Michigan Immigrant Rights Center

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Submitted via regulations.gov

Chief Samantha Deshommes
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

RE: DHS Docket No. USCIS-2009-0004

Dear Chief Deshommes:

The Michigan Immigrant Rights Center ("MIRC") is a legal services provider and resource center for Michigan's immigrants and community advocates with offices in Ypsilanti, Detroit, Grand Rapids, and Kalamazoo.

MIRC has been representing unaccompanied children in foster care in Michigan for 10 years. It has represented children who have been separated from their parents at the border and children and youth who have traveled to the United States on their own - unaccompanied children. Over the past year alone, MIRC has served more than 618 children in immigration matters. These children are among the most vulnerable and many cannot be reunified with their parents due to abuse, neglect, abandonment, or a similar basis under State law.

Today, we submit this comment to address our concerns with the regulation proposed by the U.S. Citizenship and Immigration Services ("USCIS"), regarding Special Immigrant Juvenile Status ("SIJS") Petitions.

The current regulations, primarily found at 8 CFR § 204.11, are inconsistent with the statutory provisions governing SIJS as they have not been amended following significant changes made in 2008 by the Trafficking Victims Protection Reauthorization Act.

I. The proposed regulation's definition of "juvenile court" is inconsistent with the current Special Immigrant Juvenile (SIJ) statute. Proposed 8 CFR § 204.11 (a).

The proposed regulations define a juvenile court as "any court located in the United States having jurisdiction to make judicial determinations about the custody and care of juveniles." However, the SIJ statute plain language requires that a juvenile be declared dependent on a juvenile court or placed in a qualifying custody arrangement. Thus, a court can be a juvenile court even if it only has jurisdiction to make dependency determinations but not order custody. *See also Matter of A-O-C-*, Adopted Decision 2019-03, at 4n.2 (AAO Oct. 11, 2019) (noting that

a "juvenile court" is "a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency *and/or* custody and care of juveniles" (emphasis added)). If any changes to the definition of "juvenile court" are made, we suggest that the definition be clarified to reflect the inclusion of any court located in the United States (or any State, districts, commonwealth, or territory under the administrative control of the U.S.) having jurisdiction to make judicial determinations about the custody and care of juveniles.

II. The proposed regulation provides for the impermissible review and re-adjudication of state court findings by USCIS. Proposed 8 CFR §204.11(c)(1)(i) & (ii).

As drafted, this proposed regulation imposes a burden on the petitioner to show "that the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status."

In Michigan, the state court may make the findings for SIJ in a separate "Order for Special Findings on the Issue of Special Immigrant Juvenile Status (SIJS)" in addition to issuing other orders in the case depending on the type of proceeding. For instance, in a Child Protective Proceedings, the court issues an Order of Disposition that includes relevant findings for the SIJS. However, the Order of Disposition will often not have all of the factual allegations necessary for USCIS. For that reason, the court may make the findings in a separate Order solely for the convenience of the child to summarize the most legally relevant findings. Those findings allow the child to comply with USCIS requirements. It also serves to protect the privacy interests in State court proceedings.

Although pursuing immigration relief may be a goal and component of the state court's efforts to protect the child, this should not undermine the validity of the state court decision. Congress has asked state court judges to make findings to support permanency and wellbeing of immigrant children in whose interest it is to remain in the United States. In cases brought under Child Protective Proceedings, children are not placed into those proceedings unless there is already a need to do so because of abuse, neglect, abandonment, or similar basis under state law. The proposed rule purports to curtail states' rights and casts doubt on the ability of state judges to issue findings consistent with state law. Thus, we urge the regulations instruct USCIS adjudicators to honor an " Order for Special Findings on the Issue of Special Immigrant Juvenile Status" that is supported by a state court order making the requisite findings and legal determinations.

We are also concerned with the regulations' proposal permitting USCIS officers to request or obtain sensitive juvenile court and other records. This practice invites re-examination of the evidence that fails to acknowledge state court expertise. USCIS has repeatedly acknowledged that they defer to and rely on the juvenile court in the state in making child welfare decisions and for that reason, does not reweigh the evidence and make independent determinations about abuse, neglect, or abandonment. 6 USCIS PM J.2(D)(5). This USCIS practice acknowledges that the State courts have the expertise in issues of child welfare and should not be second-guessed or adjudicated by USCIS adjudicators who have no such expertise. The proposed regulation, however, gives USCIS adjudicators discretion to second guess the findings of the State court.

