

Nicholas Cipriani Inn of Court, September 13, 2023
Family Court and Undocumented Children

Learn how to represent families in Custody and Dependency Proceedings when undocumented children are involved. This session will explore the cultural and political context in which families and children arrive in Philadelphia. The emphasis will be on spotting legal issues which are in the best interest of the child and best practices to help them achieve stability and permanency. The session will include discussion of three Superior Court cases regarding Special Immigrant Juvenile matters in Pennsylvania over the past year.

I. DEPARTURE AND ARRIVAL PHILADELPHIA – INTRODUCTION (Stephanie)

Options for Kids - Asylum, Family, SIJ

Which Way Home: La Bestia Documentary 2009 Trailer (3:03)
https://youtu.be/QsAdHLki9Iw?si=O_CjXKgFKMSZ7GoE

II. WHAT IS SIJ?

Form I-360 & Copy of SIJ Reg - Required Findings
Sample Custody Petition & Order - This is a Custody Case!

Walking to America with the Migrant Caravan | VICE News Tonight Special Report (HBO)
Stephanie (5 incl. Video) News Clip (20:48):
https://youtu.be/ZWq0v4ucav0?si=z6E_RxLASYkx0PUL

III. PHILADELPHIA AND COUNTY PRACTICES WHEN SIJ ISSUES ARISE IN CUSTODY AND DEPENDENCY CASES

Philly Judge Palmer Cover Sheet, Interpreter, Rule, Shirlene Emergencies
MontCo Judge Wall Procedures, Grades, Attendance, 17 year olds and semi-emergencies
Bucks Judge McMaster, Conferences, Deceased Parents, No emergencies
Chester Judicial Rotation, Special Motion, No emergencies
Philly Dependency, Bucks Private Petition, MontCo Opinion
DelCo Situation, Guardianship

The Darien Gap PBS NewsHour 2020 Clip (10:48):
https://urldefense.proofpoint.com/v2/url?u=https-3A_youtu.be_XMPX1547Pss&d=DwMGaQ&c=euGZstcaTDllvimEN8b7jXrwwQOf-v5A_CdpnVfiiMM&r=ijR1qpUA-WZDxLCD3pfaflbgIXQos-X5zqbaQU0bs_s&m=U8dGm57_M3E-qXisYRwiOfLVYo8Mr2NIHas-Kkgfp-Qn6dHViVX8RvooOiWnkZ2n&s=BMqIZ_sv_JE5t6ivxWA9el15-gcDDgHsflJ9XPtYikQ&e=

IV. THE SUPERIOR COURT ON SIJ MATTERS

Pablo Orozco 284 A.3d 474, Juarez Velazquez 135 2023 PA super 111, Villegas Rivas 2023 PA Super

V. POLITICS AND FAMILY LAW

Rio Grande Barriers CNN News Story 7/23 (4:00):
https://urldefense.proofpoint.com/v2/url?u=https-3A_www.cnn.com_videos_us_2023_07_20_texas-2Dmarine-2Dfloating-2Dbarrier-2Drosa-2Dflores-2Dpkg-2Dovn-2Dvpx.cnn&d=DwMGaQ&c=euGZstcaTDllvimEN8b7jXrwwQOf-v5A_CdpnVfiiMM&r=ijR1qpUA-WZDxLCD3pfaflbgIXQos-X5zqbaQU0bs_s&m=U8dGm57_M3E-qXisYRwiOfLVYo8Mr2NIHas-Kkgfp-Qn6dHViVX8RvooOiWnkZ2n&s=gs7KWZOLXvSyVnGMGWZSS-rTkcb-Sr6PPGb-dFHAibw&e=



Home > Working in the United States > Permanent Workers > Employment-Based Immigration: Fourth Preference EB-4 > Special Immigrant Juveniles

Special Immigrant Juveniles

i ALERT: On March 22, 2023, the Department of State posted the [April 2023 Visa Bulletin](#), as well as a [Federal Register Notice \(PDF\)](#), explaining certain changes to the Final Action Dates and Dates for Filing for the Employment-Based Fourth Preference Immigrant Visa Category.

i ALERT: On March 7, USCIS announced a [final rule](#) to align the SIJ classification with existing federal statutes and clarify SIJ eligibility criteria and evidentiary requirements to improve the efficiency and effectiveness of the program.

In addition to issuing the SIJ final rule, we are [updating guidance](#) in the USCIS Policy Manual regarding deferred action and related employment authorization for SIJs with an approved Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. Starting May 6, 2022, USCIS will consider deferred action and related employment authorization for noncitizens who have an approved Form I-360, for SIJ classification but who cannot apply to adjust status to become a lawful permanent resident (LPR) because an immigrant visa number is not immediately available. Read our [news release](#) for more information.

If you are in the United States and need the protection of a juvenile court because you have been abused, abandoned or neglected by a parent, you may be eligible for Special Immigrant Juvenile (SIJ) classification. If SIJ classification is granted, you may qualify for lawful permanent residency (also known as getting a Green Card).

[Close All](#) [Open All](#)

Eligibility for SIJ Classification ^

You must meet all of the statutory requirements outlined below to be eligible for SIJ classification. The requirements can also be found at [INA § 101\(a\)\(27\)\(J\)](#); [8 CFR § 204.11](#); and [USCIS Policy Manual, Volume 6, Part J- Special Immigrant Juveniles](#).





You Must:	When?
<p>Have written consent from the Department of Health and Human Services (HHS)/ Office of Refugee Resettlement (ORR) to the court's jurisdiction if:</p> <ul style="list-style-type: none">• You are currently in the custody of HHS, AND• The juvenile court order also changes your custody status or placement.	<p>At the time USCIS makes a decision on your petition.</p> <p>Please see the HHS website for instructions on obtaining HHS consent.</p>

State Juvenile Court Orders



How to Petition for SIJ Classification (Form I-360)



Filing SIJ Form I-360 In Person Before Your 21st Birthday



Consideration of Deferred Action



Green Card Based on SIJ Classification (Form I-485)



After You File



Resources



 Close All  Open All

Last Reviewed/Updated: 03/31/2023



Petition for Amerasian, Widow(er), or Special Immigrant

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-360
OMB No. 1615-0020
Expires 04/30/2024

For USCIS Use Only		Fee Stamp	Action Block	
Returned				
Resubmitted				
Relocated	Received Sent			
Remarks:	<input type="checkbox"/> Petitioner/Applicant Interviewed	Classification	Priority Date	
	<input type="checkbox"/> Interviewed Beneficiary Interviewed			
	<input type="checkbox"/> I-485 Filed Concurrently			
	<input type="checkbox"/> Bene "A" File Reviewed			

To be completed by an Attorney or Accredited Representative (if any).	<input type="checkbox"/> Select this box if Form G-28 or G-28I is attached.	Attorney State Bar Number (if applicable)	Attorney or Accredited Representative USCIS Online Account Number (if any)
		<input type="text"/>	<input type="text"/>

▶ **START HERE - Type or print in black ink.**

Part 1. Information About Person or Organization Filing This Petition

NOTE: You must complete **Part 1**, as the petitioner if you are filing this petition on behalf of another person. If you are a Violence Against Women Act (VAWA) self-petitioner or special immigrant juvenile, skip to **Part 1, Item Number 7**.

1. Your Full Name

Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

2. USCIS Online Account Number (if any)

▶

3. U.S. Social Security Number (if any)

▶

4. Alien Registration Number (A-Number) (if any)

▶ A-

5. Individual IRS Tax Number (if any)

▶

6. Mailing Address

In Care Of Name (if any)

Organization Name (if applicable)

Street Number and Name	Apt. Ste. Flr. Number
<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="text"/>

City or Town	State	ZIP Code
<input type="text"/>	<input type="text"/>	<input type="text"/>

Province	Postal Code	Country
<input type="text"/>	<input type="text"/>	<input type="text"/>



Part 1. Information About Person or Organization Filing This Petition (continued)

7. Alternate and/or Safe Mailing Address

If you are a VAWA self-petitioning spouse, child, parent, or a special immigrant juvenile and do not want U.S. Citizenship and Immigration Services (USCIS) to send notices about this petition to your home, you may provide an alternate and/or safe mailing address.

In Care Of Name (if any)

Street Number and Name

Apt. Ste. Flr. Number

City or Town

State

ZIP Code

Province

Postal Code

Country

Part 2. Classification Requested

Select **only one** box.

- 1. A.** Amerasian
- B.** Widow(er) of a U.S. citizen
- C.** Special Immigrant Juvenile
- D.** Special Immigrant Religious Worker
- (1)** Will the beneficiary be working as a minister? Yes No
- E.** Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government, or U.S. Government in the Canal Zone
- F.** Special Immigrant Physician
- G.** Special Immigrant G-4 International Organization Employee or Family Member or NATO-6 Employee or Family Member
- H.** Special Immigrant Armed Forces Member
- I.** Self-Petitioning Spouse of Abusive U.S. citizen or Lawful Permanent Resident
- J.** Self-Petitioning Child of Abusive U.S. citizen or Lawful Permanent Resident
- K.** VAWA Self-Petitioning Parent of a U.S. citizen son or daughter
- L.** Special Immigrant Afghanistan or Iraq National who worked with the U.S. Armed Forces as a translator
- M.** Special Immigrant Iraq National who was employed by or on behalf of the U.S. Government
- N.** Special Immigrant Afghanistan National who was employed by or on behalf of the U.S. Government or the International Security Assistance Force (ISAF) in Afghanistan
- O.** Broadcasters
- P.** Other

Provide the name of the classification below.



Part 3. Information About the Person for Whom This Petition Is Being Filed

NOTE: On this petition, the "beneficiary" or "self-petitioner" means the person for whom this petition is being filed. If you provided an alternate and/or safe mailing address above, you must also complete **Part 3**.

1. Your Full Name

Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

2. Mailing Address

In Care Of Name (if any)

Street Number and Name	Apt. Ste. Flr. Number	
<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="text"/>	
City or Town	State ZIP Code	
<input type="text"/>	<input type="text"/> <input type="text"/>	
Province	Postal Code	Country
<input type="text"/>	<input type="text"/>	<input type="text"/>

Other Information

3. Date of Birth (mm/dd/yyyy) <input type="text"/>	4. Country of Birth <input type="text"/>
5. U.S. Social Security Number (if any) ▶ <input type="text"/>	6. A-Number (if any) ▶ A- <input type="text"/>
7. Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed	

Complete **Item Numbers 8. - 15.** if this person is in the United States. If an item number is not applicable or the answer is "none," leave the space blank. Provide information below for the passport or other document used at the time of last arrival to the United States.

8. Date of Last Arrival (mm/dd/yyyy) <input type="text"/>	9. Form I-94 Number or I-95 Crewman's Landing Permit ▶ <input type="text"/>
10. Passport Number <input type="text"/>	11. Travel Document Number <input type="text"/>
12. Country of Issuance for Passport or Travel Document <input type="text"/>	13. Expiration Date for Passport or Travel Document (mm/dd/yyyy) <input type="text"/>
14. Current Nonimmigrant Status <input type="text"/>	15. Date current status expired, or will expire, as shown on Form I-94 or I-95 (mm/dd/yyyy) <input type="text"/>

Part 4. Processing Information

1. If the person listed in **Part 3.** is outside the U.S., is ineligible to adjust status in the U.S., or does not wish to adjust status in the U.S., provide the following information about the U.S. Consulate at which the person prefers to apply for an immigrant visa.

U.S. Consulate

A. City or Town

B. Country



Part 4. Processing Information (continued)

2. If a U.S. address was provided in **Part 3.**, type or print the person's foreign address below. If he or she does not maintain a foreign address, list the city or town and country of last foreign residence. If his or her native alphabet does not use Roman letters, type or print his or her name and foreign address in the native alphabet.

A. Your Full Name

Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

B. Mailing Address

Street Number and Name	Apt. Ste. Flr.	Number
<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="text"/>
City or Town		
<input type="text"/>		
Province	Postal Code	Country
<input type="text"/>	<input type="text"/>	<input type="text"/>

3. Gender of the beneficiary: Male Female

4. **A.** Are you filing any other petitions or applications with this one? Yes No

B. If you answered "Yes" to **Item A.** in **Item Number 4.**, how many?

If you answer "Yes" to **Item Numbers 5. - 6.**, provide an explanation in the space provided in **Part 15. Additional Information.**

5. Is the beneficiary in removal proceedings? Yes No

6. Has the beneficiary ever worked in the U.S. without permission? (If you are applying for a special immigrant juvenile status, you are not required to answer this item number.) Yes No

7. Is an application for adjustment of status attached to this petition? Yes No

Part 5. Information About the Spouse and Children of the Person for Whom This Petition Is Being Filed

NOTE: Depending on the classification you seek, you can either file this petition for another person or for yourself. On this petition, the "beneficiary" or "self-petitioner" means the person for whom this petition is being filed, whether that person is yourself or another person.

1. If you are filing as a self-petitioning spouse, have any of your children filed separate self-petitions? Yes No

2. Person 1

Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Date of Birth (mm/dd/yyyy)	Country of Birth	
<input type="text"/>	<input type="text"/>	
Relationship	A-Number (if any)	
<input type="checkbox"/> Spouse <input type="checkbox"/> Child	▶ A- <input type="text"/>	



Part 5. Information About the Spouse and Children of the Beneficiary (continued)

3. Person 2

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

4. Person 3

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

5. Person 4

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

6. Person 5

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

7. Person 6

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**



Part 5. Information About the Spouse and Children of the Beneficiary (continued)

8. Person 7

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

9. Person 8

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

10. Person 9

Family Name (Last Name) Given Name (First Name) Middle Name
Date of Birth (mm/dd/yyyy) Country of Birth
Relationship Child A-Number (if any) **A-**

Part 6. Complete Only If Filing for an Amerasian

Information About the Mother of the Amerasian

1. Mother's Full Name

Family Name (Last Name) Given Name (First Name) Middle Name

2. A. Is the mother still alive? Unknown Yes No

B. If you answered "Yes" to **Item A.** in **Item Number 2.**, provide her address below.

In Care Of Name (if any)
Street Number and Name Apt. Ste. Flr. Number
City or Town State ZIP Code
Province Postal Code Country



Part 6. Complete Only If Filing for an Amerasian (continued)

C. If you answered "No" to **Item A. in Item Number 2.**, provide her date of death (mm/dd/yyyy).

Information About the Father of the Amerasian

If possible, attach a notarized statement from the father regarding parentage. If there is a question you cannot fully answer in the space provided on this petition, use the space provided in **Part 15. Additional Information.**

3. Father's Full Name

Family Name (Last Name)

Given Name (First Name)

Middle Name

4. Date of Birth (mm/dd/yyyy)

5. Country of Birth

6. A. Is the father still alive?

Unknown

Yes

No

B. If you answered "Yes" to **Item A. in Item Number 6.**, provide his address below.

In Care Of Name (if any)

Street Number and Name

Apt. Ste. Flr. Number

City or Town

State

ZIP Code

Province

Postal Code

Country

C. If you answered "No" to **Item A. in Item Number 6.**, provide his date of death (mm/dd/yyyy).

D. Daytime Telephone Number (if any)

E. Work Telephone Number (if any)

At the time the Amerasian was conceived:

7. A. The father was in the military (indicate branch of service below).

Army

Air Force

Navy

Marine Corps

Coast Guard

B. Provide the father's service number:

C. The father was not in the military and was not a civilian employed abroad. (Attach a full explanation of the circumstances.)

Part 7. Complete Only If Filing as a Widow/Widower

1. Full Name of U.S. Citizen Husband or Wife Who Died

Family Name (Last Name)

Given Name (First Name)

Middle Name

2. Date of Birth (mm/dd/yyyy)

3. Country of Birth

4. Date of Death (mm/dd/yyyy)



Part 7. Complete Only If Filing as a Widow/Widower (continued)

5. At time of death, your spouse was a (Select **only one**):

- A. U.S. citizen born in the United States
- B. U.S. citizen born abroad to U.S. citizen parents
- C. U.S. citizen through naturalization

(1) Provide A-Number (if any) ▶ A-

D. Other (Explain)

6. How many times have you been married?

7. How many times was your spouse married?

8. A. When did you and your spouse get married (mm/dd/yyyy)?

B. Where did you and your spouse get married?

9. A. Did you remarry after the death of your spouse? Yes No

B. If you answered "Yes" to **Item A. in Item Number 9.**, provide the date that you remarried (mm/dd/yyyy).

10. If you are filing as a widow(er), were you legally separated at the time of the U.S. citizen's death? Yes No

NOTE: If you answered "Yes" to **Item Number 10.**, provide an explanation in the space provided in **Part 15. Additional Information.**

Part 8. Complete Only If Filing for a Special Immigrant Juvenile

Information About the Juvenile

1. List any other names used:

A. Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

B. Family Name (Last Name)	Given Name (First Name)	Middle Name
<input type="text"/>	<input type="text"/>	<input type="text"/>

Answer the following questions regarding the person for whom the petition is being filed. If you answer "No" to **Item A. in Item Number 2.**, provide an explanation in the space provided in **Part 15. Additional Information.**

2. A. Have you been declared dependent on a juvenile court in the United States OR has a juvenile court legally committed you to, or placed you under the custody of, an agency, department of a state, or an individual or entity? Yes No

B. Provide the name of the state agency, department, or court-appointed organization or individual with which you are placed below.

C. Are you currently under the jurisdiction of the juvenile court that made your placement or custody determination identified in **Item B. in Item Number 2.** above? Yes No



Part 8. Complete Only If Filing for a Special Immigrant Juvenile (continued)

3. A. If you answered "Yes" to **Item C. in Item Number 2.** above, are you currently residing in your court-ordered placement? Yes No
- B. If you answered "No" to **Item C. in Item Number 2.** above, select your reason below.
- You were adopted or placed in a permanent guardianship or another permanent living arrangement (other than reunification with the abusive parents).
- You aged-out of the juvenile court's jurisdiction and the order was terminated based on age.
- Other. (If you selected "Other," provide an explanation in the space provided in **Part 15. Additional Information.**)
4. A. A juvenile court has determined that reunification with one or both of my parents is not viable due to:
- Abuse Neglect Abandonment
- Similar basis under state law (specify):
- B. If you selected "one" in **Item A. in Item Number 4.**, provide the name of that parent below.
5. Has it been determined in judicial or administrative proceedings that it would not be in your best interest to be returned to your or your parent's country of citizenship or nationality or last habitual residence? Yes No
6. A. Are you currently or were you previously in the custody of the U.S. Department of Health and Human Services (HHS)? Yes No
- B. If you answered "Yes" to **Item A. in Item Number 6.**, and you are in HHS custody, did the juvenile court order determine or alter your custody status or placement? Yes No

Part 9. Complete Only If Filing a Special Immigrant Religious Worker Petition

Prospective Employer Attestation

1. Provide the following information about the prospective employer.
- A. Number of members of the prospective employer's organization
- B. Number of employees working at the same location where the beneficiary will be employed
- C. Number of aliens holding special immigrant or nonimmigrant religious worker status who are currently employed or were employed within the past five years
- D. Number of Special Immigrant Religious Worker (Form I-360) and Nonimmigrant Religious Worker (Form I-129) petitions submitted by the prospective employer within the past five years
- E. Number of Special Immigrant Religious Worker (Form I-360) petitions submitted by the beneficiary during the last five years
2. Has the beneficiary or have any of the beneficiary's dependent family members previously been admitted to the United States for a period of stay in the Religious Worker (R) classification during the last five years? Yes No

If you answered "Yes" to **Item Number 2.**, provide the beneficiary's and any dependent family member's prior periods of stay in the R classification in the United States during the last five years. Be sure to provide only those periods when the beneficiary and/or family members were actually in the United States in the R classification. Provide the beneficiary's information in **Item Number 3.** below. For dependent family members, use the space provided in **Part 15. Additional Information.**

NOTE: Submit photocopies of Form I-94 Arrival-Departure Record, Form I-797 (Notice of Action), and/or other USCIS documents identifying these periods of stay in the R classification. If you need extra space to complete this section, use the space provided in **Part 15. Additional Information.**



Part 9. Complete Only If Filing a Special Immigrant Religious Worker Petition (continued)

3. Beneficiary

Family Name (Last Name)

Given Name (First Name)

Middle Name

Period of Stay

From (mm/dd/yyyy)

To (mm/dd/yyyy)

- 4. Provide a summary of the type of responsibilities of those employees, other than the beneficiary, who work at the same location where the beneficiary will be employed. If you need extra space to complete this section, use the space provided in **Part 15. Additional Information.****

Position

Summary of the Type of Responsibilities for That Position

- 5. Describe the relationship, if any, between the religious organization in the United States and the organization abroad of which the beneficiary is a member.**

- 6. Provide the following information about the prospective employment. If you need extra space to complete this section, use the space provided in **Part 15. Additional Information.****

A. Title of position offered

B. The beneficiary will be working (select one of the following):

As a minister

In a religious vocation

In a religious occupation

C. Detailed description of the beneficiary's proposed daily duties

D. Description of the beneficiary's qualifications for the position offered

E. Description of the proposed salaried and/or non-salaried compensation

F. Provide the specific addresses or locations where the beneficiary will be working

Company Name

Street Number and Name

Apt. Ste. Flr. Number

City or Town

State

ZIP Code

Province

Postal Code

Country



Part 9. Complete Only If Filing a Special Immigrant Religious Worker Petition (continued)

Answer **Item Numbers 7. - 13.** about the prospective employer. If you answer "No" for **Item Numbers 7. - 13.**, provide an explanation in the space provided in **Part 15. Additional Information.**

7. The prospective employer is a bona fide non-profit religious organization or a bona fide organization that is affiliated with the religious denomination and is tax exempt as described in section 501(c)(3) of the Internal Revenue Code of 1986, subsequent amendment, or equivalent sections of prior enactments of the Internal Revenue Code. If the prospective employer is affiliated with the religious denomination, complete the Religious Denomination Certification included in this petition. Yes No

If you answered "Yes," select the applicable box and attach the appropriate documentation to the petition.

