



**U.S. Citizenship and
Immigration Services**

USCIS Policy Manual

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Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 2 - Eligibility Requirements

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](#)).^[1] 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
Unmarried
Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360)
Juvenile court order(s) issued in the United States that meets the specified requirements
U.S. Department of Homeland Security consent
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.^[2] 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.^[3]

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.^[4]

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 custody and care of juveniles.^[5] 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.^[6] 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.^[7]

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.^[8]

To be eligible for SIJ classification, the petitioner must submit a juvenile court order(s) with the following determinations and provide evidence that there is a reasonable factual basis^[9] 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 the state child welfare 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 his or her 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 him or her 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^[10].

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.^[11] 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.^[12] 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.^[13]

Custody

Placing the petitioner “under the custody of” a natural person or entity generally encompasses both legal and physical custody. Commitment to, or placement under the custody of a person may include certain types of guardianship, conservatorship, or adoption.^[14] 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^[15]

The juvenile court must determine that reunification with one or both parents^[16] is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws.^[17] Lack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent(s) remains in effect until the child ages out of the juvenile court’s jurisdiction.^[18] The temporary unavailability of a child’s parent(s) does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not required.^[19]

The juvenile court order should contain the factual basis for this determination, which includes naming the petitioner’s parents, and the record must establish that the court determined the named person(s) to be the petitioner’s parents. USCIS may request additional evidence if this is not established. For example, if the court’s determinations are based on a father not listed on the petitioner’s birth certificate, a determination that the claimed father is the father should be recognized in the juvenile court order.^[20]

3. Best Interests

Juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country. However, 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 his or her parents. 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. While the standards for making best interest determinations may vary between states, 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).^[21] The child's safety and well-being are typically the paramount concern.

The court’s determination that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that being returned to the petitioner’s (or petitioner’s parents’) country of nationality or last habitual residence would not be in the child’s best interest.^[22] However, if for example the court places the child with a person in the United States pursuant to 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 qualifying best interest finding with a sufficient factual basis to warrant USCIS 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.

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 his or her 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.^[23]

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^[24] to have jurisdiction under state law to make the required judicial determinations about the custody and care and/or dependency of the juvenile.^[25] 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 is controlling on the 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, or placed in a permanent guardianship; or
- The petitioner was the subject of a valid 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).^[26]

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.^[27] If, however, a juvenile permanently relocates to a new state and is not living in a court-ordered placement, then the petitioner must submit:

- Evidence that the court is still exercising jurisdiction over the petitioner; or
- A new juvenile court order from the court that has jurisdiction.^[28]

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. USCIS Consent

The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) simplified but did not remove the DHS consent requirement.^[29] In order to consent to the grant of SIJ classification, USCIS must review the juvenile court order and any supporting evidence submitted to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to protect the child and provide relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit.^[30] USCIS

therefore looks to the nature and purpose of the juvenile court proceedings and whether the court order was sought in proceedings granting relief from abuse, neglect, or abandonment beyond an order with factual findings to enable a person to file a petition for SIJ classification.^[31] Generally, the court-ordered dependency or custodial placement of the child is the relief being sought from the juvenile court, and the factual basis of each of the required determinations is evidence that the request for SIJ classification is bona fide.

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. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the determinations necessary for SIJ classification.

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.

E. HHS Consent

If a petitioner is currently in the custody of the U.S. Department of Health and Human Services (HHS) and seeks a juvenile court order that also alters^[32] his or her custody status or placement, HHS must consent to the juvenile court's jurisdiction. HHS consent is not required if the order simply restates the juvenile's current placement.

F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition.^[33] 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 his or her natural or prior adoptive parents, even after naturalization.^[34] This prohibition applies to a custodial parent when the juvenile court has found reunification is not viable with the other parent.

