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Borders, Bans and New Americans: Immigration Law in the Trump Administration

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Continuing Legal Education Materials

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V. IMMIGRATION AND CHILDREN

SPECIAL IMMIGRANT JUVENILE STATUS – PREDICATE ORDERS, JURISDICTION, PROCESS AND PROCEDURES.

E.N. v. E.S.,

67 Mass.App.Ct. 182 (2006)

Synopsis

Background: Following entry of judgment of divorce nisi, which awarded sole legal and physical custody of children to mother, father filed complaint requesting that judgment be modified to grant him sole legal and physical custody of children. On day scheduled for trial, father filed motion requesting that Puerto Rico habeas corpus judgment granting him custody of older child be given full faith and credit, and seeking dismissal of modification proceeding. The Probate and Family Court Department, Barnstable County, Robert E. Terry, J., denied father's request for modification of divorce custody order. Father appealed.

Holdings: The Appeals Court, Duffly, J., held that:

1 trial court had authority under Massachusetts Child Custody Jurisdiction Act (MCCJA) to make child custody determination in connection with divorce action;

2 habeas corpus judgment obtained by father in Puerto Rico, which judgment awarded him custody of parties' older child, was not entitled to full faith and credit in Massachusetts under Parental Kidnapping Prevention Act (PKPA);

3 trial court's exercise of jurisdiction issuing divorce judgment was appropriate under MCCJA and PKPA; and

4 trial court did not abuse its discretion in declining to modify divorce judgment.

Opinion

DUFFLY, J.

We are asked to decide whether child custody provisions of a divorce judgment of the Probate and Family Court may be challenged by the plaintiff, E.N. (father), in a subsequent proceeding. The father claims that the Probate and Family Court lacked jurisdiction over the issue of custody as it ***183*** relates to the parties' older child, who was born in Puerto Rico. Without the father's consent, the defendant, E.S. (mother), removed that child to Massachusetts where she has family, there obtaining an abuse prevention order on allegations of abuse by the father that were, in a later proceeding, credited by a judge of the Probate and Family Court following trial.

The father did not appeal the October 22, 2001, judgment of divorce nisi awarding to the mother sole legal and physical custody of that child and of a second child who was born to the parties in Massachusetts, following their separation.[1] Instead, well over a year later, on December 17, 2002, the father filed a complaint for modification in the Probate and Family Court alleging a change in the children's circumstances and requesting sole legal and physical custody and the right to remove the children to Puerto Rico, as well as modification of his support obligations. On the day scheduled for trial on the modification

complaint (and other consolidated matters, see *infra*), the father filed a motion pursuant to G.L. c. 209B, § 12(*a*), seeking recognition and enforcement in the Probate and Family Court of a judgment of the Superior Court of Bayamón, Puerto Rico, dated April 18, 2001, granting him custody of the older child. The father also filed a "motion to dismiss," in essence challenging the authority of the court to exercise jurisdiction with respect to the older child. After a trial, the probate judge rejected the father's jurisdictional arguments. Treating the motion as an alternative claim for relief, the judge then proceeded to address the merits of the father's complaint and denied the father's request to modify the divorce judgment and remove the children to Puerto Rico.

Our resolution of the issues differs somewhat from that of the probate judge, whose decision we affirm. We conclude that, under applicable provisions of the Massachusetts Child Custody Jurisdiction Act (MCCJA), G.L. c. 209B, and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A (1994 & Supp.2006), Massachusetts had jurisdiction to issue an initial custody determination; such jurisdiction was properly exercised in connection with the mother's divorce action.

184** *Background facts and proceedings.* The parties were married in Puerto Rico on April 15, 1996, and the first of the two children was born there on March 26, 1997. The marriage was unhappy and, as found by the probate judge, beginning in 1999, the father was "physically, verbally, and emotionally abusive to the [mother] and the children."[2] The parties separated on October 15, 1999; on October 18, the ***1107** father filed a custody petition in Puerto Rico, alleging that the mother had abandoned the child.[3] Following a hearing in Puerto Rico (not attended by the mother), the father was awarded temporary custody of the child until January 31, 2000, when the order expired.[4] After a brief reconciliation that ended in January, 2000, the mother became pregnant with the parties' younger son. See note 2,185** *supra.* They separated again, and on March 1, 2000, the mother relocated to Massachusetts without the older child, initially renting a room in her sister's house.

In July, 2000, then some six months pregnant, the mother returned to Puerto Rico. On July 25, 2000, she asked that the father allow her to spend some time with the older child. Rather than return the child to the father at the end of the day, as she apparently had promised, the mother removed the child to Massachusetts. The next day, July 26, 2000, the mother—citing a two-year history of physical and emotional abuse by the father against her and the child—obtained in the Probate and Family Court an abuse prevention order against the father that also awarded her custody of the older child.[5]

Meanwhile, in Puerto Rico, the father sought to initiate criminal proceedings against the mother. On August 28, 2000, a judge of "the Court of First Instance, Bayamón Part," issued a warrant for the mother's arrest on the ground of an asserted violation of the Puerto Rico Penal Code.[6] On January 18, 2001, the mother was arrested on the warrant and detained at the Barnstable house of correction.

Upon the mother's arrest, the older child was briefly placed in the custody of the Department of Social Services (department).[7] That same day, the father traveled to Massachusetts to retrieve the older ***1108** child and was interviewed by the department concerning the allegations of abuse the mother had made against him in connection with the restraining order of July 26, 2000. The next day, January 19, 2001, the maternal grandmother filed in the Probate and Family Court a petition for temporary guardianship, in which she asserted the need to ***186** protect the children from abuse by the father. The father filed an opposition to the petition. A hearing was held, and on January 19, 2001, a judge of the Probate and Family Court[8] granted temporary custody of both children to the maternal grandmother, to expire on April 19, 2001.

In his findings on the order for temporary guardianship, the probate judge found that Puerto Rico was then the home State[9] of the older child and that Massachusetts was the home State of the younger child.[10,11] The probate judge entered his order pursuant to the emergency jurisdiction provision of the MCCJA, G.L. c.

209B, § 2(*a*)(3), on findings that an emergency existed and that the older child may have been subject to mistreatment and neglect by either or both parents.[12]

On February 12, 2001, the father filed a petition for habeas corpus in the Superior Court of Bayamón, Puerto Rico, requesting ***187** that the court grant him custody of and "patria potestas" over the older child.[13] The older child had not lived in Puerto Rico for the six-month period preceding ****1109** the filing of this petition, and thus Puerto Rico was not then the child's home State.

On April 13, 2001—by which time the older child had lived in Massachusetts for nearly nine consecutive months—the mother filed a complaint for divorce in the Probate and Family Court, requesting, among other things, custody of the children. The father, who concedes he was served with process, filed an answer to the complaint stating that the Probate and Family Court lacked jurisdiction over the custody of the older child. Referring to the facts that the child was born in Puerto Rico and that "the cases [regarding custody of the child] started in the court of Puerto Rico and in the jurisdiction of Puerto Rico [in] October 18, 1999," the father claimed in his answer that "[p]ursuant to the provisions of sec. 1738A of the Parental Kidnapping Prevention Act of 1980, Puerto Rico is the state with jurisdiction over the [older child]."

A judgment of the Superior Court of Bayamón dated April 18, 2001 (and bearing a certificate of authentication dated April 19, 2001),[14]granted the father's petition for custody and patria ***188** potestas over the older child and ordered that the child be brought immediately to the jurisdiction of Puerto Rico.[15]

In the meantime, the mother's divorce action proceeded in Massachusetts; temporary orders issued June 20, 2001, awarding her sole legal and physical custody of the children and directing the father to pay $100 per week for support of the mother and the children. In a memorandum and order on the motion for temporary orders issued the same day, the probate judge determined that Massachusetts had "subject matter" jurisdiction over the older child's custody on the basis that "no custody order had been in effect from another jurisdiction on either July 26, 2000 [when the abuse prevention order first issued], or [on] August 23, 2000 [when the restraining order was renewed]," and also "pursuant to G.L. c. 209B, § 2(*a*)(3)" (conferring emergency jurisdiction if the child is physically present in the Commonwealth ****1110**and "it is necessary in an emergency to protect the child from abuse or neglect").[16]

***189** On October 22, 2001, after a hearing before the probate judge (not attended by the father), a judgment of divorce nisi issued that, among other things, awarded the mother sole legal and physical custody of the children, ordered the father to pay $100 per week as child support (plus an additional $25 per week towards established arrearages), and divided the parties' property. The father (who concedes that he received a copy of the divorce judgment) did not appeal from the divorce judgment.

Also in October, 2001, a judgment entered dismissing the maternal grandmother's guardianship petition. A year later, on November 22, 2002, the maternal grandmother filed a second petition for temporary guardianship of the parties' children. In this petition, she alleged that the children had been neglected by the mother and also had been physically and possibly sexually abused by the mother's live-in boyfriend. The probate judge issued an order for temporary guardianship that same day.

Thereafter, on December 16, 2002, the father filed the within complaint seeking modification of the divorce judgment. In the complaint, the father acknowledged that the mother had earlier been awarded sole legal and physical custody of the children; he alleged as changed circumstances that, among other things, the children had been placed with the maternal grandmother as a result of an ongoing investigation in Massachusetts of abuse and neglect. The father requested that the divorce judgment be modified by granting him sole legal and physical custody of the children and the right to remove them to Puerto Rico. The mother

responded with a complaint for contempt against the father alleging that he had failed to pay support as ordered.

On June 26, 2003, the day scheduled for trial of the pending consolidated actions—the father's complaint for modification, the mother's complaint for contempt, and the maternal grandmother's petition for guardianship—the father, through counsel, filed a "motion to domesticate foreign decree under G.L. c. 209B, § 12(*a*)," requesting that the Puerto Rico habeas corpus judgment granting him custody of the older child be ***190** given full faith and credit. He also filed a motion to dismiss the modification and guardianship proceedings, alleging that the Probate and Family Court lacked jurisdiction under the MCCJA, G.L. c. 209B, § 2(*d*), and the PKPA, 28 U.S.C. § 1738A(a). According to the father, because the Puerto Rico Superior Court's resolution of the custody issue (see note 15, *supra*) predated that of the probate judge's June 20, 2001, determination that Massachusetts had jurisdiction, the guardianship and modification actions should be dismissed and the Puerto Rico court's April 18, 2001, judgment enforced.[17]

***1111** 1Following trial on the consolidated actions, the probate judge denied the father's request for modification of the divorce custody order, dismissed the petition for guardianship, and adjudged the father in contempt for wilfully neglecting and refusing to pay child support. The judge concluded that the Probate and Family Court was not precluded from exercising jurisdiction with respect to the older child[18] and, on the merits of the complaint for modification and removal, that the father ***191** had failed to demonstrate that a change in custody and the removal of the children to Puerto Rico would be in their best interests. The father appealed.

2*Discussion.* 1. *Claimed lack of jurisdiction.* The father argues, among other things, that, because Puerto Rico was the older child's home State and had "reasserted" its "jurisdiction over the matter"[19] after emergency jurisdiction in Massachusetts was no longer necessary, the Puerto Rico habeas corpus judgment is entitled to ***1112** full faith and credit and the probate judge erred in maintaining jurisdiction over the older child. The father asks that the Puerto Rico judgment "be ordered registered in [Massachusetts], thus ordering compliance with its rulings, and ordering the return of [the older child] to Puerto Rico with the father." The father's arguments are premised on the assumption that the Probate and Family Court lacked "subject matter" jurisdiction and therefore was not competent to adjudicate the custody matter in the context of the parties' divorce action.

3We think the question is not whether, strictly speaking, the Probate and Family Court had "subject matter" jurisdiction—in ***192** the sense of having been vested by the Legislature with the power to decide the custody issue, see *Doe v. Roe*, 377 Mass. 616, 617, 387 N.E.2d 143 (1979)[20]—but rather whether, under applicable provisions of the PKPA and MCCJA, the Probate and Family Court should have exercised jurisdiction to issue the divorce judgment awarding custody.[21] This requires a two-stage inquiry: first, whether Massachusetts was the home State when the mother's divorce action was filed, thus giving the Probate and Family Court "authority to exercise jurisdiction" under the MCCJA, *Khan v. Saminni*, 446 Mass. 88, 91, 842 N.E.2d 453 (2006); second, whether the court should have exercised such jurisdiction under provisions of the MCCJA and PKPA. See, e.g., *id.* at 95–96, 842 N.E.2d 453 (Trinidad court was vested with authority to adjudicate a custody issue under its laws; that Massachusetts was the home State "is not determinative of jurisdiction"). See also *Custody of Brandon*, 407 Mass. 1, 5, 551 N.E.2d 506 (1990); *Bak v. Bak*, 24 Mass.App.Ct. 608, 614–615, 511 N.E.2d 625 (1987).

