



# SPECIAL IMMIGRANT JUVENILE STATUS MANUAL

3rd Edition, summer 2017

A Step-by-Step Guide for Safe Passage Project  
Pro Bono Attorneys



*The contents of this manual are not legal advice, and should not be used as such. This manual is not a substitute for advice from a licensed attorney; it is intended as a general guide for pro bono attorneys working with the Safe Passage Project.*



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## Acknowledgements

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## Introduction to the Safe Passage Project and the Legal Needs of Unaccompanied Immigrant Children<sup>1</sup>

Safe Passage Project is a 501(c)(3) non-profit organization that provides legal representation and social work support to unaccompanied immigrant children facing deportation. Safe Passage began as a clinic at New York Law School that sought to train and mentor attorneys aiding unrepresented immigrant children. Since the formation of the clinic in 2006, the need for *pro bono* representation of child respondents at immigration court has grown exponentially. Today, Safe Passage Project is both an independent nonprofit housed at New York Law School serving nearly 700 clients and a law school clinic.

In 2014, the number of unaccompanied children fleeing Central America for safety in the United States increased to 60,000 and in the past three years approximately 180,000 unaccompanied children have sought protection in the United States. Conditions in Guatemala, El Salvador and Honduras have deteriorated over the last several years, with murderous gangs filling power vacuums left by weak states. Guatemala and El Salvador continue to experience aftershocks of decades-long civil wars, exacerbated in some instances by American military and C.I.A. intervention. This includes weak judicial and law enforcement systems, extreme poverty, and isolation of and discrimination against indigenous populations. In Honduras, civil society also was severely weakened by a political coup and many vulnerable populations became victims of endemic violence. For example, the Garífuna community, descended from African slaves, are ostracized by mainstream society and by the Honduran government, and has had its ancestral lands confiscated to make way for tourist developments. Violence against women is endemic throughout the region and domestic violence is practiced with impunity.

As a result of this instability, children suffer beatings, sexual assault, forced recruitment into gangs, and child labor, and they find no relief from local law enforcement or their governments. Amidst this chaos, children try to survive. Often, though, they flee.

After an initial period of detention, some unaccompanied minors are transferred by the Office of Refugee Resettlement (“ORR”) to live with “sponsors” in New York State, and are

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<sup>1</sup> This manual provides detailed information and instructions for each stage of the multiple phases of a Special Immigrant Juvenile Status (SIJS) case. Additional materials are available when an attorney accepts a case for *pro bono* representation and work with a Safe Passage Project Mentor Attorney. We regret that we cannot share sample documents or pleadings under any other circumstance. We do not post our pleadings, samples, or other similar information on the public website.



simultaneously entered into removal proceedings. No one, not even a child, is appointed a free lawyer in deportation proceedings. Children who cannot afford an attorney must fend for themselves against a regime that has deemed them “enforcement priorities,” and which is trying to deport them as quickly as possible. This is where Safe Passage Project comes in: we conduct legal screenings at immigration court and then match children with *pro bono* attorneys and with in-house staff attorneys. Having legal representation in immigration proceedings is absolutely essential: immigration is one of the most, if not the most, complex areas of law in the United States. Without a lawyer, a child is unlikely to be able to defend herself effectively, even if she is eligible for relief that would allow her to stay in this country. Based on our experience and review of data published by the immigration court, we estimate that with legal representation, over 90% of respondents in immigration proceedings are permitted to remain in the U.S. Without representation, almost 85% are ordered deported.

New York State has only two immigration courts that cover the entire state. These are located in New York City and Buffalo. While Safe Passage Project accepts cases of children who reside throughout New York State, our focus is on the children scheduled to appear at New York City Immigration Court located at 26 Federal Plaza in lower Manhattan. Safe Passage Project conducts monthly screenings of child respondents at the New York Immigration Court to identify forms of possible immigration relief available to these children, including Special Immigrant Juvenile Status (SIJS), the subject of this manual. Once screened, Safe Passage Project either accepts cases “in-house” or recruits *pro bono* attorneys to work directly with the children. Safe Passage Project “mentor attorneys” work side by side with these *pro bono* attorneys, volunteer interpreters, and law students in order to provide comprehensive legal services to our clients. In addition to legal services, Safe Passage Project has a social work team which coordinates the provision of essential social services in order to help children access medical and mental health care, enroll in school, and navigate their new home.

In the spring of 2008, the New York State Bar Association recognized Safe Passage Project’s innovative work by awarding it the President’s *Pro Bono* Award. Safe Passage Project has additionally received a “Pro Bono Hero” Award from the American Immigration Lawyers’ Association (AILA). In 2014, Safe Passage was selected to receive grants from New York City Council, Robin Hood Foundation, the Justice Americorps program and private foundations. Today, Safe Passage Project’s work is made possible by the generous support of numerous foundations, trusts, and private donors, as well as local, state, and federal grants. Safe Passage Project is extraordinarily grateful for the financial and in-kind support we have received from New York Law School.

For more information about the Safe Passage Project, or to volunteer, please visit our website



at [www.safepassageproject.org](http://www.safepassageproject.org). Lawyers and students can complete the online volunteer registration forms to be added to our email lists. We accept bilingual volunteers who can serve as interpreters.





## Becoming Familiar with Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) is a unique status that protects children by coordinating a state court dependency and planning process with immigration petitions. Congress created this special category to protect children in state foster care, and later expanded the program to protect more children who have benefited from state law protections such as guardianship, adoption, custody, and others. Ultimately, this federal law allows undocumented children under the age of 21 who have been abused, neglected, or abandoned by one *or* both parents to obtain lawful permanent resident status within the United States. Qualifying children must meet the criteria codified at Immigration and Nationality Act § 101(a)(27)(J):

1. The applicant must be under 21 years old;
2. He/she must be unmarried;
3. He/she must be declared dependent upon a juvenile court. In general, this means that a state juvenile court like a Family Court has taken jurisdiction over a petition addressing the needs of the applicant;
4. Reunification with one *or* both of the applicant's parents must no longer be a viable option due to abuse, abandonment, neglect or a similar basis under state law; AND
5. It is not in the best interests of the applicant to return to his/her country of nationality or last habitual residence.

For the full text of Immigration and Nationality Act, § 101(a)(27)(J) (2015), codified at 8 U.S.C. § 1101(a)(27)(J) (2015) and its corresponding regulations, see [Appendix A](#). As of June 2017, the immigration regulations are out of date, revised regulations were proposed in 2011 and are still pending.

### Goal Overview: Permanent Residency

The primary goal of the SIJS process is to provide immigration protection to children who have received certain state law protections. Congress created a special path to adjustment of status – a term of art meaning that a person may convert her status from temporary or undocumented to permanent resident within the United States. When a person is granted adjustment of status, he or she becomes a lawful permanent resident (“LPR”), commonly known as a “green card holder.” The central statute that governs this adjustment of status process is INA § 245(a):

- A. “The status of an alien who was inspected and admitted or paroled into the United



States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if

1. the alien makes an application for such adjustment,
2. the alien is **eligible** to receive an immigrant visa and is **admissible** to the United States for permanent residence, and
3. **an immigrant visa is immediately available** to him at the time his application is filed." (emphasis added.)

These eligibility requirements must be demonstrated at the time of the filing of the I-485, Application for Adjustment of Status, primarily through the application forms and supporting documentation to be provided.



Broken out into its component parts:

<p><u>"Inspected and admitted or paroled"</u></p> <p>Satisfied by INA § 245(h)(1), a juvenile who has been granted Special Immigrant Juvenile Status is "deemed, for purposes of subsection (a), to have been paroled into the United States..."</p>	<p><u>"Admissible"</u></p> <p>See INA § 212(a) and Appendix H for potential bases of inadmissibility.</p> <p>NOTE: Many of the grounds of inadmissibility found in the INA are automatically waived for SIJS applicants, meaning violations that would generally permit someone from adjusting status will not pose problems for a SIJS grantee. For example, a SIJS grant waives unlawful entry (crossing the border without permission), working without authorization, status as a public charge, and certain other immigration violations.</p>
<p><u>"Eligible"</u></p> <p>Based on an approved or concurrently-filed underlying petition—in this case, an I-360 Petition for Special Immigrant Juvenile Status. In order to file an I-360 Petition, the petitioning child must first obtain certain predicate orders from a juvenile court.</p>	<p><u>"An immigrant visa is immediately available"</u></p> <p>This tells us <b>when</b> we can file the I-485 application for Adjustment of Status. Visa availability is governed by the monthly Visa Bulletin published by the State Department.</p> <p>SIJS applicants fall under EB4 ("Employment based – 4<sup>th</sup> Preference) "catch-all" category.</p>

It is important to note that a child who is granted SIJS status cannot later sponsor his or her parents for immigration benefits. Though the child herself can adjust status and ultimately become a citizen, she cannot, in the future, petition for immigration benefits on behalf of her birth parents. It also means that she likely cannot petition for siblings or other family members.



## Goal Overview: Stability of Care and Permanency Planning for Children

You may have learned of the child’s need for representation because of an Immigration Court removal proceeding. However, the focus of your work as an attorney for the child, particularly an attorney who will be litigating in Family Court,<sup>2</sup> is stability, planning, and permanency for the child. Attorneys assisting immigrant youth should understand that their primary role in representing an immigrant child in a Family Court matter is to advocate for the best interests of the child. Respect the Family Court’s role and focus on the client’s need for the Family Court to appoint a custodian or guardian for her so that she is guided and protected in the United States. Immigration matters may be a part of the motivation for going to Family Court, but it is critical that you focus your representation under the traditional and necessary goals of Family Court matters.

Phrased another way: if the young person is in the United States and is not living in a situation where two biological parents take full responsibility for her, then she may require the appointment of a custodian or a legal guardian to quiet any external claims to guardianship or custody. Children released from immigration detention to “sponsors” need a legal guardian because the documents issued by the federal detention authorities upon the child’s release are not legally sufficient to authorize that adult to care for and make decisions for the young person. The child needs your help in securing the appointment of a guardian or custodian in order to access healthcare services, educational opportunities, passports, banking services, etc. Even enrollment in school can be delayed if the young person’s custodial relationships have not been formally clarified by a state entity such as the Family Court.

Please note that Family Courts in New York do not discriminate on immigration status: anyone, regardless of status, can file a guardianship or custody petition. Likewise, guardians or custodians are appointed based on the best interest of the child; immigration status is not considered. [\*In the Matter of the Guardianship of Michael Lafontant, an Infant\*, 617 N.Y.S.2d 292 \(Surrogate’s Ct., Rockland Cty. 1994\)](#). Family Courts’ goals are to help the young person build a more stable future through the appointment of a responsible adult as the young person’s caretaker.

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<sup>2</sup> Please note that this manual addresses only New York State law. If you practice law in a different state, the relevant law, policies, procedures and best practices will be significantly different. Please contact a SIJS expert in your state before proceeding.



## Key Terms

**Abandoned child:** A child whose parent or other person legally responsible for her care evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child, although being able to do so and not prevented or discouraged from doing so.

**Abused child:** a child less than 18 years of age whose parents or other person legally responsible for her care inflicts or allows non-accidental physical injury upon a child or who creates a substantial risk of death, or physical or psychological injury or impairment of bodily function or organ.

**Adjustment of Status:** The process by which an applicant changes immigration status from nonimmigrant, parolee or no status to immigrant. In order to adjust status, the individual must have an approved visa petition, and a visa must be available to them. Once someone has “adjusted status,” they are a Legal Permanent Resident (green card holder) of the United States.

**Best interest standard:** A discretionary determination by the court which takes into account various factors such as the child’s relationship with the proposed guardian/custodian, the child’s home-life stability, physical and mental well-being, and the proposed guardian/custodian’s ability to care for and support the child.

**Custodian:** Usually one of the child’s biological parents, regardless of immigration status, who will be responsible for the housing, education, financial support, and general well-being of the child. Non-biological parents can be appointed custodians, but New York courts require “extraordinary circumstances” before appointing that person as the child’s custodian.

**Final Action Date:** Indicates whether or not it is expected that a visa petition can be adjudicated and completed based on the priority date in any particular month.

**Guardian:** A person, regardless of immigration status, with decision-making authority and legal responsibility of a young person (in New York, under age 21) who can safeguard the child’s physical and emotional well-being.

**Neglected child:** a child whose parents or other person legally responsible for her care has failed to exercise a minimum degree of care by failing to provide adequate food, clothing, medical care, shelter, or education or by unreasonably inflicting or allowing physical harm, or by misusing alcoholic beverages and drugs to the extent that he or she loses self-control of his or her actions.



**Priority Date:** Determined by the date a visa petition is received by USCIS. The Priority Date is used to determine an applicant's "place in line" for having a visa available to the applicant (and therefore able to adjust status). Priority dates are almost always based on country of birth and visa preference category.

**Removal Proceedings:** Administrative proceedings to determine an individual's removability under Immigration law. Removal proceedings generally take place in Immigration Court (EOIR) and are conducted by an Immigration Judge who is an employee of the Department of Justice. The Government is represented by the Office of Chief Counsel of the Immigration and Customs Enforcement (ICE) within the Department of Justice.

**Special Findings Order:** In New York, a court order issued by a state court that makes five specific factual findings. These findings form the basis of a child's eligibility for Special Immigrant Juvenile Status.

**Visa Bulletin:** Published by the U.S. Department of State, a summary of visa petition processing times and the availability of visas that are limited in number. If a visa category is "current," there are visas available and applicants can expect to be issued a visa to travel to the U.S., or to adjust status if they are already in the U.S. If the visa category is not current, the visa bulletin will indicate the Priority Date (see below) on which an applicant can expect to receive a visa. Even though SIJS is not a formal "visa", the category is subject to a visa quota so we look to the Bulletin for the waiting periods.



## FOUR MAIN PHASES OF A SPECIAL IMMIGRANT STATUS CASE

There are four main phases to obtaining Special Immigrant Juvenile Status.

### **Phase 1, Family Court: obtain court orders**

First, the child must engage in a proceeding in the state juvenile court in the county where she resides. In New York, this court is most commonly the Family Court. In Family Court, the child requests that a judge appoint a guardian or custodian for her. This underlying guardianship or custody petition provides the Court with the jurisdiction necessary to simultaneously issue a “Special Findings Order” that declares the child’s factual eligibility for SIJS (they are under 21, unmarried, etc.). Most often, clients request the Special Findings Order through a motion that accompanies, or is filed shortly after, the guardianship or custody petition.

