

4. Proposal G

Legislative Bill: Proposal G

Amend Chapter 7B Juvenile Code to allow the juvenile court's nominal jurisdiction over a juvenile to be extended beyond the age of 18 for the purpose of supporting a petition for special immigrant juvenile status or a related application for adjustment of immigration status.

G.S. § 7B-201 Retention and termination of jurisdiction.

(a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first, except to the extent, if any, that jurisdiction is extended as provided in subsection (a1).

(a1) If a petition for special immigrant juvenile status on behalf of the juvenile or an application for adjustment of status in connection with a petition for special immigrant juvenile status on behalf of the juvenile is pending before the U.S. Citizenship and Immigration Service or a federal administrative court at the time the juvenile reaches the age of 18 years or is otherwise emancipated, jurisdiction over the juvenile, which shall thenceforth be solely and exclusively for the purpose of allowing continued consideration of the juvenile's petition and/or application, shall continue until the first to occur of:

- (1) the U.S. Citizenship and Immigration Service has issued final decisions on the juvenile's petition and application, or
- (2) jurisdiction is terminated by order of the court, or
- (3) the juvenile notifies the court that he or she objects to continued jurisdiction, or
- (4) the juvenile reaches the age of 21.

[The remainder of the section is not set out here.]

Detailed Analysis: Proposal G

Amend Chapter 7B Juvenile Code to allow the juvenile court's nominal jurisdiction over a juvenile to be extended beyond the age of 18 for the purpose of supporting a petition for

special immigrant juvenile status or a related application for adjustment of immigration status.

G-1. Need or Condition Addressed. Certain children in the long term foster care of county departments of social services who are seeking to become lawful permanent residents of the United States may need to remain subject to the nominal jurisdiction of the juvenile court past the age of 18 in order to preserve their eligibility to become legal immigrants.¹²

Undocumented alien children in the long-term care of county departments of social services (due to abuse, neglect or dependency) who meet certain requirements (including that the child is deemed to continue “to be dependent upon the juvenile court and eligible for long-term foster care”) may petition the US Citizenship and Immigration Services (“USCIS”) to become classified as “special immigrant juveniles.”¹³ Special immigrant juvenile (“SIJ”) classification confers eligibility for adjustment of immigration status to lawful permanent resident.¹⁴

Foster children who adjust their status as a result of SIJ classification become lawful permanent residents eligible to naturalize after five years; however, they may not use their immigration status to obtain any immigration benefit to their natural or prior adoptive parents.¹⁵

Without adjustment in their immigration status, such children, notwithstanding that they have been raised by North Carolina foster parents as English-speaking “American” children, become adult illegal immigrants subject to removal proceedings at age 18.

¹² The full texts of the Immigration and Nationality Act, USCIS regulations and other immigration legal resources cited here can be reviewed at www.uscis.gov

¹³ The requirements for special immigrant juvenile status are that the petitioner must: be under 21 years of age; be unmarried; have been declared dependent upon a juvenile court located in the US; have been deemed eligible for long-term foster care; continue to be dependent upon the juvenile court and eligible for long-term foster care; and be the subject of a finding by the juvenile court that it would not be in his or her best interest to be returned to the country of nationality. 8 C.F.R. § 204.11

¹⁴ An application for adjustment of status (Form I-485) is usually filed and processed concurrently with the petition for SIJ classification (I-360). Form I-485 must be supported by documentation including any arrest record and disposition information. The applicant’s adjustment of status to lawful permanent resident is subject to inadmissibility based on his or her criminal record as required by Sections 212(a)(2)(A),(B) and (C) of the Immigration and Nationality Act.

¹⁵ Immigration and Nationality Act §101(a)(27)(J)(iii)(II), 8 U.S.C. § 1101.

A foster child's petition for SIJ classification or application for adjustment of status can be approved up to the time he or she attains the age of 21. However, if the foster child's petition or application has been submitted but not approved by the time the foster child attains age 18, he or she becomes ineligible for approval unless he or she continues to meet all SIJ requirements, including that he or she is deemed to "to be dependent upon the juvenile court and eligible for long-term foster care."

