

## USCIS Response to Coronavirus (COVID-19)



U.S. Citizenship  
and Immigration  
Services

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## Chapter 1 - Purpose and Background

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### A. Purpose

Congress initially created the special immigrant juvenile (SIJ) classification to provide humanitarian protection for abused, neglected, or abandoned [noncitizen](#) children eligible for long-term foster care. This protection evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. While there is no longer a requirement that a child be found eligible for long-term foster care, a juvenile court determination<sup>[1]</sup> that reunification with one or both parents is not viable is still required for SIJ classification.<sup>[2]</sup>

Children in a variety of different circumstances who are residing in the United States may be eligible for SIJ classification, including but not limited to:

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subjected to similar maltreatment by a parent prior to their arrival in the United States, or while in the United States;
- Children in federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Unaccompanied Children's Services Program;<sup>[3]</sup> or
- Children in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of a person or entity appointed by a state or juvenile court.

### B. Background

Congress first established the SIJ immigrant visa classification in 1990. Since then, Congress has enacted several amendments. The table below provides an overview of major legislation related to SIJ

classification.

### Special Immigrant Juvenile Classification: Acts and Amendments

Acts and Amendments	Key Changes
<b>The Immigration Act of 1990</b> <sup>[4]</sup>	<ul style="list-style-type: none"> <li>Established an SIJ classification for children declared dependent on a juvenile court in the United States, eligible for long-term foster care, and for whom it would not be in their best interest to return to their country of origin</li> </ul>
<b>Miscellaneous and Technical Immigration and Nationality Amendments of 1991</b> <sup>[5]</sup>	<ul style="list-style-type: none"> <li>Provided that children with SIJ classification were considered paroled for the purpose of adjustment of status to lawful permanent residence</li> <li>Provided that noncitizen children cannot apply for admission or be admitted to the United States in order to obtain SIJ classification</li> </ul>
<b>The Immigration and Nationality Technical Corrections Act of 1994</b> <sup>[6]</sup>	<ul style="list-style-type: none"> <li>Expanded eligibility from those declared dependent on a juvenile court to children whom such a court has legally committed to, or placed under the custody of, a state agency or department</li> </ul>
<b>The 1998 Appropriations Act</b> <sup>[7]</sup>	<ul style="list-style-type: none"> <li>Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment</li> <li>Provided that children are eligible only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the grant of classification</li> <li>Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court's jurisdiction</li> </ul>
<b>Violence Against Women Act of 2005</b> <sup>[8]</sup>	<ul style="list-style-type: none"> <li>Prohibited compelling an SIJ petitioner to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for SIJ classification</li> </ul>

Acts and Amendments	Key Changes
<p><b>The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008)</b>  <a href="#">[9]</a></p>	<ul style="list-style-type: none"> <li>• Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law</li> <li>• Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court</li> <li>• Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner’s age at the time of adjudication</li> <li>• Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order</li> <li>• Altered the “specific consent” function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary of the Department of Homeland Security</li> <li>• Added a timeframe for adjudication: USCIS shall adjudicate SIJ petitions within 180 days of filing</li> </ul>

## C. Legal Authorities

- [INA 101\(a\)\(27\)\(J\)](#); [8 CFR 204.11](#) – Special immigrant juvenile classification
- [INA 203\(b\)\(4\)](#) – Certain special immigrants
- [INA 204\(a\)\(1\)\(G\)\(i\)](#) – Petitioning procedure
- [INA 245\(h\)](#); [8 CFR 245.1\(e\)\(3\)](#) – Special immigrant juveniles, eligibility for adjustment of status
- [INA 287\(h\)](#) – Protecting abused juveniles
- [8 CFR 205.1\(a\)\(3\)\(iv\)](#) – Automatic revocation
- [8 CFR 205.2](#) – Revocation on notice

## Footnotes

[^1] The term “determination” refers to a conclusion of law. See [8 CFR 204.11\(a\)](#) (defining “judicial determination” as a conclusion of law made by a juvenile court).

[^2] There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.

[^3] See Section 462 of the Homeland Security Act of 2002, [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135, 2202 (November 25, 2002).

[^4] See [Pub. L. 101-649 \(PDF\)](#) (November 29, 1990).

[^5] See [Pub. L. 102-232 \(PDF\)](#) (December 12, 1991).

[^6] See [Pub. L. 103-416 \(PDF\)](#) (October 25, 1994).

[^7] See [Pub. L. 105-119 \(PDF\)](#) (November 26, 1997).

[^8] See [Pub. L. 109-162 \(PDF\)](#) (January 5, 2006).

[^9] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).

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## Chapter 2 - Eligibility Requirements

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Special immigrant juvenile (SIJ) classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. If a juvenile court has made certain judicial determinations and issued orders under state law on dependency or custody, parental reunification, and the best interests of the child, then the child may be eligible for SIJ classification.

USCIS determines if the petitioner meets the requirements for SIJ classification by adjudicating a Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).<sup>[1]</sup> USCIS' adjudication of the SIJ petition includes review of the petition, the juvenile court order(s), and supporting evidence to determine if the petitioner is eligible for SIJ classification. USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about the best interest of the juvenile and abuse, neglect, abandonment, or a similar basis under state law.

