

THIS IS A SAMPLE

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

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

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

Petitioner XXX, by her attorney, NAME of the PROFESSIONAL AFFILIATION, filed a Petition for Allocation of Parental Responsibilities and Request for Special Findings on DATE. This Memorandum is submitted in support of her request for certain special findings within that Petition.

1. XX filed her petition pursuant to 750 ILCS 46/601 *et seq* and 750 ILCS 5/600 *et seq*. In addition, she requested certain special findings regarding the minor children; namely, that their reunification with their father the Respondent was not viable due to his abuse and neglect of them, and that it would not be in their best interest to return to their home country.
2. Domestic relations judges in Illinois have authority to make determinations regarding the best interest of the child pursuant to the Illinois Marriage and Dissolution of Marriage Act 750 ILCS 5/600 *et seq*, (“the IMDMA”) whether in the context of abuse, neglect, abandonment; reunification; removal and relocation, or serious endangerment.

3. This authority is broad and includes the discretion to grant various types of relief. *See, e.g., In re Marriage of Turk*, 2014 IL 116730 (awarding child support to a noncustodial parent); *Blonsky v. Blonsky*, 84 Ill. App. 3d 810 1980 (awarding custody to a father during the school year and to mother during the summer); *In re Marriage of Edsey*, 199 Ill. App. 3d 39 (separating a child from siblings).
4. In making determinations regarding custody and other factors relating to the best interest of the child, “the Court’s role is to promote stability and continuity.” *In re Marriage of Nolte*, 241 Ill. App. 3d 320 (1993).
5. Petitioner has requested certain special findings that would allow her children to petition the immigration authorities for Special Immigrant Juvenile Status (“SIJS”), which would provide them the stability of remaining lawfully in the United States in the custody of their mother.
6. SIJS is a form of immigration relief under Section 101(a)(27)(J) of the Immigration and Nationality Act (“the INA”), codified at 8 U.S.C. 1101(a)(27)(J). The regulations implementing the statute are found at 8 C.F.R. 204.11.¹
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:

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

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

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

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."
10. Although an Illinois court presiding over an action for allocation of parental responsibilities is not typically called a "juvenile court," it nonetheless constitutes a "juvenile court" for the purposes of federal immigration law. Under the INA, one must look to the function, not the title, of the state court to determine whether it is a "juvenile court" within the meaning of 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(a). USCIS itself recognizes that state courts that meet this definition may include "juvenile, family, orphans, dependency, guardianship, probate and delinquency courts." *See* Ex. 1, USCIS "Information for Juvenile Courts." Because this Court presides over family law matters including child custody determinations, this Court is clearly a "juvenile court" under the definition included in the INA and its implementing regulations.
11. Illinois law provides the domestic relations court with jurisdiction under 750 ILCS 5/600 *et seq.* to hear and adjudicate petitions for allocation of parental responsibility, to restrict

parental responsibilities, and to make findings with respect to parental abuse, neglect, or abandonment of a minor child. *See, e.g.*, 750 ILCS 5/603.10(b)(1).

12. The Illinois Appellate Court, First District, has addressed the authority of state courts to make the specific factual for SIJS under Illinois law. *In re Estate of Nina L.*, 2015 Ill. App (1st) 152223.
13. In *Nina L.*, the appellants were co-guardians of a non-relative minor child. They appealed a denial by the Cook County Probate Court of their petition for special findings that would allow the minor to apply for SIJS. *Id.*
14. In the absence of Illinois case law on SIJS, the appellate court conducted a thorough analysis of the federal regulations and their applicability under Illinois law. The appellate court determined that the Cook County probate judge erred as a matter of law in refusing to make the requested SIJS findings, and vacated the order below. *Id.* The appellate court also took the affirmative step of entering the findings itself, concluding that Nina's reunification with her parents was not viable due to abuse, abandonment or neglect, and that it would not be in her best interest to return to her country. *Id.*
15. Although the appellate court's analysis in *Nina L.* occurred in the context of an appeal in probate court, its review of the applicable federal law and Illinois state law applies equally here.
16. Additionally, the Illinois General Assembly recently amended the Juvenile Court Act, the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act, the Adoption Act, the Illinois Domestic Violence Act, and the Probate Act to clarify the role of Illinois courts in SIJS cases. The amendments state that "if a motion requests findings regarding Special Juvenile Status under 8 U.S.C. 1101(1)(27)(J) and the evidence, which

