

# Special Immigrant Juvenile Status (SIJS): An Overview Emphasizing Recent Developments December 20, 2017

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## Topics for Today



- Basic SIJS requirements



- Quiz!



- State court process with Q&A



- Immigration service process



- Demonstration of conversation with child

## Getting to Know You

- What is your job? (examples: social worker, probation officer, children's attorney, judge)
- In what courts do you appear? (examples: dependency, delinquency, probate, family)
- Have you ever attended a training on Special Immigrant Juvenile Status?
- Do you have any direct experience with an SIJS case? (examples: identifying an eligible child, obtaining or issuing SIJS findings, filing applications with the immigration service)

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## Getting to Know Each Other

### THREE STEPS:

- Turn to someone you do not already know
- For three minutes, discuss:
  - Challenges for undocumented children in the juvenile court system
  - Possible benefits of SIJS for these children, if you know
- Contribute thoughts to the group about these topics when we re-convene.

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## **Part I: Basic SIJS Requirements**

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### **SIJS Basics: Overview**

- Special Immigrant Juvenile Status (SIJS) provides legal protection for certain undocumented immigrant youth who have been abused, abandoned, or neglected by allowing them to legalize their immigration status and become lawful permanent residents.
- Obtaining SIJS is a two or three step process. The first step takes place in state juvenile court and the remaining steps take place with the immigration service.

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## SIJS Basics: Steps of a SIJS Case

1. Obtain findings required for SIJS from a state court
2. Apply for a Special Immigrant Juvenile visa with USCIS using Form I-360
3. Apply for adjustment of status (a green card) using Form I-485 either with U.S. Citizenship and Immigration Services (USCIS) or in the Immigration Court

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## Role of State Court vs. Federal Government

- Juvenile court findings are necessary for a child to apply for SIJS
- Juvenile court need not determine motivation of child, whether child may someday pose some unknown threat to public safety, whether USCIS will or will not grant the SIJ application, etc.
- Federal immigration authorities will ultimately decide whether a minor will be granted SIJS
- Federal agency will see whether child meets the requirements and whether they are deserving of a green card through SIJS as a matter of discretion

## SIJS Basics: Statutory & Regulatory Authority

- The Immigration and Nationality Act at § 101(a)(27)(J), codified at 8 USC § 1101(a)(27)(J)
- This statute is in turn implemented by standards set out in federal regulations, found in the Code of Federal Regulation at 8 CFR § 204.11.
  - **CAUTION:** The regulations have not yet been updated to reflect changes made to the underlying Special Immigrant Juvenile statute, which was significantly amended in 2008 by the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457, 122 Stat. 5044.

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## SIJS Basics: New Agency Policy!

- In the absence of updated regulations, USCIS recently issued new SIJS portions of its online policy manual.
- The policies went into effect October 26, 2016.
- They are required reading for anyone handling SIJS cases.
- They are found at:
  - Volume 6 (Immigrants), Part J (Special Immigrant Juveniles)
  - Volume 7 (Adjustment of Status), Part F (Special Immigrant-Based (EB-4) Adjustment), Chapter 7 (Special Immigrant Juveniles)

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## SIJS Basics: Eligibility Requirements

### ***For a youth to be eligible for SIJS, he/she must:***

- 1) Be under 21 years of age
- 2) Be unmarried
- 3) Have been declared dependent upon a juvenile court located in the United States or the court has legally committed the youth to or placed the youth under the custody of an agency or department of the state, or an individual or entity appointed by a state or juvenile court

### ***The juvenile court must also find that:***

- 4) Reunification with one or both parents is not viable due to abuse, neglect or abandonment, or a similar basis under state law.
- 5) It is not in the young person's best interest to be returned to his country of nationality or last residence (this finding may also be made in an administrative proceeding).

