SPECIAL IMMIGRANT JUVENILE STATUS: A PRIMER FOR ONE-PARENT CASES

Special Immigrant Juvenile Status (SIJS) cases, involving a claim of abuse, abandonment or neglect against one parent while the child resides with the non-offending parent, are commonly referred to as one-parent cases. These cases, though permissible under the plain language of the statute as well as federal agency interpretation, have proved challenging particularly at the state court phase of the application process and at times before U.S. Citizenship and Immigration Services (USCIS), the agency that adjudicates SIJS petitions. This advisory is intended to be a primer for practitioners new to representing minors in one-parent SIJS claims so that they can successfully advocate for SIJS in these cases.

Background on One-Parent SIJS

Special Immigrant Juvenile Status was created by statute in 1990 to provide a path to lawful permanent residency for certain vulnerable children for whom it would not be in their best interest to return to their home county.[1] It has been amended multiple times since its creation, most notably in 2008 by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).[2] The TVPRA clarified and amended the definition of a Special Immigrant Juvenile. Specifically, it eliminated the "eligible for long-term foster care" language for Special Immigrant Juvenile eligibility, and replaced it with language requiring that reunification not be viable with "1 or both of the immigrant's parents" due to abuse, neglect, abandonment, or a similar basis found under State law.[3] This statutory change not only broadened eligibility for SIJS applicants beyond those children who were eligible for long term foster care,[4] but by using the language "1 or both" Congress signified that the child need not be separated from both parents to be eligible for SIJS. Rather, the non-viability of reunification with just one parent due to abuse, neglect, abandonment, or a similar basis is sufficient grounds to request that a state court make the necessary findings. Practically speaking, this means that a child who is residing with one parent but is unable to reunify with the other parent due to abuse, neglect, or abandonment can qualify for SIJS.[5]

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[1] *See* 8 U.S.C. § 1153(b)(4)(allocating a percentage of immigrant visas to special immigrants); 8 U.S.C. § 1101(a)(27)(J)(defining Special Immigrant Juvenile Status).

[2] Trafficking Victims Protection Reauthorization Act 2008, Pub. L. No. 110-457, §235, 112 Stat. 5044.

[3] 8 U.S.C. § 1101(a)(27)(J).

[4] *See* Memorandum from USCIS to Field Leadership re TVPRA of 2008: Special Immigrant Juvenile Status Provisions (Mar. 24, 2009), *available at* http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf (last visited Nov. 20, 2014).

[5] In dependency proceedings, this means that in a case where the parent of a child is still receiving reunification services, an SIJS order can be entered without termination of parental rights for that parent as long as there are allegations of abuse, neglect or abandonment against the other parent (whom may have already had their parental rights terminated).

Unfortunately, because there is very little legislative history on the meaning of this language, and because some state courts have interpreted it in a way that is at odds with its plain meaning, advocates handling these cases must anticipate and be prepared to address skepticism from state courts, and sometimes even USCIS.

What is a One-Parent SIJS Claim?

Advocates use the language "one-parent SIJS claim" to refer to two different factual scenarios. The first refers to a situation in which the claim of abuse, neglect, or abandonment is against one parent while the child resides with the non-offending parent. The other interpretation is a claim based upon the abuse, neglect, or abandonment of one parent while the child lives with a non-parent. In this scenario, the non-offending parent is typically still in the child's life, though presently unable to provide full-time care and support. This guide addresses only the first type of claim associated with the phrase "one-parent SIJS," that is, a petition for SIJS when a child is residing safely with one parent.

Such one-parent SIJS claims can arise in a variety of contexts in state court. For example:

Special Immigrant Juvenile Status is an avenue for undocumented children to obtain legal status when they cannot be reunified with one or both parents due to abuse, neglect, abandonment, or a similar basis found under State law and it is not in their best interests to return to their home country.

The federal government tasks state courts with making three findings:

1) that the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency or department or an individual or entity appointed by a state or juvenile court;
2) that reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment or a similar basis; and
3) that it is not in the child's best interest to be returned to his or her country of nationality or last habitual residence.

