

SPECIAL IMMIGRANT **JUVENILE STATUS**

A Step-By-Step Guide for the Safe Passage Immigration Project Volunteer Attorneys

The Safe Passage Immigration Project is an initiative of the Justice Action Center at New York Law School. The following New York Law School students contributed to the Safe Passage Immigration Project Handbook: Amy Bower '10, Kiran Siddiqi '10, Emily Pierce '11, Viviana Salcedo '12 and Ilana Snyder '13. Amy Bower, Kiran Siddiqi and Emily Pierce are now practicing attorneys. All materials found in the handbook were written under the supervision of Professor Lenni Benson and Adjunct Professor Lindsay Curcio.

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An Introduction to the Safe Passage Immigration Project

Professor Lenni Benson founded the Safe Passage Immigration Project in 2006 upon a suggestion by immigration judge Patricia Rohan of the Executive Office of Immigration Review. Judge Rohan noted that increasing numbers of minors in immigration proceedings needed pro bono representation. One of Safe Passage's objectives is to train pro bono attorneys to represent children who need immigration assistance. Safe Passage provides resources and mentoring to volunteer attorneys.

The Department of Homeland Security Yearly Reports stated that in January 2010, there were 1.2 million undocumented minors in the United States, approximately 11 percent of the undocumented population.^[1] Some of these children are escaping abuse or political turmoil in their home countries. Others have been victims of smugglers or trafficking. There are approximately 8,000 unaccompanied minors who are taken into federal custody each year after crossing the border into the United States.^[2] In some situations, children have lived most their lives in the U.S. unaware that their parents or guardians failed to secure a legal immigration status for them. While these children are entitled to counsel in immigration proceedings, the federal government will not pay for their legal representation. As a result, more than half the unaccompanied children go through immigration proceedings without a lawyer.^[3]

United States Immigration law provides special relief for some, but not all of these children. The Safe Passage Immigration Project helps existing social service providers and non-profit organizations screen juvenile populations and identify immigration relief available to these children. Safe Passage brings together pro bono attorneys, including New York Law School alumni, and current law students dedicated to providing direct client services in special immigrating juvenile status cases.

New York Law School students may volunteer for the Safe Passage Immigration Project to develop training and intake materials for special immigrant juvenile status cases. Our students also provide language translation assistance between volunteer attorneys and clients and assist in research and case preparation. In addition to their volunteer work with Safe Passage students participate in other immigration events such as clinics and initiatives sponsored by the New York City Bar Association, Justice for Our Neighbors and the American Immigration Lawyers Association. Students who have completed their first year of law school are eligible to receive hours towards the Public Service Certificate for their volunteer efforts.

In Spring 2008, Safe Passage received the New York State Bar Association's President's Pro-bono Award for its innovative program.

For more information about Safe Passage or to volunteer, please visit us at: www.nyls.edu/immigration or contact Lindsay Curcio, Adjunct Professor, New York Law School/Co-Director, Safe Passage Immigration Project at safepassage@nyls.edu.

[1] Read full report at: http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf

[2] Find these facts on the KIND website at:

<http://www.supportkind.org/media/7408/web%20facts%20and%20figures.pdf>

[3] *Id.*

Step 1:
Becoming Familiar with Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) is an immigration classification available to certain undocumented immigrants under the age of 21 who have been abused, neglected, or abandoned by one or both parents. There are very specific requirements for a minor to qualify for SIJS, and the criteria are codified in INA § 101(a)(27)(J):

1. The applicant must be under 21 years old;
2. He/she must be unmarried;
3. He/she must be declared dependent in a juvenile court. This means that the Family Court must take jurisdiction over a petition addressing the needs of the applicant;
4. Reunification with one or both of the child's parents must no longer be a viable option;
AND
5. It is not in the best interests of the minor to return to his/her country of nationality or last habitual residence.

For INA § 101(a)(27)(J) and the corresponding regulations, see [Appendix A](#).

There are many benefits to obtaining Special Immigrant Juvenile Status. SIJS waives several types of inadmissibility that would otherwise prevent an immigrant from becoming a lawful permanent resident (getting a green card). For example, SIJS waives unlawful entry, working without authorization, status as a public charge, and certain immigration violations. Once a minor receives SIJS, he/she will be able to adjust his/her status to that of a lawful permanent resident, obtain work authorization, and eventually apply for U.S. citizenship.

Youth may apply for SIJS both affirmatively and defensively. In the latter scenario, the juvenile would be in removal proceedings. He/she would have been issued a Notice to Appear (NTA) by the Department of Homeland Security for any number of reasons (including being out of status or having committed a crime). In a defensive application, the attorney would appear in court on the date of the NTA with the juvenile eligible for SIJS and ask for a continuance. This would allow time to file a petition with family court and then with United States Citizenship and Immigration Services ("USCIS"). The ultimate goal of a defensive application is to state an alternative form of relief that is available to the juvenile. To apply affirmatively, the young person would not be in immigration proceedings and would file with USCIS. Both procedures are discussed in section seven below.

