USCIS Policy Manual

Current as of **December 14, 2016**

Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 1 - Purpose and Background

A. Purpose

Congress initially created the special immigrant juvenile (SIJ) classification to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care. This protection evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. While there is no longer a requirement that a child be found eligible for long-term foster care, a juvenile court finding that reunification with one or both parents is not viable is still required for SIJ classification.[1] There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.

Children in a variety of different circumstances may be eligible for SIJ classification, including but not limited to:

- Children who have been abused prior to their arrival in the United States, or while in the United States;

- Children in federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Unaccompanied Children's Services Program;[2] See Section 462 of the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2202 (November 25, 2002). or

- Children in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of a person or entity appointed by a state or juvenile court.

B. Background

Congress first established the SIJ immigrant visa classification in 1990. Since then, Congress has enacted several amendments. The table below provides an overview of major legislation related to SIJ classification.

Special Immigrant Juvenile Classification: Acts and Amendments	
Acts and Amendments	**Key Changes**
The Immigration Act of 1990 [3] **See Pub. L. 101-649 (November 29, 1990).**	• Established an SIJ classification for children declared dependent upon a juvenile court in the United States, eligible for long-term foster care, and for whom it would not be in their best interest to return to their country of origin
Miscellaneous and Technical Immigration and Nationality Amendments of 1991 [4] **See Pub. L. 102-232 (December 12, 1991).**	• Provided that children with SIJ classification were considered paroled for the purpose of adjustment of status to lawful permanent residence • Provided that foreign national children cannot apply for admission or be admitted to the United States in order to obtain SIJ classification
The Immigration and Nationality Technical Corrections Act of 1994 [5] **See Pub. L. 103-416 (October 25, 1994).**	• Expanded eligibility from those declared dependent on a juvenile court to children whom such a court has legally committed to, or placed under the custody of, a state agency or department
The 1998 Appropriations Act [6]	• Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment

See Pub. L. 105-119 (November 26, 1997).	• Provided that children are eligible only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the grant of status • Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court's jurisdiction
Violence Against Women Act of 2005[7] See Pub. L. 109-162 (January 5, 2006).	• Prohibited compelling an SIJ petitioner to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for SIJ classification
The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008)[8] See Pub. L. 110-457 (December 23, 2008).	• Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law • Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court • Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner's age at the time of adjudication • Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order • Altered the "specific consent" function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary of the Department of Homeland Security

	• Added a timeframe for adjudication: USCIS shall adjudicate SIJ petitions within 180 days of filing

C. Legal Authorities

- INA 101(a)(27)(J); 8 CFR 204.11 [9] Certain portions of the regulations have been superseded. This part provides up-to-date guidance. – Special immigrant status for certain children declared dependent on a juvenile court (special immigrant juvenile)
- INA 203(b)(4) – Certain special immigrants
- INA 204(a)(1)(G)(i) – Petitioning procedure
- INA 245(h) – Adjustment of special immigrant juveniles
- INA 287(h) – Protecting abused juveniles
- 8 CFR 205.1(a)(3)(iv) – Reasons for automatic revocation
- 8 CFR 205.2 – Revocation on notice

Footnotes

1.

There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.

2.

See Section 462 of the Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, 2202 (November 25, 2002).

3.

See Pub. L. 101-649 (November 29, 1990).

4.

See Pub. L. 102-232 (December 12, 1991).

5.

See Pub. L. 103-416 (October 25, 1994).

6.

See Pub. L. 105-119 (November 26, 1997).

7.

See Pub. L. 109-162 (January 5, 2006).

8.

See Pub. L. 110-457 (December 23, 2008).

9.

Certain portions of the regulations have been superseded. This part provides up-to-date guidance.

Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.

USCIS Policy Manual

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Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 2 - Eligibility Requirements

A. Determining Eligibility

The special immigrant juvenile (SIJ) classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. If a juvenile court has made certain findings, under state law, on dependency or custody, parental reunification, and the best interests of the child, then the child may be eligible for SIJ classification.

USCIS determines if the petitioner meets the requirements for SIJ classification by adjudicating a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360).[1] USCIS also adjudicates Form I-485, Application to Register Permanent Residence or Adjust Status, which determines eligibility for adjustment of status to lawful permanent residence. See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7]. USCIS' adjudication of the SIJ petition includes review of the petition, the juvenile court order (or orders), and supporting evidence to determine if the petitioner is eligible for SIJ classification. USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about abuse, neglect, or abandonment.

B. General

A petitioner must satisfy the following requirements to qualify for SIJ classification:

General Eligibility Requirements for SIJ Classification

Physically present in the United States
Unmarried
Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)
Juvenile court order (or orders) issued in the United States that meets the specified requirements
U.S. Department of Homeland Security consent
U.S. Department of Health and Human Services (HHS) consent, if applicable

C. Age-out Protections

In general, a "child" is an unmarried person under 21 years of age for purposes of SIJ classification.[2] USCIS interprets the use of the term "child" in section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in INA 101(b)(1), which states that a child is an unmarried person under 21 years of age. USCIS considers the petitioner's age at the time the SIJ petition is filed when determining whether the petitioner has met the age requirement.[3] Section 235(d)(6) of the TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.

If a petitioner was under 21 years of age on the date of the proper filing of Form I-360, USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.

D. Juvenile Court Order

To be eligible for SIJ classification, a juvenile court in the United States must have issued order (or orders) with the following findings:

- Dependency or Custody – Declares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile [4] For information on which state courts USCIS considers a juvenile court, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order (or orders) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Proceedings [6 USCIS-PM J.3(A)(1)]. court;

- Parental Reunification – Declares, under the state child welfare law, that the petitioner cannot reunify with one or both of the petitioner's parents prior to aging out of the juvenile court's jurisdiction due to abuse, neglect, abandonment, or a similar basis under state law; and

- Best Interests – Finds that it would not be in the petitioner's best interest to be returned (to a placement) in the petitioner's, or his or her parent's, country of nationality or last habitual residence.

1. Dependency [5] This requires that the petitioner has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while he or she is in the United States and under the jurisdiction of the court. See 8 CFR 204.11(c)(3). For an example of state law governing declarations of dependency see California Welfare and Institutions Code Section 300. or Custody

The petitioner must be the subject of a juvenile court order that declares him or her dependent on a juvenile court, or legally commits to or places the petitioner under the custody of either an agency or department of a state, or a person or entity appointed by a state or juvenile court. Placing the petitioner "under the custody of" a person requires physical custody. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent's abuse, neglect, or abandonment of the petitioner.

Court-ordered dependency or custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification. [6] USCIS generally requires that the court order be valid at the time of filing and must determine that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority. See 8 CFR

204.11(c)(5). See Subsection 2, Parental Reunification [6 USCIS-PM J.2(D)(2)]. A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent,[7] See Black's Law Dictionary (10th ed. 2014) (defining "in loco parentis"). is not considered a custodian for purposes of establishing SIJ eligibility.[8] A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279). See Section 235(d)(5) of the TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008).

2. Parental Reunification[9] **The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term "eligible for long-term foster care" is defined at 8 CFR 204.11(a), as requiring that family reunification no longer be viable and that this determination would be expected to remain in place until the child reached the age of majority. USCIS interprets the TVPRA changes as a clarification that petitioners do not need to be eligible for or placed in foster care and that they may be reunified with one parent or other family members. However, USCIS requires that the reunification no longer be a viable option with at least one parent, and USCIS maintains that the court's determination is meant to be in place until the child reaches the age of majority. See 8 CFR 204.11(a). See Section 235(d)(1)(A) of TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5079 (December 23, 2008).**

The juvenile court must find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws. Lack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent (or parents) remains in effect until the child ages out of the juvenile court's jurisdiction.[10] For example, when parental reunification is no longer the goal of the child welfare authority's plan for a permanent living situation for the child (known as a "permanency plan"). The temporary unavailability of a child's parent does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not required.