These three findings must be made before a child can even apply for SIJS before the federal agency, U.S. Citizenship and Immigration Services.

Custody Proceedings: Angel was abused and neglected by his father in his home country. As a teenager, Angel travels to the United States to reunite with his biological mother who has been residing in the United States for years, working and sending money home to provide for Angel. Angel is apprehended while attempting to cross the border, transferred to the custody of the Office of Refugee Resettlement (ORR) and later reunified with his mother in Los Angeles. Angel's attorney files a parentage petition in family court in Los Angeles based on his mother's desire to establish sole custody over him. His mother is seeking sole custody because Angel's father was abusive and she wants to be able to make decisions about his education, healthcare and welfare without his father's involvement. In connection with the parentage petition, an order making the findings necessary for SIJS is requested based on the abuse and neglect that Angel suffered in his father's care.

Delinquency Proceedings: Eduardo was brought to the United States by his mother at the age of two years old. He has no recollection of the journey. He has only faint memories of his father, whom he has seen on only two occasions since arriving to Washington state, even though his father has come to

Washington on various occasions. His father is now residing in Mexico, but his exact whereabouts are unknown. He has never provided any financial or emotional support for Eduardo. At age 14, while residing with his mother, Eduardo is arrested for burglary, his case is handled in juvenile delinquency court, and he is put on probation. The juvenile probation department refers Eduardo to immigration authorities. He is then transferred to ORR custody and later reunified with his mother. Eduardo's immigration attorney then works with his public defender to request an SIJS predicate order from the juvenile delinquency court based on his father's abandonment.

Dependency Proceedings: Patricia lived with both her mother and father in the United States. Unfortunately, she was abused by her father and there were allegations that her mother failed to protect her from his abuse. The abuse was reported to local child welfare authorities and Patricia was removed from the home. Her father's parental rights were terminated. Her mother left her father and received reunification services through the court. During the course of reunification services, Patricia's dependency attorney sought an order from the dependency court making the findings necessary for SIJS based on reunification not being viable with her father due to abuse. Patricia was ultimately reunified with her mother.

Guardianship Proceedings:[6] Carla is twelve years old. She was brought to the United States as an infant. She has resided in California in her mother's care her whole life and has never met her father. Carla's father abandoned the family after they arrived in the United States and her mother believes he now resides in Alabama, though they have not had contact for many years. Carla's mother is terminally ill with brain cancer, and is concerned that she needs another adult authorized to provide care for and make decisions for Carla should she become too ill to do so. Carla's mother petitions the court for a joint guardianship to allow her best friend to have authority to step in to care for Carla when she is too ill to do so, or passes away. Her mother's attorney also seeks an order from the guardianship court making the findings necessary for SIJS based on reunification not being viable with Carla's father due to abandonment.

What State Law Addresses One-Parent SIJS Claims?[7]

For years following the TVPRA's passage, there was no published case law on the interpretation of the "1 or both" language of the SIJS statute. In 2012, the Nebraska Supreme Court issued a published

[6] Note that in cases where the child is residing with a parent, a guardianship may not be an appropriate avenue in which to obtain an SIJS order, depending upon the law governing guardianships in your state.

[7] Some states have also passed laws addressing the SIJS statute. For example, in California, SB 873 was signed into law in September 2014. This law, among other things, clarified that family courts have jurisdiction to make the findings necessary for SIJS. This is particularly important for one-parent SIJS claims, as family courts are the main venue in which one-parent SIJS cases are filed in California and have historically been quite contentious. A California Judicial Council Memorandum implementing SB 873 also provided helpful language in support of one-parent SIJS cases, stating that: "a child whose parent was awarded sole custody based on another parent's conduct… assuming no other impediments…" will be eligible for the finding that she has come under the supervision of the court. *See Memorandum to the Presiding Judges and Court Executive Officers of the Superior Courts: Senate Bill 873 and the Special Immigrant Juvenile Process in the Superior Courts* (Sept. 30, 2014), p. 14, *available at* http://www.ncjfcj.org/sites/default/files/SIJ%2BMemo%2Bfor%2BCourts%2BSeptember%2B2014.pdf (last visited Feb. 19, 2015).