Once a young person is granted SIJS status and becomes a lawful permanent resident, he/she cannot petition for immigration benefits for birth parents, siblings, or other family members.

There are two main stages in obtaining Special Immigrant Juvenile Status. First, the minor must engage in a proceeding in the Family Court in the county where he/she resides. As part of this proceeding, the minor must obtain a "special findings order" that declares the minor's eligibility for SIJS. Most often, SIJS clients request this order through a motion that accompanies a guardianship petition.

Although guardianship is the most common way for the Family Court to obtain jurisdiction over a minor, it is also possible to bring a motion requesting the order through a custody, neglect, adoption,

permanency hearing for children in foster care, or PINS (Person in Need of Supervision) proceeding. However it is done, receipt of this order is a pre-requisite to applying for SIJS status.

After receiving this order from the Family Court judge, the minor may then apply for SIJS, lawful permanent residence, and work authorization through the United States Citizenship and Immigration Service (USCIS). This manual provides detailed information and instructions for each of these stages.

Step 2: **Interviewing Your Client**

By the time you receive your client's contact information the Safe Passage law student volunteers will have already interviewed him/her and determined the client's eligibility for SIJS. You will receive a completed intake sheet that will include all of the information the Safe Passage staff gathered at the initial interview. However, it is important to note that you and the law student volunteer will continue to gather more information about your client in additional meetings. The intake sheet provides only a starting point.

Your initial client meeting should take place in person. At this meeting, gather information to make a determination as to whether your client may apply for SIJS, has any inadmissibility issues and if so if there are any exceptions or waivers they may be eligible for. You may meet at your office, at a public place, or in the Justice Action Center at New York Law School (NYLS). If you would like to book a room at the Lawyering Skills Center at NYLS for your client meetings, please feel free to contact safepassage@nyls.edu. New York Law School students are also available to help with client intakes, translations, and research. Please feel free to email safepassage@nyls.edu to request the help of a student volunteer. It is a good idea to ask the client to bring certain documents to the initial meeting. The most important documents to collect include:

- A copy of the client's birth certificate.
- A copy of the death certificates of the client's parents, if applicable.
- Any identification documents such a copy of client's passport, visa, I-94, National ID cards from home country (Matricula Consular), school IDs, medical records, and any documents establishing your clients age .

Please note that all documents not in English require a certified translation. In the past New York Law School students have volunteered to translate. Please contact Safe Passage if you need translation assistance. For more information about how to request copies of birth and death certificates, see [Appendix B](#).

It is common for the client's potential guardian, social worker, or family member to accompany him/her to the interview. This is not a problem, but you should check with the client to make sure he/she feels comfortable talking to you with others present. Additionally, it may be necessary to have an interpreter in the room if there is a language barrier. New York Law School students are available to interpret, translate documents, and assist you in any way throughout the entire SIJS process. If you need help locating an interpreter or a student assistant, please send your request to safepassage@nyls.edu.

One of the most important goals for your first client meeting is to get to know the client and make sure he/she is comfortable speaking with you. Earning your client's trust may be difficult since the clients often have endured multiple hardships.

At his/her first meeting with the Safe Passage staff, the client will have answered many of the questions on the intake sheet. However, it is important to review the answers to the Safe Passage questionnaire to check for errors and inconsistencies and gather more information as needed. One extremely essential fact to ascertain is if the client's parents are alive and, if so, where they are living. This information will be crucial to the guardianship and custody paperwork discussed below. Additionally, it is essential to collect the client's most recent contact information, as well as the contact information of the people with whom the client lives to contact your client in the event that his/her phone has been turned off or number has changed. If your client is in foster care, phone numbers for foster parents and case workers will be provided by Safe Passage.

By the end of the first meeting, the client should have a general understanding of Special Immigrant Juvenile Status and the steps necessary to obtain it. You should have a plan as to how to place the client under the jurisdiction of the New York State Family Court. As previously mentioned, the most common way to do this is to have a family member or close friend of the client file a petition seeking guardianship over the minor. If that is the case for your client, at the first meeting you should either speak with the proposed guardian to discuss the guardianship process or obtain the guardian's contact information in order to set up a time to discuss the details at a future time.

Guardianship

The person who currently cares for the young person may have many questions about what it means to be appointed guardian by a court. In brief, it is important for a young person who is not being raised by his/her parents to have a guardian named so that a reliable adult is responsible for the youth. Significantly, guardians have decision-making authority and financial and legal responsibility for the young person. This allows the guardian to secure medical treatment for the young person, enroll him/her in school, and obtain a passport for him/her, etc. **A guardian is not financially responsible for the young person over whom he/she obtains guardianship.** The age limit until when a teen may be assigned a guardian varies from state to state. In New York, a young adult can be assigned a guardian up to the age of 21.