- A. A currently valid determination letter from the Internal Revenue Service (IRS) establishing that the organization is a tax-exempt organization;
 - B. A currently valid determination letter from the IRS establishing that the organization is recognized as tax-exempt under a group tax exemption; or
 - C. If you are claiming that the prospective employer is a bona fide organization that is affiliated with the religious denomination, provide the following:
 - (1) A currently valid determination letter from the IRS establishing that the organization is a tax-exempt organization;
 - (2) Documentation that establishes the religious nature and purpose of the organization, such as a copy of the organizing instrument of the organization that specifies the purposes of the organization;
 - (3) Organizational literature, such as books, articles, brochures, calendars, flyers, and other literature describing the religious purpose and nature of the activities of the organization; and
 - (4) A completed religious denomination certification, signed and dated, certifying that the petitioning organization is affiliated with the religious denomination.
8. The prospective employer is willing and able to provide salaried and/or non-salaried compensation at a level that the beneficiary and any dependents will not become a public charge. Yes No
9. The funds to pay the beneficiary's compensation do not include any monies obtained from the beneficiary, excluding reasonable donations or tithing to the religious organization. Yes No
10. The beneficiary will not engage in secular employment, and the prospective employer will provide salaried and/or non-salaried compensation. Yes No
11. The offered position is full time, requiring at least an average of 35 hours of work per week. Yes No
12. The beneficiary has been a religious worker for at least two years immediately before Form I-360 was filed and is otherwise qualified for the position offered. Yes No
13. The beneficiary has been a member of the prospective employer's denomination for at least two years immediately before Form I-360 was filed. Yes No

Prospective Employer Attestation (must be completed by the prospective employer even if the beneficiary is filing on his or her own behalf)

I certify or attest under penalty of perjury under the laws of the United States of America that the contents of this attestation, and the evidence submitted, are true and correct.

14. Signature of an Authorized Official of the Prospective Employer (sign in ink) Date of Signature (mm/dd/yyyy)



Part 9. Complete Only If Filing a Special Immigrant Religious Worker Petition (continued)

Printed Name and Title of Signatory for Prospective Employer

15. Family Name (Last Name) Given Name (First Name) Middle Name

16. Title of the Signatory

Mailing Address

17. Employer/Organization Name

Street Number and Name Apt. Ste. Flr. Number

City or Town State ZIP Code

Contact Information

18. Daytime Telephone Number 19. Fax Number (if any)

20. Email Address (if any)

Religious Denomination Certification (to be completed only if the prospective employer is affiliated with a religious denomination)

I certify under penalty of perjury, that the prospective employer, ,
is affiliated with this Religious Denomination, , and that the attesting
religious organization within the religious denomination is tax-exempt as described in section 501(c)(3) of the Internal Revenue Code
of 1986, or equivalent sections of prior enactments of the Internal Revenue Code. The contents of this certification are true and
correct to the best of my knowledge.

21. Signature of the Authorized Representative of the Religious Denomination (sign in ink) Date of Signature (mm/dd/yyyy)

Printed Name and Title of the Signatory of the Religious Denomination

22. Family Name (Last Name) Given Name (First Name) Middle Name

23. Title of the Signatory



Part 9. Complete Only If Filing a Special Immigrant Religious Worker Petition (continued)

Information About the Attesting Religious Organization Within the Religious Denomination

24. Name of Attesting Religious Organization Within the Religious Denomination

25. Street Number and Name

Apt. Ste. Flr. Number

City or Town

State

ZIP Code

26. Daytime Telephone Number

27. Fax Number (if any)

28. Email Address (if any)

29. IRS Tax Number of the Attesting Religious Organization

Part 10. Complete Only If Filing as a VAWA Self-Petitioning Spouse or Child of a U.S. Citizen or Lawful Permanent Resident or a VAWA Self-Petitioning Parent of a U.S. Citizen Son or Daughter

NOTE: For the safety and protection of all VAWA self-petitioners, information regarding a filing will only be provided to the self-petitioner or their designated attorney or representative with a valid Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.

1. Full Name of U.S. citizen or Lawful Permanent Resident Abuser

Family Name (Last Name)

Given Name (First Name)

Middle Name

2. Date of Birth (mm/dd/yyyy)

3. Country of Birth

4. Date of Death (mm/dd/yyyy)

5. Your abuser is now, or was, a (Select one):

A. U.S. citizen born in the United States

B. U.S. citizen born abroad to U.S. citizen parents

C. U.S. citizen through naturalization

(1) Provide A-Number (if known) ▶ A-

D. U.S. Lawful Permanent Resident

(1) Provide A-Number (if any) ▶ A-

E. Other (Explain)

6. How many times have you been married? ▶

7. How many times was your abuser married (if known)? ▶



Part 10. Complete Only If Filing as a VAWA Self-Petitioning Spouse or Child of a U.S. Citizen or Lawful Permanent Resident or a VAWA Self-Petitioning Parent of a U.S. Citizen Son or Daughter
(continued)

8. A. When did you and your abuser get married? (If you are a self-petitioning child or self-petitioning parent, type or print "N/A.")
(mm/dd/yyyy)
- B. Where did you and your abuser get married? (If you are a self-petitioning child or self-petitioning parent, type or print "N/A.")
9. When did you live with your abuser?
From (mm/dd/yyyy) To (mm/dd/yyyy)
Include any other dates you have lived off/on with your abuser in the space provided in **Part 15. Additional Information.**
10. Provide the last address at which you lived together with your abuser.
Street Number and Name Apt. Ste. Flr. Number
City or Town State ZIP Code
Province Postal Code Country
11. Provide the last date that you lived together with your abuser at this address.
From (mm/dd/yyyy) To (mm/dd/yyyy)
12. I am currently residing in the United States and I request an Employment Authorization Document. Yes No

Part 11. Petitioner's Statement, Contact Information, Declaration, and Signature (Individual)

IMPORTANT: Complete this section **ONLY** if you are an individual filing this petition for yourself. If you are filing Form I-360 to petition for another person or as an authorized signatory of an organization, complete **Part 12. Statement, Contact Information, Declaration, and Signature of the Petitioner or Authorized Signatory.**

NOTE: Read the **Penalties** section of the Form I-360 Instructions before completing this part.

Petitioner's Statement

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.** If applicable, select the box for **Item Number 2.**

1. Petitioner's Statement Regarding the Interpreter
- A. I can read and understand English, and I have read and understand every question and instruction on this petition and my answer to every question.
- B. The interpreter named in **Part 13.** read to me every question and instruction on this petition and my answer to every question in ,
a language in which I am fluent. I understand all of this information as interpreted.
2. Petitioner's Statement Regarding the Preparer
- At my request, the preparer named in **Part 14.**, ,
prepared this petition for me based only upon information I provided or authorized.



Part 11. Petitioner's Statement, Contact Information, Declaration, and Signature (Individual) (continued)

Petitioner's Contact Information

3. Petitioner's Daytime Telephone Number
4. Petitioner's Mobile Telephone Number (if any)
5. Petitioner's Email Address (if any)

Petitioner's Declaration and Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any and all of my records that USCIS may need to determine my eligibility for the immigration benefit I seek.

I further authorize release of information contained in this petition, in supporting documents, and in my USCIS records to other entities and persons where necessary for the administration and enforcement of U.S. immigration laws.

I understand that USCIS may require me to appear for an appointment to take my biometrics (fingerprints, photograph, and/or signature) and, at that time, if I am required to provide biometrics, I will be required to sign an oath reaffirming that:

- 1) I provided or authorized all of the information contained in, and submitted with, my petition;
- 2) I reviewed and understood all of the information in, and submitted with, my petition; and
- 3) All of this information was complete, true, and correct at the time of filing.

I certify, under penalty of perjury, that all of the information in my petition and any document submitted with it were provided or authorized by me, that I reviewed and understand all of the information contained in, and submitted with, my petition, and that all of this information is complete, true, and correct.

Petitioner's Signature

6. Petitioner's Signature Date of Signature (mm/dd/yyyy)

NOTE TO ALL PETITIONERS: If you do not completely fill out this petition or fail to submit required documents listed in the Instructions, USCIS may deny your petition.

Part 12. Statement, Contact Information, Declaration, and Signature of the Petitioner or Authorized Signatory

IMPORTANT: Complete this section **ONLY** if you are filing Form I-360 to petition for another person or as an authorized signatory of an organization. If you are an individual filing this petition for yourself, complete **Part 11. Petitioner's Statement, Contact Information, Declaration, and Signature (Individual)**.

NOTE: Read the **Penalties** section of the Form I-360 Instructions before completing this part.

Petitioner's or Authorized Signatory's Statement

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.** If applicable, select the box for **Item Number 2.**

1. Petitioner's Statement Regarding the Interpreter
- A. I can read and understand English, and I have read and understand every question and instruction on this petition and my answer to every question.
 - B. The interpreter named in **Part 13.** read to me every question and instruction on this petition and my answer to every question in , a language in which I am fluent. I understand all of this information as interpreted.



Part 12. Statement, Contact Information, Declaration, and Signature of the Petitioner or Authorized Signatory (continued)

2. Petitioner's Statement Regarding the Preparer

At my request, the preparer named in **Part 14.**, , prepared this petition for me based only upon information I provided or authorized.

Authorized Signatory's Contact Information

3. Authorized Signatory's Family Name (Last Name)	Authorized Signatory's Given Name (First Name)
<input type="text"/>	<input type="text"/>
4. Authorized Signatory's Title	5. Authorized Signatory's Daytime Telephone Number
<input type="text"/>	<input type="text"/>
6. Authorized Signatory's Mobile Telephone Number (if any)	7. Authorized Signatory's Email Address (if any)
<input type="text"/>	<input type="text"/>

Petitioner's or Authorized Signatory's Declaration and Certification

Copies of any documents submitted are exact photocopies of unaltered, original documents, and I understand that, as the petitioner, I may be required to submit original documents to USCIS at a later date.

I authorize the release of any information from my records, or from the petitioning organization's records, to USCIS or other entities and persons where necessary to determine eligibility for the immigration benefit sought or where authorized by law. I recognize the authority of USCIS to conduct audits of this petition using publicly available open source information. I also recognize that any supporting evidence submitted in support of this petition may be verified by USCIS through any means determined appropriate by USCIS, including but not limited to, on-site compliance reviews.

If filing this petition on behalf of an organization, I certify that I am authorized to do so by the organization.

I certify, under penalty of perjury, that I have reviewed this petition, I understand all of the information contained in, and submitted with, my petition, and all of this information is complete, true, and correct.

Petitioner's or Authorized Signatory's Signature

8. Petitioner's or Authorized Signatory's Signature	Date of Signature (mm/dd/yyyy)
 <input type="text"/>	<input type="text"/>

NOTE TO ALL PETITIONERS AND AUTHORIZED SIGNATORIES: If you do not completely fill out this petition or fail to submit required documents listed in the Instructions, USCIS may delay a decision on or deny your petition.



Part 13. Interpreter's Contact Information, Certification, and Signature

Provide the following information about the interpreter.

Interpreter's Full Name

- 1. Interpreter's Family Name (Last Name) Interpreter's Given Name (First Name)
- 2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

- 3. Street Number and Name Apt. Ste. Flr. Number
City or Town State ZIP Code
- Province Postal Code Country

Interpreter's Contact Information

- 4. Interpreter's Daytime Telephone Number
- 5. Interpreter's Mobile Telephone Number (if any)
- 6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and , which is the same language specified in **Part 11., Item B.** in **Item Number 1.**, or in **Part 12., Item B.** in **Item Number 1.**, and I have read to this petitioner or the authorized signatory in the identified language every question and instruction on this petition and his or her answer to every question. The petitioner or authorized signatory informed me that he or she understands every instruction, question, and answer on the petition, including the **Petitioner's Declaration and Certification**, or **Petitioner's or Authorized Signatory's Declaration and Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

- 7. Interpreter's Signature (sign in ink) Date of Signature (mm/dd/yyyy)



Part 14. Contact Information, Declaration, and Signature of the Person Preparing this Petition, if Other Than the Petitioner

Provide the following information about the preparer.

Preparer's Full Name

- 1. Preparer's Family Name (Last Name) Preparer's Given Name (First Name)
- 2. Preparer's Business or Organization Name (if any)

Preparer's Mailing Address

- 3. Street Number and Name Apt. Ste. Flr. Number
City or Town State ZIP Code
Province Postal Code Country

Preparer's Contact Information

- 4. Preparer's Daytime Telephone Number
- 5. Preparer's Mobile Number
- 6. Preparer's Email Address (if any)

Preparer's Statement

- 7. A. I am not an attorney or accredited representative but have prepared this petition on behalf of the petitioner and with the petitioner's consent.
- B. I am an attorney or accredited representative and my representation of the petitioner in this case extends does not extend beyond the preparation of this petition.

NOTE: If you are an attorney or accredited representative whose representation extends beyond preparation of this petition, you may be obliged to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, or G-28I, Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States, with this petition.

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this petition at the request of the petitioner or authorized signatory. The petitioner has reviewed this completed petition, including the **Petitioner's Declaration and Certification**, or **Petitioner's or Authorized Signatory's Declaration and Certification**, and informed me that all of this information in the form and in the supporting documents is complete, true, and correct.

Preparer's Signature

- 8. Preparer's Signature (sign in ink) Date of Signature (mm/dd/yyyy)



Part 15. Additional Information

If you need extra space to provide any additional information within this petition, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this petition or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name) Given Name (First Name) Middle Name

2. A-Number (if any) ▶ A-

3. A. Page Number B. Part Number C. Item Number

D.

4. A. Page Number B. Part Number C. Item Number

D.

5. A. Page Number B. Part Number C. Item Number

D.

6. A. Page Number B. Part Number C. Item Number

D.



Nivan from Venezuela

The mother of the child is -----who resides in -----, Caracas Venezuela. She is single.

- e. The father of the child is ----- who resides in Venezuela. Uncle is attempting to locate his address.
4. The relationship of Plaintiff to the child is that of Uncle. Other than the child at issue, Uncle currently resides with the following person: -----
5. The relationship of the defendants to the child are that of Mother and Father. Uncle does not know with whom Father resides. Mother resides with another minor child, -----
6. Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another Court.

Plaintiff has no information of a custody proceeding concerning the child pending in a Court of this Commonwealth or any other state or country.

Plaintiff does not know of a person not a party to the proceedings or named herein who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

7. The best interest and permanent welfare of the child will be served by granting the relief requested for the following reasons:
- a. Uncle is the only appropriate caregiver available to the child given the situation in the home of Mother and the abandonment by Father.
- b. All parties and the child are natives of Venezuela. Uncle and Mother share parentage through their father. Uncle is a US citizen having lived here for 28 years and is well-established. Due to a maternal grandmother, the child also holds a Spanish passport but previously has lived only in Venezuela.
- c. Earlier this year Uncle communicated with the child and invited him for a short summer visit in July. The child was able to enter the United States easily he is a European Union citizen and he arrived in Pennsylvania on August 3, 2015.
- d. Once the child arrived here Uncle realized that the child was very depressed and withdrawn as a result of the violence he had been experiencing and the neglect by Mother. Uncle is filing for custody in order to rescue the child from this situation.
- e. Venezuela is a socialist country experiencing crushing crime, violence, and inflation. Like other socialist countries, food and other commodities are very scarce. Mother works but is not always able to provide or locate enough food. More than once in a

- 11
- f. Mother also works excessive hours, approximately 7:00 a.m. to 8:00 p.m. during the week and often on Saturdays. The child has essentially been left alone for most of the time to care for himself, and also his younger half-brother.
 - g. Father has never lived with the child nor provided him with any support. The child last spoke with Father when he received a call on his 14th birthday. The child does not recall the last time he actually saw Father. Father has clearly abandoned the child.
 - h. In addition, the child has been the subject of or immediate witness to three violent incidents.
 - i. In 2012 at the age of 14 the child was leaving school and was surrounded by a group of teenagers. They pulled knives and robbed the child. The child was very frightened by this event.
 - ii. In 2013 at the age of 15 the child was waiting at a public bus stop to go home and was approached by a man. The man pulled out a gun and pointed it at the child with the intention of robbing him. Fortunately, the bus came and the man put the gun away and got on the bus. Again, the child was very frightened.
 - iii. In 2014 at the age of 16, one afternoon the child was walking home to his apartment building with a friend. Upon entering the lobby of the building the boys came upon a man shot in the head, lying on the floor bleeding. The child was completely terrified by this event as it happened in his own home.
 - i. After the murder in the lobby of his apartment building last year, the child began to isolate himself inside his home, going out only for school or if absolutely necessary. He began to be depressed, constantly afraid, and wary of everyone around him.
 - j. Uncle was aware the child was feeling down and believed that a visit to the U.S. might do the child some good, to give him a break. Uncle did not realize the extent of the depression and the degree to which the child was withdrawn. After seeing the child, Uncle also realized that the teenage boy was severely malnourished and underweight. With proper food the child has gained 50 pounds and is now a very healthy and strong young man.
 - k. If the child is returned to Venezuela he will return to the violence and the neglect in Mother's home - neglect due to both poverty and her related absence from the home. It is not in the child's best interest to be reunified with Mother.
 - l. It is in the child's best interest to remain in the custody of Uncle. The child has no relatives left in Spain and no other relative outside of Venezuela to help him. Uncle could not bring himself to return the child at the end of the visit. Since the child has been here, Uncle has noticed significant improvement. The child still exhibits signs of trauma, always keeping his possessions closely with him, and is sometimes sad. However, he is less withdrawn and likes to engage in conversation now.

An from China

Father is ----- who resides in ===== Fujian Province, China, 350203. He is married.

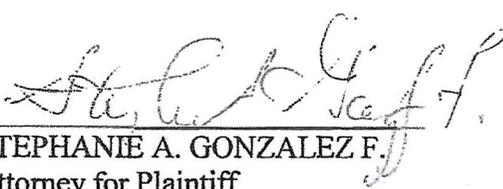
4. The relationship of Plaintiff to the child is that of Paternal Aunt. Other than the child at issue, Plaintiff currently resides with the following persons: -----
5. The relationship of the defendants to the child are that of Mother & Father. Mother & Father reside with the following persons: -----
6. Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another Court.
Plaintiff has no information of a custody proceeding concerning the child pending in a Court of this Commonwealth or any other state or country.
Plaintiff does not know of a person not a party to the proceedings or named herein who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
7. The best interest and permanent welfare of the child will be served by granting the relief requested for the following reasons:
 - a. Aunt is the only caregiver available for the child at this time. Father and Mother abused the child to the point that he ran away from home and left his country;
 - b. All of the parties and the child are natives of China. Aunt is a permanent resident of the United States. The child lived with his parents and younger sisters in China. The parents are rural farmers and are very traditional;
 - c. The child did not do well in school. Beginning in 2010 when the child was 12, the parents would beat him for not doing well. They would also beat him for ordinary discipline related to going out to see his friends as a teenager. However, the beatings went beyond ordinary discipline. The beatings were so severe that the child required medical treatment. The parents would also withhold food as a punishment and would throw him out of the house for days;
 - d. Most recently, in April 2014 the parents beat the boy causing his upper lip and mouth to bleed. Then in May 2014 they beat him causing him to break two teeth, one upper and one lower. The boy's grandfather and aunt took him for medical treatment. The parents then threw him out of the house again in June 2014;
 - e. The boy could no longer take the beatings and other abusive treatment. He had heard of a way to get to the United States and enlisted the help of a "snake". The "snake" arranged

route to Cuba and ^{then} Mexico, finally crossing the border from Mexico into Texas on June 29, 2014 at the age of 16;

- f. The child was detained by immigrations officials, sent to a children's shelter and eventually to Aunt in Philadelphia in August 2014;
- g. The child is doing much better now. He is in 10th grade at Abraham Lincoln High School. While he is still struggling in school, he is attending and is no longer being abused. He gets along well with Aunt and her family; and
- h. It is not in the child's best interest to be returned to China and to his family where he will be abused again. The child should remain here with Aunt where he is living in a loving home.
8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child has been named as a party to this action. No other persons are known to have or claim a right to custody or visitation of the child.
9. The plaintiff is the paternal aunt of the child. Aunt stands *in loco parentis* to the child by virtue of the child having lived with her exclusively since August 2014. The parents have not sought the return of their son and apparently do not object to Aunt having custody of him.
10. Aunt has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. 1915.3-2.
11. Aunt will translate the instant petition to Chinese for the defendants for purposes of service.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant him sole legal and physical custody of the child.

