

**PART II: SPECIAL IMMIGRANT JUVENILE STATUS FOR CHILDREN AND
YOUTH UNDER JUVENILE COURT JURISDICTION**

CHAPTER 3¹

**INTRODUCTION AND OVERVIEW TO SPECIAL IMMIGRANT
JUVENILE STATUS**

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

For many child welfare or probation workers seeking to understand the basics of SIJS, this chapter will provide all the information you need. **Chapters 4–9** are designed to answer more specific questions on the nuances of eligibility, risks and benefits of applying, general background on state juvenile court systems and how immigration interfaces with them, and the application process for both affirmative and defensive cases. In particular, **Chapters 8 and 9** provide information on both the affirmative and defensive application processes and how to complete the forms.

The appendices to this manual contain many useful items for SIJS cases, such as a sample court order and other papers that you can present to a juvenile court judge, a handout in English and

¹ Portions of this chapter were reprinted with permission from Katherine Brady & David Thronson, *Immigration Issues Representing Children Who Are Not United States Citizens*, in CHILD WELFARE LAW AND PRACTICE MANUAL: REPRESENTING CHILDREN, PARENTS AND STATE AGENCIES IN ABUSE, NEGLECT AND DEPENDENCY CASES (Nat’l Ass’n of Counsel for Children 2d ed. 2004).

Spanish that you can use to discuss the risks and benefits of this program with the child, a copy of the law, regulations, USCIS policy guidance,² and sample completed copies of application forms. See **Appendices**. Note that it is easy to obtain the immigration forms you will need for the application for Special Immigrant Juvenile Status from the USCIS website at www.uscis.gov, by calling a toll-free number, or from an immigration practitioner. See instructions in **Chapter 8**.

§ 3.1 Lawful Immigration Status: What Is It and Why Is It Important? The Stories of Julia, Martin, Eduardo, and Ramon

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

Examples: The stories of Julia, Martin, Eduardo, and Ramon. When “Julia” was fourteen years old, she became a dependent of a juvenile court due to her parents’ abuse. The court terminated her father’s parental rights and provided reunification services to Julia’s mother. Her mother eventually successfully completed services and reunified with Julia (in other words, Julia was formally returned to her mother’s custody). Julia recovered from her abuse and adjusted well to life. She got good grades and was accepted to a state university.

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

Luckily, one of her social workers had heard of SIJS. Although right before Julia’s eighteenth birthday was a late date to apply and she was in reunification services with her mother, county social workers and local immigration attorneys working together were able to successfully complete the SIJS application process before Julia’s dependency case was terminated, based on a claim of abuse by her father. Julia became a lawful permanent resident through SIJS. The end of the story is that the real “Julia” went on to a successful college career, became an accountant, and has made a great life for herself!

² In late 2016, USCIS updated sections of its Policy Manual, *available online at* <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, on SIJS and SIJS-based adjustment of status (*see* Volume 6, Part J for information on SIJS and Volume 7, Part F, Chapter 7 for information on SIJS-based adjustment). Per USCIS, this guidance supersedes all prior policy memoranda except for USCIS, *Policy Memorandum: Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement* (Jun. 25, 2015), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2015/2015-0624_Perez-Olano_Settlement_Agreement_PM_Effective.pdf. However, we continue to include the prior policy memoranda on SIJS in Appendix D of this manual for their historical import.

“Martin” was placed in juvenile delinquency proceedings when he was arrested after a school fight. The juvenile court ordered him placed home on probation, with a probation officer having regular check-ins with Martin. However, the probation department realized that there was an issue with Martin’s immigration status. Martin’s public defender had heard of Special Immigrant Juvenile Status and, after learning that Martin’s father had abandoned his family many years ago and had never provided support for Martin, realized that Martin might be eligible for SIJS. Martin’s public defender successfully requested that the juvenile court make the findings necessary to allow Martin to apply for SIJS. Martin is now a lawful permanent resident, which has contributed greatly to his rehabilitation by allowing him to plan for future education and employment.

“Eduardo” came to the United States at the age of sixteen, traveling with a guide, or “coyote.” He was apprehended at the border, designated as an “unaccompanied alien child,” and placed in an Office of Refugee Resettlement (ORR) immigration detention facility in Harlingen, Texas.³ Eduardo was sent to the United States by his abusive father who wanted Eduardo to find work and send money home to the family. Eduardo had no plan for where he would live or how he would find work. He was later released from ORR custody to a maternal aunt who resides in San Jose, California. After meeting with a local immigration non-profit in San Jose, Eduardo was identified as being SIJS-eligible based on the extreme physical and emotional abuse he suffered from his father, and his mother’s failure to protect him. Eduardo was also in need of an adult guardian in the United States since he was sixteen years old and residing in the United States without a parent. Eduardo’s attorney helped him file a petition to have his aunt appointed to be his guardian, and also to request that the court make the eligibility findings for SIJS. After a successful petition in probate (guardianship) court and a positive outcome from his SIJS application, Eduardo is safely residing in his maternal aunt’s care and well on his way to becoming a lawful permanent resident.

After being assaulted and harassed by gang members in his neighborhood for months, “Ramon” fled Guatemala at the age of fourteen to reunite with his mother who resides in Los Angeles, California. Ramon’s father had physically abused both his mother and Ramon when he was a child. After his mother escaped to the United States, Ramon lived with his maternal grandparents. His father visited infrequently, usually while intoxicated, and never provided Ramon with emotional or financial support. Ramon has not seen his mother since he was five years old but successfully reunites with her after being apprehended by border patrol and placed in an immigration detention center for children. Ramon’s mother would like to request sole legal and physical custody of Ramon to protect him from any future abuse by his father. If a family court grants Ramon’s mother’s custody petition and also makes the eligibility findings for SIJS, Ramon will be SIJS-eligible.

§ 3.2 What Is Special Immigrant Juvenile Status and Who Is Eligible to Become a Permanent Resident Through Special Immigrant Juvenile Status?

Special Immigrant Juvenile Status (SIJS) is a federal law that assists certain undocumented children in obtaining lawful permanent residency. The statutory basis for Special Immigrant

³ ORR is the federal agency responsible for detaining children who are apprehended by immigration agents and classified as “unaccompanied.” For further information, *see* Chapter 18.

