

**Special Immigrant Juveniles (SIJS):
Inadmissibility Factors That Do and Do Not Apply to SIJS Cases¹**

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June 12, 2021 (Updated December 26, 2022)

This tool is designed to provide judges, attorneys and victim advocates working with immigrant children who have been victims of child abuse, child neglect, or child abandonment perpetrated by one of both of the child’s parents with a reference tool listing the inadmissibility grounds under immigration law that apply to children seeking Special Immigrant Juvenile Status (SIJS). In order to gain lawful permanent residency once an immigrant child’s SIJS application has been approved, the child must prove that the child is admissible to the United States.

Sections 245(h)(2)(A)-(B)² of the Immigration and Nationality Act exempt children who Special Immigrant Juvenile applications have been approved from some grounds of inadmissibility,³ lists certain inadmissibility grounds that are not waivable,⁴ and authorizes DHS⁵ to grant waivers of other inadmissibility grounds in cases of SIJS children for humanitarian or family unity purposes or when the waiver is in the public interest.⁶ With limited exceptions, most notably certain drug trafficking and gang involvement, the criminal inadmissibility grounds listed below require a criminal conviction.⁷ Juvenile adjudications are not considered “convictions” for immigration purposes.⁸ However, the conviction related criminal inadmissibility grounds apply to children who are convicted after being tried as an adult.

The term “conviction” as defined by U.S. immigration laws⁹ means a formal judgment of guilt of the immigrant entered by a court or, if adjudication of guilt has been withheld, where:

- (i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) The judge has ordered some form of punishment, penalty, or restraint on the noncitizen’s liberty to be imposed.

The following list provides an overview of the inadmissibility grounds that do not apply, that do apply for which a waiver may be available, and that do apply and are not waivable in cases of immigrant children applying for lawful permanent residency after the child’s SIJS application has been granted.¹⁰

Grounds of Inadmissibility That Do Not Apply Special Immigrant Juveniles

INA 212(a)(4)	Public charge; ¹¹
INA 212(a)(5)(A)	Labor certification; ¹²
INA 212(a)(6)(A)	Aliens present without admission or parole; ¹³
INA 212(a)(6)(C)	Misrepresentation, including false claim to U.S. citizenship; ¹⁴

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- INA 212(a)(6)(D) Stowaways;¹⁵
- INA 212(a)(7)(A) Immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document;¹⁶ and
- INA 212(a)(9)(B) Aliens unlawfully present.¹⁷

Grounds of Inadmissibility That Apply to Special Immigrant Juveniles That Can Be Waived

The Secretary of DHS Attorney General may waive the following grounds of inadmissibility in the case of SIJS recipients for humanitarian purposes, family unity, or when it is in the public interest:¹⁸

- INA 212(a)(1) Health-related grounds;¹⁹
- INA 212(a)(2)(D) Prostitution and commercialized vice;²⁰
- INA 212(a)(2)(E) Immigrants who committed a serious criminal offense who claimed immunity from prosecution;²¹
- INA 212(a)(2)(G) Foreign government officials who have committed particularly severe violations of religious freedom;²²
- INA 212(a)(2)(H) Significant traffickers in persons;²³
- INA 212(a)(2)(I) Money laundering;²⁴
- INA 212(a)(3)(D) Immigrant membership in a totalitarian party;²⁵
- INA 212(a)(3)(F) Association with terrorist organization;²⁶
- INA 212(a)(3)(G) Recruitment or use of child soldiers;²⁷
- INA 212(a)(5)(B) Unqualified physicians;²⁸
- INA 212(a)(5)(C) Uncertified foreign health care workers;²⁹
- INA 212(a)(6)(B) Failure to attend removal proceedings;³⁰
- INA 212(a)(6)(E) 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 law;³¹
- INA 212(a)(6)(F) Subject to a civil penalty for document fraud;³²
- INA 212(a)(6)(G) 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 violation;³³
- INA 212(a)(7)(B) Any nonimmigrant without a valid passport, nonimmigrant visa, or border crossing ID at the time of application for admission;³⁴
- INA 212(a)(8) 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 President;³⁵
- INA 212(a)(9)(A) Certain aliens previously removed;³⁶
- INA 212(a)(9)(C) Any person unlawfully present after previous immigration violations;³⁷
- INA 212(a)(10)(A) Practicing polygamists;³⁸
- INA 212(a)(10)(B) Guardian required to accompany another helpless immigrant;³⁹
- INA 212(a)(10)(C) International child abduction;⁴⁰