decision interpreting the language to require failed reunification with both parents. Some state courts in other jurisdictions have looked to this case to support denial of requests for SIJS findings when a child is residing with one parent. A New Jersey appellate court followed suit in 2014, although that case is currently on appeal to the New Jersey Supreme Court. Thankfully, contrary case law has also developed in both New York and California. Summaries of both the negative and positive case precedent are set forth below.

Negative Case Precedent on One-Parent Claims. At the time of this writing, there are two published state court decisions interpreting the statutory language to require failed reunification with both parents: the Nebraska Supreme Court's decision in *In re Interest of Erick M.*, and a New Jersey appellate court decision in *H.S.P. v. J.K.*[8]

In ***In re Interest of Erick M.***, Erick was adjudicated delinquent and committed to the care and custody of a state agency. A petition for SIJS findings was made in the delinquency proceedings, alleging that Erick had been abandoned by his father, whose whereabouts were unknown. He did not allege an inability to reunify with his mother, who participated in his delinquency case and with whom he intended to reunify. The lower court found that the facts failed to demonstrate that reunification with Erick's mother was not viable due to abuse, neglect, or abandonment and on that basis held that the failed reunification component of the SIJS statute was not met. The lower court also found that there was no evidence of abuse or neglect by Eric's father and did not make a finding as to whether Erick's father had abandoned him. Because the reunification component was not met, the court did not consider whether it would not be in Erick's best interest to return to his home country. In affirming the lower court's holding, the Nebraska Supreme Court stated that, "when ruling on a petitioner's motion for an eligibility order under Section 1101(a)(27)(J), a court should generally consider whether reunification with either parent is feasible."[9]

The Nebraska Supreme Court's analysis is seriously flawed. First, the court found that the federal SIJS statute is ambiguous and thus turned to the legislative history of the statute. In summarizing the various changes to the federal statute, the court focused on what it thought to be the central purpose of the various amendments: ensuring that SIJS is sought primarily to obtain relief from abuse, neglect, or abandonment and not for the purpose of obtaining immigration relief.[10] However, USCIS does not examine whether SIJS was sought primarily to escape abuse, neglect, or abandonment, but instead whether the initiation of the juvenile court action itself was sought for an immigration benefit. In Erick's case, the initiation of court action was due to his offense and not for an immigration benefit. Nonetheless, the court held that "Erick was not seeking SIJ status to escape from parental abuse, neglect, or abandonment."[11] But this express consent function[12] is one relegated to USCIS, not to the juvenile court in its adjudication of an SIJS motion.

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[8] *In re Interest of Erick M.*, 284 Neb. 340, 820 NW 2d. 639 (2012); *H.S.P. v. J.K.*, 435 N.J.Super. 147, 87 A.3d 255 (N.J.Super.A.D. Mar. 27, 2014), cert. granted, 218 N.J. 532 (N.J. July 28, 2014)).

[9] *In re Interest of Erick M.*, 284 Neb. at 352.

[10] *Id.* at 347.

[11] *Id.*

The court also considered unpublished Administrative Appeals Office (AAO)[13] decisions in support of this proposition, ultimately finding that the appellant "could not satisfy the reunification component without showing that reunification with his mother was not feasible."[14] However, many of the AAO decisions relied upon by the court were addressing pre-TVPRA cases where failed reunification *was* required with both parents, while others were in cases where the petitioner could not reunify with both parents due to abuse, neglect, or abandonment and thus, simply reflected the facts of those cases. Moreover, the Nebraska Supreme Court did not consider the federal agencies' interpretations of the statute (discussed below), thus issuing its decision in ignorance of the agency's own interpretation and implementation of the federal statute.

