Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

Title
Probate Guardianship: Special Immigrant Juvenile Status for Wards

Rules, Forms, Standards, or Statutes Affected
Adopt form GC-224

Recommended by
Probate and Mental Health Advisory Committee
Hon. Mitchell L. Beckloff, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2014

Date of Report
September 10, 2013

Contact
Douglas C. Miller, 818-558-4178
douglas.c.miller@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends the adoption of a new mandatory Judicial Council form. When signed by a judicial officer presiding in a California probate guardianship case, the *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224) would make findings that are necessary to support the application of an immigrant ward for special immigration juvenile status under federal law. That status would entitle the ward to permanent lawful residence in the United States and eligibility to apply for citizenship in the future.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2014, adopt the *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (form GC-224), a court order in a guardianship case that would make findings in support of a ward's eligibility for special immigrant juvenile status under federal immigration law.

A copy of form GC-224 is attached at page 8.

Previous Council Action

In response to provisions of federal immigration law applicable to minor immigrants to the United States who are involved in state court juvenile dependency proceedings, the Judicial Council adopted the *Order Regarding Eligibility for Special Immigrant Juvenile Status* (form JV-224), effective on January 1, 2007. This form was designed for use in the juvenile court to establish the state judicial findings necessary for dependent children of that court to apply for Special Immigrant Juvenile Status (SIJS) under federal law. After changes were made in that law in 2009, the Family and Juvenile Law Advisory Committee proposed revisions of form JV-224 to conform to those changes and to provide greater clarity. The changes in the form were considered and adopted by the Judicial Council on October 29, 2010, effective on July 1, 2011.

Rationale for Recommendation

Special Immigrant Juvenile Status

The federal Immigration and Nationality Act defines a "special immigrant" to include "an immigrant who is present in the United States— [¶] (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States."[1] The federal law further provides that if such an immigrant's reunification with one or both parents is "not viable due to abuse, neglect, abandonment, or a similar basis found under State law," and it would not be in his or her best interest to be returned to his or her, or to his or her parents', previous country of nationality or last habitual residence, the immigrant may be granted special immigrant juvenile status by the federal government. This status means that he or she is eligible for classification as a lawful permanent resident alien, entitled to live and work in the United States indefinitely and apply for citizenship in the future.[2]

In the case of an immigrant who is a dependent of a state juvenile court, the findings (1) of dependence upon that court, (2) of non-viability of reunification with a parent, and (3) that it would not be in the best interest of the immigrant to be returned to his or her, or to his or her parents', country of nationality or last habitual residence, are to be made in the state's judicial proceedings or in administrative proceedings authorized or recognized by the state juvenile court. These findings must be proven in the federal immigration reclassification proceeding by an order of the state juvenile court.[3]

---

[1] Immigration and Nationality Act, § 101(a)(27)(J); 8 U.S.C. § 1101(a)(27)(J). See Attachment A for a copy of this law.

[2] See 58 Fed.Reg. 42843, 42844 (Aug. 12, 1993).

[3] See 8 C.F.R. §§ 204.11(c)(3)–(6), (d)(2). Attachment B contains a copy of 8 Code of Federal Regulations, Part 204.11 (2013).

Form JV-224

During the progress of the proposal to revise the juvenile court form in 2010, public comment was requested on whether a version of the form appropriate for use in probate guardianships should be developed by the Probate and Mental Health Advisory Committee. Two commentators asserted that probate departments of the court have authority under the federal law to issue findings that would support special immigrant juvenile status for wards in probate guardianships and requested referral to the probate advisory committee for development of a form order suitable for use in guardianship cases. The Family and Juvenile Law Advisory Committee responded to these requests by referring the matter to the Probate and Mental Health Advisory Committee.

