Special Immigrant Juvenile Status Regulations:

1993, 2009, 2011 (Proposed Rule), & 2022

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This document compares and contrasts the original 1993 rule on Special Immigrant Juvenile Status, a 2009 amendment to this rule, the 2011 proposed rule on Special Immigrant Juvenile Status, and the subsequently adopted 2022 rule that went into effect on March 8, 2022. The 2022 rule significantly amended prior versions of the rule, including the 2011 proposed rule. This document will help readers understand the 2022 rule amendments and which portions of the 1993 and 2009 versions of the rule remain intact, as well as which portions of the 2011 proposed rule remained in the final rule. Each rule details in track changes how it was changed by the subsequent rules. Provisions no longer applicable are crossed out, provisions that have been amended are highlighted (yellow for changes made in 2022 and pink for changes made in 2009), and provisions that are still inforce are unchanged. If you place the cursor on the provision that are crossed out or highlighted, you will see explanatory notes with citations. The full text of each version of the rule is included in chronological order.

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in effect on the date of the original optional origin contract. Although exporters who ship foreign cotton on an optional origin contract do not receive payments on that cotton, their obligation to ship under the user marketing certificate program is thereby fulfilled, and a replacement contract is not required.

This policy allows exporters to lock in a payment rate on an optional origin contract and, if a higher payment rate occurs later, to ship foreign cotton on the lower rate and U.S. cotton on the higher rate. Since only exporters who trade in both foreign and U.S. cotton make optional origin contracts, the current rules give them an advantage over exporters who ship only U.S. cotton. The revised rule would establish the payment rate for optional origin contracts at the lower of: (1) the payment rate in effect when the original optional origin contract was made; or (2) the payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped is of U.S. origin.

Revisions to penalty provisions for non-shipment of cotton will improve exporter accountability without compromising the objectives of the user marketing certificate program. Changing the way in which payment rates are determined for U.S. cotton shipped on an optional origin contract will eliminate any advantage to exporters who trade in both foreign and U.S. cotton vis-a-vis exporters who ship only U.S. cotton. These changes should result in a more accurate indication of the potential level of U.S. cotton exports and the competitiveness of U.S. upland cotton in world markets.

Section 1427.109(e) is amended to require that documentation be submitted to CCC as evidence that an export contract cancellation, amendment or failure to export is beyond the control of the exporter. Requests for relief from making a replacement contract will be examined by CCC on a case-by-case basis. Further clarification of documentation required to support relief requests will improve the efficiency of CCC operations.

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 13, 1993, in order to be assured of consideration.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.107 is amended by:

A. Revising paragraph (d)(3),

B. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g) respectively, and

C. Adding a new paragraph (e) to read as follows:

§ 1427.107 Payment rate.

* * * * *

(d) * * *

(3) If shipment is not completed by December 31 of such year, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the original contract payment rate or, if a replacement contract has been made, the replacement contract payment rate, or

(ii) 50 percent of the original contract payment rate.

(e) For U.S. cotton sold by the exporter under an optional origin contract, the payment rate shall not be established until the exporter notifies CCC in writing that the cotton shipped or to be shipped was or will be of United States origin. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of:

(1) The payment rate in effect when the optional origin contract was made, or

(2) The payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be, of United States origin.

* * * * *

3. Section 1427.109 is amended by:

A. Revising paragraph (c)(3), and

B. Revising paragraph (e) to read as follows:

§ 1427.109 Contract cancellations.

* * * * *

(c) * * *

(3) Not completed, or a replacement contract is not designated by the exporter by December 31, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the payment rate determined in accordance with paragraph (b) of this section, or

(ii) 50 percent of the original contract payment rate.

* * * * *

(e) The provisions of paragraphs (a) through (d) of this section will not apply if CCC determines, based upon written evidence provided by the exporter, that a contract cancellation, amendment, or failure to export is due to reasons beyond the control of the exporter. If, as determined by CCC, the cancellation is beyond the control of the exporter, replacement contracts are not required, and the assessment of liquidated damages by CCC is waived. Documentation to support that contract cancellations are beyond the control of the exporter must be submitted to CCC. Requests for relief from naming a replacement contract will be examined by CCC on a case-by-case basis to determine if relief is warranted.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 101, 103, 204, 205, and 245

[INS No. 1424–92]

RIN 1115–AC48

Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 153 of the Immigration Act of 1990 (IMMACT 90) by providing a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court in the United States. This rule also implements section 302(d)(2) of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 (Technical Amendments) by providing for the adjustment of status to that of lawful permanent resident for aliens classified as special immigrants who have been declared dependent on a juvenile court in the United States. In addition, the rule implements section 702 of IMMACT 90, which became effective November 29, 1990, by finalizing procedures for appeals of denials of adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e)(3) of the Immigration and Nationality Act (the Act), as amended. This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified aliens with the opportunity to apply for special immigrant classification and lawful permanent resident status, with possibility of becoming citizens of the United States in the future. It also ensures that persons whose applications for adjustment of status were denied because of failure to establish eligibility for the bona fide marriage exemption are able to exercise the appeal rights provided by law.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Although many dependent alien juveniles were eligible for the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA), those benefits were only available for a limited period of time to certain aliens who had been in the United States since before 1982. No method existed for most court-dependent juvenile aliens to regularize their immigration status and become lawful permanent residents of this country, even though a United States juvenile court had found them dependent upon the court and eligible for long-term foster care, and it had been determined that it was not in the children's best interests to be returned to their home countries or the home countries of their parents. Section 153 of IMMACT 90 provides that certain aliens who have been declared dependent on juvenile courts located in the United States may be eligible for special immigrant classification. Aliens who are classifiable as special immigrants may apply for immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident within the United States. After adjustment of status or admission with an immigrant visa, they may live and work in the United States indefinitely and may apply to become United States citizens in the future.

Section 153 of IMMACT 90, as originally enacted, did not relieve special immigrant juvenile court dependents from compliance with any of the statutory requirements for immigrant visa issuance abroad or adjustment of status within the United States, even though it exempted them from deportation under several provisions of section 241 of the Act. A significant number of aliens eligible for classification as special immigrant juvenile court dependents were ineligible to become lawful permanent residents because they could not meet the statutory requirements for immigrant visa issuance or for adjustment of status.

Persons seeking immigrant visa issuance abroad are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States or who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient United States workers in the alien's field at the intended job location. Many juvenile court dependents could not meet these requirements and were, therefore, unable to obtain an immigrant visa even though they were eligible for classification as special immigrant juveniles.

Persons applying for adjustment of status within the United States must also show that they are not excludable under section 212(a) of the Act. In addition, they must meet the adjustment of status requirements of section 245 of the Act. Section 245(a) of the Act requires that adjustment of status applicants show that they entered the United States only after having been inspected and admitted or paroled by an immigration officer. Many juvenile court dependents were unable to satisfy this requirement. Those who had been inspected and admitted or paroled were frequently ineligible for adjustment because they fell within the provisions of section 245(c) of the Act. This section prohibits the adjustment of status of preference immigrants who have been employed without authorization, are not in lawful nonimmigrant status at the time the application for adjustment is filed, or have failed to continuously maintain lawful nonimmigrant status in the past.

Although a person who cannot meet the special adjustment of status requirements of section 245 of the Act may still be eligible for immigrant visa issuance abroad, travel outside the United States presents unique problems for a large number of juvenile court dependents. Financial and documentary difficulties, and certain legal complications which may result from travel outside the area of the court's jurisdiction or outside the United States, combine to form and almost insurmountable barrier to travel abroad for many of these juveniles.

The Technical Amendments, enacted December 12, 1991, reduced or eliminated the obstacles facing most special immigrant juvenile court dependents wishing to become lawful permanent residents. Section 302(d)(2) of that law provides that special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act are not subject to exclusion provisions restricting the admission of aliens who are likely to become public charges, aliens without labor certifications, and aliens who entered the United States without proper documents. It also allows waivers of most other exclusion provisions to be approved on an individual basis for humanitarian purposes, family unity, or when the approval of a waiver is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents will not be a factor in a discretionary waiver determination. The exclusion provision concerning simple possession of 30 grams or less of marijuana may be waived. However, other controlled substance violations, criminal exclusion grounds under sections 212(a)(2) (A), (B), and (C) of the Act, and certain exclusion provisions involving security and related issues under 212(a)(3) (A), (B), (C), and (E) of the Act may not be waived.

Section 302(d)(2) of the Technical Amendments also modifies section 245

of the Act by adding a new subsection 245(h). This new subsection permits most special immigrant juveniles to become lawful permanent residents regardless of the method of original entry into the United States, unauthorized employment, or failure to maintain lawful nonimmigrant status. It provides that all special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act shall be deemed, for the purposes of section 245(a) of the Act, to have been paroled into the United States and exempts them from compliance with any of the requirements of section 245(c) of the Act.

Section 302(d)(2) of the Technical Amendments also seeks to minimize abuse of these generous benefits by restricting the admission of aliens arriving in the United States for the purpose of taking advantage of this means of gaining lawful permanent resident status. It provides that neither section 101(a)(27)(J) of the Act nor section 245(h) of the Act 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 under section 101(a)(27)(J) of the Act.

The Immigration Marriage Fraud Amendments of 1986 (IMFA), enacted November 10, 1986, made several changes to the Act which were designed to reduce the incentive for an alien to enter into a marriage with a United States citizen or lawful permanent resident for the sole purpose of obtaining immigration benefits. Section 5(a)(2) of IMFA provided that an adjustment of status application could not be approved when the adjustment was based upon a marriage that had been entered into on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, unless the alien had resided outside the United States for two or more years following the marriage. Section 702 of IMMACT 90 amends this requirement to provide that an applicant who can show, by clear and convincing evidence, that the marriage was bona fide may be exempted from compliance with this requirement. It also provides a single level of administrative appellate review for denials of requests for the exemption.

On May 21, 1991, at 56 FR 23207–23209, the Immigration and Naturalization Service (the Service) published an interim rule with request for comments in the Federal Register. The rule established a procedure for classification of certain juvenile court dependents as special immigrants under section 101(a)(27)(J) of the Act. The interim rule also described appeal rights in adjustment of status cases where the denial was based upon failure to qualify for the bona fide marriage exemption contained in section 245(e) of the Act. The interim rule became effective on May 21, 1991. Interested persons were invited to submit written comments on or before June 20, 1991. The Service received 38 comments relating to the rule.

Interim Rule

The interim rule implemented section 153 of IMMACT 90 by establishing a procedure for classification of certain aliens who have been declared dependent on a juvenile court in the United States as special immigrants. The rule also implemented section 702 of IMMACT 90 by providing a method through which the applicant could appeal the denial of an application for adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act.

Comments

The discussion that follows summarizes the issues which have been raised relating to the interim rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule. The discussion also summarizes technical changes mandated by section 302(d)(2) of the Technical Amendments, which statutorily exempt qualified special immigrant juveniles from meeting certain admissibility and adjustment of status requirements.

Redesignation of 8 CFR 101.6 as 8 CFR 204.11.

Section 162 of IMMACT 90 mandates the filing of petitions for all principal special immigrants. Regulations governing the filing of petitions for immediate relative, family sponsored, and employment-based immigrant classifications are found in 8 CFR part 204. The Service has determined that both the general public and Service employees will find the regulations easier to access if regulations concerning all types of petitions for immigrant classification are included in 8 CFR part 204. The Service has therefore determined that the regulations implementing the provisions of section 153 of IMMACT 90 should be removed from 8 CFR 101.6 and added to 8 CFR 204.11. This redesignation also mandates a technical modification to 8 CFR 103.1(f)(2)(xxxv), which provides for appellate review of denials of petitions for special immigrant juveniles. The technical change is necessary because petitions for special immigrant juveniles will now be approved under 8 CFR part 204 rather than 8 CFR part 101. The petitioner's right to appeal a denial of a petition for a special immigrant juvenile to the Associate Commissioner, Examinations has not been changed.

Appeals of Denials of Adjustment of Status Applications Based Upon Marriage Entered Into During Deportation or Exclusion Proceedings

Two commenters stated that they felt the appeal provision was unnecessary. These commenters further stated that they felt that the issue of whether a marriage was bona fide should not be reviewed during adjustment of status proceedings.

Adjustment of status applications based upon marriages subject to the two-year foreign residence requirement of section 245(e) of the Act require the filing of a visa petition. Before action is taken upon the visa petition, the Service officer adjudicating the case is required to determine whether clear and convincing evidence of a bona fide marriage has been provided. Therefore, this issue will normally be resolved in visa petition proceedings. However, the Service is not precluded from reviewing the issue of whether the marriage is bona fide during adjustment of status proceedings, despite the existence of an approved visa petition. Section 702 of IMMACT 90 provides that there shall be only one level of administrative appellate review for denials of adjustment of status applications pursuant to section 245(e) of the Act. Since no administrative review of denials of applications for adjustment of status previously existed (such denials were not appealable, although the applicant had the option of renewing the request in deportation proceedings before an immigration judge), the rule established this statutorily directed administrative review process. Accordingly, the rule has not been changed.

Definition of Long-term Foster Care

~~Twenty-five commenters urged the Service to amend the definition of long-term foster care to encompass situations in which adoption or guardianship is deemed to be in the juvenile's best interest. Twenty commenters recommended that the Service adopt the definition of long-term foster care contained in the Social Security Act. Some commenters also suggested that the Service modify the rule to recognize administrative determinations regarding eligibility for long-term foster care.~~

The final rule removes the regulatory definition of "long-term foster care" and substitutes a definition of "eligible for long-term foster care." The new definition adopts commenters' recommendations that eligibility for long-term foster care be established when a juvenile court determines that reunification with the natural parent(s) or the prior adoptive parent(s) is no longer a viable option for the child. The new definition also allows juveniles to qualify for special immigrant status when guardianship or adoption is deemed to be in the juvenile's best interest after the alien is found to be dependent upon the juvenile court. Section 153 of IMMACT 90 states that the decision regarding eligibility for long-term foster care must have been made in judicial proceedings. Therefore, this rule continues to recognize only judicial decisions concerning eligibility for long-term foster care.

Form I-360

Several commenters stated that they were pleased that the rule allows any person to file the petition on behalf of the juvenile.

Many also applauded the Service's decision to clearly state that the petitioner need not be a citizen or a lawful permanent resident of the United States. No commenters opposed these provisions. One commenter stated that he found the I-360 form somewhat confusing to use for a dependent juvenile, but that he understood the form was being revised. No commenters objected to the use of this form.

The Service has developed a revised Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The revised form is now available for use by the public and contains specific instructions for persons seeking to establish eligibility for special immigrant juvenile status. The revised form will be amended as soon as possible to reflect changes made by this rule. Questions concerning completion of the form may be directed to local immigration offices.

Fee Waivers

One commenter asked that fees be waived for certain applicants.

8 CFR 103.7(c) contains a fee waiver provision applicable to fees for applications, petitions, appeals, motions, or requests. Requests for fee waivers must be made and considered on a case-by-case basis.

Eligibility—Alien Required To Be Juvenile Under State Law

Twenty-six commenters recommended that the requirement that the beneficiary be a juvenile under state law be modified or eliminated. Several commenters pointed out that definitions of the terms "juvenile," "minor," and "child" vary from state to state. They also noted that different definitions may be used in various proceedings within one state and that some states have no legal definition of some or all of these terms, making compliance with the interim rule's eligibility requirements problematic. Some felt that the differences between the laws of various states would cause confusion. Some expressed concerns about the possibility that an alien in one state would be eligible for the benefit, while an alien in substantially identical circumstances living in another state would not be eligible. Others felt that the requirement was unnecessary, since the juvenile court would be required to determine eligibility for juvenile status prior to finding an individual dependent upon the court. Some also observed that section 153 of IMMACT 90 does not explicitly restrict special immigrant status to juveniles. Many also cited state laws allowing a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but require continued court protection. These commenters suggested the regulation be amended to include these dependent young adults.

Despite commenters' concerns about confusion caused by differences between the laws of the various states, the Service believes that certain inequities caused by variations in state law are unavoidable in determining eligibility for the benefits of section 153 of IMMACT 90. Juvenile court issues are under the jurisdiction of the states and therefore dependent upon state statutes. However, in order to minimize confusion caused by dissimilar state laws, the Service has removed the requirement that the beneficiary be a juvenile under state law and replaced it with a requirement that the beneficiary be under twenty-one years of age. The new requirement establishes a consistent countrywide definition of the age at which an alien will no longer be eligible for special immigrant juvenile status. Although the language of the statute does not expressly restrict benefits to juveniles, the Service notes it does not specifically include aliens of any age who at some point in the past, regardless of how distant, had been declared dependent upon a juvenile court in the United States and found eligible for long-term foster care. The revised standard allows students and other young persons who continue to be dependent upon the juvenile court after reaching the age of eighteen to qualify for special immigrant juvenile status. This requirement also conforms with the definition of "child" contained in section 101(b)(1) of the Act. This rule does, however, allow exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Eligibility—Alien Required To Be Unmarried

Twenty-three commenters encouraged the Service to delete the requirement that the alien be unmarried. Most stated they felt this requirement should be eliminated because the beneficiary's marital status is not addressed by section 153 of IMMACT 90. Some commenters objected to this requirement because prospective beneficiaries had not received prior notice that marriage could make them ineligible for special immigrant juvenile status. Some also indicated that they felt the decision as to whether a married individual could be dependent upon the juvenile court should be made only by the juvenile court. One commenter pointed out that this requirement would disproportionately affect female juveniles, because they are more frequently coerced into marriages by unscrupulous adults or social pressures.

As indicated in the supplementary information to the interim rule, the Service believes that marriage alters the dependent relationship with the juvenile court. No commenters indicated that they believed that the marriage of a dependent juvenile would not affect the juvenile's dependency upon the court. Section 153 of IMMACT 90, in contrast to most other immigrant and special immigrant provisions, extends no benefits to spouses, indicating that Congress did not envision married persons as dependent juveniles. This requirement also conforms with the definition of child contained in section 101(b)(1) of the Act, which requires that children be unmarried. The term "unmarried" is defined in section 101(a)(39) of the Act. That section defines an unmarried person as a person who is not currently married, whether or not previously married. Therefore, a person who had been coerced or who had improvidently entered into a marriage would not be permanently ineligible for special immigrant juvenile status. After legal termination of a marriage by annulment, divorce, or through the death of the spouse, an individual is regarded by the

Service as "unmarried" and could be eligible to seek special immigrant juvenile status, provided he or she meets the other statutory and regulatory requirements for the classification. The rule has, however, been modified to allow an alien who can establish that he or she met the eligibility criteria on November 29, 1990, to apply for this benefit, provided that a petition for classification as a special immigrant juvenile is filed no later than June 1, 1994.

Best Interest of the Child

The Service received two written comments and several telephonic inquiries indicating that some confusion existed regarding the type of administrative proceeding in which this determination may be made. Two commenters expressed concern about the Service's ability to make this determination in deportation proceedings or other administrative immigration hearings. Another commenter urged the Service to reduce possible abuse of this benefit by narrowly defining the elements which could be considered in determining the best interest of the alien child. This commenter recommended that the Service rewrite the eligibility criteria to exclude children who were brought or sent to the United States to take advantage of the special immigrant juvenile provision. This commenter also recommended that juvenile courts be required to request and obtain a report from the Service prior to declaring an alien child dependent upon the court.

The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court. Such administrative proceedings would most commonly be conducted by state or local social service agency officials. The Service does not intend to make determinations in the course of deportation proceedings regarding the "best interest" of a child for the purpose of establishing eligibility for special immigrant juvenile classification. The rule does not contain any restrictions on factors which may be considered in determining the best interest of the child. The Service believes that it would be both impractical and inappropriate for the Service to routinely readjudicate judicial or social service agency administrative determinations as to the juvenile's best interest. Abuse of this provision is of concern both to Congress, as shown by the statutory restriction on the grant of future immigration benefits for the juvenile's parent(s) based upon the relationship, and to the Service. However, the Service believes that a child in need of the care and protection of the juvenile court should not be precluded from obtaining special immigrant status because of the actions of an irresponsible parent or other adult. The Service also believes it would be impractical and inappropriate to impose consultation requirements upon the juvenile courts or the social service system, especially requirements which could possibly delay action urgently needed to ensure proper care for dependent children.

Eligibility—"Grandfather" Provision

Twenty-nine commenters urged the Service to establish a regulatory provision which would allow aliens who were eligible for special immigrant juvenile classification on November 29, 1990, the date of enactment of IMMACT 90, but who could not become lawful permanent residents at that time, to remain eligible for this classification until Congress took action to amend the adjustment of status provisions of the Act. One commenter cited the "grandfather" provision of section 702 of IMMACT 90 as an example the Service should follow in implementing section 153.

As originally enacted, IMMACT 90 did not exempt special immigrant juvenile aliens from the normal statutory requirements for adjustment of status. The Service did not, however, wish to unnecessarily preclude otherwise qualified special immigrant juvenile aliens from becoming lawful permanent residents. On November 29, 1990, the date of enactment of IMMACT 90, the Service directed its local offices to accept and hold in abeyance applications for adjustment of status filed by persons who appeared to meet the statutory requirements for the special immigrant juvenile classification of section 153 of IMMACT 90. Further guidance was issued on August 16, 1991, directing local offices to accept applications for adjustment of status filed by special immigrant juveniles despite statutory ineligibility for adjustment of status because of the provisions of sections 245 (a) or (c) of the Act. The local offices were again instructed not to take action to deny these adjustment of status applications solely because the special immigrant juvenile was statutorily ineligible for adjustment of status. On December 12, 1991, section 302(d)(2) of the Technical Amendments amended the adjustment of status provisions of the Act to exempt special immigrant juveniles from many of the statutory requirements for adjustment of status. In furtherance of Service policy of using administrative discretionary authority to ensure that special immigrant juveniles are not precluded from obtaining lawful permanent residence because of the passage of time while the Service was awaiting Congressional action to amend the adjustment of status provisions, this rule allows exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Documentary Requirements

Twenty-one commenters stated that they felt the documentary requirements were either confusing or excessive. Some stated that they felt it should not be necessary to submit a total of four documents to establish eligibility. Several stated that the juvenile court could declare an individual eligible for long-term foster care only after finding the person dependent upon the court and only after alternatives to a long-term placement were considered. These commenters stated that they felt that evidence of a declaration of eligibility for long-term foster care should satisfy not only that requirement, but also the evidentiary requirements relating to dependency and the determination regarding the "best interest" of the child.

The rule has been revised to clearly require documentary evidence of the beneficiary's age. The evidence may be in the form of a birth certificate, passport, or official foreign identity card such as a Cedula or Cartilla. This rule also provides that the director may, in his or her discretion, accept other documents which reasonably establish the beneficiary's age. The final rule has also been revised to state that, in addition to evidence of the beneficiary's age, one or more documents must be submitted showing dependency, eligibility for long-term foster care, and the "best interest" determination. The Service has left in place, however, the requirement that the document(s) must show that all three statutory criteria have been met. In view of diverse state laws governing juvenile court proceedings and the possibility that state laws could change in the future, the Service does not believe that any of the section 153 statutory requirements can be ignored. The Service also notes that consideration of alternatives to long-term foster care does not, in itself, show that a determination was made that it is in the juvenile's best interest not to be returned to his or her country of nationality or habitual residence of

his or her parents. The court's finding that long-term foster care is the best alternative available to the child within the United States does not necessarily establish that long-term foster care in another country would not be available or would not be in the child's best interest.

Revocation of Approval

Twenty-four commenters asked the Service to revise or eliminate provisions of the interim rule which automatically revoke the approval of a petition for a special immigrant juvenile under certain circumstances. Most commenters cited state laws which allow a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but continue to require court protection. They suggested amending the rule to eliminate the automatic revocation of petitions for these young people. Many commenters also expressed concern that the rule would allow the automatic revocation of a petition when the juvenile is placed in a guardianship situation or has been adopted. Some stated they felt that approval should not be revoked simply because a beneficiary's circumstances change while the Service is reviewing an application for adjustment of status. One commenter felt that the rule should indicate that any subsequent decision regarding the best interest of the child should be made only by the juvenile court which made the initial ruling.

This rule removes the provision automatically revoking approval of a petition for special immigrant juvenile status when the alien ceases to be a juvenile under state law, and substitutes a provision establishing automatic revocation of an earlier approval when the beneficiary reaches the age of twenty-one. The rule has also been revised to state that changes in circumstances resulting from adoption or placement in a guardianship situation will not result in revocation of approval. In response to comments that the Service should not revoke approval of the petition simply because the beneficiary's circumstances change during the application process, the Service notes that other applicants for permanent residency are required to continue to maintain eligibility for their visa classification until admission with an immigrant visa or adjustment of status. The Service does not believe that there is good reason to exempt special immigrant juveniles from this requirement. The final rule also clearly states that the decision regarding the beneficiary's best interest must be made by a juvenile court of competent jurisdiction or in administrative proceedings recognized by the juvenile court having jurisdiction over the beneficiary. As indicated earlier, the Service believes that the decision regarding the best interest of the beneficiary should be made by the juvenile court or the social service agency officials recognized by the juvenile court, not by the immigration judge or other immigration officials. The final rule does not, however, require the decision to be made by the court which made the initial determination, since the Service believes this would be an unnecessary infringement upon the juvenile court system's ability to make determinations regarding its own jurisdictional issues.

Regulations governing the revocation of approval of petitions for immigrant classification are found in 8 CFR part 205. The Service has determined that both the public and Service employees will find the regulations easier to access if regulations concerning the revocation of all types of petitions for immigrant classification are included in 8 CFR part 205. The Service has, therefore, removed procedures relating to the automatic revocation of approval of petitions for classification as a special immigrant juvenile from 8 CFR 101.6(f) and placed them in 8 CFR 205.1.

This rule also changes several references to sections of the Act in 8 CFR part 205. The reference changes are necessary because IMMACT 90 redesignated many sections of the Act.

This rule also removes 8 CFR 205.1(a)(10). That paragraph provided that the approval of a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under deportation or exclusion proceedings would be automatically revoked unless the beneficiary had resided outside the United States for at least two years in accordance with former section 204(h) (currently 204(g)) of the Act. Section 702 of IMMACT provides an exemption from the two-year foreign residence requirement if the petitioner can establish, by clear and convincing evidence, that the marriage is bona fide. Therefore, the automatic revocation provision is no longer appropriate and is removed. The Service's authority to revoke the approval of any petition under section 204 of the Act after notice to the petitioner, which is contained in 8 CFR 205.2, has not been changed and continues to be applicable to spousal immigrant visa petitions.

This rule also removes 8 CFR 205.1(c)(4), which provided for automatic revocation of a sixth preference petition when the petitioner filed a written notice of withdrawal. The preceding paragraph, which formerly referred only to third preference petitions, has been revised to encompass all instances in which the petitioner in an employment-based case files a written notice of withdrawal with any officer of the Service who is authorized to grant or deny petitions. There is, therefore, no need to repeat the provision in the following paragraph.

In 8 CFR 205.2(a) the reference to "§ 204.1" is changed to "§ 205.1" to correct a typographical error.

Adjustment of Status

Twenty-eight commenters expressed concern about the method through which a special immigrant juvenile could become a lawful permanent resident. One commenter asked whether a special immigrant juvenile would automatically be granted permanent resident status or would be required to comply for adjustment of status. Several commenters indicated that, since Congressional intent was to allow special immigrant juveniles to become permanent residents, the Service should revise the rule to allow adjustment regardless of whether the applicants were ineligible for adjustment under existing statutes.

The Act generally requires a person intending to live permanently in the United States to enter the country with an immigrant visa, which may be issued only by a United States embassy or consulate abroad. Section 245 of the Act allows certain aliens in the United States to adjust status to that of a lawful permanent resident, without departing the United States or obtaining an immigrant visa from a consultate or embassy. Neither IMMACT 90 nor the Technical Amendments contain any indication that Congress envisioned a unique application process for special immigrant juveniles wishing to become lawful permanent residents of the United States. Therefore, special immigrant juveniles will continue to be required to apply for either immigrant visa issuance abroad or adjustment of status in the United States.

Although the Service is responsible for interpreting the Act and implementing provisions of the Act through regulation, the Service cannot implement rules which are contradictory to statutory requirements imposed by Congress. As indicated in the supplementary information to the interim rule, the original language of IMMACT 90 did not waive any of the adjustment of status eligibility requirements for special immigrant juveniles. The Service, therefore, initially lacked authority to accede to

commenters' requests to waive certain adjustment of status requirements. However, on December 12, 1991, the Technical Amendments became effective. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with several of the usual statutory requirements for adjustment of status.

Section 245(a) of the Act generally requires that applicants for adjustment of status establish that they have been inspected and admitted or paroled into the United States. Section 302(d)(2) of the Technical Amendments provides that, for the purpose of applying for adjustment of status as a special immigrant juvenille under section 101(a)(27)(J) of the Act only, these juveniles will be treated as if they had been paroled into the United States.

Section 245(c) of the Act generally prohibits the Service from adjusting the status of an alien who is not in lawful nonimmigrant status, who has failed to maintain lawful nonimmigrant status in the past, or who has been employed without authorization in the United States. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with these provisions of section 245(c) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status. These revisions ensure that the regulations reflect the statutory exemptions provided for special immigrant juveniles by section 302(d)(2) of the Technical Amendments.

Exclusion Grounds

Two commenters took exception to the statement contained in the supplementary information to the interim rule concerning the possibility that special immigrant juveniles who seek an immigrant visa or adjustment of status could have difficulty establishing that they are not likely to become public charges.

All applicants for immigrant visa issuance or adjustment of status under section 245 of the Act must establish that they are not excludable from the United States, unless the grounds of excludability have been waived. Persons seeking immigrant visa issuance abroad or adjustment of status in the United States are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States, who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient workers in the alien's field at the intended job location, or who entered the United States without proper documentation. Therefore, the Service initially lacked the authority to grant lawful permanent resident status to special immigrant juveniles who were likely to become public charges or were otherwise excludable from the United States.

Section 302(d)(2) of the Technical Amendments provides that the exclusion provisions under sections 212(a)(4), (5)(A), and (7)(A) of the Act will not apply to a qualified special immigrant under section 101(a)(27)(J) of the Act, thus automatically waiving excludability because of likelihood of becoming a public charge, failure to obtain a labor certification, and entry without proper documents. No application or fee is required for an automatic waiver.

Section 302(d)(2) also allows most other exclusion provisions to be waived for individual special immigrant juveniles for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination. A waiver application must be filed and the appropriate fee paid for an individual waiver. The only exclusion provisions which may not be waived are those involving certain criminal and related grounds, and certain security and related grounds. The grounds which may not be waived are set forth in sections 212(a)(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) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status to ensure that these regulations reflect the statutory exemptions provided by section 302(d)(2) of the Technical Amendments, including the automatic exemptions.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this regulation has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 101

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation (Government agencies), Fees, Forms.

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 101 and 103, which was published in the **Federal Register** at 56 FR 23207–23209 on May 21, 1991, is adopted as a final rule with the following changes:

PART 101—PRESUMPTION OF UNLAWFUL ADMISSION

1. The authority citation for part 101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

§ 101.6 [Redesignated as § 204.11.]

2. Section 101.6 is redesignated as § 204.11.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

4. In § 103.1, paragraph (f)(2)(xxxv) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxv) Petitions for special immigrant juveniles under part 204 of this chapter;

* * * * *

PART 204—IMMIGRANT PETITIONS

5. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

6. Newly redesignated § 204.11 is revised to read as follows:

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) *Definitions.*

~~*Eligible for long-term foster care means that a*~~ determination has been made by the juvenile court that family reunification is no longer a viable option. ~~A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.~~

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) *Who may file.* The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

~~(2) *Where to file.* The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.~~

(c) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

~~(4) Has been deemed eligible by the juvenile court for long-term foster care;~~

(5) Continues to be dependent upon the juvenile court and ~~eligible for long-term foster care~~, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to ~~the country of nationality or last habitual residence of the beneficiary or~~ his or her parent or parents; or

~~(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I–360 before June 1, 1994.~~

(d) *Initial documents which must be submitted in support of the petition.* (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

~~(2)~~ One ~~or more documents which include:~~

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

~~(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and~~

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision ~~to the Associate Commissioner, Examinations,~~ in accordance with part 103 of this chapter.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

7. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

§ 205.1 [Amended]

8. In § 205.1, the introductory text is amended by adding the term "before October 1, 1991, or section 203(g) of the Act on or after October 1, 1991," immediately after the term "section 203(e) of the Act".

§ 205.1 [Amended]

9. In § 205.1, paragraphs (a)(5), (a)(6), (a)(7), (b)(5), and (b)(6) are amended by revising the reference to "section 203(a)(4)" to "section 203(a)(3)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

10. In § 205.1, paragraph (a)(10) is removed.

§ 205.1 [Amended]

11. In § 205.1, paragraphs (b)(5) and (b)(6) are amended by revising the reference the "section 204(g)" to "section 204(f)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

12. Section 205.1 is amended by:

a. Revising the reference in the heading in paragraph (c) to *"section 203(a)(3) or (6)."* to read *"section 203(b)."*;

b. Revising the reference in paragraph (c)(3) to "third preference" to read "employment-based preference";

c. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

d. Revising the reference in the newly redesignated paragraph (c)(4) to "a sixth preference case." to read "an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.".

13. In § 205.1, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 205.1 Automatic revocation.

* * * * *

(d) *Special immigrant juvenile petitions.* ~~Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990.~~

~~and the petition for classification as a special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:~~

~~(1) Upon the beneficiary reaching the age of twenty-one;~~

~~(2) Upon the marriage of the beneficiary;~~

~~(3) Upon the termination of the beneficiary's dependency upon the juvenile court;~~

~~(4) Upon the termination of the beneficiary's eligibility for long-term foster care; or~~

~~(5) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.~~

* * * * *

§ 205.2 [Amended]

14. In § 205.2, paragraph (a) is amended by revising the reference to "§ 204.1" to "§ 205.1".

§ 205.2 [Amended]

15. In § 205.2, paragraph (b) is amended in the fourth sentence by revising the reference to "section 204(g)" to "section 204(f)". Paragraph (b) is further amended in the fourth sentence by revising the reference to "section 203(a)(1), (2), (4), or (5)" to "section 203(a)(1), (2), (3), or (4)".

§ 205.2 [Amended]

16. In § 205.2, paragraph (b) is amended in the fifth sentence by revising the reference to "section 203(a)(3) or (6)" to "section 203(b)".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

17. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

§ 245.1 [Amended]

18. In § 245.1, paragraph (a) is amended by adding at the end a new sentence to read as follows: "A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States."

§ 245.1 [Amended]

19. Section 245.1 is amended by:

a. Revising the reference in paragraph (b)(4)(ii) to "section 101(a)(27)(H)" to "section 101(a)(27)(H) or (J)";

b. Revising the reference in paragraph (b)(5) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

c. Revising the reference in paragraph (b)(6) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

§ 245.1 [Amended]

20. In § 245.1, a new paragraph (d)(3) is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(d) * * *

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) nor the exclusion provisions of sections 212(a)(4), (5)(A), or (7)(A) of the Act shall apply to a qualified special immigrant under section 101(a)(27)(J) of the Act. The exclusion provisions of sections 212(a)(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), or (3)(E) of the Act may not be waived. Any other exclusion provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination.

* * * * *

Dated: June 22, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19350 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR PART 140

RIN 3150–AE75

Adjustment of the Maximum Standard Deferred Premium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum standard deferred premium, presently established at $63 million per reactor per accident (but not to exceed $10 million in any one year), to $75.5 million per reactor per accident (but not to exceed $10 million in any one year), in accordance with the aggregate percentage change of 19.9 percent in the Consumer Price Index (CPI) from August 1988 through March 1993.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone (301) 504–1289.

SUPPLEMENTARY INFORMATION: Section 15 of Public Law 100–408, the Price-Anderson Amendments Act of 1988 ("the Act") enacted on August 20, 1988, requires the Commission to adjust the maximum standard deferred premium (presently $63 million) for inflation. Section 15 added a new Section 170t. to the Atomic Energy Act of 1954, as amended ("AEAct"). Section 170t. provides as follows:

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b.(1) (Section 170b.(1) of the AEAct) not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988 in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection. (2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

The inflation adjustment required by Section 170t.(1)(A) of the AEAct must be in accordance with the aggregate percentage change (since August 1988) in the Consumer Price Index (CPI) for all urban consumers published by the Secretary of Labor. The aggregate percentage increase in the CPI from August 1988 through March 1993 is 19.9 percent. This number is derived by dividing the September 1988 CPI index by the March 1993 CPI index. The new maximum standard deferred premium, computed by multiplying $63 million by 0.199 and adding the product to $63 million, will be $75.5 million. Therefore, as of August 20, 1993, 10 CFR 140.11(a)(4) will require that large nuclear power plant licensees maintain, in addition to $200 million in primary financial protection, a new maximum standard deferred premium of $75.5 million per reactor per accident (but not to exceed $10 million in any one year).

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 1998, and will be based on the incremental change in the CPI since March 1993.

Because this inflation adjustment by the Commission is essentially ministerial in nature (e.g., multiplying $63 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to $63 million), the Commission finds that there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as unnecessary. In view of the impending statutory deadline for implementing this change to its regulations, the Commission finds that there exists good cause for making the rule effective on August 20, 1993 (less than 30 days after publication of the final rule in the **Federal Register**).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0039.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 116 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administration (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) because it is statutorily required. Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (as amended), and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 140:

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

2. Section 140.11(a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by § 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $75,500,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

Dated at Rockville, Maryland this 2nd day of August, 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 93–19222 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Praziquantel Tablets and Injectable Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Miles, Inc., Agriculture Division, Animal Health Products. The supplements provide for the use of 34 milligram (mg) DRONCIT® (Praziquantel) Canine Cestocide Tablet and 5.68 percent Injectable Cestocide for dogs and cats for removal and control of *Echinococcus multilocularis* in dogs.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8614.

SUPPLEMENTARY INFORMATION: Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, filed two supplemental NADA's. NADA 111–607 provides for veterinary prescription use of Droncit® (Praziquantel) 5.68 percent Injectable Cestocide for dogs and cats. NADA 111–798 provides for veterinary prescription use of 34 mg Droncit® (Praziquantel) Canine Cestocide Tablet. The supplements provide for the removal and control of *Echinococcus multilocularis* in addition to use for removal of *Dipylidium caninum*, *Taenia pisiformis*, and *Echinococcus granulosus* in dogs. The supplemental NADA's are approved as of July 16, 1993. The regulations are amended in §§ 520.1870(c)(1)(i) and 522.1870(c)(1)(ii) to reflect the approvals. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of

**Amendments to section 204.11 are on pg. 26937

Rules and Regulations

Federal Register
Vol. 74, No. 107
Friday, June 5, 2009

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 1, 100, 103, 204, 207, 208, 211, 212, 214, 216, 236, 244, 245, 248, 264, 274a, 301, 316, 320, 322, 324, 327, 328, 329, 330, 334, and 392

[CIS No. 2405–07; DHS Docket No. USCIS–2007–0005]

RIN 1615–AB56

Removing References to Filing Locations and Obsolete References to Legacy Immigration and Naturalization Service; Adding a Provision To Facilitate the Expansion of the Use of Approved Electronic Equivalents of Paper Forms

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Homeland Security (DHS) regulations by eliminating certain references to the Immigration and Naturalization Service (INS) organizational structure and removing all references in the Code of Federal Regulations (CFR) to INS and U.S. Citizenship and Immigration Services (USCIS) Offices. This rule also removes all references in the CFR to filing locations, so that USCIS may provide such information on petition and application forms and through any other means. In addition, this rule adds a definition of the term ''form'' to the CFR, which will facilitate the expansion of the use of approved electronic equivalents of USCIS paper forms; this will support USCIS' transition from a paper-based filing and processing environment to an electronic one.

Overall, the rule is intended to eliminate confusion and certain obsolete references to the INS organizational structure from USCIS regulations, help the public determine where to file forms with USCIS, create a more efficient and streamlined process for future changes to filing instructions, and allow the component to better manage its workload through, among other things, affording greater flexibility to accept and process applications and petitions in an electronic environment.

DATES:

Effective Date: This rule is effective July 6, 2009.

Comment Date: Written comments must be submitted on or before August 4, 2009.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2007–0005, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. To ensure proper handling, please reference DHS Docket No. USCIS–2007–0005 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529–2210. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Roxanne Alonso, Adjudications Officer, Policy and Regulation Management Division, Domestic Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., MS 2211, Washington, DC 20529–2211, telephone (202) 272–8100.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and the DHS docket number (USCIS–2007–0005) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. See **ADDRESSES** above for information on how to submit comments.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Background

A. What effect does this rule have?

This interim rule eliminates certain references to the organizational structure of the Immigration and Naturalization Service (INS), which was abolished on March 1, 2003, pursuant to the Homeland Security Act of 2002, Public Law 107–609 (November 22, 2002), 116 Stat. 2135. The Secretary of Homeland Security has approved the organizational structure of each new component pursuant to 8 CFR 2.1, which provides that the Secretary may delegate authority and functions by regulation, directive, memorandum, or other means as deemed appropriate. Eliminating references to the organizational structure of INS is necessary, because U.S. Citizenship and Immigration Services (USCIS) is modifying aspects of the command and control structure that was temporarily retained from the INS field management structure. These changes to the regulations will not affect the locations of USCIS local offices or other sites.

This interim rule also removes from the regulations all instructions regarding the filing locations for petitions and applications. These regulatory provisions are unnecessary and restrict USCIS' ability to vary petition and application filing locations as necessary to address fluctuations in the volume of applications, shifting workload needs, and benefits processing modifications. Removing these regulatory provisions will allow USCIS to better utilize its resources and serve its customers. Filing locations and procedures will still be available on USCIS forms and the USCIS Web site. Customers may also call the USCIS '800-number' customer service line for information on where to submit their documents, or simply call the agency listing in the government resources pages of their local telephone directory. This change does not affect any evidentiary requirement or substantive eligibility requirement for a particular benefit.

This interim rule removes current geographic jurisdictional service boundaries. This change will allow USCIS the flexibility to manage workloads and facilitate interaction with, and services to, the public. For those few applications and petitions that are currently filed at USCIS local offices, customers will be able to file these specific forms at the office closest to them. Regarding services that require an alien to make an appearance at a USCIS office, by removing the geographic parameters on the office with jurisdiction for adjudicating specific immigration or naturalization benefits, USCIS will have the flexibility to offer interviews and other services at different offices in the area based on the ability to schedule appointments most effectively. *See* 8 CFR 103.2(b)(9).

The rule adds a definition of the term ''Form'' to 8 CFR part 1. USCIS has added this definition to clarify that references to the term ''form'' and to form numbers throughout USCIS regulations are now intended to encompass both the traditional paper form and all approved electronic equivalents used for on-line filing with USCIS or other similar purposes.

Finally, the rule amends 8 CFR 100.4 to remove all references to INS and USCIS Offices. However, this rule does not alter the regulations in paragraphs (c)(2) for ports of entry for aliens arriving by vessel or by land transportation or (c)(3) for the method of identifying ports-of-entry for aliens arriving by aircraft. The designation of ports of entry is within the authority of the U.S. Customs and Border Protection (CBP) and generally governed by 19 CFR 101.3. Maintenance of the current erroneous references to District Offices in 8 CFR 101.3 will have no legal effect on the distribution of workload or acceptance applications by USCIS. CBP has indicated that they may amend how 8 CFR part 100 references ports of entry, and classes of ports of entry, and will remove references to the INS district in which they are located in a future rulemaking.

B. Why is USCIS issuing this rule?

This rule is necessary to remove references to USCIS office locations and geographical jurisdictions from the Code of Federal Regulations. USCIS will provide information regarding the proper locations on the filing instructions on the respective USCIS forms. As USCIS workload has increased and as USCIS has managed that workload to eliminate processing backlogs of petitions and applications for immigration benefits, it has become clear that the agency on occasion needs to redistribute work within its adjudicative resources. Changing the applicable regulations each time a workload redistribution occurs is a lengthy process and an inefficient management tool. The ability to make changes to filing instructions to reflect a redistribution of workload will enable USCIS to efficiently reallocate its adjudications resources. Thus, this interim rule is intended to enhance USCIS' ability to provide updated, clear information, and to increase its administrative flexibility to adapt to changing situations. Information about the agency's organizational structure, where to file an application or petition, and where and how individuals can seek services or assistance from USCIS will continue to be widely available.

This rule is also necessary to assist the agency in transforming its business environment from a paper-based petition and application process to an electronic environment. This major change effort is referred to as the USCIS Transformation Initiative. This regulation is the first in a series to be published to implement this initiative. As the USCIS Transformation Initiative progresses, USCIS expects that electronic versions of forms and digital images of supporting documents will largely replace paper forms and documents for filing, adjudication, and records retention purposes.

