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CHAP

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Volume 6 - PETITIONS

Part D - PETITIONS FOR SPECIAL IMMIGRANT JUVENILES (SIJs)

Chapter 1 - Purpose, Background, and Legal Authority

A. Purpose

Congress initially created the Special Immigrant Juvenile (SIJ) classification to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care. This protection evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under State law. While there is no longer a requirement that a child be found eligible for long-term foster care, a finding that reunification with one or both parents is not viable is still required for the child to be classified as an SIJ.

Children who are in a variety of circumstances may be eligible for SIJ classification, including those who:

- Have been abused prior to their arrival to the United States, or while in the United States;
- Are in federal custody with the U. S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) in the Unaccompanied Alien Children Program. See Section 462 of the Homeland Security Act of 2002, Pub. L. 107-296 (November 25, 2002); or
- Are in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of an individual or entity appointed by a state or juvenile court.

B. Background

Congress first established the SIJ immigrant visa classification in 1990. Since then, Congress has updated program requirements. See PM Vol 6, Part J, Special Immigrant Juveniles for more information.

C. Legal Authorities

The following statutes and regulations pertain to SIJs:

- INA 101(a)(27)(J); 8 CFR 204.11 – Special Immigrant Juveniles (certain portions of the regulations have been superseded. See PM Vol 6, Part J, Special Immigrant Juveniles and PM Vol 7, Part F, Special Immigrant Based (EB-4) Adjustment for current requirements)
- INA 203(b)(4) – Certain Special Immigrants

- INA 245(h) – Adjustment of Special Immigrant Juveniles
- INA 287(h) –Protecting Abused Juveniles
- 8 CFR 205.1(a)(3)(iv) – Reasons for Automatic Revocation
- 8 CFR 205.2 - Revocation on Notice

Chapter 2 - Eligibility

In order to be classified as a special immigrant juvenile (SIJ), an individual must file Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant.

The individual must meet the following requirements to be eligible for classification as a special immigrant juvenile (SIJ):

- Physically present in the United States;
    - The petitioner is required to be physically present in the United States at the time of filing and adjudication of Form I-360. The officer should determine physical presence in the United State by reviewing Form I-360 and the entire record of proceedings.
- Unmarried;
    - The petitioner must be unmarried at the time of filing and adjudication of Form I-360. This means the petitioner either: never married; or if previously married, the marriage ended in annulment, divorce, or death prior to filing Form I-360.
- Under the age of 21 on the date of filing Form I-360;
    - The petitioner is only required to be under the age of 21 at the time of filing Form I-360.
- Have a juvenile court order issued in the United States that meets specified requirements. See PM Vol 6, Part J, Special Immigrant Juveniles for more information on specific court order requirements;
- Department of Homeland Security (DHS) consent. See PM Vol 6, Part J, Special Immigrant Juveniles for more information; and
- HHS consent, if applicable.

A. Frequently Asked Questions

The information in this section was prepared by OCC.

1. Reunification Findings

Q. Can you clarify USCIS's interpretation of reunification with one or both parents for purposes of establishing eligibility for SIJ Classification, in particular where the petitioner is over 18 at the time the order is issued?

A: To be eligible for SIJ classification, a juvenile court must have determined that reunification with one or both of the petitioner's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. See 8 USC 1101(a)(27)(J)(i); see also PM Vol 6, Part J, Chapter 2. The determination that parental reunification is no longer viable is a legal conclusion, made in accordance with relevant state child welfare laws, that the petitioner cannot reunify with one or both parents prior to aging out of the court's jurisdiction. See 8 USC

1101(a)(27)(J)(i); 8 CFR 204.11(a) (definition of eligible for long-term foster care); see also PM Vol 6, Part J, Chapter 2. In order for a juvenile court to have authority to determine the non-viability of family reunification, the court must have jurisdiction to determine whether a parent will be able to regain custody of the petitioner. Therefore, in order for a court order to be valid for the purpose of establishing SIJ eligibility, the court must have the power and authority to determine both whether a parent could regain custody and to order reunification, if warranted. See 8 CFR 204.11(a) and 8 CFR 204.11(d)(2)(i)-(ii); see also PM Vol 6, Part J, Chapter 2.

