

Chapter VI: Inadmissibility in Special Immigrant Juvenile Status Cases¹

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Receiving lawful permanent residence is a multiple step process. First, the immigrant must prove eligibility for immigration relief. For most forms of relief, after eligibility is established, the immigrant must then apply to become a lawful permanent resident. This chapter explains admissibility requirements and the inadmissibility waivers that may be available in cases of children applying for Special Immigrant Juvenile Status (SIJS).

As with all forms of immigration relief that lead to lawful permanent residence, a finding of inadmissibility can negatively impact an immigrant's case. A finding of inadmissibility can lead to denial of the immigrant's lawful permanent residence application and it can also be a basis for an immigrant's removal or deportation. SIJS is not a form of immigration status in and of itself. When an immigrant child is granted SIJS, the child becomes eligible to apply for lawful permanent residence, which provides the child full lawful immigration status in the United States. Whether or not someone who receives SIJS can remain in the United States and become a lawful permanent resident or must be deported is in large part decided by whether the individual is found to be inadmissible and whether they merit a favorable exercise of discretion by the U.S. Department of Homeland Security (DHS) or the Executive Office for Immigration Review. These are determinations that are made by United States Citizenship and Immigration Services (USCIS) adjudicators or an Immigration Judge, depending on the procedural posture of the immigrant child's case.

The Immigration and Nationality Act (INA) articulates certain grounds of inadmissibility that can be barriers to someone obtaining lawful permanent residence. A denial of lawful permanent residence can result in deportation of that immigrant despite the approval of the immigrant's underlying immigration petition including, but not limited to, an SIJS petition. For children granted SIJS, the INA provides an automatic statutory exemption from certain specific grounds of inadmissibility.² Additionally, other grounds of inadmissibility can be waived for immigrants with approved SIJS cases upon a showing that the waiver furthers "humanitarian purposes, family unity" or "the public interest," and that the immigrant merits a favorable exercise of discretion by USCIS or the immigration judge.³ However, there are grounds of inadmissibility that cannot be waived and serve as a bar to lawful permanent residence for SIJS children. These inadmissibility grounds can, and do, lead to the deportation of SIJS children.

It is important to note that in immigration proceedings before an immigration judge, an individual has a right to an attorney if the immigrant can retain an attorney, but there is generally no right to court appointed counsel. This includes children who have no right to appointed counsel for either affirmative applications filed with USCIS or in Immigration Court deportation proceedings.⁴ It can be very difficult for immigrant children to meet their burden of proof of their admissibility without the assistance of counsel. In the Sixth Amendment effective assistance of counsel context, in criminal proceedings noncitizens must be advised about the immigration consequences of a plea.⁵ Though not required in the civil context where the Sixth Amendment does not govern, such as in juvenile delinquency matters, it can

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² 8 U.S.C. § 1255(h)(2)(A); Immigration and Nationality Act (INA) § 245(h)(2)(A).

³ 8 U.S.C. § 1255(h)(2)(B); Immigration and Nationality Act (INA) § 245(h)(2)(B).

⁴ See 8 U.S.C. § 1362; INA § 292; 8 C.F.R. §292.5(b); 8 C.F.R. §1240.10(a)(1).

⁵ Padilla v. Kentucky, 555 U.S. 1169 (2009).

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be best practices, useful, necessary, and in the children’s best interests for state courts to appoint an attorney to a noncitizen minor to ensure the child understands the immigration consequences of the state court proceedings.⁶

In immigration adjudications, the burden is on the often-unrepresented immigrant applicant to affirmatively show admissibility and persuade the adjudicator that a favorable exercise of discretion is warranted.⁷ Formal rules of evidence do not apply. Filings, orders, and other evidence that are part of a family court or delinquency proceedings can and are routinely used in determining inadmissibility by USCIS and Immigration Judges. Even when proceedings are confidential or when delinquency records are sealed or expunged, immigration adjudicators routinely request and receive state court documentation from state court proceedings and use it to influence their determinations on admissibility and discretion.⁸ Evidence of inadmissibility can come from many sources and generally can be considered in the immigration case, so long as the evidence is relevant.