A guardian does not have to be related to the young person, nor does he/she have to live with the young person. A guardian does not become the young person's parent, nor do the young person's parents lose their parental rights simply because another individual is named guardian of their child. However, if the minor is found to have been neglected, abused or abandoned by his/her birth parents, guardianship will end those parental rights.

The guardian, as well as the members of the guardian's household who are over 18, must be fingerprinted for the purpose of a criminal background check. Certain criminal offenses will prevent a person from being named a guardian, so the proposed guardian's criminal history is certainly an area into which you should inquire. Additionally, the guardian and the members of the household who are over 18 must provide all of their addresses for the past 28 years in order for a search to be done regarding any allegations of child abuse, neglect, and abandonment. The guardian must be aware that a representative of ACS or the Department of Probation may visit their home and perform a Court-Ordered Investigation (COI) in order to evaluate the conditions of the household

in which the minor will live. Lastly, the proposed guardian, as well as the young person, will have to appear in Family Court and provide testimony in court. In guardianship cases, usually the minor's parents do not appear, so the judge will ask the proposed guardian and the minor questions about their relationship and living situation.

Step 3:

Assist the Proposed Guardian in Preparing and Filing the Guardianship or Custody Petition

Preparing the Guardianship Petition and Accompanying Forms

In a guardianship proceeding, the petitioner is the proposed guardian and the respondent(s) is/are the parents of the minor. The first important point regarding the guardianship petition is that you, as an attorney, do not represent the petitioner/proposed guardian in this proceeding. However, you should talk to the petitioner about the process, assist him/her in filling out the paperwork, and discuss what to expect when filing the petition and appearing in Family Court. Nonetheless, the proposed guardian is not your client. Please advise the guardian that the Family Court may help him/her file pro se.

There are three or four forms (depending on the age of the minor) that you will help the proposed guardian prepare. All of these New York Court forms are located in Appendix C. The first is Form 6-1, Petition for Guardianship of the Person. This form asks for information about the proposed guardian, the people residing with the proposed guardian, the minor, and the minor's parents.

The second form in Appendix C is Form 6-2, Oath and Designation for Service of Process. This form is an oath by the proposed guardian that he/she will faithfully and honestly discharge the duties of a guardian. It also includes the guardian's address so that the court knows where to send any information about the guardianship.

The next form is Form 6-3, Consent of Person Over 18/Preference of Minor Over 14. This is only necessary if your client is over 14 and it tells the court that the minor agrees to the proposed guardianship.

The final form is the OCFS-3909, Request for Information. It is on this form where the proposed guardian and members of his/her household who are over 18 must list each of their addresses for the past 28 years. This form is extremely important since it checks for prior allegations of child abuse, and without its full completion the guardianship process cannot move forward. If there are any gaps in the dates, the Office of Children and Family Services will not accept the form.

Also in Appendix C is a sample Notice of Appearance that indicates that you are representing your client in his/her guardianship proceeding. You should bring this with you to the first court appearance.

Filing the Guardianship Petition and Accompanying Forms

Once all the forms are completed, it is time to file them at the New York State Family Court for people residing in New York State. It may be pertinent to call the clerk if you are filing in a court

where you have never filed. For New York Family Court contact information, see [Appendix I](#). The petitioner and the young person must appear in person to file the petition. This however, may vary depending in which court you are filing; for example, in Manhattan you MUST file in person. You are not required to go with the petitioner to file the petition, but it is a good idea if you go since courthouses are often overwhelming and intimidating for people who are not used to them.

You should bring the Notice of Appearance with you. The petitioner should bring the petition and accompanying documents **plus four (4) copies** with them to court. The petitioner should also bring photo identification and a proof of residence. It is a good idea to get to the courthouse early in the morning in order to minimize wait time.

Upon arrival at court, go to the petition room and file the petition. Make sure that you get a copy of the petition back that is time-stamped with a file and docket number hand-written on it by the clerk. At this time you will give the clerk the other two or three documents that you prepared. Before you leave the window, the clerk will tell you which courtroom you should go to for your case to be called. This room is referred to as a “part.” Go to that part and let the court officer who is outside of the part know that you are there. After checking in, all you have to do is wait until your docket number is called. You could have to wait for several hours, so remember to bring something to occupy your time.

Not all courts are the same—in some circumstances, you must first file the petition, receive a scheduled court hearing and then return for the hearing. You serve respondents in the interim.

While waiting, remind the proposed guardian that the court will ask if he/she wants a lawyer. The proposed guardian has a right to a lawyer.

The First Court Appearance: Guardianship

Once you arrive at the courthouse, you will have to wait for your case to be called. Attorneys may enter the courtroom, however clients must remain in the waiting room before the case is called. It is the attorney’s choice if he/she wishes to remain with the young person in the waiting room or wait in the court. When your case is called, enter the courtroom with the proposed guardian and the client. You will be asked to orally note your appearance. After that, offer your Notice of Appearance to the clerk if no one has asked for it yet.