RESPECTFULLY SUBMITTED


STEPHANIE A. GONZALEZ F.
Attorney for Plaintiff

Date: 2/14/15

Mercy & David from Nigeria

<u>Persons</u>	<u>Addresses</u>	<u>Dates</u>
Caregiver	Philadelphia, PA	2/2021 to Present
Caregiver	Chester, PA	12/8/2015 to 2/2021
Mother & Father	Nigeria	Birth to 12/8/2015

- d. The Mother of the children is -----, who resides at -----Lagos State, Nigeria. She is married.
- e. The Father of the children is -----, who resides at-----
Lagos State, Nigeria. He is married
4. The relationship of the Plaintiff to the children is that of Caregiver. Other than the children at issue, Caregiver reside with his own adult daughter, -----.
5. The relationship of the defendants to the children is that of parents. Father currently resides with his current wife ----- . Mother lives on her own.
6. Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the children in this or another Court.

Plaintiff has no information of a custody proceeding concerning the children pending in a Court of this Commonwealth or any other state or country.

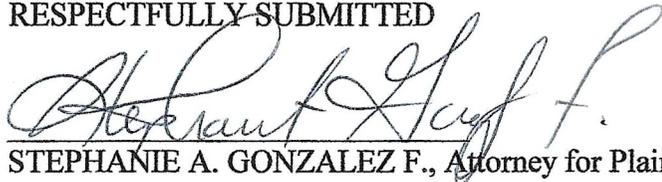
Plaintiff does not know of a person not a party to the proceedings or named herein who has physical custody of the children or claims to have custody or visitation rights with respect to the children.

7. The best interest and permanent welfare of the children will be served by granting the relief requested for the following reasons:
 - a. Caregiver is the only appropriate caregiver for the children at this time as both of the parents have abandoned the children;
 - b. Caregiver is a friend of the Father. As he is not a family member, he does not have all of the details regarding the relationship of Mother and Father;
 - c. In 2015, Father came to the United States with the children. At the end of the year, he asked Caregiver to watch the children for a few months, while he returned to Nigeria. Father indicated he would return to the US in three months for them;

- d. Father never returned for the children in six years. Caregiver has had no communication with Mother and only sporadic communication with Father. Father has not expressed any intention of returning to the United States. Neither Father nor Mother have sent Caregiver any money for the children;
 - e. As the children were with Caregiver for a time he became attached to them and did not want to turn them over to Children and Youth. He has now raised them as his own and needs an Order of Custody to act on their behalf as they are older;
 - f. The girl is in ---- grade at -----High School and the boy is in----- grade at-----School. They are both doing well;
 - g. Reunification with the parents is impossible as they abandoned their children with a nearly six years ago and have performed no parental duties and provided no support during that time. It is not in the best interest of the children to return to Nigeria as it appears that the parents will not care for them. It is in their best interest to remain here in the US with Caregiver, who has cared for them for the past several years.
8. Each parent whose parental rights to the children have not been terminated, and the person who has physical custody of the children, are a party to this action. No other persons are known to have or claim a right to custody or visitation of the children.
 9. Caregiver has standing to bring this action as he stands *in loco parentis* to the children, having been their sole caregiver since December 2015, and as the parents have not objected to him having custody of the children. There is no one else to care for the children.
 10. Jurisdiction and venue are appropriate in Philadelphia, Pennsylvania as no other jurisdiction would be viable at this time. Delaware County is no longer appropriate because the children no longer reside there.
 11. Plaintiff has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. 1915.3-2.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant them sole legal and physical custody of the children.

RESPECTFULLY SUBMITTED



STEPHANIE A. GONZALEZ F., Attorney for Plaintiff

Date: 01/17/2022

Jose from Guatemala

4. The relationship of Plaintiff to the child is that of Mother. Other than the child at issue, Mother resides with the following person: -----
5. The relationship of the defendant to the child is that of Father. Defendant is deceased.
6. Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another Court.
Plaintiff has no information of a custody proceeding concerning the child pending in a Court of this Commonwealth or any other state or country.
Plaintiff does not know of a person not a party to the proceedings or named herein who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
7. The best interest and permanent welfare of the child will be served by granting the relief requested for the following reasons:
 - A. Mother is the only caregiver available for the child. Father was murdered in 2010 in Guatemala, the home country of the parties and child;
 - B. The parties were living together and had a good life with five children. Father owned a furniture store next to the parties' home and was able to support the family;
 - C. In April 2010, Mother was at home when she heard shots next door. Men had entered and killed Father looking for money from his business. After Father's death, Mother was unable to support herself and the five children. Mother therefore came to the United States in 2011 to work, leaving the children with her parents;
 - D. Mother continuously sent money to support the children and maintained contact with them. Mother even saved enough money to purchase a home in Guatemala to return there to live. In April 2016, Mother's oldest son, Mauricio, had gone to check on the home. When he eventually did not return, people went looking for him and he was found dead in the home, having been hung;
 - E. After the death of brother, the child, the only other son in the family, became terrified that he would be next after his father and his older brother. (The other children of the parties are girls.) The child immediately fled the village and went to live with an aunt for a time.

Unfortunately, the aunt could not keep him indefinitely;

F. Eventually the child decided to journey to the United States in search of safety and Mother. The child crossed into the United States in December 2016 and was released to Mother in January 2017;

G. The child is acclimating to the United States. He is in --- grade at ----- High School and starting to get acclimated. The child gets along with Mother's partner and their young son, age 3; and

H. Reunification with the Father is impossible due to his murder. His death left the child effectively abandoned by him and in a situation similar to that of an abandoned child. After the subsequent death of the child's older brother, he was left in his country with no one to protect him; and

I. It is in the best interest of the child to remain in the United States with Mother. There is no caregiver available to the child in Guatemala and it would not be in his best interest to return him to Guatemala where he would be in danger from those who murdered his father and then brother.

8. Each parent whose parental rights to the child have not been terminated and the person who has physical custody of the child has been named as a party to this action. No other persons are known to have or claim a right to custody or visitation of the child.
9. Father has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. 1915.3-2.
10. Mother has translated the instant petition to Spanish and attaches it here.

WHEREFORE. Plaintiff respectfully requests this Honorable Court grant her sole legal and physical custody of the child.

Date: _____

7/3/17

RESPECTFULLY SUBMITTED



STEPHANIE A. GONZALEZ F.

Attorney for Plaintiff

Carlos from Nicaragua

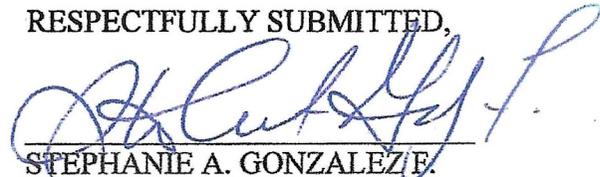
- d. The Mother of the child is ----- She resides at -----
METAGALPA, NICARAGUA She is married, but separated.
 - e. The Father of the child is ----- who resides at -----
Philadelphia, PA . He is married but single.
4. The relationship of Plaintiff to the child is that of FATHER. Other than the child at issue, FATHER resides with -----, a relative.
 5. The relationship of Defendant to the child is that of MOTHER. MOTHER resides with her own mother and her two minor children.
 6. Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another Court.
Plaintiff has no information of a custody proceeding concerning the child pending in a Court of this Commonwealth or any other state or country.
Plaintiff does not know of a person not a party to the proceedings or named herein who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
 7. The best interest and permanent welfare of the child will be served by granting the relief requested for the following reasons:
 - a. The father is the only appropriate caregiver for the child at this time. The mother neglected the child and did not take proper care of him;
 - b. The parties and the child are natives of Nicaragua. They were married and living together as a family until January 2020;
 - c. Around that time, the boy made some public statements at a school activity, shouting "Long live Nicaragua." This was considered problematic by the government and the minor began to be investigated by the police;
 - d. After the separation, they lived between the parties, but the Mother distanced herself from the child. She rarely saw him. The mother is a teacher and she feared the repercussions of being associated with a family member that the police had described as troublesome;
 - e. Political repression and severe restrictions on freedom of expression are documented in 2021;

- f. Eventually, the boy was too scared to stay in Nicaragua. Since the mother had not spent much time with the child, the father left Nicaragua with the child to come to the United States in July 2021;
 - g. The boy is in grade ----- at ----- High School and doing well;
 - h. It is the child's preference to remain with the Father in Philadelphia. The mother has not supported the child and has not regularly communicated with him;
 - i. The reunification of the child with the Mother is impossible. She began to neglect him after her problems with the police due to his political expression. She has not supported him and has also stopped communicating with the boy. It is not in the best interest of the child to return to Nicaragua where there are no parents willing to take care of him and he would most likely be in danger due to the political situation. It is best for the child to remain in Philadelphia with the mother; and
 - j. The father requests sole legal and physical custody of the child, but also requests specific permission and authorization to obtain and/or renew the child's passport without the consent or cooperation of the mother, as she is uncommunicative.
8. Each parent whose parental rights to the child has not been terminated and the person who has physical custody of the child has been named as a party to this action. No other persons are known to have or claim a right to custody or visitation of the child.
9. FATHER has attached the Criminal Record/Abuse History Verification form required pursuant to Pa.R.C.P. 1915.3-2.
10. FATHER has translated the instant petition to Spanish and attaches it here.

WHEREFORE, Plaintiff respectfully requests this Honorable Court grant sole legal and physical custody of -----

Date: 9/14/22

RESPECTFULLY SUBMITTED,



STEPHANIE A. GONZALEZ F.
Attorney for Plaintiff

Yasmina from Guatemala

- d. The mother of the child is _____ who resides at _____ Guatemala. She is married.
- e. The father of the child is _____ who resides at _____ Bucks County, PA. He is married.
4. The relationship of Plaintiff to the child is that of Father. Other than the child at issue, Father resides with his niece, _____ and her four minor children.
5. The relationship of the Defendant to the child is that of mother. Mother lives on her own.
6. Plaintiff has not participated as a party or witness, or in another capacity, in other litigation concerning the custody of the child in this or another Court.

Plaintiff has no information of a custody proceeding concerning the child pending in a Court of this Commonwealth or any other state or country.

Plaintiff does not know of a person not a party to the proceedings or named herein who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

7. The best interest and permanent welfare of the child will be served by granting the relief requested for the following reasons:
- a. Father is the only caregiver available for the child. The child was kidnapped twice from the custody of Mother who has failed to properly supervise her;
- b. The parents and child are natives of Guatemala. The parents were married in approximately 2001 and are the parents of two children, an adult son and the child in question;
- c. Father came to the United States in approximately 2007. Father sent money back to support both children. The parents' adult son came to the United States in 2013, leaving the child and Mother in Guatemala;
- d. In 2018, at the age of approximately 14, the child was walking home from school and stopped at a store. A car came by and a man forced her into the car at knife-point. The child was kept in a hotel room for four days. During the day she was left alone bound and gagged. The man would return in the evenings and assaulted her;
- e. Mother had begun a small taxi business and employed a driver. Father sent money to the driver imploring him to help in the search for the child. Father was unaware that the driver was actually the kidnapper. The driver facilitated a call between the

child and Father. On the fourth day the child managed to keep the phone and call Mother;

- f. Mother reported the incident and the driver was arrested by the police. However, subsequently the Court admonished Mother for failure to supervise the child and ultimately released the driver, a 27 year old man;
- g. Father later learned that the driver was also a drug dealer for a Honduran drug boss, "La Chata". "La Chata" had used her influence to secure the release of the driver;
- h. As a result of the trauma, the child stopped going to school. However, approximately four months later, Mother wanted to go to church in a nearby town, but does not drive so she had the child, still only 14 years old, drive her. During the long service, the child left the church to go to the local store to get something to eat. Mother let the child go without supervision, having let her guard down after four months;
- i. The same man, clearly obsessed, was waiting for the child on the corner near the church. The man again took the child at knife-point, this time to an apartment. He kept her for 22 days. Again she was tied during the day, with no food or water. At night the man would return and both abuse and assault the child;
- j. On the 22nd day the police arrived. (The girl believes that the woman who owned the apartment eventually called them.) Mother refused to make a formal declaration against the driver after her experience with the Court the first time and out of fear of "La Chata";
- k. With no one else in Guatemala to assist her, in late 2018 the child fled and tried to reach Father in the United States. The child crossed the border in January 2019 and was eventually released to Father by immigration officials in February 2019;
- l. The child is currently finishing the ----- grade at ----- Father was not able to obtain counseling for the child, but she is recovering and doing well enough;
- m. Reunification with Mother is not viable. Mother neglected her parental responsibilities by failing to properly supervise the child. Mother used the child as her own driver, let her go out unaccompanied in dangerous areas resulting in her being kidnaped twice, and failed to follow through with law enforcement;
- n. It is in the best interest of the child to remain with Father, who is caring for her and properly supervising her. It is not in the best interest of the child to return to Guatemala back to the supervision of Mother and certain danger in her village from her kidnapper who remains there.

**IN THE COURT OF COMMON PLEAS FOR
SOUTHEASTERN PA COUNTY, PENNSYLVANIA**

XX	:	
XX	:	
Plaintiffs		
v.	:	IN CUSTODY
	:	
YY	:	No. ZZ
YY	:	
Defendants	:	

ORDER

AND NOW this 12th Day of July 2023, after a hearing with Plaintiffs, XX XX and the minor child, AA, where the parties and child testified and submitted documents, it is hereby ORDERED and DECREED:

Jurisdiction: Pursuant to 23 Pa.CS Sec. 5421(a), Montgomery County, Pennsylvania has jurisdiction to make this child custody determination and the child has resided here for at least six months. Montgomery County retains exclusive jurisdiction.

Service: YY (hereinafter, “Father”) and YY (hereinafter, “Mother”) were properly served with the Complaint for Custody and Notice for Hearing. Father and Mother signed an Acceptance of Service, which included the telephone number to the Court’s chambers, Father and Mother failed to appear, and the Court received no communication indicating they wished to participate in the proceedings. Service is found to be proper.

Standing: Plaintiffs, XX and XX, (hereinafter “Cousins”) stand *in loco parentis* to the child. Cousins have attended to the child’s needs for the past year and have registered him in school. The parents have not sought the return of their child and do not object to Cousins having custody of him, as evidenced by their failure to contact the Court to participate in the hearing today. Cousins have rebutted the presumption of custody in favor of a parent by clear and convincing evidence pursuant to 23 Pa.C.S.A. Section 5327(b).

Consideration of Best Interest Factors Section 5328:

(1) Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.

There is no evidence that any party has restricted access to the child. This factor is not applicable.

(2) The present and past abuse committed by a party or member of the party's household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.

- I. The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

Father abused the child. At home he beat him with a belt and when working in the fields with sticks. As discipline, Father forced the child to kneel on corn kernels and with a brick on each shoulder in the sun, until the child or the bricks fell.

Mother neglected the child by failing to protect him from Father's abuse.

No formal charges were filed against Father so Section 5329 does not apply. This factor weighs in favor of Cousins.

- (3) The parental duties performed by each party on behalf of the child.

Parents neglected the child by failing to perform their parental duties to educate him and to provide necessities. The child had not been sent to school after the 8th grade. Instead, the child had to work to help provide for his own necessities. Even while in school in the United States for 8th grade, Father made the child go to work with him after school to work as a dish washer.

Cousins perform all parental duties for the child. This factor weighs in favor of Cousins.

- (4) The need for stability and continuity in the child's education, family life and community life.

Cousins are providing the child with stability and continuity in his education as they enrolled him in school and he is doing well. The child gets along well with the children of Cousins. By contrast, his life was in turmoil with Father and Mother. In addition to the abuse, Father brought him to the United States for one year, separating him from Mother and the siblings, and then abruptly took him back to Guatemala in 2020. The child has been stable in the home of Cousins for the past year in Montgomery County. This factor weighs in favor of Cousins.

- (5) The availability of extended family.

The child has more extended family near the home of parents, but does have some family here. This factor weighs in favor of Father and Mother.

- (6) The child's sibling relationships

The child's siblings live near Father and Mother. This factor weighs in favor of Father and Mother.

- (7) The well-reasoned preference of the child, based on the child's maturity and judgment.

The child expressed his clear preference to remain living with Cousins and to not return to his parent's home in Guatemala. This factor weighs in favor of Cousins.

(8) The attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.

There is no evidence that any party has tried to turn the child against another. This factor is not applicable.

(9) Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.

Father has no positive relationship with the child, due to his abuse of the child. Mother may love the child, but she failed to protect the child from Father. She continues to communicate with the child, but has no consistent relationship with him.

Cousins currently have a good relationship with the child, adequate to meet his emotional needs.

(10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.

Father and Mother completely failed to attend to the child's needs. In addition to the abuse, they neglected his education by having him work after the year 2020.

By contrast, Cousins have provided for the child so that he may attend school, rather than working to pay for his own food, shelter and clothing. The child just finished the 10th grade at North Penn High School. He received primarily A's and B's and has no grade lower than a C+. His attendance is also excellent. This factor weighs in favor of Cousins.

(11) The proximity of the residences of the parties.

The parties reside in different countries and regular shared or partial custody is not viable. This factor is not applicable.

(12) Each party's availability to care for the child or ability to make appropriate child-care arrangements.

The child is a teenager and not in need of child-care. Cousin YY is also at home full-time having just given birth to twins. This factor is not applicable.

(13) The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.

There is no evidence of conflict between Cousins, Father and Mother. This factor is not applicable.

(14) The history of drug or alcohol abuse of a party or member of a party's household.

There is no evidence of substance abuse by any party. This factor is not applicable;

(15) The mental and physical condition of a party or member of a party's household.

There is no evidence that any party has a mental or physical impairment. This factor is not applicable.

(16) Any other relevant factor. **NONE**

Best Interest Determination: After considering the testimony of Cousins and child, which this Court finds to be credible, and reviewing the documents presented, which this Court admitted into evidence, in light of the best interest factors as reviewed herein, the Court finds that the majority of the factors weigh heavily in favor of Cousins.

The child is doing well with Cousins, both in the home and in school. **In contrast, this Court finds that the child was abused by Father and neglected by both Father and Mother who failed to educate him properly.**

This Court is authorized to order counseling, family counseling and/or reunification therapy with one or both parents pursuant to 23 Pa.C.S.A. Sec.5333. However, due to the circumstances of this case, **the Court finds that reunification with Father is not viable, nor with Mother who continues to reside with Father.** Accordingly, the Court declines to order counseling or therapy.

Accordingly, the Court finds that it is not in the child's best interest to return to Guatemala, for any form of custody with the parents, not even partial custody. It is in the best interest of the child to live exclusively here in Montgomery County with Cousins.

Award of Custody: **Accordingly, Sole legal and physical custody of the unmarried minor child, AA, born AA, is awarded to XX and YY.** Although Cousins are third parties in this action, as neither is a parent to the child, this Court finds that Cousins have presented clear and convincing evidence to meet their burden to rebut the presumption of an award of custody in favor of a parent pursuant to 23 Pa.C.S.A. Sec. 5327(b).

As the Court grants sole legal custody to Cousins, they may make all legal decisions on behalf of the minor child. Cousins are specifically authorized to obtain passports for the child without the written consent of either parent.

Education: The Court finds that it is in the best interest of the child to remain in the Philadelphia Public School District and continue his education until he graduates from high school or reaches the age of 21, whichever may come first. [PHILADELPHIA PROVISION]

Relocation: 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. Section 5337 and Rule of Civil Procedure 1915.17.

BY THE COURT,

J.

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Attorneys for MR

IN RE: DSR : COURT OF COMMON PLEAS OF
D.O.B. SSS : PHILADELPHIA COUNTY,
: PENNSYLVANIA
: FAMILY COURT DIVISION
: JUVENILE BRANCH
:
: Pet. D#
J.#

Application to File a Private Petition

SUMMARY ALLEGATIONS:

Sex: Male
DOB: SSS
Location of Child: DDD
Name of Caretakers: MR

1. Petitioner is MR. He is the maternal uncle of the above-named child.
2. The above-named child is a dependent child under provisions of the Pennsylvania Juvenile Act, 42 Pa. Cons. Stat., § 6301, *et seq.* It is in the best interests of this child and the public that this petition be brought.
3. Upon information and belief, this child is dependent pursuant to the Juvenile Act due to the following allegations found in the attached petition, to be incorporated by reference in this application.
4. The Department of Human Services (“DHS”) has not been involved with this child or the petitioner. Petitioner does not seek the assistance of DHS nor services from DHS.

5. Petitioner seeks to have the child declared to be a dependent child so that he can continue to care for the child and asks that this Honorable Court adjudicate this child dependent, entering an order that will allow him to apply for Special Immigrant Status for the child pursuant to 8 U.S.C.A. § 1101(a)(27)(J).