III. Regulatory Requirements

A. Administrative Procedure Act

This interim rule will not change the eligibility rules governing any immigration benefit. It will not confer rights or obligations upon any party. USCIS expects that this rule will further the public's interest in receiving clear instruction on where and in what format to file applications and petitions for immigration benefits. Accordingly, USCIS has determined that the public notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b), do not apply because the rule is procedural in nature and does not alter the substantive rights of the affected parties. Therefore, this rule satisfies the exemption from notice and comment rulemaking in 5 U.S.C. 553(b)(A). USCIS nevertheless invites comments on this rule and will consider all timely comments in the preparation of a final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required ''to publish a general notice of proposed rulemaking for any proposed rule.'' Because this rule is being issued as an interim rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

E. Executive Order 12866

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

F. Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting and recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 100

Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 204

Administrative practice and procedures, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 207

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, reporting and recordkeeping requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 301

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 316

Citizenship and naturalization, Reporting and recordkeeping requirements.

8 CFR Part 320

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 322

Citizenship and naturalization, Infants and children, Reporting and recordkeeping requirements.

8 CFR Part 324

Citizenship and naturalization, Reporting and recordkeeping requirements, Women.

8 CFR Part 327

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 328

Citizenship and naturalization, Military personnel, Reporting and recordkeeping requirements.

8 CFR Part 329

Citizenship and naturalization, Reporting and recordkeeping requirements, Veterans.

8 CFR Part 330

Reporting and recordkeeping requirements, Seamen.

8 CFR Part 334

Administrative practice and procedure, Citizenship and naturalization, Courts, Reporting and recordkeeping requirements.

8 CFR Part 392

Citizenship and naturalization, Reporting and recordkeeping requirements.

■ Accordingly, chapter 1 of title 8 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

■ 2. Section 1.1 is amended by adding paragraph (aa) to read as follows:

§ 1.1 Definitions.

* * * * *

(aa) The term *Form* when used in connection with a petition, application, or other instrument to be filed with USCIS in order to request an immigration benefit, means a device for the collection of information in a standard format that may be submitted in paper format or in an electronic format as may be prescribed by USCIS on its official Web site at *http://www.uscis.gov.* The term *Form* followed by a USCIS form number includes a USCIS approved electronic equivalent of such form as USCIS may prescribe on

its official Web site at *http//www.uscis.gov.*

PART 100—STATEMENT OF ORGANIZATION

■ 3. The authority citation for part 100 continues to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

■ 4. Section 100.1 is revised to read as follows:

§ 100.1 Introduction.

The following components have been delegated authority under the Immigration and Nationality Act to administer and enforce certain provisions of the Immigration and Nationality Act and all other laws relating to immigration: U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).

§ 100.2 [Removed and Reserved]

■ 5. Section 100.2 is removed and reserved.

■ 6. Section 100.3 is revised to read as follows:

§ 100. 3 Places where, and methods whereby, information may be secured or submittals or requests made.

Any person desiring information relative to a matter handled by CBP, ICE or USCIS or any person desiring to make a submittal or request in connection with such a matter, should communicate either orally or in writing, with either CBP, ICE or USCIS as appropriate. When the submittal or request consists of a formal application for one of the documents, privileges, or other benefits provided for in the laws administered by CBP, ICE or USCIS or the regulations implementing those laws, follow the instructions on the form as to preparation and place of submission. Individuals can seek service or assistance from CBP, ICE or USCIS by visiting the CBP, ICE or USCIS Web site or calling CBP, ICE or USCIS.

§ 100.4 [Amended]

■ 7. Section 100.4 is amended by:

■ a. Removing the introductory text;

■ b. Removing paragraphs (a), (b), (c)(1) and (c)(4), (e) and (f);

■ c. Removing paragraph (c) heading and introductory text;

■ d. Redesignating paragraph (c)(2), as paragraph (a);

■ e. Redesignating paragraph (c)(3) as paragraph (b); and

■ f. Redesignating paragraph (d) as paragraph (c).

§ 100.5 [Amended]

■ 8. Section 100.5 is amended by revising the term ''Immigration and Naturalization Service'' to read ''Department of Homeland Security''.

§ 100.6 [Removed and Reserved]

■ 9. Section 100.6 is removed and reserved.

§ 100.7 [Amended]

■ 10. Section 100.7 is amended by revising the term ''Immigration and Naturalization Service'' to read ''Department of Homeland Security''.

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 11. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

■ 12. Section 103.2 is amended by:

■ a. Revising the first sentence of paragraph (a)(1); and by

■ b. Revising paragraph (a)(6).

The revisions read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) * * *

(1) * * * Every application, petition, appeal, motion, request, or other document submitted on any form prescribed by this chapter I, notwithstanding any other regulations to the contrary, must be filed with the location and executed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter I requiring its submission. * * *

* * * * *

(6) *Where to file.* An application or petition must be filed as indicated in the instructions on the respective form.

* * * * *

PART 204—IMMIGRANT PETITIONS

■ 13. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

■ 14. Section 204.1, is amended by revising paragraph (e) to read as follows:

§ 204.1 General information about immediate relative and family-sponsored petitions.

* * * * *

(e) *Jurisdiction.* A petition described in this part must be filed in accordance with the instructions on the form. A United States consular officer in a country in which USCIS does not have an office may accept and approve a relative petition or a petition filed by a widow or widower if the petitioner resides in the area over which the post has jurisdiction, regardless of the beneficiary's residence or physical presence at the time of filing. In emergency or humanitarian cases and cases of national interest, a United States consular officer may accept a petition filed by a petitioner who does not reside within the consulate's jurisdiction. While consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate USCIS office. Consular officers may consult with the appropriate USCIS office abroad prior to stateside referral, if they deem it necessary. A consular official may not accept or approve a self-petition filed by the spouse or child of an abusive citizen or lawful permanent resident of the United States under section 204(a)(1)(A)(iii), 204(a)(1)(A)(iv), 204(a)(1)(B)(ii), or 204(a)(1)(B)(iii) of the Act. These self-petitions must be filed with a USCIS office in the United States as indicated in the instructions to the applicable petition form as prescribed by USCIS.

* * * * *

■ 15. Section 204.3(g) is revised to read as follows:

§ 204.3 Orphans.

* * * * *

(g) *Where to file.* Form I–600, Petition to Classify Orphan as an Immediate Relative, and Form I–600A, Application for Advanced Processing of Orphan Petition, must be filed in accordance with the instructions on the form.

* * * * *

§ 204.4 [Amended]

■ 16. Section 204.4 is amended by:

■ a. Revising the phrase ''with the Service office having jurisdiction over the place of the alien's intended residence in the United States or with the overseas Service office having jurisdiction over the alien's residence abroad'' in paragraph (c) to read: ''in accordance with the instructions on the form''; and

■ b. Revising the phrase '' with the Service office having jurisdiction over the beneficiary's residence in the United States'' in the second sentence of paragraph (i) to read: ''with USCIS''.

§ 204.5 [Amended]

■ 17. Section 204.5(b), is amended by revising the phrase ''with the Service Center having jurisdiction over the

intended place of employment, unless specifically designated for local filing by the Associate Commissioner for Examinations'' to read: ''in accordance with the instructions on the form''.

§ 204.6 [Amended]

■ 18. Section 204.6 is amended by removing and reserving paragraph (b).

§ 204.8 [Removed and Reserved]

■ 19. Section 204.8 is removed and reserved.

■ 20. Section 204.9 is amended by:

■ a. Revising paragraph (a)(2); and

■ b. Revising the phrase ''with the director having jurisdiction over his or her place of residence,'' in the first sentence of paragraph (c)(2) to read ''in accordance with the instructions on the form''.

The revision reads as follows:

§ 204.9 Special immigrant status for certain aliens who have served honorably (or are enlisted to serve) in the Armed Forces of the United States for at least 12 years.

(a) * * *

(2) *Where to file.* The petition must be filed in accordance with the instructions on the form.

* * * * *

§ 204.10 [Amended]

■ 21. Section 204.10 is amended by removing and reserving paragraph (c)(2).

■ 22. Section 204.11 is amended by revising paragraph (b) to read as follows:

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

* * * * *

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. ~~The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.~~

* * * * *

§ 204.13 [Amended]

■ 23. Section 204.13 is amended by removing the last sentence in paragraph (c).

PART 207—ADMISSION OF REFUGEES

■ 24. The authority citation for part 207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

§ 207.1 [Amended]

■ 25. Section 207.1 is amended by removing the phrase ''with the Service office having jurisdiction over the area where the applicant is located'' in the first sentence of paragraph (a).

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 26. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

■ 27. Section 208.4 is amended by revising paragraph (b) to read as follows:

§ 208.4 Filing the application.

* * * * *

(b) *Filing location.* Form I–589, Application for Asylum and Withholding of Removal, must be filed in accordance with the instructions on the form.

* * * * *

§ 208.5 [Amended]

■ 28. Section 208.5(b)(1)(ii) is amended in the first sentence by revising the phrase ''to the district director having jurisdiction over the port-of-entry'' to read: ''in accordance with the instructions on the form'', and by revising the term ''district director'' to read ''DHS office'' wherever that term appears.

PART 211—DOCUMENTARY REQUIREMENTS; IMMIGRANTS; WAIVERS

■ 29. The authority citation for part 211 continues to read as follows:

Authority: 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

■ 30. Section 211.1 is amended by revising paragraph (b)(3) to read as follows:

§ 211.1 Visas.

* * * * *

(b) * * *

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I–551, or reentry permit, the alien may file an application for a waiver of this requirement with the DHS *officer with jurisdiction over the port of entry where the alien arrives.* To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in 8 CFR 103.7(b)(1), except that if the alien's Form I–551 was lost or stolen, the alien must instead file Form I–90, Application to Replace Permanent Resident Card, with the fee prescribed in 8 CFR 103.7(b)(1), provided the temporary absence did not exceed 1 year. In the exercise of discretion, the DHS officer *who has jurisdiction over the port of entry where the alien arrives* may waive the alien's lack of an immigrant visa, Form I–551, or reentry permit and admit the alien as a returning resident *if DHS* is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, Form I–551, or reentry permit. Filing the Form I–90 will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application.

* * * * *

■ 31. Section 211.2 is amended by revising paragraph (b) to read as follows:

§ 211.2 Passports.

* * * * *

(b) Except as provided in paragraph (a) of this section, if an alien seeking admission as an immigrant with an immigrant visa believes that good cause exists for his or her failure to present a passport, the alien may file an application for a waiver of this requirement with the *DHS officer who has jurisdiction over the port of entry where the alien arrives.* To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in 8 CFR 103.7(b)(1). In the exercise of discretion, the *DHS officer with jurisdiction over the port of entry,* may waive the alien's lack of passport and admit the alien as an immigrant, if DHS is satisfied that the alien has established good cause for his or her failure to present a passport.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 32. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227.

■ 33. Section 212.2 is amended by:

■ a. Revising paragraph (d);

■ b. Removing the phrase ''an application for permission to reapply, Form I–212, with the district director having jurisdiction over the place where the alien resides'' in the second sentence of paragraph (e) and adding in its place ''Form I–212, Application for Permission to Reapply'';
■ c. Revising paragraph (f);
■ d. Revising paragraph (g)(2); and
■ e. Removing paragraph (g)(3).

The revisions read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

* * * * *

(d) *Applicant for immigrant visa.* Except as provided in paragraph (g)(2) of this section, an applicant for an immigrant visa who is not physically present in the United States and who requires permission to reapply must file Form I–212. Except as provided in paragraph (g)(2) of this section, if the applicant also requires a waiver under section 212(g), (h), or (i) of the Act, Form I–601, Application for Waiver of Grounds of Excludability, must be filed simultaneously with the Form I–212.

* * * * *

(f) *Applicant for admission at port of entry.* An alien may request permission at a port of entry to reapply for admission to the United States within 5 years of the deportation or removal, or 20 years in the case of an alien deported, or removed 2 or more times, or at any time after deportation or removal in the case of an alien convicted of an aggravated felony. The alien must file the Form I–212, where required, with the DHS officer having jurisdiction over the port of entry.

(g) * * *

(2) An alien who is an applicant for parole authorization under 8 CFR 245.15(t)(2) and requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, must file the requisite Form I–212 or Form I–601 concurrently with the Form I–131, Application for Travel Document. An alien who is an applicant for parole authorization under 8 CFR 245.13(k)(2) and requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, must file the requisite Form I–212 or Form I–601 concurrently with the Form I–131, Application for Travel Document.

* * * * *

■ 34. Section 212.3 is amended by:
■ a. Revising paragraph (a);
■ b. Removing the phrase ''with the appropriate district director'' at the end of the last sentence in paragraph (d); and by
■ c. Revising paragraph (f) introductory text.

The revisions read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) *Jurisdiction.* An application for the exercise of discretion under section 212(c) of the Act must be submitted on Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile. If the application is made in the course of proceedings under sections 235, 236, or 242 of the Act, the application shall be made to the Immigration Court.

* * * * *

(f) Limitations on discretion to grant an application under section 212(c) of the Act. An application for advance permission to enter under section 212 of the Act shall be denied if:

* * * * *

■ 35. Section 212.7 is amended by:
■ a. Revising paragraph (a)(1); and by
■ b. Removing and reserving paragraph (b)(2).

The revision reads as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

(a) * * *

(1) Form I–601 must be filed in accordance with the instructions on the form. When filed at a consular office, Form I–601 shall be forwarded to USCIS for a decision upon conclusion that the alien is admissible but for the grounds for which a waiver is sought.

* * * * *

§ 212.15 [Amended]

■ 36. Section 212.15 is amended by:
■ a. Removing the phrase, '', and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1)'' in the first sentence of paragraph (j)(1) introductory text;
■ b. Removing the phrase ''to the Director, Nebraska Service Center,'' in first sentence of paragraph (j)(2)(i);
■ c. Removing the phrase ''to the Director, Nebraska Service Center,'' in the first sentence of paragraph (j)(2)(ii); and
■ d. Revising the term ''the Director, Nebraska Service Center'' to read: ''USCIS'' in the first sentence of paragraph (j)(3)(i).

PART 214—NONIMMIGRANT CLASSES

■ 37. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1372, 1379, 1731–32; section 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively, 8 CFR part 2.

■ 38. Section 214.2 is amended by:
■ a. Revising paragraph (a)(6)(iii);
■ b. Removing the phrase ''with the appropriate Service Center'' in paragraph (e)(8)(iv)(B);
■ c. Removing the word ''State'' in the first sentence of paragraph (e)(8)(iv)(C) and adding in its place ''Department of State'';
■ d. Removing the phrase ''with the Service Center'' in the first sentence of paragraph (e)(8)(v);
■ e. Removing the phrase ''a Service Center'' in the second sentence of paragraph (e)(8)(v) and adding in its place ''USCIS'';
■ f. Removing the last sentence of paragraph (e)(8)(v);
■ g. Revising paragraph (g)(6)(iii);
■ h. Removing paragraph (h)(3)(i)(D);
■ i. Removing the second sentence in paragraph (k)(1);
■ j. Removing the last sentence in paragraph (k)(7);
■ k. Revising paragraph (l)(2);
■ l. Removing the phrase ''Service Center'' in paragraph (l)(5)(ii)(C) and adding in its place ''USCIS office'';
■ m. Revising paragraph (l)(5)(ii)(F);
■ n. Removing the third sentence in paragraph (l)(7)(i) introductory text and by revising the word ''Service'' in the fourth sentence to read ''USCIS'';
■ o. Revising paragraph (l)(7)(i)(C);
■ p. Removing the term ''Service Center'' in the second sentence of paragraph (l)(8)(ii) and adding in its place ''USCIS office'';
■ q. Removing the third sentence in paragraph (m)(11)(ii)(A);
■ r. Removing the phrase ''to the service center with jurisdiction over the current school'' in the fourth sentence of paragraph (m)(11)(ii)(B);
■ s. Removing the phrase '', with the Service Center which has jurisdiction in the area where the alien will work'' in the first sentence of paragraph (o)(2)(i);
■ t. Removing the phrase ''and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located'' in the first sentence of paragraph (o)(2)(iv)(A), and by removing the second sentence;
■ u. Removing the phrase ''with the Service Center that has jurisdiction over the area where the alien will perform services,'' in paragraph (o)(2)(iv)(B);

■ v. Removing the phrase ''with the Service Center having jurisdiction over the new place of employment'' in the first sentence of paragraph (o)(2)(iv)(C);
■ w. Removing the phrase ''with the Service Center where the original petition was filed'' in the first sentence of paragraph (o)(2)(iv)(D);
■ x. Revising the ninth sentence in (p)(2)(i);
■ y. Removing the phrase ''and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located'' in the first sentence of (p)(2)(iv)(A), and by removing the second sentence;
■ z. Removing the phrase ''with the Service Center that has jurisdiction over the area where the alien will perform the services,'' in (p)(2)(iv)(B);
■ aa. Removing the phrase ''with the appropriate Service Center'' in the last sentence of (p)(2)(iv)(H);
■ bb. Removing the second sentence of paragraph (q)(5)(i);
■ cc. Removing the phrase ''with the service center having jurisdiction over the area where the alien will perform services or labor, or receive training'' in the first sentence of paragraph (q)(5)(iv);

The revisions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

(a) * * *

(6) * * *

(iii) If the Department of State's endorsement is favorable, the dependent may apply to USCIS for employment authorization. When applying to USCIS for employment authorization, the dependent must present his or her Form I–566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Secretary.

* * * * *

(g) * * *

(6) * * *

(iii) If the Department of State's endorsement is favorable, the dependent may apply to USCIS for employment authorization. When applying to USCIS for employment authorization, the dependent must present his or her Form I–566 with a favorable endorsement from the Department of State and any additional documentation as may be required by the Secretary.

* * * * *

(l) * * *

(2) * * *

(i) Except as provided in paragraph (l)(2)(ii) and (l)(17) of this section, a petitioner seeking to classify an alien as an intracompany transferee must file a petition on Form I–129, Petition for Nonimmigrant Worker. The petitioner shall advise USCIS whether a previous petition for the same beneficiary has been filed, and certify that another petition for the same beneficiary will not be filed unless the circumstances and conditions in the initial petition have changed. Failure to make a full disclosure of previous petitions filed may result in a denial of the petition.

(ii) A United States petitioner which meets the requirements of paragraph (l)(4) of this section and seeks continuing approval of itself and its parent, branches, specified subsidiaries and affiliates as qualifying organizations and, later, classification under section 101(a)(15)(L) of the Act multiple numbers of aliens employed by itself, its parent, or those branches, subsidiaries, or affiliates may file a blanket petition on Form I–129. The blanket petition shall be maintained at the adjudicating office. The petitioner shall be the single representative for the qualifying organizations with which USCIS will deal regarding the blanket petition.

* * * * *

(5) * * *

(ii) * * *

(F) If the consular officer determines that the alien is ineligible for L classification under a blanket petition, the consular officer's decision shall be final. The consular officer shall record the reasons for the denial on Form I–129S, retain one copy, return the original of I–129S to the USCIS office which approved the blanket petition, and provide a copy to the alien. In such a case, an individual petition may be filed for the alien on Form I–129, Petition for Nonimmigrant Worker. The petition shall state the reason the alien was denied L classification and specify the consular office which made the determination and the date of the determination.

* * * * *

(7) * * *

(i) * * *

(C) *Amendments.* The petitioner must file an amended petition, with fee, at the USCIS office where the original petition was filed to reflect changes in approved relationships, additional qualifying organizations under a blanket petition, change in capacity of employment (*i.e.,* from a specialized knowledge position to a managerial position), or any information which would affect the beneficiary's eligibility under section 101(a)(15)(L) of the Act.

* * * * *

(p) * * *

(2) * * *

(i) * * * The petitioner must file a P petition on Form I–129, Petition for Nonimmigrant Worker. * * *

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

■ 39. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.4 [Amended]

■ 40. Section 216.4 is amended by removing and reserving paragraph (a)(3).

§ 216.5 [Amended]

■ 41. Section 216.5 is amended by removing and reserving paragraph (c).

§ 216.6 [Amended]

■ 42. Section 216.6, is amended by removing and reserving paragraph (a)(2).

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

■ 43. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

§ 236.14 [Amended]

■ 44. Section 236.14 is amended by removing the first sentence of paragraph (a).

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 45. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR 2.

§ 240.63 [Amended]

■ 46. Section 240.63 is amended by removing the phrase ''at the appropriate Service Center'' in paragraph (c).

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 47. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.7 [Amended]

■ 48. Section 244.7 is amended by removing the phrase ''shall be filed with the director having jurisdiction over the applicant's place of residence'' in paragraph (a) and adding in its place ''must be filed on Form I–821, Application for Temporary Protected Status''.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

■ 49. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

§ 245.2 [Amended]

■ 50. Section 245.2 is amended by:
■ a. Removing the phrase '', and shall be submitted to the director having jurisdiction over the applicant's place of residence in the United States'' in the second sentence in paragraph (b);
■ b. Removing the third sentence in paragraph (b);
■ c. Removing the word ''his'' in the fourth sentence of paragraph (b) and adding in its place ''the'';
■ d. Removing the phrase ''with the director having jurisdiction over the applicant's place of residence'' in the first sentence in paragraph (c);
■ e. Removing the phrase ''the director'' in the third sentence of paragraph (c) and adding in its place ''USCIS'';
■ f. Removing the phrase ''by the director'' in the fifth sentence of paragraph (c).

§ 245.7 [Amended]

■ 51. Section 245.7 is amended by removing the phrase ''with the director having jurisdiction over the applicant's place of residence'' from the first sentence of paragraph (a).

§ 245.8 [Amended]

■ 52. Section 245.8 is amended by removing the phrase ''with the director having jurisdiction over the applicant's place of residence'' from the first sentence of paragraph (a).

§ 245.12 [Amended]

■ 53. Section 245.12 is amended by removing the phrase '', with the Service director having jurisdiction over the applicant's place of residence'' in paragraph (a)(1).

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 54. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.3 [Amended]

■ 55. Section 248.3 is amended by removing the phrase '', to the Nebraska Service Center'' in paragraph (d).

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

■ 56. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1303–1305; 8 CFR part 2.

§ 264.2 [Amended]

■ 57. Section 264.2 is amended by removing the phrase ''to the Service office having jurisdiction over the applicant's place of residence in the United States'' in paragraph (a) and adding in its place ''on Form I–485 in accordance with the instructions on the form and paragraph (c) of this section''.

■ 58. Section 264.5 is amended by revising the first sentence in paragraph (e)(2)(i) to read as follows:

§ 264.5 Application for a replacement Permanent Resident Card.

(e) * * *
(2) * * *
(i) Form I–90 must be filed in accordance with the instructions on the form. * * *
* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

■ 59. The authority citation for part 274A continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

§ 274a.13 [Amended]

■ 60. Section 274a.13 is amended by:
■ a. Removing the phrase ''with the director having jurisdiction over applicant's residence, or the director having jurisdiction over the port of entry at which the alien applies, or with such other Service office as the Commissioner may designate'' in the first sentence of paragraph (a)(1) and add in its place '', Application for Employment Authorization'';
■ b. Removing the phrase ''the director or such other officer as the Commissioner may designate'' in the second sentence in paragraph (a)(1) and adding in its place ''USCIS'';
■ c. Removing the phrase ''with the appropriate Service Center or with such other Service office as the Commissioner may designate'' in the first and last sentences in paragraph (a)(2);
■ d. Removing the phrase ''the district director'' in the first sentence of paragraph (d) and adding in its place ''USCIS'';
■ e. Removing the phrase ''the INS'' in the first sentence of paragraph (d) and adding in its place ''USCIS''.

PART 301—NATIONALS AND CITIZENS OF THE UNITED STATES AT BIRTH

■ 61. The authority citation for part 301 continues to read as follows:

Authority: 8 U.S.C. 1103, 1401; 8 CFR part 2.

§ 301.1 [Amended]

■ 62. In section 301.1, paragraph (a)(1) is amended by removing the term ''Service'' in the first and last sentences and adding in its place ''USCIS'', and by removing the second sentence.

PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

■ 63. The authority citation for part 316 continues to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1427, 1443, 1447; 8 CFR part 2.

§ 316.3 [Removed and Reserved]

■ 64. Section 316.3 is removed and reserved.

PART 320—CHILD BORN OUTSIDE THE UNITED STATES AND RESIDING PERMANENTLY IN THE UNITED STATES; REQUIREMENTS FOR AUTOMATIC ACQUISITION OF CITIZENSHIP

■ 65. The authority citation for part 320 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 320.3 [Amended]

■ 66. Section 320.3 is amended by removing the fourth sentence in paragraph (a).

PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP

■ 67. The authority citation for part 322 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443; 8 CFR part 2.

§ 322.3 [Amended]

■ 68. Section 322.3 is amended by removing the third sentence in paragraph (a).

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

■ 69. The authority citation for part 324 continues to read as follows:

Authority: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§ 324.2 [Amended]

■ 70. Section 324.2 is amended by removing the final sentence of paragraph (b).

§ 324.3 [Amended]

■ 71. Section 324.3 is amended by:

■ a. Removing the phrase ''the office of the Service having jurisdiction over her place of residence as evidence of her desire to take the oath'' in paragraph (b)(1) and adding in its place ''USCIS in accordance with the instructions on the form.'';

■ b. Removing the phrase ''the district director'' in paragraph (b)(2) and adding in its place ''USCIS'';

■ c. Removing the phrase ''the Service'' in paragraph (b)(2) and adding in its place ''USCIS''.

§ 324.4 [Amended]

■ 72. Section 324.4 is amended by removing the phrase ''office of the Service'' and adding in its place ''USCIS office''.

§ 324.5 [Amended]

■ 73. Section 324.5 is amended by removing the phrase ''the Service'' wherever it appears and adding in its place ''USCIS''.

PART 327—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO LOST UNITED STATES CITIZENSHIP THROUGH SERVICE IN ARMED FORCES OF FOREIGN COUNTRY DURING WORLD WAR II

■ 74. The authority citation for part 327 continues to read as follows:

Authority: 8 U.S.C. 1103, 1438, 1443.

§ 327.2 [Amended]

■ 75. Section 327.2 is amended by removing the phrase '', to the Service office having jurisdiction over the applicant's place of residence'' in the first sentence of paragraph (a).

PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH THREE YEARS' SERVICE IN ARMED FORCES OF THE UNITED STATES

■ 76. The authority citation for part 328 continues to read as follows:

Authority: 8 U.S.C. 1103, 1439, 1443.

§ 328.3 [Removed and Reserved]

■ 77. Section 328.3 is removed and reserved.

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

■ 78. The authority citation for part 329 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

§ 329.3 [Removed and Reserved]

■ 79. Section 329.3 is removed and reserved.

§ 329.5 [Amended]

■ 80. Section 329.5 is amended by removing and reserving paragraph (c).

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

■ 81. The authority citation for part 330 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 330.2 [Amended]

■ 82. Section 330.2 is amended by adding a period immediately after the phrase ''An applicant for naturalization under section 330 of the Act must submit an Application for Naturalization, Form N–400'' and removing the remaining text in paragraph (a).

PART 334—APPLICATION FOR NATURALIZATION

■ 83. The authority citation for part 334 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

§ 334.1 [Amended]

■ 84. Section 334.1 is amended by removing the phrase ''at the Service office indicated in the appropriate part of this chapter'' and adding in its place ''in accordance with the instructions on the form''.

§ 334.11 [Amended]

■ 85. Section 334.11 is amended by removing the phrase ''with the Service office having jurisdiction over the applicant's place of residence in the United States'' from the second sentence of paragraph (a).

PART 392—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO DIE WHILE SERVING ON ACTIVE DUTY WITH THE UNITED STATES ARMED FORCES DURING CERTAIN PERIODS OF HOSTILITIES

■ 86. The authority citation for part 392 continues to read as follows:

Authority: 8 U.S.C. 1103, 1440 and note, and 1440–1; 8 CFR part 2.

§ 392.3 [Amended]

■ 87. Section 392.3(b)(1), is amended by adding a period immediately after the phrase ''An application for posthumous citizenship must be submitted by mail on Form N–644'' and removing the remaining text from the first sentence and removing the second sentence.

Janet Napolitano,

Secretary.

[FR Doc. E9–13014 Filed 6–4–09; 8:45 am]

BILLING CODE 9111–97–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

RIN 3064–AD37

Modification of Temporary Liquidity Guarantee Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is issuing this Final Rule to make permanent a minor modification to the Temporary Liquidity Guarantee Program (TLGP) to include certain issuances of mandatory convertible debt (MCD) under the TLGP debt guarantee program (DGP).

DATES: The final rule becomes effective on June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Steven Burton, Senior Financial Analyst, Bank and Regulatory Policy Section, Division of Insurance and Research, (202) 898–3539 or *sburton@fdic.gov*; Robert C. Fick, Counsel, Legal Division, (202) 898–8962 or *rfick@fdic.gov*; A. Ann Johnson, Counsel, Legal Division (202) 898–3573 or *aajohnson@fdic.gov*; Mark L. Handzlik, Senior Attorney, Legal Division, (202) 898–3990 or *mhandzlik@fdic.gov*; Gail Patelunas, Deputy Director, Division of Resolutions

Proposed Rules

Federal Register
Vol. 76, No. 172

Tuesday, September 6, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 205, and 245

[CIS No. 2474–09; DHS Docket No USCIS–2009–0004]

RIN 1615–AB81

Special Immigrant Juvenile Petitions

AGENCY: U.S. Citizenship and Immigration Services, DHS.
ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to amend its regulations governing the Special Immigrant Juvenile (SIJ) classification, and related applications for adjustment of status to permanent resident. The Secretary may grant SIJ classification to aliens whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. This proposed rule would require a petitioner to be under the age of 21 only at the time of filing for SIJ classification. This proposed rule would require that juvenile court dependency be in effect at the time of filing for SIJ classification and continue through the time of adjudication, unless the age of the juvenile prevents such continued dependency. Aliens granted SIJ classification are eligible immediately to apply for adjustment of status to that of permanent resident.

DATES: Written comments must be submitted on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2009–0004 by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at *USCISFRComment@dhs.gov.* Include DHS Docket No. USCIS–2009–0004 in the subject line of the message.
- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. To ensure proper handling, please reference DHS Docket No. USCIS–2009–0004 on your correspondence. This mailing address may be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529–2020. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Rosemary Hartmann, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2099, telephone (202) 272–8350 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

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I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, or federalism effects that might result from this proposed rule. Comments from individuals and agencies with direct experience handling SIJ cases are particularly encouraged. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2009–0004 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *See* the **ADDRESSES** section above for information on how to submit comments. Those wishing to submit anonymous comments should do so electronically at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

II. Background and Legislative Authority

Section 101(a)(27)(J) of the Immigration and Nationality Act of 1952 (INA or Act), as amended, 8 U.S.C. 1101(a)(27)(J), permits the Secretary of Homeland Security to grant special immigrant juvenile classification to certain aliens whom a juvenile court has declared to be dependent on the court, or whom the juvenile court has committed to or placed under the custody of a State agency, department, individual, or entity. The juvenile court must determine that reunification of the alien with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under State law. In addition, it must be determined in administrative or judicial proceedings that the return of the alien to the alien's or the alien's parent's country of nationality or last habitual residence would not be in the alien's best interest.

This proposed rule would implement:

- The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, 108 Stat. 4319 (Jan. 25, 1994),
- The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act),

Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997),

- The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006), and
- The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008).

The Immigration and Nationality Technical Corrections Act of 1994, the CJS 1998 Appropriations Act and TVPRA 2008 amended section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J), which permits certain juvenile aliens to petition for special immigrant juvenile classification, and section 245(h) of the Act, 8 U.S.C. 1255(h), which permits aliens classified as special immigrant juveniles to adjust status to permanent resident.

The Immigration and Nationality Technical Corrections Act of 1994 expanded the group of eligible aliens to include not only those dependent on a juvenile court, but those the court has legally committed to, or placed under the custody of, an agency or department of a State. The CJS 1998 Appropriations Act limited SIJ eligibility by requiring that dependency be due to abuse, abandonment, neglect, or a similar basis under State law. In addition, the consent functions were added in 1998. The scant legislative history behind these amendments suggests that Congress intended to limit eligibility to prevent potential abuse of this benefit, tying eligibility more directly to judicial findings of abuse, abandonment, or neglect and allowing the government to consent to the State court's jurisdiction and to the granting of an immigration benefit. *See* H.R. Rep. No. 105–405, at 130 (1997).

VAWA 2005 added section 287(h) to the INA, protecting a child applying for SIJ status from being compelled to contact the child's alleged abuser or any family members of the abuser. INA section 287(h), 8 U.S.C. 1357(h).

The TVRPA 2008 expanded eligibility for SIJ status in a number of ways. First, TVPRA 2008 replaced the requirement of eligibility for long-term foster care with a new requirement that a juvenile's reunification with one or both parents is not viable due to abuse, abandonment, neglect or a similar basis under State law. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). Second, TVPRA 2008 further expanded the group of eligible aliens to include those placed by a juvenile court with an individual or entity. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). In addition, Congress modified the consent requirements. DHS consent is simply consent to the grant of SIJ status and not consent to the dependency order serving as a precondition to the grant of SIJ status. INA section 101(a)(27)(J)(iii), 8 U.S.C. 1101(a)(27)(J)(iii). TVPRA 2008 vested the specific consent function with the Secretary of Health and Human Services. INA section 101(a)(27)(J)(iii)(I), 8 U.S.C. 1101(a)(27)(J)(iii)(I). TVPRA 2008 includes age out protection so that an alien cannot be denied SIJ classification based on age if the alien was under 21 years of age when the petition was filed. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6).

This proposed rule would clarify procedural and substantive requirements for SIJ petitions. The proposed rule also would implement statutorily mandated changes by revising the existing eligibility requirements, including protections against aging-out, adding the revised consent requirements, and further exempting SIJ adjustment of status applicants from several grounds of inadmissibility.

This rule proposes to require that an alien be under the age of 21 at the time of filing. The proposed rule would require that a juvenile be declared dependent on a juvenile court or have been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. TVPRA 2008 section 235(d)(1)(A). The proposed rule would require that such dependency, commitment, or custody, be in effect at the time of filing and continue through the time of adjudication, unless the age of the juvenile prevents such continuation. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6); *see* proposed 8 CFR 204.11(b)(1)(iv) and 8 CFR 205.1(a)(3)(iv)(B).

III. Special Immigrant Juvenile Classification and Related Adjustment of Status

A. Eligibility Requirements

An alien seeking classification as a special immigrant juvenile must file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360). DHS proposes to require that an alien is eligible for SIJ classification if he or she:

(1) Is present in the United States;

(2) Is under 21 years of age at the time of filing;

(3) Is unmarried;

(4) Has been declared dependent on a juvenile court, or has been 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. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation;

(5) Is the subject of a State or juvenile court determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;

(6) Has been the subject of a determination in judicial or administrative 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

(7) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

Based on the CJS 1998 Appropriations Act and TVPRA 2008, the proposed regulation would significantly change the Form I–360 eligibility criteria. *See* proposed 8 CFR 204.11(b) (currently 204.11(c)). DHS proposes to require the petitioner to be under the age of 21 at the time of filing as provided by TVPRA 2008. DHS also proposes to require that dependency, commitment, or custody per section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i), as amended by the TVPRA 2008, be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

1. Under 21 Years of Age

Under TVPRA 2008, USCIS may not deny SIJ classification based on age if the alien was a child on the date on which the alien petitioned for SIJ classification. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). Under section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), a child is defined as under 21 years of age and unmarried. Through these provisions, Congress has expressed an intent that special immigrant juvenile classification requires that the alien be under the age of 21 only at the time of filing. *See* proposed 8 CFR 204.11(b)(1)(ii). The TVPRA 2008 prohibition would also require removal of existing 8 CFR 205.1(a)(3)(iv)(A), which provides for automatic revocation of the petition of an alien who reaches the age of 21 prior to adjudication of an application for adjustment of status. It would be contrary to the purpose of the statute for Congress to bar denial of a petition because the petitioner aged out, yet permit USCIS to continue to revoke the classification automatically if the alien's subsequent application for adjustment

of status has not been adjudicated before the alien's 21st birthday.

2. Unmarried

Under existing regulations, a juvenile must remain unmarried both at the time the Form I–360 is filed and through adjudication in order to qualify for SIJ classification. 8 CFR 204.11(c)(2) and 205.1(a)(3)(iv)(B). The proposed rule continues this approach, proposed 8 CFR 204.11(b)(1)(iii), for the following reasons. Marriage alters the dependent relationship with the juvenile court and emancipates the child. Furthermore, no derivative benefits for spouses are provided under the SIJ statute. This omission suggests that Congress did not intend for married juveniles to be eligible for SIJ classification. *See* 58 FR 42843–51 (1993). No legislative changes or intervening facts have caused USCIS to alter this provision. This interpretation, moreover, is consistent with Congress's use of the term ''child'' in its Transitional Rule provision of section 235(d)(6) of the TVPRA 2008.

The TVPRA 2008 age-out protection preserves eligibility for SIJ status by precluding USCIS from denying SIJ classification based on age if the alien was a child on the date on which the alien petitioned for SIJ classification. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). This section of the TVPRA uses the term ''child,'' which is defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), as a person who is under 21 years of age and unmarried. Section 235(d)(6) of the TVPRA 2008 links the age-out prohibition specifically to age, by providing that SIJ status may not be denied ''based on age,'' but does not link the age-out protection to marital status. USCIS believes that Congress intended that SIJ classification require that the alien be under the age of 21 only at the time of filing, but that Congress did not intend a similar time- of-filing standard with respect to marital status. *See* proposed 8 CFR 204.11(b)(1)(iii).

3. Juvenile Court Dependency

An alien seeking SIJ classification must have been declared dependent on a juvenile court located in the United States, or such a court must have legally committed the juvenile to, or placed him or her under the custody of, a State agency or department of a State, or an individual or entity appointed by a State or juvenile court. The term ''juvenile court'' includes any court having jurisdiction to make judicial determinations about the custody and care of juveniles. The use of the term ''dependency'' throughout this proposed rule encompasses dependency, commitment, or custody as provided in amended section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i).

Dependency, commitment, or custody must be in effect when the Form I–360 is filed and must continue through the time of adjudication, unless the age of the petitioner prevents such continuation. *See* Proposed 8 CFR 204.11(b)(1)(iv). State juvenile court age limitations on jurisdiction and dates of ''emancipation'' vary greatly from state to state. Eligibility for special immigrant juvenile classification, however, depends only in part on the findings of the State court, since USCIS retains the discretionary authority to grant, deny, or revoke SIJ classification. The proposed rule would ensure that juveniles who age out of State court dependency after filing the Form I–360 would remain eligible for SIJ classification. USCIS, therefore, would not deny SIJ classification to a juvenile with a valid dependency order at the time of filing if the dependency order is no longer in effect at the time of adjudication as a result of the petitioner's age or emancipation, other than emancipation by marriage, based on State law.

Another context in which a petitioner may age out relates to relocation to another state. Jurisdiction over a juvenile by a state juvenile court typically ends upon the juvenile's relocation. For example, if an 18-year-old SIJ petitioner with a valid dependency order in one state relocates to another state, the petitioner might not be subject to the jurisdiction of the juvenile court in the new state because the new state deems age 18 to be the age of emancipation. Under the proposed rule, a juvenile who cannot obtain a new juvenile court dependency order because of age would remain eligible for SIJ classification so long as he or she meets all other applicable requirements. Proposed 8 CFR 204.11(b)(1)(iv) would not require dependency to continue through adjudication for petitioners in this situation.

When an SIJ petitioner relocates to another state, the initial juvenile court dependency order will no longer be in effect because the juvenile will no longer be under the initial court's jurisdiction. The petitioner must therefore obtain a new dependency order. Despite the lapse between dependency orders, USCIS will consider dependency to have continued through the time of adjudication under proposed 8 CFR 204.11(b)(1)(iv). USCIS recognizes that the calendaring of State court proceedings is beyond the petitioner's control and that a lapse between dependency orders based on relocation does not signify a change in the underlying facts on which special immigrant juvenile classification is based, but rather a technical transfer of jurisdiction that may be the cause of the lapse. USCIS, accordingly, will not consider a petitioner ineligible for SIJ classification due to a lapse in time between the two orders.

Proposed 8 CFR 204.11(b)(2)(i) clarifies that a juvenile who is adopted or placed under guardianship is eligible for SIJ classification under amended section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i). This section allows eligibility where a petitioner has been ''legally committed to, or placed under the custody of * * * an individual * * * appointed by a State or juvenile court located in the United States.'' Therefore, commitment to, or placement under the custody of an individual, can include adoption and guardianship.

4. Viability of Reunification Due To Abuse, Neglect, Abandonment, or a Similar Basis Under State Law

An SIJ petitioner must additionally establish that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i). The proposed rule would require the juvenile to establish that he or she is the subject of a State court order determining that reunification with one or both parents is not viable for one of the reasons enumerated in section 101(a)(27)(J)(i). Determining the viability of reunification with one or both of a child's parents due to abuse, neglect, abandonment, or a similar basis under State law is a question that lies within the expertise of the juvenile court, applying relevant State law. *See* Proposed 8 CFR 204.11(b)(1)(v). Section 101(a)(27)(J)(i) of the Act previously required a State court determination of eligibility for long-term foster care due to abuse, neglect, or abandonment.

The concepts of abuse, neglect, and abandonment are not defined in immigration law. Specific legal definitions of the terms ''abuse, neglect, or abandonment'' for the purposes of juvenile dependency proceedings derive from State law and therefore vary from state to state.

For example, in California, ''abuse'' encompasses distinct definitions of physical abuse, neglect (including severe and general neglect), sexual abuse, and emotional abuse. The basic definition of child abuse or neglect includes physical injury inflicted by other than accidental means upon a child by another person; willful

harming or injury of the child or the endangering of the person or health of the child; and unlawful corporal punishment or injury. Cal. Penal Code sections 11165.3, 11165.6. In the District of Columbia, however, ''physical child abuse'' refers to infliction of physical or mental injury upon the child and sexual abuse or exploitation of a child. The law also specifies which acts are considered abusive and, therefore, do not constitute mere ''discipline.'' DC Code Ann. section 16–2301.

In New York, a child is deemed ''abandoned'' if a parent shows ''an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency.'' NY Soc. Serv. Law section 384–b. Virginia law, by contrast, simply states, ''*Abused or neglected child* means any child less than age 18 whose parents or other person responsible for his or her care abandons such child.'' VA Code Ann. section 63.2–100. Thus, the language of the dependency orders varies based on individual State laws as well.

If a juvenile court order includes a finding that reunification with one or both parents is not viable under State law, the petitioner must establish that this State law basis is similar to a finding of abuse, neglect, or abandonment. The petitioner has the burden of proof relating to the scope of the State law. The nature and elements of the State law must be similar to the nature and elements of abuse, abandonment, or neglect. This is a case-by-case determination because of the variations in State law.

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, abandonment, or neglect because children found ''uncared for'' are equally entitled to juvenile court intervention and protection. The outcomes for children adjudged ''uncared for'' are the same as they are for children adjudged abused, abandoned, or neglected. *See* Conn. Gen. Stat. Ann. section 46b–120(8),(9); 121(a).

Petitioners are encouraged to include copies of the State laws on abuse, abandonment, and neglect, or equivalent concepts as defined in the State, and the State definition for the basis on which the juvenile court has made its finding in order to more clearly meet their burden of proof. Additional evidence to establish the basis for a finding that reunification is not viable due to a similar basis found under State law may include:

- Evidence that shows the conduct that occurred and any acts that led to the victimization of the petitioner (this may be contained in the court order itself);
- Other findings from the court;
- Evidence of how a child subject to a finding under State law is treated similarly by the State, for example is eligible for the same programs, as a child who has been adjudicated abused, abandoned or neglected;
- Opinions or letters from social workers, victim advocates, medical professionals, and others who work with the juvenile; and
- Affidavits of the petitioner, other witnesses or those who know the juvenile.

5. Determination of ''Best Interest''

The State judicial or administrative proceedings must additionally determine, under applicable State law, that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the alien or of his or her parents. Congress has not altered these requirements, and this proposed rule would continue the existing requirement. Typically, the juvenile court order itself will include this finding. This finding, however, can be made in any State judicial or administrative proceeding. *See* current 8 CFR 204.11(c)(6) and proposed 8 CFR 204.11(b)(1)(vi).