The findings must be based upon the person (or persons) who is the petitioner's parent (or parents)[11] The term "parent" does not encompass a step-parent unless the step-parent is recognized as the petitioner's legal parent under state law, such as when a step-parent has adopted the petitioner. under state law. If the juvenile court order establishes that the person (or persons) is the petitioner's parent (or parents), USCIS generally considers this requirement met. However, if the record does not establish that the person (or persons) is the petitioner's parent (or parents), USCIS may request additional evidence. For example, if the findings are based on a father not listed on the petitioner's birth certificate, a determination that the claimed father is the father under state law should be established in the juvenile court order.

3. Best Interests

Juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country. However, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or his or her parents. Accordingly, this requires a determination by the juvenile court that a placement in the child's, or his or her parents', country of nationality or last habitual residence is not in the child's best interest.

While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.[12] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child. The court's finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner's country of nationality would not be in the child's best interest.[13] See 58 FR 42843-01, 42848 (August 13, 1993). USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.

4. Validity of Order

Issued under State Law

The juvenile court order must have been properly issued under state law to be valid for the purposes of establishing eligibility for SIJ classification. This includes the need for the juvenile court to follow their state laws on jurisdiction.[14] For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the care and custody of juveniles. See 8 CFR 204.11(a). See Perez-Olano v. Holder, Case No. CV 05-3604 (C.D. Cal. 2005).at paragraph 8. For example, a juvenile court may not be able to take jurisdiction and issue a dependency or custody order for a juvenile who is 18 years of age or older even though the juvenile may file his or her petition with USCIS until the age of 21. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.

Continuing Jurisdiction

In general, the petitioner must remain under the jurisdiction of the juvenile court at the time of the filing and adjudication of the SIJ petition, subject to some exceptions discussed below. If the petitioner is no longer under the jurisdiction of the juvenile court for a reason related to their

underlying eligibility for SIJ classification, the petitioner is not eligible for SIJ classification. This may include cases in which the petitioner is no longer under the jurisdiction of the court because:

- The court vacated or terminated its findings that made the petitioner eligible because of subsequent evidence or information that invalidated the findings; or

- The court reunified the petitioner with the parent with whom the court previously deemed reunification was not viable because of abuse, neglect, abandonment, or a similar basis under state law.

However, this requirement does not apply if the juvenile court jurisdiction ended solely because:

- The petitioner was adopted, or placed in a permanent guardianship; or

- The petitioner was the subject of a valid order that was terminated based on age before or after filing the SIJ petition (provided the petitioner was under 21 years of age at the time of filing the SIJ petition).[15] See Perez-Olano v. Holder, Case No. CV 05-3604 (C.D. Cal. 2005).

A petitioner with a juvenile court order who moves to the jurisdiction of a different juvenile court may need to either submit evidence that the petitioner is still under the jurisdiction of the court that issued the order or submit a new court order.

A juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction. In general, a court maintains jurisdiction when it orders the child placed in a different state or makes a custody determination and the legal custodian relocates to a new jurisdiction.[16] Some states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact for the Placement of Children (ICPC). The UCCJEA is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA is effective only upon adoption by state legislatures. See Sections 201-204 of UCCJEA available at the Uniform Law Commission website on UCCJEA. ICPC is a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children. Each state and the District of Columbia have enacted the provisions of the ICPC under state law. If, however, a child relocates to a new jurisdiction and is not living in a court ordered placement or with the court ordered custodian, then the petitioner must submit:

- Evidence that the court is still exercising jurisdiction over the petitioner; or

- A new juvenile court order from the court that has jurisdiction.[17] See 8 CFR 204.11(c)(5).

If the original order is terminated due to the relocation of the child but another order is issued in a new jurisdiction, USCIS considers the dependency or custody to have continued through the time of adjudication of the SIJ petition, even if there is a lapse between court orders.

5. USCIS Consent

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008)[18] See Pub. L. 110-457 (December 23, 2008). simplified but did not remove the Department of Homeland Security (DHS) consent requirement. In order to consent, USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit.[19] See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997). The court ordered dependency or custodial placement of the child is the relief being sought from the juvenile court, and the factual basis of each of the required findings is evidence that the request for SIJ classification is bona fide.

USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the findings necessary for classification as a SIJ. The evidence needed does not have to be overly detailed, but must confirm that the juvenile court made an informed decision in order to be considered "reasonable." USCIS generally consents to the grant of SIJ classification when the order includes or is supplemented by a reasonable factual basis for all of the required findings.

USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make findings in separate hearings and the petitioner may request an order that compiles the findings of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the findings that were made so that USCIS can determine the petitioner's eligibility for SIJ classification does not mean that the order is not bona fide.

E. HHS Consent

If a petitioner is currently in the custody of the U.S. Department of Health and Human Services (HHS) and seeks a juvenile court order that also alters[20] See Perez-Olano v. Holder, Case No. CV 05-3604 (C.D. Cal. 2005). his or her custody status or placement, HHS must consent to the juvenile court's jurisdiction. HHS consent is not required if the order simply restates the petitioner's current placement.

F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition.[21] For discussion on the applicability of inadmissibility grounds to SIJ-based applicants for adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7]. Therefore, a petitioner does not need to apply for a waiver of any applicable grounds of inadmissibility in order to be eligible for SIJ classification.

G. Family Members

Unlike some other immigrant visa petitions, SIJ classification does not allow the petitioner's family members to be included on the petition as derivative beneficiaries. SIJ petitioners that have adjusted status to that of a lawful permanent resident may petition for qualifying family members through the family-based immigration process. However, a petitioner who adjusts status as a result of an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents.[22] See INA 101(a)(27)(J)(iii)(II). This prohibition also applies to a non-abusive, custodial parent, if applicable.

Footnotes

1.

USCIS also adjudicates Form I-485, Application to Register Permanent Residence or Adjust Status, which determines eligibility for adjustment of status to lawful permanent residence. See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7].

2.

USCIS interprets the use of the term "child" in section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in INA 101(b)(1), which states that a child is an unmarried person under 21 years of age.

3.

Section 235(d)(6) of the TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.

4.

For information on which state courts USCIS considers a juvenile court, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order (or orders) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Proceedings [6 USCIS-PM J.3(A)(1)].

5.

This requires that the petitioner has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while he or she is in the United States and under the jurisdiction of the court. See 8 CFR 204.11(c)(3). For an example of state law governing declarations of dependency see California Welfare and Institutions Code Section 300.

6.

USCIS generally requires that the court order be valid at the time of filing and must determine that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority. See 8 CFR 204.11(c)(5). See Subsection 2, Parental Reunification [6 USCIS-PM J.2(D)(2)].

7.

See Black's Law Dictionary (10th ed. 2014) (defining "in loco parentis").

8.

A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279). See Section 235(d)(5) of the TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008).

9.

The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term "eligible for long-term foster care" is defined at 8 CFR 204.11(a), as requiring that family reunification no longer be viable and that this determination would be expected to remain in place until the child reached the age of majority. USCIS interprets the TVPRA changes as a clarification that petitioners do not need to be eligible for or placed in foster care and that they may be reunified with one parent or other family members. However, USCIS requires that the reunification no longer be a viable option with at least one parent, and USCIS maintains that the court's determination is meant to be in place until the child reaches the age of majority. See 8 CFR 204.11(a). See Section 235(d)(1)(A) of TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5079 (December 23, 2008).

