

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2224 (Santiago)
Version: May 16, 2024
Hearing Date: June 18, 2024
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Special immigrant juvenile status: court orders and guardianship

DIGEST

This bill requires a court that granted a request to make the findings necessary for a person to seek Special Immigrant Juvenile Status (SIJS or SIJ status) to provide the petitioner a certified copy of the order, and clarifies that a parent may be appointed the guardian of a person between 18 and 21 years of age in connection with a SIJS application.

EXECUTIVE SUMMARY

Special Immigrant Juvenile Status is a federal immigration classification that helps vulnerable children and youth remain in the United States. Any unmarried person under age 21 who has been abused, neglected, or abandoned by a parent may seek classification as a Special Immigrant Juvenile and then immediately apply for lawful permanent resident status. In order to petition for SIJ status from the federal government, an eligible child or youth first must obtain an order from a state court that makes findings establishing the petitioner's eligibility. At the federal level, there is currently a significant backlog in processing SIJS petitions.

This bill is intended to streamline and clarify existing statutes in order to help SIJS-eligible children and youth cut down on the delay in obtaining SIJ status. First, the bill requires a court that grants a request for SIJ findings to issue a certified copy of the order on the same day as the order is granted. Second, the bill clarifies that a Probate Court may appoint the parent of a consenting person who is 18 years or older, but under 21 years of age, as the person's guardian in connection with a petition to make SIJ findings. In response to concerns from stakeholders, the author has agreed to amendments to extend slightly the time frame in which a state court must issue an order after granting a request for SIJS findings.

This bill is sponsored by Bet Tzedek, the Coalition to Abolish Slavery and Trafficking, the Immigrant Legal Resource Center, and the Los Angeles Center for Law and Justice and is supported by Seneca Family of Agencies. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Defines a “special immigrant juvenile” as a person under 21 years of age who is declared a dependent by a juvenile court or committed to the custody of a state agency or a court-appointed individual; whose reunification with one or both of their parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and whose return to their country of nationality or last habitual residence is not in their best interest. (8 U.S.C. § 1101(a)(27)(J).)
- 2) Provides immigration relief that relies on a state’s interest in the welfare of children by providing for Special Immigrant Juvenile Status where a state determines that reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or similar basis found under state law and that it would not be in the child’s best interest to return to their home country. (8 U.S.C. § 1101(a)(27).)
- 3) Provides that a person who has obtained SIJ status may, on the basis of that status, apply for a visa for lawful permanent residency. (8 U.S.C. § 1153(b)(4); *see also* 8 C.F.R. § 204.11.)

Existing state law:

- 1) Authorizes a superior court to make the judicial findings and determinations that are necessary for a person to seek SIJ status from the federal government, regardless of the division of the superior court or the stage of the proceedings, provided that the prerequisites are met. (Code Civ. Proc., § 155(a).)¹
- 2) Provides that, if an order is requested from the superior court making the necessary findings regarding SIJ status, and there is evidence to support those findings, which may consist solely of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order, which shall include all of the following findings:
 - a) The child was either (1) declared a dependent of the court, or (2) legally committed to, or placed under the custody of, a state agency or department,

¹ Code of Civil Procedure section 155 will be amended on January 1, 2025, to clarify that a superior court may make SIJ findings on a nunc pro tunc basis. (*See* AB 1650 (Jim Patterson, Ch. 851, Stats. 2023).) This bill amends the version of the law that will take effect on January 1, 2025.

- or an individual entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was declared.
- b) That reunification of the child with one or both of the child's parents was determined not to be viable because of abuse, neglect, abandonment, or similar basis pursuant to California law. The court shall indicate the date on which reunification was determined not to be viable.
 - c) That it is not in the best interest of the child to be returned to the child's, or the child's parent's, previous country of nationality or country of last habitual residence. (Code Civ. Proc., § 155(b).)
- 3) Provides that, in any judicial proceedings in response to a request that the superior court makes the determinations necessary to support a petition for classification as a SIJ, information regarding the child's immigration status that is not otherwise protected by state confidentiality laws shall remain confidential and shall be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child's counsel, and the child's guardian; and that information may be sealed using specified procedures set forth in the California Rules of Court. (Code Civ. Proc., § 155(c), (d).)
 - 4) Permits a relative or other person on behalf of a minor, or the minor if 12 years of age or older, to file a petition for the appointment of a guardian of the minor. A relative may file a petition for a guardian regardless of the relative's immigration status. (Prob. Code, § 1510.)
 - 5) Provides that, with the consent of the proposed ward, a court may appoint a guardian of the person, or extend a guardianship of the person, for an unmarried individual who is 18 years of age or older, but who has not yet attained 21 years of age, in connection with a petition to make the necessary findings regarding SIJ status.
 - a) The petition may be filed by a parent, relative, or any other person on behalf of the ward or the proposed ward, or the ward or proposed ward.
 - b) Provides that a guardianship established or extended under this provision does not abrogate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent. (Prob. Code, § 1510.1(a)-(c).)
 - 6) Provides that the terms "child," "minor," and "ward," for purposes of the Probate Code provisions establishing guardianships, conservatorships, and other protective proceedings, include a person who is younger than 21 years of age and who consents to the appointment of a guardian or extension of a guardianship after they attain 18 years of age pursuant to 5). (Prob. Code, § 1510.1(d).)