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

17. The General Assembly further provided specific definitions of the terms to be applied:

- a. “For the purpose of making a finding under this Section:
- b. "Abuse" has the meaning ascribed to that term in subsection (1) of Section 103 of the Illinois Domestic Violence Act of 1986.
- c. "Abandonment" includes, but is not limited to, the failure of a parent to maintain a reasonable degree of interest, concern, or responsibility for the welfare of the child or when one or both of the child's parents are deceased or cannot be reasonably located.
- d. "Neglect" includes the meaning ascribed to the term in paragraph (a) of subsection (1) of Section 2-3 of the Juvenile Court Act of 1987 and the failure to perform caretaking functions as defined in subsection (c) of Section 600.”

See Pub. Act 101-0121, § 10 (adding 750 ILCS5/603.11)

18. Factual findings made by this Court will not automatically entitle the minor children to any lawful immigration status in the United States. Rather, these findings are a prerequisite to filing for immigration relief in the form of SIJS, without which the children will be ineligible to apply.

19. Here, as supported by the Petition and attached Declaration, the Petitioner is prepared to present testimony and evidence that the minor children have been neglected and abandoned by the Respondent:

- a. Respondent regularly abused alcohol;

- b. Respondent was regularly physically, verbally, emotionally, and sexually abusive towards the Minor Child's mother in the presence of the Minor Child;
 - c. Respondent provided no emotional support and little financial support for the Minor Child;
 - d. Respondent did not play a role in the Minor Child's upbringing;
 - e. Respondent neglected the Minor Child by failing to perform caretaking functions or parental responsibilities for her;
 - f. Petitioner mother feared for her safety and the safety of the Minor Child, and protected the Minor Child from Respondent;
20. As supported by the Petition and attached Declaration, the Petitioner is also prepared to testify that the Minor Child is adjusting well to her life with Petitioner in Illinois, and that the Petitioner is presently providing and will continue to provide the Minor Child with a stable, safe environment in which to live and thrive.
- a. The Minor Child and Petitioner have a strong and trusting relationship as mother and daughter;
 - b. The Minor Child and Petitioner have a close bond with each other, and Petitioner is the best person to continue to care for, provide for, and protect the Minor Child;
 - c. It would not be in the Minor Child's best interest to return to COUNTRY;
 - d. The Minor Child has always lived with Petitioner and is now living with Petitioner, and Petitioner has provided and will continue to provide the Minor Child with a stable, safe environment in which to live and thrive;
 - e. If the Minor Child were to return to COUNTRY, she would not have anywhere to live, or any way to obtain the necessities of life. She would be forced to work

long hours for extremely low pay in order to help provide for her family. Any further education for the Minor Child would cease, and the Minor Child would be without the support necessary to pursue her goal of attending college.

Additionally, the Minor Child would not have access to health insurance or adequate health care;

- f. The Minor Child is enrolled and thriving at NAME High School in Chicago and is currently in the tenth grade. The Minor Child is performing well academically and making friends. The Minor Child wishes to pursue higher education upon her high school graduation. Such educational opportunities are not feasible in the Minor Child's former home country;
- g. If the Minor Child were to return to COUNTRY, the Minor Child would face threats from gangs that have continuously threatened her family.

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

- a. That the minor children's reunification with the Respondent is not viable due to his abuse and neglect of them;
- b. That it would not be in the minor children's best interest to return to their home country due to a lack of appropriate caregiver there.

Respectfully submitted,

Attorney for Petitioner

NAME

PROFESSIONAL AFFILIATION

ADDRESS

PHONE

EMAIL

Attorney #