



JAC SAFE PASSAGE IMMIGRATION PROJECT

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UPCOMING EVENTS!

SCO Know Your Rights Presentation and Immigration Screening at SCO Family of Services: Spring 2010

NYLS Adoption Law Conference: March 5, 2010

See inside for more details.

Professors Lenni B. Benson and Lindsay A. Curcio are the Co-directors of the Safe Passage Immigration Project at the Justice Action Center (JAC). New York Law School students Amy Bower 4L evening student, Luz Maria Restrepo 3L, and Kiran Siddiqi 3L are this year's JAC affiliates who are working on the Safe Passage Immigration Project as their capstones. Safe Passage is located at New York Law School, Room A402, 47 Worth Street, New York, NY 10013. Safe Passage can be accessed online at www.nyls.edu/immigration.

This newsletter is a publication of the Safe Passage Immigration Project at New York Law School's Justice Action Center. It was initially developed by Zarina H. Syed '09, JAC Graduate Fellow. The newsletter has been edited by Professors Lindsay Curcio, Lenni Benson, and Richard Marsico, and by student Luz Maria Restrepo 3L.



Who We Are

The Safe Passage Immigration Project at New York Law School's Justice Action Center is a program aimed at providing legal assistance to unrepresented minors seeking special immigrant juvenile (SIJ) status in family and immigration court (see below for more information about what SIJ is). Several NYC organizations, including The Door, the American Immigration Lawyers Association's Juvenile Docket, and SCO Family of Services refer SIJ cases to Safe Passage. Safe Passage then offers SIJ training to attorneys and New York Law School students and later enlists their assistance on the referred cases on a pro bono basis.

Safe Passage also provides mentoring and resources to volunteer attorneys and law students. Additionally, the project holds naturalization trainings and screening events to assist members of the community in preparing applications for citizenship.

Safe Passage currently has volunteer attorneys and students working on approximately 16 SIJ and other immigration-related cases throughout the NYC area.

Safe Passage was awarded the New York State Bar Association's President's Award for Pro Bono Service in 2008.

To learn more about volunteering with Safe Passage, e-mail safepassage@nyls.edu.



Left to right: Safe Passage Co-directors Professors Lenni Benson and Lindsay Curcio



JAC students who are working on Safe Passage for their capstones this year (left to right): Luz Maria Restrepo 3L, Amy Bower 4L evening student, and Kiran Siddiqi 3L

Why SIJ Is Important

Every year, thousands of juveniles are apprehended by U.S. immigration officials while entering the U.S. illegally. Many of these children are unaccompanied and are seeking refuge from abuse and maltreatment. Other children come to the U.S. lawfully with parents or family members who are later unable or unwilling to care for them for various reasons, such as physical or mental disability, death, or imprisonment. Additionally, some foreign national children who have lived in the United States most of their lives but never had an immigration status are currently in the U.S. foster care system because of parental abuse, neglect, and/or abandonment.

Special immigrant juvenile (SIJ) status is a special type of immigration status that provides a way for foreign national children under 21 who are abused, neglected, or abandoned by their parents to apply for legal permanent residence status in the U.S. SIJ status provides a way for these vulnerable children to legalize their immigration status and remain in the U.S. Eventually, these children will also have the opportunity to apply for citizenship.

Because immigration law is considered civil law, foreign national children who apply for SIJ affirmatively or defensively in removal proceedings are not entitled to legal counsel at government expense. As a result, many of these children face challenges in navigating a complex system on their own. Safe Passage aims to address the problem of the lack of legal representation by finding *pro bono* attorneys and volunteer law students to represent these children in family and immigration court.

SIJ Law in a Nutshell

Special Immigrant Juvenile (SIJ) status is a way for foreign national children under 21 who are abused, neglected, or abandoned by their parents to apply for legal permanent residence (LPR) status in the U.S.

To be eligible for SIJ, an applicant must establish that: (1) he or she is under 21 years old; (2) he or she is unmarried; (3) he or she has been declared dependent upon a juvenile court and eligible for long-term foster care because reunification with one or both parents is not viable due to abuse, neglect, or abandonment; and (4) it is not in the applicant's best interest to be returned to his or her (or his or her parents') country of nationality or last habitual residence. *See* Immigration and Nationality Act (INA) § 101(a)(27)(J); *see also* 8 C.F.R. § 204.11.

