar diferentes formularios, entregar huellas digitales, tomarse fotografías, y hacerse un examen medico. Después de entregar su aplicación a los oficiales de inmigración, usted podrá conseguir un permiso para trabajar legalmente en los Estados Unidos. Unos meses después o tal vez en unos años usted tendrá una entrevista con el Servicios de Inmigración y Naturalización- INS, en la cual aprobarán o negarán su aplicación. Si niegan su aplicación usted podrá apelar esa decisión. Un trabajador social, un abogado, o un adulto responsable le ayudará con el proceso.

Cuales Son Los Beneficios de Ser Residente Permanente?

Usted tendrá el derecho de vivir y trabajar permanentemente en los Estados Unidos, sin tener miedo de ser deportado. Usted también podrá calificar para cuotas de inscripción y matricula bajas si se inscribe en un colegio del estado y tal vez podrá calificar para otros tipos de asistencia. Usted tendrá el derecho de aplicar para la ciudadanía de los Estados Unidos después de 5 años de ser residente permanente. Si usted se casa con una persona sin documentos, usted podrá a ayudar el/ella a conseguir una tarjeta verde. Usted no tendrá el derecho de aplicar para que sus papas inmigren.

Cuales son Los Riesgos o Aspectos Negativos de Ser Inmigrante Juvenil Especial?

Si las autoridades de inmigración niegan su caso, ellos podrán comenzar el proceso de deportación. Su trabajador social y abogado van a evaluar su caso cuidadosamente antes de presentar los documentos al Servicios de Inmigración y Naturalización -INS. *Es muy importante que usted sea completamente honesto con la persona que le ayuda a aplicar.*

Existen Otra Maneras de Obtener Mi Tarjeta Verde?

Hay varias maneras de conseguir su tarjeta verde. Si usted no califica por el Estado Juvenil Especial, consulte con un experto en las leyes de inmigración para ver si hay otra manera de obtenerla. Por ejemplo, su esposo o su papa, padrastro, o papa adoptivo puede aplicar para usted si es ciudadano de los Estados Unidos ("USC") o residente permanente legal ("LPR"), aunque no vivan con usted. O, si una de estas personas lo ha abusado, usted podrá solicitar para su tarjeta verde aunque el o ella no quiera someter una petición para usted. Si usted teme volver a su país natal, usted podría calificar para asilo político. Además, en momentos de guerra civil o de un desastre en un país, Estados Unidos otorga un Estado de Protección Temporal- "TPS" para gente que vienen de ciertos países. Por ejemplo, le gente de El Salvador que se encontraban en los Estados Unidos antes del 13 de febrero de 2001 pueden aplicar hasta el 9 de Sept. 2002.

Appendix B

OMB No. 1115-0117

U.S. Department of Justice
Immigration and Naturalization Service

Petition for Amerasian, Widow(er), or Special Immigrant

START HERE - Please Type or Print

Part 1. Information about person or organization filing this petition. (Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want INS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name	Given Name	Middle Initial
Garcia-Gomez	Julia	M

Company or Organization Name

Address - C/O
c/o Martha Brown, D.S.S.

Street Number and Name	Apt. #
1000 First Street	600

City	State or Province
San Francisco	CA

Country	Zip/Postal Code
USA	94103

U.S. Social Security #	A #	IRS Tax # (if any)
none	none	none

Part 2. Classification Requested (check one):

a. ☐ Amerasian
b. ☐ Widow(er) of a U.S. citizen who died within the past two (2) years
c. ☒ Special Immigrant Juvenile
d. ☐ Special Immigrant Religious Worker
e. ☐ Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
f. ☐ Special Immigrant Physician
g. ☐ Special Immigrant International Organization Employee or family member
h. ☐ Special Immigrant Armed Forces Member
i. ☐ Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
j. ☐ Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
k. ☐ Other, explain:

Part 3. Information about the person this petition is for.

Family Name	Given Name	Middle Initial
Garcia-Gomez	Julia	M

Address - C/O

Street Number and Name	Apt. #
2000 6th Street	

City	State or Province
San Francisco	CA

Country	Zip/Postal Code
USA	94103

Date of Birth (Month/Day/Year)	Country of Birth
7/12/87	Mexico

U.S. Social Security #	A # (if any)
(none)	(none)

Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed

Complete the items below if this person is in the United States:

Date of Arrival (Month/Day/Year)	I-94#
approx. 3/94	(none)

Current Nonimmigrant Status	Expires on (Month/Day/Year)
n/a	n/a

Continued on back.

Appendix B-1

FOR INS USE ONLY

Returned	Receipt

Resubmitted

Reloc Sent

Reloc Rec'd

☐ Petitioner/ Applicant Interviewed
☐ Beneftiary Interviewed

☐ I-485 Filed Concurrently
☐ Bene "A" File Reviewed

Classification

Consulate

Priority Date

Remarks:

Action Block

To Be Completed by *Attorney or Representative,* if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

Part 4. Processing Information.

Below give to United States Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City	Country
n/a	

If you gave a United States address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name	Address

Sex of the person this petition is for.	☐ Male	☐ Female
Are you filing any other petitions or applications with this one?	☐ No	☐ Yes (How many? _____)
Is the person this petition is for in exclusion or deportation proceedings?	☐ No	☐ Yes (Explain an a separate sheet of paper)
Has the person this petition is for ever worked in the U.S. without permission?	☐ No	☐ Yes (Explain an a separate sheet of paper)
Is an appilication for adjustment of status attached to this petition?	☐ No	☐ Yes

Part 5. Complete only if filing for an Amerasian.

Section A. Information about the mother of the Amerasian

Family Name	Given Name	Middle Initial

Living? ☐ No (Give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Address

Section B. Information about the father of the Amerasian: If possible, attach a notarized statement from the father regarding parentage.

Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name	Given Name	Middle Initial

Date of Birth (Month/Day/Year)	Country of Birth

Living? ☐ No (give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Home Address

Home Phone #	Work Phone #

At the time the Amerasian was conceived:

☐ The father was in the military (indicate branch of service below - and give service number here): _____

☐ Army ☐ Air Force ☐ Navy ☐ Marine Corps ☐ Coast Guard

☐ The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.

☐ The father was not in the military, and was not a civilian employed abroad. (Attach a full explanation of the circumstances.)

Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.

Section A. Information about the Juvenile

List any other names used. (none)

Answer the following questions regarding the person this petition is for. If you answer "no," explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state?	☐ No	☒ Yes
Does he/she continue to be eligible for long term foster care?	☐ No	☒ Yes

Continued on next page.

Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.

Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.

Family Name	Given Name	Middle Initial

Date of Birth *(Month/Day/Year)*	Country of Birth	Date of Death *(Month/Day/Year)*

He or she is now, or was at time of death a (check one):

- ☐ U.S. citizen born in the United States.
- ☐ U.S. citizen born abroad to U.S. citizen parents.
- ☐ U.S. citizen through Naturalization *(Show A #)* _____
- ☐ U.S. lawful permanent resident (Show A #) _____
- ☐ Other, explain _____

Section B. Additional Information about you.

How many times have you been married?	How many times was the person in Section A married?	Give the date and place you and the person in Section A were married. *(If you are a self-petitioning child, write: "N/A")*

When did you live with the person named in Section A? From *(Month/Year)* _____ until *(Month/Year)* _____

If you are filing as a widow/widower, were you legally separated at the time of to U.S citizens's death? ☐ No ☐ Yes, *(attach explanation)*.

Give the last address at which you lived together with the person named in Section A, and show the last date that you lived together with that person at that address:

If you we filing as a self-petitioning spouse, have any of your children filed separate self-petitions? ☐ No ☐ Yes *(show child(ren)'s full names)*:

Part 8. Information about the spouse and children of the person this petition is for.

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A. Family Name (none)	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Spouse ☐ Child		A #
B. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
C. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
D. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
E. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
F. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #

G. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A#
H. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A#

Part 9. Signature.

Read the information on penalties in the instructions before completing this part. If you are going to file this petition at an INS office in the United States, sign below. If you are going to file it at a U.S. consulate or INS office overseas, sign in front of a U.S. INS or consular official.

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf at an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature Julia Garcia-Gomez		Date 9/01/01
Signature of INS or Consular Official	Print Name	Date

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for requested benefit and it may have to be denied.

Part 10. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature Martha Brown	Print Your Name MARTHA BROWN	Date 9/01/01
Firm Name and Address	Dept. Social Services, 1000 First Street, #600, San Francisco, CA 94103	

Appendix C

Sample Juvenile Court Judge's Order Supporting
Special Immigrant Juvenile Status Application

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
JUVENILE COURT

In the Matter of	)	No.
	)	ORDER REGARDING
	)	MINOR'S ELIGIBILITY FOR
	)	SPECIAL IMIMGRANT
a Minor	)	JUVENILE STATUS

The court has reviewed the supporting material on file, heard the arguments of counsel and found the following:

( ) The minor was declared dependent on the Juvenile Court of the County of San Francisco [or brought under the jurisdiction of the Juvenile Court of the County of San Francisco and committed to the custody of a State Agency] on _____. The minor remains under this Court's jurisdiction.

( ) The minor was deemed eligible by this Court for long term foster care on _____.

( ) This Court finds that it is not in the best interest of the minor to be returned to his/her or his/her parents' previous country of nationality or country of last habitual residence, _____. It is in the minor's best interest to remain in the United States.

( ) The above findings and actions were made due to [abuse, neglect or abandonment] of the minor. [Or, the above findings were made due to abuse of the minor under Calif. Welfare & Inst. Code § 300(a) (physical abuse).]

DATED: _____

_____
Judge/Commissioner/Referee of the Juvenile Court

Appendix D

Applications Checklist

Note that some INS offices have local filing requirements, relating to the order in which they want the documents placed, whether a medical exam is due at the initial filing or is brought in to the interview, whether an "ADIT" cover sheet is used, etc. Where possible, consult with a local immigration practitioner or INS officer to find out about local procedure.

I-360 Petition for Special Immigrant Juvenile Status

- I-360 Petition
- Juvenile Court Order
- G-28 Form, if child has an attorney
- Filing Fee of $130

I-485 Application for Adjustment of Status

- I-485
- G-325A Biographic Information Form
- 3 "Green Card" Photos
- Birth Certificate or other Proof of Age
- I-765 Request for Employment Authorization (optional; $100 fee)
- "Adit" sheet (required by some INS offices)
- Medical Exam (required at initial filing only by some INS offices)
- Passport, I-94 or other entry document, if available
- Filing Fee of $255 ($160 if under 14 years of age)

OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Appendix E

Form I-485, Application to Register Permanent Resident or Adjust Status

START HERE - Please Type or Print

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

Section of Law
- ☐ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 2 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other _____

Country Chargeable

Eligibility Under Sec. 245
Approved Visa Petition
Dependent of Principal Alien
Special Immigrant
Other _____

Preference

Action Block

To be Completed by *Attorney or Representative*, if any
☐ Fill in box if G-28 is attached to represent the applicant.
VOLAG #

ATTY State License #

Part 1. Information About You.

Family Name	Given Name	Middle Initial
Garcia-Gomez	Julia	M.

Address - C/O: Martha Brown, D.S.S.

Street Number and Name	Apt. #
1000 First Street	600

City: San Francisco

State	Zip Code
CA	94103
Date of Birth (month/day/year) 7/12/87	**Country of Birth** Mexico
Social Security # (none)	**A # (if any)** (none)
Date of Last Arrival (month/day/year) approx. 3/94	**I-94 #** (none)
Current INS Status n/a	**Expires on (month/day/year)** n/a

Part 2. Application Type. *(check one)*

I am applying for an adjustment to permanent resident status because:

a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Atttach a copy of the approval notice-- or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). [Attach a copy of the fiance(e) petition approval notice and the marriage certificate.]

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. ☐ I have continuously resided in the U.S. since before January 1, 1972.

h. ☒ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)
Special Immigrant Juvenile Status

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2,1964, whichever date is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Continued on back

Part 3. Processing Information.

City/Town/Village of Birth: Guadalajara	Current Occupation: Student
ıur Mother's First Name: Elena	Your Father's First Name: Juan

ve your name exactly how it appears on your Arrival /Departure Record (Form 1-94)

n/a

ıce of Last Entry Into the U.S. (City/State): El Paso, TX	In what status did you last enter? *(Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.)*: without inspection
ere you inspected by a U.S. Immigration Officer? ☐ Yes ☒ No	
ɔnimmigrant Visa Number: n/a/	Consulate Where Visa Was Issued: n/a
ıte Visa Was Issued ıonth/day/year): n/a — Sex: ☐ Male ☒ Female	Marital Status ☐ Married ☒ Single ☐ Divorced ☐ Widowed

ve you ever before applied for permanent resident status in the U.S.? ☐ No ☒ Yes If you checked "Yes," give date and place of filing and final disposition.

List your present husband/wife and all your sons and daughters. (If you have none, write "none." If additional space is needed, use a separate piece of paper.)

ımily ıme (none)	Given Name	Middle Initial	Date of Birth (month/day/year)
untry of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
ımily ıme	Given Name	Middle Initial	Date of Birth (month/day/year)
untry of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
ımily ıme	Given Name	Middle Initial	Date of Birth (month/day/year)
untry of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
ımily ıme	Given Name	Middle Initial	Date of Birth (month/day/year)
·untry of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
ımily ıme	Given Name	Middle Initial	Date of Birth (month/day/year)
untry of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No

ıist your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar ıroup in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the ıame(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a ıeparate piece of paper.

n/a (14 years old)

art 3. Processing Information. *(Continued)*

ase answer the following questions. (If your answer is **"Yes"** to any one of these questions, explain on a separate piece of paper. Answering **"Yes"** does not necessarily an that you are not entitled to adjust your status or register for permanent residence.)