B. Consent Requirements

1. DHS Consent to the Grant of SIJ Classification

All petitioners for SIJ classification must obtain the consent of the Secretary of Homeland Security to the SIJ classification. Section 101(a)(27)(J)(iii) of the Act, 8 U.S.C. 1101(a)(27)(J)(iii), as amended; *see* proposed 8 CFR 204.11(c)(1). Consent to the dependency order was historically a precondition to granting special immigrant juvenile classification. Section 235(d)(1)(B) of TVPRA 2008, however, replaced that precondition with the requirement that the Secretary consent to the SIJ classification itself. This proposed rule provides that consent will be granted to otherwise eligible SIJ petitioners where the qualifying State court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or some similar basis under State law, and not primarily for the purpose of obtaining lawful immigration status. *See* proposed 8 CFR 204.11(c)(1)(i). This policy is consistent with congressional intent in creating the consent function. *See* H.R. Rep. No. 105–405, at 130 (1997) (noting that the language of the statute was modified to limit the SIJ provisions to those for whom it was created by requiring a determination that neither the dependency order nor the judicial determination of best interest was sought primarily to obtain an immigration benefit, rather than relief from abuse, abandonment or neglect). The proposed rule clarifies that the approval of a Form I–360 is evidence of the Secretary's consent, rather than consent being a precondition of the juvenile court order. *See* proposed 8 CFR 204.11(c)(1)(iii). The removal of consent to the juvenile court order as a statutory precondition renders two separate decisions by USCIS unnecessary and redundant.

The petitioner bears the burden of proving that the State court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or some similar basis under State law. Evidence can include information about the juvenile court proceedings such as a dependency or guardianship order, findings accompanying the order, actual records from the proceedings, or other evidence that summarizes the evidence presented to the court. Dependency orders that include or are supplemented by specific findings of fact regarding the basis for a finding of abuse, neglect, abandonment, or some similar basis under State law are usually sufficient to provide a basis for the Secretary's consent. Orders lacking specific factual findings generally are not sufficient to provide a basis for consent, and must be supplemented by separate findings or any other relevant evidence establishing the factual basis for the order.

Evidence can also include information from persons who know the petitioner in a personal or professional manner. This evidence could include, but is not limited to, affidavits, letters, evaluations, or treatment plans from the court, State agency, department, or individual with whom the juvenile has been placed, health care professionals, social workers, others with responsibility to evaluate and treat the juvenile, attorneys, guardians, adoptive parents, family members, and friends.

USCIS may seek or consider additional relevant evidence if the evidence presented is not sufficient to establish a reasonable basis for consent. USCIS may request additional evidence

from the petitioner in such cases. Moreover, USCIS may consider any evidence of the role of a parent or other custodian in arranging for a petitioner to travel to the United States or to petition for SIJ classification. *See Yeboah* v. *U.S. Dep't of Justice,* 345 F.3d 216 (3d Cir. 2003). If USCIS determines that the State court order is sought primarily to obtain lawful immigration status, USCIS will deny consent.

2. Specific Consent of HHS

TVPRA 2008 vested custody of unaccompanied alien children, who are often petitioners for SIJ classification, with the Secretary of Health and Human Services rather than the Secretary of Homeland Security. In addition, TVPRA 2008 simplified the language to refer simply to ''custody,'' in contrast to the previous ''actual or constructive custody'' language.

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. Section 101(a)(27)(J)(iii)(I) of the Act, 8 U.S.C. 1101(a)(27)(J)(iii)(I). A juvenile in the custody of the Department of Health and Human Services (HHS) is required to obtain specific consent from HHS to a State court order modifying custody status or placement prior to filing a petition for SIJ classification. *See* proposed 8 CFR 204.11(c)(2). The specific consent requirement was introduced by the 1998 Appropriations Act and amended by TVPRA 2008.

An SIJ petitioner who is in the custody of HHS must now seek specific consent from HHS if he or she seeks a juvenile court order that would determine or alter his or her custody status or placement. The SIJ petitioner is not required to obtain specific consent from HHS if the juvenile court order makes no findings as to custody status or placement. Where required, an SIJ petitioner must submit evidence of an HHS grant of specific consent when filing a petition for SIJ classification with USCIS.

C. Application Process

An alien must file Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, to petition for SIJ classification under section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J). All petitioners for SIJ classification must submit all required initial evidence, and supporting documentation, with the Form I–360. *See* 8 CFR 103.2(b)(1) and proposed 8 CFR 204.11(d).

This proposed rule would amend what constitutes acceptable supporting documentation or initial evidence that must accompany the Form I–360. *See* proposed 8 CFR 204.11(d). The proposed rule would require the following initial evidence, which may be contained in one document or in several documents:

- Form I–360, completed in accordance with the instructions on the form;
- Evidence of the alien's age, such as a birth certificate, passport, official foreign identity document issued by a foreign government, or other document which, in the discretion of USCIS, establishes the alien's age;
- Biometrics as provided in the instructions on the form;
- A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the juvenile to be dependent upon that court or that the court has legally committed the juvenile to, or placed the juvenile under the custody of, an agency or department of a State or an individual or entity appointed by a State or juvenile court;
- Specific findings of fact or other relevant evidence, either incorporated into the court order or separate from the order, establishing that reunification with one or both parents was deemed not viable due to abuse, neglect, abandonment, or a similar basis under State law. If the evidence includes a finding that reunification is not viable due to a similar basis under State law, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment;
- Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s); and
- If a juvenile is in HHS custody and obtained a juvenile court order that determined or altered his or her custody status or placement, evidence that HHS granted specific consent to the new custody status or placement ordered by the court.

USCIS may obtain initial or additional supporting evidence, documents, or materials directly from a court, government agency, or other administrative body in either paper or electronic format.

The Application to Register Permanent Residence or Adjust Status, Form I–485, is used by SIJ petitioners to apply for related adjustment of status to that of a permanent resident, either concurrently with or subsequent to filing Form I–360. Where possible, USCIS encourages concurrent filing of Form I–485 and Form I–360.

D. Adjudication and Post-Adjudication

1. Interview Process

USCIS may interview the petitioner for purposes of adjudicating the Form I–360 petition. 8 CFR 103.2(b)(9). USCIS has discretion to determine whether an interview is necessary. The determination not to interview may apply when an SIJ petitioner files Form I–360 alone, without an accompanying Form I–485. *See* proposed 8 CFR 204.11(e). USCIS will consider such factors as the age of the juvenile, the sensitive nature of issues of abuse, neglect, or abandonment involved in the case, and whether the USCIS officer expects to gather additional relevant evidence at an interview. In some instances, an officer may require information that can only be provided by the juvenile or a person acting on the juvenile's behalf, such as when a petition is missing information or the juvenile has a criminal record.

USCIS seeks to establish a nonthreatening interview environment that would promote an open, productive discussion about the SIJ petition. Juveniles seeking SIJ classification, unlike other juveniles, are under specific pressures and hardships relating to the loss of parental support and to juvenile court proceedings. The juvenile could bring a trusted adult (who is familiar with the juvenile and can be supportive), in addition to an attorney or representative (at no expense to the Government). The trusted adult or the attorney may present a statement at the end of the interview. The interviewing officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing. USCIS still maintains discretion to interview a child separately when necessary. Generally, in the context of the SIJ interview, it is not necessary to interview a juvenile (whether alone or accompanied) about the facts regarding the abuse, neglect, or abandonment upon which the dependency order is based. However, USCIS retains the discretion to interview the juvenile.

USCIS cannot compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any point during the petition or interview process. INA section 287(h), 8 U.S.C. 1357(h), proposed 8 CFR 204.11(f).

As a general rule, USCIS must interview any applicant for adjustment of status, regardless of the underlying status and how the applicant is adjusting status to lawful permanent resident. 8 CFR 245.6. This general interview requirement for all adjustment of status applications also applies to SIJ petitioners. It applies when, as is most often the case, an SIJ petitioner files the Form I–360 concurrently with the Form I–485. It also applies when USCIS grants a Form I–360 filed separately, and then the SIJ petitioner files a Form I–485.

Although the general interview requirement does apply to SIJ petitioners, USCIS does have discretion to waive an adjustment of status interview for SIJ petitioners. USCIS may waive an interview in the case of a child under the age of 14, or where USCIS determines on a case-by-case basis that an interview is not necessary. *See* 8 CFR 245.6. USCIS will review the underlying Form I–360 (if not already approved) and the Form I–485 during the interview and will generally provide safeguards outlined above regarding interviews for SIJ classification.

2. Decisions

TVPRA 2008 contained a provision for expeditious adjudication of SIJ petitions within 180 days. *See* TVPRA 2008 section 235(d)(2), 8 U.S.C. 1232(d)(2). USCIS intends to adhere to the 180-day benchmark, taking into account general USCIS regulations pertaining to receipting of petitions, evidence and processing, and assuming the completeness of the petition and supporting evidence. Proposed 8 CFR 204.11(h); 8 CFR 103.2. The 180-day timeframe begins when the SIJ petition is receipted, as reflected in the receipt notice sent to the SIJ petitioner. 8 CFR 103.2(a)(7). If USCIS sends a request for initial evidence, the 180-day timeframe will start over from the date of receipt of the required initial evidence. 8 CFR 103.2(b)(10)(i). If USCIS sends a request for additional evidence, the 180-day timeframe will stop as of the date USCIS sends the request, and will resume once USCIS receives a response from the SIJ petitioner. 8 CFR 103.2(b)(10)(i). USCIS will not count delay attributable to the petitioner or his or her representative within the 180-day timeframe. USCIS interprets the 180-day timeframe to apply to adjudication of the Form I–360 petition for SIJ status only, and not to the Form I–485 application for adjustment of status. USCIS does not interpret the 180-day timeframe to mean that an unadjudicated petition at the end of the timeframe will be automatically approved.

3. Revocation

Current 8 CFR 205.1(a)(3)(iv) provides conditions under which a grant of an underlying petition for SIJ classifica tion is automatically revoked during the period when a Form I–485 is pending, but before a decision on the Form I–485 becomes final. This proposed rule would alter this section consistent with TVPRA 2008.

As noted above, USCIS cannot deny SIJ classification based on age if the alien was a child on the date on which the alien filed the petition. Current regulations, however, provide for automatic revocation of the underlying SIJ petition if the juvenile reaches the age of 21 or dependency on the juvenile court was terminated before the Form I–485 was adjudicated. 8 CFR 205.1(a)(3)(iv)(A) and (C). As discussed above, it would be contrary to the language and purpose of the amended statute to continue this automatic revocation. Accordingly, the proposed rule removes 8 CFR 205.1(a)(3)(iv)(A) and (C) because these grounds relate to a juvenile's age.

The rule also proposes to modify the language at current 8 CFR 205.1(a)(3)(iv)(D) to reflect current statutory language at section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i), requiring automatic revocation of an approval of the Form I–360 if a court deems reunification with one or both parents a viable option. The proposed rule would not change the language of current 8 CFR 205.1(a)(3)(iv)(B) (revoking approval of the petition upon the marriage of the juvenile). As discussed above, Congress intended an SIJ petitioner to remain unmarried.

4. No Parental Rights

The proposed rule references the statutory language at section 101(a)(27)(J)(iii)(II) of the Act that parents cannot be accorded any right, privilege, or status under the Act. Proposed 8 CFR 204.11(g). USCIS interprets this provision to mean that any parent or prior adoptive parent cannot gain lawful status through the alien granted SIJ status, regardless of whether the alien goes on to become a permanent resident or even a United States citizen. When TVPRA 2008 added the language regarding the non-viability of reunification with one or both parents, Congress did not amend section 101(a)(27)(J)(iii)(II) of the INA to permit a non-abusive parent to gain any right, privilege, or status under the INA by virtue of the parental relationship. USCIS continues to interpret this language to apply to any parent or any prior adoptive parent, regardless of that parent's involvement in the abuse, abandonment or neglect.

E. Adjustment of Status

As provided by the TVPRA 2008 amendments to section 245(h)(2)(A) of the Act, 8 U.S.C. 1255(h)(2)(A), SIJ adjustment of status applicants are exempt from four additional grounds of inadmissibility. The full list of exempted grounds of inadmissibility in proposed 8 CFR 245.1(e)(3) would be modified to include:

- Public charge (section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4));
- Labor certification (section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A));
- Aliens present without inspection (section 212(a)(6)(A) of the Act, 8 U.S.C. 1182(a)(6)(A));
- Misrepresentation (section 212(a)(6)(C) of the Act, 8 U.S.C. 1182(a)(6)(C));
- Stowaways (section 212(a)(6)(D) of the Act, 8 U.S.C. 1182(a)(6)(D));
- Documentation requirements (section 212(a)(7)(A) of the Act, 8 U.S.C. 1182(a)(7)(A)); and
- Aliens unlawfully present (section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B)).

The following grounds of inadmissibility cannot be waived:

- Conviction of certain crimes (section 212(a)(2)(A) of the Act, 8 U.S.C. 1182(a)(2)(A));
- Multiple criminal convictions (section 212(a)(2)(B) of the Act, 8 U.S.C. 1182(a)(2)(B));
- Controlled substance traffickers (section 212(a)(2)(C) of the Act, 8 U.S.C. 1182(a)(2)(C)) except for a single offense of simple possession of 30 grams or less of marijuana;
- Security and related grounds (section 212(a)(3)(A) of the Act, 8 U.S.C. 1182(a)(3)(A));
- Terrorist activities (section 212(a)(3)(B) of the Act, 8 U.S.C. 1182(a)(3)(B));
- Foreign policy (section 212(a)(3)(C) of the Act, 8 U.S.C. 1182(a)(3)(C)); and
- Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E)).

Under section 245(h)(2)(B) of the Act, 8 U.S.C. 1255(h)(2)(B), any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The proposed rule amends 8 CFR 245.1(e)(3) accordingly.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

DHS has reviewed this proposed rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals, who are not small entities as defined by 5 U.S.C. 601(6). There are no costs added by this rule and no change in any process as a result of this proposed rule that would have a direct effect, either positive or negative, on a small entity.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. An analysis of the costs and benefits of this rule has been prepared and submitted to OMB for review as required by the Executive Order. The results of that analysis are as follows.

This rule proposes several changes to the SIJ program that are necessary to bring the regulations into conformity with statutory requirements and agency practice. No additional regulatory compliance requirements will be added that will cause a detectable change in costs for petitioning individuals. In addition, this rule is expected to result in no changes in program costs for the government. Qualitatively, this proposed rule would codify the practices and procedures currently implemented via internal policy directives issued by USCIS. This rule would establish clear guidance for petitioners and applicants regarding the procedural and interpretative issues raised following statutory amendments.

In fiscal year 2009, USCIS received 1,484 SIJ petitions; in 2008 USCIS received 1,361 petitions; in 2007 USCIS received 739 petitions; and in 2006 USCIS received 541 petitions. In fiscal year 2009, USCIS approved 1,212 SIJ petitions; in 2008 USCIS approved 697 petitions; in 2007 USCIS approved 521 petitions; and in 2006 USCIS approved 389 petitions. It does not follow that USCIS denied the remainder of petitions filed in each fiscal year. These approval numbers do not take into account cases that, by the end of the fiscal year, were only initially receipted, awaiting response on a Request for Further Evidence, still pending, transferred, or rejected. The approval numbers may also include petitions filed in a previous fiscal year. According to the DHS Office of Immigration Statistics, in fiscal year 2008, 989 SIJs adjusted status to permanent resident; in fiscal year 2007 772 SIJs adjusted status to permanent resident; and in fiscal year 2006, 894 SIJs adjusted status to permanent resident. The volume of petitions for SIJ classification is not expected to change significantly as a result of this proposed rule if finally promulgated and, therefore, the burden of compliance both in time and fees will not increase above that currently imposed.

USCIS funds the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs, by charging and collecting fees. USCIS has determined, under its discretionary fee setting authority, however, that no fee should be charged for filing Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, filed by petitioners seeking SIJ classification. *See* 8 CFR 103.7(b)(1). These petitioners are subject to dependency orders of a State court and are not able to pay the filing fee for adjudication of the special immigrant juvenile petition. USCIS believes that these limited numbers of juvenile petitioners should be exempt from fees in the same manner as asylees under INA section 286(m), 8 U.S.C. 1356(m).

Most petitioners seeking SIJ classification will also file a Form I–485, Application to Register Permanent Residence or Adjust Status, with a current $985 fee, and Form I–601, Application for Waiver of Ground of Inadmissibility, with a current $585 fee. SIJ petitioners who cannot afford the fees for Forms I–485 or I–601 may request a waiver of the fees. The respective fees are not affected by this rule.

The fee impacts of this rule on each SIJ petitioner as well as on USCIS are neutral because USCIS estimates that filings for SIJ classification will continue at about the same volume as they have in the relatively recent past.

E. Executive Order 13132 (Federalism)

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, USCIS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Family Assessment

This regulation may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, Div. A. This action has been assessed in accordance with the criteria specified by section 654(c)(1). This regulation will enhance family well-being by enabling juvenile aliens who have been abused, neglected, or abandoned and placed in State custody by a juvenile court to obtain special immigrant classification. Such classification will enable these juveniles to be placed into more stable, permanent home environments and release them from reliance on their

abusers. Statutory mandate prevents the granting of immigration benefits to the abusive parent of an SIJ. 8 U.S.C. 1101(a)(27)(J)(iii)(II). This classification will also encourage reporting of abuse to the authorities for appropriate legal action.

H. Paperwork Reduction Act (PRA)

On June 25, 2009, USCIS published a 60-day notice in the **Federal Register** requesting comments on the revised Form I–360 that included the SIJ provisions required by Public Law 105–119, Public Law 109–162, and Public Law 110–457. 74 FR 30312. The one comment that USCIS received on the revised form did not relate to the SIJ provisions but rather was a suggestion to break up the Form I–360 into separate forms for SIJ and religious workers. USCIS responded to the commenter directly, advising him that creating a new form solely for religious workers and SIJs would require modification to the established electronic systems that would be extremely cumbersome and costly at this time. On September 8, 2009, USCIS published a 30-day notice in the **Federal Register** requesting further comments on the revised form. USCIS did not receive any further comments. 74 FR 46216.

On December 30, 2009, the Office of Management and Budget approved the revised Form I–360 in accordance with the PRA. The approved OMB Control No. is 1615–0020.

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1232, 1255; 8 CFR Part 2.

2. Section 204.11 is revised to read as follows:

§ 204.11 Special immigrant classification for certain aliens declared dependent on a juvenile court (Special Immigrant Juvenile).

(a) *Definitions.* As used in this section, the terms:

Juvenile court means any court located in the United States having jurisdiction to make judicial determinations about the custody and care of juveniles.

Petition means Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, or a successor form as may be prescribed by DHS.

State includes an Indian tribe, tribal organization, or tribal consortium, operating a program under a plan approved under 42 U.S.C. 671.

(b) *Eligibility.* (1) An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if he or she:

(i) Is physically present in the United States;

(ii) Is under 21 years of age at the time of filing;

(iii) Is unmarried;

(iv) Has been declared dependent on a juvenile court or has been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

(v) Is the subject of a State or juvenile court determination, under applicable State law, that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;

(vi) Has been the subject of judicial proceedings or administrative proceedings in which it has been determined, under applicable State law, that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the alien or his or her parent(s); and

(vii) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

(2) For the purposes of establishing classification as a special immigrant juvenile, a juvenile who has been adopted or placed under guardianship after having been found dependent upon a juvenile court in the United States, or having been committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court, is considered eligible for SIJ classification. Commitment to or placement under the custody of an individual can include adoption and guardianship.

(c) *Consent.* (1) Every alien must obtain the consent of the Secretary of Homeland Security to the classification as a special immigrant juvenile.

(i) In determining whether to provide consent to classification as a special immigrant juvenile as a matter of discretion, USCIS will consider, among other permissible discretionary factors, whether the alien has established, based on the evidence of record, that the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status; and that the evidence otherwise demonstrates that there is a bona fide basis for granting special immigrant juvenile status.

(ii) The alien has the burden of proof to show that discretion should be exercised in his or her favor.

(iii) Approval by USCIS of the SIJ petition also will constitute the granting of consent on behalf of the Secretary.

(2) An alien in the custody of the Department of Health and Human Services, who seeks a juvenile court order determining or altering the alien's custody status or placement, must obtain specific consent from the Secretary of Health and Human Services to the State court's jurisdiction to determine or alter custody status prior to filing the SIJ petition with USCIS.

(d) *Petition procedures.* The alien, or an adult acting on the alien's behalf, may file the petition for special immigrant juvenile classification. Each individual requesting special immigrant juvenile classification must submit:

(1) A Petition completed in accordance with the instructions on the form;

(2) Evidence of the alien's age; and

(3) One or more documents which reflect the following:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the juvenile to be dependent upon that court, or that the court legally committed the juvenile to, or placed the juvenile under the custody of, a State agency or department, or an individual or entity appointed by a State or juvenile court;

(ii) Specific findings of fact or other relevant evidence, either incorporated into the court order or separate from the order, establishing the basis for a finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; and

(iii) Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s).

(4) If a juvenile is in the custody of the Secretary of Health and Human Services and obtained a juvenile court order that determined or altered the custody status or placement of the juvenile, evidence that the Secretary of Health and Human Services granted specific consent.

(e) *Interview.* In accordance with 8 CFR 103.2(b) ~~and 245.6,~~ although an interview is not a prerequisite to the adjudication of a Special Immigrant Juvenile petition, USCIS may ~~require an~~ interview as a matter of discretion.

(1) The SIJ petitioner may be accompanied by a trusted adult, in addition to an attorney or representative, at the interview. USCIS, in its discretion, may place reasonable limits on the number of persons who may be present at the interview.

~~(2) The trusted adult or attorney or representative may present a statement at the end of the interview. USCIS, in its discretion, may limit the length of such statement or comment and may require its submission in writing.~~

(f) *No contact.* USCIS will not compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any time during the petition or interview process.

(g) *No parental rights.* No natural or prior adoptive parent of any alien with an approved Special Immigrant Juvenile petition shall, by virtue of such parentage, be accorded any right, privilege, or status under the Act. ~~This prohibition remains in effect even after the alien becomes a lawful permanent resident or a United States citizen.~~

(h) *Timeframe.* USCIS will adjudicate a petition for Special Immigrant Juvenile classification within 180 days of receipt of a properly filed petition. The date of receipt will be as provided in 8 CFR 103.2(a)(7). ~~A request for required initial evidence from USCIS to the petitioner or a request from the petitioner for rescheduling of biometrics or an interview will restart the 180-day timeframe. Any request for additional evidence will suspend the timeframe as of the date of the request up until the date the requested evidence, response, or a request for a decision based on the evidence already provided is received. Any delay requested or caused by the applicant will not be counted as part of the 180-day adjudication period.~~

PART 205—REVOCATION OF APPROVAL OF PETITIONS

3. The authority citation for part 205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

4. Section 205.1 is amended by:

a. Removing paragraph (a)(3)(iv)(A);

b. Removing paragraph (a)(3)(iv)(C);

c. Redesignating paragraphs (a)(3)(iv)(B), (D) and (E) as paragraphs (a)(3)(iv)(A), (B) and (C) respectively; and by

d. Revising newly redesignated paragraph (a)(3)(iv)(B).

The revision reads as follows:

§ 205.1 Automatic revocation.

(a) * * *

(3) * * *

(iv) * * *

(B) Upon reunification of the beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, or abandonment; or

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

5. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229; 8 CFR part 2.

6. Section 245.1 is amended by revising paragraph (e)(3) to read as follows:

§ 245.1 Eligibility.

* * * * *

(e) * * *

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) of the Act nor the inadmissibility provisions of sections 212(a)(4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), or (9)(B) of the Act shall apply to any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act. The inadmissibility provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination based on family unity.

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2011–22625 Filed 9–2–11; 8:45 am]

BILLING CODE 9111–97–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2011–0209]

NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed enforcement policy revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (*i.e.*, reactor, fuel cycle, and materials licensees, vendors, and contractors), on several topics addressed in this document to assist the NRC in revising its Enforcement Policy. The NRC staff is currently evaluating these topics for inclusion in the next revision to the NRC Enforcement Policy. The proposed Policy topics discussed in this document will not address all the items in SRM–SECY–09–0190, ''Major Revision to NRC Enforcement Policy,'' dated August 27, 2010 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession No. ML102390327). Before the staff submits the next proposed Policy revision to the Commission for approval in early Calendar Year 2012, it will publish a second document in the **Federal Register** to solicit public comments on additional topics.

DATES: Submit comments by October 6, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0209 in the subject line of

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 204, 205, and 245

[CIS No. 2474–09; DHS Docket No. USCIS–2009–0004]

RIN 1615–AB81

Special Immigrant Juvenile Petitions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is amending its regulations governing the requirements and procedures for juveniles seeking classification as a Special Immigrant Juvenile (SIJ) and related adjustment of status to lawful permanent resident (LPR). This rule codifies statutorily mandated changes and clarifies the following: the definitions of key terms, such as ''juvenile court'' and ''judicial determination''; what constitutes a qualifying juvenile court order for SIJ purposes; what constitutes a qualifying parental reunification determination; DHS's consent function; and applicable bars to adjustment, inadmissibility grounds, and waivers for SIJ-based adjustment to LPR status. This rule also removes bases for automatic revocation that are inconsistent with the statutory requirements of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) and makes other technical and procedural changes. DHS is issuing this rule to update the regulations as required by law, further align SIJ classification with the statutory purpose of providing humanitarian protection to eligible child survivors of parental abuse, abandonment, or neglect, and clarify the SIJ regulations.

DATES: This final rule is effective April 7, 2022.

FOR FURTHER INFORMATION CONTACT: Rená Cutlip-Mason, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Dr., Camp Springs, MD 20529–2140; or by phone at 240–721–3000. (This is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of the Regulatory Action

DHS is amending its regulations governing the SIJ classification and related applications for adjustment of status to LPR (submitted on U.S. Citizenship and Immigration Services (USCIS) Form I–485, Application to Register Permanent Residence or Adjust Status), hereafter ''adjustment of status.'' Specifically, this rule revises DHS regulations at 8 CFR 204.11, 205.1, and 245.1 to reflect statutory changes, modify certain provisions, codify existing policies, and clarify eligibility requirements.

B. Legal Authority

The Immigration and Nationality Act (INA), as amended, permits the Secretary of Homeland Security (Secretary) to classify as an SIJ[1] a noncitizen whom a juvenile court located in the United States has declared to be dependent on the juvenile court, or whom the juvenile 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. *See* INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). The juvenile court must determine that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. *Id.* In addition, it must be determined in administrative or judicial proceedings that it would not be in the petitioner's best interest to be returned to the country of nationality or last habitual residence of the petitioner or of their parent(s). *See* INA section 101(a)(27)(J)(ii), 8 U.S.C. 1101(a)(27)(J)(ii). Finally, the Secretary, through USCIS, must consent to SIJ classification. *See* INA section 101(a)(27)(J)(iii), 8 U.S.C. 1101(a)(27)(J)(iii). The timeframe for adjudicating SIJ petitions is 180 days. *See* TVPRA 2008 section 235(d)(2), 8 U.S.C. 1232(d)(2).

Upon classification as an SIJ, a noncitizen may be immediately eligible to apply for adjustment of status to LPR, if a visa number is available.[2] *See* INA section 245(h), 8 U.S.C. 1255(h). Certain grounds of inadmissibility that would ordinarily prevent adjustment of status do not apply to those with SIJ classification. *See* INA section 245(h), 8 U.S.C. 1255(h). The Secretary also may waive certain grounds of inadmissibility for those with SIJ classification. *Id.*

DHS is prohibited from compelling SIJ petitioners or applicants for related adjustment of status to contact an alleged abuser, or family member of the alleged abuser, during the petition or application process. *See* INA section 287(h), 8 U.S.C. 1357(h).[3]

The following table summarizes the statutory amendments implemented in this final rule:

TABLE 1—SUMMARY OF STATUTORY AMENDMENTS TO SIJ CLASSIFICATION

Legislation	Amendment
The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, 108 Stat. 4319 (Jan. 25, 1994).	• Expanded the group of people eligible for SIJ classification to include those a juvenile court has le-
The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act), Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997).	• Required that dependency, commitment, or placement be due to abuse, neglect, or abandonment. • Added consent functions of the Attorney General (later changed to the Secretary) of ''express consent'' to the dependency order as a precondition to the grant of SIJ and ''specific consent'' to juvenile court jurisdiction to determine custody or placement of a person in the actual or constructive custody of the federal government (later modified by TVPRA 2008).
The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006).	• Protected a petitioner seeking SIJ classification by prohibiting DHS from compelling them to contact an alleged abuser, or family member of an alleged abuser.
The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110–457, 112 Stat. 5044 (Dec. 23, 2008).	• Created the requirement that a petitioner's reunification with one or both parents not be viable due to abuse, neglect, abandonment, or a similar basis under State law (replaced a previous requirement to have ''been deemed eligible . . . for long-term foster care''). • Expanded the group of people eligible for SIJ classification to include those placed by a juvenile court with an individual or entity.

[1] The Immigration Act of 1990, Public Law 101–649, 104 Stat. 4978 (Nov. 29, 1990), added the SIJ classification. Congress has amended the eligibility criteria for SIJ classification several times, as noted in Table 1.

[2] The provisions to adjust status under INA section 245(h) were added by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102–232, 105 Stat. 1733 (Dec. 12, 1991).

[3] The protection at INA section 287(h) for a petitioner seeking SIJ classification from being compelled to contact an alleged abuser, or the abuser's family member, was added by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006).

TABLE 1—SUMMARY OF STATUTORY AMENDMENTS TO SIJ CLASSIFICATION—Continued

Legislation	Amendment
	• Modified the consent requirements so that DHS consent is to the grant of SIJ classification and vested the former ''specific consent'' function with HHS. • Provided age-out protection so that USCIS cannot deny SIJ classification if someone was under 21 years of age when the petition was filed. • Created a statutory timeframe of 180 days to adjudicate SIJ petitions. • Exempted SIJs from additional grounds of inadmissibility in relation to an application for adjustment of status.

C. Summary of the Proposed Rule

On September 6, 2011, DHS published a proposed rule in the **Federal Register**, proposing to amend the regulations governing the SIJ classification and related applications for adjustment of status to incorporate major statutory changes to the program. *See* Proposed rule; *Special Immigrant Juvenile Petitions,* 76 FR 54978 (Sept. 6, 2011) (''proposed rule''). The proposed rule explained the changes that DHS was considering, including procedural requirements, and that DHS would ultimately finalize the regulatory changes through the rulemaking process.

Specifically, the proposed rule sought to revise DHS regulations at 8 CFR 204.11, 205.1, and 245.1 to:

• Implement statutorily mandated changes by revising the existing eligibility requirements under the following statutes:

Æ Immigration and Nationality Technical Corrections Act of 1994, Public Law 103–416, 108 Stat. 4319 (Jan. 25, 1994);

Æ Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act), Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997);

Æ Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006); and

Æ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008).

• Clarify the use of the term ''dependent'' as used in section 101(a)(27)(J)(i) of INA, 8 U.S.C. 1101(a)(27)(J)(i), including that such dependency, commitment, or custody must be in effect when a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) is filed and must continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

• Clarify that the viability of parental reunification with one or both of the child's parents due to abuse, neglect, or abandonment, or a similar basis under State law must be determined by the juvenile court based on applicable State law.

• Clarify that DHS consent to the grant of SIJ classification is warranted only when the petitioner demonstrates that the State juvenile court determinations were sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status; and that the evidence otherwise demonstrates that there is a bona fide basis for granting SIJ classification.

• Clarify that USCIS may seek or consider additional evidence if the evidence presented is not sufficient to establish a reasonable basis for DHS's consent determination.

• Remove automatic revocation under 8 CFR 205.1(a)(3)(iv)(A) and (C) to the extent that they pertain to a juvenile's age and are inconsistent with age-out protections under TVPRA 2008.

• Implement statutory revisions exempting SIJ adjustment-of-status applicants from four additional grounds of inadmissibility and clarify grounds of inadmissibility that cannot be waived.

• Improve the application process by clearly listing required evidence that must accompany Form I–360 and amend what constitutes supporting documentation; and

• Make technical and procedural changes; and conform terminology.

DHS reopened the comment period on October 16, 2019, for 30 days but did not modify these proposals. Special Immigrant Juvenile Petitions, 84 FR 55250 (Oct. 16, 2019). Hereafter, DHS refers to the 2011 proposed rule and reopened comment period collectively as the notice of proposed rulemaking (NPRM).

D. Summary of Changes From the NPRM to the Final Rule Provisions

Following careful consideration of public comments received and relevant data provided by stakeholders, DHS has made several changes from the NPRM. DHS responds to each substantive public comment in detail later in this preamble and explains why it is adopting or declining the change suggested by the commenters. DHS is making the following changes from the proposed rule in this final rule:

1. Section Heading

(a) Special Immigrant Juvenile (SIJ) Classification

The preamble in the NPRM explained that DHS used the term ''dependency'' in the proposed rule as encompassing dependency, commitment, or custody. 76 FR 54979. Consistent with this definition, DHS styled the section heading for proposed 8 CFR 204.11 as ''Special immigrant classification for certain aliens declared dependent on a juvenile court (Special Immigrant Juvenile).'' Commenters wrote that this section heading was misleading and requested that it be amended to reflect the statutory language at INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J). As explained previously, the statute permits USCIS to grant SIJ classification to a noncitizen whom a juvenile court has declared to be dependent on the juvenile court, *or* whom the juvenile court has legally committed to or placed under the custody of an agency or department of a State, individual, or entity. In response to these comments, DHS has simplified and amended the section heading of the regulation in the final rule to ''Special immigrant juvenile classification.'' *See* new 8 CFR 204.11.

2. Definitions

(a) Definitions of ''State'' and ''United States''

In order to establish eligibility for SIJ classification, a petitioner must submit qualifying juvenile court order(s) issued under State law. DHS proposed the definition of ''State'' in the NPRM as including an Indian tribe, tribal organization, or tribal consortium operating a program under a plan approved under 42 U.S.C. 671. *See* proposed 8 CFR 204.11(a), 76 FR 54985. After reviewing the public comments, DHS has amended the definition of ''State'' by also incorporating the

definition from INA section 101(a)(36), 8 U.S.C. 1101(a)(36), as including the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. In response to comments, the final rule clarifies that the term ''United States'' also means the definition from INA section 101(a)(38), 8 U.S.C. 1101(a)(38), as the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. New 8 CFR 204.11(a).

(b) Definitions of ''Juvenile Court'' and ''Judicial Determination''

DHS proposed retaining the definition of ''juvenile court'' from the previous regulation, which defines ''juvenile court'' as ''a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.'' DHS received numerous comments suggesting that the term ''juvenile court'' should be modified to align with INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i), which prescribes eligibility for SIJ classification based on a juvenile court's dependency or custody determination. DHS agrees that defining the term ''juvenile court'' to mirror the language of the statute would be clearer. The definition of ''juvenile court'' in the final rule is ''a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.'' New 8 CFR 204.11(a). DHS has incorporated the definition for the term ''judicial determination'' as ''a conclusion of law made by a juvenile court'' into the final rule for further clarity. *Id.*

(c) Definitions of ''Petition'' and ''Petitioner''

Commenters requested further clarity on the definition of the term ''petitioner'' because either a juvenile (the self-petitioner) or a person acting on the juvenile's behalf can file an SIJ petition via Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant. The proposed regulatory text for petition procedures states that ''[t]he alien, or an adult acting on the alien's behalf, may file the petition for special immigrant juvenile classification.'' Proposed 8 CFR 204.11(d), 76 FR 54985. This language, however, did not clarify which individual DHS would consider as the petitioner—a noncitizen, or an individual acting on the noncitizen's behalf. DHS has therefore amended the final rule to include in its definition section the term ''petitioner'' as ''the noncitizen seeking special immigrant juvenile classification,'' and the term ''petition'' as ''the form designated by USCIS to request classification as a special immigrant juvenile and the act of filing the request.'' DHS also has renamed the ''Petition procedures'' paragraph heading at proposed 8 CFR 204.11(d) to ''Petition requirements'' in the final rule, and modified paragraph (d)(1) to require ''[a] petition by or on behalf of a juvenile, filed on the form prescribed by USCIS in accordance with the form instructions.'' New 8 CFR 204.11(d).

3. Eligibility Requirements for Classification as an SIJ

(a) Eligibility Requirements That Must Be Met at the Time of Filing and Adjudication

DHS proposed that a petitioner must be under 21 years of age at the time of filing and subject to a dependency or custody order that is in effect at the time of filing and continues through the time of adjudication. *See* proposed 8 CFR 204.11(b), 76 FR 54985. The preamble to the NPRM stated that the proposed rule would continue to apply the requirement in 8 CFR 103.2(b) that an applicant or petitioner must establish that they are eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication to the requirement that a juvenile remain unmarried both at the time of filing the SIJ petition and adjudication. DHS did not specifically include this requirement for SIJ eligibility in the proposed regulatory text because 8 CFR 103.2(b) applies to eligibility for SIJ classification as it does to all USCIS benefit requests. Nevertheless, DHS has clarified the regulatory text in the final rule by providing that a petitioner must remain unmarried at the time of filing through adjudication of the SIJ petition. *See* new 8 CFR 204.11(b)(2).

4. Juvenile Court Order(s)

(a) Dependency or Custody

The proposed rule discussed custody, commitment, and dependency. *See* proposed 8 CFR 204.11(b)(1)(iv), 76 FR 54985. DHS interprets custody to encompass commitment. Therefore, it is unnecessary and redundant to use the term ''commitment'' also, and in the final rule, DHS exclusively uses the terms ''dependency'' and ''custody.'' *See* new 8 CFR 204.11(c).

(b) Qualifying Parental Reunification Determination

The eligibility provisions of the proposed rule required that a petitioner be the subject of a State juvenile court determination, under applicable State law, and that reunification with one or both parents not be viable due to abuse, neglect, abandonment, or a similar basis under State law. *See* proposed 8 CFR 204.11(b), 76 FR 54985. DHS received several comments requesting that DHS clarify that termination of parental rights is not a prerequisite for a qualifying determination on the viability of parental reunification. In response to those comments, DHS has amended the final rule to clarify that ''[t]he court is not required to terminate parental rights to determine that parental reunification is not viable.'' *See* new 8 CFR 204.11(c)(1)(ii).

(c) Best Interest Determination

DHS has long interpreted that the best interest determination is not a repatriation determination made by a Federal entity with authority over immigration determinations, but rather is a determination by a State court or administrative body regarding the best interest of the child. *See* Immigration and Naturalization Service (INS), *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status,* Final Rule, 58 FR 42843, 42848 (Aug. 12, 1993) (''the Service believes that the decision regarding the best interest of the beneficiary should be made by the juvenile court or the social service agency officials recognized by the juvenile court, not by the immigration judge or other immigration officials''). To further clarify this interpretation, and in response to comments, DHS added the following language for best interest determinations: ''Nothing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant State law.'' New 8 CFR 204.11(c)(2)(ii).

(d) Juvenile Court Order Validity

DHS proposed an exception to the requirement that the juvenile court order be in effect at the time of filing and continue through the time of adjudication. This exception allows a petitioner to remain eligible for SIJ classification if the juvenile court order is no longer valid after filing because ''the age of the petitioner prevents such continuation.'' *See* proposed 8 CFR

204.11(b)(1)(iv), 76 FR 54985. Following the publication of the proposed rule in 2011, the government entered into a ''Stipulation Settling a Motion for Class-Wide Enforcement'' of the 2010 settlement agreement in *Perez-Olano, et al.* v. *Holder, et al.* (*Perez-Olano* Settlement Agreement). That stipulation contains a provision that a petitioner whose juvenile court order terminated solely due to age *prior* to filing the SIJ petition remains eligible. *Perez-Olano, et al.* v. *Holder, et al.*, Case No. CV 05–3604 (C.D. Cal. 2015) (emphasis added). Following this Stipulation, and in response to public comments which DHS agrees reflect a legally permissible interpretation of the statute, DHS has incorporated into the final rule an exception to the requirement that the juvenile court order be valid at the time of filing and adjudication for petitioners who, because of their age, no longer have a valid juvenile court order either prior to or subsequent to filing the SIJ petition. *See* new 8 CFR 204.11(c)(3)(ii)(B). Additionally, DHS has included another exception in response to public comments that allows petitioners to remain eligible for SIJ classification if juvenile court jurisdiction terminated because adoption, placement in permanent guardianship, or another type of child welfare permanency goal (other than reunification with the parent or parents with whom the court previously found that reunification was not viable) was reached. *See* new 8 CFR 204.11(c)(3)(ii)(A).

5. Petition Requirements

(a) Evidence of Age

In the preamble to the NPRM, DHS listed the types of documents that could be accepted as evidence of a petitioner's age, including a birth certificate, passport, official foreign identity document issued by a foreign government, or other document that, in the discretion of USCIS, establishes the petitioner's age. 76 FR 54982. In response to numerous public comments requesting that DHS allow a petitioner to submit secondary evidence or affidavits as prescribed in 8 CFR 103.2(b)(2), DHS has added both the list of documents included in the NPRM preamble and that secondary evidence or affidavits may be submitted to the final rule. *See* new 8 CFR 204.11(d)(2).

(b) Similar Basis

In the preamble to the proposed rule, DHS explained that ''[i]f a juvenile court order includes a finding that reunification with one or both parents is not viable under State law [due to a similar basis], the petitioner must establish that this State law basis is similar to a finding of abuse, neglect, or abandonment.'' 76 FR 54981. The preamble further stated that ''[t]he nature and elements of the State law must be similar to the nature and elements of abuse, abandonment, or neglect.'' *Id.* DHS received numerous comments requesting further clarification and expressing concern that such a requirement of equivalency could result in ineligibility determinations for vulnerable children found by a juvenile court to be subjected to parental maltreatment. In response to these comments, DHS provides in the final rule that the petitioner can provide evidence of a similar basis through the juvenile court's determination as to how the basis is legally similar to abuse, neglect, or abandonment under State law; or other relevant evidence that establishes the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law. New 8 CFR 204.11(d)(4).

(c) DHS Consent

DHS received numerous comments disagreeing with the interpretation of the consent function in the NPRM, with some commenters expressing concern that it impermissibly allows USCIS adjudicators to look behind the court's order. Other commenters disagreed that the consent determination included a discretionary element. The NPRM proposed that in determining whether USCIS would consent to the grant of SIJ classification, ''USCIS will consider, among other permissible discretionary factors, whether the alien has established, based on the evidence of record, that the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status . . . .'' Proposed 8 CFR 204.11(c)(1)(i), 76 FR 54985. The NPRM also proposed that the ''petitioner has the burden of proof to show that discretion should be exercised in his or her favor.'' Proposed 8 CFR 204.11(c)(1)(ii), 76 FR 54985. In response to comments, DHS made two key revisions to the consent provision in the final rule. First, DHS removed reference to consent as a discretionary function and clarified that the request for SIJ classification ''must be bona fide.'' New 8 CFR 204.11(b)(5). Second, in recognition that petitioners can have dual or mixed motivations for seeking the juvenile court's determinations, DHS modified the consent provision to require the petitioner ''to establish that *a primary reason* the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law.'' *Id.* (emphasis added).

Additionally, DHS proposed in the NPRM that a dependency or custody order and specific findings of fact were examples of evidence USCIS would consider in determining whether USCIS' consent is warranted. *See* proposed 8 CFR 204.11(d)(3), 76 FR 54985. In response to public comments requesting clarification of the evidence DHS will consider in its consent determination, the final rule provides that a petitioner must submit the court-ordered or recognized relief from parental abuse, neglect, abandonment, or a similar basis under State law granted by the juvenile court as well as the factual basis for the juvenile court's determinations. New 8 CFR 204.11(d)(5)(i) and (ii). The final rule also clarifies that ''USCIS may withhold consent if evidence materially conflicts with the eligibility requirements [for SIJ classification] . . . such that the record reflects that the request for SIJ classification was not bona fide.'' New 8 CFR 204.11(b)(5).

(d) U.S. Department of Health and Human Services (HHS) Consent

DHS proposed that HHS consent is required only if the juvenile court determines or alters the child's custody status or placement. Proposed 8 CFR 204.11(c)(2), 76 FR 54985 (using language from *Perez-Olano, et al.* v. *Holder, et al.*, Case No. CV 05–3604 (C.D. Cal. 2010)). In response to public comments requesting clarification on when HHS consent is required, DHS has clarified in the final rule to more accurately reflect the limited circumstances under which USCIS requires evidence of HHS consent as discussed at paragraphs 7 and 17 of the *Perez-Olano* Settlement Agreement. New 8 CFR 204.11(d)(6). The Settlement Agreement clarifies that the HHS consent requirement is limited to where the juvenile court is changing the custodial placement of a petitioner in HHS custody. *See Perez-Olano, et al.* v. *Holder, et al.*, Case No. CV 05–3604 at ¶7 and 17 (C.D. Cal. 2010). Therefore, the final rule provides that HHS consent is required only if the juvenile court alters the child's custody status or placement. New 8 CFR 204.11(d)(6)(ii).