WHEREFORE, Petitioner asks that he be allowed to proceed with the filing of a Private Petition of Dependency and ultimately that this Honorable Court adjudicate this child dependent, entering an order that will allow him to apply for Special Immigrant Status for the child.

Respectfully submitted,

By: _____
STEPHANIE A. GONZALEZ FERRANDEZ

VERIFICATION

The undersigned verifies that the statements made in this petition are true and correct to the best of her knowledge, information and belief, and that the undersigned is aware that false statements herein are made subject to penalties of 18 Pa.Cons.Stat. §4904.

Date: _____

Stephanie A. Gonzalez Ferrandez
Atty. I.D. No. 73580
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Dear Immigration Colleagues:

I am always happy to assist our mutual clients with their SIJ applications. To streamline collaboration, here are a few tips. Remember that the majority of cases occur in Custody Court. Typically, Dependency Court is used only when minors are in foster care. Here are a few county-specific tips to consider when referring a client. Please note that the timelines below are estimates only.

Bucks County: Five to six months is needed between the date of filing and getting to a final hearing with Judge McMaster. Scheduling is not accommodated for cases where a minor is close to the 18th birthday. Note: The Court takes a lack of case in controversy seriously. The Custody Court will not entertain cases brought by (1) one parent against a deceased parent or (2) a mother against an unidentified father. If a third party is caring for the child and both parents are deceased then the cases will need to be brought as a private dependency petition.

Chester County: Approximately three months is needed between the date of filing and getting to a final hearing before a Judge on the wheel. Scheduling is not accommodated for cases where a minor is close to the 18th birthday. Note: Some judges have denied predicate orders finding litigants not credible. [*I do not practice in Chester, but am happy to refer you to a colleague.*]

Delaware County: Four to six months is needed between the date of filing and a hearing with a Judge on the wheel. The situation is still very precarious. A successful 2022 Superior Court opinion from a DelCo case returned practice to the county. However, Judges are resistant to these cases and there have been denials based on findings of a lack of credibility of litigants and refusing to find that reunification is not viable. A 2023 Superior Court case also from DelCo has again called proceedings into question.

Montgomery County: Approximately three months is needed between the date of filing and getting to a final hearing with Judge Wall. Scheduling is sometimes accommodated when a minor is close to the 18th birthday. Note: Judge Wall is very serious about education. Children need to be in school and have good attendance. Petitions will be denied or delayed if there are excessive absences. Judge Wall normally does not grant cases in which a 17 year old has recently arrived in the U.S.. There are very few exceptions to this.

Philadelphia County: Most cases are scheduled about six to eight months out from filing with a hearing before Judge Palmer. Scheduling is normally accommodated when a minor is close to the 18th birthday. Affidavits of good faith attempts can be accepted in lieu of personal service if service is not possible. Judge Palmer is also serious about education. Children should be in school and attending regularly. Proof of registration and attendance is required.

**Protocol for filing for Special Immigrant Juvenile Status (SIJS) in
Montgomery County**

In order to assist petitioners who are filing for 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's 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 age¹, 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 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
- It is not in the child's interest to be returned to his or her home country.

¹ 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.

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 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 in any proceeding in

Family Court:

- A Copy of the Petition and 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 any person who is a named, interested or necessary party to the action.
- 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.
- 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. School records shall be sealed by the school and presented to the Court in a sealed envelope.
- If a party is alleging that the health of a child is a contributing factor in the requested relief, a letter from the treating physician or specialist.
- 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. has the child's best interest 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.

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' TO SEEK THE APPOINTMENT OF A GUARDIAN PURSUANT TO 20 Pa. C.S.A. 5111, et seq., WHERE THE COURT BELIEVES IT THAT 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 Petition:

- 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

SPECIAL IMMIGRANT
JUVENILE CASE

question regarding what Victim was assaulted with was also aimed at assessing the extent of Victim's potential internal injuries, as they worked to quickly understand the extent of Victim's injuries. Accordingly, we find that Victim's statement to the paramedic was also nontestimonial and should not have been excluded on Confrontation Clause grounds.

Order reversed. Case remanded for further proceedings. Jurisdiction relinquished.



Juana Margarita Pablo OROZCO,
Appellant

v.

Noe Anibal Cuja TECU

No. 2474 EDA 2021

Superior Court of Pennsylvania.

Submitted May 4, 2022

Filed October 13, 2022

Background: Mother brought proceeding to obtain sole legal and physical custody of her child, who had lived with relatives in Guatemala before moving to United States to live with mother. After issuance of order that granted temporary custody to mother but lacked findings of fact necessary to petition the United States Citizenship Immigration Services (USCIS) for special immigrant juvenile (SIJ) status, mother filed emergency petition for issuance of necessary findings of fact. The Court of Common Pleas, Delaware County, Civil Division, No. 2020-003046, Nusrat J. Love, J., denied petition. Mother appealed.

Holdings: The Superior Court, No. 2474 EDA 2021, McLaughlin, J., held that:

- (1) trial court's order denying emergency petition was appealable as of right as a collateral order, and
- (2) trial court was required to make findings of fact necessary for mother to petition for child's SIJ status.

Vacated and remanded.

1. Child Custody ⇄902

Trial court's order denying mother's emergency petition seeking the issuance of an order with special immigrant juvenile (SIJ) status findings regarding child was appealable as of right as a collateral order in mother's proceeding to establish sole legal and physical custody of child, where Superior Court could decide the propriety of the denial without delving into the merits of the underlying custody case, interests of child were significant enough to outweigh the efficiency interests of the court, and child's ability to obtain appellate relief would have been effectively foreclosed if the Superior Court denied immediate review. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J); Pa. R. App. P. 313(b); 8 C.F.R. § 204.11(a, c, d).

2. Child Custody ⇄919

Issue of whether trial court's order denying mother's emergency petition for findings of fact necessary to petition United States Citizenship Immigration Services (USCIS) for special immigrant juvenile (SIJ) status for child was appealable as of right as collateral order in mother's proceeding to establish sole legal and physical custody involved pure question of law, and thus Superior Court's standard of review was de novo, and its scope of review was plenary. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J); Pa. R. App. P. 313(b); 8 C.F.R. § 204.11(a, c, d).

3. Appeal and Error ⇄66

An appeal lies only from a final order, unless an exception to this general rule applies.

4. Appeal and Error ⇄72, 358

An order is “separable” from the main cause of action, as required for order to be a collateral order that is immediately appealable as of right, if it is distinct from the underlying issue in the case and if it can be resolved without an analysis of the merits of the underlying dispute. Pa. R. App. P. 313(b).

See publication Words and Phrases for other judicial constructions and definitions.

5. Appeal and Error ⇄72

While courts will tolerate a degree of interrelatedness between merit issues and the question sought to be raised in the interlocutory appeal when determining whether an order is separable from the main cause of action, as required for order to be a collateral order, the claim must nevertheless be conceptually distinct from the merits of plaintiff’s claim. Pa. R. App. P. 313(b).

6. Appeal and Error ⇄72

Prong of the collateral-order doctrine addressing whether the right involved is too important to be denied review is satisfied if the interests that would go unprotected without immediate appeal are significant relative to the efficiency interests served by the final-order rule. Pa. R. App. P. 313(b).

7. Appeal and Error ⇄72

“Irreparable loss,” for purposes of prong of the collateral-order doctrine addressing whether claim would be irreparably lost if appellate review was postponed until final judgment on case, is a loss that

is not fully remediable after final judgment. Pa. R. App. P. 313(b).

See publication Words and Phrases for other judicial constructions and definitions.

8. Child Custody ⇄911

Appeal of trial court’s order denying mother’s emergency petition for findings of fact necessary to petition United States Citizenship Immigration Services (USCIS) for special immigrant juvenile (SIJ) status for child was not moot in mother’s proceeding to establish sole legal and physical custody of child, even though child turned 18 years of age, since SIJ statute afforded relief in proper case until youth reached 21 years of age. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J).

9. Appeal and Error ⇄3173

Superior Court reviews trial courts’ interpretations of statutes for error of law.

10. Appeal and Error ⇄3151(1)

Superior Court may reverse a decision in an equity matter only for an error of law or abuse of discretion.

11. Appeal and Error ⇄3510, 3511

The findings of fact made by the trial court in an equity matter will not be disturbed on appeal unless they are unsupported by competent evidence or are demonstrably capricious.

12. Appeal and Error ⇄3173

To the extent that an appeal implicates statutory interpretation, Superior Court’s standard of review is de novo, and its scope of review is plenary.

13. Child Custody ⇄511

Trial court was required to make findings of fact necessary for mother to petition United States Citizenship Immigration Services (USCIS) for special immigrant juvenile (SIJ) status for child in mother’s proceeding to establish sole legal

and physical custody; mother specifically requested SIJ findings both orally during hearing that resulted in temporary custody order and in her later emergency petition for SIJ findings, and federal statutory scheme put factual determinations necessary for SIJ status solely within purview of state courts. 8 U.S.C.A. § 1101(a)(27)(J); 8 C.F.R. § 204.11(a, c, d).

Appeal from the Order Entered November 4, 2021, In the Court of Common Pleas of Delaware County, Civil Division, at No(s): 2020-003046, Nusrat J. Love, J.

Devin E. Grogan, Philadelphia, for appellant.

Michael S. Henry, Philadelphia, for appellant.

Noe Anibal Cuja Tecu, appellee, pro se.

BEFORE: BOWES, J., STABILE, J., and McLAUGHLIN, J.

OPINION BY McLAUGHLIN, J.:

Juana Margarita Pablo Orozco (“Mother”) appeals from the order denying her petition seeking the issuance of an order containing specific factual findings regarding her minor child (“B.A.C.P.”), necessary to petition the United States Citizenship Immigration Services (“USCIS”) for special immigrant juvenile status (“SIJ”) for B.A.C.P. We vacate and remand.

Mother currently resides in Delaware County, Pennsylvania with B.A.C.P. B.A.C.P.’s father, Noe Anibal Cuja Tecu, resides in Guatemala, has never been involved in B.A.C.P.’s life, and has not participated in the instant matter. Before moving to the United States to live with Mother, B.A.C.P. lived with other relatives. On April 30, 2020, Mother filed for sole legal and physical custody of B.A.C.P. Almost a year later, in March 2021, the court held a hearing regarding Mother’s

custody petition. During the hearing, Mother asked the court to issue findings of fact sufficient to petition USCIS for SIJ status.

The SIJ statute, 8 U.S.C.A. § 1101(a)(27)(J), provides that a juvenile who qualifies as an SIJ may apply for lawful permanent residency and thus relief from deportation. *Yeboah v. U.S. Dep’t of Justice*, 345 F.3d 216, 221 (3d Cir. 2003). Section 1101(a)(27)(J) defines an SIJ as a juvenile:

- (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 1 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[.]
- 8 U.S.C.A. § 1101(a)(27)(J).

In order to obtain SIJ status, a petitioner must obtain determinations from both the state and federal systems. First, the juvenile, or someone acting on his or her behalf, must obtain an order from a state court making findings that the juvenile meets certain criteria. The necessary findings are:

- (1) The juvenile is unmarried and under the age of 21;
- (2) The juvenile is dependent on the court or has been placed under the custody of an individual appointed by the court or under the custody of an agency;

- (3) The juvenile court has jurisdiction under state law to make determinations regarding the custody and care of juveniles;
- (4) That reunification with one or both of the juvenile’s parents is not possible under state law due to abuse, neglect, or abandonment or a similar basis; and
- (5) It is not in the “best interest” of the juvenile to be returned to his parents’ previous country of nationality or country of last habitual residence.

See 8 C.F.R. § 204.11(a), (c) & (d); 8 U.S.C.A. § 1101(a)(27)(J). Under the federal SIJ scheme, the state court does not render an immigration decision but rather makes factual determinations predicate to USCIS’s SIJ determination. *Id.*

Here, the court stated at the hearing that it intended to consider only Mother’s custody issue, as stated in her complaint. N.T., 3/19/21, at 26-27. Accordingly, Mother requested the opportunity to amend her complaint to include the specific request for SIJ findings. *Id.* The court stated that it would take the request under advisement and issue an order. *Id.* However, the court never addressed Mother’s request for leave to amend and instead, on March 25, 2021, issued only a temporary custody order granting Mother sole legal and physical custody of B.A.C.P. The order did not include the SIJ findings of fact.

Thus, on October 28, 2021, Mother filed a petition entitled “Emergency Application for Issuance of Order,” along with a proposed order, requesting that the court issue the findings of fact necessary to apply for SIJ status. Once again, the court refused, in an order docketed on November 4, 2021. Mother filed a motion for reconsideration and a request for an emergency hearing, both of which the trial court denied. Mother filed the instant timely appeal and both Mother and the court complied with Pa.R.A.P. 1925.

Mother presents the following issues for review:

1. Whether the trial court erred in denying [Mother’s] request for an SIJ eligibility order without opinion because it deprived [Mother] and [B.A.C.P.] of a remedy for [B.A.C.P.’s] right to seek SIJ status and violated their right to due process?
2. Whether this Court has jurisdiction to review the trial court’s order as a final order under 42 Pa.C.S. § 742 and Pa.R.A.P. 341(a) & (b)(1) because it disposes of all of [Mother’s] claims relating to her request for the issuance of an SIJ eligibility order?
3. In the alternative, whether the Superior Court has jurisdiction to review the trial court’s order as a collateral order under Pa. R.A.P.313 because the issue of SIJ eligibility is separable from and collateral to the custody proceeding, the right involved is too important to be denied, and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparable lost?

Mother’s Br. at 7-8.

We address Mother’s second and third issues first because they pertain to the jurisdiction of this Court. The trial court determined, in its Pa.R.A.P. 1925(a) opinion, that the subject order is not ripe for review because it is a temporary order and thus interlocutory. To this end, the court cites *Kassam v. Kassam*, 811 A.2d 1023, 1027 (Pa.Super. 2002) (“a custody order will be considered final and appealable only if it is both: 1) entered after the court has completed its hearings on the merits; and 2) intended by the court to constitute a complete resolution of the custody claims

pending between the parties”). Moreover, the court found that the instant order, which denied Mother’s request for an emergency order or hearing, was not appealable as an interlocutory appeal as of right pursuant to Pa.R.A.P. § 311(a), nor had the court authorized an interlocutory appeal by permission pursuant to Pa.R.A.P. § 312.

This Court issued a Rule to Show Cause, on January 6, 2022, regarding whether the instant appeal should be quashed as interlocutory. Mother responded that the instant order was appealable as of right as a collateral order under Pa.R.A.P. 313(a). Mother contends that the November 4, 2021 order is immediately appealable because her request for the issuance of an SIJ order is separate from and collateral to her custody cause of action, her request is too important to delay review, and her bid for relief, via an SIJ order, will be irreparably lost if review is denied. This Court issued a discharge order, which referred the matter to this panel.

[1,2] We agree with Mother that the subject order is appealable as of right as a collateral order. As this issue involves a pure question of law, our standard of review is *de novo*, and our scope of review is plenary. *See Gilbert v. Synagro Central, LLC*, 634 Pa. 651, 131 A.3d 1, 10 (2015); *Harrell v. Pecynski*, 11 A.3d 1000, 1003 (Pa.Super. 2011); *In re Wilson*, 879 A.2d 199, 214 (Pa.Super. 2005) (*en banc*) (citations omitted).

[3] An appeal lies only from a final order, unless an exception to this general rule applies. *K.W. v. S.L.*, 157 A.3d 498, 502 (Pa.Super. 2017). One such exception is the collateral order rule, which is found in Pennsylvania Rule of Appellate Procedure 313. Rule 313 allows an immediate appeal from an interlocutory order if the order constitutes a collateral order. An order is collateral if it is “separable from and col-

lateral to the main cause of action,” “the right involved is too important to be denied review,” and “the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost.” Pa.R.A.P. 313(b).

[4,5] An order is separable from the main cause of action if it is distinct from the underlying issue in the case and if it “can be resolved without an analysis of the merits of the underlying dispute.” *In the Interest of J.M.*, 219 A.3d 645, 655 (Pa.Super. 2019) (citation omitted). While courts will “tolerate a degree of interrelatedness between merit issues and the question sought to be raised in the interlocutory appeal, the claim must nevertheless be conceptually distinct from the merits of plaintiff’s claim.” *Id.* at 656.

[6,7] The second prong of the doctrine – “the right involved is too important to be denied review” – is satisfied if “the interests that would go unprotected without immediate appeal are significant relative to the efficiency interests served by the final order rule.” *Commonwealth v. Williams*, 624 Pa. 405, 86 A.3d 771, 782 (2014). Finally, “irreparable loss” for purposes of the third prong is a loss that is not “fully remediable after final judgment.” *Commonwealth v. Blystone*, 632 Pa. 260, 119 A.3d 306, 313 (2015).

[8] Here, Mother’s emergency petition for an SIJ order is separable from Mother’s main custody action because we can decide the propriety of the denial of the SIJ motion without delving into the merits of the underlying custody case. *See J.M.*, 219 A.3d at 655. Further, the interest at issue – a predicate order for B.A.C.P. to apply for SIJ status and seek adjustment of his immigration status – is an “important right” significant enough to outweigh the efficiency interests of the court. *See*

Williams, 86 A.3d at 782. Lastly, B.A.C.P.'s ability to obtain appellate relief will be effectively foreclosed if we deny immediate review. Mother candidly informs us that deportation proceedings are pending against B.A.C.P. and she sought the SIJ order so he could obtain relief from deportation. Hence, we conclude that the November 6, 2022 order was immediately appealable as a collateral order.¹

[9] Next, we turn to Mother's substantive argument regarding the trial court's denial of her petition seeking an SIJ order. Mother takes particular issue with the court's refusal to provide reasoning for its refusal on the record in any capacity, including in its Rule 1925(a) opinion. As such, Mother maintains that she is foreclosed from having any recourse.

[10–12] We may reverse a decision in an equity matter only for an error of law or abuse of discretion. *Gurecka v. Carroll*, 155 A.3d 1071, 1075 (Pa.Super. 2017) (*en banc*). The findings of fact made by the trial court “will not be disturbed unless they are unsupported by competent evidence or are demonstrably capricious.” *Id.* (citation omitted). To the extent that this appeal implicates statutory interpretation, our standard of review is *de novo*, and our scope of review is plenary. *See Bowling v. Office of Open Records*, 621 Pa. 133, 75 A.3d 453, 466 (2013). We review trial courts' interpretations of statutes for error of law. *Commonwealth v. Lewis*, 180 A.3d 786, 788 (Pa.Super. 2018).

[13] We conclude that the trial court abused its discretion. Mother specifically requested SIJ findings both orally during the March 2019 hearing and in her October 2019 petition. The federal statutory

scheme puts the factual determinations necessary for SIJ status solely within the purview of state courts. Yet the court flatly refused to issue the SIJ order. In this posture, the refusal was an abuse of discretion. Accordingly, we vacate the trial court's order and remand for the trial court to enter a new order that shall include factual findings with respect to B.A.C.P. that are predicate to USCIS's SIJ determination under federal law.

Order vacated. Case remanded. Jurisdiction relinquished.



Nicole Eva GROSS, Appellant

v.

Jared Zalman MINTZ

No. 959 EDA 2022

Superior Court of Pennsylvania.

Argued August 23, 2022

Filed October 13, 2022

Background: Father filed emergency petition for contempt and enforcement of custody order. The Court of Common Pleas, Montgomery County, Civil Division, No. 2017-28078, Jeffrey S. Saltz, J., held mother in contempt, ordered her to pay father's attorney fees, and prohibited her from utilizing legal proceedings stemming from incident without its prior approval. Mother appealed.

Holdings: The Superior Court, No. 959 EDA 2022, McCaffery, J., held that:

1. Although B.A.C.P. turned 18 years of age in November 2021, this appeal is not moot. The federal SIJ statute affords relief in a proper case until a youth reaches the age of 21.

Accordingly, we conclude that issue is not moot and the Delaware County Court of Common Pleas has jurisdiction.

2023 WL 4778496

Superior Court of Pennsylvania.

Maria Estela Villegas RIVAS, Appellant

v.

Juanna Dayel VILLEGAS and Marvin David Landaverde

No. 2517 EDA 2022

|

Submitted January 30, 2023

|

Filed July 27, 2023

Synopsis

Background: Grandmother filed complaint, seeking sole physical and legal custody of child, who was born in El Salvador, and a petition for special relief, seeking order containing specific findings of fact that would permit child to apply for special immigrant juvenile status (SIJ), pursuant to the Immigration and Nationality Act. The Court of Common Pleas, Chester County, Civil Division, No. 2022-04171-CU, [Anthony T. Verwey, J.](#), awarded grandmother sole legal and physical custody of child, but denied grandmother's petition for special relief. Grandmother appealed

Holdings: The Superior Court, No. 2517 EDA 2022, [McCaffery, J.](#), held that:

[1] trial court's order denying grandmother's petition for special relief qualified as a collateral order that was immediately appealable;

[2] fact that trial court was not a juvenile or dependency court did not bar it from considering grandmother's petition for special relief;

[3] grandmother having filed her request as a petition for special relief, which may not have been the most appropriate practice, did not bar trial court from addressing her petition; and

[4] trial court's determination that there was insufficient credible evidence to support grandmother's requested relief and specific findings was abuse of discretion.