The SIJ process involves two steps. The first step occurs in either family court or surrogate's court, where the applicant must obtain a special findings order. Upon receipt of the order, the applicant may then petition to the U.S. Citizenship and Immigration Services or appear before immigration court to file an I-360 Petition for Special Immigrant Status along with an I-485 Application to Adjust Status.

Having SIJ status is beneficial in many ways. SIJ status waives several types of inadmissibility issues, including unlawful entry, working without authorization, public charge, and certain types of criminal violations. SIJ status also allows an immigrant to obtain LPR status, which in turn provides work authorization and allows the immigrant to eventually apply for U.S. citizenship.

Safe Passage News

Safe Passage Volunteer Student and Attorney Successful in Helping Minor to Gain Special Immigrant Juvenile Status

Safe Passage volunteer Jennifer Anzardo 3L and attorney Diana Stinaroff '07 were able to help R.C., a minor from El Salvador who was recently placed in removal proceedings, obtain special immigrant juvenile status.

First, Ms. Stinaroff successfully obtained a special findings order from family court. Soon after this, Ms. Stinaroff submitted an I-360 Special Immigrant Juvenile Petition to the United States Citizenship and Immigration Services (USCIS). USCIS recently approved R.C.'s SIJ Petition. Ms. Stinaroff is currently in the process of requesting that the immigration court allow R.C. to file for adjustment of status so that he can obtain legal permanent residence status. Throughout the entire process, Jennifer assisted Ms. Stinaroff with R.C.'s case. Jennifer used her Spanish language skills to translate for R.C. and Ms. Stinaroff. Jennifer was instrumental in obtaining the crucial facts that helped R.C. to obtain SIJ status.

Below is an article by Jennifer about her experience as a volunteer for Safe Passage and her excitement at helping R.C. obtain SIJ status, followed by a few words from Ms. Stinaroff about her experience as a volunteer attorney for Safe Passage.

My Experience as a Safe Passage Volunteer

By Jennifer Anzardo 3L



Safe Passage has been an unforgettable experience during my time at New York Law School. I joined Safe Passage as a 2L not knowing what to expect, not knowing a thing about immigration law or special immigrant juvenile status, and hoping to be able to get some practical experience. Little did I know that Safe Passage would exceed all of my expectations! I was assigned as a student volunteer to assist attorney

Diana Stinaroff on a case to help R.C., a 19-year-old from El Salvador, apply for special immigrant juvenile status. Because a language barrier existed between Ms. Stinaroff and R.C., Ms. Stinaroff had asked me several times to contact R.C. and act as a translator to get all the proper information needed for his application and affidavit.

This experience has allowed me to gain valuable information in learning how to communicate with a client to get the information needed, and most importantly, how to work on a relationship to earn a client's trust.

Recently, I was informed that the immigration court and family court granted the special findings order and then R.C.'s I-360 petition was granted. I was beyond thrilled to find out all the hard work put into this case ended up with such a positive result. Now, Ms. Stinaroff is in the process of requesting that the immigration court allow R.C. to file his application for adjustment of status to become a permanent resident.

Breaking Language Barriers

By Attorney Diana Stinaroff '07

I realized when I took R.C.'s SIJS case that the language difference would be a challenge to me. However, I was blessed with the services provided through the Safe Passage Project.

Translators, especially Jennifer Anzardo, were available to me right from the beginning and through to the end. With SIJS, time is of the essence, and I was fortunate to have students of the Safe Passage Project working with me and making language barriers non-existent.

Safe Passage Immigration Project Goes to Washington, D.C.!

By JAC Affiliate Amy Bower 4L Evening Student



Left to right: Amy Bower 4L evening student and Professor Lindsay Curcio in front of the Capitol dome in Washington, D.C.

On November 10, 2009, Professor Lindsay Curcio and I traveled to the United States Citizenship and Immigration Services (USCIS) headquarters in Washington, D.C., to attend a collaborative session on changes to the Trafficking Victims Protection Reauthorization Act (TVPRA) that affect unaccompanied minors in the U.S. At this collaborative session we learned that USCIS is in the clearance stage for new special immigrant juvenile regulations. We also met and distributed Safe Passage Immigration Project materials to USCIS officials, attorneys, and organizations that work on special immigrant juvenile issues. During the collaboration session, we heard excellent suggestions from organization representatives and practicing attorneys across the nation. One such suggestion that a few participants supported was the idea that USCIS could further implement the spirit of TVPRA by creating a specialized department at USCIS that would only be responsible for adjudicating special immigrant juvenile cases.

