



Immigration Relief for Juveniles: Special Immigrant Juvenile Status

Spring 2011

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Objective

- To understand what a Special Immigrant Juvenile (SIJ) is.
- To understand recent legislative changes to the SIJ program.
- To review adjudication of Form I-360 for SIJ status and SIJ-based Form I-485.
- To understand the Perez-Olano Settlement Agreement (POSA).

NOTICE

- This presentation is an *overview* of SIJ issues.
- Adjudicators will refer to laws, regulations, and policy memos (PM) for operational guidance on any specific case.

Legal Basis

Current as of March 2011

- Immigration Act of 1990 [IMMACT 90] Pub. L. 101-649 (1990)
- Miscellaneous and Technical INA Amendments of 1991 [MTINA] Pub. L. 102-232 (1991)
- Appropriations Act of 1998 Pub. L. 105-119 (1997)
- Violence Against Women and Department of Justice Reauthorization Act [VAWA 2005] Pub. L. 109-162 (2006)
- William Wilberforce Trafficking Victims Protection Reauthorization Act [TVPRA 2008] Pub. L. 110-457 (2008)
- INA 101(a)(27)(J)—definition
- INA 245(h)—adjustment of status
- 8 CFR 204.11 & 8 CFR 205.1(a)(3)(iv) (1993) (note: HQ working on an update)
- Memo #3—Field Guidance on SIJ Petitions (May 27, 2004)
- Memo—Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions (March 24, 2009)

What is Special Immigrant Juvenile (SIJ) Status?

- An immigrant classification.
- It allows certain juveniles to file for adjustment of status and work authorization.
- Juveniles must be in the state juvenile court system due to abuse, abandonment or neglect, as defined by INA § 101(a)(27)(J).

Definition of SLJ in the INA

The Juvenile:

- Is present in the US
- Is dependent on a juvenile court
 - Has been declared dependent on a juvenile court, *or*
 - Has been legally committed to, *or* placed under the custody of,
 - a state agency or department, *or*
 - an individual or entity appointed by the court
- Cannot reunify with a parent
 - Court finds that the juvenile cannot reunite with one or both parents because of:
 - abuse,
 - neglect,
 - abandonment,
 - or a similar basis under state law;

Definition of SIJ

(continued)

- Cannot return to home country
 - The court finds that it is not in the juvenile's best interest to be returned to the juvenile's or parent's country of nationality (or last habitual residence); *AND*
- USCIS must consent to the grant of the I-360
 - In other words, even if all the above conditions are met, USCIS still has to approve the I-360 before a juvenile is a special immigrant juvenile.
- Note on juveniles in federal custody:
 - No juvenile court has jurisdiction to determine the custody status or placement of a minor in the custody of the HHS unless HHS specifically consents to such jurisdiction.

Regulations Governing SIJ Status: 8

CFR 204.11*

The Juvenile:

- Is under 21 years old (at the time of filing only)
- Is unmarried (both at the time of filing and adjudication)
- Is declared dependent upon a juvenile court in the US (acting under state law governing dependency declarations), while the alien was both in the US and under the jurisdiction of the court (expanded to include option of judicial placement either with a state agency or with an individual or entity appointed by a state court)

**Note: The reg is outdated and parts of it are superseded by law. Yellow text explains recent statutory changes from TVPRA 2008 to lookout for. Also see memo issued March 24, 2009.*

Regulations Governing SIJ Status*

(continued)

- Is deemed eligible by a juvenile court for long term foster care (REPLACED with the requirement that the juvenile cannot be reunited with one or both of the juvenile's parents due to abuse, neglect, abandonment, or similar basis under state law)
- Continues to be dependent on the juvenile court (Be careful: if dependency on the court ends because the minor ages-out, this requirement may not apply. See aging-out slide.)

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Regulations Governing SIJ Status (continued)

AND

- The court has found that returning the juvenile to the country of nationality or last habitual residence (of the child or of the parents) is not in the best interests of the minor.
 - This finding can be made by the court in judicial proceedings, or
 - The finding can be made in administrative proceedings recognized by the court.

No SIJ Age-Out

- Previously:
 - Juvenile would age-out of eligibility if the I-360 or the I-485 was not adjudicated before the 21st birthday
- Now:
 - USCIS will **NOT deny** SIJ after the 21st birthday if the self-petitioner was under 21 at time of filing the I-360.
 - USCIS will **NOT revoke** I-360 after the 21st birthday if the self-petitioner was under age 21 at the time of filing.