Vacated and remanded.

[Sullivan, J.](#), filed concurring statement.

Procedural Posture(s): On Appeal; Other.

West Headnotes (18)

[1] **Appeal and Error** 🔑

The appealability of an order directly implicates the jurisdiction of the court asked to review the order.

[2] **Appeal and Error** 🔑

Because questions concerning the appealability of an order go to jurisdiction, they may be raised sua sponte by the Superior Court.

[3] **Appeal and Error** 🔑

Jurisdiction is purely a question of law; the appellate standard of review is de novo, and the scope of review plenary.

[4] **Appeal and Error** 🔑

Generally, for an order to be appealable, it must be (1) a final order; (2) an interlocutory order appealable by right or permission; or (3) a collateral order. [42 Pa. Cons. Stat. Ann. §§ 702\(a\), 702\(b\)](#); [Pa. R. App. P. 311, 312, 313, 341, 342](#).

[5] **Appeal and Error** 🔑

If an order satisfies the three-pronged test set forth in the collateral-order rule, the Superior Court may exercise appellate jurisdiction over the order, even though it is not final. [Pa. R. App. P. 313\(b\)](#).

[6] **Appeal and Error** 🔑

The collateral-order rule is a specialized, practical application of the general rule that only final orders are appealable as of right; as such,

the Superior Court must stringently apply the requirements of the collateral-order doctrine. Pa. R. App. P. 313(b).

[7] Appeal and Error 🔑

If an order does not meet all three prongs of the collateral-order test, the Superior Court has no jurisdiction to consider an appeal from that order. Pa. R. App. P. 313(b).

[8] Appeal and Error 🔑

Trial court's order denying grandmother's petition for special relief, seeking order containing specific findings of fact that would permit child, who was born in El Salvador, to apply for special immigrant juvenile status (SIJ), pursuant to the Immigration and Nationality Act, qualified as a collateral order that was immediately appealable, where order was separate from grandmother's custody action, it involved a right that was too important to be denied review since deportation proceedings were pending against child, and grandmother's right to pursue SIJ status for child would be lost forever if the relief was not granted. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J); Pa. R. App. P. 313(b); 8 C.F.R. § 204.11.

[9] Appeal and Error 🔑

Appellate courts apply the law in effect at the time of the appellate decision; this means that courts adhere to the principle that a party whose case is pending on direct appeal is entitled to the benefit of changes in law which occur before the judgment becomes final.

[10] Courts 🔑

One three-judge panel of the Superior Court cannot overrule another.

[11] Appeal and Error 🔑

Superior Court may reverse decision in equity matter only for error of law or abuse of discretion.

[12] Appeal and Error 🔑

Findings of fact made by trial court in equity matter will not be disturbed unless they are unsupported by competent evidence or are demonstrably capricious.

[13] Appeal and Error 🔑

To extent that appeal implicates statutory interpretation, Superior Court's standard of review is de novo, and its scope of review is plenary.

[14] Appeal and Error 🔑

Superior Court reviews trial courts' interpretations of statutes for error of law.

[15] Aliens, Immigration, and Citizenship 🔑

Fact that Court of Common Pleas was not a juvenile or dependency court did not bar it from considering grandmother's petition for special relief, seeking order containing specific findings of fact that would permit child, who was born in El Salvador, to apply for special immigrant juvenile status (SIJ), pursuant to the Immigration and Nationality Act; language of regulation governing SIJ classification did not restrict the SIJ classification to only a juvenile court having administrative power, and in Pennsylvania, a court of common pleas was the proper judicial body to review allegations of child abuse. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

[16] Aliens, Immigration, and Citizenship 🔑

The purpose of the federal law governing special immigrant juvenile (SIJ) classification is to address issues of abuse, abandonment, and neglect. [8 C.F.R. § 204.11\(c\)](#).

(27)(J); Pa. R. App. P. 1925(a); [8 C.F.R. § 204.11](#).

[17] Aliens, Immigration, and Citizenship

Grandmother having filed her request as a petition for special relief, which may not have been the most appropriate practice, did not bar trial court from addressing her petition, seeking order containing specific findings of fact that would permit child, who was born in El Salvador, to apply for special immigrant juvenile status (SIJ), pursuant to the Immigration and Nationality Act; the title of the document should not have controlled where the substance of the relief requested was clear — particularly where a child was the subject of the underlying matter, and where there were allegations of abuse, neglect, or abandonment regarding child, court should have excused the misnomer and addressed the merits set forth in the filing. Immigration and Nationality Act § 101, [8 U.S.C.A. § 1101\(a\)\(27\)\(J\)](#); [8 C.F.R. § 204.11](#).

[18] Aliens, Immigration, and Citizenship

Trial court's determination that there was insufficient credible evidence to support grandmother's requested relief and specific findings was abuse of discretion, in its opinion supporting order denying grandmother's petition for special relief, seeking order containing specific findings of fact that would permit child, who was born in El Salvador, to apply for special immigrant juvenile status (SIJ), pursuant to the Immigration and Nationality Act; court limited testimony to custody issue and grandmother was not provided with opportunity to make the case concerning allegations of abuse, neglect, and abandonment in the context of an SIJ classification, but in its opinion, court tried to apply a different lens to the same testimony and address the SIJ status issue. Immigration and Nationality Act § 101, [8 U.S.C.A. § 1101\(a\)](#)

Appeal from the Order Entered September 7, 2022, In the Court of Common Pleas of Chester County, Civil Division, at No(s): 2022-04171-CU, Anthony T. Verwey, J.

Attorneys and Law Firms

Ana Ferreira, Philadelphia, for appellant.

Juanna Dayel Villegas, appellee, pro se.

Marvin David Landaverde, appellee, pro se.

BEFORE: [BOWES, J.](#), [McCAFFERY, J.](#), and [SULLIVAN, J.](#)

Opinion

OPINION BY [McCAFFERY, J.](#):

*1 Maria Estela Villegas Rivas (Grandmother) appeals from the order denying her petition for special relief pursuant to [Pennsylvania Rule of Civil Procedure 1915.13](#)¹ and its local rule counterpart, Chester County Rule of Civil Procedure 1915.13.A. In the petition, Grandmother sought the issuance of an order containing specific findings of fact regarding her daughter's minor child (Child or the Child), which would permit Child to apply for special immigrant juvenile status (SIJ) under federal law. For the following reasons, we vacate and remand.

I. Facts & Procedural History

Child was born in January 2007 and lived in El Salvador with her mother, Juanna Dayel Villegas (Mother), until November 2021.² *See* N.T., 8/19/22, at 16; Grandmother's Complaint For Custody (Custody Complaint), 6/15/22, at 1-2 (unpaginated). It is unclear from the record whether Mother and Child's father, Marvin David Landaverde (Father), were ever married, but they are no longer in a relationship. *See* N.T. at 10-11. Child also indicated she no longer has communication with Father. *Id.* at 16.

In November 2021, Child moved to the United States to live with Grandmother and her husband, who presently reside in

Chester County, Pennsylvania. *See* Custody Complaint at 2 (unpaginated). Grandmother paid for Child's travel expenses. *See* N.T. at 12.

A. Custody Complaint

On June 15, 2022, Grandmother filed a complaint, seeking sole physical and legal custody of Child. *See* Custody Complaint at 1.³ That same day, Grandmother also filed a petition for special relief, alleging: (1) Child was under the age of 18 and unmarried; (2) Child had resided with Grandmother for the past six months in the United States; (3) Father is in El Salvador and no longer involved in Child's life; (4) Child had lived with Mother in El Salvador for the past 15 years, but Mother did not have the financial means to support and provide for Child; (5) Grandmother is Child's sole parental figure, and provides for all Child's needs and wants; and (6) Child is eligible for SIJ status, as set forth in the Immigration and Nationality Act (INA) at 8 U.S.C. § 1101(a)(27)(J). *See* Grandmother's Petition for Special Relief Pursuant to Pa.R.C.P. 1915.13 and C.C.R.C.P. 1915.13.A (Grandmother's Petition for Special Relief), 6/15/22, at 1-2 (unpaginated). Grandmother indicated she was "seeking special relief in the form of a [c]ourt [o]rder that enumerates the aforesaid additional findings of fact and grants her sole legal and physical custody of ... Child." *Id.* at 2.

B. Federal Law — SIJ Statute & Classification

*2 At this juncture, it is necessary to set forth the applicable federal law at issue. "The SIJ statute, 8 U.S.C. § 1101(a)(27)(J), provides that a juvenile who qualifies as an SIJ may apply for lawful permanent residency and thus relief from deportation." *Orozco v. Tecu*, 284 A.3d 474, 476 (Pa. Super. 2022) (citation omitted). Section 1101(a)(27)(J) defines an SIJ as a juvenile:

(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 1 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[.]

8 U.S.C. § 1101(a)(27)(J).⁴

"In order to obtain SIJ status, a petitioner must obtain determinations from both the state and federal systems."

Orozco, 284 A.3d at 476. Under 8 C.F.R. § 204.11, SIJ classification requires the following, in pertinent part:

(b) Eligibility. A petitioner is eligible for classification as a special immigrant juvenile under section 203(b)(4) of the Act as described at section 1[1]01(a)(27)(J) of the Act, if they meet all of the following requirements:

- (1) Is **under 21 years of age** at the time of filing the petition;
- (2) Is **unmarried** at the time of filing and adjudication;
- (3) Is **physically present** in the United States;
- (4) Is the **subject of a juvenile court order(s) that meets the requirements under paragraph (c)** of this section; and

(5) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile. For [United States Citizenship Immigration Services (USCIS)] to consent, the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law....

(c) Juvenile court order(s).

(1) **Court-ordered dependency or custody and parental reunification determination.** The juvenile court must have **made certain judicial determinations related to the petitioner's custody or dependency and determined that the petitioner cannot reunify with their parent(s) due to abuse, neglect, abandonment, or a similar basis under State law.**

*3 (i) The juvenile court must have made at least one of the following judicial determinations related to the petitioner's custodial placement or dependency in accordance with State law governing such determinations:

(A) Declared the petitioner dependent upon the juvenile court; or

(B) Legally committed to or placed the petitioner under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court.

(ii) The juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law. The court is not required to terminate parental rights to determine that parental reunification is not viable.

(2) Best interest determination.

(i) A determination must be 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 petitioner's best interest to be returned to the petitioner's or their parent's country of nationality or last habitual residence.**

(ii) Nothing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant State law.

(3) Qualifying juvenile court order(s).

(i) The juvenile court must have exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law to establish eligibility. ...

 8 C.F.R. § 204.11(b)- (c) (emphases added). “Under the federal SIJ scheme, the state court does not render an immigration decision but rather makes factual determinations predicate to [United States Citizenship Immigration Services’] SIJ determination.”  [Orozco](#), 284 A.3d at 477 (citation omitted).

C. Custody Hearing

On August 19, 2022, the trial court held a hearing regarding the custody issue. *See* N.T. at 3. Grandmother and Child were both present. *Id.* at 9, 16. Mother and Father did not appear in person or remotely.⁵ Grandmother's counsel requested the court consider both the custody and petition for special relief issues. *See id.* at 3-4. The court expressed concern that since the case was a custody matter, it did not qualify as a juvenile or dependency proceeding, and therefore, the court could not review the petition. *Id.* at 4-5. The court then questioned counsel about whether it had the authority to declare Child dependent and place her in the custody of the Commonwealth, to which Grandmother's counsel answered in the affirmative. *Id.* at 5-6. Counsel also stated that under the INA, “all we would need is a juvenile court to make [several] predicate findings” with regard to Child's eligibility for the SIJ status. *Id.* at 6. The court questioned counsel's response, stating: “[B]ecause I don't have jurisdiction over immigration law, but in looking at federal law regarding an [SIJ status] case, ... it requires that the applicant come before the federal government after obtaining an order of dependency from a state juvenile court.” *Id.* Counsel replied that “a custody order would be sufficient” for SIJ status purposes. *Id.* at 7. The court then stated, “I'm not sure I'm comfortable with doing that.” *Id.*

*4 Additionally, the trial court pointed out that because Grandmother filed a petition for special relief, that was not the “appropriate” application since [Rule 1915.13](#) concerns “limited temporary orders affecting custody.” N.T. at 7. Counsel replied again that Grandmother was requesting the temporary custody findings for the SIJ application, and the court had “jurisdiction to make special findings in the order[.]” *Id.* at 7-8. The court then stated: “[T]his is a custody matter. Custody matters are decided based upon 16 factors that are set forth by  23 Pa.C.S. § 5328(a)]. If you present a custody case, I will address those 16 factors, but not I am not inclined to grant special relief as I don't believe this qualifies for special relief.” *Id.* at 8. The hearing proceeded to addressing the custody issue. *Id.* Both Grandmother and Child testified. *See id.* at 9-18. The court did not enter a decision that day but took the matter under advisement. *Id.* at 18.

D. Trial Court Orders

On September 7, 2022, the trial court entered two separate orders. In the first order, the court awarded Grandmother sole legal and physical custody of Child. The court attached a memorandum in support of its custody order, which included a complete analysis of the 16 custody factors set forth in [Section 5328\(a\)](#).⁶ *See* Memorandum in Support of Custody Order, 9/7/22, at 1-5. The court opined that after considering the [Section 5328\(a\)](#) factors, it gave “significant weight to the stability of [Child]’s life provided by Grandmother, as well as the educational opportunities afforded to her by living with Grandmother.” *Id.* at 5. It further relied on “the lack of opposition to the proposed custody, as expressed by Mother,” to determine it was in the best interests of [Child] to grant Grandmother” legal and physical custody. *Id.*

As for the second order, the court denied Grandmother's petition for special relief and her request for specific findings of fact. The court provided no further analysis in the order.

E. Appeal & Trial Court Opinion

On October 6, 2022, Grandmother filed a notice of appeal from the trial court's order denying her petition for special relief,⁷ and a [Pa.R.A.P. 1925\(b\)](#) concise statement of errors complained of on appeal.⁸ The trial court issued a [Pa.R.A.P. 1925\(a\)](#) opinion on October 31, 2022.

*5 In its [Rule 1925\(a\)](#) opinion, the trial court suggested that this Court quash Grandmother's appeal “for want of jurisdiction based on the failure to appeal the final [c]ustody [o]rder in this matter.” Trial Ct. Op., 10/31/22, at 3. The court first focused on the nature of the petition for special relief, stating that the “objective of special relief is to allow for temporary modification of custody or visitation[.]” *Id.* (citation omitted). The court pointed out that it “chose to forego a temporary interim step and issued a final [c]ustody [o]rder on the same day it denied [Grandmother]’s Petition[, and that t]he [c]ustody [o]rder resolved more permanently the question of with whom the Child should remain.” *Id.* at 3-4 (citations omitted). The court opined it was the custody order that “decided all the issues of law and fact” and therefore, “[i]t was the [c]ustody [o]rder [Grandmother] was required to appeal, but she did not file a timely appeal.” *Id.* at 4.⁹

Next, the trial court determined “there was no basis for the grant of the special relief requested[.]” Trial Ct. Op. at 6. The court stated the “custody factor analysis provided the trial court with ample opportunity to address allegations of abuse, neglect, or abandonment, provided there was enough credible evidence, of sufficient weight to support such claims, but that was not the case.” *Id.* The court then determined that SIJ status was not the proper subject for special relief, stating it “was unable to find a single statutory or procedural rule in the Commonwealth related to obtaining [SIJ status] related relief in this context[.]” *Id.* (footnote omitted). The court noted that pursuant to [8 C.F.R. § 204.11\(b\)\(5\)](#), a petitioner is required to establish that the primary reason for the state juvenile court determination is “to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law.” *Id.* at 7 (citation omitted). The court surmised that based on her counsel's statements at the August 19, 2022, proceeding, Grandmother's purpose for the petition “was not primarily for the purpose of obtaining relief from parental abuse, neglect, abandonment, but solely for purposes of obtaining” SIJ status. *Id.* The court opined “it was and remains unwilling to engage in such subterfuge.” *Id.*

The court further found Grandmother's request for special relief was “defective” as there “was no emergency or other circumstance present, which warranted special relief[.]” Trial Ct. Op. at 7. Moreover, the court stated that “there was no allegation by [Grandmother] that there was an emergency or apparent urgent need for court action to preserve the well-being of Child” and “no evidence of record that Child would be put at risk or that there would be a change in circumstances with regard to custody, in the absence of special relief.” *Id.* at 8. The court determined “*status quo* ... favors” Grandmother. *Id.*

Third, the trial court determined there was insufficient credible evidence to support Grandmother's petition for special relief and specific findings of fact. *See* Trial Ct. Op. at 9. The court stated it “observed the witnesses’ demeanor during their testimony, considered their significant interest in having Child qualify for [SIJ status], and found neither witness sufficiently credible nor the evidence of sufficient weight to support the requested findings.” *Id.* The court further found: (1) no witnesses from El Salvador were called to testify about direct knowledge of allegations made against Mother and Father; (2) there was no evidence of abuse; (3) while Child may have lived in poverty in El Salvador, that was not a basis to find child abuse; (4) there was no credible evidence Father had abandoned Child; (5) there was

no evidence Child was denied the education available to her in her home county; and (6) no credible evidence that it would be dangerous for Child to return to El Salvador. *Id.*

*6 Lastly, the court addressed the issues identified in Grandmother's concise statement. *See* Trial Ct. Op. at 10-17.

II. Statement of Questions Involved

Grandmother presents the following three issues on appeal:

1. Whether the trial court erred in denying [Grandmother]'s request for an SIJ eligibility order because it deprived [her] and [Child] of a remedy for [Child]'s right to seek SIJ status and violated their right to due process?
2. Whether [the Superior] Court has jurisdiction to review the trial court's order as a final order under 42 Pa.C.S. § 742 and Pa.R.A.P. 341(a) & (b)(1) because it disposes of all of [Grandmother]'s claims relating to her request for the issuance of an SIJ eligibility order?
3. In the alternative, whether the Superior Court has jurisdiction to review the trial court's order as a collateral order under Pa.R.A.P. 313 because the issue of SIJ eligibility is separable from and collateral to the custody proceeding, the right involved is too important to be denied, and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparabl[y] lost?

Grandmother's Brief at 7-8.

Based on the nature of Grandmother's arguments, we will address her second and third issues first because they pertain to the jurisdiction of this Court.

I. Jurisdiction & Appealability

[1] [2] [3] [4] “[T]he appealability of an order directly implicates the jurisdiction of the court asked to review the order.” *Knopick v. Boyle*, 189 A.3d 432, 436 (Pa. Super. 2018) (citation omitted). We note because questions concerning the appealability of an order go to jurisdiction, they may be raised *sua sponte* by this Court. *Capuano v. Capuano*, 823 A.2d 995, 998 (Pa. Super. 2003). “Jurisdiction is purely a question of law; the appellate standard of review is *de novo*, and

the scope of review plenary.” *Kapcsos v. Benshoff*, 194 A.3d 139, 141 (Pa. Super. 2018) (*en banc*) (citation omitted). Generally, “[f]or an order to be appealable, it must be (1) a final order, Pa.R.A.P. 341-342; (2) an interlocutory order appealable by right or permission, 42 Pa.C.S. § 702(a)-(b); Pa.R.A.P. 311-312; or (3) a collateral order, Pa.R.A.P. 313.” *Ashdale v. Guidi Homes, Inc.*, 248 A.3d 521, 525 (Pa. Super. 2021).

[5] [6] [7] Pursuant to the Pennsylvania Rules of Appellate Procedure, “a final order is one that disposes of all claims and of all parties or is entered as a final order pursuant to Pa.R.A.P. 341(c).” *Situs Props., Inc. v. Jenkins Court Realty Co., LP*, 259 A.3d 993, 997 (Pa. Super. 2021) (citation & footnote omitted).

A collateral order is an order [(1)] separable from and collateral to the main cause of action [(2)] where the right involved is too important to be denied review and [(3)] the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost. Pa.R.A.P. 313(b). If an order satisfies the three-pronged test set forth in Rule 313(b), this Court may exercise appellate jurisdiction over the order, even though it is not final.

The collateral-order rule is a specialized, practical application of the general rule that only final orders are appealable as of right. As such, this Court must stringently apply the requirements of the collateral-order doctrine. If an order does not meet all three prongs of the collateral-order test, this Court has no jurisdiction to consider an appeal from that order.

*7 *Smith v. O'Brien*, 2023 WL 309009, at *2 (Pa. Super. Jan. 19, 2023) (quotation marks & some citations omitted).

[8] Here, Grandmother complains that in accordance with this Court's recent decision in *Orozco, supra*, she “has a right to seek an SIJ eligibility order in the context of a custody proceeding.” Grandmother's Brief at 12. She further asserts the trial court's September 7, 2022, order qualifies as either a final order or a collateral order. *See* Grandmother's Brief at 17. She states: “[T]he order constitutes a final order ... because it disposes of all of [her] claims relating to [her] request for the issuance of an order to establish [Child]'s eligibility for [SIJ] status pursuant to 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11.” *Id.* at 18.