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## Age

- No person can be denied SIJS on account of “age” as long as he was a child (under 21) when he filed his SIJS application.
  - MUST file with USCIS before youth turns 21

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## Marital Status

- Child must remain unmarried until the completion of the immigration process (until the I-485 adjustment of status application is approved) or the SIJS status will be revoked as a matter of law.
  - Especially for older youth, it is very important to remind them of this requirement.

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## Abuse, Neglect, Abandonment or Similar Basis

- When is reunification not viable due to abuse, neglect, or abandonment?
  - Have to look to state law to define abuse, neglect, abandonment or similar basis
    - Includes Welfare and Institutions Code § 300 but is broader than that
    - Also look to Family Code (examples: § 3010(b), 3011, 3030, 6200 et seq, 7822, 7823), Penal Code (examples: § 270, 273, 11165) and other sources of state law
  - Under Cal. Code Civ. Proc. § 155 , the evidence of abuse, abandonment or neglect may consist of (but is not limited to) a declaration from the child.

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## Reunification Not Viable with One *or* Both Parents

- Change to the SIJS law that was made by the TVPRA of 2008
- Under the current statute, children who live with one parent but have been abused, abandoned, or neglected by the other parent can be eligible for SIJS.

## What is a One Parent SIJS Claim?

- Claim of abuse, neglect, or abandonment against one parent while the child resides or is in reunification services with the other parent
- If a minor is subject to the jurisdiction of a juvenile court, that minor can request SIJS findings even if only one parent abandoned, abused, or neglected them.
  - **Example:** a child who is in delinquency proceedings and cannot reunify with dad, but who has been ordered home on probation with mom
  - **Example:** a child who is deemed a dependent of the court due to abuse in the home, but who is returned to the custody of one but not both parents



## USCIS Position on One Parent SIJS Claims

SIJ eligible children may:

- Be, or have been, in federal custody due to their undocumented status.
- Be in a state's child welfare system.
- Be living with a foster family, an appointed guardian, or the non-abusive parent.
- Have been the victim of child abuse that occurred while residing in the U.S.
- Have been the victim of child abuse that occurred in the child's home country.

Note: this is not an exhaustive list.

## One-parent SIJS

- Two 2015 California appellate court decisions clarify that one-parent SIJS is available in California:
  - *In re Israel O.* (2015) 233 Cal. App. 4th 279, held that a child may be eligible for SIJS even if a safe and suitable parental home in the United States is available
  - *Eddie E. v. Superior Court* (2015) 234 Cal. App. 4th 319, held that the plain language of the statute means that a petitioner can satisfy this finding by showing an inability to reunify with one parent due to abandonment, abuse, neglect or a similar basis

## Best Interests

- Court looks to state law on best interest factors.
  - Welfare and Institutions Code § 202; Probate Code § 1514; Family Code § 3011
- Best interest determination may, and often is, based on facts beyond abuse, abandonment, or neglect.
- Court may consider country conditions, family members or lack of them in home country, child's safety, educational opportunities, access to medical treatment or mental health services, etc.

## Best Interests

- In determining whether it would be in the child's best interests to be returned to home country, court must look at the evidence presented and cannot speculate about what might be in the child's best interests or make determinations based on policy considerations.
  - *See Leslie H. v. Superior Court*, 224 Cal. App. 4th 340 (2014)

## USCIS Consent

- USCIS is not supposed to reweigh the evidence to make a determination about abuse, abandonment or neglect.
- However, before approving a SIJS petition, USCIS must review the juvenile court order to conclude that the request for SIJ classification is **bona fide**, in other words that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and *not* primarily or solely to obtain an immigration benefit.

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## Inadmissibility

- Inadmissibility grounds of immigration law do not apply at the I-360/SIJS stage but DO apply at the I-485/Adjustment of Status stage.
- It is very important to screen for potential grounds of inadmissibility before advising a youth whether or not to apply for SIJS, because if they are found inadmissible they can be denied adjustment of status and could be placed in removal proceedings.

