

Legalizing Abused, Abandoned, and Neglected Immigrant Children

Los Angeles Center for Law and Justice
1241 South Soto Street
Los Angeles, CA 90023

Center for Human Rights and
Constitutional Law
256 South Occidental Blvd.
Los Angeles, CA 90057

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INTRODUCTION

What is a legal guardianship?

A legal guardianship is a legal proceeding by which an individual other than a minor child's parent is made responsible for the care, custody, and control of the minor child. The guardian is therefore responsible for making decisions regarding the minor child, decisions such as those involving the minor child's education and medical treatment.

Please note, however, that a guardianship does not give the guardian control over the child's property or assets.

What happens to a parent's legal rights during a guardianship?

When a guardian is appointed for a minor child, a parent's rights are not terminated. Instead, the parent's rights are temporarily suspended and transferred to the guardian. The parent remains the minor child's legal parent.

While the guardianship is in place and the parent's rights are suspended, the parent's right to visit with the minor child is also effectively suspended. The guardian is given the right to determine the manner in which a parent may visit with the minor child. As an alternative, specific orders regarding the time, place, and duration of parental visits can be requested in the guardianship proceedings as additional orders.

Distinguish Adoptions

The fact that a guardianship only suspends the parent's rights with regard to the minor child distinguishes a guardianship proceeding from adoption of the minor child. An adoption results in the parent's rights being terminated. In addition, the minor child's rights with regard to her or his family are affected. For example, adoption may impact the minor child's immigration rights as a derivative of a petitioner for legal permanent resident status or citizenship. It may also have an impact on the minor child's inheritance rights.

Distinguish Caregiver Affidavits

Having a guardian appointed is also distinct from having an individual obtain a caregiver affidavit. A caregiver affidavit is a document signed under penalty of perjury by an adult relative other than the minor child's parents. Upon signing this document and informing the minor child's parents of the signing of this document, the relative is permitted to enroll the minor child in school without the parent's involvement and to authorize emergency medical care. This constitutes the extent of the effect of having an adult relative sign a caregiver affidavit. No other rights or responsibilities are conferred on the adult relative. For a

caregiver affidavit to have legal effect, no filings are necessary. See California Family Code §6550 for further information.

Who can request or petition the court for appointment of a guardian?

Any one of the following individuals may petition the court for the appointment of a guardian for a minor child:

- a. The proposed guardian.
- b. The minor child, so long as the child is over the age of 12.
- c. The minor child's parents.
- d. A relative of the minor child.
- e. Any other person on behalf of the minor child.

When is a guardianship terminated?

A guardianship can be terminated in various fashions:

- a. By operation of law:

A guardianship automatically terminates by operation of law once the minor child reaches the age of majority, 18. At that point, the individual is no longer a minor, and therefore has no need for a guardian. The guardianship consequently automatically terminates with no necessary court action.

- b. By request of the guardian:

The appointed guardian of the minor child can petition the court to terminate the guardianship. This requires completion of court forms as well as a court hearing in which it must be shown that termination of the guardianship is in the minor child's best interest.

- c. By request of the minor child:

The minor child may petition the court to terminate the guardianship. Again, a showing must be made that the termination of the guardianship is in the minor child's best interest.

- d. By request of the minor child's parents:

At any time that the guardianship is in effect, the minor child's parents may also file a petition to terminate the guardianship. As in the above two scenarios, however, the court is required to make a finding that the termination of the guardianship is in the minor child's best interest.

AN OVERVIEW OF THE GUARDIANSHIP PROCESS

Petitioning the court to appoint a guardian for a minor child requires completion of a number of steps. While some of the steps must be completed by the attorney or advocate and others by court personnel, it is important for the attorney or advocate to be informed of each phase of the court process. This is due to the fact that failure on behalf of the attorney or advocate to correct a mistake or answer a question regarding the guardianship during any part of the process may lead to a delay in the appointment of the guardian. Delays, in turn, may result in failures to submit necessary immigration applications and petitions in a timely manner or failure to meet various requirements in relation to Special Immigrant Juvenile Status (SIJS). As advocates and attorneys, it is crucial to always be mindful of what stage in the court process the case is in and what, if anything, can be done to prevent or correct mistakes, misunderstandings, or delays in the process.

Probate Notes

As a means of checking the progress of the case and determining whether further action is necessary on behalf of the attorney or advocate, periodically check the probate notes posted by the probate attorneys. These notes can be found in the probate court section of the Los Angeles Superior Court website (www.lasuperiorcourt.org) by clicking on probate notes and typing in the case number. In these notes, the probate attorney will describe any faults or mistakes in the petition or any further steps that must be taken before the guardianship is granted. Timely review of these notes will allow the attorney or advocate to correct the notes before the hearing if necessary, or on the day of the hearing if permissible.

Process

A. Intake Interview

The first step in having an individual appointed guardian of a minor child is to interview the minor child and the proposed guardian. Successful completion of the petition for appointment of a guardian and its related forms requires an extensive amount of information regarding both parties. The information ranges from driver's license numbers to information regarding bankruptcy to history of criminal activity. Because of the exhaustive nature of the amount of information required, a sample interview sheet has been included with this manual for the proposed guardian and minor child, each designed to illicit all the information necessary to complete the petition for appointment of a guardian and the related forms and attachments. These interview sheets should be completed at the first interview of the minor child and proposed guardian.

Note, however, that in addition to acquiring this information, it will be necessary to determine the reasons why a guardianship is being sought. In the context of SIJS, the reasons for petitioning the court for the guardianship would be in order to regularize the minor child's status because of the abuse, abandonment, and neglect the minor child suffered and because it would be against the minor child's best interest to return to her or his country of residence. This requires the attorney or advocate to discuss and explicate specific examples of abuse or abandonment with the minor child within the context of the minor child's overall biographical information, as well as a determination of the minor child's home country's condition and what the minor child would face should he or she be required to return to her or his home country.

B. Completing the forms

Once all of the necessary information is gathered, the attorney or advocate can begin to complete the petition for appointment of a guardian for the minor child. The pages that follow provide specific instructions on the completion of the petition, all other necessary court forms, and the necessary attachments.

Given the number of forms and attachments involved in this stage of the process, particularly in relation to SIJS cases, this stage is often the most complicated of the guardianship process. It is also the point at which the most errors can be made. The care with which one completes the petition can therefore often determine the success of the procedure as a whole. It is consequently crucial that the attorney or advocate take great care in preparing the petition, attachments, and related forms and, as a secondary precaution, constantly check the probate notes.

C. Filing

After completing the petition and related court forms and attachments, the petition for appointment of guardian must be filed.

How Many Copies?

Bring two copies of all the forms with you for filing in addition to the original. Also, do not forget to keep a copy for your own records.

All the copies should be two hole punched for the benefit of the filing clerk.

Where to File?

Probate Attorney's office: Prior to actually filing the petition, first see the clerks in the Probate Attorney's office, Room 250. There, you will need to do the following:

- Present the Application for Waiver of Court Fees and Costs for approval and signing of the Order Upon Application for Waiver of Court Fees and Costs.
- Present the Order Prescribing Notice to have the form of notice approved and any waivers of notice approved.

Filing Room: Guardianship forms are filed in Room 102.

You will also receive your date for the guardianship hearing in this room.

Probate Department: After filing the petition and related forms, you will be instructed to obtain a hearing date for the temporary appointment of guardian if such a hearing is requested. You may request this hearing date in the probate department, Room 258.

D. Providing Notice

Generally, you will want to provide notice regarding the hearing for appointment of guardian immediately after filing the petition. This is recommended despite the fact that legally only 15 days notice is required in order to avoid missing deadlines. See below re: statutory requirements for notice in guardianship cases for a full discussion of notice requirements.