### A. General

A petitioner must satisfy the following requirements to qualify for SIJ classification:

General Eligibility Requirements for SIJ Classification
Physically present in the United States at the time of filing and adjudication of the Petition for Amerasian, Widow(er), or Special Immigrant ( <a href="#">Form I-360</a> )

General Eligibility Requirements for SIJ Classification
Unmarried at the time of filing and adjudication of <a href="#">Form I-360</a>
Under the age of 21 at the time of filing <a href="#">Form I-360</a>
Subject to juvenile court determinations issued in the United States that meet the specified requirements
Obtain U.S. Department of Homeland Security consent
Obtain U.S. Department of Health and Human Services (HHS) consent, if applicable

## B. Age-out Protections for Filing with USCIS

In general, a juvenile may seek SIJ classification if he or she is under 21 years of age and unmarried at the time of filing the petition with USCIS.<sup>[2]</sup> However, state law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings.<sup>[3]</sup>

If a petitioner was under 21 years of age on the date of the proper filing of the [Form I-360](#), and all other eligibility requirements under the statute are met, USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.<sup>[4]</sup>

## C. Juvenile Court Order

For purposes of SIJ classification, a juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations on the dependency and/or custody and care of juveniles.<sup>[5]</sup> This means the court must have the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued.<sup>[6]</sup> Depending on the circumstances, such a determination generally would be expected to remain in place until the juvenile reached the age of majority, or until the goal of a child welfare permanency plan, such as adoption, or other protective relief ordered by the juvenile court has been reached.<sup>[7]</sup>

The title and the type of court that may meet the definition of a juvenile court varies from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and youthful offender courts.

Not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification. For example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting

as a juvenile court for SIJ purposes. The burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued.<sup>[8]</sup>

To be eligible for SIJ classification, the petitioner must submit a juvenile court order(s) with the following determinations, and the record must provide evidence that there is a reasonable factual basis<sup>[9]</sup> for each of the determinations:

- Dependency or Custody – Declares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court;
- Parental Reunification – Declares, under state law, that the petitioner cannot reunify with one or both of the petitioner’s parents due to abuse, neglect, abandonment, or a similar basis under state law; and
- Best Interests – Determines that it would not be in the petitioner’s best interest to be returned to the petitioner’s, or the petitioner’s parents’, country of nationality or last habitual residence. The best interest determination may be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court.

## 1. Dependency or Custody

The petitioner must be the subject of a juvenile court order that declares the petitioner dependent on a juvenile court, or legally commits to or places the petitioner under the custody of either an agency or department of a state, or a person or entity appointed by a state or juvenile court.

### *Dependency*<sup>[10]</sup>

A determination of dependency requires that the petitioner be declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency.<sup>[11]</sup> The petitioner must be in the United States and under the jurisdiction of the court. The term dependent child, as used in state child welfare laws, generally means a child subject to the jurisdiction of a juvenile court because the court has determined that allegations of parental abuse, neglect, abandonment, or similar maltreatment concerning the child are sustained by the evidence and are legally sufficient to support state intervention on behalf of the child.<sup>[12]</sup> Dependency proceedings may include abuse, neglect, dependency, termination of parental rights, or other matters in which the court intervenes to provide relief from abuse, neglect, abandonment, or a similar basis under state law.<sup>[13]</sup>

### *Custody*<sup>[14]</sup>

Placing the petitioner “under the custody of” a natural person or entity may encompass legal or physical custody.<sup>[15]</sup> Commitment to, or placement under the custody of a person may include certain types of guardianship, conservatorship, or adoption.<sup>[16]</sup> When the court places the petitioner under the custody of a specific person, the court order should identify that person by name. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, abandonment, or similar maltreatment of the petitioner.

## 2. Parental Reunification<sup>[17]</sup>

The juvenile court must determine that reunification with one or both parents<sup>[18]</sup> is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state laws.<sup>[19]</sup> This generally means that the court intends for its determination that the child cannot reunify with his or her parent(s) to remain in effect until the child ages out of the juvenile court's jurisdiction.<sup>[20]</sup> However, actual termination of parental rights is not required.<sup>[21]</sup>

The record should contain the factual basis for this determination, and must establish that the court made a determination regarding the petitioner's parentage. If the juvenile court order names the petitioner's parents, or the record is supported by other evidence of parentage that was considered by the court, such as the birth certificate, USCIS generally considers this requirement to have been met. If a parent is unknown, the record should reflect that the parent is unknown. If the record does not establish that the court made a determination regarding the petitioner's parentage, USCIS may request additional evidence.

### 3. Best Interests

While juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or the petitioner's parents.<sup>[22]</sup> This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court's determination.

The standards for making best interest determinations may vary between states, and the court may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s).<sup>[23]</sup> The child's safety and well-being are typically the paramount concern. For example, if the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent. The analysis would not change even if the chosen caregiver is a parent. USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.<sup>[24]</sup>

The juvenile court may make the required determination that it is not in the petitioner's best interest to be returned to the petitioner's or the petitioner's parents' country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court, such as a state child welfare agency, may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a determination from that process may satisfy this requirement.<sup>[25]</sup>

### 4. Validity of Order

#### *Jurisdiction under State Law*

All determinations in the juvenile court order must have been properly issued under state law to establish eligibility for SIJ classification. This includes the need for the juvenile court<sup>[26]</sup> to have jurisdiction under state law to make the required judicial determinations about the custody and care and/or dependency of the juvenile.<sup>[27]</sup> For example, a state juvenile court may not be able to take jurisdiction and issue a



qualifying dependency or custody order for a person who is no longer a juvenile under the state's dependency or custody laws even though the federal statute allows a petitioner to file for SIJ classification until the age of 21. The state law definition of juvenile controls jurisdiction to determine dependency or custody proceedings before the juvenile court. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.

### *Continuing Jurisdiction*

In general, the petitioner must remain under the jurisdiction of the juvenile court at the time of the filing and adjudication of the SIJ petition, subject to some exceptions discussed below. If the petitioner is no longer under the jurisdiction of the juvenile court for a reason related to their underlying eligibility for SIJ classification, the petitioner is not eligible for SIJ classification. This may include cases in which the petitioner is no longer under the jurisdiction of the court because:

- The court vacated or terminated its determinations that made the petitioner eligible because of subsequent evidence or information that invalidated the determinations; or
- The court reunified the petitioner with the parent with whom the court previously deemed reunification was not viable because of abuse, neglect, abandonment, or a similar basis under state law.