B. F., et al., Minors v. Superior Court

At the time of the referral noted above, the law was unclear as to whether courts in probate guardianship cases had authority to make SIJS findings. A probate department of the superior court in a guardianship case is not a *juvenile court,* as that term is used in Welfare and Institutions Code section 245 (in referring to the superior court's exercise of jurisdiction under the Juvenile Court Law, chapter 2, part 1, division 2, of that code); and a ward is not a *dependent child* of a juvenile court, as that phrase is used in section 300 of that code and as generally understood in California practice.

Clarity has since been provided. In *B. F., et al., Minors v. Superior Court* (2012) 207 Cal.App.4th 621, the Court of Appeal, Second Appellate District, concluded that for purposes of the Immigration and Nationality Act and SIJS under that law and related regulations, a superior court in a probate guardianship case is a "juvenile court," in that the court in such a case has jurisdiction to make judicial determinations about the custody and care of a juvenile and does so when it appoints a guardian (*id*. at pp. 627–629; 8 C.F.R. § 204.11(a)). The fact that a probate guardianship is not a juvenile dependency proceeding as defined and governed by the provisions of the Welfare and Institutions Code is of no moment. The superior court, whether exercising jurisdiction in a probate guardianship or in a juvenile dependency or delinquency proceeding, is a single court (*id.* at pp. 628–629).[4]

The appointment of a general guardian of the ward's person is "placement of a juvenile under the custody of an individual appointed by a juvenile court" for purposes of the federal law. Such an appointment is also a judicial determination of the ward's entitlement to long-term foster care, which under the relevant federal SIJS regulation is a determination that family reunification is no longer a viable option (*B. F., et al., Minors, supra,* at p. 626; 8 C.F.R. § 204.11(a)). The superior court sitting as a probate court in a guardianship case that has appointed a general guardian of the

[4] The appellate opinion also disclosed that superior courts in probate guardianships throughout California, including the respondent court in the case under review, had in fact been making SIJS findings before the Court of Appeal's decision. The petitioners in the case asked the court to take judicial notice of 17 SIJS orders made by superior courts in guardianship cases throughout the state, a request unopposed by the respondent court. The request for judicial notice was denied because court orders in trial courts are not precedent, but the fact of their issuance before the decision of the Court of Appeal was not in dispute. See *B. F., et al., Minors, supra,* at p. 627, fn. 2.

person of a minor, therefore, has the authority and duty to make findings in support of the SIJS of that minor in an appropriate case, within the meaning of the federal law and regulations (*id*. at p. 630). Accordingly, it is appropriate to have a Judicial Council form available for probate departments of the superior court to use to make findings in support of SIJS.

Comments, Alternatives Considered, and Policy Implications

This proposal for a new form was circulated as part of the spring 2013 comment cycle. Seven comments were received, all of which approved the proposal. Three of these comments recommended changes. A chart of the comments received and the committee's responses is attached at pages 9–22.

Comment 1, Alliance for Children's Rights, et al.

This comment supports the proposal, with one limited exception. The comment correctly points out that the positive finding in item 4 of the form, that it would be in the minor's best interest to remain in the United States, is not required by the federal law, which calls for a negative statement of the opposite: that it would not be in the best interest of the minor to be returned to his or her country or his or her parents' country of previous nationality or last habitual residence.[5]

The positive finding was placed in item 4 of the proposed form because it is also present in the current version of form JV-224, the juvenile court form, together with the negative, opposite finding. Both findings were retained in the new form to prevent unintended different outcomes of immigration proceedings because of differences between the findings contained in the two forms. The committee has not heard of any difficulty caused by the presence of the positive finding as well as the negative finding specifically required in the federal law in the juvenile court form.

This commentator also responded positively to a request for comment as to whether there would be interest in a form application for an SIJS order as an attachment to a guardianship appointment petition. The committee developed a draft of such an application and forms for points and authorities, supporting declarations, and revisions of the guardianship petitions to refer to the application but decided not to go forward with the project at this time, primarily out of concern that the cost of distributing these forms to the courts and training court staff to work with them would not be justified given the present financial situation of the branch. The committee has retained the draft application forms and will revisit this issue when it has had an opportunity to evaluate the frequency of use of the new form order.

