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Administrative Directive

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To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
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Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Federal Immigration Act of 1990 (P.L. 101-649; 8 U.S.C. §1101(a)(27)(J); 8 CFR §204.11		

I. Purpose

The purpose of this administrative directive is to notify local departments of social services (LDSSs) and voluntary authorized agencies (VAs) that Special Immigrant Juvenile Status (SIJS) eligibility must be assessed for youth in foster

care who are neither U.S. citizens nor lawful permanent residents. If the youth is found to qualify for SIJS, this status should be pursued whenever appropriate. Since the application process for SIJS can be extremely lengthy, and must be completed before youth leave foster care, it is important to identify potentially eligible youth and refer them to an attorney with immigration expertise as soon as possible.

All youth in foster care who are not U.S. citizens and do not have documentation of lawful residence (such as a valid green card) need to be identified by agency staff and referred to immigration legal service providers for screening for SIJS or other possible immigration relief (see Part V for information on other possible immigration relief that may be available). If an immigration legal service provider finds a youth qualifies for SIJS, the LDSS or VA staff should cooperate in the securing of documents necessary to proceed with the application for SIJS. Through this directive, the Office of Children and Family Services (OCFS) provides necessary information for child welfare agencies to move forward in identifying undocumented immigrant youth, informing them of SIJS, and referring them for assistance in applying for the status within the time frame needed to establish SIJS before discharge from foster care.

II. Background

Immigrant families who are involved with the child welfare system often encounter obstacles such as poverty, language problems, lack of health care and health insurance, and lack of access to public benefits. Among these obstacles is the immigration status of undocumented family members, including children who have been placed in foster care. Those family members who are undocumented aliens (*i.e.*, not U.S. citizens or lawful permanent residents) face the possibility of deportation to their home countries. Even if not deported, youth who miss the opportunity to apply for SIJS may forever be barred from legal employment, denied access to higher education, and remain vulnerable to exploitation because of their immigration status.

To address the unique problems faced by the population of undocumented immigrant youth in foster care, the federal Immigration Act of 1990 created the category of SIJS.¹ This status enables certain undocumented immigrant youth in foster care to become lawful permanent residents and obtain green cards. Certain youth in foster care under the age of 21 may be granted this status and thereby become eligible to file for an adjustment of immigration status to that of lawful permanent resident in the U.S. and receive a work authorization. SIJS is available to undocumented immigrant youth who are under the jurisdiction of juvenile courts (in New York State this is Family Court) or whom the Family Court has placed under the custody of state agencies (including political subdivisions). For many, this will be their only opportunity to file for legal status.

¹ Immigration Act of 1990 (P.L. 101-649). Special immigrant juvenile is reflected in the definition of “special immigrant.” 8 United States Code (USC) § 1101(a)(27)(J).

The amount of time needed for filing and processing the two required applications (the applications for SIJS and adjustment to lawful permanent residency) is lengthy (up to a year or more). Most applicants need assistance in obtaining identity documents, such as birth certificates, passports, and proof of age, which LDSS or VA staff should begin seeking as early as possible. Unfortunately, many child welfare officials, lawyers, and judges have little knowledge of SIJS. Knowledge of both the child welfare system and immigration law is required. LDSSs and VAs often lack access to attorneys or specialized staff with this expertise. Therefore, it is crucial that youth be identified, informed, and referred for legal assistance as soon as disclosure of immigration status is made.

The benefit to a youth who receives SIJS and obtains a green card is clear. Although the SIJS does not affect the status of the youth's birth family, it does allow the youth to become a lawful permanent resident. With a green card, an immigrant youth can live permanently in the U.S., work legally, get financial aid for college, be eligible for limited public benefits, and apply for U.S. citizenship within five years. Information on identifying eligible youth and the application process is provided below.