4Under the MCCJA, "[a]ny [Massachusetts] court which is competent to decide child custody matters has jurisdiction to ***193** make a custody determination" if Massachusetts was the home State of the child on the commencement of the divorce action.[22] G.L. c. 209B, § 2(*a*)(1)(i). The probate courts are competent to decide custody matters, as they have been vested by the Legislature with "exclusive original***1113** jurisdiction ... of actions relative to the care, custody, education and maintenance of minor

children." G.L. c. 215, § 4, as amended by St.1975, c. 400, § 54. "Home state" is defined as "the state in which the child immediately preceding the date of commencement of the custody proceeding resided with ... a parent ... for at least 6 consecutive months." G.L. c. 209B, § 1. See 28 U.S.C. § 1738A(b)(4), (c)(2)(A). See also *Custody of Brandon*, 407 Mass. at 7, 14, 551 N.E.2d 506 ("Section 2[*a*][1] of G.L. c. 209B grants jurisdiction based solely on residence in the Commonwealth for at least six months of the child and a parent or person acting as a parent.... Section 1738A[c][2] of the [PKPA] grants 'home state' jurisdiction under the same six-month requirement found in G.L. c. 209B"). Here, the mother and the older child had been living in Massachusetts for nearly nine consecutive months (and the mother had been a Massachusetts resident for over thirteen months) when she commenced the divorce action on April 13, 2001; thus, the Probate and Family Court had home State jurisdiction to make the custody determination in connection with the divorce.

Notwithstanding that the Probate and Family Court had jurisdiction to decide the custody issue, we must next consider whether the exercise of jurisdiction was appropriate. To satisfy the requirements of both the MCCJA and the PKPA, the custody proceeding must not have commenced "during the pendency of a proceeding in a court of another state" exercising jurisdiction consistently with applicable provisions of the MCCJA and PKPA. See G.L. c. 209B, § (2)(*d*); 28 U.S.C. § 1738A(g).[23]

5***194*** Prior to commencement of the divorce action on April 13, 2001, only the father's habeas corpus petition, filed February 12, 2001, was pending. To be subject to enforcement in Massachusetts, that petition, which gave rise to the Puerto Rico court's custody determination, must have been filed at a time when Puerto Rico had home State jurisdiction—that is, Puerto Rico must have been the home State of the child "within six months before the date of the commencement of the [habeas corpus] proceeding." *****1114*** 28 U.S.C. § 1738A(c)(2)(A)(ii). See note 23, *supra.* Because the child left Puerto Rico with the mother on July 25, 2000—at a time when there was no outstanding order awarding custody and patria potestas to the father or prohibiting the child's removal[24]—Puerto Rico was no longer the child's home State and had not been within the six months ****195*** preceding the February 12, 2001, filing of the habeas corpus action.

Even if Puerto Rico was no longer the child's home State, however, the judgment on the habeas corpus petition could still be subject to enforcement (and the Probate and Family Court precluded from "modifying" that judgment) if Puerto Rico had "continuing jurisdiction" under the PKPA at the time the judgment was made. That is, if Puerto Rico had made a prior child custody determination consistently with provisions of the PKPA, jurisdiction "continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant." 28 U.S.C. § 1738A(d). See note 23, *supra; Hillier v. Hillier,* 41 Mass.App.Ct. 486, 488–489, 671 N.E.2d 520 (1996) (although Massachusetts was the home State pursuant to G.L. c. 209B, § 2, the Probate and Family Court was precluded from exercising jurisdiction under the PKPA, where a Florida court had continuing jurisdiction).

6The father makes no proper appellate argument that the court in Puerto Rico was entitled to invoke the continuing jurisdiction provision of the PKPA when it issued the habeas corpus judgment ****196*** on April 18, 2001.[25] See *****1115 *197*** *Cameron v. Carelli*, 39 Mass.App.Ct. 81, 85, 653 N.E.2d 595 (1995). Although he alluded to the issue in his motion to dismiss, he abandoned the issue on appeal. In light of the father's abandonment of any argument concerning continuing jurisdiction, and the views of the Bayamón Superior Court judge as to the basis for that court's jurisdiction, see note 25, *supra,* we consider the issue no further.

7When the mother filed the divorce action on April 13, 2001, the older child had been living with her in Massachusetts for nearly nine months, and the child was not the subject of a previously issued valid judgment or order of the Puerto Rico courts awarding custody to the father. When the father filed his habeas corpus petition on February 12, 2001, the older child had not resided in Puerto Rico for the six months

preceding the filing. Whether couched in terms of subject matter jurisdiction or home State jurisdiction as defined by the PKPA and MCCJA, we conclude that Massachusetts had jurisdiction over the custody issue and that it was properly exercised.[26]

***1116** 82. *Modification.* Contrary to the father's contention, the ***198** probate judge did not abuse his discretion by declining to modify the divorce judgment to award the father sole legal and physical custody of the children or to allow the father to remove the children to Puerto Rico. See G.L. c. 208, § 28, as amended by St.1993, c. 460, § 60 ("Upon a complaint after a divorce ... the court may make a judgment modifying its earlier judgment as to the care and custody of the minor children of the parties provided that the court finds that a material and substantial change in the circumstances of the parties has occurred and the judgment of modification is necessary in the best interests of the children"); G.L. c. 208, § 30 (the Massachusetts "removal statute"). See also *Rosenthal v. Maney,* 51 Mass.App.Ct. 257, 266, 745 N.E.2d 350 (2001) (best interests of the child always remain the paramount concern in a removal case). Although the evidence reflects that the mother had experienced significant parenting problems in the past and the children were removed from her custody for periods of time arising in part because they had allegedly been abused by her former boyfriend (against whom there is an abuse prevention order on behalf of the children), the judge found that the children now live with the mother in her own apartment, that the mother (who works) receives assistance from her mother in caring for the children, that the mother's home is clean and organized, and that the children are "well-dressed and clean and doing well in school and day care respectively." In addition, the judge found that the mother is no longer in an abusive relationship with her former boyfriend, she "has engaged in counseling to explore preventing future relationships involving domestic violence," and has been "successful at not re-engaging in relationships involving domestic violence."

The judge also made findings concerning the physical and emotional abuse inflicted by the father on the mother and the older child during the marriage. See note 2, *supra.* The judge concluded that the father had failed to show that "the quality of the children's lives would at all be improved by a move to Puerto ***199** Rico, emotionally, physically, or developmentally," or that the removal of the children to Puerto Rico was in the best interests of the children. To the contrary, the judge found that "[i]n light of the parties' violent history, removal of the children from the Commonwealth ***1117** is not in either child's best interest." There was no error.

Modification judgment dated October 23, 2003, affirmed.

In re EDWARD

441 A.2d 543 (R.I. 1982)

OPINION
WEISBERGER, Justice.
This matter comes before us on appeal from an adjudication by the Family Court finding the respondent (**Edward**) to be delinquent because he had committed the offense of larceny from the person in violation of G.L. 1956 (1981 Reenactment) s 11-41-7. In his appeal the respondent raises the issue of the adequacy of the evidence to sustain this finding. We shall not reach this issue because our examination of the record indicates that the Family Court lacked subject-matter jurisdiction of this offense.

It is undisputed that **Edward's** birth date was May 17, 1962. It is further undisputed that the alleged offense took place on May 16, 1980, the day immediately preceding **Edward's** eighteenth birthday.

The Family Court has been given exclusive jurisdiction in respect to "matters relating to delinquent (and) wayward * * * children" by G.L. 1956 (1969 Reenactment) s 8-10-3, as amended by P.L. 1980, ch. 54, s 1. The term "child" is defined in G.L. 1956 (1981 Reenactment) s 14-1-3(C) as "a person under eighteen (18) years of age."[1]

Consequently, the subject-matter jurisdiction of the Family Court depends on whether **Edward** was a "child" upon the date when the alleged offense took place. We have held in Leo v. Maro Display, Inc., R.I., 412 A.2d 221, 221-22 (1980), that at common law a person reaches his or her next year in age at the first moment of the day prior to the anniversary date of his or her birth. In reaching this determination, we relied upon Nichols v. Ramsel, 2 Mod. 280, 86 Eng.Rep. 1072 (1677); Turnbull v. Bonkowski, 419 F.2d 104 (9th Cir. 1969); Nelson v. Sandkamp, 227 Minn. 177, 34 N.W.2d 640 (1948); State v. Brown, 443 S.W.2d 805 (Mo.1969); ***544** State of New Jersey in the Interest of F.W., 130 N.J.Super. 513, 327 A.2d 697 (1974); Firing v. Kephart, 466 Pa. 560, 353 A.2d 833 (1976). The cases are further collected in 5 A.L.R.2d 1153-54 (1949).

Although Leo v. Maro Display, Inc., supra, involved a claim under our workers' compensation statute, the determination of the time of attainment of age eighteen is entirely applicable to and controls the subject-matter-jurisdiction question in the case at bar.
12Since **Edward** was born on May 17, 1962, he attained the age of eighteen on the first moment of May 16, 1980, the day before the anniversary date of his birth. Therefore, he was eighteen years of age on the date of the alleged offense. Since he had attained the age of eighteen, he was an adult within the definition of s 14-1-3(D). Further, s 15-12-1 provides:

"Notwithstanding any general or public law or provision of the common law to the contrary, all persons who shall have attained the age of eighteen (18) years, shall be deemed to be persons of full legal age. Said persons shall have all the duties and obligations, rights and privileges imposed or granted by law upon those persons heretofore having attained the age of twenty-one (21) years."
Although the parties have not raised the issue of subject-matter jurisdiction in their briefs or at oral argument, the essential ingredient of subject-matter jurisdiction may not be conferred by acquiescence or even agreement of the parties. Paolino v. Paolino, R.I., 420 A.2d 830, 835 (1980); Castellucci v. Castellucci, 116 R.I. 101, 103, 352 A.2d 640, 642 (1976); Bowden v. Ide, 48 R.I. **441**, 445, 138 A. 190, 191 (1927). Since the Family Court did not have jurisdiction to entertain this petition, its finding of delinquency cannot stand.[2]
For the reasons stated, the appeal of the defendant is sustained, the judgment of the Family Court is vacated, and the case is remanded to the Family Court with directions to dismiss the petition for want of jurisdiction.

RECINOS v. ESCOBAR,

473 Mass.734 (2015)

Synopsis

Background: Twenty year-old alien filed complaint in equity, seeking equitable and declaratory relief in form of decree of special findings, for purposes of application to be filed with United States Citizenship and Immigration Services for "special immigrant juvenile" (SIJ) status, which was prerequisite to obtaining eligibility to remain in United States as legal permanent resident. The Probate and Family Court, Middlesex County, Patricia A. Gorman, J., dismissed complaint for lack of jurisdiction, and alien appealed.

Holdings: On transfer from Appeals Court, the Supreme Judicial Court, Spina, J., held that:
1 Probate and Family Court had equitable authority to make predicate special findings to support application for special immigrant juvenile status, and
2 whether alien was in custody of Probate and Family Court had no bearing on whether she was dependent on Court due to abandonment, neglect, or abuse.
Reversed and remanded.
Cordy, J., filed concurring opinion in which Lenk, J., joined.

Opinion
SPINA, J.

In this case, we are asked to determine whether the Probate and Family Court Department has jurisdiction over youth between the ages of eighteen and twenty-one to make special findings that are necessary to apply for special immigrant juvenile (SIJ) status under 8 U.S.C. § 1101(a)(27)(J) (2012). Congress created the SIJ classification to permit immigrant children who have been abused, neglected, or abandoned by one or both of their parents to apply for lawful permanent residence while remaining in the United States. See *id.*; 8 C.F.R. § 204.11 (2009). "[C]hild" under the Federal statute is defined as an unmarried ***735** person under the age of twenty-one. 8 U.S.C. § 1101(b)(1). Before an immigrant child can apply for SIJ status, she must receive the following predicate findings from a "juvenile court":[1] (1) she is dependent on the juvenile court; (2) her reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and (3) it is not in her best interests to return to her country of origin. 8 U.S.C. § 1101(a)(27)(J)(i). Once these special findings are made, an application and supporting documents may be submitted to the United States Citizenship and Immigration Services (USCIS) agency.[2] An application for SIJ status must be submitted before the immigrant's twenty-first birthday. 8 C.F.R. § 204.11.

Liliana **Recinos**, the plaintiff, was a twenty year old,[3] unmarried immigrant attempting to apply for SIJ status. She filed a complaint in equity in April, 2014, in the Middlesex County Division of the Probate and Family Court Department. The plaintiff requested equitable and declaratory relief in the form of a decree of special findings and rulings of law concerning the findings necessary to apply for SIJ status. She also filed various motions, including a motion for special findings. A pretrial conference was held in January, 2015, at which the plaintiff submitted a stipulation signed by both herself and her mother, the defendant.[4] In March, 2015, a judge in the Probate and Family Court dismissed the complaint, explaining that the plaintiff was over the age of eighteen and that, therefore, the court did not have jurisdiction over her. The plaintiff filed a timely notice ***63** of appeal. At the plaintiff's request, the Appeals Court stayed the proceedings so that she could pursue an asylum application; however, in late September, 2015, her asylum application remained unadjudicated. The plaintiff informed the Appeals Court that she would like to pursue her appeal as expeditiously as possible because her twenty-first birthday would occur on December 5, 2015. We took this appeal on our own motion and expedited the proceedings to preserve the plaintiff's opportunity to apply for SIJ status. This court heard oral arguments on November 5, 2015.

***736** The primary issue raised by the plaintiff on appeal is whether the Probate and Family Court has jurisdiction pursuant to its broad equity powers under G.L. c. 215, § 6, over immigrant youth between the ages of eighteen and twenty-one to entertain a request to make the necessary predicate special findings under 8 U.S.C. § 1101(a)(27)(J). On November 9, 2015, we issued the following order to the Middlesex County Division of the Probate and Family Court Department:

"The judgment of the Probate and Family Court dated March 13, 2015, dismissing the plaintiff's complaint is reversed. The Probate and Family Court has jurisdiction to entertain the plaintiff's case, and the plaintiff is dependent on the court for these purposes. The court shall conduct proceedings forthwith on the plaintiff's complaint and shall act on her requests for relief expeditiously, such that, if the requested findings are made,

she will have time to apply to the Federal authorities for special immigrant juvenile status before her twenty-first birthday on December 5, 2015. This order will serve as the rescript of this court for purposes of Mass. R.A.P. 1(c), and shall issue to the trial court immediately. Opinion or opinions to follow. By the Court." This opinion states the reasons for that order.[5]

1. *Facts.* The plaintiff was born on December 5, 1994, in El Salvador. In her complaint and affidavit, the plaintiff chronicles a childhood riddled with instances of physical and emotional abuse by her father. She also described her mother's failure to protect her and her siblings from their father's abuse and the chronic gang violence in their neighborhood. She came to the United States in 2012, at the age of seventeen, to escape the threats from her father and the gang violence that overwhelmed her neighborhood.[6] At first, she settled in the area of Baltimore, Maryland, with her brother. While residing in Maryland, she was assigned a volunteer attorney. For unexplained reasons, the attorney did not take any action in helping the plaintiff obtain the findings she now seeks from the Probate and Family Court. At the end of 2012, the plaintiff relocated to Massachusetts and moved in with a family ***737*** friend with whom she still currently lives. While living in the United States, the plaintiff has had two children. Preliminarily, the plaintiff and her experiences seem to be of the type contemplated by the Federal statute.

2. *Special immigrant juvenile status.* In 1990, Congress amended the Immigration and Nationality Act (INA) to include the SIJ classification to create a pathway to citizenship for immigrant children. ****64*** Pub.L. 101–649, § 153, 101st Cong., 2d Sess. (1990). When the SIJ classification was first included, the statute required a State court to issue an order finding that (1) the child was dependent on a juvenile court and was eligible for long-term foster care, and (2) it was not in the child's best interests to return to his or her country of origin. *Id.*Since then, the provision of the INA concerning SIJs has been amended several times. *Matter of Marcelina M.-G. v. Israel S.*, 112 A.D.3d 100, 107–108, 973 N.Y.S.2d 714 (2013) (*Marcelina M.-G.*) (explaining various amendments to INA concerning SIJ status). In 1997, Congress modified the definition of SIJ to include a child who was "legally committed to, or placed under the custody of, an agency or department of a State" and added the requirement that eligibility for long-term foster care be "due to abuse, neglect, or abandonment." Pub.L. 105–119, § 113, 111 Stat. 2440 (1997). In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) further amended the INA to expand eligibility for SIJ status to include immigrant children who were placed in the custody of an "individual or entity appointed by a State or juvenile court" and eliminated the requirement of long-term foster care eligibility. Pub.L. 110–457, § 235(d)(1), 122 Stat. 5044 (2008). The amendment added the requirement that the reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. *Id.* In its present form, the Federal statute requires a juvenile court to issue an order finding that (1) the immigrant child is dependent on a juvenile court, or placed in the custody of a department or agency of the State, or placed in the custody of an individual or entity appointed by the State or court; (2) the immigrant child cannot be reunified with one or both of his or her parents due to abuse, neglect, or abandonment, or other similar basis under State law; and (3) it would not be in the child's best interests to return to his or her parents' previous country of nationality or country of last habitual residence. 8 U.S.C. § 1101(a)(27)(J)(i)-(ii).

1234The Federal statute requires a juvenile court to make special findings before an immigrant youth can apply for SIJ status and ***738*** lawful permanent residence. *Id.* The State and Federal proceedings are distinct from each other. "The process for obtaining SIJ status is 'a unique hybrid procedure that directs the collaboration of state and federal systems.' " *H.S.P. v. J.K.*, 223 N.J. 196, 209, 121 A.3d 849 (2015), quoting *Matter of Marisol N.H.*, 115 A.D.3d 185, 188, 979 N.Y.S.2d 643 (2014). Pursuant to 8 C.F.R. § 204.11, "[j]uvenile court" is defined as "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles."[7] When determining which court qualifies as a juvenile court under the Federal statute, it is the function of the State court and not the designation that is determinative. R.G. Settlage, E.A. Campbell, V.T. Thronson, Immigration Relief: Legal

Assistance for Noncitizen Crime Victims 70 (2014) (Settlage). In Massachusetts, the Juvenile Court and the Probate and Family Court both have jurisdiction to make judicial determinations about the care and custody of ***65** juveniles despite only one court being designated as a juvenile court. See G.L. c. 119, § 1; G.L. c. 208, §§ 19, 28, 28A, 31, 31A. Therefore, in Massachusetts, an immigrant child may petition for special findings in either the Juvenile Court or the Probate and Family Court. Because of the distinct expertise State courts possess in the area of child welfare and abuse, Congress has entrusted them with the responsibility to perform a best interest analysis and to make factual determinations about child welfare for purposes of SIJ eligibility. See *H.S.P., supra* at 211, 121 A.3d 849; *Matter of Hei Ting C.*, 109 A.D.3d 100, 104, 969 N.Y.S.2d 150 (2013). Therefore, the special findings a juvenile court makes should be limited to child welfare determinations. Immigration is exclusively a Federal power. See *In re Y.M.*, 207 Cal.App.4th 892, 908, 144 Cal.Rptr.3d 54 (2012). It is not the juvenile court's role to engage in an immigration analysis or decision. Settlage, *supra* at 72. Special findings by a State court that determine that the child meets the eligibility requirements for SIJ status are not a final determination. See *Marcelina M.-G.*, 112 A.D.3d at 109, 973 N.Y.S.2d 714. It is only the first step in the process to achieve SIJ status. *Id.* Once the child obtains the required special findings from a qualifying State court, the child may file an application with USCIS. This application must be submitted before the child's twenty-first birthday. 8 C.F.R. § 204.11. The child will not "age-out" of SIJ status on account of turning twenty-one while his or her application is under consideration with USCIS. See TVPRA, Pub.L. 110–457, § 235(d)(6), 122 Stat. 5044. An application for SIJ status consists of a variety of forms, and a certified copy of the juvenile court order must be included. See SIJ: Forms You May Need, http://www.uscis.gov/green-card/special-immigrant-juveniles/sij-forms-you-may-need [http://perma.cc/H8TV–UTWH]. In order to provide USCIS with sufficient information concerning the applicant's eligibility for SIJ status, State courts should provide sufficient detail about how they came to their order of special findings. *H.S.P.*,223 N.J. at 213–214, 121 A.3d 849. An applicant should include the supporting evidence used in the State court proceeding to aid USCIS in its decision-making process. See SIJ: Forms You May Need, *supra*. Doing so may result in a quicker decision. See *id.* Once a child has filed the necessary paperwork, an interview between the applicant and a USCIS official will be conducted. See SIJ: After You File, http://www.uscis.gov/green-card/special-immigrant-juveniles/sij-after-you-file [http://perma.cc/4H77–YF3K]. A decision will be issued within 180 days from the official filing date. See *id.* See also 8 C.F.R. § 204.11.

53. *Jurisdiction.* The Probate and Family Court judge dismissed the complaint for lack of jurisdiction because the plaintiff was over the age of eighteen. We conclude that the Probate and Family Court has jurisdiction, under its broad equity power, over youth between the ages of eighteen and twenty-one for the specific purpose of making the special findings necessary to apply for SIJ status pursuant to the INA.

In most circumstances, the Probate and Family Court has jurisdiction over children who are under the age of eighteen. See generally G.L. cc. 119, 190B, 210. The portion of the INA concerning SIJ status provides relief for immigrant children until age twenty-one, consequently creating a gap between access to our State court and the Federal statutory relief. There are some instances where the Probate and Family Court has jurisdiction over "adult children," namely, individuals between the ages of eighteen and twenty-three. See G.L. c. 208, § 28. However, these instances ***66** involve the maintenance and support of children and are not applicable to the present case. See *id.* See also *Eccleston v. Bankosky*, 438 Mass. 428, 434–435, 780 N.E.2d 1266 (2003) (explaining expansion ***740** of jurisdiction over "adult children" in matters of maintenance and support). This gap is not unique to the Commonwealth. Many States have a jurisdictional age limit of eighteen for access to their juvenile courts. In response to this gap, some States have enacted legislation to extend the juvenile court's jurisdiction to children up to the age of twenty-one for certain proceedings.[8] Massachusetts has not yet passed legislation to extend the Probate and Family Court's jurisdiction over these individuals.[9] The Probate and Family Court does, however, have broad equity powers pursuant to G.L. c. 215, § 6, and the court may invoke its equity power to fill in this gap.

6General Laws c. 215, § 6, grants the Probate and Family Court equitable jurisdiction, stating in relevant part:

"The probate and family court department shall have original and concurrent jurisdiction with the supreme judicial court and the superior court department of all cases and matters of equity cognizable under the general principles of equity jurisprudence and, with reference thereto, shall be courts of general equity jurisdiction...."

"A court with equity jurisdiction has broad and flexible powers to fashion remedies." ***741** *Judge Rotenberg Educ. Ctr., Inc. v. Commissioner of the Dep't of Mental Retardation (No. 1)*, 424 Mass. 430, 463, 677 N.E.2d 127 (1997). "These powers are broad and flexible, and extend to actions necessary to afford any relief in the best interests of a person under their jurisdiction." *Matter of Moe*, 385 Mass. 555, 561, 432 N.E.2d 712 (1982). We turn our attention to general principles of equity.

