

# Special Immigrant Juvenile Status

BY ANN M. HARALAMBIE

A very valuable provision of the federal law provides for “Special Immigrant Juvenile Status” (SIJS) for an undocumented, unmarried immigrant under the age of 21. This status allows such an undocumented juvenile to live and work legally in the United States, even after “aging out” of the foster care system, immigrating with a “green card.” Without a grant of that status, the juvenile might be subject to deportation. The statute, 8 U.S.C. § 1101(a)(27)(J), permits the granting of such status for an immigrant present in the United States who meets all of the following criteria:

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of an agency or department of a state, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment;
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and
- (iii) in whose case the Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status; except that—
  - (i) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the actual or constructive custody of the Attorney General unless the Attorney General specifically consents to such jurisdiction; and
  - (ii) 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.

Many children involved in the child welfare system do not possess legal immigration status. The child, social worker, or attorney may apply for SIJS for the child. The potential benefits are great; however, the risks also are great. If the application is denied, the filing will have put the authorities on notice of the child’s undocumented status, and the child might be subject to immediate deportation. The court must make specific findings, preferably using the statutory language, while the child is still under court jurisdiction.

Although federal law permits the status to be granted for persons under the age of 21, most state courts lose juvenile jurisdiction once a child turns 18. Because the statute requires that the juvenile be adjudicated dependent or committed to a state agency or department, once the court loses its jurisdiction, the status is no longer available, even if the prerequisite conditions had been met earlier. Further, permanent guardianships or other kinship arrangements that do not involve the child being adjudicated dependent or placed in the care of an agency or department may deprive the juvenile of the ability to acquire SIJS.

Immigration law is highly technical, and the current political climate has heightened concerns about undocumented aliens. Therefore, a family law attorney encountering an undocumented child who may qualify for SIJS should consult with a qualified immigration attorney to explore the possibility of applying for SIJS. **FA**



Published in *Family Advocate*, Vol. 31, No. 3, (Winter 2009) p. 12. © 2009 by the American Bar Association. Reproduced with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

**Ann M. Haralambie** practices family law in Tucson, Arizona, and is the author of *The Child's Attorney: A Guide to Representing Children in Custody, Adoption, and Protection Cases*, Chicago, IL, ABA Section of Family Law, 1993, and *Handling Child Custody, Abuse and Adoption Cases* (2d ed. 1999 Thomson West). She also is a member of the *Family Advocate* Editorial Board and issue editor of this edition.