10.

For example, when parental reunification is no longer the goal of the child welfare authority's plan for a permanent living situation for the child (known as a "permanency plan").

11.

The term “parent” does not encompass a step-parent unless the step-parent is recognized as the petitioner’s legal parent under state law, such as when a step-parent has adopted the petitioner.

12.

See U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child.

13.

See 58 FR 42843-01, 42848 (August 13, 1993).

14.

For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the care and custody of juveniles. See 8 CFR 204.11(a). See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).at paragraph 8.

15.

See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).

16.

Some states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact for the Placement of Children (ICPC). The UCCJEA is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA is effective only upon adoption by state legislatures. See Sections 201-204 of UCCJEA available at the Uniform Law Commission website on UCCJEA. ICPC is a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children. Each state and the District of Columbia have enacted the provisions of the ICPC under state law.

17.

See 8 CFR 204.11(c)(5).

18.

See Pub. L. 110-457 (December 23, 2008).

19.

See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

20.

See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).

21.

For discussion on the applicability of inadmissibility grounds to SIJ-based applicants for adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7].

22.

See INA 101(a)(27)(J)(iii)(II).

Updates

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Chapter 3 - Documentation and Evidence

A petitioner seeking special immigrant juvenile (SIJ) classification must submit all of the following documentation to USCIS:

- Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360);[1] See Instructions for Form I-360. There is no fee to file Form I-360 to seek SIJ classification.
- A copy of the petitioner's birth certificate or other evidence of the petitioner's age;[2] For more information on evidence that can be used to provide proof of age see 8 CFR 204.11(d)(1).
- Copies of the juvenile court order (or orders) and administrative document (or orders), as applicable, that establish eligibility and evidence of the factual basis for the juvenile court's findings; and
- A copy of U.S. Department of Health and Human Services (HHS) consent, if applicable.

The petitioner may file Form I-360 alone or concurrently with his or her Application to Register Permanent Residence or Adjust Status (Form I-485), if there is an immigrant visa currently available for the SIJ immigrant classification and he or she is otherwise eligible.[3] For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7].

A. Juvenile Court Orders and Administrative Documents

1. Qualifying Juvenile Court Proceedings

A juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations about the custody and care of children.[4] See 8 CFR 204.11(a). The title and the type of court that may meet the definition of a juvenile court will vary from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.

The juvenile court may make the required determination that it is not in the petitioner's best interest to be returned (to a placement) in the petitioner's or his or her parent's country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a finding from that process may satisfy this requirement.

2. Findings[5] **The term "findings" refers to the conclusions of law.**

The juvenile court order (or orders) must provide the required findings regarding dependency or custody, parental reunification, and best interests. These findings may be made in a single juvenile court order or in separate juvenile court orders. The order (or orders) should use language establishing that the specific findings (conclusions of law) were made under state law. The order (or orders) should not just mirror or cite to immigration law and regulations. The juvenile court order may use different legal terms than those found in the INA as long as the findings have the same meaning as the requirements for SIJ classification.[6] See 101(a)(27)(J).

There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.

The language of the order may vary based on individual state child welfare law. If a juvenile court order makes the findings based upon a state law similar to abuse, neglect, or abandonment,[7] For example, under Connecticut law, a child may be found "uncared for" if the child is "homeless" or if his or her "home cannot provide the specialized care that the physical, emotional or mental condition of the child requires." See Conn. Gen. Stat. Ann. section 46b-120(9). "Uncared for" may be similar to abuse, neglect, or abandonment because children found "uncared for" are equally entitled to juvenile court intervention and protection. The outcomes for children found "uncared for" are the same as they are for children found abused, neglected, or abandoned. See Conn. Gen. Stat. Ann. section 46b-120 (8),(9); 121(a). the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. Petitioners are

encouraged to submit the juvenile court's findings of how the basis is similar to abuse, neglect, or abandonment and copies of the relevant laws.

3. Factual Basis and USCIS Consent

Template orders that simply recite the immigration statute or regulatory language are generally not sufficient. Orders that have the necessary findings or rulings and include, or are supplemented by, the factual basis for the court's findings (for example, the judicial findings of fact) are usually sufficient to establish eligibility. If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all of the required findings, USCIS may request evidence of the factual basis for the court's findings.

USCIS does not require specific documents to establish the factual basis or the entire record considered by the court. However, the burden is on the petitioner to provide the factual basis for the court's findings. Examples of documents that a petitioner may submit to USCIS that may support the factual basis for the court order include:

- Any supporting documents submitted to the juvenile court, if available;
- The petition for dependency or complaint for custody or other documents which initiated the juvenile court proceedings;
- Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and
- Affidavits or records that are consistent with the findings made by the court.

4. Supporting Evidence

The order or supporting evidence should specifically indicate:

- With whom the child is placed (for example, the name of the person, or entity, or agency if the child is adjudicated dependent) and the factual basis for this finding;

- Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent (or parents) and the factual basis for the court's findings on non-viability of parental reunification; and

- The factual basis for the determination that it is not in the petitioner's best interest to return to (a placement in) the petitioner's or his or her parents' country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child's country of nationality or last habitual residence).

B. Limitations on Additional Evidence

USCIS is mindful that there are often confidentiality rules that govern disclosure of records from juvenile-related proceedings. For this reason, officers generally do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.[8] USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.

Children often do not share personal accounts of their family life with an unknown adult until they have had the opportunity to form a trusting relationship with that adult. Therefore, officers exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the findings made by the juvenile court.

Additionally, the juvenile court may make child welfare placement, custody, and best interest decisions that differ from the child's stated intentions at the time of apprehension. However, if there is significant contradictory information in the file that the juvenile court was likely not aware of or that may impact whether a reasonable factual basis exists for the court's findings, officers may request additional evidence from the petitioner or his or her legal representative.

However, officers may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner.[9] See Violence Against Women Act of 2005, Pub. L. 109-162 (January 5, 2006) codified at INA 287(h).

Footnotes

1.

See Instructions for Form I-360. There is no fee to file Form I-360 to seek SIJ classification.

2.

For more information on evidence that can be used to provide proof of age see 8 CFR 204.11(d)(1).

3.

For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [7 USCIS-PM F.7].

4.

See 8 CFR 204.11(a).

5.

The term "findings" refers to the conclusions of law.

6.

See 101(a)(27)(J).

7.

For example, under Connecticut law, a child may be found "uncared for" if the child is "homeless" or if his or her "home cannot provide the specialized care that the physical, emotional or mental condition of the child requires." See Conn. Gen. Stat. Ann. section 46b-120(9). "Uncared for" may be similar to abuse, neglect, or abandonment because children found "uncared for" are equally entitled to juvenile court intervention and protection. The outcomes for children found "uncared for" are the same as they are for children found abused, neglected, or abandoned. See Conn. Gen. Stat. Ann. section 46b-120(8),(9); 121(a).

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Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status,

including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.

USCIS Policy Manual

Current as of **December 14, 2016**

Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 4 - Adjudication

A. Jurisdiction

USCIS has sole jurisdiction over petitions for special immigrant juvenile (SIJ) classification.[1] See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. Provided the petitioner is otherwise eligible, classification as an SIJ establishes eligibility to apply for adjustment of status.[2] See Form I-485, Application to Register Permanent Residence or Adjust Status. Generally, an applicant may only apply to USCIS for adjustment of status if there is a visa number available for the special immigrant classification (EB-4), and the applicant is not in removal proceedings. If an SIJ is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application. Conversely, the applicant may seek adjustment of status with the immigration court based on USCIS' approval of the SIJ petition. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A], Part B, 245(a) Adjustment [7 USCIS-PM B], and Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [7 USCIS-PM F.7].

