IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - DOMESTIC RELATIONS DIVISION

In re Parentage of:	)	
XX	)	
Minors,	)	
	)	
X	)	
Petitioner,	)	No.
	)	Cal.
and	)	
	)	
X	)	
Respondent.	)	

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR ALLOCATION OF PARENTAL RESPONSIBILITIES AND REQUEST FOR SPECIAL FINDINGS

Petitioner XXX, by her attorney, Hillary Richardson of the National Immigrant Justice Center, filed a Petition for Allocation of Parental Responsibilities and Request for Special Findings on DATE. This Memorandum is submitted in support of her request for certain special findings within that Petition.

1. XX filed her petition pursuant to 750 ILCS 46/601 *et seq* and 750 ILCS 5/600 *et seq*. In addition, she requested certain special findings regarding the minor children pursuant to 750 ILCS 5/603.11; namely, that their reunification with their father the Respondent was not viable due to his abuse and neglect of them, and that it would not be in their best interest to return to their home country.
2. Domestic relations judges in Illinois have authority to make special findings in the best interests of immigrant children pursuant to Section 603.11 of the Illinois Marriage and Dissolution of Marriage Act ("the IMDMA"). Judges must consider motions under this section and enter the special findings if supported by the evidence. *See* 750 ILCS 5/603.11(c).

3. In 2019, the Illinois General Assembly amended the Juvenile Court Act, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act, the Adoption Act, the Illinois Domestic Violence Act, and the Probate Act to clarify the role of Illinois courts in SIJS cases. The amendments state that "if a motion requests findings regarding Special Juvenile Status under 8 U.S.C. 1101(1)(27)(J) and the evidence, which may consists solely of, but is not limited to, a declaration of the minor, supports the findings, the court *shall* issue an order" with the relevant findings. Pub. Act 101-0121, § 5 (amending 705 ILCS 405/2-4a).
4. Petitioner has requested special findings that would allow her children to petition the immigration authorities for Special Immigrant Juvenile Status ("SIJS"), which would provide them the stability of remaining lawfully in the United States in the custody of their mother.
5. SIJS is a form of immigration relief under Section 101(a)(27)(J) of the Immigration and Nationality Act ("the INA"), codified at 8 U.S.C. 1101(a)(27)(J). The regulations implementing the statute are found at 8 C.F.R. 204.11.[1]
6. Findings by this Court do not entitle a child to SIJS or any lawful immigration status in the United States. Rather, this Court's findings are a prerequisite to filing a petition for relief before the immigration authorities (U.S. Citizenship and Immigration Services, or USCIS).
7. Before a child can apply for immigration relief with USCIS, they must first obtain an order from a state court containing specific findings:

[1] Note that these regulations do not yet reflect the 2008 changes made by Congress via the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"), Pub. L. No. 110-457, § 235(d)(1)-(3), 122. Stat. 5044.

a. That she is dependent on the court or has been placed under the custody of a State agency or department, or an individual appointed by the court;
b. That reunification with one or both of her parents is not viable due to abuse, abandonment, neglect, or another similar basis under state law;
c. And that it would not be in the child's best interest to return to her or her parents' country of nationality or country of last habitual residence.

8 U.S.C. 1101(a)(27)(J).

8. These findings cannot be made by USCIS; they must be entered by a state "juvenile court," as defined under 8 C.F.R. 204.11(a): "a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." USCIS recognizes that state courts that meet this definition may include "juvenile, family, orphans, dependency, guardianship, probate and delinquency courts." See Ex. 1, USCIS "Information for Juvenile Courts."
9. Although an Illinois court presiding over an action for allocation of parental responsibilities is not typically called a "juvenile court," it nonetheless meets that definition under federal law, and has jurisdiction under federal and Illinois law to consider and enter special findings for SIJS. *See* 750 ILCS 5/603.11(b) "A court of this State that is competent to allocate parenting responsibilities has jurisdiction to make the findings necessary to enable a child, who is the subject of a petition to allocate parenting responsibilities, to petition the United States Citizenship and Immigration Services for classification as a Special Immigrant Juvenile under Section 1101(a)(27)(J) of Title 8 of the United States Code."