Juvenile Status can be found in the Immigration and Nationality Act (INA) at § 203(b)(4), which allocates a percentage of immigrant visas to individuals considered “special immigrants,” and § 101(a)(27)(J), which defines Special Immigrant Juveniles.⁴ The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, enacted on December 23, 2008, clarified and expanded the definition of a Special Immigrant Juvenile and supersedes the previous statutory definition. Pursuant to the pre-TVPRA statute, federal regulations were promulgated and can be found at 8 CFR § 204.11. These regulations implement the federal statute, but have not been updated following significant changes to the SIJS statute made by the TVPRA. In 2011, updated regulations were proposed and public comment was received; however, at the time of this writing, revised regulations have not been finalized. To the extent that the federal regulations conflict with the current statute, they are superseded by the statute. Nonetheless, pending issuance of the revised regulations, the current regulations remain in effect to the extent that they do not conflict with the statute. In the absence of updated regulations, U.S. Citizenship & Immigration Services (USCIS, the agency that adjudicates applications for SIJS) issued SIJS-related portions of its Policy Manual on October 26, 2016. This guidance, contained in Volumes 6 and 7 of the USCIS Policy Manual (USCIS-PM) is more comprehensive than any prior guidance issued by USCIS on SIJS, and is crucial reading for anyone representing children applying for SIJS. However, the Policy Manual also contains guidance that in some places conflicts with or goes beyond the statutory or regulatory requirements for SIJS.⁵ Because of this, it is important to read it in conjunction with the statute and regulations.

Under the current law, persons who are declared dependent upon a juvenile court *or* committed to the custody of agencies or departments of a state *or* to court-appointed individuals or entities, whose “reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law” and whose return to their country of nationality or last habitual residence is not in their best interest, may be able to obtain Special Immigrant Juvenile Status and, based on that, apply for lawful permanent residency (a green card).⁶ To do this, they must submit two applications and meet two sets of requirements:

1. They must apply for **Special Immigrant Juvenile Status**, and
2. Based on the Special Immigrant Juvenile petition, they also must **apply for lawful permanent residency** (a green card). In immigration terminology, applying for permanent residency is called applying for **adjustment of status** to that of a lawful permanent resident.

Ideally, the two applications are filed at the same time in an affirmative application. Sometimes, however, individuals granted Special Immigrant Juvenile Status must wait to apply for permanent residency, because visas for Special Immigrant Juveniles are subject to an annual quota based on

⁴ INA § 101(a)(27)(J) was added by § 153 of the Immigration Act of 1990 (IA90) and amended most recently by the TVPRA in 2008.

⁵ For example, the TVPRA requires USCIS to adjudicate SIJS petitions expeditiously, within 180 days of the date on which the petition is filed. TVPRA, P.L. 110-457 at § 235(d)(2). However, the USCIS Policy Manual states that “USCIS generally adjudicates SIJ petitions within 180 days,” without acknowledging that this is a legal requirement. *See* 6-USCIS-PM J.4(B).

⁶ INA § 101(a)(27)(J); 8 USC § 1101(a)(27)(J).

category⁷ and country of origin. For the first time ever, in recent years the fourth preference category has been oversubscribed for immigrants from El Salvador, Guatemala, Honduras, and Mexico. This means that sometimes Special Immigrant Juveniles from these countries must wait until a visa is available before they can submit their application for permanent residency. In a defensive application (one in which the child is in removal (deportation) proceedings), the SIJS petition is always submitted first and the adjustment of status application is submitted later.

A. Petition for special immigrant juvenile status (SIJS)

A federal statute (law) provides that an applicant must meet the following criteria to qualify for SIJS.⁸

1. Juvenile court proceedings

The applicant must be a dependent of the juvenile court *or* the court must have legally committed the child to, or placed them under the custody of, an agency or department of a state, *or* an individual or entity appointed by a state or juvenile court. A juvenile court is defined as any “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”⁹ The name of the court is not determinative; rather the role of the court is what matters for purposes of SIJS eligibility. The broad definition of juvenile court and the jurisdiction it may have under federal law includes children in dependency (child welfare), guardianship, family court/custody as well as delinquency (alleged violations of the law by youth) proceedings. It also includes children who enter into dependency or are committed to the custody of individuals and are later adopted.

Examples:

- **Dependency:** Samy is a dependent of a juvenile court and placed in foster care due to neglect by his parents. Following his parents’ failure to comply with reunification services, Samy’s parents’ parental rights are terminated. Samy is eligible for SIJS.
- **Guardianship:** Miguel is living with a paternal uncle in New York after fleeing gang violence and parental abuse and neglect in his home country of Honduras. A state court appointed Miguel’s uncle to be his guardian, and also found that reunification with Miguel’s parents was not possible due to physical abuse and neglect and that it is not in his best interest to return to Honduras. Miguel is eligible for SIJS.
- **Delinquency:** Erika was brought to the United States at the age of two. As a teenager, she gets arrested for shoplifting, is charged in delinquency court and committed to the care, custody, and control of the probation department. She is ordered home on probation and resides with her father. Her mother is a drug addict and abandoned the family when Erika was seven years old. An advocate can argue that Erika is eligible for SIJS based on her mother’s neglect and abandonment and the fact that it would not be in Erika’s best interest to be returned to her home country of Mexico, where she has no one to provide care for her and where she has no other support system.

⁷ Visas for Special Immigrant Juveniles fall under the employment-based fourth preference category. *See* Chapter 5 for more on SIJS-based adjustment of status.

⁸ *See* INA § 101(a)(27)(J).

⁹ *See* 8 CFR § 204.11(a).

- **Family/custody:** Rosa is residing safely with her mother in Los Angeles after fleeing Guatemala. In Guatemala, her father had abused her when she was young, and then abandoned the family. Rosa’s mother seeks legal and physical custody of her in a family court in Los Angeles so that she can have full custodial rights and protect her daughter from any further harm. If the family court also finds that reunification with Rosa’s father is not viable due to abuse and abandonment and that it is not in Rosa’s best interest to return to Guatemala, she will then be eligible to apply for SIJS.

All four of these children may be eligible for SIJS if they can meet all the other requirements.