B. Expeditious Adjudication

USCIS generally adjudicates SIJ petitions within 180 days.[3] See Section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008). The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date. If the petitioner has not submitted sufficient evidence to establish his or her eligibility for SIJ classification, the clock stops the day USCIS sends a request for additional evidence and resumes the day USCIS receives the requested evidence from the petitioner.[4] See 8 CFR 103.2(b)(10).

The 180-day timeframe applies only to the initial adjudication of the SIJ petition. The requirement does not extend to the adjudication of any motion or appeal filed after a denial of a SIJ petition.

C. Interview

1. Determining Necessity of Interview

USCIS has discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition.[5] See 8 CFR 103.2(b)(9). USCIS recognizes the vulnerable nature of SIJ petitioners and generally conducts interviews of SIJ petitioners when an interview is deemed necessary. USCIS conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted. USCIS will generally not require an interview if the record contains sufficient information and evidence to approve the petition without an in-person assessment. However, USCIS retains the discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition, as appropriate.

2. Conducting the Interview

Given the vulnerable nature of SIJ petitioners and the hardships they may face because of the loss of parental support, USCIS strives to establish a child-friendly interview environment if an interview is scheduled. During an interview, officers avoid questioning the petitioner about the details of the abuse, neglect, or abandonment suffered, because these issues are handled by the juvenile court. Officers generally focus the interview on resolving issues related to the eligibility requirements, including age.

The petitioner may bring a trusted adult to the interview in addition to an attorney or representative. The trusted adult may serve as a familiar source of comfort to the petitioner, but should not interfere with the interview process or coach the petitioner during the interview. Given potential human trafficking and other concerns, officers assess the appropriateness of the adult's attendance in the interview and observe the adult's interaction with the child. When appropriate, the officer may interview the child without that adult present.

D. Requests for Evidence

Additional evidence may be requested at the discretion of the officer if needed to determine eligibility.[6] See 8 CFR 103.2(b)(8). To provide petitioners an opportunity to address concerns before issuing a denial, officers generally issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), where the evidence is insufficient to approve the petition. The officer may request additional evidence for reasons such as, but not limited to:

- The record lacks the required dependency or custody, parental reunification, or best interest findings;

- It is unclear if the order was made by a juvenile court or in accordance with state law;

- The evidence provided does not establish a reasonable factual basis for the findings;

- The record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for the court order; or

- Additional evidence is needed to determine eligibility.

E. Decision

1. Approval

The Secretary of Homeland Security must consent to the grant of SIJ classification. The Department of Homeland Security (DHS) delegates this authority to USCIS. Therefore, USCIS approval of the SIJ petition is evidence of DHS consent. USCIS notifies petitioners in writing upon approval of the petition.[7] See 8 CFR 103.2(b)(19).

2. Denial

If the petitioner does not provide necessary evidence or does not meet the eligibility requirements, USCIS may deny the Form I-360 petition. If USCIS denies the SIJ petition, USCIS provides the petitioner with a written denial which includes a detailed basis for the denial.[8] See 8 CFR 103.3(a). An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision.[9] See 8 CFR 103.3. See 8 CFR 103.5. The denial notice includes instructions for filing a Notice of Appeal or Motion (Form I-290B).

3. Revocation

Automatic Revocation

An approved SIJ petition is automatically revoked as of the date of approval if any one of the circumstances below occurs before USCIS issues a decision on the petitioner's application for adjustment of status:[10] See 8 CFR 205.1(a)(3)(iv).

- Marriage of the petitioner;

- Reunification of the petitioner with one or both parents by virtue of a juvenile court order,[11] Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination. where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law;[12] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term "eligible for long-term foster care" is defined at 8 CFR 204.11(a) as requiring that family reunification no longer be viable. USCIS interprets this change as clarifying that the child does not need to be eligible for or placed in foster care. USCIS also views this change as modifying the regulation that requires auto-revocation upon the termination of the beneficiary's eligibility for long-term foster care. A petition will be revoked if reunification with the parent is now viable where a juvenile court previously deemed reunification with that parent not viable. See Section 235(d)(1)(A) of TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5079 (December 23, 2008). or

- Reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned (to a placement) in the petitioner's, or his or her parent's, country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition.[13] See 8 CFR 205.1(b).

Revocation on Notice

In addition, USCIS, with notice, may revoke an approved petition for SIJ classification for good and sufficient cause such as fraud.[14] See INA 205 and 8 CFR 205.2. In these instances, USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.[15] See 8 CFR 205.2(b).

Footnotes

1.

See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

2.

See Form I-485, Application to Register Permanent Residence or Adjust Status. Generally, an applicant may only apply to USCIS for adjustment of status if there is a visa number available for the special immigrant classification (EB-4), and the applicant is not in removal proceedings. If an SIJ is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application. Conversely, the applicant may seek adjustment of status with the immigration court based on USCIS' approval of the SIJ petition. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A], Part B, 245(a) Adjustment [7 USCIS-PM B], and Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [7 USCIS-PM F.7].

3.

See Section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008).

4.

See 8 CFR 103.2(b)(10).

5.

See 8 CFR 103.2(b)(9).

6.

See 8 CFR 103.2(b)(8).

7.

See 8 CFR 103.2(b)(19).

8.

See 8 CFR 103.3(a).

9.

See 8 CFR 103.3. See 8 CFR 103.5.

10.

See 8 CFR 205.1(a)(3)(iv).

11.

Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.

12.

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. The term "eligible for long-term foster care" is defined at 8 CFR 204.11 (a) as requiring that family reunification no longer be viable. USCIS interprets this change as clarifying that the child does not need to be eligible for or placed in foster care. USCIS also views this change as modifying the regulation that requires auto-revocation upon the termination of the beneficiary's eligibility for long-term foster care. A petition will be revoked if reunification with the parent is now viable where a juvenile court previously deemed reunification with that parent not viable. See Section 235(d)(1)(A) of TVPRA 2008, Pub. L. 110-457, 122 Stat. 5044, 5079 (December 23, 2008).

13.

See 8 CFR 205.1(b).

14.

See INA 205 and 8 CFR 205.2.

15.

See 8 CFR 205.2(b).

Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

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Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 5 - Appeals, Motions to Reopen, and Motions to Reconsider

A. General

A petitioner may submit a Notice of Appeal or Motion (Form I-290B), with the appropriate filing fee or a request for a fee waiver, to file:[1] See 8 CFR 103.3. See 8 CFR 103.5.

- An appeal with the Administrative Appeals Office (AAO);
- A motion to reconsider a USCIS decision (made by the AAO, a field office, or a service center); or
- A motion to reopen a USCIS decision (made by the AAO, a field office, or a service center).

The petitioner must file the appeal or motion within 30 days of the denial or dismissal, or 33 days if the denial or dismissal decision was sent by mail.[2] See 8 CFR 103.3(a)(2)(i). See 8 CFR 103.5(a)(1)(i). See 8 CFR 103.8(b). If the appeal relates to a revocation of an approved special immigrant juvenile (SIJ) petition, the appeal must be filed within 15 calendar days after service of the decision, or 18 days if the decision was sent by mail.[3] See 8 CFR 205.2(d) (revocation appeals) and 8 CFR 103.8(b) (effect of service by mail). There is no exception to the filing period for appeals and motions to reconsider.