. Have you ever, in or outside the U. S.:

a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☒ No

b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☒ No

c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☒ No

d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U. S.? ☐ Yes ☒ No

Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☐ Yes ☒ No

. Have you ever:

a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☒ No

b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☒ No

c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☒ No

d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☒ No

Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☒ No

. Do you intend to engage in the U.S. in:

a. espionage? ☐ Yes ☒ No

b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☒ No

c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☒ No

Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☒ No

Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☒ No

. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☒ No

Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☒ No

. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fradulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit? ☐ Yes ☒ No

. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No

. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☒ No

. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☒ No

. Do you plan to practice polygamy in the U.S.? ☐ Yes ☒ No

Continued on back

Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the lease of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

lective Service Registration. The following applies to you if you are a man at least 18 years old, but not yet 26 years old, who is required to register with the lective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide rtain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my lective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering ith the Selective Service by other means, provided I have not yet reached age 26.

ignature	*Print Your Name*	*Date*	*Daytime Phone Number*
Julia Garcia-Gomez	Julia Garcia-Gomez	9/1/01	415/255-1234

ease Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.

Part 5. Signature of Person Preparing Form, If Other Than Above. *(Sign Below)*

declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

ignature	*Print Your Name*	*Date*	*Daytime Phone Number*
Martha Brown	Martha Brown	9/1/01	415/255-1234

irm Name nd Address Department of Social Services, 1000 First St., San Francisco, CA 94103

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0066

BIOGRAPHIC INFORMATION

(Family name)	(First name)	(Middle name)	☐ MALE ☒ FEMALE	BIRTHDATE (Mo.-Day-Yr.)	NATIONALITY	FILE NUMBER
Garcia-Gomez	Julia	Maria		7-12-87	Mexico	A- (none)

ALL OTHER NAMES USED (Including names by previous marriages)	CITY AND COUNTRY OF BIRTH	SOCIAL SECURITY NO. (If any)
(none)	Guadalajara, Mexico	(none)

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)	CITY AND COUNTRY OF RESIDENCE.
FATHER	Garcia	Juan	Mexico	(unknown)
MOTHER (Maiden name)	Gomez	Elena	Rio Rancho, Mexico	San Francisco, CA

HUSBAND (If none, so state) OR WIFE	FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE
(none)						

FORMER HUSBANDS OR WIVES (if none, so state)

FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE
(none)				

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
2000 6th Street	San Francisco	CA	USA	6	98	PRESENT TIME	
2155 12th St.	Oakland	CA	USA	4	95	5	98

APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR

STREETAND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
26 Calle El Dorado	Guadalajara	Jalisco	Mexico	unknown		1	94

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE) LIST PRESENT EMPLOYMENT FIRST

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
(none)				PRESENT	TIME

Show below last occupation abroad if not shown above. (Include all information requested above.)

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR:
☐ NATURALIZATION ☒ STATUS AS PERMANENT RESIDENT
☐ OTHER (SPECIFY):

SIGNATURE OF APPLICANT: Julia Garcia-Gomez DATE: 9/1/01

Submit all four pages of this form.

If your native alphabet is other than roman letters, write your name in your native alphabet here:

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)
Garcia-Gomez	Julia	Maria	----

Appendix E-5

(1) Ident.

Form G-325A (Rev. 09/11/00) Y

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0163: Expires - 10/31/01

Application for Employment Authorization

Do Not Write in This Block

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under § 274a.12 _____		

☐ Application Approved. Employment Authorized / Extended (Circle One) until _____ (Date).
_____ (Date).
Subject to the following conditions: _____
☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c) (14), (18) and 8 CFR 214.2(f)

I am applying for:
☐ Permission to accept employment
☐ Replacement (of lost employment authorization document).
☐ Renewal of my permission to accept employment (attach previous employment authorization document).

1. Name (Family Name in CAPS) (First) (Middle)
GARCIA-Gomez Julia Maria

2. Other Names Used (Include Maiden Name)
n/a

3. Address in the United States (Number and Street) (Apt. Number)
2000 6th Street
(Town or City) (State/Country) (ZIP Code)
San Francisco CA 94103

4. Country of Citizenship/Nationality
Mexico

5. Place of Birth (Town or City) (State/Province) (Country)
Guadalajara Jalisco Mexico

6. Date of Birth (Month/Day/Year)
7-12-87

7. Sex ☐ Male ☒ Female

8. Marital Status ☐ Married ☒ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used) (if any)
(none)

10. Alien Registration Number (A-Number) or I-94 Number (if any)
(none)

11. Have you ever before applied for employment authorization from INS?
☐ Yes (if yes, complete below) ☒ No
Which INS Office? Date(s)
n/a
Results (Granted or Denied - attach all documentation)
n/a

12. Date of Last Entry into the U.S. (Month/Day/Year)
3/94

13. Place of Last Entry into the U.S.
near El Paso

14. Manner of Last Entry (Visitor, Student, etc.)
without inspection

15. Current Immigration Status (Visitor, Student, etc.)
n/a

16. Go to Part 2 of the instructions, Eligibility Categories. In the space below, place the letter and number of the category you selected from the instructions (For example, (a)(8), (c)(17)(iii), etc.).
Eligibility under 8 CFR 274a.12
(c) (9) ( )

Certification

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the Instructions in Part 2 and have identified the appropriate eligibility category in Block 16.

Signature	Telephone Number	Date
Julia Garcia-Gomez	415/255-9876	9/01/01

Signature of Person Preparing Form, If Other Than Above: I declare that this document was prepared by me at the at the request of the applicant and is based on all information of which I have any knowledge.

Print Name	Address	*Signature*	Date
Martha Brown	DSS 1000 1st Street San Francisco, CA 94103	Martha Brown	9/01/01

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Entry of Appearance as Attorney or Representative

Appearances - An appearance shall be filed on this form by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required. **Availability of Records** - During the time a case is pending, and except as otherwise provided in 8 CFR 103.2(b), a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with 8 CFR 103.10, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he/she may, in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his/her receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in 8 CFR 103.10.

In re: GARCIA-Gomez, Julia	Date: 9/01/01 File No. ____

I hereby enter my appearance as attorney for (or representative of), and at the request of the following named person(s):

Name: Julia GARCIA-Gomez	☒ Petitioner ☒ Applicant ☐ Beneficiary			
Address: (Apt. No.) (Number & Street)	(City)	(State)	(Zip Code)	
c/o Brown, DSS, 1000 First St, San Francisco		CA	94103	
Name:	☐ Petitioner ☐ Applicant ☐ Beneficiary			
Address: (Apt. No.) (Number & Street)	(City)	(State)	(Zip Code)	

Check Applicable Item(s) below:

☒ 1. I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia

California (State) Supreme Court (Name of Court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbarring, or otherwise restricting me in practicing law.

☐ 2. I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:

☐ 3. I am associated with _____ the attorney of record previously filed a notice of appearance in this case and my appearance is at his request. (*If you check this item, also check item 1 or 2 whichever is appropriate.*)

☐ 4. Others (Explain Fully.)

SIGNATURE	COMPLETE ADDRESS
Sara Abogada	Abogada and Johnson 1234 Market Street, San Francisco, CA 94110
NAME (Type or Print) Sara Abogada	TELEPHONE NUMBER 415/896-1234

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS:

Sara Abogada
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSURE IS IN CONNECTION WITH THE FOLLOWING MATTER:

Name of Person Consenting	Signature of Person Consenting	Date
Julia Garcia-Gomez	Julia Garcia-Gomez	9/01/01

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 8CFR 103.10 and 103.20 Et.SEQ.

Form G-28 (09/26/00)Y

Appendix F

JUVENILE DEPARTMENTS
The Superior Court
LOS ANGELES CALIFORNIA 90012

CHAMBERS OF
JAIME R. CORRAL
PRESIDING JUDGE

CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
(213) 974-5091

January 4, 1991

TO: All Dependency Court Judges, Commissioners and Referees

FROM: Jaime R. Corral, Presiding Judge of Juvenile Court

SUBJECT: SPECIAL IMMIGRANT STATUS FOR UNDOCUMENTED CHILDREN DECLARED DEPENDENTS OF THE JUVENILE COURT

The Immigration Act of 1990 signed into law by President Bush on November 21, 1990, directly affects undocumented children who have been declared dependents of the juvenile court.

Title 1, Part 1, Sections 153 and 154 provides, in part, that special immigrant status may be granted by the attorney general to children (1) who are declared dependents of the juvenile court; (2) who are in long-term foster care; and (3) for whom it has been determined that it is not in their best interest to return them to their country of origin. This provision, effective immediately, gives a number of undocumented children in the dependency system their option for gaining legal status.

INS is now accepting I-485 applications on behalf of these children, but is awaiting further instructions before interviewing or adjudicating these cases. The regulations guiding these provisions of the bill are expected to be issued in late January or February.

It is critical to identify children in the dependency system who may be eligible for special immigrant status and to maintain juvenile court jurisdiction until INS regulations are in place and applications can be filed. Inquiry should be made as to the legal status of these children at the permanency planning stage and their cases should be identified for special immigrant status application. Public Counsel letter of December 21, 1990, is attached and details the provisions of this bill and discusses its benefits for dependent children.

Appendix G
Federal Statutes and Regulations

I. Federal Statutes (Laws Passed by Congress)

Definition of Special Immigrant Juvenile
8 U.S.C. 1101(a)(27(J), INA 101(a)(27)(J)

(J) an immigrant who is present in the United States -

(i) who has 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 and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that -

(I) no juvenile court has jurisdiction to determine the 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; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

Special Immigrant Juveniles' Adjustment of Status, Waivers of Inadmissibility8 U.S.C. 1255(h), INA 245(h)

(h) Application with respect to special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title -

(1) such an immigrant shall be deemed, for purposes of subsection (a) of this section, to have been paroled into the United States; and

(2) in determining the alien's admissibility as an immigrant -

(A) paragraphs (4), (5)(A), and (7)(A) of section 1182(a) of this title shall not apply, and

(B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

Automatic Waiver of Certain Grounds for Deportation for Special Immigrant Juveniles
8 USC 1227(c), INA 237(c)

(c) Waivers of Grounds for Deportation

Paragraphs 1(A), 1(B), 1(C), 1(D) and 3(A) of subsection (a) (other than so much of paragraph (1) as relates to a ground of inadmissibility described in paragraph (2) or (3) of section 212(a)) shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status.

II. Federal Regulations (Created by the Immigration and Naturalization Service)

Regulation Governing Application for Special Immigrant Juvenile Status
8 CFR 204.11

Sec. 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) Definitions.

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) Petition for special immigrant juvenile. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) Who may file. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) Where to file. The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

(c) Eligibility. An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

(d) Initial documents which must be submitted in support of the petition. (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) Decision. The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

[58 FR 42850, Aug. 12, 1993]

Regulation Concerning Substitute Documents to Prove Birth in Family Visa Petition Cases
8 CFR 204.1(f), (g)(2)
(Reprinted here to provide suggestions for obtaining substitute documents to prove age in SIJS applications)

Sec. 204.1 General information about immediate relative and family-sponsored petitions.

(f) Supporting documentation. (1) Documentary evidence consists of those documents which establish the United States citizenship or lawful permanent resident status of the petitioner and the claimed relationship of the petitioner to the beneficiary. They must be in the form of primary evidence, if available. When it is established that primary evidence is not available, secondary evidence may be accepted. To determine the availability of primary documents, the Service will refer to the Department of State's Foreign Affairs Manual (FAM). When the FAM shows that primary documents are generally available in the country of issue but the petitioner claims that his or her document is unavailable, a letter from the appropriate registrar stating that the document is not available will not be required before the Service will accept secondary evidence. The Service will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child of an abusive citizen or lawful permanent resident under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. The self-petitioner may, but is not required to, demonstrate that preferred primary or secondary evidence is unavailable. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(2) Original documents or legible, true copies of original documents are acceptable. The Service reserves the right to require submission of original documents when deemed necessary. Documents submitted with the petition will not be returned to the petitioner, except when originals are requested by the Service. If original documents are requested by the Service, they will be returned to the petitioner after a decision on the petition has been rendered, unless their validity or authenticity is in question. When an interview is required, all original documents must be presented for examination at the interview.

(3) Foreign language documents must be accompanied by an English translation which has been certified by a competent translator.

(g) Evidence of petitioner's United States citizenship or lawful permanent residence—

(2) Secondary evidence. If primary evidence is unavailable, the petitioner must present secondary evidence. Any evidence submitted as secondary evidence will be evaluated for authenticity and credibility. Secondary evidence may include, but is not limited to, one or more of the following documents:

(i) A baptismal certificate with the seal of the church, showing the date and place of birth in the United States and the date of baptism;

(ii) Affidavits sworn to by persons who were living at the time and who have personal knowledge of the event to which they attest. The affidavits must contain the affiant's full name and address, date and place of birth, relationship to the parties, if any, and complete details concerning how the affiant acquired knowledge of the event;

(iii) Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);

(iv) Census records showing the name, place of birth, and date of birth or age of the petitioner; or

(v) If it is determined that it would cause unusual delay or hardship to obtain documentary proof of birth in the United States, a United States citizen petitioner who is a member of the Armed Forces of the United States and who is serving outside the United States may submit a statement from the appropriate authority of the Armed Forces. The statement should attest to the fact that the personnel records of the Armed Forces show that the petitioner was born in the United States on a certain date.