10. The IMDMA, Section 603.11, provides specific definitions of the terms “abuse,” “abandonment,” and “neglect” to be applied to these requests:
    a. “For the purpose of making a finding under this Section:
    b. "Abuse" has the meaning ascribed to that term in subsection (1) of Section 103 of the Illinois Domestic Violence Act of 1986.
    c. "Abandonment" includes, but is not limited to, the failure of a parent to maintain a reasonable degree of interest, concern, or responsibility for the welfare of the child or when one or both of the child's parents are deceased or cannot be reasonably located.
    d. "Neglect" includes the meaning ascribed to the term in paragraph (a) of subsection (1) of Section 2-3 of the Juvenile Court Act of 1987 and the failure to perform caretaking functions as defined in subsection (c) of Section 600.” *See* Pub. Act 101-0121, § 10 (adding 750 ILCS 5/603.11)
11. Additionally, the Appellate Courts of the First and Second Districts of Illinois have both addressed the authority of state courts to make the specific factual for SIJS under Illinois law. See *In re Estate of Nina L.*, 2015 Ill. App (1st) 152223, *In Re Parentage of Ervin C-R-*, 2020 Ill. App. (2nd) 200236.
12. In *Nina L.*, the First District conducted a thorough analysis of the federal SIJS regulations and their applicability under Illinois law. The court determined that the Cook County probate judge erred as a matter of law in refusing to make the requested SIJS findings. *Id.* In *Ervin C-R-*, the Second District noted that the Illinois legislature provided a framework for entering SIJS findings through Pub. Act 101-0121, and reaffirmed the First District’s analysis in *Nina L. Id.*

13. Here, as supported by the Petition, the Petitioner is prepared to present testimony and evidence that the minor children have been neglected and abandoned by the Respondent:
    a. Respondent regularly abused alcohol;
    b. Respondent was regularly physically, verbally, emotionally, and sexually abusive towards the Minor Child's mother in the presence of the Minor Child;
    c. Respondent provided no emotional support and little financial support for the Minor Child;
    d. Respondent did not play a role in the Minor Child's upbringing;
    e. Respondent neglected the Minor Child by failing to perform caretaking functions or parental responsibilities for her;
    f. Petitioner mother feared for her safety and the safety of the Minor Child, and protected the Minor Child from Respondent;
14. As supported by the Petition, the Petitioner is also prepared to testify that the Minor Child is adjusting well to her life with Petitioner in Illinois, and that the Petitioner is presently providing and will continue to provide the Minor Child with a stable, safe environment in which to live and thrive.
    a. The Minor Child and Petitioner have a strong and trusting relationship as mother and daughter;
    b. The Minor Child and Petitioner have a close bond with each other, and Petitioner is the best person to continue to care for, provide for, and protect the Minor Child;
    c. It would not be in the Minor Child's best interest to return to COUNTRY;

d. The Minor Child has always lived with Petitioner and is now living with Petitioner, and Petitioner has provided and will continue to provide the Minor Child with a stable, safe environment in which to live and thrive;

e. If the Minor Child were to return to COUNTRY, she would not have anywhere to live, or any way to obtain the necessities of life. She would be forced to work long hours for extremely low pay in order to help provide for her family. Any further education for the Minor Child would cease, and the Minor Child would be without the support necessary to pursue her goal of attending college. Additionally, the Minor Child would not have access to health insurance or adequate health care;

f. The Minor Child is enrolled and thriving at NAME School in Chicago and is currently in the tenth grade. The Minor Child is performing well academically and making friends. The Minor Child wishes to pursue higher education upon her high school graduation. Such educational opportunities are not feasible in the Minor Child's former home country;

g. If the Minor Child were to return to COUNTRY, the Minor Child would face threats from gangs that have continuously threatened her family.

15. Based on the foregoing, the Petitioner respectfully requests that this Court enter the special findings requested in her initial petition:

a. That the minor children's reunification with the Respondent is not viable due to his abuse and neglect of them;

b. That it would not be in the minor children's best interest to return to their home country due to a lack of appropriate caregiver there.

Respectfully submitted,

_____
Attorney for Petitioner

National Immigrant Justice Center
224 S. Michigan Ave, Suite 600
Chicago, IL 60604
773.672.6601
hrichardson@heartlandalliance.org
Attorney #62653