H.S.P. v. J.K., a New Jersey appellate court decision currently on appeal to the New Jersey Supreme Court arose out of a custody petition filed by an uncle seeking custody of his seventeen-year-old nephew. A request for SIJS findings was also included, based on facts alleging that he had been abandoned and neglected by his father and neglected by his mother and that it was not in his best interest to return to India. The lower court found insufficient evidence that the minor was neglected or abandoned by either of his parents.

The appellate court went on to consider whether the second prong of the SIJS statute was satisfied, that is, whether reunification with one or both parents was not viable. The court found that there were facts sufficient to demonstrate neglect and abandonment by the father, but nonetheless denied the request for SIJS findings, holding that "[w]e understand the '1 or both' phrase to require that reunification with neither parent is viable because of abuse, neglect or abandonment of the juvenile."[15] The court relied on legislative history to reach this conclusion, ultimately finding that the

Practice Tip. In the *H.S.P.* case, the appellate court expressed concern "at the invocation of the Family Part's jurisdiction to obtain custody with no apparent purpose other than to seek immigration benefits." *See H.S.P. v. J.K.*, 435 N.J.Super. at 155. The court noted that, "the only reason the Family Part's jurisdiction was invoked was petitioner's declaration that M.S. [the minor] was 'in need of…regularizing his immigration status.'" *Id.* at 155-156. Further, the court found it troubling that the father was not a party to the proceeding, nor had the parties even attempted to serve him. *Id.* at 157. Although the court ultimately upheld the judge's custody determination, **this analysis should serve as a warning to practitioners that they must structure petitions for custody or guardianship based on state law, rather than immigration law**.

[12] The SIJS law provides for two types of consent. One type involves USCIS consent to the grant of Special Immigrant Juvenile Status. This type of consent, required in every SIJS case and evidenced by the approval of the SIJS petition, replaces the concept of "express consent" in place before the TVPRA. The other type of consent involves the fairly unusual case in which a child is first placed in the custody of ORR during removal proceedings because he or she is deemed "unaccompanied" and seeks a change in custody status or placement to a local jurisdiction while in ORR custody. This is referred to as "specific" consent.

[13] The Administrative Appeals Office is the office that reviews appeals of USCIS decisions, under authority delegated to the USCIS by the Secretary of the Department of Homeland Security.

[14] *In re Interest of Erick M.*, 284 Neb. at 347.

[15] *H.S.P. v. J.K.*, 435 N.J.Super. at 166.

legislative and administrative history showed "two competing goals."[16] According to the court, on the one hand, "Congress wanted to permit use of the SIJ procedure when necessary to prevent the return of juveniles to unsafe parents…," but "[w]here such protection is unnecessary, Congress wanted to prevent misuse of the SIJ statute for immigration advantage."[17] Based on its own interpretation of the legislative history, the appellate court found that its interpretation of the "1 or both" language achieved both of Congress' goals. The court also found that the contrary interpretation of the "1 or both" language would render the words "or both" superfluous because it would always be sufficient that reunification with one of the child's parents was not viable.

The New Jersey appellate court's analysis is flawed for several reasons. First, given the plain language of the SIJS statute, it was not necessary for the court to turn to the legislative history. Second, even if the statute was ambiguous, there is nothing in the legislative history to suggest that Congress intended to only make SIJS available for children who could not reunify with either parent. In fact, the court itself acknowledged that "[t]here is no specific legislative history on the '1 or both' language."[18] The court cited legislative history related to the 1997 amendment, which was aimed at ensuring that juveniles who entered on student visas did not abuse the SIJS statute.[19] However, the legislative history of the 1997 amendment is inapplicable to interpretation of the current SIJS statute, which passed under the TVPRA in 2008 and "expanded the group of aliens eligible for SIJS status."[20] Even in examining the 1997 legislative history, nothing in it suggests that Congress intended that state courts take on the role of pre-screening potential applicants for SIJS.[21] Third, the court's argument that a broader interpretation would render "or both" superfluous is at odds with the plain meaning of the statute. Congress used the disjunctive to indicate that SIJS findings could be made when reunification is not viable with just one parent, and also could be made when reunification is not viable with both parents. Further, if the statute omitted the words "or both" and simply read: "reunification is not viable with one of the immigrant's parents," the plain meaning of that phraseology would render immigrant youth for whom reunification was not viable with *both* parents ineligible for SIJS. This would clearly be at odds with the purpose of SIJS, which is to protect vulnerable immigrant children. Lastly, the court's decision ignored federal agencies' interpretation of the SIJS statute.