However, in some situations, it may be to the petitioner's and minor child's advantage to delay giving notice of the hearing to particular relatives and provide only the minimum required under law. This might be a benefit, for example, in a case in which it is known that the guardianship will be contested.

NOTE: Under no circumstances should providing notice to the requisite governmental offices be delayed. The guardianship will not be granted until the requisite investigations have taken place. While the court can continue a hearing until such time as the report is filed, such a delay can have a serious impact on the ability to file a timely and appropriate SIJS application.

As discussed below, notice to governmental agencies and particular relatives may be accomplished via mail and completion of the Notice of Hearing form.

However, with regards to a minor child's mother, father, siblings over the age of 12, proposed guardian, and individual having physical custody of the minor child, personal service must occur.

Personal service can be completed by any of the following individuals:

- Sheriff: Sheriffs will serve documents, including guardianship documents, on parties. If there is a fee waiver in place, there is no charge. Simply provide the original Order Upon Application for Waiver of Court Costs and Fees to the sheriff along with instructions for service and the guardianship forms. If there is no fee waiver on file, the sheriff will charge a nominal fee.
- Process Servers: If your agency employs process servers, contact them to accomplish service.
- Any third party: Any individual not a party to the action may serve the documents.

Note: Any of the above individuals will have to complete a Proof of Personal Service form.

E. Investigation

As part of the process of having a guardian appointed for the minor child, an investigation will be conducted on behalf of the court.

This individual will contact the minor child and proposed guardian in order to meet with each. The investigator will also inspect the minor child's proposed living environment. The investigator will then prepare a report made available to the court and give a recommendation as to whether the guardianship should be granted or denied.

Note that different investigations occur based on who the proposed guardian is:

- If the proposed guardian is a relative of the minor child, a probate investigator conducts the investigation and generates the report.
- In cases in which the proposed guardian is not a relative of the minor child, an individual from the Department of Children and Family Services (DCFS) conducts the investigation and submits the report to the court.

F. Hearings

At least one, and possibly more, hearings will be conducted in the process of having the guardian appointed for the minor child:

1. Hearing for appointment of temporary guardianship

A hearing for appointment of temporary guardianship is usually conducted within a week of filing the petition. At this hearing, the court will determine whether it is

necessary for the proposed guardian to be appointed temporary guardian of the minor child. This appointment as guardian is deemed temporary because it is in effect only until either the date of the hearing for appointment of the guardian or some other date determined by the court.

Note: A SIJS order will not be granted at the temporary hearing because no investigation has been conducted, and as such there is no independent support for the findings the court is required to make. Such orders are made only at the hearing for appointment of the guardian.

2. Hearing for appointment of guardian

Subsequent to the hearing for temporary guardianship, a hearing is held for the appointment of the guardian.

Note from the discussion above that it may be possible for the court to continue a hearing. This may occur if:

- The required investigation has not occurred and/or the necessary reports have not been submitted.
- The matter is contested and the court wishes to hold an evidentiary hearing in order to determine whether the guardianship should be granted.

3. Extending the Temporary Letters

If the hearing is continued and there is a temporary guardianship in effect, the attorney should have the judge sign an Order Extending Letters of Temporary Guardianship.

4. Requesting Special Findings of Fact

It is at the guardianship hearing that the attorney or petitioner, if in pro per, will request that the court make special findings of fact for SIJS and also make a request for the court to retain jurisdiction over the minor to allow for enforcement of court orders. This will allow the court to retain jurisdiction over the minor after the minor reaches the age of majority, and thereby permit the minor to file for SIJS.

G. Filing the Letters of Guardianship

Once the judge grants the guardianship, the judge's clerk will file stamp the Order Appointing Guardian, and stamp the judge's signature on the Order.

You must then take this conformed copy of the Order to the Probate Register's counter in Room 106 and ask for the Letters of Guardianship to be issued.

Note: Make sure the newly appointed guardian remains with you during this process, as the guardian will have to sign the Letters of Guardianship in the presence of the clerk. The guardian must not sign the Letters of Guardianship outside the clerk's presence or the Letters will be ineffective, unless the guardian signed them in the presence of her or his attorney, who can then testify to the signing to the clerk.

After the Letters of Guardianship have been issued, you must have the Letters certified at the Certification window in Room 112.

Orders Regarding Special Immigrant Juvenile Status

In order for a minor to apply for Special Immigrant Juvenile Status, it is not sufficient to simply have a guardian appointed. It is necessary to have the court make further findings of fact supporting a minor child's claim to SIJS. These findings of fact include:

1. A finding that the court has jurisdiction under California law "to make judicial determinations about the custody and care of juveniles" within the meaning of Section 101 (a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a) and (d)(2)(i).
2. A finding that the minor child is "dependent" upon the court, within the meaning of 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a) and (d)(2)(i).
3. A finding that the minor is "eligible for long-term foster care" due to abuse, neglect, or abandonment within the meaning of 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. 204.11(d)(2)(ii).
4. A finding that it is not in the "best interest" of the child to return to her or his parent's previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(d)(2)(iii).

To obtain these findings of facts, it is necessary to accomplish two steps:

1. Provide facts to support such findings of facts. Evidence may be provided in the form of Attachment 13, a declaration by the minor, a declaration by family members, pictures, medical reports, and other evidence. This is particularly true with regard to the claim of abuse, abandonment, and neglect, and that it is not in the best interest of the minor child to return to her or his home country. Discuss and document:
 - Specific incidents of abuse or neglect.
 - Conditions in the minor child's home country.
 - Abandonment by family members.
 - The impossibility of family reunification.
2. Request and argue for these special orders in Attachment 1h, the Memorandum of Points and Authorities in Support of Minor's Request for Orders re Special Immigrant Juvenile Status.

Samples of these attachments and orders are included in this manual.

Finally, be sure to request an Order to Retain Jurisdiction After the Minor Attains Majority if the minor is soon to reach the age of majority. If the child turns 18, the guardianship is terminated, and the court no longer retains jurisdiction of the minor. As noted above, the court must have jurisdiction over the child. By requesting this order, the court will retain jurisdiction past the age of majority.

A sample of this order is also included.

Notice Requirements

A. Service

Probate Code § 1511 delineates the notice requirements for all guardianship matters. Refer to this section in order to assure that all procedural requirements have been met.

According to this section, all individuals entitled to notice must receive notice at least 15 days prior to the hearing.

Moreover, the method of service differs between the various interested parties.

Probate Code §§ 1461, 1511(b), and 1542 require that the following individuals receive personal notice of the hearing:

1. The minor child's parents.
2. The minor child, if age 12 or over.
3. Any person nominated by will or other document to serve as guardian.
4. Any person having legal custody of the minor child.

In order to comply with the personal service requirement, an individual not party to the proceeding who is over the age of 18 must personally hand one of the enumerated people a copy of the Notice of Hearing as well as the Petition and any attachments to that petition. Who ever provides these documents to the individuals listed must then complete a proof of service form. This form can be filed before or the day of the hearing.

Probate Code § 1511(c) states that the following individuals may be served via mail:

1. The minor child's paternal and maternal grandparents.
2. The siblings of the minor child over the age of 12.
 - a. Note: siblings includes half, adoptive, and child siblings.
3. The minor child's spouse.
4. The person presently having the care of the minor child.
 - a. Note: Distinguish from the person having legal custody of the minor child.
5. California Department of Social Services
6. Department of Children and Family Services.
7. In some situations, the Director of Mental Health or the Director of Developmental Services.

Notice via mail should be by way of certified mail with return receipt requested.

Each of the individuals upon whom service must occur are required to receive a copy of the Notice of Hearing form as well as the Petition and attachments.

However, in the case of governmental agencies, you should also serve a copy of the following forms: Notification to Court (E319) and Information for Investigation (1542) if necessary.

B. Proof of Service

Proof of personal service requires completion of the proof of personal service form.