Next, the judge or referee may ask several questions about the guardianship, the proposed guardian, and the young person. You may have the opportunity to explain that you will be making a **Motion for Special Findings** and that a special findings order is needed for Special Immigrant Juvenile Status. You may also want to explain Special Immigrant Juvenile Status.

During the appearance, the court will usually do the following:

- Order service of the summons on the minor’s parents;
- Order the fingerprinting of the proposed guardian and people 18 or older in the proposed guardian’s house;
- Order a child abuse and neglect clearance (the OCFS-3909);
- Order the court-ordered investigation (COI) of the proposed guardian’s household
- Set a return date.

One of three things will happen on the return date:

- 1.) First, you will all return to court simply to report that the respondents have been served, and that no issues were found with the investigations. If that happens, then the judge or referee will issue you another return date at which the guardianship petition will be adjudicated;
- 2.) Alternatively, the judge may accept the proof of service and reports and hear the merits of the guardianship petition and the motion for Special Findings on the return date; OR
- 3.) Finally, by the return date, some of the results of the investigations may be outstanding or the young person's parents have yet to be served. The judge or referee will either issue you another return date or hear the merits of the case without the information. If the case is heard with missing information, the judge or referee will not make a final decision or sign an order until those matters are completed, but the merits may be heard anyway.

Before you leave the courtroom, make sure to establish what type of service on the respondents the court will accept. It may not be possible to personally serve the parents if their whereabouts are unknown or they live in a foreign country. You should know where the parents are before you go into court so that you can suggest a method that would provide sufficient notice to the parents and minimize cost. For example, you can request service by first class mail to the last known address of your client's parents. Alternatively, if the parents are in the U.S., it is possible that they could waive service by signing a formal written consent to the guardianship, see Appendix E. If you are able to get the parents to consent to the guardianship, bring the signed and notarized form with you to the first court appearance. For a sample Consent to Guardianship see the final document in Exhibit D. Remember to collect the summons before you leave the courthouse.

Preparing the Custody Petition and Accompanying Forms

In contrast to the numerous forms necessary to commence a guardianship proceeding, there is only one form that the petitioner will have to bring to the Family Court to file for custody. For a sample Petition for Custody or Visitation, see Exhibit D.

Filing the Custody Petition and Accompanying Forms

The procedure for filing a custody petition is very similar to the process of filing a guardianship petition. Remember, the petition must be filed in the Family Court of the county in which the child has been living.

The First Court Appearance: Custody

In child custody matters, the initial appearance, called a preliminary hearing, is the first court date that you will attend. The hearing is typically brief and allows the judge to familiarize himself or herself with the case.

Plan to arrive at least 15 to 30 minutes earlier than your scheduled time. When you arrive, check with the clerk of the court to check in and find where your case has been assigned, then locate the appropriate waiting room and take a seat. Many times you will find that the family court does not have enough space in the waiting room, if this is the case please follow the courts staff directions. Make sure you are always listening for your case number. Keep in mind that you may have to be separated from your client due to space in the waiting room. Once your case is called, the judge will verify your identities. Then the judge may give a verbal overview of the case and ask you to provide a short initial statement. After hearing statements, the judge will consider any additional information that needs to be cleared up. The judge will also ask you to submit a notice of representation.

Next, the judge or referee may ask several questions about custody, the proposed custodian, and the young person. Here you may explain that you will be making a **Motion for Special Findings** so that the child may apply for SIJS.

In this initial appearance, you must turn in the **Petition for Custody**. On the return date a judge will ask if the parents of the child have been served and if all other requirements have been met. See guardianship section above. At this hearing a judge may decide to hear the merits of the case or give you a return date. Make sure to have all requirements completed in all phases of the process since the judge will not sign a final order if there are matters pending in the case.

Step 4: **Serve the Respondents with Notice of the Guardianship or Custody Proceeding**

You should establish the means of service on the respondents at the time you file with the family court. While waiting for your court date, do your best to complete service on the respondents. When you return for your hearing, if you are unable to complete service by that time, you may ask the judge or referee for more time to serve. Alternatively, you may ask the judge or referee to order a different means of service if the respondents cannot be served by the initial method.

For information about serving parties living abroad, see Appendix E.

Fact-Finding Hearing: Guardianship

During this fact-finding hearing the judge will determine the issue of guardianship. Thus, the judge will likely ask questions on the relationship between the proposed guardian/custodian and the minor, and the proposed guardian/custodian's employment, family relationships, and household members. Furthermore, the judge or referee may ask about any results of the Court Ordered Investigation and fingerprinting. It is imperative as to meet with your juvenile client to remind him or her to respond truthfully to all questions. As mentioned above, you are the attorney for the young person and not the guardian. However, it is permitted to remind the guardian that he or she may seek outside counsel.

