<u>**LEGAL GUIDANCE**</u>

Clarification of Interpretation of "Reunification with One or Both Parents" for Purposes of Establishing Eligibility for SIJ Classification

To be eligible for Special Immigrant Juvenile (SIJ) classification, a juvenile court must have determined that reunification with one or both of the petitioner's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. *See* 8 USC § 1101(a)(27)(J)(i); *see also* 6 USCIS Policy Manual J.2 (D)(2).

<u>Validity of Juvenile Court Order</u>
In order to be considered a valid juvenile court order for purposes of establishing SIJ eligibility, the court that issued the order must have had competent jurisdiction under state law to make the required determinations about the custody and care of juveniles. 8 C.F.R. § 204.11(a); *see also* 6 USCIS Policy Manual J.3 (A)(1). The evidence submitted must establish that the court had competent jurisdiction to make the required determinations about the care and custody of the petitioner, which includes parental reunification, as a juvenile. *See* 8 CFR 204.11(a) (definition of juvenile court) and 8 CFR 204.11(d)(2)(i)-(ii); *see also* 6 USCIS Policy Manual J.2 (D)(4). The required determinations are meant to be judicial conclusions made in accordance with the appropriate state law. *See* 6 USCIS Policy Manual J.3 (A)(2). Additionally, a state court order that relies on federal immigration law and regulations, including the definition of a child, instead of state law to support its jurisdiction and conclusions will not be considered valid for SIJ purposes. *See* 6 USCIS Policy Manual J.1 (A) and J.2 (D)(4).

The regulations as currently written require the court to have competent jurisdiction over dependency and long-term foster care decisions. 8 CFR 204.11(d)(2)(i)-(ii). The phrase "eligible for long-term foster care" is defined at 8 CFR 204.11(a) as a determination made by the juvenile court that family reunification is no longer a viable option. The regulations also state that this determination would be expected to remain in place until the child reached the age of majority. *Id*. The TVPRA of 2008 replaced the requirement that a court determine eligibility for long-term foster care with a requirement that the court simply determine that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. *See* section 235(d)(1)(A) of TVPRA 2008, Public Law 110-457, 122 Stat. 5044 (Dec. 23, 2008), 8 U.S.C. § 1101(a)(27)(J)(i).

<u>Determination that Reunification is No Longer Viable</u>
The determination that-parental reunification is no longer viable is a legal conclusion, made in accordance with relevant state child welfare laws, that the petitioner cannot reunify with one or both parents prior to aging out of the court's jurisdiction. *See* 8 U.S.C. § 1101(a)(27)(J)(i); 8 CFR 204.11(a) (definition of eligible for long-term foster care); *see also* 6 USCIS Policy Manual J.2(D). In order for a juvenile court to have authority to determine the non-viability of family reunification, the court must <u>have competent jurisdiction to determine whether a parent will be able to regain custody of the petitioner.</u> Therefore, in order for a court order to be valid for

the purpose of establishing SIJ eligibility, the court must have competent jurisdiction to determine both whether a parent could regain custody and to order reunification, if warranted. *See* 8 CFR 204.11(a) and 8 CFR 204.11(d)(2)(i)-(ii); *see also* 6 USCIS Policy Manual J.2 (D)(4).

Orders issued after child reaches age 18

In many jurisdictions, once a child attains the age of 18, a court's authority over custody matters ends. For example, under New York State Law, the ability of a parent to challenge the court's placement of the child outside of their own custody generally ends when the child becomes 18 years of age. *See In re Shontae R*, 48 A.D.3d 1006 (App. Div. 2008); *In re Michael O.F.*, 119 A.D.3d 785 (App. Div. 2014). This is also true outside of the realm of abuse and neglect proceedings. Specifically, parents are unable to obtain custody or pursue court ordered visitation after their child turns 18. *See Julian B. v. Williams,* 97 A.D.3d 670 (App. Div. 2012); *see also De Oliveira v. De Oliveira*, 151 A.D.3d 1062 (App. Div. 2017). Where a court loses the capacity to order reunification with a parent at age 18, they necessarily cannot make a juridical determination that reunification is not viable. Accordingly, a state court order finding that parental reunification is not viable will not be considered valid for the purpose of establishing SIJ eligibility if the evidence submitted by the petitioner does not establish the courts' jurisdiction under state law to place the child under the custody of the allegedly unfit parent.

Conclusion

If an order and corresponding evidence do not establish that the court had competent jurisdiction to make the reunification finding, an RFE should be issued. Suggested language to include in an RFE is as follows:

You attained the age of [age of majority in subject state] on or before [date order issued] when the court order you submitted was issued. Although you have presented evidence that a court has found you [dependent or placed you in a guardianship with your consent], because you had already reached the age of majority in [subject state], there is no evidence that the state court had jurisdiction under [subject state] state law to make a legal conclusion about returning you to your [mother's/father's/parents'] custody. The language in the order appears to be a factual determination that reunification was not practical, rather than a legal conclusion under the relevant state child welfare law that you cannot reunify with one or both of your parents[, and/or appears to be based upon the court taking jurisdiction by relying on the immigration law definition of child]. Please provide evidence of the court's jurisdiction to determine your [parent's/parents'] custody as of the date of the order.