Note that if a sheriff or process server performs service, these entities provide their own proofs of service.

Proof of service by mail may be provided by completing page 2 of the Notice of Hearing form and filing it either before or the day of the hearing.

C. Special Situations

1. Serving Incarcerated Persons

The process necessary to serve an incarcerated person depends on what type of facility the individual is located in:

County Jail: You can locate an individual in county jail by calling (213) 473-6100. You will have to provide the person's name and date of birth if possible. Once you contact the jail, ask for the legal or litigation department in order to determine the facility's process for completing personal service on a prisoner.

State Prison: You can locate an individual in state prison by calling (916) 227-2060. Again, you will have to provide information regarding the person's name and date of birth. It will be tremendously helpful if you are able to acquire the individual's CDC (California Department of Corrections) number prior to calling. Once you contact the prison, ask for the legal or litigation department in order to determine the facility's process for completing personal service on a prisoner.

D. Waiver of Notice

One can request that notice be waived with regard to particular individuals.

Upon request in the Petition for Appointment of a Guardian, the court may waive notice for:

- A deceased individual.
- A person whose whereabouts cannot be determined upon a showing of due diligence.
- Upon a showing that providing notice to the individual would be detrimental to the best interest of child. For example, the individual is someone who abused the minor child.

Any such request, made in Attachment 15, must be explicit and detailed. See the sample attachments for examples.

E. Notice for Temporary Guardianship

Notice must be given to parents and the minor child at least five days before the hearing for a temporary guardianship.

Again, however, a request may be made for waiver of this notice requirement under the same three conditions noted above.

INSTRUCTIONS FOR PREPARATION OF COURT FORMS

Generally

Who is the Petitioner?

Any of the following individuals may serve as the petitioner:

- The proposed guardian.
- The minor (so long as the minor is over 12 years of age).
- The minor's parent(s).
- A third party on the minor's behalf.

Note that it is permissible for a parent to be a joint guardian with a non-parent.

Also note that it is permissible to have two petitioners and/or two guardians.

Please note that in the sample forms, "minor child" refers to the minor's name, "proposed guardian" to the proposed guardian's name, and "petitioner" to the name of the petitioner, assuming that this is different than the proposed guardian.

Application for waiver of court fees (982A17)

A. Generally

The court fees for filing guardianship petitions and having the necessary investigation and interview conducted by the County of Los Angeles totals \$696.50. Given such high costs, it is important to first determine whether the client qualifies for a fee waiver.

There are three ways by which a petitioner may qualify for a fee waiver:

1. The petitioner may qualify for a fee waiver if s/he receives one of the following forms of public financial assistance:
 - SSI or SSP: Supplemental Security Income or State Supplemental Payments Program.
 - CalWORKS or TANF (Temporary Assistance to Needy Families).
 - Food Stamps.
 - County Relief, General Relief, or General Assistance.

Note: Social Security retirement and survivor benefits do not qualify under this option.

2. The petitioner's household's gross monthly income is below that designated in Judicial Council Form #982(a)(17)(A).

Note: the gross monthly income is based on the household's gross monthly income. Make sure, therefore, to account for each household member and their income in determining whether the petitioner qualifies under this standard.

Note: Judicial Council Form #982(a)(17)(A) is updated periodically. Be sure to consult the most recent version. An online version can be found at www.lasuperiorcourt.org.

3. The petitioner's income is not enough to pay for the common necessities of life for petitioner and the people supported by petitioner, and also pay court fees and costs.

Note: The above criteria apply to the petitioner, not the minor child for whom the guardianship is being sought. Moreover, practice in the court now requires that the court consider the proposed guardian's income. One cannot circumvent paying the court fees and costs by having the minor serve as the petitioner.

Note: In cases in which the petitioner does not qualify for a fee waiver, the court is often willing to work out a payment plan wherein the court will send the petitioner a monthly bill for payment of filing fees.

B. Preparing the Form

Item 1a, b: Mark item 1a, unless the petitioner is able to pay some of the court costs. In such a case, item 1b should be marked, and the fees the petitioner can pay for should be specified.

Item 2: List the petitioner's current address.

Item 3a: List the petitioner's occupation, name of employer, and his/her employer's address.

Note: This information is not required if the individual qualifies for a fee waiver based on receiving one of the enumerated forms of public assistance.

Item 3b: List the petitioner's spouse's occupation, name of employer, and his/her employer's address.

Item 4: If the petitioner qualifies for a fee waiver by virtue of receiving one of the forms of public assistance listed above, mark item 4 along with the applicable form of public assistance the petitioner receives.

Item 5: Proceed to item 5 only if you have marked item 4. Despite the fact that the judicial council form lists options a and b under item 5 as means of providing proof of public assistance, Local Rule 985 of the Rules of Superior Court of Los Angeles requires the petitioner submit documentation of receiving public assistance. The documentation can take any of the following forms:

- Medi-Cal card.
- Copy of food stamps or cash assistance receipt.
- Copy of the SSI or CalWorks award letter.

Note: While Local Rule 985 allows for copies of these forms of documentation, as of the printing of this instruction manual, Central and nearly all of the branch courts require the petitioner to provide the original form of documentation. Advise the client that it may be necessary to retain this documentation until the filing is conducted, at which time it will be returned to him or her, or have the client file the documents him or her self.

If items 4 and 5 have been completed, do not complete the rest of the form. Simply have the petitioner sign and date.

If items 4 and 5 were not completed, proceed to items 6 or 7

Item 6: If the petitioner's household's gross monthly income is below that designated in Judicial Council Form #982(a)(17)(A), mark this item, have the petitioner date and sign the form, and proceed to complete the back side of the form in its entirety.

Note: The petitioner will have to provide proof of her or his monthly income by providing one of the following forms of documentary evidence, listed in descending order of preference:

- His/her most recent paycheck stub.
- His/her most recent Federal and State Income Tax returns.
- A signed declaration showing his/her means of meeting living expenses and declaring that s/he qualifies for a fee waiver based on the Judicial Council schedule.

Note: Be aware, and make the petitioner aware, that the petitioner may be required to file the petition in person should the clerk question the information given.

Item 7: If the petitioner's income is not enough to pay for the common necessities of life for the petitioner and the people supported by petitioner and also pay court fees and costs, mark item 7, have the petitioner date and sign the form, and complete the back side of the form in its entirety.

The following items should only be completed if Items 6 or 7 were marked.

Item 8: Mark item 8 if the petitioner's income fluctuates considerably from month to month. As the item indicates, all replies for Item 9 should be based on the petitioner's average income for the last 12 months.

Item 9a: Provide the petitioner's gross monthly income.

Item 9b: Provide the petitioner's payroll deductions.

Item 9c: Calculate the petitioner's take home pay as indicated.

Item 9d: List the petitioner's other monetary sources.

Item 9e: Calculate the petitioner's total monthly income as indicated.

Item 9f: List the total number of people living in the petitioner's household, including the petitioner. Proceed to list each person's name, age, relationship to the petitioner, and each individual's gross monthly income as indicated.

Note: Should more space be required, attach a page labeled Attachment 9f.

Item 9g: Calculate the petitioner's total gross monthly household income as indicated.

Item 10: List any property interest the petitioner may hold.

Item 11: List and calculate the petitioner's monthly expenses.

Item 12: List other facts that support the application.

Order on Application for Waiver of Court Fees and Costs (982A18)

Item 1: List the date the petition will be filed.

Item 2: List the petitioner's name.

Item 3: Mark the box labeled "IT IS ORDERED that the application is granted."
Also mark the box labeled "in whole" and box a, "No payments."

The remainder of the form should be left blank, as it is completed at the time of filing by the filing clerk.

Note: Be sure to request that the clerk certify the order by placing the clerk's seal on the second page of the form. This is important should it become necessary to employ the order at any point, such as having the sheriff waive costs of service or having the court waive costs for an interpreter.