During the hearing, call the guardian as the first witness. You will want to first examine his or her character sufficiency to serve as a guardian. If any issues arose in the investigation you will want to

address them here. It is also important to question the guardian on his/her relationship to the minor (note that they do not have to be related). Lastly, you may want to examine how the client's life has changed now that the proposed guardian is in his/her life.

Next you should call the juvenile as a witness. Question the relationship between the proposed guardian and the juvenile and have the client explain why he/she wants a relationship with the guardian.

In your summation, make sure to explain why it is in the client's best interest for the proposed guardian to be appointed.

Fact-Finding Hearing: Custody

The custody hearing is similar to the guardianship hearing. However, a sole custodian will be responsible for the housing, education and well-being of the minor. Therefore, questions pertaining to the custodian's household and income would be relevant. If the custodian has any other children, calling them as witnesses may evidence the stability of the home and the fitness of the proposed custodian. As mentioned above, remember to explain in summation why this household is in the best interests of the child.

Step 5:

Draft and File the Motion for Special Findings and Accompanying Order

Remember that the Special Findings Order is a necessary part of the ultimate application for Special Immigrant Juvenile Status. In order to obtain this Order, you will have to make a motion before the Family Court requesting that they made such findings. Namely, the Order must establish that:

- The young person is under 21 years old;
- The young person is unmarried;
- The young person is dependent upon the juvenile court;
- Reunification with one or both parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law; AND
- It is not in the young person's best interest to be returned to his/her home country.

Before the return date, you will have to prepare and file the motion. The motion package that you file must be blue-backed and it must include:

- A Notice of Motion;
- Memorandum of law in support of the motion and the guardianship petition;
- A proposed special findings order;
- Relevant exhibits such as:
 - The client's affidavit;
 - The proposed guardian's affidavit;
 - Copies of birth certificates, foreign passports, National ID cards;
 - Death certificates of the client's parents, if applicable
 - Relevant statutes, regulations, and case law; and

- Country reports relating to the client's home country.

For samples of these documents, see [Appendix F](#).

Once you have all of these documents prepared, make sure to file them in Family Court. Bring the original and two copies to the court. Retain one time-stamped copy.

You may also mail a copy to the judge or the referee in advance of the return date with a cover letter that explains why you are filing the motion. For a sample cover letter, see [Appendix F](#).

Step 6: **Prepare for and Attend the Fact-Finding Hearing for Special Findings Order**

Preparing for the Special Findings Hearing

During this fact-finding hearing the judge will determine the motion for special findings. Try to schedule a meeting with the guardian/custodian and the client from a few days to a week before the fact-finding hearing. Remind the proposed guardian and the client that they need to respond truthfully to all questions.

Some topics to cover as you prepare for the hearing:

- The relationship between the proposed guardian/custodian and the minor;
- The proposed guardian/custodian's employment, family relationships, and household members;
- The whereabouts of the minor's parents;
- Why the proposed guardian/custodian is the right person to care for the minor;
- The type of abuse, neglect, or abandonment that the minor suffered;
- What the minor would like to achieve in the future;
- The proposed guardian/custodian's plans to assist the minor in his/her future.

Attending the Hearing

On the day of the hearing, check in with the court officer outside of your part, and wait to be called.

Once the case is called, you will make your appearance like you did in the prior hearing and the parties will be sworn in. You may give a brief opening statement if the judge or referee requests it. You may request that the guardianship/custody hearing (mentioned above) and the hearing on the special findings motion be combined in the interest of judicial economy.

Next, the court will probably call the guardian/custodian and ask him/her questions or the court may have you ask the guardian questions. In eliciting the testimony from the guardian/custodian, make sure to establish all 5 elements from the special findings order. When you are done, ask the judge or referee if he/she has any questions.

After the guardian/custodian is finished, the court may call the child to testify and may ask questions following their testimony.

In closing, briefly summarize the testimony, run through the 5 points of the special findings order.

If the court grants the special findings order, the court may make the findings on the record and sign an order that day or may issue a written decision that you will receive in the mail. If the findings are granted that day, you should offer a proposed Special Findings Order to the court. For a sample Special Findings Order, see Exhibit F. Remember the court order must have the exact language showing that a child meets all immigration requirements.

Before you leave court, make sure to get two copies of the Special Findings Order with the court's raised seal and two copies of the guardianship/custody order (if the motions are done at the same hearing) with the raised seal.

Step 7:
Prepare and Submit the Petition for Special Immigrant Status (I-360),
the Application to Adjust Status (I-485), and
the Application for Employment Authorization (I-765)

Once you have obtained the guardianship/custody order and the Special Findings Order, it is time to proceed with the immigration part of SIJS. It is important to remember that the client must be 21 years or younger for USCIS to review the petition. USCIS may adjudicate the petition after the age is "locked in" by submitting it before the client turns 21. Recall, that the law varies by state as to the maximum age for filing guardianship. In New York an individual may file for guardianship until the minor turns 21. First, fill out the Petition for Special Immigrant Status (I-360), the Application to Adjust Status (I-485), and the Application for Employment Authorization (I-765). For samples of these forms, see Appendix G. Please note that USCIS charges fees for several of these forms. It may be necessary for the client to obtain a fee waiver. For more information about obtaining a fee waiver, see Appendix H.