Safe Passage Students Attend NYC Immigration Events

By Zarina H. Syed '09, JAC Graduate Fellow*

Safe Passage students have been volunteering at events throughout the New York City area, including events sponsored by the Association of the Bar of the City of New York (ABCNY) and Justice for Our Neighbors. In the spring of 2009, Safe Passage students Analiz Velasquez '09*, Seng Yan Sin 2L, and Mary Frakes 3L volunteered for Justice for Our

Neighbors' immigration clinics, which are held throughout the New York City metropolitan area on Saturdays. Safe Passage students have also been attending the ABCNY's monthly immigration initiative clinics. Students Samuel Newbold 2L, Edit Shkreli 2L, Matthew Pizzo 2L, and Rosanna Vinas 2L attended the January 21, 2009 clinic in Washington Heights. When asked about his impressions of the event, Samuel Newbold wrote: "I learned *so* much in such a little while. The attorney I was assigned to offered me to contact him for future possibilities, and I ended up riding the subway back into the city with my interpreter, who was a huge help. It was very well run. Libby [attorney and Fragomen Fellow at the City Bar, Elizabeth Reichard] was organized and prepared. . . . I left inspired and excited about law. As a 1L, I'm just exploring my interests, but after this experience I really wanted to learn more about immigration law and how I can be a part of the process. Our clients arrived so broken, and were just begging for some direction and help. They left nearly in tears; all were smiling, and all were thankful. . . . Thank you for giving me this opportunity. It lit a candle for me."

* Zarina and Analiz graduated from New York Law School in 2009 and are awaiting admission to the New York Bar.

Pro Se Guide to the Immigration Court Rules

By Zarina H. Syed '09, JAC Graduate Fellow

Currently in Production: *A Pro Se Guide to the Immigration Court Rules*. Under the guidance of Professor Lenni B. Benson, JAC alumna Bethany L. Ow '09*, who is now a judicial law clerk for the Executive Office for Immigration Review, Department of Justice, created a guide to the immigration court practice manual. The objectives of the guide are to help individuals understand why they are in removal proceedings, why legal representation may help them reach a successful outcome in their case, and to make the practice manual more user-friendly for those with no legal background. The guide explains key vocabulary and terms used in immigration court proceedings, explains who is authorized to represent individuals in immigration court, and offers warnings regarding "notaries" and persons possibly involved in immigration fraud. The guide interprets sections of the practice manual into everyday language so that unrepresented individuals can try to understand and comply with its rules. English and Spanish language versions of the guide are currently being created.

A Call for Assistance: As professionals in the immigration field, your opinions regarding the content and format of the guide are the key to making a useful document. Any feedback you are willing to provide is greatly appreciated. To obtain a copy of the guide, please contact Bethany Ow at: bethany.ow@law.nyls.edu.

* Bethany graduated from New York Law School in May 2009 and is awaiting admission to the New York Bar.

Safe Passage Events (Past and Upcoming)

JAC's Safe Passage Immigration Project had an exciting and active year!

PAST EVENTS:

SCO Know Your Rights Presentation and Immigration Screening

By JAC Affiliate Luz Maria Restrepo 3L

On November 14, 2009, Safe Passage held a "Know Your Rights" presentation and immigration screening at the SCO Family of Services in Queens, New York. JAC capstone students Amy Bower 4L evening student, Luz Maria Restrepo 3L, and Kiran Siddiqi 3L presented on various topics, such as the consequences of lacking an immigration status, what to do if an immigration officer searches you, removal, special immigrant juvenile status, and alternative immigration benefits. The presentation was followed by a game designed to introduce the many types of immigration statuses available and the various kinds of relief for which one may apply.

After the presentation and game, the volunteer attorneys and students interviewed children, birth parents, and guardians to determine whether the children who were present at the event were eligible for special immigrant juvenile status and to answer their questions about various other immigration issues. The students who volunteered at the event were Amy Bower 4L evening student, Daniel Chu 1L, Mary Frakes 3L, Michele Gallo 2L, Mark Heron 2L, Luz Maria Restrepo 3L, Viviana Salcedo 1L, Kiran Siddiqi 3L, Bijitha Varghese 2L, and Olga Zagika 1L.

