

Appendix A:
Statutory Provisions Related to Special Immigrant Juvenile Status¹

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Introduction:

Special Immigrant Juvenile Status (SIJS) was created in 1990 and then changed over the years through efforts of Congress to offer protection to a great number of immigrant children who have suffered abuse, abandonment or neglect by a parent. Once Congress passes an immigration law, the U.S. Department of Homeland Security issues implementing regulations that authorize individuals to apply for immigration relief under that law. In many instances after an initial set of regulations is issued, when Congress acts to amend the statute, the DHS regulations process can fall behind and often will not keep up with the statutory amendments. When this occurs the regulations issued prior to the subsequent statutory amendments will be superseded by the new law changes. When there is a conflict between the statute and the regulations issued prior to the passage of the statutory amendments, the language of the statute prevails. To address this issue the United States Citizenship and Immigration Services (USCIS) will issue policy memoranda that implement the new law changes. These policy manuals, guides, and/or memorandums provide guidance to USCIS adjudicators and to the field implementing the statutory changes.

SIJS is one of several areas of immigration law² in which the Immigration and Nationality Act statute has overruled and superseded many parts of the SIJS regulations. This Appendix provides courts easy access to the SIJS statute, USCIS implementing policies and those portions of the USCIS regulations that have not been superseded by statute.

SIJS Statutes

Immigration and Naturalization Act, § 101(a)(27)(J) (codified at 8 U.S.C. § 1101(a)(27)(J).)

(a) As used in this chapter—

...

(27) The term “special immigrant” means—

...

(J) an immigrant who is present in the United States—

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court

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² These same inconsistencies between the statute and the regulations occur in many areas of immigration law including implementation of the Violence Against Women Act and the Trafficking Victims Protection Act. *See*, Leslye Orloff and Benish Anver, *Current State of Violence Against Women Act and Trafficking Victims Protection Act Implementing Regulations and Policies*, NIWAP (Feb. 13, 2013), <http://niwaplibrary.wcl.american.edu/pubs/state-vawa-regs-policies/>.

located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
 - (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
 - (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter...

Immigration and Naturalization Act, § 245(h) (codified at 8 U.S.C. 1255)

ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

...

(h) APPLICATION WITH RESPECT TO SPECIAL IMMIGRANTS In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title—

- (1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and
- (2) in determining the alien's admissibility as an immigrant—
 - (A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply; and
 - (B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien’s natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

SIJS Regulations

Many of the SIJS regulations issued in 1991, 1993 and 2007 have been largely superseded by the statutory amendments made to the Special Immigrant Juvenile Status statutes as part of the Trafficking Victims Protection and Reauthorization Act of 2008.³ The following provisions of the SIJS regulations that were not superseded by the statute and are still legally binding.

United States Citizenship and Immigration Service Policies

On March 24, 2009, Donald Neufeld, Acting Associate Director of Operations and Pearl Chang, Acting Chief of the Office of Policy and Strategy at the Department of Homeland Security’s (“DHS”) United States Citizenship and Immigration Services (“USCIS”) issued a memorandum to field leadership on the Special Immigrant Juvenile Status Provisions of the Trafficking Victims Protection Reauthorization Act of 2008.⁴ The memorandum sought to offer guidance to immigration services offers based on updates on legislations that would affect the adjudication of SIJS applications. The text of the memorandum is attached in Appendix C – USCIS, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*.

USCIS also released a Policy Manual, updated on August 23, 2017, that addresses SIJS and is a useful tool for individuals working with SIJS petitions, particularly in the absence of legally binding regulations. The August 23, 2017 update of the USCIS Policy Manual can be found in Appendix D1- *USCIS Policy Manual – Volume 6, Part J, Special Immigrant Juvenile Status* and Appendix D2 – *USCIS Policy Manual – Volume 7, Part F, Chapter 7 Adjustment of Status, Special Immigrant Juveniles*.⁵

³ See Pub. L. No. 110-457, 122 Stat. 5044 (2008).

⁴ *Appendix C: USCIS Memo on Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SPECIAL IMMIGRANT JUVENILE STATUS BENCH BOOK: A NATIONAL GUIDE TO BEST PRACTICES FOR JUDGES AND COURTS (2017), http://niwaplibrary.wcl.american.edu/pubs/appendix-c-tvpra_sij-neufeld-memo-03-24-2009/.

⁵ USCIS periodically updates this policy manual. Updates can be found in two locations on the USCIS website. U.S. Citizenship & Immigr. Servs., USCIS Policy Manual, Vol. 6 – Immigrants, Part J – Special Immigrant Juveniles (last updated Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html> [hereinafter USCIS Policy Manual]. U.S. Citizenship & Immigr. Servs., USCIS Policy Manual, Vol. 7 – Adjustment of Status, Part F – Special Immigrant-Based (EB-4) Adjustment (last updated Aug. 23, 2017), available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html>; SIJS Bench Book, Appendix D1, *USCIS Policy Manual*, Chapter 7: Special Immigrant Juveniles. Since the structure of the manual on the USCIS website makes citation to specific pages of the policy manual difficult, the authors have downloaded the portions of the manual that address SIJS cases and have compiled them into a single document included as Appendix D1 and D2. This facilitates more precise page citations to sections of the USCIS Policy Manual that will be used throughout this Bench Book.