Along with the I-360, you must include the Special Finding Order, the guardianship/custody order, and a copy of the client's birth certificate. To the I-485, you must attach 4 passport-style photos of the minor, a sealed medical exam, the dispositions of any arrests that the minor had, and waivers for any inadmissibility grounds. To submit a waiver for grounds of inadmissibility, form I-601 must be filed, see Appendix H.

Make sure that you have a current version of all the forms above. Also, be sure to check that you are sending USCIS the correct filing fee. See Appendix H. To find the most recent information on where to file your application check the instructions document (available in PDF format) for each form. This can be found at www.uscis.gov. Please note that you may want to use a mailing method that will provide proof of delivery. If instructions indicate that you must file at a lockbox, then file form G-1145. Form G-1145 is used for applicants who wish to receive electronic notification (e-Notification) that their application has been accepted.

Step 7A:

If the minor is not in removal proceedings, then you may submit the I-360, the I-485, and the I-765 simultaneously to the United States Citizenship and Immigration Service (USCIS). However, it is

important to inform your client that he/she must not depart the United States until permanent residency is granted. If your client leaves the United States he /she may not be able to reenter for 3 or 10 years depending on the length of unlawful status.

Step 7B:

In contrast, if the minor is in removal proceedings, then you should file the I-360 by itself to 26 Federal Plaza. Once you receive the returned and approved I-360, you may then file the I-485 and the I-765. Note that the Immigration Court and USCIS office with jurisdiction over your client's case is the Court or USCIS office where your client lives.

Step 7C:

If the minor is not in removal proceedings, he or she may have grounds of inadmissibility then you must also apply for a waiver to waive the grounds of inadmissibility. First submit the form I-360 by itself. Once the I-360 is approved, then submit the forms I-485, I-765 and I-601. See section below to determine whether the child may have grounds of inadmissibility. Please note that some waivers require qualifying United States Citizen or Lawful Permanent Resident relatives. If the potential SIJ does not have a qualifying relative he/she CANNOT qualify for that waiver.

About one month after submitting the forms, you will receive a receipt notice from USCIS. Additionally, the client will receive a notice advising him/her of a biometrics appointment and an interview date. It is very important that the client attend the biometrics appointment as scheduled.

Step 8:
Grounds of Inadmissibility

There are grounds of inadmissibility that SIJ status statutorily waives and there are grounds of inadmissibility it does not. For grounds that SIJS does not waive under the statute, you must file form I-601, Application for Waiver of Ground of Inadmissibility.

The following are grounds of inadmissibility automatically waived for SIJS applicants. You do not need a waiver if your client has done any of the following:

- Waives being a Public charge. (INA § 212(a)(4))
- Waives working without authorization. (INA § 212(a)(5)(A))
- Waives illegal entrants and immigration violators. (INA § 212(a)(6)(A))
- Waives material misrepresentation of fact. (INA § 212(a)(6)(C))
- Waives stowaways or smugglers. (INA § 212(a)(6)(D))
- Waives if one enters without proper documentation. (INA § 212(a)(7)(A))
- Waives those unlawfully present. (INA § 212(a)(9)(B))

However, if your client has any of the following issues, then you may need to submit a waiver.

- Health related grounds. (INA § 212(a)(1))
 - 212(g) waiver
- Crimes (INA § 212(a)(2))
 - Be particularly aware of controlled substances and firearms offenses. (INA §212(a)(2))
 - The Attorney General can waive criminal offenses for humanitarian purposes.
 - There is also the waiver if the conviction is for one possession of marijuana under 30 grams.
- Security related grounds. (INA § 212(a)(3))
 - There is no waiver for this except for the 212(d)(3) waiver. To qualify for this waiver the juvenile must have entered with a non-immigrant visa. The Board of Immigration Appeals (Matter of Hranka) has said that it will grant this waiver by weighing three factors:
 - The risk of harm to society if the applicant is admitted;
 - The seriousness of the applicant’s prior immigration law or criminal law violations AND
 - The reasons why the individual wants to enter the U.S.

