



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title	Agenda Item Type
Juvenile Law: Eligibility for Special Immigrant Juvenile Status (SIJS)	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise form JV-224	July 1, 2011
Recommended by	Date of Report
Family and Juvenile Law Advisory Committee	September 14, 2010
Hon. Jerilyn L. Borack, Cochair	Contact
Hon. Susan D. Huguenor, Cochair	Melissa Ardaiz, 415-865-7567 melissa.ardaiz@jud.ca.gov

Executive Summary

The Family and Juvenile Law Advisory Committee recommends revising the form used to determine whether a child declared dependent on the juvenile court is eligible for Special Immigrant Juvenile Status (SIJS). The applicable federal statute was revised in March 2009. The proposed form revisions are necessary to conform to statutory changes and to assist judicial officers, legal practitioners, and juvenile court parties in determining whether SIJS eligibility requirements have been met.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2011, revise form JV-224 to comply with current statutory mandates and to facilitate consistency.

The proposed revised form is attached at page 6.

Previous Council Action

This form was adopted as a new mandatory form on January 1, 2007 to comply with federal law. It has not been revised since that time.

Rationale for Recommendation

Effective March 19, 2009, the United States Congress revised title 8 United States Code section 1101(a)(27), which defines the term “special immigrant.” Special Immigrant Juvenile Status (SIJS) helps certain undocumented children in the juvenile court system obtain lawful immigration status. The Family and Juvenile Law Advisory Committee recommends revising the *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224) to bring it into compliance with section 1101(a)(27)(J) and to make other clarifying changes.

Legal compliance

The following changes are proposed so that form JV-224 is consistent with revised statutory language contained in section 1101(a)(27)(J):

- In item 1, add “The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602.” This clarifies that SIJS is available to children in both juvenile dependency and juvenile delinquency proceedings when the eligibility requirements are met.
- In item 1, replace “brought under the jurisdiction of” with “declared dependent on.”
- In item 1, replace “and committed to the custody of a state agency” with “The child was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by a state or juvenile court.”
- In item 2, replace “The child was deemed ‘eligible for long-term foster care’ ” with “Reunification of the child with one or both of the child’s parents was deemed not to be viable.”
- In item 2, add “This finding was made by reason of the abuse, neglect, or abandonment of the child or by reason of similar basis under California law.” A version of this statement is included in current item 4. The committee recommends merging the language of item 4 with item 2 to clarify that the federal statutory language of “abuse, neglect, abandonment, or a similar basis found under State law” refers only to the reunification element of SIJS. The committee further recommends removing the checkboxes for abuse, neglect, or abandonment because the checkboxes have created confusion for those using the form and are unnecessary.

- Revise item 3 so that it states: “It is not in the best interest of the child to be returned to his or her previous country of nationality or country of last habitual residence (*specify country or countries*) ... or his or her parents’ country or countries (*specify country or countries*) ...” This revision correctly tracks the language of section 1101(a)(27)(J)(ii) and clarifies that the “best interest” inquiry applies with respect to both the child’s and the parents’ previous country of nationality or country of last habitual residence. The language in current item 3 refers only to the parents’ previous country of nationality or of last habitual residence.
- Add a new item 4: “Specific factual findings about the child and/or the child’s parents are set forth below or provided on Attachment 4.” Those using the form have expressed concern that the form currently does not include space to file specific supplemental information about the child and/or the child’s parents.
- Remove the box at the bottom of the form that defines “eligible for long-term foster care.” This term is no longer included in section 1101(a)(27)(J), and a definition is unnecessary.

Determination of SIJS eligibility

The proposed revisions track the federal statutory language. A form consistent with federal law is necessary to assist judicial officers, legal practitioners, and juvenile court parties in determining whether SIJS eligibility requirements have been met and to ensure that the required findings are made so that children applying for SIJS may submit legally sufficient orders to Citizen and Immigration Services (CIS), a bureau of the Department of Homeland Security (DHS), as part of their applications.