A fundamental maxim of general equity jurisprudence is that equity will not suffer a wrong to be without a remedy. 2 J.N. Pomeroy, Equity Jurisprudence § 363 (5th ed. 1941). In this case, the wrong is the abuse, neglect, or abandonment immigrant children under the age of twenty-one suffer as a result of one or both of their parents' actions. As a policy, the Commonwealth seeks to protect children from wrongs that result "from the absence, inability, inadequacy or destructive behavior of parents." G.L. c. 119, § 1. The wrongs from which this policy seeks to protect the ***67** Commonwealth's children are the same as the wrongs that SIJ status attempts to remedy. Congress created this remedy by amending the INA to create a pathway to citizenship for immigrant children under the age of twenty-one who have suffered abuse, neglect, or abandonment by one or both of their parents. In order to obtain this remedy, a State court must make the necessary findings before the immigrant youth can apply for SIJ status. According to general principles of equity, if the Probate and Family Court does not exercise jurisdiction over the plaintiff, she, as well as any other immigrant child between the ages of eighteen and twenty-one in the Commonwealth, will have suffered a wrong with no available remedy. Such claims fall within the general principles of equity, and therefore, the Probate and Family Court may, for purposes of the Federal statute, exercise jurisdiction over immigrant children up to the age of twenty-one who claim to have been abused, abandoned, or neglected.
This is not the first time this court has said that the general equity powers of the Probate and Family Court reach children who are over the age of eighteen. In *Eccleston*, 438 Mass. at 438, 780 N.E.2d 1266, we concluded that the Probate and Family Court's equity jurisdiction extended to adult children until the age of twenty-three, even in the absence of statutory authority. Similar to the plaintiff in this case, the postminority child in *Eccleston*, due to her unfit parents, was financially dependent on an adult and needed a remedy from the Probate and Family Court to aid her in her path to self-sufficiency. *Id.* at 437, 780 N.E.2d 1266. Despite the absence of specific relief under any statute, we recognized that the Probate and Family Court had equitable powers to provide a remedy for the ***742** postminority child. *Id.* at 437–438, 780 N.E.2d 1266. As there is also no specific relief afforded by statute in this case, the Probate and Family Court may invoke its broad equity power under G.L. c. 215, § 6, to provide relief to the plaintiff in the form of special findings necessary for her to make application for SIJ status.

The plaintiff also argues that the Probate and Family Court has jurisdiction to enter declaratory relief under G.L. c. 231A, § 9, and that it is an appropriate method to enter the special findings for SIJ status. We need not decide this question in light of our conclusion that relief is available under the general equity jurisdiction of the Probate and Family Court.

7 4. *Dependency.* The plaintiff argues that she is dependent on the Probate and Family Court by virtue of the Federal statute. During the pretrial conference, a Probate and Family Court judge equated exercising jurisdiction over the plaintiff with a custody determination. The plaintiff contends that the Federal statute does not limit the dependency requirement to a custody determination. We agree.

8One of the three findings that a judge in the juvenile court must make includes either a custody determination or a declaration that the child is dependent on a juvenile court. Specifically, the child must be

"an immigrant who is present in the United States ... 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" (emphasis added).

8 U.S.C. § 1101(a)(27)(J)(i). The presence of the word "or" within the subsection indicates that there are three separate and ***68** distinct alternatives by which a child may satisfy this particular eligibility requirement. It follows, then, that the subsection must extend beyond a sole custody determination to satisfy the language of the Federal statute. If the word "dependent" was to be equated with custody, the first part of the subsection would be mere surplusage. "It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute." 2A N.J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 46.6 (7th ed. rev. 2014). "A statute should be construed ***743** so as to give effect to each word, and no word shall be regarded as surplusage." *Ropes & Gray LLP v. Jalbert*, 454 Mass. 407, 412, 910 N.E.2d 330 (2009). The word "dependent" must mean something other than custody and should be broadly construed because of the beneficent and remedial purpose behind the Federal statute.
9The question now is whether the plaintiff can be considered "dependent" on the Probate and Family Court. The Commonwealth's policy is to ensure "that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes."[10] G.L. c. 119, § 1. We have often recognized that attaining the age of majority does not necessarily mean that one is self-sufficient. See, e.g., *Eccleston*, 438 Mass. at 436, 780 N.E.2d 1266. The plaintiff here, who was age twenty at the time of oral argument in this appeal, was not necessarily self-sufficient. In order to attain self-sufficiency, the plaintiff and other youth in her situation need the assistance of the Probate and Family Court in the form of special findings applicable to SIJ status. If an immigrant child is able to show, for purposes of SIJ status eligibility, that he or she experienced abuse, neglect, or abandonment by one or both parents, it follows that the child is dependent on the Probate and Family Court for the opportunity to obtain relief. The child would be "dependent" on the Probate and Family Court for the assistance that is available in applying successfully for the Federal relief, i.e., SIJ status.
5. *Conclusion.* For the foregoing reasons, on November 9, 2015, we issued an order reversing the dismissal of the plaintiff's complaint and remanding the matter to the Probate and Family Court for further proceedings consistent with that order. The Probate and Family Court has jurisdiction over the plaintiff, and the plaintiff is deemed dependent on the Probate and Family Court for purposes of 8 U.S.C. § 1101(a)(27)(J). We express no view as to what the other predicate findings should be.

CORDY, J. (concurring, with whom LENK, J., joins).
I concur in the court's conclusion that in this case the Probate and Family Court may undertake to make findings necessary to enable the plaintiff to apply for special immigrant status under ***744** 8 U.S.C. § 1101(a)(27)(J) (2012). I do so because of our strong State policies aimed at protecting children from the effects of abuse and neglect, and the apparent gap between the ordinary jurisdiction of the Probate and Family Court and the benefits available under Federal law for immigrant children (between the ages of eighteen and twenty-one) who can establish that they have been abused, neglected, or abandoned by one or both of their parents in their ***69** native countries. I do so reluctantly, however, because this opinion stretches our equity jurisprudence to its outer edge, beyond what the court majority concluded was appropriate in *Eccleston v. Bankosky*, 438 Mass. 428, 780 N.E.2d 1266 (2003), a markedly different case.[1] In my view, it would have been far preferable if the Legislature had, as other State Legislatures have, acted on legislation that would have explicitly provided for expanded State court jurisdiction to address claims like that of the plaintiff. Without such legislation, the court is left to engage in gymnastics of logic and

circular reasoning to conclude that the plaintiff is “dependent” on the court solely because she needs the court to declare that she is “dependent” on the court in order to meet one of the requirements of the Federal statute, and in no other respect.

Gen.Laws 1956, § 8-10-3

§ 8-10-3. Establishment of court--Jurisdiction--Seal--Oaths

Currentness

(a) There is hereby established a family court, consisting of a chief judge and eleven (11) associate justices, to hear and determine all petitions for divorce from the bond of marriage and from bed and board; all motions for allowance, alimony, support and custody of children, allowance of counsel and witness fees, and other matters arising out of petitions and motions relative to real and personal property in aid thereof, including, but not limited to, partitions, accountings, receiverships, sequestration of assets, resulting and constructive trust, impressions of trust, and such other equitable matters arising out of the family relationship, wherein jurisdiction is acquired by the court by the filing of petitions for divorce, bed and board and separate maintenance; all motions for allowance for support and educational costs of children attending high school at the time of their eighteenth (18th) birthday and up to ninety (90) days after high school graduation, but in no case beyond their nineteenth (19th) birthday; enforcement of any order or decree granting alimony and/or child support, and/or custody and/or visitation of any court of competent jurisdiction of another state; modification of any order or decree granting alimony and/or custody and/or visitation of any court of competent jurisdiction of another state on the ground that there has been a change of circumstances; modification of any order or decree granting child support of any court of competent jurisdiction of another state provided: (1) the order has been registered in Rhode Island for the purposes of modification pursuant to § 15-23.1-611, or (2) Rhode Island issued the order and has continuing exclusive jurisdiction over the parties; antenuptial agreements, property settlement agreements and all other contracts between persons, who at the time of execution of the contracts, were husband and wife or planned to enter into that relationship; complaints for support of parents and children; those matters relating to delinquent, wayward, dependent, neglected, or children with disabilities who by reason of any disability requires special education or treatment and other related services; to hear and determine all petitions for guardianship of any child who has been placed in the care, custody, and control of the department for children, youth, and families pursuant to the provisions of chapter 1 of title 14 and chapter 11 of title 40; adoption of children under eighteen (18) years of age; change of names of children under the age of eighteen (18) years; paternity of children born out of wedlock and provision for the support and disposition of such children or their mothers; child marriages; those matters referred to the court in accordance with the provisions of § 14-1-28; those matters relating to adults who shall be involved with paternity of children born out of wedlock; responsibility for or contributing to the delinquency, waywardness, or neglect of children under sixteen (16) years of age; desertion, abandonment, or failure to provide subsistence for any children dependent upon such adults for support; neglect to send any child to school as required by law; bastardy proceedings and custody to children in proceedings, whether or not supported by petitions for divorce or separate maintenance or for relief without commencement of divorce proceedings; and appeals of administrative decisions concerning setoff of income tax refunds for past due child support in accordance with §§ 44-30.1-5 and 40-6-21. The holding of real estate as tenants by the entirety shall not in and of itself preclude the family court from partitioning real estate so held for a period of six (6) months after the entry of final decree of divorce.

(b) The family court shall be a court of record and shall have a seal which shall contain such words and devices as the court shall adopt.

(c) The judges and clerk of the family court shall have power to administer oaths and affirmations.

(d) The family court shall have exclusive initial jurisdiction of all appeals from any administrative agency or board affecting or concerning children under the age of eighteen (18) years and appeals of administrative decisions concerning setoff of income tax refunds, lottery set offs, insurance intercept, and lien enforcement provisions for past due child support, in accordance with §§ 44-30.1-5 and 40-6-21, and appeals of administrative agency orders of the department of human services to withhold income under chapter 16 of title 15.
(e) The family court shall have jurisdiction over those civil matters relating to the enforcement of laws regulating child care providers and child placing agencies.
(f) The family court shall have exclusive jurisdiction of matters relating to the revocation or nonrenewal of a license of an obligor due to noncompliance with a court order of support, in accordance with chapter 11.1 of title 15.
[See § 12-1-15 of the General Laws.]
(g) Notwithstanding any general or public law to the contrary, the family court shall have jurisdiction over all protective orders provided pursuant to the Rhode Island general laws, when either party is a juvenile.

M.G.L.A. 209B § 2

§ 2. Jurisdiction

Currentness
(a) Any court which is competent to decide child custody matters has jurisdiction to make a custody determination by initial or modification judgment if:
(1) the commonwealth (i) is the home state of the child on the commencement of the custody proceeding, or (ii) had been the child's home state within six months before the date of the commencement of the proceeding and the child is absent from the commonwealth because of his or her removal or retention by a person claiming his or her custody or for other reasons, and a parent or person acting as parent continues to reside in the commonwealth; or
(2) it appears that no other state would have jurisdiction under paragraph (1) and it is in the best interest of the child that a court of the commonwealth assume jurisdiction because (i) the child and his or her parents, or the child and at least one contestant, have a significant connection with the commonwealth, and (ii) there is available in the commonwealth substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
(3) the child is physically present in the commonwealth and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child from abuse or neglect or for other good cause shown, provided that in the event that jurisdictional prerequisites are not established pursuant to any other paragraph of this subsection and a court of another state shall be entitled to assert jurisdiction under any other subparagraph of this paragraph then a court exercising jurisdiction pursuant to this clause of paragraph (3) may do so only by entering such temporary order or orders as it deems necessary unless the court of the other state has declined to exercise jurisdiction, has stayed its proceedings or has otherwise deferred to the jurisdiction of a court of the commonwealth; or
(4) (i) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (1), (2) or (3), or another state has declined to exercise jurisdiction on the ground that the commonwealth is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that a court of the commonwealth assume jurisdiction.
(b) Except under subparagraphs (3) and (4) of paragraph (a), physical presence in the commonwealth of the child or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of the commonwealth to make a custody determination.
(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to make a custody determination.

(d) A court of the commonwealth shall not exercise jurisdiction in any custody proceeding commenced during the pendency of a proceeding in a court of another state where such court of that state is exercising jurisdiction consistently with the provisions of this section for the purpose of making a custody determination, except in accordance with paragraph (3) of subsection (a), unless the court of the other state shall decline jurisdiction pursuant to paragraph (4) of subsection (a) or shall stay its proceedings or otherwise defer to the jurisdiction of a court of the commonwealth.
(e) If a court of another state has made a custody determination in substantial conformity with this chapter, a court of the commonwealth shall not modify that determination unless (1) it appears to the court of the commonwealth that the court which made the custody determination does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or that such court has declined to assume jurisdiction to modify its determination and (2) a court of the commonwealth now has jurisdiction pursuant to this chapter.