In the alternative, Grandmother argues this Court has jurisdiction over the matter pursuant to Pa.R.A.P. 313 because the September 7, 2022, order constitutes a collateral order. *See* Grandmother's Brief at 19. She states: (1) the order “relates to a claim that is conceptually distinct from the merits of the main cause of action” because she is not seeking a modification of the custody order but rather requesting relief “in the form of issuance of the findings of fact required under [Section] 5323(d), solely for the purpose of establishing [Child]’s eligibility for SIJ status before USCIS[;]” (2) the case involves a right that is too important to be denied review because Child “is in removal proceedings in the Philadelphia Immigration Court and is seeking relief in the form of [an] adjustment of status based, prospectively, on an approved [p]etition for SIJ status[;]” and (3) Grandmother's right to pursue SIJ status for Child “will be lost forever if the requested relief is not granted.” *Id.* at 21-24.

[9] [10] With respect to this question, we are guided by this Court's decision in *Orozco, supra*.¹⁰ In *Orozco*, the appellant filed a petition seeking the issuance of an order containing specific factual findings regarding her minor child that were necessary to petition the USCIS for SIJ status as to the child. *Orozco*, 284 A.3d at 476. The appellant resided in Delaware County while the child's father resided in Guatemala. *Id.* The father was not involved in the child's life and did not participate in the proceeding at issue. *Id.* “Before moving to the United States to live with [the appellant, the child] lived with other relatives.” *Id.* In April 2020, the appellant filed a complaint for sole physical and legal custody of the child. *Id.* In March 2021, the trial court held a hearing on the matter, at which time, the appellant “asked the court to issue findings of fact sufficient to petition USCIS for SIJ status.” *Id.* The court stated that it would only consider the appellant's custody issue. *Id.* at 477. The appellant then requested the opportunity to amend her complaint to include the SIJ findings request, to which the court indicated that it would take the request “under advisement and issue an order. However, the court never addressed [the appellant]’s request for leave to amend and instead ... issued only a temporary custody order granting [her] sole legal and physical custody of [the child]. The order did not include the SIJ findings of fact.” *Id.* The appellant then filed an emergency application, “requesting that the court issue the findings of fact necessary to apply for SIJ status.”

Id. The court again declined her request and an appeal subsequently followed. *Id.*

*8 The trial court found the order at issue was “not ripe for review because it is a temporary order and thus interlocutory.” *Orozco*, 284 A.3d at 477. A panel of this Court disagreed, determining “the subject order is appealable as of right as a collateral order.” *Id.* at 478. This Court analyzed the three prongs of the collateral order doctrine, and determined:

[The appellant]’s emergency petition for an SIJ order is separable from [her] main custody action because we can decide the propriety of the denial of the SIJ motion without delving into the merits of the underlying custody case. Further, the interest at issue — a predicate order for [the child] to apply for SIJ status and seek adjustment of his immigration status — is an “important right” significant enough to outweigh the efficiency interests of the court. Lastly, [the child]’s ability to obtain appellate relief will be effectively foreclosed if we deny immediate review. [The appellant] candidly informs us that deportation proceedings are pending against [the child] and she sought the SIJ order so he could obtain relief from deportation. Hence, we conclude that the ... order **was immediately appealable as a collateral order.**

Id. at 478-79 (citations & footnote omitted; emphasis added). Additionally, this Court concluded that the trial court “abused its discretion” when it declined to provide reasoning for its refusal on the record in any capacity, stating: “The federal statutory scheme puts the factual determinations necessary for SIJ status solely within the purview of state courts. Yet the court flatly refused to issue the SIJ order. In this posture, the refusal was an abuse of discretion.” *Id.* at 479.

Turning to the present matter, it is evident that [Orozco](#) is factually and procedurally similar to this present matter — both relatives filed a custody action while also seeking the issuance of an order containing specific factual findings regarding SIJ status for a minor child. Both trial courts held a hearing on the custody issue, but refused to address the merits of the SIJ status requests and denied relief. Moreover, like the appellant in [Orozco](#), Grandmother contends that the court's September 7, 2022, order qualifies as a collateral order because: (1) it is separate from the custody action; (2) it involves a right that is too important to be denied review since deportation proceedings are pending against Child; and (3) her right to pursue SIJ status for Child will be lost forever if the relief is not granted. *See* Grandmother's Brief at 19-24. Accordingly, we disagree with the court's suggestion that this appeal should be quashed for lack of jurisdiction. Rather, this case is controlled by [Orozco](#), and the court's September 7, 2022, order qualifies as a collateral order that is immediately appealable.¹¹

[11] [12] [13] [14] We now turn to Grandmother's substantive argument regarding the court's denial of her petition seeking an SIJ order. She contends “there was nothing improper with [her] request for the issuance of an SIJ eligibility order” because “such a request can only be made within the context of a custody, guardianship or dependency proceeding.” Grandmother's Brief at 14. Grandmother states that “[8 U.S.C. § 1101\(a\)\(27\)\(J\)](#) and [8 C.F.R. § 204.11](#) grant state juvenile courts exclusive jurisdiction to make certain findings relating to SIJ eligibility.” Grandmother's Brief at 15. Moreover, she maintains the following:

*9 Federal law requires the issuance of an SIJ eligibility order by a state juvenile court as a prerequisite to pursuing SIJ status before USCIS. By necessity, SIJ eligibility must be determined in a state custody, guardianship, or dependency proceeding, applying state law. [Grandmother]’s request for an SIJ eligibility order was proper and appropriate in the context of the custody proceeding and the denial of such relief violated [Grandmother]’s fundamental right to due process.

Further, the failure to deny the application without a hearing and without articulating any reasons for the denial violates Appellant's right to due process and deprives this Court of its ability to review the decision for error.

Id. at 16.

We may reverse a decision in an equity matter only for an error of law or abuse of discretion. The findings of fact made by the trial court will not be disturbed unless they are unsupported by competent evidence or are demonstrably capricious. To the extent that this appeal implicates statutory interpretation, our standard of review is *de novo*, and our scope of review is plenary. We review trial courts’ interpretations of statutes for error of law.

[Orozco](#), 284 A.3d at 479 (citations & quotation marks omitted).

We note that at the outset of the hearing, the trial court was disinclined to consider Grandmother's petition based on several procedural nuances of the case, which it also relied on in its [Rule 1925\(a\)](#) opinion — particularly, (1) the fact that it was not a juvenile or dependency court,¹² and (2) the fact that Grandmother filed a petition for special relief, which it construed as not the proper vehicle for seeking this specific relief.¹³ We disagree with these conclusions for several reasons.

[15] [16] First, the trial court in [Orozco](#) was not a juvenile or dependency court, and there is no indication that the minor child was declared dependent upon the court or legally committed to an agency/department of the Commonwealth. Nevertheless, this Court still found that the lower court erred by refusing to address the petition. *See* [Orozco](#), 284 A.3d at 478-79. It merits mention that the language of [8 C.F.R. § 204.11\(c\)](#) refers to all three

terms — juvenile, dependency, and custody. We note the federal statute's language is intended to be all-encompassing, covering the 50 states as well as the District of Columbia. The purpose of the law is to address issues of abuse, abandonment, and neglect. *See Yeboah*, 345 F.3d at 221. Accordingly, we cannot conclude  Section 204.11 would restrict the SIJ classification to only a juvenile court having administrative power. We point out that in this Commonwealth, a court of common pleas is the proper judicial body to review allegations of child abuse, and specifically, an orphans' court has the most fitting jurisprudence. Accordingly, the rationale of the trial court in the present matter is erroneous.

[17] Second, we note that while Grandmother may have filed her request as a petition for special relief which may not have been the most appropriate practice, the title of the document should not control where the substance of the relief requested is clear — particularly where a child is the subject of the underlying matter. Where there are allegations of abuse, neglect, or abandonment regarding a child, a reviewing court should excuse the misnomer and address the merits set forth in the filing.

[18] Next, we point out that in its Rule 1925(a) opinion, the trial court opined that  *Orozco* is distinguishable from the case *sub judice* because, in  *Orozco*, this Court “addressed [SIJ status] findings in the context of the lower court's failure to provide a rationale for its declining to make such findings[, which is] not the case in the present matter.” Trial Ct. Op. at 6 n.3; *see also id.* at 15. Then, contrary to its statements at the hearing, the trial court decided to address the SIJ status issue in its opinion, determining there was insufficient credible evidence to support Grandmother's requested relief and specific findings. *See* Trial Ct. Op. at 9-10. The court analyzed the issue, relying on the testimony of Grandmother and Child during the **custody part** of the August 19th hearing, to find no evidence of abuse and abandonment. *Id.* The court further stated:

*10 In the present matter, [it] provided [Grandmother] with a meaningful opportunity to present her entire case, has now discussed the reasons for its denial [o]rder, and is addressing the alleged errors set forth by [Grandmother] as permitted by Rule 1925(a). Finally, the trial court

may make findings that would permit a litigant primarily seeking relief from abuse or neglect to apply for [SIJ status], if the evidence supports such findings. There is no legal requirement that a trial court make such findings, especially where, as here, the evidence does not warrant it. Neither  *Orozco* nor federal law requires a court to turn a blind eye to the evidence of record in order to make findings that would support an [SIJ status] application.

Id. at 16 (italics in original; citation omitted).

We find that the trial court's analysis is misplaced. As mentioned above, at the August 19th hearing, because the court opposed reviewing the SIJ status matter for several reasons, it **limited** the testimony to the **custody** issue and the  Section 5328(a) factors. Grandmother was not provided with the opportunity to make the case concerning allegations of abuse, neglect, and abandonment in the context of an SIJ classification. The court then looked at that testimony through the lens of the custody complaint and entered the order awarding Grandmother legal and physical custody of Child. *See* Memorandum in Support of Custody Order at 1-5. Now, in its Rule 1925(a) opinion, the court is trying to apply a different lens to the same testimony and address the SIJ status issue.

The court's actions amounted to an abuse of discretion. A reasonable person would not agree that Grandmother was given a full opportunity to present her case regarding Child's SIJ status. Moreover, based on the refusal to review the matter and the inadequate testimony, the court cannot retroactively make specific findings as to the SIJ determination.¹⁴ As such, we disagree with the court's determination that there was insufficient credible evidence to support Grandmother's requested relief and specific findings. *See* Trial Ct. Op. at 9-10. We conclude the court abused its discretion in refusing to address Grandmother's petition for special relief. Accordingly, we vacate the trial court's order and remand for a new hearing to address factual findings with respect to Child that are predicate to the SIJ status determination regarding evidence of abuse, abandonment, or neglect. *See*  *Orozco*, 284 A.3d at 479.¹⁵

*11 Order vacated. Case remanded for further proceedings consistent with this opinion. Jurisdiction relinquished.

Judge [Bowes](#) joins the opinion.

Judge [Sullivan](#) files a concurring statement.

CONCURRING STATEMENT BY [SULLIVAN, J.](#):

The learned majority thoroughly and persuasively explains its holding that the trial court abused its discretion by refusing to consider a request for findings related to the subject child's status as a special immigrant juvenile ("SIJ"). This Court's precedent compels me to agree that the trial court erred in suggesting that it lacked jurisdiction to make such findings.

See [Orozco v. Tecu](#), 284 A.3d 474, 479 (Pa. Super. 2022). However, I write separately based on my view that the SIJ statute, [8 U.S.C.A. § 1101\(a\)\(27\)\(J\)](#), presents unique problems, which, without further guidance from our Supreme Court and General Assembly, will continue to challenge our orphans', juvenile, and family courts.

The SIJ statute and the implementing regulations are remarkable insofar as they enlist state courts as part of the immigration process and delegate to those courts' findings that, *inter alia*: reunification with one or both of the child's parents is not viable due to abuse, neglect, or abandonment and it would not be in the child's best interests to return to a foreign country of origin or last habitual residence. See [8 U.S.C.A. § 1101\(a\)\(27\)\(J\)](#); [8 C.F.R. § 204.11\(b\)-\(c\)](#). Although a state court does not make an ultimate immigration decision, state courts are an integral part of the SIJ status proceedings. See [Orozco](#), 284 A.3d at 477. This hybrid approach of engrafting federal immigration law unto state law rests on a presumption that state courts have special competence when addressing abandonment, neglect, and abuse and determining a child's best interests. See [In re J.J.X.C.](#), 318 Ga.App. 420, 734 S.E.2d 120, 124 (2012).

Pennsylvania courts have only recently addressed the SIJ statute in published decisions in [Orozco](#) and [Velasquez v. Miranda](#), — A.3d —, 2023 PA Super 111, 2023 WL 4069151 (Pa. Super. 2023).¹ The SIJ statute is not new, however, and other state courts' interpretations and

applications of the statute have resulted in inconsistent decisions.²

*12 Initially, interpreting the SIJ statute as requiring a state court to make certain findings is problematic. The SIJ statute itself contains no language that mandates a state court make SIJ findings, see [Canales v. Torres Orellana](#), 67 Va.App. 759, 800 S.E.2d 208, 217 (2017), nor could the federal SIJ statute and associated regulations so command without implicating the principles of federalism and the Tenth Amendment. *Cf. MCI WorldCom, Inc. v. Pennsylvania Pub. Util. Comm'n*, 577 Pa. 294, 844 A.2d 1239, 1251 (2004) (noting that "The Tenth Amendment prohibits Congress from requiring states to administer federal programs against their will[,] but a "[f]ederal regulation does not commandeer a state's legislative power or violate the Tenth Amendment as long as the state is given a choice regarding whether or not to enforce the regulation"); accord [de Rubio v. Rubio Herrera](#), 541 S.W.3d 564, 573 n.9 (Mo. Ct. App. 2017).

Next, no settled interpretation or application of the SIJ statute has developed among the other states, and there is no unified body of law for considering what evidence will be sufficient to require SIJ findings. Pennsylvania has only recently begun to take first steps into this area. See [Velasquez](#), 2023 WL 4069151, at *8 (holding that a child did not meet the statutory definition of an SIJ when the child resided with one parent in the United States; the child was not adjudicated dependent or under the custody of a state agency, entity, or individual appointed by a state court; the trial court's grant of sole legal and physical custody of the child to the mother was not an appointment of a custodian for the child).³ I acknowledge that our family, juvenile, and orphans' courts have unique competence to determine the best interests of a child, particularly when a parent and the child have a significant connection to Pennsylvania and substantial evidence exists in Pennsylvania. Moreover, findings of abuse, abandonment and neglect under our law and SIJ findings may overlap. However, our courts will face obvious practical limitations because substantial evidence is or may not be readily available in Pennsylvania and, as here, the court may have to determine whether past abuse, neglect, or abandonment occurred in the foreign country and whether it is not in a child's best interest to return to that county. Furthermore, the trial court in this case will not have the benefit of adversarial testing of the evidence or legal theories.⁴ Thus, without settled procedures for bringing and considering a request for SIJ findings, it is likely that

our courts will face similar confusion and produce similar inconsistent results as experienced in other state courts.

Lastly, I would note that other states have enacted legislation addressing SIJ findings.⁵ While I concur with today's narrow decision based on its application of  *Orozco*, I believe that the issues concerning the SIJ statute demand attention from our General Assembly and the rulemaking authority of our Supreme Court.

*13 Thus, I respectfully concur in the result.

Judge [Bowes](#) joins this concurring statement.

All Citations

--- A.3d ----, 2023 WL 4778496, 2023 PA Super 135

Footnotes

1 [Rule 1915.13](#) provides:

At any time after commencement of the action, the court may on application or its own motion grant appropriate interim or special relief. The relief may include, but is not limited to, the award of temporary legal or physical custody; the issuance of appropriate process directing that a child or a party or person having physical custody of a child be brought before the court; and a direction that a person post security to appear with the child when directed by the court or to comply with any order of the court.

[Pa.R.C.P. 1915.13](#).

2 Child also shared the home with her maternal great-grandmother and three siblings. **See** N.T. at 12, 15.

3 In the complaint, Grandmother alleged, in relevant part:

13. Reunification with Father is not viable because Father is not willing to support and provide for Child. Father has abandoned and neglected the Child.

14. Reunification with Mother is not viable because Mother does not have the financial means to support and provide for Child.

15. The best interest and permanent welfare of the Child will be served by granting the relief requested because the Child will be in a safe and loving environment. [Grandmother] provides the Child safety, protection and physical, mental and moral welfare. In addition, it is not the Child's best interest to return to El Salvador because there is no appropriate relative who can provide adequate care or supervision.

Custody Complaint at 3 (unpaginated).

4 The statute was ratified for the following reasons:

The SIJ provisions of the INA were enacted in 1990 to protect abused, neglected, or abandoned children who, with their families, illegally entered the United States. Congress provided an alternative to deportation for these children. Rather than being deported along with abusive or neglectful parents, or deported to parents who had abandoned them once in the United States, such children may seek special status to remain in the United States.

Yeboah v. United States DOJ, 345 F.3d 216, 221 (3d Cir. 2003). “Although not binding on us, we may cite federal authority for its persuasive value.” *Toppy v. Passage Bio, Inc.*, 285 A.3d 672, 690 n.7 (Pa. Super. 2022).

5 Counsel for Grandmother offered into evidence “the declaration and acceptance of service for [M]other and the service on [F]ather, which was personally served by his brother.” N.T. at 4.

6 At the beginning of its analysis, the trial court stated it “was not sitting as a dependency or juvenile court, as those terms are defined by Pennsylvania law.” **See** Order, 9/7/22, at 1 n.1 (unpaginated).

7 Grandmother did not file an appeal regarding the court's custody order.

8 In the concise statement, Grandmother raised the following claims:

1. The [trial c]ourt abused its discretion and violated due process of the law as guaranteed by the Fifth Amendment by denying [Grandmother]’s request for special relief and specific findings of fact.

2. The [c]ourt erred in finding that it is not a “juvenile court” for the purposes of [SIJ status] classification.

3. The [c]ourt erred and abused its discretion in denying [Grandmother]’s special request for relief and specific findings when it had proper jurisdiction to do so.

4. The [c]ourt egregiously misapplied and misinterpreted both Pennsylvania state law and [SIJ status] federal law.

5. The [c]ourt violated [Grandmother]’s right to Due Process because it deprived [her] and [Child] of a remedy for the minor's right to seek SIJ status.

6. The [c]ourt erred and violated [Grandmother]’s right to Due Process by failing to place on the record a comprehensive discussion of the reasons for the final order denying special relief and specific findings of fact.

7. [Grandmother] reserves the right to supplement and/or amend this [concise statement] pursuant to [Rule 1925\(b\)\(2\)](#) and [Pa.R.A.P. 902](#), as the hearing transcript has not been received to date

Grandmother's Concise Statement of Errors Complaint of on Appeal, 10/6/22, a 1-2 (unpaginated; footnote omitted).

9 Relatedly, the trial court found Grandmother lacked standing to appeal the custody order because she received the relief she requested in her complaint, and therefore, was the prevailing party. **See** Trial Ct. Op. at 4-5.

10 We note that  *Orozco* was decided after the trial court entered its September 7, 2022, order, but before it issued its [Rule 1925\(a\)](#) opinion. “[I]t is well settled that Pennsylvania appellate courts apply the law in effect at the time of the appellate decision. This means that we adhere to the principle that a party whose case is pending on direct appeal is entitled to the benefit of changes in law which occur before the judgment becomes final.” *In re Adoption of A.M.W.*, 289 A.3d 109, 115 n.6 (Pa. Super. 2023) (*en banc*) (citation and quotation marks omitted). Moreover, we note that one three-judge panel of this Court cannot overrule another. **See**  *Commonwealth v. Taggart*, 997 A.2d 1189, 1201 n.16 (Pa. Super. 2010); **see also** *Commonwealth v. Taylor*, 437 Pa.Super. 102, 649 A.2d 453, 455 (1994).

As will be discussed *infra*, the trial court discussed  [Orozco](#) in its [Rule 1925\(a\)](#) opinion but found that it was distinguishable. **See** Trial Ct. Op. at 6 n.3, 15-16.

11 Consequently, we need not reach the question of whether the order at issue constitutes a final order.

12 **See** N.T. at 5-7; Trial Ct. Op. at 12.

13 **See** N.T. at 7-8; Trial Ct. Op. at 6-8.

14 We recognize there was testimony as to the lack of abuse regarding Mother, and limited information as to Father's involvement. **See** N.T. at 11, 15. However, this testimony was asked in the context of the custody issue, not an SIJ determination.

15 We take this moment to acknowledge that the law in this area has not been fully developed. While the statute was enacted in 1990, its interpretation and application in this Commonwealth has been limited until very recently. **See**  [Orozco](#); **see also** [Velasquez v. Miranda](#), — A.3d —, 2023 WL 4069151 (Pa. Super. June 20, 2023).