Positive Case Precedent on One-Parent Claims. As of the writing of this advisory, there are four published state court decisions interpreting the "one or both parent" language to require failed reunification with only one parent: a New York family court decision in *Matter of Mario S.,* a New York appellate court decision in *Marcelina M.-G. v. Israel S.,* a California First Appellate District decision in *In re Israel O.*, and a California Fourth Appellate District decision in *Eddie E. v. Superior Court.*[22]

[16] *Id.* at 169.
[17] *Id.*
[18] *Id.* at 168.
[19] *Id.* at 166.
[20] USCIS Memo, *supra* note 4.
[21] *Matter of Mario S.,* 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012).
[22] *Matter of Mario S.,* 954 N.Y.S.2d 843 (N.Y. Fam. Ct. 2012); *Marcelina M.-G. v. Israel S.*, 112 A.D.3d 100, 973 N.Y.S.2d 714 (N.Y. Fam. Ct. 2013); *In re Israel O.* (2015), 233 Cal. App. 4th 279; *Eddie E. v. Superior Court*, No. G049637, 2015 Cal App. LEXIS 136 (Cal. Ct. App. Feb. 11, 2015).

In the ***Matter of Mario S.*** case, Mario, a child brought to the United States when he was six-months old, had been adjudicated delinquent for graffiti-related offenses, placed on probation and then placed into state custody after he violated probation. Mario's mother was involved in his court case and no allegations of abuse or neglect were made against her. Further, Mario's case plan anticipated his reunification with his mother and he was in fact returned to her custody upon discharge from agency custody. Mario's father had been deported due to domestic violence. He was not involved in Mario's court case, had not provided him with any financial support since he separated from Mario's mother, and did not make any substantial effort to maintain a relationship with him. The court found that although reunification with Mario's mother was possible, abandonment by his father was enough to satisfy the SIJS statute. Further, it found that it was not in Mario's best interest to be returned to Mexico because of the length of time he had resided in the United States and the fact that there was no one to care for him in Mexico. Importantly, the court declined to follow the Nebraska Supreme Court's decision in *In re Erick M.*, stating that the state court's role is limited to making factual findings, and it is not the state court's role to determine a petitioner's intent in seeking SIJS, whether that child might someday pose a threat to public safety, or whether USCIS might ultimately grant or deny an application for adjustment of status as a Special Immigrant Juvenile. The court further noted that nothing in the statute or regulations indicates that Congress intended that state courts pre-screen potential applicants for SIJS for potential abuse.

In ***Marcelina M.-G. v. Israel S.***, Susy, the child, had initially filed for a guardianship to have her uncle appointed as her guardian although her mother lived nearby and she saw her regularly. That petition alleged that reunification was not viable with her father due to neglect and abandonment and that reunification was not viable with her mother because she had neglected and abandoned her by leaving her in Honduras and by failing to provide her with any substantial financial assistance since she arrived in the United States. Although the mother had initially supported her brother-in-law's application for guardianship, she later filed a petition for custody of Susy. The mother's petition for sole custody was granted by the Family Court and as a result, the guardianship petition dismissed. The Family Court proceeded to deny Susy's motion for Special Immigrant Juvenile Status findings, stating that it was "a strained reading of a statute" to interpret it to mean that SIJS findings could be made when the child was residing with one parent.[23] On appeal, the court looked to the plain meaning of the statute, holding that the "1 or both" language provides SIJS eligibility "where reunification with just one parent is not viable as a result of abuse, neglect, abandonment, or a similar basis under state law."[24] The court, therefore, declined to adopt the Nebraska Supreme Court's interpretation of the statute.