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## Inadmissibility

- Some grounds of inadmissibility do not apply to Special Immigrant Juveniles.
  - These include, among others, being present without admission or parole, misrepresentation and unlawful presence.
- Some grounds of inadmissibility apply but can be waived.
  - These include, among others, some health related grounds (like communicable diseases or having a physical or mental disorder that may pose or has posed a threat to property or safety), some criminal related grounds (like prostitution or commercialized vice), student visa abusers and unlawful voters.

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## Inadmissibility

- Some grounds of inadmissibility apply and can NOT be waived.
  - These include among others conviction of certain crimes, multiple criminal convictions, controlled substance traffickers, terrorist activities.
- **Important Note:** Findings of juvenile delinquency are not considered criminal convictions for purposes of immigration law. However, certain grounds of inadmissibility do not require a conviction and may be triggered by conduct alone.

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## Discretion

- To be granted Lawful Permanent Residency through SIJS, the applicant must also prove that he or she merits a favorable exercise of discretion.
  - Some factors USCIS will consider include whether positive factors (like length of residence in U.S., school history or employment history, community standing and moral character) outweigh the negative factors.
  - For Special Immigrant Juveniles, USCIS will consider findings of juvenile delinquency on a case-by-case basis based on the totality of the evidence to determine whether a favorable exercise of discretion is warranted.

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## Family Members

- There are no derivative applications for SIJS applicants.
  - Cannot apply for parents, siblings, or even minor children through the SIJS process.
- A youth who gains lawful permanent residency through SIJS can never petition for a parent (even a non-abusive parent in a one parent SIJS case).
  - As a LPR, can petition for spouse or minor children but not parent.
  - As a USC, can petition for spouse, children and siblings, not parent.

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## Documentation Required

- In addition to the application forms, applicants for Special Immigrant Juvenile Status need:
  - Birth certificate or other proof of age
  - Passport style photos
  - Government issued ID, if possible (like passport from home country unless client is also applying for asylum)
  - Civil surgeon exam (which will require proof of vaccinations)
  - Documentation from any lawful entries (like stamps in passport, I-94 or student visa where applicable)

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## Key Take Aways

- Identify SIJS-eligible youth as early as possible to start the process.
- Refer youth for a legal consult with immigration lawyer where possible to assess other forms of relief, inadmissibility, and discretionary factors.
- Help youth begin to gather documentation they will need for the process including birth certificate, IDs, vaccination records, etc.

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## Part II: Quiz!

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## Test Your New Knowledge

### THREE STEPS:

- Get a blue test sheet being handed out now
- For five minutes, work alone to:
  - Review each statement on the sheet
  - Circle “true” or “false” for each statement
- Participate as the group reviews the answers so you can score yourself

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## Part III.1: State Court Process

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### What Is a Juvenile Court?

- A juvenile court is defined as any “court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. §204.11(a).
- Since this is a federal definition, includes different types of courts in different states.



## What Is a Juvenile Court?

- In California, this includes, but is not limited to, the juvenile, probate, and family court divisions.
  - California Code of Civil Procedure § 155
  - *B.F. v. Superior Court*, 207 Cal. App. 4th 621 (2012) (Superior Courts are divided into departments as a matter of convenience; but the subject matter jurisdiction of the Superior Court is vested as a whole, so any superior court making a determination about the custody and care of a juvenile qualifies as a “juvenile court” as defined by the SIJS statute)

## SIJS: Which “Juvenile Court”?

- If the child already has an open dependency, delinquency, probate, or family court case, it is possible that they can file a request for SIJS findings in those proceedings.
- If the child does not have an open case in state court but is otherwise SIJS-eligible and in need of the court’s protection through a legal guardianship or custody petition, they may file for a guardianship or custody order and also request SIJS findings.

## Dependency/Custody Determination

- Declared dependent upon a juvenile court located in the United States
  - Dependency
- Or whom such a court has legally committed to or placed under the custody of an agency or department of a State
  - Delinquency
- Or an individual or entity appointed by a State or juvenile court located in the United States
  - Probate and family

## “Juvenile Courts”: Dependency Court

- For SIJS, the child is considered “dependent on a juvenile court” (Cal. Welf. & Inst. Code Section 300 “dependent”).
- California statute and case law recognizes jurisdiction to make SIJS findings in dependency proceedings; Cal. Civ. Proc. Code Section 155(a); *In re Y.M.*, 144 Cal. Rptr. 3d 54 (App. 2012).

