

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government –

The bill requires the department to adopt rules to implement the provisions of the newly-created section of law. Federal funding would be available for foster care services provided to any child being granted SIJS.

Promote personal responsibility –

While attaining Special Immigrant Juvenile Status entitles a dependent child to government services and benefits, it also allows the child to live, work, and attend school in the United States. Obtaining an education and gaining employment may reduce the individual's dependence on public assistance in the long-term.

B. EFFECT OF PROPOSED CHANGES:

Special Immigrant Juvenile Status

Most issues relating to immigrants are controlled by federal law. Under federal immigration law, a person who is not a citizen of this country is termed an "alien." Aliens may either be lawful permanent residents or may be undocumented. Lawful permanent residents are identified by green cards. Without a green card, aliens are subject to deportation, are unable to work in recognized occupations, and are ineligible for other benefits.¹

Special Immigrant Juvenile Status (SIJS) is an immigration option for children who are dependent on a state juvenile court and who have been deemed eligible for long-term foster care by that state juvenile court. Federal regulations have defined "eligible for long-term foster care" to mean that the court has found that family reunification is not a viable option for the child. Finally, the juvenile court must make a finding that it is not in the child's best interest to be returned to his or her home country.² As soon as the child files for SIJS, the child is protected from deportation and is eligible for work authorization. The child remains protected from deportation and eligible for work authorization until the United States Citizenship and Immigration Service (USCIS) reaches a decision on the child's application. If USCIS approves the child's application and the child adjusts his or her status, the child will become a lawful permanent resident and receive a green card. As a lawful permanent resident the child is authorized to live and work in the United States, as well as travel abroad. The child is also eligible for various state and federal benefits. The child can attend a state college or university and pay in-state tuition. After five years, the child may apply to become a U.S. Citizen.³

If the USCIS denies the petition, however, USCIS may use the information contained in the petition to begin removal proceedings against the child.⁴ As the grant of SIJS severs the child/parent relationship, once received, the child cannot petition for his or her parents to become lawful permanent residents.⁵

¹ Kinoshita, S. and Brady, K. Special Immigrant Juvenile Status for Children Under Juvenile Court Jurisdiction, Immigrant Legal Resource Center, January 2005, p. 2.

² See 8 CFR s. 204.11(a)

³ See Center for Human Rights and Constitutional Law Unaccompanied Minors Project, Special Immigrant Juvenile Status (SIJS) Manual (updated October 20, 2004), at <http://www.immigrantchildren.org/SIJS>.

⁴ Id.

⁵ Id.

Unlike most immigration matters, the determination as to whether a dependent child qualifies for SIJS and permanent residency is a joint one, reflecting the recognition of Congress that states retain primary responsibility and administrative competency to protect child welfare.⁶ The SIJS statute is thought to strike a balance between federal and state power by relying upon existing state systems to handle child welfare matters while at the same time requiring federal authorities to perform their function of regulating immigration.⁷ After an order is entered by the court with the required findings, the child may apply for special immigrant status and may petition for permanent resident status. In order for the petition to be granted, the child must fulfill other requirements that apply to all persons who become lawful permanent residents of the United States.⁸ Thus, even if a child qualified for special immigrant status, lawful permanent residency might be denied if other barriers existed. Such barriers include a criminal record, previous deportation, and some chronic illnesses. If the petition for lawful permanent residency is granted, the child retains the benefits of the status into adulthood in the same manner as any other person with permanent residency. However, if the order is not entered while the state juvenile court has jurisdiction, the status cannot be granted and the petition for lawful residency on the basis of this status must be denied.

Dependent Children in Florida

Florida dependency law does not specifically address dependent children who may be undocumented aliens. The Florida Administrative Code requires that dependent children who are undocumented aliens must receive the same services or assistance as U.S. citizens except where alienage or immigration status is explicitly referred to as a statutory condition of coverage or eligibility.⁹ However, these services are for the most part provided through the use of general revenue dollars, since federal funding for this population is generally prohibited. Currently, juvenile court jurisdiction over all dependent children ends when the child reaches 18 years of age. Child advocates report that the inability of the courts to retain jurisdiction in appropriate cases is one of the primary barriers to obtaining permanent residency for children who might otherwise qualify for it.

Although DCF is currently required by administrative rule to “promptly seek a special interest order from the Circuit Court on the child’s behalf” whenever DCF determines that the basis for such an order exists,¹⁰ the rule language lacks specific time requirements, case plan requirements, and an extension of jurisdiction provision. Additionally, there is no statutory guidance to the courts regarding consideration of any petitions of this nature which might be brought by DCF or by private attorneys representing the child. In the same rule, DCF is currently required to handle the applications for SIJS either directly, by contract, or through the use of volunteer attorneys.