Probate Case Cover Sheet – Certificate of Grounds for Assignment to District

Section I:

Part 1: Check the box marked “Petition for Guardianship of Person only” on page 2 of the form, under the heading “Conservatorship/Guardianship.”

Part 2: Circle each of the applicable reasons for which the matter is being brought in the Los Angeles Superior Court:

- a. Circle “2” if it is the district in which the minor child resides.
- b. Circle “6” if there is other statutory authority for bringing the matter in Los Angeles Superior Court.
- c. Circle “7” if the matter falls under one of the circumstances noted in Local Rule 2.0(c).

Section II: Check the box for each reason circled under Item I, Part 2. Then provide the address of the minor child, and again provide the city, state, and zip code of the minor child’s place of residence.

Section III: List the case number of any other case filed and currently open in Los Angeles Superior Court involving the minor child.

Section IV: In the blank space provided, write “Central.”

Write the date and have the declarant sign the form. The declarant is either the attorney for the matter, or, if there is none, the petitioner.

Filing in Other Districts

Guardianship cases can be filed in any district court of the Los Angeles Superior Court. This instruction manual assumes filing in the Central District. If the matter is being filed in any other district court, simply state the name of the district in Item IV.

Any matter may be filed in Central District so long as the minor child resides in Los Angeles County. To file in a different district court, the minor child must reside within that district. See the local rules for further information.

Petition for Appointment of Guardian of Minor (GC-210)

Be sure to specify in the case caption that the petition is a petition for the guardianship of either a minor or minors by checking the appropriate box.

Item 1: List the petitioner's name.

Item 1a: List the proposed guardian's name. List the proposed guardian's address, and telephone number.

Item 1b: This item should be left blank and only marked if a guardianship of the estate is being requested.

Item 1c: This item should only be checked off if guardianship is being requested for more than one minor, all of whom are related as siblings. If such is the case, an additional page, titled Attachment 1c, should be completed for each minor providing all of the information requested in Items 2 - 11.

Item 1d: According to Probate Code § 2322, in a guardianship of a person, a bond is not required. Therefore, Item 1d should be marked. In addition, mark the box labeled "for the reasons stated in Attachment 1d," cross out "for the reasons stated in Attachment 1d," and type in, "because only guardianship of person is sought."

Item 1e: This item applies to guardianships of an estate, and should therefore be left blank.

Item 1f: This item relates to powers and duties of the guardian as dictated under Probate Code §§ 2351-2358. In most cases, the guardian's powers and duties will not need to be expanded. However, should this be the case, consult the appropriate Probate Code sections and include Attachment 1f specifying the orders requested, the facts supporting the request, and the reasons the request is being made.

Item 1g: In particular situations, notice to an individual is not possible due to, for example, death or the inability to determine an individual's location. In other situations, it may be that providing notice to an individual would be against the minor's best interest. If either is the case, Item 1g should be marked, and the facts pertaining to either of the above should be provided in Attachment 15.

Item 1h: If the petitioner seeks other orders, particularly orders regarding SIJS, this item must be marked and the orders included in Attachment 1h. The attachment should be titled "Memorandum of Points and Authorities in Support of Minor's Request for Order re: Special Immigrant Juvenile Status."

Item 2: List the minor's name, address, and telephone number. Also mark the appropriate box to designate whether the minor is married or unmarried.

Item 3: List the minor's date of birth.

Item 4: Mark the box that best describes the petitioner and provide any other necessary information.

Item 5: List the proposed guardian. Provide the relevant information.

Note that this individual may be the same individual listed in Item 4.

Item 6a: Mark this item and list the individual having legal custody of the minor either by way of a court order or if the individual is a parent claiming custody of the minor child.

Note that when there is no court order regarding custody, the parents have legal custody by default.

Note: Determination of who has legal custody of the minor can be made by consulting the most recent court order for custody. Also note that this individual may not be the biological parent. If the person is unknown, this item should be left blank.

Item 6b: Mark this item only if the person who currently cares for the minor is someone other than the person having legal custody of the minor. List the person who currently cares for the minor. In most cases, this will be the proposed guardian.

Items 7a-c: Mark the items that apply and provide attachments as necessary.

Item 8: Mark the box that applies and provide attachments as necessary describing what benefits the minor child is receiving.

Item 9: Mark the box that applies and provide attachments as necessary of any relevant orders or pending proceedings.

Item 10: Mark this box only if each of the following is true: the proposed guardian has accepted or intends to accept physical care or custody of the minor and the proposed guardian holds an intent to adopt.

Item 11: Mark item 11 only if a person has been nominated either by will or other nomination and that person is someone other than the proposed guardian. Mark the appropriate item, provide the individual's name and address, and affix the nomination as Attachment 11.

Item 12: This item applies only to guardianships of an estate, and therefore should be left blank.

Item 13: Mark the box for “person.” Also mark the box labeled “of the minor ...” and “Parental custody of the minor ...” The reasons why the guardianship of the minor is necessary and convenient and parental custody of the minor would be detrimental should be stated in Attachment 13.

In addition, in SIJS cases, it is important to detail the following in Attachment 13:

- Details regarding abuse, abandonment, and neglect.
- Why it is in the minor child’s best interest to remain in the United States and not be returned to his or her home country.

Item 14: This item applies only to guardianships of an estate, and therefore should be left blank.

Item 15: Mark this box if item 1g was marked. Also mark the appropriate box relating to whether the individuals listed in item 1g cannot with reasonable diligence be given notice or whether giving notice would be contrary to the interest of justice. Include Attachment 15.

Attachment 15 should list the names of the persons that are deceased or have not been located or notified, and the diligent efforts made to notify those persons or reasons why notification would be against the interests of justice.

Note: See the notice section of this manual for more information.

Item 16a: Complete this section only if the petitioner is not related to the minor.

- If the petitioner is the proposed guardian, mark the appropriate box and refer to Probate Code § 1543 to determine what information must be provided.
- If the petitioner is not the proposed guardian, mark the appropriate box and provide Attachment 16a, a statement by the proposed guardian that s/he will provide the information requested in Probate Code §1543.

Item 16b: Mark the appropriate item designating whether the proposed guardian’s home is a foster home or not.

Item 16c: Mark this box if the proposed guardian has never filed any petition for the adoption of the minor. If the proposed guardian has filed a petition for the adoption of the minor, specify so in Attachment 16c.

Item 17: Mark this box and the appropriate boxes that follow.

Note: Always check the box relating to “Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).”

Item 18: List the name, relationship and residence of the people indicated. Should additional space be needed, continue on Attachment 18.

Note: In relation to grandparents, specify “maternal” and “paternal” for each set.

Item 19: Provide the number of additional pages attached.

The attorney should date and sign along with each petitioner.

Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice (GC-211)

This form can be used for any of the following three purposes and in any of the three following manners:

- As a Consent of the Proposed Guardian to Appointment as Guardian:
In each case, the proposed guardian, or each of the proposed guardians if there is more than one, should complete this top third portion of the form.

- As a Nomination of Guardian:
In the case of a joint guardianship, the parent may use the middle third of the form as a means of nominating the guardian. Mark the box labeled “a parent of the minor,” state the name and address of the proposed guardian, and have the parent date and sign this portion of the form.

- As a Consent to Appointment of Guardian and Waiver of Notice by any Interested Party:
In cases in which the parent(s) or other interested parties consent to the appointment of the guardian, the bottom third of the form should be completed. The filing date of the petition should be provided, and the name and relationship of the signor to the minor child should be completed. The individual needs only to sign the form.

Note: This portion of the form may be used in order to establish a waiver of notice on the part of each party entitled to notice.