III. Program Implications

Applying for SIJS involves multiple steps. It can be a confusing process, as it involves both the state and federal systems. For example, a special finding must be obtained from a juvenile court that lays out the youth's eligibility for SIJS and then an application for SIJS is made to the U.S. Citizenship and Immigration Services (USCIS). Additionally, these cases are time-sensitive, as the juvenile court may need to act, in some cases, before the youth's 18th birthday. In addition, if a young person's application for SIJS has not been adjudicated by his or her 21st birthday, this relief will be forever foreclosed to the youth. And, although SIJS applicants are forgiven many of the bars that prevent undocumented persons from obtaining legal status in the U.S., there may be some factors to consider if a young person has a history of severe mental health diagnoses or serious and lengthy involvement with the criminal justice systems. For these reasons, it is suggested that each LDSS and VA identify a person who can develop SIJS expertise to act as a liaison to facilitate this process and to assist with identifying attorneys with immigration expertise, identifying organizations that can assist with expediting the process, and providing assistance to caseworkers within the agency.

Eligibility for Special Immigrant Juvenile Status

To qualify for SIJS:

- the youth must be under 21 years old and not married;
- there must be a finding by the Family Court that the youth was abused, neglected, or abandoned;

- the court must determine that due to the abuse, neglect, or abandonment, reunification with the birth family is not a viable option; and
- the court must determine that it would not be in the best interest of the youth to be returned to the youth's or parent's previous country of nationality or country of last habitual residence.

Under federal statute, the court order submitted in support of the SIJS application (often called a special findings order) must establish that the youth has been declared a dependent of the juvenile court (Family Court in New York), or that the court has placed the youth under the custody of an agency or department of a state (or political subdivision).

The statute also provides that the applicant must be “deemed eligible for long-term foster care due to abuse, neglect or abandonment” by a juvenile court judge (Family Court judge). In federal immigration regulations, the phrase “eligible for long-term foster care” means that reunification is no longer a viable option. A youth who has been adopted or placed with a guardian after having been found dependent in the Family Court is also considered eligible for long-term foster care.²

Regarding age and time deadlines, SIJS applications must be adjudicated before the youth turns 21. Additionally, for youth in foster care, the youth must be in foster care when the application is filed and must remain in foster care throughout the process of obtaining SIJS. Youth deemed eligible for SIJS should be informed of the consequence of leaving foster care after reaching the age of 18 and should be counseled against doing so.

A youth initially placed voluntarily in foster care or adjudicated as a Juvenile Delinquent (JD) or Person in Need of Supervision (PINS) may still be eligible for SIJS, as long as the court makes a finding that the youth is eligible for long-term foster care due to abuse, neglect, or abandonment.

However, a youth who has been arrested or committed a crime may be denied permanent residency through SIJS on this basis. This will depend on various factors, including the type of criminal activity and how long ago it occurred. It is helpful if the young person can demonstrate that he or she has been “rehabilitated” and show evidence of “good moral character,” such as engagement in civic and volunteer activities. In this instance, the caseworker can be a pivotal link in providing opportunities for a youth to rebuild his or her portfolio. The intersection of immigration and criminal law is especially complicated in these matters and must be evaluated carefully before deciding whether a SIJS application is in the youth's best interests. Again, referral to a knowledgeable attorney is critical.

² 8 Code of Federal Regulations (CFR) § 204.11(a).

Identifying Eligible Children

Because of the length of time required to prepare and process SIJS applications, child welfare workers should identify eligible youth early to prevent them from aging out of the system without having acquired the status. Because youth may not wish to disclose their own status at first for fear of jeopardizing their own and their families' living situations, it is recommended that agencies teach workers skills to help them identify youth who may be eligible for SIJS without causing alarm that their families' statuses will be reported to the USCIS. For the purposes of this ADM, LDSS or VA staff do not have an obligation to notify immigration officials of a youth's immigration status, and should be aware that to do so may result in adverse consequences for the youth's immigration status and permanency goals.

For youth who are not U.S. citizens or permanent lawful residents, the consulate of the youth's home country may be able to provide various types of assistance, including assistance obtaining necessary documents, locating family members in the youth's home country, obtaining information from the home country, and/or facilitating communication for youth or families who speak uncommon dialects. Note that consular officials are representatives of the foreign government and have no official relationship with federal immigration authorities. However, if a youth or the youth's family members may be seeking refugee status or seeking asylum, that fact should not be disclosed to the consulate. A listing of the Foreign Consular Offices in the United States can be obtained at the Department of State website: <http://www.state.gov/s/cpr/rls/fco/>.