- INA 212(a)(10)(D) Unlawful voters;⁴¹ and
 INA 212(a)(10)(E) Former citizens who renounced citizenship to avoid taxation.⁴²

**Grounds of Inadmissibility Applicable to Special Immigrant Juveniles
 That Apply in All Cases With No Waiver is Available**

- INA 212(a)(2)(A) Conviction of certain crimes including a crime of moral turpitude (except a single offense of possession of less than 30 grams of marijuana);⁴³
- INA 212(a)(2)(B) Multiple criminal convictions meaning two or more convictions (except a single offense of possession of less than 30 grams of marijuana cannot be counted);⁴⁴
- INA 212(a)(2)(C) 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 possession of less than 30 grams of marijuana)⁴⁵ (Note: does not require a “conviction” in adult court or a juvenile delinquency disposition);
- INA 212(a)(3)(A) Immigrants who seek to enter the U.S. solely, principally or incidentally to:
 - Engage in espionage, sabotage;⁴⁶
 - Violate or evade laws prohibiting the export of goods, technology or sensitive information;⁴⁷
 - Engage in plans to overthrow the US government by any means;⁴⁸
 - Engage in any other unlawful activity⁴⁹ which can include any gang activity and incidental gang affiliation;⁵⁰
- INA 212(a)(3)(B) Terrorist activities;⁵¹
- INA 212(a)(3)(C) If the entry would have potentially serious adverse foreign policy consequences;⁵² and
- INA 212(a)(3)(E) Participants in Nazi persecutions, genocide or the commission of any act of torture or extrajudicial killing.⁵³

¹ Adapted from Immigrant Legal Resource Center (ILRC), Grounds of Inadmissibility for Special Immigrant Juveniles (2009) https://www.ilrc.org/sites/default/files/resources/inadmissibility_2009.pdf.

² The waiver provision:

“(h) In applying this section to a special immigrant described in section 101(a)(27)(J) [8 USC § 1101(a)(27)(J)]

...

(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 212(a) shall not apply, and

(B) the Attorney General may waive other paragraphs of section 212(a) (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). . . .”

³ INA § 245(H)(2)(A).

⁴ INA § 245(H)(2)(B).

⁵ Note that throughout the Immigration and Nationality Act there are references to the Attorney General rather than the Secretary of the Department of Homeland Security. Many code sections of the INA predate the establishment of the Department of Homeland Security in 2002. As a result of the creation of DHS in 2002, the waiver described in this section is exercised in SIJS cases by the Department of Homeland Security not the U.S. Department of Justice.

⁶ INA § 245(H)(2)(B).

⁷ What is considered a criminal conviction under immigration law is defined by the Immigration and Nationality Act and is not the same as under state laws. A judgment that might not be considered a conviction under the criminal law of the relevant jurisdiction may be a conviction for immigration purposes.

⁸ See *In re Matter of Devison-Charles*, 22 I. & N. Dec. 1362, 1365-66 (BIA 2000); *Matter of Ramirez-Rivero*, 18 I. & N. Dec. 135 (BIA 1981).

⁹ INA § 101(a)(48)(A); 8 U.S.C. 1101(a)(48)(A).

¹⁰ More detailed information on inadmissibility in Special Immigrant Juvenile Status cases including citations to the relevant statutes, regulations and case law see *Inadmissibility Comparison Charts for Crime Victim Related Forms of Immigration Relief* (2021) <https://niwaplibrary.wcl.american.edu/inadmissibility-comparison-charts-for-victims> (compares crime victim and abuse related forms of immigration relief available to children who have suffered abuse, trafficking, or other U visa listed forms of violence perpetrated against them in the U.S. or perpetrated anywhere in the world by one of the child's parents or stepparents. The forms of relief compared are VAWA self-petitioning, U visa, T visa and SJS).

¹¹ INA § 212(a)(4); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(A); PUBLIC CHARGE: INADMISSIBILITY ON PUBLIC CHARGE GROUNDS, 84 Fed. Reg. 157 (Aug. 14, 2019) (to be codified at 8 C.F.R. pt. 103, 212, 213, 214, 245, and 248) (“this rule does not create any penalty or disincentive for past, current, or future receipt of public benefits by U.S. citizens or aliens whom Congress has exempted from the public charge ground of inadmissibility. This rule does not apply to U.S. citizens, even if the U.S. citizen is related to an alien subject to the public charge ground of inadmissibility. The rule also does not apply to aliens whom Congress exempted from the public charge ground of inadmissibility (such as asylees, refugees, or other vulnerable populations listed as exempt in this final rule). Nor does this rule apply to aliens for whom DHS has statutory discretion to waive this ground of inadmissibility, if DHS has exercised such discretion”).