Note: Attorney-client privilege and other ethical duties may prevent an attorney from disclosing information to the parent(s) of a minor child and/or from providing the parent(s) with information regarding the impact an appointment of a guardian for a minor child might have on the parent’s rights with regard to their child. Should a parent approach the proposed guardian’s or minor child’s attorney, clearly identify yourself as the other party’s attorney and suggest they seek independent legal counsel.

Notification to Court of Address on Conservatorship/Guardianship (LA-E319)

As there are no item numbers on this form, the sections will be discussed by referencing the major bold items that separate the document into five areas.

In the section not labeled with any bold heading which states “Check all boxes that apply,” mark the box labeled “person.”

In the first section, mark the box labeled “WARD.” Provide all the requested information regarding the minor child involved in the matter:

- a. Name: minor child’s name.
- b. Address: minor child’s address.
- c. Social Security Number: minor child’s social security number. If the minor child has no social security number, leave this item blank.
- d. Date of birth: minor child’s date of birth.
- e. Phone number: minor child’s phone number.

In the next section, mark the box labeled “WARD.” Provide all the requested information regarding the attorney for the minor child. If there is no attorney of record, leave this item blank.

In the next section, mark the box labeled “GUARDIAN.” Provide all the requested information regarding the proposed guardian involved in the matter:

- a. Name: proposed guardian’s name.
- b. Address: proposed guardian’s address.
- c. Social Security Number: proposed guardian’s social security number. If the proposed guardian has no social security number, leave this item blank.
- d. Date of birth: proposed guardian’s date of birth.
- e. Phone number: proposed guardian’s phone number.
- f. Driver’s license number: proposed guardian’s driver’s license number.

In the next section, mark the box labeled “GUARDIAN.” Provide all the requested information regarding the attorney for the proposed guardian. If there is no attorney of record, leave this item blank.

In the final section, titled “COMPLETED BY,” provide information regarding the individual who completed this form.

Note: Should any of the requested information change during the course of litigation, a new form should be provided to the court immediately.

Confidential Guardian Screening Form (GC-212)

Item 1a: Provide the name of the proposed guardian.

Item 1b: Provide the proposed guardian's date of birth.

Item 1c: Provide the proposed guardian's social security number.

Item 1d: Provide the proposed guardian's driver's license number.

Item 1e: Provide the proposed guardian's requested numbers: telephone, work, and other.

Items 2 – 16: Have the proposed guardian answer each question provided and mark the appropriate box. If any questions are answered in the affirmative, provide a short explanation in a corresponding attachment.

Item 17: Provide the minor child's name, home telephone number, school, and school telephone number. Extra spaces are provided should there be more than one child.

Have the proposed guardian date and sign the form.

Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (MC-105)

This form is used by the court to determine whether it has jurisdiction over the minor children involved in the matter.

To ensure compliance with the jurisdictional requirements, one must list the minor's residences for the past five years.

Note: The declarant on this form should be the petitioner. However, the declarant can be any individual in possession of the relevant information.

Item 2: Mark this box if the child's address is confidential.

Item 3: List how many children are subject to this proceeding.

Item 3a: Provide the child's name, place of birth, date of birth, and sex. Then, in descending order from most to least recent, list the time frames lived at each address, each address, with whom the minor child lived as well as that individual's current address, and that person's relationship to the minor child.

Note: It is not necessary to provide exact street addresses. In cases in which it would prove burdensome for the declarant to investigate the exact address, the city and state should be provided at a minimum.

Item 3b: If there is more than one minor child involved in the matter, provide that child's name, place of birth, date of birth, and sex in the subsequent field. If the child's residence information is the same as for the first child, check the box indicating this.

Item 3c: If there are more than two children, mark the box for Attachment 3c and provide the same information requested for each of the previous children.

Item 4: If the declarant has not participated as a party or a witness or in some other capacity in another litigation or custody proceeding anywhere else concerning custody of the children involved in the case, mark the box labeled "No."

If this is not the case, and the declarant has participated in such a case, mark the box labeled "Yes" and provide the relevant information.

Item 5: If the declarant has no information regarding a custody proceeding anywhere else concerning a child subject to the proceeding, other than that stated in item 4, mark the box labeled "No."

If the declarant does have any such information, mark the box labeled "Yes" and provide the relevant information.

Item 6: If the declarant has no knowledge of any person not already a party to the proceeding who has physical custody or claims to have custody of or visitation rights with any of the children subject to the proceeding, mark the box labeled "No."

If the declarant has any such information, mark the box labeled "Yes," and provide the relevant information.

Item 7: Mark this box and provide the number of pages attached should there be any.

Have the declarant date and sign the form.

Petition for Appointment of Temporary Guardian (GC-110)

Item 1a:

- In the space marked "Petitioner," write the name of the petitioner.
- In the space marked "name and address," write the name and address of the proposed guardian.
- Mark the box labeled "guardian" and "minor."

Item 1b: Leave blank.

Item 1c: Mark the box labeled "bond not be required" and write in "because only guardianship of the person is sought."

Item 1d: Leave blank.

Item 1e: Mark this box if you require notice for a particular person to be dispensed with and provide the reasons on Attachment 1e. Be sure to also mark the box corresponding to the individual who you wish notice be dispensed with.

Item 1f: Leave blank.

Item 2: Mark the box labeled "minor" and provide the minor child's name, address, and telephone number.

Item 3: Mark the boxes labeled "minor," "guardian," "provide for temporary care," and "*specified in Attachment 3.*" Include Attachment 3, in which you provide all the reasons why a temporary guardianship is appropriate.

Item 4: Mark the boxes labeled "guardianship" and the box corresponding to item a, "pending the hearing..." and the box labeled "guardian."

Items 5-6: Leave blank.

Item 7: Mark the boxes labeled "minor" and "will" if the minor will attend the hearing. If the minor will not attend the hearing, leave this item blank.

Have the attorney and petitioner date and sign in the appropriate places.

Order Prescribing Notice (DE-200)

Item 1: Mark the box labeled “other” and in the space provided type “Petition for Appointment of Guardian.”

The date of the hearing will be provided by the court upon filing.

If filing at Central, you may provide the time, department, and room number for which the hearing will be set. They are: 11:00 AM, Department 5, Room 236.

Mark the box labeled “same as noted above” for “Address of the court.”

Item 2a: Mark the box labeled “served at least” and type in “15.”

In the section for individuals requiring personal service, type in the following list:

- 1) Mother, 2) Father, 3) Persons having physical custody of the minor(s), 4) All minors over the age of 12.

Item 2b: Mark the box labeled “mailed at least” and specify “15” for the number of days. In the section of individuals or parties requiring mail service, list the following:

Department of Children and Family Services
Attn: Guardianship Clerk
201 Centre Plaza Dr.
Monterey Park, CA 91754

California Department of Social Services
Division of Children and Family Services
744 P Street
Sacramento, CA 95814-6413

All second degree relatives
Grandparents, Brothers, Sisters

Order Appointing Guardian of Minor (GC-240)

Item 1a: If known, provide the judge's name.

Item 1b: The hearing date is unknown until the petition is filed. Therefore, leave this space blank. However, the following information may be filled in:

- Time: 11:00 AM
- Department: 5
- Room: 256

Item 1c: Mark the box and provide the petitioner's name.

Item 1d: Mark the box and provide the petitioner's attorney's name, if any.

Item 1e: Mark the box and provide the name of the minor child's attorney, if any.

Item 2: Leave blank.

Item 3: Mark the box labeled "Appointment of a guardian..." and "person."

Item 4: Leave blank.

Item 5: Leave blank.

Item 6: Leave blank.

Item 7a:

In the space marked "(NAME)" provide the proposed guardian's name.

In the space marked "(ADDRESS)" provide the proposed guardian's address.

In the space marked "(TELEPHONE)" provide the proposed guardian's telephone number.

In the space marked "is appointed guardian of" provide the minor child's name.

