

## **Protocol for filing for Custody for purposes of Special Immigrant Juvenile Status (SIJS) in Montgomery County**

In order to assist petitioners who are filing for custody for purposes of submitting a petition to the United States Citizenship and Immigration Services (USCIS) seeking SIJS status, Montgomery County has adopted the following procedures to guide petitioners through the system. The petition may be filed in Juvenile, Orphans' or Family Court, and the determination of which is the proper Court will depend on the relationship of the petitioner to the child. The decision where to file is often based upon standing of the petitioner and/or the status of the child.

Moreover, petitioners shall be required to attach or present documents as provided below, and failure to provide the proper documents may result in the dismissal of the Petition.

The term “**special immigrant**” is defined as an (J) 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 an 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 or parent's previous country of nationality or country of last habitual residence.

The criteria for SIJS status is that the child must be under 21 years of age<sup>1</sup>, is unmarried or declared dependent on a juvenile court, OR placed by a juvenile court in the custody of an individual or state agency and a court of competent jurisdiction has made one or more of the following findings of fact:

- The child has been abandoned, abused or neglected; or similar basis found under state law;
- By a parent abandonment;
- Reunification with one or both parents is not viable; and

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<sup>1</sup> In the Commonwealth of Pennsylvania, the age of emancipation is 18 and therefore the Court may not enter a custody order for any child 18 years or older.

- It is not in the child's best interest to be returned to his or her home country.

## **JUVENILE COURT PETITION FOR DEPENDENCY**

### **Dependency Court:**

The PA Juvenile Act 42 PA C.S. 6301 *et seq.* governs juvenile dependency which is adjudicated in Juvenile Court in Montgomery County. A dependent child is one who has been adjudicated dependent by virtue of a Juvenile Court order after a finding that the child is without proper parental care or control necessary for his or her physical, mental or health and/or has been abandoned by his parents or guardian. An action under the Juvenile Court is usually brought by the Office of Children and Youth and/or the police department.

## **FAMILY COURT PETITION FOR CUSTODY AND SPECIAL IMMIGRATION JUVENILE STATUS**

### **Standing for Filing for Custody in Family Court:**

Section 5324 of the Domestic Relations Act governs standing to file a petition for physical or legal custody. Generally, a parent, a grandparent or a person standing *in loco parentis* may file for custody. There is a distinction between a grandparent acting *in loco parentis* and a grandparent who is not the caretaker of the child. The rights of the non- caretaker grandparent are not absolute, and the petition must contain averments pursuant to 23 Pa.C.S. §5324 (3) and/or § 5325.

A grandparent or third party caretaker stands *in loco parentis* where that person puts him or herself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. (*Morgan v. Weiser*). A person standing *in loco parentis* may be a sibling 18 years or older, a relative or a third party who is not a family member.

Accordingly, if the party seeking custody is a parent or a grandparent who has standing pursuant to sections 5324 or 5325, and the child is not a dependent, a petition for custody would be filed in family court. If the party seeking custody avers that he or she is caring for a child by providing housing, food and necessities and is not a parent, and the child is not a dependent of the

Commonwealth of Pennsylvania, a petition would likewise be filed in family court. However, it will be up to the family court judge to determine whether the petitioner is standing *in loco parentis*. If the family judge determines that the party is not a parent, grandparent or standing *in loco parentis*, the case will be dismissed and the parties will be directed to file a Petition with the Orphans' Court.

**Petitioners are required to produce the following documents at least five (5) days in advance of any SIJS proceeding in Family Court:<sup>2</sup>**

- A Copy of the Custody Complaint and Verification signed by the Petitioner.
- A Criminal Record/Abuse History Verification for the petitioner and any other adult (18 years or older) residing in the petitioner's residence.
- A Certificate/Affidavit of Service, documenting that the petition has been served on any person who is a named, interested or necessary party to the action. The Court will not proceed with the hearing unless there is adequate proof that service was made.<sup>3</sup>
  - a) If the whereabouts of a named, interested or necessary party is unknown, the petitioner must be prepared to testify to the Court what steps were taken to locate that party.
  - b) Service must be made upon any individual that the child is lived with prior to the filing of the petition.<sup>4</sup>
  - c) If there is an averment that one party is deceased, the petitioner should make every effort to present a death certificate.
- A copy of the child's birth certificate.
- A Verification of Release from the Office of Refugee Resettlement ("ORR"), Department of Homeland Security Notice to Appear, and/or any pertinent documents generated as a result of the child's entry into the U.S.
- Proof that the child is enrolled in school, including but not limited to, a certified copy of the child's school records, attendance records and report cards. School records shall be sealed by the school and presented to the Court in a sealed envelope.

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<sup>2</sup> The Court requests that the Complaint for Custody identify the following required exhibits as follows: P-1 Complaint; P-2 Affidavit of Criminal History; P-3 Affidavit/Certificate of Service; P-4 Birth Certificate; P-5 Immigration Documents; P-6 School and Attendance Records and P-7 medical records. The Court may re-number the exhibits on the day of the hearing if the documents are not available that day.