For a motion to reopen, USCIS may excuse the petitioner's failure to file before this period expires where the petitioner demonstrates that the delay was reasonable and beyond his or her control.[4] See 8 CFR 103.5(a)(1)(i).

B. Requirements for Perez-Olano Litigation Class Members [5] **See Perez-Olano v. Holder, Case No. CV 05-3604 (C.D. Cal. 2005).**

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of certain foreign national juveniles who may have been eligible for SIJ classification or SIJ-based adjustment of status but whose SIJ petition or adjustment application was denied or revoked for certain reasons. Certain persons whose petition for SIJ classification [6] See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. or SIJ-based application for adjustment of status [7] See Form I-485, Application to Register Permanent Residence or Adjust Status. was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied or revoked SIJ petition or SIJ-based application for adjustment of status.

A class action member may file a motion to reopen if his or her SIJ petition or SIJ-based application for adjustment of status was denied or revoked on account of:

- Age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;

- Dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently terminated based on age; or

- Specific consent, if the petitioner did not receive a grant of HHS specific consent before going before the juvenile court and the court order did not alter the petitioner's HHS custody status or placement.

There is also a stipulation to the settlement agreement involving cases in which SIJ petitions or SIJ-based applications for adjustment of status were denied, terminated, or revoked on or after December 15, 2010 because the applicant's state court dependency order had expired at the time of the filing. The requirements and process for a class member to request that his or her case be reopened under the stipulation differ from requirements under the original Settlement Agreement. [8] See Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement, issued June 25, 2015.

Under the stipulation, USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition, the applicant:

- Is or was under 21 years of age, unmarried, and otherwise eligible; and

- Is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

Footnotes

1.

See 8 CFR 103.3. See 8 CFR 103.5.

2.

See 8 CFR 103.3(a)(2)(i). See 8 CFR 103.5(a)(1)(i). See 8 CFR 103.8(b).

3.

See 8 CFR 205.2(d) (revocation appeals) and 8 CFR 103.8(b) (effect of service by mail).

4.

See 8 CFR 103.5(a)(1)(i).

5.

See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).

6.

See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

7.

See Form I-485, Application to Register Permanent Residence or Adjust Status.

8.

See Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement, issued June 25, 2015.

Updates

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Volume 6 - Immigrants

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Chapter 6 - Data

USCIS compiles and makes available to the public annual reports disclosing the number of special immigrant juvenile (SIJ) petitions received, approved, and denied.[1] See the USCIS website for Data Set: Form I-360 Petition for Special Immigrant Juveniles. The number includes the filing and adjudication of SIJ petitions under the Settlement Agreement, as well as the filing and adjudication of regularly filed SIJ petitions. To ensure accuracy of information, officers must promptly enter all decisions on all petitions and motions related to SIJ into the relevant systems.

Footnotes

1.

See the USCIS website for Data Set: Form I-360 Petition for Special Immigrant Juveniles.

Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

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Volume 7 - Adjustment of Status

Part F - Special Immigrant-Based (EB-4) Adjustment

Chapter 7 - Special Immigrant Juveniles

A. Purpose and Background [1] **For more information on the legislative history of the SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles [6 USCIS-PM J].**

Congress created the special immigrant juvenile (SIJ) classification when it enacted the Immigration Act of 1990 (IMMACT 90).[2] See Pub. L. 101-649, 104 Stat. 4978 (November 29, 1990). Certain juveniles in the United States may be eligible for SIJ classification. Once classified as an SIJ, juveniles may be eligible to adjust status, if they meet all eligibility requirements.

B. Legal Authorities

- INA 101(a)(27)(J) – Special Immigrant Juveniles
- INA 203(b)(4) – Certain Special Immigrants
- INA 245; 8 CFR 245 – Adjustment of Status of Nonimmigrant to that of Person Admitted for Permanent Residence
- INA 245(h) – Application of Adjustment Provisions with Respect to Special Immigrants
- 8 CFR 245.1(e)(3) – Special Immigrant Juveniles

- 8 CFR 204.11 – Special Immigrant Status for Certain Aliens Declared Dependent on a Juvenile Court (Special Immigrant Juvenile)

- Section 153 of the Immigration Act of 1990 (IMMACT 90)[3] See Pub. L. 101-649, 104 Stat. 4978, 5005 (November 29, 1990). – Special Immigrant Status for Certain Aliens Declared Dependent on a Juvenile Court

- Section 302 of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991[4] See Pub. L. 102-232, 105 Stat. 1733, 1744 (December 12, 1991).

- Section 113 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act of 1998[5] See Pub. L. 105-119, 111 Stat. 2440, 2460 (November 26, 1997).

- Section 235(d) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)[6] See Pub. L. 110-457, 122 Stat. 5044, 5079 (December 23, 2008). – Permanent Protection for Certain At-Risk Children

C. Eligibility Requirements

To adjust to lawful permanent resident (LPR) status as an SIJ, an applicant must meet the eligibility requirements shown in the table below.[7] See INA 245(a) and (c). See 8 CFR 245, 8 CFR 245.1(a) and 8 CFR 245.1(e)(3). See Instructions to Form I-485.

SIJ-Based Adjustment of Status Eligibility Requirements	
Eligibility Requirement	**Where can I find more information?**
The applicant must have been: • **Inspected and admitted into the United States; or** • **Inspected and paroled into the United States.**	See Subsection 1, Inspected and Admitted or Inspected and Paroled [7 USCIS-PM F.7(C)(1)].

The applicant is physically present in the United States at the time of filing and adjudication of an adjustment application.	See Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A].
The applicant is eligible to receive an immigrant visa.	See Subsection 2, Eligibility to Receive an Immigrant Visa [7 USCIS-PM F.7(C)(2)].
The applicant has an immigrant visa immediately available when he or she files the adjustment of status application and at the time of final adjudication.	See Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of "Properly Filed" [7 USCIS-PM A.3(B)] and Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].
The applicant is not subject to any applicable bars to adjustment of status.	See Subsection 3, Bars to Adjustment [7 USCIS-PM F.7(C)(3)].
The applicant is admissible to the United States or eligible for a waiver of inadmissibility or other form of relief.	See Subsection 4, Admissibility and Waiver Requirements [7 USCIS-PM F.7(C)(4)].
The applicant merits the favorable exercise of discretion.	See Part A, Adjustment of Status Policies and Procedures, Chapter 9, Legal Analysis and Use of Discretion [7 USCIS-PM A.9] and Part B, 245(a) Adjustment [7 USCIS-PM B].

1. Inspected and Admitted or Inspected and Paroled

SIJs are not exempt from the general adjustment requirement that applicants be inspected and admitted or inspected and paroled.[8] See INA 245(a). See 8 CFR 245.1(e)(3). See Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, "Inspected and Admitted" or "Inspected and Paroled" [7 USCIS-PM B.2(A)]. However, the INA expressly states that SIJs are considered

paroled into the United States for purposes of adjustment under INA 245(a). Accordingly, the beneficiary of an approved SIJ petition is treated for purposes of the adjustment application as if the beneficiary has been paroled, regardless of his or her manner of arrival in the United States.[9] See INA 245(h)(1).

2. Eligibility to Receive an Immigrant Visa[10] See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6] and Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section C, Eligible to Receive an Immigrant Visa [7 USCIS-PM B.2(C)].