However, this requirement does not apply if the juvenile court jurisdiction ended solely because:

- The petitioner was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached;<sup>[28]</sup> or
- The petitioner was the subject of a qualifying juvenile court order that was terminated based on age before or after filing the SIJ petition (provided the petitioner was under 21 years of age at the time of filing the SIJ petition).<sup>[29]</sup>
- A juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction, and a juvenile leaving the court-ordered placement without permission or authorization does not by itself affect SIJ eligibility. In general, a court maintains jurisdiction when it orders the juvenile placed in a different state or makes a custody determination and the juvenile and the legal custodian relocate to a new jurisdiction.<sup>[30]</sup>

If the original order is terminated due to the relocation of the child but another order is issued in a new jurisdiction, USCIS considers 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.

## D. DHS Consent

The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) simplified but did not remove the DHS consent requirement.<sup>[31]</sup> In order to consent to the grant of SIJ classification, USCIS must review the juvenile court order(s) and any supporting evidence submitted to conclude that the request for SIJ classification is 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.<sup>[32]</sup>

In exercising this consent function, USCIS therefore looks to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court. [33] Such relief may include custodial placement, dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief. [34] USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law.

Under the *Saravia* Settlement Agreement, USCIS does not 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 his or her home country. USCIS does not use its consent authority to reweigh the evidence that the juvenile court considered when it issued the predicate order. [35]

USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make determinations in separate hearings and the petitioner may request an order that compiles the determinations of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the determinations that were made so that USCIS can determine the petitioner's eligibility for SIJ classification does not mean that the order is not bona fide. USCIS may, however, withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification. [36]

## E. U.S. Department of Health and Human Services Consent

If a petitioner is or was previously in the custody of HHS, and obtained a juvenile court order that also altered the petitioner's custody status or placement while the petitioner is or was in HHS custody, the petitioner must provide documentation of HHS' consent to the juvenile court's jurisdiction. [37] HHS consent is not required if the order simply restates the juvenile's placement in HHS custody. [38]

## F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition. [39] Therefore, a petitioner does not need to apply for a waiver of any applicable grounds of inadmissibility in order to be eligible for SIJ classification.

## G. Family Members

Unlike some other immigrant visa petitions, SIJ classification does not allow the petitioner's family members to be included on the petition as derivative beneficiaries. SIJ petitioners that have adjusted status to that of a lawful permanent resident may petition for qualifying family members through the family-based immigration process. However, a petitioner who adjusts status as a result of an SIJ classification may not confer an immigration benefit to the petitioner's natural or prior adoptive parents, even after naturalization. [40] This prohibition applies to a custodial parent when the juvenile court has found reunification is not viable with the other parent. [41]

## Footnotes

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[^1] USCIS also adjudicates the Application to Register Permanent Residence or Adjust Status ([Form I-485](#)), which determines eligibility for adjustment of status to lawful permanent residence. See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

[^2] USCIS interprets the use of the term “child” in Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in [INA 101\(b\)\(1\)](#), which states that a child is an unmarried person under 21 years of age.

[^3] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [8 CFR 204.11\(a\)](#) (defining “juvenile court” as a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles). See [8 CFR 204.11\(c\)\(1\)\(i\)](#). See [8 CFR 204.11\(c\)\(3\)](#).

[^4] Section 235(d)(6) of the TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.

[^5] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [8 CFR 204.11\(a\)](#).

[^6] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [8 CFR 204.11\(c\)\(3\)](#).

[^7] See [8 CFR 204.11\(c\)\(3\)\(ii\)\(A\) and \(B\)](#).

[^8] For more information on what evidence is sufficient to establish that the court is acting as a juvenile court for SIJ purposes, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Determinations [[6 USCIS-PM J.3\(A\)\(1\)](#)].

[^9] For information on what evidence may suffice to establish a reasonable factual basis, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 2, Evidentiary Requirements for DHS Consent [[6 USCIS-PM J.3\(A\)\(2\)](#)].

[^10] See [8 CFR 204.11\(c\)\(1\)\(i\)\(A\)](#).

[^11] See [8 CFR 204.11\(c\)\(1\)\(i\)\(A\)](#). For an example of state law governing declarations of dependency, see California Welfare and Institutions Code Section 300, et seq.

[^12] Intervention by a juvenile court on behalf of a dependent child generally involves a determination regarding the care and custody of the child or the provision of child welfare services or both. If a custodial placement is being made, the order should state where or with whom the child is being placed. If the court is providing relief through child welfare services, the order or supplemental evidence should reference what type of services or supervision the child is receiving from the court. For example, court-ordered child welfare services may include psychiatric, psychological, educational, occupational, medical or social services, services providing protection against trafficking or domestic violence, or other supervision by the court or a court appointed entity. See, for example, U.S. Department of Health and Human Services, Child Welfare Information Gateway, [How the Child Welfare System Works \(PDF\)](#). See [Budhathoki v. Nielsen \(PDF\)](#), 898 F.3d 504, 513 (5th Cir. 2018) (concluding “that before a state court ruling constitutes a dependency order, it must in some way address custody or at least supervision”).

[^13] USCIS draws on guidance from family law treatises, national clearinghouses on juvenile court practice, and state laws on the definition of dependency. See, for example, Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases*, Section 12.1 (Thompson Reuters 3rd ed. 2018); and National

Council of Juvenile and Family Court Judges, [Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases \(PDF\)](#) (2016).

[^ 14] See [8 CFR 204.11\(c\)\(1\)\(i\)\(B\)](#).

[^ 15] However, a department or agency of a state, or a person or entity appointed by a state court or juvenile court located in the United States, acting in loco parentis, is not considered a legal guardian for purposes of a qualifying custody determination. See Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008).