Although guardianship and custody are the most common ways for the Family Court to obtain jurisdiction over a child, it is also possible to bring a motion requesting a Special Findings Order in the course of other proceedings, including adoption, Article 10 Proceeding (wherein the state petitions to remove children from a parent’s household), a permanency hearing for children in foster care (“Destitute Child” proceedings), or a Person in Need of Supervision (PINS) proceeding. Supreme Court can also issue a Special Findings Order in the course of a divorce proceeding dealing with child custody. Regardless of the means to jurisdiction, receipt of a Special Findings Order signed by a state court judge or judicial referee is a prerequisite to applying for SIJS status.

### **Phase 2, U.S. Citizenship and Immigration Services (USCIS): File I-360, Petition for Special Immigrant Juvenile Status**

After receiving the Special Findings Order from the Family Court Judge or referee, the child may then apply for SIJS via an I-360, Petition for Special Immigrant Juvenile Status, filed with U.S. Citizenship and Immigration Services.

If a child is not in removal proceedings (i.e., they are undocumented but were never put into immigration court proceedings, or if those proceedings were previously terminated), *and* if that child is from a country other than Mexico, Guatemala, Honduras, or El Salvador, the child can simultaneously file an I-360, Petition for Special Immigrant Juvenile Status, an I-485, Application for Adjustment of Status, and I-765, Application for Employment Authorization (see Phase 4,



below). Form I-765, Application for Employment Authorization, once approved, will provide the child with a form of identification and a work permit that remains in force until it expires or until their “green card” is issued.

#### *Note About SIJS Visa Backlog*

Only a certain number of SIJS adjustments are available each year. The statute takes the total number of cases and divides the allocation equally by country: each country gets a maximum of just under 700 SIJS adjustments. Mexico, Guatemala, Honduras, or El Salvador are currently the countries with the highest numbers of SIJS applicants, and for the past several years, all of the SIJS numbers available to citizens of those countries have been distributed. For this reason, there is essentially a “waiting list” for SIJS for applicants from those countries. As described in more detail above and below, an applicant cannot adjust status to that of permanent resident unless there is a visa available. If no visa is available, a child cannot file an I-485, Application to Adjust Status, and will have to wait until her priority date, as dictated by the State Department’s Visa Bulletin, is current. As of the publication of this Manual (July 2017), the State Department’s Visa Bulletin indicates that SIJS visas are available for applicants from Honduras, Guatemala and El Salvador who filed their I-360, Petitions for Special Immigrant Juvenile Status on or before September 15, 2015.

### **Phase 3: Executive Office of Immigration Review (EOIR): Motion to Terminate or to Administratively Close**

If your client is not in removal proceedings at Immigration Court, this phase will not apply to your client.

The majority of children Safe Passage Project attorneys represent apply for SIJS defensively, meaning they are in removal proceedings at New York Immigration Court and they apply for SIJS as a form of relief from removal. In this scenario, a child must terminate her removal proceedings in order to 1) be protected against removal, and 2) be able to proceed with the next stage of the case: filing Form I-485, Application for Adjustment of Status.

Once a child has filed the I-360 Petition and USCIS has approved it, *pro bono* counsel should make a Motion to Terminate Removal Proceedings.<sup>3</sup> Once removal proceedings are terminated,

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<sup>3</sup> Some judges at New York Immigration Court are willing to terminate cases upon proof that the child’s I-360, Petition for Special Immigrant Juvenile Status has been approved, *even if* they are from Guatemala, Honduras, El Salvador or Mexico and cannot immediately adjust status because there is currently no “visa number” available for them. However, some judges may refuse to terminate until the child’s Priority Date is current and they can





the child is no longer at risk for removal from the United States, unless other grounds of removability (criminal grounds, for example) arise.

If a child's I-360, Petition for Special Immigrant Juvenile Status, is pending but not yet approved, an Immigration Judge may agree to administratively close the child's removal proceedings. Administrative closure is a docketing tool that permits judges to take cases off the active docket and "shelve" them, while a separate adjudicatory body like USCIS makes a decision on a visa application, for example. In cases that are administratively closed, respondents do not need to come back to immigration court for continued appearances, though the removal proceedings technically remain open. There is no affirmative benefit to be obtained from administrative closure, other than the convenience of not having to return to court; someone with an "admin closed" case cannot, for example, apply for work authorization if they do not have an independent basis for it. If a child's case is administratively closed and their I-360, Petition for Special Immigrant Juvenile Status, is later approved, the *pro bono* attorney should file a Motion to Recalendar and Terminate the removal proceedings.

By contrast, if the child is not in immigration removal proceedings *and* she is not a citizen of Mexico, Guatemala, Honduras, El Salvador, or India (as described above), she may apply for SIJS affirmatively. This means that after obtaining the necessary Family Court orders, *pro bono* counsel may file the I-360, Petition for Special Immigrant Juvenile Status, along with an I-485, Application for Adjustment of Status, with USCIS. The Immigration Court plays no role in cases with this posture.

#### **Phase 4: USCIS: I-485 Application to Adjust Status**

Once your client's removal proceedings have been terminated, once her priority date is current, and assuming she is eligible to adjust status, you should file an I-485, Application to Adjust Status, with USCIS. Form I-485, Application to Adjust Status, is the important step where your client applies for full legal permanent resident status (i.e. her "green card"). In addition to a variety of forms and supporting documentation that must be filed by mail, this step may require an in-person interview before a USCIS officer. Safe Passage Project *pro bono* attorneys must attend these adjustment interviews with their client. This manual will provide greater detail about preparing the I-485, Application to Adjust Status, the documentation required for filing, preparation for the interview, and the interview before USCIS.

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immediately adjust status. Those judges may choose to administratively close the case in the meantime, meaning no hearings are scheduled and the case will ultimately need to be re-calendared for termination.



## PHASE ONE, Family Court: Representing a SIJS-Eligible Child

### Step 1: Getting started: Review Safe Passage Case Memo and Case File

As mentioned above, a Safe Passage Project lawyer interviews each potential client. Safe Passage Project staff then draft an initial assessment of the client's eligibility for different forms of relief available under U.S. immigration law, including SIJS. We may also identify alternative forms of relief; we are always ready to discuss the relative advantages and disadvantages of various forms of immigration relief, *e.g.*, asylum, U-nonimmigrant status, T visas, or other avenues to securing lawful immigration status. Safe Passage Project staff assesses the facts gleaned during the initial assessment and drafts a legal analysis as to the child's most likely forms of immigration relief. This Case Assessment Memo is the first document you will receive from Safe Passage Project. Once you agree to accept the case, you may also receive any documentation collected from your young client during the initial screening. Note that you will need to continue to gather more information about your client at each subsequent meeting. The Case Assessment Memo provides you with a starting point from which to begin your conversation. **Please review this memo closely prior to meeting with your client.**

### Step 2: Initial Client Meeting

Your first meeting with your client should take place in person, preferably no more than 15 days after you are assigned to the child's case. Safe Passage Project is happy to help with the scheduling of your first meeting, or you may schedule the meeting on your own; however, we ask that you update your Mentor Attorney when you have made initial contact with your client because we track that information internally. You may hold the meeting at your office or call us to schedule use of one of Safe Passage's conference rooms. If you need a translator, Safe Passage Project can assist you in providing one for your meeting.

At this initial meeting, your main goal is to build a rapport with your client. Take some time to get to know the young person. It is likely that you may need to meet a few times in order for your young client to trust you enough to share intimate details of her story with you. Remember that she may have had a very difficult journey to the United States and/or suffered a great deal of harm at home. Safe Passage advocates often find that neutral topics such as subjects at



school, favorite sports teams, music preferences, or favorite foods can help you begin the conversation.

U.S. immigration law also contains many barriers to permanent resident status called “grounds of inadmissibility” (see pages 61 and Appendix H). Many of these grounds are waived or inapplicable for youth who qualify for SIJS. As you proceed through your representation, let your Safe Passage Project Mentor Attorney know if your young client has any encounters with law enforcement or disciplinary actions in school. We will help you assess the possible immigration law consequences.

### Information to Collect

Prior to your initial client meeting, your young client has already answered many basic questions designed to assess her possible eligibility for legal relief. However, you may learn new information about your young client in your first meeting. It is important to review the Case Assessment Memo with your young client in order to check for errors and inconsistencies, and to gather more information as needed. We find that as the young person begins to trust her *pro bono* attorney, she will share more information, which assists in building her legal case. Safe Passage Project Mentor Attorneys are available to discuss legal strategy as additional facts come forward.

Important information to confirm includes:

- Whether your young client’s parents are alive and, if so, where they reside. This information will be crucial to the guardianship and/or custody paperwork;
- The level of contact your young client has with her parents. For example, phone calls initiated by whom, emails, letters, gifts, or financial support;
- Your young client’s updated contact information, as well as the contact information of the people with whom your client lives. This is necessary in the event you need to contact your young client and his phone has been turned off due to lack of funds to pay for phone credits, etc. Be sure and ask for e-mail or even Facebook or WhatsApp messenger access;
- Whether your client feels safe at home. It is always important to confirm that your client is not currently at risk of abuse (physical, verbal, emotional, sexual). Though many clients go through an adjustment period when living with their sponsor, *pro bono* attorneys should be on the lookout for any potential abuse or neglect. If you suspect that your client is being abused or neglected, contact your Safe Passage



Project Mentor Attorney immediately so that we can connect the client with our social worker.

Safe Passage also recommends discussing travel costs with the client. If the client cannot pay for her travel to attorney/client meetings or to court, please contact your Mentor Attorney at Safe Passage Project.

## Documents to Gather

Be sure to request that your young client bring all relevant documents to your initial meeting. The most important documents to collect include:

- A copy of your young client’s birth certificate;
- Any identification documents such a copy of your client’s passport, visa, Arrival or Departure Form (I-94), National ID cards from home country (“Matricula Consular”), school IDs, medical records, and any documents establishing your client’s age;
  - N.B. In many Safe Passage Project cases, the client does not have a passport. Having a passport is not a prerequisite for obtaining SIJS, but your Safe Passage Project mentor attorney can guide you through the process of obtaining a passport should your client want one.
- A copy of the death certificates of your client’s parent(s), if applicable;
- Any other documentation that the client believes could be helpful in explaining their story.

Please note that all documents not in English require a certified translation. Please contact Safe Passage Project if you need translation assistance. A certified translation can be completed by anyone competent to read and write in both languages; the certification is a sworn statement that the translator is fluent in English and the foreign language, is competent to translate the attached document, and that the translation is completed to the best of her ability. For more information about how to request copies of birth and death certificates from foreign countries, see [Appendix B](#).

## Confirm that Your Young Client Meets SIJS Criteria

As described above, Safe Passage Project makes an assessment of the child’s eligibility for SIJS after the initial legal screening at immigration court. As the attorney representing the child, you



will want to reconfirm the basic SIJS eligibility requirements during your initial interview. Please keep in mind that facts and circumstances, especially as they relate to families, may change. This first meeting is a great opportunity to verify eligibility. Please contact your Safe Passage Project mentor to revisit strategy if the facts have changed.

As previously noted, Special Immigrant Juvenile Status (SIJS) is an immigrant classification available to unmarried, undocumented immigrants under the age of 21 who have been abused, neglected, or abandoned by one or both parents. In order to qualify, your client must:

- Be under the age of 21;
- Be unmarried;
- Be declared dependent on a State (Family) Court (e.g. eligible to file a guardianship or custody petition);
- Be unable to reunify with one *or* both parents due to abuse, neglect, abandonment or a similar basis under state law; and
- Be able to demonstrate that it is not in her best interests to return to his or her country of nationality or prior residence.

## Earning Your Young Client's Trust

One of the most important goals for your early meetings with your young client is to get to know her and make sure she is comfortable speaking with you. Earning your client's trust may be difficult at first, especially since the children Safe Passage Project works with have endured multiple hardships. Many are victims of trauma, violence, and other harm. It often takes more than one meeting with your young client to gather information about her entire story; she is learning to trust you, and it is not uncommon for her not to share all relevant information at the first meeting, especially if that information relates to past traumas.

In addition, you might find it a bit difficult at first to communicate with your young client if you do not speak her native language. If you are working with an interpreter, it is important to remind yourself continually that you are not having a conversation with the interpreter, but rather with your client. Speak directly to your young client, make eye contact if culturally appropriate, and don't automatically assume your young client understands legal terms or processes, even if directly translated. Spend some time thinking about how you will describe your role, the legal remedies available, and the court process in terms that a young person can understand. Continually check in with your young client to make sure she understands. For example, rather than saying "we will have to complete service of process on your parents in your home country,"



you might explain that U.S. law requires that parents be notified about any court hearings in the United States concerning their children, and for that reason we have to make sure that your client's parents receive documents about the court hearings.

Safe Passage Project advocates have found that some young clients worry that appointing another person as their guardian means they are rejecting their parents, or means that the court is making a decision that their parents are bad people. When describing events that constitute abuse, abandonment or neglect at the hands of their biological parents, some children have a tendency to downplay what they suffered because they are committed to viewing their parents as good people who love them. It can be difficult for children to view their parents as flawed people who, in the eyes of New York State law, committed abuse, abandonment or neglect. In situations like these, it is important to explain the family court process' goals to your client. For example, you can describe how legal guardianship is designed to help her with life decisions in the United States, and how having a responsible adult to assist her in permanency planning (including medical care, housing, education and stability) can be really helpful. In most of the Family Court proceedings involved in SIJS, neither party is seeking the formal termination of parental rights. Likewise, you can explain that neither you nor the Family Court is making any value judgments about the client's parents' behaviors or calling her parents bad people. Rather, there are certain actions that, in New York, meet the legal definition of abuse, abandonment or neglect, and that as part of the SIJS process, we must establish facts to meet those legal definitions.

As mentioned above, it is very important that your relationship with your young client includes discussions of how they feel in terms of their own mental health, as well as their safety at home and at school. If a child reports feeling consistently sad, depressed, or angry, or if your client expresses that she feels unsafe at home or at school, speak to your Safe Passage Project mentor attorney immediately so that the social work team can intervene. We have experience dealing with the ongoing mental health needs of clients as well as the rare situation where a child faces abuse at the hands of family members here in the U.S. Safe Passage will help you navigate these situations.