If the child is under 18, generally, the states have jurisdiction to make findings as to parental custody for minors. However, in most jurisdictions, once a child attains the age of 18, a court's authority over custody matters ends. For example, under New York State Law, the ability of a parent to challenge the court's placement of the child outside of his or her own custody generally ends when the child becomes 18 years of age. See *In re Shontae R*, 48 A.D.3d 1006 (App. Div. 2008); *In re Michael O.F.*, 119 A.D.3d 785 (App. Div. 2014). This is also true outside of abuse and neglect proceedings. Specifically, parents are unable to obtain custody or pursue court-ordered visitation after their child turns 18. See *Julian B. v. Williams*, 97 A.D.3d 670 (App. Div. 2012); see also *De Oliveira v. De Oliveira*, 151 A.D.3d 1062 (App. Div. 2017). When a court loses the capacity to order a child's reunification with a parent at age 18, they necessarily cannot make a juridical determination that reunification is not viable. Accordingly, a state court order finding that parental reunification is not viable will not be considered valid for the purpose of establishing SIJ eligibility if the evidence submitted by the petitioner does not establish the court's jurisdiction under state law to place the child under the custody of the allegedly unfit parent.

The burden is on the petitioner to establish eligibility. Generally, a petition should not be denied based on USCIS' interpretation of state law, but rather officers should defer to the juvenile court's interpretation of the relevant state laws. For the Form I-360 petition to be approvable, the evidence must establish that the juvenile court based its decision, including whether or not it has jurisdiction to issue the order, on state law rather than federal immigration law. If the court order or evidence submitted does not clearly indicate that the court had jurisdiction to make the required findings under state law, the officer should request that the applicant provide evidence that the court relied on the relevant state law to make the findings. This requirement can be met if the petitioner submits supplemental evidence that 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. Mere copies of, or references to, state laws, and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, are generally not sufficient unless supported by evidence that the court actually relied on those laws when making its findings. However, statutes, procedures or other examples of state legal authority may be sufficient when viewed with the record as a whole. The totality of the evidence should establish that eligibility is more likely than not.

2. Orders Issued After Petitioner Reaches the Age of Majority

Q: If evidence shows the juvenile court petition was filed with the court prior to the age of 18, in a state in which the age of majority is 18, but the actual juvenile court order was entered after the age of 18, is this order valid for SIJ purposes as a continuation of a previously filed juvenile action or is the order insufficient as it was entered after the child reached the age of majority?

A: Many states have laws that provide continuing jurisdiction to enter the juvenile court order after the juvenile reaches the age of majority as long as the action was filed prior to the juvenile's birthday. The officer may need to look at the individual state's laws to determine if they provide for this continuing jurisdiction; however these juvenile court orders may be sufficient for SIJ purposes. For those states that do not have laws granting continuing jurisdiction for cases filed prior to reaching the age of majority, an order may be valid if it is issued Nunc Pro Tunc to a date prior to the child reaching the age of majority. It is important to determine that the court's jurisdiction was based on state law and not on the INA definition of a child or the 8 CFR 204.11(c) req uirements that the petitioner be under the age of 21 and unmarried.

Q. The juvenile court entered a temporary custodial order after the child reached the age of majority. If a Nunc Pro Tunc order is entered after the child has reached the age of majority for the purpose of changing the

temporary order to an order of permanent custody, is it necessary that the court expressly retain the original (pre-majority) court date in the Nunc Pro Tunc order or can it be presumed the original date was retained by the very nature of the Nunc Pro Tunc?

If the Nunc Pro Tunc order issued after the child has reached the age of majority is provided to add findings required for establishing SIJ eligibility for the first time, would this qualify as a valid Nunc Pro Tunc order, even though it is not a correction of an error in the prior juvenile court order?

A: In both situations, the Nunc Pro Tunc order will generally be determined to be valid back to the date of the order which was corrected by the Nunc Pro Tunc order. We will generally defer to the state court's determination that it has the authority to issue the order Nunc Pro Tunc.

3. Petitioner Leaving Custodial Placement

Q: If the SIJ petitioner leaves the custodian listed on the court order without permission or authorization but does not leave the jurisdiction is an RFE necessary? Does "running away" from the custodial placement affect SIJ eligibility?

A: Simply living in a different jurisdiction than that of the court issuing the juvenile court order is not a problem as long as the juvenile resides under the custody of the court ordered placement or custodian. If the petitioner lives in a different jurisdiction not contemplated by the juvenile court and is not living with the custodial or court placement, then a RFE is necessary to determine whether the court is still exercising jurisdiction over the juvenile. A juvenile leaving the court ordered placement without permission or authorization does not by itself affect SIJ eligibility.