An applicant must be eligible to receive an immigrant visa to adjust status.[11] See INA 245(a)(2). An adjustment applicant typically establishes eligibility for an immigrant visa through an approved immigrant petition. An SIJ can establish eligibility for an immigrant visa by obtaining classification from USCIS by filing an SIJ-based Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) (SIJ petition).[12] To see what requirements applicants must meet to obtain such classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements [6 USCIS-PM J.2].

Therefore, in order for an SIJ-based adjustment applicant to be eligible to receive an immigrant visa, he or she must be one of the following:

- The applicant is the beneficiary of an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) classifying him or her as an SIJ;
- The applicant has a pending Form I-360 (that is ultimately approved); or
- The applicant is filing the adjustment application concurrently with the Form I-360 (and the Form I-360 is ultimately approved).

Verifying the Underlying Basis to Adjust Status and Determining Ongoing Eligibility[13] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

The SIJ petition should already be adjudicated and approved when the officer adjudicates the adjustment application. USCIS does not re-adjudicate the SIJ petition at the time of the adjudication

of the adjustment application. However, the officer should ensure that the applicant remains classified as an SIJ and thus is eligible to adjust as an SIJ. As a result, there may be instances when USCIS may require the applicant to provide additional evidence to show he or she continues to be classified as an SIJ. In other words, the officer must verify the status of any underlying immigrant petition that forms the basis for adjustment.

Revocation of Approved Petition

USCIS may revoke an approved SIJ petition upon notice as necessary[14] See 8 CFR 205.2(a). for what it deems to be good and sufficient cause,[15] See INA 205. such as, if the record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for petitioner's eligibility for SIJ classification. USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approved petition.[16] See 8 CFR 205.2 (b).

Furthermore, USCIS automatically revokes an approved SIJ petition, as of the date of approval, if any one of the circumstances below occurs before a decision on the adjustment application is issued:

- Marriage of the petitioner;[17] The applicant must be unmarried at the time of filing the adjustment application and at the time of final adjudication of the form. See 8 CFR 205.1(a)(3)(iv).
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order,[18] Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination. where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law; or
- Reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned (to a placement) to the petitioner's or his or her parent's country of nationality or last habitual residence.

If one of the above grounds for automatic revocation occurs, USCIS issues a notice to the petitioner of such revocation of the SIJ petition, which means the applicant is no longer classified as a SIJ.[19] See 8 CFR 205.1(b).

If the petition is revoked, either upon notice or as an automatic revocation,[20] See 8 CFR 205.1(b). then the officer should deny the adjustment application because the applicant no longer has an underlying basis to adjust status.

3. Bars to Adjustment[21] **See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].**

An applicant classified as an SIJ is subject to the terrorist-related bar to adjustment.[22] See INA 245(c)(6), which bars from adjustment any foreign national deportable due to involvement in a terrorist activity or group under INA 237(a)(4)(B). Special immigrant juveniles are exempt from INA 245(c)(2) and INA 245(c)(8). See 62 FR 39417, 39422 (July 23, 1997). See 8 CFR 245.1(b)(5), 8 CFR 245.1(b)(6), and 8 CFR 245.1(b)(10). INA 245(c)(7) also does not apply. See 8 CFR 245.1(b)(9). See Part B, 245(a) Adjustment, Chapter 5, Employment-Based Applicant Not in Lawful Nonimmigrant Status – INA 245(c)(7) [7 USCIS-PM B.5]. Finally, INA 245(c)(1), INA 245(c)(3), INA 245(c)(4), and INA 245(c)(5) do not apply since a special immigrant juvenile is considered to be paroled into the United States and, when reviewing these bars, USCIS focuses on the most recent admission. See INA 245(h)(1). See 8 CFR 245.1(a) and 8 CFR 245.1(e)(3). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B]. There is no waiver of or exemption to this adjustment bar if it applies. Therefore, if the terrorist-related bar to adjustment applies, an SIJ is ineligible for adjustment of status.

4. Admissibility and Waiver Requirements[23] **For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].**

In general, an applicant who is inadmissible to the United States may only obtain LPR status if he or she obtains a waiver or other form of relief, if available.[24] See INA 212(a) for the specific grounds of inadmissibility. In general, if a ground of inadmissibility applies, an applicant must apply for a waiver or other form of relief to overcome an inadmissibility ground that applies.[25] See Volume 9, Waivers [9 USCIS-PM]. USCIS may approve the application to adjust status if a waiver or other form of relief is granted and the applicant is otherwise eligible.

The following table specifies which grounds of inadmissibility do not apply to applicants seeking LPR status based on the SIJ classification.[26] See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3). Grounds of removal under INA 237(c) that correspond with exempted inadmissibility grounds are also waived for SIJs.

Inadmissibility Grounds that Do Not Apply to Special Immigrant Juveniles	
INA 212(a)(4)	Public Charge
INA 212(a)(5)(A)	Labor Certification
INA 212(a)(6)(A)	Present without admission or parole
INA 212(a)(6)(C)	Misrepresentation
INA 212(a)(6)(D)	Stowaways
INA 212(a)(7)(A)	Documentation Requirements for Immigrants
INA 212(a)(9)(B)	Unlawful Presence

The following table specifies which grounds of inadmissibility do apply to applicants seeking LPR status based on the SIJ classification and for which a waiver or other form of relief may be available.

Inadmissibility Grounds that Apply to Special Immigrant Juveniles	
INA 212(a)(1)	Health-Related
INA 212(a)(2)	Crime-Related
INA 212(a)(3)	Security-Related
INA 212(a)(6)(B)	Failure to Attend Removal Proceedings

INA 212(a)(6)(E)	Smugglers
INA 212(a)(6)(F)	Subject of Civil Penalty
INA 212(a)(6)(G)	Student Visa Abusers
INA 212(a)(8)	Ineligibility for Citizenship
INA 212(a)(9)(A)	Certain Foreign Nationals Previously Removed
INA 212(a)(9)(C)	Foreign Nationals Unlawfully Present After Previous Immigration Violations
INA 212(a)(10)	Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation

An applicant found inadmissible based on any of the above applicable grounds may be eligible for an SIJ-specific waiver of these inadmissibility grounds for:

- Humanitarian purposes;
- Family unity; or
- When it is otherwise in the public interest.[27] See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3).

The following table specifies which grounds of inadmissibility cannot be waived under the SIJ-specific waiver for such purposes.[28] However, an applicant found inadmissible based on one of the grounds of inadmissibility listed below may be eligible to obtain a waiver under other statutory authorities. For more information on other types of waivers, see Volume 9, Waivers [9 USCIS-PM].

Inadmissibility Grounds that Cannot Be Waived[29] This table includes inadmissibility grounds that cannot be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest.	
INA 212(a)(2)(A)	Conviction of Certain Crimes
INA 212(a)(2)(B)	Multiple Criminal Convictions
INA 212(a)(2)(C)	Controlled Substance Traffickers
INA 212(a)(3)(A)	Security and Related Grounds
INA 212(a)(3)(B)	Terrorist Activities
INA 212(a)(3)(C)	Foreign Policy Related
INA 212(a)(3)(E)	Participants in Nazi Persecution, Genocide, or the Commission of Any Act of Torture or Extrajudicial Killing

Juvenile Delinquency

Findings of juvenile delinquency are not considered criminal convictions for purposes of immigration law. However, certain grounds of inadmissibility do not require a conviction. In some cases, certain conduct alone may be sufficient to trigger an inadmissibility ground.[30] For example, see INA 212(a)(2)(A) (inadmissibility based on conviction of or admission that the foreign national committed certain criminal acts).