[57 FR 41056, Sept. 9, 1992, as amended at 58 FR 48778, Sept. 20, 1993;
61 FR 13072, 13073, Mar. 26, 1996; 63 FR 70315, Dec. 21, 1998]

Federal Regulation Governing Fees and Fee Waivers
8 CFR 103.7(c)
(For those wishing to apply for a waiver of the government fees for the special immigrant juvenile petition (I-360), application for adjustment of status (I-485), and application for employment authorization (I-765) See Appendix I)

(c) Waiver of fees. (1) Except as otherwise provided in this paragraph and in Sec. 3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived by the Immigration Judge in any case under his/her jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the applicant, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. The officer of the Service having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his discretion, grant the waiver of fee. Fees for "Passenger Travel Reports via Sea and Air" and for special statistical tabulations may not be waived. The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived. The payment of the additional $500 fee prescribed by section 214(c)(9) of the Act when applying for petition for nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Act may not be waived.

(2) Fees under the Freedom of Information Act, as amended, may be waived or reduced where the Service determines such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(3) When the prescribed fee is for services to be performed by the clerk of court under section 344(a) of the Act, the affidavit for waiver of the fee shall be filed with the district director or officer in charge of the Service having administrative jurisdiction over the place in which the court is located at least 7 days prior to the date the fee is required to be paid. If the waiver is granted, there shall be delivered to the clerk of court by a Service

representative on or before the date the fee is required to be paid, a notice prepared on Service letterhead and signed by the officer granting the waiver, that the fee has been waived pursuant to this paragraph.

(4) Fees for applications for Temporary Protected Status may be waived pursuant to 8 CFR 240.20.

APPENDIX H

Resources - How to Get Advice and Assistance and Find Books

Free Advice Over the Phone and Trainings

Many legal aid offices may be expert in this area and willing to provide advice or help. The following are some of the available "back-up centers" that can offer advice or training.

Immigrant Legal Resource Center
1663 Mission Street, Ste. 602
San Francisco, CA 94103
(415) 255.9499x 6263
(415) 255-9792 fax
aod@ilrc.org

Persons in Northern California who are assisting children in juvenile court proceedings can contact the ILRC to get advice on individual cases or policy issues by mail, email or fax, Monday through Friday from 10 a.m. to 3 p.m. Ask for the attorney of the day and state that you are helping a child in juvenile court proceedings. Some trainings also are available. Any person can download this manual from our website at www.ilrc.org (go to "programs" and "advocating for children"). To order hard copies of this manual or any of our other immigration publications, go to www.ilrc.org at "publications."

Legal Services for Children
1254 Market Street, 3rd Floor
San Francisco, CA 94102
(415) 863-3762

May provide representation of children in San Francisco County, has experience in these proceedings.

National Immigration Law Center
3435 Wilshire Blvd, Suite 2850
Los Angeles, CA 90010
(213) 639-3900
(213) 639-3911 Fax

Advice over the telephone and some training in Los Angeles area. Special expertise in public benefits law.

Public Counsel
3535 West 6th Street, Ste. 100
Los Angeles, CA 90020
(213) 385-2977

Children's and immigration counsel advice over the telephone and some training in Los Angeles area.

Other Legal Assistance

Local legal aid offices may be expert in this area and able to provide advice or direct representation of clients.

To obtain an immigration attorney, call one of the back-up centers for names in your area or contact the American Immigration Lawyers Association at (202) 371-9377. They should be able to provide the names of competent immigration counsel in your area.

If you are attempting to find pro bono attorney assistance, a local Bar Association should have a list of low fee or volunteer attorneys specializing in immigration law or in another field. The bar association may also know of other attorney volunteer organizations in the area.

Materials

The ILRC gives public and non-profit organizations the right to copy this entire manual for use by children's workers or low-fee or volunteer counsel. To order copies of this manual in bulk at cost, contact the IL.RC.

The following is a list of other books about immigration law published by ILRC that may be relevant to this program. (For a copy of our complete publications brochure, please call (415) 255-9499 x782, or visit our website at www.ilrc.org)

A Guide for Immigration Advocates is a large and comprehensive book about immigration law, written for paralegals. It includes clearly written material discussing forms of relief that would apply to children such as family visa petitions, suspension and asylum. *2001 Edition: $175 private attorneys, $120 non-profit agencies.*

Family Unity: A Guide for Practitioners and Conirnunitv Organizers discusses the Family Unity program which could benefit children whose parents became permanent residents through one of the amnesty programs. *2001 edition: $15 private attorneys, $12 non-profit, $8 CA non-profit*

California Criminal Law and Immigration is a comprehensive oook aimed at criminal and immigration attorneys and paralegals. It discusses the grounds of exclusion and deportation that have to do with crimes and drug abuse. *2000 Edition: $130*

Most county law libraries contain some reference books on immigration law

Handling Immigration Cases (Wiley Law Publications) by.Bill Ong Hing is a clearly written and well organized one volume treatise on immigration law.

Immigration Law and Defense (Clark Boardman) by the National Lawyers Guild is another excellent one volume treatise. Aimed at defense attorneys.

Immigration Law and Procedure (Matthew Bender) is a multi-volume text on immigration law. The index is somewhat difficult to use and the writing is legalistic, but it contains a huge amount of information.

Interpreter Releases is a weekly update on changes in the law, government policy, published cases, and rumor about U.S. immigration laws and the INS.

1663 Mission Street
Suite 602
San Francisco
California 94103
Tel 415.255.9499
Fax 415.255.9792
Email ilrc@ilrc.org
http://www.ilrc.org

1395 Bay Road
East Palo Alto
California 94303

Reply to
San Francisco ✓
East Palo Alto

Appendix I

To: Advocates Assisting Special Immigrant Juvenile Status Applicants
From: Sally L. Kinoshita, Staff Attorney
Date: October 5, 2001
Re: Fee Waiver Requests for INS Applications

The Immigration and Naturalization Service (INS) charges a few hundred dollars in fees to process a complete SIJS application.[1] However, INS has the discretion to waive any application fees if the applicant can establish that he or she is unable to pay the fee. Because of fears that the fee waiver will cause delay or other problems with the SIJS application, many counties simply pay the fees on behalf of the child. However, the vast majority of children applying for SIJS should qualify for fee waivers, and other counties choose to ask for the waivers. This memorandum discusses how to request a fee waiver.

In October 1998, the INS issued a field guidance memorandum on how fee-waiver eligibility should be determined. The memorandum, an INS fact sheet discussing the fee waiver policy, and a copy of the relevant regulations section are included with this packet. Many of the criteria for fee waivers discussed in the materials do not directly apply to SIJS applicants because typical fee waiver applicants are adults or families living outside the foster care system. According to the INS memorandum, the INS may consider a number of different factors in determining an applicant's inability to pay the required fees. These include humanitarian or compassionate reasons such as the applicant's lack of money to pay the fees without substantial difficulty, and any other evidence or factors that the INS believes establish an inability to pay the required fees. The most common reason for an SIJS applicant's inability to pay the application fees is that the child does not have enough money to pay for the fees since they are children in the foster care system.

Sample fee waiver requests are also included with this packet. The fee waiver should include a cover letter and an affidavit or declaration signed by the applicant that requests the fee waiver and states the reasons why the applicant is unable to pay the fees. Finally, remember to place a fee waiver request on top of each application and to write **"Fee Waiver Requested"** clearly in red ink at the top of each application.

****

WARNING: Applicants requesting a fee waiver might have their applications delayed because the INS will not proceed with an application until the fee waiver request is adjudicated. The delay time may vary among local offices. Although the delay may not be significant to some applicants, it may prove fatal for individuals who risk falling out of a juvenile court's jurisdiction due to age or other reasons. Therefore, in many instances, it may be HARMFUL to submit a fee waiver. *When in doubt, talk with local immigration practitioners to find out information about fee waiver processing times and procedures.*

****

[1] The I-360 Petition for Special Immigrant Juvenile Status fee is $130. The I-765 Application for Employment Authorization fee is $120. And the I-485 Application to Register Permanent Residence or Adjust Status fee is $255 for children age 14 years and older, $160 for children under 14 years old. Children who are over the age of 14 years old must also include fingerprints with their I-485 application. The $50 fee for fingerprinting generally ***cannot*** be waived.

HQ 70/5.5

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS

FROM: Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

SUBJECT: Interim Field Guidance on granting fee waivers pursuant to 8 CFR 103.7(c)

PURPOSE: This memorandum provides instructions and processing guidance for adjudication of fee waiver requests filed pursuant to 8 CFR 103.7(c). This interim field guidance should be followed until a final rule amending 8 CFR 103.7(c) becomes effective.

DISCUSSION:

Why issue guidelines?

Generally, the Service has discretion to waive any of the fees prescribed in 8 CFR 103.7(b), relating to applications or petitions pursuant to 8 CFR 103.7(c), if the applicant establishes that he or she is unable to pay the prescribed fee. These guidelines clarify what constitutes an "inability to pay" and provide circumstances and forms that Service officers may consider in determining an applicant or petitioner's "inability to pay."

The Service, in support of the fee schedule adjustment regulation [63 FR 43604], pledged to clarify its existing fee waiver policy to ensure that it is equitable to applicants and petitioners as well as financially feasible in light of the reimbursements the Service needs to fund benefit programs. The Service is also issuing this guidance to overcome the perception that fee waivers are adjudicated inconsistently nationwide.

Service officers retain broad discretionary authority under 8 CFR 103.7(c) in adjudicating fee waiver requests. These guidelines delineate factors Service officers may consider in adjudicating waiver requests, many of which are already considered in current practice. The factors noted in this memorandum are not exhaustive and Service officers have authority to consider other evidence in determining whether a waiver request can be approved.

ALL circumstances and evidence provided by an applicant or petitioner in support of a waiver request should be evaluated (i.e., financial data showing that he or she does not have access to the filing fee amount in his or her monthly budget or the applicant or petitioner is supporting other family members, as documented by reliable evidence). Suggested documentary evidence to support a fee waiver request is contained in the "Documentation" section. This guidance does not apply to the $25 fee for fingerprinting associated with many applications and petitions. However, this waiver guidance does not alter the existing discretion of Service officers to waive the fingerprinting fee in exceptionally compelling situations financial hardship.

What is the implementation plan for the new fee waiver policy?

INS is distributing this field guidance to coincide with the October 15th implementation of the first fee increase contained in the fee increase regulation, [63 FR 43604]. After distribution of this guidance, and before issuing a rule amending 8 CFR 103.7(c), the Service will perform a field assessment to collect essential data on current fee waiver applicants. This financial study is being performed in order to develop a regulation on fee waivers that is equitable to applicants and petitioners, and financially feasible for the Service. The Service will publish a final rule after appropriate public notice and comment. This interim field guidance should be followed until a regulation amending 8 CFR 103.7(c) becomes effective. Additional instructions on the field's responsibilities in collection of data for the financial assessment will be distributed shortly.

GUIDELINES:

To ensure that the Service's fee waiver guidance is implemented consistently, is equitable to the applicant or petitioner, and financially feasible to support the program, special considerations should be given to those who demonstrate "inability to pay" as required under 8 CFR 103.7(c).

A. "Inability to pay"

In determining an applicant's or petitioner's "inability to pay", a Service officer may consider the following situations and criteria in adjudicating the fee waiver request:

- Whether an applicant or petitioner has demonstrated that within the last 180 days, he or she qualified for or received a "federal means-tested public benefit". "Federal means-tested public benefits" include, but are not limited to Food Stamps, Medicaid, Supplemental Security Income, and Temporary Assistance of Needy Families.

- Whether an applicant or petitioner has demonstrated that his or her household income, on which taxes were paid for the most recent tax year, is at or below the poverty level contained in the most recent poverty guidelines revised annually by the Secretary of Health and Human Services' "Poverty Guidelines," (See attached).

- Whether an applicant or petitioner is elderly (age 65 and over, at the time the fee request is submitted).

- Whether an applicant or petitioner is disabled. The disability should have been previously determined by the Social Security Administration (SSA), Health and Human Services (HHS), Veteran's Administration (VA), Department of Defense (DOD) or other appropriate federal agency. An applicant or petitioner may provide verification of his or her disability by submitting documentation showing that the disability has been previously determined by the SSA, HHS, VA, DOD, or other appropriate federal agency.

- The age and number of dependents in an applicant's or petitioner's family household who are seeking derivative status or benefits concurrently with the principal applicant or beneficiary.

- Humanitarian or compassionate reasons, either temporary or permanent, which justify a granting of a fee waiver request. For example: the applicant is temporarily destitute; the applicant does not own, possess, or control assets sufficient to pay the fee without causing substantial hardship; or an applicant on fixed income and confined to a nursing home.

- Any other evidence or factors that the Service officer believes establishes an applicant or petitioner's inability to pay the required filing fees.

B. Issues to be Considered

Under current regulations, any application or petition may be considered for a fee waiver. However, in considering fee waiver requests, Service officers should take into consideration the following issues:

- Self-Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents applicants and adjustment of status and employment authorization applicants, under the provisions of the Violence Against Women Act (VAWA). (I-360, I-485, and I-765). Due to the sensitive nature of applications and petitions associated with this category, Service officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96 and 5/6/97.

- Nonimmigrant Applications. Generally, nonimmigrants are required to demonstrate sufficient financial support for the duration of their stay in the United States (i.e., sufficient to overcome the public charge grounds of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (INA)). Examples of this type of application would be an application to extend or change nonimmigrant status (I-539). Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications.