The juvenile "running away" from the placement should not be the sole basis for referring the Form I-360 to a field office for interview. The case should be referred to the BCU for routine processing (i.e., responding to the hit/lookout).

If Form I-360 was already approved, the officer should evaluate whether the child is still living in the court order placement and, if not, the officer must ensure that the court has not changed the findings or that the factual basis for the court's determinations have not changed.

4. Fraud vs. Consent

Q: When there are inconsistent statements in the record and FDNS discovers fraud, is there ever a circumstance when Form I-360 should be denied for fraud rather than denied for USCIS not granting consent?

A: No. The NOID/Denial would include an analysis of the inconsistencies in the record and, based on those inconsistencies, USCIS would withhold consent.

5. Best Interest Determinations

Q: A petitioner's parents are from two different countries, one of which is considered very safe and secure and one of which is considered dangerous. The juvenile court order indicates it is not in the child's best interest to return to the dangerous country. The order is silent on the petitioner's ability to return to the safer country, even if it is not the last country of residence. Is it appropriate to issue an RFE to request evidence that the child could not return to the safe country?

A: If the juvenile court order, in addressing the best interest location for placement, only discusses one country, it may be appropriate to issue an RFE for evidence that the court was aware of and considered the other country as a viable option for the petitioner's return. The court must ultimately issue findings on whether it would be in the best interest for the child to return to any country that is a country of nationality or last habitual residence for the child or either parent.

Q: To be a qualifying juvenile court order, the order or supporting evidence must indicate the factual basis for the determination that it is not in the petitioner's best interest to return to (a placement in) the petitioner's or his or her parents' country of nationality or last habitual residence (for example, addressing reunification with family that remains in the child's or parents' country of nationality or last habitual residence).

In reviewing the factual basis provided for the "not in best interest finding," what level of detail is sufficient to satisfy this finding? Is it sufficient that the juvenile court simply give some reason for its finding or must the court provide some recognized acceptable finding such as:

- No caregiver in home country
- Risk of violence in home country
- Diminished educational or employment opportunities

Are there any reasons that would not be sufficient?

A: Each state has its own best interest statute or standards that the juvenile court judge must apply to make a best interest finding. Determinations that comport with state law and provide some supporting facts should be sufficient. The best interest determination is not meant as a comparison of which county has better conditions in general or a determination that DHS removal is not in the child's best interests.

In terms of the specific examples provided above, the following are generally included in state law and therefore would typically be sufficient for purposes of SIJ eligibility:

- No caregiver in home country
- Risk of violence to the petitioner in the home country

The following examples are generally not sufficient if there is no indication that the state law on best interests allows the court to rely only on these factors:

- The ability to obtain a better education in the United States
- Better employment opportunities in the United States

Sometimes the juvenile court order will make a best interest determination based on the "non-viability of reunification." For example, the order may state, "it is not in the child's best interest to return to his home country because the parent has abandoned him and cannot provide care."

This will generally not be sufficient for SIJ eligibility. The best interest determination is a conclusion by the court that there is not a placement that would be in the child's best interests in the home country. This is a separate requirement from whether the child can reunify with a parent. Non-viability of reunification means that the child cannot be placed with the parent but does not address if there is another placement available in the home country. The best interest finding is not meant as a general determination on whether to remove the child from the US and return him or her to the home country as this is beyond the jurisdiction of the state court. The best interests analysis should focus on matters of child welfare that are under the state court's authority, such as the safety, permanency, and well-being of the child.

A court's determination that a particular placement is the best option available in the United States does not necessarily mean that a placement in the child's home country would not be in the child's best interests. However, if for example the court indicates that placement is with an individual who happens to be in the United States, 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. The analysis would not change even if the chosen caregiver is a parent.

6. Attorney Affidavits

Q: In terms of affidavits summarizing the evidence presented to the court, attorneys will often respond to an RFE by presenting their own affidavit of the evidence presented to the court. Often they will do this from states like California which have confidentiality statutes which restrict the attorney from releasing some court documents. Is it permissible to accept these attorneys' affidavits as evidence for SIJ eligibility purposes?

A: While the attorney generally cannot "testify" because that requires personal knowledge, USCIS may accept affidavits from attorneys indicating what they presented in court as they do have personal knowledge of the evidence the court considered.