Immigration adjudicators may ask for the noncitizen to produce state family or delinquency court filings, orders, or other portions of the state court file at various points in the immigration process. This includes USCIS adjudicators requesting documentation from the underlying state court proceedings during the SIJS application process.⁹ Additionally, when the noncitizen is applying for lawful permanent residence, the application specifically asks if the applicant has ever:

- “been arrested, cited, charged, or detained by any law enforcement official,” or
- “committed a crime of any kind (even if you were not arrested, cited charged with, or tried for that crime).”¹⁰

In addition as part of the immigration application process, USCIS will run an individual’s fingerprints to determine if any arrests occurred.¹¹ If the applicant answers yes to either of these questions or the child’s fingerprints lead to a record of arrest, even if the arrest or citation relates to juvenile delinquency, USCIS will routinely tell the applicant that he or she must obtain and submit the

⁶ See generally Joanna C. Kloet, *It’s Not (Fundamentally) Fair !: The Right to Counsel on the Immigration Consequences of Juvenile Misconduct*, 27 U. Fla. J.L. & Pub. Pol’y 329 (2016).

⁷ Brantigan, 11 B.I.A. 493 (1966); 8 U.S.C. § 1229a(c)(4)(A)(2006); 8 U.S.C. § 1229a(c)(2)(A); INA § 240(c)(4)(A).

⁸ U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, 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) [hereinafter SIJS BENCH BOOK], <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

⁹ U.S. Citizenship & Immigration Servs. *Volume 6: Immigrants, Part J, Special Immigrant Juveniles* (August 23, 2017), in U.S. CITIZENSHIP & IMMIGR. SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/Print/PolicyManual-Volume6-PartJ.html> (last visited Mar. 26, 2018); *Appendix D1: USCIS SIJS Policy Manual Volume 6 – Immigrants Part J – Special Immigrant Juveniles*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d1-uscis-sijs-policy-manual-full-vol-6/> (last visited Mar. 26, 2018).

¹⁰ DEP’T OF HOMELAND SEC., U.S. CITIZENSHIP & IMMIGRATION SERVS., USCIS FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS (June 26, 2017), <https://www.uscis.gov/i-485> (last visited Mar. 26, 2018).

¹¹ U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, in NAT’L IMMIGRANT WOMEN’S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

underlying police reports or court records.¹² Where the delinquency cases that stem from the arrests or other court actions have been sealed or expunged, immigration adjudicators require proof establishing that the court record has been sealed or expunged.¹³ In this context, USCIS or the immigration judge may attempt to require the applicant to request that the court provide them a copy of the sealed, expunged, or confidential court record to provide to the agency (USCIS or the immigration judge) adjudicating the child's SIJS based application for lawful permanent residence. Failing to provide a sufficient explanation of what occurred and/or failure to provide the documentation that the immigration adjudicator is seeking can lead to denial of the immigrant child's lawful permanent residence application for discretionary or inadmissibility reasons.¹⁴

Grounds of Inadmissibility and Special Immigrant Juvenile Status

Some grounds of inadmissibility can be triggered based on conduct alone, while others require a criminal conviction. Under immigration law, both a criminal conviction and admission of facts, in the context for example of a diversion agreement, can be treated as convictions under immigration law.¹⁵ Generally, delinquency adjudications and admissions made within the delinquency context are not considered convictions under immigration law.¹⁶ However, youthful offender statutes are a grey area with regard to whether criminal cases brought under these statutes will trigger inadmissibility. Depending on how the state defines its youthful offender laws, these may trigger the conviction-based grounds of inadmissibility.¹⁷ Further, though juvenile delinquency adjudications are generally not sufficient for conviction-based grounds of inadmissibility, they can and often do serve as the basis for finding conduct-based grounds of inadmissibility and adverse discretionary findings that can bar an immigrant child's ability to attain lawful permanent resident status and potentially result in the child's deportation.¹⁸

Grounds of Inadmissibility That Statutorily Do Not Apply in Special Immigrant Juvenile Status Cases

Individuals with SIJS are categorically exempt from certain grounds of inadmissibility when applying to become lawful permanent residents.¹⁹ This means that immigrant children to whom these

¹² U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

¹³ U.S. Citizenship & Immigration Servs., *Volume 7: Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment*, in U.S. CITIZENSHIP & IMMIGRATION SERVS. POLICY MANUAL (2017), <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html> (last visited Mar. 26, 2018); *Appendix D2: USCIS SIJS Policy Manual Volume 7 - Adjustment of Status Part F – Special Immigrant-Based (EB-4) Adjustment*, in NAT'L IMMIGRANT WOMEN'S ADVOCACY PROJECT, SIJS BENCH BOOK (2017), <http://niwaplibrary.wcl.american.edu/pubs/appendix-d2-uscis-sijs-policy-manual-full-vol-7/> (last visited Mar. 26, 2018).