Comments, Alternatives Considered, and Policy Implications

The invitation to comment on the proposal was circulated from April 19, 2010, through June 18, 2010, to the standard mailing list for family and juvenile law proposals as well as to the regular rules and forms mailing list. These lists include judges, court administrators, attorneys, social workers, probation officers, mediators, and other family and juvenile law professionals. A total of seven comments were received.¹ All commentators agreed with the proposal, with three suggesting modifications. The following issues received the most significant comments:

- Revising the form language so that it more closely tracks federal statutory language; and
- Making the form applicable in juvenile dependency, juvenile delinquency, and probate guardianship proceedings.

Revising the form language so that it more closely tracks federal statutory language

¹ A chart providing the full text of the comments and the committee responses is attached at pages 7–15.

Two commentators suggested changes concerning the language used in the form—specifically, that it more closely track the language used in section 1101(a)(27)(J). Each suggestion, which is detailed in the comment chart, concerns minor, technical changes in language that reflect the exact language used in the federal statute. These changes are clarifying in nature. The Family and Juvenile Advisory Committee recommends incorporating these changes since they track the federal language and promote clarity.

To track the language contained in the federal statute, another commentator suggested adding a finding to the form stating that the Secretary of Homeland Security consents to the grant of Special Immigrant Juvenile Status. The definition of “special immigrant” contained in section 1101(a)(27)(J)(iii) does require that the Secretary of Homeland Security consent to the grant of SIJS. Under the SIJS process, the court must determine that a child is eligible for SIJS by making the necessary court findings. Thereafter, the child may submit the court order of SIJS eligibility to CIS as part of the child’s SIJS application. The Department of Homeland Security (DHS) determines whether to consent to the grant of SIJS.

The commentator is correct that additional determinations beyond the court findings contained in form JV-224 must be made by the Department of Homeland Security (DHS) for a child to obtain a grant of SIJS. However, the committee does not agree to add a finding to the form stating that the Secretary of Homeland Security consents to the grant of SIJS, as required in section 1001(a)(27)(j)(iii), because it is the responsibility of DHS—not the court—to make those determinations. Form JV-224 is a court order that includes only those court findings required for SIJS eligibility.

SIJS applicability in juvenile delinquency proceedings and probate guardianship proceedings

One commentator suggested adding a note to form JV-224 to clarify that the form is appropriate for use in the juvenile delinquency context as well as the juvenile dependency context. The Family and Juvenile Law Advisory Committee agrees that SIJS is available to children in juvenile dependency proceedings and, when the eligibility requirements are met, to children in juvenile delinquency proceedings. Under section 1101(a)(27)(i), a juvenile is eligible for SIJS if he or she is declared dependent on the juvenile court and reunification with one or both parents is deemed not viable owing to abuse, neglect, abandonment, or a similar basis under state law. Although juvenile delinquency cases focus on children who have committed offenses, there may be certain situations in which a child in the juvenile delinquency system has been removed from parental custody and placed in the foster care system, and in which reunification is not viable because of one of the reasons stated above. Therefore, the committee agrees to add an introductory sentence in item 1 which states that “The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602.”

The Family and Juvenile Law Advisory Committee invited comment on the issue of whether the Probate and Mental Health Advisory Committee should develop a similar form applicable in probate guardianship proceedings. Two commentators asserted that probate courts have the

authority to make SIJS findings in probate guardianship proceedings and that a form similar to JV-224 is needed for probate guardianships in which SIJS is sought. These comments have been referred to the Probate and Mental Health Advisory Committee for consideration.

Alternatives considered and policy implications

The proposed amendments are necessary to bring this form into compliance with governing law and to promote clarity and ease of use. The judicial findings included on the form are legally required to obtain eligibility for SIJS.

To clarify the SIJS application process, the committee considered adding a “NOTICE” box at the bottom of form JV-224 stating it is a court order containing court findings required for SIJS eligibility, but that it does not mean the child will obtain a grant of SIJS. Additional determinations must be made by DHS, as set forth in section 1101(a)(27)(J)(iii). However, the committee decided that a NOTICE box outlining the SIJS process was unnecessary since form JV-224 is a court order meant to include only those court findings required for SIJS eligibility. Additional requirements for other governmental departments are clearly identified in section 1101(a)(27)(J).