### Accompanying Family Members

It is common for your young client's family members or proposed guardian to accompany her to the interview. Frequently, the young person may not feel comfortable speaking to you alone until he or she has gotten to know you. Formally, the presence of anyone other than the child's parent at an attorney/client meeting might waive attorney/client privilege. You should discuss



attorney client/privilege at your first client meeting.

Safe Passage Project also suggests that, at the beginning of your first meeting with your client, you explain that you will need to meet with your client alone for a least a portion of the meeting, since this is standard practice in attorney/client relationships. This will allow your young client to begin to develop trust in you and to discuss elements of her story that she might not be comfortable discussing in the presence of her proposed guardian or other family members.

## Road Map

It might be helpful to spend a short period of time at your initial meeting mapping out the steps of a Special Immigrant Status Case by using the road map below. There are essentially three “tracks” of involvement in a SIJS proceeding: the Executive Office of Immigration Review (immigration court), where removal proceedings are held, State Family Court, and the benefits arm of immigration, USCIS. We find that drawing or walking through this schematic minimizes confusion and helps paint a picture of the path ahead.







## Step 3: Identify a Guardian or Custodian

By the end of your first interview, your client should have a general understanding of Special Immigrant Juvenile Status and the steps necessary to obtain it. She should also understand that, if she is in removal proceedings, her master calendar hearings at Immigration Court will continue while you move forward with the Family Court process, and that the Immigration Judge will grant her additional time (continuances) to complete the Family Court process and to file the I-360, Petition for Special Immigrant Juvenile Status, with USCIS.

As her attorney, you should be focusing on the family law standards at play. You are seeking to help stabilize your client's situation and to help her find a permanent or long-term care arrangement. Is there a person in her life who is caring for her and providing her with emotional and financial support? Could this person become her custodian (typically, custodians are biological parents) or her guardian (any eligible adult, including biological parents)? A guardian or custodian need not have immigration status in the United States, but must be domiciled in the New York County where the petition will be filed.

### Who can be a Custodian?

Absent a court order, both biological parents have equal rights to the legal and physical custody of their child. Legal custody refers to the ability to make decisions for the child, while physical custody refers to the parent responsible for taking physical care of the child. Often, one parent will have both legal and physical custody of the child. A custodian can be appointed for a child until the child's 18<sup>th</sup> birthday.

While anyone who has a role in the life of a young person can petition to be the young person's custodian, note that under New York State case law, "extraordinary circumstances" must exist in order for a non-biological parent to be appointed as the child's custodian (see [Matter of Bennett vs. Jeffreys](#), 40 N.Y.S. 2d 543 (Ct. of App. 1976)). Therefore, in circumstances where a non-biological caretaker wishes to have the legal authority to care and make decisions for a young person, that adult can petition to become the young person's legal guardian. Additionally, in New York, a young person who is over the age of 18 can no longer have a custodian appointed, but is eligible to have a guardian appointed up until age 21.

If your young client's mother is seeking custody of the client, and if the client's biological father is not listed on the birth certificate, please contact your Safe Passage Project Mentor Attorney to discuss strategy. In this situation, certain Family Court judges may request an additional



proceeding to establish paternity. In cases like these, pursuing guardianship, as opposed to custody, may be a better option.

## Custodian Responsibilities & Requirements

As stated above, in New York, a custodian is typically one of the child's biological parents. The custodial parent will be responsible for the housing, education, financial support, and general well-being of the child. The court will examine what is in the best interest of the child in determining custody. Custodial parents do not have to have lawful immigration status.

## Who can be a Guardian?

Any adult over the age of 18 can be appointed as a young person's guardian, if it is in the young person's best interests. See, e.g., [\*In the Matter of the Guardianship of Michael Lafontant, an Infant\*, 617 N.Y.S.2d 292 \(Surrogate's Ct., Rockland Cty. 1994\)](#); [\*Matter of Marisol N.H.\*, 115 A.D.3d 185 \(N.Y. App. Div. 2d Dep't 2014\)](#). The guardian does not have to be biologically related to the young person. Guardians can be family friends, school teachers, religious figures, or any other responsible adult in the young person's life with her best interests in mind. Guardians do not have to have lawful immigration status.

## Guardian Responsibilities & Requirements

Governed by Article 6 of the Family Court Act (FCA) and Article 17 of the Surrogate's Court Procedure Act (SCPA), a guardian (similar to a custodian) should safe-guard the child's physical and emotional well-being. Guardians have decision-making authority and legal responsibility for the child. This allows the guardian to secure medical treatment for the child, enroll her in school, obtain a passport for her, etc. A guardian is not financially responsible for the child. If a youth is in need, though, a responsible guardian would take steps to find assistance for the youth. If a proposed guardian has assisted the child financially (buying clothes and food, for instance), that is a good indication that the proposed guardian has the child's best interests at heart.

Under New York law, a guardian can be appointed for youth up to the age of 21. A grant of guardianship does not sever the familial relationship between a parent and a biological child; a guardian does not become the child's parent, nor do the child's parents lose their parental rights simply because another individual is named guardian of their child.



## Guardianship: Additional Procedural Requirements

On January 4, 2017, Chief Judge Edwina Richardson-Mendelson issued a memorandum (found [here](#)) to all New York State Family Court judges, attorneys and clerks. The memo states that “[o]rdering fingerprints in any specific case is *at the discretion of the Family Court Judge*. Ultimately the decision to exercise discretion in requiring fingerprinting rests on whether the court is satisfied, on a case-by-case basis, that the child is safe and secure under the guardian’s care and that the guardian holds the child’s best interests as paramount, or whether there is an identifiable cause for concern that may be allayed by procuring fingerprinting results.” (See Advisory Council on Immigration Issues Memo issued on January 4, 2017; emphasis added.)

Though ordering a criminal background check and fingerprints remains in the discretion of the Family Court adjudicator, in practice, most family court judges and referees do order them in guardianship proceedings. The proposed guardian and all members of the guardian’s household over the age of 18 are subject to the background check.<sup>4</sup> The background check’s purpose is to look for any history of criminal activity or child protective violations that are cause for concern. Proposed guardians and their household members should be prepared to be fingerprinted using the method required by the Family Court.

**Fingerprints:** The proposed guardian and all members of the proposed guardian’s household who are over age 18 will likely be required to be fingerprinted in the Family Court or using a method prescribed by the Family Court. The fingerprint results initiate a background check, which looks for criminal histories or offenses against children. Certain criminal offenses will prevent a person from being named a guardian, so the proposed guardian’s criminal history, and the criminal history of household members, is certainly an area into which you should inquire.

**Record of Past Residences:** The proposed guardian and the members of the household who are over 18 must provide all of their addresses for the past 28 years. This address history is also part of the background check that searches for criminal histories and allegations of child abuse, neglect, and abandonment.

**Court-Ordered Investigation (COI):** The proposed guardian should be aware that a representative from the Administration for Children’s Services (ACS) or the Probation Office may visit their home and perform a Court-Ordered Investigation (COI) in order to evaluate the conditions of the household in which the young client lives. In general, ACS or the Probation Office will contact the proposed guardian directly to arrange an inspection; as the *pro bono*

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<sup>4</sup> There is no definition of “household member” in New York State family law. Communicate with your Safe Passage Project Mentor to discuss how this term may be defined.



attorney, you most likely do not have to coordinate the inspection. After obtaining the guardian's schedule, the person conducting the inspection may show up at the home unannounced. All household members present in the home at the time of the inspection should be prepared to be interviewed.

**Willingness to Appear in Court:** Lastly, the proposed guardian, as well as your young client, should expect to appear in Family Court several times. They will provide oral testimony. The judge will ask the proposed guardian and the child questions about their relationship, living situation, and why it is in the child's best interest for the guardian to be appointed

## FAQ: Guardianship and Custody

### **Q: Does a guardian have to be related to the child?**

A: No, a guardian does not have to be related to the child. In 2014, the Court ruled that no specific familial relationship is required to petition for guardianship. See [Matter of Marisol N.H., 115 A.D.3d 185 \(N.Y. App. Div. 2d Dep't 2014\)](#).

### **Q: Does the guardian have to have legal status within the United States?**

A: No, the guardian does not have to be a U.S. citizen, resident, or have any form of legal documented status within the United States. State courts should not inquire into a guardian's status nor relay such status to USCIS. The court in *Matter of Lafontant* found that the petitioner's lack of lawful immigration status did not preclude him from being appointed as guardian. [In the Matter of the Guardianship of Michael Lafontant, an Infant, 617 N.Y.S.2d 292 \(Surrogate's Ct., Rockland Cty. 1994\)](#). However, we cannot guarantee the safety of an undocumented custodian or guardian in Family Court; there have been reports of immigration enforcement operations in or near Family Courts in 2017.

### **Q: Can a biological/natural parent petition for guardianship?**

A: Yes, a natural parent can petition for guardianship over her own biological child. Under the Surrogate's Court Procedure Act, any person may petition for the guardianship of an infant. SCPA §1703. In *In re Marisol N.H.* the Court held that appointment of guardianship may be granted to a natural parent. See [Matter of Marisol N.H., 115 A.D.3d 185 \(N.Y. App. Div. 2d Dep't 2014\)](#).



**Q: What about step-parents? Can a step-parent be a custodian or guardian?**

A: Yes! Step-parents can be custodians/guardians or co-custodians/co-guardians with their spouse (your client's biological parent). Alternatively, if the step-parent is a lawful permanent resident or U.S. citizen, there may be a way for the step-parent to file a family-based immigration petition for your young client. Please contact your Safe Passage Mentor Attorney for guidance.

**Q: Does the guardian have to live with the child?**

A: No, the guardian does not have to live with child. [\*Matter of Axel S.D.C. v. Elena A.C.\*, 139 A.D.3d 1050 \(N.Y. App. Div. 2d Dep't 2016\)](#). However, some judges are more skeptical of guardianship proceedings where the proposed guardian does not reside with the child, even though there is absolutely no requirement that they live together.

**Q: Who does the Safe Passage Project *pro bono* attorney represent, the child or the proposed guardian/custodian?**

A: It is important to understand is that you, a Safe Passage Project *pro bono* attorney, do not represent the proposed guardian or custodian in this proceeding. However, you should talk to the proposed guardian/custodian about the process. In limited circumstances, you may be able to assist the proposed guardian/custodian in filling out a *pro se* petition for guardianship or custody where necessary. Nonetheless, the proposed guardian is not your client.

In some instances, Family Court judges are used to ordering a court-appointed attorney for the children, and dealing with their parents' retained attorneys; these judges may be confused when you present yourself as the retained attorney for the child. You should not be pressured into switching your representation. Everyone, even children, has a right to choose their own counsel. If you were to represent the parent in family court and the child in immigration court, for example, conflicts may arise that prevent your continued representation. In instances where a judge pressures you to accept representation of the parent, we strongly recommend that you insist that you are the retained counsel of the child.

## Case Examples:

FACTS	HOLDING
<p><b>Undocumented Biological Mother:</b> An undocumented mother petitioned for guardianship of her undocumented children. Prior to joining her in the United States, the children had been residing with their maternal grandmother in El Salvador. The children’s father had abandoned the children and was not in contact with either the children or the petitioning mother.</p>	<p>Granted. The judge determined that there is no reason a natural parent should not be appointed guardian of her own children. Furthermore, because the biological father had abandoned the children, and because their <i>de facto</i> guardian in El Salvador (grandmother) had been recently murdered by a gang, naming the mother as guardian was in the best interests of the children. The fact that the mother and children had been separated for many years before reuniting did not preclude the appointment of the mother as guardian. <a href="#">Matter of Marisol N.H., 115 A.D.3d 185 (N.Y. App. Div. 2d Dep’t 2014).</a></p>
<p><b>U.S. Citizen unrelated to child:</b> The former school teacher of an 18-year-old boy who had overstayed his student visa petitioned for guardianship of the boy. The boys’ parents remained in the Republic of Sierra Leone and his original host family had abandoned him.</p>	<p>Granted. A non-family member can be appointed guardian. <a href="#">Matter of Mohamed B., 83 A.D. 3d 829 (N.Y. App. Div. 2d Dep’t 2011).</a></p>
<p><b>Friend:</b> A man petitioned for the guardianship of a 20 year-old boy. The boy’s father resided in the U.S. (not with the boy) and his mother lived in India. The boy was friends with the proposed guardian’s son and had been living in their home for 3 years. Though the boy’s father lived in the U.S., he had no contact with his son.</p>	<p>Granted. The man has ensured that the boy attends school, has health insurance, and the support of an “uncle” to attend parent-teacher conference days and support him in his activities. It was in the best interests of the child to have him as a guardian. <a href="#">Matter of Amandeep S., NY Slip Op. 50945(U), 44 Misc. 3d 1201(A) (Queens Cty. Fam. Ct. 2014).</a></p>



## Step 4: Preparing the Guardianship or Custody Petition

### Guardianship Petition and Supporting Documents

Each of these New York Court forms are located in [Appendices C and D](#). You can also download the forms directly from the New York State court website to ensure that you have the most up-to-date version: <http://nycourts.gov/forms/familycourt/index.shtml>

#### What to File (Guardianship):

- **Form 6-1 or 6-1-a: Guardianship Petition**  
**Form 6-1: For children under the age of 14.**

This form, filed by the proposed guardian, asks for information about the proposed guardian, the people residing with the proposed guardian, the child, and the child's biological parents. **Reminder: you are not the attorney for the proposed guardian. Contact your Safe Passage Project mentor attorney for information on *pro se* resources for your client's proposed guardian.**

*OR*

**Form 6-1-a: A guardianship self-petition by a child over the age of 14 for Appointment of a Guardian 1123**

Use Form 6-1-a if a young person over the age of 14 is self-petitioning for the appointment of a specific guardian. We recommend you pursue this option for youth over 14 because allows counsel for the youth greater control over the proceeding. You, as the child's attorney, can fill the form out on the child's behalf.

- **Form 6-2: Guardian's Oath and Designation for Service of Process**

This form is an oath by the proposed guardian that he/she will faithfully and honestly discharge the duties of a guardian. It also includes the proposed guardian's address so that the court knows where to send any information about the guardianship proceeding.



- **Form 6-3: Consent of Person Over 18 or Preference of Minor Over 14**

If your young client is over 14, he or she is allowed to voice her preference on the guardianship. If your young client is 18 or older, she must consent to the guardianship. This form is filed even if the child is filing a 6-1-a guardianship self-petition.