¹⁴ See Beth K. Zilberman, *The Myth of Second Chances: Noncitizen Youth and Confidentiality of Delinquency Records*, GEO. IMMIGR. L.J. (forthcoming 2018).

¹⁵ 8 U.S.C. § 1101(a)(48)(A); 8 U.S.C. § 1182(a)(2)(A)(i); INA § 212(a)(2)(A)(i); INA § 101(a)(48)(A).

¹⁶ *Devison-Charles*, 22 B.I.A. 1362 (2000); *M-U-*, 2 B.I.A. 92 (1944).

¹⁷ See *Uritsky v. Gonzales*, 399 F.3d 728, 731 (6th Cir. 2005).

¹⁸ *Devison-Charles*, 22 B.I.A. 1362 (2000).

¹⁹ 8 U.S.C. § 1255(h)(2)(A); INA § 245(h)(2)(A). See generally Limayli Huguet, Faiza Chappell and Leslye E. Orloff, *Comparing Inadmissibility Waivers Available to Immigrant Victims in VAWA Self-Petitioning, U Visa, T Visa and Special Immigrant Juvenile Status Cases* (Oct. 15, 2022) <https://niwaplibrary.wcl.american.edu/pubs/inadmissibility-chart-va-wa-t-u-sijs> (Contains a full list of inadmissibility factors).

grounds of inadmissibility apply may still become lawful permanent residents if they are otherwise eligible and merit discretion. The grounds from which they are automatically exempt include:²⁰

- Public charge²¹
- Labor certification²²
- Noncitizens present without admission or parole²³
- Misrepresentation, including falsely claiming U.S. citizenship²⁴
- Stowaways²⁵
- Immigrants not in possession of a valid unexpired visa, reentry permit, border crossing identification card, or other valid entry document²⁶
- Noncitizens unlawfully present²⁷

Grounds of Inadmissibility That Statutorily Can be Waived in Cases of Special Immigrant Juvenile Status

For certain other grounds of inadmissibility, a child granted SIJS who is applying for lawful permanent residence can apply for a discretionary waiver for “humanitarian purposes, family unity, or when it is otherwise in the public interest.”²⁸ These grounds include:

- Health-related grounds²⁹
- Prostitution and commercialized vice³⁰
- Immigrants who committed a serious criminal offense who claimed immunity from prosecution³¹
- Foreign government officials who have committed particularly severe violations of religious freedom³²
- Significant traffickers in persons³³
- Money laundering³⁴
- Immigrant membership in a totalitarian party³⁵
- Association with terrorist organizations³⁶
- Recruitment or use of child soldiers³⁷
- Unqualified physicians³⁸
- Uncertified foreign health-care workers³⁹

²⁰ 8 U.S.C. § 1255(h)(2)(A); INA § 245(h)(2)(A).

²¹ INA § 212(a)(4); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(A).

²² INA § 212(a)(5)(A); 8 C.F.R. 245.1(e)(3)(iii)(B).

²³ INA § 212(a)(6)(A); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(C).

²⁴ INA § 212(a)(6)(C); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(D).

²⁵ INA § 212(a)(6)(D); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(E).

²⁶ INA § 212(a)(7)(A); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(F).

²⁷ INA § 212(a)(9)(B); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(G).

²⁸ INA § 245(h)(2)(B); 87 Fed. Reg. 13094-13095 (March 8, 2022); 8 C.F.R. 245.1 (e)(3)(iv) and (v).

²⁹ INA § 212(a)(1); INA § 245(h)(2)(B).

³⁰ INA § 212(a)(2)(D); INA § 245(h)(2)(B).

³¹ INA § 212(a)(2)(E); INA § 245(h)(2)(B).

³² INA § 212(a)(2)(G); INA § 245(h)(2)(B).

³³ INA § 212(a)(2)(H); INA § 245(h)(2)(B).

³⁴ INA § 212(a)(2)(I); INA § 245(h)(2)(B).

³⁵ INA § 212(a)(3)(D); INA § 245(h)(2)(B).

³⁶ INA § 212(a)(3)(F); INA § 245(h)(2)(B).

