

**SIJS “Q & A”:**  
**For Children in DUCS Foster Care**

Professor James Eyster, of Ave Maria School of Law, along with immigration attorneys Sarah Bronstein of Catholic Legal Immigration Network, Inc. (CLINIC)/San Francisco, Anne Chandler of the University of Houston Law Center, Deborah Lee of Florida Immigrant Advocacy Center, and Ave Maria law student Amanda Caldwell, responded to some complex questions regarding Special Immigration Juvenile Status (SIJS) and children in the foster care programs of the Office of Refugee Resettlement’s (ORR) Division of Unaccompanied Children’s Services programs (hereafter referred to as “DUCS.”). The information provided here is to help DUCS foster care caseworkers better understand the SIJS application process for children in their care; however, specific legal questions about a child’s case should be addressed and answered by the child’s attorney.

**General Questions**

***1. How would you advise caseworkers about what crosses the line between explaining the process to kids, and giving legal advice to kids?***

It is important not to give the children legal advice. Refer the children to their attorneys for any and all questions regarding legal matters. Attorneys who work with SIJS clients should be trained to deal with children and should be able to explain the process and the legal consequences to the children. Unfortunately, there are sometimes not enough attorneys to go around. However, each case and each question is, in fact, so complicated that a layman’s answer is likely to be wrong (as is a brief answer from a lawyer not familiar with the particulars of the case.)

***2. Can an SIJS child petition for siblings after becoming a U.S. Citizen? What is the process?***

Eventually, but not any time soon. An *adult* United States Citizen is allowed to petition for siblings. Thus the child will need to become a U.S. citizen and also be over age 21. The child can apply to naturalize (become a U.S. citizen) five years after becoming a lawful permanent resident (LPR). After that, she could apply for her siblings to immigrate. There is currently a ten-year backlog for brothers and sisters of U.S. citizens. For a complete explanation on the law [click here](#).

The process is filing Form I-130, “Petition for an Alien Relative,” and waiting.

Although a child granted SIJS could file for a sibling, remember that the child cannot file for a parent. The immigration code explicitly states that “no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage be accorded any right, privilege, or status under this

chapter” (INA 101 sec 27 (J)(iii)(II)).

**3. *If the child’s abusive parent(s) are in the U.S., how can this affect an SIJS case?***

If the child’s parent is in the U.S. and has abused, abandoned or neglected that child, the child would still be eligible for SIJS. However, if there is no history of abuse and the parent is willing and able to care for the child, the child would not be eligible for SIJS.

**4. *What are the differences and advantages of case termination vs. administrative closure?***

Case termination is the permanent closure of a removal proceeding – it essentially ends the court case. If termination is granted, the government can decide to reinstate proceedings by filing a “Notice to Appear” with the immigration court.

Administrative closure allows an immigration judge to indefinitely suspend a removal proceeding pending the results of administrative action – it is like putting the case on a shelf, but it can be re-calendared (put back on the court’s hearing calendar) at any time by any party, and the child is still considered to be in removal proceedings.

Generally, termination is better for the child, since it allows the child to submit the SIJS (I-360), LPR (I-485), and work permit (I-765) applications simultaneously. The weakest route is a continuance, where the judge re-calendars the case every six months or annually.

Many judges will not terminate or administratively close the case until the I-360 has been approved, while other judges may be willing to terminate or administratively close the case once the attorney has filed the I-360, or received an I-360 filing receipt, if the child appears SIJS eligible. Judges will also take into account the opinion of the trial attorney, who represents the Department of Homeland Security’s (DHS) interests in the court case. The authority to terminate or administratively close a case rests with the Assistant Chief Counsel (the government attorney representing DHS) and not with the immigration judge.<sup>1</sup>

**5. *At what point in an SIJS case should the immigration attorney ask the immigration judge to terminate or administratively close the case? (For example, when applying for specific consent? After specific consent is granted? After the SIJS application is approved?)***

Ask early and often may be the best answer. Some judges will be unwilling to terminate a removal proceeding before the child has adjusted status to LPR, since all of the allegations of removability remain and there is no proof that the child will receive SIJS and adjustment.

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<sup>1</sup> The Office of the Chief Immigration Judge has issued special guidelines for dealing with unaccompanied children in immigration court, [\*EOIR: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children: Operating Policies and Procedures Memorandum 07-01\*](#) (May 22, 2007).

However, whether an immigration judge will terminate or administratively close a case usually depends on the position of the government attorney representing DHS. When to approach the government attorney for administrative closure depends on the facts of the case and the trial strategy; for example, strategy may differ if the child is also seeking asylum as a form of relief.

Administrative closure allows an immigration judge to put a case on long-term hold pending the results of administrative action – it is like putting the case on a shelf, but it can be re-calendared (restarted) at any time by any party, and the child is still considered to be in removal proceedings.

Once the I-360 is approved, the judge will need to decide on a motion or preside at a hearing to terminate or administratively close removal proceedings against the child, if the child's attorney decides it is better strategically for the child to apply for adjustment of status before the U.S. Citizenship and Immigration Services (USCIS). It may be just as easy for the judge to adjudicate the I-485 as to close or terminate removal proceedings. Keep in mind that if proceedings are terminated, the I-485 is typically adjudicated by USCIS; if proceedings are administratively closed, the immigration judge typically retains jurisdiction over the I-485 and must adjudicate it after one of the parties has moved to re-calendar the proceedings. (However, there can be a few exceptions to these jurisdictional rules.) Which route makes the most sense will vary greatly depending on the child's individual circumstances and where the proceedings are taking place.

