

IN THE CIRCUIT COURT FOR THE _____ JUDICIAL DISTRICT
_____ COUNTY, ILLINOIS

IN RE THE ESTATE OF:)
)
NAME,) No.
)
A minor.)

**MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR GUARDIANSHIP AND
REQUEST FOR SPECIAL FINDINGS**

Petitioner NAME, by her attorney, ATTORNEY NAME, has filed a Petition for Guardianship of MINOR NAME and Motion for Special Findings pursuant to 755 ILCS 5/11-5.5. This Memorandum is submitted in support of the Petition and Motion for Special Findings.

1. PETITIONER NAME filed the petition pursuant to 755 ILCS 5/11-5.5. In addition, she requested certain special findings regarding a minor child (as defined in 755 ILCS 5/11-5.5); namely MINOR NAME, that reunification with their father was not viable due to his abandonment and neglect, and that it would not be in her best interest to return to her home country.
2. Probate judges in Illinois have authority to make special findings in the best interests of immigrant children pursuant to Section 11-5.5 of the Probate Act. Judges must consider motions under this section and enter the special findings if supported by the evidence. *See* 755 ILCS 5/11-5.5(c).
3. In 2019, the Illinois General Assembly amended the Juvenile Court Act, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act, the Adoption Act, the Illinois Domestic Violence Act, and the Probate Act to clarify the role of Illinois courts in SIJS cases. The amendments state that “if a motion requests findings regarding Special Juvenile Status under 8 U.S.C. 1101(a)(27)(J) and the evidence, which may

consists solely of, but is not limited to, a declaration of the minor, supports the findings, the court *shall* issue an order” with the relevant findings. Pub. Act 101-0121, § 5 (amending 705 ILCS 405/2-4a).

4. In 2021, the Illinois General Assembly amended the Probate Act in order to bring Illinois law into conformity with federal law by extending access to Special Immigrant Juvenile Status orders and findings to include unmarried minors ages 18 to 21. Pub. Act 102-0259.
5. Petitioner has requested certain special findings that would allow MINOR to petition the immigration authorities for Special Immigrant Juvenile Status (“SIJS”), which would provide her the stability of remaining lawfully in the United States in the custody of Petitioner.
6. Special Immigrant Juvenile Status (“SIJS”) is a form of immigration relief under Section 101(a)(27)(J) of the Immigration and Nationality Act (“the INA”), codified at 8 U.S.C. 1101(a)(27)(J). The regulations implementing the statute are found at 8 C.F.R. 204.11.
7. Findings by this Court do not entitle a child to SIJS or any lawful immigration status in the United States. Rather, this Court’s findings are a prerequisite to filing a petition for relief before the immigration authorities (U.S. Citizenship and Immigration Services, or USCIS).
8. Before a child can apply for immigration relief with USCIS, they must first obtain an order from a state court containing specific findings:
 - a. That the child is dependent on the court or has been placed under the custody of a State agency or department, or an individual appointed by the court;

- b. That reunification with at least one of the child’s parents is not viable due to abuse, abandonment, neglect, or another similar basis under state law.
 - c. And that it would not be in the child’s best interest to return to her or her parents’ country of nationality or country of last habitual residence. 8 U.S.C. 1101(a)(27)(J).
9. These findings cannot be made by USCIS; they must be entered by a state “juvenile court,” as defined under 8 C.F.R. 204.11(a): “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” USCIS recognizes that state courts that meet this definition may include “juvenile, family, orphans, dependency, guardianship, probate and delinquency courts.” See USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2: <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.
10. Although an Illinois court presiding over a minor guardianship under the Probate Act is not typically called a “juvenile court,” it nonetheless meets that definition under federal law, and has jurisdiction under federal and Illinois law to consider and enter special findings for SIJS. See 755 ILCS 5/11-5.5 (b) “A court of this State that is competent to adjudicate a petition for guardianship has jurisdiction to make the findings necessary to enable a minor, who is the subject of a petition for guardianship, to petition the United States Citizenship and Immigration Services for classification as a Special Immigrant Juvenile under Section 1101(a)(27)(J) of Title 8 of the United States Code.”
11. The Probate Act, Section 11-5.5(a), provides specific definitions of the terms “abuse,” “abandonment,” and “neglect” to be applied to these requests:
“For the purpose of making a finding under this Section:

"Abuse" has the meaning ascribed to that term in subsection (1) of Section 103 of the Illinois Domestic Violence Act of 1986.