On June 7, 2007, the Administrative Appeals Office of the US Citizenship and Immigration Services decided *Matter of Perez Quintanilla*, holding that when a juvenile court extends its jurisdiction over an applicant for SIJ classification beyond his or her 18th birthday, and there is a prior court determination that family reunification is not a viable option for the juvenile, the applicant is deemed to continue to be "eligible for long-term foster care" notwithstanding that actual foster care is not provided beyond the applicant's 18th birthday.¹⁶

The USCIS has designated *Matter of Perez Quintanilla* as a USCIS Adopted Decision binding on USCIS in similar cases nationwide.¹⁷ Accordingly, if the juvenile court's nominal jurisdiction is extended beyond the juvenile's 18th birthday, the juvenile will continue to meet the eligibility criteria for special immigrant juvenile status as to dependency on the court and deemed eligibility for foster care unless and until the juvenile court orders otherwise.

G-2. How the Law would be Revised and Improved. If a petition for special immigrant juvenile status or an application for adjustment of status is outstanding with respect to a juvenile as of his or her 18th birthday, the court's nominal jurisdiction is extended (but no later than age 21) for the sole and exclusive purpose of allowing the petition or application to be decided on its merits. Once the applicant attains age 18, any further court review of his or her case should be for the sole purpose of monitoring the progress of the SIJ petition and application for adjustment of status.

G-3. Constitutional Problems. None known.

G-4. Previous Association Position. None known.

G-5. Impact on Other Areas of Law. None known.

¹⁶ The hearing officer relied on the following definition in the USCIS regulations on special immigrant status: "Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option." 8 C.F.R. § 204.11(a). See for text of case: <http://www.uscis.gov/files/pressrelease/PerezSIJ073007.pdf>

¹⁷ Memorandum dated July 30, 2007 from Jonathan Scharfen, Deputy Director, to Regional Directors, Service Center Directors, Field office Directors and National Benefits Center Director. See for memo: <http://www.uscis.gov/files/pressrelease/PerezSIJ073007.pdf>

G-6. Drafters. See Schedule A attached.

G-7. Other Interested Groups. The American Immigration Lawyers Association, the American Academy of Adoption Attorneys and the NC Department of Health and Human Services are expected to express support for this proposal if asked. Although no specific groups likely to oppose this proposal has been identified, a bill with similar provisions introduced as House Bill 1661 in the 2007 session of the General Assembly did not pass. HB 1661 was reported favorably by the House Committee on Juvenile Justice on May 15, 2007 and was re-referred to the House Committee on the Judiciary II which apparently never voted on it.

Talking Points: Proposal G

Amend Chapter 7B Juvenile Code to allow the juvenile court's nominal jurisdiction over a juvenile to be extended beyond the age of 18 for the purpose of supporting a petition for special immigrant juvenile status or a related application for adjustment of immigration status.

- This amendment allows the juvenile court to keep its file open on a former foster child beyond his or her 18th birthday for the sole purpose of allowing more time for an application for lawful permanent resident status to be processed.
- Keeping the court file open will not qualify the juvenile for continued foster care or any other services or payments.
- The court file will stay open only as long as it takes the United States Citizenship and Immigration Service to process the juvenile's request for adjustment of status.
- Without adjustment in immigration status, some children, notwithstanding that they have been raised by North Carolina foster parents as English-speaking American children, will become adult illegal immigrants subject to removal proceedings as of their 18th birthday.
- Under U.S. immigration law, a person who obtains permanent resident status on account of foster child status cannot use that status to confer any immigration benefits on his or her parents.

**NCBA FAMILY LAW SECTION ADOPTION COMMITTEE MEMBERS WHO
PARTICIPATED IN DISCUSSION OF 2009 ADOPTION/JUVENILE LEGISLATION**

Michele Smith
Post Office Box 989
Greensboro, North Carolina 27402
Phone: 336-379-1390
Fax: 336-379-1198
msmith@hillevans.com

Brinton Wright (drafting committee)
Post Office Box 39266
Greensboro, North Carolina 27438
Phone: 336-373-1500
Fax: 2336-272-8258
brinton@wendoverlaw.com

Jane Thompson (drafting committee)
4625 Brownsboro Road, Suite 115
Winston-Salem, North Carolina 27106
Phone: 336-896-7052 ext. 216
Fax: 336-896-7055
jane.thompson@ncmail.net

David Thurman
301 S. McDowell Street, #608
Charlotte, North Carolina 28204
Phone: 704-377-4164
Fax: 704-377-5503
wdatbtw@aol.com

Bobby Mills
Post Office Box 1677
Raleigh, North Carolina 27602-1677
Phone: 919-821-1860
Fax: 919-821-1816
bmils@hermcb.com

Sharon Thompson
400 W. Main Street, Suite 502
Durham, North Carolina 27701
Phone: 919-688-9646
Fax: 919-683-1395
st@stlawgroug.com