Gen.Laws 1956, § 33-15.1-4

§ 33-15.1-4. Power of probate court to appoint guardians

Currentness

The probate court in each city or town, if occasion shall require, shall have power to appoint or approve guardians of the persons and estates, or of the person or estate of minors who shall reside, or have a legal settlement in the city or town, and of the estate within the city or town.

8 U.S.C.A. § 1101(a)(27)(J)

Definitions

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;

Gen.Laws 1956, § 14-1-3

§ 14-1-3. Definitions

Currentness

The following words and phrases when used in this chapter shall, unless the context otherwise requires, be construed as follows:
(1) "Adult" means a person eighteen (18) years of age or older, except that "adult" includes any person seventeen (17) years of age or older who is charged with a delinquent offense involving murder, first-degree sexual assault, first-degree child molestation, or assault with intent to commit murder, and that person shall not be subject to the jurisdiction of the family court as set forth in §§ 14-1-5 and 14-1-6 if, after a hearing, the family court determines that probable cause exists to believe that the offense charged has been committed and that the person charged has committed the offense.
(2) "Appropriate person", as used in §§ 14-1-10 and 14-1-11, except in matters relating to adoptions and child marriages, means and includes:
(i) Any police official of this state, or of any city or town within this state;
(ii) Any duly qualified prosecuting officer of this state, or of any city or town within this state;
(iii) Any director of public welfare of any city or town within this state, or his or her duly authorized subordinate;
(iv) Any truant officer or other school official of any city or town within this state;
(v) Any duly authorized representative of any public or duly licensed private agency or institution established for purposes similar to those specified in § 8-10-2 or 14-1-2; or
(vi) Any maternal or paternal grandparent, who alleges that the surviving parent, in those cases in which one parent is deceased, is an unfit and improper person to have custody of any child or children.
(3) "Child" means a person under eighteen (18) years of age.
(4) "The court" means the family court of the state of Rhode Island.
(5) "Delinquent", when applied to a child, means and includes any child who has committed any offense that, if committed by an adult, would constitute a felony, or who has on more than one occasion violated any of the other laws of the state or of the United States or any of the ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles.
(6) "Dependent" means any child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed, or threatened with harm, due to the inability of the parent or guardian, through no fault of the parent or guardian, to provide the child with a minimum degree of care or proper supervision because of:
(i) The death or illness of a parent; or
(ii) The special medical, educational, or social-service needs of the child which the parent is unable to provide.
(7) "Justice" means a justice of the family court.
(8) "Neglect" means a child who requires the protection and assistance of the court when his or her physical or mental health or welfare is harmed, or threatened with harm, when the parents or guardian:
(i) Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so;
(ii) Fails to provide the child proper education as required by law; or
(iii) Abandons and/or deserts the child.
(9) "Wayward", when applied to a child, means and includes any child:
(i) Who has deserted his or her home without good or sufficient cause;
(ii) Who habitually associates with dissolute, vicious, or immoral persons;

(iii) Who is leading an immoral or vicious life;
(iv) Who is habitually disobedient to the reasonable and lawful commands of his or her parent or parents, guardian, or other lawful custodian;
(v) Who, being required by chapter 19 of title 16 to attend school, willfully and habitually absents himself or herself from school or habitually violates the rules and regulations of the school when he or she attends;
(vi) Who has, on any occasion, violated any of the laws of the state or of the United States or any of the ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles; or
(vii) Any child under seventeen (17) years of age who is in possession of one ounce (1 oz.) or less of marijuana, as defined in § 21-28-1.02, and who is not exempted from the penalties pursuant to chapter 28.6 of title 21.
(10) The singular shall be construed to include the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.
(11) For the purposes of this chapter, "electronic surveillance and monitoring devices" means any "radio frequency identification device (RFID)" or "global positioning device" that is either tethered to a person or is intended to be kept with a person and is used for the purposes of tracking the whereabouts of that person within the community.

Gen.Laws 1956, § 40-11-2

§ 40-11-2. Definitions

Currentness

When used in this chapter and unless the specific context indicates otherwise:
(1) "Abused and/or neglected child" means a child whose physical or mental health or welfare is harmed, or threatened with harm, when his or her parent or other person responsible for his or her welfare:
(i) Inflicts, or allows to be inflicted, upon the child physical or mental injury, including excessive corporal punishment; or
(ii) Creates, or allows to be created, a substantial risk of physical or mental injury to the child, including excessive corporal punishment; or
(iii) Commits, or allows to be committed, against the child, an act of sexual abuse; or
(iv) Fails to supply the child with adequate food, clothing, shelter, or medical care, though financially able to do so or offered financial or other reasonable means to do so; or
(v) Fails to provide the child with a minimum degree of care or proper supervision or guardianship because of his or her unwillingness or inability to do so by situations or conditions such as, but not limited to: social problems, mental incompetency, or the use of a drug, drugs, or alcohol to the extent that the parent or other person responsible for the child's welfare loses his or her ability or is unwilling to properly care for the child; or
(vi) Abandons or deserts the child; or
(vii) Sexually exploits the child in that the person allows, permits, or encourages the child to engage in prostitution as defined by the provisions in § 11-34.1-1 et seq., entitled "Commercial Sexual Activity"; or
(viii) Sexually exploits the child in that the person allows, permits, encourages, or engages in the obscene or pornographic photographing, filming, or depiction of the child in a setting that taken as a whole, suggests to the average person that the child is about to engage in, or has engaged in, any sexual act, or that depicts any such child under eighteen (18) years of age performing sodomy, oral copulation, sexual intercourse, masturbation, or bestiality; or
(ix) Commits, or allows to be committed, any sexual offense against the child as such sexual offenses are defined by the provisions of chapter 37 of title 11, entitled "Sexual Assault", as amended; or

(x) Commits, or allows to be committed, against any child an act involving sexual penetration or sexual contact if the child is under fifteen (15) years of age; or if the child is fifteen (15) years or older, and (1) force or coercion is used by the perpetrator, or (2) the perpetrator knows, or has reason to know, that the victim is a severely impaired person as defined by the provisions of § 11-5-11, or physically helpless as defined by the provisions of § 11-37-6.

(2) “Child” means a person under the age of eighteen (18).

(3) “Child protective investigator” means an employee of the department charged with responsibility for investigating complaints and/or referrals of child abuse and/or neglect and institutional child abuse and/or neglect.

(4) “Department” means department of children, youth, and families.

(5) “Educational program” means any public or private school, including boarding schools, or any home-schooling program.

(6) “Institution” means any private or public hospital or other facility providing medical and/or psychiatric diagnosis, treatment, and care.

(7) “Institutional child abuse and neglect” means situations of known or suspected child abuse or neglect where the person allegedly responsible for the abuse or neglect is a foster parent or the employee of a public or private residential child-care institution or agency; or any staff person providing out-of-home care or situations where the suspected abuse or neglect occurs as a result of the institution's practices, policies, or conditions.

(8) “Law-enforcement agency” means the police department in any city or town and/or the state police.

(9) “Mental injury” includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as: failure to thrive; ability to think or reason; control of aggressive or self-destructive impulses; acting-out or misbehavior, including incorrigibility, ungovernability, or habitual truancy; provided, however, that the injury must be clearly attributable to the unwillingness or inability of the parent or other person responsible for the child's welfare to exercise a minimum degree of care toward the child.

(10) “Person responsible for child's welfare” means the child's parent; guardian; any individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and has unsupervised access to a child; foster parent; an employee of a public or private residential home or facility; or any staff person providing out-of-home care (out-of-home care means child day care to include family day care, group day care, and center-based day care). Provided, further, that an individual, eighteen (18) years of age or older, who resides in the home of a parent or guardian and has unsupervised access to the child, shall not have the right to consent to the removal and examination of the child for the purposes of § 40-11-6.

(11) “Physician” means any licensed doctor of medicine, licensed osteopathic physician, and any physician, intern, or resident of an institution as defined in subdivision (6).

(12) “Probable cause” means facts and circumstances based upon as accurate and reliable information as possible that would justify a reasonable person to suspect that a child is abused or neglected. The facts and circumstances may include evidence of an injury, or injuries, and the statements of a person worthy of belief, even if there is no present evidence of injury.

(13) “Shaken-baby syndrome” means a form of abusive head trauma, characterized by a constellation of symptoms caused by other than accidental traumatic injury resulting from the violent shaking of and/or impact upon an infant or young child's head.

M.G.L.A. 273 § 1

§ 1. Abandonment and nonsupport; failure to comply with support order; decree establishing rights of spouse as prima facie evidence

Currentness

A spouse or parent shall be guilty of a felony and shall be subject to the penalties set forth in section fifteen A if:
(1) he abandons his spouse or minor child without making reasonable provisions for the support of his spouse or minor child or both of them; or
(2) he leaves the commonwealth and goes into another state without making reasonable provisions for the support of his spouse or minor child or both of them; or
(3) he enters the commonwealth from another state without making reasonable provisions for the support of his spouse or minor child, or both of them, domiciled in another state; or
(4) wilfully and while having the financial ability or earning capacity to have complied, he fails to comply with an order or judgment for support which has been entered pursuant to chapter one hundred and nineteen, two hundred and seven, two hundred and eight, two hundred and nine, two hundred and nine C, or two hundred and seventy-three, or received, entered or registered pursuant to chapter two hundred and nine D, or entered pursuant to similar laws of other states. No civil proceeding in any court shall be held to be a bar to a prosecution hereunder but the court shall not enter any order pursuant to section fifteen A which would directly or indirectly result in a decrease in the amount paid for current support pursuant to an order or judgment on behalf of the child or spouse to who, or on whose behalf, support is owed.
In a prosecution hereunder a decree or judgment of a probate court in a proceeding in which the defendant or spouse appeared or was personally served with process, establishing the right of his spouse to live apart or the freedom of such spouse to convey and deal with property, or the right to the custody of the children, shall be admissible and shall be prima facie evidence of such right.

15 Roger Williams U. L. Rev. 24

THE VITAL ROLE OF THE RHODE ISLAND FAMILY COURT AND ITS UNIQUE JURISDICTION IN IMMIGRATION CASES INVOLVING ABUSED AND NEGLECTED CHILDREN

I. Introduction

The issues before the Rhode Island Family Court involving child abuse and child neglect cases have become more complicated as our State has become more diverse. Special Immigrant Juvenile Status cases and the role of the Family Court have evolved as a new concept and area of legal expertise. The federal immigration law relating to juveniles was revised in March of 2009 and will continue to evolve as lawmakers attempt to better address all immigration issues. It is vital that Family Court judges, practitioners, and agency representatives appearing before the court have a basic understanding of immigration law as it relates to children and juveniles under the age of twenty-one who are illegal immigrants and come to the court as a result of abuse, ***25** neglect and/or abandonment. In these cases, a state judge must make special findings in accordance with federal law for a federal immigration judge to consider granting green card status. Additionally, an admission of child maltreatment by a parent in Family Court may lead to adverse action

against them by immigration authorities and, in turn, result in severe consequences to both the parents and their children.

This article explores the legal and social issues impacting children and their families in the Family Court. In particular, it attempts to simplify the procedural process for lawyers and judges to successfully ensure legal immigration status is granted for abused and neglected children, known to child welfare, who require permanent status in the United States when it is not in their best interest to return to their native country.

II. Defining the Problem

The United States is experiencing high levels of legal and illegal immigration. It has become a hot political topic in the halls of Congress, at the Rhode Island General Assembly, as well as in discussions during numerous debates in recent elections. The statistics are staggering. Across the United States, there are 11.9 million undocumented immigrants.[1] According to a new analysis by the Pew Hispanic Center, between 2005 and 2008, undocumented immigrants comprised approximately 2.8 percent of the Rhode Island population and 3.6 percent of its work force.[2] The population of undocumented immigrants living in Rhode Island in 2008 was estimated to be 30,000.[3] According to the Pew study, the undocumented immigrant population is largely composed of young families.[4] It should be noted that the report defines "unauthorized immigrants" as "residents of the United States who are not U.S citizens, who do not hold current permanent resident visas, or who have not been granted ***26*** permission to remain in the country under a set of specific authorized temporary statuses for long-term residence and work."[5]

The Pew study also suggests that many of the nation's undocumented immigrants are Hispanic, and the majority are from Mexico. In Rhode Island, the overwhelming majority of illegal immigrants live in the poorer neighborhoods of Providence, Pawtucket, Woonsocket, and Central Falls.[6] Children and families without legal status are most likely to find themselves in the child welfare system and ultimately the Family Court.