[^ 16] SIJ is generally not an appropriate option for those children who come to the United States for the primary purpose of adoption. Although it does not apply to all SIJ cases involving adoption, SIJ classification is not meant to provide a way to circumvent the Hague Adoption Convention or other requirements for receiving legal status via adoption. See Hague Conference on Private International Law, Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134, Art. 2, 28. See [8 CFR 204.300](#) (regulations governing the intercountry adoption of a Hague Adoption Convention adoptee).

[^ 17] The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. USCIS interprets the TVPRA changes as a clarification that petitioners do not need to be eligible for or placed in foster care and that they may be reunified with one parent or other family members. However, USCIS requires that the reunification no longer be a viable option with at least one parent. USCIS maintains that the court's determination generally should be in place on the date the petitioner files the [Form I-360](#) and continue through the time of adjudication, unless the juvenile court's jurisdiction over the petitioner terminated solely because a child welfare permanency goal was reached or due to age, provided the petitioner was under 21 at the time of filing the petition. See [8 CFR 204.11\(c\)\(3\)\(ii\)\(A\) and \(B\)](#). See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5079 (December 23, 2008).

[^ 18] The term "parent" does not encompass a stepparent unless the stepparent is recognized as the petitioner's legal parent under state law, such as when a stepparent has adopted the petitioner.

[^ 19] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [8 CFR 204.11\(c\)\(1\)\(ii\)](#).

[^ 20] For example, when parental reunification is no longer the goal of the child welfare authority's plan for a permanent living situation for the child (known as a "permanency plan"). See U.S. Department of Health and Human Services, Child Welfare Information Gateway, [How the Child Welfare System Works \(PDF\)](#).

[^ 21] See [8 CFR 204.11\(c\)\(1\)\(ii\)](#). USCIS does not require 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. See *R.F.M. v Nielsen*, 365 F.Supp.3d 350, 382 (S.D. NY Mar. 15, 2019). See *J.L., et al v. Cissna*, 341 F.Supp.3d 1048 (N.D. CA 2018), *Moreno-Galvez v. Cissna*, No. 19-321 (W.D. WA July 17, 2019). See *W.A.O. v. Cissna*, No. 19-11696 (D. NJ July 3, 2019).

[^ 22] See [INA 101\(a\)\(27\)\(J\)\(ii\)](#). See [8 CFR 204.11\(c\)\(2\)](#).

[^ 23] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, [Determining the Best Interests of the Child](#).

[^ 24] See [8 CFR 204.11\(c\)\(2\)\(ii\)](#).

[^ 25] See [8 CFR 204.11\(c\)\(2\)](#). The burden is on the petitioner to prove that the other judicial or administrative body is authorized or recognized by a juvenile court to make best interest determinations. Evidence to support this may include, but is not limited to, copies of the relevant state law(s) or court documents indicating that the judicial or administrative body is authorized to make such determinations.

[^ 26] As defined in this Section C, Juvenile Court Order [[6 USCIS-PM J.2\(C\)](#)].

[^ 27] For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles. See [8 CFR 204.11\(a\)](#).

[^ 28] See [8 CFR 204.11\(c\)\(3\)\(ii\)\(A\)](#).

[^ 29] See [8 CFR 204.11\(c\)\(3\)\(ii\)\(B\)](#).

[^ 30] Nearly all states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact for the Placement of Children (ICPC). The UCCJEA is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA is effective only upon adoption by state legislatures. See Sections 201-204 of UCCJEA available at the [Uniform Law Commission website on UCCJEA](#)<sup>27</sup>. ICPC is a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children. Each state and the District of Columbia have enacted the provisions of the ICPC under state law.

[^ 31] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).

[^ 32] See [INA 101\(a\)\(27\)\(J\)\(iii\)](#). See [8 CFR 204.11\(b\)\(5\)](#). See [8 CFR 204.11\(d\)\(5\)](#). See [H.R. Rep. 105-405 \(PDF\)](#), p. 130 (1997).

[^ 33] See [8 CFR 204.11\(d\)\(5\)](#).

[^ 34] See [8 CFR 204.11\(d\)\(5\)\(i\)\(A\) and \(B\)](#).

[^ 35] See [Saravia v. Barr \(PDF\)](#), 3:17-cv-03615 (N.D. Cal. January 14, 2021).

[^ 36] See [8 CFR 204.11\(b\)\(5\)](#).

[^ 37] See [8 CFR 204.11\(d\)\(6\)\(ii\)](#).

[^ 38] For more information on juvenile court orders for youth in HHS custody that do not alter their custodial placement, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 2, Evidentiary Requirements for DHS Consent [[6 USCIS-PM J.3\(A\)\(2\)](#)].

[^ 39] For discussion on the applicability of inadmissibility grounds to SIJ-based applicants for adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)]. See [8 CFR 245.1\(e\)\(3\)\(iii\) and \(iv\)](#).

[^ 40] See [INA 101\(a\)\(27\)\(J\)\(iii\)\(II\)](#). See [8 CFR 204.11\(i\)](#).

[^ 41] See [8 CFR 204.11\(i\)](#).

## USCIS Response to Coronavirus (COVID-19)



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## Chapter 3 - Documentation and Evidence

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A petitioner seeking special immigrant juvenile (SIJ) classification must submit all of the following documentation to USCIS:

- Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#));<sup>[1]</sup>
- A copy of the petitioner's birth certificate or other evidence of the petitioner's age;<sup>[2]</sup>
- Copies of the juvenile court order(s) and administrative document(s), as applicable, that establish eligibility;
- Evidence of the factual basis for the juvenile court's determinations; and
- A copy of U.S. Department of Health and Human Services (HHS) consent, if applicable.