³⁷ INA § 212(a)(3)(G); INA § 245(h)(2)(B).

³⁸ INA § 212(a)(5)(B); INA § 245(h)(2)(B).

³⁹ INA § 212(a)(5)(C); INA § 245(h)(2)(B).

- failure to attend removal proceeding⁴⁰
- Smugglers—if at any time, the individual knowingly encouraged, induced, assisted, abetted, or aided any other person to enter or attempt to enter the US in violation of the law⁴¹
- Subject to a civil penalty for document fraud⁴²
- Student visa abusers—violation of an (F) student visa as an elementary or secondary school student is excludable until the person has been outside of the US for a continuous period of 5 years after the violation⁴³
- Any person ineligible for citizenship or anyone who has left the US to evade service in the armed forces during a time of war or emergency declared by the President⁴⁴
- Certain immigrants previously removed⁴⁵
- Any person unlawfully present after previous immigration violations⁴⁶
- Practicing polygamists⁴⁷
- Guardian required to accompany another helpless immigrant⁴⁸
- International child abduction⁴⁹
- Unlawful voters⁵⁰
- Former citizens who renounced citizenship to avoid taxation⁵¹

Grounds of Inadmissibility for That Cannot be Waived for Children Granted SIJS

For other grounds of inadmissibility there is no waiver available based on SIJS. For immigrant children who are in removal proceedings in immigration court who qualify for no other form of relief⁵² from deportation, this would likely lead to child's deportation from the United States. The most problematic for SIJS children are inadmissibility grounds related to criminal activity, drugs, and gang

⁴⁰ INA § 212(a)(6)(B); INA § 245(h)(2)(B).

⁴¹ INA § 212(a)(6)(E); INA § 245(h)(2)(B).

⁴² INA § 212(a)(6)(F); INA § 274(C); INA § 245(h)(2)(B).

⁴³ INA § 212(a)(6)(G) (attending a publicly funded elementary school violates the terms of an (F) student visa. Attending a publicly funded secondary school also violates the terms of an (F) student visa unless the attendance was for an aggregate period that is less than 12 months and the student reimbursed the public school for the full unsubsidized per capita cost of providing the child education at the school).

⁴⁴ INA § 212(a)(8); INA § 245(h)(2)(B). Persons ineligible for citizenship are: INA § 313 (persons opposed to the government or in favor of totalitarian forms of government are prohibited from naturalization); INA § 314 (deserters from the armed forces are prohibited naturalization); INA § 315 (immigrants relieved from service in the armed forces are ineligible for naturalization).

⁴⁵ INA § 212(a)(9)(A); INA § 245(h)(2)(B).

⁴⁶ INA § 212(a)(9)(C); INA § 245(h)(2)(B).

⁴⁷ INA § 212(a)(10)(A); INA § 245(h)(2)(B).

⁴⁸ INA § 212(a)(10)(B); INA § 245(h)(2)(B).

⁴⁹ INA § 212(a)(10)(C); INA § 245(h)(2)(B).

⁵⁰ INA § 212(a)(10)(D); INA § 245(h)(2)(B).

⁵¹ INA § 212(a)(10)(E); INA § 245(h)(2)(B).

⁵² Some SIJS eligible children who have been victims criminal activities including but not limited to (domestic violence/child abuse) perpetrated against the child in the United States will qualify to apply for VAWA self-petitioning or U visas which include more generous inadmissibility waivers than are available through the SIJS. For information on which immigrant victims, including children, may be eligible for the U visas. See Leslye E. Orloff, Alisha Lineswala, Benish Anver, Karen Dryhurst & Lucia Macias, *U Visa Certification for Tool Kit for Federal, State and Local Judges, Commissioners, Magistrates and Other Judicial Officers*, NATIONAL IMMIGRANT WOMAN'S ADVOCACY PROJECT (last updated Nov. 7, 2017), <http://niwaplibrary.wcl.american.edu/pubs/u-visa-certification-tool-kit-federal-state-local-judges-magistrates/>. Children may also qualify for and should be screened for other forms of victim based immigration relief. See generally Alexandra Brown & Leslye Orloff, *The Department of Homeland Security's Interactive Infographic on Protections for Immigrant Victims*, NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-interactive-infographic-on-protections-for-immigrant-victims-8-29-17/>; DHS Infographic: *Protections for Immigrant Victims* NATIONAL IMMIGRANT WOMEN'S ADVOCACY PROJECT (Jan. 12, 2017), <http://niwaplibrary.wcl.american.edu/pubs/dhs-protections1-6-links-121516/> (last visited Mar. 26, 2018); U.S. CITIZENSHIP & IMMIGRATION SERVS., IMMIGRATION OPTIONS FOR VICTIMS OF CRIMES (June 30, 2011), <http://niwaplibrary.wcl.american.edu/pubs/imm-options-victims-of-crimes/> (last visited Mar. 26, 2018).