In ***In re Israel O.***, Israel was adjudicated delinquent for receiving stolen property. He was returned to his mother's home, subject to conditions of probation. He had no memory of his father, had only limited telephone contact with him and had never received any physical or emotional support from him. Israel petitioned the court for an order making the findings necessary for SIJS, alleging that his father had

[23] *Marcelina M.-G. v. Israel S.*, 112 A.D.3d at 106.
[24] *Id.* at 110.

abandoned him and that if he were returned to Mexico, he would have no place to live and his father would not provide for him. The juvenile delinquency court found that Israel's father had abandoned him. However, relying largely on the *In re Erick M.* decision, the court interpreted the "1 or both" language of the SIJS statute as prohibiting SIJS findings if return to a custodial parent remained feasible. On appeal, the People originally filed a brief arguing that the statute was ambiguous and that legislative history failed to support Israel's position that inability to reunify with either parent would support SIJS eligibility, again relying heavily on *In re Erick M.* Subsequently, the People withdrew their position in light of USCIS materials indicating that a child could be eligible for SIJS while residing with one parent. The People took the position that it would be inappropriate for "a state attorney general to urge an interpretation of federal immigration policy in a manner that would contradict with information provided by the federal agency tasked with enforcing such policy."[25]

The appellate court considered the single issue of the meaning of the SIJS statute's "1 or both" language. The appellate court stated that it agreed with *In re Erick M.* that the statute is ambiguous and susceptible to more than one interpretation, but it departed from *Erick M.* to the extent that that decision contemplated a state court role in effectuating federal immigration policy. The appellate court looked to agency interpretation of the "1 or both" language and found little doubt that USCIS interprets the federal statute to include children residing with a non-abusive parent. Although the agency interpretations cited in the case were not contained in formal regulations, the court found that they were entitled to respect, "but only to the extent those interpretations have the 'power to persuade.'"[26] The appellate court found the agency interpretation of the statute to be persuasive and consistent with the purpose of the SIJS statute, and thus held that an eligible minor for SIJS includes a juvenile for whom a safe and suitable parental home is available in the United States. The court remanded for the lower court to consider whether it was not in Israel's best interest to be returned to Mexico.

In ***Eddie E. v. Superior Court****,* Eddie was brought to the U.S. at the age of 5 and resided in the U.S. since that time. Eddie was adjudicated delinquent for unlawfully taking a vehicle and related offenses. He was referred to Immigration and Customs Enforcement by the Probation Department, placed in removal proceedings and later reunified with his father. His mother had abandoned the family when he was 8 years old and later passed away. After a previous denial of SIJS findings on other grounds, a successful writ petition, and remand to the juvenile court to consider Eddie's request for SIJS findings,[27] the juvenile court found that Eddie satisfied the first finding because he was in the custody of a state agency, but not the second or third findings. The juvenile court found that Eddie did not satisfy the second prong because he lived with his father, who did not abuse him. The court relied on *In re Erick M.*

[25] *In re Israel O.*, 233 Cal. App. 4th at 286.
[26] *Id.* at 290.
[27] In December 2012, Eddie made his initial request for SIJS findings from the juvenile court. The juvenile court refused to make the findings because it found that his commitment to juvenile hall and placement on probation did not qualify as being a dependent of the court. The appellate court reversed, finding that an alternative basis to satisfy the statute could be: having been "legally committed to, or placed in the custody of, an agency or department of a State, or an individual or entity…". *See Eddie E. v. Superior Court* (2013) 223 Cal.App.4th 622. The appellate court remanded for consideration of this alternative basis to satisfy the first prong of the SIJS statute and for the court to consider the second and third prongs of the SIJS statute.

in holding that to satisfy this prong of the statute, Eddie had to prove he could not reunify with both parents, not just one. The juvenile court also held that alternatively, Eddie's inability to reunify with his mother was not due to abandonment, but death, since his mother had passed away after abandoning him. Further, the juvenile court found that Eddie did not satisfy the third prong of the statute because it *would* be in his best interest to return to Mexico. On this point, the court speculated that a "fresh start" in Mexico might work to his benefit given his poor choices and violations of the law.[28]

