



U.S. Citizenship and
Immigration Services

USCIS Policy Manual

Current as of November 19, 2019

Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 3 - Documentation and Evidence

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](#));^[1]
- A copy of the petitioner's birth certificate or other evidence of the petitioner's age;^[2]
- Copies of the juvenile court order(s) and administrative document(s), as applicable, that establish eligibility and 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 his or her 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 he or she is otherwise eligible.^[3]

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.^[4] 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). Mere copies of, or references to, state law(s), and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, may not be sufficient unless supported by evidence that the court actually relied on those laws when making its determinations. 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).^[5] 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 order makes the determinations based upon a state law similar to abuse, neglect, or abandonment, the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. This requirement may be met if the elements of the state law are contained in the order, by providing a copy of the law the court relied upon and a description of how the elements of the similar basis are equivalent, or by showing that the child is entitled to equivalent juvenile court protection and intervention based on the court's determination of the similar basis to abuse, neglect, or abandonment.^[6]

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

2. Final Orders

A court order for dependency or custody that clearly indicates that the order was issued for a limited purpose (for example, medical guardianship) or expires before the child reaches the age of majority is generally not sufficient for SIJ eligibility. However, the title of the court order is not necessarily controlling. For example, an order entitled "temporary" may, in fact reach the legal conclusion that reunification is not viable and is legally binding on the parties until the age of majority. In such a case, the order should generally contain language to that effect or the SIJ petitioner should submit evidence that the court intended the order to be legally in effect until the age of majority. Such evidence could include, for example, the underlying petition or copies of relevant state law.

A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent for a time-limited period,^[7] is generally not considered a custodian for purposes of establishing SIJ eligibility.^[8] However, a child may be placed with a temporary caregiver in the context of a dependency proceeding (for example, when placed with a foster parent) and still meet the criteria for being dependent on a juvenile court.

3. Factual Basis and USCIS Consent

Orders that have the necessary determinations and include, or are supplemented by, the factual basis for the court's determinations (for example, the judicial findings of fact) are usually sufficient to establish eligibility and to demonstrate that the request for SIJ classification is bona fide.^[9] 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, USCIS generally consents to the grant of SIJ classification.^[10] If a petitioner cannot obtain 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.^[11]

4. 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 his or her 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.^[12]

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.^[13]

Footnotes

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1. [^] See Instructions for [Form I-360](#). There is no fee to file [Form I-360](#) to seek SIJ classification.
 2. [^] For more information on evidence that can be used to provide proof of age see [8 CFR 204.11\(d\)\(1\)](#).
 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 Juvenile [\[7 USCIS-PM F.7\]](#).
 4. [^] See [8 CFR 204.11\(d\)\(2\)](#); *Matter of D-Y-S-C-* ([PDF, 306 KB](#)), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (explaining that petitioners bear the burden of establishing the state law applied in the reunification, dependency or custody, and

best-interest determinations.).

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

6. [^] For example, under Connecticut law, a child may be found “uncared for” if the child is “homeless” or if his or her “home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.” See Conn. Gen. Stat. Ann. section 46b-120(9). “Uncared for” may be similar to abuse, neglect, or abandonment because children found “uncared for” are equally entitled to juvenile court intervention and protection. The outcomes for children found “uncared for” are the same as they are for children found abused, neglected, or abandoned. See Conn. Gen. Stat. Ann. section 46b-120(8),(9); 121(a).

7. [^] See Black’s Law Dictionary (10th ed. 2014) (defining “in loco parentis”).

8. [^] 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, must not be considered a legal guardian for purposes of this section or Section 462 of the Homeland Security Act of 2002 (codified at 6 U.S.C. 279). 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).

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

10. [^] See [INA 101\(a\)\(27\)\(J\)\(iii\)](#) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997); see also [Matter of D-Y-S-C- \(PDF, 306 KB\)](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (requiring that, for USCIS’ consent to be warranted, the judicial determination to find that the juvenile was subjected to such maltreatment by one or both parents under state law); [Matter of E-A-L-O- \(PDF, 304 KB\)](#), Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying that, for USCIS’ to consent to SIJ classification, a juvenile court dependency declaration must be issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law).

11. [^] 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.

12. [^2] USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.

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

Legal Authorities

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

[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](#)

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

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

Current as of November 19, 2019