

# WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

RIAC Monthly Newsletter

Issue 20 / May 2022

## What You Need to Know for Your Noncitizen Client

### If your noncitizen client is facing criminal charges or adverse findings in Family Court...

Please contact the WNY Regional Immigration Assistance Center. We provide legal support to attorneys who provide mandated representation to noncitizens in the 7th and 8th Judicial Districts of New York.

#### Buffalo Office

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We are funded by the New York State Office of Indigent Legal Services (ILS) to assist mandated representatives in their representation of noncitizens accused of crimes or facing findings in Family Court following the Supreme Court ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. There is no fee for our service.

Please consider also contacting us if you need assistance interviewing your client to determine their immigration status or communicating immigration consequences; or if you would like us to intercede with the DA or the judge to explain immigration consequences. We speak Spanish and French.

### LawNY's Reentry Project

LawNY's Reentry Project provides legal services to low-income individuals who have criminal records that are a barrier to their employment, professional licensing, and housing, and serves 14 counties: Allegany, Steuben, Chemung, Schuyler, Livingston, Ontario, Seneca, Wayne, Yates, Tioga, Tompkins, Chautauqua, Cattaraugus, & Monroe. The goal of the Reentry Project's services is to increase employability and reduce recidivism among criminal justice-involved individuals by overcoming these barriers. They can help with obtaining either NYS DCJS or FBI fingerprint Records of Arrest and Prosecution (RAP Sheets); representing individuals in petitions to the Courts and NYS Division of Parole for Certificates of Relief from Disability and Certificates of Rehabilitation; representing individuals with eligible conviction records in Motions to Seal Pursuant to CPL § 160.59; representing justice-involved individuals before NYS Agencies related to criminal background check clearances (for example: NYS Department of Health [DOH] Criminal History Check Legal Unit for Certified Nurses' Aides [CAN], Home Health Care Aides [HHCA], and others such as drivers, cooks, and cleaners) and professional licensing moral character reviews (for example: security guards, nurses, cosmetologists, etc.); and representing justice-involved individuals in claims of



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# Special Immigrant Juvenile Status (SIJS)

By Abbey Brown, Legal Assistant, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.,  
and a special thank you to Mary Armistead, Esq., for her contributions to this article

On March 29<sup>th</sup>, 2022, the WNYRIAC and NYSDA co-hosted a virtual CLE titled, “Representing Youth in Family and Criminal Court Proceedings.” The guest speakers were Lana Tupchick, Esq., of Tupchik Legal Group in Buffalo, and Mary Armistead, Esq., Staff Attorney at The Legal Project in Albany. Ms. Armistead discussed Special Immigrant Juvenile Status (SIJS) in depth, which is of particular importance to the RIAC’s work.

SIJS is a humanitarian pathway to lawful permanent residence status for immigrant children and youth who meet certain eligibility requirements. First, SIJS involves certain determinations made by state courts with “juvenile jurisdiction.” In New York, these determinations are typically made by a family or surrogate’s court. Armistead noted that while the power to grant immigration status lies exclusively with the federal government, a state court with juvenile jurisdiction issues findings of fact in a “predicate order” that then allows a child to apply for a green card (permanent residence), either concurrently or at a later time.

Armistead discussed the five eligibility requirements needed of a SIJS’ applicant in order to be approved for the benefit. These include: (1) the applicant must be younger than 21 years old; (2) the applicant must be unmarried; (3) the applicant must be declared a dependent of a juvenile court, or placed under the custody of an agency, department of a State, or an individual or entity appointed by a State or juvenile court; (4) there must be a finding by the court

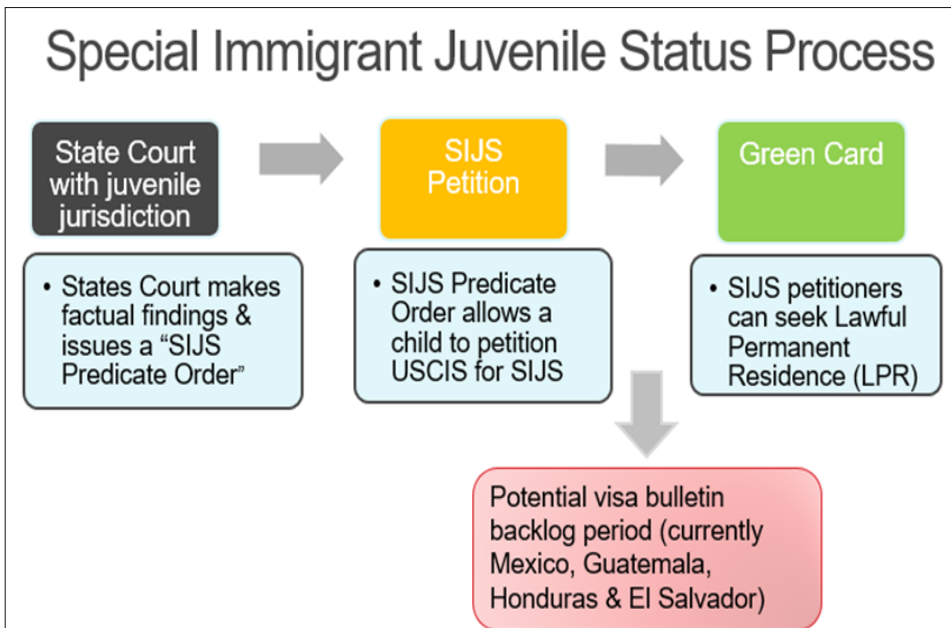
“...[A] state court with juvenile jurisdiction issues findings of fact in a ‘predicate order’ that then allows a child to apply for a green card...”