Footnotes

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 Juvenile [[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\(a\), \(d\)\(2\)\(i\)](#) and (iii). See [Matter of A-O-C- \(PDF, 309 KB\)](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (clarifying that juveniles must have been subject to a dependency or custody order issued by a "juvenile court," which is defined as a court "in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.").

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 [8 CFR 204.11\(a\)](#). Consistent with the district court’s decision in *R.F.M., et al. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and [INA 101\(a\)\(27\)\(J\)\(i\)](#), USCIS interprets the definition of juvenile court at [8 CFR 204.11\(a\)](#) to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency or custody and care of juveniles (or both).
6. [△] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [Matter of A-O-C \(PDF, 309 KB\)](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019).
7. [△] See [8 CFR 204.11\(d\)\(2\)\(i\)](#).
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 3, Factual Basis and USCIS Consent [[6 USCIS-PM J.3\(A\)\(3\)](#)].
10. [△] See [8 CFR 204.11\(c\)\(3\)](#).
11. [△] See [8 CFR 204.11\(c\)\(3\)](#). See [Matter of E-A-L-O- \(PDF, 304 KB\)](#), Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying the requirement that a juvenile court dependency declaration is not sufficient for USCIS’ to consent to SIJ classification absent evidence that the dependency declaration actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law). 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, [Resource Guidelines Improving Court Practice in Child Abuse & Neglect Cases \(PDF\)](#). (1995).
14. [△] 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 204.301](#) and [8 CFR 204.303](#).
15. [△] 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. The term “eligible for long-term foster care” is defined at [8 CFR 204.11\(a\)](#), as requiring that family reunification no longer be viable and that this determination would be expected to remain in place until the child reached the age of majority. 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, and USCIS maintains that the court’s determination generally is

meant to be in place until the child reaches the age of majority. See [8 CFR 204.11\(a\)](#). See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5079 (December 23, 2008).

16. [^] The term “parent” does not encompass a step-parent unless the step-parent is recognized as the petitioner’s legal parent under state law, such as when a step-parent has adopted the petitioner.

17. [^] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [Matter of D-Y-S-C- \(PDF, 306 KB\)](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (interpreting section 101(a)(27)(J)(i) to mean that that a qualifying reunification finding must include a judicial determination that the juvenile was subjected to such parental maltreatment by one or both parents under state law).

18. [^] 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 \(PDF\)](#).

19. [^] 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 (SDNY Mar. 15, 2019). See *J.L., et al v. Cissna*, 341 F.Supp.3d 1048 (N.D.C.A. 2018), *Moreno-Galvez v. Cissna*, No. 19-321 (W.D.W.A. July 17, 2019). See *W.A.O. v. Cissna*, No. 19-11696 (D.N.J. July 3, 2019).

20. [^] In circumstances where the judge does not make a final determination on parentage or makes a determination as to alleged or purported parentage, the order will not meet the statutory requirements for SIJ classification.

21. [^] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, [Determining the Best Interests of the Child](#). See [Matter of A-O-C- \(PDF, 309 KB\)](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (providing, consistent with decisions in *R.F.M. v Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and [INA 101\(a\)\(27\)\(J\)\(i\)](#), that the definition of juvenile court at 8 CFR 204.11(a) means 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.).

22. [^] See 58 FR 42843-01, 42848 (Aug. 13, 1993).

23. [^] See [8 CFR 204.11\(d\)\(2\)\(iii\)](#). 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. See [Matter of A-O-C- \(PDF, 309 KB\)](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (providing, consistent with decisions in *R.F.M. v Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and [INA 101\(a\)\(27\)\(J\)\(i\)](#), that the definition of juvenile court at 8 CFR 204.11(a) means 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). 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.

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

25. [^] 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 custody and care and/or dependency of juveniles. See [8 CFR 204.11\(a\)](#). See [Perez-Olano v. Holder \(PDF, 5.34 MB\)](#), Case No. CV 05-3604 (C.D. Cal. 2010) at paragraph 8.