III. The Family Court's Role

There are two major instances when the Family Court has a great impact on immigration issues. First, there is a need for the court to make special findings in Special Immigrant Juvenile cases when an abused or neglected child is before the Family Court. Second, a parent's admission in Family Court may be considered for immigration proceedings when a state court makes a finding of parental abuse and/or parental neglect.[7] This impact is dramatic considering the estimated 1.6 million children in the country who lack legal status, as well as the demographics that suggest that families and youth without legal status are more likely to be in Family Court.[8]

As illustrated in the case studies discussed in this article, the Family Court has a notable impact on juveniles who hope to gain permanent residence. One way that these juveniles can attain permanent residency is through obtaining Special Immigrant Juvenile Status. This special status was added to the Immigration and Nationality Act in 1990 to address the hardships that juveniles for whom the State has become a guardian had ***27*** faced.[9] The statute expresses compassion by allowing these juveniles to become legal residents to avoid further hardship.[10] Indeed, it is well documented that juveniles in Family Court without legal status are vulnerable given that "[w]hen illegal immigrants become subject to the court's determinations, rulings, and orders, they face severe consequences with which families with legal status need not contend, such as detention in an immigration facility, deportation to another country, and permanent geographical separation from their homes and families."[11] Undocumented youth are less likely to find employment, get higher education, and obtain health coverage.[12] Therefore, a determination in the Family Court that may lead to permanent residence could, in turn, significantly improve the lives of many youth. Given these implications, it is imperative that judges, practitioners, lawyers, social workers, and social service agencies are aware of the interplay of these immigration issues in the Family Court.

A. Special Findings

When appropriate, there are findings of fact that the Family Court must make in order for a juvenile to be eligible for Special Immigration Status. These legal determinations are referred to as "special findings."[13] Without the Family Court making these findings, it is impossible for the juvenile to otherwise apply and gain Special Immigrant Status.[14] The child's petitioner must file a motion, as well as an affidavit, asking the Family Court to find that the child is dependent on the juvenile court, reunification with one or both parents is not viable because of abuse, neglect, abandonment, or other similar basis in state law, and that returning to the country of nationality or last residence is not in the child's best interest.[15] "For purposes of immigration law, a child is 'dependent' on the Family Court if the Court has ***28*** jurisdiction over a case involving the child."[16]

B. Admissions

Admissions made in the Family Court can have an impact tantamount to criminal cases, and may, in fact, result in harsh immigration consequences.[17] Specifically, when an alien is convicted or admits to a crime of "moral turpitude," immigration officials have the power to deport or refuse entry into the United States to that individual.[18] Federal courts have held that harming a child constitutes a crime of moral turpitude.[19] A parent who is in this country illegally, or legally but is not a citizen, knowing that he or she may get deported upon admission, may not admit to abuse or neglect allegations in Family Court. Counsel and judges must ensure that parties involved in immigration proceedings are aware of the consequences of their admissions, despite the common assumption that only admissions and findings in criminal cases risk such severe consequences.[20]

The risk that comes with admissions or court fact-finding may conflict with the child's interest in obtaining Special Immigrant Juvenile Status. After all, a parent who would otherwise admit to neglect or abuse (an eligibility requirement as to one or both parents), may not make such an admission because he or she may suffer as a result. Indeed, as mentioned, such an admission by a parent may result in deportation, thus separating the parent and child. Certainly, this is not an ideal result as separating a parent from a child is a step backward considering the overall goal of the Family Court. In sum, an unfortunate consequence of a parent's encouraged admission in court leading to the child's possible chance at legal residence, could result in the parent never being able to see the child again because he or she is deported and denied re-entry to this country.[21]

IV. Special Immigrant Status as Defined By Federal Law

An undocumented juvenile can acquire permanent residence ***29*** by obtaining Special Immigrant Juvenile Status.[22] Special Immigrant Status is defined as:

(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. . .[23]

Further, 8 C.F.R. 204.11(c) defines Special Immigrant Status by laying out criteria required for eligibility. Specifically, a juvenile may qualify for Special Immigrant Status if he/she:
(1) Is under twenty-one years of age;
(2) Is unmarried;
***30** (3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;
(4) Has been deemed eligible by the juvenile court for long-term foster care;
(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and
(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or
(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

Long-term foster care means that family reunification is no longer an option for the child per a juvenile or family court determination.[24] Many older children languish in the child welfare system and do not always experience permanency under the jurisdiction of the Family Court until adulthood.[25] "A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation."[26]

***31 V. The Trafficking Victims Protection Reauthorization Act of 2008**
Due to confusion concerning the long-term foster care provision of 8 C.F.R. § 204.11, and with a hope to offer status to more individuals, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) clarifies and amends the law by eliminating the long-term foster care provision (indicating that reunification is not viable for both parents), and making it clear that this is available not only to children who remain in foster care, but also to children who cannot be reunified with one or both parents.[27] This amendment is significant because it may prevent deportation of a parent who is in the United States; findings may be made against an absent parent, rather than both parents.

Furthermore, the TVPRA adds to the provision that reunification is not viable due to abuse, abandonment, neglect, or similar basis under state law.[28] In essence, this means that only one parent needs to admit to one of these bases, or a Family Court needs to find that only one of the parents is guilty of one of these bases, for the child to meet the required element of Special Immigrant Status. The TVPRA also transfers the consent provision of 8 U.S.C. § 1101(a)(27)(J)(iii)(I) from being the Department of Homeland Security's responsibility to the Department of Health and Human Services' responsibility.[29] This may make the process faster and lead to more consistent results.[30]

The TVPRA mandates that the adjudication of applications for status be processed within 180 days of the applicant's filing date.[31]Further, with regard to the age eligibility requirement that the applicant be under twenty-one years of age, the TVPRA ***32** makes it clear that so long as the applicant was under twenty-one at the time of filing his application, he or she may not be denied Special Immigrant Juvenile Status.[32] As a result, lawyers, practitioners, and judges need to identify those children who are eligible for Special Immigrant Juvenile Status and ensure that the application process is filtered through the system according to the newly established time-lines. With the knowledge of how imperative this process is for young children without legal status, the Family Court can assist in lessening the burden on immigrant youth.

VI. Case Studies

There is very little case law in this ever-evolving area of the law and there is no appellate case law in Rhode Island. Recently, however, there were two cases in Providence County Family Court that resulted in the Department of Children, Youth and Families (DCYF) initiating immigration status after legal and statutory criteria were met. For purposes of confidentiality the names of the children and parents are changed in this article.

The first case involved Maria who was a young teen living in DCYF care for nearly two years. At the time the immigration issues came to the court's attention, DCYF had filed a termination of parental rights petition against both her parents alleging abandonment and seeking adoption by Maria's foster family. While in state care, Maria had very little contact with her birth mother who was living in Rhode Island with "green card status to work." Maria had been placed in the temporary custody of DCYF, and was in non-relative foster care. Maria was doing extremely well in school, loved her foster family and had a strong desire to remain with them as their adopted daughter.

Prior to entering the United States, Maria had been living in her native country with her grandmother and uncle. During this time, Maria's mother, who lived in Rhode Island, maintained contact with her and had sent the family money to care for Maria. While apart from Maria, her mother married and had several children with her new husband in Rhode Island. When Maria's grandmother and uncle passed away, it was decided she would move to Rhode Island to live with her mother. Accordingly, Maria ***33*** was illegally smuggled across the Texas border by a friend of the family and was relocated to Rhode Island.

Maria's half-siblings were born in the United States, and they are US citizens. Allegations of physical abuse against the mother resulted in Maria's removal from the home and her placement by DCYF. This matter was complicated by a language barrier as Maria's mother spoke very little English, and thus she required an interpreter to assist her during the proceedings. Further, there had been very little communication between Maria and her mother throughout DCYF's involvement, and a miscommunication led DCYF to believe that both mother and daughter did not wish to see each other.Further complicating the matter, it was also disclosed during a court conducted in-camera interview of Maria that her stepfather sexually abused her before her removal from the home by DCYF. Maria's stepfather was no longer living with Maria's mother and half siblings. The stepfather's status is unknown as he had no involvement with Maria's family and was not a party to the Termination of Parental Rights proceeding that was pending before the court.

Fortunately, after all testimony was completed, the parties were able to resolve the issues and act in the best interest of Maria. This judge made special findings that Maria had been in the state's care and custody for over a year, she had been abandoned by her birth father,[33] whose whereabouts were unknown, and it was clearly not in her best interest to return to her country of origin given the circumstances of her family. DCYF filed the necessary legal documents and the case will be heard by the US Immigration Court for a decision regarding whether Maria's legal immigration status as a juvenile will be granted, permitting her to stay in the United States as a productive member of society. Without the Family Court making special findings in cases involving juveniles before the Family Court, the Department of Homeland Security cannot grant legal status to the child. The Special Juvenile Status Provision recognizes the need to provide for the challenges of children who often need a ***34*** compassionate method to become legal residents.[34]

This case clearly illustrates the severe consequences involved with complicated matters of child neglect, abuse and abandonment coupled with immigration issues. Further, in this case there was a language barrier that impacted how this case was handled. Certainly, Maria's mother was in fear that her own immigration status could be affected given that a court finding of abuse or neglect could lead to her deportation. Maria's mother also has other children living in the United States who are US citizens. She did not want to permanently lose her parental rights, and Maria also expressed a strong desire to see her mother and her siblings. Maria was flourishing in her foster home, her community, and her school. Maria was a very

impressive young woman, and all parties agreed that she should be given every opportunity to gain her legal status in the United States. As such, this is exactly the type of case that is ripe for Special Juvenile Immigrant Status in accordance with federal law.[35] If Maria were deported, she would potentially be placed in a situation of violence and destitution, alone and without her family because all her relatives were deceased and she had no viable resources in her homeland. The action that is pending is the first step to ensure Maria's permanency and future in the United States.

The second case involves Miguel, a young teen who is medically fragile and severely impaired.[36] The Child Advocate's Office initiated a petition in the Family Court for state custody of Miguel.[37] DCYF had refused to do so and did not pursue commitment. There are numerous state agencies involved, complicated funding issues, and many collateral issues that have not been fully resolved, which this article will not address given the status of the case. Suffice it to say that Miguel was before the United States Immigration Court and recently received Special Juvenile Status.[38] The Family Court made special findings based on stipulated facts agreed to by all parties. In this case, both ***35** Miguel and his mother are illegal immigrants, but Miguel's mother is not living in Rhode Island, and she is not able to care for him given his fragile medical condition and unusual circumstances. The US Attorneys' Office was notified and they provided assistance to all parties in addressing Miguel's severe needs. Given his unique circumstances, the Department of Homeland Security had no interest in exercising jurisdiction, and it was determined that any attempts to relocate Miguel could be life threatening. The special circumstances of Miguel's case clearly exemplify the vital role of the Family Court and its unique jurisdiction which, in turn, is necessary and must occur before federal action is pursued in the Immigration Court for Special Juvenile Immigration Status.

VII. Case Law: Establishing Jurisdiction in State Juvenile Courts Involving Immigrants

It is a common misconception that Family Courts may not have jurisdiction over alien children and their parents. However, the families' immigration status is generally irrelevant unless the case is already open to the Immigration and Naturalization Service (INS). This is confirmed by the opinions of two state courts of last resort.