That discretionary element is not present in the statute and fails to acknowledge State court expertise.

Furthermore, this proposed rule also ignores that the production of documents may violate state confidentiality provisions. The commentary at 76 Fed. Reg. 54981 lists evidence that would be expected to support a SIJS petition to meet the burden of proof to show the State order was sought for relief from abuse, abandonment, or neglect, rather than primarily for obtaining lawful immigration status. The evidence list includes "a dependency or guardianship order, findings accompanying the order, actual records from the proceedings, or other evidence that summarizes the evidence presented to the court," and "evaluations or treatment plans from the court, State agency, department, or individual with whom the juvenile has been placed." However, such evidence may be confidential under state court rules and requesting it would violate a youth's right to confidentiality. Mich. Ct. R. 3.903(A)(3).

III. The proposed regulation invites unnecessary and inappropriate interviews to question a child about details of abuse, neglect, and abandonment. Proposed 8 CFR §204.11(e)

The proposed regulation states that USCIS "may require an interview as a matter of discretion." In most cases, USCIS will already have evidence in their record detailing the factual allegations concerning the child's eligibility for SIJS. If USCIS does not, it is unclear why a Request for Evidence could not be issued instead of requiring an interview. This is routine practice in other immigration matters.

Instead, the commentary indicates that USCIS, in its discretion, can interview a child separately from the child's chosen trusted adult or legal representative and has "discretion" to interview a child about the facts regarding the abuse, neglect, or abandonment. 76 Fed. Reg. 54982.

First, USCIS should recognize that is inappropriate to question a child about details of abuse, neglect, or abandonment without their legal representative present. Additionally, subjecting children to more questioning forces children to relive traumatizing experiences. An example of the negative effect of such a practice can been seen in the cases of our clients whom have had multiple forms of relief available to them, including SIJ and asylum, but decide to forgo their asylum claims because they are afraid of the retraumatization caused by retelling their experiences of abuse. If SIJS would have required an interview, they would have likely foregone that application as well.

For example, MIRC had a client who came to the United States fleeing violence from his home country. When he was five years old, his house was attacked by a group of men. The men raped his mother and killed her in front of our client and his siblings. After the death of his mother, he experienced violence at the hands of his caregivers and was homeless for eight years. This client eventually made his way to the United States and was placed in long term foster care in Michigan. He knew that telling his story would be important, but he did not want to retell his traumatic story more than once. He filmed a video in which he spoke with his therapist about his traumatic past and refused to speak about it again. He said that speaking about his experiences filled him with hate and sadness. Ultimately, a Michigan State Court examined the evidence and

found that reunification with both of his parents was not viable under the "similar basis under state law" standard, MCL 712A.2(b), and that it was not in his best interest to return to his home country. Because the SIJ process did not involve an interview, our client was able to receive immigration status without having to retell his story and retraumatize himself.

Having an interview be a routine part of the SIJS process would cause many traumatized clients to have no choice but to retell their traumatizing experience or to elect to forego this form of relief. This leaves children at risk of being deported to a situation that is not in their best interest.

Furthermore, should this proposed section of the regulation be adopted, we strongly urge the proposed regulation is modified to clarify that SIJ petitioners are always permitted to have a legal representative present during any USCIS interview.

IV. The proposed rule writes in adjudication deadline exceptions to the SIJS statute that do not exist. Proposed 8 CFR § 204.11(h).

The proposed regulations permit USCIS to restart the 180-day clock in certain circumstances and pause it in other circumstances. 8 CFR § 204.11(h). The SIJ statute contains no such exceptions. *See* U.S.C. § 1232 (d)(2) (requiring that an SIJS petition "shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed"). Even with this mandate, absent some emergency, SIJS petitions are generally not adjudicated within that specified time frame. While we understand the demand on USCIS officers to process these petitions, we fear that permitting USCIS to restart or pause the 180 day clock will only further delay the adjudication of these petitions and make it impossible for the agency to comply with statutory requirements. Instead, we ask USCIS to develop guidance to ensure that all SIJS cases are adjudicated timely and within the 180-day congressionally mandated time frame.

V. Conclusion

MIRC hopes that this comment will allow USCIS to consider some of the ramifications of the proposed rule. MIRC respectfully encourages USCIS to conform the final rule to the language of the SIJS statute and to safeguard the rights of children in the process.

Respectfully,

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Unaccompanied Children's Team
Michigan Immigrant Rights Center