Moreover, the statute creates a unique procedural caveat where the ultimate determination is of the federal immigration nature, but preliminary factual determinations are made by state courts. **See**  [Orozco](#), 284 A.3d at 477 (citation omitted). Since the statute's enactment, no settled interpretation or application of the SIJ statute has been developed among the states, and there is no unified body of law for considering what evidence will be sufficient to support SIJ findings. As such, the courts of this Commonwealth may face confusion and produce inconsistent results in future proceedings as we see this type of case occurring often in the future. Consequently, we note that further guidance from the Pennsylvania Supreme Court and General Assembly may help to clarify those problems that will continue to challenge our orphans', juvenile, and family courts.

1 A petition for reargument in [Velasquez](#) is currently pending before this Court.

2 Congress enacted the first SIJ statute in 1990 and amended it in 1991, 1994, 1998, and 2005. The earlier iterations of the statute appear to have been limited to cases where a child's parents brought a child to the United States, but the child became eligible for long-term foster care. **See** [Yeboah v. U.S. Dep't of Justice](#), 345 F.3d 216, 221-22 (3d Cir. 2003) (noting that the original SIJ statute provided an alternative to deporting a child along with abusive parents or deporting a child to parents who abandoned the child once in the United States). Congress amended the statute in 2008 to its current form.

Commentators have noted the striking variance among the state courts' interpretations and applications of the SIJ statute. **See, e.g.**, Richard F. Storrow, [Unaccompanied Minors at the U.S.-Mexico Border: The Shifting Sands of Special Immigrant Juvenile Status](#), 33 *Geo. Immigr. L.J.* 1, 20-29 (2018) (discussing state court decisions); Gregory E. Catangay, [Abandoning the Status Quo: Towards Uniform Application of Special Immigrant Juvenile Status](#), 20 *U.C. Davis J. Juv. L. & Pol'y* 39, 73-74 (2016) (arguing that the variances in state law undermines the intent of the SIJ statute and that Congress should remove the state court requirements from the SIJ and keep the program within the purview of the federal system).

3 Other state courts interpreting the SIJ statute have reached contrary conclusions. **See, e.g.**, [De Guardado v. Guardado Menjivar](#), 901 N.W.2d 243, 248 (Minn. Ct. App. 2017).

4 Here, the moving party filed an unopposed petition for custody of child against the child's parents who resided in a different country and did not participate at the hearing.

5 **See, e.g.,**  Cal. Civ. Proc. Code § 155; Colo. Rev. Stat. Ann. § 14-10-123 (1.5); Conn. Gen. Stat. Ann. § 45a-608n(c); 705 Ill. Comp. Stat. Ann. 405/1-4.3(a); Me. Rev. Stat. tit. 22, § 4099-I 3.; Minn. Stat. Ann. § 257D.01 subd.4; Neb. Rev. Stat. Ann. § 43-3806; Nev. Rev. Stat. Ann. § 3.2203(1); Wash. Rev. Code Ann. § 13.90.901(1)-(2).

297 A.3d 837

Superior Court of Pennsylvania.

Licely Juarez VELASQUEZ, Appellant

v.

Lizardo Marroquin MIRANDA, Appellee

No. 2688 EDA 2022

|

Argued April 19, 2023

|

Filed June 20, 2023

|

Reargument Denied August 7, 2023

Synopsis

Background: Mother filed custody complaint against father seeking sole legal and physical custody of children, and requesting that the court award children special immigrant juvenile status (SIJS). The Court of Common Pleas, Delaware County, Civil Division, No. CV-2021-02235, Atinuke B. Moss, J., granted mother sole legal and physical custody of the children, but declined to find children eligible for SIJS, and denied mother's petition for reconsideration. Mother filed children's fast track appeal.

Holdings: The Superior Court, No. 2688 EDA 2022, King, J., held that:

[1] mother's failure to abide by rule requiring her to submit concise statement of errors complained of on appeal contemporaneously with her notice of appeal did not warrant dismissal of appeal;

[2] mother properly preserved her issues for appeal in her concise statement; and

[3] children were not eligible for special immigrant juvenile status (SIJS).

Affirmed.

Procedural Posture(s): On Appeal; Motion for Physical Custody; Motion for Legal Custody.

West Headnotes (10)

[1] **Child Custody**  Assignment of errors and briefs

Mother's failure to abide by rule requiring her to submit concise statement of errors complained of on appeal contemporaneously with her notice of appeal did not warrant dismissal of children's fast track appeal filed by mother in proceeding on mother's complaint seeking sole legal and physical custody of the children and requesting that the children be awarded special immigrant juvenile status (SIJS); following an appellate order directing mother to submit her concise statement, mother submitted her concise statement prior to the date set forth in the order, mother ultimately complied with the appellate court's directive, and her asynchronous filing of concise statement did not prejudice father, who had no involvement in the case, or impede the trial court's ability to draft an opinion. Immigration and Nationality Act § 101,  8 U.S.C.A. § 1101(a)(27)(J); Pa. R. App. P. 1925(a)(2)(i).

[2] **Appeal and Error**  Purpose and functions

A concise statement of errors complained of on appeal must be specific enough for the trial court to identify and address the issues the appellant wishes to raise on appeal. Pa. R. App. P. 1925.

[3] **Appeal and Error**  Purpose and functions

In essence, the purpose of rule requiring filing of a concise statement of errors complained of on appeal is to allow the trial court to easily discern the issues an appellant intends to pursue on appeal and to allow the court to file an intelligent response to those issues in an opinion. Pa. R. App. P. 1925(b).

[4] **Appeal and Error**  Defects or errors in making case or statement

A concise statement of errors complained of on appeal that is too vague to allow the court to identify the issues raised on appeal is the functional equivalent to no concise statement at all. Pa. R. App. P. 1925(b).

[5] **Child Custody** ➔ Assignment of errors and briefs

Mother's concise statement of errors complained of on appeal essentially raised one issue, specifically, whether the trial court's decision regarding children's eligibility for special immigrant juvenile status (SIJS) was erroneous as against the facts of record, applicable law, and at odds with the trial court's custody decision in mother's favor, and thus mother's concise statement properly preserved her issues for appeal in mother's children's fast track appeal, even though filing was anything but concise and was not the typical formatting; if anything, mother's statement was overly specific and more detailed than necessary to preserve her claims, and mother not only specified the issues but also cited the record and legal authority to support her claims. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J); Pa. R. App. P. 1925(a)(2)(i).

[6] **Aliens, Immigration, and Citizenship** ➔ Special immigrants

Child Custody ➔ Operation and Effect

Children had not been adjudicated dependent or placed in the legal custody of a state agency or an individual or entity appointed by a state or juvenile court at conclusion of action in which mother filed complaint against father for custody of children and asked trial court to award children special immigrant juvenile status (SIJS), and therefore children, who were citizens of Guatemala, were not eligible for SIJS at that time, even though trial court awarded mother sole custody of children; children resided with mother, mother's two sisters, and children of one of mother's sisters, SIJS statute contemplated scenario in which a court appointed an individual or an entity to have custody of a child, and

trial court did not appoint mother to have custody. Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J); 8 C.F.R. § 204.11(b, c).

2 Cases that cite this headnote

[7] **Courts** ➔ Construction of federal Constitution, statutes, and treaties

The construction of a federal statute is a matter of federal law.

[8] **Statutes** ➔ Language and intent, will, purpose, or policy

Statutes ➔ Design, structure, or scheme

Under federal rules of statutory construction, in determining the meaning of a federal statute, the courts look not only to particular statutory language, but also to the design of the statute as a whole and to its purposes.

[9] **Statutes** ➔ Policy behind or supporting statute

When the courts confront circumstances not plainly covered by the terms of a federal statute, suggesting that Congress did not contemplate the issue, they endeavor to give statutory language the meaning that advances the policies underlying the legislation.

[10] **Aliens, Immigration, and Citizenship** ➔ Special immigrants

The purpose behind the statute governing special immigrant juvenile status (SIJS) is to assist a limited group of abused children who are essentially wards of the United States.

Immigration and Nationality Act § 101, 8 U.S.C.A. § 1101(a)(27)(J).

*839 Appeal from the Order Entered September 20, 2022, In the Court of Common Pleas of Delaware County, Civil Division, at No(s): CV-2021-002235, [Atinuke B. Moss, J.](#)

Attorneys and Law Firms

[Michael S. Henry](#), Philadelphia, for appellant.

Lizardo M. Miranda, appellee, pro se.

BEFORE: [PANELLA, P.J.](#), [KING, J.](#), and [STEVENS, P.J.E.](#) *

Opinion

OPINION BY [KING, J.](#):

Appellant, Lically Juarez Velasquez (“Mother”), appeals from the order entered in the Delaware County Court of Common Pleas, which declined to find her minor children, S.M.J. (born in 2007) and E.M.J. (born in 2010) (“Children”) eligible for Special Immigrant Juvenile Status (“SIJS”).¹ We affirm.

The relevant facts and procedural history of this case are as follows. Mother and Appellee, Lizardo Marroquin Miranda (“Father”), are the biological parents of Children. On March 5, 2021, Mother filed a custody complaint seeking sole legal and physical custody of Children. Mother also attached to her custody complaint a proposed order asking the court to award Children SIJS. The court scheduled a hearing for June 22, 2022. At the June 22, 2022 hearing, the court raised questions concerning its jurisdiction because neither of the parties are citizens of the United States nor are Children citizens of the United States.² Mother subsequently briefed the jurisdictional issue and argued that under Section 5402 of the Uniform *840 Child Custody Jurisdiction and Enforcement Act, the court had exclusive jurisdiction over the custody matter because Pennsylvania is the home state of Children.³ On July 7, 2022, the court entered an order asserting that it lacked jurisdiction over the custody matter. The next day, Mother filed a petition for reconsideration and an evidentiary hearing. The court granted relief and scheduled a custody trial for August 15, 2022.

The court held a custody trial on August 15, 2022, at which Mother testified.⁴ On September 20, 2022, the court granted Mother sole legal and physical custody of Children, but the court declined to find Children eligible for SIJS. On October 11, 2022, Mother filed a petition for reconsideration. While the petition remained pending, Mother filed a timely notice of

appeal on October 19, 2022. On October 27, 2022, the court denied the petition for reconsideration. On November 14, 2022, this Court directed Mother to file a concise statement of errors complained of on appeal no later than November 28, 2022. Mother filed her statement on November 21, 2022.

Mother raises three issues on appeal:

Whether...Mother properly preserved the issues raised in her Rule 1925(b) Statement?

Whether the trial court erred in denying [M]other's request to find that reunification of the minor children with their father is not viable due to abandonment, abuse or neglect, or a similar basis under state law because the trial court construed both federal and state remedial statutes narrowly and ignored or misapplied state definitions of abandonment, abuse and neglect to reach its conclusions?

Whether the trial court's refusal to conclude that it is not in the best interest of the minor children to return to Guatemala is unreasonable, and therefore an abuse of discretion, given [M]other's credible testimony and the trial court's findings of fact in support of its custody determination?

(Mother's Brief at 6).

[1] In her first issue, Mother acknowledges that she failed to file her concise statement of errors complained of on appeal contemporaneously with her notice of appeal. Mother argues, however, that once this Court directed her to file a concise statement, she complied with the timeframe set by this Court's order. Thus, Mother asserts that she cured any defect concerning her failure to file the statement.

Additionally, Mother asserts that her concise statement clearly and concisely identified the issues she sought to raise on appeal. Mother contends that her concise statement discussed the trial court's narrow construction of relevant federal and state statutes, and the court's misapplication of, or failure to consider, the definitions *841 of “abandonment,” “abuse,” and “neglect,” relevant to a determination of SIJS. Mother claims these were the precise challenges she planned to assert on appeal. Mother maintains her concise statement further addressed the court's failure to conclude that reunification of Children with Father and a return to Guatemala would be against Children's best interests. Mother avers that she also raised in her statement that the court's failure to find Children eligible for SIJS contradicts its

custody award in favor of Mother. Mother insists this was another issue she intended to, and does, raise on appeal. Mother concludes that she submitted her concise statement in a timely fashion after receipt of this Court's directive, and properly preserved her issues such that we may review her issues on appeal. We agree.

[Pennsylvania Rule of Appellate Procedure 1925\(a\)\(2\)\(i\)](#) provides that in a children's fast track appeal, "[t]he concise statement of errors complained of on appeal shall be filed and served with the notice of appeal." [Pa.R.A.P. 1925\(a\)\(2\)\(i\)](#). Nevertheless, this Court has held that "in all children's fast track cases, the failure to file a concise statement of errors complained on appeal with the notice of appeal will result in a defective notice of appeal, to be disposed of on a case by case basis." [In re K.T.E.L.](#), 983 A.2d 745, 747 (Pa.Super. 2009). In deciding whether to quash or dismiss an appeal for noncompliance with [Rule 1925\(a\)\(2\)\(i\)](#), the [K.T.E.L.](#) Court directed us to the guidelines set forth in [Stout v. Universal Underwriters Ins. Co.](#), 491 Pa. 601, 421 A.2d 1047 (1980). *See* [id.](#) In [Stout](#), our Supreme Court stated:

The extreme action of dismissal should be imposed by an appellate court sparingly, and clearly would be inappropriate when there has been substantial compliance with the rules and when the moving party has suffered no prejudice.

* * *

The Rules of Appellate Procedure were adopted to insure the orderly and efficient administration of justice at the appellate level. They were not intended, however, to be so rigidly applied as to result in manifest injustice, particularly when there has been substantial compliance and no prejudice.

[Stout, supra](#) at 604-05, 421 A.2d at 1049.

[2] Additionally, we observe that:

A concise statement of errors complained of on appeal must be specific enough for the trial court to identify and address the issues the appellant wishes to raise on appeal. [Pennsylvania Rule of Appellate Procedure 1925](#) provides that a [Rule 1925\(b\)](#) statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge.

Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

This Court has considered the question of what constitutes a sufficient [Pa.R.A.P. 1925\(b\)](#) statement on numerous occasions and has established that an appellant's concise statement must properly specify the error to be addressed on appeal.

[S.S. v. T.J.](#), 212 A.3d 1026, 1030-31 (Pa.Super. 2019) (internal citations, quotation marks, and brackets omitted).

[3] [4] "In essence, the purpose of requiring a concise statement of [errors] complained of on appeal under [Pa.R.A.P. 1925\(b\)](#) is to allow the trial court to easily discern the issues an appellant intends to pursue on appeal and to allow the court to file an intelligent response to those issues in an opinion pursuant to [Pa.R.A.P. 1925\(a\)](#)." *Id.* at 1032. *See also* [*842 Kanter v. Epstein](#), 866 A.2d 394, 401 (Pa.Super. 2004), *cert. denied*, 546 U.S. 1092, 126 S.Ct. 1048, 163 L.Ed.2d 858 (2006) (stating: "By raising an outrageous number of issues, the Defendants have deliberately circumvented the meaning and purpose of [Rule 1925\(b\)](#) and have thereby effectively precluded appellate review of the issues they now seek to raise"). "[A] [c]oncise [s]tatement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent to no [c]oncise [s]tatement at all." [Id.](#) at 400.

Instantly, Mother did not file a concise statement of errors complained of on appeal contemporaneously with her notice of appeal, even though this case is designated as a children's fast track case. *See* [Pa.R.A.P. 1925\(a\)\(2\)\(i\)](#). Consequently, this Court entered an order on November 14, 2022, directing Mother to file a concise statement of errors complained of on appeal no later than November 28, 2022. Mother filed her statement on November 21, 2022. Under these circumstances, we see no reason to dismiss Mother's appeal for her technical noncompliance with [Rule 1925\(a\)\(2\)\(i\)](#). Mother ultimately complied with this Court's directive, and her belated filing did not prejudice Father (who has had no involvement in this case) or impede the trial court's ability to draft an opinion. *See* [K.T.E.L., supra](#). *See also Stout, supra*.

[5] Turning to whether Mother's [Rule 1925](#) statement properly preserved her appellate issues, the trial court described Mother's statement as "overly verbose, generalized, and vague necessitating the court to guess and search for the

issues being raised and attempt to guess at [Mother's] intended issues to be framed for appeal.” (Trial Court Opinion, filed 12/29/22, at 13). The trial court deemed all of Mother's issues waived on appeal on this basis, relying on *S.K. v. C.K.*, No. 1311 EDA 2022, 2022 WL 17098637 (Pa.Super. filed Nov. 22, 2022) (unpublished memorandum)⁵ (holding father's eight-page “concise” statement raising 41 issues failed to comply with requirements of Rule 1925(b)(4), constituting waiver of issues on appeal).

While we acknowledge that Mother's Rule 1925 filing is anything but concise and does not appear in the typical formatting of a concise statement of errors, we cannot agree with the trial court that Mother failed to preserve her claims for appeal. Specifically, upon our review of Mother's Rule 1925 statement, we cannot say that the statement is vague or that it was insufficient to permit the trial court to identify

the issues Mother sought to raise on appeal. See  *Kanter, supra*. If anything, Mother's statement is overly specific and more detailed than necessary to preserve her claims. Mother not only specified the issues she sought to raise on appeal, but she cited the record and legal authority to support her claims. We further note that Mother did not purport to raise an “outrageous” number of issues on appeal. Compare  *id.*; *S.K., supra*. Rather, Mother essentially raised one issue: whether the trial court's decision regarding Children's eligibility for SIJS was erroneous as against the facts of record, applicable law, and at odds with the court's custody decision in favor of Mother. Consequently, we decline to deem Mother's appellate issues waived and will proceed to a merits review of her claims.

[6] In her second and third issues combined, Mother argues that the court's denial of SIJS eligibility for Children is diametrically *843 opposed to the trial court's custody decision in Mother's favor. Specifically, Mother contends that the court needed to decide whether reunification with Father was viable due to Father's abandonment, abuse, or neglect. If the court found that reunification was not viable, Mother maintains the court was required to find Children eligible for SIJS. Mother complains that the court readily found evidence of Father's abandonment, abuse and/or neglect such that the court awarded Mother sole physical and legal custody of Children. Nevertheless, Mother emphasizes that the court failed to make the same findings relevant to SIJS eligibility for Children. Mother insists that SIJS eligibility does not require the initiation of formal proceedings against Father to support a finding of abandonment, abuse, or neglect.

Further, Mother argues it is in Children's best interests not to return to Guatemala. Mother stresses that there are less educational opportunities for Children in Guatemala. Mother asserts that neither Father nor Children's step-siblings would have any relationship with Children if Children were forced to return to Guatemala. Mother contends that Children previously witnessed Father's physical abuse against Mother. Mother concludes that the trial court abused its discretion concerning its findings regarding Children's best interests, and this Court must grant Mother relief. We disagree, albeit on different grounds than the trial court.

[7] [8] [9] When interpreting a federal statute, we apply the following principles:

The construction of a federal statute is a matter of federal law. Under federal rules of statutory construction, in determining the meaning of a federal statute, the courts look not only to particular statutory language, but also to the design of the statute as a whole and to its purposes. Furthermore, when the courts confront circumstances not plainly covered by the terms of a statute, suggesting that Congress did not contemplate the issue, they endeavor to give statutory language the meaning that advances the policies underlying the legislation.

 *Zaleppa v. Seiwell*, 9 A.3d 632, 636 (Pa.Super. 2010) (quoting *Council 13, American Federation of State, County and Mun. Employees, AFL-CIO ex-rel. Fillman v. Rendell*, 604 Pa. 352, 379-80, 986 A.2d 63, 80 (2009)) (internal citations omitted).

SIJS is an immigration status that may be awarded to:

- (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 1 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 *844 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 to such parentage, be accorded any right, privilege, or status under this chapter[.]

 8 U.S.C.A. § 1101(a)(27)(J) (emphasis added).

Additionally, the Code of Federal Regulations provides:

§ 204.11 Special immigrant juvenile classification.

* * *

(b) Eligibility. A petitioner is eligible for classification as a special immigrant juvenile under section 203(b)(4) of the Act as described at section 101(a)(27)(J) of the Act, if they meet all of the following requirements:

(1) Is under 21 years of age at the time of filing the petition;

(2) Is unmarried at the time of filing and adjudication;

(3) Is physically present in the United States;

(4) **Is the subject of a juvenile court order(s) that meets the requirements under paragraph (c) of this section;** and

(5) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile. For [United States Citizenship and Immigration Services

(“USCIS”)] to consent, the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. USCIS may withhold consent if evidence materially conflicts with the eligibility requirements in paragraph (b) of this section such that the record reflects that the request for SIJ classification was not bona fide. USCIS approval of the petition constitutes the granting of consent.

(c) Juvenile court order(s).

(1) Court-ordered dependency or custody and parental reunification determination. The juvenile court must have made certain judicial determinations related to the petitioner's custody or dependency and determined that the petitioner cannot reunify with their parent(s) due to abuse, neglect, abandonment, or a similar basis under State law.

(i) The juvenile court must have made at least one of the following judicial determinations related to the petitioner's custodial placement or dependency in accordance with State law governing such determinations:

(A) Declared the petitioner dependent upon the juvenile court; or

(B) Legally committed to or placed the petitioner under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court.