The following volunteer attorneys attended the event: New York Law School Professors Lenni Benson, Lindsay Curcio, and Richard Marsico; alumni Veronica Frosen '09*, Alissa Sandman '07, Rosanna Servidio '09*, and Martha Voelz '09*; and attorneys Merrill Clark and Eva Kozlowska. Morris Heney, Director of SCO Family of Services, was also present.

The SCO Family of Services is a community-based nonprofit organization that is dedicated to providing assistance to families devastated by poverty, children suffering from abuse and neglect, children and adults with special needs, and homeless families. SCO also provides innovative after-school programs and schools for children and teens with special needs. For more information about the SCO Family of Services, you can visit www.sco.org.

* Not yet admitted at time of event; graduated from the Law School in May 2009.



Left to right: Martha Voelz '09, Professor Lindsay Curcio, Rosanna Servidio '09, Mary Frakes 3L



Left to right: Daniel Chu 1L and Alissa Sandman '07



Kiran Siddiqi 3L



Amy Bower 4L evening student



Left to right: Luz Maria Restrepo 3L and Veronica Frosen '09

Safe Passage Immigration Project Hosts CLE Training for Attorneys

By JAC Affiliate Kiran Siddiqi 3L

On Monday, November 9, 2009, the Safe Passage Immigration Project hosted a special immigrant juvenile training session. The attorneys who attended the session were also able to receive CLE credit. Professors Lenni Benson and Lindsay Curcio led the training and explained special immigrant juvenile (SIJ) status in detail and how to go about filing a SIJ petition. Winnifred Charles '05 presented other immigration alternatives available for those who may not qualify for SIJ status. Morris Heney and Agata Roszkowski from SCO

Family of Services also joined us to train attorneys on best practices when working with children who may have suffered trauma. They also explained the foster care and guardianship system in New York State, of which many children that are eligible for SIJ status are a part.

The training was a success, with more than 50 attorneys in attendance. Many expressed their interest in helping minors obtain SIJ status, and a few joined us at SCO Family of Services the following weekend, where we held a Safe Passage immigration screening with foster children, minors, and their parents to help identify possible SIJ cases and other immigration-related issues.

Passage, other immigration benefits, and the proposed Dream Act. Materials for the training are available at the Safe Passage group on the Law School's Portal.



Agata Ratajczyk 3L and Jennifer Anzardo 3L



Professor Lindsay Curcio



Morris Heney, Director of SCO Family of Services



Agata Roszkowski, Supervisor of SCO Family of Services



Winnifred Charles, NYLS Class of 2005

The Best Legal Work Ever Done: Representing Refugees

By JAC Affiliate Marta Izak 3L

A panel discussion on “The Best Legal Work Ever Done: Representing Refugees” was held on October 26, 2009 and sponsored by the Justice Action Center, the Safe Passage Project, and the Immigration Law Students Association (ILSA). The panel was devoted to helping students and attorneys learn about representing refugees in immigration proceedings. The speakers included attorneys who work with refugees every day. Lori Adams '04, an attorney for Human Rights First, spoke about her work in assisting indigent refugees held in detention centers obtain pro bono counsel. She conducts intake interviews with the refugees then assigns a pro bono attorney to the case. Ms. Adams assists the attorney from the very first consultation up until immigration proceedings are culminated. James O'Malley '85 is the attorney for Deogratias “Deo” Niyizonkiza, a refugee from Burundi who survived genocide. Deo's amazing story is the inspiration for *Strength in What Remains*, a bestselling book by Pulitzer Prize-winning author Tracy Kidder. Mr. O'Malley spoke about gaining his client's trust, the importance of conducting country condition research to frame his client's case, and preparing his client to present his story to immigration officials in his quest to obtain asylum relief. For more information on this and many other events, please join the ILSA group in the Law School's Portal.

