**MOT**

ATTORNEY, ESQ.

Nevada Bar No. Bar #

Address

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION – JUVENILE

CLARK COUNTY, NEVADA

In the Matter of: ) Case No.: J

) Dept. No.:

**CLIENT,** ) Courtroom:

DOB: Date of Birth )

AGE: Age YEARS OLD )

)

A MINOR. )

)

**MOTION FOR FINDINGS ON THE ISSUE OF**

**SPECIAL IMMIGRANT JUVENILE STATUS**

COMES NOW, Attorney, Esq., of Firm, by and on behalf of CLIENT, a minor, and submits this Motion for Findings on the Issue of Special Immigrant Juvenile Status, and requests this Court to make the requisite findings to allow United States Citizenship and Immigration Services (“USCIS” formerly “INS”) to consider CLIENT for a Special Immigrant Juvenile Status (“SIJS”) pursuant to 8 U.S.C. §1101(a)(27)(J).

This Motion is made and based upon the following Memorandum of Points and Authorities, the affidavit attached hereto, the exhibit attached hereto, the papers and pleadings of file herein, and such other documentary and oral evidence as may be presented at the hearing of this Motion.

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**NOTICE OF MOTION**

TO: Attorney, Esq., Deputy District Attorney, Attorney for the Department of Family Services;

TO: Case Manager, Case Manager, Department of Family Services.

**PLEASE TAKE NOTICE** that the undersigned will bring the foregoing MOTION on for hearing before the Eighth Judicial District Court – Family Division, 601 N. Pecos Road, Las Vegas, Nevada 89101, on the Day day of Month, Year in Courtroom Courtroom **#** at Time.

**NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING.**

DATED this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **INTRODUCTION**

This Memorandum of Points and Authorities is submitted in support of CLIENT’s request for an order making the necessary factual findings to enable her to petition the United States Citizenship and Immigration Services (“USCIS” formerly “INS”) for SIJS pursuant to 8 U.S.C. §1101(a)(27)(J) and 8 C.F.R. §204.11.

1. **STATEMENT OF FACTS**

CLIENT is a 16-year-old minor who was born near Mexico City, Mexico. CLIENT was brought to the United States by her father when she was approximately seven years old. She has continuously lived in the United States since she was brought here. CLIENT’s mother resides in Mexico, but CLIENT has not seen her since she was approximately three years old and does not know why she stopped caring for CLIENT. CLIENT is currently a full-time student at Desert Pines High School in Las Vegas, Nevada. The court declared CLIENT a ward of the court on Date.

On Date, CLIENT’s father, Father, was arrested on the charges of physical abuse of CLIENT. He is currently incarcerated at Clark County Detention Center awaiting sentencing on Date. He also has an immigration hold so even were he to get probation, he would likely be deported. CLIENT’s natural mother has never participated in these proceedings and CLIENT’s stepmother rejected CLIENT and moved with her two natural children out of state.

CLIENT has been in the United States since she was about seven years old. She has been attending school since she arrived, and hopes to go to college. If CLIENT was sent back to Mexico, she would have no place to live. The requested findings of the court would make it possible for CLIENT to apply to USCIS for Special Immigrant Juvenile Status and become eligible for legal permanent residency, employment authorization, a social security card, financial aid for higher education once she graduates from high school, and the freedom to live in the United States without fear of removal.

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1. **LEGAL ARGUMENT**

Through the Immigration Act of 1990, Congress created the classification of Special Immigrant Juvenile to provide immigration relief for certain undocumented children in foster care, guardianship, or adoption situations whose parents were unable to provide for the child’s care or protection. *See* 8 U.S.C. §1101(a)(27)(J).

For purposes of immigration law, a juvenile court is defined as a “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. §204.11(a). This Court qualifies as a juvenile court for federal immigration purposes because it is authorized to make such determinations in Nevada.

As a prerequisite for a child present in the United States to establish eligibility for Special Immigrant Juvenile Status, a juvenile court must make the following findings:

1. The child has been declared dependent on a juvenile court.
2. The child’s reunification with one or both of her parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.
3. The child’s best interest would not be served by being returned to her country of origin.

8 U.S.C. §1101(a)(27)(J).

The juvenile court, however, does not make an immigration decision. Specifically, the juvenile court does not determine whether the child is eligible for Special Immigrant Juvenile Status. Rather, the requested findings are preliminary factual determinations which are prerequisites to the filing of an application for immigration relief from USCIS. *See* 8 C.F.R. §204.11(c)(6). Once the juvenile court issues these findings, the juvenile can apply to USCIS for Special Immigrant Juvenile Status and legal permanent residency. Without the requested findings, however, an undocumented child like CLIENT cannot petition for possible recognition as a Special Immigrant Juvenile by USCIS and will be unable to obtain the associated benefits of legal immigration status.