- 7) Provides that, except in specified circumstances where a custodial parent has been diagnosed as having a terminal condition, a minor's parent may not be appointed as a guardian of the person of the minor. (Prob. Code, §§ 1514, 2105(f).)

This bill:

- 1) Requires a court that issues an order making the necessary determinations regarding SIJ status to provide a certified copy of the order to the petitioner on the same day that the order was issued by the court.
- 2) Permits a court to appoint a parent as a guardian of the person of their unmarried child who is 18 years of age or older, but who has not yet attained 21 years of age, when the guardian is appointed in connection with a petition to make the necessary determinations regarding SIJ status.
- 3) Provides that a parent may be appointed as a guardian of the person of a person aged 18 years of age and under 21 years of age, with their consent, pursuant to Probate Code section 1510.1.

COMMENTS

1. Author's comment

According to the author:

Special Immigrant Juvenile Status applicants are vulnerable children and young people who have endured parental abuse, neglect, or abandonment. Unfortunately, while seeking immigration relief, they often face lengthy delays in their application process. AB 2224 aims to address the SIJS backlog by ensuring clarity and expediency in the state's role in the application process.

2. Background on SIJ findings

As explained by the California Supreme Court:

Congress first established the SIJ classification in 1990 to provide relief to immigrant children who were eligible for long-term foster care and whose interests would not be served by returning to their country of origin. Congress has since amended the provisions governing SIJ status several times...Under the law as amended, a child is eligible for SIJ status if: (1) the child is a dependent of a juvenile court, in the custody of a state agency by court order, or in the custody of an individual or entity appointed by the court; (2) the child cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis found under state law; and (3) it is not in the child's best interest to return to

[their] home country or the home country of [their] parents. Under federal immigration regulations, each of these findings is to be made in the course of state court proceedings.²

Under current federal regulations, a person is eligible for SIJ classification when they are under 21 years of age and unmarried at the time the petition was filed and is the subject of a court order that makes the findings set forth above.³ An eligible person may petition for SIJ classification from the Secretary of the United States Department of Homeland Security; petitions are processed by United States Citizenship and Immigration Services (USCIS).⁴ If SIJ status is granted, the recipient may seek lawful permanent residence which, in turn, permits the recipient to seek U.S. citizenship in five years.⁵

Because the SIJ predicate findings must be made by a state court, California law governs when, and under what circumstances, a SIJ-eligible person may seek an order. Code of Civil Procedure section 155 (Section 155) provides the procedural requirements for making an order setting forth the SIJ findings, and permits any superior court to make these findings upon request.⁶ Additionally – because SIJ eligibility requires that the applicant be placed in the custody of an individual or entity appointed by the court, or otherwise a dependent of the court – the Probate Code permits the appointment of a guardian, or the extension of a guardianship, for a person who is 18 years of age or older, but not yet 21 years of age, with the consent of that person.⁷

3. This bill requires a court to timely process an order making SIJS findings and clarifies provisions of the Probate Code relating to appointing a guardian for purposes of pursuing SIJ status

As the author and sponsors note, there is a massive backlog of SIJS cases pending before USCIS.⁸ As of March 2023, over 107,000 SIJS cases were pending before USCIS; over 16,000 of the affected youth are located in California.⁹ Although the United States Department of State has since eliminated a policy that restricted the number of SIJ visas allocated on an annual basis, the backlog remains.¹⁰ For SIJ-eligible children and youth, therefore, time is of the essence in obtaining the court order necessary to petition USCIS for SIJ status. This bill is intended to assist SIJS-eligible children and youth in two ways.

² *Bianka M. v. Superior Court* (2018) 5 Cal.5th 1004, 1012-1013.

³ 8 C.F.R. § 204.11(b).

⁴ *Ibid.*

⁵ 8 U.S.C. §§ 1101, 1255, 1427.

⁶ Code Civ. Proc., § 155.

⁷ Prob. Code, § 1510.1.

⁸ See, e.g., Davidson, et al., *False Hopes: Over 100,000 Immigrant Youth Trapped in the SIJS Backlog* (2023) p. 11.