- Family-based visa petitions and applications and petitions related to classifying an orphan as an immediate relative Petitioners for family-based visas must file an enforceable affidavit of support under section 213A of the INA, on behalf of the

beneficiaries at the time the beneficiaries are applying for adjustment of status. Those petitioners must prove that they have an income level of 125% of the most current published poverty guidelines. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions. In addition, the nature of applications and petitions associated with classifying an orphan as an immediate relative and applying for certificate of citizenship for adopted child (Form N-643) has the same considerations as the family-based petitions. Adoptive parents must demonstrate sufficient financial means to support the child in order to meet home study requirements. They must also file an affidavit of support on behalf of the adopted child. These applications and petitions should be treated the same as family-based visa petitions.

- Employment-based visa petitions and Employment Authorization Generally, beneficiaries and applicants are entering the United States specifically for employment, with sponsorship from their employer, or are obtaining employment after entering. Fee waiver requests should be adjudicated in light of the level of income and support required for approval of these types of applications or petitions.

- Travel Documents and Advance Parole. A fee waiver request made in connection with this type of application should be adjudicated in light of the applicant or petitioner's representations as to the distance, length, and source of income for the travel requested or proposed.

C. Special situations concerning Adjustment of Status Applications (I-485)

- Public Charge Concerns. The granting of a fee waiver does not necessarily subject the applicant or petitioner to public charge liability under other provisions of the INA, such as deportability under section 237(a)(5) or inadmissibility under section 212(a)(4).

- Exceptions to Public Charge Requirements. Refugees, Asylees, NACARA and Registry applicants are exempt from the Form I-485 requirements to show evidence that they are not likely to become a public charge. Therefore, these categories may be given wider latitude in required income levels when determining fee waivers.

- Self Petitioning Abused/Battered Spouses and Children of Citizens or Lawful Permanent Residents applicants and Adjustment of Status applicants under the provisions of the Violence Against Women Act (VAWA). This category should be given special consideration when determining whether they should be granted a fee waiver. Due to the sensitive nature of applications and petitions associated with this category, Service officers should refer to the detailed information on the treatment of this category contained in field guidance memoranda on VAWA dated 4/16/96 and 5/6/97.

IMPLEMENTATION:

A. Processing fee waiver requests

As of October 13, 1998, all pending and newly submitted fee waiver requests should be reviewed under these guidelines. All Service officers are asked to facilitate the adjudication of the fee waiver requests and the implementation of these guidelines. These guidelines only apply to application and petition filing fees contained in 8 CFR 103.7(b).

B. Documentation

Fee waiver requests should generally be decided based upon the initial evidence submitted in support of the fee waiver request, unless the Service officer determines that a request for additional evidence would be appropriate. Along with the affidavit or unsworn declaration pursuant to 28 U.S.C. 1746, as required by 8 CFR 103.7(c), the applicant *may* submit additional documentation to provide proof of the "inability to pay." All documents submitted by the applicant in support of a fee waiver request are subject to verification by the Service.

Suggested examples of documentation are:

- Evidence that an applicant has, within the last 180 days, qualified for or received a "federal means tested public benefit";

- Evidence which verifies an applicant's disability. An applicant or petitioner may provide verification of his or her disability by submitting documentation showing that the disability has been previously determined by the SSA, HHS, VA, DOD, or other appropriate federal agency;

- Employment records, pay stubs, W-2 forms, letter(s) from employer(s), and income tax returns (proof of filing of a tax return). The same documents may also be submitted for the dependents in the United States;

- Rent receipts, utility bills (such as gas, electricity, telephone, water), food, medical expense, child care receipts and receipts for other essential expenditures;

- Documentation to show all assets owned, possessed, or controlled by the applicant or petitioner, or by his or her dependents;

- Evidence of the applicant's living arrangements in the United States (living with relative, living in his or her own house, apartment, etc.), and evidence of whether his or her spouse, children, or other dependents are residing in his or her household in the United States;

- Evidence of the applicant's essential extraordinary expenditures or those of his or her dependents residing in the United States.

C. Public Information

The Office of Public Affairs is preparing a fact sheet to respond to media inquiries about the fee waiver guidance. Regional Offices please distribute to local offices with instructions to distribute to all local Congressional Offices in their jurisdiction.

D. Information to CBO/NGO Groups

All Service Offices must proactively communicate the fee waiver guidance and the suggested documentation that should support the fee waiver requests, to all community groups and local Congressional Offices in your area. All CBO/NGO groups should be notified that to facilitate the processing of fee waiver requests, applicants and petitioners should put a large notation *"fee waiver request enclosed*" on the outside of the mailing envelope containing their application or petition and fee waiver request. In addition, a similar notation should be placed on top of the affidavit and supporting information submitted in support of their request.

E. Point of Contact

If you have questions regarding these guidelines, their implementation, or the financial assessment, please contact Irene Hoffman in HQADN at (202) 514-4754.

Enclosure: 1998 Poverty Guidelines

U.S. Department of Justice
Immigration and Naturalization Service
Washington, DC 20536

FACT SHEET

10/09/98

INS Fee Waiver Guidance

As part of the August 14, 1998, regulation increasing filing fees for most immigration benefits, the Immigration and Naturalization Service (INS) pledged to review its current fee waiver policy to ensure that it would be fair to the applicant, promote consistency, and be reasonable for INS to administer. Because federal guidelines require the processing of immigration benefits to be self-supported by filing fees, the policy also must ensure that adequate fee revenue is collected by INS to fund application processing.

Generally, the INS has discretion to waive any application or petition filing fees if the applicant establishes that he/she is unable to pay the fee. The guidance maintains INS' discretionary authority to grant fee waivers, but provides direction on what constitutes "inability to pay."

Implementation of Fee Waiver Guidance

In conjunction with the first fee increases on October 13, 1998, INS issued fee waiver guidance to field offices, which will be effective until a final regulation amending the current fee waiver regulation is published in the Federal Register.

Before proceeding with a regulation, INS will conduct a field assessment to obtain data that will help build on the existing guidance and formulate a fee waiver regulation. INS expects to have an interim rule by summer 1999, and a final rule by the end of that year.

What is the Fee Waiver Field Guidance?

INS Service Officers currently have broad discretion in granting fee waivers. The field guidance, outlined below, will provide Service Officers with guidelines which should be considered when determining if a fee waiver is justified. However, the field guidance is not exhaustive. INS Service Officers will evaluate **all** factors, circumstances, and evidence supplied by the applicant before making a determination.

In all fee waiver requests applicants are required to demonstrate an **"inability to pay."** In determining "inability to pay," INS Service Officers may consider the following situations and criteria regarding the applicant:

- Within the last 180 days, he/she qualified for or received a "federal means tested public benefit," such as Food Stamps, Medicaid, Supplemental Security Income (SSI), and Temporary Assistance to Needy Families (TANF),

- His/her household income on which taxes were paid for the most recent tax year is at or below the poverty level contained in the most recent poverty guidelines revised annually by the Secretary of Health and Human Services.

- He/she is elderly (age 65 or older at the time the fee waiver request is submitted.)

- He/she is disabled. Applicant should submit verification of disability (see below, **How To Apply for a Fee Waiver.**)

- The age and number of dependents who are seeking derivative status or benefits concurrently with the principal applicant.

- Humanitarian and compassionate situations, such as: the applicant is temporarily destitute; the applicant does not own, possess, or control assets sufficient to pay the fee without a showing of substantial hardship; or an applicant is on a fixed income and confined to a nursing home.

- Any other evidence or factors that the INS Service Officer believes establishes an applicant's "inability to pay" the required filing fees.

Applicants should be aware that certain immigration benefits have income requirements or require evidence that the applicant or beneficiary is not likely to become a public charge (for example: nonimmigrant visa petitions, family-based visa petitions, classifying an orphan as an immediate relative, employment-based visa petitions, employment authorizations, travel documents, and advance parole.)

Documentation

Documentation, such as the suggested examples listed below, may be submitted to provide proof of the "inability to pay:"

- Evidence that an applicant has, within the last 180 days, qualified for or received a "federal means tested public benefit;"

- In case of disability, documentation showing that the disability has been previously determined by the Social Security Administration, Health and Human Services, Veteran's Administration, the Department of Defense or other appropriate federal agencies;

- Employment records, pay stubs, W-2 forms, letter(s) from employer(s), and income tax returns (proof of filing of a tax return) for the applicant. These documents may also be submitted for his/her dependents in the United States;

- Rent receipts, utility bills (such as gas, electricity, telephone, water), food, medical expenses, child care, and receipts for other essential expenditures;

- Documentation to show all assets owned, possessed, or controlled by the applicant or by his/her dependents;

- Evidence of applicant's living arrangements in the United States (living with relative, living in his/her own house apartment, etc.), and evidence of whether his/her spouse, children, or other dependents are living in his/her household in the United States;

- Evidence of essential, unexpected expenditures made by the applicant or his/her dependents living in the United States.

How To Apply for a Fee Waiver

- To apply for a fee waiver, an applicant must submit an affidavit-or unsworn declaration that is signed and dated and includes the statement: "I declare under penalty of perjury that the foregoing is true and correct"-requesting a fee waiver and stating the reasons why he/she is unable to pay the filing fee.

- The affidavit and supporting documentation (see above, **Documentation**) must be submitted along with the benefit application or petition.

- To facilitate the processing of fee waiver requests, applicants should write in large print **"Fee Waiver Request"** on the outside of the mailing envelope containing their application or petition and fee waiver request, as well as at the top of their affidavit and each page of their supporting information.

- If a fee waiver request is denied, the entire application package will be returned to the applicant, who must then begin the application process again by re-filing for the benefit with the appropriate fee.

- INS -

Last Modified 04/03/2002

[Code of Federal Regulations]
[Title 8, Volume 1]
[Revised as of January 1, 2001]
From the U.S. Government Printing Office via GPO Access
[**CITE: 8CFR103.7**]

[Page 96-102]

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 103--POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS--Table of Contents

Sec. 103.**7** Fees.

(c) Waiver of fees. (1) Except as otherwise provided in this paragraph and in Sec. 3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived by the Immigration Judge in any case under his/her jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the applicant, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. The officer of the Service having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his discretion, grant the waiver of fee. Fees for ``Passenger Travel Reports via Sea and Air'' and for special statistical tabulations may not be waived. The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived. The payment of the additional $500 fee prescribed by section 214(c)(9) of the Act when applying for petition for nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Act may not be waived.

(2) Fees under the Freedom of Information Act, as amended, may be waived or reduced where the Service determines such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(3) When the prescribed fee is for services to be performed by the clerk of court under section 344(a) of the Act, the affidavit for waiver of the fee shall be filed with the district director or officer in charge of the Service having administrative jurisdiction over the place in which the court is located at least **7** days prior to the date the fee is required to be paid. If the waiver is granted, there shall be delivered to the clerk of court by a Service representative on or before the date the fee is required to be paid, a notice prepared on Service letterhead and signed by the officer granting the waiver, that the fee has been waived pursuant to this paragraph.

(4) Fees for applications for Temporary Protected Status may be waived pursuant to 8 CFR 240.20.

October 5, 2001

Charles DeMore
District Director
San Francisco District Office
Immigration and Naturalization Service
630 Sansome Street
San Francisco, Ca 94111

RE: FEE WAIVER REQUEST FOR SPECIAL IMMIGRANT JUVENILE STATUS APPLICATION

Dear Mr. DeMore:

Attached please find a fee waiver request, pursuant to Title 8 of the Code of Federal Regulations, part 103.7(c), for XYZ's application for Special Immigrant Juvenile Status. Our office represents her in her dependency case in the Juvenile Court of the City and County of San Francisco.

As proof of her eligibility for a fee waiver, XYZ is submitting the attached declaration of indigence. XYZ is currently in San Francisco's foster care system and in no position to earn any income of her own. She is therefore unable to pay for the application fees.

If you have any further questions or concerns, please do not hesitate to contact me at (415) 555-0000. Thank you for your consideration.

Sincerely,

AGENCY

XYZ
Fee Waiver Request

FEE WAIVER REQUEST

DECLARATION

I, XYZ, hereby swear and declare:

1. I am fifteen years old. I am requesting a fee waiver for my attached application as provided by 8 C.F.R. § 103.7(c).

2. I am applying for Special Immigrant Juvenile Status. I am unable to pay the fees for my I-360, I-485 and I-765 forms.

3. I am unable to pay the application fee because I am a full-time student and am not working. I am a sophomore at Balboa High School. I have no income and no savings.

4. I currently live in a foster home and receive public assistance to cover my most basic living expenses.

5. I therefore request a fee waiver.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in San Francisco, California on January 12, 2001.

_____
XYZ

Appendix J

U.S. Department of Justice
Immigration and Naturalization Service

HQADN 70/6.1.7-P

425 I Street NW
Washington, DC 20536

JUL -9 1999

MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS IN CHARGE
SERVICE CENTER DIRECTORS
REGIONAL COUNSEL
DISTRICT COUNSEL

FROM: Thomas E. Cook
Acting Assistant Commissioner
Adjudications Division

Thomas Cook

SUBJECT: Special Immigrant Juveniles – Memorandum #2: Clarification of Interim Field Guidance

On August 7, 1998, the Office of Adjudications issued a memorandum providing interim field guidance on section 113 of Public Law 105-119, amending the special immigrant juvenile (SIJ) provisions of section 101(a)(27)(J) of the Immigration and Nationality Act (INA). The purpose of this memorandum is to provide clarification of the interim field guidance relating to the Attorney General's consent and on the documentation required to support a special immigrant juvenile petition. The clarification that is provided in this memorandum supercedes the previous guidance on these subjects.

