

Procedural Guide

1200-500.85

SPECIAL IMMIGRANT STATUS (SIS)

Date Issued: 12/05/11 Effective date 12/19/11 (NOTE: The effective date applies to only those sections highlighted in yellow, the rest of the procedures are currently in effect. This will allow time for SCSW to inform their CSWs of the changes.)

- New Policy Release
- Revision of Existing Procedural Guide 1200-500.85, Special Immigrant Status (SIS), dated 03/19/08

Revision Made: NOTE: Current Revisions are Highlighted

The Special Immigrant Juvenile Status eligibility requirement has changed. An undocumented child is now eligible for Special Immigrant Juvenile Status when the Juvenile Court has made the finding that family reunification with **one or both** parents of the undocumented child is not viable due to abuse, neglect, and/or abandonment. This new requirement has replaced the previous requirement of a child being under the permanent plan of Planned Permanent Living Arrangement (AKA long-term foster care). In addition, a description of the Special Immigrant Status (SIS) Unit was added to clarify when the SIS Unit is assigned as primary and secondary to cases.

Cancels: None

DEPARTMENTAL VALUES

This Procedural Guide supports timely permanency for undocumented youth

WHAT CASES ARE AFFECTED

This Procedural Guide is applicable to all new and existing cases **with an undocumented child/youth.**

OPERATIONAL IMPACT

It is not the duty of CSWs to report undocumented children and families to Immigration & Customs Enforcement (ICE). Section 101 (a)(27)(J) of the Immigration and Nationality Act [8 U.S.C 1101], as amended by the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, allows for Special Immigrant Status for undocumented children who are dependents of a juvenile court and the juvenile court has made the finding that family reunification with one or both parents of the undocumented child is not viable due to abuse, neglect, and/or abandonment, and for whom the court has declared that it is not in the child's best interest to be returned to their country of origin. Special Immigrant Juveniles can then seek a grant of lawful permanent resident status. Legal status will afford an immigrant child the right to remain in the United States thus eliminating the fear of deportation upon emancipation from the child welfare system. However, a child/youth may be deported if breaking the law, even if they have obtained legal status.

Obtaining Special Immigrant Juvenile Status for an undocumented child/youth that is under the supervision of the Department is not at the discretion of the case-carrying CSW or SCSW. **All eligible undocumented children shall be referred to the SIS Unit as soon as they become eligible** and USCIS will decide if the child will be granted lawful permanent resident status. Lawful permanent resident status allows a child/youth to successfully emancipate from the dependency system with the tools to legally work and/or pursue higher education in the United States, which is consistent with DCFS permanency goals and values.

In order for the SIS Unit to file the paperwork involved in obtaining lawful permanent resident status for eligible undocumented children and youth, the case-carrying CSW needs to refer the child/youth as soon as the child/youth becomes potentially eligible.

Due to the new eligibility criteria for SIJS under TVPRA 2008, undocumented dependent children may be referred to the SIS Unit to obtain lawful permanent resident status

- as soon as they become dependents of the court (Jurisdictional/Dispositional Hearing*) and one or both parent(s) is not given family reunification services, or
- when family reunification with one or both parents is unsuccessful (.366.21(e) or (f), 366.22, 366.25, or 366.26 hearings).

* When the order of no family reunification for one or both parents is made at the Jurisdictional/Dispositional hearing, it is the responsibility of the Dependency Investigator (DI) to refer the child/youth to the Special Immigrant Status (SIS) Unit.

The legalization process requires continued Court jurisdiction. It is currently taking six months to eighteen months, depending on the circumstances, for a child/youth to receive a legal residency card ("green card"). Therefore, it is essential that referrals to SIS be made as soon as the child/youth becomes eligible.

NOTE: For eligibility purposes, though they are not U.S. citizens or nationals of the U.S. by reason of their birth within the United States, children born in certain unincorporated U.S. territories such as American Samoa, Guam, Puerto Rico, or the American Virgin Islands are U.S. citizens, therefore, children from these U.S. territories do not need to be referred to the SIS Unit.

For all undocumented children an application for PRUCOL must be completed by Revenue Enhancement and sent to U.S. Citizenship and Immigration Services (USCIS) [previously known as INS]. The PRUCOL application will be completed after the regional intake eligibility worker forwards the PRUCOL questionnaire and current court report to the PRUCOL Eligibility Worker. The purpose of the PRUCOL application is for funding purposes only, it is not an application to grant the undocumented child/youth lawful status in the United States. In order to grant an undocumented dependent child/youth lawful permanent resident status (obtain a “green card”) a separate referral to the SIS Unit is required once the juvenile court has made the finding that family reunification with one or both parents of the undocumented child is not viable due to abuse, neglect, and/or abandonment. Only qualifying undocumented children can apply for Special immigrant Juvenile Status and be granted legal status. For more information, see Procedural Guide E08-0590, Permanent Residence Under the Color of the Law (PRUCOL).