On appeal, the court held that the SIJS statute is not ambiguous and that the plain language means that a petitioner can satisfy this finding by showing an inability to reunify with one parent due to abuse, neglect, abandonment, or a similar basis found under State law. The court then considered and rejected both the *In re Erick M.* and *H.S.P.* decisions. The appellate court explicitly rejected *In re Erick M.'s* reasoning and holding, including its understanding of the role of the state court in the SIJS process. In considering the *Erick M.* decision, the appellate court disagreed with the *Erick M.* court's conclusion that the statute was ambiguous, finding instead that "it is commonplace for statutes to provide alternative means of satisfying a condition using the disjunctive word 'or.'"[29] The appellate court went on to find that even if it considered the statute to be ambiguous, the *Erick M.* court's rationale for resolving the ambiguity as it did was not persuasive because none of the USCIS unpublished decisions that the court relied upon discussed the pertinent issue: "whether '1 or both' can be satisfied by a showing applicable to only one parent when there is another known parent." [30] Further, the appellate court disagreed with the *Erick M.* court's understanding of the relative roles of the state court and USCIS, holding that "[t]he task of weeding out bad faith applications falls to USCIS, which engages in a much broader inquiry than state courts."[31] The appellate court also explicitly rejected the *H.S.P.* case, finding that it should not have delved into legislative history without a finding that the statute was ambiguous, and that the court fundamentally misunderstood the state court's role in the SIJS process. The appellate court went on to find that Eddie's mother's death did not render her abandonment ineffective, stating that "[i]t would be a particularly parsimonious reading of the statute…to deny relief to a petitioner who had been fully abandoned just because his or her parents, by dint of circumstance, died after the abandonment."[32] Lastly, the court held that Eddie satisfied the third prong of the SIJS statute regarding whether it is in his best interest to be returned to Mexico, finding uncontradicted evidence that Eddie has lived in the U.S. his entire life, has family here, and has no one in Mexico to turn to. Accordingly, the appellate court directed the lower court to issue an order making the SIJS findings.

<u>What Federal Guidance Exists on One-Parent SIJS Claims</u>?

Federal SIJS regulations have not been updated following the TVPRA's revision of the SIJS statute to address the "1 or both" clause, nor are there any federal policy memos that speak directly to the

[28] *Eddie E. v. Superior Court*, No. G049637, 2015 Cal App. LEXIS 136, at *7.
[29] *Id.* at *14.
[30] *Id.*
[31] *Id.* at *16.
[32] *Id.* at *23.

interpretation of the clause.[33] Nonetheless, there is significant federal support for one-parent claims. Set forth below is a list of some of the most relevant evidence that should be cited to and included in state court filings when resistance to these claims is encountered.

- USCIS's general information publication on SIJS acknowledges that "SIJ eligible children may…[b]e living with…the non-abusive parent."[34]

- USCIS regularly grants SIJS petitions wherein a state court has found that reunification was not viable only as to one parent.[35] In fact, responses from a 2012 national survey of immigrant youth advocates in 15 different states around the country administered by the ILRC for the Vera Institute of Justice indicated a 100% approval rate of one-parent SIJS applications filed with USCIS.

- The proposed revised Form I-360, "Petition for Amerasian, Widow(er), or Special Immigrant" clearly acknowledges that the failed reunification may only be with one parent by providing separate boxes that allow an applicant to check that: "a juvenile court has determined that reunification with" [check box] "one or" [check box] "both of my parents is not viable…"[36]

- A June 2013 Administrative Appeals Office decision reversed USCIS's denial of an I-360 petition in a case where a juvenile court had determined that a young woman from Honduras was abused and abandoned by her father and placed her in her mother's custody.[37] In this case, USCIS had determined that the petition was not *bona fide*. Notably however, neither the USCIS nor the Administrative Appeals Office considered the minor's reunification with her mother to be relevant to her eligibility for SIJS. Instead, the AAO reversed USCIS's determination, and found that the request was *bona fide* and that the applicant's inability to reunite with her father due to his abuse and abandonment satisfied the requirements of the Immigration and Nationality Act.