The petitioner may file [Form I-360](#) alone or concurrently with the Application to Register Permanent Residence or Adjust Status ([Form I-485](#)), if there is an immigrant visa currently available for the SIJ immigrant classification and the petitioner is otherwise eligible.<sup>[3]</sup>

### *Documentation of Age*

An SIJ petitioner should submit documentation of age in the form of a valid birth certificate, official government-issued identification document, or other document that in USCIS' discretion establishes the petitioner's age.<sup>[4]</sup> If primary documentation of birth is not available to the petitioner, USCIS may consider affidavits or secondary evidence of age, which may include baptismal certificates, school records, hospital records, or immunization records, in order to evaluate whether the petitioner has met the petitioner's burden of proof by the preponderance of the evidence.

Affidavits must be sworn to by persons who have personal knowledge of the event to which they attest. Any affidavit must contain the affiant's full name and address, date and place of birth, relationship to the petitioner, if any, and complete details concerning how the affiant acquired knowledge of the event.

## A. Juvenile Court Order(s) and Administrative Documents

### 1. Qualifying Juvenile Court Determinations

The juvenile court order(s) must provide the required judicial determinations regarding dependency or custody, parental reunification, and best interests. These determinations may be made in a single juvenile court order or in separate juvenile court orders. The order(s) should use language establishing that the specific judicial determinations were made under state law.<sup>[5]</sup> This requirement may be met if the order(s) cite those state law(s), or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court.

USCIS looks at the documents submitted in order to ascertain the role and actions of the court and to determine whether the proceedings provided relief to the child under the relevant state law(s). The juvenile court order may use different legal terms than those found in the Immigration and Nationality Act (INA) as long as the determinations have the same meaning as the requirements for SIJ classification (for example, “guardianship” or “conservatorship” may be equivalent to custody).<sup>[6]</sup> Orders that just mirror or cite to federal immigration law and regulations are not sufficient.

There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.

#### *Similar Basis under State Law*

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. If a juvenile court makes the determinations based upon a state law 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.<sup>[7]</sup>

Such evidence must include the juvenile court's determination as to how the basis is legally similar to abuse, neglect, or abandonment under state law, or other evidence that establishes that the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under state law.<sup>[8]</sup> Such evidence may include the petition for dependency, complaint for custody, or other documents that initiated the juvenile court proceedings. USCIS does not re-adjudicate whether the juvenile court determinations regarding similar basis comply with that state's law, only whether they comply with the federal immigration law requirements for SIJ classification.<sup>[9]</sup>

The fact that one or both parents is deceased is not itself a similar basis to abuse, neglect, or abandonment under state law. A legal conclusion from the juvenile court is required to establish that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.

## 2. Evidentiary Requirements for DHS Consent

For DHS to consent to the grant of SIJ classification, the juvenile court order(s) and any supplemental evidence submitted by the petitioner must include the factual basis for the required determinations, as well as the relief from parental abuse, neglect, abandonment or a similar basis under state law granted or recognized by the court.<sup>[10]</sup> Relief from parental maltreatment 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 or remedial relief.<sup>[11]</sup>

### *Factual Basis*

Where the factual basis for the court's determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law, DHS generally consents to the grant of SIJ classification.<sup>[12]</sup> If a petitioner does not provide a court order that includes facts that establish a factual basis for all of the required determinations, USCIS may request evidence of the factual basis for the court's determinations. USCIS does not require specific documents to establish the factual basis or the entire record considered by the court. However, the burden is on the petitioner to provide the factual basis for the court's determinations. Examples of documents that a petitioner may submit to USCIS that may support the factual basis for the court order include:

- Any supporting documents submitted to the juvenile court, if available;
- 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.<sup>[13]</sup>

### *Youth in HHS Custody*

Youth in HHS Office of Refugee Resettlement (ORR) custody seeking SIJ classification may not be able to alter their custodial placement via a juvenile court and instead may seek a dependency determination from a juvenile court. In circumstances in which a youth in ORR custody receives a qualifying dependency determination under state law, USCIS may consider evidence of the court's recognition of the ORR placement to be the protective remedial relief provided in conjunction with the dependency determination.<sup>[14]</sup> USCIS recognizes that, generally, placement in federal custody with ORR affords protection as an unaccompanied child under federal law and removes a state juvenile court's need to provide a petitioner with additional relief from parental maltreatment under state law.<sup>[15]</sup>

### *Declaratory Judgments*

A declaratory judgment generally determines the rights of parties without ordering anything to be done.<sup>[16]</sup> In the context of juvenile court determinations, a declaratory judgment may state facts but not order custody, dependency, or make legal reunification or best interest determinations. However, a declaratory judgment may be sufficient to merit DHS consent if accompanied by or includes a qualifying court-ordered



custodial placement or a declaration of dependency on the court for the provision of child welfare services and/or other court-ordered or recognized protective remedial relief.

### 3. Supporting Evidence

The order or supporting evidence should specifically indicate:

- What type of relief the court is providing, such as child welfare services or custodial placement;
- With whom the child is placed, if the court has appointed a specific custodian or guardian, (for example, the name of the person, or entity, or agency) and the factual basis for this finding;
- Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent(s) and the factual basis for the court's determinations on non-viability of parental reunification; and
- The factual basis for the determination that it is not in the petitioner's best interest to return to the petitioner's or the petitioner's parents' country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child's country of nationality or last habitual residence).

### B. Limitations on Additional Evidence

USCIS is mindful that there are often confidentiality rules that govern disclosure of records from juvenile-related proceedings. For this reason, officers generally do not request information or documents from sources other than the SIJ petitioner or his or her legal representative. <sup>[17]</sup>

Children often do not share personal accounts of their family life with an unknown adult until they have had the opportunity to form a trusting relationship with that adult. Therefore, officers should exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the determinations made by the juvenile court.