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1. CLIENT **is dependent on a juvenile court based on orders from this Court.**

Under the first prong of the SIJ provision, the subject minor must be declared dependent on a juvenile court, or whom such court has legally committed to, *or* placed under the custody of, an agency or department of a State or juvenile court located in the United States. 8 U.S.C. §1101(a)(27)(J)(i).

For purposes of immigration law, CLIENT meets the first prong and has been declared dependent on this juvenile court. In a Foster Care Order signed Date, she was declared a ward of the Family Court as a child in need of protection. (A copy of the Order is attached as Exhibit A). In addition, in the same Order, this Court gave legal custody of CLIENT to the Department of Family Services for out of home placement. *Id*. Therefore, CLIENT is dependent on this juvenile court for immigration purposes.

1. CLIENT**’s reunification with one or both of her parents is not viable due to abuse, neglect abandonment, or a similar basis found under State law.**

Eligibility for Special Immigrant Juvenile Status requires a finding that “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.” 8 U.S.C. §1101(a)(27)(J)(i). In 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act (“TVPRA”) amended portions of the Immigration and Nationality Act pertaining to Special Immigrant Juveniles. Prior to the 2008 amendment, the statute required a juvenile court to deem a juvenile eligible for long term foster care due to abuse, neglect, or abandonment. However, the TVPRA 2008 amendment removed the language that a juvenile court must deem a juvenile eligible for long-term foster care and replaced it with the requirement that reunification with one or both parents is not viable. Donald Neufeld, Acting Associate Director of USCIS, *Memorandum: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009).

Here, reunification with one or both parents is currently not a viable option for CLIENT. CLIENT’s reunification with her mother is not a viable option because CLIENT has not seen her since she was approximately 3 years old. In addition, CLIENT’s mother has never contacted the Department of Family Services, and has not made any attempt to see CLIENT for years. CLIENT’s current plan is not reunification, but rather Other Planned Permanent Living Arrangement with Independent Living. CLIENT’s reunification with her father is also not a viable option because he is currently incarcerated and is subject to deportation. Therefore, reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under State law.

1. **It is not in** CLIENT**’s best interest to be returned to her country of origin**.

Eligibility for Special Immigrant Juvenile Status requires a finding that it is not in CLIENT’s best interest to be returned to her “previous country of nationality or country of last habitual residence” 8 U.S.C. §1101(a)(27)(J)(ii). This Court is not required to “make a determination as to whether the minor child would be at risk of harm if returned to the country of origin; [this] Court needs to find that return would not be in the child’s best interest.” *In re E.G.,* 4 Misc. 3d 1238(A), 899 N.Y.S.2d 59 (Fam. Ct. 2009). Thus, this is a factual determination about the child’s situation that must be made by the juvenile court, not an immigration decision.

It is not in CLIENT’s best interest to return to Mexico, her previous country of nationality. Although born outside of the United States, CLIENT has been in this country since she was only about seven years old. She has attended school in the United States since arriving, and has plans to go to college. CLIENT was brought to the United States at such a young age. Accordingly, it is in CLIENT’s best interest not to be returned to Mexico.

1. **CONCLUSION**

Factual findings by this Court will enable CLIENT to petition USCIS for Special Immigrant Juvenile Status and legal permanent residency. Without such findings, CLIENT will remain undocumented, and her prospects of obtaining legal immigration status will be greatly reduced.

WHEREFORE, the petitioner respectfully requests the Court find and order the following:

1. That CLIENT, has been declared dependent upon the juvenile court;
2. That reunification with one or both of CLIENT’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
3. That it is not in CLIENT’s best interest to be returned to her country of origin; and
4. Any other relief this court deems just and proper.

Respectfully submitted this Day day of Month, Year.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTORNEY, ESQ.

Nevada Bar No.: Bar #

Address

**ADD AFFIDAVIT**

***CERTIFICATE OF MAILING***

I HEREBY CERTIFY that on the Day day of Month, Year, I placed a true and correct copy of the foregoing ***MOTION FOR FINDINGS ON THE ISSUE OF SPECIAL IMMIGRANT JUVENILE STATUS***,postage fully prepaid, in the United States Mail addressed as follows:

Attorney, Esq.

Deputy District Attorney Juvenile

Family Court

601 N. Pecos Road, Room 470

Las Vegas, Nevada 89101

Attorney for the Department of Family Services

Case Manager, Case Manager

Department of Family Services

701 N. Pecos Road, Bldg. K

Las Vegas, Nevada 89101

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An employee of

Firm

Exhibit “A”