"Abandonment" includes, but is not limited to, the failure of a parent to maintain a reasonable degree of interest, concern, or responsibility for the welfare of the minor or when one or both of the minor's parents are deceased or cannot be reasonably located.

"Neglect" includes the meaning ascribed to the term in paragraph (a) of subsection (1) of Section 2-3 of the Juvenile Court Act of 1987 and the failure to perform caretaking functions as defined in subsection (c) of Section 600 of the Illinois Marriage and Dissolution of Marriage Act.

12. Although the minor subject to this Petition has already attained 18 years of age, Illinois Pub. Act 102-0259, supra, changed the definition of "minor," for the purposes of this subsection, to include an "unmarried person who is less than 21 years old who consents to the appointment of a ... guardian after the age of 18." 755 ILCS 5/11-5.5(e)(1).
13. Subsection (e)(2) provides that a parent may petition for guardianship of such a minor, and subsection (e)(3) provides that "the court shall appoint the petitioner as the guardian of the person" of such a minor if the minor consents to the appointment. 755 ILCS 5/11-5.5(e) (Emphasis added).
14. Here, the Petitioner, as the minor's mother, is submitting this Petition for Guardianship of the Person of her 18-year-old, unmarried daughter, along with a Consent to Guardianship signed by the minor, and a Motion for Special Findings pursuant to 755 ILCS 5/11-5.5.

15. As supported by the verified Petition, the Petitioner is prepared to present testimony and evidence that the minor child has been abandoned and neglected by her biological father, NAME (“Father”), pursuant to 755 ILCS 5/11-5.5(a):

- a. Father abandoned the minor child by:
 - i. Not having seen the minor child for 14 years;
 - ii. Providing no emotional support to the minor child for 14 years;
 - iii. Providing little financial support for the first six months of the minor child’s life and since having provided no financial support;
 - iv. Not playing a role in the minor child’s upbringing;
- b. Father neglected the minor child by:
 - i. Failing to perform caretaking functions or parental responsibilities for her.

16. As supported by the Petition, the Petitioner is also prepared to testify that the minor child is adjusting well to her life with Petitioner in Illinois, and that the Petitioner is presently providing and will continue to provide the minor child with a stable, safe environment in which to live and thrive.

- a. The minor child and Petitioner have a strong and trusting relationship, and Petitioner is the best person to continue to care for, provide for, and protect the minor child;
- b. The minor child is a vulnerable young person in need of a guardian to provide her with protection and stability, and to help her remedy the effects of the trauma caused by her father’s abandonment at a young age.

- c. It would not be in the minor child's best interest to return to COUNTRY, as she has no appropriate caretaker there and would face threats of violence similar to those she has already experienced;
- d. The minor child wishes to continue living with and not be separated from Petitioner. Petitioner has provided and will continue to provide the minor child with a stable, safe environment in which to live and thrive;

17. Based on the foregoing, the Petitioner respectfully requests that this Court:

- a. With the minor's consent, enter an order appointing Petitioner as the guardian of the person of the minor until the minor attains 21 years of age;
- b. Find that the minor child's reunification with Father is not viable due to his abandonment and neglect of her pursuant to 755 ILCS 5/11-5.5(a) ;
- c. Find that it would not be in the minor child's best interest to return to COUNTRY due to a lack of appropriate caregiver there and the dangerous and unstable environment she would encounter.

Respectfully submitted,

Attorney for Petitioner

ATTORNEY NAME
CONTACT INFO