26. [^] See [Perez-Olano v. Holder \(PDF, 5.34 MB\)](#), Case No. CV 05-3604 (C.D. Cal. 2010).

27. [^] Some 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](#). 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.

28. [^] See [8 CFR 204.11\(c\)\(5\)](#) (stating that an alien is eligible for SIJ classification if he or she continues to be dependent on the juvenile court).

29. [^] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008). See [Matter of D-Y-S-C- \(PDF, 306 KB\)](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019).

30. [^] See [INA 101\(a\)\(27\)\(J\)\(iii\)](#) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

31. [^] Id.; see also [Matter of D-Y-S-C- \(PDF, 306 KB\)](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (clarifying SIJ classification may only be granted upon USCIS' consent to juveniles who meet all other eligibility criteria and establish that they sought the requisite juvenile court or administrative determinations in order to gain relief from parental abuse, neglect, abandonment, or similar basis under state law, and not primarily to obtain an immigration benefit).

32. [^] See [Perez-Olano v. Holder \(PDF, 5.34 MB\)](#), Case No. CV 05-3604 (C.D. Cal. 2010).

33. [^] 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 Juvenile [[7 USCIS-PM F.7](#)].

34. [^] See [INA 101\(a\)\(27\)\(J\)\(iii\)\(II\)](#).

Legal Authorities

[INA 101\(a\)\(27\)\(J\)](#), [8 CFR 204.11](#) - Special immigrant juveniles

[INA 101\(b\)](#) - Definition of child

[INA 204\(a\)\(1\)\(G\)\(i\)](#) - Petitioning procedure

[INA 287\(h\)](#) - Protecting abused juveniles

Forms

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

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

Appendices

Update to Special Immigrant Juvenile Policy and Administrative Procedure Act (APA) Considerations

Appendix: Update to Special Immigrant Juvenile Policy and Administrative Procedure Act (APA) Considerations

On November 19, 2019, USCIS provided more clarity on several requirements for special immigrant juvenile (SIJ) classification, including the following:

- USCIS reaffirmed and clarified that the petitioner must have been a juvenile under the relevant state law definition of “juvenile” (or equivalent term) when the juvenile court order was issued; [[1](#)]
- USCIS clarified the definition of a juvenile court for purposes of SIJ classification and provides examples of the types of evidence that may be provided to establish that a court is acting as a

qualifying juvenile court;^[2]

- USCIS clarified guidance on what constitutes a qualifying “dependency” or “custody” determination from the juvenile court for the purposes of SIJ classification eligibility;^[3]
- USCIS clarified guidance on the statutorily-mandated USCIS consent function;^[4]
- USCIS clarified guidance on what qualifies as a similar basis to abuse, neglect, or abandonment under state law;^[5] and
- USCIS reaffirmed for officers that the agency no longer requires 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.^[6]

These updates and clarifications of current USCIS policy guidance are based on USCIS interpretation of the applicable terms in DHS regulations and the Immigration and Nationality Act (INA). An agency is not required to use the Administrative Procedure Act’s (APA) notice-and-comment procedures to issue an interpretive rule or one that amends or repeals an existing interpretive rule,^[7] or when modifying rules of agency organization, procedure, or practice.^[8] However, the instruction to not require evidence that a state 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 was a policy change in response to the resource strain of ongoing litigation. As with all other policy guidance USCIS issues, these updates and clarifications to officers do not add to the substantive regulations, create legally binding rights, obligations, or change the substantive standards by which USCIS will evaluate SIJ petitions. Accordingly, USCIS published no Federal Register notices requesting public comment because public notice is not required for these internal policy changes and clarifications.

Unfair Surprise and Reliance Interest

An agency can change its interpretation of a regulation at different times in its history as long as the interpretative changes create no unfair surprise.^[9] In this case, USCIS is not changing its policy regarding SIJ adjudications. USCIS is updating this guidance to clarify what the law and regulations permit or require because of potential confusion. It has never been USCIS official policy to grant SIJ classification based on a state judge’s order that is sought primarily to permit the alien to obtain lawful immigration status.