Item 7b: Leave blank.

Item 8: Leave blank.

Item 9a: Mark the box labeled "Bond is not required."

Items 9b-d: Leave blank.

Item 10-13: Leave blank.

Item 14: Mark the box labeled "Other orders as specified in Attachment 14 are granted." This attachment will list all the necessary SIJS orders required.

Item 15: Leave blank.

Item 16: Write in the number corresponding to the number of boxes checked.

Item 17: Write in the number of pages attached.

Letters of Guardianship (GC- 250)

Item 1:

Next to "(NAME):" write the name of the proposed guardian.

Check the box marked "person."

Next to "(name)" write the name of the minor child.

Item 2: Leave blank.

Item 3: Leave blank.

Item 4: Leave blank.

Item "AFFIRMATION": The proposed guardian must sign this portion. NOTE, however, that it must be signed by the proposed guardian IN THE PRESENCE OF THE CLERK OF THE COURT. If it is not done in this fashion, the letters will not be valid.

Order Appointing Temporary Guardianship (GC-140)

Item 1: Mark the box labeled “guardian.”

Item 1a: If known, provide the judge’s name.

Item 1b: The hearing date is unknown until the petition is filed. Therefore, leave this space blank. However, the following information may be filled in:

- Time: 11:00 AM
- Department: 5
- Room: 256

Item 1c: Mark the box and provide the petitioner’s name and mark the box and provide the petitioner’s attorney’s name, if any.

Item 1d: Mark the box and provide the name of the minor child and mark the box and provide the name of the minor child’s attorney, if any.

Item 2: Leave blank.

Item 3: Mark the boxes labeled “it is necessary that a temporary,” “guardian,” “provide for temporary care...,” “pending the hearing ...,” and “guardian.”

Item 4: Leave blank.

Item 5: Leave blank.

Item 6: Leave blank.

Item 7a:

In the space marked “(NAME)” provide the proposed guardian’s name.

In the space marked “(ADDRESS)” provide the proposed guardian’s address.

In the space marked “(TELEPHONE)” provide the proposed guardian’s telephone number.

Mark the box labeled “is appointed temporary guardian of” and provide the minor child’s name.

Item 7b: Leave blank.

Item 8: Leave blank.

Item 9a: Mark the box labeled "Bond is not required."

Items 9b-d: Leave blank.

Item 10-15: Leave blank.

Item 16: Write in the number corresponding to the number of boxes checked.
This should be one.

Item 17: Write in the number of pages attached. This should be zero.

Letter of Temporary Guardianship (GC-150)

Item 1:

Next to "(NAME):" write the name of the proposed guardian.

Check the box marked "guardian" and "person."

Next to "(name)" write the name of the minor child.

Item 2: Leave blank.

Item 3: Leave blank.

Item 4: Leave blank.

Item 5: Leave blank.

Item "AFFIRMATION": This portion must be signed by the proposed guardian.

NOTE, however, that it must be signed by the proposed guardian IN THE PRESENCE OF THE CLERK OF THE COURT. If it is not done in this fashion, the letters will not be valid.

SPECIAL IMMIGRANT JUVENILE STATUS

Introduction

Special Immigrant Juvenile Status ("SIJS") is an immigration option for children who are dependent on a state juvenile court or in the custody of a state agency or department. As soon as the child files for SIJS, the child is protected from deportation and eligible for work authorization. The child remains protected from deportation and eligible for work authorization until the United States Citizenship and Immigration Service ("CIS") reaches a decision on the child's application. If CIS approves the child's application and the child adjusts his/her status, the child will become a lawful permanent resident (i.e. a green card holder). As a lawful permanent resident the child is authorized to live and work in the United States, as well as travel abroad. The child is also eligible for various state and federal benefits. The child can attend a state college or university and pay in-state tuition. After five years, the child may apply to become an U.S. Citizen.¹

This section of the manual provides legal service providers and child advocates new to representing SIJS applicants with an overview of the SIJ process. At the end of the manual there are model materials. As immigration is a highly nuanced area of law and constantly changing, we strongly encourage you to consult with an immigration expert before you help a child apply for SIJS. IOLTA recipients may contact IOLTA technical support centers for assistance with all aspects of SIJ cases.

¹ If, however, the child is convicted of certain criminal offenses, the child will not be able to apply for citizenship. *See* INA § 237(a), 8 USC § 1227(a).

WHO IS ELIGIBLE?

A child must qualify for SIJS and for adjustment of status to a lawful permanent resident.

A. Special Immigrant Juvenile

A Special Immigrant Juvenile is:

“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 SIJS." INA§ 101(a)(27)(J), 8 USC § 1101(a)(27)(J).

A child is eligible for SIJS under §101(a)(27)(J) of the INA if the child:

(1) *Is under twenty-one years of age.*²

(2) *Is unmarried.*³

(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

A "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." 8 CFR § 204.11(a). Children in dependency or delinquency proceedings, as well as children placed in

² 8 CFR § 204.11(c)(1).

³ 8 CFR § 204.11(c)(2).

⁴ 8 CFR § 204.11(c)(3).

guardianships by a probate court satisfy the requirements of INA §101(a)(27)(J)(3) and 8 CFR § 204.11(a).

(4) *"Has been deemed eligible by the juvenile court for long-term foster care."*⁵

"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." 8 CFR § 204.11(a). Family reunification is not likely a viable option when a child has been placed in foster care, adoption, or guardianship.

(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."*⁶

(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."*⁷

B. Adjustment of Status

Rather than having to leave the United States and go through consular processing, SIJ applicants can apply for adjustment of status in the United States.⁸ This process allows them to apply to become lawful permanent residents without leaving the United States.

⁵ 8 CFR § 204.11(c)(4).

⁶ 8 CFR § 204.11(c)(5).

⁷ 8 CFR § 204.11(c)(6).

⁸ INA § 254(h) allows for applicants to apply for adjustment of status within the United States:

(h) In applying this section to a special immigrant described in section 101(a)(27)(J)-

(1) such an immigrant shall be deemed, for purposes of subsection (a), 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 212(a) shall not apply, and

(B) the Attorney General may waive other paragraphs of section 212(a) (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 101(a)(27)(J) 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.

SIJ applicants are also subject to grounds of inadmissibility and deportability. CIS could deport or remove the child or deny the child adjustment of status.⁹ Most grounds of deportability and inadmissibility, however, do not apply to SIJ applicants.¹⁰ Certain grounds of deportability and inadmissibility can be waived. If any of the following grounds apply to your client, your client can apply for waiver, but you should consult with an immigration expert before filing the SIJ petition: prostitution, HIV, previous deportation, previous deportation or removal order, conviction¹¹ of possession of less than 30 grams of marijuana, drug addiction, drug abuse, fraudulent visa, etc.

If SIJS is not an option for your client, your client may be able to legalize their status through a: family visa petition, Violence Against Women Act Petition (VAWA), Visa for a Victim of, and Witness Against, a Serious Crime (U-Visa), Asylum, or Assistance for Victims of Alien Trafficking (T-Visa). An IOLTA funded technical support center can help you determine if your client is eligible for any immigration benefits.

C. Risks of Applying

There are risks and benefits to applying for SIJS that you should discuss with your client prior to filing your client's SIJ application.

1. Confidentiality

SIJ applications are not confidential. When a child applies for SIJS, s/he alerts CIS that s/he is residing undocumented in the United States. If CIS denies the child's SIJ application, CIS may use the information from the child's application to initiate removal proceedings against the child. It is therefore very important that you assess the strength of the child's application before submitting it to Citizenship and Immigration Services. Review all grounds of deportability and inadmissibility before you file the petition. You should consult with an immigration expert if you have concerns or questions about your client's case.

⁹ See INA § 237(a), 8 USC § 1227(a) and INA § 212(a), 8 USC § 1182(a).

