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May 17–18, 2019

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SIJS Updates and Practice Pointers

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RFE/NOID Trends

- The state predicate order lack sufficient evidence to show a factual basis for the findings.
- The state predicate order does not highlight the state law or statute upon which the determination was based, and instead cites to the INA.
- The state predicate order does not show whom the court considered the parents (if not listed on the birth certificate).



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RFE/NOID Trends

- The petition contains facts that conflict with information in the I-213, or “Record of Deportable-Inadmissible Alien.
- The predicate order is invalid because the child was over eighteen-years-old when the order/findings were issued.
- The petition should have been submitted along with a separate copy of state court custody order.



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State Court Practice Tips

Strategies for Predicate Order:

- Provide state law citation for special findings:
 - Custody or Dependency
 - Abuse/Abandonment/Neglect/ Similar Basis
 - Non-viability of reunification
 - Best Interest not to return
- Take out any reference to INA language



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AAO Unpublished Decision of TX Orders

Non-Viability of Unpublished AAO Decisions:

Grant: Matter of S-M-R-I-(Dec. 18, 2018) “The ruling that the Petitioner's brother had certain exclusive rights, and that his parents could only have possession of him in a supervised setting due to their neglect supports the court's finding that the Petitioner's reunification with his parents is not viable.”



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AAO Unpublished Decision of TX Orders

Non-Viability of Unpublished AAO Decisions:

Denial: Matter of V-A-A-E-(Dec. 18, 2018)

“Although the court made a parental reunification finding, the court's appointment of the Petitioner's father as Possessory Conservator shows that the court believed that visitation between the Petitioner and his father was in his best interest regardless of the limitations on those visitation rights.”



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State Court Practice Tips

Strategies for Predicate Order:

- State court may require paternity to be established
- If findings are being made against dad, name father even if “Unknown Father”
- If parent(s) deceased make an argument of neglect, abandonment or abuse prior to death



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AAO Unpublished Decision of TX Orders

Deceased Parent AAO Unpublished Cases:

Neglect

Matter of J-Y-R-P- (Aug 28, 2018): Uses 261.001(4)...death without making necessary arrangements as neglect (denied on other grounds).

Similar basis

Matter of C-E-G-G- (Nov. 28. 2018): Death of both parents with no provisions for care does not equal a similar basis under state law.



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AAO Unpublished Decision of TX Orders

Deceased Parent AAO Unpublished Cases:

Abandonment

Matter of Y-A-M-O-: (Feb. 28. 2019): "Petitioner could not reunify with his father and mother due to parental abandonment under section 152.102 of the Tex. Fam. Code resulting from their failure to ensure that the Petitioner had reasonable and necessary care as a child after their deaths."



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State Court Practice Tips

Anticipating RFEs, NOIDs, NOIRs:

- Establish factual basis
- File child and adult's written statement with state court
- Request a transcript be taken
- Include other supportive documentation



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State Litigation Updates

Litigation on I-360 denials for 18-21 year old children:

- New York: *R.F.M., et al v. Nielson, et al.* (March 2019)
- Washington: *Moreno Galvez, et al v. Cissna, et al.* (Injunctive relief but no decision)
- California: *J.L., et al v. Cissna, et al.* (No decision)
- New Jersey – just filed April 29, 2019



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State Legislation Updates

State Legislation Concerning SIJS:

Colorado

Nevada

California

New York

Washington

Maryland

Connecticut

Massachusetts

New Jersey

Virginia

Others?



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Adjudication Times

I-360 Adjudication Timeframe:

- Processed by the National Benefits Center
- Statutory adjudication deadline: 180 days
- Reality: 6-18+ months



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Adjudication Times

Outside of Processing Times:

- E-mail the NBC at NBCSIJ@uscis.dhs.gov
- Fill out an Electronic Case Assistance Form, DHS-7001 with the USCIS Ombudsman's office
- Request congressional assistance
- Reach out to an AILA NBC Liaison

Source: CLINIC: Top Trends in Special Immigrant Juvenile Adjudications, August 2018



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Adjudication of the I-360

I-360 Adjudication Trends:

From 2017 to 2018:

- Denials have risen 8%-27%
- 50% less petitions have been adjudicated
- 34,000 backlogged petitions

Source: <https://bit.ly/2UjyA9j>



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Adjudication Times

I-485 Adjudication Timeframe:

- Based on the visa bulletin published monthly by the state department
- SIJ adjustment visa are in the 4th Preference Employment Category
- Country specific
- Adjustment with USCIS vs. Court



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Visa Bulletin – May 2019

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINE S	VIETNAM
1st	01MAR18	22FEB17	01MAR18	22FEB17	01MAR18	01MAR18	01MAR18
2nd	C	15MAY16	C	16APR09	C	C	C
3rd	C	22AUG15	C	01JUL09	C	01JUN18	C
Other Workers	C	01SEP07	C	01JUL09	C	01JUN18	C
4th	C	C	08MAR16	C	01AUG18	C	C
Certain Religious Workers	C	C	08MAR16	C	01AUG18	C	C
5th Non-Regional Center (C5 and T5)	C	22SEP14	C	C	C	C	22SEP16
5th Regional Center (I5 and R5)	C	22SEP14	C	C	C	C	22SEP16



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SIJS In Removal Proceedings

- Quotas on IJs to complete cases
- Limits on Procedural Options (admin closure)
- SIJ considered collateral relief, and may not be sufficient to warrant a continuance
- *Matter of M-C-R-A*: Continuance granted post *Matter of L-A-B-R*- for a case with approved I-360, waiting for visa availability.



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SIJS In Removal Proceedings

- Lodging the I-485
- Pursue other forms of relief before IJ
- Appeal removal order
- Motion to Reopen



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SIJS In Removal Proceedings I-485 Adjudication Forum:

Filing with USCIS	Filing with Immigration Judge
Removal proceedings have been terminated	Unable to terminate removal proceedings
Less adversarial setting	Could be ordered removed if not granted
Could re-adjudicate the I-360	IJ doesn't have jurisdiction to re-adjudicate the I-360
Timing?	Timing?



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QUESTIONS



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