Furthermore, findings of juvenile delinquency may also be part of a discretionary analysis.[31] For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B]. USCIS will consider findings of juvenile delinquency on a case-by-case basis based on the totality of the evidence to determine whether a favorable exercise of discretion is warranted. Therefore, an adjustment applicant must disclose all arrests and charges. If

any arrest or charge was disposed of as a matter of juvenile delinquency, the applicant must include the court or other public record that establishes this disposition.

In the event that an applicant is unable to provide such records because the applicant's case was expunged or sealed, the applicant must provide information about the arrest and evidence demonstrating that such records are unavailable under the law of the particular jurisdiction. USCIS evaluates sealed and expunged records according to the nature and severity of the criminal offense.

5. Treatment of Family Members

Dependents of SIJs cannot file as derivative applicants. SIJ beneficiaries may petition for certain qualifying family members through family-based immigration after they have adjusted status to LPR. [32] See INA 101(a)(27)(J). However, a juvenile who adjusts status based on an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents after naturalization. [33] See INA 101(a)(27)(J)(iii)(II). This prohibition also applies to a non-abusive, custodial parent, if one exists.

6. Requirements for Perez-Olano Litigation Class Members [34] **See Perez-Olano v. Holder, Case No.CV 05-3604 (C.D. Cal. 2005).**

Perez-Olano v. Holder is a class-action lawsuit filed on behalf of certain foreign national juveniles who may have been eligible for SIJ classification or SIJ-based adjustment of status but whose SIJ petition or adjustment application was denied or revoked for certain reasons. Certain persons whose petition for SIJ classification [35] See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. or SIJ-based application for adjustment of status [36] See Form I-485, Application to Register Permanent Residence or Adjust Status. was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied SIJ petition or SIJ-based application for adjustment of status.

A class action member may file a motion to reopen if his or her SIJ petition or SIJ-based application for adjustment of status was denied or revoked on account of:

- Age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;

- Dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently

terminated based on age; or

- Specific consent, if the petitioner did not receive a grant of the Department of Health and Human Services (HHS) specific consent before going before the juvenile court and the court order did not alter the petitioner's HHS custody status or placement.

There is also a stipulation to the settlement agreement involving cases in which SIJ petitions or SIJ-based applications for adjustment of status were denied, terminated, or revoked on or after December 15, 2010, because the applicant's state court dependency order had expired at the time of the filing. The requirements and process for a class member to request that his or her case be reopened under the Stipulation differ from requirements under the original Settlement Agreement.[37] See Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement, issued (June 25, 2015).

Under the stipulation, USCIS will not deny, revoke, or terminate an SIJ petition or SIJ-based adjustment of status if, at the time of filing the SIJ petition, the applicant:

- Is or was under 21 years of age, unmarried, and otherwise eligible; and

- Is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

D. Documentation and Evidence

An applicant should submit the following documentation to adjust status as an SIJ:[38] For information about limitations on additional evidence, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 3, Documentation and Evidence, Section B, Limitations on Additional Evidence [6 USCIS-PM J.3(B)].

- Application to Register Permanent Residence or Adjust Status (Form I-485), with the correct fee or with a Request for Fee Waiver (Form I-912);

- Copy of the receipt or approval notice (Form I-797) for the applicant's SIJ petition (unless the applicant is filing the petition together with Form I-485);[39] USCIS may also require the

applicant to provide additional evidence to show he or she continues to be classified as an SIJ. See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

- Two passport-style photographs;
- Biographic Information Sheet (Form G-325A), if the applicant is 14 through 79 years of age;
- Copy of government-issued identity document with photograph (if available);
- Copy of birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);[40] Foreign nationals admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such foreign nationals may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.
- Any other evidence, as needed, to show that the terrorist-related adjustment bar does not apply;
- Report of Medical Examination and Vaccination Record (Form I-693);[41] The applicant may submit Form I-693 together with Form I-485 or later at USCIS' request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].
- Certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable);

- Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and

- Documentation of past or present J-1 or J-2 nonimmigrant status, including proof of compliance with or waiver of the 2-year foreign residence requirement under INA 212(e) (if applicable).[42] See Part A, Adjustment of Status Policies and Procedures, Chapter 2, Eligibility Requirements, Section B, Who is Not Eligible to Adjust Status, 3. Other Eligibility Requirements [7 USCIS-PM A.2(B.3)].

E. Adjudication[43] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

1. Filing

An applicant seeking adjustment of status as a special immigrant juvenile may file his or her adjustment application with USCIS concurrently with the SIJ petition, while the SIJ petition is pending, or after USCIS approves the SIJ petition (as long as the petition is still valid), provided:

- USCIS has jurisdiction over the adjustment application;[44] For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)]. and

- The visa availability requirements are met.[45] The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

2. Interview

Determining Necessity of Interview

USCIS recognizes the vulnerable nature of SIJ based applicants for adjustment of status and generally conducts interviews of SIJ based applicants for adjustment of status when an interview is deemed

necessary. USCIS conducts a full review of the record and supporting evidence to determine whether an interview may be warranted.

USCIS will generally not require an interview if the record contains sufficient information and evidence to approve the adjustment application without an in-person assessment. However, USCIS retains the discretion to interview SIJ based adjustment applicants for the purposes of adjudicating the adjustment of status application, as applicable.[46] See 8 CFR 103.2(b)(9).

Conducting the Interview

Given the vulnerable nature of SIJ based adjustment applicants and the hardships they may face because of the loss of parental support, USCIS takes special care to establish a child-friendly interview environment. During an interview, USCIS avoids questioning the applicant about the details of the abuse, neglect, or abandonment suffered because these issues are handled by the juvenile court. USCIS generally focuses the interview on resolving issues related to eligibility for adjustment of status.

The applicant may bring a trusted adult to the interview in addition to an attorney or representative. The trusted adult may serve as a familiar source of comfort to the applicant, but should not interfere with the interview process or coach the applicant during the interview. Given potential human trafficking and other concerns, USCIS assesses the appropriateness of the adult to attend the interview and is observant of the adult's interaction with the child. If USCIS has any concerns related to appropriateness of the adult's presence, USCIS may continue the interview without that adult present.

3. Age-Out Protections

There is no age limit for SIJ-based applicants for adjustment of status. In cases where an SIJ petitioner is under 21 years of age on the date of proper filing of the SIJ petition, USCIS does not deny an SIJ-based adjustment application solely because the applicant is older than 21 years of age at the time of filing or adjudication of the Form I-485.[47] See INA 101(b)(1) (definition of child is an unmarried person under 21 years of age). See Section 235(d)(6) of the TVPRA, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008) (provides age-out protection to SIJ petitioners). Although the SIJ definition at INA 101(a)(27)(J) does not use the term child, USCIS incorporated the child definition at INA 101(b)(1) into SIJ-related regulations. For more information on age-out protections for purposes of an SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements, Part C, Age-out Protections [6 USCIS-PM J.2(C)].

4. Decision

Approval

The officer must determine that the applicant meets all the eligibility requirements and merits the favorable exercise of discretion[48] See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 9, Legal Analysis and Appropriate Use of Discretion [7 USCIS-PM A.9]. before approving the application to adjust status as an SIJ. If the application for adjustment of status is approvable, the officer must determine if a visa is available at the time of final adjudication.[49] For more information on visa availability and visa retrogression, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

If approved, USCIS assigns the following code of admission to applicants adjusting under this category:

Class of Applicant and Code of Admission	
Applicant	**Code of Admission**
Special Immigrant Juvenile	SL6

The applicant becomes an LPR as of the date of approval of the adjustment application.[50] The date of approval is shown in the USCIS approval notice mailed to the applicant. That date is also shown on the actual Form I-551, Permanent Resident Card, the applicant receives after adjustment approval.