USCIS has analyzed the potential for and taken into account serious reliance interests that may be engendered by the practices USCIS officers may have followed prior to this clarification. USCIS acknowledges that a person who may have been approved for SIJ classification before this policy alert may no longer be approved by an officer following this clarifying guidance in rendering their decision. An advocate or representative of an SIJ petitioner, not knowing of this policy, may erroneously petition the state court judge who is handling their client’s case to issue an order with findings of fact in support of the petitioner’s eligibility for SIJ that does not provide relief from parental abuse, neglect, abandonment or a similar basis under state law. However, the statutory and regulatory eligibility criteria have never permitted SIJ classification to be approved using such state court orders, nor has it been official USCIS policy. Therefore, an SIJ petitioner cannot be said to have acted in reliance on the continuation of a practice and policy that has not been a USCIS practice and policy and which is contrary to the law. USCIS must limit the approval of SIJ classification to cases who are eligible based on a valid court order as required by the INA regardless of its effects on parties who may rely on erroneous state court orders.

With respect to the policy change to no longer require evidence that a state 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, USCIS made that change in response to the strain of litigation. USCIS anticipated that the change would not negatively impact petitioners with potential reliance interests, rather it would reduce their evidentiary burden.

Implementation

USCIS implemented this policy update immediately, as it was merely a clarification. However, USCIS still allowed interested parties an opportunity to comment by providing a 10-day comment period, as is generally provided for Policy Manual publications.

Footnotes

1. [^] See Chapter 2, Eligibility Requirements, Section A, General [6 USCIS-PM J.2(A)] and Section B, Age-out Protections For Filing with USCIS [6 USCIS-PM J.2(B)].
2. [^] See Chapter 2, Eligibility Requirements, Section C, Juvenile Court Order [6 USCIS-PM J.2(C)].
3. [^] See Chapter 2, Eligibility Requirements, Section C, Juvenile Court Order, Subsection 1, Dependency or Custody [6 USCIS-PM J.2(C)(1)].
4. [^] See Chapter 2, Eligibility Requirements, Section D, USCIS Consent [6 USCIS-PM J.2(D)].
5. [^] 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)].
6. [^] See Chapter 2, Eligibility Requirements, Section C, Juvenile Court Order, Subsection 2, Parental Reunification [6 USCIS-PM J.2(C)(2)].
7. [^] See *Perez v. Mortgage Bankers Assoc.*, 135 S.Ct. 1199 (2015).
8. [^] *James v. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000)
9. [^] See *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 171 (2007). See *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012).

POLICY ALERT - USCIS Special Immigrant Juvenile Classification

November 19, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual regarding the special immigrant juvenile (SIJ) classification.

[Read More](#)

AFFECTED SECTIONS

6 USCIS-PM J - Part J - Special Immigrant Juveniles

Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

[Read More](#)

AFFECTED SECTIONS

1 USCIS-PM - Volume 1 - General Policies and Procedures

2 USCIS-PM - Volume 2 - Nonimmigrants

6 USCIS-PM - Volume 6 - Immigrants

7 USCIS-PM - Volume 7 - Adjustment of Status

8 USCIS-PM - Volume 8 - Admissibility

9 USCIS-PM - Volume 9 - Waivers

10 USCIS-PM - Volume 10 - Employment Authorization

11 USCIS-PM - Volume 11 - Travel and Identity Documents

12 USCIS-PM - Volume 12 - Citizenship and Naturalization

POLICY ALERT - Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker, SIJ, and G-4 international organization or NATO-6 employee or family member, among others.

[Read More](#)

AFFECTED SECTIONS

6 USCIS-PM J - Part J - Special Immigrant Juveniles

7 USCIS-PM F - Part F - Special Immigrant-Based (EB-4) Adjustment