Attorney General's Consent

New section 101(a)(27)(J) contains two provisions that require the Attorney General to consent in SIJ cases. One provision requires the Attorney General to consent to a juvenile court's jurisdiction over dependency proceedings for a child in the custody of the Immigration and Naturalization Service (INS). The other provision requires the Attorney General to consent to a juvenile court dependency order serving as a precondition to the grant of SIJ status. As an interim measure, district directors, in consultation with their district counsel, should continue to act as the consenting official in these cases.

Juveniles in INS Custody

In the case of juveniles in INS custody, the Attorney General's consent to the juvenile court's jurisdiction must be obtained before proceedings on issuing a dependency order for the juvenile are begun. Therefore, if a juvenile court issues a dependency order for a juvenile in INS custody without first obtaining the Attorney General's consent to the jurisdiction, the order is not valid.

Requests for the Attorney General to consent to a juveniles court's jurisdiction over a juvenile in INS custody must be made in writing and directed to the district director with jurisdiction over the juvenile's place of residence. The district director, in consultation with the district counsel, should consent to the juvenile court's jurisdiction if: 1) it appears that the juvenile would be eligible for SIJ status if a dependency order is issued; and 2) in the judgement of the district director, the dependency proceeding would be in the best interest of the juvenile.

Juveniles not in INS Custody

In the case of juveniles not in INS custody, the Attorney General's consent to the dependency order must be obtained as a precondition to the grant of SIJ status. Juvenile courts do not need the Attorney General's consent to take jurisdiction to issue dependency orders for these juveniles. Therefore, in the case of juveniles not in INS custody, INS officials should not become involved in juvenile court proceedings in order to consent to dependency orders. Rather, the Attorney General's consent to the dependency order should be reflected in a grant or denial of the petition for SIJ status.

A dependency order issued for a juvenile not in INS custody may serve as a precondition to a grant of SIJ status only if two elements are established. First, a juvenile court must have deemed the juvenile eligible for long-term foster care due to abuse neglect and abandonment. Second, it must have been determined in administrative or judicial proceedings that it would not be in the juvenile's best interest to be returned to the juvenile's or parent's previous country of nationality or country of last habitual residence. If both elements are established, consent to the order serving as a precondition must be granted. If either element is not established, consent must be refused.

If a dependency order or other supporting documentation submitted with an SIJ petition establish the above-mentioned elements for consent, the district director must consent to the order. After the consent is granted, the office should proceed to determine if the juvenile is otherwise eligible for SIJ status. While the record of the proceeding must reflect that the consent elements were established and that consent was granted, a separate notice of consent need not be issued to the petitioner. If SIJ status is ultimately granted, the Attorney General's consent may be implied from the grant. If SIJ status is ultimately denied for other eligibility reasons, the notice of denial should note that consent was granted in addition to the grounds for denial.

If a dependency order or other supporting documentation submitted with an SIJ petition do not establish the consent elements, the district director must refuse to consent to the order and eligibility for SIJ status need not be considered. A notice of denial stating that SIJ status is

denied because the Attorney General's consent to the dependency order is a precondition to the grant of status and that the petition failed to establish the requirements for consent must be issued.

Supporting Documentation for SIJ Petitions

SIJ petitions should be filed with INS supported by a juvenile court dependency order. Additional documentation submitted with the petition should include:

- Evidence of the juvenile's date and place of birth;
- Evidence of the juvenile's date and manner of entry into the United States;
- Evidence of the juvenile's current immigration status;
- Evidence that the juvenile court deemed the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment;
- Evidence that it would not be in the juvenile's best interest to be returned to the juvenile's or the parents' previous country of nationality or country of last habitual residence; and
- Evidence of the type of proceeding before the juvenile court that resulted in the dependency order.

Evidence that a dependency order was issued on account of abuse, neglect, or abandonment, and that it would not be in the juvenile's best interest to be removed from the United States is crucial to obtaining the Attorney General's consent to the dependency order. Documents filed with the juvenile court would be the most reliable evidence of these elements of consent. However, in many States documents submitted to or issued by the juvenile court in dependency proceedings may be subject to privacy restrictions. Therefore, if a dependency order does not include information establishing these crucial elements and State laws prevent court documents from being submitted to INS, a statement summarizing the evidence presented to the juvenile court during the dependency proceeding and the court's findings should be sufficient to establish the elements. In order for a statement to serve as acceptable evidence of these elements, the statement should be in the form of an affidavit or other signed, sworn statement, and be prepared by the court or the State agency or department in whose custody the juvenile has been placed. All other evidence the petitioner submits to establish the consent elements must also be considered in determining whether or not to consent to the dependency order.

Further Information

If you have questions regarding the information in this memorandum, they may be directed to Ann Palmer, Office of Adjudications at 202-307-0891.

Appendix K

TO: Persons Helping Immigrant Children in Dependency Proceedings
FR: Katherine Brady, Immigrant Legal Resource Center
DA: July 26, 1999

RE: New INS Memorandum on Special Immigrant Juvenile Status

The INS has issued a new memorandum intended to correct its August 1998 Interim Field Guidance on special immigrant juvenile status (SIJS) applications. While problems remain, this Memorandum is a real improvement. We congratulate INS for responding to the serious concerns raised by many advocates over the past year.

A copy of the INS Memorandum, dated July 9, 1999, is attached. We suggest that you show this to your local INS adjudicators if needed, since it is possible that it will not yet have come to their attention.

For those new to the area, special immigrant juvenile status (SIJS) is a federal law that helps immigrant children who are in permanent placement in dependency proceedings to get lawful immigration status and a "green card." The memo that you are reading is from the Immigrant Legal Resource Center (ILRC), a non-profit organization that provides free technical assistance and a free basic manual about SIJS to anyone helping immigrant children to get this status. This memo will highlight main points and point out some problem areas in the attached INS Memorandum. It assumes some knowledge about SIJS; see the enclosed flyer for how to contact us if you have questions. Also, see the end of this memo for a list of other memoranda and materials available from the ILRC.

The main points that the July 9 INS Memorandum addresses are (a) that the INS should have no contact with juvenile court, unless the child was in INS custody prior to coming to juvenile court; (b) what the standard is for granting "consent" in cases where the child was in INS custody prior to coming to juvenile court; (c) what evidence is required to show that the judge's order was due to abuse, neglect or abandonment; and (d) what other information and evidence must be provided.

A. The INS should have no contact with juvenile courts and does not need to "consent" to juvenile courts making any orders, except in cases where the juvenile was in prior INS custody.

The SIJS law requires INS "consent" in two different situations: the relatively rare situation of the juvenile who was in INS custody before coming to the juvenile court, and the situations of all other immigrant juveniles who had no contact with INS, or at least were not in INS custody, before they came to juvenile proceedings. For children who were *not* in prior INS custody, this Memorandum clarifies what INS "consent" is about.

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The Memorandum adopts the position that advocates have taken, which is that INS should not have contact with juvenile court and should just "consent" to using the judge's order in the process of adjudicating the SIJS application. The Memorandum states at page 2 (under *"Juveniles not in INS Custody"*):

> "Juvenile courts do not need the Attorney General's consent to take jurisdiction to issue dependency orders for [juveniles not in INS custody]. Therefore, in the case of juveniles not in INS custody, INS officials should not become involved in juvenile court proceedings in order to consent to dependency orders. Rather, the Attorney General's consent to the dependency order should be reflected in a grant or denial of the petition for SIJ status."

This clarification was necessary because some INS offices interpreted the August 1998 Field Guidance to require them to liaison with juvenile courts and give the courts consent to make certain orders, even for children who were not in INS custody. The Memorandum makes it clear that INS offices should not do this.

B. Rules for children who are in INS custody before coming to dependency hearings

For the relatively small number of juveniles who are in INS constructive or real custody before coming to dependency court, the INS must consent to a juvenile court making a dependency order. Juvenile court orders made without this consent will be viewed as invalid, at least by the INS. Requests for INS consent for a court to take jurisdiction must be made in writing to the District Director with jurisdiction over the juvenile's place of residence. The district director

> "should consent to the juvenile court's jurisdiction if: 1) it appears that the juvenile would be eligible for SIJ status if a dependency order is issued; and 2) in the judgment of the district director, the dependency proceeding would be in the best interest of the juvenile." Memorandum, page 2, under *"Juveniles in INS Custody."*

ILRC comment: Since dependency proceedings are expert governmental deliberations dedicated to identifying and implementing a plan that is in the best interests of the child, it should be an extremely rare case where the District Director decides that such proceedings are not in the child's best interest.

C. Evidence to show abuse, abandonment or neglect, and that it is not in the child's best interest to return to the home country

The "elements of consent." The Memorandum states that if two facts are established, the INS must "consent" to letting the juvenile court judge's order serve as a basis for SIJS. It

refers to these two points to be proved as the "elements for consent."

> "A dependency order issued for a juvenile not in INS custody may serve as a precondition to a grant of SIJ status only if two elements are established. First, ***a juvenile court must have deemed the juvenile eligible for long-term foster care due to abuse, neglect and abandonment.*** Second, it must have been determined in administrative or judicial proceedings that ***it would not be in the juvenile's best interest to be returned to the juvenile's or parent's [home country]***... If a dependency order or other supporting documentation submitted with an SIJ petition establish the above mentioned elements for consent, the district director ***must consent*** to the order." Memorandum, page 2 under *"Juveniles not in INS Custody"* (emphasis added).

"Deemed eligible for long term foster care due to abuse, neglect or abandonment." First, remember that immigration regulations define "deemed eligible for long term foster care" to mean that the court decided that parental reunification was not a viable option, and the child should proceed or have proceeded to foster care, guardianship, or adoption. 8 CFR 204.11(a). Thus a child placed in guardianship after a court ended reunification efforts with her parents is still eligible to adjust status through SIJS.

What evidence must the court include in its order to establish that it made the order due to abuse, neglect or abandonment? Many advocates feel a legal and/or ethical obligation to disclose only the legal basis for the dependency and not to give further factual information. For example, a court order could state that "the minor was made a dependent of this court and deemed eligible for long term foster care under Calif. W&I Code §300(a) (physical abuse) and §300(d) (sexual abuse)." This certainly is some "Evidence that the juvenile court deemed the juvenile eligible for long-term foster care due to abuse, neglect or abandonment," which is what is required from the list on page 3 of the Memorandum.

Other advocates have been providing more factual information, often in response to INS threats to deny the SIJS application, and depending upon privacy rules in their courts. If the INS requests information that you believe that it is illegal or unethical to provide, we recommend that you speak with other groups in your area (including the Bar Association) and ask to meet with local INS about the issue; contact the INS Washington office (the telephone of Ann Palmer of that office appears at the end of the memo); and/or contact the ILRC (see attached flyer).

Not in the child's best interest to return to the home country. Evidence also must be presented that it was "determined in administrative or judicial proceedings that it would not be in the juvenile's best interest to be returned" to the juvenile's or parent's home country. Page 2. Thus some statement must be provided that a court or another body considered the issue and made the determination. (Some states have established cooperative relationships with the Mexican department of social services, which will investigate or conduct home studies in Mexico. For information, contact the ILRC.)

Note, however, that on page 3 of the Memorandum, in the list of "Supporting Documentation for SIJ Petitions," it says that documentation should include "Evidence that it would not be in the juvenile's best interest" to return to the home country. (Emphasis added.) Some INS offices will read that as requiring not just a statement that a court or agency considered the issue, but an actual statement about the situation in the home country (or the lack of information about it). Advocates will raise the legal issue[1] with INS, but as a practical matter it is unlikely that we will get a written response in the near future. Certainly the judge's order must state that it has made such a determination. Again, if information is demanded that it is illegal or unethical for you to provide, meet with local INS, contact national INS, or contact the ILRC, as discussed in the preceding paragraph.

Providing the information: a judge's order, original documents, or a sworn statement. We recommend that whenever possible, advocates provide the information about the "consent elements" in the *dependency court judge's order*. The Memorandum states that "if a dependency order does not include information establishing" the consent elements, the INS will look to ***documents filed with the court or sworn statements by the court or state agency or department.*** Page 3.

Regarding documents filed with the court, the Memorandum recognizes that state privacy laws may prohibit handing over confidential dependency court documents to the INS. It states that while such documents "would be the most reliable evidence" of the elements to be proved, "in many States documents submitted to or issued by the juvenile court in dependency proceedings may be subject to privacy restrictions." Page 3. *Advocates who demonstrate that dependency proceedings are protected by state privacy laws should be able to avoid giving INS documents filed with or issued by the court or state agencies.*

Regarding the sworn statement by court or state department or agency, this appears to be a safety device provided in case the juvenile court judge is not able or willing to provide sufficient information and court documents cannot be presented. The memo states:

> "Therefore *if* a dependency order does not include information establishing these crucial elements and State laws prevent court documents from being submitted to INS, a statement summarizing the evidence presented to the juvenile court during the dependency proceeding and the court's findings should be sufficient to establish the elements. In order for a statement to serve as acceptable evidence of these elements, the

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[1] This goes beyond the requirements of the statute, which provides that a special immigrant juvenile is a person "for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence ...." INA §101(a)(27)(J)(ii), 8 USC §1101(a)(27)(J)(ii). However, the legislative history is less clear. Contact the ILRC if you wish to contest this issue.

statement should be in the form of an affidavit or other signed, sworn statement, and be prepared by the court or the State agency or department in whose custody the juvenile has been placed. All other evidence the petitioner submits to establish the consent elements must also be considered in determining whether or not to consent to the dependency order." Page 3 (emphasis supplied).