In 2002, the Supreme Judicial Court of Massachusetts addressed the issue of the state's jurisdiction involving the physical abuse of an immigrant child by her father. When a court sought to terminate the parental rights of an Indian National father, the father argued that the court did not have jurisdiction because both he and his child were not citizens of the United States.[39] The Supreme Judicial Court of Massachusetts rejected the father's argument and upheld the trial judge's findings that the father either actively abused his daughter or knowingly neglected to prevent the severe harm that she sustained.[40] The Supreme Judicial Court of Massachusetts found that the court had jurisdiction over the child on the basis that, “federal immigration law specifically recognizes the jurisdiction of State Juvenile Courts over determinations regarding the custody and best interests of children who have been abused or neglected, ***36** regardless of their immigration status.”[41] Further, the court held, “[t]he Juvenile Court's jurisdiction over the matter stems from the child's presence in the Commonwealth and her obvious need of care and protection.”[42]This also stands true regardless of where the abuse, neglect, or other charge occurred so long as the child is present in the state.[43] For the same reasons, the court also exercised jurisdiction despite the father's argument that the “judge lacked authority to dispense with his consent to the child's adoption because both he and the child are Indian nationals.”[44] Similarly, the Supreme Court of New Hampshire decided that it had jurisdiction over a nonresident, foreign child present in the state because “‘[t]he jurisdiction of the juvenile court is not limited to those who reside or have their domicile in [the state in question] but applies to any neglected or delinquent child found within the state.”’[45] Nevertheless, allowing jurisdiction in the State Juvenile or Family Court will not deprive INS from deporting an individual; it only makes available certain criteria for obtaining Special Immigrant Status.[46]Even when obstacles for reunification make it almost impossible for parental reunification to occur, and for the court to determine parental fitness, state courts nevertheless can exercise jurisdiction.[47]

However, state courts do not have jurisdiction over children in INS custody nor do they have jurisdiction to prevent deportation by INS authorization. In a federal court decision concerning the jurisdiction of a state juvenile court, a foster care agency petitioned a state juvenile court asking it to find that a child immigrant was dependent on the court and that it was not in the child's best interest to return to his native country of China.[48] After the state court found that the child was dependent and that it was not in his best interest to return to China, the child petitioned the INS for Special Immigrant Status. Despite this request, the INS denied the petition claiming that the court did ***37*** not originally have jurisdiction over the child because he was in the "legal custody" of the INS at that time.[49] On appeal, the Sixth Circuit held that if the child is not in INS custody, state Juvenile, Family, or District Courts can issue a dependency order. However, if the child is in INS custody, the Sixth Circuit held that the Attorney General must consent to the court's order prior to a judicial determination.[50]

The federal courts have clearly limited state court jurisdiction if a child is already in INS custody, and have held that the state courts lack jurisdiction regardless of the child's circumstances. A Florida case granted jurisdiction of an orphaned, child immigrant without the Attorney General's consent because, although 8 U.S.C. § 1101 prohibits a state court from declaring a child dependent without the consent of the Attorney General, when the Attorney General has actual or constructive custody of the child and "where a child has never been in the custody of the Attorney General, . . . the statute makes no such consent necessary."[51] In this case, the court held that the child was not in the Attorney General's custody and, therefore, met the legal definition of a dependent child.[52]

Unless the child is in INS custody, state Juvenile, Family, or District Courts can issue a dependency order. If the child is in INS custody, the Attorney General must consent to the court's order prior to the court exercising jurisdiction.[53] "[W]here a child has never been in the custody of the Attorney General . . . [8 U.S.C. § 1101] makes no such consent necessary."[54] Regardless, "a minor child . . . without parents or legal guardians is dependent under [State] Law."[55]

VIII. Collaboration and Implementation of Federal Law is in the Best Interest of Undocumented Immigrant Youth

On a national level, it has been strongly recommended that, ***38*** "[j]udges in the Family Court should ensure they are fully familiar with their limited, but vital role in assisting undocumented immigrant youth."[56] Juvenile Court judges are responsible for making the special findings that are necessary to be eligible for Special Immigrant Juvenile Status.[57] It is imperative that the Family Court first inquire whether INS is involved and determine a proper notification process before factual determinations are made. Further, given the harsh consequences following admissions made in the Family Court, especially for those without legal status, judges should only accept admissions made after the respondent has been "fully advised of the potential consequences of that admission on any immigrant matters which the respondent may have pending, or with which the respondent may be involved in the future."[58]To spread awareness, agencies providing legal aid and Bar Associations should produce written resources and training to ensure that attorneys are aware of the collateral consequences of admissions in the Family Court, just as criminal defense agencies have done.[59] Moreover, central sources of information may provide further assistance, such as information tables in the Family Court building, as well as mandatory and ongoing training for judges and attorneys on spotting and handling immigration issues.[60]

In Rhode Island, it is imperative that DCYF and other child-caring agencies develop specific regulations to identify eligible immigrant youth and to develop legal protocol to formally motion the Family Court for special findings to be made in cases involving illegal immigrant youth in accordance with federal law. Additionally, necessary forms should be devised to facilitate the process. DCYF needs to promulgate regulations that will formalize the Special Immigrant Juvenile Status process and best meet the needs of

children in state care. An additional incentive to the state is the funding mechanism for reimbursement that could alleviate the financial stress on the State budget when DCYF is caring for illegal immigrant children who may not be eligible for federal reimbursement.

***39** The legal community, particularly legal service agencies working with immigrants, must be aware of the change in the Special Juvenile Status statute as it can positively impact the clients these agencies serve. Our children are our future, and all children need to be given the opportunities that law and justice provide, particularly our state's most vulnerable children. Judges, lawyers, and social workers who work with immigrant populations involved with the child welfare system need to work in a coordinated and meaningful process to successfully ensure legal immigration status for children in state care who cannot return to their native country. Facilitating the legal process for a green card, although not a guarantee, provides an opportunity for many youth to find employment, receive higher education, and obtain health coverage. State juvenile courts need to work collaboratively with federal authorizes and facilitate the implementation of federal immigration law devised to benefit juveniles in order to best meet the needs of undocumented immigrant youth who appear before the Family Court.

IX. Conclusion

It is crucial that child protection agencies recognize their important duty to identify children who are eligible for Special Immigrant Juvenile Status and to communicate with lawyers, social workers, and guardians in a collaborative effort to act in the best interest of the child. They need to initiate appropriate legal action in the Family Court on behalf of immigrant youth.[61] This would alleviate some of the risk of future unemployment for children who remain without resident status when they leave the protection agency's care, because juveniles without permanent resident status can be deported and denied employment, health care, and opportunities for higher education.[62] Some states already place this responsibility on their child welfare agencies and mandate that child welfare employees are taught how to obtain status for immigrant youth.[63] It follows that legal representatives should be required to inquire about their clients' ***40** immigration status.[64] Whenever a child client, parents, or any relevant parties before the Family Court are not legal citizens of the United States, their attorney will need to be aware of relevant immigration law and inform the clients that an admission could result in deportation or denial of entry.

As our country and our state continues to become more diverse, it is obvious that judges, lawyers and social workers working with immigrant populations in the Family Court need to be familiar with immigration law and, most importantly, their respective roles. The role of the Family Court is vital, and the future of many immigrant youth is dependant on the court to enhance their wellbeing as well as their family's ability to remain together. Although the special findings only apply to abused and neglected children who appear before the Family Court, the proper implementation of both federal and state laws can positively improve the lives of this special population of children and youth.

Footnotes

a1 Associate Justice, Rhode Island Family Court. Judge D'Ambra has presented at national conferences throughout the country and authored several articles on legal topics affecting children and families. Prior to her judicial appointment, Judge D'Ambra had been practicing law since 1980, during which time she served as the Child Advocate for the State of Rhode Island, and legal counsel for the Department of Children, Youth and Families. Judge D'Ambra is also an adjunct professor in the Masters Program at Rhode Island College School of Social Work. Throughout her legal career, Judge D'Ambra has received numerous commendations and advocacy awards from state and local organizations.

1 See Karen Lee Ziner, Undocumented Immigrants Subject of Detailed Study, Providence J., Apr. 15, 2009 at A1 (citing Jeffrey S. Passel, A Portrait of Unauthorized Immigrants in the United States, Pew Hispanic Center, Apr. 14, 2009, available at http://pewhispanic.org/reports/report.php?ReportID=107).

2 Id.

3 Id.

4 Id.

5 Id. at A8.
6 See Rhode Island Foundation, United Way of Rhode Island & Rhode Island KIDS COUNT, 2009 Rhode Island Kids Count Factbook (2009) available at http://www.rikidscount.org/matriarch/documents/09_RIKC_Factbook_Web.pdf.
7 See Theo Liebmann, Family Court and the Unique Needs of Children and Families who Lack Immigration Status, 40 Colum. J.L. & Soc. Probs. 583, 583-84 (2007).
8 See id. at 584-85.
9 See id. at 588.
10 See id.
11 Id. at 586.
12 See id.
13 See id. at 588.
14 See id. at 588-89.
15 See 8 C.F.R. § 204.11 (2009).
16 Liebmann, supra note 7, at 589.
17 See id. at 594.
18 See id.
19 See id. at 595.
20 See id.
21 See id.
22 See 8 U.S.C. § 1255(i) (2006).
23 8 U.S.C. § 1101(a)(27)(J) (LexisNexis 2009).
24 See Aliens and Nationality, 8 C.F.R. § 204.11(a).
25 See generally R.I. Gen. Laws § 14-1-6, §42-72-3, §42-72-5 (2007).
26 See 8 C.F.R. § 204.11(a).
27 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235(d(1)(A), 122 Stat. 5043, 5079 (2008) (emphasis added).
28 457 § 235(d(1)(A), 122 Stat. at 5079 (2008) (emphasis added).
29 457 § 235(d)(1)(B), 122 Stat. at 5079-80.
30 See Deborah Lee et al., Update on Legal Relief Options for Unaccompanied Alien Children Following the Enactment of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, AILA InfoNet Doc. No. 09021830, Feb. 19, 2009, available at http://www.aila.org/ (search for "09021830").
31 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 § 235(d)(2), 122 Stat. 5043, 5080 (2008).
32 457 § 235(d)(6), 122 Stat. at 5080.
33 TVPRA requires Special Immigration Juvenile Status findings that only one parent has abandoned the child and findings against both parents is no longer required under the new amendments in the federal law. See 457 § 235(d(1)(A), 122 Stat. at 5079 (2008).
34 See Liebmann, supra note 7, at 586.
35 8 U.S.C. § 1255 (2006).
36 This case was actually the catalyst for the initial research used in this article regarding immigration issues impacting children in DCYF care. 0
37 See In re R.J.P., 445 A.2d 286, 286 (R.I. 1982).
38 At the time of publication, Miguel was notified that his green card status was approved. He may now be eligible for Medicaid.
39 See In re Adoption of Peggy, 767 N.E.2d 29, 37 (Mass. 2002).
40 Id. at 34, 37, 41.
41 Id. at 37.
42 Id. at 36.

43 See In re SRUN R., 2005 WL 2650254, at *7 (Conn. Super. Ct. 2005).
44 In re Peggy, 767 N.E.2d at 35.
45 In re JUVENILE 2002-098, 813 A.2d 1197, 1200 (N.H. 2002) (quoting In re Poulin, 129 A.2d 672 (N.H. 1957)).
46 See Gao v. Jenifer, 185 F.3d 548, 555 (6th Cir. 1999).
47 See JUVENILE, 813 A.2d 1197 at 1201.
48 See Gao, 185 F.3d at 551.
49 Id.
50 See In re SRUN R., 2005 WL 2650254, at *2 (Conn. Super. 2005).
51 F.L.M. v. Dept. of Children and Families, 912 So.2d 1264, 1267-68 (Fla. Dist. Ct. App. 2005).
52 See id. at 1268.
53 See SRUN, 2005 WL 2650244, at *2.
54 F.L.M., 912 So. 2d at 1267-68.
55 Id. at 1268-69.
56 Liebmann, supra note 7, at 601.
57 See id.
58 Id.
59 See id.
60 See id. at 602.
61 See id. at 599.
62 See id.
63 See id.
64 See id. at 600.

Special Immigrant Juveniles – Predicate Orders, Jurisdiction, Burdens of Proof, Processes and Procedures

By Deborah S. Gonzalez, Esq.

Foreign nationals from Central and South America enter the United States through our borders without proper documentation on a daily basis. Since 2015, the United States has seen a growing number of minor children crossing our borders unaccompanied by an adult. In many instances, during their travels between their country and the United States, minor children become victims of crime by gang members and drug lords who control the borders between Mexico and the United States.

Federal law allows minor children who have entered the United States unaccompanied by an adult, to obtain lawful permanent resident status, if they are classified as Special Immigrant Juveniles (SIJ).[1] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), enacted in December of 2008, expanded the definition of SIJ to include children who have been declared dependent on a state court, or on a court appointed individual, and whose reunification with one or both parents is not viable due to abandonment, abuse and/or neglect, or similar basis pursuant to state law.