6. No Contact

(a) Clarification of No Contact Provision

DHS proposed to codify the statutory requirement at section 287(h) of the INA, 8 U.S.C. 1357(h), that prohibits DHS from requiring that the petitioner

contact their alleged abuser at any stage of the SIJ petition process. One commenter recommended that DHS modify the regulatory text to more closely track the language at INA section 287(h), 8 U.S.C. 1357(h), which also includes individuals who battered, neglected, or abandoned the child as individuals that petitioners cannot be compelled to contact by DHS in relation to their SIJ matter. DHS agrees with this commenter and has incorporated language at new 8 CFR 204.11(e) more closely tracking the statutory language. In addition, for alignment with INA section 101(a)(27)(J)(i) regarding the eligibility requirement that reunification not be viable with a petitioner's parent(s) due to ''abuse, neglect, abandonment, or a similar basis found under State law,'' DHS is including the term ''abused'' at new 8 CFR 204.11(e).

7. Interview

(a) Ability of Trusted Adult, Attorney, or Representative To Provide a Statement

DHS proposed to permit a trusted adult, attorney, or representative to provide a statement at the petitioner's interview for SIJ classification. Proposed 8 CFR 204.11(e)(2), 76 FR 54986. However, commenters opposed this provision due to concerns that it would violate due process protections for the petitioner. Therefore, DHS has removed this provision from the final rule. The change was made to limit the ability of a non-attorney or representative to make a statement that could impact the outcome of a case given commenters' concerns that a ''trusted adult'' may not have the consent of the child to participate in the child's case and is not subject to any ethical rules or disciplinary action should they engage in misconduct. DHS does not, however, seek to inhibit the petitioner's representation by their attorney or representative, and as further addressed later in this preamble, an attorney or accredited representative is still permitted to provide a statement. DHS, has also retained the provision that the petitioner may be accompanied by a trusted adult at the interview. *See* new 8 CFR 204.11(f).

(b) Presence of Attorney or Accredited Representative at the Interview

DHS proposed that: ''USCIS, in its discretion, may place reasonable limits on the number of persons who may be present at the interview.'' Proposed 8 CFR 204.11(e)(1), 76 FR 54986. A number of commenters expressed concern with this provision and viewed this language as permitting USCIS to interview a child alone without their attorney or accredited representative. DHS did not intend to limit a petitioner's right to have their attorney or accredited representative present, and DHS has modified the final regulatory text for clarity, adding that although USCIS may limit the number of persons present at the interview, ''the petitioner's attorney or accredited representative of record may be present.'' New 8 CFR 204.11(f). This is consistent with the right to representation as codified at 8 CFR 103.2(a)(3) and 292.5(b).

8. Time for Adjudication

(a) Clarification Regarding Adjudication Processing Timeframes

DHS proposed codifying the statutory 180-day timeframe on USCIS decisions and proposed when the period would start and stop. *See* 8 U.S.C. 1232(d)(2); proposed 8 CFR 204.11(h), 76 FR 54986. Several commenters asked DHS to reconsider whether temporarily pausing or restarting the 180-day period is legally permissible. These comments reflect some level of confusion regarding the proposed requirements for the 180-day timeframe, as DHS did not intend to indicate that it would be applying a different standard with regard to the impact on required processing times for SIJ petitioners versus petitioners for all other immigration benefits. As explained in the NPRM, the 180-day benchmark would take ''into account general USCIS regulations pertaining to receipting of petitions, evidence and processing, and assuming the completeness of the petition and supporting evidence.'' *See* proposed 8 CFR 204.11(h), 76 FR 54983. To alleviate confusion, DHS has incorporated into the final rule a reference to the regulations at 8 CFR 103.2(b)(10)(i) regarding how requests for additional or initial evidence or to reschedule an interview affect the time period imposed for processing, along with clarifying that the 180-day period does not begin until USCIS has received all required initial evidence as listed at new 8 CFR 204.11(d). *See* new 8 CFR 204.11(g)(1).

(b) Impact of Requests for Evidence for Adjustment of Status Applications on Processing Timeframes

In response to a number of comments, DHS is clarifying the impact of requests for evidence (RFEs) for adjustment of status applications on the 180-day timeframe for adjudication of the SIJ petition. New 8 CFR 204.11(g)(2). DHS agrees with commenters that where a petition for SIJ classification and an application for related adjustment of status are pending simultaneously, an RFE that relates only to the application for adjustment should not pause the 180-day clock for adjudication of the SIJ petition. The 180-day period relates only to the adjudication of the SIJ petition; therefore, RFEs, notices of intent to deny (NOIDs), or other requests unrelated to the SIJ petition itself do not impact the 180-day timeframe. *Id.*

9. No Parental Immigration Benefits Based on SIJ Classification

(a) Application of Prohibition to All of Petitioner's Natural and Prior Adoptive Parents

DHS proposed that natural or prior adoptive parents of the individual seeking or granted SIJ classification cannot be accorded any right, privilege, or status under the INA by virtue of their parentage. Proposed 8 CFR 204.11(g), 76 FR 54986. Several commenters asked DHS to revisit its interpretation that the INA prohibits any parent, including a non-abusive parent, from gaining lawful status through the individual granted SIJ classification. In response, DHS notes that the statutory language is clear that ''no natural parent or prior adoptive parent of any alien provided special immigrant juvenile status . . . shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.'' INA section 101(a)(27)(J)(iii)(II), 8 U.S.C. 1101(a)(27)(J)(iii)(II). The statute accords no preference to a parent who did not participate in the abuse or neglect. DHS has clarified the final rule by providing that the ''prohibition applies to all of the petitioner's natural and prior adoptive parent(s).'' New 8 CFR 204.11(i).

10. Revocation

(a) Moved Provisions on Automatic Revocation From 8 CFR 205.1(a)(3)(iv) to 8 CFR 204.11(j)(1)

DHS proposed to codify an automatic revocation provision for SIJ classification at 8 CFR 205.1, which contains the provisions for automatic revocation of immigration benefits generally. In the final rule, DHS has incorporated the revocation provisions for SIJ classification at 8 CFR 204.11, where the rest of the regulations governing SIJ petitions are located, for ease of reference and to retain all regulations pertaining to SIJ petitions in the same location. To minimize confusion, DHS has revised 8 CFR 205.1(a)(3)(iv) to provide that the automatic revocation provisions for SIJ classification are at 8 CFR 204.11(j)(1).

(b) Changes to the Grounds for Automatic Revocation

DHS proposed removal of the automatic revocation grounds that relate to a SIJ beneficiary's age for consistency with TVPRA 2008 section 235(d)(6), the ''Transition Rule'' provision, which provides that DHS cannot deny SIJ classification based on age if the noncitizen was a child on the date on which the noncitizen filed the petition. DHS also proposed revising the revocation ground based on a termination of the SIJ beneficiary's eligibility for long-term foster care as this is no longer a requirement under INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J). Proposed 8 CFR 205.1(a)(3)(iv)(A),(B),(C), 76 FR 54986. In the final rule, DHS has incorporated these modifications to the bases for automatic revocation. New 8 CFR 204.11(j)(i),(ii). In response to public comments, DHS also has removed marriage of the SIJ beneficiary as a basis for automatic revocation, amending its prior interpretation of INA 245(h).

(c) Notice and Evidentiary Requirements

DHS added to the final rule clarifying language regarding revocation on notice and automatic revocation. New 8 CFR 204.11(j)(1) and 205.1(a)(3)(iv). This language provides information about automatic revocation of SIJ petitions by incorporating by reference the general automatic revocation provisions at 8 CFR 205.1.

(d) Revocation on Notice

DHS did not propose changes to revocation upon notice in the NPRM. However, for maximum clarity, DHS has added language that USCIS may revoke an approved SIJ petition upon notice at new 8 CFR 204.11(j)(2), incorporating by reference the general provisions for revocation on notice at 8 CFR 205.2. As beneficiaries of SIJ classification have always been subject to the provisions for revocation on notice at 8 CFR 205.2, this is a technical change to have all revocation provisions for SIJs in 8 CFR 204.11.

11. Eligibility for Adjustment of Status

(a) Requirements for SIJ-Based Adjustment of Status

In response to comments, DHS has revised 8 CFR 245.1(e)(3) to provide separate standards for SIJ-based adjustment of status. DHS also has added new 8 CFR 245.1(e)(3)(i) to clarify that a noncitizen who has been granted SIJ classification will be deemed paroled into the United States for the limited purpose of meeting one of the eligibility requirements for SIJ-based adjustment of status.

(b) Bars to Adjustment, Inadmissibility, and Waivers

DHS received many public comments regarding the proposal that only certain grounds of inadmissibility could be waived for humanitarian purposes, family unity, or when it is otherwise in the public interest under INA section 245(h)(2)(B), 8 U.S.C. 1255(h)(2)(B), and that the grounds not listed under this statutory provision are unwaivable for SIJ adjustment applicants. *See* 76 FR 54983. Commenters disagreed with this interpretation and wrote that pursuant to INA section 212, 8 U.S.C. 1182, an applicant classified as an SIJ may apply for a waiver for any applicable ground of inadmissibility for which a waiver is available. The commenters stated that while certain grounds of inadmissibility cannot be waived under INA section 245(h)(2)(B), 8 U.S.C. 1255(h)(2)(B), they can be waived under other waiver provisions of the INA, such as INA section 212(h). In response to these comments, in the final rule DHS has modified its interpretation of INA section 245(h)(2)(B) and now clarifies that nothing in the final rule should be construed to bar an applicant classified as an SIJ from a waiver for which the applicant may be eligible pursuant to INA section 212.

DHS has also modified 8 CFR 245.1(e)(3) to expand when a waiver at INA section 245(h)(2)(B) is available for inadmissibility under section 212(a)(2) based on the ''simple possession exception.'' DHS had proposed in the NPRM that a waiver is available for inadmissibility under INA section 212(a)(2)(C), 8 U.S.C. 1182(a)(2)(C) (controlled substance traffickers), if the offense is related to a single offense of simple possession of 30 grams or less of marijuana. *See* proposed 8 CFR 245.1(e)(3), 76 FR 54983, 54986. The simple possession exception was applied in the proposed rule to only INA section 212(a)(2)(C) based on a plain language reading of INA section 245(h)(2)(B), which provides that in determining an SIJ's admissibility as an immigrant:

[T]he 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.

In the final rule, DHS has expanded application of the simple possession exception to the grounds of inadmissibility under INA section 212(a)(2)(A), 8 U.S.C. 1182(a)(2)(A) (conviction of certain crimes), INA section 212(a)(2)(B), 8 U.S.C. 1182(a)(2)(B) (multiple criminal convictions), and INA section 212(a)(2)(C), 8 U.S.C. 1182(a)(2)(C) (controlled substance traffickers). *See* new 8 CFR 245.1(e)(3)(v)(A). This modification was the result of a recent Board of Immigration Appeals decision in *Matter of Moradel,* which conducted a statutory analysis of the scope of the simple possession exception under INA section 245(h)(2)(B) and concluded that it ''applies to all of the provisions listed under section 212(a)(2)'' and that ''Congress intended the 'simple possession' exception in section 245(h)(2)(B) to be applied broadly.'' 28 I&N Dec. 310, 314–315 (BIA 2021).

(c) No Parental Immigration Benefits Based on SIJ Classification

DHS has provided standards that relate to SIJ-based adjustment of status and incorporated them into 8 CFR 245.1(e)(3) in response to comments that the proposed rule conflated standards for SIJ classification and SIJ-based adjustment of status. For clarity, and because the prohibition on parental immigration benefits applies to SIJ petitioners and applicants for related adjustment of status, DHS has amended 8 CFR 245.1(e)(3)(vi) to add the same text used at new 8 CFR 204.11(i).

(d) No Contact

Several commenters requested that DHS extend the prohibition in INA section 287(h), 8 U.S.C. 1357(h), against USCIS compelling SIJ petitioners to contact their alleged abuser(s) to the proceedings related to SIJ-based adjustment of status. DHS agrees that it is reasonable to extend this prohibition to the adjustment of status proceedings given that adjustment of status applications may be pending concurrently with SIJ petitions. DHS has revised 8 CFR 245.1(e)(3)(vii) to incorporate the no contact provision.

E. Summary of Costs and Benefits

The provisions of the final rule subject to this regulatory impact analysis will either affect a petitioners' eligibility or directly alter the petitioning and adjudication process. DHS expects the final rule to affect the following stakeholder groups: Petitioners for SIJ; State juvenile courts and appellate courts; and the Federal Government. The population of juveniles interested in attaining SIJ

classification, adjusting status, and obtaining lawful work authorization are required to initially submit Form I–360. The cost of the final rule affects newly eligible SIJ petitioners under the no action baseline. The provisions of the final rule subject to this regulatory impact analysis are examined against two baselines: (1) The pre statutory baseline; and (2) the no action baseline. The pre statutory baseline would evaluate the clarifications in petitioners' eligibility made by TVPRA 2008. In analyzing each provision against the pre statutory baseline, DHS finds that these clarificatory changes have no quantifiable impact on eligibility. Stated alternatively, in the absence of the TVPRA 2008 provisions codified by this rule, DHS has no evidence suggesting SIJ trends would have behaved differently in the intervening years. Consequently, this analysis focuses on the no action baseline and those regulatory provisions affecting the petitioning-adjudicating process and then analyzes the historical growth of demand for and grants of SIJ classification in order to assess the benefits and costs accruing to each stakeholder.

Relative to the no action baseline, the final rule will impose costs on a group of petitioners who will now be eligible to submit Form I–601, Form I–485 and Form I–765 once they already have an approved SIJ classification. This final rule will allow SIJ beneficiaries who get married prior to applying for LPR status to remain eligible to obtain permanent residence. This rule will also allow SIJ beneficiaries who have simple possession offenses to submit Form I–601 to apply for a waiver of inadmissibility under any of the provisions listed at INA section 212(a)(2), 8 U.S.C. 1182(a)(2). DHS assumes that every petitioner who will not have their SIJ classification revoked because of marriage will file Form I–485 which will result in new costs (and benefits) to those petitioners.

The changes in this final rule will not impact Form I–360 petitioners currently applying for SIJ classification under the no action baseline, however the impacts will be discussed in the pre statutory baseline discussion. The changes in this final rule will update regulations to reflect statutory changes, modify certain provisions, codify existing policies, clarify eligibility requirements, and will not impact children applying for SIJ classification. DHS has required this additional evidence since the TVPRA 2008. Due to data limitations that preclude identification of the unrelated factors that explain the changes in the volume of petitioners observed over time, DHS is limited in its ability to assess Form I–360 data. The primary benefit of the rule to USCIS is greater consistency with statutory intent, and efficiency.

II. Background

A. Special Immigrant Juvenile (SIJ) Classification

Congress created the SIJ classification through the Immigration Act of 1990 to provide humanitarian protection for certain abused, neglected, or abandoned juveniles in the child welfare system who were eligible for long-term foster care. Through several legislative amendments, this protection evolved to include juveniles outside the foster care system. The statutory provisions for SIJ classification at INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J), require a juvenile court determination that:

- The juvenile is dependent on the court, or is under the custody of a State agency or department or an individual or entity appointed by the court;
- Reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law; and
- It would not be in the juvenile's best interest to return to the juvenile's (or their parent's) country of nationality or last habitual residence.

In addition, the juvenile must be under 21 years of age and unmarried. SIJ classification may be granted only upon the consent of the Secretary of Homeland Security, through USCIS.

A petitioner who has been classified as an SIJ is eligible to apply for adjustment of status. Petitioners for SIJ classification do not have the ability to include other family members who may derive LPR status based on their status (derivatives) on their petition, nor are they ever eligible to sponsor their natural or prior adoptive parents for any immigration benefit.

The previous regulations governing SIJ classification at 8 CFR 204.11 were published in in 1993.[4] 58 FR 42843. This rule updates the regulations as required by statutory amendments to the SIJ statute since that time and further aligns the benefit with the statutory purpose of providing humanitarian protection to eligible child survivors of parental abuse, abandonment, or neglect.

B. Final Rule

DHS adopts most of the regulatory amendments proposed in the NPRM and makes key clarifying changes based on public comments. DHS explains in this rule why we are making changes or adopting the proposed regulatory amendments without change. The changes to the regulatory text are summarized previously in Section I, and they are discussed in further detail later in Section III. This final rule does not respond to comments that are general in nature or seek a change in U.S. laws, regulations, or agency policies that are unrelated to the SIJ classification or SIJ-based adjustment of status. This final rule also does not change the procedures or policies of other Federal agencies or State courts, nor does it resolve issues outside the scope of the rulemaking. All comments can be reviewed at the Federal Docket Management System at *https://www.regulations.gov,* docket number USCIS–2009–0004.

III. Response to Public Comments on Proposed Rule

A. Summary of Public Comments

On October 16, 2019, DHS reopened the comment period on the proposed rule for 30 days to provide the public with further opportunity to comment on the proposed rule. 84 FR 55250 (Oct. 16, 2019). During the initial comment period for the proposed rule, DHS received 57 public comments. DHS received an additional 77 comments on the proposed rule during the reopened comment period. In total, between the two comment periods, DHS received 134 comments.[5] DHS has reviewed all 134 of the public comments received and addresses them in this final rule.

B. General and Preliminary Matters

1. General Support for the Proposed Rule

Comment: Several commenters expressed general support of SIJ classification and favored finalizing the proposed rule and protecting vulnerable children in our society. Two commenters wrote that they appreciated DHS incorporating the protections and expansions from TVPRA 2008.

Response: DHS appreciates commenters' general support for this rulemaking and for its ongoing efforts to protect vulnerable children in accordance with the text and purpose of the statute.

Comment: Two commenters indicated that they supported the proposed rule because the clarification of certain terms and elimination of ambiguous language

[4] 8 CFR 204.11 was amended in 2009 to eliminate reference to legacy INS in accordance with the creation of DHS. 74 FR 26937 (June 5, 2009).

[5] Six additional comments were received but not posted on *www.regulations.gov* or considered by DHS because they were identified as being duplicate, irrelevant, or internal comments.

aids in understanding and prevents unintended consequences in the interpretation of the regulation by the relevant authorities.

Response: DHS appreciates commenters' support of the clarifications in this rulemaking. DHS agrees and hopes that this rule will improve adjudications and the SIJ petition and related adjustment of status application processes for SIJs by eliminating ambiguities and updating the regulation to reflect statutory changes and the statutory purpose of providing humanitarian protection to eligible child survivors of parental abuse, abandonment, or neglect.

Comment: Several commenters expressed support for the rule but stated that they did not want the benefit to go to those who might be engaging in fraud or abuse or those who do not meet certain criteria. One commenter stated they hoped that USCIS would strictly scrutinize the background of applicants to ensure the benefit goes to those ''who really need it.'' Another commenter stated that they agreed with the proposed rule, but only if ''the parents have abandoned the children'' or there were ''some sort of child abuse.''

Response: DHS appreciates commenters' support of the rule. USCIS endeavors to screen all benefits for fraud to ensure that only those eligible receive them. The statute governing SIJ eligibility at INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J), states that a petitioner may be eligible if reunification with their parent(s) is not viable due to abuse, neglect, abandonment, or a similar basis under State law. DHS cannot make changes to the rule that conflict with the statutory requirements of SIJ eligibility.

Comment: Two commenters stated that they believe that the SIJ program is a beneficial program and advocated further ''revising the law to be looser for children'' and to make the immigration system as a whole looser for those without criminal records.

Response: DHS appreciates commenters' support and has implemented the SIJ program as authorized by Congress. DHS is therefore unable to make any changes in response to these comments to the extent such changes would exceed its rulemaking authority. This rule modifies the regulations surrounding SIJs specifically, not those impacted by the immigration system without criminal records, and DHS believes the changes provide greater clarity and further align the SIJ program with the statutory purpose.

2. General Opposition to the Proposed Rule

Comment: Several commenters opposed the proposed rule on the basis that they did not agree with the statutory SIJ classification because they viewed it as giving ''amnesty'' to foreign-born children or using taxpayer dollars to provide benefits for foreign born children, rather than U.S. citizen children in need.

Response: DHS has implemented the SIJ program as authorized by Congress. DHS also notes that the costs of USCIS are generally funded by fees paid by those who file benefit requests and not by taxpayer dollars appropriated by Congress. *See* INA section 286(m), 8 U.S.C. 1356(m). DHS made no changes in response to these comments.

Comment: One commenter said that the proposed regulations fail to meet their objective of clarifying procedural and substantive requirements for the SIJ petition by adding extraneous requirements that fall outside Congress' intention to provide protection to a vulnerable population.

Response: DHS disagrees with the commenter and does not believe that any extraneous requirements were added beyond those imposed by Congress. DHS's intent with this rule is to amend the regulations to reflect statutory changes that have taken place since the previous regulations were published and to further align the program with the statutory purpose. With regard to the commenter's specific concerns, DHS has addressed each concern in subsequent sections of the preamble.

Comment: A commenter wrote that the proposed rule would impermissibly restrict the due process rights of affected migrants who are minors in ways that conflict with United States obligations under international law and violate customary international law.

Response: DHS disagrees with commenters that the rule violates international law. The commenter does not specify any provision in the proposed rule that would negatively affect an immigrant minor's due process rights. DHS knows of no changes in the rule that deny, restrict, or limit the rights of a minor to due process nor of any international laws or principles that the rule violates. Therefore, DHS is making no changes in the final rule as a result of this comment.

Comment: One commenter, referencing the USCIS press release announcing the reopening of the comment period, stated that conclusory statements that impugn the motives of SIJ petitioners wholesale are improper, impart at minimum an appearance of bias to adjudications, and thereby increase the risk of unfounded denials of relief and attendant risk that children will be returned to harm. The commenter urges DHS to include language in the rule clarifying that adjudicators must consider any application for SIJ on its own merits, to underscore DHS's commitment to fair adjudications for all children seeking humanitarian protection.

Response: DHS respectfully disagrees that the rule's announcement contained conclusory statements that impart a bias to adjudicators. Adjudicators evaluate each petition on its own merits, and DHS does not imply any predetermined outcomes as a result of this rule. DHS remains committed to the fair and just adjudication of all immigration benefit requests. At the same time, DHS will continue vetting all immigration benefit requests to ensure they are granted only to those who are eligible. This requires DHS to ensure that petitioners do not obtain benefits for which they are not eligible under the law.

Comment: Several commenters said that it is inappropriate that SIJ visa numbers are assigned to the employment-based fourth preference (EB–4) visa category and wrote that visa numbers in the EB–4 category should go only to employment-based immigrants. Some commenters wrote that those with SIJ classification were taking visa numbers away from skilled workers and stated that SIJ visa numbers should be placed in a separate category. Other commenters said that for SIJ petitioners to qualify for a visa number under the EB–4 category, they should be subject to requirements for other employment-based immigrants, such as being in status at the time of applying to adjust and having a bona fide relationship to the United States.

Response: DHS is unable to address commenters' concerns because SIJ classification is one of a number of disparate immigrant classifications that collectively are under the EB–4 category pursuant to INA section 203(b)(4), 8 U.S.C. 1153(b)(4). As the designation of SIJ visa numbers under the EB–4 category is statutory, it cannot be altered via this rulemaking.

3. Decision

(a) Decision Section and Notification of Appeal Rights

In response to public comments, DHS added to the final rule a section regarding notification of decisions and appeal rights on petitions at new 8 CFR 204.11(h). Such a section was in the previous rule at 8 CFR 204.11(e) (58 FR

42850), but it had been omitted from the NPRM because USCIS regulations at 8 CFR part 103 provide for such notifications and appeals. However, DHS has included it in the final rule to ensure full clarity for SIJ petitioners.

4. Section Heading

Comment: Nine commenters thought that the section heading of proposed 8 CFR 204.11, ''Special immigrant classification for certain aliens declared dependent on a juvenile court (Special Immigrant Juvenile),'' should be changed to reflect all of the categories of individuals who may be eligible.

Response: DHS agrees that the section heading should be amended because juvenile court dependents are only one of several categories of individuals who may be eligible under INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J). DHS thinks it best to simply change the section heading to ''Special immigrant juvenile classification.'' *See* new 8 CFR 204.11. This section heading is much more succinct and still ensures that the section heading is inclusive of all eligible individuals.

5. Terminology

Comment: Several commenters wrote about the use of the term ''alien'' in the proposed rule. While some supported the use of the term and noted that it is a legally defined term of art under the INA, others contended that use of the term encourages negative stereotyping of undocumented people. These commenters recommended that the term ''alien'' be removed from the regulatory text and not be used to refer to the individual seeking SIJ classification.

Response: While the term ''alien'' is a legal term of art defined in the INA for immigration purposes, DHS recognizes that the term has been ascribed with a negative, dehumanizing connotation, and alternative terms, such as ''noncitizen,'' that reflect our commitment to treat each person the Department encounters with respect and recognition of that individual's humanity and dignity are preferred. DHS will use the term ''alien'' when necessary in the regulatory text as the term of art that is used in the statute, but where possible we will use the term ''petitioner'' to refer to those who are seeking SIJ classification, and the term ''applicant'' to refer to those who are seeking adjustment of status based upon classification as an SIJ. *See, e.g.,* new 8 CFR 204.11(a) and 245.1(e)(3).

Comment: One commenter noted that DHS used both the terms ''status'' and ''classification'' in referring to SIJ and asked DHS to be clear in the use of these terms.

Response: DHS agrees with the commenter that the rule should be consistent in the use of those terms. SIJ is a ''classification''; an individual does not receive an actual ''status'' until they become an LPR based on the underlying SIJ classification. For clarity, DHS uses ''classification'' throughout this rulemaking when referring to the SIJ benefit itself. *See, e.g.,* new 8 CFR 204.11(a).

Comment: One commenter requested that the term ''juvenile'' be replaced with the term ''immigrant'' when referring to the person seeking classification as an SIJ because the statute never refers to the ''special immigrant'' as a juvenile. Another commenter noted that if DHS intends that an adult filing on behalf of an individual can function as the ''petitioner,'' then DHS should replace the word ''petitioner'' with ''alien'' for clarity and consistency.

Response: DHS declines to make the changes requested by the commenters. DHS uses the term ''petitioner'' to refer to the noncitizen seeking SIJ classification but includes in the regulatory text that another person may file on the petitioner's behalf. *See* new 8 CFR 204.11(d)(1). DHS does not make any changes in this rule to DHS regulations governing who can file a petition on behalf of a child at 8 CFR 103.2. DHS will therefore use the more appropriate term ''petitioner'' to refer to the person seeking SIJ classification.

6. Organization

Comment: Several commenters thought that the way DHS organized the information in the proposed rule relating to SIJ classification and the related SIJ-based adjustment of status seemed to conflate the two standards.

Response: DHS agrees with commenters that its proposed layout may raise confusion. In the final rule, DHS separates the requirements for SIJ-based adjustment of status into 8 CFR 245.1(e)(3), and limits 8 CFR 204.11 to requirements for SIJ classification.

7. Effective Date

Comment: One commenter asked DHS to consider grandfathering or creating an exception for those individuals who could not file under the previous rule, especially those who could qualify only if both parents abused, neglected, or abandoned the individual.

Response: DHS appreciates this concern; however, the change the commenter was referring to was statutory, and without clear congressional instruction to retroactively apply provisions of TVPRA 2008, DHS declines to make changes based on this comment. DHS did implement the changes in 2008, consistent with the statutory language. Any cases filed after that date did benefit from those statutory changes, though USCIS regulations did not reflect the change. DHS cannot however apply those statutory changes retroactively to petitions filed prior to passage of TVPRA 2008. DHS notes that a petitioner is required to establish eligibility at the time of filing and remain eligible through adjudication of the petition. 8 CFR 103.2(b)(1). Statutes are generally prospective only, but Congress may apply a statute retroactively if it includes clear language providing for retroactive application in the legislation. For example, Congress did so in the VAWA 2013 changes to U nonimmigrant status (victims of crime). Violence Against Women Reauthorization Act of 2013, Public Law 113–4 (Mar. 7, 2013) (VAWA 2013). In creating age-out protection providing that certain qualifying family members of U nonimmigrant petitioners must file a request before the age of 21, but may exceed that age while the request is being processed, Congress added an effective date that says the amendment ''shall take effect as if enacted as part of the Victims of Trafficking and Violence Protection Act of 2000.'' VAWA 2013 section 805(b). Without such clear statutory authority in TVPRA 2008, DHS will not apply its SIJ provisions retroactively.

8. Regulatory Comments

Comment: One commenter wrote that the rule is arbitrary and capricious in violation of the Administrative Procedure Act (APA) because DHS did not provide reasoned justifications for its changes to longstanding policies.

Response: The commenter does not indicate which changes that DHS proposed were not sufficiently explained. Nevertheless, DHS provided a detailed explanation for each of its proposed regulatory provisions governing the SIJ program. *See* 76 FR 54979–54983. DHS also summarized the changes again in the comment period extension notice to refresh the public comments. *See* 84 FR 55250–55251. In addition, the changes are mainly in the nature of changes to implement statutory revisions, clarifying changes, changes to improve the application process, or to make technical and procedural changes. The changes are not major departures from longstanding DHS positions, and they do not rely on factual findings that contradict those that underlay our prior policy.

Comment: Three commenters said that the proposed rule did not conduct the regulatory analysis required under Federal law and executive orders. One commenter stated that the NPRM's assessment that there will be no economic impact is inaccurate because the rule imposes a higher standard of review for the consent analysis, which will increase costs for USCIS and slow adjudications. Additionally, this commenter stated that the prediction in the NPRM that the fee impacts on petitioners are neutral is inaccurate as filings have increased beyond those expected at the time the proposed rule was issued.

Response: USCIS provided an economic analysis in the NPRM and is updating the analysis in this final rule. *See* 76 FR 54984. The commenters correctly note that DHS stated that the fee impacts of this rule on each SIJ petitioner as well as on USCIS are neutral because USCIS estimates that filings for SIJ classification will continue at about the same volume as they have in the relatively recent past. *Id* DHS disagrees that this rule's consent analysis will delay adjudications and increase costs for USCIS. The proposed rule also stated the fees for the forms filed by petitioners seeking SIJ classification, including Form I–485, Application to Register Permanent Residence or Adjust Status, and Form I–601, Application for Waiver of Ground of Inadmissibility, were not affected by the rule. This rule does not change the fees that will be paid by SIJ petitioners. As noted in the economic analysis for this final rule, the number of SIJ petitioners has increased since the proposed rule, and the fees have changed as a result of rules other than this one. *See* 81 FR 73292 (Oct. 24, 2016). Generally, though, SIJ petitioners are eligible to request fee waivers for USCIS benefit requests. USCIS has provided an updated regulatory impact analysis of changes being made in this rule in Section IV.A, ''Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)''.

Comment: Several commenters stated that the proposed rule was outdated and stale because of the time that elapsed between the issuance of the NPRM in 2011 and the reopening of the comment period in 2019. Three commenters noted that the results of the review of the Office of Management and Budget (OMB) are therefore outdated and unreliable for a current assessment of the proposed rule's costs and benefits. These commenters requested that DHS withdraw the NPRM pending new review and analysis by OMB in light of current USCIS procedures and policies. Another commenter requested that USCIS update its proposal and provide a revised proposed rule in a supplemental notice of proposed rulemaking that would allow comment on a complete proposal that reflects the current state of the law.

Response: DHS recognizes that approximately 10 years have passed since it first proposed changes to the SIJ program through rulemaking and accordingly stated that it reopened the comment period ''to refresh this proposed rule and allow interested persons to provide up-to-date comments in recognition of the time that has lapsed since the initial publication of the proposed rule.'' 84 FR 55251. Prior to reopening the comment period in 2019, DHS assessed the changes to the program since the rule was proposed 8 years prior and determined that it was still interested in its original proposals, and that it would reopen the comment period to account for any changes over the years, to the extent that there were any for which it previously did not account. In this final rule, DHS is responding to both the comments received on the proposed rule in 2011 and the comments received in response to the reopened comment period. DHS disagrees that it should issue a supplemental notice to reflect the current state of the law because the law has not changed—the last statutory update to the SIJ portfolio occurred in 2008, prior to publishing the NPRM. Further, DHS disagrees that it should withdraw the rule pending new OMB review. DHS acknowledges that the adequacy of the notice provided and comments received can depend on if the situation around the rulemaking has changed so much that there was new or different information that the agency should have offered or the public could have provided for consideration.[6] DHS does not believe that there have been significant changes in the basis for the proposed rule. Nevertheless, while the information for the public to consider was not new or changed, DHS published a notice requesting a new round of public comment to ensure that the public had notice of the proposed rule and relevant background information and that DHS had current input from affected stakeholders close to the time of decision.

The reopening of the comment period and the final rule have gone through OMB review prior to publication. To the extent that data have changed and developed in the years since the proposed rule was published, DHS has updated relevant data accordingly.

Comment: Two commenters stated that the proposed rule does not satisfy the criteria and fundamental principles of federalism required under Executive Order (E.O.) 13132. These commenters request that DHS withdraw the proposed rule and defer to the States on areas of traditional State expertise related to the administration of SIJ petitions, or, in the alternative, that DHS issue a federalism summary impact statement if it does move forward with the rule. Similarly, several commenters wrote that the proposed rule lacks statutory authority because State courts, not Federal immigration agencies, have the requisite expertise in child-welfare issues that should not be second- guessed by USCIS SIJ adjudicators and that DHS improperly encourages a re-examination of the State court's order; requires the petitioner to prove the underlying motivation behind the State child-welfare assistance sought; and mandates the disclosure of evidence treated as confidential by the States.

Response: DHS disagrees with commenters that this rulemaking implicates federalism concerns. Specifically, INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J), sets clear parameters for the extent of State versus Federal involvement in the SIJ process: ''who has been declared dependent on a juvenile court located in the United States . . . and in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status.'' Neither the proposed rule nor this final rule modifies the extent of State involvement. As for the commenter's assertion that DHS violated E.O. 13132 (Federalism) because it inadequately analyzed the rule's impacts on States, DHS reiterates for this final rule that the regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The United States Government's authority to regulate immigration and noncitizen status is broad, and stems in part from its constitutional power to ''establish a uniform rule of Naturalization,'' Art. I, § 8, cl. 4, and on its sovereign power to control and conduct foreign relations. *Arizona* v. *United States,* 567 U.S. 387 (2012). Under the Supremacy Clause, states are precluded from regulating conduct in a field that Congress has expressly determined must be regulated at the federal level or where Congress

[6] *See Idaho Farm Bureau Fed'n* v. *Babbitt,* 58 F.3d 1392 (9th Cir. 1995); *Mobil Oil Corp.* v. *EPA,* 35 F.3d 579, 584–85 (D.C. Cir. 1994).

has created a framework of regulation so pervasive that there is no room for the States to supplement it. *Id.* at 399. Here, the role of DHS is to adjudicate SIJ petitions to determine eligibility for SIJ classification and adjustment of status as prescribed by the INA—a field in which the States have no role. Accordingly, it is entirely appropriate for USCIS officers when adjudicating an SIJ petition to review the State court determinations to determine if a primary reason the petitioner sought the juvenile court determinations was to obtain relief from abuse, neglect, abandonment, or a similar basis under State law, because this review is necessary for USCIS to make the consent determination required by the INA. On the other hand, under this rule DHS has no role in making dependency or custodial determinations or granting relief from abuse, neglect, or abandonment, or a similar basis under State law, which is a field properly reserved to the States.

9. Miscellaneous

Several comments were submitted that did not relate to the substance of the NPRM, and will, therefore, not be individually discussed. These comments related to areas such as writing style and other issues outside of the scope of this rulemaking, including comments on the USCIS Policy Manual or Administrative Appeals Office (AAO) Adopted Decisions, recommendations not pertaining to this rule, and general statements unrelated to the substance of the regulation. DHS has reviewed and considered all such comments and incorporated them as applicable.

C. Definitions

1. ''State''

Comment: Six commenters recommended that DHS change the proposed definition of ''State'' to encompass all geographic areas under the administrative control of the United States. Another commenter pointed out that to define ''State'' but not ''United States'' was an oversight.

Response: DHS agrees with the commenters that the proposed definition of ''State'' appears incomplete and will adopt the INA definitions for ''State'' and ''United States,'' which are established immigration terms of art. This final rule amends the definition of ''State'' and adds the definition for ''United States'' at 8 CFR 204.11(a) by making reference to the INA definitions.

2. ''Juvenile Court''

Comment: Twenty-three commenters recommended changes to the definition of ''juvenile court.'' Four commenters requested that the definition expressly indicate that qualifying juvenile courts that can issue orders include delinquency courts. One commenter wrote that the use of the term ''juvenile court'' did not track statutory language, which allows for a custody determination by a State juvenile court. Eighteen commenters requested that the term ''juvenile court'' be modified to align with INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i), which recognizes juvenile court dependency or custody determination. One commenter suggested that the final rule be consistent with the definition of ''juvenile court'' from the AAO Adopted Decision, *Matter of A–O–C–,* which states that ''petitioners must establish that the court had competent jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under State law.'' *Matter of A–O–C–,* Adopted Decision 2019–03, at 4 (AAO Oct. 11, 2019). One commenter suggested that the term ''juvenile court'' include the custody, care, guardianship, delinquency, or best interest of the juvenile. Another commenter suggested that the definition include care, custody, dependency, and/or placement of a child.

Response: DHS agrees with the commenters that the definition of ''juvenile court'' should include dependency to align with INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i), and the guidance provided in *Matter of A–O–C–*. The final rule defines ''juvenile court'' as a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles. New 8 CFR 204.11(a). The final rule defines the term ''judicial determination'' as a conclusion of law made by a juvenile court. *Id.* Further, State law, not federal law, governs the definition of ''juvenile,'' ''child,'' ''infant,'' ''minor,'' ''youth,'' or any other equivalent term for juvenile which applies to the dependency or custody proceedings before the juvenile court. The final rule therefore requires the juvenile court to have exercised its jurisdiction over petitioners as juveniles (or other equivalent term) under the applicable State law. New 8 CFR 204.11(c)(3)(i).

DHS, however, declines to specify the types of courts that have jurisdiction to make judicial determinations about the dependency and/or custody and care of a juvenile. The definition of ''juvenile court'' in the final rule already encompasses various types of State courts that have the jurisdiction to make judicial determinations about the dependency and/or custody and care of juveniles, and it does not limit qualifying courts to those specifically named ''juvenile'' courts. New 8 CFR 204.11(a). The names and titles of State courts that may act in the capacity of a juvenile court to make the types of determinations required to establish eligibility for SIJ classification may vary State to State. A court by a particular name may have such authority in one State, but not in another. DHS also declines to include ''care,'' ''guardianship,'' ''delinquency,'' ''placement of a child,'' or ''best interest of the juvenile'' as part of the definition of ''juvenile court'' for the same reason—that a variety of types of proceedings may result in a qualifying order for SIJ classification, and DHS does not want to create a list that may be interpreted as exhaustive.

Comment: A commenter stated that the requirement in the NPRM for a petitioner to submit a juvenile court order issued by a court of competent jurisdiction located in the United States is redundant because the definition of the term ''juvenile court'' already addresses the jurisdictional and geographical limitations of the juvenile court.

Response: DHS agrees with this comment. Because the term ''juvenile court'' is defined in the final rule as a court located in the United States that has jurisdiction under State law, DHS has removed the proposed provision stating that the juvenile court order be issued by a court of competent jurisdiction. *See* new 8 CFR 204.11(a).

D. Eligibility Requirements for Classification as a Special Immigrant Juvenile

This final rule adopts the eligibility requirements proposed in the NPRM regarding age, unmarried status, and physical presence. New 8 CFR 204.11(b)(1) through (3). The reasoning provided in the preamble remains valid with respect to general eligibility and is incorporated here by reference. DHS has modified and added language to the regulatory text on juvenile court order requirements and validity based on public comments and on policy decisions made after publication of the proposed rule. The changes to the regulatory text are summarized in this preamble in Section I.

Several commenters raised the issue of what point in time (time of filing or time of adjudication) USCIS assesses eligibility for SIJ classification. In general, absent any clear statutory authority or compelling reason that

suggests otherwise, DHS applies the general rule that ''[a]n applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.'' 8 CFR 103.2(b)(1). A petitioner who does not meet the eligibility requirements at the time of filing (and as later described in this rule, where applicable, the time of adjudication) is not eligible for SIJ classification. Exceptions to this general rule for specific SIJ classification eligibility requirements are addressed in the following discussion of the individual eligibility requirements.

The following table illustrates at what points during the petition and adjudication process USCIS will assess each eligibility requirement.

TABLE 2—SIJ ELIGIBILITY REQUIREMENTS AT TIME OF FILING AND TIME OF ADJUDICATION OF FORM I–360

Eligibility requirement	Time of filing Form I–360	Time of adjudication Form I–360
Under 21 years of age	Yes	No.
Unmarried	Yes	Yes.
Physical presence	Yes	Yes.
Valid juvenile court order	Yes, unless meets one of the two exceptions	Yes, unless meets one of the two exceptions.

1. Under 21 Years of Age

As explained in the proposed rule, under TVPRA 2008, USCIS may not deny SIJ classification based on age if the noncitizen was a child on the date on which they petitioned for SIJ classification (hereafter referred to as ''age-out protection''). TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). Under section 101(b)(1) of INA, 8 U.S.C. 1101(b)(1), a ''child'' is defined as under 21 years of age and unmarried. Through these provisions, Congress has expressed an intent that SIJ classification requires that the non-citizen be under the age of 21 only at the time of filing.

Comment: Twelve commenters supported DHS's proposed change to prohibit USCIS from denying SIJ classification based on age if the individual was a child on the date on which they petitioned for SIJ classification. One commenter thought that the proposed rule drew an ''arbitrary line'' at the age of 21 and that DHS was disqualifying any person over the age of 21 from protections from deportation. Some commenters indicated that DHS should give higher priority to petitioners less than 10 years old than to those who are 18 to 21 years of age without severe disabilities.

Response: DHS does not make any changes based on these comments because the age limit is set by statute. DHS does not have the authority to expand the program beyond the age the law permits nor to give preference to one age group over another. *See* TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). DHS will require that the petitioner be under 21 years of age only at the time of filing at new 8 CFR 204.11(b)(1).

2. Unmarried

Comment: One commenter agreed with the retention of the requirement that a petitioner remain unmarried through the adjudication of the SIJ petition. The commenter recommended that the final regulation further clarify that USCIS will consider other similar indicia of emancipation when determining whether USCIS should consent. The commenter said that for example, the regulation should clarify that the status of a civil union or common law marriage will be an indication of the legal equivalent of emancipation through marriage.

Response: USCIS will consider a noncitizen's eligibility for SIJ classification based on the preponderance of the evidence in its assessment of whether a primary reason the petitioner sought the required juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. *See* new 8 CFR 204.11(b)(5). Where USCIS has evidence of a State-recognized common law marriage, it will adjudicate the SIJ petition consistently with the eligibility requirements of the final rule, which maintains the long-standing position that a petitioner for SIJ classification must be unmarried at the time of filing and adjudication. *See* new 8 CFR 204.11(b)(2). However, civil unions are not recognized by USCIS as legal marriages for immigration purposes.

Comment: Four commenters requested that DHS remove the requirement that a petitioner remain unmarried at the time of adjudication. Commenters noted that TVPRA 2008 prohibits denial of a petition based on age as long as the conditions were met at the time the petition was filed. The commenters suggest that similar protections should be provided in regard to unmarried status, because the policy behind the TVPRA 2008 protection was to protect at-risk child victims of abuse. Other commenters discussed the effect of marriage on a petitioner's status as a dependent child in response to the preamble to the NPRM, which stated that ''[m]arriage alters the dependent relationship with the juvenile court and emancipates the child.'' 76 FR 54980. One commenter noted that to the extent that marital status may affect the dependency status of the petitioner, it is unnecessary to require unmarried status through adjudication since the proposed rule requires dependency at the time of adjudication. Another commenter said that while marriage in most jurisdictions changes whether someone is ''dependent'' or not, USCIS should acknowledge that some jurisdictions may make an exception where it is in a child's best interests.