- **Form OCFS-3909, Request for Information (“Address History Form”)**

The proposed guardian and members of her household<sup>5</sup> who are over the age of 18 must list each of their addresses for the past 28 years, even if those addresses were outside the United States. This form is extremely important and used as part of the background check process to ensure no prior allegations or convictions of child abuse exist against the proposed guardian. Please encourage your young client’s proposed guardian and those in the household to complete the form with you to the best of their ability. Without this form, the guardianship process cannot move forward. If there are any gaps in the dates, the State Central Registry (SCR), which conducts the background check, will not accept the form. Please contact your Safe Passage Mentor Attorney with any questions.

- **Copy of Birth Certificate and Affidavit of Translation**

You must include a copy of your young client’s birth certificate (or other proof of her age, such as a passport). If not in English, the birth certificate must be translated and be accompanied by an affidavit of translation. For more information about affidavits of translation for birth certificates, see [Appendix B](#).

- **Form GF-29: Notice of Appearance**

This form indicates that you are representing your young client in the guardianship proceeding. You may choose to file it this with the Guardianship Petition if your client is over the age of 14 and filing a 6-1-a Guardianship Self-Petition. If a proposed guardian is filing Form 6-1 Guardianship Petition for a child under the age of 14, you may submit your Notice of Appearance for the child along with the petition, but be warned that the court clerk may be confused and think you are entering your appearance on behalf of the proposed guardian.

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<sup>5</sup> There is no statutory definition of “household member.” Contact your Mentor Attorney with questions.





- **Any other information the court demands.**

For example, as of April 2017, Nassau County Family Court requires that a specific information sheet be filed with the guardianship petition. In addition, if a guardian or custodian is making a *pro se* filing, check with your Mentor Attorney to see if there are *pro se*-specific requirements.

**PRACTICE TIP:**

If you need an expedited ruling (for example, your client is about to turn 21 and age out of eligibility for SIJS), talk to your Mentor Attorney about how to file an Order to Show Cause or other request for an expedited hearing.

## Custody Petition and Supporting Documents

In contrast to the numerous forms necessary to commence a guardianship proceeding, there is usually only one form that the petitioner will have to bring to the Family Court to file for custody. For a sample Petition for Custody or Visitation, see **Exhibit D**, or you can download the forms directly at: <http://nycourts.gov/forms/familycourt/index.shtml>

### What to File (Custody):

- **General Form 17: Petition – Custody, Visitation**

This form provides the court with the names and relationships of all the parties involved, and requests a grant of custody. It also requires you explain why it is in the best interest of the child to have the proposed guardian legally established. It is filed by the proposed custodian. Contact your Safe Passage Mentor Attorney for information about *pro se* resources for proposed custodians.

- **Copy of Birth Certificate and Affidavit of Translation**

You must include a copy of your client's birth certificate (or another proof of her age such as a passport). If not in English, the birth certificate must be translated and be accompanied by an affidavit of translation. For more information about affidavits of



translation for birth certificates, see [Appendix B](#).

While you may submit Form GF-29 Attorney’s Entry of Appearance with the proposed custodian’s *pro se* custody petition, submitting the GF-29 at this stage may cause confusion. The court clerk may incorrectly think you are entering your appearance on behalf of the proposed guardian, even if the form is filled out correctly and indicates that you are the attorney for the subject child.

**PRACTICE TIP:**  
Some attorneys elect to file their Motion for Special Findings (below) along with their Guardianship or Custody Petition. Please consult your Safe Passage Project Mentor Attorney for information about concurrent filings.

## Step 5: Filing the Guardianship or Custody Petition in Family Court

### Note on Variability between Counties and Among Judges:

Though this manual attempts to summarize New York State Family Court procedures, the truth is that practices vary wildly from county to county, and even among judges in the same county. In addition, court procedures often change without notice.

Please communicate with your Safe Passage Project Mentor Attorney before filing so that s/he can give you the most up-to-date tips on filing and appearing before your specific judge.

### Guardianship

Once all the forms have been completed, it is time to file them at the New York State Family Court with jurisdiction over your young client’s place of residence, meaning in the county where your young client has been living for the past six months, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (N.Y. Dom. Law § 75). For Family Court contact information,



see [Appendix I](#).

Which parties must appear at filing depends on the Family Court in which the petition will be filed. Contact your Safe Passage Mentor Attorney for details. In some instances, the attorney or an agent of the attorney can file without the client or proposed guardian present. In other situations, the proposed guardian must be the one to file the petition. Courthouses can be often overwhelming and intimidating places for people who are not used to them, so we recommend communicating with Safe Passage Project to ensure that the filing occurs as seamlessly as possible.

Regardless of who is filing, it is a good idea to get to the courthouse early in the morning in order to minimize wait time. Be sure to bring:

- The original petition and accompanying documents, along with the requisite number of copies (varies by county);
- If the proposed guardian's presence is required at filing, it is recommended that the proposed guardian also bring photo identification and a proof of residence. Other documentary requirements may apply, depending on the county of filing.

Upon arrival at court, go to the petition room or main clerk's window and file the petition. Make sure that you obtain a copy of the petition that is time-stamped with a file and docket number hand-written by the clerk.

Please remember to contact your Safe Passage Project Mentor Attorney for court-specific information on next steps, since counties vary in their practice. In some cases, you or the proposed guardian will need to return to the courthouse in a few days or weeks to pick up the summons for the initial hearing date.

In other instances, when filing in Kings County, for example, you should expect talk to a court attorney or Family Court judge on the same day as filing. If this is the case, before you leave the filing window, the clerk will tell you which courtroom you should go to for your initial appearance before a judge or referee. This room is referred to as a "part." Go to that part and let the court officer know that you are there. After checking in, wait until your docket number is called. You may have to wait for 1-2 hours depending on the court. While waiting, remind the proposed guardian (if present) that the judge or referee will ask if s/he wants a lawyer and that s/he needs to be prepared to answer this question audibly before the judge. The proposed guardian has a right to a lawyer, and in some cases judges will appoint free counsel. Remind the proposed



guardian that you are not his/her attorney.

If you see a judge or court attorney the same day of filing, the main point of that initial appearance is to establish basic facts like who is living in the household with the child, where the child's biological parents are, and how you will effect service of process on them. You will not discuss the substance or merits of the case.

## Custody

Procedures for filing vary by county. Remember, the petition must be filed in the Family Court of the county in which the child has been living for the past six months pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (N.Y. DOM. LAW § 75). In some counties, the petitioner (the proposed custodian) must submit the custody petition herself—an agent cannot submit it on her behalf. If that is the case, it may be advisable to go with the proposed custodian to court anyway, especially if she doesn't speak English, to ensure that she is able to file.

Be sure to bring:

- The original petition and accompanying documents along with the requisite number of copies (varies by county);
- If the proposed guardian's present is required at filing, it is recommended that the proposed guardian also bring photo identification and a proof of residence.

## Step 6: Obtain Summons (Guardianship and Custody)

A summons is the document that tells the parties to the proceeding (child, proposed guardian/custodian, and respondent parent(s)) when to appear for the first hearing in Family Court. The summons is especially important because it, along with the underlying petition (whether guardianship or custody), must be served on the child's respondent parent(s), regardless of whether they live in the United States or in the child's home country.

In some counties, you will not receive a summons on the day of filing. Some counties will mail the child's attorney the summons; in other instances, the petitioner must pick it up at court a few days or weeks later. In Kings County, however, you will receive a summons on the day of filing.



## Step 7: Serve the Respondents with Notice of the Proceeding (Guardianship and Custody)

The respondent(s) must be served with notice of the proceeding. In a case where one biological parent is the proposed guardian or custodian, the other biological parent is the respondent. In a case where another family member or friend is the proposed guardian, both biological parents are the respondents. (If a parent is deceased, obviously no service need be effected on that parent.)

### What to Serve

- The summons;
- A full copy of the as-filed petition (guardianship or custody). This includes all petition forms, the translated birth certificate, the OCFS Address form in guardianship cases, etc.

Once the respondents receive these documents, they can do with them what they wish (file them away, use them to make arrangements to appear in Family Court to contest the proceedings, throw them in the trash, etc.).

In guardianship cases, Safe Passage Project also recommends sending the respondents a 6-4 Waiver and Consent form. The respondents have the option of signing this form, which indicates that they consent to the guardianship and waive future service of process of motions, judge's orders, etc.

### How to Serve

CPLR § 308 governs service of process upon "natural persons," and permits the following forms of service: 1) personal service (handing the documents to the respondent), 2) delivering the documents to be served upon a person of "suitable age and discretion" (i.e. over age 18) at the respondent's home or place of business, *and* by mailing the same documents to the respondent's home or place of business; 3) delivering the documents to the respondent's agent for service (this rarely applies), 4) "nail and mail" service (attaching the summons to the door of the respondent's home or place of business, and mailing the summons to the respondent's home or place of business); or 5) service in another manner permitted by the judge.



Note that CPLR Sec. 308 indicates that service shall be done “within the state” in the manner described above. Even though many respondents in Safe Passage Project client cases reside out of state or even out of country, judges tend to demand service in conformity with CPLR 308.

If your client is from a country other than Guatemala, El Salvador or Honduras, talk to your Safe Passage Project mentor attorney about potential issues related to the Hague Convention on International Service of Process. There are nations that require more formal methods of service.

See [Appendix E](#) for more information on service of process.

## FAQ: Service of Process

### **Q: Who can effect service of process on my client’s parents in home country?**

A: Anyone over the age of 18 who is not a party to the proceeding can serve the respondents. In practice, though, you’ll want to add on a few requirements. The person should be able to read and write in their native language so that they can fill out an Affidavit of Personal Service in that language, describing the date and place that service was effected. The process server must have the Affidavit of Personal Service notarized, and must mail the original Affidavit to the child’s attorney in New York, for presentation in court.

Safe Passage Project does not have an independent budget for professional process servers. If you work for a firm that allows for litigation expenses in *pro bono* work, we recommend that you use that budget to hire a professional process server in-country. If that is not possible, talk with your client about whether they know any literate people who live near the respondents and who may be willing to help. Safe Passage Project clients have used cousins, aunts/uncles, neighbors, and even local bodega owners as process servers.

### **Q: What if my client and her proposed guardian/custodian have no idea where the respondent resides or works?**

A: Encourage the client and the proposed guardian/custodian to make diligent efforts to locate the respondent. Call the respondent’s mother, friend or other relative in home country and ask for the address. Look up the respondent on Facebook and Google. Keep track of any efforts made, and be prepared to present those efforts to the judge at the Return on Process Hearing (below). If the judge is convinced that the respondent is truly nowhere to be found, she may permit another form of service (sending the documents by email or Facebook, for example), or she may waive service entirely.



Note that Surrogates' Court Procedure Act § 1705(2) permits the judge to waive service on a respondent that has abandoned a child. However, this provision only applies to guardianship, not custody cases. Still, in custody cases where a respondent has abandoned their child and service is impossible, a judge will likely waive service or permit another form of service, but only once they are satisfied that all reasonable efforts have been made.

**Q: Can the same person who served the documents on the respondents also notarize the Affidavit of Personal Service?**

A: In general, try to avoid this. The process server should be different from the notary.

**Q: What are some alternative methods of service, other than personal service, that a judge might permit?**

A: A judge may permit service in basically any manner that s/he wants, if s/he is convinced that service under CPLR 308 is impracticable. Examples include service by International DHL along with a printout from DHL confirming service; service by email, where the service documents are attachments; service by fax; service by Facebook, where the documents are appended in a message, etc. For more information about serving parties living abroad, see [Appendix E](#).



## Step 8: Ensure that All Household Members over the Age of 18 are Fingerprinted (Guardianship Proceedings Only)

You will recall that as part of the Guardianship Petition, you included an OCFS Address Form listing the address history of the adult members of the guardian's household. This form, along with the household members' fingerprints, are used to run a background check on the household members. The background check's purpose is to alert the judge to any household members with histories of child abuse and neglect or other crimes. The guardianship petition itself asks questions about the types of violations that the background check looks for. It is important at the petition-drafting stage to confirm with the proposed guardian that no one in the household has such a history.

As mentioned above on page 22, a January 2017 memo from the Chief Judge of the Family Court makes clear that ordering fingerprints in order to run a state background check is at the discretion of each individual family court judge. This memo is in harmony with the Surrogate's Court Procedure Act, which establishes jurisdiction for three forms of guardianship: guardianship of the person, permanent guardianship, and guardianship of property. SCPA § 1701 requires production of SCR records, criminal background checks and home inspections for a proposed "permanent guardian," but has no such requirement for a proposed "guardian of the person." In most cases, a Safe Passage Project client is requesting the appointment of a guardian of the person, not a permanent guardian. Strictly speaking, then, the fingerprint and background check "requirements" are not requirements at all; ordering these is in the discretion of the family court judge. *See also Matter of Silvia N.P.L. v. Estate of Jorge M.N.P.*, 141 A.D.3d 654, 37 N.Y.S.3d 270 (N.Y. App. Div. 2016) (holding it was improper for family court to dismiss petition based solely on the petitioner's failure to comply with directive to obtain fingerprinting). Based on the foregoing, if household members refuse to get fingerprinted for the purposes of the background check, you may consider making a motion to waive the background check.

**Important note about household members with criminal histories:** Occasionally, a member of the proposed guardian's household will have an arrest history. This may not, in itself, be a barrier to guardianship, especially if the crime was not a crime of violence, if it occurred several years ago, and/or if the case was resolved (the household member completed community service or probation, for example). It is important to bring household members' criminal histories to the attention of your Safe Passage Project Mentor Attorney for several reasons. Your mentor will be able to tell you how to obtain a Certificate of Disposition from criminal court, which will show the final outcome of the household member's criminal case, so that we can





make an analysis regarding the impact the criminal history will have on the case. In addition, we want to avoid putting household members, particularly undocumented ones, at risk of immigration arrest. Though Family Court proceedings are supposed to be confidential, we have received several reports of people with outstanding criminal warrants appearing on family court matters, only to be arrested by immigration authorities. Ensuring that no family member has an outstanding arrest warrant is therefore essential.

## Step 9: Attend the First Family Court Appearance (“Return on Process Hearing”)

### Return on Process Hearing, Guardianship

In most counties, the first time you will see the Family Court judge is at the Return on Process hearing.<sup>6</sup> At this hearing, the judge will want an update on service of process, and will also (in guardianship cases) check to see if household members have been fingerprinted and if the State Central Registry background checks have come back.