Consistent with permanency planning for youth in foster care, agencies should emphasize the importance of engaging families and youth in foster care, establishing a relationship with the youth, and explaining the purpose of the inquiries into immigration status. Workers may find themselves in a balancing act between taking the time to engage the families/youth in care and referring the youth for screening as quickly as possible. Once a young person understands that this referral is being made so that he or she may obtain legal status, this distrust most likely can be overcome.

As with any youth in foster care, gathering basic information is part of the planning process and integral to casework practice. One of the first opportunities for workers to assess a youth's immigration status is when the Title IV-E eligibility determination is completed and related documentation is collected. An agency providing federal benefits, including foster care and adoption subsidy payments, is required to verify the immigration status of recipients.³ The Initial Foster Child Eligibility Checklist is completed shortly after a youth first enters foster care. The instructions provided in the OCFS Eligibility Manual for Child

³ The Personal Responsibility and Work Opportunity Act (PRWORA) of 1996 (P.L. 104-193), §§ 401-03, codified at 8 U.S.C. §§ 1611-13.

Welfare Programs provide a list of acceptable documentation to prove U.S. citizenship and/or qualified immigrant status. One form of documentation to confirm the youth's immigration status is the youth's birth certificate, which can often be obtained through public assistance records. If the youth is not part of a public assistance case, the birth certificate can also be obtained through the youth's family or by requesting a copy from the local vital records office in the state or city in which the youth was born. A youth with a U.S. birth certificate is a United States citizen and does not need immigration assistance.

Another indicator of immigration status is the youth's social security number. Some youth may have social security numbers. Youth in foster care age 14 and up who have jobs will need social security numbers if they do not already have them from their families. If a youth has a social security number, this generally indicates that he or she is a U.S. citizen or a lawfully admitted permanent resident.

When assessing a youth already in the foster care system, completing the Family Assessment and Service Plan (FASP), preparing for Service Plan Reviews (SPR), and conducting casework contacts also provide ongoing opportunities to obtain information about the youth's immigration status. Asking questions about the youth's country of origin, language spoken at home, and length of time in the U.S. can help determine the youth's eligibility for SIJS as well as any need for language or cultural assistance. It is suggested that workers document SIJS eligibility and application status in the child case file in either the FASP or SPR. That way, if the youth moves to a new agency, that agency will be aware of the youth's SIJS status.

Referring Eligible Children

If it is determined that a youth in foster care may be eligible for SIJS, the youth should be referred for further screening by a legal professional familiar with SIJS standards and process. A list of some legal service providers and immigration/SIJS technical assistance resources is provided as an attachment to this ADM. The youth's law guardian can also help in identifying legal service providers who can assess the youth's eligibility and help decide whether to apply. The law guardian can be instrumental in obtaining the special findings order described above.

It is critical that each youth be thoroughly screened because filing an application for SIJS will alert USCIS to the youth's unlawful presence in the U.S. If the youth was involved in any criminal activity, including arrests and juvenile delinquency adjudications, this should be known and considered before submitting an SIJS application, because such background can be taken into consideration and could result in a denial. However, a background of criminal activity does not automatically disqualify a youth. Attorneys with expertise in this area should review the case to decide whether the youth might qualify and whether he or she should apply, given the circumstances. If you need assistance in

finding an attorney with this expertise, please contact your OCFS Regional Office.

Obtaining SIJS will have an enormous impact on the life of any youth in foster care who is not legally present in the United States. When a caseworker is diligent in identifying such a youth, referring him or her for legal expertise, helping collect the required documents such as birth certificates, and following through with the application process, it can make a difference in whether the youth is able to obtain SIJS, get a green card, and work and remain in the U.S.

The Application Process

An application for SIJS should only be completed with the assistance of an immigration attorney or a Board of Immigration Appeals accredited representative. Due to the complexities that can be involved in the SIJS application process, it is very important that the youth is screened and assisted by a legal service provider with immigration expertise. To obtain SIJS and apply for lawful permanent residency, a youth must submit two applications:

1. Application for Special Immigrant Juvenile Status (Form I-360)
2. Application for Legal Permanent Residency (Form I-485)

The applications can be found on the USCIS website: <http://www.uscis.gov/portal/site/uscis>. These applications are processed by USCIS. To expedite the process, USCIS strongly encourages the filing of the two applications at the same time.