Additionally, the juvenile court may make child welfare placement, custody, and best interest decisions that differ from the child's stated intentions at the time of apprehension. However, if there is significant contradictory information in the file that the juvenile court was likely not aware of or that may impact whether a reasonable factual basis exists for the court's determinations, officers may request additional evidence from the petitioner or his or her legal representative.

However, officers may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner. <sup>[18]</sup>

## Footnotes

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<sup>[^ 1]</sup> See Instructions for [Form I-360](#). There is no fee to file [Form I-360](#) to seek SIJ classification.

<sup>[^ 2]</sup> See [8 CFR 204.11\(d\)\(2\)](#).

[^3] For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

[^4] See [8 CFR 204.11\(d\)\(2\)](#). SIJ petitioners are not subject to the general presumption of ineligibility at [8 CFR 103.2\(b\)\(2\)\(i\)](#), since that general rule is superseded by the specific provisions in [8 CFR 204.11\(d\)\(2\)](#).

[^5] See [8 CFR 204.11\(c\)\(3\)](#).

[^6] See [INA 101\(a\)\(27\)\(J\)](#).

[^7] See [8 CFR 204.11\(d\)\(4\)](#).

[^8] See [8 CFR 204.11\(d\)\(4\)\(i\) and \(ii\)](#).

[^9] See [87 FR 13066, 13084 \(PDF\)](#) (Mar. 8, 2022).

[^10] See [8 CFR 204.11\(d\)\(5\)\(i\) and \(ii\)](#).

[^11] See [8 CFR 204.11\(d\)\(5\)\(ii\)\(A\) and \(B\)](#).

[^12] See [INA 101\(a\)\(27\)\(J\)\(iii\)](#). See [8 CFR 204.11\(d\)\(5\)](#).

[^13] Such affidavits or records will be assigned low evidentiary value unless they are accompanied by evidence that the court considered the information contained therein in the course of issuing its judicial determinations.

[^14] For example, if the juvenile court 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. See [8 CFR 204.11\(d\)\(5\)\(ii\)\(B\)](#).

[^15] See Section 462(b)(1) of the Homeland Security Act of 2002, [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135, 2203 (2002).

[^16] See definition of "judgment" and "declaratory judgment," Black's Law Dictionary (11th ed. 2019).

[^17] USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.

[^18] See Violence Against Women Act of 2005, [Pub. L. 109-162 \(PDF\)](#) (January 5, 2006), codified at [INA 287\(h\)](#). See [8 CFR 204.11\(e\)](#).

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## Chapter 4 - Adjudication

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### A. Jurisdiction

USCIS has sole jurisdiction over petitions for special immigrant juvenile (SIJ) classification.<sup>[1]</sup> Provided the petitioner is otherwise eligible, classification as an SIJ establishes eligibility to apply for adjustment of status.<sup>[2]</sup>

### B. Expeditious Adjudication

In general, USCIS issues a decision on a properly filed petition for SIJ classification within 180 days.<sup>[3]</sup> The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date.

If the petitioner did not submit all required initial evidence<sup>[4]</sup> with the petition, and USCIS issues a request for initial evidence, the timeframe is reset and the 180 days starts over from the date of receipt of the required initial evidence.<sup>[5]</sup>

If the petitioner submitted all required initial evidence with the petition, but USCIS requires additional evidence in order to determine the petitioner's eligibility, the 180-day timeframe is suspended from the date of issuance of the request for additional evidence. The clock resumes at the same point where it stopped once USCIS receives the requested evidence, a response, or a request for a decision based on the evidence.<sup>[6]</sup>

The 180-day timeframe applies only to the initial adjudication of the SIJ petition. The requirement does not extend to the adjudication of any motion or appeal filed after a denial of an SIJ petition.

### C. Interview

## 1. Determining Necessity of Interview

USCIS has discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition.<sup>[7]</sup> USCIS recognizes the vulnerable nature of SIJ petitioners and generally conducts interviews of SIJ petitioners only when an interview is deemed necessary. USCIS conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted. USCIS generally does not require an interview if the record contains sufficient information and evidence to approve the petition without an in-person assessment. However, USCIS retains the discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition, as appropriate.

## 2. Conducting the Interview

Given the vulnerable nature of SIJ petitioners and the hardships they may face because of the loss of parental support, USCIS strives to establish a child-friendly interview environment if an interview is scheduled. During an interview, officers avoid questioning the petitioner about the details of the abuse, neglect, or abandonment suffered, because these issues are handled by the juvenile court. Officers generally focus the interview on resolving issues related to the eligibility requirements, including age.

The petitioner may bring a trusted adult to the interview in addition to an attorney or representative.<sup>[8]</sup> The trusted adult may serve as a familiar source of comfort to the petitioner, but should not interfere with the interview process or coach the petitioner during the interview. Given potential human trafficking and other concerns, officers assess the appropriateness of the adult's attendance in the interview and observe the adult's interaction with the child. When appropriate, the officer may interview the child without that adult present. Although USCIS may limit the number of persons present at the interview, such limitations do not extend to the petitioner's attorney or accredited representative of record.<sup>[9]</sup>

## D. Requests for Evidence

Additional evidence may be requested at the discretion of the officer if needed to determine eligibility.<sup>[10]</sup> To provide petitioners an opportunity to address concerns before issuing a denial, officers generally issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), where the evidence is insufficient to adjudicate the petition. The officer may request additional evidence for reasons such as, but not limited to:

- The record lacks the required dependency or custody, parental reunification, or best interest determinations;
- It is unclear if the order was made by a juvenile court or in accordance with state law;
- The evidence provided does not establish a reasonable factual basis for the determinations or indicate what protective relief was granted by the court;
- The record contains evidence or information that materially conflicts with the evidence or information that was the basis for the court order; or
- Additional evidence is needed to determine eligibility.