For further discussion of dependency, delinquency, guardianship, custody, and adoption and their intersection with SIJS, see **Chapter 4**. For general background of these systems, consult **Chapter 7**.

2. The juvenile court must find that reunification with one or both parents is not viable

For the child to qualify for SIJS, a judge must issue an order finding that *the child’s reunification with one or both parents is not viable* due to abuse, neglect, abandonment, or a similar basis under state law.¹⁰

A finding for SIJS purposes that reunification is not viable does not require formal termination of parental rights or a determination that reunification will never be possible. While short separations from parents likely would not qualify, the possibility of future reunification need not deter a finding that reunification presently is not viable as long as there is a significant separation.¹¹

The “one or both parents” language also signifies that the child need not be separated from both parents to be eligible for SIJS. In other words, the statute provides SIJS eligibility on the basis of the non-viability of reunification with one parent due to abuse, neglect, or abandonment, even while the child remains in the care of the other parent or while the court is actively trying to reunite the child with the other parent. Advocates should be aware, however, that the parent with whom the child remains or with whom they eventually reunify will not be eligible for legal status through the child at any point in the future, even after the child becomes a U.S. citizen.¹² There is very little legislative history on the meaning of this language and there has been some resistance from state courts to grant these “one-parent” SIJS claims. However, the plain language of the statute, various state court decisions, as well as USCIS’s official interpretation and implementation of the statute support the viability of these claims. Most significantly, the new USCIS Policy Manual guidance on SIJS explicitly recognizes that children can be eligible for

¹⁰ INA § 101(a)(27)(J); *see also* Manoj Govindaiah, Deborah Lee, Angela Morrison, & David Thronson, *Update on Legal Relief Options for Unaccompanied Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, at 3-4, www.aila.org (AILA Doc. No. 09021830) (posted Feb. 19, 2009) [hereinafter *TVPPRA Practice Advisory*].

¹¹ The USCIS Policy Manual (USCIS-PM) states that lack of viable reunification generally means the child cannot reunify with their parent(s) for the duration of the juvenile court jurisdiction, until the child ages out. *See* 6 USCIS-PM J.2(D)(2).

¹² *See* INA § 101(a)(27)(J)(iii)(II).

SIJS based on their inability to reunify with only one parent.¹³ See **Chapter 4** for further discussion of “one-parent” SIJS cases.

NOTE: Expansion of the scope of SIJS beyond foster care. Advocates should note that the former SIJS statute required an applicant to have been “deemed eligible for long-term foster care” by the court, which in turn was interpreted to require that family reunification *with both parents* must no longer be a viable option. The TVPRA eliminated this requirement, which had been a source of confusion for both juvenile courts and USCIS. In essence, the TVPRA clarified the terminology in the statute and made clear that the child need not be in actual state foster care to be SIJS-eligible.¹⁴

Example: Sara lived with both her father and mother. Sara was abused by her father and her mother failed to protect her from his abuse. Sara’s situation was reported to local child welfare authorities. Sara’s mother left Sara’s father. Subsequently, the juvenile court provided reunification services with Sara’s mother. For SIJS eligibility, the juvenile court only needs to find that family reunification with one parent—here, Sara’s father—is not viable and therefore, the court can enter SIJS findings even while reunification services are provided to Sara’s mother. Sara would be eligible for SIJS.

While this example demonstrates the expansion of who may be eligible for SIJS while in dependency (child welfare) proceedings, there are additional avenues for children to come under the jurisdiction of a juvenile court and be eligible for SIJS. They include delinquency, guardianship, family/custody, and adoption proceedings. See examples in the prior section. For further discussion, see **Chapter 4**.

3. *Due to abuse, neglect, abandonment, or similar basis under state law*

The court order must make it clear that reunification with one or both parents is not viable *due to abuse, neglect, abandonment, or a similar basis under state law*, as opposed to making the SIJS findings solely for the purpose of getting the child lawful immigration status or for some other reason.¹⁵

Abuse, neglect, and abandonment are defined under the relevant state law and do not have to take place within the United States for the child to be eligible for SIJS. The relevant question for SIJS eligibility is whether a judge, under the applicable law of the state, has found abuse, neglect, abandonment, or some other, similar finding. While this language prohibits establishing SIJS eligibility via juvenile court jurisdiction for children not otherwise in need, it does not require that formal charges of abuse, neglect, or abandonment be levied against parents. For example, a child for whom the court appoints a guardian can qualify without a separate proceeding against the parents alleging abuse, neglect, or abandonment.

Under changes by the TVPRA, the SIJS statute now allows for SIJS eligibility based on findings under state law “similar” to abuse, neglect, or abandonment. For example, some states use different legal terms, other than abuse and neglect, to describe the basis for refusing to reunify a

¹³ See 6 USCIS-PM J.2(D)(1).

¹⁴ See 6 USCIS-PM J.2(D)(2).

¹⁵ See INA § 101(a)(27)(J)(i).

child with their parents. Other courts, such as delinquency, may not normally enter abuse and neglect findings, but instead other findings for which they have jurisdiction. The TVPRA broadened the eligibility requirements such that these state law findings based on slightly different vocabulary may still meet the SIJS statutory requirements. However, the applicant must still establish that such a basis is in fact similar to a finding of abuse, neglect, or abandonment. To avoid this extra step, if the child was subject to juvenile court jurisdiction under some other legal term it is best to ask the judge to also include in the SIJS order (discussed below) one of the designated statutory terms: “abuse, neglect, or abandonment.” The judge should use the term whose plain meaning reflects what actually happened to the child.

The juvenile court judge’s order should specifically identify whether abuse, neglect, or abandonment, or a similar basis in law, was the foundation for the determination that reunification with one or both parents was not viable and provide facts to support the finding. It is not sufficient for the order to simply track the language of the SIJS statute. For example, the judge’s order could state, “The minor’s reunification with the mother is not viable based on physical abuse he suffered in the form of weekly beatings which left bruises on the minor’s body. The minor’s reunification is further not viable based on emotional abuse he endured, with his mother calling him ‘good for nothing’ and ‘a burden’ on a regular basis” or “The above orders and findings were made due to abandonment and neglect of the minor by the father, in that the father failed to provide support for the child and has not contacted the child in seven years. During this time, the minor has attempted to contact his father to request support, but has been told that his father ‘does not care’ about him and that the minor should ‘go to hell.’” See sample judge’s order in **Appendix J**. According to USCIS guidance, the judge’s order, or other documents submitted, must provide a basic statement of the facts that supported the order, sufficient to establish that there was a factual basis for the court’s findings.¹⁶ For further discussion, see § 4.5.