No SIJ Dependency Age-Out

- Previously:
 - Juvenile would age-out of SIJ eligibility if dependency on the juvenile court was in effect at the time of filing I-360, but was vacated, terminated or ended before adjudication
- Now:
 - USCIS **CANNOT** deny SIJ if the juvenile was dependent on a state court at the time of filing the I-360 but ages out of the state court's jurisdiction
 - This covers situations in which dependency was vacated, terminated or ended because of the age of the juvenile before adjudication

No SIJ Dependency Age-Out

(examples)

State age of emancipation is 18. Juvenile files I-360 while under 18 (order is in effect). State court order automatically terminates when the juvenile reaches 18. Juvenile remains eligible for SIJ, even if I-360 is adjudicated after juvenile turns 18.

State age of emancipation is 18. Juvenile files I-360 at the age of 19 (order is not in effect). State court order automatically terminated when the juvenile reached 18. Juvenile is ineligible for SIJ.

State “A” age of emancipation is 21. State “B” age of emancipation is 18. Juvenile gets court order in State “A” and files I-360 while under 21. At age 19, juvenile moves to State “B” before adjudication. Juvenile cannot get new order in State “B” because of age. Juvenile remains eligible for SIJ.

Non Age-Out Termination

- If a juvenile relocates, he or she may need a new state court order
 - example: A juvenile relocates from State A to State B. If the juvenile can get a court order in State B, the lapse in time between the two orders will not be grounds for denial of the petition. Dependency will be considered in effect through the time of adjudication.
 - Adjudicators can request HQ review of complex SIJ cases involving issues like these.
- If dependency otherwise ends prior to adjudication, but *not* because of aging-out, juvenile will be *ineligible* for SIJ.
 - example: the juvenile removes him/herself from foster care.
 - example: the juvenile marries.

USCIS Consent

- USCIS must consent to the grant of SIJ status (an exercise of discretion).
- The juvenile court order and the determination of best interest were sought primarily on the abuse, abandonment or neglect of the juvenile.
 - There will almost always be some immigration motive for seeking a court order, it just cannot be the primary motive.
- Defer to juvenile court's findings and its expertise.

Juveniles in Federal Custody

- HHS is charged with the care and custody of all unaccompanied minors
- Definition:
 - under the age of 18,
 - in the US,
 - have no legal status, and
 - have no parent or legal guardian available in US.
- ICE or CBP must transfer the minor to the care of HHS within 48 hours.
- The Office of Refugee Resettlement (ORR) is the HHS agency that arranges for the care and custody of these juveniles.
- ORR runs shelters and secure facilities, but bed space is limited, so
- Most juveniles are cared for through a network of ORR-funded contract facilities, such as local shelters and agencies.
- In either situation, ORR retains custody until the juvenile either reaches the age of 18, or ORR relinquishes custody.

Specific Consent from HHS

- Specific consent from HHS is needed ONLY if:
 - The juvenile was in ORR custody when the court order was issued, AND
 - The court altered or determined custody status or placement (rather just restating HHS’s current placement).
- HHS has interim instructions (available on their website) which should be filed with Form I-360, if applicable. (RFE if necessary.)
- **Note:** You no longer need to send specific consent cases to HQ.

The URM Program

- The Unaccompanied Refugee Minors (URM) is a sub-program of ORR (HHS) funded foster care
- Placements are based on individual need (foster home, therapy, semi and independent living, group care, residential treatment, secure facilities)
- The services available include safety planning, health care, mental health care, social adjustment, English as a Second Language (ESL), education and vocational training

The URM Program and SIJ

- URM is now available to certain SIJ children.
- URM is critical because children may end up homeless and may have already aged out of state benefits.
- To ensure eligibility for URM, the I-360 **must** be approved before the juvenile turns 18.
 - HQ supports expediting cases in this circumstance. You may receive a request to expedite for this purpose from HHS, from an attorney or applicant, or from HQ.
 - Note: a child may be moved from a State with no program, into a state with a URM program

How Does a Juvenile Apply for SIJ Status and for Green Card?

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Form I-360

- Can be filed alone or concurrently with Form I-485 and Form I-765 to Lockbox.
- USCIS always has jurisdiction.
- Must be filed before juvenile turns 21.
- Must be adjudicated within 180 days.
- No fee.
- Cannot file for parents.

Form I-485

- Can be filed concurrently for a juvenile not in removal proceedings.
- EOIR has jurisdiction if juvenile is in removal proceedings.
- Fee waiver request.
- Interview may be waived on case-by-case basis.