⁹ *Id.* at p. 24.

¹⁰ *Id.* at p. 23.

First, this bill requires a court that grants a request for SIJS findings to issue a certified copy of the order on the same day as the order is granted. According to the author, some courts take weeks, or even months, after granting a request to issue an order; if the requesting party has provided the court with an adequate proposed order, there is no reason for such an extreme delay. In response to concerns from stakeholders, the author has agreed to amend the bill to require a certified copy of the order to be issued three days after the request is granted or from the date the court receives a properly conformed proposed order, whichever is later, if the party makes a request for expedited processing. The amendments are set forth in greater detail in part 4.

Second, this bill clarifies that a Probate Court may appoint the parent of a consenting person who is 18 years or older, but under 21 years of age, as the person's guardian in connection with a petition to make SIJS findings. While the Probate Code already permits a person who is 18 years of age, but under 21 years of age, to consent to such a guardianship, the Probate Code does not expressly state that the court may appoint the parent as the guardian, and a separate provision states that a parent generally may not be appointed as a minor's guardian.¹¹ Accordingly, this bill amends the relevant sections of the Probate Code to clarify that this general rule does not apply in a guardianship established in connection with an 18-to-20-year-old who is eligible for SIJS findings.

4. Amendments

As noted above, the author has agreed to amend the bill to provide the courts with slightly more time to issue an order making SIJS-predicate findings. The amendments are set forth below, subject to any nonsubstantive amendments the Office of Legislative Counsel may make.

Amendment

At page 4, delete lines 30-33 and insert:

(3) If a court grants an order that includes the determinations described in paragraph (1), and the person who requested the findings has submitted a request for expedited processing accompanied by a properly conformed proposed order, the court shall provide the person who requested the findings with a certified copy of the order within three court days of the date of the hearing at which the findings were made, or the date the proposed order was submitted, whichever is later.

¹¹ Prob. Code, §§ 1510.1, 1514.

5. Arguments in support

According to Bet Tzedek, a co-sponsor of the bill:

SIJS applicants are vulnerable children and young people who face lengthy delays in their application process. Once SIJS applicants submit their petition to the U.S. Citizenship and Immigration Services (USCIS), USCIS has 180 days to make a decision per federal law. Unfortunately, the USCIS' adjudication timeline is often delayed.

If these children and young people receive SIJS approval, they face additional delays in filing their Lawful Permanent Resident (LPR) application. Despite SIJS' humanitarian intent, their LPR application is processed under the employment-based immigrant visa system, which is subject to numerical limits and per country visa caps. Given these caps, SIJS applicants have to wait years before they can apply for LPR status, solely due to visa unavailability.

To combat these backlogs, it is crucial to ensure there is clarity and expediency in filing a SIJS petition as it makes them one-step closer to filing their LPR application. AB 2224 supports this aim by making the following important procedural changes related to the SIJS court order:

- Clarifying that the court can appoint a parent as the guardian for their unmarried child if they are over the age of 18 but under 21 and pursuing SIJS
- Ensuring that individuals receive the SIJS court order the same day the court issues it

SUPPORT

Bet Tzedek (co-sponsor)
Coalition to Abolish Slavery and Trafficking (co-sponsor)
Immigrant Legal Resource Center (co-sponsor)
Los Angeles Center for Law and Justice (co-sponsor)
Seneca Family of Agencies

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1650 (Jim Patterson, Ch. 851, Stats. 2023) clarified that a superior court is authorized to make the necessary factual determinations for a child up to the age of 21 to seek SIJ status nunc pro tunc (retroactively) beginning January 1, 2025.

AB 1412 (Bloom, 2019) would have established a division within the Family Code addressing SIJ-predicate findings and establishing more detailed procedures regarding a petition for SIJ-predicate findings filed within the family court or probate court. AB 1412 died in the Assembly Judiciary Committee.

AB 1379 (Irwin, 2019) would have amended Section 155 to state that, in any judicial proceeding in response to a request for SIJ-predicate findings, the existence of a standby guardian designated under the Probate Code and evidence that a contingency had occurred making the standby guardian operative shall serve as affirmative evidence that the covered juvenile has been abandoned and cannot be reunified with one or both parents. AB 1379 died in the Assembly Judiciary Committee.

AB 2090 (Gonzalez Fletcher, Ch. 209, Stats. 2018) clarified that a petition for a guardianship for a person over 18 years of age, but under the age of 21, may be filed by the parent of the person.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 11, Noes 2)
Assembly Judiciary Committee (Ayes 10, Noes 0)
Assembly Human Services Committee (Ayes 5, Noes 0)