Special Immigrant Juvenile (SIJ) Training for Students

By JAC Affiliate Luz Maria Restrepo 3L

On September 24, 2009, Safe Passage Co-directors and New York Law School Professors Lenni Benson and Lindsay Curcio, as well as JAC affiliates Amy Bower 4L evening student, Luz Maria Restrepo 3L, and Kiran Siddiqi 3L, provided training on special immigrant juvenile status to New York Law School students. The purpose of the training was to familiarize students who were interested in volunteering for Safe Passage with the laws and procedures involved in assisting children and teenagers in their petitions for special immigrant juvenile status. Amy, Luz, and Kiran also talked about their own experiences with volunteering for Safe

Safe Passage Joins AILA's National Day of Action

By Zarina H. Syed '09, JAC Graduate Fellow

The American Immigration Lawyers Association (AILA) held its National Day of Action in Washington, D.C., on March 19 and in New York City on March 23, 2009. The annual event aims to educate members of Congress and their staffers about the problems plaguing the immigration system so that they can be more effective in crafting, promoting, and supporting legislative solutions. Advocates visited local offices of U.S. representatives and senators, and talked to the district staff members who typically handle constituent services and immigration casework. Safe Passage met with Mina Elias, the

Chief of Staff of Representative Carolyn Maloney's (D-14th) New York office. The group discussed Representative Maloney's work as co-chair of the Human Trafficking Caucus and as co-sponsor of the William Wilberforce Trafficking Victims Rights Protection Act, which includes many protections for special immigrant juvenile and unaccompanied minor asylum seekers. Safe Passage also met with Representative José Serrano's (D-16th) community liaison for immigration and environmental affairs. Attending the events in New York were Safe Passage Co-director Professor Lindsay Curcio, attorney Michael Mandel, attorney Elizabeth Barna '90, and students Zarina Syed '09, Analiz Vasquez '09, and Juliana Moran 3L.

NYLS Adoption Law Conference

By Zarina H. Syed '09, JAC Graduate Fellow

The Justice Action Center co-sponsored the 6th Annual Adoption Law Conference, *International Adoption: One Year After the Hague* at New York Law School on March 6, 2009. The Conference panelists discussed the state of international adoption on the one year anniversary of when the Hague Convention on Intercountry Adoption became effective in the U.S. Panelists for the event included U.S. Citizenship & Immigration Services' NYC District Director Andrea Quarantillo and District Adjudications Officer Denise Noel; Co-director of Safe Passage Professor Lindsay Curcio, and attorney Robert Gottfried, a partner at Hodgson Russ LLP. The conference also functioned as the conclusion of a working group session on intercountry adoption, which was held at Harvard Law School in January 2008.

SCO Know Your Rights Presentation and Immigration Screening

By Zarina H. Syed '09, JAC Graduate Fellow

On February 28, 2009, Safe Passage held a "Know Your Rights" presentation at SCO Family of Services in Queens, NY. The presentation included an overview of the deportation process and the different kinds of immigration relief currently available. The presentation also informed the audience about the importance of knowing one's current immigration status and the proposed Dream Act. The presentation was followed by a short game designed to teach volunteers the basics of immigration law. An immigration screening was held after the presentation whereby volunteer attorneys and students interviewed immigrant juveniles who attended the event to assess their eligibility for special immigrant juvenile status and other immigration benefits. Attendees for the event included immigrant juveniles, SCO directors and social workers, and birth and foster parents. Volunteer attorneys included Roberta Cohen '06, Manuel Garcia '08*, Joanna Kirby, Annamelda Paul '07, Sheerli Shamtoub**, and Professors Lenni Benson and Lindsay Curcio. New York Law School students included Jennifer Anzardo 3L, Alicia Arana***, Amy Bower 4L evening student, Viviana Cosme 4L, Mary Frakes 3L, Camelia

Ghiuzeli***, Kai Livramento 2L, Ivonne Norman 4L, Ruben Pena 2L, Agata Ratajczyk 3L, Luz Maria Restrepo 3L, Robert Scott 3L, Kiran Siddiqi 3L, Zarina Syed '09, Analiz Velasquez '09, and Kristin Wett 4L.

* *Not yet admitted at time of event.*

** *Pepperdine University School of Law graduate; not yet admitted at time of event.*

*** *Alicia and Camelia graduated from New York Law School in February 2010.*

SIJ Training at Kaye Scholer LLP

By Zarina H. Syed '09, JAC Graduate Fellow

On February 13, 2009, Safe Passage held a SIJ training for approximately 10 attorneys at the law firm of Kaye Scholer LLP. The training provided information on the representation of SIJ cases in family and immigration courts, special issues when working with children, and recent changes in immigration law. Presenting at the event were Safe Passage Co-director Professor Lindsay Curcio and students Zarina Syed '09, Luz Restrepo 3L, and Jennifer Anzardo 3L.