Response: As explained in the proposed rule, under the previous regulations at 8 CFR 204.11(c)(2), a juvenile must remain unmarried both at the time the SIJ petition is filed and through adjudication in order to qualify for SIJ classification. No legislative changes or intervening facts have caused USCIS to alter this provision. This interpretation is consistent with Congress' use of the term ''child'' in the ''Transition Rule'' provision at section 235(d)(6) of TVPRA 2008. INA section 101(b)(1), 8 U.S.C. 1101(b)(1), defines a ''child'' as under 21 years of age and unmarried. In section 235(d)(6) of TVPRA 2008, Congress linked the age-out protection specifically to age by providing that SIJ classification may not be denied ''based on age.'' TVPRA 2008 does not link age out protection to marital status. Thus, Congress required that the petitioner be under the age of 21 only at the time of filing, but did not intend a similar protection as to marital status. Further, 8 CFR 103.2(b)(1) states that ''[a]n applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.'' Therefore, DHS will maintain its long-standing regulatory requirements, consistent with the definition of ''child'' in the INA, that a petitioner be

unmarried at time of filing the SIJ petition and at time of adjudication. New 8 CFR 204.11(b)(2).

3. Physical Presence in the United States

Comment: One commenter recommended that DHS interpret the requirement for a petitioner's physical presence in the United States as either physical or constructive presence. The commenter stated that using the word ''physically'' to modify the word ''present'' impermissibly narrows the statute and the rule should instead mirror the text of the statute, which provides that an SIJ petitioner is one who is ''present in the United States.''

Response: DHS disagrees with this interpretation. The statutory language at INA section 101(a)(27)(J)(i) requires that petitioners be subject to determinations from a juvenile court located in the United States, indicating that Congress intended that the petitioner be physically present to be eligible for a grant of SIJ classification. It has therefore been DHS's longstanding interpretation that physical presence in the United States is required for USCIS to approve the petition for SIJ classification, and no facts or circumstances have come to our attention that would justify changing that interpretation.

4. Juvenile Court Order Determinations

(a) Dependency or Custody

Comment: Fourteen commenters thought that the proposed rule was not inclusive enough of the various types of placements by a juvenile court that could lead to eligibility for SIJ classification. These commenters want DHS to clarify that commitment to or placement under the custody of an individual could include, but is not limited to, adoption and guardianship. Another commenter requested that DHS clarify that guardianship or adoption standing alone is sufficient for SIJ classification, without being preceded by a dependency, commitment, or custody order. Several of these commenters asked DHS to clarify that a court-ordered placement with a non-offending parent or a foster home could qualify. One commenter requested that DHS clarify the types of State court proceedings that may qualify, including divorce, custody, guardianship, dependency, adoption, child support, protection orders, parentage, paternity, termination of parental rights, declaratory judgments, domestication of a foreign order, or delinquency. Another commenter said that they were concerned that USCIS is interpreting dependency to exclude children who are in the care and custody of the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR).

Response: The plain language of INA section 101(a)(27)(J)(i) is disjunctive, requiring a petitioner to establish that they have either ''been declared dependent on a juvenile court . . . *or* . . . such a court has legally committed [them] to, or placed [them] under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court''. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). The final rule clarifies that SIJ classification is available to petitioners for whom the juvenile court provides or recognizes relief from parental abuse, neglect, abandonment, or a similar basis under State law, which may include the court-ordered custodial placement, or the court-ordered dependency on the court for the provision of child welfare services and/or other court-ordered or court-recognized protective remedial relief. New 8 CFR 204.11(d)(5)(ii)(A) and (B). DHS will not include a full list of examples of qualifying placements in this rule to avoid confusion that qualifying placements are limited to those listed. However, in response to commenters' request that USCIS clarify whether adoption or guardianship standing alone may qualify, USCIS notes that a judicial determination from a juvenile court of adoption or guardianship would generally be a sufficient custodial and/or dependency determination for SIJ eligibility. In addition, juvenile court-ordered placement with a non-offending relative or foster home would also generally qualify as a judicial determination related to the petitioner's custody and/or dependency for SIJ eligibility.

In response to a commenter's concern that USCIS is interpreting dependency to exclude children who are in the care and custody of ORR, USCIS recognizes that placement in federal custody with ORR also affords protection as an unaccompanied child pursuant to Federal law and obviates a State juvenile court's need to provide a petitioner with additional relief from parental maltreatment under State law. *See generally* Homeland Security Act of 2002, Public Law 107–296, 462(b)(1), 116 Stat. 2135, 2203 (2002) (providing that ORR shall be responsible for ''coordinating and implementing the placement and care of unaccompanied alien children in Federal custody by reason of their immigration status. . . .''). Such relief qualifies as relief in connection with a juvenile court's dependency determination. In this final rule, USCIS is clarifying that the relief qualifies so long as the record shows that the juvenile court was aware that the petitioner was residing in ORR custody at the time the order was issued. *See* new 8 CFR 204.11(d)(5)(ii)(B). For example, if the order states that the petitioner is in ORR custody, or the underlying documents submitted to the juvenile court establish the juvenile's placement in ORR custody, that would generally be sufficient evidence to demonstrate that the court was aware that the petitioner was residing in ORR custody. USCIS is making this clarification to ensure that those in ORR custody are not inadvertently excluded from SIJ classification because of the requirement that the juvenile court recognize or grant the relief.

Comment: Several commenters requested further clarification on the definition of dependency. One commenter requested that DHS explain whether dependency includes temporary custody orders. Another commenter stated that the regulations should retain the definition of dependency contained in the previous 8 CFR 204.11(c)(3), which states that a petitioner should establish that they have been ''declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency.'' This commenter noted that whether a juvenile is dependent on the juvenile court is within the purview of the juvenile court and not USCIS.

Response: DHS recognizes that there is no uniform definition for ''dependency,'' and the final rule continues to give deference to State courts on their determinations of custody or dependency under State law. DHS agrees with the commenter that the dependency determination is within the jurisdiction of the juvenile court. Thus, the final rule requires the juvenile court to have made a judicial determination ''related to the petitioner's custodial placement or dependency in accordance with State law governing such determinations.'' New 8 CFR 204.11(c)(1).

(b) Parental Reunification Determination

DHS received twenty-two comments on various aspects of the parental reunification determination. DHS reaffirms that the juvenile court must make this determination based on applicable State laws. Nothing in this rule should be construed as changing the standards that State courts use for making family reunification determinations, such as evidentiary

standards, notice to parents, family integrity, parental rights, and due process. DHS further notes that definitions of concepts such as abuse, neglect, or abandonment may vary from State to State. For example, it is a matter of State law to determine if a parent's actions or omissions are so severe that even with services or intervention, the child cannot be reunified with that parent.

Comment: Several commenters requested that the final rule formally abandon USCIS' requirement that in order to make a qualifying parental reunification determination, the juvenile court must have jurisdiction to place the juvenile in the custody of the unfit parent(s). Another commenter requested that DHS explain what constitutes a qualifying reunification determination when a juvenile court does not make an explicit finding and grants the offending parent noncustodial rights. Seven commenters requested clarification that termination of parental rights is not a prerequisite for SIJ classification. One commenter requested that DHS remove from the proposed rule any discussion of the requirement that a juvenile court order contain a determination that the petitioner is eligible for long-term foster care due to abuse, neglect, or abandonment.

Response: Consistent with longstanding practice and policy, DHS agrees that termination of parental rights is not required for SIJ eligibility and has incorporated this clarification in the final rule. New 8 CFR 204.11(c)(1)(ii). The idea that children should not grow up in the foster care system has led to changes in Federal law, such as the Adoption and Safe Families Act. Adoption and Safe Families Act of 1997, Public Law 105–89 (Nov. 19, 1997). The SIJ program has evolved along with child welfare law to include children for whom reunification with one or both parents is not viable because of abuse, neglect, abandonment, or a similar basis under State law. INA section 101(a)(27)(J)(i) previously required a State court determination of eligibility for long-term foster care due to abuse, neglect, or abandonment; however, the statute was modified by TVPRA 2008 to reflect this shift away from long-term foster care as a permanent option for children in need of protection from parental maltreatment. Accordingly, references to ''foster care'' were removed from the NPRM and have been removed from the final rule.

While there is no longer a requirement that petitioners be found eligible for long-term foster care, nonviability of parental reunification is still required. However, DHS no longer requires [7] that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification; therefore, this final rule does not include such a requirement. *See, e.g., R.F.M.* v. *Nielsen,* 365 F. Supp. 3d 350 (S.D.N.Y. 2019); *J.L., et al.* v. *Cissna,* 341 F. Supp. 3d 1048 (N.D. Cal. 2018); *Moreno Galvez* v. *Cuccinelli,* 387 F. Supp. 3d 1208 (W.D. Wash. 2019); *W.A.O.* v. *Cuccinelli,* Civil Action No. 2:19–cv–11696, 2019 U.S. Dist. LEXIS 136045 (D.N.J. July 3, 2019). DHS further acknowledges that even while it was in effect, the reunification authority requirement should never have applied to petitioners who had juvenile-court orders entered pursuant to Section 300 of the California Welfare and Institutions Code, because California courts generally have continuing jurisdiction over juveniles even after they turn 18. *See,* Cal. Welf. & Inst. Code § 303 (which provides that juvenile courts ''may retain jurisdiction over any person who is found to be a ward or a dependent child of the juvenile court until the ward or dependent child attains 21 years of age''). These juvenile courts have jurisdiction to issue findings regarding abuse, neglect, or abandonment, and based on these findings, ''adjudge that person to be a dependent child of the court.'' *See* Cal. Welf. & Inst. Code § 300.

Where a juvenile court has intervened through, for example, the removal of a child from a home because of parental maltreatment, such intervention may establish that the juvenile court determined that parental reunification is not viable, even if the court order does not explicitly reference that determination. However, the petitioner must establish that the juvenile court's actions resulted from the court's determination under State law that reunification with their parent(s) was not viable due to parental maltreatment. *See* new 8 CFR 204.11(c)(1)(ii).

Comment: Several commenters requested that DHS clarify that petitioners are eligible for SIJ classification when the juvenile court determines that parental reunification with only one parent is not viable. Two commenters further asked DHS to include language that the viability of reunification applies equally whether the parent is a birth parent or an adoptive parent.

Response: The ability of a State court to make a ''one parent'' parental reunification determination is a matter of State law and depends on the individual circumstances of the case. Nothing in this rule should be construed as changing how juvenile courts determine under State law the viability of parental reunification. In the event that a juvenile court determines that it needs to intervene to protect a child from one parent's abuse, neglect, abandonment, or a similar basis under State law, that court's determination may fulfill the parental reunification requirement. Similarly, the ability of a court to exercise its authority to place a child in the custody of a non-offending parent is also a matter of State law. Therefore, if reunification with only one of the petitioner's parents is not viable, the petitioner may be eligible for SIJ classification. DHS, however, declines to incorporate the request that the reunification determination applies to both birth parents and adoptive parents because the parental reunification determination must be made under State law, and it is ultimately a matter of State law who constitutes a legal parent. In other words, the nonviability of parental reunification determination must be based upon a parent who the State court considers the child's legal parent under State law.

Comment: DHS also received several comments regarding the definitions of abuse, neglect, and abandonment as they relate to the parental reunification determination. One commenter stated that the viability of parental reunification with one or both of the petitioner's parents due to abuse, neglect, abandonment, or a similar basis under State law must be determined by a juvenile court based on applicable State law. Another commenter requested that DHS incorporate language from the SIJ section of the USCIS Policy Manual stating that ''USCIS generally defers to the court on matters of [S]tate law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about . . . abuse, neglect, abandonment, or a similar basis under [S]tate law.'' [8]

Other commenters recommended that DHS define or categorize the terms ''abuse,'' ''neglect,'' and ''abandonment.'' One commenter recommended that DHS define the terms ''abuse,'' ''neglect,'' and ''abandonment,'' to allow for a

[7] *See also* USCIS, ''Policy Alert: Special Immigrant Juvenile Classification,'' Nov. 19, 2019, available at *https://www.uscis.gov/sites/default/files/policymanual/updates/20191119-SIJ.pdf.*

[8] USCIS Policy Manual, Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements [6 USCIS–PM J.2], available at *https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.*

consistent application of the law. A second commenter suggested that DHS implement a standardized process for the categorization of the findings of State juvenile courts into Federal categories for abuse, neglect, and abandonment to ensure uniformity in DHS's determination of whether a request for SIJ classification is bona fide. This commenter suggested adopting a version of the modified categorical approach used to determine whether a criminal conviction has immigration consequences.

Response: Whether a State court order submitted to DHS establishes a petitioner's eligibility for SIJ classification is a question of Federal law and lies within the sole jurisdiction of DHS. *See Arizona* v. *United States,* 567 U.S. 387, 394 (2012) (''The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.''); *see also Budhathoki* v. *Nielsen,* 898 F.3d 504, 512 (5th Cir. 2018) (explaining that ''[w]hatever responsibilities are exclusively for the [S]tate court, USCIS must evaluate if the actions of the [S]tate court make the applicant eligible for SIJ [classification]''). However, the plain language of the statute, ''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,*'' demonstrates that Congress intended the determination that reunification with one or both of the petitioner's parents is not viable due to parental maltreatment to be made by a juvenile court under State law. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i) (emphasis added). The relevant SIJ statutory language does not define abuse, neglect, or abandonment. Because the determination of parental maltreatment is a matter of State law, and the definitions of abuse, neglect, and abandonment vary from State to State, creating a standardized process or modified categorical approach would undermine Congress's instruction concerning the State's role in these determinations. For these reasons, DHS generally defers to juvenile courts on matters of State law, though it will evaluate orders for legal sufficiency under the requirements of INA and finds no need to codify additional corresponding language from the USCIS Policy Manual.

Comment: Several commenters focused on the evidentiary requirements for establishing abuse, neglect, abandonment, or a similar basis. One commenter requested that DHS require the juvenile court to check the petitioner's proof of abandonment or abuse to in order to prevent fraud. Another commenter requested that USCIS provide guidance on what information should be contained in a juvenile court order when the court finds that a parent is abusive, including the identity of the parent and details of the abuse. Another commenter stated that juveniles who claim to have been abandoned should provide evidence showing that they have a bona fide relationship to the United States, otherwise they should reunify with relatives living in their home country.

Response: Proving a bona fide relationship to the United States is not an eligibility requirement under INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J). Further, such a proposal was not a part of the NPRM and thus to codify a United States nexus requirement would be outside the scope of this rulemaking.

As noted earlier in this preamble, because a determination regarding parental maltreatment is a matter of State law, USCIS does not have the authority to mandate that a juvenile court require specific evidence from a petitioner prior to issuing its determinations. USCIS is responsible for detecting and deterring immigration benefit fraud and for determining a petitioner's eligibility for the SIJ classification. It cannot delegate these responsibilities to the States. Moreover, because the determinations of dependency, custody, and parental maltreatment are a matter of State law, USCIS cannot require State juvenile courts to act as an immigration gatekeeper or to undertake fraud investigations in connection with dependency or custody proceedings. USCIS cannot therefore require juvenile courts to take specific actions to verify that a petitioner has not reunified with his or her parent(s) or otherwise require juvenile courts to adopt specific procedures to verify or investigate parental maltreatment. However, USCIS will not grant its consent if the petitioner fails to demonstrate that a primary reason the juvenile court determinations were sought was to obtain relief from abuse, abandonment, neglect, or a similar basis under State law. *See* new 8 CFR 204.11(b)(5).

(c) Determination of Best Interest

Comment: DHS received three comments in relation to the requirement that juvenile court judges make best interest determinations under relevant State law. Proposed 8 CFR 204.11(b)(1)(vi), 76 FR 54985. One commenter expressed general support for the requirement. Another commenter stated that the final rule should not require that the juvenile court make a determination about a placement in the petitioner's or their parent(s)' country of nationality or last habitual residence. One commenter expressed opposition to the best interest requirement in the proposed rule, stating that the language of the INA provision notably does not include any requirement that the best interest determination be made in State, as opposed to Federal, judicial or administrative proceedings. This commenter suggested that the final rule should be amended to provide that under 8 U.S.C. 1101(a)(27)(J)(ii), repatriation determinations are made by USCIS, as part of its statutory consent function.

Response: The best interest determination is one of the key determinations for establishing eligibility for SIJ classification and the only one that has not changed throughout the history of the SIJ program. Since the inception of the SIJ program, it has consistently been the expressed intent of Congress to reserve this benefit for children for whom it has been determined that it would not be in their best interest to return to their or their parent(s)' home countries. The prior regulation interpreted the best interest determination as requiring a petitioner to have ''been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents.'' Previous 8 CFR 204.11(c)(6). In TVPRA 2008, Congress did not alter the best interest determination, indicating that it intended to retain the agency's long-standing requirement that the best interest determination must be made in either judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions. New 8 CFR 204.11(c)(2)(i). The best interest determination is therefore not a removal determination to repatriate a child (a determination within the purview of Federal immigration law), rather, it is a determination made by a State court or relevant administrative body, such as a State child welfare agency, regarding the best interest of the child. The preamble to the 1993 SIJ final rule explained that ''the Service believes that the decision regarding the best interest of the beneficiary should be made by the juvenile court or the social service

agency officials recognized by the juvenile court, not by the immigration judge or other immigration officials.'' 58 FR 42848.

While the standards for making best interest determinations may vary from State to State, best interest determinations generally consist of the deliberation that courts and administrative bodies undertake under State law when deciding what type of services, actions, and orders will best serve a child, as well as who is best suited to take care of a child. Best interest determinations generally consider a number of factors related to the circumstances of the child and the parent or caregiver, with the child's safety and well-being the paramount concerns. HHS, Administration for Children and Families, Child Welfare Information Gateway, ''Determining the Best Interests of the Child,'' 2016, available at *https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/best-interest/.* The final rule clarifies that it does not alter any obligations juvenile courts may have under State child welfare law when making best interest determinations. New 8 CFR 204.11(c)(2)(ii).

DHS agrees that a juvenile court or administrative body may not be able to make a placement determination in a foreign county. However, DHS has long held the interpretation that a determination that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that being returned to the petitioner's (or petitioner's parents') country of nationality or last habitual residence would not be in the child's best interest. *See* 58 FR 42848. The best interest determination must be made based on the individual circumstances of the petitioner, and DHS will not accept conclusions that simply mirror statutory language in or cite to INA section 101(a)(27)(J)(ii), 8 U.S.C. 1101(a)(27)(J)(ii). The final rule requires evidence of the factual basis for the best interest determination as part of the evidentiary requirement for DHS consent. *See* new 8 CFR 204.11(d)(5)(i).

5. Qualifying Juvenile Court Orders

DHS received numerous comments regarding the proposed requirement that the juvenile court order be in effect at the time of filing and continue through the time of adjudication of the SIJ petition, with limited exceptions provided for by the proposed rule. The majority of commenters opposed the requirement that the juvenile court order be in effect at the time of filing and/or adjudication. Other commenters focused on the exceptions to this requirement.

(a) Validity at Time of Filing and Adjudication

Comment: A number of commenters asked DHS to revisit its position of requiring the juvenile court order to be in effect at the time of filing the SIJ petition and continue through the time of adjudication. Several of the commenters noted that the statute uses past tense when referring to the dependency and custody determinations. Two commenters expressed support for retaining this requirement, with one commenter stating that it ensures that the request for SIJ classification is bona fide, and another commenter stating that the juvenile court order is a filter that makes sure that the benefit is reserved for children in need of special treatment. Another commenter suggested that if DHS is retaining this requirement, the language of the proposed rule should be revised to ''such dependency, commitment, or custody must be in effect at the time of filing the petition and continue through the time of adjudication of the petition.''

Response: DHS notes that the INA requirement ''has been declared dependent . . . or has [been] legally committed to, or placed under the custody of'' is worded in the present perfect tense. *See* INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). U.S. courts have ''frequently looked to Congress' choice of verb tense to ascertain a statute's temporal reach.'' *Carr* v. *United States,* 560 U.S. 438, 448 (2010). The present perfect tense refers to a time in the indefinite past or a past action that continues to the present.[9] *See, e.g., Padilla-Romero* v. *Holder,* 611 F.3d 1011, 1013 (9th Cir. 2010) (explaining that ''[a]s a purely grammatical matter, the use of the present perfect tense 'has been,' read in isolation from the surrounding text of the statute, can connote either an event occurring at an indefinite past time ('she has been to Rome') or continuing to the present ('she has been here for five hours')''). DHS believes the wording of the dependency requirement in the INA is meant to show that the juvenile court has done something in the past, but the focus is on the present time (the adjudication of the SIJ petition by USCIS). For this reason, the final rule requires that the juvenile court order ''must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition.'' New 8 CFR 204.11(c)(3)(ii).

Further, longstanding USCIS regulations at 8 CFR 103.2(b)(1), in general, require an applicant or petitioner for any immigration benefit to establish eligibility ''at the time of filing,'' and that eligibility ''must continue'' through adjudication. Additionally, DHS agrees with commenters that this requirement ensures that SIJ classification is provided to those truly in need of the benefit. DHS has therefore modified the regulatory text at new 204.11(c)(3)(ii) to clarify that the juvenile court order must be in effect at the time of filing the petition and remain in effect through adjudication, except where the juvenile court's jurisdiction terminated solely because of petitioner's age or due to the petitioner reaching a child welfare permanency goal, such as adoption. These exceptions are discussed further elsewhere in this section of the preamble.

Comment: DHS received numerous comments about how the requirement that the juvenile court order be in effect at the time of filing and adjudication applies to petitioners who relocate to another State. One commenter strongly objected to the proposed rule to the extent that it presumed that SIJ eligibility would continue even if the petitioner moved out of State. This commenter requested that DHS only recognize when a petitioner moves to another jurisdiction under the custody of a custodian appointed by the juvenile court, or when a petitioner in the custody of an institution is moved by the juvenile court to another jurisdiction.

Other commenters indicated that requiring a new court order for petitioners that relocate to a new State or juvenile court jurisdiction would be overly burdensome. Several commenters stated that the requirement to obtain a new State court order is inconsistent with other binding Federal statutes, such as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact on the Placement of Children (ICPC). Those commenters said that the UCCJEA and ICPC specifically prescribe a process by which transfer between States is obtained and the initial State typically retains jurisdiction of the matter and the juvenile. Several commenters also expressed concerns that this requirement may disproportionately affect petitioners in the custody of ORR of HHS. Another commenter stated that it would create additional hurdles for those seeking Federal long-term foster

[9] *Merriam-Webster.com,* ''present perfect,'' *https://www.merriam-webster.com/dictionary/present%20perfect* (last visited Aug. 18, 2021).

care through the Unaccompanied Refugee Minor (URM) program.

Response: DHS does not wish to place an extra burden on petitioners who may be moved between ORR facilities or to court-appointed custodians in another jurisdiction, or to those seeking long-term foster care through the URM program. Since the time of the NPRM, USCIS has issued policy guidance that clarifies that a juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction and is maintaining this policy, regardless of this final rule.[10] If the original order is terminated due to the relocation of the child, but another order is issued in a new jurisdiction, USCIS will consider 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.

As discussed previously, absent any clear statutory authority, DHS applies the general rule that ''[a]n applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication.'' 8 CFR 103.2(b)(1). DHS will retain the requirement that the juvenile court order be in effect at the time of filing the SIJ petition and continue through the time of adjudication of the SIJ petition, and implements this provision at 8 CFR 204.11(c)(3)(ii).

(b) Exceptions to the Requirement That a Juvenile Court Order Be Valid at the Time of Filing and Adjudication

Comment: Several commenters recommended specific exceptions to the requirement that the juvenile court order be valid at the time of filing and adjudication of the SIJ petition. The commenters requested that DHS take into account the fact that a court may terminate its jurisdiction over a child if such child finds a permanent placement, such as adoption or legal permanent guardianship. The commenters were concerned that if the court terminated its jurisdiction due to the child being placed in permanent guardianship or adoptive placement that the child would lose eligibility for SIJ classification. One commenter stated that a child who is returned to one parent is usually not subject to continuing court supervision. Another commenter stated that it would be contrary to the statute to deny SIJ classification to children who have achieved a permanency option in juvenile court merely because the juvenile court process reached its conclusion and secured a safe and permanent solution for the child.

Response: DHS agrees that an individual adopted, placed in guardianship, or another type of permanent placement may remain eligible for SIJ classification. The previous regulation interpreted the ''eligible . . . for long-term foster care'' requirement generally to require an individual to remain in foster care until reaching the age of majority, but acknowledged that this did not apply if ''the child is adopted or placed in a guardianship situation.'' Previous 8 CFR 204.11(a). In the proposed rule, DHS did not propose to alter this position. DHS will follow this long-standing position and expand it to include other types of permanent placements, such as custody orders. DHS is clarifying this position at new 8 CFR 204.11(c)(3)(ii)(A). The final rule states that the juvenile court order must be in effect on the date the petitioner files the petition and continue through the time of adjudication, except when the juvenile court's jurisdiction terminated solely because the petitioner was adopted, placed in a permanent guardianship, or another permanency goal was reached. *Id.*

Comment: In the NPRM, DHS proposed an exception to the requirement that the juvenile court order continue through the time of adjudication for petitioners whose juvenile court orders terminated solely due to age *after* filing the SIJ petition. Proposed 8 CFR 204.11(b)(1)(iv), 76 FR 54985. Some commenters asked DHS to allow individuals to file if they are under 21 years of age and had a juvenile court order even if the order has lapsed *prior* to filing the SIJ petition. These commenters noted that the INA and TVPRA 2008 only require the petitioner to be under 21 years of age at the time of filing. Other commenters supported extending eligibility for petitioners who may age out of the juvenile court's jurisdiction due to relocation to another State.

Response: After DHS published the 2011 NPRM, the government reached a stipulation agreement in *Perez-Olano, et al.* v. *Holder, et al.,* which contains a provision that a petitioner whose juvenile court order terminated solely due to age *prior* to filing the SIJ petition remains eligible. *Perez-Olano, et al.* v. *Holder, et al.,* Case No. CV 05–3604 (C.D. Cal. 2015). In accordance with the court agreement and in response to public comments, which DHS agrees reflect a legally permissible interpretation, DHS now codifies the exception to the requirement that the juvenile court order be valid at the time of filing and adjudication for petitioners who no longer have a valid juvenile court order either prior to or subsequent to filing the SIJ petition because of the petitioner's age, at new 8 CFR 204.11(c)(3)(ii)(B). In response to comments, this exception also covers the situation of a petitioner who may age out of the juvenile court's jurisdiction due to relocation to another State.

E. Evidence

1. Petition Requirements

A petitioner must submit a complete Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, in accordance with the form instructions. DHS has amended the form consistent with the changes made in this final rule. The final rule also removes the form number from the regulatory text. New 8 CFR 204.11. Prescribing a specific form number to be filed for a certain benefit in the Code of Federal Regulations (CFR) is generally not necessary, and mandating specific form numbers reduces USCIS' ability to modify or modernize its business processes to address changing needs.

2. Age

Comment: Ten commenters expressed concern that the list of documents in the proposed rule that may demonstrate proof of age was restrictive. Commenters discussed the challenges that abused, neglected, or abandoned children may face in obtaining proof of their age and birth from their abusive parents. These commenters suggested adding alternate documentation of proof of age that would be acceptable, and expressly indicating that secondary evidence may be provided as is allowed for other types of immigration petitions.

Response: DHS agrees that some vulnerable children may face challenges in obtaining documentation of their age. DHS regulations on the provision of secondary evidence at 8 CFR 103.2(b)(2)(i) apply to SIJ petitioners, and DHS did not propose to alter this in the proposed rule. The previous regulation interpreted the proof of age requirement for SIJ petitioners to include evidence in the form of ''a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age.'' Previous 8 CFR 204.11(d)(1), 58 FR 42850. DHS will follow its long-standing position of

[10] USCIS Policy Manual, Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 2, Eligibility Requirements [6 USCIS–PM J.2], available at *https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2.*

allowing official government-issued identification or secondary evidence, and we have added clarifying language at new 8 CFR 204.11(d)(2).

Comment: Two commenters requested that USCIS recognize that SIJ petitioners may not have government-issued identification to present at the biometrics appointment. Another commenter requested that DHS remove all references to biometrics in the regulation.

Response: DHS appreciates the intention of these comments; however, it has acted to remove from regulations all unnecessary procedural instructions and responsibilities, such as acceptable documents for office visits. In addition, the proposed rule only referenced biometrics in the preamble and not in the regulatory text itself, which is consistent with the final rule as well. Therefore, DHS did not revise the regulation in response to the commenters' requests and biometrics submission requirements for SIJ petitioners remain the same.

Comment: One commenter said that in addition to documentary evidence of the petitioner's age, USCIS should collect DNA samples as part of its biodata procedures, or else confirm that a sample has already been collected and added to the Combined DNA Index System (CODIS) database of the Federal Bureau of Investigation (FBI). The commenter asserts that the juvenile's age, identity, and any prior contacts with law enforcement agencies can be more accurately and expeditiously verified by USCIS using the CODIS database.

Response: DHS appreciates the comment, but DNA collection is outside of the scope of this rulemaking. DHS did not propose to require SIJ petitioners to submit DNA in the proposed rule, and it is not a subject on which the public was requested to comment. Therefore, DHS is unable to incorporate the suggestions of the commenter.

3. Similar Basis

INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i), provides that a petitioner must establish that their reunification with one or both parents is not viable due to ''abuse, neglect, abandonment, or a *similar basis* found under State law'' (emphasis added). When a juvenile court determines parental reunification is not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under State law. New 8 CFR 204.11(d)(4). The language of the order may vary based on individual State child welfare law due to variations in terminology and local State practice in making child welfare decisions.

Comment: A number of commenters said that petitioners should not have to demonstrate to USCIS that similar basis determinations are equivalent concepts. These commenters requested that the evidentiary standard be modified to reflect that the similar basis requirement is met where the court has authority to take jurisdiction over the child. Commenters also stated that USCIS should defer to juvenile court determinations regarding what constitutes a similar basis under State law. Many of the commenters expressed concerns that the requirement in the proposed rule poses an undue burden on petitioners.

Response: The requirement to demonstrate that a similar basis determination is legally analogous to abuse, neglect, or abandonment under State law is statutory and thus DHS does not have authority to modify it. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i) (''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''). DHS disagrees that an assumption can be made that a basis is legally similar to abuse, neglect, or abandonment just because a juvenile court took jurisdiction over the petitioner. The final rule definition of ''juvenile court'' encompasses a wide variety of State courts, and such courts may take jurisdiction over the case of a juvenile for a variety of reasons that are not related to parental maltreatment.

In the preamble to the proposed rule, DHS explained that ''[i]f a juvenile court order includes a finding that reunification with one or both parents is not viable [due to a similar basis] under State law, the petitioner must establish that this State law basis is similar to a finding of abuse, neglect, or abandonment.'' 76 FR 54981. The preamble further stated that ''[t]he nature and elements of the State law must be similar to the nature and elements of abuse, abandonment, or neglect.'' *Id.* The preamble provided an example under Connecticut law of an ''uncared for'' child and explained that ''uncared for'' may be similar to abuse, abandonment, or neglect, because children found ''uncared for'' are equally entitled to juvenile court intervention and protection. *Id.* The preamble gave examples of additional evidence a petitioner could submit to establish the basis for a juvenile court's finding that reunification is not viable due to a similar basis found under State law; those examples focused on the factual basis for the juvenile court's parental reunification determination. *Id.*

In response to comments requesting further clarification and expressing concern that petitioners would face an undue burden by having to demonstrate legal equivalency in order to establish that the ground is similar to abuse, neglect, or abandonment, DHS has further clarified how petitioners can meet the similar basis requirement at new 8 CFR 204.11(d)(4)(i) and (ii). Evidence demonstrating that this requirement is met includes options that would not place additional burden on the petitioner, such as including the juvenile court's determination as to how the basis is legally similar to abuse, neglect, or abandonment under State law. A petitioner may alternatively submit other evidence that establishes the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law. Such evidence may include the petition for dependency, complaint for custody, or other documents that initiated the juvenile court proceedings. USCIS will not re-adjudicate whether the juvenile court determinations regarding similar basis comply with that State's law, only whether they comply with the requirements of Federal immigration law for SIJ classification. Additionally, USCIS will consider outreach to juvenile courts, social workers, attorneys and other stakeholders to provide technical assistance on the level of detail in juvenile court orders and underlying documents sufficient for SIJ adjudications.

Comment: One commenter stated that the final rule should provide that when a child has been a victim of domestic violence, forced marriage, or child endangerment, the child should be presumed to have suffered sufficient maltreatment equal to or greater than abuse, abandonment, or neglect under State law to qualify for SIJ classification without having to prove that these State laws are similar to abuse, abandonment or neglect.

Response: DHS acknowledges the vulnerable circumstances of children who are victims of domestic violence, forced marriage, or child endangerment. However, the INA requires that a juvenile court determine that reunification is not viable with a child's parent(s) *due to* abuse, neglect, abandonment, or a similar basis under State law. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). Therefore, a juvenile court's determination alone that a child is a victim of domestic violence, forced marriage, or child

endangerment would not be sufficient for SIJ purposes, unless it were accompanied by: a judicial determination that reunification with the child's parent(s) is not viable on that basis; and evidence indicating that the basis constituted a legal basis similar to abuse, neglect, or abandonment under State law. As mentioned previously in this preamble, DHS provides further clarity in this final rule regarding how petitioners can meet the evidentiary requirement of demonstrating that a basis is legally similar to abuse, neglect or abandonment under State law at new 8 CFR 204.11(d)(4)(i) and (ii).

Comment: Four commenters said that the proposed regulations will result in adjudicators wrongly denying SIJ classification to minors in long-term foster care by so narrowly construing what constitutes a similar basis under State law and that greater deference should be granted to the variety of bases for which reunification with a child's parent(s) is determined not viable. One commenter noted that in certain States like Utah, there is no basis for an abandonment determination; rather a child who is abandoned to State custody is determined to be a ''dependent'' child. The commenter requests that such determinations resulting in the child being removed from the parents and placed in State child welfare services be considered a similar basis under State law for SIJ purposes.

Response: DHS appreciates the commenters' concern and acknowledges that there is variation in terminology and local or State practice in making child welfare decisions. That a child has been placed in State child welfare services following a determination that parental reunification is not viable may constitute part of the evidence provided of how a judicial determination is similar to abuse, neglect, or abandonment under State law. As discussed, DHS has added regulatory language in the final rule that helps clarify what evidence must be provided to meet the burden of proof of demonstrating that the legal basis is similar to abuse, neglect, or abandonment under State law. *See* new 8 CFR 204.11(d)(4).

4. Evidentiary Requirements for DHS Consent

DHS proposed that USCIS consent would be provided where the petitioner sought the qualifying juvenile determinations primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or a similar basis under State law, and not primarily for the purpose of obtaining lawful immigration status, and the evidence otherwise demonstrates that there is a bona fide basis for granting SIJ classification. *See* proposed 8 CFR 204.11(c)(1)(i), 76 FR 54985. DHS also proposed that the petitioner must submit specific findings of fact or other relevant evidence establishing the factual basis for the juvenile court's parental reunification determination as evidence that the request is bona fide. *See* proposed 8 CFR 204.11(d)(3)(ii), 76 FR 54985 (discussed in the preamble at 76 FR 54981).

Many commenters discussed the DHS consent function. Some commenters focused on the way DHS interprets the statutory consent function, while others focused on how DHS applies the consent function. The majority of comments opposed either DHS's interpretation or the operation of its consent function in some way. One commenter expressed concerns with how USCIS will determine if a petitioner is primarily seeking lawful immigration status, rather than child protection. This commenter referenced cases of children who may have suffered some abuse, neglect, or abandonment in the past, but where the abuse, neglect, or abandonment does not seem to be the reason they are before the court.

DHS will retain its long-standing position on the interpretation of the DHS consent function as requiring the factual basis for the court's judicial determinations in the final rule. DHS has amended the regulations governing the consent function in response to public comments as described in the following paragraphs.

(a) Background and Legal Interpretation of DHS Consent

Comment: Many commenters opposed DHS's interpretation or application of the statutory consent function. These commenters said it was impermissible for USCIS to ''look behind'' the juvenile court order to determine whether the petitioner established that the order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law. Some commenters suggested that DHS institute a presumption of consent where the petitioner meets all of the eligibility requirements and has a juvenile court order instead of basing its consent determination on whether the primary purpose for seeking the juvenile court order was for relief from parental maltreatment. Another commenter further noted that in finalizing the proposed rule, USCIS also must be guided by a Federal district court's conclusion in *Zabaleta* v. *Nielsen,* 367 F. Supp. 3d 208 (S.D.N.Y. 2019), that the 2008 TVPRA contracted, rather than expanded, DHS's consent function.

Response: As discussed in the proposed rule, DHS's position comes from legislative history on the creation of the consent function. *See* 76 FR 54981. Congress amended the SIJ classification requirements in 1997 to require the express consent of the Attorney General to the dependency order as a precondition to the grant of SIJ classification. *See* CJS 1998 Appropriations Act, Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997). According to the House Report accompanying the 1997 amendments, the purpose of the amendments was to ''limit the beneficiaries of this provision to those juveniles for whom it was created, namely abandoned, neglected, or abused children.'' H.R. Rep. No. 105–405, at 130 (1997). DHS may consent if it determines ''neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect.'' *Id.*

TVPRA 2008 modified the consent function, shifting from express consent to the dependency order to consent to the grant of SIJ classification. *See* TVPRA 2008 section 235(d)(1)(B)(i). Prior to TVPRA 2008, DHS had to make two decisions while adjudicating an SIJ petition: whether to expressly consent to the dependency order and whether to approve the SIJ petition. Now USCIS need only consent to the grant of SIJ classification. The district court in *Zabaleta* v. *Nielsen* stated that with the enactment of TVPRA 2008, ''Congress diluted the agency's consent authority'' when it modified the consent function. 367 F.Supp.3d at 212. The district court reasoned that ''Congress decreased the agency's authority under the consent provision'' when it struck the requirement that USCIS expressly consent to the dependency order. 367 F.Supp.3d at 216. DHS disagrees with this interpretation of the modification of the consent function in TVPRA 2008. While TVPRA 2008 shifted DHS's consent function to the grant of the SIJ classification and removed the requirement that DHS ''expressly'' consent to the dependency order,[11] Congress did not remove the consent function. DHS cannot treat the consent function as absent because Congress did not remove it, and neither can DHS

[11] DHS notes that ''express'' consent to an adjudicative process it controls, unlike express consent to a dependency order issued by a State juvenile court, would result in an adjudicative redundancy.

render it meaningless by applying a presumption that every petition that includes a juvenile court order merits consent.

The determinations made by the juvenile court are related to the dependency or custody, parental reunification, and best interests of the child under relevant State law. USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law. Granting consent based on a petitioner's eligibility for SIJ classification under immigration law is the role of USCIS. It is not the role of the State court to act as an immigration gatekeeper. It is clear that SIJ classification was created, and remains a vital way, to provide immigration relief to children who are victims of parental maltreatment. DHS therefore believes its interpretation of the consent function is a reasoned approach based on the statutory history of SIJ classification and of the consent function.

In response to commenters' concerns regarding how USCIS would weigh the petitioner's motivations, DHS recognizes that a juvenile court order may have multiple purposes and that there may be an immigration motive in seeking the determinations concurrent with, and in some instances, equal in weight to, a desire to obtain relief from parental maltreatment. For example, a child who has been placed in long-term foster care may not become aware of the need to regularize their status until well after the original determinations regarding non-reunification with their parent(s) were made by the juvenile court. At that time, they may separately seek the requisite determinations from the juvenile court related specifically to SIJ eligibility. Although a primary reason for seeking the juvenile court determinations at that point would be for the purpose of obtaining immigration status, it does not negate their underlying motivations for seeking the original relief from parental maltreatment from the court.

In recognition of the fact that SIJ petitioners may have dual or mixed motivations, DHS has modified the consent function by removing the requirement that the petitioner demonstrate that they did not seek the juvenile court's determinations ''primarily for the purpose of obtaining lawful immigration status'' and instead requiring the petitioner to establish that ''*a primary reason* the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law.'' See new 8 CFR 204.11(b)(5) (emphasis added). Establishing that a primary reason the petitioner sought the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law is dependent upon the facts and circumstances of each case. USCIS may consider any materially relevant evidence, and DHS has clarified language on the operation of its consent function. *See* new 8 CFR 204.11(b)(5) and (d)(5).

(b) Roles of the Juvenile Court and DHS in Determining Eligibility

Comment: Many commenters expressed concern that as written, the proposed rule instructs DHS to re-adjudicate the determinations made by juvenile courts as part of the consent analysis. One commenter stated that this gives in effect ''appellate review'' of the State court adjudication to USCIS; another said that this provides for the impermissible review and adjudication of State court findings.

Response: The role of DHS is fundamentally different from that of the juvenile court. The juvenile court makes child welfare-related determinations under State law. USCIS determines if a child meets the statutory requirements for SIJ classification under Federal immigration law. A juvenile court determines if it has the jurisdiction and evidence to issue an order under State law for the requested juvenile court action (*e.g.,* appoint a legal guardian). While USCIS defers to the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if a child's maltreatment constituted abuse, neglect, abandonment, or a similar basis under State law, it must still determine whether a primary reason the petitioner sought the juvenile court determinations was to obtain relief from abuse, neglect, abandonment, or similar basis found under State law. To make this determination, DHS requires the factual basis for the court's determinations and evidence that the juvenile court granted or recognized relief from parental abuse, neglect, abandonment, or similar basis under State law. *See* new 8 CFR 204.11(d)(5)(i) and (ii). DHS will not re-adjudicate the juvenile court determinations regarding State law, but rather will look to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the State juvenile court in exercising its consent function. *See* new 8 CFR 204.11(d)(5).

(c) Conflation of Pursuit of a Juvenile Court Order With the Determinations Necessary for SIJ

Comment: Eight commenters thought that the DHS interpretation of the consent function in the proposed rule conflated the pursuit of a juvenile court order with the pursuit of a special order from a judge, including the determinations and factual findings necessary for SIJ classification. The commenters noted that in some jurisdictions, the determinations for dependency and custody are made in separate hearings from the other required determinations for SIJ eligibility. They further noted that in some jurisdictions, an SIJ juvenile court order is a separate, special order issued to facilitate obtaining immigration relief, while determinations relating to custody and placement are done independently. One commenter expressed general support for requiring that USCIS consent to SIJ classification, rather than the juvenile court order.

Response: DHS understands that in some jurisdictions, the court will have a separate hearing and issue a separate order with the necessary determinations for SIJ classification. In order to ensure a clearer understanding, DHS has modified the language of the rule to state that the petitioner must establish that a primary reason they sought the juvenile court's determinations, rather than the order itself, was to obtain relief from abuse, neglect, abandonment, or a similar basis under State law. New 8 CFR 204.11(b)(5).

(d) DHS Consent Process and Procedures

Comment: One commenter said that the requirement of consent by DHS seems wholly unnecessary if, as is stated in the proposed rule, approval of the SIJ petition is considered the granting of consent on behalf of the Secretary of Homeland Security. Other commenters said that the consent provision of the proposed rule essentially instructs USCIS adjudicators to presume fraud and State court incompetence in fact finding in every SIJ case. The commenters further noted that the ''primary purpose'' and ''bona fide'' language in proposed 8 CFR 204.11(c)(1)(i), 76 FR 54985, aims to effectively reinstitute the express consent provision from prior to the changes made by TVPRA 2008 by requiring a review of the evidence in the record for proof of the petitioner's primary motive and a ''bona fide'' basis to grant SIJ classification.

Response: DHS disagrees that the consent provision is unnecessary

because the proposed rule indicated that approval of the SIJ petition is considered the granting of consent on behalf of the Secretary of Homeland Security. The NPRM specifically stated that the ''the approval of a Form I–360 is *evidence* of the Secretary's consent, rather than consent being a precondition of the juvenile court order'' in order to clarify the TVPRA change. 76 FR 54981 (emphasis added). DHS did not conflate consent with approval.

DHS also disagrees that the proposed rule instructs USCIS adjudicators to presume fraud or State court incompetence, or to re-adjudicate the juvenile court determinations or factual findings. The role of the State court and DHS are fundamentally different. While juvenile courts make determinations pursuant to their State law, USCIS must adjudicate petitions for SIJ classification under Federal immigration law, and may grant consent only where the eligibility criteria are met and DHS determines that a primary reason the petitioner sought the required juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. *See* new 8 CFR 204.11(b)(5). DHS cannot delegate determinations of eligibility for the SIJ classification nor its consent function to a State court.

As previously noted, DHS will conduct a case-specific adjudication of each petition to ensure that petitioners have met their burden of proving that USCIS consent is warranted. DHS therefore declines to make any change in response to these comments as DHS consent is itself an eligibility requirement pursuant to the statute at INA section 101(a)(27)(J)(iii), 8 U.S.C. 1101(a)(27)(J)(iii).