Special Immigrant Status (SIS) Unit

The Department established the Special Immigrant Status (SIS) Unit to provide immigration services to all DCFS children eligible for SIJS under Section 153 of the Federal Immigration Act of 1990. The SIS Unit handles the entire legalization process for referred cases until the US Citizenship and Immigration Services (USCIS) approves/denies legal status and issues a “green card” for the child/youth. The SIS Unit is dedicated to serve all of the Department’s offices, including Adoptions; it is located at the Belvedere office (SPA 7), it consists of specialized Eligibility Workers (EW) to process the legalization process of undocumented children/youth.

All SIS referrals from regional offices will be assigned to the EWs (legalization workers) in the SIS Unit as secondary, the referring CSW remains primary on the case. The EW from the SIS Unit will keep the case-carrying CSW informed as to the status of the application and inform the CSW if additional documentation (e.g. disposition reports on any arrests, proof of date and place of birth, complete immunization records, etc.) is required for the approval of the child’s legal status.

DEFINITIONS

US Citizenship

A person born in the US or naturalized or, in certain circumstances, born abroad to a U.S. citizen parent or parents.

Immigrant

A person who leaves one country to settle permanently in another.

US Citizenship and Immigration Services (USCIS)

Formerly known as INS, a government agency responsible for the admission, control and status of all immigrants in the United States. (Note: Immigration jurisdiction supersedes Superior court jurisdiction.)

Lawful Permanent Resident (LPR)

An immigrant who has been lawfully accorded the privilege of residing permanently in the US. Lawful permanent residents are those individuals who hold a "green card". Lawful permanent residents with good moral character as defined by immigration law are permitted to apply for naturalization after five years of US residency or when they turn 18, whichever is later.

"Green Card"

An identification card issued to lawful permanent residents by USCIS.

Undocumented Alien

Also known as an "illegal alien," is a person who has entered the US illegally and is deportable if apprehended, or a person who entered the US legally but who has fallen "out of status" and is deportable.

Special Immigrant Juvenile Status (SIJS)

Provides lawful permanent residency to certain undocumented children who are under the jurisdiction of a juvenile court, the juvenile court has made the finding that family reunification with one or both parents of the undocumented child is not viable due to abuse, neglect, and/or abandonment, and for whom it has been determined that is not in their best interest to be returned to their country of nationality.

Permanent Resident Under the Color of Law (PRUCOL)

PRUCOL **is not** recognized as a lawful status by US Citizenship and Immigration Services (USCIS). However, DCFS through its Revenue Enhancement is required to determine if an undocumented applicant falls into this category. For a child to be considered PRUCOL, USCIS must be aware of the child's presence in the United States and USCIS must not be actively seeking the removal of the child from the United States.

NOTE: A separate referral to the SIS Unit is required to obtain lawful permanent resident status (a “green card”) for a qualifying undocumented child/youth.

If legal residency is not established prior to the finalization of legal guardianship or adoption and/or termination of Court jurisdiction, DCFS cannot assist the family with this process, therefore a child’s legal residency shall be established prior to the finalization of legal guardianship or adoption and/or termination of Court jurisdiction. If legal residency is not established prior to termination of Court jurisdiction, the family may be subject to a very lengthy and costly immigration family filing process, which may include traveling to the child’s country of origin and requesting a visa from that country’s consulate.

Additionally, there are times when the Special Immigration Unit may decline to apply for Permanent Resident Status for certain children who are believed to be ineligible. The Special Immigration Unit will work with the family and keep DCFS staff informed regarding actions to take in such a circumstance.

Best practice would include disclosure of all immigration related issues to the prospective adoptive parents or legal guardians in writing, receipt of which should be acknowledged by their signature. CSWs **shall not** give legal advice regarding immigration issues to prospective adoptive parents or legal guardians but should instead refer them to contact the SIS Unit or urge them to retain counsel with that expertise.

NOTE: The SIS Unit can also help obtain or replace a child’s/youth’s lost or stolen green card both prior to and post termination of jurisdiction. The SIS Unit will cover the USCIS fees to replace a green card if the child is under the age of 21. Once the youth is 21, he/she is responsible for paying the USCIS fees to replace a green card. Green cards are good for 10 years; if a child needs to have his/her green card renewed, the SIS Unit can help with that as well.