[5] See 8 C.F.R. § 204.11(c)(6). The negative finding in conformity with the regulation is also present in item 3 of the proposed form.

In addition, many applications for SIJS orders are made by counsel with experience in this area, including representatives of the organization that made this comment. These experienced attorneys apparently do not need forms for their applications, whether made with appointment petitions or as separate petitions after establishment of the guardianship. The complex draft application and supporting forms drafted by this committee might be too difficult for self-represented, petitioning proposed guardians to understand and use properly. Perhaps the best way to help self-represented persons in appropriate cases instead of creating application forms for SIJS would be for courts to appoint counsel experienced in this procedure for minors who might qualify for SIJS and leave the application process to those experienced counsel.

Comment 2, Bet Tzedek

This comment also supports the new form and offers the additional statement in support of its adoption that the form would greatly simplify the process of obtaining SIJS orders even for counsel because the form "allows attorneys the opportunity to present an elegant, efficient, and simple form for the court to complete. This will undoubtedly save staff attorneys a significant amount of time."

Bet Tzedek does make one request for a small change in the form. It requests that a second checkbox be placed in the title caption to identify a guardianship of the person, in addition to the box to identify a guardianship of the estate. Its suggestion is that the absence of a checkbox for "person" might be confusing to self-represented persons, leading to selection of the "estate" checkbox when there is in fact no guardian or proposed guardian of the estate.

The committee concluded that a checkbox for guardianship of the person is unnecessary. SIJS requires a state court to declare that an immigrant is dependent upon a juvenile court "*or placed under the custody of . . . an individual or entity appointed by a State or juvenile court"* (8 U.S.C. § 1101(a)(27)(J)(i), italics added). In the guardianship context, this means appointment of a guardian of the person. Whether there is also a guardianship of an estate, every ward eligible for SIJS will have a guardian of his or her person.

A single checkbox for an estate guardianship may in fact be less confusing to the self-represented applicant than checkboxes for both "person" and "estate." Moreover, even if such an applicant gets it wrong—by not checking the box when there is an estate or by checking it when there is none—either action is irrelevant to the result. That is preferable to a situation where an applicant fails to check a "person" box that must be selected every time in order to qualify for SIJS. In addition, court staffs may often complete this form for the judicial officer's signature, particularly for unrepresented applicants.

Comment 3, Legal Services for Children

This San Francisco–based nonprofit law firm is entirely supportive of this proposal but points out that the invitation to comment referred to the "long-term foster care" provision of the SIJS regulation (at 8 C.F.R. § 204.11(a)), although the related federal legislation was amended in 2008 to delete any reference to foster care. This observation is correct. However, the regulation

has not yet been amended, and the change has no effect on SIJS applications in guardianships. Moreover, the invitation has served its purpose and there is no reason to modify it. The attached copy of the federal law is current.

This commentator also supports development of a form application for SIJS.

Comments 4–7
The remaining commentators—the Orange County Bar Association, the State Bar's Standing Committee on the Delivery of Legal Services, and the Superior Courts of Los Angeles and San Diego Counties—supported the proposal.

Because of the referral from the Family and Juvenile Law Advisory Committee in response to comments from the public received by that committee, followed by the Court of Appeal's decision in *B. F., et al., Minors*, no alternative to development of a guardianship version of the existing juvenile court form order was considered. As noted above, the committee did consider developing and proposing forms for an application for SIJS status as part of a guardianship petition but decided not to recommend adoption or approval of such forms at this time for the reason previously indicated.

Implementation Requirements, Costs, and Operational Impacts

The committee anticipates that the cost of distribution of this new form order will be modest, as should be costs incurred by courts for staff training in its use. It is a guardianship variant of a form already in common use in juvenile court departments and at least to some extent in probate departments, so any training required on the new form should be minimal.