¹⁰ See INA § 237(c), 8 USC § 1227(c); INA § 245(h)(1), (2)(A), 8 USC § 1255(h)(1), (2)(A)

¹¹ A disposition in juvenile court is not a "conviction." See *Matter of Ramirez-Rivero*. 18 I&N 135 (BIA 1981).

2. Family Unity

If a child receives SIJS, the child cannot petition for his or her parents to become lawful permanent residents.¹² The parents, however, are not barred from immigrating to the United States through other means.

In addition, a child may or may not be able to petition for a brother or sister. When a child receives SIJS, the grant of SIJS severs the parent-child relationship and the child is no longer the child of his or her biological parents. CIS may argue that accordingly the child is no longer a sibling of his or her biological siblings, and thus unable to petition for his or her brothers and sisters. The child's siblings, however, may immigrate to the United States through other means.

Assuming the child is able to petition for his or her brothers and sisters to become lawful permanent residents, the child must wait until s/he is twenty-one years old.

3. Children in Removal Proceedings

A child already in removal proceedings should strongly consider applying for SIJS. CIS cannot deport the child while the child's SIJ application is pending. The SIJ application gives the child immediate protection from deportation. If the child is in the actual or constructive custody of the federal government, the child must obtain specific consent from CIS.¹³

¹² See INA § 101(a)(27)(J)(iii)(II): [N]o 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 Act.

¹³ See INA § 101(a)(27)(J)

THE APPLICATION

A SIJ eligible child must submit two applications, one for Special Immigrant Juvenile Status (Form I-360) and one for Legal Permanent Residency (Form I-485).¹⁴ An applicant will file both applications concurrently at the local CIS district office with jurisdiction over the applicant unless the applicant is in immigration proceedings. You may be able to mail in the packet or make an appointment to drop off the application via Info Pass on the CIS website (www.uscis.gov).

The application will consist of a cover letter to CIS, case summary, form G-28, form I-360, form I-485, and form I-765 with supporting documentation. Before filing the packet, check the filing fee for each form on the CIS website. Fee waivers are also available. Completed sample forms and checklists are attached.

A. Form I-360 Petition for Amerasian, Widow or Special Immigrant

The Form I-360 must be supported by¹⁵:

- * A Court order declaring dependency on the juvenile court or placing the juvenile under (or legally committing the juvenile to) the custody of an agency or department of a State.
- * A Court order that deems the juvenile eligible for long-term foster care due to abuse, neglect, or abandonment.
- * A determination from an administrative or judicial proceeding that it is in the juvenile's best interest not to be returned to his/her country of nationality or last habitual residence (or the juvenile's parents' country of nationality or last habitual residence).
- * Proof of the juvenile's age¹⁶
- * G-28 Notice of Appearance
- * Filing Fee

¹⁴ Most forms are available at www.uscis.gov

¹⁵ See Memorandum #3 - Field Guidance on Special Immigrant Juvenile Status Petitions; United States Citizenship and Immigration Services; May 27, 2004.

¹⁶ 8 CFR § 204.11(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."

1. Court Order

A juvenile court must make certain findings of fact before a child may apply for SIJS. These findings include: (1) that the child has been declared dependent upon a juvenile court located in the United States or is in the custody of a state agency or department; (2) that the child has been deemed eligible by a juvenile court for long-term foster care *due to abuse, abandonment, or neglect*; and (3) that it would not be in the child's best interest to be returned to the country of nationality or last habitual residence of the child or of his or her parent or parents.¹⁷ The order must also include the judge's signature.

CIS "strongly encourages juvenile courts to address" why it would not be in the child's best interest to be returned to his or her country of nationality and "incorporate a finding into the court order."¹⁸ However, "other judicial or administrative bodies authorized or recognized by the juvenile court may make such a determination."¹⁹ Evidence of this element includes: the child's declaration stating there is no one able or willing to care for him or her in his or her country of origin, declarations from family members stating they are unable to care for the child, reports on the status of children in the child's home country, letters from doctors or therapists.

2. Age Out Issues and the Court Order

If the child is seventeen years old, you should also ask the court for an order retaining jurisdiction after the minor attains majority to comply with the court order. Under 8 CFR § 205.1(a)(3)(iv)(A) a SIJ applicant must be under 21 years old at the time s/he submits her/his application *and* at the time of adjustment. If the child is older than 21 years old at the time of adjustment, CIS will deny the child's application. Advocates should research the applicable state laws to determine how long their client may remain a dependent of the state juvenile court. For SIJ purposes, a child can apply for SIJ so long as they are under 21 years old. See 8 CFR § 204.11(c)(1).

Recently, CIS instructed officers to take the following steps to avoid a child aging out:

"Schedule SIJ adjustment interviews well in advance of the petitioner's 21st birthday, or in jurisdictions where court dependency terminates before age 21, well in advance of that birth date (e.g. age 18 in New Jersey).

¹⁷ See 8 CFR § 204.11(d); *see also* Memorandum from William Yates, Field Guidance on Special Immigrant Juvenile Status Petitions, May 27, 2004, at 4.

¹⁸ Memorandum from William Yates, Field Guidance on Special Immigrant Juvenile Status Petitions, May 27, 2004, at 4.

¹⁹ *Id.*

Ensure proper completion of background checks, including fingerprint clearances and name-checks (this means all clearances should be scheduled no later than 60 days prior to the age-out date).

Provide for expedited processing of cases at risk of aging out (e.g. in-person filing for applicants who age out within a year; priority interviews and fingerprinting; other appropriate administrative relief).²⁰ Memorandum from William Yates, Field Guidance on Special Immigrant Juvenile Status Petitions, May 27, 2004, at 6.

A child may wait four months to 36 months for his or her interview with CIS. Advocates should also request that CIS expedite the interview. By obtaining the order retaining jurisdiction and requesting an expedited interview, advocates can likely avoid having their client age out of juvenile court jurisdiction before CIS adjudicates their client's SIJ application.

²⁰ This provision has been specifically applied to SIJ beneficiaries. See *Pierre v. McElroy*, 200 F.Supp.2d 251 (SDNY 2001). Note: This necessarily includes treating the juvenile as under juvenile court jurisdiction during the 45-day period.

Notice of Entry of Appearance as Attorney or Representative (G-28)

In the first box, "In re:" write the minor's name.

Enter the date.

"File No." refers to the child's alien number. If the child has an alien number ("A" number) include it in this box.

Type in the name of the client you represent and indicate in the next box who you represent. Include your client's address.

Check box 1 and include the applicable information.

Sign the document and include your name printed, address and telephone number.

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

Part 1:

If the minor prefers for CIS to send all correspondence to your office, include your organization's address in Part 1.

Part 2:

Check box c.

Part 3:

Include all of your client's personal information here. If your client is unsure about when s/he arrived in the United States, do not state a specific date. Instead write "approximately" and state the month and year.

Part 4:

Indicate the American Consulate in the minor's home country you want notified if the petition is approved. A list of consulates is available on the Department of State's website.

Check the applicable boxes for the remaining questions. Check the "yes" box next to "Is the application for adjustment of status attached to this petition?"

Part 5:

Leave blank.

Part 6:

Check yes for both questions.

Part 7:

Leave blank.

Part 8:

Leave blank.

Part 9:

Have the minor sign, print his/her name, and date the application.

Part 10:

Have the person that prepared the form sign, print his/her name, date, and include his/her address.

In the lower right hand corner there is box with information to be completed by the child's attorney. Check the box indicating that a G-28 is attached to the petition and include your state bar number on the third line.