Procedures

**A. WHEN: MAKING A REFERRAL TO THE SPECIAL IMMIGRANT STATUS UNIT:
WHEN COURT HAS MADE THE FINDING THAT FAMILY
REUNIFICATION WITH ONE OR BOTH PARENTS OF THE
UNDOCUMENTED CHILD/YOUTH IS NOT VIABLE DUE TO ABUSE,
NEGLECT, AND/OR ABANDONMENT**

Due to the new eligibility criteria for SIJS, undocumented dependent children may be referred to the SIS Unit to obtain lawful permanent resident status

- as soon as they become dependents of the court (Jurisdictional/Dispositional* Hearing), **and one or both parent(s)** is not given family reunification services, or
- when family reunification with one or both parents is unsuccessful [366.21 (e) or (f), 366.22, 366.25, or 366.26 hearings].

* When the order of no family reunification for one or both parents is made at the Jurisdictional/Dispositional hearing, it is the responsibility of the Dependency Investigator (DI) to refer the child/youth to the Special Immigrant Status (SIS) Unit.

DI or Case-Carrying CSW Responsibilities

1. Make certain that the undocumented child/youth meets the eligibility criteria for Special Immigrant Juvenile Status. To be eligible, the child/youth must be:
 - A dependent of the Juvenile Court;
 - The Juvenile Court has made the finding that family reunification with one or both parents of the undocumented child/youth is not viable due to abuse, neglect, and/or abandonment; (In other words, the child may receive family reunification with one parent, however family reunification services with the other parent was terminated or family reunification with both parents was terminated.)
 - Subjected to judicial proceedings in which it is determined that it is not in his/her best interest to returned to their country of nationality; and,
 - Unmarried and under the age of 21.
2. Exhaust and document every effort in obtaining a birth certificate, baptismal certificate, passport, or foreign identification card or other evidence of age and place of birth.

NOTE: It the responsibility of the case-carrying CSW to obtain any available document(s) that confirms the youth's age, it is not the responsibility of the SIS Unit. This includes obtaining a delayed registration of birth if the child's birth was never registered, see Procedural Guide 1200-500.10, Obtaining Vital Records (Birth, Death, Marriage and Divorce).

3. Complete a DCFS 852, Special Immigrant Status/Naturalization Referral,
4. Attach the current minute order and proof of age and place of birth to the DCFS 852.
5. Send the DCFS 852, and attachments to the SIS Unit by mail or fax at 5835 S. Eastern Avenue, Los Angeles, CA 90040, fax number (323) 890-9700.
6. If the permanent plan for the undocumented child is legal guardianship, request that the court maintain jurisdiction pending the Special Immigrant Juvenile Status (SIJS) process and until a green card is approved.

7. If the permanent plan for the undocumented child is Adoption, **do not finalize adoption** nor should Court jurisdiction be terminated until SIJS is approved. If a child is undocumented he/she will not automatically become a US citizen if adopted by a US citizen parent. This process is automatic **only** when the child is a lawful permanent resident first.

NOTE: The legalization process requires continued Court jurisdiction. It is currently taking six months to eighteen months, depending on the circumstances, for a child/youth to receive a legal residency card (“green card”). Therefore, it is essential that referrals to SIS be made as soon as the child/youth becomes eligible.

When a child is granted Special Immigrant Juvenile Status in relative foster care, they are referred to DPSS to receive CalWORKs.

SIJS can be granted for youth as long as they file with USCIS age 21 and as long as they remain dependents of the court, whether they are in paid or non-paid placement. A youth age 18 or older must have been receiving AFDC-FC prior to reaching the age 18 and (s)he must continue to meet all other eligibility requirements to be eligible for continuation of AFDC-FC after age 18. Therefore, if a youth age 18 - 21 is granted SIJS, the youth does not automatically become AFDC-FC eligible. The only funding source for non-relative foster care payment remains GRI.

Special Immigration Status Unit Staff Responsibilities

The SIS Unit handles the entire legalization process for referred cases until the US Citizenship and Immigration Services (USCIS) approves/denies legal status and issues a “green card” for the child/youth. **It is critical for the case-carrying CSW to keep the case open until the “green card” is received.**

1. The SIS Unit will also file for:
 - a) The replacement of lost or stolen permanent resident cards on behalf of DCFS children, regardless of the child’s age (Court jurisdiction is not required). **The SIS Unit will cover the USCIS fees to replace a green card if the child is under the age of 21. Once the youth is 21, he/she is responsible for paying the USCIS fees to replace a green card. Green cards are good for 10 years; if a child needs to have his/her green card renewed, the SIS Unit can help with that as well.**
 - b) US citizenship for youth over the age of 18, whose reunification with one or both parents is not viable due to abuse, neglect, and/or abandonment and have been legal residents in the U.S. for at least five years (continued Court jurisdiction is not required).