Thus when needed a social worker, department attorney, or other responsible party from court or state agency or department can submit a sworn statement. Most INS offices accept un-notarized sworn statements with the following signature statement: "I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief." Again, the person providing the sworn statement must consider legal and ethical confidentiality concerns when deciding what information to include.

D. Other information required

The Memorandum states that the application should include "documentation" showing "evidence" of the juvenile's **date and place of birth, date and manner of entry into the United States, and current immigration status**. Applicants already submit evidence of age, which is required by the existing INS regulation and which usually means submitting a birth certificate or some substitute. The ILRC manual on SIJS discusses ways to locate foreign birth certificates and substitute documents to use when birth certificates are not available.

Regarding place and manner of entry and immigration status, in the case of children who entered without inspection (for example, by secretly crossing the Mexican/U.S. border), this evidence could be a sworn statement by the social worker, or a statement in the judge's order, regarding what the child or relatives said happened. In the case of children who entered the U.S. legally (e.g., on a visitor's visa), if the child or relatives have some document showing the entry, that should be presented. Contact local immigration attorneys or the ILRC (see attached flyer) for any questions about immigration status or manner of entry.

Evidence of the **type of juvenile court proceeding** also is required (dependency, delinquency, probate, etc.). That probably will be identified in the judge's order.

OTHER MATERIALS AVAILABLE FROM THE ILRC

Contact the ILRC for a copy of our basic manual on SIJS, and for a copy of: a 1999 HHS memorandum on public benefits for immigrant children in dependency; a 1999 INS memorandum on the need to expedite children's adjustment interviews if there is a danger of "aging out," or the original August 1998 INS Field Guidance on SIJS. See attached flyer for how to contact the ILRC, and how to join our E-mail list serve for more frequent updates. In requesting the government memoranda described above, it is most convenient for us if you use E-mail but we will fax or mail the documents as well.

Appendix L - Still in Progress

Appendix M

Proposed Changes in the SIJS Statute: The Unaccompanied Alien Child Protection Act of 2001

In January 2001, Senator Dianne Feinstein introduced an omnibus bill addressing several concerns of unaccompanied immigrant children, the "Unaccompanied Alien Child Protection Act of 2001." At this writing Congress has not voted on any version of the bill. The following is a summary of changes that the bill, as it was originally introduced, would make in the special immigrant juvenile law. Advocates should keep abreast of developments, to see if the bill actually becomes law and if so, in what ways it differs from the summary supplied here.

The bill is Senate Bill 121 and can be found at http://thomas.loc.gov. At that site, request information on S.121. The special immigrant juvenile section appears at § 401 of the bill. Section 401 of proposed S. 121, in its current form, would:

- eliminate the current requirement that the INS must give "consent" to each application (based on the INS assessment that the judge acted based on abuse, neglect or abandonment). In its place, the proposed law would require that the newly created Office of Children's Services of the Department of Justice "has certified to the Commissioner [of INS] that the classification of an alien as a special immigrant under this subparagraph has not been made solely to provide an immigration benefit to that alien." Proposed INA § 101(a)(27)(J)(iii). The proposed Office of Children's Services is an agency within the Department of Justice that coordinates law and policy for unaccompanied noncitizen children. See S. 122, § 101 for more on the Office of Children's Services.

- provide that the following additional grounds of inadmissibility do not apply at all to SIJS applicants: inadmissibility based on
    - the "health" grounds (this means that applicants cannot be barred from SIJS based on their having diseases such as HIV and TB, or being classed as a "drug abuser/drug addict" or person with a mental condition that poses a threat to self or others)
    - visa fraud and false claim to U.S. citizenship
    - alien smuggling
    - document fraud
    - student visa abusers

  See S. 122 § 401(b)(1), modifying INA § 245(h)(2)(A).

- add a discretionary waiver for the relatively rare case of an SIJS applicant found inadmissible for conviction in *adult court*, or admission, of a crime involving moral turpitude, drug offense, or multiple offenses, under INA § 212(a)(2)(A) and (B). The waiver would be available if the offense arose as a consequence of the child being unaccompanied. Unfortunately, the proposed law does not provide a

waiver for children inadmissible because INS suspects them of aiding or being drug traffickers, under INA § 212(a)(2)(C).

- include children placed in the custody of individuals or entities appointed by the State, as well as children placed under the custody or care of a department or agency of the State. Proposed INA § 101(a)(27)(J)(i).

- include children declared eligible for long term foster care due to "abuse, neglect, abandonment, or a similar basis found under State law." This would solve the problem of children who are made dependents due to "destitution" and similar terms used in some state statutes. Proposed INA § 101(a)(27)(J)(i). .

- create a grandfather clause for all children who on or after November 29, 1990 was under the jurisdiction of state-licensed foster care, who was emancipated before the date of enactment of the proposed legislation, and who has never had an SIJS application filed for him or her. Grandfather applicants will have three years after the effective date of this law or two years after the INS promulgates any regulation to implement the law, whichever is greater.

OMB No. 1115-0117

U.S. Department of Justice
Immigration and Naturalization Service

Petition for Amerasian, Widow(er), or Special Immigrant

INSTRUCTIONS

Purpose of This Form.
This petition is used to classify an alien as:

- an Amenasian;
- a Widow or Widower,
- a Battered or Abused Spouse or Chid of a U.S. Citizen or Lawful Permanent Resident
- a Special Immigrant (Religious Worker; Panama Canal Company Employee, Canal Zone Government Employee, U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member, Juvenile Court Dependent or Armed Forces Member).

Initial Evidence Requirements.
If these instructions state that a copy of a document may be filed with this petition, and you choose to send us the original, we may keep that original for our records. Any foreign language document must be accompanied by an English translation certified by the translator that he/she is competent to translate the foreign language into English and that the translation is accurate.

Amerasian. Any person who is 18 or older, an emancipated minor, or a U.S. corporation may file this petition for an alien who was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950, and before October 22, 1982, and was fathered by a U.S. citizen.

The petition must be filed with:

- copies of evidence showing that the person this petition is for was born in one of the above countries between those dates. If he/she was born in Vietnam, you must also submit a copy of his/her Vietnamese I.D. card, or an affidavit explaining why it is not available;
- copies of evidence establishing the parentage of the person, and of evidence establishing that the biological father was a U.S. citizen. Examples of documents that may be submitted are birth or baptismal records or other religious documents; local civil records; an affidavit, correspondence or evidence of financial support from the father; photographs of the father (especially with the child); or, absent other documents, affidavits from knowledgeable witnesses which detail the parentage of the child and how they know such facts;
- a photograph of the person;
- if the person is married, submit a copy of the marriage certificate, and proof of the termination of any prior marriages; and
- if the person is under 18 years old, submit a written statement from his/her mother or legal guardian which:
  - irrevocably releases him/her for emigration and authorizes the placement agencies to make necessary decisions for his/her immediate care until a sponsor receives custody;
  - shows an understanding of the effects of the release, and states whether any money was paid or coercion used prior to obtaining the release; and
  - includes the full name, date and place of birth, and present or permanent address of the mother or guardian, and with the signature of the mother or guardian on the release authenticated by a local registrar, court of minors, or a U.S. immigration or consular officer.

The following sponsorship documents are also required. You may file these documents with the petition, or wait until we review the petition and request them. However, not filing them with the petition will add to the overall processing time.

- An Affidavit of Financial Support executed by the sponsor, with the evidence of financial ability required by that form. Please note that the original sponsor remains financially responsible for the Amerasian if any subsequent sponsor fails in this area;
- Copies of evidence showing that the sponsor is at least 21 years old and is a U.S. citizen or permanent resident;
- Fingerprints of the sponsor on Form FD-258; and
- If this petition is for a person under 18 years old, the following documents issued by a placement agency must be submitted:
  - a copy of the private, public or state agency's license to place children in the U.S., proof of the agency's recent experience in the intercountry placement of children and of the agency's financial ability to arrange the placement;
  - a favorable home study of the sponsor conducted by a legally authorized agency;
  - a pre-placement report from the agency, including information regarding any family separation or dislocation abroad that would result from the placement;
  - a written description of the orientation given to the sponsor and to the parent or guardian on the legal and cultural aspects of the placement;
  - a statement from the agency showing that the sponsor has been given a report on the pre-placement screening and evaluation of the child; and
  - a written plan from the agency to provide follow-up services, including mediation and counseling, and describing the contingency plans to place the person this petition is for in another suitable home if the initial placement fails.

Widow/Widower of a United States Citizen. You may file this petition for yourself if:

- you were married for at least two years to a U.S. citizen who is now deceased and who was a U.S. citizen at the time of death;
- your citizen spouse's death was less than two years ago;
- you were not legally separated from your citizen spouse at the time of death; and
- you have not remarried.

The petition must be filed with:

- a copy of your marriage certificate to the U.S. citizen and proof of termination of any pnor marriages of either of you;
- copies of evidence that your spouse was a U.S. citizen, such as a birth certificate if born in the U.S., Naturalization Certificate or Certificate of Citizenship issued by this Service, Form FS-240, Report of Birth Abroad of a Citizen of the United States; or a U.S. passport which was valid at the time of the citizen's death; and
- a copy of the death certificate of your U.S. citizen spouse.

Self-Petitioning Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident. You may self-petition for immediate relative or famity-sponsored immigrant classification if you:

- are now the spouse or child of an abusive U.S. citizen or lawful permanent resident;
- are eligible for immigrant classification based on that relationship;
- are now residing in the United States;
- have resided in the United States with the U.S. citizen or lawful permanent resident abuser in the past;
- have been battered by, or have been the subject of extreme cruelty perpetrated by:
  - -- your U.S. citizen or lawful permanent resident spouse during the marriage; or are the parent of a child who has been battered by or has been the subject of extreme cruelty perpetrated by, your abusive citizen or lawful permanent resident spouse during your marriage; or
  - -- your citizen or lawful permanent resident parent while residing with that parent;
- are a person of good moral character;
- are a person whose removal or deportation would result in extreme hardship to yourself, or to your child if you are a spouse; and if you
- are a spouse who entered into the marriage to the citizen or lawful permanent resident abuser in good faith.

NOTE: Divorce or other legal termination of the marriage to the abuser AFTER the self-petition is properly filed with INS will not be the sole basis for denial or revocation of an approved self-petition. If you remarry before you become a lawful permanent resident, however, your self-petition will be denied or the approval revoked.

Your self-petition may be filed with any credible relevant evidence of eligibility. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of INS; therefore, you are encouraged to provide the following documentation:

- evidence of the abuser's U.S. citizenship or lawful permanent resident status;
- marriage and divorce decrees, birth certificates, or other evidence of your legal relationship to the abuser;
- one or more documents showing that you and the abuser have resided together in the United States in the past, such as employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, or affidavits;
- one or more documents showing that you are now residing in the United States, such as the documents listed above;
- evidence of the abuse, such as reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. If you have an order of protection or have taken other legal steps to end the abuse, you should submit copies of those court documents;
- if you are more than 14 years of age, your affidavit of good moral character accompanied by a local police clearance, state-issued criminal background check, or similar report from each locality or state in the United States or abroad in which you have resided for six or more months during the three (3) year period immediately preceding the filing of your sellf-petition;
- affidavits, birth certificates of children, medical reports and other relevant credible evidence of the extreme hardship that would result if you were to be removed or deported; and
- if you are a spouse, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding your courtship, wedding ceremony, shared residence and experiences showing that your marriage was entered in good faith.

Special Immigrant Juvenile. Any person, including the alien, may file this petition for an alien who:

- is unmarried and less than 21 years old;
- has been declared dependent upon a juvenile court in the United States or who such a court has legally committed to, or placed under the custody of, an agency or department of a state and who has been found eligible for long-term foster care; and
- has been the subject of administrative or judicial proceedings in which it was determined that it would not be in the juvenile's best interests to be returned to the juvenile's or his/her parent's country of nationality or last habitual residence.

NOTE: After a special immigrant juvenile becomes a permanent resident, his or her parent(s) may not receive any immigration benefit based on the relationship to the juvenile.

The petition must be filed with:

- a copy of the juvenile's birth certificate or other evidence of his or her age;
- copies of the court or administrative document(s) upon which the claim to eligibility is based.

Special Immigrant Religious Worker. Any person, including the alien, may file this petition for an alien who for the past two (2) years has been a member of a religious denomination which has a bona fide nonprofit, religious organization in the U.S; and who has been carrying on the vocation, professional work, or other work described below, continuously for the past two (2) years; and seeks to enter the U.S. to work solely:

- as a minister of that denomination; or
- in a professional capacity in a religious vocation or occupation for that organization; or
- in a religious vocation or occupation for the organization or its nonprofit affiliate.

NOTE: A petition for a special immigrant for a person who is not a minister may only be filed until October 1, 2000.

The petition must be filed with:

- a letter from the authorized official of the religious organization establishing that the proposed services and alien qualify as above;
- a letter from the authorized official of the religious organization attesting to the alien's membership in the religious denomination and explaining, in detail, the person's religious work and all employment during the past two (2) years and the proposed employment; and
- evidence establishing that the religious organization, and any affiliate which will employ the person, is a bona fide nonprofit religious organization in the U.S. and is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

Special immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. government in the Canal Zone. Any person may file this petition for an alien who, at the time the Panama Canal Treaty of 1977 entered into force, either:

- was resident in the Canal Zone and had been employed by the Panama Canal Company or Canal Zone Government for at least one (1) year, or
- was a Panamanian national and either honorably retired from U.S. Government employment in the Canal Zone with a total of 15 or more years of faithful service or so employed for 15 years and since honorably retired; or
- was an employee of the Panama Canal Company or Canal Zone government, had performed faithful service for five (5) years or more as an employee, and whose personal safety, or the personal safety of his/her spouse or child, is in danger as a direct result of the special nature of his/her employment and as a direct result of the Treaty.