## “Juvenile Courts”: Delinquency Court

- For SIJS, the child is considered “placed under the custody of, a state agency . . . , or an individual . . . appointed by [the] court” (Cal. Welf. & Inst. Code Section 602 “ward”).
- California statute and case law recognizes jurisdiction to make SIJS findings in delinquency proceedings; Cal. Civ. Proc. Code Section 155(a); *Leslie H. v. Superior Court*, 168 Cal. Rptr. 3d 729 (App. 2014).
- It is important also to keep in mind any immigration consequences of the juvenile adjudications!

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## “Juvenile Courts”: Probate Court

- For SIJS, the child is considered “placed under the custody of . . . an individual . . . appointed by [the] court.”
- California statute and case law recognizes jurisdiction to make SIJS findings in probate court proceedings; Cal. Civ. Proc. Code Section 155(a); *B.F. v. Superior Court*, 143 Cal. Rptr. 3d 730 (App. 2012).
- Under recent bill, AB900, which went into effect January 1, 2016, youth can petition for a guardianship until age 21 if in conjunction with a request for SIJS findings.

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## “Juvenile Courts”: Family Court

- For SIJS, the child is considered “placed under the custody of . . . an individual . . . appointed by [the] court.”
- California statute recognizes jurisdiction to make SIJS findings in family court proceedings; Cal. Civ. Proc. Code Section 155(a); CA Judicial Council Memo on SIJS (Sept. 30, 2014).

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## SIJS: State Court Predicate Order

- Request for SIJS findings is made by filing a petition with the court:
  - Juvenile dependency or delinquency: Form JV-356
  - Family court: Form FL-356
  - Probate court: Form GC-220
- Form Petitions provide space for child to declare facts in support of each of the requested findings.
  - Additional evidence, such as declarations from others, or evidence of conditions in the home country, may also be submitted.
  - Evidence to support the three findings may also already exist in the record.

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## SIJS: State Court Predicate Order

- The SIJS findings/order is made on Judicial Council Form: GC-224/FL-357/JV-357.
- We recommend:
  - Including a short statement of the factual basis for the findings on the SIJS findings/order itself (USCIS will want to see this to ensure the state court made a “reasonable” and “informed” decision)
  - Including citations to California law that support the findings (e.g. WIC provisions on abuse, neglect, or abandonment, or citations to Family or Penal Code or other state law)
  - NOT including citations to federal immigration law
  - Including the child’s parents’ names on the form

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## Maintaining Juvenile Court Jurisdiction

- General rule: Child must remain under juvenile court jurisdiction until the adjustment of status application is approved unless such jurisdiction is terminated “based on age.”

## Maintaining Juvenile Court Jurisdiction

- The SIJS regulations (current & proposed) require that a child remain under juvenile court jurisdiction until the entire immigration process is complete and the child has been granted lawful permanent residency.
- The SIJS Policy Manual (Vol. 6, Part J, Ch 2) has a more detailed discussion of the continuing jurisdiction requirement.

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## Maintaining Juvenile Court Jurisdiction, cont.

- But it is clear that USCIS cannot deny or revoke SIJS based on the loss of state court jurisdiction where that loss was due to age (for example, losing jurisdiction when the child turns 18 or 21).
  - Under the *Perez-Olano* stipulation, that loss can occur before or after the I-360 petition is filed with USCIS.

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### Continues to Be Dependent upon the Juvenile Court, cont.

- It is less clear if USCIS can revoke or deny SIJS based on loss of state court jurisdiction where that loss was not due to age (for example, when a court terminates jurisdiction when a child successfully completes probation).
  - Under the current and proposed regulations, USCIS could revoke SIJS status and deny adjustment if jurisdiction is terminated for a reason other than age.