Implementation Requirements, Costs, and Operational Impacts

Implementation of the revised form will incur standard reproduction costs. The change in federal law may result in some workload changes in the courts, but form JV-224 must incorporate the new federal requirements.

Attachments

1. Form JV-224, at page 6
2. Chart of comments, at pages 7–15
3. Attachment A: Title 8 United States Code section 1101(a)(27)(J)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): _____ TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT A3 09/14/10 mc Not approved by the Judicial Council</p>
<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILD'S NAME:	
<p>ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS</p>	CASE NUMBER:

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602. The child was declared dependent on the juvenile court of the county of *(specify)*:
 The child was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by a state or juvenile court, on *(specify date)*:
 The child remains under this court's jurisdiction.
2. Reunification of the child with one or both of the child's parents was deemed not to be viable on *(specify date)*:
 This finding was made by reason of the abuse, neglect, or abandonment of the child or by reason of similar basis under California law.
3. It is not in the best interest of the child to be returned to his or her previous country of nationality or country of last habitual residence *(specify country or countries)*:
 or his or her parents' country or countries *(specify country or countries)*:
 It is in the child's best interest to remain in the United States.
4. Specific factual findings about the child and/or the child's parents are set forth below or provided on Attachment 4.

Date: _____ JUDICIAL OFFICER

SPR10-35**Juvenile Law: Eligibility for Special Immigrant Juvenile Status** (revise form JV-224)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Child Welfare Services—Policy and Program Support Corey Kissel Policy Analyst	A	No narrative comments submitted.	No response required.
2.	Esperanza Immigrant Rights Project, Catholic Charities of Los Angeles James Lyall Attorney	A	<p>I agree with the proposed changes and second the comments submitted by my colleagues at Public Counsel—both their suggestions for modifications to the proposed form as well as their recommendation that a similar form be created for probate court guardianships in which Special Immigrant Juvenile Status (SIJS) is sought.</p> <p>This comment is submitted on behalf of Esperanza Immigrant Rights Project of Catholic Charities of Los Angeles which represents, pro bono, dozens of abused, abandoned, and neglected children annually in a variety of immigration proceedings, including SIJS.</p> <p>The majority of our child clients must seek SIJS eligibility orders in probate guardianships and there is often confusion in the probate system about jurisdiction and authority to issue SIJS eligibility findings,</p>	<p>The responses to the comments submitted by Public Counsel regarding form JV-224 are described below.</p> <p>This comment has been forwarded to the Probate and Mental Health Advisory Committee for their consideration on the issue of whether a similar form should be created for probate court guardianships in with Special Immigrant Juvenile Status (SIJS) is sought.</p>

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Juvenile Law: Eligibility for Special Immigrant Juvenile Status (revise form JV-224)

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	Commentator	Position	Comment	Committee Response
			as well as what the precise language of the findings should be. A form similar to the one proposed for dependency proceedings would be helpful both to practitioners and courts addressing these cases by reducing confusion and increasing efficiency in the fair adjudication of these cases.	
3.	Orange County Bar Association Lei Lei Wang Ekvall President	A	No narrative comments submitted.	No response required.
4.	Public Counsel Leslie Parrish, Senior Staff Attorney Kristen Jackson, Senior Staff Attorney	A	<p>1. We agree with SPR10-35 and propose some minor revisions to the form for use in the juvenile courts. We also support the creation of an analogous form for use in probate court guardianship proceedings.</p> <p>2. Form JV-224, Item 1. Change language to “and was <u>legally committed to or placed under the custody of a state agency or department</u> or an individual or entity”.</p> <p>These proposed edits are suggested to bring the form more closely in</p>	<p>1. This comment has been forwarded to the Probate and Mental Health Advisory Committee for their consideration on the issue of whether a similar form should be created for probate court guardianships in with Special Immigrant Juvenile Status (SIJS) is sought.</p> <p>2. The committee agrees to make this change in order to more closely track the language of the federal statute. The committee also recommends adding further punctuation and language so that it exactly matches the federal statute. The language would state “and was <u>legally committed to, or placed under the custody of,</u> a state agency or</p>