SIJ CLE Seminars

By Zarina H. Syed '09, JAC Graduate Fellow

On October 1 and October 27, 2008, Safe Passage held two SIJ CLE seminars for volunteer attorneys at the Law School. Speakers for the two events included: Katherine Fleet, an attorney with the Legal Aid Society's Immigration Law Unit; Harry Gelb, Assistant Supervising Attorney at the NYC Administration for Children's Services; Morris Heney, Director of Rapid Assessment/Permanency Plus Programs at SCO Family of Services; Agata Roszkowski, a supervisor with SCO Family of Services and student at the Hunter College School of Social Work; and Professors Lenni Benson and Lindsay Curcio, Co-directors of the Safe Passage Immigration Project. Approximately 40 volunteer attorneys attended these two trainings.

Naturalization Training

By Zarina H. Syed '09, JAC Graduate Fellow

Safe Passage held special immigrant juvenile (SIJ) status and naturalization trainings for New York Law School students in August and September 2008. Professors Lenni Benson and Lindsay Curcio, Co-directors of the Safe Passage Immigration Project, led the programs. The August naturalization training attracted over 100 first-year students, while approximately 50 students attended the SIJ training in September.

For further information about our events or to be added to our listserv or volunteer list, please send an e-mail to safepassage@nyls.edu.

Film Screening: The Visitor

On February 2, 2010, the Immigration Law Students Association (ILSA) and Safe Passage held a screening of *The Visitor*, a touching story about a professor who comes home to find a Syrian musician and Senegalese street vendor living in his apartment, both undocumented. The professor allows them to stay at his apartment and slowly develops a close friendship with them. The musician is later arrested and sent to a detention center and the professor hires a lawyer to defend his friend against removal. For more information about *The Visitor*, please visit www.thevisitorfilm.com.

After the screening, a panel of speakers from Families for Freedom presented a talk about the movie and took questions from the audience. The panelists, who were themselves detainees at one time, also described their experiences in the detention centers, including the quality of the centers, the staffing, the difficulties with visitations, and the difficulties in addressing and resolving their legal issues.

Safe Passage will also be planning another film screening, so stay tuned for more information on that as well!

UPCOMING EVENTS:

SCO Know Your Rights Presentation and Immigration Screening

Spring 2010

Safe Passage will hold another “Know Your Rights” presentation and screening at the SCO Family of Services, Genovese Family Life Center in Queens, NY in February 2010. The presentation will include information about the importance of knowing your immigration status, an overview of the deportation process, and various forms of immigration relief. The presentation will be followed by an immigration screening, during which attorneys and volunteers will interview children and teens who attend the event to determine whether they may be eligible for special immigrant juvenile status or another type of immigration status. See “Past Events” above to read about the most recent SCO event and the dedicated student volunteers who participated!

NYLS Adoption Law Conference and Symposium

March 5, 2010

The Justice Action Center, the *New York Law School Law Review*, and the Harvard Adoption Project will be co-sponsoring the 7th Annual Adoption Law Conference on March 5, 2010 at New York Law School. This year’s conference will explore national and international policies that promote the preservation and reunification of families and the creation of permanent families for unparented children. Diane B. Kunz, Executive Director of the Center for Adoption

Policy and JAC affiliate Evita Torre 3L will be working on the conference in conjunction with Professor Carlin Meyer, Director of the Law School’s new Diane Abbey Law Center for Children and Families; affiliates of the Abbey Center; and participants in the Safe Passage Immigration Project. There will be more to come on the date, time, location, and speakers in the next Safe Passage Newsletter. In the meantime, see “Past Events” above for a summary of the Adoption Law Conference that took place on March 6, 2009.