In some USCIS Districts, it may be faster to adjust status (that is, adjudicate the I-485) before the immigration judge, while in other Districts it may be faster to adjust status before USCIS. One attorney has noted that she has her SIJS clients adjust before the USCIS when there is a serious inadmissibility issue (a reason that USCIS could deny permanent residency, such as certain crimes); otherwise, she has them adjust before the immigration judge.

**6. *In places where the immigration judge will only issue continuances, are the number and length of the continuances merely up to the judge's discretion? Could a judge refuse to grant continuances, even though a child has a pending specific consent decision, or a pending I-360?***

The regulation at 8 C.F.R. § 1003.29 provides that an immigration judge may grant a motion for a continuance for good cause shown. In making this determination, the immigration judge considers the arguments raised in the motion and any supporting documentation. Of course, the adjudication of a motion for a continuance is within the discretion of the immigration judge on a case-by-case basis. The judge can deny a continuance and order removal. The child's attorney could then appeal to the Board of Immigration Appeals (BIA) and while the BIA appeal is pending, move to reopen the removal proceedings if the I-360 and I-485 were approved.

**7. *Are I-360s adjudicated by individual USCIS district offices? What does it mean to file at a***

***“lockbox facility?”***

Each USCIS District Office establishes its own procedures regarding the filing of I-360s and concurrent filings of I-360s and I-485s. For example, in Miami, all I-360s are sent to the Chicago “lockbox.” In Houston, I-360s can be filed locally for children in removal proceedings, while I-360s for children *not* in removal proceedings are sent to the Chicago lockbox.

To file at a lockbox means to file at the address for USCIS. This is a secure post office box. Contract employees of the DHS open the mail, inspect the forms, fees, and evidence and either return the applications or issue receipts and forward the applications to the appropriate DHS local office. Filing at a lockbox facility can take longer, since the application must be sorted and then sent to the appropriate local office.

***8. After an I-360 is submitted, what acknowledgement is received from USCIS? Is this sent to the child applicant and the attorney, or just the attorney?***

The attorney and child should each receive a detailed filing receipt from the USCIS, and then later a copy of the approval; however, this does not always take place. In some jurisdictions attorneys do not regularly receive notices of approval for I-360s for children in proceedings. In other jurisdictions, the I-360 decision will be made immediately following the USCIS interview, and if positive, an approval letter issued the same day.

***9. How long does/should an I-360 decision take?***

A month or two, to a year or more, depending on the local office processing the case.

***10. If a child submits the I-360 first, and it is approved, what status do they have at that point, before the I-485 is approved?***

With only I-360 approval, a child would be considered paroled into the U.S. (under the Immigration and Nationality Act [INA] section 245 (g)), however this is *not* a permanent status.

***11. If the child’s I-360 is approved before aging out of eligibility, but the I-485 is NOT approved before aging out of eligibility, will the child still have legal status, even though the child cannot adjust to permanent residency?***

No. Approval of an SIJS petition may be revoked if the child reaches 21 before the approval of the lawful permanent resident status, or if the child marries, ceases to be eligible for long-term foster care, or ceases to be under juvenile court-jurisdiction. Every state has different interpretations of when a child ceases to be eligible for long-term foster care, or ends

dependency on the juvenile court. The child will need to work with an attorney familiar with law and practice in the court having jurisdiction for children under the age of 21.

**12. What is the impact on an SIJS case if the child has:**

**a. *An existing removal order?***

This is a complex area of law, so there is not a simple answer. Attorneys will typically request that the case be reopened or submit a motion to stay (or suspend) the removal order (though there may be some exceptions to this). The proper course of action will depend on the attorney's case-by-case assessment.

**b. *A concurrent asylum application or asylum case on appeal?***

It is important to preserve the asylum claim, in case the SIJS case has been rejected (withholding of removal or a Convention Against Torture (CAT) claim may also be possibilities). Some immigration judges will allow the child to file an asylum application to ensure the child does not miss the one-year filing deadline for asylum applications (meaning that asylum applicants must file for asylum within one year of entering the U.S., though some children may seek an exemption from this). This allows the child to pursue an SIJS application first, turning to the asylum application only if the pursuit of SIJS is not successful. The child cannot be removed until all administrative remedies including the asylum claim and appeals to the BIA and U.S. Court of Appeals have been exhausted (provided the attorney files a stay of removal).

**c. *If the child has a final order of removal, why is it necessary to reopen removal proceedings in order to apply for SIJS?***

A motion to reopen is necessary if the child has an outstanding removal order from the immigration court, meaning the child could be deported at anytime. USCIS cannot adjudicate an application for legal relief (such as SIJS) unless the case is reopened before the immigration judge. In some cases, such as with Haitian clients, it may be possible to have the Board of Immigration Appeals administratively close the case and then submit the I-485 and I-360 concurrently to USCIS.