Before an attorney submits the applications, a child welfare worker can assist the attorney in the collection of the necessary documents. These documents include the birth certificate, passport, court orders, medical examination, and other identification papers. To obtain a copy of a foreign birth certificate, staff should contact the consulate of the youth's home country for instructions on how to obtain the youth's birth record.

Passport: A passport from the home country should be obtained as soon as possible, as the youth will need this as a form of identification. LDSS or VA staff should assist the youth in obtaining his or her passport from the Consulate or other authorities from the youth's country of origin or nationality.

Fees: There are several fees associated with the SIJS application process such as application fees and fees for the medical examination, legal services, birth certificate, and passport. The filing fees for the SIJS applications are subject to change; therefore, an immigration service provider and the USCIS website should always be consulted before filing any forms. These fees can be costly. It may be possible for the applicant to apply for a fee waiver for some of the fees associated with the SIJS process. To apply for a fee waiver, the applicant will need to submit, at the same time that the application for which a fee waiver is sought, a

cover letter and affidavit by the youth stating that he or she is indigent. In some cases, fee waiver requests may delay the processing of SIJS applications. Fee waivers are not always granted, but SIJS applications are often eligible. Consult the USCIS website for more information regarding fee waivers.

Employment Authorization Applications (Working Papers): In conjunction with submitting Form I-485, a youth should also submit Form I-765 to receive an Employment Authorization Document (EAD). This document is available to youth regardless of age and is excellent proof of identification. Since an EAD is usually processed within 90 days of the filing of the I-765 application, it is a great form of temporary identification while the I-485 application is pending. The document allows the youth to work legally if the youth is old enough to work. Having the EAD also allows the youth to apply for a social security number for limited purposes.

Immigration Fingerprinting

After filing the application for legal permanent residency and receiving a receipt notice, the youth will receive a notice to appear for biometrics, which means that he or she will be fingerprinted and photographed. The young person should try to bring valid identification to enter the USCIS building. It may be helpful to bring proof of being in care. Valid identification usually includes a passport. Immigration advocates can advise on this process. It is usually helpful for case workers or agency staff to accompany youth to these appointments.

The Adjustment of Status Interview

When a youth meets the eligibility requirements for SIJS, he or she will be notified in writing that an “adjustment of status” interview has been scheduled at a district immigration office.

The attorney working with the youth on the SIJS application prepares the youth for the “adjustment of status” interview and represents the youth during the interview. A child welfare worker can also accompany the youth to provide moral support and guidance but may not be allowed into the interview. Attendance at this interview is extremely important and can only be excused in very limited circumstances.

A District Adjudications Officer (DAO) will interview the youth to determine eligibility for SIJS and Adjustment of Status. The DAO will also evaluate the documents provided and will ask clarifying questions about the application. The DAO may ask for updates, like whether the youth is still in school, has a part-time job, engages in extra-curricular activities, or has any arrests. The attorney should be conversant in what questions are appropriate for the interview. The DAO may ask for additional documents at the end of the interview. One such standard request for documentation that is usually made is for a notarized letter stating that the youth is still in foster care.

Notice of Decision

The youth may be informed of a decision at the interview, but notification may also occur at a later date. USCIS may request additional documents or evidence and offer additional time to respond. Once any requested additional documents are submitted (if applicable), the youth will receive a decision of whether the application has been granted or denied.

If the Adjustment of Status (I-485) application is granted, the youth may be given an "I-551 Temporary Evidence of Lawful Permanent Residence" stamp in his or her passport. To obtain this stamp, the youth must have a valid, current passport. Otherwise, the youth will have to wait until his or her green card is processed and arrives by mail. The timing of green card processing varies, but it should be completed within a few months.

If the Adjustment of Status application is denied, the notice of denial will inform the applicant or his or her appeal rights.

IV. Claiming Instructions

There are several fees associated with the SIJS application process such as application fees, legal fees and fees for the medical examination, birth certificate, and passport. These costs should be claimed as administrative federally non-participating foster care on line 11 Foster Care Non-IV-E on the Schedule D-2 (Allocation for Claiming General Services Administration Expenditures).