PRACTICE TIP: Advocates who demonstrate that juvenile court proceedings are protected by state privacy/confidentiality laws should avoid giving USCIS any documents from the state court proceedings.

4. *The court or an administrative agency must determine that it is not in the child’s best interest to be returned to their home country*

Generally, the juvenile court should include in its SIJS order (discussed below) that it is not in the child’s best interest to be returned to their country of nationality or last habitual residence. Both the downsides of the child returning to their home country and the upsides of remaining in the United States are relevant. The evidence for this finding may range from a foreign social service agency’s home study determining that a grandparent’s home is not appropriate, to simply interviewing the child to learn that there are no known appropriate family members in the home country or that no one is available to protect the child from harm in the home country. Other factors may include: family and friend support systems in the United States, the child’s emotional and physical well-being, and access to medical and educational resources that the child may require. If the juvenile court does not include this language in its SIJS order, the applicant must

¹⁶ 6 USCIS-PM J.3(A)(3).

submit evidence that this finding has been made in another administrative or judicial proceeding. For further discussion, see § 4.6.

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

In order for a child to qualify for SIJS, the juvenile court judge must sign a special order, usually prepared by the child's attorney or other advocate, stating that all the findings required for SIJS have been made. The child will submit this order to USCIS as part of the child's petition for Special Immigrant Juvenile Status. For more on the SIJS application process, see **Chapters 8** and **9**. A sample judge's order appears in **Appendix J**.

PRACTICE TIP: Advocates should request input from SIJS experts before drafting the SIJS order. In recent years, USCIS has exercised increasing scrutiny of the SIJS state court order, and USCIS's concerns with the orders change frequently. Accordingly, before submitting a proposed SIJS order to the juvenile court judge, get input from SIJS experts about the content of the order, as it will need to be acceptable not only to the juvenile court judge, but also to USCIS.

6. *Consent to the grant of SIJS and specific consent*

There are two requirements of consent under the SIJS law: (1) consent to the grant of SIJS in any case; and (2) specific consent for a juvenile court determination on a child's custody or placement status if the child is in federal custody during removal (deportation) proceedings.

The first type of consent requires that the Secretary of Homeland Security, through USCIS, consent to the grant of Special Immigrant Juvenile Status.¹⁷ According to USCIS, this consent is an acknowledgement that SIJS was not "sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment."¹⁸ USCIS conflates consent with the act of approving an SIJS petition and, therefore, there is no separate consent application that needs to be made. An approval of an SIJS application itself is evidence of this consent.¹⁹

The second type of consent is more rare. It applies only to children in federal custody who seek a juvenile court determination of their custody status or placement. Children in federal custody who are deemed "unaccompanied" will be placed in the custody of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) Division of Children's Services (DCS) (hereinafter referred to as ORR). As such, children in federal custody seeking a juvenile court determination that changes their custody or placement status must first obtain "specific consent" from ORR. This is a notable change. Prior to the TVPRA, the specific consent had to be obtained from the Department of Homeland Security (DHS), which had policies and practices toward unaccompanied minors that were confusing, inconsistent, and detrimental for these youth.²⁰ For further discussion, see § 4.7.

¹⁷ INA § 101(a)(27)(J)(iii).

¹⁸ See H.R. Rep. No. 105-405, at 130 (1997); 6 USCIS-PM J.2(D)(5).

¹⁹ 6 USCIS-PM J.4(E)(1).

²⁰ TVPRA Practice Advisory, *supra* note 10, at 4.

7. Other requirements: Applicant must be under age twenty-one at time of filing with USCIS, juvenile court should retain jurisdiction (until further guidance is provided), and child should be unmarried

a. Under the age of twenty-one

Any person under the age of twenty-one who meets the other requirements can apply for SIJS.²¹ Historically, this meant that applicants needed to complete the entire immigration adjudication process prior to turning twenty-one. However, under the TVPRA, as long as the applicant is a “child” (defined as an unmarried person less than twenty-one years of age) on the date the SIJS petition is properly filed with USCIS, USCIS cannot deny SIJS regardless of the applicant’s age at the time of the petition’s adjudication.²² In other words, so long as the applicant is a “child” according to the immigration laws at the time of proper filing, the applicant’s age will be locked in for purposes of the SIJS petition.

Note on applicants who are eighteen or older. State laws generally require that a child be under age eighteen at the time they are first under the jurisdiction of the juvenile court. State laws vary as to how long a child can remain under juvenile court jurisdiction once they have entered the system. Some states, for example, end dependency at age eighteen, others extend it to age nineteen (especially if the child must complete high school), and others potentially can extend dependency to age twenty-one or beyond. Similarly, different states have different laws on how old a young person must be to enter or stay under juvenile court jurisdiction in a delinquency case. In the guardianship and family law context, most state courts can only take jurisdiction of a minor who is under the age of eighteen, although there are some notable exceptions (for example, in New York and California, a guardian may be appointed past the age of eighteen).

Under the regulations, any person under twenty-one who meets the SIJS requirements can apply for SIJS.²³ Thus, it is possible that a nineteen-year-old could become a juvenile court dependent for the first time at age nineteen and could file an SIJS petition and have it approved—so long as they meet the other SIJS requirements. In reality, however, this would be very difficult to achieve. Most jurisdictions will not declare a youth dependent, appoint them a guardian, or make a custody determination once they are eighteen or older. This misalignment between federal and state law creates a class of youth, ages eighteen to twenty-one, who are otherwise eligible for SIJS under federal law, but are effectively barred from applying for this status because no state court can take jurisdiction of them and make the SIJS findings. In fact, advocates report significant difficulties in obtaining juvenile court jurisdiction even for older children who are not yet eighteen but who are close to their eighteenth birthdays. Moreover, under a new interpretation of the SIJS statute, USCIS may also deny a case of a youth applying for SIJS who received the SIJS findings after the age of eighteen.²⁴

²¹ 8 CFR § 204.11(c)(1).

²² Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), § 235(d)(6); *see also* 6 USCIS-PM J.2(C) (“USCIS considers the petitioner’s age at the time the SIJ petition is filed when determining whether the petitioner has met the age requirement.”).

²³ 8 CFR § 204.11(c)(1).

²⁴ Prior to 2018, cases in which the youth was over eighteen when the SIJS findings were made were routinely approved by USCIS. In April of 2018, however, the *New York Times* published an article

b. Continuing juvenile court jurisdiction until the entire immigration process is complete

The SIJS regulations provide that the person applying for Special Immigrant Juvenile Status must remain under juvenile court jurisdiction throughout the entire immigration process—that is, until USCIS approves the petition for SIJS *and* the application for adjustment to lawful permanent residency.²⁵ This provision predates changes enacted by the TVPRA, and at this time it is unclear whether this requirement will continue to exist.²⁶

When this requirement is read in tandem with the TVPRA’s age-out protection (described above), however, it appears that this continuing jurisdiction requirement is eliminated altogether for children whose juvenile court cases close due to age. If USCIS cannot deny SIJS to any person on account of “age,” as long as they were under the age of twenty-one when the SIJS petition was filed, USCIS cannot then refuse to approve an SIJS petition or revoke an approved SIJS petition simply because the child’s juvenile court case has been closed if this closure is because of “age.” This issue comes into play, for example, under state law where dependency, delinquency, guardianship, family, or other juvenile court jurisdiction ends when a child turns eighteen years old. For these reasons, advocates believe that this regulation needs to be changed to reflect the age-out protections of the TVPRA.

While it seems clear that the statute now intends to protect a child from aging out of SIJS eligibility, until USCIS provides further guidance advocates should proceed with caution in this area. Some juvenile court judges will want to, or must under state law, terminate juvenile court jurisdiction when the child reaches a certain age. Juvenile court jurisdiction may also end by operation of law when a child turns eighteen. It therefore remains best practice to proceed as expeditiously as possible in pursuing Special Immigrant Juvenile Status to complete processing

describing a “rule change” that was resulting in mass denials of post-age-eighteen SIJS cases in New York. Liz Robbins, *A Rule is Changed for Young Immigrants, and Green Card Hopes Fade*, N.Y. TIMES, Apr. 17, 2018, <https://www.nytimes.com/2018/04/18/nyregion/special-immigrant-juvenile-status-trump.html>. This change occurred without USCIS issuing any public announcement about a change in policy or otherwise announcing a changed interpretation of the SIJS eligibility requirements. Soon thereafter, *Politico* reported on a “clarification” by the USCIS chief counsel’s office—never announced publicly—“which called in February for the agency to reject pending applications in cases where applicants could not be returned to the custody of a parent.” Ted Hesson, *USCIS Explains Juvenile Visa Denials*, POLITICO, Apr. 25, 2018, <https://www.politico.com/newsletters/morning-shift/2018/04/25/travel-ban-at-scotus-182935>. Since most courts cannot place a child back into the custody of their parent once the child reaches the age of majority, according to the new USCIS interpretation, those state courts “do not have power and authority to make the reunification findings for purposes of SIJ eligibility.” *Id.* At the time of writing, class action lawsuits have been filed in New York and California challenging USCIS’s denial of cases based on this unannounced policy change. *M. et al v. Nielsen et al*, No. 1:18-cv-05068 (S.D.N.Y. filed June 7, 2018); *J.L. et al v. Cissna et al*, No. 5:18-cv-04914 (N.D. Cal. filed Aug. 14, 2018). However, in the meantime, it seems clear that USCIS intends to deny many cases in which the SIJS findings were obtained after the youth turned eighteen, though this may depend to some extent on state law. See further information in Chapter 4.

²⁵ 8 CFR § 204.11(c)(5); 8 CFR § 205.1(a)(3)(iv)(C).

²⁶ The proposed SIJS regulations, which have not been finalized, provide that an individual is eligible for SIJS classification so long as the dependency, commitment, or custody underlying the state court order is in effect at the time of filing and continues through the time of adjudication, “unless the age of the petitioner prevents such continuation.” Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978 (Sept. 6, 2011).

while the child continues to be under court jurisdiction. If the court is considering termination of jurisdiction, advocates should fight to keep the child under juvenile court jurisdiction until the immigration process is complete. At the same time, immigration attorneys using the expeditious adjudication requirement can try to persuade USCIS to speed up (“expedite”) the process if the child is about to age out of the juvenile court system.²⁷

If continuing to retain jurisdiction in a case is not possible, advocates are best advised to obtain specific language in the juvenile court order terminating jurisdiction of the case that states that the case is being closed due to age.

Continuing existence of this regulation creates a difficult situation and needlessly costs state systems time and energy by requiring children to stay in the juvenile court system longer than they otherwise would. We hope that better rules will appear in the future as a result of the TVPRA’s age-out protection. Advocates should keep abreast of developments.

Example: Julia entered the child welfare system when she was fourteen years old. Because social workers had not heard about SIJS earlier and did not know about her immigration situation, Julia did not apply for SIJS until she was seventeen. The juvenile court retained jurisdiction over Julia until she was twenty and USCIS granted her SIJS and adjustment of status applications.

Example: Mario entered the delinquency system when he was fifteen years old and resided in a foster care group home for years. Mario did not apply for SIJS until he was seventeen years old. The juvenile court terminated jurisdiction on Mario’s nineteenth birthday due to his age and the fact that he had completed probation. Mario should remain eligible for SIJS because he was under twenty-one on the date he applied for SIJS and a denial based on a lack of continuing juvenile court jurisdiction would be “based on age”—something the TVPRA prohibits. Note: if the court had terminated jurisdiction due to completion of probation and not because of age, Mario would be in jeopardy of having his SIJS application denied even if he filed it before the age of twenty-one.