activity. Certain grounds of inadmissibility require a conviction or admission of facts that would constitute an admission of guilt,⁵³ and do not generally include juvenile adjudications. However, seemingly minor criminal conduct can implicate these grounds of inadmissibility. Even though delinquency adjudications do not generally trigger inadmissibility grounds, the evidence in the record in the delinquency case has the potential to implicate other conduct-based grounds of inadmissibility that are not waivable.

Certain grounds of inadmissibility that cannot be waived are based on criminal convictions, admissions,⁵⁴ or on multiple criminal convictions.⁵⁵ Juvenile adjudications and admissions are not convictions that will trigger these grounds.⁵⁶ Depending on the nature of the state criminal statute, some of these grounds may be triggered even for seemingly minor offenses and consulting with an immigration expert is important. These grounds include:

- Conviction of certain crimes including crimes involving moral turpitude, potentially including theft and shoplifting, domestic violence, child abuse or exploitation (except a single offense of simple possession of less than 30 grams of marijuana);⁵⁷ and
- Multiple criminal convictions meaning two or more convictions (except a single offense of simple possession of less than 30 grams of marijuana cannot be counted);⁵⁸
- DHS knows or has reason to believe the applicant is, or has been an illicit trafficker in any controlled substance (except a single offense of simple possession of less than 30 grams of marijuana).⁵⁹

Non-waivable grounds of inadmissibility that are based on conduct alone can be triggered by many parts of a youth's state court record, including documents that are part of the youth's social file or dependency file, as well as any police reports, school reports, or probation reports included in the court records.⁶⁰ Also evidence used to determine suspicion of gang involvement does not need to rise to the level of proof that would be required for a state delinquency adjudication or for a criminal conviction under state law. This evidence may be present even when the evidence in the case was not sufficient to lead to the filing of a juvenile delinquency petition under state law. The most common conduct-based grounds of inadmissibility include inadmissibility of persons:

- For whom there is "reason to believe" the individual is a drug trafficker,⁶¹

⁵³ 8 U.S.C. § 1182(a)(2)(A); INA § 212(a)(2)(A).

⁵⁴ 8 U.S.C. § 1182(a)(2)(A); INA § 212(a)(2)(A). There is an exception for crimes involving moral turpitude for acts that were committed before age eighteen and the application for admission was more than five years after any time served. 8 U.S.C. § 1182(a)(2)(A)(ii)(I); INA § 212(a)(2)(A)(ii)(I).

⁵⁵ 8 U.S.C. § 1182(a)(2)(B); INA § 212(a)(2)(B).

⁵⁶ *Devison-Charles*, 22 B.I.A. 1362 (2000); *M-U-*, 2 B.I.A. 92 (1944).

⁵⁷ 8 U.S.C. § 1182(a)(2)(A)(i)(I); INA § 212(a)(2)(A)(i)(I); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(1). However, in addition to the exception for a crime committed under eighteen and more than five years has passed since application for benefit. 8 U.S.C. § 1182(a)(2)(A)(ii)(I); INA § 212(a)(2)(A)(ii)(I). There is an exception for a single petty offense §1182(a)(2)(A)(ii)(II); INA § 212(a)(2)(A)(ii)(II).

⁵⁸ 8 U.S.C. § 1182(a)(2)(B); INA § 212(a)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(2).

⁵⁹ 8 U.S.C. § 1182(a)(2)(A)(i)(II); INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1255(h)(2)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(3). There is an exception for a single petty offense § 1182(a)(2)(A)(ii)(II); INA § 212(a)(2)(A)(ii)(II).

⁵⁹ 8 U.S.C. § 1182(a)(2)(A)(i)(II); INA § 212(a)(2)(A)(i)(II); 8 U.S.C. § 1255(h)(2)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(3).