Upon arrival at the courthouse, meet up with your client and client’s proposed guardian. You will need to check in with the Court Officer for your part, and then wait for your young client’s case to be called. Although attorneys may enter the courtroom and wait in the gallery, clients must remain in the waiting room until their case is called. It is your choice as to whether you remain with your young client in the waiting room or wait inside the courtroom. If you have little experience in Family Court, it is recommended you enter the judge’s part and observe a few hearings. This will give you a good sense of the particular judge and procedures. When your young client’s case is called, enter the courtroom with the proposed guardian and your young client and proceed to the seating area as directed by the Court Officer.

Please note that it is customary for attorneys to stand when addressing the judge or referee in Family Court. (This is the opposite of the procedure used in immigration court where the Judge needs to be sure you are sitting so that the digital recording system can hear your remarks.) The judge or referee will ask you to orally note your appearance, including your name, firm name, and firm address.

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<sup>6</sup> Note that in some counties, you will see the Family Court Judge on the day of filing for an initial conference. If you filed in such a county, Step 9 will constitute your *second* court appearance.



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

- **Confirm that service has been effected upon the respondents**

If you have not been successful in serving the respondents before the Return on Process date, the judge will likely give you an adjournment to continue your efforts. If you are not confident that you will locate the respondents or be able to effect service, discuss with the court whether it will accept alternative forms of service. For example, you can request service by first class mail to the last known address of the respondents.<sup>7</sup> Alternatively, it is sometimes possible that the respondents could waive service by signing a formal written consent to the guardianship. See [Appendix E](#). If you obtained the parents' consent to the guardianship, bring the signed and notarized form with you to the Return on Process Hearing.

- **Confirm that fingerprints and background check have come back clean**
- **[Possible]: Order a Court-Ordered Investigation (COI) of the proposed guardian's home.**

The COI is discretionary and not all judges order one.

- **Set a return date for a full hearing**

The judge may then ask several questions about the guardianship papers, the proposed guardian, and your young client to determine that it is in the best interests of your young client for the proposed guardian to take responsibility for him or her. You will have the opportunity to explain that you will be making a **Motion for Special Findings** and that you also plan to request that the judge issue a **Special Findings order making certain findings of fact**. You may also be called upon by the judge or referee to explain Special Immigrant Juvenile Status.

## Return on Process Hearing, Custody

In child custody matters, the initial appearance is referred to as a "preliminary hearing" and is the first court date that you will attend. The hearing is typically brief and is intended to provide the judge an opportunity to familiarize herself with the case.

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<sup>7</sup> In guardianship cases where a parent has abandoned a child, service by mail is acceptable. NY SCPA § 1705(2)).



Upon arrival you will need to check in with the Court Officer.

Once your case is called, the judge will ask all individuals to identify themselves and their relationship to the child. You will also state your name and appearance for the record. The judge may ask you to provide a short initial statement. The judge will ask if the other parent of your young client has been served.

The judge will then ask several questions about custody, the proposed custodian, and your young client. Here, you will have the opportunity to explain that you will be making a **Motion for Special Findings** so that your young client may apply for SIJS.

As described in the guardianship section, above, the judge will likely confirm whether service on the respondent parent has been effected, issue a return date for completion of service (if not yet complete), or set a date for a full merits hearing. Note that there is no fingerprinting or background check component in custody cases, though the judge may still order a Court-Ordered Investigation (COI).

## Step 10: Draft the Motion for Special Findings

Although SIJS is a form of relief granted under federal immigration law, prior to petitioning for the relief, a State Court (Family Court) must first make five factual findings, outlined in step 12 and below. These factual findings are made in the issuance of a Special Findings Order (SFO). The Family Court is not granting the child immigration status; rather, it is simply making factual determinations that form the basis for a SIJS grant.

In order to obtain the SFO, you must make a motion before the Family Court asking that the court make the following findings:

The subject child is under the age of 21;
The subject child is unmarried;
The subject child is under the jurisdiction of/dependent on a state family court, in that the court has appointed a guardian or custodian for her;
The subject child cannot reunify with one or both



parents due to abuse, abandonment, neglect, or a similar basis under state law, and
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It is not in the subject child's best interest to return to her native country.
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## What Goes into a Motion for Special Findings?

The Motion for Special Findings makes the case for why your client is eligible for Special Immigrant Juvenile Status. It must argue why the Family Court should make the factual findings that your young client is 1.) under 21 years of age, 2.) unmarried, 3.) under the jurisdiction of the Family Court, 4.) unable to reunify with one or both of her parents due to abandonment, abuse, or neglect, and 5.) unable to return to her home country because it is not in her best interest to do so. The Memorandum of Law should persuasively set forth the legal claim and support the Guardianship/Custody petition. The Child's affidavit might be the most important component of the Motion for Special Findings. This is the child's story and should be written to ensure all of the necessary SIJS elements are touched upon. The child may be asked by the judge at a subsequent hearing to testify to what is in the affidavit. Safe Passage has written hundreds of Special Findings Motions, Memorandum, and Child's Affidavits, so please consult your Safe Passage Mentor attorney about our Sample Pleadings.

## What to File:

- Notice of Motion;
- Memorandum of law in support of the motion and the guardianship or custody petition;
- Proposed Special Findings Order (GF-42); and
- Relevant exhibits, such as:
  - ✓ Client's affidavit (perhaps the most important document of all);
  - ✓ The proposed guardian's/custodian's affidavit;
  - ✓ Copies of birth certificates, foreign passports, National ID cards;
  - ✓ Death certificates of the client's parent(s), if applicable



- ✓ Select country condition reports relating to the client’s home country<sup>8</sup>. Please note that Family Court judges do not generally want a voluminous filing; be circumspect in the amount of country conditions you submit. Two to three brief news articles or reports are sufficient.

For samples of these documents, contact your Safe Passage Project Mentor Attorney.

Safe Passage has summarized almost every case published in New York that addresses the key elements of family law relevant to your Special Immigrant Juvenile Motion. To access the summaries of New York State case law on abuse, abandonment and neglect, please visit the “resources” section of Safe Passage’s website: <http://www.safepassageproject.org/what-issij-status/>. We update these materials from time to time and all links are to free websites. You should, of course, verify that all cases are current. It is important that you cite to the relevant New York State case law materials in your Memorandum of Law to help contextualize the facts in your case.

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<sup>8</sup> Examples of Country Conditions Reports include: U.S. State Department Human Rights Reports, reports by Human Rights Watch, Amnesty International, UNICEF and reports published by well-respected rights organizations or news outlets.

## Case Examples

FACTS	HOLDING
<p><b>Abandonment – Little Contact:</b> The only contact a mother had with her daughter in the past 6 months was one visit and one phone call.</p>	<p>Infrequent/no contact of mother with child qualifies as abandonment. <a href="#"><i>In re Maddison B.</i>, 74 A.D.3d 1856, 902 N.Y.S.2d 471 (N.Y. App. Div. 4th Dep't 2010).</a></p>
<p><b>Abandonment – Lack of Support:</b> A 17-year-old child came into the country with his father, while his mother stayed behind. The father kicked the child out of the house, leaving the child without a home or any resources. The child no longer knows of his father's whereabouts or contact information. The father has not contacted the child in three years, nor provided any support.</p>	<p>Parents moving without providing child with contact information and/or financial support equals abandonment. <a href="#"><i>Matter of Amandeep S.</i>, NY Slip Op. 50945(U), 44 Misc. 3d 1201(A) (Queens Cty. Fam. Ct. 2014).</a></p>
<p><b>Abuse – Physical:</b> The petitioner's medical experts declared that the rib fractures suffered by the child had been inflicted intentionally, and the record reflects that the child was in the parents' care when he suffered the fractures. The father failed to provide a reasonable and adequate explanation for the child's injuries.</p>	<p>Abuse is found where a doctor finds injuries to be purposeful and inflicted under parents' care. <a href="#"><i>Suffolk Cnty. Dep't of Soc. Servs. V. Kelly K. (In Re Robert A.)</i>, 2013 N.Y. Slip Op. 05689 (N.Y. App. Div. 2d Dep't 2013).</a></p>
<p><b>Abuse – Sexual:</b> Allegations against a father that he had repeatedly sexually abused his 8-year-old natural daughter. The evidence consisted of the child's repeated out of court descriptions to four different adults as well as witnesses' testimony of her behavior. The child also testified unsworn in camera and corroborated her out of court statements.</p>	<p>Father sexually abused child, mother neglects child by allowing abuse. <a href="#"><i>Matter of Telsa Z. (Rickey Z.--Denise Z.)</i>, 71 A.D.3d 1246, 897 N.Y.S.2d 281, 2010 NY Slip Op 1859 (N.Y. App. Div. 3d Dep't 2010).</a></p>
<p><b>Neglect – Dangerous Requests:</b> The father demanded that the son get the father a knife, which he then held to the mother's neck in the presence of the son. A daughter also witnessed the action. This action created an imminent danger of impairment to the son's physical, emotional and mental condition.</p>	<p>A father neglected his son and derivatively neglected his daughter by asking the children to place their mother in danger. <a href="#"><i>Matter of Briana F. v Oswaldo F.</i>, 69 A.D.3d 718 (N.Y. App. Div. 2d Dep't 2010).</a></p>
<p><b>Neglect – Lack of School Attendance:</b> Two children had a significant unexcused absentee rate that had affected their education. The father provided no proof to justify their absences or to show that they were being educated elsewhere.</p>	<p>Educational neglect by significant unexcused absences. <a href="#"><i>In re Cunntrel A.</i>, 70 A.D.3d 1308, 894 N.Y.S.2d 800 (N.Y. App. Div. 4th Dep't 2010).</a></p>



**Other Similar Basis Under Law—Death of one parent:**

Petitioner applied to be named guardian of his nephew, whose father was deceased and whose mother abandoned him.

Death of one parent constitutes a “similar basis under state law” that prevents reunification with that parent. Court did not make findings as to abandonment by mother, because death of father was sufficient to establish eligibility for Special Findings Order. [\*Matter of Luis R. v Maria Elena G., 2014 NY Slip Op 05792 \(N.Y. App. Div. 2nd Dep’t 2014\).\*](#)

**Please note the following rules requiring citation to official reports in New York Courts:**

"New York decisions shall be cited from the official reports, if any." CPLR 5529 [e]. "Where New York authorities are cited in any submissions, New York Official Law Report citations shall be included, if available." Rules of Ct of Appeals [22 NYCRR] § 500.1 [g]. "Where New York authorities are cited in any paper, New York Official Law Report citations must be included." Rules of Ct of Appeals [22 NYCRR] § 510.1 [a].

[http://www.courts.state.ny.us/reporter/new\\_styman.htm](http://www.courts.state.ny.us/reporter/new_styman.htm)

## Step 11: Prepare for the merits hearing on the underlying petition (guardianship or custody), and on the Special Findings Motion

During this final fact-finding hearing, the judge will determine guardianship/custody and hear the motion for Special Findings Order. Schedule a meeting with the proposed guardian and your client approximately one week prior to the hearing in order to prepare.

Remind the proposed guardian and your client that they need to respond truthfully to all questions and dress presentably for court.

You will prepare a brief direct examination of your young client and the proposed guardian/custodian. Contact your Safe Passage Project Mentor Attorney for sample testimony questions. Your client and proposed guardian/custodian should be prepared to answer questions on the following topics:

- The relationship between the proposed guardian and your young client;



- The proposed guardian’s employment, family relationships, and household members;
- Your client’s age and marital status;
- The whereabouts of your client’s parents;
- Why the proposed guardian/custodian is an appropriate person to care for your client;
- The type of abuse, neglect, or abandonment that your client suffered;
- What your client would like to achieve in the future; and
- The proposed guardian’s plans to assist your client in achieving her dreams.

## Step 12: Merits Hearing in Family Court

Once procedural hurdles (fingerprint, background, SCR clearances, Court-Ordered Investigations, and service of process) have been satisfied, the judge will schedule a merits hearing. This is your opportunity to explain your client’s case to the court. Note that different judges run their courtrooms and hearings differently; talk to your Mentor Attorney for judge-specific tips.

At the merits hearing, you will need to establish facts regarding the child’s identity, age, marital status, appropriateness of the guardianship/custody, that reunification with one both parents is not viable due to abandonment, abuse, or neglect, or a similar basis under NY law, and that it is not in the child’s best interest to return to her country of origin.

You will need to take testimony from the young person, guardian, and any other potential witnesses. For a sample list of testimony questions, contact your Safe Passage Project Mentor Attorney.





## Guardianship and Custody: Testimony

During the fact-finding hearing, the judge will determine the issue of guardianship or custody. Because many guardianship cases are not contested, the judge may conduct an inquest (a judicial inquiry) and ask the proposed guardian and/or child questions regarding the best interest of the child. The judge will ultimately decide whether it is in the child's best interest for the guardian to be appointed, and will ask questions about the relationship between the proposed guardian and the child. The judge might also inquire into the proposed guardian's employment, family relationships, and household members. The judge should allow you, as the child's attorney, to solicit testimony as well.

Fact-finding in a custody hearing is similar to that in a guardianship hearing. However, unlike in guardianship cases, the custodian is financially responsible for the child and is expected to secure appropriate housing, education and medical care for the child. Therefore, questions pertaining to the custodian's income may be relevant. If the custodian has any other children, calling them as witnesses may evidence the stability of the home and the fitness of the proposed custodian. As mentioned above, remember to explain in your summation why this household is in the best interests of the child.

Absent a specific request by the judge, you may either call the proposed guardian/custodian or your young client as your first witness. With respect to the proposed guardian/custodian, the judge will be concerned with examining his or her character to serve as a guardian or custodian. If any troublesome issues arose in a Court Ordered Investigation, you will want to address them here.<sup>9</sup>

It is also important to question the guardian/custodian on his or her relationship to your young client (remember that in guardianship cases, they do not have to be related). Lastly, you may want to examine how your young client's life has changed now that the proposed guardian/custodian is involved.

When you call your young client for testimony, you will want to ask questions concerning the

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<sup>9</sup> Always discuss such issues with your Mentor Attorney and with your client and the proposed guardian/custodian in advance of the hearing. Examples: 1.) a household member has a hit on the background check: a neglect case from 5 years ago, on an unrelated child who no longer lives in the home. An investigation was conducted but there was no negative finding against the parent. 2.) A proposed guardian has a hit on the background check: educational neglect was found against Dad last year. 3.) The COI reveals that there are no windows in the basement apartment and the judge asks the family to move.



relationship between the proposed guardian/custodian and your client, and have her explain why she wishes for the proposed guardian/custodian to be appointed to care for her. Finally, if you wish to give a brief summation, make sure to explain why it is in your client's best interest for the proposed guardian to be appointed.

