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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF SAN MATEO**
8 **PROBATE DIVISION**

9 In the matter of:

10 Maria Estefany Garcia Ruiz,

11 a Minor

)
) Case No.:

)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES REGARDING**
) **MINOR'S ELIGIBILITY FOR SPECIAL**
) **IMMIGRANT JUVENILE STATUS**

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15 Petitioner Brianna Alcalá, through counsel, submits this Memorandum for the Court's consideration:

16
17 **I. INTRODUCTION**

18 This Memorandum of Points and Authorities is submitted in support of Maria Estefany Garcia
19 Ruiz request for an order making the necessary factual findings to enable her granddaughter Maria
20 Estefany Garcia Ruiz to petition U.S. Citizenship and Immigration Services ("USCIS") for Special
21 Immigrant Juvenile Status ("SIJS"), pursuant to Section 101(a)(27)(J) of the Immigration and
22 National Act (the "INA"), codified at 8 U.S.C. 1101(a)(27)(J).

23 Under the statute, a Special Immigrant Juvenile is an unmarried person under the age of twenty-
one who is in the United States, who has been declared dependent on a juvenile court located in the

1 United States or whom a juvenile court has legally committed to, or placed in the custody of, an
2 agency or department of a State or of an individual or entity appointed by a State or juvenile court,
3 and whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or
4 a similar basis found in state law. 8 U.S.C. § 1101(a)(27)(J).

5 For Maria Estefany Garcia Ruiz (Maria) to be eligible to apply to USCIS for SIJS, a juvenile or
6 state court must first make several findings of fact. The required findings are as follows:

- 7 1. The child is dependent upon the juvenile court or has been legally committed to, or placed
8 in the custody of, an agency or department of a State, or an individual or entity appointed
9 by a State or juvenile court, within the meaning of 8 U.S.C. § 1101(a)(27)(J);
- 10 2. The child's reunification with one or both parents is not viable due to abuse, neglect,
11 abandonment, or a similar basis found under state law, within the meaning of 8 U.S.C. §
12 1101(a)(27)(J);
- 13 3. It is not in the "best interest" of the child to be returned to her or her parents' previous
14 country of nationality or country of last habitual residence, within the meaning of 8 U.S.C.
15 § 1101(a)(27)(J).

16 The juvenile or state court, rather than the immigration authorities, is charged with making these
17 findings because of its expertise and experience in juvenile matters. However, these factual findings,
18 standing alone, will not entitle Maria to Special Immigrant Juvenile Status or to lawful permanent
19 residency in the United States. Rather, they will serve as a *prerequisite* to the filing of a petition for
20 such immigration relief with USCIS. *See* 8 C.F.R. § 204.11(d). Without the requested court order,
21 Maria cannot petition USCIS for SIJS. *Id.* She must submit the order to USCIS as part of her
22 petition for SIJS. USCIS retains complete discretionary authority to approve or deny Maria's petition
23 for SIJS and application for permanent residency. Maria respectfully requests that the Court issue an

1 order making the appropriate findings of fact to enable her to petition for SIJS and apply for lawful
2 permanent residency.

3
4 **II. STATEMENT OF FACTS**

5 Maria was born on [REDACTED] in [REDACTED] El Salvador. Maria's mother is Maria
6 Ruiz Figueroa.

7 Maria's father abandoned her before she was born. His name does not appear on her birth
8 certificate. However, Maria's mother stated that her father was Luis Garcia Sanchez. Maria has
9 never had a relationship with her father. Her father has never acknowledged Maria as his daughter.
10 Her father has never communicated with her and has never provided any financial support for her.
11 Maria has only seen her father from a distance in passing, despite her father residing nearby.

12 Maria was abandoned by her mother when she was 5 years old. Her mother left El Salvador for
13 Guatemala in [REDACTED]. She has not communicated with her since she left. She has not
14 provided any financial support for her since this time.

15 Maria was raised by her maternal aunt, in El Salvador. Her maternal grandmother, the proposed
16 guardian Brianna Alcalá, maintained a strong relationship with Maria by speaking to her regularly on
17 the phone and by sending money and gifts to El Salvador for her. Her maternal grandmother has had
18 occasional contact with her mother; however, her mother has not attempted to communicate with her.

19 Maria came to the United States in March 2013 to reunite with her maternal grandmother and to
20 flee the gangs in her neighborhood. There was significant gang activity in her neighborhood. Maria
21 was afraid of gang members who congregated outside of her house and her school. Maria was also
22 no longer able to attend school in El Salvador at the beginning of 2013 because it was too expensive.

23 In the United States, Maria has been able to return to school. She is in the 8th grade at [REDACTED]
[REDACTED]. She hopes to graduate from high school and have a career. She would like

1 to attend military college. She feels safer in the United States, and wishes to remain here with her
2 maternal grandmother.