The petition must be filed with:

- a letter from the Panama Canal Company, Canal Zone government or U.S. government agency employing the person in the Canal Zone, indicating the length and circumstances of employment and any retirement or termination; and
- copies of evidence to establish any claim of danger to personal safety.

Special Immigrant Physician. Any person may file this petition for an alien who:

- graduated from a medical school or qualified to practice medicine in a foreign state;
- was fully and permanently licensed to practice medicine in a State of the U.S. on January 9, 1978, and was practicing medicine in a State on that date;
- entered the U.S. as an "H" or "J" nonimmigrant before January 9, 1978; and
- has been continuously present in the U.S. and continuously engaged in the practice or study of medicine since the date of such entry.

The petition must be filed with:

- letters from the person's employers, detailing his/her employment since January 8, 1978, including the current employment; and
- copies of relevant documents that demonstrate that the person filed for meets all the above criteria.

Special Immigrant International Organization Employee or family member. Certain long-term "G" and "N" nonimmigrant employees of a qualifying international organization entitled to enjoy privileges, exemptions and immunities under the International Organizations Immunities Act, and certain relatives of such an employee, may be eligible to apply for classification as a Special Immigrant. To determine eligibility, contact the qualifying international organization or your local INS office.

The petition must be filed with:

- a letter from the international organization demonstrating that it is a qualifying organization and explaining the circumstances of qualifying employment and the immigration status held by the person the petition is for, and
- copies of evidence documenting the relationship between the person this petition is for and the employee.

Armed Forces Member. You may file this petition for yourself, if:

- you have served honorably on active duty in the Armed Forces of the United States after October 15, 1978;
- you originally lawfully enlisted outside the United States under a treaty or agreement in effect on October 1, 1991, for a period or periods aggregating:
  - twelve (12) years, and were never separated from such service except under honorable conditions; or
  - six years, are now on active duty, and have reenlisted to incur a total active duty service obligation of at least 12 years;
- you are a national of an independent state which maintains a treaty or agreement allowing nationals of that state to enlist in the United States Armed Forces each year; and
- the executive department under which you have served or are serving has recommended you for this

The petition must be filed with:

- certified proof issued by the authorizing official of the executive department in which you are serving or have served which certifies that you have the required honorable active duty service and/or commitment; and
- your birth certificate.

General Filing Instructions.

Please answer all questions by typing or clearly printing in black ink only. Indicate that an item is not applicable with "N/A." If an answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item the answer refers to. Every petition must be properly signed, and accompanied by the proper fee. If you are under 14 years of age, your parent or guardian may sign the petition.

Where to File.

If you are filing for a Special Immigrant Juvenile, file the petition at the local INS office having jurisdiction over the place he/she lives.

If you are filing for Amerasian classification and the person you are filing for is outside the United States, you may file this petition at the INS office that has jurisdiction over the place he/she lives or the office that has jurisdiction over the place he/she will live.

If you are in the United States and filing as a Widow/Widower you may file this petition together with your application for adjustment of status.

If this petition is for an Amerasian, a Widow/Widower, or a Special Immigrant Armed Forces member, and that person lives outside the United States, you may file this petition at the INS office overseas or the U.S. consulate or embassy abroad having jurisdiction over the area in which he or she lives.

In all other instances (except for a self-petitioning battered or abused spouse or child described below), file this petition at an INS Service Center, as follows:

If you live in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail this petition to USINS, Vermont Service Center, 75 Lower Welden Street, St. Albans, VT 05479-0001.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail this petition to USINS, Texas Service Center, P.O. Box 152122, Dept A, Irving, TX 75015-2122.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail this petition to USINS, California Service Center, P.O. Box 10360, Laguna Niguel, CA 92607-0360

If you live elsewhere in the U.S., mail this petition to USINS, Nebraska Service Center, 850 S Street, Lincoln, NE 68501-2521

If you are a self petitioning battered spouse or abused spouse or child, mail your completed Form I-360 with supporting documents and correct fee to the Vermont Service Center at the following address:

USINS
Vermont Service Center
75 Lower Welden Street,
St. Albans, VT. 05479

If the Vermont Service Center later sends you a Notice of Approval of your petition, you may apply at your local INS office to adjust your status as a lawful permanent resident.

Public Service Information. The National Domestic Violence Hotline povides information, crisis intervention and referrals to local service providers, including legal assistance organizations, to victims of domestic violence or anyone calling on their behalf at 1-800-799-7233 or TDD at 1-800-787-3244 TTD. The hotline services are available 24 hours a day seven (7) days a week, toll-free from anywhere in the United States, Puerto Rico or the Virgin Islands. The staff and volunteers speak both English and Spanish and have access to translators in 139 languages.

Fee.
The fee for this petition to $110.00, except that there is no fee if you are filing for an Amerasian. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $30.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information.
Rejection. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that the petition is deficient You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by the Service.

Initial processing. Once the petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility and we may deny your petition.

NOTE: A self-petitioning battered or abused spouse or child of a U.S. citizen or lawful permanent resident may submit any relevant credible evidence in place of the suggested evidence.

Requests for additional information or interview. We may request additional information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. If you establish that the person this petition is for is eligible for the requested classification, we will approve the petition. We will send it to the U.S. Embassy/Consulate for visa issuance unless he or she is in the U.S. and appears eligible and intends to apply for adjustment to permanent resident status while here. If you do not establish eligibility, we will deny the petition. We will notify you in writing of our decision.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Forms and Information.
To request INS forms, call our toll free number at 1-800-870-3676. You may also obtain INS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center (NCSC) at 1-800-375-5283 or from the INS Internet website at www.ins.usdoj.gov.

Privacy Act Notice.
We ask for the information on this form, and associated evidence to determine if you have established eligibility for the immigration benefit you are seeking. Our legal right to ask for this information is in 8 USC 1154. We may provide this information to other govemment agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex Accordingly, the reporting burden for this collection of information is computed as follows: (1) leaming about the law and form, 15 minutes; (2) completing the form, 20 minutes; and (3) assembling and filing the application, 85 minutes for an estimated average of 2 hours per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, HQPDI, 425 I Street N.W., Room 4034, Washington, D.C. 20536; OMB No. 1115-0117. **DO NOT MAIL YOUR COMPLETED APPLICATION TO THIS ADDRESS.**

OMB No. 1115-0117

U.S. Department of Justice
Immigration and Naturalization Service

Petition for Amerasian, Widow(er), or Special Immigrant

START HERE - Please Type or Print

Part 1. Information about person or organization filing this petition.

(Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want INS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name	Given Name	Middle Initial
Company or Organization Name		

Address - C/O

Street Number and Name	Apt. #
City	State or Province
Country	Zip/Postal Code
U.S. Social Security #	A # / IRS Tax # (if any)

Part 2. Classification Requested (check one):

a. ☐ Amerasian
b. ☐ Widow(er) of a U.S. citizen who died within the past two (2) years
c. ☐ Special Immigrant Juvenile
d. ☐ Special Immigrant Religious Worker
e. ☐ Special Immigrant based on employrnent with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
f. ☐ Special Immigrant Physician
g. ☐ Special Immigrant International Organization Employee or family member
h. ☐ Special Immigrant Armed Forces Member
i. ☐ Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
j. ☐ Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
k. ☐ Other, explain: _____

Part 3. Information about the person this petition is for.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name	Apt. #
City	State or Province
Country	Zip/Postal Code
Date of Birth *(Month/Day/Year)*	Country of Birth
U.S. Social Security #	A # *(if any)*

Marital Status: ☐ Single ☐ Married ☐ Divorced ☐ Widowed

Complete the items below if this person is in the United States:

Date of Arrival *(Month/Day/Year)*	I-94#
Current Nonimmigrant Status	Expires on *(Month/Day/Year)*

Continued on back.

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner/ Applicant Interviewed ☐ Benefitiary Interviewed	
☐ I-485 Filed Concurrently ☐ Bene "A" File Reviewed	
Classification	
Consulate	
Priority Date	
Remarks:	
Action Block	

To Be Completed by *Attorney or Representative,* if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

Part 4. Processing Information.

Below give to United States Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City	Country

If you gave a United States address in Part 3, print the person's foreign address below. If his/her native alphabet does not use Roman letters, print his/her name and foreign address in the native alphabet.

Name	Address

Sex of the person this petition is for.	☐ Male	☐ Female
Are you filing any other petitions or applications with this one?	☐ No	☐ Yes (How many? _____)
Is the person this petition is for in exclusion or deportation proceedings?	☐ No	☐ Yes (Explain an a separate sheet of paper)
Has the person this petition is for ever worked in the U.S. without permission?	☐ No	☐ Yes (Explain an a separate sheet of paper)
Is an appilication for adjustment of status attached to this petition?	☐ No	☐ Yes

Part 5. Complete only if filing for an Amerasian.

Section A. Information about the mother of the Amerasian

Family Name	Given Name	Middle Initial

Living? ☐ No (Give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Address

Section B. Information about the father of the Amerasian: If possible, attach a notarized statement from the father regarding parentage. Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name	Given Name	Middle Initial

Date of Birth (Month/Day/Year)	Country of Birth

Living? ☐ No (give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Home Address

Home Phone #	Work Phone #

At the time the Amerasian was conceived:

☐ The father was in the military (indicate branch of service below - and give service number here): _____

☐ Army ☐ Air Force ☐ Navy ☐ Marine Corps ☐ Coast Guard

☐ The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.

☐ The father was not in the military, and was not a civilian employed abroad. (Attach a full explanation of the circumstances.)

Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.

Section A. Information about the Juvenile

List any other names used.

Answer the following questions regarding the person this petition is for. If you answer "no," explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state?	☐ No	☐ Yes
Does he/she continue to be eligible for long term foster care?	☐ No	☐ Yes

Continued on next page.

Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.

Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.

Family Name	Given Name	Middle Initial

Date of Birth *(Month/Day/Year)*	Country of Birth	Date of Death *(Month/Day/Year)*

He or she is now, or was at time of death a (check one):

- ☐ U.S. citizen born in the United States.
- ☐ U.S. citizen born abroad to U.S. citizen parents.
- ☐ U.S. citizen through Naturalization *(Show A #)* _____
- ☐ U.S. lawful permanent resident (Show A #) _____
- ☐ Other, explain _____

Section B. Additional Information about you.

How many times have you been married?	How many times was the person in Section A married?	Give the date and place you and the person in Section A were married. *(If you are a self-petitioning child, write: "N/A")*

When did you live with the person named in Section A? From *(Month/Year)* _____ until *(Month/Year)* _____

If you are filing as a widow/widower, were you legally separated at the time of to U.S citizens's death? ☐ No ☐ Yes, *(attach explanation).*

Give the last address at which you lived together with the person named in Section A, and show the last date that you lived together with that person at that address:

If you we filing as a self-petitioning spouse, have any of your children filed separate self-petitions? ☐ No ☐ Yes *(show child(ren)'s full names):*

Part 8. Information about the spouse and children of the person this petition is for.

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Spouse ☐ Child		A #
B. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
C. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
D. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
E. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #
F. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A #

G. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A#
H. Family Name	Given Name	Middle Initial	Date of Birth *(Month/Day/Year)*
Country of Birth	Relationship ☐ Child		A#

Part 9. Signature.

Read the information on penalties in the instructions before completing this part. If you are going to file this petition at an INS office in the United States, sign below. If you are going to file it at a U.S. consulate or INS office overseas, sign in front of a U.S. INS or consular official.

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf at an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Signature Date

Signature of INS or Consular Official	Print Name	Date

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for a requested benefit and it may have to be denied.

Part 10. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date
Firm Name and Address		

OMB No. 1115-0053

U.S. Department of Justice
Immigration and Naturalization Service

Form I-485, Application to Register Permanent Resident or Adjust Status

START HERE - Please Type or Print

Part 1. Information About You.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name | Apt. #

City

State	Zip Code
Date of Birth (month/day/year)	Country of Birth
Social Security #	A # (if any)
Date of Last Arrival (month/day/year)	I-94 #
Current INS Status	Expires on (month/day/year)

Part 2. Application Type. *(check one)*

I am applying for an adjustment to permanent resident status because:

a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Atttach a copy of the approval notice-- or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)

b. ☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.

c. ☐ I entered as a K-1 fiance(e) of a U.S. citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiance(e). [Attach a copy of the fiance(e) petition approval notice and the marriage certificate.]

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

f. ☐ I am the husband, wife or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year.

g. ☐ I have continuously resided in the U.S. since before January 1, 1972.

h. ☐ Other basis of eligibility. Explain. (If additional space is needed, use a separate piece of paper.)

_____

_____

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2,1964, whichever date is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Continued on back

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

Section of Law
- ☐ **Sec. 209(b), INA**
- ☐ **Sec. 13, Act of 9/11/57**
- ☐ **Sec. 245, INA**
- ☐ **Sec. 249, INA**
- ☐ **Sec. 2 Act of 11/2/66**
- ☐ **Sec. 2 Act of 11/2/66**
- ☐ **Other** _____

Country Chargeable

Eligibility Under Sec. 245
Approved Visa Petition
Dependent of Principal Alien
Special Immigrant
Other _____

Preference

Action Block

To be Completed by *Attorney or Representative,* if any

☐ Fill in box if G-28 is attached to represent the applicant.

VOLAG #

ATTY State License #

Part 3. Processing Information.