Most guardianship and custody hearings are combined with the Special Findings Hearing. Therefore, consider incorporate the questions below into your direct examination of your young client.

### Special Findings: Testimony

During your questioning of the guardian/custodian and child, you should ensure you elicit testimony that establishes all five elements of Special Immigrant Juvenile Status. Practice the direct questioning with your client to make sure she understands the questions you will ask her in court. You will also want to reiterate each of these points in your summation. Please note that at any point during testimony the judge may interject with questions. Please advise the proposed guardian/custodian and your young client of this possibility. Also keep in mind a key rule of litigation: do not ask any question to which you do not already know the answer!

If the court grants Guardianship/Custody and Special Findings orders, the court will either make the findings on the record and sign an order that day, or issue a written decision that you will receive in the mail. If the order is granted that day, you should offer a proposed Special Findings Order to the court. Your proposed Special Findings order needs to be carefully drafted to fit facts specific to your young client. It is especially important to tailor the GF-42 to include citations to the New York State law the judge used in making her decision. This is because USCIS will eventually analyze the state court orders when adjudicating the child's SIJS petition, and it is important that USCIS understand that the family court judge applied relevant state law in her decision-making process. For a sample Special Findings Order published on the New York State Courts' website, see [Appendix F](#).



### **Before leaving court, double-check that:**

- You have two copies of the guardianship or custody order and Special Findings Order. Both should have raised seals.
- The names of your client, her guardian/custodian and her parents are all spelled correctly;
- Your client's date of birth is accurate;
- The Special Findings Order specifies which parent (father, mother or both) abused, abandoned and/or neglected your client. The order must cite to specific facts as well as to New York State law.

## FAQ: Special Findings

### **Q: What if my client is supported by, or able to reunified with *one*, but *not both* of her parents?**

A: Your client may still be eligible for SIJS provided he or she meets the remaining criteria. In 2013, a New York court correctly held that the plain meaning of "one or both" language in the SIJS statute (*i.e.* that reunification with "one or both" of the juvenile's parent "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law") requires only a finding that reunification with *one* parent is not viable. [Matter of Marcelina M.-G v. Israel S., 112 A.D. 3d 100 \(N.Y. App. Div. 2d Dep't 2013\)](#).

### **Q: Is prison considered abandonment?**

A: Possibly. In *Matter of Jackie B. v. Dennis B.*, the Court found abandonment when the jailed respondent did not attempt to contact the child within a 6-month period. The Court ruled the burden is upon the jailed parent to prove an inability to maintain contact, or evidence that he or she is prevented from doing so. [Matter of Jackie B. v. Dennis B., 75 A.D.3d 692, 903 N.Y.S.2d 612 \(N.Y. App. Div. 3d Dep't 2010\)](#).

### **Q: What evidence do I need to show to prove that it is not in my client's best interest to return to her country of nationality or last residence?**

A: The "best interests" standard present within the SIJS statute is determined by the State



standard. In New York this amounts to a review of the “totality of the circumstances” – psychological, health, wealth, and happiness. [Matter of White, 118 A.D. 2d 336, 342 \(N.Y. App. Div. 1st Dep’t 1986\)](#).

For example, in 2013, the court in *Matter of Marisol* considered the children’s lives as in their home country of El Salvador against their new lives in the United States in the care of their undocumented mother. While in El Salvador, the children’s caretaker, their grandmother, was murdered by a gang. Despite arrests being made in connection to the murder, threats continued against the family. The children were forced to drop out of the school and were unable to even leave their house for fear of being attacked. In contrast, since arriving in the United States, the children regularly attended school, made friends, and their mother was present to provide for them financially and emotionally. Thus the court determined it was in the best interests of the children not to return to their home country of origin. [Matter of Marisol N.H., 115 A.D.3d 185 \(N.Y. App. Div. 2d Dep’t 2014\)](#).



## PHASE TWO, USCIS: Petition for Special Immigrant Juvenile Status

Following the Family Court grant of the guardianship/custody and the issuance of a Special Findings Order, you will proceed with the immigration portion of SIJS, which involves United States Citizenship and Immigration Services and Immigration Court (EOIR). It is very important that you file the I-360 Petition as soon as possible after the requisite orders are granted in family court. In fact, we recommend that you prepare the Form BEFORE you obtain your final Family Court Special Findings. The day USCIS receives the form is the day that marks your client's "place in line." Because priority dates in the Visa Bulletin inch along, a delay of even a few days can make a difference in how quickly your client finally acquires legal immigration status.

The immigration portion of SIJS includes the I-360 Petition for Special Immigrant Juvenile Status, the termination of removal proceedings in the Immigration Court if applicable (**Phase 3**), and an Application for Adjustment of Status (*i.e.*, a green card) (**Phase 4**). Remember, Phase 2—the filing of the I-360 Petition only—is for clients who are in removal proceedings and/or who cannot simultaneously file Form I-485 Application for Adjustment of Status.

Please note that USCIS **must** receive your client's SIJS Petition before she turns 21 years of age. USCIS may adjudicate the petition after the age of 21 because her age will be "locked in" on the date the Petition is received by USCIS. If you are even a few days away from the birth date, please contact Safe Passage Project. There is no grace period.



## Step 13: Complete and File the Petition for Special Immigrant Juvenile Status

On the day you receive the guardianship/custody order and the Special Findings Order in Family Court, have your client sign a G-28 Attorney's Entry of Appearance for matters before USCIS, and the I-360 Petition. Otherwise, have your client sign the I-360 Petition and G-28 as soon as possible.

Visit our website (under Resources) for a link to videos of one of our Safe Passage Mentor Attorneys completing these immigration forms.

### What to File with USCIS

- Cover Letter;
- Form G-28, Notice of Entry of Appearance as an Attorney, signed by client and attorney and printed on light blue paper;
- Form I-360, Petition for SIJS, signed by client, attorney and translator (if applicable);
- Copy<sup>10</sup> of the Special Findings Order;
- Copy of the Letter of Guardianship or Custody Order;
- Copy of Birth Certificate or Other Proof of Age and Identity with certified English translations;

**PRACTICE TIP:**  
Always download USCIS forms directly from the [USCIS website](#) unless otherwise directed by your Mentor Attorney. The form editions change frequently and with very little notice, and it's important to use the most up-to-date edition to avoid a rejection of the filing.

Contact your Safe Passage Project Mentor Attorney for a sample completed I-360 filing.

If the Child is under the age of 14, a parent/guardian/custodian may sign the forms on their behalf.

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<sup>10</sup> Do not mail the original Family Court orders to USCIS. Keep originals in a safe place for presentation at the Adjustment of Status Interview.



## Where to File

**As of March 2017, Form I-360, Petition for Special Immigrant Juvenile Status, should be mailed to:**

For USPS:

USCIS  
P.O. Box 805887  
Chicago, IL 60680-4120

PRACTICE TIP:  
**Always** review  
[www.uscis.gov](http://www.uscis.gov) for updated  
filing instructions prior to  
filing a petition.

For Express Mail or Courier Deliveries (FedEx, UPS):

USCIS  
Attn: FBAS  
131 South Dearborn 3<sup>rd</sup> Floor  
Chicago, IL 60603-5517

Safe Passage Project strongly recommends using a mailing method that will provide proof of delivery, such as FedEx or USPS Express Mail.

After you have filed Form I-360, USCIS will send a document called Form I-797C, Notice of Action ("Receipt Notice"), confirming the date that they received the petition. According to Section 235(d)(2) of the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA), USCIS must adjudicate SIJS cases within 180 days of receipt. USCIS will respond in one of three ways: they will approve the petition, send a request for additional evidence, or deny the case.

In the event that SIJS is approved, if your client is in removal proceedings, you can now file a motion to terminate the removal proceedings on her behalf and subsequently file her application for adjustment of status. If USCIS denies the I-360 Petition, it is possible to appeal the denial. USCIS will attach instructions to the denial on how to file an appeal.

If you receive a Request for Evidence (RFE) please contact us. Since the winter of 2016, USCIS has been training new adjudicators and has been implementing a new Adjudicator's Field Manual. It has become quite common for the agency to send back petitions at least once requesting additional evidence. Safe Passage Project has developed best practices in responding to these RFEs. We also track the behavior of the agency and regularly coordinate with the USCIS to improve the overall adjudication of these petitions.



**WARNING:** Your client cannot depart the United States until she has received her “green card,” *even if* she has an approved I-360, Petition for Special Immigrant Juvenile Status.

Please note that even if your client’s Form I-360, Petition for Special Immigrant Juvenile Status, is approved, she **CANNOT DEPART THE UNITED STATES**. In fact, in most instances, she should not leave **until permanent residency is granted and her “green card” is in hand**. If your young client leaves the United States before such time, s/he may not be allowed to reenter for 3 or 10 years, depending on his or her prior length of unlawful presence within the United States. In some limited cases, it may be possible to obtain Advance Parole on the basis of a pending Form I-485, Application for Adjustment of Status (Phase 4), but even then, we do not recommend that your client depart the country because there is no guarantee that she will be let back in at a port of entry.

## FAQ: Filing Petitions with USCIS

**Q: How will I know USCIS has received my client’s petition?**

A: Upon receipt USCIS will mail you, as the attorney of record, a Form I-797C, Notice of Action, confirming they are processing your client’s case.

**Q: How I can check on the status of my client’s case?**

A: Use USCIS’s online [Case Status Online system](#), “My Case Status,” to check the status of your client’s case. We recommend you create a free account with the Case Status Online as a representative and set up an email or text message alert for status updates on your young client’s case. In the alternative, telephone the National Customer Service Center at 1-800-375-5283. Both options will require you to provide your client’s I-797C receipt number and “A number” and to have a Form G-28, Notice of Entry of Appearance as an Attorney, on file.

**Q: What is the typical processing time?**

A: Congress has mandated adjudication within 180 days of receipt. To check processing times on the USCIS website, visit <https://egov.uscis.gov/cris/processTimesDisplayInit.do>. Please let us know if your case is taking longer than 180 days.





## PHASE THREE, Executive Office of Immigration Review: Motion to Administratively Close or Terminate Removal Proceedings

If your young client is in removal proceedings, you will need to file a motion to terminate removal proceedings before you can proceed with filing for Adjustment of Status before USCIS. Please note the majority of children under the umbrella of the Safe Passage Project are in removal proceedings and thus filing for SIJS “defensively”. If your client is not in removal proceedings, then you may submit the I-360 SIJS Petition and the Adjustment of Status Application (Forms I-485, I-765, G-325a and fee waiver) simultaneously to the USCIS, as long as the priority date is current.

### Step 14: Administratively Close and, eventually, Terminate Removal Proceedings in Immigration Court (EOIR)

Prepare a written Motion to Administratively Close or Terminate Removal Proceedings, or make an oral motion in open court

As mentioned above, “admin closure” is a docketing tool that permits judges to take cases off the active docket and “shelve” them, for example while a separate adjudicatory body like USCIS makes a decision on a visa application. In cases that are administratively closed, respondents do not need to come back to immigration court for continued appearances, though the removal proceedings technically remain open. Immigration judges can grant administrative closure even over the objection of one of the parties. *Matter of Avetisyan*, I. & N. Dec. 688 (BIA 2012); *Matter of W-Y-U*, 27 I. & N. Dec. 17 (BIA 2017).

By contrast, termination completely ends removal proceedings. Once the Immigration Judge terminates removal proceedings, your client’s case before the Immigration Court is concluded. You may now proceed to assist her in filing her Application for Adjustment of Status to become a Lawful Permanent Resident, *if her priority date is current and there is a SIJS visa available*. See “Visa Retrogression,” page 54, below. Termination is usually reserved for situations where a respondent has immediate relief available (for example, the respondent has won asylum, or has an approved and available visa and can adjust status right away). In most (though not all) instances, it is advisable to terminate removal proceedings before filing an I-485 Application for



## Adjustment of Status.

Though you can make a Motion to Administratively Close or Terminate removal proceedings at any time, including when your client's I-360 Petition for Special Immigrant Juvenile Status is pending, a judge is more likely to agree to admin close proceedings once the SIJS petition has been approved by USCIS. Because of the long visa wait times for SIJS applicants from Honduras, Guatemala and El Salvador, many SIJS applicants from those countries will spend months or even years with an approved I-360 Petition, but without the opportunity to adjust status. During this period, most judges at the New York Immigration Court choose to admin close, rather than terminate, removal proceedings.

Once the I-360 Petition for Special Immigrant Juvenile Status is approved *and* a visa is available (see Notes on SIJS Visa Backlog/Retrogression, pages 10 and 54), you can request termination of the proceedings. If proceedings were previously admin closed, this is accomplished by filing a written Motion to Recalendar and Terminate. If proceedings were never admin closed, file a Motion to Terminate.

Motions to Admin Close or to Terminate can be made orally during a Master Calendar Hearing, or in writing. If your client's I-360 Petition is approved in May, but her next Master Calendar Hearing is not until July, you should consider filing a written motion. If her next Master Calendar Hearing is at the end of May, you may choose to wait to request admin closure orally.

Please contact your Safe Passage Mentor Attorney for sample motions. Remember that all written motions must be served on ICE District Counsel as well as EOIR, and that all motions must be received at least 15 days before the next Master Calendar Hearing.



## Note on SIJS VISA Retrogression

As mentioned above, children who have an approved I-360, Petition for Special Immigrant Juvenile Status, are able to move on the Phase 4 and apply for an adjustment of status only once their Final Action Date (previously referred to as a “Priority Date”) becomes current. A Final Action Date is the date that the visa petition was received by USCIS, and is indicated on the receipt notice.

There are a limited number of SIJS visas available each year. SIJS visas are drawn from the fourth preference employment-based category (EB-4) in the Department of State’s (DOS) monthly [Visa Bulletin](#). Only about 9,940 visas are available in this category annually. Each country is allotted only 695 visas per year.