8 USCA §1101(a)(27)(J) – defines a special immigrant as one who has been declared dependent on a juvenile court or placed in the custody of an agency or individual appointed by the juvenile court, and whose reunification with one or both parents is not viable due to abandonment, abuse or neglect; and for whom the

[1] 8 USCA § 1101(a)(27)(J); See also, "*The Vital Role of the Rhode Island Family Court and Its Unique Jurisdiction in Immigration Cases Involving Abused and neglected Children*", 15 Roger Williams U.L. Rev. 24.

court has determined that it would not be in the best interest of the juvenile to foreign national juvenile's home country.

The order of dependency and custody must be issued by the state court having jurisdiction over the minor child. In Rhode Island, these predicate orders must be obtained in Probate Court (in some instances) and Family Court; however, our neighboring state of Massachusetts requires only one hearing in the Probate and Family Court.[2]

In Rhode Island, if the minor is in the custody of the Department of Children, Youth and Families, then the state agency can petition the family court for findings of fact of abandonment, abuse or neglect. If this is the case, then a private practitioner generally would not be involved with obtaining the predicate order; however, the private practitioner may be involved in helping the minor obtain SIJ status and lawful permanent residence.[3]

The majority of the cases begin with an unaccompanied minor entering the United States unlawfully. In many instances, the child is caught by Customs Border Patrol (CBP), wherein CBP then places the child in removal proceedings and transfers the child to the Office of Refugee Resettlement (ORR) with the U.S. Department of Health and Human Services (HHS).[4]

The ORR then places the child with a juvenile shelter, where the child is examined by a medical doctor and attends school. The ORR works with the child to find someone who can take custody of the child. In most instances, the child may already have arranged to meet with a family member or friend with whom the child was going to live with.

Once an adult who can care for the child is identified, ORR performs a background check on the person, and if all is clear, the child is released to the person with the promise that the "guardian" will look after the child, and ensure that the child will attend all future hearings and attend school, etc.

Generally speaking, the child is placed in the care of either a sibling or other family member, and in some instances with friends or acquaintances. The placement from the ORR to the "guardian" is made by way of a power of attorney issued by the parent(s) in the home country to the person taking over placement of the child.[5]

Most often, the adult who took over physical possession over the minor will be the person seeking legal guardianship over the minor. An issue that generally comes into play is the legal status of the proposed guardian. In most courts the issue does not come up; however a discussion with the proposed guardian is necessary to make him/her aware of the possibility of having to disclose his/her legal status in the United States. Once a proposed guardian identified, the process may begin.

The purpose of the workshop is to give the audience a practical view on the issues of jurisdiction, burdens of proof, and processes and procedures necessary to aid a foreign national child to obtain the proper predicate orders in Rhode Island Probate Courts and Family Courts. Concurrently this workshop will make comparisons the issues of jurisdiction, burdens of proof and processes and procedures f our neighbor state of Masssachusetts. The workshop will also discuss the process for applying for Special Immigrant Juvenile (SIJ) status with the U.S. Citizenship & Immigration Service (USCIS), and ultimately, obtaining lawful permanent residence in the Immigration Court, for children who may be in removal proceedings.

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[2] See MGL c. 209B sec.2(a)

[3] See R.I.G.L. §8-10-3

[4] The Homeland Security Act of 2002 (P.L. 107-296) transferred functions under U.S. immigration law related to the care of unaccompanied alien children from the then-INS to HHS/ORR

[5] See generally, http://www.acf.hhs.gov/programs/orr/programs/ucs/about

Probate Court – Guardianship[6]

In Rhode Island, the process begins with the filing of a Minor Guardianship Petition in Probate Court, if no parents live in the US. Of course, if the child is living with a parent, then guardianship is not an option; however, the parent with physical possession may file a Miscellaneous Petition for Custody and findings of fact in Family court.

In Massachusetts, the Probate and Family Court is granted jurisdiction pursuant to the Massachusetts Child Custody Jurisdiction Act.[7]

In Rhode Island, most cases begin while the child is in the care of a family member (not a parent), wherein the family member must seek legal guardianship over the child. The purpose of the legal guardianship is two-fold: first to allow the guardian the authority to register the child in school and secure medical care; but also to grant the guardian standing to file a Miscellaneous Petition in Family Court.

The practitioner should keep in mind that he/she is filing the guardianship petition on behalf of the proposed guardian and not the ward (the minor child). The practitioner should discuss with both the "guardian" and the "ward" the implications of representing both parties and discuss issues of conflicts of interest and confidentiality, and seek consent from the parties for simultaneous representation.

The documents that need to be filed with the Probate Court are the entry of appearance, Minor Guardianship Petition, birth certificate of the minor child with translation, affidavits of the minor and the proposed guardian regarding the circumstances which lend themselves to the necessity of the guardianship, and the power of attorney from the parents with translation, if you have one. Prior to filing your petition for minor guardianship in Probate Court, the practitioner should consider whether or not there is a power of attorney in the ORR file. If there is no power of attorney, then the practitioner needs to talk to the family regarding the ability to obtain a power of attorney.

If obtaining a power of attorney from the parents is not possible, then service will be required on the parents prior to going forward with the guardianship petition in Probate Court, or you will need the parents to sign off on the petition.

Another very important consideration, not only from the Probate Court perspective, but also from the Immigration Judge's perspective, is the duty of the Guardian not only to provide, food, clothing and shelter, but also the Guardian's responsibility over the education of the minor.

If successful, at the conclusion of the hearing, the Probate Court will issue a certificate of appointment, which you will need to file your Miscellaneous Petition for Findings of Fact in Family court.

Family Court – Miscellaneous Petition for Findings of Fact and or Miscellaneous Petition for Custody and Findings of fact

Once the Guardianship order has been entered, the next step is the filing of the Miscellaneous Petition for Specific Findings of Fact, as laid out in the Code, 8 U.S.C.A.§ 1101(a)(27)(J). It is important to remember, that pursuant to the Code, a minor must not seek special findings of fact for immigration purposes.[8] If the minor is

[6] See, R.I.G.L.§ 33-15.1-4

[7] See MGL c. 209B Sec.2(a); see also *E.N. v. E.S.*, 67 Mass.App.Ct. 182, 191-192 & n.20, 852 N.E.2d 1104 (2006); MGL c.215 Sec.4

[8] Memo, Neufeld, Acting Assoc. Director, Domestic Operations, USCIS HQOPS 70/8.5 (Mar. 20, 2009), InfoNet at Doc. No. 09041670.

living with one parent, then the petition would be filed in terms of custody, while also seeking findings of fact as to the abandonment, abuse and/or neglect of the other parent.

The Family Court proceedings are essentially the same if the Miscellaneous Petition is being filed by the Guardian or if it is being filed by one parent. The difference will be that the relief in a one-parent petition will also seek full custody; wherein that would not be sought by the guardian, and there is no need for an appointment of guardianship by one parent, as that is granted by virtue of the biological relationship and law. The other difference is that Family court form DR-6 must be filed with a one-parent petition; whereas, the DR-6 is not necessary with a petition filed by guardian.

The Miscellaneous Petition will include, FCU1 form, a copy of the order from Probate Court, a copy of the minor's birth certificate with translation, a memorandum of law, and affidavits from both the Minor and the Guardian regarding the abandonment, abuse and/or neglect, and best interest of the child.[9]

Client preparation for the hearing will be very important to provide the court with sufficient evidence to meet the elements of the definitions abandonment, abuse and/or neglect according to the Rhode Island statute.[10]

During the hearing, the petitioner and the minor will be required to submit evidence to establish that the minor was victim of abandonment, abuse and/or neglect.[11] In Rhode Island, neglect can be established is the minor can show of that the minor's parents failed to supply the minor with adequate food, clothing, shelter, medical care or proper education.[12] Abuse or neglect can be established if the minor can show that the minor's physical or mental health or welfare were threatened with harm because the parents created or allowed to be created a substantial risk of harm, and they failed to provide a minimum degree of care or proper supervision.[13] Generally, these elements are established by way of sworn affidavits corroborated by in court oral testimony.

Once the hearing conducted and oral orders are entered, careful preparation of the court order is also of extreme importance. It is important for the immigration piece of this process that the order specify what the findings of the court are. The Family Court order must include all of the statutory language as spelled out by 8 USCA §1101(a)(27)(J).

In Rhode Island, the Family Court's jurisdiction ends one day prior to the minor's 18th birthday.[14] In Massachusetts, the court retains jurisdiction until the minor's 21st birthday.[15]

United States Citizenship & Immigration Service – form I-360 – Petition for Amerasian, Widow(er), and Special Immigrant.

Once the predicate Family Court order has been entered, the Minor should file the petition with the United States Citizenship & Immigration Service (hereinafter USCIS) to classify the child as a Special Immigrant

[9] See, R.I.G.L.§§ 14-1-3 and 40-11-2

[10] See, R.I.G.L.§§14-1-13 and 40-11-2; See also, MGL c.273 sec.1 and 110 CMR 2.00, for definition of abandonment and neglect.

[11] *Id*.

[12] R.I.G.L. §14-1-3(8)

[13] R.I.G.L. §40-11-2(1)(ii) and (v)

[14] *In Re Edwards*, 441 A.2d 543 (RI 1982)

[15] *Recinos v. Escobar*, 473 Mass. 734,739 (2016) ("The Probate and Family Court has jurisdiction, under its broad equity power, over youth between ages of eighteen and twenty-one for the specific purpose of making the special findings necessary to apply for SIJ status pursuant to the INA.")

Juvenile (SIJ). This classification will allow the child to apply for lawful permanent residence if the child is otherwise admissible[16].

Although most immigration petitions seeking classification must be filed by a relative or employer, SIJ classification is unusual inasmuch as the minor is a self-petitioner; in other words, the foreign national seeking SIJ classification is the petitioner and the beneficiary of the petition.

To seek SIJ status, the minor must file form I-360 along with the predicate family court order and other documentation. Once filed, USCIS issues a receipt of the application with a receipt number. This receipt may be important when filing a motion to continue a Master Calendar hearing with the Immigration Court.

Pursuant to the TVPRA, you should receive an interview notice and/or a decision prior to the expiration of 180 days from USCIS's receipt of the petition.

During the interview, the minor will be required to provide proof of identity. This can be in the way of the identification sheet provided by the ORR, or school identification, as most minors do not have a passport. Whatever identification chosen should possess a photo on it. It is noteworthy to mention that neither the appointed guardian, nor the parent are required to appear at the SIJ interview.

The USCIS officer will ask questions relating to the minor's relatives both in the US and outside the US, to determine that there is no fraud.[17] Once receipt of an approval notice, the minor can continue with the removal proceedings with the Immigration Court.

Special Immigrant Juvenile immigrants are subject to visa quota limitations of section 1153(b)(4), title 8 of the U.S. Code. As such, only 7.1 percent of employment-based visas are allocated to special immigrants.[18] Therefore, even if a minor has an approved SIJ application, s/he will need to wait for visa numbers to become available prior to applying for adjustment of status.

Immigration Court Removal Proceedings

If the minor is in removal proceedings, s/he must respond to the allegations on the Notice to Appear (NTA) and request the relief sought. In these cases, the relief will most likely be adjustment of status based on the SIJ classification; of course, the minor may be eligible for other forms of relief.

If the matter is scheduled to be heard at the Immigration Court, prior to receiving predicate orders, and/or approval of the I-360, motions to continue are routinely entertained in an effort to allow the minor to obtain the predicate orders and/or approval of the I-360 to give the minor an opportunity to apply for adjustment of status.[19]

SIJ classification waives most inadmissibility issues, except criminal, security related and terrorism grounds. If a minor is inadmissible pursuant to any of these grounds, a waiver of the ground of inadmissibility may be available.[20]

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[16] Admissibility is the desirability of the foreign national to be granted lawful permanent residence or a nonimmigrant visa absent any defect as enumerated in the Code §1182.

[17] See, Neufeld Memo, Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Protection – HQOPS 70/8.5 – guidance on the line of questioning allowed during the interview with the minor.

[18] 8 USCA §1153(b)(4), INA §203(b)(4)

[19] http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm

[20] See 8 USC §1182(h), INA §212(h)

Absent any other legal issues, the case will be granted and the minor should receive an order granting lawful permanent residence. It is noteworthy to mention that the minor child will never be allowed to petition for his/her parents once s/he receives lawful permanent residence through SIJ status.

Upon reaching 5 years of lawful permanent resident status, the minor (after the age of 18) is eligible to apply for naturalization.