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		<p>line with the current language of the federal statute related to custody and placement options for the child. If, however, the proposed edits do not accurately reflect what language is used in or for California juvenile court proceedings, they can be disregarded.</p> <p>3. Form JV-224, Item 2. Change language to “<u>Reunification of T</u>the child was deemed to be unable to reunify with one or both of <u>the child’s his or her</u> parents <u>was deemed not to be viable</u>”.</p> <p>The proposed edits are suggested to bring the form more closely in line with the federal statutory language.</p> <p>4. Form JV-224, Item 3. Change language to “It is not in the best interest of the child to be returned to his or her parent’s previous country of nationality or country of last habitual residence <u>or that or his or her parents</u>”.</p> <p>The proposed edits reflect the fact</p>	<p>department, or an individual or entity <u>appointed by a state or juvenile court on ...</u>”</p> <p>3. The committee agrees to make this change in order to more closely track the language of the federal statute.</p> <p>4. The committee agrees to change item 3 to correctly track the federal statutory language in Title 8 United States Code section 1101(a)(27)(J)(ii) and to clarify that Special Immigrant Juvenile Status (SIJS) is available to a child for whom it has been determined that it would not be in that child’s best interest to be returned to either the</p>
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			<p>that under the federal statute, SIJS is available to a child for whom return to: (1) his or her previous country of nationality or last habitual residence; OR (2) his or her parents' previous country of nationality of last habitual residence is not in the child's best interest. As written, the form refers only to the parents' country. Although often the country of the parents and of the child are the same, that may not always be the case. The revisions would clarify this finding.</p> <p>5. Form JV-224, Item 4. Add the language of Item 4 to Item 2 so that the language in Item 4 would be the second sentence of Item 2. This would also result in a change of numbering.</p> <p>The proposed merging of paragraphs two and four reflects the fact that the federal statutory language of "abuse, neglect, abandonment, or a similar basis found under State law" refers only to the reunification element of SIJS, not to the best interest element</p>	<p>child's or the parent's previous country of nationality or country of last habitual residence. The language would state: "It is not in the best interest of the child to be returned to his or her previous country of nationality or country of last habitual residence (<i>specify country or countries</i>) ... or his or her parents' country or countries (<i>specify country or countries</i>) ..."</p> <p>5. The committee agrees to make this change to clarify that the federal statutory language of "abuse, neglect, abandonment, or a similar basis found under State law" refers only to the reunification element of Special Immigrant Juvenile Status (SIJS), not to the best interest element or the jurisdiction and custody element. This would result in renumbering the form items because Item 4 would be merged with Item 2.</p>
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			<p>or the jurisdiction and custody element.</p> <p>6. Form JV-224, Item 4. Change language to “The above <u>This</u> findings were <u>was</u> made by reason of the abuse, neglect, or abandonment of the child or by reason of a similar basis under California law.”</p> <p>7. Form JV-224, Item 5. Change language to “Specific factual findings about the child <u>and/or</u> the child’s parents are provided on Attachment 5.”</p> <p>8. Form JV-224, citation footer, right-hand corner. Change citation to “<u>The Immigration and Nationality Act of 1990</u>”</p> <p>The Immigration Act of 1990 die create SIJS, but did not use that “101(a)(27)(J)” citation. Instead, that citation is part of the INA, now that the 1990 Act has been integrated into the larger statute.</p>	<p>6. The committee agrees to make this technical change.</p> <p>7. The committee agrees to make this technical change and to state that the findings may also be set forth in the space below on the form.</p> <p>8. This committee agrees to make this clarifying change and include the correct legal citation.</p>
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Juvenile Law: Eligibility for Special Immigrant Juvenile Status (revise form JV-224)