Availability of this new form in guardianship practice would meet anticipated greater demand for SIJS orders in guardianship cases caused by the recent appellate decision discussed above. The form would produce a clear set of SIJS findings that have been readily accepted by federal immigration hearing officers in the existing juvenile court version. The form should reduce judicial officer and court staff time that would otherwise be spent directly drafting such orders or indirectly reviewing and correcting or modifying proposed orders submitted by counsel or self-represented parties.

Relevant Strategic Plan Goals and Operational Plan Objectives

This proposal advances two strategic goals—Goal III, Modernization of Management and Administration, and Goal IV, Quality of Justice and Service to the Public—because it will:

- Ensure that statewide . . . court forms promote the fair, timely, effective, and efficient processing of cases and make court procedures easier to understand (Goal III.B.2); and
- Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes (Goal IV.3).

This proposal furthers Objective IV.1.f of the operational plan by improving practices, procedures, and administration of probate guardianship cases.

Attachments

1. Form GC-224, at page 8
2. Chart of comments, at pages 9–22
3. Attachment A: 8 U.S.C. § 1101(a)(27)(J)
4. Attachment B: 8 Code of Federal Regulations, Part 204.11 (2013)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**Draft** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ MINOR ☐ MINORS*	
ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP	CASE NUMBER:

The court has reviewed the supporting material on file, heard the arguments of counsel, and found the following:

1. *(Name):* ☐ the minor ☐ one of the minors named above, was legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by this court, on *(specify date):* . He or she remains under this court's jurisdiction.
2. Reunification of the minor with one or both of his or her parents was deemed not to be viable on *(date):* . This finding was made by reason of the abuse, neglect, or abandonment of the minor or by reason of a similar basis under California law.
3. It is not in the best interest of the minor to be returned to his or her previous country of nationality or country or countries of last habitual residence *(specify country or countries):*

   or to his or her parents' previous country or countries of nationality or country or countries of last habitual residence *(specify country or countries):*

4. It is in the minor's best interest to remain in the United States.
5. ☐ Additional findings about the minor or his or her parents are ☐ provided on Attachment 5. ☐ stated below:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

* ***(In a guardianship case involving more than one ward, prepare a separate order for each ward whose eligibility for special immigrant juvenile status is at issue.)***

Form Adopted for Mandatory Use
Judicial Council of California
GC-224 [New January 1, 2014]

ORDER REGARDING ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS—PROBATE GUARDIANSHIP
(Probate—Guardianships and Conservatorships)

Immigration and Nationality Act, § 101(a)(27)(J), 8 U.S.C. § 1101 (a)(27)(J); 8 C.F.R. § 204.11
www.courts.ca.gov

SPR13-33

Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.

Adopt Judicial Council form GC-224

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Alliance for Children's Rights Los Angeles, Lara Holtzman, Managing Attorney Esperanza Immigrant Rights Project— Catholic Charities of Los Angeles, Inc. Los Angeles, Martin Gauto, Lead Immigration Attorney Immigration Center for Women and Children Los Angeles, Suzanne Mc Cormick, Executive Director Kids in Need of Defense (KIND) Los Angeles Rosalind Oliver, Supervising Attorney Public Counsel Los Angeles Kristen Jackson and Leslie Parrish, Senior Attorneys San Diego Volunteer Lawyer Program, Inc. (SDVLP) San Diego Amy Fitzpatrick, Executive Director	A	**I. Introduction *** Our respective organizations support the adoption of form GC-224—*Order Regarding Eligibility for Special Immigrant Juvenile Status- Probate Guardianship*. We also support a Judicial Council form application for a SIJS order, as an attachment to a guardianship appointment petition. **II. Proposed form GC-224** A. <u>Proposed form GC-224 is Appropriate and Should be Adopted</u> The Judicial Council's Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt form GC-224, an Order Regarding Eligibility for Special Immigrant Juvenile Status (SIJS). As indicated in page 2 of the Invitation to Comment, currently, there is a Judicial Council form- JV-224 (adopted in 2007 and revised effective July 1, 2011), which is used in juvenile dependency and delinquency proceedings. At the time that the Judicial Council's Family and Juvenile Law Advisory Committee proposed the 2011 revision of this form, the committee also invited public comment on whether a version of the form would be appropriate in probate guardianship cases. After considering the opinion in *B.F., et al, Minors, v Superior Court*	No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-33

Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.