Comment: Three commenters wrote that DHS should develop a process for internal review if USCIS determines that the juvenile court order was sought primarily to obtain immigration benefits and USCIS would deny consent. These commenters pointed to a USCIS memorandum [12] and stated that it requires supervisory review prior to denying consent or issuing a denial of the SIJ petition. As an alternative to supervisory review, the commenters suggested review at USCIS headquarters.

Response: DHS appreciates commenters' concerns regarding denials. However, DHS will not promulgate an internal review process in the rule that would bind USCIS to an administrative procedure that could restrict resource allocation and become outdated. Supervisory review instructions will be provided in guidance documents if necessary. DHS will consider these comments when drafting such guidance.

Comment: Two commenters requested that USCIS notify the petitioner that a decision to deny consent is appealable to the AAO.

Response: USCIS notifies denied petitioners of the right to appeal the decision to the AAO as required by 8 CFR 103.3(a)(1)(iii)(A) for all appealable decisions. For SIJ petitioners, this includes the ability to appeal the denial of an SIJ petition based on the withholding of DHS consent. DHS is not aware of this requirement not being followed, but to avoid any confusion and in response to comments, the final rule at new 8 CFR 204.11(h) requires notifying petitioners of their right to appeal pursuant to 8 CFR 103.3.

Comment: One commenter said that if consent to SIJ classification is warranted when ''the state court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment or some similar basis under state law,'' then USCIS should clearly list all required initial evidence. The commenter further stated that it would be helpful to have a list of a few examples to clarify what ''additional evidence'' may be required as well.

Response: There are variations in State laws, as well as varying requirements regarding privacy and confidentiality, so there are no specific documents that may or may not fulfill these evidentiary requirements. However, at new 8 CFR 204.11(d)(5)(i)(A) and (B), DHS provided examples of what may constitute relief from parental maltreatment, including ''the court-ordered custodial placement'' or ''the court-ordered dependency on the court for the provision of child welfare services and/or other court-ordered or recognized protective or remedial relief . . .'' to provide further clarification on what evidence may fulfil this requirement. Examples of documents that may be provided as evidence in support of the factual basis for the juvenile court order include: Any supporting documents submitted to the juvenile court; the petition for dependency or complaint for custody or other documents which initiated the juvenile court proceedings; court transcripts; affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and affidavits or records that are consistent with the determinations made by the court.[13]

(e) Burden on the Petitioner

Comment: Many commenters said that the proposed regulations regarding consent imposed too great a burden on petitioners. These commenters asked DHS not to require the petitioner to submit documentation and make arguments in excess of what the statute requires, and many said that DHS should not require findings of fact or additional evidence beyond the determinations in the juvenile court order. Several commenters stated that the DHS interpretation of the consent function and requirement for evidence of the factual basis is burdensome because it requires the petitioner to prove to USCIS what the juvenile court has already determined. Another commenter said that the SIJ statute only requires that SIJ orders contain factual findings, and therefore, USCIS does not need to evaluate the petitioner's intent for initiating dependency court proceedings nor weigh evidence to determine whether it believes the court made proper findings. One commenter wrote that they strongly agree with USCIS that ''the petitioner bears the burden'' of proving that the State court order was not sought primarily for any other reason than obtaining relief from abuse, neglect, abandonment, or some similar basis under State law, with particular scrutiny of petitions whose primary motivation is obtaining an immigration benefit. Another commenter recommended that the final rule incorporate the principles found in the NPRM and the USCIS Policy Manual that juvenile court findings of fact regarding the basis for a determination of abuse, neglect, abandonment, or a similar basis ''are usually sufficient to provide a basis for the Secretary's consent.'' 84 FR 54981; *See also* USCIS Policy Manual, Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 3, Documentation and Evidence, A, Juvenile Court Order(s) and Administrative Documents, 3, Factual Basis and USCIS Consent [6 USCIS–PM J.3(A.3)], available at *https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3.*

Response: DHS does not agree that the regulation requiring a factual basis for the juvenile court's determinations poses too great a burden on petitioners. The burden is on the petitioner, as it is

[12] USCIS, ''Memorandum #3—Field Guidance on Special Immigrant Juvenile Status Petitions'' (''Policy Memorandum #3''), May 27, 2004, available at *https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf.*

[13] USCIS Policy Manual, Volume 6, Immigrants, Part J, Special Immigrant Juveniles, Chapter 3, Documentation and Evidence [6 USCIS–PM J.3], available at *https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3.*

for all immigration benefit requests, to establish that they meet eligibility requirements. DHS works to ensure that all SIJ petitions are properly adjudicated under the requirements of the INA, and as noted previously, will conduct case specific adjudication of each petition to ensure that petitioners have met their burden of proving that USCIS consent is warranted. In the majority of cases, the petitioner can meet the burden of showing that a primary purpose for seeking the order was to provide the petitioner relief from parental abuse, neglect, or abandonment, or a similar basis to these grounds simply based on the juvenile court order itself. Orders that include findings of fact in support of the juvenile court's determinations, as well as evidence of court-ordered or recognized relief from parental maltreatment, will usually provide the basis for USCIS consent.

Some juvenile courts only provide a template order that mirrors the statutory language at INA section 101(a)(27)(J) with no information on how the determinations relate to the petitioner under State law. This may not be enough to provide a basis for USCIS to determine whether to grant consent absent supplemental evidence. These cases are highly case specific, and each will be adjudicated on its own merits. In the proposed rule, DHS gave many examples of supplementary information that could be included with the petition, such as juvenile court findings accompanying the custody or dependency order, actual records from the proceedings, or other evidence that summarizes the evidence provided to the court. *See* 76 FR 54981. DHS does not agree that providing supplementary information, such as the examples on these lists, is unduly burdensome. In many cases, most of the information was submitted to the juvenile court by the petitioner, his or her parent(s), advocate, or attorney and is under the control of the petitioner, his or her parent(s), or the attorney or advocate for the child.

DHS also disagrees with commenters who said that DHS is instituting requirements in excess of the statutory requirements, and that the statute only requires factual findings. The statute explicitly requires that DHS consent to the grant of SIJ classification, and for the reasons set forth in the NPRM as well as this final rule, DHS believes its interpretation of consent is reasonable. INA section 101(a)(27)(J)(iii), 8 U.S.C. 1101(a)(27)(J)(iii).

As previously noted, DHS recognizes that a juvenile court order may have multiple purposes and that there may be some immigration motive in seeking the order concurrent with a need to obtain relief from parental maltreatment. However, adjudicators must review the order and any other evidence provided to determine whether or not the petition was bona fide and merits USCIS consent. While adjudicators may not substitute their own judgement for that of the State juvenile court on issues of State law, USCIS must evaluate petitions for legal sufficiency under Federal immigration law.

(f) Privacy Concerns

Comment: Thirty-one commenters had privacy concerns with the process for USCIS consent and the requirement that petitioners provide to USCIS the factual basis for the juvenile court's determinations. Many of these commenters thought that requiring the petitioner to submit additional documents from a court, government agency, or other administrative body, beyond just the juvenile court order, compels the petitioner to present information that is protected under State privacy laws. Several other commenters were concerned with language in the preamble to the proposed rule that would allow officers to obtain records directly from a juvenile court. *See* 76 FR 54982. The commenters wrote that DHS should remove this from the final rule or at least educate officers on applicable privacy laws and instruct officers to follow proper procedures for lawfully obtaining access to the records, which may mean formally petitioning a juvenile court.

Response: DHS agrees that all applicable privacy laws should be followed in the provision of juvenile court records. Nothing in DHS guidance should be construed as requiring the release or obtaining of records in violation of privacy laws, and officers are advised on relevant privacy laws and procedures as they relate to SIJ petitions. As discussed previously, often these records were submitted to the juvenile court by the petitioner, his or her parent(s), attorney, or advocate and the documents are already under the control of the petitioner, his or her parent(s), attorney or advocate for the child. DHS agrees that petitioners and their legal representatives should follow State laws regarding the authorization of release of confidential records.

DHS provided a list of documents in the proposed rule that may assist the petitioner in providing evidence of the factual basis. These documents are intended to be examples of documents that the petitioner can provide. However, it is ultimately up to the petitioner which particular document(s) they choose to provide. DHS will not require a specific form of evidence to prove the factual basis. Requests for additional evidence on SIJ petitions are governed by the same regulations that govern all other immigration petitions. *See* 8 CFR 103.2 and 103.3. USCIS officers generally do not directly request records from any party other than the petitioner and their legal representative in adjudicating SIJ petitions. However, this does not bar USCIS from directly requesting documents as part of a fraud investigation, as permitted by law.

(g) Consent Standards

Comment: Twenty-one commenters wrote that DHS should not equate ''consent'' and ''discretion'' and said that the proposed rule attempted to impermissibly give DHS discretion where the statute only provides for consent. Commenters were concerned that this language would allow USCIS to consider factors that are not related to SIJ eligibility requirements.

Response: The NPRM proposed that DHS would consider both the evidence on the record as well as ''permissible discretionary factors'' (proposed 8 CFR 204.11(c)(1)(i), 76 FR 54985) (''In determining whether to provide consent . . . USCIS will consider, among other permissible discretionary factors, whether the alien has established, based on the evidence of record . . .''). The NPRM also proposed that the ''petitioner has the burden of proof to show that discretion should be exercised in his or her favor.'' *See* proposed 8 CFR 204.11(c)(1)(ii), 76 FR 54985. DHS recognizes that the wording of the regulatory text in the NPRM may have caused some confusion as to how DHS would determine if consent is warranted, and we agree that consent is not a discretionary function. In exercising consent, DHS intends to only consider factors that are relevant to assessing whether a primary reason the petitioner sought the juvenile court's determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. DHS has accordingly refined the language in this final rule and has set parameters for exercising the consent function by codifying its interpretation of consent and the evidence required. Under the consent function, adjudicators must determine that the request for SIJ classification is bona fide. *See* new 8 CFR 204.11(b)(5). DHS requires the petitioner to submit the factual basis for the juvenile court's determinations and evidence the court provided relief from parental maltreatment to demonstrate that the request is bona fide. *See* new 8 CFR 204.11(d)(5)(i) and (ii). DHS will generally consent to the grant of SIJ

classification if the petitioner meets these evidentiary requirements.

The final rule also clarifies DHS's provision to consider the evidence of record when assessing consent by stating that ''USCIS may withhold consent if evidence materially conflicts with the eligibility requirements [for SIJ classification] . . . such that the record reflects that the request for SIJ classification was not bona fide.'' New 8 CFR 204.11(b)(5).

Pursuant to the settlement agreement in *Saravia* v. *Barr,* USCIS will not, however, withhold consent based in whole or in part on the fact that the State court did not consider or sufficiently consider evidence of the petitioner's gang affiliation when deciding whether to issue a predicate order or in making its determination that it was not in the best interest of the child to return to their home country. USCIS also will not use its consent authority to reweigh the evidence that the juvenile court considered when it issued the predicate order,[14] nor will it consider factors without a nexus to the petitioner's motivations for seeking the juvenile court determinations.

(h) Consent and Role of the Child's Parent

Comment: Several commenters disagreed with language in the NPRM preamble that DHS may consider evidence of a parent or custodian's role in arranging for the petitioner to travel to the United States or to petition for SIJ classification as reason to suspect that the juvenile court order was sought primarily to obtain lawful immigration status. *See* 76 FR 54982. One commenter stated that punishing children for their parents' actions ignores the independent right of the child to receive relief, and it contravenes the purpose of the statute to protect vulnerable children. Several commenters said that the parent sending the child to the U.S. may have been to protect the child from the abuse, neglect, or abandonment of the other parent.

Response: It is a matter of State law as to if and how a parent's or custodian's role in arranging travel to the United States impacts a juvenile court's ability to issue a court order and make the required judicial determinations.[15] However, a petitioner must establish by a preponderance of the evidence that a primary reason they sought the juvenile court determinations was to obtain relief from parental maltreatment. *See* new 8 CFR 204.11(b)(5). As discussed, the final rule clarifies that USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification such that the record reflects that the request for SIJ classification was not bona fide. *Id.* This may include situations such as one in which a juvenile court relies upon a petitioner's statement, and/or other evidence in the underlying submission to the juvenile court, that the petitioner has not had contact with a parent in many years to make a determination that reunification with that parent is not viable due to abandonment, but USCIS has evidence that the petitioner was residing with that parent at the time the juvenile court order was issued. Such an inconsistency may show that the required juvenile court determinations were sought primarily to obtain an immigration benefit rather than relief from parental maltreatment. However, evidence that the petitioner sought the juvenile court determinations for both an immigration purpose and for relief from parental maltreatment would not alone result in a material conflict demonstrating that the request for SIJ classification was not bona fide. This reflects DHS' position that SIJ petitioners may have mixed motivations.

5. HHS Consent

Several commenters focused on the requirement of specific consent from HHS, including one commenter who generally supported DHS including specific consent from HHS in the rule. Based on TVPRA 2008 and the *Perez-Olano* Settlement Agreement, the proposed rule stated that an unaccompanied child in the custody of HHS is required to obtain specific consent from HHS to a juvenile court order that determines or alters their custody status or placement prior to filing a petition with USCIS.[16]

Comment: Five commenters thought that the proposed provision regarding juvenile court orders that ''alter'' the individual's custody status or placement went beyond what is required by the INA. INA section 101(a)(27)(J)(iii)(I), 8 U.S.C. 1101(a)(27)(J)(iii)(I), states that ''no juvenile court has jurisdiction to *determine* the custody status or placement of an alien in the custody of the Secretary of [HHS] unless the Secretary of [HHS] specifically consents to such jurisdiction'' (emphasis added).

Response: This regulation implements the limited circumstances under which USCIS requires evidence of HHS consent at new 8 CFR 204.11(d)(6). The language intentionally restricts the pool of children in HHS custody to whom the specific consent requirement applies, as was intended by both TVPRA 2008 and the subsequent *Perez-Olano* Settlement Agreement. *Perez-Olano, et al.* v. *Holder, et al.,* Case No. CV 05–3604 (C.D. Cal. 2010). Although the *Perez-Olano* Settlement Agreement indicated that HHS consent is required only if the juvenile court determines or alters the child's custody status or placement, in the final rule, DHS has removed ''determined'' and included ''altered'' only. New 8 CFR 204.11(d)(6)(ii). The final rule more accurately reflects the limited circumstances under which USCIS requires evidence of HHS consent as discussed at paragraphs 7 and 17 of the *Perez-Olano* Settlement Agreement. The Settlement Agreement clarifies that the HHS consent requirement is limited to where the juvenile court is changing the custodial placement of a petitioner in HHS custody. *See Perez-Olano, et al.* v. *Holder, et al.,* Case No. CV 05–3604 at ¶ 7 and 17 (C.D. Cal. 2010). This codifies and reflects long-standing policy, clarifying that those petitioners in HHS custody who receive juvenile court orders declaring them dependent on the court and restating their placement in ORR custody are not required to obtain HHS consent; only those petitioners in HHS custody who receive orders altering their custodial placements are required to obtain HHS consent.

Comment: Three commenters thought that the rule failed to clarify that a court exercising jurisdiction over a child in HHS custody and issuing an SIJ predicate order does not determine custody status or placement triggering the specific consent requirement. Another commenter thought this language was restrictive, limiting the pool of children in HHS custody to whom the specific consent requirement applies.

Response: DHS agrees that the court's determination of dependency or custody

[14] *Saravia* v. *Barr,* 3:17–cv–03615 (N.D. Cal. Jan. 14, 2021).

[15] The proposed rule cited to *Yeboah* v. *DOJ,* 345 F.3d 216 (3d Cir. 2003), which held, in part, that legacy INS acted within its discretion in considering evidence of the petitioner's relationship with his family and physical and mental condition in deciding whether to deny consent. *Yeboah* addressed the legacy INS's specific consent function for juveniles in INS custody, which has since been amended by the 2008 TVPRA.

[16] TVPRA 2008 vested responsibility for issuing specific consent for unaccompanied children in HHS custody with HHS, rather than DHS. It also simplified the consent language used to refer simply to ''custody'' rather than ''actual or constructive custody'' as the requirement was previously worded after its creation by the 1998 Appropriations Act. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act), Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997).

required for SIJ classification does not necessarily trigger the consent requirement. A child is required to obtain HHS consent only if they are in HHS custody and also want to have a state court, not HHS, decide to move them out of HHS custody or into a placement other than the one designated by HHS. In other words, HHS specific consent is not required if the juvenile court order simply restates the HHS placement. Ultimately, specific consent is a process conducted by HHS, not USCIS, which adjudicates petitions for SIJ classification. For DHS purposes, where HHS specific consent applies, the petitioner should present evidence of a grant by HHS of specific consent.

F. Petition Process

1. Required Evidence

Comment: One commenter said that USCIS should require the petitioner to provide evidence of the residence or location of their parent(s) or legal guardians if present in the United States, and that this information should be provided to the appropriate USCIS or U.S. Immigration and Customs Enforcement (ICE) district office, which should then collect a DNA sample from them. The commenter further asserted that the petition should not be deemed properly filed until this requirement is completed and stated that such a requirement would not require direct contact between a petitioner and alleged abuser.

Response: The commenter's request for additional required evidence and DNA submissions goes beyond the scope of the rulemaking and what is required by statute to implement the SIJ program. Furthermore, DHS is concerned that adding such a requirement may run afoul of the no contact provision prohibiting DHS from compelling petitioners to contact alleged abusers. *See* INA section 287(h), 8 U.S.C. 1357(h); *see also* new 8 CFR 204.11(e). For these reasons, DHS declines to incorporate this recommendation into the final rule.

2. No Contact

The proposed rule implemented the statutory requirement at INA section 287(h), 8 U.S.C. 1357(h), that prohibits USCIS from requiring that the petitioner contact the alleged abuser at any stage of the SIJ petition process. Ten commenters discussed issues relating to this aspect of the rule, seven of whom indicated general support for this provision.

Comment: Two commenters suggested expansions of the no contact provision. These commenters wrote that this protection should be extended to proceedings for other immigration benefits based upon SIJ classification, including LPR status and naturalization. These commenters further suggested that USCIS employees and officers be prohibited from contacting the petitioner's alleged abuser(s) during the same processes.

Response: The statutory protection applies to those seeking SIJ classification and states that such petitioners ''shall not be compelled to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status.'' INA section 287(h), 8 U.S.C. 1357(h). DHS has extended this provision to individuals seeking LPR status based upon SIJ classification, at new 8 CFR 245.1(e)(3)(vii), because SIJ classification and SIJ-based adjustment of status have historically been sought concurrently in certain circumstances. DHS appreciates the suggestion to extend this protection to the naturalization phase also; however, DHS proposed no changes to the eligibility and adjudication requirements for naturalization. Thus, that change is beyond the scope of this rulemaking.

With regard to the commenters' suggestion that DHS expand the prohibition against requiring contact with the abusers to DHS employees and officers, such an expansion is not within the scope of the law's prohibition intended to protect petitioners from having to contact their alleged abusers.

Comment: One commenter recommended that DHS modify the proposed regulatory text to mirror the statutory language at INA section 287(h), 8 U.S.C. 1357(h), which also includes individuals who battered, neglected, or abandoned the child in the categories of individuals that petitioners will not be compelled to contact. Another commenter supported expansion of the no contact provision to anyone who has abused the child, not just the abusive parent(s).

Response: DHS agrees with these commenters and has clarified that these prohibitions on compelling contact apply to individuals who abused, neglected, battered, or abandoned the child. *See* new 8 CFR 204.11(e) and 8 CFR 245.1(e)(3)(vii).

Comment: Five commenters suggested that the regulations should stress that evidence of the petitioner's ongoing contact with their parent(s) should not contradict the child's petition for SIJ classification. These commenters suggested that while contact cannot be required, it also cannot be held against the petitioner given the dynamics of abuse.

Response: DHS appreciates these thoughtful comments on the dynamics of relationships between abused children and their alleged abusers. However, DHS will not include information on the dynamics of children and their alleged abusers in regulation. USCIS may provide instructions on such issues in guidance to SIJ petition adjudicators.

Comment: One commenter requested that DHS add a statement that this prohibition on compelling contact with alleged abusers would not affect what juvenile courts do to ensure parental notice of court proceedings.

Response: While DHS agrees that this rule does not apply the no contact provision to juvenile court proceedings, directly advising juvenile courts on how to conduct State court proceedings is beyond the scope of this rulemaking and DHS authority.

3. Interview

Comment: There were a number of comments regarding the section of the proposed rule that provided for interviews of SIJ petitioners at USCIS discretion. *See* proposed 8 CFR 204.11(e), 76 FR 54986. Sixteen of those commenters suggested that USCIS should presumptively waive in-person interviews of SIJ petitioners, and twenty-four commenters indicated that USCIS officers should not ask the petitioner about abuse, neglect, or abandonment. Another commenter said that DHS should remove the clause ''as a matter of discretion'' as the SIJ adjudication is not a discretionary determination. These commenters expressed concerns that such questioning only would redo what the juvenile court has already done, that USCIS officers lack the required training for taking such testimony, and that it can retraumatize children. Several of these commenters recommended that USCIS establish procedures for its staff on how to create a nonthreatening interview environment and ensure that officers have appropriate training on interviewing vulnerable children, and one commenter suggested that DHS incorporate portions of the USCIS Policy Manual on SIJ interviews into the rule.

Response: Regulations on the processing and adjudication of immigration petitions apply to SIJ petitions, including the authority to interview anyone who files an immigration benefit request, at 8 CFR 103.2(b)(9). DHS is not changing the regulations on immigration interviews at 8 CFR 103.2(b)(9) via this rule and retains the discretion to interview an SIJ petitioner and grant or deny the SIJ

petition, consistent with the statute and this final rule. DHS disagrees that its interview process would redo what a juvenile court has already done, or that USCIS officers may ''lack the required training for taking such testimony,'' as DHS assesses whether to grant or deny an immigration benefit. DHS provides child interviewing guidelines to adjudication officers, and notes, as it did in the proposed rule, that USCIS seeks to establish a non-adversarial interview environment. DHS appreciates comments aimed at improving interviews of SIJ petitioners and will consider implementation of these comments through guidance and training.

Comment: While commenters expressed general support for allowing a trusted adult to be present at the interview, twenty-nine commenters expressed concerns with the provision that USCIS may place reasonable limits on the number of persons who may be present at the interview. These commenters suggested that USCIS should not retain the discretion to interview a child alone and cannot separate a petitioner from their attorney or accredited representative. Two commenters further stated that it is inappropriate to limit the child's representation by their attorney to a single statement or written comment in a USCIS interview and requested that proposed 8 CFR 204.11(e)(2), 76 FR 54986, be stricken.

Response: The proposed rule sought to recognize the unique vulnerability of SIJ petitioners by allowing SIJ petitioners to bring a trusted adult to the interview, in addition to the petitioner's attorney or legal representative. DHS did not intend to limit a petitioner's right to have their attorney or accredited representative present at the interview. The limitation on persons present at the interview was aimed at individuals other than the child's attorney or accredited representative. DHS has added clarifying language at new 8 CFR 204.11(f) indicating that USCIS will do nothing to inhibit the representation of a petitioner by an attorney or accredited representative. DHS also has not included the proposed provision regarding the attorney or representative statement in new 8 CFR 204.11(f).

Comment: Eight commenters opposed the provision at proposed 8 CFR 204.11(e)(2), 76 FR 54986, that a trusted adult could present a statement at the interview. These commenters expressed concerns that this would violate due process protections for the petitioner because an adult who is not an attorney or representative is not subject to any ethical rules or disciplinary action should they engage in misconduct. Furthermore, commenters asserted that it may be challenging for adjudicators to discern whether the child genuinely consented to the adult participating in their case, raising potential trafficking and abuse concerns.

Response: In response to comments, DHS removed the provision that the trusted adult can provide a statement at the interview. The removal of this language is not intended to mean that an attorney or accredited representative is not permitted to provide a statement; as addressed previously, DHS does not seek to inhibit the petitioner's representation by their attorney or representative. DHS will explore further clarifying the role of the trusted adult via guidance.

Comment: Eleven commenters said that USCIS should not question a petitioner about their criminal record in connection with the SIJ petition. One commenter requested clarification on what information USCIS looks at in regard to the criminal background of SIJ petitioners and at what phase in the process the inquiry occurs.

Response: The commentary on criminal record was part of the NPRM preamble, and not the proposed regulatory text. DHS agrees that review of the petitioner's criminal record should be conducted in connection with the adjustment of status application. The criminal record will be reviewed at the SIJ petition stage only as it relates to the eligibility requirements for SIJ classification. For example, if USCIS learns that a petitioner found dependent on the court pursuant to youthful offender proceedings was subsequently convicted of a crime as an adult, that element of the criminal record may be relevant to the petitioner's eligibility for the benefit if it results in a termination of the juvenile court dependency prior to the time of filing and/or adjudication. *See* new 8 CFR 204.11 (b)(4) and (c)(3)(ii). DHS applies the regulations at 8 CFR part 245 on the processing and adjudication of immigration applications for SIJ-based adjustment of status applications, including the regulations at 8 CFR part 245.6 on immigration interviews.

4. SIJ Petition Decision Timeframe Requirement

DHS proposed the 180-day timeframe for issuing SIJ petition decisions and explained when the period would start and stop. *See* 8 U.S.C. 1232(d)(2); proposed 8 CFR 204.11(h), 76 FR 54986. DHS noted that the 180-day timeframe relates only to the petition for SIJ classification and not to any concurrently filed, or later filed application for adjustment of status. DHS modeled the starting and pausing of the decision timeframe provisions on similar provisions at 8 CFR 103.2(b)(10)(i). A number of commenters discussed the timeframe for adjudication, with some expressing support for incorporating the 180-day timeframe from TVPRA 2008 and others asking DHS to reconsider whether the framing of the start and stop provisions in the proposed rule are legally permissible.

Comment: Twenty commenters asked DHS to reconsider whether under 8 U.S.C. 1232(d)(2), temporarily pausing or completely restarting the running of the 180-day timeframe is legally permissible. Five of the commenters said that the timeframe should be suspended only, not restarted, for requests for additional evidence or to reschedule an interview. Another five of the commenters thought that a request to bring information to an interview should not pause the running of the 180 days and said that it should be paused only on the date of the interview if the individual fails to present the requested documents, delaying the adjudication.

Response: Despite the confusion indicated by the comments, DHS did not intend to change the regulations at 8 CFR 103.2(b)(10)(i) regarding how the requests for additional or initial evidence or to reschedule an interview impact the timeframe imposed for processing SIJ petitions. DHS will follow the regular practices set out for all immigration petitions in 8 CFR 103.2(b)(10)(i) to ensure regulatory consistency and consistency in agency practice. To avoid confusion, DHS has removed language explaining the 180-day timeframe, pauses, and when it resumes, and refers to the regulations at 8 CFR 103.2(b)(10)(i). *See* new 8 CFR 204.11(g)(1).

In acknowledgement of the permanent injunction issued in *Moreno Galvez* v. *Cuccinelli,* No. 2:19–cv–321–RSL (W.D. Wash. Oct. 5, 2020) (concluding that all adjudications of SIJ petitions based on Washington State court orders must be completed within 180 days), *appeal docketed,* No. C19–0321–RSL (9th Cir. Dec. 4, 2020), DHS will not apply the timeframe for issuing SIJ decisions at new 8 CFR 204.11(g)(1) to SIJ petitions with Washington State orders. DHS retains its interpretation that the timeframe is not absolute, and though the court mandated compliance in Washington state, it acknowledged that:

When determining whether an agency has acted within ''a reasonable time'' for purposes of 5 U.S.C. 555(b), the timeline established by Congress serves as the frame of reference . . . Under governing

case law, that [180 day] deadline is not absolute, but it provides the frame of reference for determining what is reasonable.

Federal courts must ''defer to an agency's construction, even if it differs from what the court believes to be the best interpretation, if the particular statute is within the agency's jurisdiction to administer, the statute is ambiguous on the point at issue, and the agency's construction is reasonable.'' *Nat'l Cable & Telecommunications Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967, 969 (2005). While the statute states that all petitions for special immigrant juvenile classification under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the petition is filed, the processing of any immigration benefit request requires the submission and analysis of a substantial amount of information, opportunities for the petitioner to provide additional evidence to establish eligibility, and the vetting of SIJ petitions for which USCIS does not control the timing. The strict application of 8 U.S.C. 1232(d) to mean adjudicated to completion in 180 days regardless of follow up requests for evidence from petitioners and dependence on timely actions by the United States Postal Service (USPS), State courts, and other agencies, would mean that USCIS would be required to deny adjudications that are incomplete when the 180-day deadline arrives because USCIS cannot legally grant SIJ classification before eligibility is definitively determined. The statute prescribes no penalty if the 180 days are exceeded, and DHS cannot approve (and courts cannot order DHS to approve) petitioners who are not legally eligible. Further, DHS does not believe that Congress wanted denial of the petition before it is fully adjudicated to be the result of that requirement. Therefore, DHS interprets the term ''adjudicated'' in that provision to mean that the 180 days does not begin until the petition is complete, submitted with all of the required initial evidence as provided in the form instructions, and ready for adjudication. This interpretation is consistent with other, more recent, laws in which Congress has prescribed adjudication deadlines on USCIS. *See, e.g.,* Continuing Appropriations Act, 2021, Public Law 116–159, div. D, Title I, sec 4102(b)(2) (stating, ''The required processing timeframe for each of the applications and petitions described in paragraph (1) shall not commence until the date that all prerequisites for adjudication are received by the Secretary of Homeland Security.''). USCIS has extensive and lengthy experience and expertise in adjudicating SIJ cases as authorized by the statute, and interprets the ambiguity in 8 U.S.C. 1232(d)(2) based on this expertise, irrespective of the holding in *Moreno Galvez*. Thus, USCIS will continue to follow regular practices as set out for all immigration petitions at 8 CFR 103.2(b)(10)(i) for SIJ petitions that are not based on Washington State court orders, and will apply 8 CFR 103.2(b)(10)(i) to those based on Washington State court orders.[17]

Comment: Four commenters requested that USCIS not pause the 180-day timeframe for the SIJ petition when an RFE relates only to a pending application for adjustment of status.

Response: DHS agrees that an RFE that relates only to the application for adjustment, and not to the petition for SIJ classification, will not pause the 180-day timeframe for adjudication of the petition for SIJ classification and is incorporating this suggestion at new 8 CFR 204.11(g)(2). The 180-day timeframe relates only to the adjudication of the SIJ petition; therefore, RFEs, NOIDs, or requests unrelated to the SIJ petition do not impact the 180-day timeframe.

Comment: One commenter suggested that the 180-day adjudication timeframe should apply to the SIJ-based adjustment of status application as well.

Response: DHS declines to incorporate this recommendation because statutory language only provides for the 180-day timeframe to apply to petitions for SIJ classification, and not for SIJ-based adjustment of status. The law states that all applications for SIJ classification under section 101(a)(27)(J) of the INA, 8 U.S.C. 1101(a)(27)(J), must be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed. 8 U.S.C. 1232(d)(2). Further, the NPRM did not propose such a change and explicitly stated that ''USCIS interprets the 180-day timeframe to apply to adjudication of the Form I–360 petition for SIJ status only, and not to the Form I–485 application for adjustment of status.'' 76 FR 54983. Finally, the adjudication of the adjustment of status application is distinct from the adjudication of the petition for SIJ classification in that visa number availability may cause delays to the adjudication of the adjustment of status application. This is a variable outside of DHS' control that would potentially render a 180-day timeframe for adjustment applications impossible to adhere to in all cases.

Comment: One commenter suggested that the rule could be improved by creating a structured timeline to ensure that DHS adheres to the 180-day timeframe.

Response: DHS appreciates this comment aimed at ensuring the timely adjudication of SIJ petitions, but declines to impose detailed procedural steps, requirements, or information in its regulations. DHS will consider including additional guidelines regarding the timeframe for adjudications in subregulatory guidance.

5. Decision

Comment: Three commenters said that USCIS must provide notice to a petitioner that a denial is appealable to the AAO. They noted that the previous 8 CFR 204.11(e) states that petitioners will be notified of the right to appeal upon denial, whereas the proposed rule does not contain such a statement.

Response: DHS agrees that regulations on providing petitioners with notice of the right to appeal an adverse decision apply to SIJ petitioners. DHS has incorporated language clarifying that USCIS provides notice of the right to appeal to the petitioner at new 8 CFR 204.11(h), but notes that all petitioners are notified of their right to appeal in accordance with 8 CFR 103.3. DHS defers to the provisions at 8 CFR 103.3 and does not indicate the specific office to which the appeal must be submitted. This rule includes no procedural requirements, office names, locations, and responsibilities. Prescribing office names, filing locations, and jurisdictions via regulation is unnecessary and restricts USCIS' ability to vary work locations as necessary to address its workload needs and better utilize its resources.

G. No Parental Immigration Benefits Based on Special Immigrant Juvenile Classification

DHS proposed that parents of the individual seeking or granted SIJ classification cannot be accorded any right, privilege, or status under the INA by virtue of their parentage. *See* proposed 204.11(g), 76 FR 54986. DHS

[17] DHS has determined that this approach is a logical outgrowth of the proposed rule. DHS proposed its interpretation of the 180-day timeframe (76 FR at 54983), and clarifies in this final rule that it did not intend to change the regulations at 8 CFR 103.2(b)(10)(i) regarding how the requests for additional or initial evidence or to reschedule an interview impact the timeframe imposed for processing SIJ petitions. Though USCIS considered the reasoning in the injunction, the *Moreno Galvez* order has not changed the Agency's ultimate decision to finalize its proposal.

received several comments related to this requirement.

Comment: Two commenters indicated general support for preventing a parent from gaining lawful status through an individual classified as an SIJ. One commenter requested clarification as to whether the parent of a petitioner can obtain lawful status by other means. Another commenter asked DHS to revisit its interpretation that this provision means that any parent (even a non-abusive parent) cannot gain lawful status through the individual granted SIJ classification, regardless of whether the individual goes on to receive LPR status or even United States citizenship. The commenter asked DHS to allow a custodial non-abusive parent to receive status under INA where the hardship to the parent-child familial relationship is one of the elements for the relief sought by the custodial non-abusive parent. The commenter noted that under DHS's interpretation, an individual classified as an SIJ because of a history of abuse, neglect, or abandonment by one parent would potentially lose the protective parent's care and custody if the parent were removed from the United States and was not eligible for any relief based on the parent-child relationship.

Response: While DHS appreciates the comments and acknowledges the vulnerability of a child with SIJ classification, DHS believes it fully explained the statutory limitations in the proposed rule and will make no changes to this provision. DHS notes that the statute states ''no natural parent or prior adoptive parent of any alien provided special immigrant juvenile status . . . shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.'' INA section 101(a)(27)(J)(iii)(II), 8 U.S.C. 1101(a)(27)(J)(iii)(II). At the time this language was created in the 1998 Appropriations Act, eligibility did not apply to ''one-parent'' SIJ cases. TVPRA 2008 changed that by adding the language regarding the nonviability of reunification with one or both parents. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). However, as noted in the proposed rule, Congress made no changes to the section on parental rights under the INA. The statute is clear that no parent can receive any right under the INA based on the parent-child relationship. The change suggested by the commenter would require legislation, and therefore, DHS cannot make this change in a rulemaking. DHS notes that a parent may qualify for forms of relief that are not based on the parent-child relationship.

Comment: One commenter suggested that USCIS should take steps to ensure that parents who have been found by a juvenile court to be abusive are referred to ICE for additional screening for removability based on that abuse. The commenter stated that for example, ICE should determine whether the parent's conduct constituted an aggravated felony, moral turpitude, or abuse under the Adam Walsh Act, and if probable cause is found, file a Notice to Appear (NTA) with the immigration court.

Response: USCIS is in the process of publishing updated guidance for referring cases to ICE and issuing NTAs, which will be controlling. This guidance is not required to be codifed in regulations. Therefore, DHS will not incorporate the suggestion in the final rule.

Comment: Several commenters noted that the paragraph heading of proposed 8 CFR 204.11(g), ''No parental rights,'' is misleading and asked DHS to clarify that INA does not require the termination of parent rights as a prerequisite for SIJ classification.

Response: DHS agrees with these commenters and has changed the paragraph headings in this rulemaking to ''No parental immigration rights based on special immigrant juvenile classification.'' at new 8 CFR 204.11(i) and 245.1(e)(3)(vi), respectively. In addition, DHS added language that termination of parental rights is not required for a qualifying parental reunification determination at new 8 CFR 204.11(c)(1)(ii).

H. Revocation

The proposed rule discussed amending the grounds for revocation of the underlying SIJ classification while an adjustment of status application is pending based on the legislative changes to the SIJ eligibility requirements. DHS received many comments relating to the various revocation grounds. Some of these comments indicated general support for changing the revocation grounds. These commenters noted their support in particular for removing the revocation grounds based on the petitioner's age, court dependency status, and long-term foster care eligibility. Because there were many comments relating to revocation, DHS is including the following table summarizing the automatic revocation grounds under this final rule:

TABLE 3—AUTOMATIC REVOCATION GROUNDS IN THIS FINAL RULE *

Revocation ground	Corresponding regulatory cite
By virtue of a court order, the individual reunifies with a maltreating parent named in the original court order that found reunification with that parent not viable.	8 CFR 204.11(j)(1)(i).
There is a determination in administrative or judicial proceedings that it is in the individual's best interest to be returned to the country of nationality or last habitual residence of the petitioner or their parent(s).	8 CFR 204.11(j)(1)(ii).

* If any of the following revocation grounds arise after USCIS has approved an SIJ petition but prior to granting of adjustment of status to lawful permanent resident, then USCIS will revoke the SIJ classification.

Regulations on revocation upon notice also apply to SIJ petitions. 8 CFR 205.2. DHS did not specifically discuss revocation upon notice in the proposed rule because it is not changing those regulations, which already apply to SIJ petitions, via this rule. To ensure the public understands the various applicable revocation provisions, DHS added language that USCIS may revoke an approved SIJ petition upon notice at new 204.11(j)(2).

1. Revocation Based on Reunification With a Parent

Comment: Several commenters wrote that the rule should provide more clarity that DHS will not revoke SIJ classification if an individual reunifies with a non-abusive parent. A few of the commenters stated that DHS should not revoke SIJ classification because of reunification with one or both parents when a court had previously found that reunification was not a viable option. The commenters stated that revocation in that case was contrary to the language and purpose of TVPRA 2008. The commenters noted that INA does not require that reunification with a parent never be an option for the individual. These commenters thought revoking the SIJ classification on this ground would punish the individual and work against the permanency goals of the child welfare system.

Response: DHS believes that it is a reasonable interpretation to allow for revocation where the SIJ reunifies with the maltreating parent by virtue of a juvenile court order, as the goal of SIJ classification is relief from parental maltreatment by according them a legal immigration status. When a child can be reunified with their maltreating parent, there is no need for SIJ classification. DHS notes that this automatic revocation ground is limited to cases where a juvenile court order brings about the reunification or reverses the previous nonviability of parental reunification determination. USCIS will not revoke the SIJ classification where the individual reunites with a non-maltreating parent. Automatic revocation based on reunification with a parent is only possible under this rulemaking where the individual reunifies with the maltreating parent named in the court order.

2. Implementation of Changes to the Revocation Grounds

Comment: Two commenters requested that DHS remove the ground for revocation upon the marriage of the approved SIJ from the previous regulation. One commenter wrote that an SIJ petitioner should not be required to stay unmarried, subject to automatic revocation, during the period in which USCIS is adjudicating adjustment of status. This commenter wrote that requiring a young adult to remain unmarried while waiting for a visa number to become available and for USCIS to process their application is an undue burden and reaches beyond the statute. Another commenter opined that marital status at the time of adjudication should not trigger automatic revocation of a petition unless marriage directly affected the dependency status of the petitioner.

Response: DHS agrees with the commenters and has removed marriage of the SIJ beneficiary as a basis for automatic revocation, amending its prior interpretation of INA 245(h). INA 245(h); 8 U.S.C. 1255(h) explicitly references ''a special immigrant described in section 1101(a)(27)(J) of this title''. Although the SIJ definition at section 1101(a)(27)(J) did not use the term child, USCIS incorporated the child definition at INA 101(b)(1) into the regulations. However, DHS recognizes that its prior interpretation has led to certain noncitizens with SIJ classification remaining unable to marry for years, just to maintain eligibility for adjustment. This is due to the prolonged wait times for visa number availability in the EB–4 category for noncitizens of certain countries, a consequence that was not envisioned when the original regulations were promulgated in 1993. Accordingly, DHS is removing marriage of the SIJ beneficiary as a basis for automatic revocation. DHS will maintain its long-standing regulatory requirement, consistent with Congress' use of the term ''child'' in the ''Transition Rule'' provision at section 235(d)(6) of the TVPRA 2008, that a petitioner must be under 21 years of age and unmarried at the time of filing the SIJ petition. New 8 CFR 204.11(b)(2). *See* TVPRA 2008, section 235(d)(6), Public Law 110–457, 122 Stat. 5044, 5080 (providing age-out protections for juveniles who are unmarried and under the age of 21 when their petitions are filed).

Comment: One commenter requested that DHS clarify that USCIS cannot issue notices of intent to revoke (NOIRs) or revocations based on regulations, policy, or practice not in effect when the SIJ petition was approved.

Response: DHS is not adding grounds for revocation, but we are codifying changes required by TVPRA 2008, which we have been following in our current and long-standing practice. Accordingly, DHS can issue NOIRs and revocations based on this regulation, consistent with the relevant statutes. As proposed, DHS has altered this provision consistent with TVPRA 2008 section 235(d)(6), the ''Transition Rule'' provision, which provides that DHS cannot deny SIJ classification based on age if the noncitizen was a child on the date on which the noncitizen filed the petition. As required by this statutory change, DHS has removed revocation grounds based on the petitioner's age and court dependency status. DHS also has removed the revocation ground based on a termination of the SIJ beneficiary's eligibility for long-term foster care as this is no longer a requirement under INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J). DHS is modifying the regulation in this rule to reflect INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i), to require automatic revocation of an approved SIJ petition if a court orders reunification with the SIJ beneficiary's maltreating parent(s). However, DHS agrees that USCIS may only revoke SIJ classification, or any other immigration benefit, based on the requirements in place at the time of adjudication.

I. Adjustment of Status to Lawful Permanent Resident (Adjustment of Status)

1. Eligibility

Comment: Several comments indicated that the proposed rule conflated eligibility standards for SIJ classification and for SIJ-based adjustment.

Response: In response to these comments, DHS segregated the standards for SIJ-based adjustment at 8 CFR 245.1(e)(3). DHS also has added clarifying language on eligibility for SIJ-based adjustment of status at 8 CFR 245.1(e)(3)(i).

Comment: Two commenters said that DHS was not clear whether an individual must file for adjustment of status while under 21 years of age.

Response: An individual does not have to meet an age requirement to qualify for adjustment of status based on SIJ classification. Petitioners do not need to remain under 21 years of age at the time of adjudication of the petition, and therefore would not need to be under 21 years of age at the time of SIJ-based adjustment of status. DHS also has removed the age-related automatic revocation ground.

2. Inadmissibility

The TVPRA 2008 amendments to INA section 245(h)(2)(A) included additional grounds of inadmissibility from which SIJ adjustment of status applicants are exempt. The exempted grounds of inadmissibility for SIJ applicants now include: Public charge at INA section 212(a)(4), 8 U.S.C. 1182(a)(4); labor certification at INA section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A); aliens present without admission or parole at INA section 212(a)(6)(A), 8 U.S.C. 1182(a)(6)(A); misrepresentation at INA section 212(a)(6)(C), 8 U.S.C. 1182(a)(6)(C); stowaways at INA section 212(a)(6)(D), 8 U.S.C. 1182(a)(6)(D); documentation requirements for immigrants at INA section 212(a)(7)(A), 8 U.S.C. 1182(a)(7)(A); and aliens unlawfully present at INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B).

An SIJ applicant for adjustment of status may apply for a waiver pursuant to INA section 245(h)(2)(B), 8 U.S.C. 1255(h)(2)(B), for certain grounds of inadmissibility. The following grounds of inadmissibility cannot be waived under INA section 245(h)(2)(B): Conviction of certain crimes at INA section 212(a)(2)(A), 8 U.S.C. 1182(a)(2)(A) (except for a single offense of simple possession of 30 grams or less of marijuana); multiple criminal convictions at INA section 212(a)(2)(B), 8 U.S.C. 1182(a)(2)(B) (except for a single offense of simple possession of 30 grams or less of marijuana); controlled substance traffickers at INA section 212(a)(2)(C), 8 U.S.C. 1182(a)(2)(C) (except for a single offense of simple possession of 30 grams or less of marijuana); security and related grounds

at INA section 212(a)(3)(A), 8 U.S.C. 1182(a)(3)(A); terrorist activities at INA section 212(a)(3)(B), 8 U.S.C. 1182(a)(3)(B); foreign policy at INA section 212(a)(3)(C), 8 U.S.C. 1182(a)(3)(C); and participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing at INA section 212(a)(3)(E), 8 U.S.C. 1182(a)(3)(E).