Denial

If the officer determines that the applicant is ineligible for adjustment, the officer must deny the adjustment application. The officer must provide the applicant a written reason for the denial.[51] See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a). Although there are no appeal rights for the denial of an adjustment application, the applicant may file a motion to reopen or reconsider, or renew the application in Immigration Court. The denial notice should include instructions for filing a Notice of Appeal or Motion (Form I-290B).

Footnotes

1.

For more information on the legislative history of the SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles [6 USCIS-PM J].

2.

See Pub. L. 101-649, 104 Stat. 4978 (November 29, 1990).

3.

See Pub. L. 101-649, 104 Stat. 4978, 5005 (November 29, 1990).

4.

See Pub. L. 102-232, 105 Stat. 1733, 1744 (December 12, 1991).

5.

See Pub. L. 105-119, 111 Stat. 2440, 2460 (November 26, 1997).

6.

See Pub. L. 110-457, 122 Stat. 5044, 5079 (December 23, 2008).

7.

See INA 245(a) and (c). See 8 CFR 245, 8 CFR 245.1(a) and 8 CFR 245.1(e)(3). See Instructions to Form I-485.

8.

See INA 245(a). See 8 CFR 245.1(e)(3). See Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section A, " Inspected and Admitted" or "Inspected and Paroled" [7 USCIS-PM B.2(A)].

9.

See INA 245(h)(1).

10.

See Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6] and Part B, 245(a) Adjustment, Chapter 2, Eligibility Requirements, Section C, Eligible to Receive an Immigrant Visa [7 USCIS-PM B.2(C)].

11.

See INA 245(a)(2).

12.

To see what requirements applicants must meet to obtain such classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements [6 USCIS-PM J.2].

13.

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

14.

See 8 CFR 205.2(a).

15.

See INA 205.

16.

See 8 CFR 205.2(b).

17.

The applicant must be unmarried at the time of filing the adjustment application and at the time of final adjudication of the form. See 8 CFR 205.1(a)(3)(iv).

18.

Revocation will not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.

19.

See 8 CFR 205.1(b).

20.

See 8 CFR 205.1(b).

21.

See INA 245(c). See Part B, 245(a) Adjustment [7 USCIS-PM B].

22.

See INA 245(c)(6), which bars from adjustment any foreign national deportable due to involvement in a terrorist activity or group under INA 237(a)(4)(B). Special immigrant juveniles are exempt from INA 245(c)(2) and INA 245(c)(8). See 62 FR 39417, 39422 (July 23, 1997). See 8 CFR 245.1(b)(5), 8 CFR 245.1(b)(6), and 8 CFR 245.1(b)(10). INA 245(c)(7) also does not apply. See 8 CFR 245.1(b)(9). See Part B, 245(a) Adjustment, Chapter 5, Employment-Based Applicant Not in Lawful Nonimmigrant Status – INA 245(c)(7) [7 USCIS-PM B.5]. Finally, INA 245(c)(1), INA 245(c)(3), INA 245(c)(4), and INA 245(c)(5) do not apply since a special immigrant juvenile is considered to be paroled into the United States and, when reviewing these bars, USCIS focuses on the most recent admission. See INA 245(h)(1). See 8 CFR 245.1(a) and 8 CFR 245.1(e)(3). For more information on the bars to adjustment, see Part B, 245(a) Adjustment [7 USCIS-PM B].

23.

For more information, see Volume 8, Admissibility [8 USCIS-PM] and Volume 9, Waivers [9 USCIS-PM].

24.

See INA 212(a) for the specific grounds of inadmissibility.

25.

See Volume 9, Waivers [9 USCIS-PM].

26.

See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3). Grounds of removal under INA 237(c) that correspond with exempted inadmissibility grounds are also waived for SIJs.

27.

See INA 245(h)(2)(B) and 8 CFR 245.1(e)(3).

28.

However, an applicant found inadmissible based on one of the grounds of inadmissibility listed below may be eligible to obtain a waiver under other statutory authorities. For more information on other types of waivers, see Volume 9, Waivers [9 USCIS-PM].

29.

This table includes inadmissibility grounds that cannot be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest.

30.

For example, see INA 212(a)(2)(A) (inadmissibility based on conviction of or admission that the foreign national committed certain criminal acts).

31.

For more information, see Part A, Adjustment of Status Policies and Procedures [7 USCIS-PM A] and Part B, 245(a) Adjustment [7 USCIS-PM B].

32.

See INA 101(a)(27)(J).

33.

See INA 101(a)(27)(J)(iii)(II).

34.

See Perez-Olano v. Holder, Case No.CV 05-3604 (C.D. Cal. 2005).

35.

See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

36.

See Form I-485, Application to Register Permanent Residence or Adjust Status.

37.

See Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement, issued (June 25, 2015).

38.

For information about limitations on additional evidence, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 3, Documentation and Evidence, Section B, Limitations on Additional Evidence [6 USCIS-PM J.3(B)].

39.

USCIS may also require the applicant to provide additional evidence to show he or she continues to be classified as an SIJ. See Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

40.

Foreign nationals admitted to the United States by CBP at an airport or seaport after April 30, 2013, may be issued an electronic Form I-94 by CBP instead of a paper Form I-94. Such foreign nationals may visit the CBP website to obtain a paper version of an electronic Form I-94. CBP does not charge a fee for this service.

41.

The applicant may submit Form I-693 together with Form I-485 or later at USCIS' request. See the USCIS website for more information. For more information on when to submit Form I-693, see Volume 8, Part B, Health-Related Grounds of Inadmissibility, Chapter 4, Review of Medical Examination Documentation [8 USCIS-PM B.4].

42.

See Part A, Adjustment of Status Policies and Procedures, Chapter 2, Eligibility Requirements, Section B, Who is Not Eligible to Adjust Status, 3. Other Eligibility Requirements [7 USCIS-PM A.2(B.3)].

43.

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review [7 USCIS-PM A.6].

44.

For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section D, Jurisdictions [7 USCIS-PM A.3(D)].

45.

The applicant must have an immigrant visa immediately available when he or she filed the adjustment of status application and at the time of final adjudication. See Section C, Eligibility Requirements [7 USCIS-PM F.7(C)].

46.

See 8 CFR 103.2(b)(9).

47.

See INA 101(b)(1) (definition of child is an unmarried person under 21 years of age). See Section 235(d)(6) of the TVPRA, Pub. L. 110-457, 122 Stat. 5044, 5080 (December 23, 2008) (provides age-out protection to SIJ petitioners). Although the SIJ definition at INA 101(a)(27)(J) does not use the term child, USCIS incorporated the child definition at INA 101(b)(1) into SIJ-related regulations. For more information on age-out protections for purposes of an SIJ classification, see Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements, Part C, Age-out Protections [6 USCIS-PM J.2(C)].

48.

See INA 245(a). For more information, see Part A, Adjustment of Status Policies and Procedures, Chapter 9, Legal Analysis and Appropriate Use of Discretion [7 USCIS-PM A.9].

49.

For more information on visa availability and visa retrogression, see Part A, Adjustment of Status Policies and Procedures, Chapter 6, Adjudicative Review, Section C, Verify Visa Availability [7 USCIS-PM A.6(C)].

50.

The date of approval is shown in the USCIS approval notice mailed to the applicant. That date is also shown on the actual Form I-551, Permanent Resident Card, the applicant receives after adjustment approval.

51.

See 8 CFR 103.2(b)(19) and 8 CFR 103.3(a).

Updates

POLICY ALERT – Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.