*Hernandez-Lemus vs. Arias-Diaz*, 480 Mass. 1002 (2018)

Summary by Katy Krywonis, CAFL Training Unit

This case provides a good overview of the role of state courts in adjudicating the special findings to apply for Special Immigrant Juvenile (SIJ) status under the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(27)(J). The SJC concluded that the child was entitled to special findings with respect to his mother. The SJC vacated the part of the judgment that denied the motion for special findings and remanded.

*Facts*: The father filed a petition in the Probate and Family Court for custody of his son, a seventeen year old undocumented immigrant from Guatemala. A Motion for Special Findings of Fact and Rulings of Law, accompanied by the child’s affidavit, was also filed so that the child could apply for SIJ status. It asserted that reunification of the child with his mother was not viable due to abuse and neglect, and that return to Guatemala was not in his best interests. The judge granted custody of the child to the father, but declined to make the special findings. A panel of the Appeals Court affirmed. The SJC granted further appellate review.

*Discussion*: SIJ status is a path to lawful permanent residence (green card) for undocumented children (under age 21 and unmarried) who have been abused, neglected, or abandoned by one or both parents. Obtaining SIJ status is a unique hybrid process that involves state court and federal immigration officials. First, the child must obtain special findings from a juvenile court or probate court that (1) they are dependent on a juvenile court or probate court in the United States; (2) they cannot reunify with one or both parents due to abuse, neglect, or abandonment; and (3) it is not in their best interests to return to their country of origin. The judge must make findings – whether favorable or not – concerning each of these criteria. But the findings must be made only as to the parent with whom the child claims reunification is not viable. So for a child like this one, the judge must make findings about his mother but not about his father. The ultimate merits and purpose of the child’s application for SIJ status are irrelevant because the judge’s findings are exclusively child welfare determinations and separate from the immigration analysis. The child’s application for SIJ status is predicated on the special findings (referred to as a “predicate order.”) After receiving the predicate order, the child must then submit it with a petition for SIJ status to the United States Citizenship and Immigration Services (USCIS). USCIS ultimately determines whether the child meets all the requirements of eligibility for SIJ status. If SIJ status is granted, the child can then be considered for a green card.

*Practice Tip*: There are serious risks involved in applying for SIJ status. Most notably, it flags that the client is here illegally. Changes to immigration law and practice are making it harder for children to obtain SIJ status. Counsel must always consult with an immigration attorney before seeking SIJ status for a child client. DCF contracts with an immigration attorney to assist kids in care with their SIJ applications. The CPCS Immigration Impact Unit and Children’s Law Center can provide information and assistance, too.