If the Visa Bulletin indicates that an applicant’s Final Action Date is current (i.e. reflects today’s date, indicated by a “C”), the applicant with an approved visa can apply for adjustment of status right away. A Final Action Date is not current if the country allotment for any given visa category has been used up. Mexico, Guatemala, Honduras or El Salvador are countries with the highest numbers of SIJS applicants, and for the past several years, all of the SIJS visas available to citizens of those countries have been distributed. As of July 2017, the Final Action Date for SIJS applicants from El Salvador, Guatemala, Honduras and Mexico is September 15, 2015, meaning that only those applicants who filed their Form I-360 Petitions for SIJS on or before September 15, 2015, and who therefore have a Final Action Date of September 15, 2015 or before, can file their applications for adjustment of status. These dates frequently advance more significantly in the new fiscal year, which begins on October 1 of each year.



**A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES**

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

<u>Employment-Based</u>	All Charge-ability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	01JAN12	C	01JAN12	C	C
2nd	01APR15	22APR13	01APR15	22JUL08	01APR15	01APR15
3rd	C	01JAN12	C	15JUL06	C	01JUN15
Other Workers	C	01JAN04	C	15JUL06	C	01JUN15
<b>4th</b>	C	C	<b>15SEP15</b>	15SEP15	<b>15SEP15</b>	C



An applicant cannot adjust status to that of permanent resident unless there is a visa available. In short, there is currently a “waiting list” for SIJS visas for applicants from the Guatemala, El Salvador, Honduras, and Mexico. However, it is important to note that the Final Action Date chart does not move in a linear fashion. The EB-4 Final Action Date has been stuck at July 15, 2015, for quite some time, but could suddenly jump forward several months or years without warning. Safe Passage Project monitors the *Visa Bulletin* carefully.

Where a child has an approved SIJS petition but no visa is currently available, she may still be able to administratively close her removal proceedings (Phase 3), but she will not be able to adjust her status or get a work permit. Your client should, unfortunately, be prepared to wait in immigration limbo for several years.

A bright spot: in October 2016, DOS announced a new policy: in addition to publishing the Final Action Date Chart, it would publish a chart entitled “Dates for Filing of Employment-Based Visa Applications.” If the *Filing Date*, as opposed to the Final Action Date, is current, USCIS now has the option of accepting applications for adjustment of status. USCIS would likely not adjudicate the application in the absence of an available visa (which is still governed by the Final Action Date chart); however, applicants could at least file their adjustment of status applications *along with an application for employment authorization*. If approved, this would allow them to receive an Employment Authorization Document during the possibly years-long pendency of their application for adjustment of status.

As of July 2017, USCIS is [currently relying only on the Final Action Date Chart](#), *not* the Filing Date Chart of the Visa Bulletin. However, if USCIS changes this, SIJS applicants caught in the visa retrogression could file their application for adjustment of status and their application for employment authorization, all while waiting for the Final Action Date to become current. Again, Safe Passage Project monitors these developments carefully and will alert you to any changes that may affect your client’s case.



**B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS**

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit [www.uscis.gov/visabulletininfo](http://www.uscis.gov/visabulletininfo) for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	01OCT13	01FEB09	C	C
3rd	C	01SEP15	01JAN07	C	01JAN16
Other Workers	C	01JUN08	01JAN07	C	01JAN16
4th	C	C	C	C	C



## PHASE FOUR, USCIS: Apply for Adjustment of Status

### Step 15: Prepare and File Form I-485 Application for Adjustment of Status and Supporting Documentation

This last step allows your client to transition to full Legal Permanent Resident (LPR) status. We list the forms and briefly outline the procedures here. This process takes time and it is important to get the details right.

Assuming your client's I-360, Petition for Special Immigrant Juvenile Status, has been approved, there is a SIJS visa available (i.e. the Final Action Date is current, *or* the Filing Date is current and USCIS is accepting applications based on the Filing Date Chart), *and* your client has no inadmissibility issues, file the following documents with USCIS:

- **Form I-485, Application for Adjustment of Status;**

If extra space is required to complete an item, attach an additional sheet to the application and write the client's name and Alien Registration Number (A-Number) at the top of each sheet. Be sure to indicate which Part and Item Number the answer refers to and have your young client sign the additional sheet as well, following the instructions for Form I-485, available on the USCIS website.

Be sure to read each and every question on pages 3 through 5 (the "inadmissibility questions") to your client in her native language. If she answers "yes" to any of these questions, contact your Safe Passage Project Mentor Attorney.

- **Form G-325A, Biographic Information;**
- **Form I-765, Application for Employment Authorization;**

Your client can apply for employment authorization on the basis of her pending (though simultaneously-filed) I-485 Application for Adjustment of Status. Her I-765 eligibility category is therefor (c)(9). Read the I-765 instructions thoroughly for more information.

- **Four (4) passport-style photos (two each for the I-485 and I-765);**
- **Copy of birth certificate or other proof of age and identity with certified English**



**translations;**

Remember, a copy of the birth certificate with certified translation is acceptable. Do not send an original, but keep it in a safe place for presentation at the Adjustment of Status interview.

- **Filing Fee or Form I-912, Application for Fee Waiver;**

- Fees must be made payable to the Department of Homeland Security. Note that fees change regularly. For the most current information, consult the Fees page of the USCIS website, located at <https://www.uscis.gov/forms/our-fees>.
- If your client cannot afford to pay the filing fees (very likely, as they are over \$1,000), plan on filing Form I-912, Application for Fee Waiver. Please contact your Safe Passage Mentor Attorney for sample fee waivers. Note that as of the date of publication of this manual, previous editions of Form I-912 are acceptable, and we recommend using the previous (more straightforward) edition. Contact your Mentor Attorney for the form.

- **MAYBE: Form I-693, Medical Exam and Supplemental Exam in a Sealed Envelope;**

- Your client must visit a USCIS-approved civil surgeon, who will conduct a medical exam and give your client a completed Form I-693. The civil surgeon will give your client the original signed form *in a sealed envelope. Neither you nor your client can open this envelope*; it must be delivered sealed to USCIS. Advise your young client to obtain an additional copy of the medical examination for her own records. With your young client's permission, you can review the exam results to confirm that there are no issues with inadmissibility owing to medical conditions.
- A list of civil surgeons can be found on [USCIS's website](#). When making an appointment with a civil surgeon, advise your client to inquire about the fees. Fees are not regulated by USCIS and can vary between civil surgeons.
- **Be advised that a completed and signed Form I-693 is only valid for one year, and it must be valid at the time of adjudication. If the form expires during the pendency of the application, your client will have to pay for another medical exam. Because adjustment of status applications can**





**take a long time to adjudicate, we recommend that you omit Form I-693 Medical Exam out of your original filing.** Instead, you can include a line in the cover letter saying that you will provide the Form I-693, Medical Exam at the adjustment of status interview. Leaving the medical exam out of the initial filing is acceptable as long as you include a line like this. Please contact your Safe Passage Mentor Attorney with any questions.

NOTE ON SIGNATURES:

If your client is under the age of 14, their guardian/custodian may sign all of the above forms on the client's behalf (except Form I-693, which is signed by a civil surgeon)



**Possible Inadmissibility Issues:** A number of things can cause someone to be inadmissible to the United States, meaning that they cannot adjust status to that of Legal Permanent Resident. These can include criminal convictions or pleas, multiple entries to the United States, fraud or misrepresentation, previously claiming to be a U.S. citizen, and more. It is very important that you go through the inadmissibility questions on pages 3-5 of Form I-485, and that you confirm that your client has never been arrested, cited or charged with criminal activity. Some juvenile offenses are not considered convictions for immigration purposes. If your client has been arrested at any time please consult with us.

Please note that the following, while normally grounds of inadmissibility, are *inapplicable* to children adjusting status as Special Immigrant Juveniles:

Other grounds of inadmissibility may be waived or waivable if the client qualifies for certain inadmissibility waivers. However, certain waivers are only available if the applicant has a qualifying U.S. citizen or Legal Permanent Resident relative. Contact Safe Passage Project for details or concerns regarding inadmissibility.

## Step 16: Biometrics Appointment

After USCIS receives your client's Form I-485, Application for Adjustment of Status, USCIS will send her a biometrics appointment notice with the location of the nearest Application Service Center site. USCIS will collect your client's fingerprints, photo and signature at the Application Service Center appointment. Your client must attend this appointment and bring photo identification, such as a school ID or ORR Release form with photo. A parent/guardian or another person can accompany your young client to the appointment.

The appointment will take approximately one hour, though each Service Center site is different. At the end of the appointment, your young client will receive a stamp on her biometrics notice confirming her appearance. Remind your young client to keep this document in a safe location.

Once the biometrics appointment is completed, USCIS should process and mail your client's Employment Authorization Document (EAD). This card permits your client to work lawfully in the United States.



## Step 17: Adjustment of Status Interview

After the biometrics appointment, USCIS may schedule your young client for an interview at the local USCIS office. USCIS will send your client a notification in the mail with the date and time of his or her interview. You will also receive this notice as the attorney of record. In or around New York City, interviews typically occur at 26 Federal Plaza in Manhattan or at the Long Island Field Office. It is at this interview that a USCIS officer will adjudicate the previously-submitted I-485, Application for Adjustment of Status. Please note that it's also possible that USCIS will adjudicate the application on the papers, and may not schedule an interview at all. This is normal.

If your client is called in for an interview, prepare your client for the interview by going over all the questions in the Form I-485 and making sure that your client understands the complicated language used in this form. You should also go over your client's I-360 Petition for Special Immigrant Juvenile Status and the underlying court orders, as it's possible that the officer will ask questions about the underlying visa petition.

In the interview itself, you will serve an important role as both legal counsel and support system. Remember to bring your Form G-28 Notice of Entry of Appearance as Attorney (printed on light-blue paper), and a valid form of photo identification. If your client does not speak English, an interpreter may need to accompany you. Contact your Safe Passage Mentor Attorney for guidance, as practices for interpreters differ at various local offices. Advise your young client to have a good night's sleep beforehand, to arrive on time, and to dress nicely. You and your client should bring originals or certified copies of all documents previously submitted in your young client's immigration case, including birth certificates and Family Court orders. In addition, your client should bring her passport (if she has obtained one).

After the interview, USCIS will mail a notice of approval, denial, or a request for additional evidence in the matter. If your young client's application for adjustment of status is approved, she will receive a Permanent Resident Card ("green card"), and notice of approval of her adjustment of status within 90 days. Alternatively, at the adjustment of status interview, the immigration officer may also choose to place a I-551 stamp inside your client's passport, or to print out a letter with similar information to demonstrate evidence of lawful permanent residence.

If USCIS denies your young client's application, it will attach a specific notice to the decision letter explaining why it was denied. USCIS will also provide Form I-290B, which should be



completed to request that USCIS reopen or reconsider the decision. There are specific deadlines involved; please contact your Safe Passage Project Mentor Attorney if you receive a denial notice.

## FAQ: Adjustment of Status Interview

### **Q: How should I prepare my young client for the adjustment of status interview?**

A: It is important to schedule a mock interview with your client to help her better understand the process and lessen her nerves. Go through all the questions on the Form I-485 with her. Make sure she understands the complicated language used in the questions. Have your young client practice telling you her basic biographical information, how she entered the United States, whether she is in school, is working, and ensure that she is able to explain any arrests, etc.

### **Q: How will I know when my client's Adjustment of Status Application is approved?**

A: If USCIS does not issue an approval at the end of the interview, you can use USCIS's online Case Status Online system, "My Case Status," to check the status of your client's case. We recommend you create a free account with the Case Status Online as a representative and set up an email or text message alert for status updates on your young client's case. In the alternative, telephone the National Customer Service Center at 1-800-375-5283. Both options will require you to provide your client's I-797C receipt number and A number and to have a Form G-28, Notice of Entry of Appearance, as an Attorney, on file.



## Step 18: Receive “Green Card” and Close the Case

Once your client’s I-485 Application for Adjustment of Status is approved, she is a Legal Permanent Resident of the United States! She has permission to reside in the United States indefinitely, as long as no new grounds of removability or deportability arise.

As soon as the “green card” arrives, we recommend holding a case closing meeting with your client. Safe Passage Project has a case closing letter that we recommend reviewing carefully with your client, as it contains very important information about your client’s rights and responsibilities as a Legal Permanent Resident. In particular, it addresses:

- Residency requirements;
- Required registration for selective service (men only); and
- Avoiding grounds of inadmissibility or removability.

Permanent resident status does not expire, though a Permanent Resident can lose their status if, for example, they spend too much time outside of the United States (known as “abandoning” their permanent residency), or if they commit certain crimes that make them removable. The Permanent Resident Card has an expiration date ten years from the date of issuance, but the status itself does not expire.

Assuming no new grounds of inadmissibility or removability arise, your client may be eligible to apply to become a citizen (to “naturalize”) after five years as a permanent resident. Encourage your client to contact Safe Passage Project five years from the date permanent residence was granted, and we will assist the client in filing their naturalization paperwork or will locate a low-bono or *pro bono* attorney to assist them.

**Congratulations! You’ve changed a child’s life. Take a breath, and get ready to take another case. 😊**

\*\*\*Please contact your Safe Passage Mentor Attorney if you have any case-specific questions, or Deputy Executive Director Gui Stampur with any other questions\*\*\*



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## Appendix A – “Special Immigrant” statute current through Nov. 2014

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

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

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and
- (ii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
  - 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
  - no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

Please check 8 C.F.R. § 204.11 for regulations defining special immigrant. As of November of 2014 the published regulations are out of date because they do not reflect the 2008 statutory changes. Proposed regulations are expected. Still, it is wise to read over the regulations and to ask questions if you have questions about the agency’s interpretation of the statutory provisions. Recently, USCIS issued an Adjudicator’s Field Guide that provides instructions to



the adjudicators about the evidence and standards for granting Special Immigrant Juvenile Status. You can find the document at:

<https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html>





## Appendix B – Foreign Birth Certificates and Translations of Foreign Documents

**Obtaining Foreign Birth Certificates:** Although the easiest way to obtain a foreign birth certificate is via the helpful assistance of family or friends in the child’s home country, this is not always possible.

To obtain a foreign birth certificate on behalf of your client, you should first research the country’s system for record keeping. One of the main sources of for details on obtaining foreign birth certificates is the Foreign Affairs Manual: <http://www.state.gov/m/a/dir/regs/fam/>

Please note that Safe Passage volunteer students can aid *pro bono* attorneys in requesting these documents. To request a volunteer’s assistance, please contact your Mentor Attorney.