Failure to attend removal proceedings (INA § 212(a)(6)(B))

- No waiver for draft evaders. (INA § 212(a)(8)(B))
- Waivers available for aliens previously removed (INA § 212(a)(9)(A)) and for previous immigration violations (INA § 212(a)(9)(C)) but these are advanced topics and require some research; please consult with Safe Passage Project or refer to *The Waivers Book: Advanced Issues in Immigration Law Practice*, published by AILA in 2011; editor-in-chief, Irene Scharf.
 - Example: A child from Honduras arrives at the US border and is stopped. He lies, says he is Mexican (misrepresentation- (INA § 212(a)(6)(C))), and is sent back into Mexico (expedited removal- (INA § 212(a)(9)(A))). He then re-enters the US- (INA § 212(a)(9)(C))). The I-601 waiver may waive all three (3) grounds of inadmissibility. Under certain circumstances form I-212 may (or should) be used instead to apply for the exceptions listed in INA § 212(a)(9)(A)(iii) and INA § 212(a)(9)(C)(ii).
 - <http://www.uscis.gov/files/form/i-601instr.pdf>
 - <http://www.uscis.gov/files/form/i-601.pdf>
- The only grounds of inadmissibility that are not waivable for SIJS applicants are those listed in INA § 212(a)(2)(A), (B) and (C) (except for a single instance of simple possession of 30 grams or less of marijuana) and INA § 212(a)(3)(A), (B), (C) and (E).

Step 9:
Prepare the Client for the Adjustment Interview

When preparing the client for the adjustment interview, it is most important to reassure him that you will be accompanying him to the interview. The interviewer will likely review information contained in the forms submitted, information on the young person's criminal history and any inconsistencies they may have discovered. Much like the Family Court proceeding, it is important to utilize questions to review this information. Make sure your client understands that the questions may be difficult but it is important to think and remain calm before answering. The client must bring a state-issued photo ID or a passport of his country of birth.

Step 10:
Attend the Adjustment Interview with the Client

Recall, that there are two ways to file SIJS for the immigration component. If your client is in removal proceedings you should only file the I-360. If your client is not in removal proceedings one should file the I-360 and I-485 simultaneously.

If You Filed an I-360 Alone

After you have filed the I-360, USCIS will send an I-797C letter confirming the date that they received the petition. According to Section 235 (d) (2) of the Trafficking Victims and Authorization Act (TVPRA) of 2008, USCIS must make a decision on SIJS cases 180 days after the date of receipt. After the 180 days, you will likely receive another letter from USCIS either approving or denying SIJS to your client. In the event that SIJS is approved, the client in removal proceedings has procured a successful defensive status and can adjust to file the I-485. If USCIS denies the I-360, it is possible to appeal the denial. USCIS will attach instructions on how to file an appeal.

Only after your client has received the approved I-360, will he/she be called for an adjustment interview (I-485). Denial or approval of the I-485 will be adjudicated at the interview.

If You Filed an I-360 and an I-485

After going to your interview, USCIS will remit a denial or approval in the interview. If they approve SIJS for your client, they will mail your client a "green card" or Permanent Resident Card in about 90 days. They may also choose temporarily to place I-551 to demonstrate evidence of permanent residence. Both would confer Lawful Permanent Residency upon the client. If USCIS denies your petition, they will attach specific notice of why it was denied with a form to fill out to reconsider the decision. If your decision can be appealed, you must file the appeal within 30 days of the service of the decision. You may also be able to file a Motion to Reopen or Reconsider. Both appeals and motions are filed on Form I-290B, Notice of Appeal or Motion.

The Interview

Through either avenue, if your client has secured an I-485 you should attend the interview with your client but you should bring Form G-28, Notice of Entry of Appearance as Attorney, with you. If your client does not speak English, you must bring a translator as USCIS will not provide one. Even if you speak the language of your client, you cannot translate for him/her. You must bring your own form of identification like state-issued driver's license or passport. You will serve an important role both as legal counsel but also as a support system for the young person.

Step 11:
What's Next

Once your client is over the age of 18, held permanent residency for 5 years with half the time physically present in the United States, he/she may apply for naturalization to become a U.S. citizen. Please keep in mind that there may be other eligibility requirements. To see form N-400 to file for Naturalization, please visit www.uscis.gov. Remember that if your client receives a grant of permanent residence through special immigrant status, your client may not be able to apply for any immigration benefit for a birth parent or family member.

Appendix A

INA §101 (a) (27) The term “special immigrant” means—

(J) an immigrant who is present in the United States—

(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, or an individual or entity appointed by a State or juvenile court located in the United States, and 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;

(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 Secretary of Homeland Security consents 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 custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services 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;

Please check 8 CFR §1101 (a)(27)(J) for regulations defining special immigrant.

Appendix B

To obtain a foreign birth certificate you should first research the country's system for record keeping. Furthermore, you can access the Foreign Affairs Manual at <http://www.state.gov/m/a/dir/regs/fam/> for further guidance on how obtain foreign documents. Please note that Safe Passage volunteer students can aid volunteer attorneys in requesting these documents. To request a volunteer's help, send a request to safepassage@nyls.edu.

Appendix C

These forms are from the NY Family Court. For the most recent information and forms please visit: <http://www.nycourts.gov/courts/nyc/family/index.shtml>. Please check the website for most recent version of all forms prior to filling documentation with the Court.

