

Immigration Matters



By Evan George

The plight of undocumented children, whose parents or guardians have abandoned, abused or neglected them, is a recurring dilemma in the U.S. immigration system. These undocumented children lack lawful status and cannot avail

themselves of the basic privileges of citizens and residents of the United States, including employment authorization, a driver's license, or in-state tuition or other financial assistance to attend college. The same children are often vulnerable to abuse by adults, or to arrest, detention, and deportation by the government. Fortunately, there is a remedy available to children who have been declared dependent by a juvenile court, whose reunification with their parents is not viable due to abuse, neglect or abandonment, and for whom return to their country of origin is not in their best interest.

In 1990, Congress created a category for Special Immigrant Juvenile Status (SIJS) to address the need for legal relief for such unaccompanied children. SIJS is an immigration benefit available to undocumented children in foster care (or those in guardianships or adoptions), who have been the victims of abuse, abandonment or neglect. SIJS is designed to enable such children to gain lawful permanent residence (also called a "green card"), notwithstanding their unlawful status. Under normal family-based immigration processing, an undocumented child must rely upon their U.S. citizen or resident parent to petition for a permanent visa on their behalf. With SIJS, however, an undocumented child does not need the assistance of a family member to obtain protection and lawful permanent resident status. Additionally, SIJS status exempts undocumented children from various grounds of removal from the United States, including inadmissibility based upon entry without inspection, failure to maintain valid nonimmigrant status, misrepresentation, unlawful presence, or being a stowaway or public charge.

The statutes establishing eligibility requirements for the SIJS have recently gone through significant reform. In December 2008, Congress expanded the SIJS eligibility requirements, which now include undocumented children who fall into the following categories: 1) those who have been declared dependent by a juvenile court; 2) those who a juvenile

court has legally placed under the custody of a state agency or department; or, 3) those who have been placed under the custody of an individual or entity appointed by a state or juvenile court. The state court must find that reunification with one or both of the parents is not viable due to abuse, neglect or abandonment, or a similar basis under state law. The SIJS petitioner must also demonstrate that it would not be in their best interest to be returned to their home country, or that of their parents. To be eligible, the undocumented child must be under 21 years old and unmarried at the time of filing for SIJS status. Importantly, the United States Citizenship and Immigration Service will not deny a child's petition for having aged-out, as long as the child submitted the petition while under age 21.

If the undocumented child applies for this status and is successful, s/he may remain in the United States, work legally, qualify for in-state tuition at college, and in five years apply for U.S. citizenship. This legal remedy is not free of risk, however, as the undocumented child could be placed in removal proceedings and deported if their petition is denied.

Next month's column will address recent increased efforts of the United States Immigration and Customs Enforcement targeting U.S. employers, including local family businesses, for I-9 compliance and other workplace enforcement issues. If you have an immigration-related issue or question, feel free to contact me at 352-378-5603 or evan@evangeorge-law.com.

Circuit Judge Stan R. Morris To Retire

In a letter to Governor Charlie Crist dated September 15, 2009, the Honorable Stan R. Morris announced his plans to retire as Circuit Judge for the Eighth Judicial Circuit, effective at 11:59 p.m. on January 31, 2010. Judge Morris was elected as Alachua County Court Judge in 1980 and has served the citizens of Alachua, Baker, Bradford, Levy, Union and Gilchrist counties since his appointment to the Circuit Court bench in 1986 by Governor Bob Graham. Judge Morris served as Chief Judge of the Eighth Judicial Circuit from 2001-2005.