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			<p>9. We also suggest that form JV-224 contain a note stating that it is appropriate for use in juvenile delinquency proceedings. The current 2007 version of form JV-224 makes this clear through its reference to Welfare and Institutions Code section 727 in the text box. With the elimination of the text box, which we support, we have some concern that judges may be uncertain whether the form can be used in the delinquency context—and they may expend judicial resources trying to get to the bottom of that question. If this were spelled out on the form itself—or were noted in some official Judicial Council publication—we believe that any confusion would be eliminated.</p>	<p>9. The Family and Juvenile Law Advisory Committee agrees that SIJS is available to children in juvenile delinquency proceedings when the eligibility requirements are met. Under section 1101(a)(27)(i), a juvenile is eligible for SIJS if he or she is declared dependent on the juvenile court and reunification with one or both parents is deemed not viable owing to abuse, neglect, abandonment, or a similar basis under state law. Although juvenile delinquency cases focus on children who have committed offenses, there may be certain situations in which a child in the juvenile delinquency system has been removed from parental custody and placed in the foster care system, and in which reunification is not viable because of one of the reasons stated above. Therefore, the committee agrees to add an introductory sentence in item 1 which states that “The child was found to be within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300 or 602.”</p>
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			<p>10. *Commentator submitted lengthy comments on the issue of probate courts having the authority to make SIJS findings in probate guardianship proceedings. Specifically, the commentator argues that federal law allows the probate court to make SIJS findings and provides supporting legal authority and analysis.</p>	<p>10. This comment has been forwarded to the Probate and Mental Health Advisory Committee for their consideration.</p>
5.	<p>Hon. Jon Edward Stuebbe Judge Superior Court of Kern County</p>	<p>AM</p>	<p>The proposed form, JV-224, should add a finding that the Secretary of Homeland Security consents to the grant of Special Immigrant Juvenile Status to track the U.S. Code. See Title 8, United States Code section 1101(a)(27)(J)(iii), which states that the term “special immigrant” means an immigrant who is present in the U.S. “in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status ...”</p>	<p>The definition of “special immigrant” contained in United States Code section (a)(27)(J)(iii) does require that the Secretary of Homeland Security consents to the grant of SIJS. Under the SIJS process, the court must determine that a child is eligible for SIJS by making the necessary court findings. Thereafter, the child may submit the court order of SIJS eligibility to Citizen and Immigration Services (CIS), which is a bureau within the Department of Homeland Security (DHS), as part of the child’s application for SIJS. DHS determines whether to consent to the grant of SIJS.</p> <p>The commentator is correct that additional determinations beyond the court findings contained in form JV-224 must be made by</p>

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Juvenile Law: Eligibility for Special Immigrant Juvenile Status (revise form JV-224)

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				<p>DHS for a child to obtain a grant of SIJS. However, the committee does not agree to add a finding to the form stating that the Secretary of Homeland Security consents to the grant of SIJS, as required in section 1001(a)(27)(j)(iii), because it is the responsibility of DHS—not the court—to make those determinations. Form JV-224 is a court order that includes only those court findings required for SIJS eligibility.</p>
6.	<p>Superior Court of San Diego County Michael M. Roddy Executive Officer</p>	AM	<p>Form JV-224, Item 1. The following changes are suggested for item 1: “The child was brought under the jurisdiction of <u>declared dependent on</u> the juvenile court of the county of (<i>specify</i>) and was committed to the custody of a state agency or an individual or entity appointed by the juvenile court on (<i>specify date</i>):”</p> <p>Reason for suggestion: To track the language of the statute, 8 U.S.C. § 1101(a)(27)(J)(i), i.e., “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</p>	<p>The committee agrees to make this change to track the federal statutory language.</p>

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All comments are verbatim unless indicated by an asterisk (*).

			individual or entity appointed by a State or juvenile court located in the United States”	
7.	Cynthia Wojan Juvenile Court Coordinator Superior Court of Solano County	A	No narrative comments submitted.	No response required.

Attachment A

Title 8 United States Code section 1101(a)(27)(J)

(a) As used in this chapter—

(27) The term “special immigrant” means—

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

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;