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### Take Away: Maintaining Juvenile Court Jurisdiction

- Juvenile court jurisdiction does not have to be extended if jurisdiction terminates based on age, but it does need to be extended in other circumstances (e.g. probation terminated).
  - E.g.: Guardian was appointed and SIJS findings made for the child at age 17. Although the child's application with USCIS is still pending when the child turns 18 and probate court jurisdiction ends, there is no need to extend probate court jurisdiction since the jurisdiction terminates due to the child's age.

## SIJS: What Can You Do To Help?

- **Step 1:** Identify SIJS-eligible children
  - Screen each case for SIJS eligibility.
  - Contact local experts with questions.
  - If the child has any prior contact with immigration authorities, a deportation order, a serious delinquency record, or an age-out issue or is in removal proceedings, an expert should be contacted to handle the case.

## SIJS: What Can You Do To Help?

- **Step 2:** Obtain the SIJS Findings
  - Use the Judicial Council Forms, and heed the prior advice for what to include in the order.
  - Procedures, timing, and evidence for obtaining the SIJS findings will vary depending upon what type of proceeding the child is in.



## SIJS: What Can You Do To Help?

- **Step 2: Obtain the SIJS Findings – who files the request?**
  - In dependency, the request may be made by county counsel, the child’s attorney, the child’s social worker, or the child’s immigration attorney.
  - In delinquency, the request may be made by the defense attorney, probation officer, or the child’s immigration attorney.
  - In guardianship and custody cases, the request is typically made by the person filing the guardianship or custody petition.

## SIJS: What Can You Do To Help?

- **Step 2: Obtain the SIJS Findings – when can the request be filed?**
  - *Be sure to do so as soon as the child meets the eligibility requirements.*
  - In dependency/delinquency cases, the request can be filed after a determination is made that child will not reunify with at least one parent.
  - In guardianship/custody cases, the request could be filed along with the guardianship or custody petition.

## SIJS: What Can You Do To Help?

- **Step 2:** Obtain the SIJS Findings – **what evidence should be filed in support of the request?**
  - In dependency cases, often all of the evidence needed to support the SIJS request is already in the court file.
  - In delinquency cases, sometimes the evidence needed to support the SIJS request is already in the court file, and sometimes additional evidence is needed.
  - In guardianship/custody cases, evidence must be included to support the SIJS request, including declarations, other written evidence, and (potentially) in-court testimony.

## SIJS: What Can You Do To Help?

- **Step 3:** Compile the necessary evidence to support the SIJS application with USCIS
  - Certified copy of SIJS findings
  - If the child has a delinquency record, he or she will need court permission to disclose certified copies of the juvenile court dispositions to USCIS.

## SIJS: What Can You Do To Help?

- **Step 4:** Make sure the child remains SIJS-eligible
  - Keep the court case open to allow for approval of the immigration applications, unless the court's jurisdiction is being terminated because of age.
  - Contact an expert if the child is charged in delinquency or adult criminal court to ensure that any case is resolved to avoid grounds of inadmissibility and preserve eligibility for a green card.

## Part III.2: Questions & Answers

## Part IV: Immigration Service Process

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### Two Key Steps

- Who?
  - Immigration attorney
  - Special legalization worker within agency
- What?
  - File visa petition (I-360) with U.S. Citizenship & Immigration Services (USCIS)
  - File adjustment of status application (I-485/green card application) with USCIS or immigration judge

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## I-360 Visa Petition

- Should be filed ASAP after court issues complete SIJS findings
- No fee
- Need proof of age (birth certificate or other)
- USCIS must adjudicate within 180 days
- Approval = good, but gives only SIJ classification (not work authorization)


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## I-360 Step: New Developments

- USCIS adjudicates at a central location (not local offices) as of 11/01/2016.
- USCIS issues more requests for evidence & notices of intent to deny.
- Many more children apply for SIJS than there are available visas (visa cap).
- Congress is moving bills to limit SIJS.