## E. Fraud

There may be cases where the officer suspects or determines that a petitioner has committed fraud in attempting to establish eligibility for SIJ classification. In these cases, officers follow current procedures when referring a case to Fraud Detection and National Security (FDNS).<sup>[11]</sup>

## F. Decision

### 1. Approval

SIJ classification may not be granted absent the consent of the Secretary of Homeland Security. DHS delegates this authority to USCIS. Therefore, USCIS approval of the SIJ petition is evidence of DHS consent. USCIS notifies petitioners in writing upon approval of the petition.<sup>[12]</sup>

### 2. Denial

If the petitioner does not provide necessary evidence or does not meet the eligibility requirements, USCIS denies the [Form I-360](#) petition. If USCIS denies the SIJ petition, USCIS provides the petitioner with a written denial notice which includes a detailed basis for the denial.<sup>[13]</sup> An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision.<sup>[14]</sup> The denial notice includes instructions for filing a Notice of Appeal or Motion ([Form I-290B](#)).

### 3. Revocation

#### *Automatic Revocation*

An approved SIJ petition is automatically revoked as of the date of approval if any one of the circumstances below occurs before USCIS issues a decision on the SIJ's application for adjustment of status:<sup>[15]</sup>

- Reunification of the SIJ with one or both parents by virtue of a juvenile court order,<sup>[16]</sup> 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
- Reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned to the petitioner's, or the petitioner's parents', country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition.<sup>[17]</sup>

#### *Revocation on Notice*

In addition, USCIS, with notice, may revoke an approved petition for SIJ classification for good and sufficient cause such as fraud, or if USCIS determines the petition was approved in error.<sup>[18]</sup> In these instances, USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.<sup>[19]</sup>

Under the *Saravia* Settlement Agreement, USCIS does not revoke a petition for SIJ classification based in whole or in part on the fact that the state court's best interest determination was not made with

consideration of the petitioner's gang affiliation.<sup>[20]</sup>

## G. Deferred Action

### 1. Consideration for Deferred Action

A person granted SIJ classification may apply for adjustment of status to that of a lawful permanent resident if an immigrant visa number is immediately available in the employment-based 4th preference (EB-4) category, and the person is otherwise eligible for adjustment of status.<sup>[21]</sup> There is an annual limit on the total number of immigrant visa numbers available in the EB-4 category<sup>[22]</sup> and an annual limit to the number of applicants from a given country.<sup>[23]</sup> When an immigrant visa number is not immediately available, a noncitizen with SIJ classification cannot apply for adjustment of status until new visas become available and the SIJ's priority date becomes current.<sup>[24]</sup>

USCIS considers deferred action for a noncitizen with SIJ classification if the person cannot apply for adjustment of status solely because an immigrant visa number is not immediately available. Deferred action is an act of prosecutorial discretion that defers proceedings to remove a noncitizen from the United States for a certain period of time.

Deferred action does not provide lawful status. Generally, persons granted deferred action are eligible for work authorization if they can demonstrate economic necessity for employment.<sup>[25]</sup>

A separate request for deferred action is not required, nor will it be accepted, for noncitizens with SIJ classification who are ineligible to adjust status solely because an immigrant visa number is not immediately available. USCIS automatically conducts deferred action determinations for such persons.

### 2. Case-by-Case Discretionary Determination

As in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion.<sup>[26]</sup> In doing so, USCIS weighs all relevant positive and negative factors that apply to the person's case.<sup>[27]</sup> USCIS may generally grant deferred action if, based on the totality of the facts and circumstances of the case, the positive factors outweigh the negative factors.<sup>[28]</sup>

One particularly strong positive factor that weighs heavily in favor of granting deferred action is that the person has an approved [Form I-360](#) and will be eligible to apply for adjustment of status as soon as an immigrant visa number becomes available. Additionally, the eligibility criteria for SIJ classification are generally strong positive factors in such a determination, including that a juvenile court determined that it was in the best interest of the SIJ not to be returned to the country of nationality or last habitual residence of the SIJ or the SIJ's parents.

A person who has been granted deferred action may apply for and be granted employment authorization for the period of deferred action.<sup>[29]</sup> The person must file an Application for Employment Authorization ([Form I-765](#)) indicating eligibility category (c)(14).

### 3. Period of Deferred Action

If USCIS grants deferred action to a noncitizen with SIJ classification in the exercise of discretion, USCIS authorizes deferred action for a period of 4 years. USCIS may consider requests for renewal of deferred action for noncitizens with SIJ classification who remain ineligible to apply for adjustment of status because an immigrant visa number is not immediately available. A person may submit a deferred action renewal request to USCIS 150 days before expiration of the period of deferred action. Renewal requests are subject to the guidance outlined above regarding eligibility and adjudication.

## 4. Termination

USCIS reserves the right to terminate the grant of deferred action and revoke the related employment authorization at any time as a matter of discretion. Examples may include, but are not limited to, cases where:

- USCIS determines the favorable exercise of discretion is no longer warranted;
- The [Form I-360](#) petition for SIJ classification is revoked; or
- The prior deferred action and related employment authorization were granted in error.

## Footnotes

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[<sup>1</sup>] See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)). See [8 CFR 204.11\(h\)](#).

[<sup>2</sup>] See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)). Generally, an applicant may only apply to USCIS for adjustment of status if there is a visa number available for the special immigrant classification (EB-4), and the applicant is not in removal proceedings. If an SIJ is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application. Conversely, the applicant may seek adjustment of status with the immigration court based on USCIS' approval of the SIJ petition. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures [[7 USCIS-PM A](#)], Part B, 245(a) Adjustment [[7 USCIS-PM B](#)], and Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

[<sup>3</sup>] See Section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act of 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008). See [8 CFR 204.11\(g\)](#).

[<sup>4</sup>] See Chapter 3, Documentation and Evidence [[6 USCIS-PM F.3](#)].

