

Special Immigrant Juvenile Status  
Cases: Policy Updates and  
Considerations for Juvenile and Family  
Court Judges  
Presented With USCIS

National Council of Juvenile and Family Court  
Judges – National Conference on Juvenile Justice

March 18, 2024

# Faculty Introductions

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## Thank you to SJI

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- Forum on Human Trafficking and Immigration in State Courts
- What is the NJNI (337 judges – 39 states & 2 territories)
  - Opportunity to engage in discussions with other judges
  - Receive latest information
  - Peer-to-Peer training opportunities
  - Get your questions answered
  - Receive the information you need through
    - Webinars, trainings, and technical assistance
    - Bench cards, tools and training materials
- **We are circulating a sign up sheet**



# Learning Objectives

By the end of this training you will be better able to:

- Better identify Special Immigrant Juvenile (SIJ) eligible youth in the cases judges hear.
- Gain improved understanding of the federal requirements for SIJ eligibility.
- Understand what constitutes sufficient legal and factual determinations for SIJ classification
- Learn how to play a leadership role regarding SIJ within your jurisdictions

Raise your hand if you have issued  
SIJS judicial determinations in  
your court orders.



# NOTE

- All of the USCIS Slides in this slide deck contain the U.S. Citizenship and Immigration Services Logo
- All other slides for this presentation were developed by NIWAP and the National Judicial Network



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# WHAT JUDGES NEED TO KNOW: Special Immigrant Juvenile Classification

March 18, 2024

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2024 National Conference on Juvenile  
Justice

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# PRESENTATION OUTLINE



U.S. Citizenship  
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 DHS/USCIS

 Special Immigrant Juvenile (SIJ) Classification

 Resources

 Q&A

# DHS ORG CHART (SIMPLIFIED)



U.S. Citizenship  
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U.S. Department of Homeland  
Security (DHS)

U.S. Customs  
and Border  
Protection  
(CBP)

**U.S. Citizenship  
and Immigration  
Services  
(USCIS)**

U.S.  
Immigration  
and Customs  
Enforcement  
(ICE)

U.S. Coast  
Guard

Federal  
Emergency  
Management  
Agency  
(FEMA)

U.S. Secret  
Service

Transportation  
Security  
Administration  
(TSA)

# SPECIAL IMMIGRANT JUVENILE (SIJ) CLASSIFICATION: OVERVIEW



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✦ **Immigration benefit for certain noncitizen children** who cannot be reunified with one or both parents due to abuse, abandonment, neglect, or a similar basis under state law.

✦ **Pathway to lawful permanent resident (LPR) status (Green Card)**



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# WHO SEEKS SIJ CLASSIFICATION?



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## May include:

- Children who live with a court appointed custodian (may include a parent)
- Adopted children
- Children in state foster care
- Unaccompanied children

In what types of state court cases do you see SIJ eligible children?

# UNACCOMPANIED CHILD (UC)



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“Child under the age of 18 who has no lawful immigration status in the U.S. and for whom there is no parent or legal guardian in the U.S. available to provide care and physical custody.”

6 USC 279(g)(2)

Some SIJs may be UCs, but not all UCs are eligible for SIJ classification.



# UCs AND THE ORR PROCESS



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Child apprehended & screened

- Evaluated for age & other criteria
- Held for no more than 72 hours

Notice to Appear (NTA) issued

- Designation as UC
- Filed with EOIR to initiate removal proceedings

Transferred to ORR facility

- Required to place the child in the least restrictive setting

Removal proceedings conducted

- Venue transfer if necessary
- USCIS has initial jurisdiction over asylum applications

Does the placement in least restrictive setting involve a best interest of the child determination similar to what is required of state courts?

# SIJ CLASSIFICATION: PROCESS

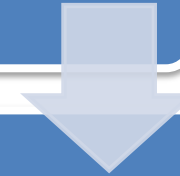


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Juvenile Court Process



SIJ Classification: Form I-360



SIJ-based Green Card: Form I-485

# SIJ CLASSIFICATION: ELIGIBILITY CRITERIA



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- Under 21 at time of filing with USCIS
- Unmarried
- Physically present in the U.S.
- Subject of state juvenile court order(s) with required determinations on:
  - Dependency or custody,
  - Parental reunification, and
  - Best interests
- Eligible for USCIS consent



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# SIJ CLASSIFICATION: AGE



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## Age at time of filing with USCIS

- ✦ Must be under 21 as of the date of filing
- ✦ Petitioner will continue to remain eligible even if they turn 21 after filing

## Age at time of juvenile court order

- ✦ State law is controlling as to whether a petitioner is considered a “child” or any equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings at the time the order(s) are issued.

# SIJ CLASSIFICATION: JUVENILE COURT



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- ✦ **Juvenile Court:** 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. (8 CFR 204.11(a))
  - ✦ Title and type of court may vary (e.g., juvenile, family, probate, youthful offender/delinquency)
- ✦ **Judicial Determinations:**
  - ✦ Order must contain the required determinations made under state law regarding: dependency or custody, parental reunification, and best interests. Should include evidence of a reasonable factual basis for each of the determinations and the ordered relief from parental maltreatment.