(ii) The juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law. The court is not required to terminate parental rights to determine that parental reunification is not viable.

(2) Best interest determination.

(i) A determination must be made in judicial or administrative proceedings by a court or agency recognized by *845 the juvenile court and authorized by law to make such decisions that it would not be in the petitioner's best interest to be returned to the petitioner's

or their parent's country of nationality or last habitual residence.

(ii) Nothing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant State law.

(3) Qualifying juvenile court order(s).

(i) The juvenile court must have exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law to establish eligibility.

(ii) The juvenile court order(s) must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition, except when the juvenile court's jurisdiction over the petitioner terminated solely because:

(A) The petitioner was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached, other than reunification with a parent or parents with whom the court previously found that reunification was not viable; or

(B) The petitioner was the subject of a qualifying juvenile court order that was terminated based on age, provided the petitioner was under 21 years of age at the time of filing the petition.

8 C.F.R. § 204.11(b), (c) (emphasis added).

To summarize, SIJS is a federal immigration status available to foreign children in the United States who have been abused, abandoned, or neglected. *See* 8 U.S.C.A. § 1101(a)(27)(J). To obtain SIJS, a child must first apply to a state court for an order finding that he or she meets the statutory and regulatory requirements. *See id.* (SIJS statutory requirements). *See also* 8 C.F.R. § 204.11 (SIJS regulatory requirements). *See also* *Osorio-Martinez v. Attorney General United States of America*, 893 F.3d 153, 163 (3d Cir. 2018) (stating: “Alien children may receive SIJ[S] only after satisfying a set of rigorous, congressionally defined eligibility criteria, including that a juvenile court find it would not be in the child's best interest to return to her country of last habitual residence and that the child is dependent on the court or placed in the custody of the state or someone appointed by the state”).

The Third Circuit Court of Appeals set forth the eligibility criteria for SIJS in *Osorio-Martinez* as follows:

We begin with the requirements for SIJ[S] that show a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for [legal permanent resident] status, and that, in effect, establish a successful applicant as a ward of the United States with the approval of both state and federal authorities[.]

This understanding of SIJ[S] is reflected in the very definition of a Special Immigrant Juvenile, *i.e.*, a child “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 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under

State law.” 8 U.S.C. § 1101(a)(27)(J)(i). It is also compelled not only by the statute's purpose and history, ... but also by [the Department of Homeland Security's] own characterization *846 of SIJ[S] as a classification to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care[.] And the SIJ[S] statute's implementing regulations indicate that, to remain eligible for adjustment of status pending visa availability, SIJ[S] designees must remain in the custody of the state court or state agency to which

they have been committed. *See* 8 C.F.R. § 204.11(c) (5) (noting that to be eligible for SIJ[S], an alien must “**continue** to be dependent upon the juvenile court and eligible for long-term foster care” (emphasis added)); *see also* *Special Immigrant Juvenile Petitions*, 76 Fed. Reg. 54978-01, 54980 (proposed Sept. 6, 2011) (to be codified at 8 C.F.R. pts. 204-05, 245) (noting that “dependency,” for purposes of SIJ status, “encompasses dependency, commitment, or custody”).

Importantly, that close, dependency relationship with the United States is also borne out by the statutory criteria for SIJ[S] eligibility. To qualify for SIJ[S], applicants not only must be physically present in the United States, unmarried, and under the age of twenty-one, but also, ... they must obtain an order of dependency from a state juvenile court.

8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(c). That order requires the state court to find: (1) that the applicant is “dependent on a juvenile court ... or placed under the custody” of a state agency or someone appointed by the state; (2) 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 ... habitual residence,”; and (3) that “reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” 8 U.S.C. § 1101(a)(27)(J)(i), (ii); *see also* 8 C.F.R. § 204.11(a), (c). Moreover, these determinations must be “in accordance with state law governing such declarations of dependency,” 8 C.F.R. § 204.11(c)(3), which, depending on the state, may also entail specific residency requirements, *e.g.*, [Pa.R.C.P.] 1915.2(a)(ii) (providing that the dependency action must be brought in the child's home county or a county “which had been the child's home county within six months before commencement of the proceeding”). ...

With that order in hand, applicants must then file an application with USCIS, along with “sufficient evidence to establish ... eligibility” and the associated filing fee. The Secretary of Homeland Security must also consent to the grant of SIJ[S], which functions as an acknowledgement that the request for SIJ classification is bona fide—that is, that the benefit is sought primarily ... for the purpose of obtaining relief from abuse or neglect or abandonment.

All of these requirements attest to SIJ[S] designees’ dependency and close ties with state and federal authorities, the risk to their well-being in being removed to their countries of origin, and a relationship to the United States that far exceeds that of aliens on the threshold of initial entry or apprehended within hours of surreptitiously entering the United States.

Id. at 168-70 (some internal citations and quotation marks omitted).

In *Orozco, supra*, on which Mother relies, this Court considered an interlocutory appeal from a collateral order denying the mother's petition seeking the issuance of an order containing specific factual findings regarding her minor child necessary to obtain SIJS. In that case, the mother had filed a petition for sole custody along with a petition seeking specific findings regarding SIJS for the child. The trial *847 court stated that it intended to consider only the mother's custody

issue raised in her complaint, but not the issue of SIJS. On appeal, this Court held:

We conclude that the trial court abused its discretion. Mother specifically requested SIJ[S] findings both orally during the March 2019 hearing and in her October 2019 petition. The federal statutory scheme puts the factual determinations necessary for SIJ[S] solely within the purview of state courts. Yet the court flatly refused to issue the SIJ[S] order. In this posture, the refusal was an abuse of discretion. Accordingly, we vacate the trial court's order and remand for the trial court to enter a new order that shall include factual findings with respect to [the child]...

Orozco, supra at 479.

Instantly, we initially note that Mother's reliance on *Orozco* does not afford her any relief. While the trial court in that case refused to make any factual findings concerning eligibility for SIJS despite the mother's requests to do so, here, the trial court made factual findings concerning whether Children were eligible for SIJS and simply did not find facts necessary to demonstrate that Children were eligible for SIJS. Specifically, the trial court found: (1) the record does not demonstrate that Father abused Children; (2) based on the evidence presented, the court was without sufficient information to decide whether Mother informed Father of her intent to relocate with Children to the United States or whether Father consented to relocation, such that the court was unable to determine that Father abandoned Children; and (3) the record did not definitively support a conclusion that it would be in Children's best interests to remain in the United States. (*See* Trial Court Opinion, filed 12/1/22, at unnumbered pp. 10-12). On appeal, Mother challenges these findings as against the facts of record, applicable law, and inconsistent with the court's decision to award Mother sole legal and physical custody of Children.

Nevertheless, we need not decide whether the trial court's factual findings set forth above were erroneous, because

Children are not eligible for SIJS on other grounds. The relevant federal law contemplates an award of SIJS **only** where the child or children have been adjudicated dependent or the child or children have been legally committed to the custody of a state agency or an individual or entity appointed by the state or juvenile court. *See* 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(b)(4), (c)(1)(i)(A-B). *See also* *Osorio-Martinez, supra*.

[10] Significantly, Children have not been adjudicated dependent or placed in the legal custody of a state agency or an individual or entity appointed by a state or juvenile court. Rather, the record makes clear that Children reside with Mother and Mother's two sisters, and the two children of one of Mother's sisters. (*See* N.T. Trial, 8/15/22, at 7-8; R.R. at 116-17). Thus, Mother focuses on only part of the relevant statutory and regulatory federal language at issue (concerning whether reunification with one or both parents is viable and whether it would be in the children's best interest to remain in the United States), but she ignores the eligibility

requirement that Children must be adjudicated dependent or under the custody of a state agency or individual or entity appointed by the state or juvenile court.⁶ On *848 this record, Children are simply ineligible at this juncture for SIJS. *See* 8 U.S.C.A. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11(b)(4), (c)(1)(i)(A-B); *Osorio-Martinez, supra*. *See also* *Zaleppa, supra*. Accordingly, we affirm the order declining to find Children eligible for SIJS, albeit on other grounds. *See Liberty Mut. Ins. Co. v. Domtar Paper Co.*, 77 A.3d 1282 (Pa.Super. 2013), *aff'd*, 631 Pa. 463, 113 A.3d 1230 (2015) (explaining that this Court may affirm trial court's decision on any grounds supported by record on appeal).

Order affirmed.

All Citations

297 A.3d 837, 2023 PA Super 111

Footnotes

- * Former Justice specially assigned to the Superior Court.
- 1 “The SIJ[S] statute, 8 U.S.C.S. § 1101(a)(2)(J), provides that a juvenile who qualifies [for SIJS] may apply for lawful permanent residency and thus relief from deportation.” *Orozco v. Tecu*, 284 A.3d 474, 476 (Pa.Super. 2022).
- 2 The parties and Children are citizens of Guatemala. Mother moved to Pennsylvania with Children in December 2018. Father still resides in Guatemala.
- 3 *See* 23 Pa.C.S.A. § 5421(a) (explaining that court of this Commonwealth has jurisdiction to make initial custody determination only if Commonwealth is home state of child on date of commencement of proceeding); 23 Pa.C.S.A. § 5402 (defining “home state” as state in which child lived with parent for at least six consecutive months immediately before commencement of child custody proceeding). Mother further asserted that she and Children were not unlawfully present in the United States because they have pending asylum claims. *See* 8 U.S.C. § 1182(a)(9)(B)(iii)(II) (stating no period of time in which alien has bona fide application for asylum pending shall be taken into account in determining period of unlawful presence in United States).
- 4 Although Father accepted service of the custody complaint and received notice of the hearing, he declined to participate in the hearing or in any proceedings involving this matter. Father also has declined to file an appellee's brief on appeal.

- 5 **See** Pa.R.A.P. 126(b) (stating we may rely on unpublished decisions of this Court filed after May 1, 2019 for persuasive authority).
- 6 In response to a question concerning this point raised at oral argument, Mother responded that she satisfied the relevant statutory language because the court awarded her sole custody of Children. Nevertheless, the express statutory language and the purpose of the statute do not support Mother's claims. **See**  *Zaleppa, supra*. Notably, the statute contemplates a scenario where the court **appoints** an individual or entity to have custody over the child at issue. This scenario is consistent with the purpose behind the statute to assist a limited group of abused children who are essentially “ward[s] of the United States.” **See**  *Osorio-Martinez, supra*. Here, the court did not appoint Mother to have custody. Rather, Mother is the biological parent of Children and she sought to exercise sole custody of Children over the rights of Father. Mother's interpretation of the statutory language is unavailing.

**MEMORANDUM OF LAW RELATED TO RECENT DECISION IN
VELAZQUEA V. MIRANDA, JUNE 2023 OPINION OF THE
SUPERIOR COURT OF PENNSYLVANIA (PANEL DECISION)**

I. QUESTION OF LAW PRESENTED

Whether trial courts are bound by the recently issued Superior Court decision *Velasquez v. Miranda*, 2688 EDA 2022, (Pa. Super. Ct. 2023) for the issuance of a custody order regarding undocumented immigrant children or a SIJS eligibility order as referenced in *Velasquez*?

Suggested Answer: No

II. LEGAL ARGUMENT

A. A Pennsylvania Custody Court is a “Juvenile Court” that has jurisdiction to make the findings necessary for the Department of Homeland Security to decide upon a Special Immigrant Juvenile Status Application.

Velasquez upheld the trial court’s denial of the appellant mother’s request for an order determining Special Immigrant Juvenile Status (SIJS) eligibility and concluded based on the record at the custody hearing that the subject children were not eligible for SIJS. *Id.* at 17. The denial is based on the conclusion that such eligibility can only result from a dependency proceeding. The present case is distinguishable since Plaintiff is requesting that this court appoint him/her/them as the child’s sole legal and physical custodian by awarding custody, a remedy available to him/her/them through Pennsylvania’s custody statute, and issue an order based on specific best interest findings of facts as permitted under 23 Pa. C.S.A. Sec. 5328. While the federal SIJS regulations reference the order of a state juvenile court, which includes a custody court, as part of the eligibility determination, such determination can only be made by the federal Department of Homeland Security (DHS). The state trial court herein is asked to act within its sole jurisdiction to adjudicate a complaint for custody and make findings as to what is in the subject child’s best interest.

i. Special Immigrant Juvenile Status

In 1990, Congress created a path to legal permanence for immigrant youth who were abused, neglected, or abandoned by their parents through Special Immigrant Juvenile Status. This status is determined by the United States Citizenship and Immigration Services, an agency within DHS. Recognizing that vulnerable immigrant children were not limited to those in long term foster care, the law was amended in 2008 as part of the Trafficking Victims Protection Reauthorization Act to include children who are not able to reunify with at least one parent as a result of abuse, neglect or abandonment. *See* TVPRA Sec. 235(d) (1)-(6). The amended language specifically permitted DHS to determine that a youth was eligible for SIJS classification when a juvenile court order found that one or both parents neglected, abused or abandoned the child so that reunification with that parent was not possible. As the USCIS manual states clearly, “there is no longer a requirement that a child be found eligible for long-term foster care.” 6 USCIS Policy Manual J.2(A).

For the purposes of SIJS classification, a “juvenile court” is defined as a U.S. court having jurisdiction under state law to make judicial determinations on the dependency and/or custody and care of juveniles. *See* C.F.R. Sec. 204.11(a). This means that the court must have the authority to make determinations about dependency and/or custody or care of the child as a juvenile under the laws of that state at the time that the order was issued. 6 USCIS Policy Manual J.2(C); *see* INA 101(a)(27)(J)(i); 8 CFP 204.11(a)(2022); 8 CFR 204.11(c)(3). While SIJS was formerly reserved for children in dependency proceedings, the 2008 amendments to the federal law made clear that DHS could grant SIJS to children who were the subject of custody proceedings as both courts would be classified as a juvenile court with the ability pursuant to state law to make determinations about the best interest and custody of children.

Implementation guidelines from U.S. Citizenship and Immigration Services (USCIS) make clear that custody orders with specific factual findings are considered to be juvenile court orders for the purposes of USCIS’s eligibility determination noting that “[w]hen the court places the petitioner under the custody of a specific person, the court order should identify that person by name. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, abandonment, or similar maltreatment of the petitioner.” See USCIS Policy Manual, Vol. 6, Part J, Ch. 2 Section C(1).¹

- ii. ***Orozco v. Tecu*, 2022 Pa. Super 174 (2022) confirmed that Pennsylvania custody courts can and must make the factual determinations regarding custody for children who may later pursue SIJ status from DHS.**

The recent decision of the Pennsylvania Superior Court in *Orozco v. Tecu*, 2022 Pa. Super. 174 (2022) confirmed that a Pennsylvania custody court is an eligible “juvenile court” for the purpose of making the required factual determinations necessary for DHS to later make a SIJS determination. Specifically, in an appeal from a Delaware County court’s refusal to issue an order including the specific factual findings required for a subsequent SIJS petition, the Superior Court reasoned that “[t]he federal statutory scheme puts the factual determinations necessary for SIJ classification solely within the purview of state courts.” *Id.* at 8. *Velasquez* did not overrule or limit this determination, specifically noting that the trial court did make factual findings as required by *Orozco*.

- B. While the trial court is bound to follow directives and precedent set by the appellate court, even ones which may be erroneous, *Velasquez* does not apply to this case nor prevent the trial court proceeding to make a custody determination with best interest findings, which findings may also serve as predicate findings for a future SIJS eligibility determination.**

¹ Available at <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

i. *Velasquez* does not prevent this Court from making a custody determination with a full review of the best interest factors and related findings.

What is significant about the *Velasquez* decision is what it does not do:

- *Velasquez* does not address, suggest, state or direct that a party cannot generally file a complaint in custody – instead upholding the award of custody;
- *Velasquez* does not address, suggest, state or direct that this court cannot hold a hearing in custody – rather only offering analysis regarding the effect of such a hearing on a federal program;
- *Velasquez* does not address, suggest, state or direct that this court cannot make findings after having held a hearing - to do so would contradict *Orozco*; and
- *Velasquez* does not address, suggest, state or direct any particular findings that this court should make – never reaching the merits of the findings appealed.

In contrast to *Orozco*, *Velasquez* contains no directive for any trial court to do or not to do anything. The opinion is at best commentary on the requirements of and eligibility for a federal immigration program and a prediction as to the outcome if the Plaintiff had the intention of using the custody order to apply for such program. It contains no directive in this realm because a state court has no authority to do so regarding a federal program. *Velasquez* has no bearing on this case with regard to conducting a hearing and making findings.

ii. *Velasquez* specifically states *Orozco* is a different scenario for situations in which a trial court refuses to make factual findings related to SIJS cases, indicating that its holding applies in a case in which findings were made but the facts did not demonstrate SIJS eligibility.

The *Velasquez* panel clearly indicates that it is distinguishable from *Orozco* and its mandate to make findings, because it is a case in which findings were made, just not in favor of their plaintiff. By contrast with *Orozco* they note that “[w]hile the trial court in that case refused to make any factual findings concerning eligibility for SIJS despite the mother’s requests to do

so, here the trial court made factual findings concerning whether Children were eligible for SIJS and simply did not find facts necessary to demonstrate that Children were eligible for SIJS.” *Velasquez*, *supra* at 16. The *Velasquez* panel clearly limits themselves to cases on appeal in which the lower court denied findings consistent with SIJ eligibility. The real precedent of *Velasquez*, if any, is as an advisory to litigants should they appeal what they perceive to be negative findings related to SIJ status made by the trial court sitting in custody. *Velasquez* advises litigants that the merits of negative findings will not be reviewed as the panel considers the cases originating in custody court to be a futile effort in any event to achieve SIJ eligibility.²

iii. Velasquez arises in a case in which a party specifically asked for “Special Immigrant Juvenile Status Order”, Plaintiff in this case requests an “Order of Custody”.

The plaintiff in *Velasquez*, who was the mother of the children in question, “filed a custody complaint seeking sole legal and physical custody of Children. Mother also attached to her custody complaint a proposed order asking the court to award Children SIJS.” *Velasquez* at 2. As noted earlier, only DHS has the legal authority to determine and confer such status on a minor child. Plaintiff herein requests a finding in custody, with its attendant review of the best interest factors and other matters addressed in a custody case, as well as any findings directed to be addressed in *Orozco*. The determination of what is in a child’s best interest and a review of the custodial factors and any other relevant factors are clearly within the jurisdictional purview of this Court and none other. *Velasquez* simply has no bearing on this case as the relief requested is clearly distinguishable.

C. Even if this Court determines that the facts, law, or opinion discussed in *Velasquez* applies to the situation of the case at hand, this Court cannot follow the result of *Velasquez*, as a subsequent Superior Court panel decision cannot reverse or contradict a prior Superior Court panel decision.

² As indicated, *supra*, it is well established that thousands of children all over the country, including in Pennsylvania, have been granted SIJ eligibility by USCIS after reviewing orders issued by custody courts.

While *Velasquez* does not apply to the case at issue, Plaintiff recognizes that this Court could determine otherwise. However, in such an event, this Court still cannot apply *Velasquez* to prevent the holding of a hearing or the issuance of timely findings regarding best interest and other custodial issues, which overlap with the special findings as enumerated under federal law for a grant of SIJS.

As discussed herein, the panel in *Velasquez* distinguishes itself from *Orozco*. By so doing, *Velasquez* attempts to sidestep the suggestion of contradicting or overruling *Orozco* because it is well established precedent that a subsequent panel decision of the Superior Court cannot overrule a prior panel decision of the Superior Court. This principle was recently reiterated in *Commonwealth v. Harris*, 269 A.2d 534, 539 (Pa. Super. Ct. 2022):

“As we often recognize, a prior published opinion issued by a panel of this Court constitutes binding precedential authority. *See Commonwealth v. Beck*, 78 A.3d 656, 659 (Pa. Super. 2013). (“A panel [of this Court] is not empowered to overrule another panel of the Superior Court.”) (citation omitted).” *Id.* at 539. (*See also, Commonwealth v. Taylor*, 437 Pa. Super. 102, 649 A.2d 453, 455 (1994) cited in *Commonwealth v. Beck*.)

Accordingly, *Velasquez* cannot prohibit or direct this trial court sitting in custody to do anything contrary to *Orozco*'s directive to make findings which are related to SIJS predicate requirements. To the extent the panel in *Velasquez* may appear to be or may attempt to tie the hands of trial courts with its discussion of dependency proceeding exclusivity, this trial court must not take heed. This trial court must proceed to act consistent with any other custody case before it, as well as *Orozco*, which was decided the year prior to *Velasquez*.

III. CONCLUSION

A state trial court sitting in custody is authorized to hear custody cases and make findings related to best interest. Such trial court is also authorized, and pursuant to *Orozco* required, to make best interest findings which are consistent with the findings the DHS would review in

connection with an application for SIJ status. Nothing in the recent decision of *Velazquez*, which reviewed a different request for relief, was in a different procedural posture, and issued a holding as to federal jurisdictional matters, changes the state trial court's duty going forward in custody cases involving undocumented immigrant children who may in the future apply for SIJS status from the federal DHS via the USCIS.

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