



U.S. Citizenship and Immigration Services

USCIS Policy Manual

Current as of November 19, 2019

Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 4 - Adjudication

A. Jurisdiction

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

B. Expeditious Adjudication

The Trafficking Victims Protection and Reauthorization Act of 2008 provides that SIJ petitions be adjudicated by USCIS within 180 days.^[3] The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date. If the petitioner has not submitted sufficient evidence to establish his or her eligibility for SIJ classification, the clock stops the day USCIS sends a request for additional evidence and resumes the day USCIS receives the requested evidence from the petitioner.^[4]

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 a SIJ petition.

C. Interview

1. Determining Necessity of Interview

USCIS has discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition.^[5] 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. 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.

D. Requests for Evidence

Additional evidence may be requested at the discretion of the officer if needed to determine eligibility.^[6] 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 directly and substantively 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).^[7]

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.^[8]

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.^[9] An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision.^[10] 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 petitioner's application for adjustment of status:^[11]

- Marriage of the petitioner;
- Reunification of the petitioner with one or both parents by virtue of a juvenile court order,^[12] 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;^[13] 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 his or her parents’, country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition.^[14]

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.^[15] 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.^[16]

Footnotes

1. [^] See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)). See *Matter of E-A-L-O-* ([PDF, 304 KB](#)), Adopted Decision 2019-04 (AAO, Oct. 11, 2019) (citing Sections 471(a), 451(b), 462(c) of the Homeland Security Act of 2002, [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135, 2205 (November 25, 2002)).
2. [^] 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](#)].
3. [^] 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).
4. [^] See [8 CFR 103.2\(b\)\(10\)](#).
5. [^] See [8 CFR 103.2\(b\)\(9\)](#).
6. [^] See [8 CFR 103.2\(b\)\(8\)](#).
7. [^] 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\(b\)\(10\)](#).
8. [^] See [8 CFR 103.2\(b\)\(19\)](#).
9. [^] See [8 CFR 103.3\(a\)](#).
10. [^] See [8 CFR 103.3](#). See [8 CFR 103.5](#).
11. [^] See [8 CFR 205.1\(a\)\(3\)\(iv\)](#).
12. [^] 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.
13. [^] The Trafficking Victims Protection and Reauthorization Act (TVRA 2008), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044 (December 23, 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. USCIS interprets this change as clarifying that the child does not need to be eligible for or placed in foster care. USCIS also views this change as modifying the regulation that requires auto-revocation upon the termination of the beneficiary’s

eligibility for long-term foster care. A petition is subject to revocation if reunification with the parent is now viable where a juvenile court previously deemed reunification with that parent not viable. See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5079 (December 23, 2008).

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

15. [^] See [INA 205](#) and [8 CFR 205.2](#).

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

Legal Authorities

[8 CFR 205.1\(a\)\(3\)\(iv\)](#) - Reasons for automatic revocation

[8 CFR 205.2](#) - Revocation on notice

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

[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

Current as of November 19, 2019