B. State-Specific Topics

The information in this section was prepared by OCC.

1. California

Q: California Probate Code Section 1510.1 indicates that a guardian may be appointed for someone between the ages of 18-20, for the purpose of making SIJ findings. How do we apply California's age of majority for SIJ purposes?

A: Per California Family Code Section 6500, the age of majority is 18. California law does not generally allow a parent to have custody of an adult. See Cal.Welf. & Inst.Code Section 303(a) and Cal.Fam.Code Section 7505(c) . However, CA Probate Code Section 1510.1(a)(1) permits the appointment of a guardian for someone age 18-20 in connection with a petition for SIJ findings. In addition, section 1510.1(d) provides that an unmarried individual under 21 who consents to the appointment of the guardian under 1510.1(a)(1) is to be considered a child or minor. The filing of the petition is viewed as consent to the appointment of a guardian under CA law.

However, for purposes of SIJ eligibility, the juvenile court must have jurisdiction over the care and custody of the juvenile under state law and have jurisdiction over the reunification finding. This means that the court must have the authority to place the petitioner under the custody of the allegedly unfit parent.

California Probate Code Section 1510.1(c) provides that this section does not authorize the guardian to eliminate any of the rights that a person who has attained 18 years of age may have as an adult under state law, including, but not limited to, decisions regarding the ward's medical treatment, education, or residence, without the ward's express consent.

The statute implies that the right to decide where the young adult lives will be decided by the young adult, or their guardian, if he or she expressly consents to allowing the guardian to control his or her place of residence. It does not confer the authority for the court to make decisions about the care and custody outside of what the petitioner consents to, and thus, the court has no jurisdiction over care and custody. This means that the court could not return the petitioner to the custody of the allegedly unfit parent if the court did determine that reunification was viable.

The burden is on the petitioner to establish eligibility. The SIJ statute requires that a juvenile court order be submitted and that the court have jurisdiction under state law to issue its findings.

Despite the changes to California law, it is unclear whether California courts have jurisdiction to make the required determinations about the custody and care of petitioners who are 18 or older as juveniles under state law. Specifically, the evidence must establish that the court that issued the order had the legal authority and power to actually reunify a petitioner with his or her allegedly unfit parents in accordance with the relevant California child welfare laws. The petition would not be denied based on an interpretation of CA law, but it may be appropriate to deny on the basis that the evidence does not establish eligibility because the court does not have jurisdiction to reunify the petitioner with a parent. USCIS may ask the petitioner to provide evidence that

the court had competent jurisdiction over the reunification finding in accordance with 8 CFR 204.11(d)(2)(ii). This means the evidence must establish the court had the power and legal authority under state law to place the petitioner under the custody of the parent. California civil procedures were updated to provide jurisdiction to all Superior courts in California to make "the factual findings" required by 8 USC 1101(a)(27)(J)(i). See CA Civ.Pro. Section 155. However, USCIS views the required findings as legal conclusions on matters of child welfare that must be made by courts of competent jurisdiction. The change in California law does not appear to provide the courts with the power and legal authority to make decisions about a parent's ability to have custody of an individual over 18.

The burden is on the petitioner to establish eligibility. Generally, a petition should not be denied based on USCIS' interpretation of state law, but rather officers should defer to the juvenile court's interpretation of the relevant state laws. For the Form I-360 petition to be approvable, the evidence must establish that the juvenile court based its decision, including whether or not it has jurisdiction to issue the order, on state law rather than federal immigration law. If the court order or evidence submitted does not clearly indicate that the court had jurisdiction to make the required findings under state law, the officer should request that the applicant provide evidence that the court relied on the relevant state law to make the findings. This requirement can be met 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. Mere copies of, or references to, state laws, and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, are generally not sufficient unless supported by evidence that the court actually relied on those laws when making its findings. However, statutes, procedures or other examples of state legal authority may be sufficient when viewed with the record as a whole. The totality of the evidence should establish that eligibility is more likely than not.

2. Maryland

Q: How do we apply Maryland's age of majority for SIJ purposes?