A. City/Town/Village of Birth	Current Occupation
Your Mother's First Name	Your Father's First Name

Give your name exactly how it appears on your Arrival /Departure Record (Form 1-94)

Place of Last Entry Into the U.S. (City/State)		In what status did you last enter? *(Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.)*
Were you inspected by a U.S. Immigration Officer? ☐ Yes ☐ No		
Nonimmigrant Visa Number		Consulate Where Visa Was Issued
Date Visa Was Issued (month/day/year)	Sex: ☐ Male ☐ Female	Marital Status ☐ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever before applied for permanent resident status in the U.S.? ☐ No ☐ Yes If you checked "Yes," give date and place of filing and final disposition.

B. List your present husband/wife and all your sons and daughters. (If you have none, write "none." If additional space is needed, use a separate piece of paper.)

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Relationship	A #	Applying with You? ☐ Yes ☐ No

C. List your present and past membership in or affiliation with every political organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of the organization(s), location(s), dates of membership from and to, and the nature of the organization (s). If additional space is needed, use a separate piece of paper.

Part 3. Processing Information. *(Continued)*

Please answer the following questions. (If your answer is "**Yes**" to any one of these questions, explain on a separate piece of paper. Answering "**Yes**" does not necessarily mean that you are not entitled to adjust your status or register for permanent residence.)

1. Have you ever, in or outside the U. S.:
   a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☐ No
   b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☐ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☐ No
   d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the U. S.? ☐ Yes ☐ No
2. Have you received public assistance in the U.S. from any source, including the U.S. government or any state, county, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☐ Yes ☐ No
3. Have you ever:
   a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☐ No
   b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☐ No
   c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the U.S. illegally? ☐ Yes ☐ No
   d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☐ No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☐ No
5. Do you intend to engage in the U.S. in:
   a. espionage? ☐ Yes ☐ No
   b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☐ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☐ No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☐ No
7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☐ No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☐ No
9. Have you ever been deported from the U.S., or removed from the U.S. at government expense, excluded within the past year, or are you now in exclusion or deportation proceedings? ☐ Yes ☐ No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fradulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S. or any immigration benefit? ☐ Yes ☐ No
11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☐ No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and not yet complied with that requirement or obtained a waiver? ☐ Yes ☐ No
13. Are you now withholding custody of a U.S. citizen child outside the U.S. from a person granted custody of the child? ☐ Yes ☐ No
14. Do you plan to practice polygamy in the U.S.? ☐ Yes ☐ No

Continued on back

Part 4. Signature.

(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records which the INS needs to determine eligibility for the benefit I am seeking.

Selective Service Registration. The following applies to you if you are a man at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: I understand that my filing this adjustment of status application with the Immigration and Naturalization Service authorizes the INS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon INS acceptance of my application, I authorize INS to transmit to the Selective Service System my name, current address, Social Security number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, the INS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26.

Signature	***Print Your Name***	***Date***	***Daytime Phone Number***

Please Note: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.*

Part 5. Signature of Person Preparing Form, If Other Than Above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	***Print Your Name***	***Date***	***Daytime Phone Number***

Firm Name and Address

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0066

BIOGRAPHIC INFORMATION

(Family name)	(First name)	(Middle name)	☐ MALE ☐ FEMALE	BIRTHDATE (Mo.-Day-Yr.)	NATIONALITY	FILE NUMBER A-

ALL OTHER NAMES USED (Including names by previous marriages)	CITY AND COUNTRY OF BIRTH	SOCIAL SECURITY NO. (If any)

	FAMILY NAME	FIRST NAME	DATE, CITY AND COUNTRY OF BIRTH (If known)	CITY AND COUNTRY OF RESIDENCE.
FATHER				
MOTHER (Maiden name)				

HUSBAND (If none, so state) OR WIFE	FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	CITY & COUNTRY OF BIRTH	DATE OF MARRIAGE	PLACE OF MARRIAGE

FORMER HUSBANDS OR WIVES (if none, so state)

FAMILY NAME (For wife, give maiden name)	FIRST NAME	BIRTHDATE	DATE & PLACE OF MARRIAGE	DATE AND PLACE OF TERMINATION OF MARRIAGE

APPLICANT'S RESIDENCE LAST FIVE YEARS. LIST PRESENT ADDRESS FIRST

STREET AND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
						PRESENT TIME	

APPLICANT'S LAST ADDRESS OUTSIDE THE UNITED STATES OF MORE THAN ONE YEAR

STREETAND NUMBER	CITY	PROVINCE OR STATE	COUNTRY	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR

APPLICANT'S EMPLOYMENT LAST FIVE YEARS. (IF NONE, SO STATE) LIST PRESENT EMPLOYMENT FIRST

FULL NAME AND ADDRESS OF EMPLOYER	OCCUPATION (SPECIFY)	FROM MONTH	FROM YEAR	TO MONTH	TO YEAR
				PRESENT TIME	

Show below last occupation abroad if not shown above. (Include all information requested above.)					

THIS FORM IS SUBMITTED IN CONNECTION WITH APPLICATION FOR: ☐ NATURALIZATION ☐ STATUS AS PERMANENT RESIDENT ☐ OTHER (SPECIFY):	SIGNATURE OF APPLICANT DATE
Submit all four pages of this form.	If your native alphabet is other than roman letters, write your name in your native alphabet here:

PENALTIES: SEVERE PENALTIES ARE PROVIDED BY LAW FOR KNOWINGLY AND WILLFULLY FALSIFYING OR CONCEALING A MATERIAL FACT.

APPLICANT: **BE SURE TO PUT YOUR NAME AND ALIEN REGISTRATION NUMBER IN THE BOX OUTLINED BY HEAVY BORDER BELOW.**

COMPLETE THIS BOX (Family name)	(Given name)	(Middle name)	(Alien registration number)

Application for Employment Authorization

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-0163; Expires 04/30/05

Application for Employment Authorization

Do Not Write in This Block.

Remarks	Action Stamp	Fee Stamp
A#		
Applicant is filing under §274a.12 _____		

☐ Application Approved. Employment Authorized / Extended *(Circle One)* until _____ (Date).
_____ (Date).
Subject to the following conditions: _____
☐ Application Denied.
☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c).
☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c)(14), (18) and 8 CFR 214.2(f)

I am applying for:
☐ Permission to accept employment.
☐ Replacement *(of lost employment authorization document).*
☐ Renewal of my permission to accept employment *(attach previous employment authorization document).*

1. Name (Family Name in CAPS) (First) (Middle)

2. Other Names Used (Include Maiden Name)

3. Address in the United States (Number and Street) (Apt. Number)

(Town or City) (State/Country) (ZIP Code)

4. Country of Citizenship/Nationality

5. Place of Birth (Town or City) (State/Province) (Country)

6. Date of Birth

7. Sex ☐ Male ☐ Female

8. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced

9. Social Security Number (Include all Numbers you have ever used) (if any)

10. Alien Registration Number (A-Number) or I-94 Number (if any)

11. Have you ever before applied for employment authorization from INS?
☐ Yes (If yes, complete below) ☐ No
Which INS Office? Date(s)

Results (Granted or Denied - attach all documentation)

12. Date of Last Entry into the U.S. (Month/Day/Year)

13. Place of Last Entry into the U.S.

14. Manner of Last Entry (Visitor, Student, etc.)

15. Current Immigration Status (Visitor, Student, etc.)

16. Go to Part 2 of the Instructions, Eligibility Categories. In the space below, place the letter and number of the category you selected from the instructions (For example, (a)(8), (c)(17)(iii), etc.).

Eligibility under 8 CFR 274a.12

( ) ( ) ( )

Certification.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking. I have read the Instructions in Part 2 and have identified the appropriate eligibility category in Block 16.

Signature Telephone Number Date

Signature of Person Preparing Form, If Other Than Above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address *Signature* Date

Initial Receipt	Resubmitted	Relocated		Completed		
		Rec'd	Sent	Approved	Denied	Returned

U.S. Department of Justice
Immigration & Naturalization Service

OMB #1115-0134

Medical Examination of Aliens Seeking Adjustment of Status

(Please type or print clearly)

I certify that on the date shown I examined:

1. Name (Last in CAPS)

(First) (Middle Initial)

2. Address (Street number and name) (Apt. number)

(City) (State) (Zip Code)

3. File number (A number)

4. Sex
☐ Male ☐ Female

5. Date of birth (Month/Day/Year)

6. Country of birth

7. Date of examination (Month/Day/Year)

General Physical Examination: I examined specifically for evidence of the conditions listed below. My examination revealed;

☐ No apparent defect, disease, or disability.

☐ The conditions listed below were found (check all boxes that apply).

Class A Conditions

☐ Chancroid
☐ Chronic alcoholism
☐ Gonorrhea
☐ Granuloma inguinale
☐ Hansen's disease, infectious
☐ HIV infection
☐ Insanity
☐ Lymphogranuloma venereum
☐ Mental defect
☐ Mental retardation
☐ Narcotic drug addiction
☐ Previous occurrence of one or more attacks of insanity
☐ Psychopathic personality
☐ Sexual deviation
☐ Syphilis, infectious
☐ Tuberculosis, active

Class B Conditions

☐ Hansen's disease, not infectious ☐ Tuberculosis, not active

☐ Other physical defect, disease or disability (specify below).

Examination for Tuberculosis - Tuberculin Skin Test

☐ Reaction_____mm ☐ No reaction ☐ Not Done

Doctor's name (please print) Date read

Examination for Tuberculosis - Chest X-Ray Report

☐ Abnormal ☐ Normal ☐ Not done

Doctor's name (please print) Date read

Serologic Test for Syphilis

☐ Reactive Titer (confirmatory test performed) ☐ Nonreactive

Test Type

Doctor's name (please print) Date read

Serologic Test for HIV Antibody

☐ Positive (confirmed by Western biot) ☐ Negative

Test Type

Doctor's name (please print) Date read

Immunization Determination (DTP, OPV, MMR, Td-Refer to ***PHS Guidelines*** for recommendations.)

☐ Applicant is currently for recommended age-specific immunizations.

☐ Applicant is not current for recommended age-specific immunizations and I have encouraged that appropriate immunizations be obtained.

REMARKS:

Civil Surgeon Referral for Follow-up of Medical Condition

☐ The alien named above has applied for adjustment of status. A medical examination conducted by me identified the condtions above which require resolution before medical clearance is granted or for which the alien may seek medical advice. Please provide follow-up services of refer the alien to an appropriate health care provider. The actions necessary for medical clearance are detailed on the reverse of this form.

Follow-up Information:

The alien named above has complied with the recommended health follow-up.

Doctor's name and address (please type or print clearly) Doctor's signature Date

Application Certification

I certify that I understand the purpose of the medical examination, I authorize the required tests to be completed, and the information on this form refers to me.

Signature Date

Civil Surgeon Certification:

My examination showed the applicant to have met the medical examination and health follow-up requirements for adjustment of status.

Doctor's name address (please type or print clearly) Doctor's signature Date

The Immigration and Naturalization Service is authorized to collect this information under the provisions of the Immigration and Nationality Act and the Immigration Reform and Control Act of 1986, Public Law 99-603

Medical Clearance Requirements for Aliens Seeking Adjustment of Status

Medical Condition	Estimate Time For Clearance	Action Required
**Suspected Mental Conditions*	5 - 30 Days	The applicant must provide to a civil surgeon a psychological or psychiatric evaluation from a specialist or medical facility for final classification and clearance.
Tuberculin Skin Test Reaction and Normal Chest X-Ray	Immediate	The applicant should be encouraged to seek further medical evaluation for possible preventive treatment.
Tuberculin Skin Test Reaction and Abnormal Chest X-Ray or Abnormal Chest X-Ray (Inactive/Class B)	10 - 30 Days	The applicant should be referred to a physician or local health department for further evaluation. Medical clearance may not be granted until the application returns to the civil surgeon with documentation of medical evaluation for tuberculosis.
Tuberculin Skin Test Reaction and Abnormal Chest X-Ray or Abnormal Chest X-Ray (Active of Suspected Active/Class A)	10 - 300 Days	The applicant should obtain an appointment with physical or local health department. If treatment for active disease is started, it must be completed (usually 9 months) before a medical clearance may be granted. At the completion of treatment, the applicant must present to the civil surgeon documentation of completion. If treatment is not started, the applicant must present to the civil surgeon documentation of medical evaluation for tuberculosis.
Hansen's Disease	30 - 210 Days	Obtain an evaluation from a specialist of Hansen's disease clinic. If the disease is indeterminate or Tuberculoid, the applicant must present to the civil surgeon documentation of medical evaluation. If disease is Lepromotous of Borderline (dimorphous)and treatment is started, the applicant must complete at least 6 months and present documentation to the civil surgeon showing adequate supervision , treatment, and clinical response before a medical clearance is granted.
****Venereal Diseases*	1 - 30 Days	Obtain an appointment with a physician or local public health department. An applicant with a reactive serologic test for syphilis must provide to the civil surgeon documentation of evaluation for treatment. If any of the venereal diseases are infectious, the applicant must present to the civil surgeon documentation of completion of treatment.
Immunizations Incomplete	Immediate	Immunizations are not required,but the applicant should be encouraged to go to physician or local health department for appropriate immunizations
HIV Infection	Immediate	Post - test counseling is not required, but the applicant should be encouraged to seek appropriate post-test counseling.

*Mental retardation; insanity; previous attack of insanity; psychopathic personality, sexual deviation or mental defect; narcotic drug addition; and chronic alcoholism.

**Chancroid; gonorrhea; granuloma inguinale; lymphogranuloma venereum; and syphilis.