Example: Thelma arrived to the United States at the age of seventeen-and-a-half. She had been abandoned by both parents as a young child and was raised by a grandmother who was no longer able to care for her. She reunified with a loving maternal aunt who petitioned the court to be appointed her guardian. By the time Thelma’s hearing date in guardianship court came and her aunt was appointed her guardian, she was weeks away from her eighteenth birthday, when the court’s jurisdiction ends by operation of law. Thelma should remain eligible for SIJS because she was under twenty-one on the date she applied for SIJS and a denial based on a lack of continuing juvenile court jurisdiction would be “based on age,” which is prohibited by the TVPRA.

c. The applicant cannot be married

Under USCIS regulations, applicants for SIJS must remain unmarried until the entire immigration process is complete and USCIS grants permanent residency. An applicant’s being divorced or having their own children does not bar SIJS eligibility.

²⁷ Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008), § 235(d)(2).

B. Application for permanent resident status

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

Applicants generally might have a difficult time gaining permanent residency or may even be barred from doing so if they have a record of involvement with drugs, prostitution, or other crimes, have engaged in alien smuggling, were previously deported, or have certain other “bad marks” against them. These children need advice from expert immigration counsel before applying. They may well win their case—but they need to get good advice to make sure of that before they apply. Immigration lawyers should note that children seeking SIJS-based adjustment of status are automatically exempt from many grounds of inadmissibility. Also, special waivers of inadmissibility are available to Special Immigrant Juveniles that do not require a qualifying relative. See discussion at § 5.3.

More detailed information on all eligibility requirements for SIJS and adjustment of status is provided in **Chapters 4** and **5**.

The following types of cases, discussed in **Chapters 4** and **5**, deserve special attention and expert advice:

- Children who soon will turn eighteen, or are over eighteen
- Children who soon will be released from juvenile court jurisdiction
- Children who currently are in removal (deportation) proceedings
- Children who are or have been in juvenile delinquency proceedings or have a juvenile or adult criminal record
- Children who have encountered law enforcement even if they have never been formally arrested and/or placed in delinquency proceedings
- Children who have engaged in drug use or drug dealing
- Children who may be in a gang database or flagged as a gang member or associate
- Children who have been previously deported or removed
- Children who have been involved in alien smuggling

§ 3.3 What Are the Benefits of Applying for Special Immigrant Juvenile Status?

The most important benefit of applying for SIJS is obtaining lawful permanent resident status—a green card. Special Immigrant Juvenile Status might be the only route for an undocumented child to gain lawful permanent immigration status in the United States. (But see **Part III** of this manual for other important and, in some instances, more viable ways that some children can obtain lawful immigration status.)

A lawful permanent resident has the right to **live and work permanently** in the United States and to **travel in and out of the country**. While access to public benefits (e.g., welfare, MediCare) for permanent residents has been drastically curtailed since 1996, permanent residents are eligible for some benefits initially and more as time goes on. In particular, youth may be eligible for Title IV-

E funds and federal financial aid to go to college. Additionally, after five years (and in some cases sooner) permanent residents can apply for **U.S. citizenship**, which provides additional benefits such as the ability to vote and a more secure immigration status.

Lawful permanent resident status is **permanent**—a Special Immigrant Juvenile who obtains permanent residency will keep it after they are no longer under juvenile court jurisdiction. They remain a permanent resident for their entire life (unless they choose to become a U.S. citizen). The only reason someone’s permanent residency might end would be if the person became deportable for some reason, such as violation of certain laws and convictions *as an adult* of certain criminal offenses.

The above benefits come with the green card, but once applicants have submitted the adjustment of status application, they may be granted **employment authorization** until their case is decided.

Counties also benefit when a child gains SIJS because they may be able to access federal foster care matching funds, which they cannot access for undocumented children.

See **Chapter 6** for a further discussion of these benefits.

§ 3.4 What Are the Risks of Applying?

The greatest risk to the child is that, if an affirmative application is turned down, Immigration and Customs Enforcement (ICE) might attempt to remove (deport) the child from the United States.

When a child files an affirmative petition for SIJS, the child is alerting immigration officials in USCIS to the fact that they are present in the United States unlawfully. Since these petitions are not confidential, if the SIJS petition and/or the adjustment of status application is denied, under a new USCIS policy memorandum, USCIS will issue the child a Notice to Appear (NTA), placing the child in removal proceedings for deportation.²⁸

It is crucial to make sure that the child is likely to gain SIJS and adjustment of status before submitting a SIJS packet to USCIS so that you do not unintentionally cause the child to be deported. Note that children who are not eligible for SIJS may still be eligible to get lawful status in some other way, such as through U nonimmigrant status (a visa for victims of crime) or through an abusive U.S. citizen or permanent resident parent under Violence Against Women Act (“VAWA”) provisions, even if the child does not come or remain under juvenile court jurisdiction. See **Chapters 10** and **11**.

²⁸ USCIS, *Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* PM-602-0050.1 (June 28, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf> [hereinafter *USCIS NTA Memo*]. On July 30, 2018, USCIS announced that implementation of USCIS NTA Memo is postponed until USCIS components “create or update operational guidance on NTAs and Referrals to ICE.” See USCIS, *Updated Guidance on the Implementation of Notice to Appear Policy Memorandum* (July 30, 2018), <https://www.uscis.gov/news/alerts/updated-guidance-implementation-notice-appear-policy-memorandum>. It is unclear therefore when the guidance will be implemented. Nonetheless, advocates must engage in the risk analysis that the USCIS NTA Memo now requires in all affirmative cases and advise their clients of the same.

In the cases where a child is already in removal (deportation) proceedings and applying for SIJS and adjustment of status defensively, this risk does not exist because immigration authorities are already aware of the child's presence in the United States. In these cases, however, there may be significant barriers to obtaining SIJS and adjustment of status—including getting the children into juvenile court and time pressures created by immigration court deadlines.

§ 3.5 Who Should Apply?

Children who meet all of the statutory and regulatory requirements for SIJS and adjustment of status and who merit a favorable exercise of USCIS's discretion should file for these forms of relief. If the children are not in removal proceedings, they should generally submit the SIJS petition and the adjustment of status application together, affirmatively, if visa availability allows them to.²⁹ Generally, children should not affirmatively apply if the advocate is not confident that the applications will be granted. In case of doubt, the advocate should be sure to consult with competent immigration counsel. For example, children with juvenile delinquent or adult criminal records or records of extensive immigration violations should consider their case strategy with an expert before filing.