What Documentation is Required?

Form I-360

- Proof of age (birth certificate, passport, foreign identity document etc).
- Juvenile court order with proper findings (dependency, reunification, and best interest).
- Specific consent from HHS (if necessary).

Form I-485

- General adjustment application documentation.
- No affidavit of support needed.
- Form I-601 (if necessary).
- May require fingerprints.

What Documentation does USCIS

Give to the Juvenile?

Form I-360

- I-797C for receipt.
- Approval Notice.

Form I-485

- Permanent Residence Card (“green card”).
- EAD card (if applied for on I-765).
- Permanent Resident (ADIT) stamp in passport (if juvenile has passport).

Perez-Olano Settlement Agreement (POSA)

- Class action filed May 13, 2005
- Settlement agreement effective from December 14, 2010 until December 13, 2016
- Class members: all aliens including, but not limited to, SIJ applicants who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based AOS based upon their alleged SIJ eligibility

Perez-Olano Injunction

- Nationwide permanent injunction issued by the U.S. District Court of the Central District of California on January 8, 2008
- Prohibited DHS from requiring specific consent when a state court's dependency order will not determine custody status or placement
- Injunction now dissolved, but terms regarding issuance of specific consent are incorporated in the Settlement Agreement

Under POSA, USCIS may not:

- Deny or revoke a class member's application for SIJ classification or SIJ-based AOS on account of age or dependency status if, at the time of filing, the class member:
 - was under 21 years of age, or
 - was the subject of a valid dependency order that was subsequently terminated based on age.

POSA Motions to Reopen

- Class members can file a Motion to Reopen (Form I-290B) if:
 - their I-360 or SIJ-based I-485 was denied or revoked on or after 5/13/05
 - for age-out, dependency age-out, or specific consent
- Readjudication will be with respect to age eligibility and specific consent

MTR Potential Issues

- Juvenile has a juvenile court order with pre-TVRA language, but juvenile has aged-out of juvenile court's jurisdiction so cannot obtain a new court order
 - Adjudicator must rely on court order in the file
- Marriage
 - If juvenile is married, I-360 can be denied on this basis

Adjudication Issues

- All cases must be adjudicated within 180 days (not counting time for RFEs).
- SIJs who file for AOS are subject to the cap on the EB4 category.
 - Technically, a visa must be available at the time an SIJ petitioner files for AOS.
- An RFE, as opposed to a denial, is generally most appropriate given the vulnerability of the SIJ population
- Field offices may waive AOS interview on case-by-case basis.
 - See 8 CFR 245.6. A flexible policy is appropriate b/c of the population, the 180- day deadline and responding to requests for URM expedites.
- USCIS CANNOT compel an SIJ petitioner to contact the parent (or family member of the parent) who allegedly abused, neglected or abandoned the juvenile at any stage of applying for SIJ under INA 287(h).

Inadmissibility

An applicant must be admissible to the US or obtain a waiver of inadmissibility (Form I-601-fee waiver)

212(a) Grounds that do **NOT** apply:

- (4) Public Charge
- (5)(A) Labor Certification
- (6)(A) Present without Admission or Parole
- (6)(C) Misrepresentation
- (6)(D) Stowaways
- (7)(A) Valid Documentation
- (9)(B) Unlawful Presence

Inadmissibility

(Continued)

Any other 212(a) ground may be waived except:

- (2)(A), (B), (C) Criminal Grounds-except for a single offense of simple possession of 30 grams or less of marijuana
- (3)(A), (B), (C), (E) Security and Related Grounds
- Waiver must be for humanitarian purposes, family unity, or otherwise in the public interest.
- Note: SIJs are deemed paroled into the U.S.

Auto Revocation: 8 CFR 205.1(a)(3)(iv)*

- Turns 21 years old (**NO LONGER** a basis for revocation; only required to be under 21 at the time of filing I-360)
- Marries
- Termination of dependency on the juvenile court (Be careful with the age out protection)
- Termination of eligibility for long-term foster care (“eligible for long term foster care” is **REPLACED** with “reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law”)
- Determination that it *is* in the applicant’s best interests to return to a country of origin

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Questions?

Your HQ contacts are:

- Carlos Fernandez (Field Operations Directorate)
- Rosemary Hartmann (Office of Policy and Strategy)
- Colleen Zengotitabengoa (Office of Chief Council)
- OFO-Special-Inquiries@dhs.gov