Immigration Law Developments

Post-18 Guardianships in NY State

By Zarina H. Syed '09, JAC Graduate Fellow

The Immigration and Nationality Act (INA) created a provision to enable undocumented minors in the U.S. to apply for special immigrant juvenile (SIJ) status and obtain legal permanent residency. See INA § 101(a)(27)(J); see also 8 CFR § 204.11(a). The Appellate Division, First Department has held that the “appointment of a guardian constitutes the necessary declaration of dependency on a juvenile court” for purposes of SIJ petitions. See *In Re Antowa McD.*, 50 A.D.3d 507 (1st Dept. 2008). Under the 2006 Amendments to the Surrogate’s Court Procedure Act, guardianships for persons under 21 years old were made available in certain situations. See Surr. Ct. Proc. Act §§ 103 and 1707(2) (2009). Despite these amendments, in May 2008 the Second Department held that the family court did not have guardianship jurisdiction past the age of 18 because the child was no longer a “minor” under the New York State Family Court Act. See *In Re Vanessa D.*, 51 A.D.3d 790, 858 N.Y.S.2d 687 (2nd Dept. 2008). In response to this decision, an amended version of the NYS Family Court Act was enacted in November 2008 which allows for post-18 guardianships in New York State family courts. The new law states, in pertinent part: “For purposes of appointment of a guardian of the person pursuant to this part, the terms infant or minor shall include a person who is less than twenty-one years old who consents to the appointment or continuation of a guardian after the age of eighteen.” See Fam. Ct. Act § 661. This new legislation allows an applicant for SIJ status to petition for guardianship after the age of 18 and effectively allows those persons between the ages of 18 and 21 to apply for SIJ status.

Visa Waiver Updates with the New Mandatory “ESTA”

By Matthew Covey 3L Evening Student

The visa waiver program (VWP), which allows citizens from 35 countries to enter the U.S. for up to 90 days without first obtaining a visa, has been significantly improved with the introduction of a new program called the Electronic System for Travel Authorization (ESTA).

As of January 12 of this year, the U.S. Department of Homeland Security (DHS) requires foreign nationals planning to enter the U.S. under the VWP to complete an online application for travel authorization before they travel. ESTA requires essentially the same information that is required of travelers completing Form I-94 onboard U.S.-bound airlines. In fact, DHS explains that ESTA is an enhancement of the Form I-94 system, and ESTA may ultimately replace the I-94. A traveler need not have specific travel plans before he or she applies, and once the system has authorized an individual for travel, the authorization is valid for two years or until his or her passport expires (whichever comes first). The application process is free and can be completed by the traveler, or for the traveler by friends, family, or travel professionals.

DHS says that the ESTA program allows it to process visa waiver applications efficiently and also allows travelers to determine, in advance of their departure, whether they are eligible for the VWP. ESTA also aids in making the record of departure no longer contingent on the I-94 system. Reportedly, in most cases, ESTA confirms eligibility for the VWP immediately. DHS recommends that travelers apply 72 hours before they travel, though it appears that travelers can apply as late as prior to departure at an Internet café at the airport, and still be approved for the program.

ESTA has received significant media attention around the world. It appears, however, that many of the concerns about the system may have been overstated. Reports of system malfunction are rare, and DHS officers have reportedly been accommodating to travelers who arrive at the airport unaware of the new procedure. However, in several countries, a sophisticated parasitic industry has sprung up to “aid” travelers in preparing applications. Travel agents and Web sites are reported to be charging from \$50 to \$250 to complete ESTA applications. One particular Web site, for example, was designed to look like a U.S. government Web site, but offered travelers misleading information.

The VWP is authorized by the Immigration and Nationality Act (INA) § 217. INA §§ 217(a)(9) – 217(a)(11) were amended in 2007 to prepare for the creation of ESTA. The official U.S. Government’s ESTA Web site is located at: www.cbp.gov/xp/cgov/travel/id_visa/esta/.

New Protections for Unaccompanied Minors in the Trafficking Victims Protection Reauthorization Act (TVPRA)

By Zarina H. Syed '09, JAC Graduate Fellow

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Act) was enacted on December 23, 2008 in order to enhance measures to combat human trafficking. *See* Pub. L. No. 110-457, 122 Stat. 5044 (2008). Section 235 of the Act, titled “Enhancing Efforts to Combat

the Trafficking of Children,” sets forth numerous provisions relating to the treatment of unaccompanied alien children who may be eligible for asylum or special immigrant juvenile (SIJ) status. The following is an overview of the main provisions of the Act.