# QUALIFYING JUVENILE COURT ORDER(S)



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- ✦ **Under State Law:** 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.
  
- ✦ **Validity:** Juvenile court order(s) must be in effect at the time petitioner files the petition and remain in effect through adjudication
  - ✦ Except where the juvenile court's jurisdiction ended solely because of:
    - ✦ the petitioner's age, or
    - ✦ because the petitioner reached a child welfare permanency goal, such as adoption.

8 CFR 204.11(c)(3)

# REQUIRED DETERMINATIONS



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**A juvenile court with jurisdiction** must issue the following judicial determinations under state law, and the record must provide evidence that there is a reasonable factual basis for each of the determinations.

- **Dependency/Custody:** The child is either dependent on the court or placed under the custody of an individual or entity;
- **Reunification:** The child cannot be reunified with one or both parents because of abuse, abandonment or neglect, or similar basis under state law; and
- **Best Interests:** It is not in the best interest of the child to be returned to their or their parent(s)' country of nationality or last habitual residence.



The factors you are required to consider under your *state best interests laws* impact which of the following SIJS judicial determinations?



- A. The SIJ dependency or custody determination
- B. The ruling that the child cannot be reunified with a parent who perpetrated the child's maltreatment
- C. Whether it is in the child's best interests to be returned to the child's or their parent's country of origin
- D. All of the above

# CONSENT



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- To consent to the grant of SIJ classification, USCIS must conclude that the request for SIJ classification is *bona fide*, meaning 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.” (8 CFR 204.11(b)(5))
- This is in recognition that petitioners can have dual or mixed reasons for seeking the juvenile court’s determinations.

# CONSENT: EVIDENTIARY REQUIREMENTS



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## To make a consent determination, USCIS needs evidence of:

1. The factual basis for the juvenile court determinations, and
2. The relief ordered by the court

## Court-ordered relief may include:

- custodial placement,
- dependency on the court for the provision of child welfare services, and/or
- other court-ordered 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
- 8 CFR 204.11(d)(5)

# JUVENILE COURTS AND USCIS ROLE



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	Juvenile Court	USCIS
<b>Does</b>	Make child welfare findings under <b>state law</b>	Determine if a child meets statutory requirements for SIJ classification under <b>federal immigration law</b> and determines whether the petitioner has met her burden of proving that the juvenile court had jurisdiction and issued required determinations under state law.
<b>Does Not</b>	Have the authority to determine eligibility for SIJ classification	Reweigh evidence to determine if child was abused, neglected, or abandoned under state law.

# TIPS FOR JUVENILE COURT ORDERS



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There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state laws.

- ✦ **Establish that determinations were issued under state law.**
  - The order(s) should use language establishing that the judicial determinations were made under state law (e.g., citation to relevant state law).
  - Do not just mirror or cite to immigration law and regulations.
- ✦ **All determinations do not have to be in the same order.**
  - Multiple orders are fine, as long as all required determinations are made.
- ✦ **Include the names of parents if known.**
  - The record must establish that the court made a determination regarding the child's parentage.
  - If parent(s) are unknown, the record should reflect that they are unknown.



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# DEPENDENCY/CUSTODY



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## Helpful to USCIS

The court order states the specific custody and/or dependency determination made under state law, including naming the individual or entity that the child is placed with:

**“The court grants legal guardianship to the child’s maternal aunt, Jessica Doe.”**

# NON-VIABILITY OF REUNIFICATION



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## Helpful to USCIS

The court order states the specific determination made under state law:

**“The child cannot reunify with her biological mother, Jane Doe, because she abandoned the child in Country X when she was 10 years-old, as abandonment is defined by (applicable section of the state law).”**

# BEST INTERESTS



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## Helpful to USCIS

**“It would not be in the child’s best interest to return to Country X where she has no family to care for her. Here in the United States, the child is protected and cared for by her mother, who is ensuring her health, safety, and wellbeing.”**



What are some other examples of detailed findings that could be useful to include in court's SIJ court orders?

# SIJ CLASSIFICATION: PROCESS

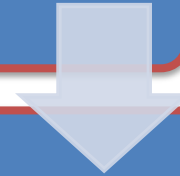


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Juvenile Court Process



SIJ Classification: Form I-360



SIJ-based Green Card: Form I-485

# FORM I-360: PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT



U.S. Citizenship and Immigration Services

- Form I-360 (no fee)
- Juvenile court order(s) that:
  - Makes the required determinations, and
  - Includes or is supplemented by the factual basis for each of the court's findings
- Birth certificate or other evidence of age
- HHS consent, if applicable

**Petition for Amerasian, Widow(er), or Special Immigrant** USCIS Form I-360  
Department of Homeland Security U.S. Citizenship and Immigration Services OMB No. 1615-0020 Expires 06/30/2022

For USCIS Use Only		Fee Stamp	Action Block
Returned			
Resubmitted			
Relocated			
Received			
Sent			
Remarks:	<input type="checkbox"/> Petitioner/Applicant Interviewed <input type="checkbox"/> Interviewed Beneficiary Interviewed <input type="checkbox"/> I-485 Filed Concurrently <input type="checkbox"/> Bene "A" File Reviewed	Classification	Priority Date
		Consulate	
To be completed by an Attorney or Accredited Representative (if any).	<input type="checkbox"/> Select this box if Form G-28 or G-281 is attached.	Attorney State Bar Number (if applicable)	Attorney or Accredited Representative USCIS Online Account Number (if any)

▶ **START HERE** - Type or print in black ink.