Comment: Fifteen commenters wrote that DHS cannot prohibit SIJ petitioners from seeking waivers of grounds of inadmissibility to which petitioners may qualify if otherwise eligible. Commenters wrote that pursuant to INA section 212, 8 U.S.C. 1182, an applicant classified as an SIJ may apply for a waiver for any applicable ground of inadmissibility for which a waiver is available. The commenters stated that while certain grounds of inadmissibility cannot be waived under INA section 245(h)(2)(B), 8 U.S.C. 1255(h)(2)(B), they can be waived under other waiver provisions of the INA, such as INA section 212(h). These commenters wrote that they support the need for additional language on how inadmissibility provisions apply to SIJ petitioners. Another four commenters wrote that they support DHS in including the expanded statutory exemptions from certain inadmissibility grounds.

Response: DHS will implement the expanded statutory exceptions from certain inadmissibility grounds without further change at new 8 CFR 245.1(e)(3)(iii). DHS also has clarified how inadmissibility provisions, bars, and waivers apply to SIJs in this rule. *See* new 8 CFR 245.1(e)(3)(ii) through (v). Specifically, DHS provides that an applicant seeking to adjust status to LPR status based on their classification as an SIJ may be eligible for a waiver for humanitarian purposes, family unity, or when it is otherwise in the public interest pursuant to INA section 245(h)(2)(B), 8 U.S.C. 1255(h)(2)(B). DHS agrees with the commenters that INA section 245(h)(2)(B) does not make certain grounds of inadmissibility unwaivable for SIJs, it only limits the grounds for which such a waiver is available. Nothing in the final rule should be construed to bar an applicant classified as an SIJ from a waiver for which the applicant may be eligible pursuant to INA section 212.

In addition, DHS provides that the only relevant adjustment of status bar that may apply to an SIJ adjustment applicant would be the bar from adjustment if deportable due to engagement in terrorist activity or association with terrorist organizations (INA section 237(a)(4)(B), 8 U.S.C. 1227(a)(4)(B)). *See* new 8 CFR 245.1(e)(3)(ii). For the limited purposes of INA section 245(a), SIJ applicants for adjustment will be deemed to have been paroled into the United States. SIJ applicants for adjustment are not subject to the bars at section 245(c)(2) of the INA that prevent anyone who has accepted unauthorized employment, failed to maintain status, or is in unlawful status at time of filing for adjustment from adjusting status. Applicants who are exempted from the bars at INA section 245(c)(2) also are not barred under INA section 245(c)(7) and (8). Because additional bars to adjustment at INA section 245(c)(1), (3), (4), and (5) only apply to applicants who have been or were otherwise admitted to the United States in a particular status, and SIJs are deemed parolees for the limited purpose of adjustment of status, the only relevant adjustment of status bar that may apply to an SIJ adjustment applicant would be that of being deportable due to engagement in terrorist activity or association with terrorist organizations. INA section 245(c)(6), 8 U.S.C. 1255(c)(6); INA section 237(a)(4)(B), 8 U.S.C. 1227(a)(4)(B).

Comment: Two commenters said that in the event that SIJ petitioners enter the United States without inspection, admittance, or parole, they should first have to re-enter the United States in order to seek adjustment.

Response: Pursuant to INA section 245(h)(1), 8 U.S.C. 1255(h)(1), SIJs are deemed to have been paroled for the limited purpose of adjustment to LPR status. DHS is therefore unable to alter this requirement via this rulemaking as the commenter suggests.

3. No Parental Immigration Rights Based on SIJ Classification

In response to comments stating that DHS conflated the standards for SIJ classification and for SIJ-based adjustment of status in the proposed rule, in the final rule, DHS has separated the standards that relate to SIJ-based adjustment of status into 8 CFR 245.1(e)(3). Because it also applies at the adjustment of status phase, DHS has added the prohibition on parental immigration benefits at 8 CFR 245.1(e)(3)(vi). The language is similar to that used in 8 CFR 204.11(i), for which the DHS position is fully discussed in Section I.D.10 above.

4. No Contact

Comment: Several commenters suggested that DHS extend the prohibition on compelling SIJ petitioners to contact their alleged abuser(s) to subsequent SIJ-related proceedings, including adjustment of status based on approved SIJ classification.

Response: Because SIJ petitions and SIJ-based adjustment of status applications may be filed concurrently, DHS agrees that it is reasonable to extend this prohibition to the adjustment of status phase. DHS implements this prohibition at new 8 CFR 245.1(e)(3)(vii).

5. Other Comments Related to Adjustment of Status

Comment: One commenter said that because SIJs are exempt from the public charge inadmissibility ground, USCIS should exempt SIJs from having to pay a fee for filing the adjustment of status application.

Response: DHS did not propose a change related to exempting SIJs from the Form I–485 fee and declines to include the commenters' suggestion in this final rule. Nevertheless, the fee for an SIJ-based adjustment of status application may be waived on a per case basis.

Comment: Three commenters stated that DHS should create a process for approved SIJs awaiting adjustment to receive deferred action and work authorization to ensure that vulnerable children's rights are being adequately protected.

Response: DHS did not propose to codify regulations that provide for a grant of deferred action and work authorization while the SIJ's Form I–485 is pending, and we are declining to create a deferred action process for approved SIJs awaiting adjustment in this final rule. Deferred action (DA) is a longstanding practice by which DHS may exercise discretion to forbear or assign lower priority to removal action in certain cases for humanitarian reasons, administrative convenience, or in the interest of the Department's overall enforcement mission. DHS may grant DA to individuals with SIJ classification, as in all DA determinations, through an individualized, case-by-case, discretionary determination based on the totality of the evidence. DA is generally not an immigration benefit or program as those terms are known. If DHS decides to implement a DA process, it may be implemented via policy guidance using DHS' inherent authority to exercise DA without rulemaking. Thus DHS is not including DA in this final rule.

Comment: One commenter said that DHS should promulgate a regulation authorizing administrative closure of removal proceedings for cases when a Form I–360 has been approved, but a

visa number is not yet available for adjustment.

Response: The commenter's request is beyond the scope of this rulemaking. DHS is unable to promulgate regulations authorizing administrative closure of removal proceedings as removal proceedings are under the sole purview of the U.S. Department of Justice.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if a regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB), has designated this final rule a significant regulatory action though it is not an economically significant rule since it fails to meet the $100 million threshold under section 3(f)(1) of E.O.12866. Accordingly, OIRA has reviewed this regulation.

1. Background and Summary

As discussed in the preamble, DHS is amending its regulations governing the SIJ classification under INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J), and related applications for adjustment of status to that of a lawful permanent resident under INA section 245(h), 8 U.S.C. 1255(h). Specifically, this rule revises DHS regulations at 8 CFR 204.11, 205.1, and 245.1 to reflect statutory changes, modify certain provisions, codify existing policies, and clarify eligibility requirements.

The statutory foundation for SIJ classification as administered by USCIS has changed over time. The previous CFR provisions on SIJ petition filing requirements and procedures are incongruent with the several legislative changes enacted by Congress since the issuance of the final SIJ rule in 1993.[18] In this final rule, DHS is incorporating these statutorily mandated changes and codifying its long-standing policies and practices already in place.

The provisions of the final rule subject to this regulatory impact analysis are examined against two baselines: (1) The pre statutory baseline; and (2) the no action baseline. The pre statutory baseline evaluates the clarifications in petitioners' eligibility made by TVPRA 2008. In analyzing each provision, DHS finds that these clarificatory changes have no quantifiable impact on eligibility under the pre statutory baseline. Stated alternatively, in the absence of the TVPRA 2008 provisions analyzed in the Sections (a) through (m) that follow, DHS has no evidence suggesting SIJ trends would have behaved differently in the intervening years. Consequently, this analysis focuses mainly on the no action baseline and those regulatory provisions affecting the petitioning-adjudicating process and then analyzes the historical growth of demand for and grants of SIJ classification in order to assess the benefits and costs accruing to each stakeholder. Table 4 summarizes the final provisions of this rule with an economic impact.

The final rule will impose costs on a group of petitioners who will now be eligible to submit Form I–601, Form I–485 and Form I–765 once they already have an approved Form I–360 under the no action baseline. This final rule will allow SIJ beneficiaries who get married prior to applying for LPR status to remain eligible to obtain permanent residence. This rule will also allow SIJ beneficiaries who have simple possession offenses to be eligible for Form I–601 if inadmissible under any of the provisions listed at INA section 212(a)(2), 8 U.S.C. 1182(a)(2). DHS assumes that every petitioner who will not have their SIJ classification revoked because of marriage will file Form I–485 which will lead to new costs (and benefits) to those petitioners.

The final rule may impose costs of providing evidence regarding a State court determination. The changes in this final rule will not add additional costs or benefits to Form I–360 petitioners currently petitioning for SIJ classification under the no action baseline, however impacts will be discussed in the pre statutory baseline discussion. The changes in this final rule will codify statutory changes into regulation, modify certain provisions, codify existing policies, clarify eligibility requirements, and will not impact children applying for SIJ classification. DHS has required this additional evidence since the TVPRA 2008. Due to data limitations that preclude identification of the unrelated factors that explain the changes in the volume of petitioners observed over time, DHS is limited in its assessment of Form I–360 data.

The primary benefit of the rule to USCIS is greater consistency with statutory intent, and efficiency. The eligibility provisions offer an increased protection and quality of life for petitioners. By allowing reunification with non-abusive parents, the rule serves the child welfare goal of family permanency. By clarifying the requirements for qualifying juvenile court orders, the regulation will not require petitioners to provide evidence of the juvenile court's continuing jurisdiction in certain circumstances, such as when a child welfare permanency goal is reached, such as adoption. *See* new 8 CFR 204.11(c)(3)(ii)(A). The procedural changes to 8 CFR 204.11 to provide a timeframe for the adjudication process both clarify the requirements for petitioning for SIJ classification (streamlining consent, explaining documentation, outlining the interview, setting timeframe) and reduce the hurdles to successfully adjusting to LPR status once SIJ classification has been granted (incorporating expanded grounds for waivers of inadmissibility). Further, the rule centralizes and makes explicit the barriers from contact with alleged abusers to which the petitioner is entitled. Another benefit is that SIJ beneficiaries who marry prior to applying for LPR will also benefit from no longer having their SIJ classification revoked.

DHS estimates the total quantified costs of the rule to reflect the total cost to file Form I–485 for SIJ beneficiaries who marry prior to applying for LPR and SIJ beneficiaries to file Form I–601 who have simple possession offenses prior to applying for LPR, and may qualify for a waiver to an inadmissibility ground under INA section 212(a)(2), 8 U.S.C. 1182(a)(2).

For the 10-year implementation period of the rule, DHS estimates the annualized costs of this rule will be $34,871 annualized at 3-percent and 7-percent under the no action baseline. The total cost to petitioners in the pre statutory baseline ranges from a minimum of $236,845[19] in FY 2008 to

[18] *See* Table 1, Summary of Statutory Amendments to SIJ Classification, for a list of all legislation impacting the statutory requirements of SIJ.

[19] Total Cost in 2008 ($1,708) + Total Cost for In-house Attorney in 2008 ($235,137) = $236,845 minimum cost in 2008.

[20] Total Cost in 2017 ($33,099) + Total Cost for Outsourced Attorney in 2017 ($7,901,271) = $7,934,370 maximum cost in 2017.

a maximum of $7,934,370 [20] in FY 2017. Table 4 provides a more detailed summary of the final rule provisions and their economic impacts under the no action baseline.

TABLE 4—SUMMARY OF MAJOR PROVISIONS AND IMPACTS BASED ON THE NO ACTION BASELINE

Final rule provisions	Purpose	Estimated benefits of the provision	Estimated costs of the provision

1. Inadmissibility Provisions:
• An applicant for adjustment of status based on special immigrant juvenile classification is not subject to the following inadmissibility grounds:
  • (A) Public charge (INA section 212(a)(4));
  • (B) Labor certification (INA section 212(a)(5)(A));
  • (C) Noncitizens present without admission or parole (INA section 212(a)(6)(A));
  • (D) Misrepresentation (INA section 212(a)(6)(C));
  • (E) Stowaways (INA section 212(a)(6)(D));
  • (F) Documentation requirements for immigrants (INA section 212(a)(7)(A)); and
  • (G) Noncitizens unlawfully present (INA section 212(a)(9)(B)).
	• Amend 8 CFR 204.11 to promote consistency with The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110–457, 112 Stat. 5044 (Dec. 23, 2008).	• SIJ beneficiaries who file Form I–601 who have simple possession offenses prior to applying for LPR, and may qualify for a waiver to an inadmissibility ground under INA section 212(a)(2), 8 U.S.C. 1182(a)(2).
		• This modification may allow SIJs with a simple possession offense, the chance to remain eligible for lawful permanent residence.
			• DHS estimates the quantified costs of the provision rule to be approximately $4,791 which reflects the total cost for SIJ beneficiaries to file Form I–601 who have simple possession offenses prior to applying for LPR, and may qualify for a waiver to an inadmissibility ground under INA section 212(a)(2), 8 U.S.C. 1182(a)(2).

2. Marriage as a Ground for Automatic Revocation: • DHS has removed marriage of the SIJ beneficiary as a basis for automatic revocation, amending its prior interpretation of INA 245(h). INA 245(h); 8 U.S.C. 1255(h) explicitly references ''a special immigrant described in section 1101(a)(27)(J) of this title''. Although the SIJ definition at section 1101(a)(27)(J) did not use the term child, USCIS incorporated the child definition at INA 101(b)(1) into the regulations.	• DHS is removing marriage of the SIJ beneficiary as a basis for automatic revocation. DHS will maintain its long-standing regulatory requirement, consistent with Congress' use of the term ''child'' in the ''Transition Rule'' provision at section 235(d)(6) of the TVPRA 2008, that a petitioner must be under 21 years of age and unmarried at the time of filing the SIJ petition. • New 8 CFR 204.11(b)(2). See TVPRA 2008, section 235(d)(6), Public Law 110–457, 122 Stat. 5044, 5080 (providing age-out protections for juveniles who are unmarried and under the age of 21 when their petitions are filed).	• SIJ beneficiaries will no longer be subject to automatic revocation of their approved SIJ petition if they marry.	• DHS estimates total annual quantified costs of approximately $30,080 to which reflects the total cost of SIJ beneficiaries who file Form I–485 and, who marry prior to applying for LPR.

In addition to the impacts summarized above, and as required by the OMB Circular A–4,[21] Table 5 presents the prepared accounting statement showing the costs and benefits associated with this regulation. as required by OMB Circular A–4.

TABLE 5—OMB A–4 ACCOUNTING STATEMENT FOR NO ACTION BASELINE

[$ millions, FY 2020—time period: FY 2022 through FY 2031]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation
BENEFITS				
Monetized Benefits	N/A			Regulatory Impact Analysis (''RIA'').
Annualized quantified, but un-monetized, benefits	N/A			RIA.
Unquantified Benefits	The eligibility provisions offer an increased protection and quality of life for petitioners. By allowing reunification with non-abusive parents, the rule serves the child welfare goal of family permanency. By clarifying the requirements for qualifying juvenile court orders, the regulation will not require petitioners to provide evidence of the juvenile court's continuing jurisdiction in certain circumstances, such as when a child welfare permanency goal is reached (e.g., adoption). See new 8 CFR 204.11(c)(3)(ii)(A). DHS has removed marriage of the SIJ beneficiary as a basis for automatic revocation. This change is a benefit to petitioners, so they can remain eligible for lawful permanent residence and do not have to put marriage on hold.			RIA.

[19] Total Cost in 2008 ($1,708) + Total Cost for In-house Attorney in 2008 ($235,137) = $236,845 minimum cost in 2008.

[20] Total Cost in 2017 ($33,099) + Total Cost for Outsourced Attorney in 2017 ($7,901,271) = $7,934,370 maximum cost in 2017.

TABLE 5—OMB A–4 ACCOUNTING STATEMENT FOR NO ACTION BASELINE—Continued
[$ millions, FY 2020—time period: FY 2022 through FY 2031]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation
	The procedural changes to 8 CFR 204.11 to provide a timeframe for the adjudication process both clarify the requirements for petitioning for SIJ classification (streamlining consent, explaining documentation, outlining the interview, setting timeframe) and reduce the hurdles to successfully adjusting to LPR status once SIJ classification has been granted (incorporating expanded grounds for waivers of inadmissibility). Further, the rule centralizes and makes explicit the barriers from contact with alleged abusers to which the petitioner is entitled, promoting peace of mind. DHS has also expanded application of the simple possession exception to certain grounds of inadmissibility under the INA. This modification may allow SIJ-classified individuals to remain eligible for lawful permanent residence.			
COSTS				
Annualized monetized costs (7%)	$0.03	N/A	N/A	RIA.
Annualized monetized costs (3%)	$0.03	N/A	N/A	
Annualized quantified, but un-monetized, costs	N/A			
Qualitative (unquantified) costs	N/A			RIA.
TRANSFERS				
Annualized monetized transfers: "on budget"	N/A			
From whom to whom?	N/A			
Annualized monetized transfers: "off-budget"	N/A			
From whom to whom?				
Miscellaneous analyses/category	Effects			Source citation
Effects on State, local, or tribal governments	None			RIA.
Effects on small businesses	None			RIA.
Effects on wages	None			None.
Effects on growth	None			None.

2. Provisions of the Rule and Impacts

Congress introduced SIJ classification in the INA as a means of providing lawful permanent residence to juvenile noncitizens in need of state intervention from parental maltreatment.[22] As stated earlier, the provisions subject to this impact analysis either clarify a petitioner's eligibility or alter the eligibility of SIJ beneficiaries who marry prior to applying for LPR. Following careful consideration of public comments received and relevant data provided by stakeholders, DHS has made several changes from the NPRM. The NPRM[23] stated that the fee impacts of this rule on each SIJ petitioner as well as on USCIS were neutral. In the NPRM, USCIS estimated that filings for SIJ classification will continue at about the same volume as they had in the relatively recent past. Based on public comments, DHS took a more in depth look at the costs and benefits, in this final rule. DHS has made several changes from the NPRM, outlined in Section I. D. above, which have resulted in costs to the petitioners for certain SIJ populations.

(a) Requirements at Time of Filing and Adjudication

The final rule will continue to require a petitioner seeking SIJ classification to be under 21 years of age at the time of filing the petition and unmarried at the time of filing. Clarifying language will specify that an SIJ petitioner is required to remain unmarried at the time their petition is adjudicated, and physically present in the United States at the time of filing and adjudication. The requirement that the petitioner be under the age of 21 at the time of filing the petition, rather than at the time of adjudication, reflects protections against aging out of eligibility for SIJ classification as promulgated by TVPRA 2008. DHS estimates no impacts from this regulatory change, in this final rule.

(b) DHS Consent

The original statute for SIJ classification did not include a consent function, and therefore it was not in the previous regulation. As discussed in the above responses to public comments, DHS consent was first incorporated into the SIJ statute through amendments to the statute from the 1998 Appropriations Act. In 2008 the TVPRA further modified the consent function to require that a petitioner obtain DHS consent to the grant of SIJ classification. The DHS consent authority is delegated to USCIS, and USCIS approval of the petition constitutes the granting of consent. For USCIS to consent, petitioners are required to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law.

The final rule includes evidentiary requirements for DHS consent. To receive DHS consent, the court order and any supplemental evidence submitted by the petitioner must include the following: The court-ordered relief from parental abuse, neglect, abandonment, or a similar basis under State law granted by the juvenile court, and the factual basis for the juvenile court's determinations. Consent is provided by approval of the petition, signifying that the Secretary of Homeland Security consents to granting the SIJ classification. *See* new 8 CFR

[22] Noncitizens may file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360) for SIJ classification, and if a visa number is available, they may file an Application to Register Permanent Residence or Adjust Status (Form I–485) to become a lawful permanent resident (LPR). Note that a grant of SIJ classification does not guarantee permanent resident status.

[23] See USCIS, ''Special Immigrant Juvenile Petitions,'' Proposed Rule, 76 FR 54978, 54984–95 (Sep. 6, 2011).

204.11(b)(5). This additional evidence has been collected since TVPRA 2008. Because of this DHS only estimates this regulatory change, in this final rule in the pre statutory baseline.

(c) Qualifying Juvenile Court Orders

Under the initial SIJ statute, a noncitizen child was eligible for SIJ classification if he or she had been declared dependent on a juvenile court located in the United States and deemed eligible by that court for long-term foster care. As discussed earlier in the preamble, several statutory changes modified the requirements for SIJ eligibility, including the requirements for qualifying juvenile court orders. Reflecting these changes, the final rule requires a petitioner to obtain qualifying juvenile court determinations regarding dependency or custody, parental reunification, and best interests. Any juvenile court order(s) is required to meet certain validity requirements, including that it may be valid at the time of filing and adjudication, unless either of two exceptions apply. The first exception is for petitioners who, because of their age, no longer have a valid juvenile court order either prior to or subsequent to filing the SIJ petition. *See* new 8 CFR 204.11(c)(3)(ii)(B). The second is an exception that allows petitioners to remain eligible for SIJ classification if juvenile court jurisdiction terminated because adoption, placement in permanent guardianship, or another type of child welfare permanency goal (other than reunification with the offending parent) was reached. *See* new 8 CFR 204.11(c)(3)(ii)(A). These changes reflect the statutory amendments from TVPRA 2008 and are consistent with Congress's purpose to protect children from parental maltreatment. Because of this, DHS only estimates the impact of this regulatory change, in this final rule in the pre statutory baseline.

(d) Dependency or Custody

In order to receive a qualifying court-ordered juvenile dependency or custody determination, the petitioner must be declared dependent upon a juvenile court, or a juvenile court must have placed the petitioner in the custody of a State agency or department, or an individual or entity appointed by the State or juvenile court.

A child may become subject to the jurisdiction of a State court through various iterations of custody or dependency, such as foster care, guardianship, adoption, or custody.[24] Under the previous rule, children were required to be found dependent on the juvenile court and eligible for long-term foster care. The final rule gives deference to State courts on their determinations of custody or dependency under State law.

Language in previous 8 CFR 204.11(c)(4) states that a petitioner is required to be deemed ''eligible for long-term foster care''. The TVPRA 2008 removed the requirement that petitioners be deemed eligible for long-term foster care, reflecting a shift in the child welfare system away from long-term foster care as a permanent option for children in need of protection from parental maltreatment. TVPRA 2008 expanded eligibility to include noncitizens who cannot reunify with one or both parents and who are determined to be dependent on the juvenile court or placed in the custody of an individual or entity by the juvenile court. DHS expects that the expansion of eligibility introduced by the TVPRA 2008 and codified here resulted in new petitions. DHS is unable to obtain data that would attribute the expansion in eligibility's contribution to the increase in petitions received before and after TVPRA 2008. The implications of limitation are discussed further in the Costs and Benefits of the Final Rule section. DHS only estimates the impact of this regulatory change in the pre statutory baseline.

(e) HHS Specific Consent

The final rule incorporates a provision regarding HHS specific consent, which was created by the 1998 Appropriations Act and modified by the TVPRA 2008. The regulation provides the limited circumstances under which USCIS requires evidence of HHS consent at new 8 CFR 204.11(d)(6). The language intentionally restricts the pool of children in HHS custody to whom the specific consent requirement applies, clarifying that it applies specifically to those who seek juvenile court orders changing their custodial placement, as was intended by both the TVPRA 2008 and the subsequent *Perez-Olano Settlement Agreement. Perez-Olano, et al.* v. *Holder, et al.,* Case No. CV 05–3604 (C.D. Cal. 2010). DHS estimates no impacts from this regulatory change, in this final rule.

(f) Petition Requirements

The final rule clarifies the requirements for submission of an SIJ petition (*see* new 8 CFR 204.11(d)), including providing additional information regarding what evidence can be provided to demonstrate that the juvenile court made a qualifying determination of similar basis under State law and when DHS consent is warranted. DHS estimates no impacts from this regulatory change, in this final rule.

(g) Inadmissibility

The final rule implements statutory revisions exempting SIJ adjustment of status applicants from four additional grounds of inadmissibility pursuant to changes made by the 2008 TVPRA. With these additional four grounds, an applicant filing for adjustment of status based on SIJ classification is not subject to the following inadmissibility provisions of section 212(a) of the Act: Public charge (INA section 212(a)(4), 8 U.S.C. 1182(a)(4)); Labor certification (INA section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A)); Aliens present without admission or parole (INA section 212(a)(6)(A), 8 U.S.C. 1182(a)(6)(A)); Misrepresentation (INA section 212(a)(6)(C), 8 U.S.C. 1182(a)(6)(C)); stowaways (INA section 212(a)(6)(D), 8 U.S.C. 1182(a)(6)(D)); documentation requirements for immigrants (INA section 212(a)(7)(A), 8 U.S.C. 1182(a)(7)(A)); and Aliens unlawfully present (INA section 212(a)(9)(B), 8 U.S.C. 1182(a)(9)(B)).

In the final rule, DHS has expanded application of the ''simple possession exception,'' to the grounds of inadmissibility under INA section 212(a)(2)(A), 8 U.S.C. 1182(a)(2)(A) (conviction of certain crimes) and INA section 212(a)(2)(B), 8 U.S.C. 1182(a)(2)(B) (multiple criminal convictions), in addition to the existing application of the simple possession exception at INA section 212(a)(2)(C), 8 U.S.C. 1182(a)(2)(C) (controlled substance traffickers). *See* new 8 CFR 245.1(e)(3)(v)(A). This modification was the result of a recent Board of Immigration Appeals decision in *Matter of Moradel,* which conducted a statutory analysis of the scope of the simple possession exception under INA section 245(h)(2)(B) and concluded that it ''applies to all of the provisions listed under section 212(a)(2)'' and that ''Congress intended the 'simple possession' exception in section 245(h)(2)(B) to be applied broadly.'' 28 I&N Dec. 310, 314–315 (BIA 2021). DHS estimates the quantified costs of the provision to be approximately $4,791, which reflects the total cost for SIJ beneficiaries to file Form I–601 who have simple possession offenses prior to applying for LPR, and may qualify for a

[24] DHS did not include a list of examples of qualifying placements to avoid confusion that qualifying placements are limited to those listed.

waiver to an inadmissibility ground under INA section 212(a)(2), 8 U.S.C. 1182(a)(2).

(h) Interviews

USCIS may conduct interviews to clarify portions of the petition during adjudication; however, interviews are not required (*see* new 8 CFR 204.11(f)). The final rule also clarifies that while USCIS may limit the number of people present at the interview, the petitioner's attorney or accredited representative will always be permitted to attend. It also provides that a ''trusted adult'' may be present, further clarifying the resources available to the petitioner during adjudication.

(i)No Parental Immigration Rights

The rule codifies the long-standing statutory provision that no natural or prior adoptive parent may derive immigration benefits through their relationship to an SIJ beneficiary. The rule further clarifies that this restriction remains in effect even after the SIJ becomes a lawful permanent resident or a United States citizen. *See* new 8 CFR 204.11(i) and 245.1(e)(3)(vi). DHS estimates no impacts from this regulatory change, in this final rule.

(j) No Contact

The final rule provides that at no point during the adjudication process will a petitioner be required to contact an individual who allegedly battered, neglected, or abandoned the petitioner, or any family member of that person, during the petition or application process. *See* INA section 287(h), 8 U.S.C. 1357(h); new 8 CFR 204.11(e) and 245.1(e)(3)(vii).[25] In addition, for alignment with the language at INA section 101(a)(27)(J)(i) regarding the eligibility requirement that reunification not be viable with a petitioner's parent(s) due to ''abuse, neglect, abandonment, or a similar basis under state law,'' DHS is including the term ''abused'' at new 8 CFR 204.11(e) and 245.1(e)(3)(vii). This regulatory change is based upon the statutory amendment to INA section 287(h) enacted by VAWA 2005, which was intended to keep children safer.

(k) Marriage as a Ground for Automatic Revocation

DHS has removed marriage of the SIJ beneficiary as a basis for automatic revocation, amending its prior interpretation of INA 245(h). INA 245(h); 8 U.S.C. 1255(h) explicitly references ''a special immigrant described in section 1101(a)(27)(J) of this title''. Although the SIJ definition at section 1101(a)(27)(J) did not use the term child, USCIS incorporated the child definition at INA 101(b)(1) into the regulations. However, DHS recognizes that its prior interpretation has led to certain noncitizens with SIJ classification remaining unable to marry for years, just to maintain eligibility for adjustment. This is due to the prolonged wait times for visa number availability in the EB–4 category for noncitizens of certain countries, a consequence that was not envisioned when the original regulations were promulgated in 1993. Accordingly, DHS is removing marriage of the SIJ beneficiary as a basis for automatic revocation. DHS will maintain its long-standing regulatory requirement, consistent with Congress' use of the term ''child'' in the ''Transition Rule'' provision at section 235(d)(6) of the TVPRA 2008, that a petitioner must be under 21 years of age and unmarried at the time of filing the SIJ petition. New 8 CFR 204.11(b)(2). *See* TVPRA 2008, section 235(d)(6), Public Law 110–457, 122 Stat. 5044, 5080 (providing age-out protections for juveniles who are unmarried and under the age of 21 when their petitions are filed). This provision may allow some SIJ beneficiaries to now be eligible to adjust status that otherwise would not under the no action baseline. The total cost to the newly eligible population to complete and file Form I–485 and Form G–28, where applicable is $30,080.[26]

(l) Timeframe for Decisions

Pursuant to TVPRA 2008 (section 235(d)(2), 8 U.S.C. 1232(d)(2)), the final rule specifies that in general, USCIS will make a decision on an SIJ petition within 180 days. *See* new 8 CFR 204.11(g). This provision also clarifies when the 180-day period may begin and when it may pause due to delays caused by the petitioner, in accordance with longstanding regulation at 8 CFR 103.2(b)(10)(i). Since this is a clarifying provision, DHS does not estimate any impacts from this regulatory change, in this final rule.

(m) Special Immigrant Juvenile Petition Filing and Adjudication Process

The overarching process for a petitioner to obtain immigration benefits as an SIJ is a three-step sequence:

(1) Obtaining qualifying juvenile court order(s) containing the required judicial determinations for SIJ classification from a state juvenile court;

(2) Filing a Form I–360 petition with USCIS for SIJ classification; and

(3) Applying for LPR status using Form I–485 when a visa number is available.

This final rule does not change this general process but makes some adjustments in accordance with statutory amendments related to SIJ classification. The statutory amendments codified in the regulation include the following: The DHS consent function; HHS specific consent; documentation for petitions; inadmissibility; interview procedures; no parental immigration benefits, no contact provisions; and timeframe for adjudication.

Noncitizens may request SIJ classification using Form I–360 and accompanying Form G–28 if an attorney or representative files on behalf of the petitioner. The final rule will require additional documentation if the petitioner requires HHS consent and clarifies the types of evidence that may fulfill the requirements for a qualifying non-viability of reunification determination based on a similar basis under state law as well as the evidentiary requirements for DHS consent, for the no action baseline. The noncitizen filing a Form I–485 based on an approved SIJ petition is considered paroled into the United States for the limited purpose of eligibility for adjustment of status, even if the noncitizen entered the United States unlawfully. Form I–485 can either be filed concurrently with Form I–360 if a visa number is immediately available, or subsequent to approval of a Form I–360. An SIJ petitioner or beneficiary may apply for employment authorization pursuant to the pending adjustment application via Form I–765, Application for Employment Authorization.

Applicants deemed inadmissible to the United States may submit an application for a waiver of certain grounds of inadmissibility, as provided by the final rule at new 8 CFR 245.1(e)(3)(v). Form I–912, Request for Fee Waiver, is used to request a fee waiver for certain immigration forms and services based on a demonstrated inability to pay. Applicants submitting Form I–485, Application to Register Permanent Residence or Adjust Status, based on SIJ classification are eligible to seek a fee waiver for Form I–485 and related forms.

[25] The protection at INA section 287(h) for a petitioner seeking SIJ classification from being compelled to contact an alleged abuser, or the abuser's family member, was added by the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006).

[26] Calculation: ($18,240 Filing Fees) + ($11,840 Opportunity Cost of Time) = $30,080 Total Cost.

3. Costs and Benefits of the Final Rule

(a) Costs and Benefits of the Final Rule Relative to a Statutory Baseline

This rule revises DHS regulations at 8 CFR 204.11, 205.1, and 245.1 to reflect statutory changes, modify certain provisions, codify existing policies, and clarify eligibility requirements. The final rule may impose a higher burden on petitioners by requiring evidence that the juvenile court's determination is legally similar to abuse, neglect, or abandonment under state law; however, DHS has required additional evidence from some petitioners since the TVPRA 2008 on this issue. Because this additional evidence has been required for many years, DHS is unable to estimate how frequently this evidence is insufficient in petitioners' filings or how much additional time or effort this might have required.

Since its creation in 1990, USCIS has seen a significant increase in petitions for SIJ classification. Table 6 shows the total annual receipts for filings of Form I–360 during fiscal years (FYs) 2003 through 2020.

TABLE 6—APPROVALS, DENIALS, AND RECEIPTS OF PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT (FORM I–360) APPLICATION CLASS: SPECIAL IMMIGRANT JUVENILES, FOR FY 2003 THROUGH FY 2020

Fiscal year	Receipts	Approvals	Denials	Revocations
2003	79	33	8	0
2004	202	132	32	1
2005	327	246	35	1
2006	485	412	34	1
2007	659	577	45	0
2008	1,137	1,045	73	1
2009	1,369	1,281	69	3
2010	1,646	1,537	82	2
2011	2,226	2,095	98	2
2012	2,967	2,788	155	3
2013	3,996	3,756	148	20
2014	5,815	5,349	323	26
2015	11,528	10,767	651	70
2016	19,572	18,223	1,121	99
2017	22,154	19,471	2,399	23
2018	21,899	20,500	1,111	6
2019	20,783	19,733	688	3
2020	18,788	17,220	418	1
5-year Total*	103,196	95,147	5,737	132
5-year Annual Average*	20,639	19,029	1,147	26

Note: The report reflects the most up-to-date data available at the time the system was queried. Database Queried: March. 5, 2021, System: USCIS C3 Consolidated via SASPME, Office of Policy and Strategy (OP&S), Policy Research Division (PRD). The data reflect the current status of the petitions received in each fiscal year.

**5-year calculations are based only on FY 2016 through FY 2020.*

Table 6 shows the total population in FY 2003 through FY 2020 that filed Form I–360 for SIJ classification. Over the five-year period from FY 2016 through FY 2020, the number of Form I–360 receipts for SIJ classification ranged from a low of 18,788 in FY 2020 to a high of 22,154 in FY 2017. The trend in the annual number of Form I– 360 receipts for SIJ classification has steadily increased over the past few decades, but the annual receipts of Form I–360 has decreased in the past three FYs. From FY 2017 through FY 2020, the number of receipts of Form I–360 has decreased by 15 percent.[27] DHS is unable to quantify the portion of the observed increase in receipts in 2008 and after which may have been the result of the expansion of eligibility triggered by TVPRA 2008. DHS does not have enough information to conclude on the exact reasons for the cause in the significant increases in applications over the past 12 years, and furthermore, DHS cannot determine if TVPRA 2008 was the sole cause for the increased applications. As a result, DHS presents a range of possible impacts estimating a minimum and maximum cost to petitioners under the pre statutory baseline below.

In addition to including the most current receipt and approval trends, the data presented in Table 6 are updated and differ from discussion of receipts and approvals for FY 2006 through FY 2009 that appeared in the Notice of Proposed Rulemaking, which were obtained prior to USCIS data centralization initiatives.

i. Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant and Form G–28

Although there is no fee to file Form I–360 to request SIJ classification, DHS estimates the public reporting time burden is 2 hours and 5 minutes (2.08 hours), which includes the time for reviewing instructions, gathering the required documentation and information, completing the petition, preparing statements, attaching necessary documentation, and submitting the petition.[28] DHS acknowledges that SIJ petitioners filing Form I–360 may incur additional costs obtaining judicial determinations and, in many instances, may elect to acquire legal representation.

To estimate the opportunity costs of time for petitioners who are not using a

[27] Calculation: ((FY 2020 Form I–360 receipts 18,788¥FY 2017 Form I–360 receipts 22,154)/FY 2017 Form I–360 receipts 22,154) × 100) = ¥15 percent (rounded).

[28] *See* Instructions for Petition for Amerasian, Widow(er), or Special Immigrant (time burden estimate in the Paperwork Reduction Act section). Form I–360 *https://www.uscis.gov/sites/default/files/document/forms/i-360.pdf*. OMB No. 1615–0020. Expires Jun. 30, 2022. A separate time burden of 3 hours and 5 minutes (3.08 hours) per response for Iraqi or Afghan Nationals employed by or on behalf of the U.S. Government in Iraq or Afghanistan, and 2 hours and 20 minutes (2.33 hours) per response for Religious Workers. DHS does not expect an additional burden for Iraqi or Afghan Nationals employed by or on behalf of the U.S. Government in Iraq or Afghanistan or Religious workers. The public reporting burden for this collection of information is estimated at 2 hours and 5 minutes (2.08 hours) per response.

lawyer, USCIS uses an average total rate of compensation based on the effective minimum wage. SIJ petitioners are young with limited work experience/education; therefore, their wages would likely be in line with a lower wage. As reported by The New York Times ''[t]wenty-nine states and the District of Columbia have state-level minimum hourly wages higher than the federal [minimum wage],'' as do many city and county governments. Analysis by The New York Times estimates that ''the effective minimum wage in the United States . . . [was] $11.80 an hour in 2019.'' [29] DHS relies on this more robust minimum wage of $11.80 per hour, as a reasonable estimate of the per hour wages used to estimate the opportunity costs of time. In order to estimate the fully loaded wage rates, to include benefits, USCIS used the benefits-to-wage multiplier of 1.45 and multiplied it by the prevailing minimum hourly wage rate. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor (DOL), Bureau of Labor Statistics (BLS) report detailing average compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.45.[30] The fully loaded per hour wage rate for someone earning the prevailing minimum wage rate is $17.11.[31] Therefore, DHS estimates that the opportunity cost for each petitioner is $35.59 per response for the SIJ petition.[32]

For petitioners who acquire attorneys or accredited representation to petition on their behalf, Form G–28 must be filed in addition to Form I–360. Table 7 shows historical Form G–28 filings by attorneys or accredited representatives accompanying SIJ petitions. DHS notes that these forms are not mutually exclusive. Based on the 5-year average, DHS estimates 95.8 percent [33] of Form I–360 petitions are filed with a Form G–28. The remaining 4.2 percent [34] of petitions are filed without a Form G–28.

TABLE 7—FORM I–360, SIJ PETITIONS SUBMITTED TO USCIS FROM FY 2016 THROUGH FY 2020 WITH A FORM G–28

Fiscal year	Number of Form I–360 receipts	Number of petitions filed with Form G–28
2016	19,572	17,830
2017	22,154	21,252
2018	21,899	21,306
2019	20,783	20,244
2020	18,788	18,221
Total	103,196	98,853
5-year Annual Average	20,639	19,771

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. March 5, 2021 & USCIS Analysis.

DHS estimates the opportunity cost of time for attorneys or accredited representatives using an average hourly wage rate $71.59 for lawyers.[35] However, average hourly wage rates do not account for worker benefits such as paid leave, insurance, and retirement. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor (DOL), Bureau of Labor Statistics (BLS) report detailing average compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.45.[36] DHS calculates the average total rate of compensation as $103.81 [37] per hour for an in house lawyer. Therefore, DHS estimates that the opportunity cost for each petitioner is $215.92 per response for the in house attorney.[38] DHS recognizes that an entity may not have lawyers embedded in their organization and may choose, but is not required, to outsource the preparation of these petitions and, therefore, presents two wage rates for lawyers to account for the often higher salaries of lawyers. DHS multiplied the average hourly U.S. wage rate for lawyers by 2.5 for a total of

[29] ''Americans Are Seeing Highest Minimum Wage in History (Without Federal Help)'' Ernie Tedeschi, The New York Times, April 24, 2019. Accessed at *https://www.nytimes.com/2019/04/24/upshot/why-america-may-already-have-its-highest-minimum-wage.html* (last visited June 25, 2020).

[30] The benefits-to-wage multiplier is calculated as follows: ($38.60 Total Employee Compensation per hour)/($26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). *See* U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, *Employer Cost for Employee Compensation (December 2020), Table 1. Employer Costs for Employee Compensation by ownership* (Dec. 2020), *https://www.bls.gov/news.release/archives/ecec_03182021.pdf* (last visited September 2, 2021).

[31] Calculation: (Effective Minimum Wage Rate) $11.80 × (Benefits-to-wage multiplier) 1.45 = $17.11 per hour.

[32] Calculation: (Effective Wage) $17.11 × (Estimated Opportunity of Cost to file Form I–360) 2.08 hours = $35.59.

[33] Calculation: (19,771 Form G–28/20,639 Form I–360 petitions) × 100 = 95.8 percent (rounded).

[34] Calculation: 100 percent¥95.8 percent filing with Form G–28 = 4.2 percent only filing Form I–360.

[35] *See* U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2020 National Occupational Employment and Wage Estimates-National, *SOC 23–1011 – Lawyers, https://www.bls.gov/oes/2020/may/oes_nat.htm* (last visited March 31, 2021).

[36] The benefits-to-wage multiplier is calculated as follows: ($38.60 Total Employee Compensation per hour)/($26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). *See* U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, *Employer Cost for Employee Compensation (December 2020), Table 1. Employer Costs for Employee Compensation by ownership* (Dec. 2020), *https://www.bls.gov/news.release/archives/ecec_03182021.pdf* (last visited March 31, 2021).

[37] Calculation of weighted mean hourly wage for lawyers: $103.81 average hourly total rate of compensation for lawyers = $71.59 average hourly wage rate for lawyers × 1.45 benefits-to-wage multiplier.

[38] Calculation: (Effective Wage) $103.81 × (Estimated Opportunity of Cost to file Form I–360) 2.08 = $215.92.

$178.98 [39] to approximate an hourly billing rate for an outsourced lawyer.[40] Therefore, DHS estimates that the opportunity cost for each petitioner is $372.28 per response for the out sourced attorney.[41]

DHS uses the historical Form G–28 filings of 95.8 percent (Table 7) by attorneys or accredited representatives accompanying SIJ petitions as a proxy for how many may accompany Form I–485 petitions. The remaining 4.2 percent [42] of SIJ petitions are filed without a Form G–28. Table 11 shows the total receipts split out by the type of filer based on associated Form G–28 submissions.

TABLE 8—NUMBER OF FORMS FILED BY PETITIONERS AND ACCREDITED REPRESENTATIVES

Fiscal year	Receipts	Number of forms filed by petitioners (4.2%)	Number of forms filed by accredited by legal representation (95.8%)
2008	1,137	48	1,089
2009	1,369	57	1,312
2010	1,646	69	1,577
2011	2,226	93	2,133
2012	2,967	125	2,842
2013	3,996	168	3,828
2014	5,815	244	5,571
2015	11,528	484	11,044
2016	19,572	822	18,750
2017	22,154	930	21,224
2018	21,899	920	20,979
2019	20,783	873	19,910
2020	18,788	789	17,999

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. March 5, 2021 & USCIS Analysis.

DHS does not know what caused the increase in receipts over the past 13 years. The increase in receipts could be due to TVPRA 2008 or it could be a result of a number of other things outside the scope of this rulemaking.

DHS does not know how many petitioners used an in-house lawyer compared to an outsourced lawyer, so both estimates are shown in Table 9. The table shows the range of total cost incurred since TVPRA 2008 changes.

The total cost to petitioners since TVPRA 2008 range from a minimum of $236,845 [43] in FY 2008 to a maximum of $7,934,370 [44] in FY 2017.