Creation of a Safe Repatriation Program

The Act directs the Secretary of the U.S. Department of Homeland Security (DHS), along with the Secretary of State, the Attorney General (AG), and the Secretary of Health and Human Services (HHS), to develop a pilot program on safe repatriation for unaccompanied alien children in the U.S. The Act also requires that these agencies provide Congress with an annual report on their repatriation activities, including the number of unaccompanied alien children ordered to be removed and the number of such children actually removed from the U.S.; the nationalities, ages, and gender of such children; policies and procedures used to effect removal of such children; steps taken by the representatives of the agencies to ensure that such children are safely and humanely repatriated to their home countries; and the type of immigration relief sought and denied to such children.

Custody and Care of HHS

The Act requires that within 48 hours of the apprehension of an unaccompanied alien child by a government agency, the child must be either returned home or screened by that agency for immigration relief by determining whether the child has a credible fear of persecution if returned to her home country or if the child is a trafficking victim. If a determination cannot be made within 48 hours, or if it is determined that the child does not have a credible fear of persecution or is not a trafficking victim, the child must immediately be transferred to the exclusive care and custody of HHS.

Placement

Upon transfer to HHS custody, the Act requires that HHS place an unaccompanied foreign national child in the least restrictive setting that is in the best interest of the child. A child must not be placed in a secure facility unless it is determined that the child poses a danger to herself or others, or where she has been charged with committing a crime. Where a child is placed in a secure facility, the placement must be reviewed on a monthly basis to determine if such placement remains warranted. Before placing an unaccompanied alien child with an individual (custodian), HHS must first determine whether a home study is necessary. If a child is placed with a custodian, HHS must work with the Executive Office for Immigration Review (EOIR) to ensure that such custodian receives a legal orientation presentation. Such orientations must address the custodian’s responsibility to ensure the child’s appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking.

Legal Counsel and Child Advocates

The Act authorizes HHS to appoint independent child advocates for child trafficking victims and other vulnerable unaccompanied alien children. Additionally, the Act requires HHS to ensure that children who are placed in removal proceedings have access to *pro bono* legal counsel to the greatest extent practicable.

Effect on Special Immigrant Juveniles

The Act specifically prohibits the United States Citizenship and Immigration Services (USCIS) from denying special immigrant juvenile status to an applicant solely based on the applicant's age as long as the applicant was a child (under 21) on the date the petition was filed.

The Act also makes a few changes to the definition of a special immigrant juvenile as found in the Immigration and Nationality Act (INA) § 101(a)(27)(J). The Act inserts "State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose 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" into INA § 101(a)(27)(J)(i). The Act also inserts "the Secretary of Homeland Security consents to the grant of special immigrant juvenile status" in INA § 101(a)(27)(J)(iii). Further, in INA § 101(a)(27)(J)(iii)(I), the Act strikes "in the actual or constructive custody of the AG unless the AG specifically consents to such jurisdiction" and inserts "in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction." It is important to note that when an attorney requests a special findings order during a guardianship proceeding, the attorney makes sure that the judge includes the above language in the order. Finally, the Act requires DHS to adjudicate SIJ applications within 180 days of filing.

The full text of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 can be accessed online at the Library of Congress' Web site at: www.usdoj.gov/olp/pdf/wilberforce-act.pdf.

Safe Passage Resource Center

Safe Passage Resources at JAC

Safe Passage now has a new place to house its resources. The Justice Action Center's office at New York Law School, located in room A402 of 47 Worth Street, now has a space devoted exclusively to Safe Passage materials, including sample court forms, past CLE training manuals, relevant laws and regulations, and agency memoranda. Students are welcome to utilize these resources at their convenience and volunteer attorneys can make an appointment to use these resources during regular business hours.

Online Special Immigrant Juvenile (SIJ) Resources

For more information about SIJ, you can visit the following Web sites:

NYLS Safe Passage Immigration Project:
www.nyls.edu/immigration

**Center for Human Rights and Constitutional Law:
Unaccompanied Minors Project:**
<http://immigrantchildren.org/SIJS/>

American Immigration Lawyers Association (AILA):
www.aila.org

The Door:
www.door.org

U.S. Citizenship and Immigration Services:
www.uscis.gov

Executive Office for Immigration Review:
www.usdoj.gov/eoir/



Welcome! Zarina H. Syed '09 joined the Justice Action Center as its Graduate Fellow in January 2010. Last year, Zarina worked with Safe Passage as her Capstone Project, and we are delighted to have her on the Safe Passage team again.