**Part 1. Information About Person or Organization Filing This Petition**

**NOTE:** You must complete **Part 1**, as the petitioner if you are filing this petition on behalf of another person. If you are a Violence Against Women Act (VAWA) self-petitioner or special immigrant juvenile, skip to **Part 1, Item Number 7**.

1. Your Full Name  
Family Name (Last Name) Given Name (First Name) Middle Name

2. USCIS Online Account Number (if any) 3. U.S. Social Security Number (if any)

4. Alien Registration Number (A-Number) (if any) 5. Individual IRS Tax Number (if any)

6. Mailing Address [\(USPS ZIP Code Lookup\)](#)  
In Care Of Name (if any)

Organization Name (if applicable)

Street Number and Name Apt. Ste. Flr. Number

City or Town State ZIP Code

Province Postal Code Country

Form I-360 Edition 06/09/20 Page 1 of 19

# FILING FOR A GREEN CARD



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- ✦ File Form I-485 if a category EB4 visa number is available based on the SIJ's priority date and country of chargeability
- ✦ Valid Form I-693
- ✦ Form G-28 if the SIJ has an attorney or accredited representative
- ✦ Filing fee or fee waiver
- ✦ Mail packet to address on the USCIS website
- ✦ Will be scheduled for biometrics



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# VISA BACKLOG



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Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	15JUL22	01OCT20	C	C
2nd	22NOV22	01JAN20	01MAR12	22NOV22	22NOV22
3rd	08SEP22	01SEP20	01JUL12	08SEP22	08SEP22
Other Workers	08SEP20	01JAN17	01JUL12	08SEP20	01MAY20
4th	01DEC19	01DEC19	01DEC19	01DEC19	01DEC19
Certain Religious Workers	01DEC19	01DEC19	01DEC19	01DEC19	01DEC19



- SIJs are subject to a cap on the numbers of visas available each year for special immigrants to adjust status in the EB-4 category.
- There is currently a significant backlog- the wait for an available visa may be many years long.

# SIJ POLICY UPDATES



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## **SIJ Final Rule**

-  Comprehensive revision to align regulations with statutory changes

## **SIJ Deferred Action**

-  USCIS automatically considers granting deferred action to SIJ-classified noncitizens who do not have an immigrant visa number available to apply for a green card.

## **Filing Flexibilities**

-  In-person filing within 2 weeks of the 21<sup>st</sup> birthday
-  If the last day before the 21<sup>st</sup> birthday falls on a weekend or federal holiday, filings that arrive by mail on the next business day will be considered timely filed.



# RESOURCES



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# SIJ RESOURCES



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- Regulatory Citations: [8 CFR 204.11](#); [205.1\(a\)\(3\)\(iv\)](#); [245.1\(e\)\(3\)](#)
- SIJ Final Rule: [87 FR 13066](#)
- USCIS Policy Manual guidance
  - [Volume 6, Part J: Special Immigrant Juveniles](#)
  - [Volume 7, Part F: Special Immigrant-Based Adjustment of Status, Chapter 7, Special Immigrant Juveniles](#)
- SIJ Landing Page: [uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4/special-immigrant-juveniles](https://uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4/special-immigrant-juveniles)
- Adjudications Data: [uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data](https://uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data)



# QUESTIONS & ANSWERS



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**Any questions?**

**Thank you!**

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- This presentation provides a general overview of key elements of adoption-related immigration processes. It is not a substitute for the actual U.S. immigration laws and regulations, nor is it a comprehensive summary of these laws and regulations. If there is any inconsistency between this presentation and the laws and regulations, the language of the laws and regulations governs.
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# NIWAP Resources

- SIJS Bench Book
- Answers to Questions Judges Ask
  - Q and A based on the 2022 SIJS regulations
- Article & chart analyzing state SIJS case law rulings through 2023
- Map and comparison charts all state:
  - Best interests laws
  - Family/Juvenile Court jurisdiction and service of process requirements
  - Public benefits access for SIJS children and immigrant crime victims
- Bench cards, webinars, training tools
- Government SIJS publications including SIJS regulatory history

# Technical Assistance and Materials

- **Power Point presentations and materials for this conference at**
  - <http://niwaplibrary.wcl.american.edu/ncjfcjcleveland2024>
- **National Judicial Network**
  - <https://niwaplibrary.wcl.american.edu/national-judicial-network>
- **SIJS Webinar**
  - <https://niwaplibrary.wcl.american.edu/njn-webinar-new-regulations-policies-sijs-orders-oct-2022>
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