that the applicant is unable to be reunited with one or both parents due to abuse, neglect, abandonment, or a similar basis found under State law (e.g. death) and; (5) a court finding that it is in the child’s best interest *not* to be returned to their home country. In order to apply successfully for SIJS, USCIS must receive an I-360 petition at least one day before the child’s 21st birthday.

The applicant first files a petition, though an approved SIJS petition does not

result in lawful permanent residency. A second application for permanent residency must also be filed.

If a child has been placed in removal proceedings in immigration court, the process will be more complicated. The child will need to move for a continuance from the immigration court until they are statutorily eligible to apply for permanent residence. Then, they must either have their removal proceedings terminated, if they wish to apply for their “green card” with U.S. Citizenship



Infographic by Mary Armistead, Esq.

and Immigration Services (USCIS), or apply with the immigration court.

Albeit the many legal nuances and complications that can occur in court, there are considerable benefits to SIJS that make the challenge worthwhile. SIJS grantees can apply for permanent residence, which is the pathway to U.S. citizenship. SIJS can also provide opportunities for the child in terms of stability, housing, health insurance, and financial aid.

However, it is important to note that there is a bar on benefits for the parents of SIJS applicants. SIJS grantees will not be able to file for their biological or prior adoptive parents to obtain an immigrant benefit at any future point. This even applies to the non-abusive/abandoning/neglectful parent, though the bar does not directly affect a biological or prior adoptive parent's ability to adjust status through any other method.

Lastly, SIJS can arise in *any* proceeding where a child is an immigrant and their custody or care is at issue. Even if no other party has brought up the issue of SIJS, it is important to screen your client for SIJS eligibility and make a motion for special findings if it is in their best interest. It is essential that a proposed order be submitted to the court, as the order must contain very specific language and information, including specifying the eligibility basis under state law, to avoid rejection by USCIS. If the child has an immigration attorney, connect with that attorney *before* making a motion for special findings. If they do not have an immigration attorney, it is crucial to connect them with one. The WNYRIAC can provide you with referrals.

### **Any questions about SIJS?**

Contact the WNYRIAC's legal assistant, Abbey Brown, and she will put you in touch with Ms. Armistead.  
Email: [abrown@legalaidbuffalo.org](mailto:abrown@legalaidbuffalo.org)

## **WNY Regional Immigration Assistance Center**

A partnership between the Ontario County Public Defender's Office and the Legal Aid Bureau of Buffalo, Inc.

### ***Reentry Project Cont'd...***

discrimination in violation of their rights under the Human Rights Law (Exec. Law) § 296 (15) & (16) and NY Corrections Law Article 23-a.

If you need re-entry services in Erie County or those counties in the 8th JD not served by LawNY, contact the Legal Aid Bureau of Buffalo at (716) 853-9555.

## **Updates**

### ***Temporary Protected Status (TPS)***

In addition to extending Temporary Protected Status to certain Ukrainians and Afghans, as reported in our April Newsletter, DHS has recently extended the country-specific, temporary form of relief to certain individuals from Sudan and Cameroon. "TPS" has *stringent* criminal bars and requires that individuals be in the U.S. since no later than March 1, 2022 for Sudan and April 14, 2022 for Cameroon. For more information on TPS, see our [July 2021](#) newsletter.

### ***Immigrant Defense Project (IDP)***

The IDP has updated some of their resources, such as the Know Your Rights website and the Know Your Rights flyer, now available in 16 languages. The flyers and booklets give valuable information about who is at risk of being arrested by ICE and how to invoke one's rights during an encounter with ICE at the door, inside the home, or on the street.

[Click here for the Know Your Rights with ICE website](#)