A: If the juvenile court order or other evidence provided establishes that the state court concludes it has jurisdiction over custody pursuant to Maryland family law 201(b)(10), which requires the abuse, abandonment or neglect occurred before the age of 18, orders that pertain to juveniles up to the age of 21 will generally be sufficient for purposes of SIJ eligibility. (Note the law extending the age of minority to 21 for SIJ purposes, became effective October 1, 2014. If the petitioner was 18 or older on the date the order was entered, that order must be dated after October 1, 2014, for the petitioner to benefit from the revised law. We defer to the Maryland state court in interpreting whether family law 201(b)(10) or any other state law provides the court with jurisdiction.)

This is distinguished from other states such as California because, Maryland changed the definition of child and gave the court jurisdiction over custody until 21 for SIJ purposes. California civil procedure provides courts the authority to issue SIJ orders but did not make any changes to provide jurisdiction over custody. The state of California is treating these orders as "factual" only.

3. Massachusetts

Q: The age of majority in Massachusetts is 18; however, the Massachusetts Supreme Court in *Recinos v. Esocbar* used equitable powers to extend the jurisdiction of the Massachusetts Probate court to anyone under the age of 21 for the purpose of seeking an order to pursue SIJ classification. Attorneys frequently cite *Recinos* as evidence to establish the order is valid under state law.

It is our understanding, despite *Recinos*, we consider the statutory age of majority to be 18 when assessing whether the court was acting in the capacity of a juvenile court. Is this still our current directive?

A: Generally, if the petitioner is age 18 or over when the Massachusetts court entered the order, the court lacks jurisdiction over the custody of the petitioner as a juvenile. One exception to this general rule would be if the

order is deemed issued pre-majority as a continuing juvenile action.

The key question for all states is whether the court has jurisdiction to issue orders regarding the care and custody of the petitioner as a juvenile under state law. The decision in *Recinos* makes clear that the Massachusetts state court does not have jurisdiction over the custody of individuals over the age of 18. However, *Recinos* states that the federal statute does not limit the court's dependency requirement to a custody determination, but this is contrary to USCIS' interpretation of what the statute requires. Court orders from Massachusetts for individuals over the age of 18 must be reviewed to determine if the court had jurisdiction to make a custody determination about the petitioner as a juvenile under state law. In reviewing the court order and evidence officers should consider the following questions:

1. Is the petitioner being placed under the custody of an agency or individual?

2. Does the court have the authority to place the petitioner back in the care and custody of his/her allegedly unfit parents as a juvenile?

If the answer to either of these questions is no, then the Massachusetts state court lacks jurisdiction over the care and custody of the petitioner as a juvenile under state law and the order is not valid for the purpose of establishing SIJ eligibility.

The burden is on the petitioner to establish eligibility. USCIS would generally not deny the petition based on our interpretation of Massachusetts law. We would ask the petitioner to provide evidence that the court had jurisdiction over the custody of the petitioner and the reunification finding in accordance with 8 CFR 204.11(a), (d)(2)(i)-(ii).

The burden is on the petitioner to establish eligibility. Generally, a petition should not be denied based on USCIS' interpretation of state law, but rather officers should defer to the juvenile court's interpretation of the relevant state laws. For the Form I-360 petition to be approvable, the evidence must establish that the juvenile court based its decision, including whether or not it has jurisdiction to issue the order, on state law rather than federal immigration law. If the court order or evidence submitted does not clearly indicate that the court had jurisdiction to make the required findings under state law, the officer should request that the applicant provide evidence that the court relied on the relevant state law to make the findings. This requirement can be met 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. Mere copies of, or references to, state laws, and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, are generally not sufficient unless supported by evidence that the court actually relied on those laws when making its findings. However, statutes, procedures, or other examples of state legal authority may be sufficient when viewed with the record as a whole. The totality of the evidence should establish that eligibility is more likely than not.

4. New York

Q: Is a New York guardianship order acceptable as a dependency order for SIJ purposes?

A: NY case law recognizes that a guardianship action is a form of dependency. As such, a NY juvenile court guardianship order will generally be sufficient for SIJ eligibility when it is for someone under the age of 21. For cases with a NY juvenile court dependency, custody, or guardianship order, there is no need to use the dependency/custody RFE language to request more evidence or information.

While a NY juvenile court guardianship order may qualify as a dependency order, the order will not qualify as a juvenile court order for SIJ purposes unless the Petitioner is recognized as a child under NY law or the court concludes that it has the authority under state law to place the petitioner under the custody of another person and to order reunification with a parent as a child/minor/infant/juvenile. The recognition of the guardianship order as

"dependency" under state law does not mean that the court had jurisdiction under state law to make a legal determination about a petitioner's reunification with one or both parents.