For Form 6-1 please visit: <http://www.nycourts.gov/forms/familycourt/pdfs/6-1.pdf>

For Form 6-2 please visit: <http://www.nycourts.gov/forms/familycourt/pdfs/6-2.pdf>

For Form 6-3 please visit: <http://www.nycourts.gov/forms/familycourt/pdfs/6-3.pdf>

For Form OCFS 309 please visit: <http://cqc.ny.gov/uploads/guardianship/ocfs3909.pdf>

For all remaining forms, including the GF-29, entrance of attorney, see: <http://www.nycourts.gov/forms/familycourt/general.shtml>

To keep current with updated versions of the forms cited above visit: <http://www.nycourts.gov/forms/familycourt/guardianship.shtml>

Appendix D

For General Form 17, please visit: <http://www.nycourts.gov/forms/familycourt/pdfs/gf-17.pdf>

Appendix E

The most common form of service abroad is that governed by the Hague Convention on International Service. The Hague Convention is incorporated in Federal Rule of Civil Procedure 4(f). The Convention provides for three methods of service; 1.) by a Central Authority of the individual country; 2.) by International Registered Mail or 3.) through direct service through an agent of the receiving country. It is important to research the individual country where service will be affected to determine if that country has “reserved” any part of the Convention. If it has “reserved” a particular form of service, then that form of service would not be acceptable.

Service through the Central Authority of the Individual Country

To affect this type of service the attorney must complete form USM-94. Attached, must be two copies of the document one wishes to serve in the language of the country. The attorney may choose to provide “formal” service—which is sending the documents to the Central Authority, usually the Ministry of Justice—who will then send those documents to the individual. The attorney may also choose to provide “informal service” whereby the documents are sent directly to the party. This informal service must be consented to as per Rule 4(d) of FRCP.

Service by Internationally Registered Mail

This service may be affected by simply sending the documents in the registered mail. This method of service, however, is somewhat contended and requires research on whether the individual country “reserved.” If, in fact they did reserve service should not be affected in this manner.

Service through a State Agent

An attorney may serve an individual through an agent of the foreign state. The individuals must be “judicial officers, officers, officials or other component persons of the State of Destination.” Some prefer this method as quicker.

For more information, and to file the USM-94, please visit:

<http://www.hagueservice.net/forms.html>

Appendix F

Insert SP sample notice of Motion, Special Findings Motion, Sample Attorney Affirmation and Memo of Law, Sample Affidavit of the Young Person, Sample Special Findings Order, and sample Cover Letter to Judge/Referee.

Appendix G

For Form I-360, please visit: <http://www.uscis.gov/files/form/i-360.pdf>

For Form I-485, please visit: <http://www.uscis.gov/files/form/i-485.pdf>

For Form I-765, please visit: <http://www.uscis.gov/files/form/i-765.pdf>

For Form I-601, please visit: <http://www.uscis.gov/files/form/i-601.pdf>

Appendix H

United States Citizenship and Immigration Services will waive fees for certain applications under certain circumstances. The individual must demonstrate that he/she is unable to pay the fee and USCIS will take all factors into consideration. There is a waiver available for form I-485, form I-601, and form I-765 for the Special Immigrant Juvenile since he or she does not need to demonstrate that he will become a public charge for admission or adjustment of status. There are currently two ways to file for a fee waiver. An individual may file Form I-912, Request for a Fee Waiver, or submit a statement detailing why he/she is requesting the waiver.

Appendix I

Contact Information

The Justice Action Center at New York Law School

Phone Number: 212-431-2314

Address: 185 W. Broadway, New York, NY 10013

Website: http://www.nyls.edu/centers/harlan_scholar_centers/justice_action_center

The Safe Passage Immigration Project

Phone Number: 212-431-2100 ext: 4725

Address: 185 W. Broadway, New York, NY 10013

Email: safepassage@nyls.edu

Website: http://www.nyls.edu/centers/harlan_scholar_centers/justice_action_center/projects/safe_passage_project&search=1

The Family Courts in the Five Boroughs

Bronx

Phone Number: 718-618-2098

Address: 900 Sheridan Ave. Bronx 10451.

New York City

Phone Number: 646-386-5200

Address: 60 Lafayette St. New York, NY 10013.

Kings (Brooklyn)

Phone Number: 347-401-9600

Address: 330 Jay Street, Brooklyn, NY 11201.

Queens

Phone Number: 718-298-0197

Address: 151-20 Jamaica Ave. Jamaica, NY 11432.

Richmond (Suffolk)

Phone Number: 718-675-8800

Address: 100 Richmond Terrace, Staten Island, NY 10301.

For updated information please see:

<http://www.nycourts.gov/courts/nyc/family/infobycounty.shtml>

USCIS Information

Phone Number: 1800-375-5283 for the National Customer Service Center

The Immigration Court at 26 Federal Plaza

The Executive Office for Immigration Review in New York

Phone Number: 917-454-1040

Address: 26 Federal Plaza, Room 1237, New York, NY 10278.