TABLE 9—RANGE OF POTENTIAL TOTAL COSTS FOR FILERS BY TYPE AND BY YEAR

Fiscal year	Forms filed by petitioner	Forms filed by accredited by legal representation	Total cost for petitioners ($35.59/each)	Total cost for in-house attorney ($215.92/each)	Total cost for an outsourced attorney ($372.28/each)
2008	48	1,089	$1,708	$235,137	$405,413
2009	57	1,312	2,029	283,287	488,431
2010	69	1,577	2,456	340,506	587,086
2011	93	2,133	3,310	460,557	794,073
2012	125	2,842	4,449	613,645	1,058,020
2013	168	3,828	5,979	826,542	1,425,088
2014	244	5,571	8,684	1,202,890	2,073,972
2015	484	11,044	17,226	2,384,620	4,111,460
2016	822	18,750	29,255	4,048,500	6,980,250
2017	930	21,224	33,099	4,582,686	7,901,271
2018	920	20,979	32,743	4,529,786	7,810,062
2019	873	19,910	31,070	4,298,967	7,412,095
2020	789	17,999	28,081	3,886,344	6,700,668

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. March 5, 2021 & USCIS Analysis.

[39] The DHS analysis in, ''Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program'' (May 31, 2018), available at *https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the,* used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages (Last visited July 28, 2021). Also, the analysis in the DHS ICE rule, ''Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' at G–4 (Aug 25, 2008), available at *http://www.regulations.gov/#!documentDetail;D=ICEB-2006-0004-0922* used 2.5 as a multiplier for outsourced labor wages in this rule, pages 143–144.

[40] Calculation: (Mean hourly wage of Lawyers) $71.59 × (Benefits-to-wage multiplier) 2.5 = $178.98 per hour for an outsourced lawyer.

[41] Calculation: (Effective Wage) $178.98 × (Estimated Opportunity of Cost to file Form I–360) 2.08 hours = $372.28.

[42] Calculation: 100 percent ¥ 95.8 percent filing with Form G–28 = 4.2 percent only filing Form I–360.

[43] Total Cost in 2008 ($1,708) + Total Cost for In-house Attorney in 2008 ($235,137) = $236,845 minimum cost in 2008.

[44] Total Cost in 2017 ($33,099) + Total Cost for Outsourced Attorney in 2017 ($7,901,271) = $7,934,370 maximum cost in 2017.

ii. Form I–485, Application To Register Permanent Residence or Adjust Status

To obtain permanent residence as a SIJ, a noncitizen must file a Form I–485, Application to Register Permanent Residence or Adjust Status. If an immigrant visa is not available at the time of filing, the applicant will not be able to apply until such a visa becomes available. SIJs are not exempt from the general adjustment requirement that applicants be inspected and admitted or inspected and paroled. *See* INA 245(a); 8 CFR 245.1(e)(3). However, a noncitizen filing an adjustment of status application based on an approved SIJ petition is considered paroled into the United States for the limited purpose 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. *See* INA 245(h)(1). Because DHS is unable to describe the nationality and other circumstances of the affected population, it is not possible to quantify if or when individuals affected by the rule will file a Form I–485 based on the pre statutory baseline.

The reported burden to the petitioners estimated for collection of information and completion for the Form I–485 [45] is 6 hours and 42 minutes (6.70 hours). Form I–485 has a fee of $1,140, with certain applicants under the age of 14 years old pay a fee of $750 for Form I–485.

DHS is unaware of the quantity of petitioners that went on to file Form I–485 after TVPRA 2008; however, DHS estimates that the estimated opportunity cost per person filing Form I–485 is $114.64.[46] SIJ applicants for adjustment of status are eligible to submit Form I–912, Request for Fee Waiver. The total cost for a petitioner to file Form I–485 would be $864.64 if they are under the age of 14 years and $1,254.64 for those 14 years and older.

iii. Form I–601, Application for Waiver of Grounds of Inadmissibility

Applicants for adjustment of status based on SIJ classification who are inadmissible under certain grounds may seek a waiver of inadmissibility via Form I–601, Application for Waiver of Grounds of Inadmissibility. The time burden for Form I–601 is estimated at 1 hour and 45 minutes [47] (1.75 hours) per application.

DHS is unaware of the quantity of petitioners that went on to file Form I–601 after changes to TVPRA 2008. The estimated opportunity cost per person filing is estimated at $29.94.[48] Form I–601 has a filing fee of $930, for those to whom it applies; however, SIJ applicants for adjustment of status are eligible to submit Form I–912, Request for Fee Waiver. The total cost for a petitioner to file Form I–601 would be $959.94 [49] based on the pre statutory baseline.

iv. Form I–765, Application for Employment Authorization

The affected population of newly eligible SIJ classified individuals who have filed a Form I–485, may go on to file a Form I–765, to apply for an Employment Authorization Document (EAD). Because the rule does not obligate SIJ classified individuals to seek employment authorization and it is not known what portion of the affected population have gone on to apply for an EAD due to TVPRA 2008, DHS does not know the number of SIJ classified individuals who went on to file Form I–765; therefore, DHS cannot estimate the total cost for the pre statutory baseline and only shows the per unit cost. The fee of $410.00 for Form I–765 is not shown as a cost of this rule. The public reporting burden for the collection of information for Form I–765 is estimated at 4 hours and 45 minutes (4.75 hours) per response.[50] USCIS uses an average total rate of compensation based on the effective minimum wage for SIJ petitioners, as explained previously. This amounts to an estimated opportunity cost of $81.27 per response for applications.[51] The total cost for a petitioner to file Form I–765 would be $491.27.

v. Form I–912, Request for Fee Waiver

Form I–912 is used to request a fee waiver for certain immigration forms and services based on a demonstrated inability to pay. Applicants submitting Form I–485, Application to Register Permanent Residence or Adjust Status, Form I–601, Application for Waiver of Grounds of Inadmissibility and Form I–765, Application for Employment Authorization are eligible to seek a fee waiver if they are applying for lawful permanent resident status based on SIJ classification.

DHS did not track how many SIJ petitioners successfully requested fee waivers due to the TVPRA 2008 changes, but anticipates that most of them qualify based on income or hardship. Thus, the analysis presents only opportunity costs for the related forms some of the noncitizens eligible for SIJ under the proposed rule may choose to file. Because DHS does not know the number of SIJ classified individuals who went on to file Form I–912 for subsequent immigration benefit requests, DHS cannot estimate the total cost for the pre statutory baseline and only shows the per unit cost.

The public reporting burden for this collection of information for this form is estimated at 2 hours and 33 minutes (2.55 hours) per response, including the time for reviewing instructions, gathering the required documentation and information, completing the request, preparing statements, attaching necessary documentation, and submitting the request.[52] As explained above, USCIS uses an average total rate of compensation based on the effective minimum wage for SIJ petitioners. Multiplying the fully-loaded hourly wage rate of $17.11 by the burden of 2 hours and 33 minutes (2.55 hours) equals an estimated opportunity cost of $43.63 for SIJ applicants requesting a fee waiver using Form I–912 based on the pre statutory baseline.[53]

(b) Costs and Benefits of the Final Rule Relative to No Action Baseline

This final rule will impose new costs on the population of juvenile immigrants granted SIJ classification who choose to marry prior to filing Form I–485 to register as a permanent resident. It will also allow SIJs who are inadmissible under INA sections 212(a)(2)(A), (B) and (C) because of a single offense of simple possession of 30 grams or less of marijuana to be eligible to apply for a waiver of inadmissibility

[45] *See* Instructions for Instructions for Application to Register Permanent Residence or Adjust Status. Form I–485. OMB No. 1615–0023. Expires March 31, 2023. Accessed *https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf* (last visited March 22, 2021).

[46] *See* Instructions for Application for Waiver of Grounds of Inadmissibility. Form I–601. OMB No. 1615–0029. Expires July 31, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-601instr-pc.pdf* (last visited March 22, 2021).

[47] Calculation: (Fully-loaded Effective Wage) $17.11 × (Estimated Opportunity Cost to file Form I–601) = $17.11 × 1.75 = $29.94.

[48] Calculation: Estimated opportunity cost per person filing ($29.94) + Fee for Form I–601 ($930) = $959.94

[49] *See* Instructions for Application for Employment Authorization. Form I–765. OMB No. 1615–0040. Expires July 31, 2022. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* (last visited March 22, 2021).

[50] Calculation: (Effective wage) $17.11 × (Estimated Opportunity Cost to file Form I–765) = $17.11 × 4.75 = $81.27.

[51] See Instructions for Request for Fee Waiver. Form I–912. OMB No. 1615–0116. Expires 09/30/2024. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf* (last visited October 19, 2021).

[52] Calculation: (Fully-loaded Effective Wage) $17.11 × (Estimated Opportunity Cost to file Form I–912) 2.55 = $43.63.

by filing a Form I–601, Application for Waiver of Grounds of Inadmissibility. The cost of the final rule impacts SIJ beneficiaries who get married prior to applying for LPR status and those now eligible for adjustment of status with a minor drug related charge. The final rule will impose costs related to this population filing Form I–485 and Form I–601 in the no action baseline.

DHS expects the final rule to affect the following stakeholder groups: petitioners for SIJ classification; state juvenile courts and appellate courts; and the Federal Government.

i. Regulatory Provisions: The Petitioning-Adjudication Process

a. Form I–485, Application To Register Permanent Residence or Adjust Status

To obtain permanent residence as a SIJ, a noncitizen must file a Form I–485, Application to Register Permanent Residence or Adjust Status. If an immigrant visa is not available at the time of filing, the applicant will not be able to apply until such a visa becomes available.

In this final rule, DHS is no longer requiring that an approved Form I–360 petition be automatically revoked if the beneficiary marries prior to applying for or being approved for adjustment of status to lawful permanent resident. To estimate the population that will be affected by removing the revocation based on marriage provision, DHS analyzed historical data on the ages of petitioners who received revocations. DHS assumes that those who filed for SIJ under the age of 15 would likely not have had their petitions revoked based on marriage. DHS also assumes that revocations for those who filed at 21 or older may have been based on having been approved in error due to having filed after turning 21. Using the data from Table 10, DHS estimates the 5-year average for the newly eligible population to be 16 petitioners annually. DHS does not know the specific reason each petition was revoked and does not rule out the possibility that all or none of these petitions were revoked due to marriage. For the purpose of this analysis, DHS presents an upper bound of 16 petitions and a lower bound of zero petitions annually who will now be eligible to apply for LPR status. Filing Form I–485 is included as a direct, quantified cost of this final rule for the population of SIJ beneficiaries who will not be revoked due to marriage.

TABLE 10—NUMBER OF FORM I–360 PETITIONS REVOKED BY AGE, FOR FY 2016 THROUGH FY 2020

Fiscal year	Age range			Total
	0–15	16–20	21+	
2016	21	59	19	99
2017	4	14	5	23
2018	0	6	0	6
2019	1	2	0	3
2020	0	0	1	1
Total	26	81	25	132
5-year Annual Average	5	16	5	26

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. March 5, 2021 & USCIS Analysis.

This rule will allow approved SIJ beneficiaries who get married prior to applying for LPR status and remain eligible to obtain permanent residence. DHS assumes that every petitioner who will be newly eligible will file Form I–485 which will lead to new costs (and benefits) to those petitioners. For those who acquire legal representation to petition on their behalf, Form G–28 must be filed in addition to Form I–485. DHS does not know the number of SIJ's who then went on to submit Form I–485 petitions that would be accompanied by Form G–28.

For petitioners who acquire attorneys or accredited representation to petition on their behalf, Form G–28 must be filed in addition to Form I–360. Table 11 shows historical Form G–28 filings by attorneys or accredited representatives accompanying SIJ petitions. DHS notes that these forms are not mutually exclusive. Based on the 5-year average, DHS estimates 95.8 percent [54] of Form I–360 petitions are filed with a Form G–28. The remaining 4.2 percent [55] of petitions are filed without a Form G–28.

TABLE 11—FORM I–360, SIJ PETITIONS SUBMITTED TO USCIS, FOR FY 2016 THROUGH FY 2020

Fiscal year	Number of Form I–360 receipts	Number of petitions filed with Form G–28
2016	19,572	17,830
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2018	21,899	21,306
2019	20,783	20,244
2020	18,788	18,221
Total	103,196	98,853
5-year Annual Average	20,639	19,771

Source: USCIS, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), Claims 3 database. March. 5, 2021 & USCIS Analysis.

[54] Calculation: (19,771 Form G–28/20,639 Form I–360 petitions) × 100 = 95.8 percent (rounded).

[55] Calculation: 100 percent ¥ 95.8 percent filing with Form G–28 = 4.2 percent only filing Form I–360.

DHS estimates the opportunity cost of time for attorneys or accredited representatives using an average hourly wage rate $71.59 for lawyers.[56] However, average hourly wage rates do not account for worker benefits such as paid leave, insurance, and retirement. DHS accounts for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier using the most recent Department of Labor (DOL), Bureau of Labor Statistics (BLS) report detailing average compensation for all civilian workers in major occupational groups and industries. DHS estimates the benefits-to-wage multiplier is 1.45.[57] DHS calculates the average total rate of compensation as $103.81 [58] per hour for a lawyer.

To estimate the opportunity costs of time for applicants who are not using an attorney or accredited representative, USCIS uses the fully-loaded prevailing minimum wage rate is $17.11 as previously discussed.

DHS uses the historical Form G–28 filings of 95.8 percent (Table 8) by attorneys or accredited representatives accompanying SIJ petitions as a proxy for how many may accompany Form I–485 petitions. The remaining 4.2 percent [59] of SIJ petitions are filed without a Form G–28. DHS estimates that a maximum 15 [60] petitions annually would be filed with a Form G–28 and 1 [61] petition would be filed by the petitioner.

To estimate the opportunity cost of time to file Form I–485, DHS applies the estimated public reporting time burden (6.70 hours [62]) to the newly eligible population and compensation rate of who may file the form. Therefore, for those newly eligible, as shown in Table 12, DHS estimates the total annual opportunity cost of time to petitioners completing and filing Form I–485 petitions will be approximately $10,433 [63] for lawyers and $115 [64] for petitioners who submit on their own application. For attorneys or accredited representatives, an additional opportunity cost of time of 0.83 hours is applied per Form I–485 application.[65] As shown in Table 12, DHS estimates the total annual opportunity cost of time to petitioners completing and filing Form G–28 will be a maximum of approximately $1,292 [66] for attorneys or accredited representatives. The opportunity cost of time to the newly eligible population to complete and file Form I–485 and Form G–28 is $11,840 (Table 9). DHS is unaware of the number of SIJ applicants who would also apply for Form I–912, Request for Fee Waiver. DHS estimates that the maximum filing cost the new population to file Form I–485 is $18,240 [67] if all newly eligible petitioners pay the full filing fee. The total cost to the newly eligible population to complete and file Form I–485 and Form G–28, where applicable is $30,080.[68]

TABLE 12—ADDITIONAL OPPORTUNITY COSTS OF TIME TO PETITIONERS FOR FILING FORM I–485 PETITIONS

Petitioner type	Affected population	Time burden to complete Form I–485 (hours)	Time burden to complete Form G–28 (hours)	Compensation rate	Total opportunity cost
	A	B	C	D	E = A × (B + C) × D
Attorney or Accredited Representative	15	6.70	0.83	$103.81	$11,725
Petitioner	1	6.70		17.11	115
Total	16				11,840

Source: USCIS analysis.

b. Form I–601, Application for Waiver of Grounds of Inadmissibility

Applicants for adjustment of status based on SIJ classification who are inadmissible under certain grounds may seek a waiver of inadmissibility via Form I–601, Application for Waiver of Grounds of Inadmissibility. The time burden for Form I–601 is estimated at 1 hour and 45 minutes [69] (1.75 hours) per application.

In this final rule, DHS has expanded application of the ''simple possession exception'' to certain grounds of inadmissibility as a result of a recent Board of Immigration Appeals decision in *Matter of Moradel,* which conducted a statutory analysis of the scope of the simple possession exception under INA section 245(h)(2)(B) and concluded that it ''applies to all of the provisions listed under section 212(a)(2).'' 28 I&N Dec. 310, 314–315 (BIA 2021). This change

[56] *See* U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2020 National Occupational Employment and Wage Estimates-National, *SOC 23–1011 — Lawyers, https://www.bls.gov/oes/2020/may/oes_nat.htm* (last visited March 31, 2021).

[57] The benefits-to-wage multiplier is calculated as follows: ($38.60 Total Employee Compensation per hour)/($26.53 Wages and Salaries per hour) = 1.454964 = 1.45 (rounded). *See* U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release, *Employer Cost for Employee Compensation (December 2020), Table 1. Employer Costs for Employee Compensation by ownership* (Dec. 2020), *https://www.bls.gov/news.release/archives/ecec_03182021.pdf* (last visited March 31, 2021).

[58] Calculation of weighted mean hourly wage for lawyers: $103.81 average hourly total rate of compensation for lawyers = $71.59 average hourly wage rate for lawyers × 1.45 benefits-to-wage multiplier.

[59] Calculation: 100 percent ¥ 95.8 percent filing with Form G–28 = 4.2 percent only filing Form I–360.

[60] Calculation: (95.8 percent × 16 newly eligible population) = 15 new population filing Forms I–485 and G–28.

[61] Calculation: (4.2 percent × 16 newly eligible population) = 1 new population filing only Form I–485

[62] *See* Instructions for Application to Register Permanent Residence or Adjust Status. Form I–485. OMB No. 1615–0023. Expires Sept. 30, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf* (last visited March 22, 2021).

[63] Calculation: (15 new population filing Forms I–485 and G–28) × (6.70 Time Burden to Complete Form I–360) × ($103.81 Compensation Rate of a Lawyer) = $10,433.

[64] Calculation: (1 new population filing Form I–485) × (6.70 Time Burden to Complete Form I–485) × ($17.11 Compensation Rate of a Petitioner) = $115.

[65] *See* Instructions for Notice of Entry of Appearance as Attorney or Accredited Representative. Form G–28. OMB No. 1615–0105. Expires May 31, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf* (last visited March 22, 2021).

[66] Calculation: (15 new population filing Forms I–485 and G–28) × (0.83 Time Burden to Complete Form G–28) × ($103.81 Compensation Rate of a Lawyer) = $1,292.

[67] Calculation: (16 Total population) × ($1,140 Filing Fee Cost per Form I–485) = $18,240.

[68] Calculation: ($18,240 Filing Fees) + ($11,840 Opportunity Cost of Time) = $30,080 Total Cost.

[69] *See* Instructions for Application for Waiver of Grounds of Inadmissibility. Form I–601. OMB No. 1615–0029. Expires July 31, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-601instr-pc.pdf* (last visited March 22, 2021).

will allow SIJs who are inadmissible under INA sections 212(a)(2)(A), (B) and (C) because of a single offense of simple possession of 30 grams or less of marijuana to be eligible to apply for a waiver of inadmissibility by filing a Form I–601, Application for Waiver of Grounds of Inadmissibility. To estimate the population that will be affected by expanding eligibility for those with simple possession offenses to file a waiver of inadmissibility, DHS analyzed historical data on the denials of SIJ petitioners who applied for Form I–601. DHS does not know the specific reason each application was denied. DHS does not rule out the possibility that all or none of these petitions were denied due to simple possession offenses. DHS presents an upper bound of 4 petitions and a lower bound of zero petitions annually who may now be eligible to receive an approved Form I–601 shown in Table 13.

TABLE 13—FORM I–601 CASES DENIED AFTER BEING APPROVED FOR A SIJ CLASSIFICATION

[For FY 2016 through FY 2021]

I–601 Adjudicated fiscal year	Approved ** SIJ with a denied I–601
2016	2
2017	1
2018	5
2019	3
2020	11
2021 *	6
Total	28
5-year Annual Average ***	4

Note: The report reflects the most up-to-date data available at the time the system was queried. Database Queried: July 22, 2021, System: USCIS Claims 3 database, Office of Policy and Strategy (OP&S), Policy Research Division (PRD), The data reflect the current status of the petitions received in each fiscal year.

** Data for FY 2021 valid only through 07/22/2021.*

*** As of* July 22, 2021, *SIJ cases still show a Current Approved Status.*

**** 5-year average is based on FY 2016 through FY 2020.*

DHS uses the historical Form G–28 filings of 95.8 percent of Form I–360 (Table 8) by attorneys or accredited representatives accompanying SIJ petitions as a proxy for how many may accompany Form I–601 applications. The remaining 4.2 percent [70] of Forms I–601 would be filed without a Form G–28. DHS estimates that a maximum 4 [71] Forms I–601 annually would be filed with a Form G–28 and 0 [72] petition would be filed by the petitioner.

To estimate the opportunity cost of time to complete and file Form I–601, DHS applies the time burden (1.75 hours) [73] to the newly eligible population and compensation rate of who may file. If an attorney or accredited representative files on behalf of the beneficiary, a Form G–28 would be filed with a time burden of 0.83 hours.[74] As shown in Table 14, DHS estimates the total annual opportunity cost of time to the newly eligible population to complete and file Form I–601 and Form G–28 is $1,071. The estimated filing fees for the new population to file Form I–601 is $3,720.[75] Therefore, the total cost to the newly eligible population to complete and file Form I–601 and accompanying Form G–28 is a $4,791.[76]

[70] Calculation: 100 percent ¥ 95.8 percent filing with Form G–28 = 4.2 percent only filing Form I–360.

[71] Calculation: (95.8 percent × 4 newly eligible population) = 4 new population filing Forms I–601 and G–28.

[72] Calculation: (4.2 percent × 4 newly eligible population) = 0 new population filing only Form I–601.

[73] *See* Instructions for Application for Waiver of Grounds of Inadmissibility. Form I–601. OMB No. 1615–0029. Expires July 31, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-601instr-pc.pdf* (last visited March 22, 2021).

[74] *See* Instructions for Notice of Entry of Appearance as Attorney or Accredited Representative. Form G–28. OMB No. 1615–0105. Expires May 31, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/g-28instr.pdf* (last visited March 22, 2021).

[75] Calculation: (4 Total population) × ($930 Cost to File) = $3,720.

[76] Calculation: ($3,720 Filing Fees) + ($1,071 Opportunity Cost of Time) = $4,791 Total Cost.

TABLE 14—ADDITIONAL OPPORTUNITY COSTS OF TIME TO PETITIONERS FOR FILING FORM I–601 APPLICATIONS

Petitioner type	Affected population	Time burden to complete Form I–601 (hours)	Time burden to complete Form G–28 (hours)	Compensation rate	Total opportunity cost
	A	B	C	D	E = A × (B + C) × D
Lawyer	4	1.75	0.83	$103.81	$1,071
Total	4				1,071

Source: USCIS analysis.

DHS includes Form I–601[77] as a cost of this final rule for the new population that may be eligible for approval under the no action baseline.

ii. Qualitative Benefits to Petitioners

Benefits to petitioners are largely qualitative. The eligibility provisions offer an increased protection and quality of life for petitioners. By allowing reunification with non-abusive parents, the rule serves the child welfare goal of family permanency. By clarifying the requirements for qualifying juvenile court orders, the regulation will not require petitioners to provide evidence of the juvenile court's continuing jurisdiction in certain circumstances, such as when a child welfare permanency goal is reached, such as adoption. *See* new 8 CFR 204.11(c)(3)(ii)(A).

DHS has removed marriage of the SIJ beneficiary as a basis for automatic revocation. Currently, certain individuals with an approved SIJ petition have to wait as long as two or more years to be eligible to file for adjustment of status due to the lack of immigrant visa availability for nationals of certain countries in the EB–4 category.[78] This change is a benefit to petitioners, so they can remain eligible for lawful permanent residence and do not have to put marriage on hold.

The procedural changes to 8 CFR 204.11 to provide a timeframe for the adjudication process both clarify the requirements for petitioning for SIJ classification (streamlining consent, explaining documentation, outlining the interview, setting timeframe) and reduce the hurdles to successfully adjusting to LPR status once SIJ classification has been granted (incorporating expanded grounds for waivers of inadmissibility). Further, the rule centralizes and makes explicit the barriers from contact with alleged abusers to which the petitioner is entitled.

DHS has expanded the simple possession exception in this rule. Currently those who have been approved for SIJ classification with a simple possession offense and apply for a waiver of grounds of inadmissibility may have their application denied because they are ineligible for the waiver. This modification may allow them the chance to remain eligible for lawful permanent residence.

DHS acknowledges that SIJ petitioners may pursue subsequent actions discussed above, such as adjusting status and applying for employment authorization, which may enable additional earnings over their lifetime. However, DHS is does not quantify those impacts to the affected juvenile population in this rule.

iii. Benefits to Federal Government

The primary benefits of the rule to DHS are greater consistency with statutory intent and increased efficiency. Externally, congruence of statute and regulation lessens ambiguity and requires fewer resources to be spent on guidance to the regulated community. Internally, the regulations provide a clearer standard for adjudications, including what evidence is required for consent and similar basis determinations.

iv. Alternatives Considered

Where possible, DHS has considered, and incorporated alternatives to maximize net benefits under the rule. For example, DHS considered an alternative to the final rule following the review of public comment and decided to incorporate a clarification on how a petitioner can establish that the juvenile court made a qualifying determination that parental reunification is not viable under State law based on a *similar basis* to the statutorily enumerated grounds of abuse, neglect, or abandonment. As discussed, DHS incorporated options for petitioners to submit evidence that would not place an additional burden on them, such as the juvenile court's determinations or other relevant evidence that establishes the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law. This alternative was adopted in response to public comments requesting further clarification to minimize the risk of inadvertent ineligibility based on differences between States' laws and judicial systems.

(c) Total Costs of the Final Rule

In this section, DHS presents the total annual costs of this final rule. Table 15 details the total annual costs of this final rule to petitioners will be $34,871 under the no action baseline.

TABLE 15—SUMMARY OF ESTIMATED ANNUAL COSTS TO NEW PETITIONERS IN THIS FINAL RULE—NO ACTION BASELINE

Total costs of filing	Total estimated annual cost
Form I–485	$30,080
Form I–601	4,791
Total Annual Cost (undiscounted)	34,871

[77] *See* Instructions for Application for Waiver of Grounds of Inadmissibility. Form I–601. OMB No. 1615–0029. Expires July 31, 2021. Accessed at *https://www.uscis.gov/sites/default/files/document/forms/i-601instr-pc.pdf* (last visited March 22, 2021).

[78] *See* U.S. Department of State, *Visa Bulletin for September 2021, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-september-2021.html* (listing the final action dates for nationals of El Salvador, Guatemala, and Honduras as March 15, 2019).

Table 16 shows the cost over the 10-year implementation period of this final rule, DHS estimates the total annualized cost to be is $34,871 undiscounted in the first year, $33,855 discounted at 3-percent and $32,590 discounted at 7-percent. The total cost estimates are based on the no action baseline. The total cost to petitioners in the pre statutory baseline ranges from a minimum of $236,845 [79] in FY 2008 to a maximum of $7,934,370 [80] in FY 2017.

TABLE 16—TOTAL UNDISCOUNTED AND DISCOUNTED COSTS OF THIS FINAL RULE—NO ACTION BASELINE

Year	Total estimated costs $34,871 (undiscounted)	
	Discounted at 3-percent	Discounted at 7-percent
1	$33,855	$32,590
2	32,869	30,458
3	31,912	28,465
4	30,982	26,603
5	30,080	24,863
6	29,204	23,236
7	28,353	21,716
8	27,527	20,295
9	26,726	18,968
10	25,947	17,727
Total	297,457	244,919
Annualized Cost	34,871	34,871

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, (Mar. 29, 1996), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, or governmental jurisdictions with populations of less than 50,000.[81]

The statutory foundation for the SIJ classification program, administered by USCIS, has changed over time. In this final rule, DHS will strengthen regulations by codifying its long-standing policies and practices already in place having an impact on the eligibility of SIJ petitioners and the process of filing. This final rule primarily seeks to resolve these discrepancies by making necessary changes. Approval of SIJ petitions requires a petitioner to meet a number of specified eligibility criteria and petition requirements in new 8 CFR 204.11(b), (c) and (d).

Therefore, this final rule regulates individuals and individuals are not defined as a ''small entity'' by the RFA. Based on the evidence presented in this RFA and throughout this preamble, DHS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 804 of Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This final rule likely will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.[82] The inflation-adjusted value of $100 million in 1995 is approximately $178 million in 2021 based on the Consumer Price Index for All Urban Consumers (CPI–U).[83]

This final rule does not contain such a mandate as the term is defined under UMRA.[84] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

[79] Total Cost in 2008 ($1,708) + Total Cost for In-house Attorney in 2008 ($235,137) = $236,845 minimum cost in 2008.

[80] Total Cost in 2017 ($33,099) + Total Cost for Outsourced Attorney in 2017 ($7,901,271) = $7,934,370 maximum cost in 2017.

[81] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[82] *See* U.S. Department of Labor, BLS, ''Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,'' available at *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf* (last visited Jan. 13, 2022).

[83] Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2021); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2021 ¥ Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(270.970 ¥ 152.383)/152.383] * 100 = (118.587/152.383) * 100 = 0.77821673 * 100 = 77.82 percent = 78 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.78 = $178 million in 2021 dollars.

[84] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. See 2 U.S.C. 1502(1), 658(6).

E. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this final rule is not a major rule, as defined by 5 U.S.C. 804, for purposes of congressional review of agency rulemaking pursuant to the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 868, 873 (codified at 5 U.S.C. 804). This rule will not result in an annual effect on the economy of $100 million or more.

Accordingly, absent exceptional circumstances, this rule will have a delayed effective date of 30 days. DHS has complied with the CRA's reporting requirements and has sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

F. Executive Order 13132 (Federalism)

This final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. DHS does not expect this rule would impose substantial direct compliance costs on State and local governments or preempt State law. As stated above, neither the proposed rule nor this final rule modify the extent of State involvement set by statute. INA section 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J) (''who has been declared dependent on a juvenile court located in the United States . . . and in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status.''). State courts rightfully grant relief from abuse, neglect, abandonment, or some similar basis under State law, but they have no role in determining or granting immigration status within the United States. Therefore, in accordance with section 6 of E.O. 13132, it is determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This final rule meets the applicable standards set forth in section 3(a) and (b)(2) of E.O. 12988.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This final rule does not have ''tribal implications'' because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Family Assessment

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Agencies must assess whether the regulatory action: (1) Impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) financially impacts families, and whether those impacts are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the determination is affirmative, then the agency must prepare an impact assessment to address criteria specified in the law. As discussed in the proposed rule,[85] DHS assessed this action in accordance with the criteria specified by section 654(c)(1). This final rule will continue to enhance family well-being by aligning the regulation more closely with the statute. Accordingly, the rule will continue to enable juvenile noncitizens who have been abused, neglected, or abandoned and placed in State custody by a juvenile court to obtain special immigrant classification, and continue to enable these juveniles to be placed into more stable, permanent home environments and release them from reliance on their abusers.

J. National Environmental Policy Act

DHS analyzes actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive 023–01, Revision 01, ''Implementation of the National Environmental Policy Act,'' and DHS Instruction Manual 023–01–001–01, Revision 01, ''Implementation of the National Environmental Policy Act (NEPA)'' (Instruction Manual), establish the procedures DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA codified at 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1501.4 and 1507.3(e)(2)(ii). The DHS categorical exclusions are listed in Appendix A of the Instruction Manual. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that demonstrate, or create the potential for, significant environmental impacts. Instruction Manual, section V.B(2)(a–c).

This action amends existing regulations governing requirements and procedures for juveniles seeking SIJ classification. Specifically, the amendments update regulations codified in 8 CFR 204.11, 205.1, and 245.1 to reflect the statutory text and make other programmatic clarifications. The amendments codify changes required by law, clarify the definitions of ''juvenile court'' and ''judicial determination,'' what constitutes a qualifying juvenile court order and parental reunification determination, DHS's consent function, and bars to adjustment, inadmissibility grounds, and waivers for SIJ-based adjustment to LPR status. In addition, the amendments remove bases for automatic revocation that are inconsistent with the statutory requirements of the TVPRA 2008 and make other technical and procedural changes. The amended regulations codify and clarify eligibility criteria and will have no impact on the overall population of the U.S. and will not increase the number of immigrants allowed into the U.S.

DHS analyzed the proposed amendments and has determined that this action clearly fits within categorical exclusion A3(a) in Appendix A of the Instruction Manual because the regulations being promulgated are of a strictly administrative or procedural nature. DHS has also determined that this action clearly fits within categorical exclusion A3(d) because it amends existing regulations without changing their environmental effect. This final

[85] *See* USCIS, ''Special Immigrant Juvenile Petitions,'' Proposed Rule, 76 FR 54978, 54984–95 (Sep. 6, 2011).

rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this final rule is categorically excluded from further NEPA review.

K. Paperwork Reduction Act

This rule requires that DHS make nonsubstantive edits to the instructions for Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant (OMB Control No. 1615–0020), to require evidence in support of the ''judicial determinations'' instead of evidence in support of the juvenile's court's ''findings,'' and the instructions for Form I–601, Application for Waiver of Grounds of Inadmissibility (OMB Control No. 1615–0029) to incorporate the expanded application of the simple possession exception to the grounds of inadmissibility under INA section 212(a)(2)(A), 8 U.S.C. 1182(a)(2)(A) (conviction of certain crimes) and INA section 212(a)(2)(B), 8 U.S.C. 1182(a)(2)(B) (multiple criminal convictions), in addition to the existing application of the exception of the simple possession exception at INA section 212(a)(2)(C), 8 U.S.C. 1182(a)(2)(C) (controlled substance traffickers). DHS has submitted a Paperwork Reduction Act Change Worksheet, Form OMB 83–C, and amended information collection instruments to OMB for review and approval in accordance with the PRA.

VI. List of Subjects and Regulatory Amendments

List of Subjects

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedures, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1324a, 1641; 8 CFR part 2.

■ 2. Section 204.11 is revised to read as follows:

§ 204.11 Special immigrant juvenile classification.

(a) *Definitions.* As used in this section, the following definitions apply to a request for classification as a special immigrant juvenile.

Judicial determination means a conclusion of law made by a juvenile court.

Juvenile court means a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.

Petition means the form designated by USCIS to request classification as a special immigrant juvenile and the act of filing the request.

Petitioner means the alien seeking special immigrant juvenile classification.

State means the definition set out in section 101(a)(36) of the Act, including an Indian tribe, tribal organization, or tribal consortium, operating a program under a plan approved under 42 U.S.C. 671.

United States means the definition set out in section 101(a)(38) of the Act.

(b) *Eligibility.* A petitioner is eligible for classification as a special immigrant juvenile under section 203(b)(4) of the Act as described at section 101(a)(27)(J) of the Act, if they meet all of the following requirements:

(1) Is under 21 years of age at the time of filing the petition;

(2) Is unmarried at the time of filing and adjudication;

(3) Is physically present in the United States;

(4) Is the subject of a juvenile court order(s) that meets the requirements under paragraph (c) of this section; and

(5) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile. For USCIS to consent, the request for SIJ classification must be bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. USCIS may withhold consent if evidence materially conflicts with the eligibility requirements in paragraph (b) of this section such that the record reflects that the request for SIJ classification was not bona fide. USCIS approval of the petition constitutes the granting of consent.

(c) *Juvenile court order(s).* (1) *Court-ordered dependency or custody and parental reunification determination.* The juvenile court must have made certain judicial determinations related to the petitioner's custody or dependency and determined that the petitioner cannot reunify with their parent(s) due to abuse, neglect, abandonment, or a similar basis under State law.

(i) The juvenile court must have made at least one of the following judicial determinations related to the petitioner's custodial placement or dependency in accordance with State law governing such determinations:

(A) Declared the petitioner dependent upon the juvenile court; or

(B) Legally committed to or placed the petitioner under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court.

(ii) The juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under State law. The court is not required to terminate parental rights to determine that parental reunification is not viable.

(2) *Best interest determination.* (i) A determination must be made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions that it would not be in the petitioner's best interest to be returned to the petitioner's or their parent's country of nationality or last habitual residence.

(ii) Nothing in this part should be construed as altering the standards for best interest determinations that juvenile court judges routinely apply under relevant State law.

(3) *Qualifying juvenile court order(s).* (i) The juvenile court must have exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law to establish eligibility.

(ii) The juvenile court order(s) must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition, except when the juvenile court's jurisdiction over the petitioner terminated solely because:

(A) The petitioner was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached, other than reunification with a parent or parents with whom the court previously found that reunification was not viable; or

(B) The petitioner was the subject of a qualifying juvenile court order that was terminated based on age, provided the petitioner was under 21 years of age at the time of filing the petition.

(d) *Petition requirements.* A petitioner must submit all of the following evidence, as applicable to their petition:

(1) *Petition.* A petition by or on behalf of a juvenile, filed on the form prescribed by USCIS in accordance with the form instructions.

(2) *Evidence of age.* Documentary evidence of the petitioner's age, in the form of a valid birth certificate, official government-issued identification, or other document that in USCIS' discretion establishes the petitioner's age. Under no circumstances is the petitioner compelled to submit evidence that would conflict with paragraph (e) of this section.

(3) *Juvenile court order(s).* Juvenile court order(s) with the judicial determinations required by paragraph (c) of this section. Where the best interest determination was made in administrative proceedings, the determination may be provided in a separate document issued in those proceedings.

(4) *Evidence of a similar basis.* When the juvenile court determined parental reunification was not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under State law. Such evidence must include:

(i) The juvenile court's determination as to how the basis is legally similar to abuse, neglect, or abandonment under State law; or

(ii) Other evidence that establishes the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law.

(5) *Evidentiary requirements for DHS consent.* For USCIS to consent, the juvenile court order(s) and any supplemental evidence submitted by the petitioner must include the following:

(i) The factual basis for the requisite determinations in paragraph (c) of this section; and

(ii) The relief from parental abuse, neglect, abandonment, or a similar basis under State law granted or recognized by the juvenile court. Such relief may include:

(A) The court-ordered custodial placement; or

(B) The court-ordered dependency on the court for the provision of child welfare services and/or other court-ordered or court-recognized protective or remedial relief, including recognition of the petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement.

(6) *U.S. Department of Health and Human Services (HHS) consent.* The petitioner must provide documentation of specific consent from HHS with the petition when:

(i) The petitioner is, or was previously, in the custody of HHS; and

(ii) While in the custody of HHS, the petitioner obtained a juvenile court order that altered the petitioner's HHS custody or placement status.

(e) *No contact.* During the petition or interview process, USCIS will take no action that requires a petitioner to contact the person(s) who allegedly battered, abused, neglected, or abandoned the petitioner (or the family member of such person(s)).

(f) *Interview.* USCIS may interview a petitioner for special immigrant juvenile classification in accordance with 8 CFR 103.2(b). If an interview is conducted, the petitioner may be accompanied by a trusted adult at the interview. USCIS may limit the number of persons present at the interview, except that the petitioner's attorney or accredited representative of record may be present.

(g) *Time for adjudication.* (1) In general, USCIS will make a decision on a petition for classification as a special immigrant juvenile within 180 days of receipt of a properly filed petition. The 180 days does not begin until USCIS has received all of the required evidence in paragraph (d), and the time period will be reset or suspended as described in 8 CFR 103.2(b)(10)(i).

(2) When a petition for special immigrant juvenile classification and an application for adjustment of status to lawful permanent resident are pending at the same time, a request for evidence relating to the separate application for adjustment of status will not stop or suspend the 180-day period for USCIS to decide on the petition for SIJ classification.

(h) *Decision.* USCIS will notify the petitioner of the decision made on the petition, and, if the petition is denied, of the reasons for the denial, pursuant to 8 CFR 103.2(b) and 103.3. If the petition is denied, USCIS will provide notice of the petitioner's right to appeal the decision, pursuant to 8 CFR 103.3.

(i) *No parental immigration rights based on special immigrant juvenile classification.* The natural or prior adoptive parent(s) of a petitioner granted special immigrant juvenile classification will not be accorded any right, privilege, or status under the Act by virtue of their parentage. This prohibition applies to all of the petitioner's natural and prior adoptive parent(s).

(j) *Revocation.* (1) *Automatic revocation.* USCIS will issue a notice to the beneficiary of an approved petition for special immigrant juvenile classification of an automatic revocation under this paragraph as provided in 8 CFR 205.1. The approval of a petition for classification as a special immigrant juvenile made under this section is revoked as of the date of approval if any one of the following circumstances occurs before the decision on the beneficiary's application for adjustment of status to lawful permanent resident becomes final:

(i) Reunification of the beneficiary with one or both parents by virtue of a juvenile court order, 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

(ii) Administrative or judicial proceedings determine that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of their parent(s).

(2) *Revocation on notice.* USCIS may revoke an approved petition for classification as a special immigrant juvenile for good and sufficient cause as provided in 8 CFR 205.2.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

■ 3. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a, and 1324a.

■ 4. Amend § 205.1 by revising paragraph (a)(3)(iv) to read as follows:

§ 205.1 Automatic revocation.

(a) * * *

(3) * * *

(iv) *Special immigrant juvenile petitions.* An approved petition for classification as a special immigrant juvenile will be revoked as provided in 8 CFR 204.11(j)(1).

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 5. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; Pub. L. 105–100, section 202, 111 Stat. 2160, 2193; Pub. L. 105–277, section 902, 112 Stat. 2681; Pub. L. 110–229, tit. VII, 122 Stat. 754; 8 CFR part 2.

■ 6. Amend § 245.1 by revising paragraph (e)(3) to read as follows:

§ 245.1 Eligibility.

* * * * *

(e) * * *

(3) *Special immigrant juveniles.* (i) *Eligibility for adjustment of status.* For the limited purpose of meeting one of the eligibility requirements for adjustment of status under section 245(a) of the Act, which requires that an individual be inspected and admitted or paroled, an applicant classified as a special immigrant juvenile under section 101(a)(27)(J) of the Act will be deemed to have been paroled into the United States as provided in § 245.1(a) and section 245(h) of the Act.

(ii) *Bars to adjustment.* An applicant classified as a special immigrant juvenile is subject only to the adjustment bar described in section 245(c)(6) of the Act. Therefore, an applicant classified as a special immigrant juvenile is barred from adjustment if deportable due to engagement in terrorist activity or association with terrorist organizations (section 237(a)(4)(B) of the Act). There is no waiver of or exemption to this adjustment bar if it applies.

(iii) *Inadmissibility provisions that do not apply.* The following inadmissibility provisions of section 212(a) of the Act do not apply to an applicant classified as a special immigrant juvenile and do not render the applicant ineligible for the benefit:

(A) Public charge (section 212(a)(4) of the Act);

(B) Labor certification (section 212(a)(5)(A) of the Act);

(C) Aliens present without admission or parole (section 212(a)(6)(A) of the Act);

(D) Misrepresentation (section 212(a)(6)(C) of the Act);

(E) Stowaways (section 212(a)(6)(D) of the Act);

(F) Documentation requirements for immigrants (section 212(a)(7)(A) of the Act);

(G) Aliens unlawfully present (section 212(a)(9)(B) of the Act);

(iv) *Inadmissibility provisions that do apply.* Except as provided for in paragraph (e)(3)(iii) of this section, all inadmissibility provisions in section 212(a) of the Act apply to an applicant classified as a special immigrant juvenile.

(v) *Waivers.* (A) Pursuant to section 245(h)(2)(B) of the Act, USCIS may grant a waiver for humanitarian purposes, to assure family unity, or in the public interest for any applicable provision of section 212(a) of the Act to an applicant seeking to adjust status based upon their classification as a special immigrant juvenile, except for the following provisions:

(1) Conviction of certain crimes (section 212(a)(2)(A) of the Act) (except for a single offense of simple possession of 30 grams or less of marijuana);

(2) Multiple criminal convictions (section 212(a)(2)(B) of the Act) (except for a single offense of simple possession of 30 grams or less of marijuana);

(3) Controlled substance traffickers (section 212(a)(2)(C) of the Act) (except for a single offense of simple possession of 30 grams or less of marijuana);

(4) Security and related grounds (section 212(a)(3)(A) of the Act);

(5) Terrorist activities (section 212(a)(3)(B) of the Act);

(6) Foreign policy (section 212(a)(3)(C) of the Act); or

(7) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (section 212(a)(3)(E) of the Act).

(B) The relationship between an applicant classified as a special immigrant juvenile and the applicant's natural or prior adoptive parents cannot be considered a factor in issuing a waiver based on family unity under paragraph (v) of this section.

(vi) *No parental immigration rights based on special immigrant juvenile classification.* The natural or prior adoptive parent(s) of an applicant classified as a special immigrant juvenile will not be accorded any right, privilege, or status under the Act by virtue of their parentage. This prohibition applies to all of the applicant's natural and prior adoptive parent(s) and remains in effect even after the special immigrant juvenile becomes a lawful permanent resident or a United States citizen.

(vii) *No contact.* During the application or interview process, USCIS will take no action that requires an applicant classified as a special immigrant juvenile to contact the person who allegedly battered, abused, neglected, or abandoned the applicant (or the family member of such person(s)).

* * * * *

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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