- c) Post Adoption immigration services, including change of name (new name in Adoptions decree) for lawful permanent resident children, and Certificate of Citizenship for lawful permanent resident children adopted by at least one US citizen parent.

Reminder: Undocumented children/youth **do not** qualify for Kin-Gap. Therefore, make certain that USCIS (through the SIS Unit) has granted a child/youth legal status in the US before recommending Kin-Gap. If a child/youth does not have legal status, **recommend legal guardianship but do not recommend the termination of Court jurisdiction** and refer the case immediately to the SIS Unit.

If you have any questions about the referral process or the services provided by the SIS Unit, please contact Cecilia Saco, **Program** Coordinator/Supervisor, at (323) 725-**4679** or by e-mail for a consultation.

B. WHEN: A CHILD/YOUTH IS GRANTED LAWFUL PERMANENT RESIDENT STATUS AKA "GREEN CARD"

Case-Carrying CSW Responsibilities

1. Obtain the green card from the SIS EW worker.
2. Make a copy of the green card and file the copy in the Additional Services folder (red folder).
3. At the next home visit with the child/youth, deliver the original green card to the child/youth/caregiver and have the child/youth sign any necessary documentation confirming the receipt of the green card. Since USCIS has granted the child/youth lawful permanent resident status, CSWs are to deliver the green card to the child/youth as soon as possible. Under no circumstances shall the CSW retain the green card in the file or withhold it due to the child's/youth's noncompliance with the case plan.
4. Inform the child/youth and caregiver that if the green card is lost, they may have to pay for a replacement card. The SIS Unit will cover the USCIS fees to replace a green card if the child is under the age of 21. Once the youth is 21, he/she is responsible for paying the USCIS fees to replace a green card. Green cards are good for 10 years; if a child/youth needs to have his/her green card renewed, the SIS Unit can assist with this as well.
5. Inform the caregiver that the child/youth shall apply for a social security number. In addition to the green card, the Social Security Office requires an original birth certificate or other proof of age and place of birth.

6. Once a Social Security Number is obtained, inform the youth and the caregiver that the youth shall obtain a California ID.

APPROVAL LEVELS

Section	Level	Approval
A.	None	

OVERVIEW OF STATUTES/REGULATIONS

United States Code title 8 Chapter 12 Section 1101(a)(27)(J)(i)

(27)The term “special immigrant” means—

- (A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;
- (B) an immigrant who was a citizen of the United States and may, under section 1435 (a) or 1438 of this title, apply for reacquisition of citizenship;
- (C) an immigrant, and the immigrant’s spouse and children if accompanying or following to join the immigrant, who—
 - (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, State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law,...

Immigration Nationality Act (INA), Section 101(a)(27)(J)-provides the eligibility requirements for Special Immigrant Juvenile Status.

Federal Immigration Act of 1990, Section 153 of the - provides Special Immigrant Juvenile Status (SIJS) to undocumented children who (1) are under 21, (2) are unmarried, (3) have been abandoned, neglected or abused by at least one birth parent, (4) have been declared dependent on the juvenile court (often through a guardianship proceeding) or deemed eligible for long-term foster care, and (5) for whom the court has declared that it is not in the child’s best interest to be returned to his country of origin. A grant of SIJS does not automatically confer lawful permanent resident status; instead, it makes the child eligible to apply for adjustment of status to that of lawful permanent resident.

Trafficking Victims Protection Reauthorization Act of 2008- amended the definition of a “Special Immigrant Juvenile” (SIJ) at section 101(a)(27)(J) of the Immigration and

Nationality Act. It expanded the group of aliens eligible for SIJ status and modified the definition of special immigrant juvenile regarding the findings a juvenile court must make in order for a juvenile court order to serve as the basis for a grant of SIJ status.

LINKS

California Code <http://www.leginfo.ca.gov/calaw.html>
Division 31 Regulations <http://www.cdss.ca.gov/ord/PG309.htm>
Title 22 Regulations <http://www.dss.cahwnet.gov/ord/PG295.htm>

RELATED POLICIES

Procedural Guide E08-0590, Permanent Residence Under the Color of the Law (PRUCOL) and Special Immigration Status

[Procedural Guide 1200-500.10](#), Obtaining Vital Records (Birth, Death, Marriage and Divorce).

[Procedural Guide 1200-500.86](#), Immigration Options for Undocumented Children & Families

FYI 08-05(Rev), Establishing Legal Residency Prior To Adoption Finalization and/or Termination of Court Jurisdiction on Other Permanent Plans

FORM(S) REQUIRED/LOCATION

HARD COPY None

LA Kids: [DCFS 852](#), Special Immigrant Status/Naturalization Referral

CWS/CMS: None

SDM: None