¹² INA § 212(a)(5)(A); 8 C.F.R. 245.1(e)(3)(iii)(B) (this inadmissibility ground applies only to members of professions holding advanced degrees, immigrants of exceptional ability, skilled workers, professionals, or unskilled or temporary workers performing work for which qualified workers are not available in the U.S.); INA § 245(h)(2)(A).

¹³ INA § 212(a)(6)(A); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(C).

¹⁴ INA § 212(a)(6)(C); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(D).

¹⁵ INA § 212(a)(6)(D); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(E).

¹⁶ INA § 212(a)(7)(A); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(F).

¹⁷ INA § 212(a)(9)(B); INA § 245(h)(2)(A); 8 C.F.R. 245.1(e)(3)(iii)(G).

¹⁸ INA § 245(h)(2)(B); 87 Fed. Reg. 13094-13095 (Mar. 8, 2022); 8 C.F.R. 245.1 (e)(3)(iv) and (v).

¹⁹ INA § 212(a)(1); INA § 245(h)(2)(B).

²⁰ INA § 212(a)(2)(D); INA § 245(h)(2)(B).

²¹ INA § 212(a)(2)(E); INA § 245(h)(2)(B).

²² INA § 212(a)(2)(G); INA § 245(h)(2)(B).

²³ INA § 212(a)(2)(H); INA § 245(h)(2)(B).

²⁴ INA § 212(a)(2)(I); INA § 245(h)(2)(B).

²⁵ INA § 212(a)(3)(D); INA § 245(h)(2)(B).

²⁶ INA § 212(a)(3)(F); INA § 245(h)(2)(B).

²⁷ INA § 212(a)(3)(G); INA § 245(h)(2)(B).

²⁸ INA § 212(a)(5)(B); INA § 245(h)(2)(B).

²⁹ INA § 212(a)(5)(C); INA § 245(h)(2)(B).

³⁰ INA § 212(a)(6)(B); INA § 245(h)(2)(B).

³¹ INA § 212(a)(6)(E); INA § 245(h)(2)(B).

³² INA § 212(a)(6)(F); INA § 274(C); INA § 245(h)(2)(B).

³³ INA § 212(a)(6)(G) (attending a publicly funded elementary school violates the terms of an (F) student visa. Attending a publically 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).

³⁴ INA § 212(a)(7)(B); INA § 212(d)(4); INA § 245(h)(2)(B).

³⁵ 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).

³⁶ INA § 212(a)(9)(A); INA § 245(h)(2)(B).

³⁷ INA § 212(a)(9)(C); INA § 245(h)(2)(B).

³⁸ INA § 212(a)(10)(A); INA § 245(h)(2)(B).

³⁹ INA § 212(a)(10)(B); INA § 245(h)(2)(B).

⁴⁰ INA § 212(a)(10)(C); INA § 245(h)(2)(B).

⁴¹ INA § 212(a)(10)(D); INA § 245(h)(2)(B).

⁴² INA § 212(a)(10)(E); INA § 245(h)(2)(B).

⁴³ INA § 212(a)(2)(A)(i)(I); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(1) (a conviction is not required). *See* INA § 212(a)(2)(A)(ii) (for limited exceptions for certain under 18 year old offenders and for cases in which the maximum penalty possible for the crime did not exceed imprisonment for one year and if there was a conviction the sentence did not exceed 6 months (regardless of the extent to which the sentence was ultimately executed)).

⁴⁴ INA § 212(a)(2)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(2).

⁴⁵ 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.)

⁴⁶ INA § 212(a)(3)(A)(i)(I); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁴⁷ INA § 212(a)(3)(A)(i)(II); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁴⁸ INA § 212(a)(3)(A)(ii); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁴⁹ INA § 212(a)(3)(A)(iii); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(4).

⁵⁰ 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.

⁵¹ INA § 212(a)(3)(B); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(5).

⁵² INA § 212(a)(3)(C); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(6).

⁵³ INA § 212(a)(3)(E); INA § 245(h)(2)(B); 8 C.F.R. 245.1(e)(3)(v)(7).