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[33] Proposed regulations were issued in 2011 and public comment was received. However, at the time of this writing, the proposed regulations have not been finalized and thus are not binding.

[34] USCIS, Immigration Relief for Abused Children, *available at* http://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/Immigration_Relief_for_Abused_Children-FINAL.pdf (last visited Nov. 20, 2014).

[35] *See* Junck, Angie, ILRC Practice Advisory: An Update on One-Parent Special Immigrant Juvenile Status Claims, *available at* http://www.immigrationadvocates.org/nonpr ofit/library/item.533703-Practice_Advisory_An_Update_on_OneParent _Special_Immigrant_Juvenile_Status (last visited Dec. 7, 2014). Membership in Immigration Advocates Network is required and is limited to certain qualifying individuals.

[36] *See* AILA InfoNet, USCIS Comment Request on Form I-360, p. 9, Part 8, Question 3.A, *available at* http://www.aila.org/content/fileviewer.aspx?docid=50482&linkid=281819 (last visited Dec. 7, 2014).

[37] *See In re: [Redacted]*, No. [Redacted] (U.S. Dept. of Just., Imm. & Nat. Serv., Admin. App. Ofc., June 3, 2013), *available at* http://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2013/JUN032013_01C6101.pdf (last visited Dec. 7, 2014).

- A brief filed by Immigration and Customs Enforcement in the Baltimore Immigration Court confirmed that this is USCIS's position: "[C]ounsel for USCIS [] has confirmed that a child who enters the United States illegally to join his/her parent in the United States may be considered "abandoned" for the purposes of an I-360. However, a child who enters the United States illegally to join both parents may not be considered abandoned."[38]

- A January 2014 publication of the Executive Office for Immigration Review (EOIR), more commonly known as the Immigration Court, states that "[u]nder the current version of the statute, because it is only reunification with one parent that must not be viable, the alien child could potentially be living with one parent and still qualify for SIJ status."[39]

- EOIR, sitting as the San Antonio Immigration Court, has held that the express language of Section 101(a)(27)(J)(i) of the Immigration and Nationality Act requires failed reunification with either one or both of the alien's parents.[40] In that case, the respondent's reunification with his father was no longer viable due to neglect or abandonment. The fact that the respondent was able to reunify with his mother did not render him ineligible for Special Immigrant Juvenile Status. The court there stated: "The express language of section 101(a)(27)(J)(i) of the Act requires failed reunification with one or both of the alien's parents. The respondent demonstrated that reunification was not viable with one of his parents, thus, satisfying the requirements of the statute."[41]

Thus, under both USCIS interpretation and EOIR's reading of the statute, the non-viability of reunification with either one or both of a child's parents is sufficient for purposes of satisfying the SIJS statute. Advocates should stress these interpretations to state courts, as they owe deference to interpretations of the SIJS statute by the federal agencies charged with its implementation, including the Department of Homeland Security (under whose umbrella USCIS exists) and the Department of Justice (under whose umbrella EOIR exists).[42]

[38] Amy S. Paulick, Assistant Chief Counsel, Department of Homeland Security, *DHS Line*, In the Matter of [Redacted], on file with the author.
[39] Executive Office for Immigration Review, Special Immigrant Juveniles: All the Special Rules, Immigration Law Advisor, Vol. 8, No. 1 (January 2014), *available at* http://www.justice.gov/eoir/vll/ILA-Newsleter/ILA%202014/vol8no1.pdf (last visited Nov. 20, 2014).
[40] *In re A.R.J.* (Exec. Office Imm. Rev., San Antonio, Tex. Aug. 10, 2009), on file with the author.
[41] *Id.*
[42] *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 844 (1984).