V. Other Immigration Relief

While this ADM has focused on SIJS, there may be other legal relief for undocumented immigrant youth in foster care, including trafficking relief or T Visas, visas for victims of crime (U visas), Violence Against Women Act (VAWA) relief, or asylum. Youth who may qualify as a refugee, asylee, Cuban/Haitian Entrant or minor victim of certain forms of trafficking may be eligible for the Unaccompanied Minor Refugee Foster Care Program (see OTDA Administrative Directive 07-ADM-07 for more information). This program provides for 100% federal reimbursement for foster care and services by the Federal DHHS Office of Refugee Resettlement, but does not lead to permanent legal residency status. A legal screening is critical to ascertain if any of these remedies can and should be sought.

VI. Contacts

If you have any questions regarding information contained in this ADM, please contact the appropriate Regional Office, Division of Child Welfare and Community Services:

Buffalo Regional Office- Mary Miller (716) 847-3145
Mary.Miller@ocfs.state.ny.us

Rochester Regional Office- Linda Kurtz (716) 238-8200
Linda.Kurtz@ocfs.state.ny.us

Syracuse Regional Office- Jack Klump (585) 423-1200
Jack.Klump@ocfs.state.ny.us

Albany Regional Office- Kerri Barber (518) 473-9684
Kerri.Barber@ocfs.state.ny.us

Spring Valley Regional Office- Patricia Sheehy (845) 708-2499
Patricia.Sheehy@ocfs.state.ny.us

New York City Regional Office- Patricia Beresford (212) 383-1788
Patricia.Beresford@ocfs.state.ny.us

Native American Services- Kim Thomas (716) 847-3123
Kim.Thomas@ocfs.state.ny.us

If you have any fiscal claiming questions, please contact the Bureau of Financial Services:

Regions I-IV: James Carroll (800) 343-8859, ext. 4-7576 or (518) 474-7576
James.Carroll@otda.state.ny.us

Region V: Michael Borenstein (631) 854-9704
Michael.Borenstein@otda.state.ny.us

Region VI: Marian Borenstein (212) 961-8250
Marian.Borenstein@otda.state.ny.us

Office of Children and Family Services: Dennis Lassi (518) 474-0131
Dennis.Lassi@ocfs.state.ny.us

/s/ Nancy Martinez

Issued By:

Name: Nancy Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

Immigration and SIJS resources

The Legal Aid Society of Rochester
One West Main Street
Suite 800
Rochester, New York 14614
(585) 232-4090
<http://www.lasroc.org>

They also have offices serving the Albany and Syracuse areas.

International Institute of Buffalo
864 Delaware Avenue
Buffalo, NY 14222
(716) 883-1900
<http://www.iibuff.org/>

The Door Legal Services
121 Avenue of the Americas
New York, NY 10013
(212) 941-9090
Direct legal inquiries to Maria Parissi at ext. 3280
<http://www.door.org/>

Lawyers for Children
110 Lafayette Street 8th Floor
New York City 10013
(800) 244-2540
(212) 966-6420
<http://www.lawyersforchildren.org/>

Legal Aid Immigration Law Unit
199 Water Street
New York, NY 10038
(212) 577-3300
<http://www.legal-aid.org/en/home.aspx>

NYSDA Immigrant Defense Project
3 W. 29th Street, Suite 803
New York, NY 10001
(212) 725-6422
(800) 391-5713
<http://www.immigrantdefenseproject.org>

SIJS questions/assistance for New York City agencies:

Mark Lewis
Director of Immigrant Services
Administration for Children's Services
Family Support Services
2 Washington Street, 20-F-2
New York, NY 10004
(212) 487-8569
Mark.Lewis@dfa.state.ny.us

Harry Gelb
Assistant Supervising Attorney
NYC Administration for Children's Services
Family Court Legal Services
Bronx Family Court Unit
900 Sheridan Avenue #6A1
Bronx, New York 10451
(718) 590-5438 ext. 5944
Harry.Gelb@dfa.state.ny.us

Online Resources

U.S. Citizenship and Immigration Services: <http://www.uscis.gov>
U.S. Department of State: <http://www.state.gov>
American Immigration Lawyers Association: <http://www.aila.org>
Immigration Legal Resource center: <http://www.ilrc.org>