

Guardian Ad Litem for XXXXXX  
302 8th Street, Suite 110  
Glenwood Springs, CO 81601

*Via Federal Express*

**RE: Nancy XXXXXX, Eligibility for Special Immigrant Juvenile Status**

Dear Attorneys:

Per your request, we are providing this letter and attached information regarding the legal basis for Special Immigrant Juvenile Status ("SIJS"). It is our understanding that this information will be disseminated to the Family Court and county attorney in order to clarify Nancy's eligibility for SIJS. We will first provide a brief overview of SIJS eligibility requirements; we will then discuss specific issues regarding Nancy's case.

### **BRIEF OVERVIEW OF SPECIAL IMMIGRANT JUVENILE STATUS**

Special Immigrant Juvenile status was created as part of the Immigration Act of 1990 to allow undocumented children who have been declared dependents of the juvenile court to obtain legal resident status in the United States, i.e. get a "green card." Under 8 U.S.C. §1101(a)(27)(J), the requirements for SIJS are:

- (1) The child must be declared dependent on a juvenile court, or the court must have legally committed the child to or placed the child under the custody of a state department or agency;
- (2) The child must be "deemed eligible for long-term foster care" due to neglect, abuse, or abandonment;
- (3) A judge or administrative authority must have determined that return to the previous home country is not in the child's best interest.

In addition to the statutory requirements above, an undocumented child must also satisfy certain regulatory requirements contained in 8 C.F.R. §204.11(c), as follows:

- (4) Juvenile court must maintain jurisdiction until the entire application is decided;

(5) The child must be under 21;

(6) The child must be unmarried.

If a child satisfies the above legal requirements, he or she may apply for SIJS. The child must submit two separate forms to U.S. Citizenship and Immigration Services (“USCIS”) with supporting documentation: Form I-360 (Petition for Special Immigrant Status) and Form I-485 (Application for Adjustment of Status). Under 8 C.F.R. 204.11(d), the child must also submit initial documents including **proof of age** and the **juvenile court order** containing appropriate findings. *See Exhibit A, Federal Statutes and Regulations regarding Special Immigrant Juveniles.*

The federal statute and regulations clearly contemplate and authorize the issuance of specific findings by the juvenile court regarding the child’s eligibility for long-term foster care and whether it is in the child’s best interest to be returned to her home country. Some juvenile courts have acknowledged the authority to issue such decisions, and have made an effort to disseminate information regarding SIJS eligibility to all dependency court judges. *See, e.g. Exhibit B, Memorandum of the Los Angeles Superior Court regarding Special Immigrant Juvenile Status.*

In addition to being legally *authorized* to issue such findings, juvenile courts are actually *encouraged* to do so. In May 2004, USCIS issued a memorandum offering specific guidance regarding SIJS court orders. *See Exhibit C, USCIS Memorandum regarding SIJS.* The memorandum states that the juvenile court order:

*must establish [that]: the juvenile is a dependent of the court or the court has placed the juvenile under...the custody of an agency or department of the State; and [that] the juvenile has been deemed eligible for long-term foster care due to abuse, neglect or abandonment.”* (emphasis in original).

*See Exhibit C, page 4.* The memorandum further states that the court order will also:

*preferably establish the following...[]: specific findings of fact in support of the order...[]; and that it would not be in the alien’s best interest to be returned to the alien’s home country... USCIS strongly encourages juvenile courts to address this issue and incorporate a finding into the court order.”* (emphasis added).

*See Exhibit C, page 4.*

For convenience, we have attached a sample juvenile court order that satisfies the statutory, regulatory, and recommended requirements for SIJS. *See Exhibit D, Sample SIJS Court Order.*

Once a child has submitted the court order and the necessary forms, he or she will be scheduled for an interview with USCIS. In general, the interview is scheduled between 6 months and 3 years from the time the application is submitted.<sup>1</sup> At the interview, the immigration officer can

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<sup>1</sup> The child may request to expedite processing if necessary (i.e. if the child is turning 21 or will no longer be under juvenile court jurisdiction). Expedite procedures will be discussed in more detail below.

approve the application, deny the application, or request more evidence. ***Please note that, in order for the child to remain eligible for SIJS, the juvenile court must maintain jurisdiction until the entire application is decided.*** If the application is approved, the child will become a legal permanent resident, i.e. receive a “green card.” If the application is denied, the child *may* be referred to immigration court for removal proceedings.

In addition to the information provided above, we are also providing your office with a copy of the “Immigration Benchbook” published by the Immigrant Legal Resource Center in January 2005. *See Exhibit E.* This manual is specifically designed as a reference manual for Juvenile and Family Court judges with regard to immigration issues; Chapter 2 deals exclusively with SIJS applications and eligibility requirements.