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## I-360 Filings with USCIS

 <b>U.S. Citizenship and Immigration Services</b>				
<small>Number of Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with a Classification of Special Immigrant Juvenile, by Fiscal Year and Case Status 2010-2017</small>				
Period	Petitions by Case Status			
	Petitions Received <sup>2</sup>	Approved <sup>3</sup>	Denied <sup>4</sup>	Pending <sup>5</sup>
<b>Fiscal Year - Total</b>				
2010	1,646	1,590	97	35
2011	2,226	1,859	84	47
2012	2,968	2,726	119	220
2013	3,994	3,431	190	702
2014	5,776	4,606	247	1,826
2015	11,500	8,739	412	4,357
2016	19,475	15,101	594	8,533
<b>Fiscal Year 2017 by Quarter</b>				
Q1: October - December	5,377	4,436	193	8,674
Q2: January - March	3,972	3,809	229	9,376
Q3: April - June	5,956	1,862	174	13,369

D: Data withheld to protect applicants' privacy.

- Represents zero.

<sup>1</sup> Refers to foreign children in the United States who have been abused, abandoned, or neglected.

<sup>2</sup> The number of new petitions received and entered into a case-tracking system during the reporting period.

<sup>3</sup> The number of petitions approved during the reporting period.

<sup>4</sup> The number of petitions that were denied, terminated, or withdrawn during the reporting period.

<sup>5</sup> The number of applications awaiting a decision as of the end of the reporting period.

NOTE: 1) Some petitions approved or denied may have been received in previous reporting periods.

2) The report reflects the most up-to-date data available at the time the report is generated.

Source: Department of Homeland Security, U.S. Citizenship and Immigration Services, C3 Consolidated via Standard Management Analysis and Reporting Tool (SMART), June 2017

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## I-485 Green Card Application

- Should be filed with I-360 if possible, though now not possible in most cases
- Fee, but fee waiver available
- Need medical examination and photos
- No time limit for USCIS adjudication
- Filing = allows a child to obtain work authorization

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## I-485 Step: New Developments

- USCIS adjudicates now at a central location (not local offices).
- Because of visa caps, generally children from El Salvador, Honduras, Guatemala, and Mexico cannot file their I-485s with their I-360s.
- They may have to wait for YEARS to file their I-485s (and lack work permits in the interim).

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## New Developments: What Do They Mean?

- USCIS likely will deny more I-360 petitions.
- The entire immigration process was about six months, now it may be YEARS as children wait for an available visa so they can apply for and obtain a green card.
- In the meantime, for many children there is no deportation protection, work permit, SSN, or federal financial aid.

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## New Developments: What Do They Mean?

### FOR YOU:

- More requests to courts for amended SIJS findings
- More requests to keep children under court jurisdiction until the immigration service process is complete
- More need to look at alternative forms of immigration relief for children

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## **Part V: Demonstration: Conversation with a Child About SIJS**

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## Resources

- An Overview of Special Immigrant Juvenile Status (ILRC)
  - <http://www.ilrc.org/resources/an-overview-to-special-immigrant-juvenile-status>
- California Appellate Law on SIJS (ILRC)
  - <https://www.ilrc.org/california-appellate-law-special-immigrant-juvenile-status>
- Recommendations for State Court Predicate Orders in CA (ILRC)
  - INSERT LINK
- USCIS Fact Sheet “Immigration Relief for Abused Children”
  - [https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/PED.SIJ.1015\\_Brochure\\_M-1114B\\_Revised\\_05.19.16.pdf](https://www.uscis.gov/sites/default/files/USCIS/Green%20Card/Green%20Card%20Through%20a%20Job/PED.SIJ.1015_Brochure_M-1114B_Revised_05.19.16.pdf)
- Judicial Council Memo on SB 873 and the SIJS Process in the Superior Courts
  - <http://www.courts.ca.gov/documents/jc-20141028-item1.pdf>

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