There is one exception to this cautious advice: children who are already in removal (deportation) proceedings have nothing to lose by submitting an SIJS petition and a corresponding application for adjustment of status since ICE is already trying to deport them.³⁰ They should apply for SIJS if there is any chance of qualifying since approval of the SIJS petition and adjustment of status application would stop their deportation. Note that if these children are already in federal custody (ORR custody), juvenile courts will have to get permission ("specific consent") from ORR if they make any determination that changes the child's custody or placement status. No consent is needed if such a determination is not regarding custody or placement status and merely to enter SIJS predicate order findings. See § 4.7.

§ 3.6 What Is the Application Procedure?

The process for applying for SIJS and adjustment of status depends upon whether the child is applying affirmatively (not in removal proceedings) or defensively (while in removal proceedings, as a defense to deportation). Some steps are similar and others differ. The application procedure is discussed in greater detail in **Chapters 8** (affirmative) and **9** (defensive). Sample application packets appear in **Appendices M** and **S–W**.

Affirmative case. The child must file two applications, one for Special Immigrant Juvenile Status and one to adjust status to lawful permanent residency. Unlike many other bases of eligibility for

²⁹ Note that in an affirmative SIJS case, both the I-360 and I-485 forms can be filed concurrently with USCIS assuming there is a visa available to the child, unless there is a reason to file the I-360 alone in advance of the I-485 (for example, if the child has a prior executed removal order and the approved I-360 is needed to prevent reinstatement of the removal order, or if it may be helpful for an applicant to have additional time to demonstrate rehabilitation if there are any negative factors in the case, such as a delinquency history).

³⁰ If the child's immigration attorney contests removability and puts DHS to its burden to establish the child's alienage, however, then the attorney would not want to submit an SIJS petition on the child's behalf until that issue is resolved since the SIJS petition does require the child to admit alienage.

adjustment of status that require applicants to have been inspected and admitted or paroled into the United States in order to adjust status (or else they must travel outside the United States to apply for permanent residency at a U.S. consulate abroad), an applicant for lawful permanent residency based on SIJS never has to travel outside of the United States, but can apply while remaining in the United States.³¹ Currently, both the SIJS and the adjustment of status applications are filed at the Chicago Lockbox. For the SIJS petition, besides the applicable immigration form (I-360), the applicant must submit the SIJS order and some proof of age such as a birth certificate. If also filing for adjustment of status, the applicant submits the applicable adjustment immigration forms (I-485, as well as I-765 if seeking employment authorization), two passport-style photographs, photo identification, birth certificate if available, the results of a medical exam conducted by a USCIS-approved doctor, and filing fees (unless waived). Applicants generally need to have a photo identification to complete their biometrics.

Once the adjustment application is filed with USCIS, the child can obtain employment authorization. USCIS will schedule an appointment for the child to be photographed and fingerprinted (“biometrics”) at an Application Support Center (“ASC”), and the FBI will complete a check of any criminal or delinquency record or prior deportation for children ages fourteen and older. USCIS is required by the TVPRA to adjudicate SIJS petitions within 180 days of filing, however, in recent years USCIS is regularly failing to comply with this requirement. USCIS may adjudicate the SIJS petition with or without interviewing the child. When USCIS does decide to interview the child, the child often can have a social worker, and certainly an attorney, attend the interview with them if desired. USCIS might approve the SIJS petition at the interview, or might request further information. If USCIS denies the case, under the new USCIS guidance discussed above (once it is implemented), USCIS will issue the child an NTA, placing them in removal (deportation) proceedings. The child can appeal the SIJS petition’s denial to a higher unit at USCIS called the Administrative Appeals Office (AAO). They may also consider filing an action in federal district court challenging the denial.

USCIS may also adjudicate the application for adjustment of status with or without an interview. If USCIS interviews the SIJ adjustment applicant, USCIS may approve the application at the interview, or may request additional information. As with the SIJS petition, if USCIS denies the adjustment application, under the new USCIS guidance discussed above (once implemented), USCIS will issue an NTA, placing the child in removal (deportation) proceedings. The child cannot appeal the denial of the adjustment of status application. Instead, the adjustment of status application can only be renewed before the immigration court.

If desired and if visa availability allows, the child will submit two applications at the same time to USCIS if applying for SIJS affirmatively: one for Special Immigrant Juvenile Status (Form I-360) and one for adjustment of status to permanent residency (Form I-485).

³¹ Immigration practitioners should see INA § 245(h), which provides that SIJS applicants are deemed paroled in and therefore eligible for adjustment even if they entered without inspection. They do not have to qualify under § 245(i) or another special program, or pay a penalty fee; they are entitled to adjustment by virtue of their approved SIJS petition. Otherwise, immigration attorneys should note that an SIJS-based adjustment procedure is similar to a § 245(a) adjustment for an immediate relative.

Defensive case. The child still must file two applications, one for Special Immigrant Juvenile Status and one to adjust status to lawful permanent residency. Unlike in affirmative cases, however, these applications are not filed together. Instead, the child first files their SIJS petition with USCIS at the Chicago Lockbox—since USCIS alone has the power to grant or deny a child’s SIJS petition. Besides the forms, the child must submit the SIJS order and some proof of age such as a birth certificate. USCIS may adjudicate the SIJS petition with or without interviewing the child. Again, this adjudication must happen within 180 days of the filing of the SIJS petition under the law, although USCIS routinely misses this deadline. If USCIS denies the child’s SIJS petition, the child can appeal to a higher unit at USCIS (the AAO). They can also consider filing an action in federal district court. If USCIS approves the child’s SIJS petition, they proceed to the next step.

Once USCIS has approved the child’s SIJS petition, then the child’s immigration attorney will file the child’s adjustment of status application with the immigration judge—since the immigration judge alone has the power to grant or deny a child’s adjustment of status if the child is in removal proceedings, unless the immigration attorney is able to obtain a termination of the removal proceedings, in which case they can file the application for adjustment of status with USCIS.³² Besides the forms, the child must submit the results of a medical exam conducted by a USCIS-approved doctor and filing fees (or a request for fee waiver). The child’s immigration attorney must also submit a biometrics packet to USCIS so that the child can have their background checks completed. After these steps are complete, the immigration judge will schedule a merits hearing for the child. At that hearing, the immigration judge will take testimony and will likely issue a decision on the child’s case. If the immigration judge approves the case, the child becomes a lawful permanent resident. If the case is denied, the child can file appeals with the Board of Immigration Appeals and then the federal courts, depending upon the circumstances.

