

A RESOLUTION

25-225

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

July 11, 2023

To declare the existence of an emergency with respect to the need to amend Chapter 3 of Title 13 of the District of Columbia Official Code to provide that publication may be substituted for personal service of process for appointments of a vulnerable youth guardian in certain circumstances; and to amend Chapter 23 of Title 16 of the District of Columbia Official Code to authorize the Family Division of the Superior Court to appoint, modify, and terminate a new class of legal guardianship for vulnerable youth.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Vulnerable Youth Guardianship Protection Emergency Declaration Resolution of 2023”.

Sec. 2 (a) Special Immigrant Juvenile Status (“SIJS”) is a special humanitarian visa established by the federal government covering abused, neglected, or abandoned immigrant youth under age 21. If approved, those granted SIJS are authorized to work, maintain a Social Security Number, receive assistance for housing and education, and eventually apply for lawful permanent residency, making SIJS an important legal lifeline for vulnerable immigrant youth, especially undocumented immigrant youth.

(b) Under 8 U.S.C. § 1101(a)(27)(J), to apply for a SIJS visa, an applicant must be an unmarried noncitizen under 21 years of age, be presently residing in the United States, and possess a juvenile court order from a state court. The court order must find that:

(1) The petitioner is dependent on the court or under custody of a state agency, department, or court-appointed guardian;

(2) The petitioner has suffered from abuse, neglect, abandonment, or other related reason that makes reunification with the petitioner’s parents impossible; and

(3) It is in the best interest of the petitioner not to return to the previous country of nationality or the country of the last habitual residence of the petitioner or of the petitioner’s parents.

(c) Despite the intended reach of this humanitarian visa, a number of eligible immigrant youth in the District may be unable to access these critical protections due to an inconsistency between District law and federal law. Under current District law, the Superior Court of the District of Columbia lacks authority over unmarried noncitizens who are at least 18 but younger

than 21 that would be consistent with federal SIJS petition requirements. Specifically, the court does not have authority over these youth except in certain, extremely-limited circumstances, such as the youth being under the care of the Child and Family Service Agency or being legally found to have been subjected to neglect. Because the court's authority over unmarried noncitizens who are at least age 18 but younger than 21 is limited, the court has no legal mechanism to issue the orders necessary to allow a number of eligible youth to apply for SIJS, even though federally SIJS petitioners are allowed to petition until the age of 21. The court also lacks the necessary authority to appoint guardians to unmarried noncitizens who are at least age 18 but younger than 21, which can be a necessary component of the SIJS petition. This lack of authority prevents many immigrant youth (and in particular undocumented immigrant youth) who have suffered from abuse, abandonment, or neglect, in the District from obtaining relief from that past mistreatment by accessing these critical federal protections as intended.

(d) There is a pressing need to address the lack of access to federal protections and lack of accessible guardianship appointments for immigrant youth, one of the District's most vulnerable populations. Child welfare organizations, advocacy groups, and experts testified at the Committee on the Judiciary and Public Safety's June 8, 2023, hearing on the Vulnerable Youth Guardianship Protection Amendment Act of 2023, as introduced on January 19, 2023 (Bill 25-44) ("permanent bill"), that immigrant youth without the critical supports of guardianship are especially vulnerable to abuses such as human trafficking and housing insecurity. SIJS visas allow for the material benefits of access to employment, the procurement of a Social Security number, healthcare, assistance with housing and education, and eventually the possibility of applying for lawful permanent residency. The stability and safety that SIJS affords immigrant youth also fosters their emotional, psychological, and physical well-being by providing them with a stable and supportive schooling environment, community, and household. With the protections of a court appointed guardian, youth will not be forced to move from their friends and communities to other jurisdictions to try to access SIJS protections. SIJS thus importantly shields immigrant youth from emotional and psychological suffering, exploitation and abuse, involvement in illegal activity, material instability, and housing insecurity. Advocates testified that they must turn away several youths on a monthly basis because of this ongoing misalignment in District and federal law and that even eligible youth close to the cutoff age of 18 find it difficult to obtain a pro bono attorney with the expertise to rapidly prepare and file the necessary legal documents.

(e) It is federally estimated that more than one third of unaccompanied immigrant youth coming to the United States have already reached 17 years of age, meaning that when these youth arrive in the District they are already on the verge of aging out of Superior Court authority should they wish to seek federal relief under SIJS while residing in the District. This misalignment between the District and federal law means that, absent Council action, a class of vulnerable District immigrant youth will be unable to seek legal relief afforded to them by federal law and will be unable to seek the care and support of a guardianship appointment while living in the District.

ENROLLED ORIGINAL

(f) Although the Committee on the Judiciary and Public Safety is actively considering permanent legislation to provide the court with this authority, the Council could pass that legislation at the earliest in fall 2023, after which the bill will need to undergo both mayoral and congressional review. As a result, a permanent bill could not become effective until 2024 at the earliest, more than 6 months from now. The vulnerable immigrant youth the SIJS visa is intended to support cannot wait half a year or longer to be eligible for this critical relief from past abuse, abandonment, and neglect. Thus, it is essential that the Council act as soon as possible to provide the court with the authority necessary to provide the requested supports for SIJS visa petitions, appoint guardians where appropriate, and otherwise provide support to these vulnerable youth. That said, the emergency measures here have an effective date of September 1, 2023, to ensure the court has sufficient time to prepare for the anticipated influx of new cases.

Sec. 3. The determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Vulnerable Youth Guardianship Protection Emergency Amendment Act of 2023 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.