Adopt Judicial Council form GC-224

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
	Southwestern Law School Immigration Clinic Los Angeles Andrea Ramos, Professor Youth Law Center San Francisco Alice Bussiere, Staff Attorney		(2012), 207 Cal.App.4th 621, which determined that all state courts in California had the authority and duty to make SIJS findings, the Probate and Mental Health Advisory Committee now proposes the adoption of GC-224, for use in probate guardianship proceedings. We support the adoption of the form and agree, for the reasons expressed in the Judicial Council's proposal, that such a form is necessary to comply with federal and state law. We further agree with the Judicial Council's rationale regarding why a version of the form to be used exclusively in probate guardianship proceedings should be adopted. We believe that the draft form is appropriate and conforms with the law. However, we would recommend one change to the form. Item 4 in the draft form GC-224 includes a finding that "It is in the minor's best interest to remain in the United States." The federal law does not require a specific finding that it is in the minor's best interest to remain in the United States—only that it is not in the minor's best interest to be returned to his previous country of nationality or residence (or that of his or her parents'). (8 U.S.C. § 1101(a)(27)(J)). Footnote 5 of the Invitation to Comment explains that this finding was included in order to mirror the current form JV-224, which includes this language. There was a concern that	

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			different language in the form JV-224 and the proposed form GC-224 would lead to possible negative consequences in immigration proceedings. We believe, however, that because the federal law does not require the finding in item 4, that a form GC-224 which leaves out it this finding would be acceptable in immigration proceedings.	The committee respects the views of the commenting organizations on this topic, but has decided to keep the text in the form as proposed. The equivalent finding in the juvenile court form does not appear to present any difficulties in immigration proceedings leading to SIJS status, and a variation in the text between the two forms on this point might cause difficulties in one or both types of cases in which the forms would be used.
			B. <u>The Adoption of Proposed form GC-224 Would Have a Positive Impact on the Public's Access to Courts ,and Preserve Court Resources</u> We further believe that the proposed form would have a beneficial impact on the public's access to the courts. In our experience, attorneys and self-represented litigants can encounter difficulties in obtaining SIJS orders because a Judicial Council form is not available. In some cases, courts will accept a proposed order on pleading format, and in others request a modified form of the form JV-224. Judges and court staff may have to spend additional time reviewing proposed orders, researching the law, and instructing attorneys and litigants. In one representative case, for example, a pro bono attorney working with one of our organizations struggled with getting a SIJS order signed in a	The committee agrees with this conclusion.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			court where the judge and court staff was not familiar with SIJS. The attorney submitted three different versions of the order, one on pleading paper, and two different modified versions of the form JV-224, before successfully obtaining his order. The uncertainty by the judge and court staff regarding the format the order should take contributed to the confusion and delay. Further, the nature of probate guardianship proceedings is such that many guardianship petitions are filed in pro per. Two of our organizations, Public Counsel and San Diego Volunteer Lawyer Program, Inc., staff court-based guardianship self-help centers. Some litigants who are unable to obtain pro bono representation may need to proceed with their guardianship petition and request for SIJS order in pro per. Pro se litigants are likely to experience even greater obstacles navigating the court system and would greatly benefit from a Judicial Council SIJS order. **III. The Judicial Council Should Develop an Attachment to the Guardianship Appointment Petition That Could be Used to Request a SIJS Order** The advisory committee also requested comments on whether an attachment to the guardianship petition requesting a SIJS order would be of interest. For the same reasons given above, we believe that such an attachment	The committee has developed drafts of forms of an application for an SIJS order and supporting documents as attachments to a guardianship petition, but has decided to postpone proposing these forms for Judicial Council approval at this