B. I-485 Application to Register Permanent Residence or to Adjust Status

The Form I-485 must be supported by the following documentation²¹:

- * Birth certificate or other proof of identity in compliance with 8 CFR 103.2 (including a translation into English).
- * A sealed medical examination (Form I-639). The medical exam must be performed by a CIS approved medical doctor.
- * Two color photographs with child facing forward.
- * Evidence of inspection, admission or parole (if available; by law an individual with SIJ classification is deemed to be paroled for purposes of adjustment of status²²).
- * If the child is over 14 years old, s/he must also submit a Form G-325A (Biographic Information).
- * If the juvenile has an arrest record, s/he must also submit certified copies of the records of disposition.
- * If the juvenile is seeking a waiver of a ground of inadmissibility that is not otherwise automatically waived under INA §245(h)(2)(A), s/he must submit a Form I-601 (Application for Waiver of Ground of Excludability) and supporting documents establishing that a waiver is warranted for humanitarian purposes, family unity, or in the public interest (supporting documents include affidavits, letters, press clippings, etc.). If you are an inexperienced immigration practitioner, consult with an immigration expert before submitting the waiver. There is separate filing fee for the waiver.
- * Biometrics Fee, if the child is over fourteen years old.
- * Filing Fee.

1. Evidence of the Child's Age

8 C.F.R. 204.11(d) requires that a child submit evidence of his or her age in support of his or her application. Often children enter this country without

²¹ Memorandum from William Yates, Field Guidance on Special Immigrant Juvenile Status Petitions, May 27, 2004, at 4.

²² INA §245(h)(1). Although deemed paroled as a matter of law, applicants may still be subject to INA §212(a)(2)(A), (B), and (C), §212(a)(3)(A), (B), (C), and (E), and §241(a)(5).

documentation of their age and it can be challenging for the child's advocate to obtain such documentation. For this reason, we recommend that you immediately begin to search for documentation of the child's age as soon as you decide to proceed with the SIJ application.

a. Birth Certificates

If the child has family or friends in his or her home country contact them to see if they are willing to help you obtain a birth certificate for the child. Explain to them the importance and urgency of the situation. Be sure to call and follow up with them about the status of their efforts.

You should also contact the register or appropriate agency in the town in which the child was born. If you do not know how to contact the register or the appropriate agency, the Department of State's Foreign Affairs Manual contains information on how to obtain birth certificates.²³ Once you have contact information for the agency, call the agency to see if there is a fee for your request and what information they need to process your request. Mail the agency a letter in the appropriate language by certified mail.

Another approach is to contact the local consul and ask them to help you obtain a birth certificate. Many consuls are familiar with SIJS and are willing to assist you.

Make sure you document and keep copies of the steps you took to obtain the birth certificate. Submit that information to CIS.

b. Other Documentation

An applicant must submit "documentary evidence of [his/her] 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." 8 C.F.R. 204.11(d).

Evidence of the child's age may include: "(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); or (iv) Census records showing the name, place of birth, and date of birth or age of the petitioner." 8 CFR § 204.1(g)(2). Other evidence of the child's age may include

²³ Information is available at <http://travel.state.gov/visa/reciprocityweb/index.htm>

a juvenile court order, doctor's evaluation, psychologist evaluation, dental exams, etc . . .

If you submit copies of foreign documents you must document all steps you took to obtain the original document and the result. Submit evidence of the steps you took to obtain the original document.

If you decide to submit the SIJ application before obtaining evidence of the child's age, indicate in your letter to CIS that you are actively trying to obtain evidence of the child's age. You should also include the language of 8 C.F.R. 204.11(d) and submit a declaration from the child attesting to the child's age.

2. Inadmissibility and Waivers

A child must be eligible to adjust her or his status to a lawful permanent resident. The child must show that s/he is not barred from adjusting her or his status by any grounds of inadmissibility or that s/he qualifies for a waiver of the applicable ground of inadmissibility. Unlike other adjustment applicants, SIJ eligible children are excused from several grounds of inadmissibility,²⁴ including public charge,²⁵ entering without proper labor certification,²⁶ and entering without a proper immigrant visa.²⁷ Other grounds of inadmissibility can be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest (i.e. previous false claim to citizenship, previous removal order, etc.).

Under INA 245(h)(2)(B), however, certain grounds of inadmissibility cannot be waived.²⁸ In addition, the child may not be able to adjust his or her status if s/he is in deportation proceedings, has been deported or removed, has a criminal record, was paroled into the United States, is or might be HIV positive, etc. If any of these situations apply to your client, contact an immigration expert.

²⁴ See INA §245(h)(2)(A) and §237(c)

²⁵ See INA §212(a)(4)

²⁶ See INA §212(a)(5)(A)

²⁷ See INA §212(a)(7)(A)

²⁸ See INA § 245(h)(2)(B). These grounds include INA § 212(a)(2)(A) Conviction of Certain Crimes; INA § 212(a)(2)(B) Multiple Criminal Convictions; INA § 212(a)(2)(C) Controlled Substance Traffickers (except for a single instance of simple possession of 30 grams or less of marijuana); INA § 212(a)(3)(A) Security Related Grounds; INA § 212(a)(3)(B) Terrorist Activities; INA § 212(a)(3)(C) Foreign Policy; and INA § 212(a)(3)(E) Nazi Persecution or Genocide.

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

Part 1:

Include your client's personal information. If your client is unsure about when they entered the country, write "approximately" and state the month and year.

Part 2:

Check box a.

Part 3:

Include all requested information. If the child does not know the name of the city and state where s/he entered the United States, state "unknown."

If the child is sixteen years or older, include the applicable information.

Go over questions 1-14 with your client. These are the same questions that a CIS officer will ask your client during the SIJ interview. If your client answers "yes" to any of the questions consult with an immigration expert. Your client may be ineligible to adjust her or his status or may need to file a waiver.

Part 4:

Have your client, sign, print their name, date, and include his/her phone number.

Have the person that prepared the form, sign, print his/her name, date, and include his/her contact information.

Biographic Information, Form G-325A

See attached model form. You will need to submit four copies of this form to CIS.

C. Children in Immigration Proceedings

If a child is in immigration proceedings, file the I-360 with CIS and wait for approval. When the I-360 is approved, file the I-485 in Immigration Court and adjust the child's status before an Immigration judge.

D. I-765

You should consider filing for work authorization regardless of whether the child plans to work. If the child receives work authorization, CIS will issue the child an official identification document. The child can then apply for a Social Security number.

E. Fee Waivers

SIJ applicants may request fee waivers for forms I-360, I-485, and I-765 pursuant to 8 CFR 103.7(c). The child should submit a declaration and additional documentation to illustrate the child's "inability to pay" for the fees. CIS recently instructed its officers to "pay particular close attention to fee waiver guidance relating to consideration of humanitarian or compassionate reason in support of a request."²⁹ Contact your local CIS office to see if they have a fee waiver form.

²⁹ Memorandum from William Yates, Field Guidance on Special Immigrant Juvenile Status Petitions, May 27, 2004; *see* Memorandum from William Yates, Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c), March 4, 2004.

AFTER YOU FILE THE APPLICATION

The child should receive work authorization within three months. If the child is fourteen years or older, CIS will contact the child for the fingerprinting appointment.

Within four months to one year CIS should interview the child. The child will need a photo I.D. to attend the interview. A guardian, caseworker, interpreter, and or attorney may attend the interview with the child. The CIS officer will ask the child the questions contained in forms I-360 and I-485. The officer should not ask the child for details about the abuse, abandonment, or neglect. The court order provides all the information that the officer needs. If the officer attempts to question the child about the abuse, abandonment, or neglect you should stop the interview and ask to speak with the officer's supervisor.

CIS may approve the child's application at the interview or request additional information. CIS may also send you the decision by mail. If CIS grants the application, the child will receive a CIS stamp in her or his passport and I-181 with an approval stamp. The child should receive her or his Permanent Resident Card ("Green Card") within three months.

If the child receives a denial, the child has a right to appeal the decision.