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A Practice Advisory on *Recinos v. Escobar*:
Special Immigrant Juvenile Status in Probate and Juvenile Courts
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In *Recinos v. Escobar*, 473 Mass. 734 (2016), the Massachusetts Supreme Judicial Court (SJC) was asked to determine whether the Probate and Family Court has jurisdiction over youth between the ages of 18 and 21 who are requesting the special findings necessary to apply for Special Immigrant Juvenile (SIJ) status from the federal government. In its decision, the Court addressed the role of state courts in adjudicating these special findings for SIJ status and further clarified issues related to such findings.

This memo will briefly describe SIJ status, what is required to obtain SIJ status, and the import of the *Recinos* decision.

1. What is SIJ Status?

SIJ status is a pathway to lawful permanent residence (green card) for certain undocumented children, who are physically present in the U.S., who were abused, abandoned, or neglected by one or both parents.¹

2. What is required to obtain SIJ Status?

a. Special findings from a state court (“Predicate Order”)

Before a child applies for SIJ status with federal immigration officials, a state juvenile court must find that (1) the child is dependent on a juvenile court in the United States; (2) the child cannot reunify with one or both parents due to abuse, abandonment, or neglect or a similar basis; and (3) the child’s best interest is not to return to her home country or parent’s previous country. 8 U.S.C. §1101(27) (J). Such state court findings are referred to as a “predicate order.” The federal SIJ statute requires that a state juvenile court make such findings before the child can apply for SIJ status with immigration officials. *Id.*

b. I-360

After receiving a “predicate order,” a child petitioning for SIJ status must file a form I-360 with the United States Citizenship and Immigration Services (USCIS). While the predicate order is necessary to file the I-360, it is not sufficient by itself to obtain SIJ status. In order to be granted SIJ status, a child must obtain the

¹ For SIJ purposes, “child” is defined as an unmarried individual under the age of 21. 8 U.S.C. §1101(b) (1).

predicate order, file an application, submit to background checks and an interview with USCIS and then must await approval from USCIS. Once the SIJ status (I-360) is granted, the child can then be considered for a green card.

3. Which Massachusetts courts have jurisdiction to provide a “predicate order?”

Under federal immigration law, a juvenile court is defined as “a court located in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. §204.11. In Massachusetts, both the Juvenile Court and the Probate and Family Court have “jurisdiction to make judicial determinations about the care and custody of juveniles despite only one court being designated as a juvenile court.”² Thus, attorneys may seek the predicate order in either Juvenile Court or Probate and Family Court.

4. What does the *Recinos* decision say?

Prior to *Recinos*, attorneys seeking predicate orders on behalf of their clients encountered a number of obstacles to obtaining an order. The primary obstacle, addressed in detail by the SJC, was that probate and juvenile court jurisdiction ends at 18, but SIJ status is available until an individual turns 21. Children between 18 and 21 often had no way to request a predicate order in state court despite being otherwise eligible for SIJ status. The Court in *Recinos* resolved the gap between access to Massachusetts courts and the federal relief for children by finding that the Massachusetts Probate and Family Court, under its broad equity power under M.G.L. c. 215 §6, has jurisdiction for the “specific purpose of making the special findings necessary to apply for SIJ status pursuant to the INA.” *Recinos* at 739. Furthermore, the Court held that a child is “dependent on” the Probate and Family Court by virtue of the Federal SIJ statute and need not couch a request for a predicate order as a request for a custody determination or through any alternative vehicle. In short, a child may bring an equity action in Probate and Family Court solely for the purpose of obtaining the SIJ predicate order.

For those practicing in Juvenile Court (as opposed to Probate and Family Court), a second obstacle has been that Juvenile Court judges often express concern over whether they have jurisdiction to issue predicate orders. However, in *Recinos*, the SJC makes clear that because the “Juvenile Court...[has] jurisdiction to make judicial determinations about the care and custody of juveniles...an immigrant child may petition for special findings in either the Juvenile Court or the Probate and Family Court.” *Recinos* at 738.

Finally, both Juvenile Court and Probate Court judges have often expressed concern that their role is not to engage in immigration analysis and therefore they should not be issuing predicate orders. In *Recinos*, the Court makes clear that the determinations required to grant a predicate order are exclusively child welfare determinations, which are the “distinct expertise” of state courts. *Recinos* at 738. The predicate orders are therefore separate from the immigration analysis and are only “the first step in the process to achieve SIJ status.” *Id.*

5. What is the role of the CAFL and YAD attorney after *Recinos*?

As discussed above, before a child can request Special Immigrant Juvenile status from United States Citizenship and Immigration Services (USCIS), she must first obtain the predicate findings from a state court judge. CAFL and YAD attorneys are best situated, during their representation of eligible individuals in

² *Recinos v. Escobar*, 473 Mass. 734 (2016).

juvenile and probate matters, to request these findings from Massachusetts Juvenile Court and Probate Court judges. With the predicate findings in hand, eligible juvenile clients can then apply for SIJ status and obtain lawful status in the U.S.

As always, please contact the IIU with any questions about this decision or for assistance in individual cases.