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			would be beneficial, both to the public's access to the courts, and to preserve court resources. The absence of a Judicial Council form to request a SIJS order in a guardianship means that the manner in which a request for a SIJS order is made varies by county and by judge. In some cases, the request for SIJS order can be made in the guardianship petition itself, by checking item 1g and asking for additional orders. However, in other cases, the court will require that a litigant seek the order through a separate petition or motion. If a Judicial Council SIJS attachment were adopted, litigants would have access to a standard format for requesting SIJS orders. For the foregoing reasons, we recommend that the Judicial Council create a form Attachment to the current forms GC-210 and GC-210P, the petitions for appointment of a probate guardian. Respectfully Submitted: Alliance for Children's Rights; Esperanza Immigrant Rights Project—Catholic Charities of Lo s Angeles, Inc.; Immigration Center for Women and Children; Kids in Need of Defense (KIND);	time because of uncertainty as to whether the volume of such applications would justify the cost to the courts of their development and distribution, and court-staff training in their use, at this financially difficult time for the courts. The committee will retain the drafts and revisit this issue after it gains experience with the use of the new form order.

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			San Diego Volunteer Lawyer Program, Inc. (SDVLP); Youth Law Center	
2.	Bet Tzedek Elissa Barrett, Vice President and General Counsel Los Angeles	A	Bet Tzedek hereby respectfully submits the following comments regarding the adoption of form GC-224, *Order Regarding Eligibility for Special Immigrant Juvenile Status- Probate Guardianship*. Bet Tzedek provides representation in Probate Legal Guardianship matters wherein the minor subject to the proceedings qualifies for Special Immigration Juvenile Status ("SIJS"), and has made various requests for such orders. With the exception of one suggested modification, Bet Tzedek supports the adoption of said form. Bet Tzedek—The House of Justice provides free legal services benefiting more than 15,000 people of every racial and religious background each year. Bet Tzedek's staff works out of its new office on Wilshire Boulevard in Los Angeles' Koreatown neighborhood. In addition to its full time staff, Bet Tzedek has more than 1,000 active volunteers nationally who effectively leverage our staff resources by donating more than $80 million worth of services each year. Bet Tzedek's key practice areas include: elder law; debtors' rights; real estate; landlord/tenant, and housing; Holocaust reparations; probate	

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			guardianship and conservatorship; public benefits; and employment rights. In addition to direct legal representation, impact litigation, and policy advocacy in each of these areas, Bet Tzedek staff conducts expansive outreach and education programs at more than 30 senior centers, food banks, medical clinics, and numerous other community-based organizations. Bet Tzedek represents clients in SIJS matters through its Kinship Care and Medical Legal Collaborative. Bet Tzedek's Kinship Care Program provides direct representation services to clients seeking Probate Legal Guardianship of a minor. An estimated 88,000 Los Angeles County children live with their grandparents. These loving caregivers are often unable to access much needed services on behalf of their grandchildren due both to a lack of legal custody over that child and the child's status as an undocumented immigrant. Attorneys working with Bet Tzedek's Kinship Care program represent grandparents seeking Probate Legal Guardianship over a minor child to correct these needs. As part of their representation, these attorneys secure the requisite SIJS orders addressed by the proposed Form GC-224 on behalf of minors who qualify. Bet Tzedek's Medical Legal Partnership ("MLP") is a unique collaboration between Bet Tzedek and Saint Francis Medical Center	

	Commentator	Position	Comment	Committee Response
			designed to help address the legal problems that contribute negatively on a patient's health. Bet Tzedek's MLP addresses these and other issues by training medical providers on legal issues and how they impact a patient's health, helping identify patients with legal needs, and providing legal advice and counsel for patients and families in need. Included among the various cases referred by the medical facility are Probate Legal Guardianship cases where the minor qualifies for SIJS. As is the case with the Kinship Care Program, Bet Tzedek's MLP staff secure SIJS orders as part of their Probate Legal Guardianship advocacy. Bet Tzedek supports the adoption of the proposed Form GC-224, with one suggested modification. Bet Tzedek proposes modifying the caption heading, which as currently proposed only allows litigants or their attorneys to check a box indicating whether guardianship of the estate was secured. Bet Tzedek would propose including two separate boxes. One box would be checked to indicate when guardianship of the person was secured. A second box would be checked to indicate that in addition to guardianship of the person, guardianship of the estate was secured. The caption heading would, therefore, read as follows: "GUARDIANSHIP OF THE [___] PERSON [___] PERSON AND ESTATE OF . . ."	The committee concluded that a checkbox for guardianship of the person would be unnecessary because SIJS in a guardianship necessarily would require a guardian of the ward's person, whether or not there is also a guardian of his or her estate.

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			Bet Tzedek believes that as the form currently reads, individuals may be confused by the presence of only one box between the guardianship of the person and the guardianship of the estate options. This confusion may lead individuals to check the box in the mistaken belief that it corresponds to matters where guardianship of the person only was secured. Bet Tzedek believes the inclusion of two boxes, one for each option, provides a clear distinction between the two. Furthermore, Bet Tzedek believes the adoption of Form GC-224 would be of tremendous benefit to attorneys, including pro bono attorneys, and prose litigants. In general, the form greatly simplifies the process of securing the requisite SIJS orders. Rather than requiring attorneys draft lengthy and sometimes cumbersome orders after hearing, this form allows attorneys the opportunity to present an elegant, efficient, and simple form for the court to complete. This will undoubtedly save staff attorneys a significant amount of time. Many agencies, including Bet Tzedek, make use of pro bono attorneys to work on these matters. The ability to provide these attorney with a form to present to the court will not only also save these attorneys time in preparing orders after hearing, it will also help provide a clearly defined tool to	A single checkbox for an estate guardianship may in fact be less confusing to the self-represented applicant than checkboxes for both "person" and "estate." Moreover, even if such an applicant gets it wrong—by not checking the box when there is an estate or by checking it when there is none—either action is irrelevant to the result. That is preferable to a situation where an applicant fails to check a "person" box that must be selected every time to qualify for SIJS. In addition, court staffs may often complete this form for the judicial officer's signature, particularly for unrepresented applicants.

	Commentator	Position	Comment	Committee Response
			facilitate their successful completion of the case. These two factors will likely lead to a greater number of private attorneys volunteering to assist with these matters. Lastly, the form is clear and easy to understand, thereby making it accessible to pro se litigants. While Bet Tzedek cannot comment specifically on a form application for a SISJ order to serve as an attachment to a guardianship appointment petition that has yet to be drafted, we would encourage the drafting of such a form for review, and would be interested in providing commentary on such a form.	
3.	Legal Services for Children Katie Fleet, Managing Attorney San Francisco	A	Founded in 1975 as a non-profit organization, Legal Services for Children (LSC) is one of the first non-profit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment with equal access to the services they need to become healthy and productive young adults. We provide holistic advocacy through teams of attorneys and social workers in the areas of guardianship, immigration, dependency, and education. We empower clients by actively involving them in critical decisions about their lives. We believe that all children have the right to be protected by the legal system regardless of their race, gender, sexual orientation, or immigration status.	

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			LSC is a national resource on Special Immigrant Juvenile Status (SIJS). Our staff provides training and technical assistance to legal and social service professionals, locally and nationally, on this important form of immigration relief for vulnerable children. Additionally, we have a robust guardianship practice, which includes obtaining orders from the Probate Courts regarding eligibility for SIJS. We agree with SPR13-33 and propose only minor revisions to the Background section. In paragraph 2 on page 3, there is a reference to "long-term foster care" and a citation to 8 C.F.R. § 204.11(a). This language is superseded by the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA), which removed the "long-term foster care" language from the federal statute. Under TVPRA, the court must find that the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. 8 U.S.C. § 1101(a)(27)(J). In addition, we think it is important to clarify a reference in paragraph 1 on page 2. SIJS makes youth eligible to apply for Lawful Permanent Residence, but they still have to meet many other criteria. SIJS does not automatically confer Lawful Permanent Resident status. Specific Comments:	The Invitation to Comment has served its purpose and need not be amended.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			—The proposal to adopt the *Order Regarding Eligibility for SIJS—Probate Guardianship* (GC-224) achieves the stated purpose, including creating a distinct guardianship form and eliminating cross-outs or other modifications of the juvenile court form (JV-224) used in dependency and delinquency courts. —The proposal would have a positive impact on the public's access to the courts by informing self-represented parties of the availability of this important form of immigration relief for undocumented children in Probate Court guardianships. —We would be very interested in an application for an SIJS order as an attachment to a guardianship petition. This [form] would simplify and expedite the process of obtaining such an order in probate court for our child clients. Additionally, an application for an SIJS order as an attachment to the guardianship petition would provide self-represented parties with greater access to SIJS.	
4.	Orange County Bar Association Wayne R. Gross, President Newport Beach	A	No specific comments made.	No response necessary.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
5.	Standing Committee on the Delivery of Legal Services (SCDLS) The State Bar of California Office of Legal Services Sharon Ngim, Program Developer and Staff Liaison	A	*(Agree with proposal)* • *Does the proposal reasonably achieve the stated purpose?* Yes. The proposal proposes a new court form to be used in probate guardianship matters concerning special immigration juvenile status (SIJS). The purpose is to provide a form that is specific to probate guardianship, rather than a form also used for juvenile dependency proceedings. This change was needed to implement an appellate court decision, *B.F., et al., Minors v. Superior Court*, which found that for INS and SIJS purposes, a superior court in a probate guardianship case is a "juvenile court." The form clarifies this status. • *Would this proposal have an impact on the public's access to the courts?* It does not impact access per se, but it does safeguard the status of persons eligible for SIJS by ensuring the proper jurisdiction of the superior court. There is no negative impact on access to the courts. • *Would a draft application for an SIJS order in a guardianship consisting of new optional Judicial Council forms and revisions of the appointment petitions to refer to them, be of interest in the next year or so?*	No response necessary.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR13-33
Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law.
Adopt Judicial Council form GC-224
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			SCDLS does not have sufficient SIJS expertise to answer this question.	
6.	Superior Court of Los Angeles County Los Angeles	A	Adopt form GC-224 The form will likely be helpful to litigants and the court. An application for an SIJS order in a guardianship as an attachment to a guardianship appointment petition would be a worthwhile project. It does not seem likely that there would be any significant cost savings in connection with SIJS applications. Implementation would require some limited training for staff and the addition of several codes to the case management system and both could be accomplished with 2 months from Judicial Council approval of form.	No response necessary.
7.	Superior Court of San Diego County Michael Roddy, Executive Officer	A	No specific comments made.	No response required.

Attachment A

8 U.S.C. § 1101(a)(27)(J)

(a) As used in this chapter [Chapter 12, Immigration and Nationality]—

* * *

(27) The term "special immigrant" means—

* * *

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter;

Attachment B

8 Code of Federal Regulations, Part 204.11 (2013)

Code of Federal Regulations

Title 8 - Aliens and Nationality

Volume: 1
Date: 2013-01-01
Original Date: 2013-01-01
Title: Section 204.11 - Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).
Context: Title 8 - Aliens and Nationality. CHAPTER I - DEPARTMENT OF HOMELAND SECURITY. SUBCHAPTER B - IMMIGRATION REGULATIONS. PART 204 - IMMIGRANT PETITIONS. Subpart A - Immigrant Visa Petitions.

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) *Definitions.*

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(c) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

(d) *Initial documents which must be submitted in support of the petition.* (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

[58 FR 42850, Aug. 12, 1993, as amended at 74 FR 26937, June 5, 2009]