**Translations of Foreign Documents:** Note that the New York Civil Practice Law and Rules (CPLR) do not require that translations be limited to people who have a special certification in translation. CPLR 2101(b) only requires that an document in a foreign language be accompanied by an English translation of the document, along with an affidavit from the translator stating (1) her qualifications and (2) that the translation is accurate.

### *Sample Affidavit of Translation:*

I, \_\_\_\_\_, being duly sworn, depose and say that I am fluent in both the English and Spanish languages, having [*been raised speaking both languages/studying Spanish at the primary, secondary and university levels, etc*]. I swear that I translated the attached document from Spanish into English and hereby certify that it is a true and complete translation to the best of my knowledge, ability, and belief.

Signature of Translator: \_\_\_\_\_ Date: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_ of the year \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC



## Appendix C – New York Family Court Forms: Guardianship

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

**Form 6-1, Petition for Appointment of Guardian of a Person:**

<http://www.nycourts.gov/forms/familycourt/pdfs/6-1-a.pdf>

**Form 6-1(a), Petition by Person Over 14 for Appointment of Guardian of a Person:**

<https://www.nycourts.gov/forms/familycourt/pdfs/6-1-a.pdf>

**Form 6-2: Oath and Designation for Service of Process:**

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

**Form 6-3: Consent of Person Over 18 and Preference of Person Over 14 Regarding Appointment of Guardian:** <http://www.nycourts.gov/forms/familycourt/pdfs/6-3.pdf>

**Form 6-4: Waiver of Process, Renunciation or Consent to Letters of Guardianship:**

<http://nycourts.gov/forms/familycourt/pdfs/6-4.pdf>

**Form OCFS-3909:** <http://cqc.ny.gov/uploads/guardianship/ocfs3909.pdf>

For all remaining forms, including the **GF-29, Notice of Appearance**, and **Form GF-42 Special Findings Order**, see: <http://www.nycourts.gov/forms/familycourt/general.shtml>

To keep current with updated versions of the forms cited above visit:

<http://www.nycourts.gov/forms/familycourt/guardianship.shtml>

For sample guardianship petitions and Special Findings filings specific to guardianship, please contact your Safe Passage Mentor Attorney. We have samples that can assist our cooperating attorneys. We do not make these samples available to the public.



## Appendix D – New York Family Court Forms: Custody

**General Form 17, Petition for Custody:** <http://www.nycourts.gov/forms/familycourt/pdfs/gf-17.pdf>

For all remaining forms, including the **GF-29, Notice of Appearance**, and **Form GF-42, Special Findings Order**, see: <http://www.nycourts.gov/forms/familycourt/general.shtml>

To keep current with updated versions of the forms cited above visit:

<http://www.nycourts.gov/forms/familycourt/guardianship.shtml>

For sample custody petitions and Special Findings filings specific to custody, please contact your Safe Passage Mentor Attorney.



## Appendix E – Service on Respondents

### Personal Service

The most common form of service is direct in-person service, many times accomplished by a family member or acquaintance of the child. The “process server” must be over age 18 or older and not a party to the proceedings. This person should physically take the documents and deliver them directly to the parent(s) in the home country. The process server must complete and Affidavit of Personal Service in their native language, describing the date and location that service was effected.

### Mail Service

Another common form of service is via international carriers such as DHL or Federal Express. Additionally, judges are becoming more comfortable with facsimile and email as forms of service. Please contact your Safe Passage Mentor Attorney to discuss the best method of service in your case, and to obtain sample service and consent documents in English, Spanish or French (other languages upon request).

N.B. In some parts of El Salvador and Guatemala, USPS and Fed Ex will not deliver documents because it is too dangerous for the mail carriers.

### Service in Conformity with the Hague Convention

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

To determine if a country is a party to the Hague Convention on International Service, please visit [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=17](http://www.hcch.net/index_en.php?act=conventions.text&cid=17)

Please note: **Guatemala, El Salvador, Honduras, and Ecuador are NOT parties to this Convention**, which means that service per the CPLR should control. Mexico, is a state party to the Convention. However, there is confusion amongst Family Court judges as to when the Hague Convention applies. Please contact your Safe Passage Mentor Attorney for guidance.



Even if a country is a party to the Hague Convention, the methods of service prescribed by the Hague might not be applicable.

### **Service through the Central Authority of the Individual Country**

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

### **Service by Internationally Registered Mail**

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

### **Service through a State Agent**

An attorney may serve an individual through an agent of the foreign state. The individuals must be “judicial officers, officers, officials or other component persons of the State of Destination.” See <http://www.hagueservice.net/forms.html>

### **Waiver of Service and Consent to Guardianship/Custody**

Some judges accept Form 6-4 “waiver and consent,” signed and notarized by the respondent parent, in lieu of proof that the summons and petition was personally served upon the parent. The respondent parent could, if they choose, sign form 6-4 in their native language. The form states that they consent to the form of relief being sought (guardianship or custody), and that they do not require future service of motions, subsequent petitions, judges’ orders, etc. Speak to your Safe Passage Mentor Attorney to see if requesting Form 6-4 from the respondent parent(s) is a good idea.



## Appendix F – Available Samples

Please contact Safe Passage for any of the below samples:

### Family Court

- Guardianship Petition
- Custody Petition
- Notice of Motion
- Special Findings Motion
- Sample Attorney Affirmation
- Memorandum of Law
- Affidavit of the Child
- Special Findings Order
- Cover Letter to Judge

### Immigration Court (EOIR)

- Motion to Continue Removal Proceedings
- Motion to Terminate Removal Proceedings
- Motion to Administratively Close Removal Proceedings
- Motion to Re-calendar and Terminate Removal Proceedings

**We do not post these online because Safe Passage Project Mentor Attorneys work closely with our *pro bono* attorneys to discuss how to appropriately draft the pleadings in each case.**

**Please note that these samples are intended only as guides. As a child’s attorney, you are expected to craft each document to fit the specifics of your case. There is no “one size fits all” approach, and the pleadings should be carefully drafted to reflect your client’s needs and situation.**



## Appendix G – Immigration Forms

All forms are available online. Safe Passage Project recommends downloading the forms from the USCIS website every time you need to fill out a form. USCIS often changes the form edition without notice, and will not accept previous editions.

**Form G-28, Notice of Entry of Appearance as an Attorney:** <http://www.uscis.gov/g-28>

**Form I-360, Petition for Special Immigrant Juvenile Status:** <http://www.uscis.gov/i-360>

**Form I-485, Application for Adjustment of Status:** <http://www.uscis.gov/i-485>

**Form I-765, Application for Employment Authorization:** <http://www.uscis.gov/i-765>

**Form G-325A, Biographic Information:** <http://www.uscis.gov/g-325a>

**Form I-601, Application for Waiver of Grounds of Inadmissibility:**  
<http://www.uscis.gov/i-601>

**Fee Schedule:** <http://www.uscis.gov/fees>

**Form I-912, Application for Fee Waiver:** As of the publication of this Manual, USCIS has published an updated edition of Form I-912. However, USCIS still accepts previous versions of the form. The form edition dated 5/10/2013 is much more straightforward, but is no longer downloadable on the USCIS website. Contact your Safe Passage Project mentor for a copy of the older version of that form.



## Appendix H – Inadmissibility Issues

Certain grounds of inadmissibility are inapplicable or statutorily waived for young people who have been granted Special Immigrant Juvenile Status.

The following are grounds of inadmissibility automatically waived for SIJS applicants. Your client does not need a waiver if she is charged with or has done any of the following:

- **Public Charge** (INA § 212(a)(4))
- **Worked without Authorization** (INA § 212(a)(5)(A))
- **Entered Illegally or has incurred Immigration Violations** (INA § 212(a)(6)(A))
- **Material Misrepresentation of Fact** (INA § 212(a)(6)(C))
- **Stowaway or Smuggler** (INA § 212(a)(6)(D))
- **Entered without Proper Documentation** (INA § 212(a)(7)(A))
- **Unlawful Presence** (INA § 212(a)(9)(B))

Though not automatically waived, people with SIJS status who are inadmissible due to the following violations may be eligible for waiver of inadmissibility. This is an advanced topic and requires significant research and expertise; please consult with Safe Passage Project or refer to *The Waivers Book: Advanced Issues in Immigration Law Practice*, AILA, 2011.





**Waivers of inadmissibility may be possible** (please be sure to discuss with your Safe Passage Mentor Attorney)

- Health related grounds (INA § 212(a)(1))
  - 212(g) waiver
- Certain crimes (INA § 212(a)(2))
  - Be particularly aware of controlled substances and firearms offenses. (INA § 212(a)(2))
  - The Attorney General can waive criminal offenses for humanitarian purposes.
  - There is also a waiver if the conviction is for one possession of marijuana less than 30 grams.
- Having been previously removed (INA § 212(a)(9)(A))
- having previous immigration violations (INA § 212(a)(9)(C))

**Example:** A child from Honduras arrives at the U.S. border and is stopped by a U.S. Immigration Officer. He lies, says he is Mexican (misrepresentation-(INA § 212(a)(6)(C))), and is sent back into Mexico (expedited removal-(INA § 212(a)(9)(A))). He then re-enters the US(INA § 212(a)(9)(C))). The I-601 waiver may waive all three (3) grounds of inadmissibility. Under certain circumstances form I-212 may (or should) be used instead to apply for the exceptions listed in INA § 212(a)(9)(A)(iii) and INA § 212(a)(9)(C)(ii).

### **No Waivers Available**

- Security related grounds (INA § 212(a)(3))
  - There is no waiver for this violation, *except* for the 212(d)(3) waiver. To qualify for this waiver, the juvenile must have entered with a non-immigrant visa. This would be an unusual situation for a Safe Passage Project Client. Please contact us for more guidance.
- draft evaders (INA § 212(a)(8)(B))
- 212(a)(2)(A), (B) and (C) (except for a single instance of simple possession of 30 grams or less of marijuana) and INA § 212(a)(3)(A), (B), (C) and (E).



## Appendix I– Useful Contact Information

### **Safe Passage Project**

Phone Number: 212-324-6558

Address: 185 West Broadway, New York, NY 10013

Email: [help@safepassageproject.org](mailto:help@safepassageproject.org)

Website: [www.safepassageproject.org](http://www.safepassageproject.org)

Ongoing Support & Law Student Assistance: The Safe Passage Project provides ongoing support throughout your entire *pro bono* representation of a young person. In addition to providing manuals, samples, and mentorship, we have a number of law students and interpreters ready to assist you with client intakes, translations, and research. To be paired with a law student, please email Safe Passage at [help@safepassageproject.org](mailto:help@safepassageproject.org)

Interpreting & Translation Support: If you would like a volunteer interpreter to assist you in communicating with your young client, please email Safe Passage at: [help@safepassageproject.org](mailto:help@safepassageproject.org). You do not need to hire a professional translation service for documents. Please let us know how we can support you with language services.

Meeting Space: If you would like to reserve a room at Safe Passage for client meetings, please email Safe Passage at: [help@safepassageproject.org](mailto:help@safepassageproject.org)

### **Executive Office for Immigration Review** (the Immigration Court at 26 Federal Plaza)

Phone Number: 917-454-1040

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

To check an A # and learn the status of the next hearing you can use an automated number system. Dial 1-800- 898-7180.

### **New York City Family Courts**

Bronx

Phone Number: 718-618-2098

Address: 900 Sheridan Ave., Bronx, NY 10451.

New York (Manhattan)

Phone Number: 646-386-5200



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

Kings (Brooklyn)

Phone Number: 347-401-9610

Address: 330 Jay Street, Brooklyn, NY 11201.

Queens

Phone Number: 718-298-0197

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

Richmond (Staten Island)

Phone Number: 718-675-8800

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

**Long Island Family Courts:**

Nassau

Phone Number: 516-493-4000

Address: 1200 Old Country Road, Westbury, NY 11590

Suffolk

Central Islip

Phone Number: 61-853-4375

Address: 400 Carleton Ave., Central Islip, NY 11722

Riverhead

Phone Number: 631-852-3906

Address: 889 E. Main St., #308, Riverhead, NY 11901

*Other New York County Family Courts:*

**Westchester Family Courts**

White Plains

Phone Number: 914-824-5500

Address: 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601



#### Yonkers

Phone Number: 914-831-6555

Address: 53 South Broadway, 3<sup>rd</sup> Floor, Yonkers, NY 10701

#### New Rochelle

Phone Number: 914-831-6590

Address: 420 North Avenue, New Rochelle, NY 10801

#### Rockland

Phone Number: 845-483-8210

Address: 1 South Main Street, Suite 300, New City, NY 10956

#### Putnam

Phone Number: 845-208-7800

Address: 20 County Center, Carmel, NY 10512

#### Orange

Phone Number: 845-476-3520

Address: 285 Main Street, Goshen, NY 10924

#### Dutchess

Phone Number: 845-431-1850

Address: 50 Market Street, Poughkeepsie, NY 12601

**For updated information please visit:**

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

#### **USCIS Information**

National Customer Service Center: 1-800-375-5283

#### **USCIS Civil Surgeon Locator**

Young people who are applying for adjustment of status through SIJS are required to have a medical examination by a civil surgeon. A civil surgeon is a doctor who has been designated by



the United States Citizenship and Immigration Services must conduct this type of medical examination. To locate a civil surgeon, please visit:

[https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office\\_type=CIV](https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=CIV)

### **USCIS Case Status Check**

If your client has a pending case at USCIS, use their Receipt Notice to look up their case status using this website:

[https://egov.uscis.gov/cris/Dashboard.do;jsessionid=bacra\\_3mIBPgG6p3l63lu](https://egov.uscis.gov/cris/Dashboard.do;jsessionid=bacra_3mIBPgG6p3l63lu)

The website is not always up to date. Call the USCIS hotline with questions.

**Address Changes:** All non-citizens must file a Change of Address form with immigration (EOIR, USCIS, ICE) within 10 days of moving. What type of form and where to file depends on the posture of the case:

- If a non-citizen has an open case in immigration court, she must fill out an EOIR-33 Change of Address <http://www.justice.gov/eoir/eoirforms/eoir33/ICadr33.htm> by mailing one copy to the court, and one copy to ICE.
- If she has a case pending with USCIS, she can file an AR-11 online at <https://egov.uscis.gov/coa/displayCOAForm.do>

USCIS posts policy updates here: <https://www.uscis.gov/policymanual/Updates/20161026-SIJ-EB4Adjustment.pdf#>