### **SPECIAL CONSIDERATIONS REGARDING NANCY XXXXX AND SIJS ELIGIBILITY**

According to the information provided us, Nancy XXXXX appears to fulfill the legal requirements for SIJS eligibility, however, she has not yet obtained the necessary court order containing the specific language discussed above. The recent “Order of Continued Adjudication and Disposition and Order of Default” is not sufficient to satisfy the SIJS requirements because it discusses continued efforts towards family reunification and it fails to make a finding as to whether it is in Nancy’s best interest to return to El Salvador.

To clarify the judge’s order, the GAL should make a motion for specific findings with regard to Nancy’s eligibility for SIJS. In particular, the GAL should present evidence to the Court sufficient for the judge to find that: (1) it is not in Nancy’s best interest to be returned to El Salvador, and (2) Nancy is eligible for long-term foster care due to neglect, abuse, or abandonment. A sample court order containing the appropriate language has been attached as Exhibit D.

#### **(1) Return to El Salvador is Not in Nancy’s Best Interest**

The judge should be presented with information regarding country conditions in El Salvador. We have attached a detailed packet of articles regarding the civil war, poverty, and natural disasters that have plagued El Salvador for many years. *See Exhibit F.* In addition, the GAL should present evidence specific to Nancy, including statements and/or affidavits from individuals who are aware of Nancy’s situation, such as family, friends, a doctor, therapist, dentist, and Nancy herself.

#### **(2) Nancy’s Eligibility for Long-term Foster Care Due to Abandonment**

In the prior order, Nancy’s father entered his admission of abandonment; Nancy’s mother did not appear and judgment of abandonment was entered against her by default. On this basis, the Court entered a finding of dependency or neglect. These previous findings should be sufficient to warrant a specific finding by the Court that Nancy is “eligible for long-term foster care due to abuse, neglect, or abandonment.”

*From an immigration standpoint, parental rights do not need to be terminated, so long as the Court finds that Nancy is “eligible for long-term foster care due to abandonment.” However, it is unclear from the information provided whether the County is required (under Colorado family law) to terminate parental rights before the judge can make such a finding.* Given the father’s admission of abandonment and the mother’s failure to appear, there should not be any legal impediment to the Court entering a finding that Nancy is eligible for long-term foster care. Additional evidence regarding abandonment, neglect, and/or abuse should be presented, such as Nancy’s affidavit, a statement or letter from a doctor, dentist, therapist, etc.

### **THE AGE-OUT PROBLEM: THE COURT MUST MAINTAIN JURISDICTION OVER NANCY’S CASE UNTIL USCIS MAKES A FINAL DECISION**

In all respects, Nancy will be eligible for SIJS so long as she is able to obtain the appropriate court order. However, as noted above, the juvenile court must maintain jurisdiction over her case until the entire SIJS application has been decided. Thus, *it is imperative that the Court and all parties involved understand that if the judge terminates jurisdiction when Nancy turns 18 years old on June 24, 2006, she will lose eligibility for SIJS.* In addition, it should be made clear that there appears to be no other legal basis for Nancy to obtain permanent residence in the United States. Even if she is eventually adopted, she will not be able to obtain immigration benefits through her adoptive parents because she is over age 16. INA §101(b)(1), 8 U.S.C. §1101(b)(1). Thus, in order to preserve SIJS eligibility, the GAL must pursue one of the following options:

1. If the Court is willing to issue the appropriate order based on the information provided, we will file SIJS application as soon as possible and request that USCIS expedite processing. It is *likely* that USCIS will be able to conduct an interview and make a final decision before Nancy turns 18, but it is not *guaranteed*. Thus, the GAL should ask the juvenile court to retain jurisdiction until USCIS has issued a final decision. Make sure that the judge is aware that scheduling of the interview and issuance of a final decision could take several months, even if expedited. Request that the Court schedule a final hearing past age 18; if Court is unwilling, then schedule as late as possible, i.e. June 23, 2006.

2. If the Court is not willing to issue the appropriate order (because further proceedings against the parents are necessary before the Court can find that Nancy is “eligible for long-term foster care” then the GAL should ask the court to maintain jurisdiction over Nancy’s case past age 18 and continue with the procedures for obtaining the necessary order. The GAL should emphasize that under C.R.S. §19-3-205, the Court has the authority to retain jurisdiction over juveniles until age 21.

### **Conclusion**

Clearly, it would be within Nancy’s best interest to remain in the United States and to obtain permanent resident status. Thus, it is critical that the GAL educate the Court regarding Nancy’s *eligibility for SIJS*, as well as her apparent *inability to obtain legal permanent residence by any other means*. In addition, the GAL should emphasize that if Nancy is unable to obtain the appropriate order—or if the Court issues the correct order, but terminates jurisdiction before

USCIS issues a final decision—then Nancy will become ineligible for SIJS and could be placed into removal proceedings.

Should you have any questions regarding this letter or the attached documentation, please do not hesitate to contact our office.

Very truly yours,

LICHTER & ASSOCIATES, P.C.

Laura L. Lichter