Guardianship of Yosselin Guadalupe Penate/DOR v. Lopez, 477 Mass. 268 (2017)

Summary by Jennifer Klein, Immigration Impact Unit

In this case, the SJC addressed the question of whether a state Probate and Family Court or Juvenile Court judge may decline to make special findings in the case of a child under age 21 applying for Special Immigrant Juvenile Status (SIJ). To apply for SIJ, which provides undocumented youth with a path to citizenship, a juvenile below age 21[[1]](#footnote-1) must obtain special findings from a “juvenile court” that (1) the child is dependent on a juvenile court, or under the custody of an agency or department of a state or an individual or entity appointed by the court or state; (2) reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and (3) returning the child to his or her country of origin would not be in the child’s best interest. The child must then submit these findings along with an I-360 application to the U.S. Citizenship and Immigration Service (USCIS) which ultimately determines whether the child meets all the requirements of eligibility for SIJ status. After obtaining SIJ status, a child can be considered for a green card.

This case involved two juveniles – Yosselin Penate and EG. Yosselin was living in the custody of an uncle and presented a motion for special findings against her mother in conjunction with her uncle’s petition for guardianship. EG was living in the custody of her mother, and filed a motion for special findings against her father in conjunction with a paternity suit initiated by the Department of Revenue. In both cases the Probate and Family Court judges denied the motions. In Yosselin’s case, the judge declined to make findings as to the first and third prongs and found that Yosselin’s case did not satisfy the second prong because her primary motivation in moving for special findings was to be able to apply for SIJ and not that she could not be reunited with her mother. In EG’s case, the judge completely declined to make special findings because EG was in her mother’s custody.

The SJC’s decision after reviewing these two cases contains two major holdings. First, the SJC declared that the Probate and Family Court judge may not decline to make special findings if requested by an immigrant child. This holding applies regardless of whether the judge suspects that the juvenile seeks a path to lawful status for reasons other than her abuse/abandonment/neglect. In short, “[t]he immigrant child’s motivation is irrelevant to the judge’s special findings.” Additionally, a judge must make the special findings even if the judge believes that the child will not prevail in her application for SIJ status before USCIS, because, as the SJC noted, immigration “lies exclusively within the purview of the Federal government.”

Second, the SJC took the opportunity to clarify that special findings must be limited to the parent with whom the child claims that reunification is not viable. So, for a child like EG who is in the custody of her mother and moves for special findings regarding her father, the judge should only discuss the father in its findings. Finally, the SJC did not answer the question of whether the immigration statute requires a finding against one or both parents, as the state court’s duty is solely to make special findings against either one or both parents as requested by a child.

Practice Note: There are serious risks involved in applying for SIJ status. Counsel must always consult with an immigration attorney before seeking SIJ status for a child.

1. In Recinos v. Escobar, 473 Mass. 734 (2015), the SJC addressed the issue of the SIJ statute defining “child” as anyone below age 21 while the Massachusetts probate and juvenile court jurisdiction ends at 18. The SJC held that the Massachusetts Probate and Family Court, under its broad equity power under M.G.L. c. 215 §6, has jurisdiction over youth up to age 21 for the “specific purpose of making the special findings necessary to apply for SIJ status pursuant to the INA.” [↑](#footnote-ref-1)