3
4 **III. ARGUMENT**

5 **a. THIS COURT IS A “JUVENILE COURT” THAT IS AUTHORIZED TO MAKE**
6 **FACTUAL FINDINGS FOR SPECIAL IMMIGRANT JUVENILE STATUS.**

7 For Maria to qualify to apply for Special Immigrant Juvenile Status, factual findings must be
8 made by a state “juvenile court.” 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11. Immigration
9 regulations define the term “juvenile court” as “a court located in the United States having
10 jurisdiction under state law to make judicial determinations about the custody and care of juveniles.”
11 8 C.F.R. § 204.11(a). This definition is broader than the usage of the term “juvenile court” in the
12 California Welfare & Institutions Code, which refers to dependency courts as juvenile courts. *See*
13 *Cal. Wel. & Inst. Code § 300 et seq.* The Court of Appeal, Second Appellate District, concluded that
14 a superior court in a probate guardianship proceeding is a “juvenile court” for the purpose of making
15 the requisite factual findings for Special Immigrant Juvenile Status. *B. F., et al., Minors v. Superior*
16 *Court* (2012) 207 Cal.App.4th 621, 627-29. The Court of Appeal reasoned that in making a probate
17 guardianship decision, the state court is making a “judicial determination about the custody and care”
18 of the minor. Therefore, this Court clearly qualifies as a “juvenile court” for purposes of the statutory
19 definition, such that it has the authority to make factual findings to establish the minor’s eligibility for
20 Special Immigrant Juvenile Status.

21 **b. MARIA IS “DEPENDENT” UPON THIS COURT.**

22 For the purpose of Special Immigrant Juvenile Status, “[t]he acceptance of jurisdiction
23 over the custody of a child . . . makes the child dependent on the juvenile court.” *Matter of Jose A.*
Menjivar, 29 Immig. Rptr. B2-37 (1994). In establishing a guardianship of the person, this Court is

1 accepting jurisdiction over the custody of Maria such that she is dependent on the juvenile court for
2 the purposes of SIJS. Additionally, Maria is a child who has been placed in the custody of an
3 individual appointed by this Court, because she has been placed in the custody of her guardian.
4

5 **c. REUNIFICATION WITH ONE OR BOTH OF MARIA’S PARENTS IS NOT**
6 **VIABLE DUE TO ABUSE, ABANDONMENT, OR NEGLECT, OR A SIMILAR**
7 **BASIS UNDER STATE LAW.**

8 In order to be eligible for Special Immigrant Juvenile Status, Maria must show that
9 reunification with “one or both parents” is not viable due to abuse, abandonment, or neglect, or a
10 similar basis under state law. 8 U.S.C. 1101(a)(27)(J)(i). Reunification is not viable with either of
11 Maria’s parents on account of abandonment. Maria has never had a relationship with her father. Her
12 father abandoned her and her mother before Maria was born. Her father has never acknowledged
13 Maria as his daughter. He failed to provide financial or emotional support for Maria. Maria has
14 never spoken to her father, and has only seen him in passing from a distance. Maria was abandoned
15 by her mother when she was approximately 5 years old. Her mother left El Salvador to live in
16 Guatemala. Maria was left with her maternal aunt, who raised her in El Salvador. Maria’s mother
17 failed to communicate with her and failed to provide any financial support for her. Maria has not
18 spoken to her mother since she abandoned her. Maria’s maternal grandmother, the proposed
19 guardian and petitioner in this matter, has had intermittent contact with Maria’s mother. This failure
20 to communicate and provide support constitutes abandonment under California law. Reunification
21 with Maria’s parents is thus not viable due to abandonment.

22 **d. IT IS NOT IN MARIA’S BEST INTEREST TO RETURN TO EL SALVADOR,**
23 **HER COUNTRY OF ORIGIN.**

1 In order to be eligible for Special Immigrant Juvenile Status, this Court must find that it is
2 not in Maria's best interest to return to her country of origin. 8 U.S.C. § 1101(a)(27)(J)(i). In order
3 for the court to make this determination, it should examine all of the circumstances affecting the
4 child's well-being and interests. *See* 8 C.F.R. § 204(c)(6). Maria's present situation shows that it is
5 indeed not in her best interest to return to El Salvador, her country of origin.

6 Maria left El Salvador to reunite with her maternal grandmother and to flee gang activity in
7 her neighborhood. She felt threatened by gang members who congregated outside of her house and
8 her school. She was no longer able to attend school at the beginning of 2013 because she could not
9 afford the necessary supplies. She hoped to have a better life in the United States.

10 Maria is attending school in the United States. She hopes to graduate and pursue a career.
11 She would like to attend military college. She does not believe she would have the same
12 opportunities in El Salvador Maria is currently living with her maternal grandmother, who has been
13 providing her with a safe and stable home. It is therefore in Maria's best interest not to be returned to
14 El Salvador, her country of origin.

15
16 **IV. CONCLUSION**

17 For purposes of her eligibility to apply for Special Immigrant Juvenile Status with U.S.
18 Citizenship and Immigration Services, Maria falls under the provisions of the statute. She is
19 dependent on this Court. Reunification with her parents is not viable due to abandonment. It is not in
20 Maria's best interest to be returned to El Salvador. This Court's declaration of these facts will enable
21 Maria to apply for lawful permanent residency in the United States, which, if granted, will allow her
22 a chance for a healthy, safe and stable life.
23

1 Without this Court's findings, Maria will likely not qualify for immigration relief and she
2 faces possible deportation to El Salvador. For the foregoing reasons, Brianna Alcala respectfully
3 requests that this Court issue an order making the requisite findings enabling her granddaughter
4 Maria Estefany Garcia Ruiz to petition the Immigration Services for Special Immigrant Juvenile
5 Status.

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7 Dated: September 10, 2014

Respectfully submitted,

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Helen Beasley
Attorney for Petitioner