Note that if the immigration judge is willing to terminate the child’s removal proceedings upon the filing or approval of the child’s SIJS petition by USCIS, then the child can proceed affirmatively with their case and seek their adjustment of status before USCIS rather than in immigration court. This may be preferable because it allows the child’s adjustment of status application to be adjudicated in a non-adversarial setting. It is best practice to request that the attorney representing ICE either join or agree not to oppose the motion to terminate, although it is unlikely in the current environment that ICE will agree to either. See **Chapter 9** for further information.

The child will submit two applications *at different times and to different entities* if applying for SIJS defensively: one for Special Immigrant Juvenile Status (Form I-360) to USCIS, and then one for adjustment of status to permanent residency (Form I-485) to the immigration judge (or, if removal proceedings are terminated, USCIS)—but only if the SIJS petition is approved.

³² The only exception is if the child is charged as an “arriving alien” in her removal proceedings. In that case, USCIS has jurisdiction to adjudicate the child’s adjustment of status application. 8 CFR §§ 245.2(a)(1), 1245.2(a)(1).

§ 3.7 Expeditious Adjudication

SIJS petitions are required to be adjudicated expeditiously, within 180 days after the date on which the application is filed.³³ USCIS interprets this expeditious requirement as only applying to the SIJS petition (I-360) and not the entire application packet, which includes the adjustment of status application (I-485).³⁴ In order to comply with this requirement, USCIS has the discretion to waive interviews with applicants under the age of fourteen or when it is determined that an interview is not otherwise necessary. Advocates should contact the National Benefits Center (the USCIS office responsible for adjudicating SIJS petitions and SIJS-based adjustment of status applications) if SIJS petitions are not adjudicated on time, and should then go up the chain of command at USCIS until the issue is resolved. Action in federal court may be possible if USCIS does not adjudicate a child's SIJS petition within the 180-day timeframe. Currently, USCIS routinely fails to comply with the 180-day deadline. See **Chapter 8** for further information.

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

Before a petition for Special Immigrant Juvenile Status is filed for a child, the child should understand what the application is about, and the risks and benefits of filing. Any attorney for the child must be consulted, and the child's social worker, probation officer, CASA (court-appointed special advocate) volunteer, foster parent, or other interested advocate may be involved. A one-page form in Spanish and English that you can use to help explain Special Immigrant Juvenile Status to the child appears in **Appendix F**. A more in-depth discussion about working with immigrant children is in **Chapter 2**.

§ 3.9 Natural Parents, or Prior Adoptive Parents, and Maybe Siblings, Cannot Benefit Through Grant of SIJS to Child

A child who immigrates as a Special Immigrant Juvenile essentially ceases to be the "child" of their natural parents or prior adoptive parents for immigration purposes.³⁵ This means that the child will not be able to use their new lawful immigration status to help their original parents to get lawful status, even if parental rights were not terminated. For example, a Special Immigrant Juvenile who becomes a permanent resident and then a U.S. citizen will not be able to immigrate their natural mother (usually a U.S. citizen who is at least twenty-one years old has that right).

Congress enacted this rule to make sure that parents who abused, neglected, or abandoned their children would not benefit from the fact that the children qualified for SIJS. These parents generally do not lose any immigration benefit that they otherwise would have had, because without SIJS their undocumented child usually could not have helped their parents to immigrate. Even though under the TVPRA a child may qualify for SIJS if only one parent is abusive, neglectful, or has abandoned them, the other, non-offending parent still faces this same bar. They cannot gain any immigration benefit through a child who obtains immigration status based on Special Immigrant Juvenile Status. In some cases where children want to help a non-offending parent to also obtain lawful immigration status, U or T nonimmigrant status, for example, may be

³³ TVPRA, Pub. L. No. 110-457 at § 235(d)(2).

³⁴ See 6 USCIS-PM J.4(B). USCIS temporarily pauses the 180-day I-360 adjudication clock when it issues a request for additional evidence (RFE).

³⁵ INA § 101(a)(27)(J)(iii)(II).

better options because there is no bar to immigrating parents for these forms of relief, as there is with SIJS, and these options allow the child to include their parents as derivative beneficiaries.

A U.S. citizen who is at least twenty-one years old can petition for permanent resident status for a sibling. Unfortunately, it may be that the child who gained lawful permanent residency through SIJS is barred from using their new status to assist a brother or sister to immigrate. Immigration law defines siblings as persons with a common parent. Since the SIJS recipient is no longer considered the “child” of the natural or prior adoptive parent, USCIS may assert that the child no longer has a sibling relationship with brothers and sisters for immigration purposes. Even if the child can apply for siblings, the main drawback is that the sibling’s petition falls under the family-based fourth preference category. These petitions generally have a long waiting period (anywhere from fourteen to upwards of twenty or more years after the petition is filed) before the sibling receives any legal rights. See **Chapter 13** for more on family-based immigration.

§ 3.10 Children in Immigration Custody

If an unaccompanied immigrant child is in immigration custody when they come to juvenile court, a juvenile court judge cannot make custody or care decisions that change the child’s custody status or placement without ORR’s permission. Specifically, the SIJS statute states that “no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction.”³⁶ This is referred to as the “specific consent” requirement.

Importantly, specific consent is not required for a juvenile court to take jurisdiction over a child’s case or to enter SIJS findings. Custody or placement decisions are not always ones that arise in the process of obtaining the SIJS order. Specific consent is only required where a juvenile court will determine or alter a child’s custody or placement status. This would arise, for example, if the child was petitioning to be moved from a federal ORR facility to a local facility, such as a group home that is under local, and not federal, jurisdiction.

Requests for consent for a juvenile court to order a change in custody or placement determination over a child in ORR custody must be made in writing to ORR. Instructions are found at **§ 7.6**.

³⁶ INA § 101(a)(27)(J)(iii)(I).