[<sup>5</sup>] See [8 CFR 204.11\(g\)](#). See [8 CFR 103.2\(b\)\(10\)\(i\)](#).

[<sup>6</sup>] See [8 CFR 204.11\(g\)](#). See [8 CFR 103.2\(b\)\(10\)\(i\)](#).

[<sup>7</sup>] See [8 CFR 103.2\(b\)\(9\)](#).

[<sup>8</sup>] See [8 CFR 204.11\(f\)](#).

[<sup>9</sup>] See [8 CFR 204.11\(f\)](#).

[<sup>10</sup>] See [8 CFR 103.2\(b\)\(8\)](#).

[^ 11] A referral to FDNS does not change the 180-day timeframe for adjudication. However, the timeframe for processing will stop or be suspended for delays caused by the petitioner. See [8 CFR 103.2\(b\)\(10\)](#). See [8 CFR 204.11\(g\)\(1\)](#).

[^ 12] See [8 CFR 204.11\(h\)](#).

[^ 13] See [8 CFR 204.11\(h\)](#).

[^ 14] See [8 CFR 103.3](#). See [8 CFR 103.5](#). See [8 CFR 204.11\(h\)](#).

[^ 15] See [8 CFR 204.11\(j\)\(1\)](#).

[^ 16] Revocation does not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.

[^ 17] See [8 CFR 205.1\(b\)](#).

[^ 18] See [INA 205](#). See [8 CFR 204.11\(j\)\(2\)](#). See [8 CFR 205.2](#).

[^ 19] See [8 CFR 205.2\(b\)](#).

[^ 20] See [Saravia v. Barr \(PDF\)](#), 3:17-cv-03615 (N.D. Cal. January 14, 2021).

[^ 21] See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

[^ 22] See [INA 203\(b\)\(4\)](#).

[^ 23] See [INA 202\(a\)\(2\)](#).

[^ 24] See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [[7 USCIS-PM A.3\(B\)\(4\)](#)].

[^ 25] See [8 CFR 274a.12\(c\)\(14\)](#).

[^ 26] While separate biometrics submission is not required for consideration of deferred action, the officer may need to update the biographic background checks performed for the SIJ petition adjudication. Depending on the facts and circumstances of the individual case, the officer may also request that the person submit biometrics for a background check or interview the person before granting deferred action. See [8 CFR 103.2\(b\)\(9\)](#).

[^ 27] See Volume 10, Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 4, Adjudication [[10 USCIS-PM A.4](#)].

[^ 28] Noncitizens with approved SIJ classification awaiting visa availability to apply for adjustment of status are among the beneficiaries of victim-based immigration benefits who receive consideration for prosecutorial discretion regarding civil immigration enforcement actions. See [ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims \(PDF\)](#), issued August 10, 2021. USCIS may grant deferred action to noncitizens with approved SIJ classification who have never been in removal proceedings, as well as those in removal proceedings, those with a final order, or those with a voluntary departure order (as long as they are not in immigration detention).



[\[^ 29\]](#) See [8 CFR 274a.12\(c\)\(14\)](#).

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# Chapter 5 - Appeals, Motions to Reopen, and Motions to Reconsider

## Guidance

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A petitioner may submit a Notice of Appeal or Motion ([Form I-290B](#)), with the appropriate filing fee or a request for a fee waiver, to file:<sup>[1]</sup>

- An appeal with the Administrative Appeals Office (AAO);
- A motion to reconsider a USCIS decision (made by the AAO, a field office, or the National Benefits Center); or
- A motion to reopen a USCIS decision (made by the AAO, a field office, or the National Benefits Center).

The petitioner must file the appeal or motion within 30 days of the denial or dismissal, or 33 days if the denial or dismissal decision was sent by mail.<sup>[2]</sup> If the appeal relates to a revocation of an approved special immigrant juvenile (SIJ) petition, the appeal must be filed within 15 calendar days after service of the decision, or 18 days if the decision was sent by mail.<sup>[3]</sup> There is no exception to the filing period for appeals and motions to reconsider.

For a motion to reopen, USCIS may excuse the petitioner's failure to file before this period expires where the petitioner demonstrates that the delay was reasonable and beyond his or her control.<sup>[4]</sup>

## Footnotes

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<sup>[^ 1]</sup> See [8 CFR 103.3](#). See [8 CFR 103.5](#).

<sup>[^ 2]</sup> See [8 CFR 103.3\(a\)\(2\)\(i\)](#). See [8 CFR 103.5\(a\)\(1\)\(i\)](#). See [8 CFR 103.8\(b\)](#).

[^3] See [8 CFR 205.2\(d\)](#), (revocation appeals) and [8 CFR 103.8\(b\)](#), (effect of service by mail).

[^4] See [8 CFR 103.5\(a\)\(1\)\(i\)](#).

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## USCIS Response to Coronavirus (COVID-19)



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USCIS compiles, and makes available to the public, annual reports disclosing the number of special immigrant juvenile (SIJ) petitions received, approved, and denied.<sup>[1]</sup> The number is limited to properly filed SIJ petitions. To ensure accuracy of information, officers must promptly enter all decisions on all petitions and motions related to SIJ into the relevant systems.

## Footnote

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[<sup>1</sup>] See the USCIS website for [Data Set: Form I-360 Petition for Special Immigrant Juveniles](#).

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## Resources

### Legal Authorities

[INA 201](#) - Worldwide level of immigration

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[INA 202](#) - Numerical limitations on individual foreign states

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[INA 203](#) - Allocation of immigrant visas

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[INA 204](#), [8 CFR 204](#) - Procedure for granting immigrant status

### Forms

[G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#)

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[I-290B, Notice of Appeal or Motion](#)

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[I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#)

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[I-485, Application to Register Permanent Residence or Adjust Status](#)

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