⁶⁰ If the child welfare agency does interviews of the adults in the home or teachers and enters that into the record, if the immigration adjudicator access it they will use it. The adjudicator will use any information from any court or agency that they can obtain. This includes information from interagency databases as well; it does not need to come from the court for it to be of use to the adjudicator in making these determinations.

⁶¹ 8 U.S.C. § 1182(a)(2)(C); INA § 212(a)(2)(C); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(3) (a conviction is not required. There is an exception for a single offence of simple possession of 30 grams or less of marijuana.)

- Who entered the United States to engage in unlawful activity⁶² which can include any gang activity and incidental gang affiliation,⁶³ and
- Who are involved in activities relating to terrorism and commission of extrajudicial killing, genocide, or torture.⁶⁴ These national security related inadmissibility grounds are described in more detail as follows:
 - Immigrants who seek to enter the U.S. solely, principally or incidentally to:
 - Engage in espionage, sabotage⁶⁵
 - Violate or evade laws prohibiting the export of goods, technology or sensitive information⁶⁶
 - Engage in plans to overthrow the US government by any means⁶⁷
 - Engage in any other unlawful activity⁶⁸
 - Terrorist activities⁶⁹
 - If the entry would have potentially serious adverse foreign policy consequences⁷⁰
 - Participation in Nazi persecution, genocide, or acts of torture or extrajudicial killings.⁷¹

An applicant whose SIJS application is granted cannot be granted lawful permanent residency if they are deportable due to engagement in terrorist activity or association with terrorist organizations.⁷² There is no waiver of or exemption for SIJS children to this terrorist-related bar to lawful permanent residency or any of the other listed non-waivable bars.⁷³

⁶² 8 U.S.C. § 1182(a)(3)(A); INA § 212(a)(3)(A).

⁶³ While criminal conduct in furtherance of the activities of a “criminal street gang” can be an aggravating factor leading to immigration enforcement against an immigrant, Immigration and Customs Enforcement attorneys have been directed to be mindful that inclusion in one or more gang databases is not determinative of whether a particular individual is, in fact, a gang member or associate. *See*, KERRY E. DOYLE, GUIDANCE TO OPLA ATTORNEYS REGARDING THE ENFORCEMENT OF CIVIL IMMIGRATION LAWS AND THE EXERCISE OF PROSECUTORIAL DISCRETION 5 (Apr. 3, 2021) https://niwaplibrary.wcl.american.edu/wp-content/uploads/OPLA-immigration-enforcement_guidanceApr2022.pdf; see also ALEJANDRO MAYORKAS, U.S. DEP’T OF HOMELAND SECURITY, MEMORANDUM: GUIDELINES FOR THE ENFORCEMENT OF CIVIL IMMIGRATION LAW 4 (Sep. 30, 2021), <https://niwaplibrary.wcl.american.edu/pubs/mayorkas-civil-imm-guide-sept-21> (“Our personnel should not rely on the fact of conviction or the result of a database search alone.”). *But see* 8 U.S.C. § 1182(a)(3)(A)(ii) (the Department of State uses gang activity to find inadmissibility); INA § 212(a)(3)(A)(ii). U.S. DEP’T OF STATE FOREIGN AFFAIRS MANUAL, VOL. 9 – VISAS, 9 FAM 40.31, n.5.3.

⁶⁴ 8 U.S.C. § 1182(a)(3)(B); INA § 212(a)(3)(B) (terrorist activities); 8 U.S.C. § 1182(a)(3)(C); INA § 212(a)(3)(C) (serious adverse foreign policy consequences); 8 U.S.C. § 1182(a)(3)(E); INA § 212(a)(3)(E) (participants in Nazi persecutions, genocide or the commission of any act of torture or extrajudicial killing).

⁶⁵ INA § 212(a)(3)(A)(i)(I); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁶⁶ INA § 212(a)(3)(A)(i)(II); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁶⁷ INA § 212(a)(3)(A)(ii); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁶⁸ INA § 212(a)(3)(A)(iii); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁶⁹ INA § 212(a)(3)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(5).

⁷⁰ INA § 212(a)(3)(C); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(6).

⁷¹ INA § 212(a)(3)(E); INA § 245(h)(2)(B); ; 8 C.F.R. 245.1(e)(3)(v)(7).

⁷² 8 CFR §245.1(e)(3)(ii); 7 USCIS-PM F.7(C)(4).

⁷³ 7 USCIS-PM F.7(C)(4).