<sup>3</sup> Counsel shall contact Chambers in advance of the scheduled hearing if service cannot be effectuated or if alternate service may be required.

<sup>4</sup> If a child resided with a grandparent or family member prior to entering the U.S., service should be made upon that party in addition to the parent who has allegedly neglected, abandoned or abused the minor child/ren.

**Petitioners shall submit the following documents (where available and/or applicable) at least five (5) days in advance of any SIJS proceeding in Family Court.**

Medical, Vaccination and/or Dental Records.

- If a party is alleging that the health of a child is a contributing factor for the Court to consider, petitioner should provide medical documents or a letter from the treating physician or specialist.
- Power of Attorney if the petitioner is not the child's parent.
- Lease/proof of payment of utilities.

### **Proposed Order**

Counsel shall provide a proposed order containing findings of fact and conclusions of law based on the allegations averred in the petition. The USCIS is now requiring reference to the custody statute and an indication that the appropriate state law has been considered by the Court, i.e. that the child's best interest has been taken into consideration pursuant to 23 PA.C.S. § 5328. In the event a party is alleging that a child has been abandoned, the parties must be prepared to present testimony pursuant to 23 PA.C.S. 5402 which requires a finding that a child has been left without provision for reasonable and necessary care or supervision; that the child has been abandoned, abused or neglected by a parent; (or similar basis found under state law); That reunification with one or both parents is not viable and that it is not in the child's best interest to return to his or her

#### **All orders shall contain the following:**

1. Proposed findings for each of the applicable 16 custody factors;
  2. The basis upon which the child has been abandoned, neglected and abused;
  3. The reason that reunification with one or both parents is not viable; and
  4. Why it is not in the child's interest to be returned to his or her home country.
- If the Petitioner is not a parent, the order shall include findings establishing that the petitioner stands *in loco parentis* and is providing parental duties and care for the minor child.
  - All orders shall contain the following relocation language as follows:

A party proposing to change the residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights shall follow the procedures required by 23 Pa.C.S. §5337 and Rule of Civil Procedure 1915.17.

- Where applicable, orders may include a provision authorizing the parent/custodial parent to apply for a passport and/or travel.
  - Suggested language: Custodial Parent/Party shall be permitted as sole legal and sole physical custodian of the child/children to make application for and obtain a passport for the child/children. This order shall serve as a substitute for parent consent under the Guidelines for U.S. Passports and International Travel for the U/.S. Department of State and for Passports of other countries as well.

**Counsel shall notify the Court if a translator is required for the above hearing as soon as possible. The appropriate form necessary to request or cancel an Interpreter can be found at:<http://www.montgomerycountypa.gov/1622/Interpreter-Requests>**

**ANY CHILD WHO IS THE SUBJECT OF THE PETITION SHALL BE PRESENT IN COURT.**

**THE COURT RESERVES THE RIGHT TO DISMISS ANY PETITION AND DIRECT THE PARTIES TO REFILE IN ORPHANS' COURT TO SEEK THE APPOINTMENT OF A GUARDIAN PURSUANT TO 20 Pa. C.S.A. 5111, et seq., WHERE THE COURT BELIEVES IT WOULD BE IN THE BEST INTEREST OF THE CHILD.**

### **ORPHANS' COURT PETITION FOR GUARDIANSHIP OF A MINOR CHILD**

An adult may file a petition with the Clerk of the Orphans' Court to be appointed Guardian of the Person of a minor child under 20 Pa. C.S.A. 5111, et seq., if the minor is residing in Montgomery County.

A petition may also request appointment of a Guardian of the Estate of a minor child, where the child is entitled to benefits, an inheritance or owns other assets.

**THE CHILD MUST BE PRESENT AT THE HEARING.** The Court may appoint a guardian *ad litem* to represent the child's interests and to visit the home where the child is residing.

A child over the age of 14 may nominate a person to be his or her guardian of the person, and the nominee shall be preferred, if found by the court to be qualified and suitable. The Petition must specify the age of the child.

The filing fee for a petition seeking guardianship of a minor child is \$ 85.50.

**Petitioners are required to attach the following documents to their Petitions:**

- Verification signed by the petitioner.
- A Criminal Record/Abuse History Verification for anyone residing in the petitioner's residence.
- A Verification of Release from the Office of Refugee Resettlement and/or any pertinent documents from the Immigration Proceedings.
- A Certificate of Service, documenting that the petition has been served on the addresses of the parents of the child and any other guardian of the child.
- If the whereabouts of a parent or interested party is unknown, the petitioner must be prepared to testify to the Court what steps were taken to locate that party.
- If there is an averment that one party is deceased, the petitioner should make every effort to present a death certificate.
- A copy of the child's birth certificate.
- Proof that the child is enrolled in school, including but not limited to a certified copy of the child's school records, attendance records and report cards.
- If a party is alleging that the health of a child is a contributing factor in their requested relief, a letter from the treating physician or specialist.

If you have any questions, please contact one of the following offices:

Family Court Administration                      610-278-3174

Orphans' Court Clerk                              610-278-3400