HB 809

The bill creates a new section of law relating to Special Immigrant Juvenile Status (SIJS) and lawful permanent residency for undocumented alien children who have been abused, neglected, or abandoned and who have been adjudicated dependent by the court. The bill defines the term “eligible for long-term foster care” as a situation in which reunification with parents is not an appropriate permanent solution for the child. “May be eligible for special immigrant juvenile status under federal law” indicates that the child has been found dependent based on abuse, neglect, or abandonment allegations; the child is eligible for long-term foster care; it is in the child’s best interest to stay in the U.S.; and the child remains under juvenile court jurisdiction. These provisions help eliminate confusion as to the required elements of the petition to the court regarding undocumented alien dependent children. The bill requires DCF or community-based care providers to identify whether children who are adjudicated dependent are citizens of the United States no later than the first judicial review and to keep the court apprised of efforts to address the child’s citizenship status. Where abuse, neglect, or

⁶ Gregory Zhong Tian Chen, *Elian or Alien? The Contradictions of Protecting Undocumented Children under the Special Immigrant Juvenile Statute*, 27 *Hastings Const. L.Q.* 597, 609 (2000).

⁷ *Id.* at 613.

⁸ Kinoshita and Brady, pp. 3-5.

⁹ Chapter 65C-9, F.A.C.

¹⁰ Rule 65C-9.003(7), F.A.C.

abandonment allegations have been made, this bill requires services to be provided regardless of the child's citizenship, unless statutorily precluded for specific services. If the child is not a citizen, DCF or the community-based care provider is required to include in the child's case plan a recommendation as to whether the permanency plan for the child will include remaining in this country.

The bill requires that, if the plan includes the child remaining in this country, DCF or the community-based care provider shall evaluate whether, under federal law, the child may be eligible for SIJS. However, the determination as to whether an order supporting an application for this status is granted remains in the discretion of the court, which must consider the best interests of the child, a component of which is the express wishes of the child when possible. The bill directs DCF or the community-based care provider to file a petition requesting SIJS and an application for adjustment of status to lawful permanent residency within 60 days after an order supporting such a petition and application is granted, using either its own, contracted, or volunteer attorneys. If the petition and application have been filed but have not been granted by the time the child reaches 18 years of age, the court is authorized to retain jurisdiction solely to permit continued consideration of the petition by federal authorities. This expanded jurisdiction expires upon final decision of the federal authorities, but no later than the young adult's 22nd birthday. In any judicial review report submitted to the court for a child for whom the court has granted the SIJS, the report shall contain information on the status of the child's petition and application process.

C. SECTION DIRECTORY:

Section 1. Creates section 39.5075, Florida Statutes, relating to citizenship or residency status for immigrant children who are dependent.

Section 2. Provides for an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase the ability of currently undocumented alien children who have been abused, neglected, or abandoned to attain lawful permanent residency status in this country. Attaining this status is a necessary prerequisite to becoming U.S. citizens, obtaining recognized work, and becoming U.S. taxpayers.

D. FISCAL COMMENTS:

The Department of Children and Families projects no fiscal impact as a result of this bill. The Agency for Health Care Administration indicates that increased state Medicaid expenditures may result for children who become eligible and otherwise could not qualify based on their alien status, although this impact is indeterminate at this time. The Office of State Court Administrator (OSCA) expects some additional need for court hearings, with associated costs, but is unable to project the number of hearings or the costs. In addition, the bill may be slightly revenue-positive, as Florida cannot be federally reimbursed for foster care services to children who are non-documented aliens, but can be so reimbursed for those who achieve permanent residency status.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the department to adopt rules to implement the provisions of the newly-created section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Immigrant Advocacy Center, estimates that approximately 25 children per year will be eligible to apply for SIJS through the provisions of the bill. The Department of Children and Families is unable to estimate the number of children likely to be served but characterized the number as a "small population."

There are a number of fees related to seeking Special Immigrant Juvenile Status. As of October 2004, the Petition for Special Immigrant Juvenile Status fee is \$185, and the Application to Register Permanent Residence or Adjust Status fee is \$315 for children age 14 years and older, \$215 for children under 14 years old. Children who are over the age of 14 years old must also include their fingerprints with their application. The \$70 fee for fingerprinting generally cannot be waived.

The USCIS has the discretion to waive any application fees, if the applicant can demonstrate that they are unable to pay the fees. An applicant submitting a petition under SIJS may request a fee waiver for application fees, and in most cases, should qualify.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES