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THE COUNCIL

Committee Report of the Governmental Affairs Division

Robert Newman, Legislative Director
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COMMITTEE ON IMMIGRATION

Hon. Daniel Dromm, Chair

Wednesday, March 24, 2010

Proposed Int. No.3-A: By Council Members Dromm, Cabrera, Arroyo, Jackson, Barron, Brewer, Dickens, Eugene, Ferreras, Fidler, Foster, Gonzalez, James, Koppell, Koslowitz, Lander, Lappin, Mark-Viverito, Mealy, Palma, Seabrook, Vann, Williams, Nelson, Rodriguez and Van Bramer

Title: A Local Law to amend the administrative code of the city of New York, in relation to requiring the Administration for Children's Services to review strategies and create a plan of action to protect children who qualify for Special Immigrant Juvenile Status.

Introduction

On Wednesday, March 24, 2010, the Committee on Immigration, chaired by Council Member Daniel Dromm, will hold a hearing on Proposed Introductory Bill Number 3-A (“Prop. Int. No. 3-A”), a Local Law to amend the administrative code of the city of New York, in relation to requiring the Administration for Children’s Services to review strategies and create a plan of action to protect children who qualify for Special Immigrant Juvenile Status. The Committee previously held a hearing on Int. No. 3 on March 2, 2010.

Background

New York City’s Administration for Children’s Services (ACS) provides child welfare services to families and children in New York City regardless of citizenship status.¹ The child welfare services provided by ACS include child protective, preventive and foster care services.² According to ACS there were 15,965 children in the foster care system as of November 2009.³ Some of the children placed into ACS’s care are undocumented immigrants and may be eligible for Special Immigrant Juvenile Status (“SIJS”). ACS is responsible for aiding these children in obtaining SIJS in order for them to become eligible for adjustment of status and to obtain benefits, such as the ability to work and receive student loans. Determining which children may be undocumented and therefore eligible for SIJS is often difficult because undocumented youth, like undocumented adults, are hesitant to disclose their status for fear of deportation.

¹ Testimony of Deputy Commissioner Ronald Richter, New York City Administration for Children’s Services, before the Committees on Immigration and General Welfare, 12 (Jan. 29, 2007) (on file with Committee on Immigration staff).

² Testimony of Mark Lewis, Director of Immigration Services, New York City Administration for Children’s Services, before the City Council, Committee on Immigration, 1 (Oct. 26, 2009) (on file with Committee on Immigration Staff).

³ New York City Administration for Children’s Services Flash Indicators January 2010, available at http://www.nyc.gov/html/acs/downloads/pdf/stats_monthly_flash.pdf (site visited Feb. 24, 2010).

Additionally, undocumented children may not know their status because they were brought to the United States at a young age. Because immigrant children pose a special challenge to ACS staff, ACS provides special training to all staffers, including child protective staff, attorneys and foster care directors.⁴ The New York City Council has held hearings since 2006 on ACS's efforts to identify and assist children who qualify for SIJS. The Council received testimony from ACS as well as immigration and child welfare advocates who work with immigrant youths and ACS on a regular basis. Since the City Council's first hearing on this issue there have been some changes to the federal law that have expanded the class of young people who may be deemed SIJS-eligible. Additionally, on January 20, 2010, Mayor Bloomberg announced the merger of the City's Department of Juvenile Justice (DJJ) into ACS.⁵ DJJ has custody of juvenile offenders between the ages of 11 and 16 as they await trial and sentencing.⁶ In FY2009, DJJ admitted 5,833 juveniles into its custody.⁷ This has resulted in an increase in the general population that ACS must serve as well as a potential increase in the number of SIJS-eligible children within its care.

Special Immigrant Juvenile Status

The federal Immigration Act of 1990⁸ established special immigrant status for non-citizens "declared dependent on a juvenile court in the United States."⁹ This statute was most

⁴ New York City Administration for Children's Services Immigration and Language Guidelines for Child Welfare Staff (2nd Ed.); Richter Testimony (2007), 15-16.

⁵ Mayor Bloomberg State of the City Address, Jan. 20, 2010, available at http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2010a%2Fpr029-10.html&cc=unused1978&rc=1194&ndi=1.

⁶ Julie Bosman, *City Signals Intent to Put Fewer Teenagers in Jail*, New York Times, Jan. 21, 2010.

⁷ City of New York, Preliminary Mayor's Management Report, Department of Juvenile Justice, 134 (Feb. 10, 2010) available at http://home2.nyc.gov/html/ops/downloads/pdf/2010_mmr/0210_mmr.pdf.

⁸ Pub. L. No. 101-649, § 153, 104 Stat. 4978, 5005-06 (1990) (codified as amended at 8 U.S.C. § 1101).

⁹ 8 U.S.C. § 1101(a)(27)(J) (2010).

recently amended by the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), expanding the definition of a special immigrant juvenile.¹⁰ Prior to the amendments under the TVPRA, in order to qualify for SIJS, an applicant would have had to establish that he or she was (i) under 21 years of age; (ii) unmarried; (iii) declared dependent on a juvenile court; (iv) deemed eligible for long-term foster care by the juvenile court due to abuse, neglect, or abandonment; and (v) found best served by not being returned to his or her country of origin.¹¹ Now, an immigrant juvenile can be deemed eligible for SIJS if “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” and he or she is either:

- (i) declared dependent on a juvenile court;
- (ii) legally committed to, or placed under the custody of, an agency or department of state by a juvenile court; or
- (iii) placed under the custody of an individual or entity appointed by a state or juvenile court.¹²

As a result of these changes, Family Courts have increased flexibility to make the appropriate findings for minors because they can rely on state law and because findings can be made against one parent, rather than both parents.¹³ These changes will likely result in a larger number of children being eligible for SIJS.¹⁴

¹⁰ USCIS, Memorandum to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, 2 (Mar. 24, 2009).

¹¹ 8 CFR §204.11(c).

¹² INA §101(a)(27)(J)(i).

¹³ Testimony by Myra Elgabry, Director, Immigration Rights Project, Lawyers for Children, Inc., before the New York City Council, Committee on Immigration, 2 (Oct. 26, 2009) (On file with Committee on Immigration Staff); USCIS, Memorandum to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, 2 (Mar. 24, 2009).

¹⁴ Elgabry Testimony, 2.

Based upon the receipt of SIJS classification, a young person becomes eligible for adjustment of status and may apply for lawful permanent residency, which confers additional rights to authorized employment within the United States and eligibility to naturalize after five years.¹⁵ An immigrant child who successfully adjusts his or her status as a result of SIJS classification may receive all of the benefits of lawful permanent residence.¹⁶

Local Treatment of SIJS-Eligible Children

On August 19, 2008, the New York State Office of Children and Family Services, with the assistance of ACS,¹⁷ issued an Administrative Directive notifying local departments of social services and voluntary authorized agencies that SIJS eligibility must be assessed for youth in foster care who are neither U.S. citizens nor lawful permanent residents.¹⁸ The Administrative Directive indicates that SIJS should be pursued wherever appropriate and emphasizes the importance of filing a timely application.¹⁹ The Administrative Directive further states that SIJS applications must be completed before youth leave foster care.²⁰

Consistent with the Administrative Directive, ACS issued its own policy on SIJS in August 2009 in an effort to ensure that children do not leave foster care without being considered for SIJS.²¹ This policy provides: (i) a list of indicators to be used by foster care provider agencies to determine immigration status of children; (ii) criteria for SIJS eligibility; and (iii) an

¹⁵ 8 C.F.R. § 245.2; ¹⁵ ILRC *supra* at 1; USCIS Interoffice Memorandum, *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions* (May 27, 2004) available at http://www.uscis.gov/files/pressrelease/SIJ_Memo_052704.pdf.

¹⁶ USCIS Interoffice Memorandum (May 27, 2004).

¹⁷ Lewis Testimony, 3.

¹⁸ New York State Office of Children & Family Services, Administrative Directive, Special Immigrant Juvenile Status (Aug. 19, 2008).

¹⁹ *Id.*

²⁰ *Id.*

²¹ New York City Administration for Children's Services, Guidance 2009/07 on Special Immigrant Juvenile Status (Aug. 13, 2009).

outline of the SIJS application process.²² Additionally, the policy explains that the fees associated with the SIJS application process are refundable by ACS.²³ In compliance with the State's Administrative Directive and ACS's policy, when an ACS employee encounters a foster child who is neither a United States citizen nor a lawful permanent resident, he or she is supposed to refer that child to a legal services provider that has the ability to determine the child's eligibility and provide assistance in legalizing the child's status through completion of an SIJS application.²⁴ ACS guidelines instruct employees to consult with immigration attorneys prior to a foster child's discharge from foster care to "independent living" because discharge from foster care can impact an SIJS application.²⁵

In order to assist staff with the identifying and assisting undocumented children eligible for SIJS, ACS created the Director of Immigrant Services position in August 2005.²⁶ Subsequently, ACS hired an Immigrant Advocate in 2008 to assist the Director of Immigrant Services on SIJS matters as well as other immigration and language assistance issues.²⁷ In 2009, ACS hired a part-time Immigrant Youth Advocate to work with foster care agencies, immigrant youth in foster care and legal service providers on SIJS.²⁸ As a result of grant funding, ACS was also able to hire graduate students to review foster care cases in order to identify immigrants in foster care.²⁹ Students were able to review more than 1,500 cases and identified approximately 150 children in the care of ACS who might be eligible for SIJS benefits. In October of 2009, ACS stated that it planned to review "all cases of foster care youth ages 12 and above" by the

²² Id.

²³ Id.

²⁴ NYC ACS Guidelines for Child Welfare Staff (Aug. 13, 2009).

²⁵ Id.

²⁶ Testimony of Deputy Commissioner Ronald Richter, New York City Administration for Children's Services, before the Committee on Immigration, 8 (June 15, 2006).

²⁷ Lewis Testimony, 3.

²⁸ Id.

²⁹ Id.

end of 2009 in an effort “to ensure that all immigrant youth are identified and referred for legal services.”³⁰ In an effort to ensure that staff at all levels are aware of SIJS and the importance of identifying eligible children as early as possible, ACS provides a variety of trainings. ACS includes information on SIJS in trainings prepared for child protective staff and new attorneys in its Family Court Legal Services division.³¹ ACS makes trainings focused on immigrant issues available to all staff, including foster care agency staff.³² Lastly, training specifically on SIJS is provided at quarterly meetings with foster care directors.³³

Concerns about the Treatment of SIJS-Eligible Children by ACS

As recently as October 2009, advocates agreed that ACS needed to do more to help non-citizen children in its care. For example, advocates expressed the following concerns:

- Foster care contract service providers lack “information, knowledge, resources, technical assistance and support...in the area of immigration relief for their clients.”³⁴ Many have no knowledge of SIJS at all.³⁵
- There is no reliable, systematic mechanism for identifying SIJS-eligible children.³⁶
- Young people in foster care are often identified as being eligible for SIJS benefits only after they miss out on educational and work related opportunities or when they are about to age out of foster care.³⁷

³⁰ Id.

³¹ Lewis Testimony, 4.

³² Id.

³³ Id.

³⁴ Written Testimony of Ilze Earner, Ph.D., Director, Immigrants and Child Welfare Project, Hunter College School of Social Work, before the New York City Council, Committee on Immigration, 3 (Oct. 26, 2009); Written testimony of Katherine Fleet, Staff Attorney, Immigration Law Unit, The Legal Aid Society, before the New York City Council Committee on Immigration, 4 (Oct. 26, 2009).

³⁵ Elgabry Testimony, 4.

³⁶ Fleet Testimony, 4.

³⁷ Id.

- Young people often sign themselves out of foster care at 18 years of age, unaware of their immigration status and/or unaware of the need to remain in foster care until their status has been adjusted through the SIJS application process.³⁸

Advocates suggested that that ACS create an accurate and efficient system of identification to determine SIJS-eligible children in its care and to coordinate immigration services for those children.³⁹ Such a system would help prevent youths from being discharged or aging out of the system without applying for SIJS or other immigration benefits.

Testimony on Int. No. 3

On March 2, 2010, the Committee on Immigration held a hearing on Int. No. 3. The Committee heard testimony from ACS and several advocacy organizations. Although ACS believes that the steps that it has taken in recent years to assist children in obtaining SIJS and other immigration benefits are significant, it “recognizes that no systems are perfect and improvement is possible in how the child welfare system...addresses the needs of immigrant youth...”⁴⁰ As such, ACS supported the intent of Int. No. 3, to develop a comprehensive plan to identify and refer immigrant youth for SIJS legal services.⁴¹

Immigrant and child welfare advocates provided testimony in support of Int. No. 3, but had recommendations to strengthen the legislation in order to ensure that immigrant youths are protected. Additionally, advocates wanted to make sure that the legislation required ACS to review their current practices and procedures relating to the identification and assistance of SIJS

³⁸ Written Testimony of Nancy Downing, Director of Advocacy, Covenant House New York, before the New York City Council Committee on Immigration, 2 (Oct. 26, 2009).

³⁹ Elgabry Testimony, 3.

⁴⁰ Testimony of Mark Lewis, Director of Immigration Services, New York City Administration for Children’s Services, before the City Council, Committee on Immigration, 5 (March 2, 2010) (on file with Committee on Immigration Staff).

⁴¹ Id.

–eligible youth in its care in order to develop a new plan to serve this population. For example, Int. No. 3 called on ACS to systemize its efforts to identify and coordinate services for SIJS eligible children, advocates, however, were concerned that it did not provide any information on how to facilitate those services. As such, advocates recommended that the legislation explicitly require ACS to collect information on a child’s country of birth in order to systemically screen and identify youth for SIJS eligibility.⁴² To ensure that immigration issues be resolved before youth age out of foster care, testimony recommended that ACS ensure that each child in foster care have a birth certificate and to track such information.⁴³ Int. No. 3 also required ACS to systemize training programs for employees and contract foster care workers and attorneys regarding SIJS. Advocates, however, were concerned that this training was not mandatory and front line workers would not receive the necessary information and guidance to protect immigrant children. As such, they recommended that ACS be required to systemize mandatory training.⁴⁴ Advocates also recommended that ACS be required to report on its own compliance with the plan and its ability to identify and aid immigrant youths.⁴⁵ The amended version of the legislation reflects these recommendations.

Prop. Int. No. 3-A

If enacted, Prop. Int. No. 3-A would require ACS to designate an individual or individuals to establish a comprehensive new plan to address the needs of children in contact with ACS who may be eligible for SIJS or other immigration benefits. The plan would

⁴² Testimony of The Legal Aid Society, before the City Council, Committee on Immigration, 5 (March 2, 2010) (on file with Committee on Immigration Staff); Testimony of Lawyers for Children, before the City Council, Committee on Immigration, 2-3 (March 2, 2010) (on file with Committee on Immigration Staff).

⁴³ Testimony of The Legal Aid Society, 5.

⁴⁴ Testimony of The Legal Aid Society, 6 (March 2, 2010); Testimony of Lawyers for Children, 3 (March 2, 2010); Oral Testimony of Nancy Downing, Covenant House, before the City Council, Committee on Immigration, 5 (March 2, 2010).

⁴⁵ Testimony of The Legal Aid Society, 7 (March 2, 2010); Testimony of Lawyers for Children, 4 (March 2, 2010);

systemize how ACS (i) identifies the country of birth, to the extent practicable, of children with whom it has contact; (ii) identifies children who may be eligible for SIJS or other immigration benefits; (iii) tracks such children until the completion of their SIJS or other immigration relief; (iv) assists such children, as soon as they are identified, in obtaining the immigration services needed, including birth certificates if they do not possess them; and (v) provides mandatory training programs on immigration benefits for appropriate ACS and contract agency case workers and staff. The plan must also include descriptions of ACS's internal structure and standards by which it will implement and sustain the plan. This plan would be due to the City Council six months from the effective date of the local law.

Starting one year after completion of the plan, ACS would be required to submit annual reports to the City Council. The reports would take account of ACS's (i) ability to identify, track and coordinate immigration services for youths with whom it has had contact; (ii) progress towards achieving the goals of the plan; and (iii) programs, procedures, memoranda or training materials concerning the implementation of the plan.

Effective Date

This local law would take effect ninety days after enactment into law and will sunset in 2015.

Prop. Int. No. 3-A

By Council Members Dromm, Cabrera, Arroyo, Jackson, Barron, Brewer, Dickens, Eugene, Ferreras, Fidler, Foster, Gonzalez, James, Koppell, Koslowitz, Lander, Lappin, Mark-Viverito, Mealy, Palma, Seabrook, Vann, Williams, Nelson, Rodriguez and Van Bramer

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring the Administration for Children's Services to review strategies and create a plan of action to protect children who qualify for Special Immigrant Juvenile Status.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. Special Immigrant Juvenile Status (SIJS) is available for undocumented children involved in the child welfare system. SIJS is a statutory provision included in the Federal Immigration Act of 1990, which, if applied for in a timely manner, enables certain undocumented young people to become permanent residents and to obtain green cards. SIJS presents the opportunity for immigrant children to live in the United States and take advantage of the various opportunities available to lawful United States residents. Based on information provided to the Council by the Administration for Children's Services (ACS) as well as immigration and child welfare advocates, ACS could improve its procedures for serving the population of undocumented immigrant children that are under its care.

The Council finds that it is necessary for ACS to ensure that immigration relief is a factor in permanency planning for non-citizen youth. The Council further finds that, although ACS has made great strides to address the immigration needs of children in its care, there is a need for additional information, knowledge, resources, technical assistance and support to be provided to contract service providers in the area of immigration benefits for their clients. The Council finds that the creation of a new plan within ACS is necessary in order to create an accurate and efficient identification and tracking system in order to coordinate immigration services so that

ACS can meet its obligation to protect immigrant children in the child welfare system. This will help ensure that all SIJS-eligible children have the opportunities that they deserve.

§2. Chapter nine of title 21 of the administrative code of the city of New York is amended by adding a new section 21-904 to read as follows:

§ 21-904 Special Immigrant Juvenile Status Plan within the Administration for Children's Services. a. ACS shall designate an individual or individuals responsible for creating and implementing a new comprehensive plan to provide services to children in contact with ACS who may be deemed eligible for Special Immigrant Juvenile Status ("SIJS") or other immigration benefits. Such plan shall, at a minimum, systemize how ACS, with assistance from foster care agencies, (i) identifies the country of birth, to the extent practicable, of children in contact with ACS; (ii) identifies all children within ACS, as early as possible, who may qualify for SIJS or other immigration benefits; (iii) tracks such children, to the extent practicable and consistent with client confidentiality requirements, until the completion of their SIJS or other immigration relief ; (iv) assists such children, as soon as they are identified, in obtaining the immigration services they need, including birth certificates if they do not possess them; and (v) provides mandatory training programs on immigration benefits, including SIJS, for appropriate ACS and contract agency case workers and staff.

b. Reporting. 1. Six months from the effective date of this local law, ACS shall submit the plan to the city council. 2. The plan shall include detailed descriptions of (i) how ACS will accomplish a(i)-(v) above; (ii) the structure and operation of the ACS offices that will have responsibility for identifying, tracking and ensuring the referral of youths for SIJS or other immigration benefits; (iii) the number and type of positions within ACS that will have responsibility for identifying, tracking and ensuring the referral of youths for SIJS or other

immigration benefits, including whether each such position is full or part time and temporary or permanent; (iv) program standards for contract agencies regarding SIJS identification and coordination of immigration services; (v) ACS's mechanisms and indicators for monitoring its own and contract agencies' compliance with and achievements under the plan; and (vi) ACS's method(s) for collecting data and evaluating outcomes for immigrant youth that it has made contact with under the new plan. 3. No later than one year after completion and submission of the plan, ACS shall prepare and submit to the city council a report (i) regarding its ability to identify, track and coordinate immigration services for youths with whom it has had contact; (ii) containing indicators sufficient to show the agency's progress towards achieving the goals of the plan; and (iii) containing such programs, procedures, memoranda, or training materials as concern the implementation and goals of the plan. Subsequent reports shall be submitted annually on the first of April thereafter.

§3. This local law shall take effect 90 days after its enactment into law and will sunset in 2015.

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