

5262 Special Considerations for Undocumented Youth

Legal counsel competent to address immigration options for undocumented youth should be sought at the earliest opportunity.

A. Permanent Option

To achieve permanency and facilitate self-sufficiency, children and youth may petition for lawful permanent resident status in the United States through Special Immigrant Juvenile Status (SIJS). If granted special Immigrant juvenile status and their petition for adjustment of status is approved, then the child/youth becomes a lawful permanent resident alien of the United States with the ability to live and work within the U.S. without fear of deportation. After five years, lawful permanent resident aliens may apply for citizenship, but must meet all requirements including but not limited to, status, good moral character, and length of residence in the United States. The link to the complete SIJS manual can be found at <http://www.ilrc.org>

Undocumented youth in care with a case plan goal other than reunification with one or both parents shall be given the option to apply for SIJS. Adoption does not automatically naturalize a youth who is undocumented and immigration status will still need to be addressed. SIJS is still possible in certain circumstances, even if the child is no longer under court jurisdiction and even if the youth turns 21, provided that the application for SIJS was filed before turning 21.

SIJS does not alter the youth's status as a child in need of care. All requirements of the state and federal law as well as agency policy continue to apply throughout the process of seeking SIJS until the Secretary is relieved of custody.

1. Eligibility Standards for SIJS

Unmarried children who are under age 21 and meet the following three standards may apply for SIJS:

- a. A youth must be under the jurisdiction of a court in a child in need of care or juvenile offender proceeding.
- b. The court must find that reunification is not a viable option even when termination of parental rights is not in the child's best interest. The case plan goal shall be a permanency option other than reunification with one or both parents.
- c. SIJS is still possible in certain circumstances even if the child is no longer under court jurisdiction and even if the youth turns 21 years, provided that the application for SIJS was filed before turning 21. The court must be clear that the proceeding did not arise to secure SIJS but because the child was abused, neglected, or abandoned or due to any other basis in state law.

2. Risks and Benefits

If an application is submitted for SIJS, there is risk of denial of their petition and a decision to send them back to their country of origin. However, if a youth is already in deportation proceedings for his or her removal, the youth has nothing to lose by filing an application for SIJS.

There is also risk for youth who do not apply. Youth can apply for SIJS up until they turn 21 years of age. If the juvenile court and foster care case is closed, youth have no option to apply for SIJS. If a youth is emancipated without legal documentation, he or she may not have another chance to apply for legal status in the United States.

How to Apply for SIJS:

- a. Evaluate the minor's case to make sure that it fits within each of the three eligibility criteria.
- b. Discuss the option fully with the youth, explaining in plain language what SIJS is, what it could do for the youth and the risk involved. It is important to emphasize the risk of deportation and the impact SIJS has on the youth's rights toward birth parents and siblings.

- c. If the youth decides to proceed with application for SIJS an experienced immigration attorney is advised. Cases with a mitigating factor (i.e. arrests, convictions, drug abuse, testing positive for HIV), are not impossible but they are more difficult and require a more intricate knowledge of the process. Even without mitigating factors, immigration law is a challenging specialized practice and success is unlikely without expert assistance.
- d. The court must hear evidence on the three criteria.
- e. The court's findings must be recorded in an "Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status" or similar format that includes the required factual findings. Although not conclusive, this order must be included in the child's application for SIJS. An example of the proposed order on the three criteria using specific language can be found at <http://www.ilrc.org> of the SIJS manual in appendix E.
- f. Both an SIJS and a change in legal status form must be completed and filed with to the closest Citizen and Immigration Services or CIS (formerly INS) office.
- g. The applicant minor should request employment authorization while the case is pending and the case manager should schedule an appointment for the youth to be fingerprinted for an FBI criminal activity check.
- h. Next, the CIS will schedule an interview, which a number of people (case manager, lawyer, etc) may also attend. The CIS might make a decision on the application at the interview or may ask for further information or time.
- i. This process can take as long as 3 years and shall be initiated early enough that the juvenile court can maintain Jurisdiction until it is complete.

B. Temporary Option-Deferred Action for Childhood Arrivals (DACA)

DACA applies only to children who arrived in the United States prior to June 15, 2007. Information is posted on the USCIS

website <http://www.uscis.gov/sites/default/files/USCIS/Resources/daca.pdf> or <http://www.ilrc.org>