Examples of juvenile court orders from NY that may qualify as valid juvenile court orders for SIJ purposes include:

- NY juvenile court guardianship or custody order issued while the petitioner was under age 18.
- NY juvenile court guardianship orders entered under Fam.Ct.Act 661(b) Permanent Custody, are acceptable up to age 21.
- NY juvenile court orders issued when the petitioner was over 18, which contain specific language establishing that the court has concluded the petitioner is a child under NY law, or the court makes a similar conclusion that they have the authority under state law to place the petitioner under the custody of a parent as a child/minor/infant/juvenile.

For additional information on USCIS' interpretation of reunification, please refer to the questions above under Reunification Findings.

The burden is on the petitioner to establish eligibility. Generally, a petition should not be denied based on USCIS' interpretation of state law, but rather officers should defer to the juvenile court's interpretation of the relevant state laws. For the Form I-360 petition to be approvable, the evidence must establish that the juvenile court based its decision, including whether or not it has jurisdiction to issue the order, on state law rather than federal immigration law. If the court order or evidence submitted does not clearly indicate that the court had jurisdiction to make the required findings under state law, the officer should request that the applicant provide evidence that the court relied on the relevant state law to make the findings. This requirement can be met 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. Mere copies of, or references to, state laws, and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, are generally not sufficient unless supported by evidence that the court actually relied on those laws when making its findings. However, statutes, procedures, or other examples of state legal authority may be sufficient when viewed with the record as a whole. The totality of the evidence should establish that eligibility is more likely than not.

5. Texas

Q: Texas does not have a dependency law. However, a Texas juvenile, under age of 18, was found dependent upon the juvenile court. The courts are entering "Clarify Orders" to explain that they are using the dictionary definition of dependency in making their findings. Is there any circumstance in which a Texas dependency order will be valid for SIJ purposes without a custody or guardianship order?

A: Typically, no. Court orders do not need to contain specific language; rather the order must establish that the statutory requirements have been met. The word dependency is not used in all states but all states have a child protection scheme with an equivalent legal determination. The policy manual provides an example of state law on dependency from California. See California Welfare and Institutions Code Section 300. USCIS has previously determined in a non-precedent AAO decision that in Texas, certain types of conservatorships have a legally equivalent meaning to dependency.

Q: Can a Texas Conservatorship order be deemed an award of custody? If so, is this nullified if the parent with whom reunification was found non-viable is named as a possessory conservator, or named possessory conservator with rights to visitation?

A: A Texas managing conservatorship may generally be equated to an award of custody. Typically, visitation rights to the parent with whom reunification was found non-viable do not undermine a finding on non-viability of reunification because the statute does not require that parental rights be fully terminated. However, where the same non-reunifying parent is also named possessory conservator, we would question whether the court made a qualifying determination on the non-viability of reunification. For example, if the possessory conservator has joint physical custody with the managing conservator we could not conclude that the court has determined that the child cannot be returned to the custody of the parent due to their unfitness.

Chapter 3 - Required Documents and Evidence

The following documents or evidence are required with a SIJ Form I-360:

- A copy of the petitioner's birth certificate or other evidence of the petitioner's age (see 8 CFR 204.11(d)(1));
    - In some cases, the petitioner may have difficulty obtaining the evidence of age described in 8 CFR 204.11(d)(1). If an official document is not available, the officer may consider "other documents, which in the discretion of the director establishes the beneficiary's age." In these cases, the officer may consider secondary evidence as described in 8 CFR 103.2(b)(2) and/or any factual determinations made by the court to establish age. The officer should also review the entire record for evidence of prior age determinations made by HHS and/or DHS.
- Copies of the juvenile court order(s) and administrative document(s), as applicable, that establish eligibility and include the factual basis for the juvenile court's findings; and
- A copy of HHS consent, if applicable.
    - If HHS consent is required, the petitioner (or his or her representative) can request consent by sending an email to the Office or Refugee Resettlement (ORR) using a Request for Specific Consent to Juvenile Court Jurisdiction, C-1. If ORR consents to the request, ORR will notify the petitioner via email. See Special Immigrant Juvenile Status – Specific Consent Program Instructions for more information on ORR consent requirements.

Chapter 4 - Adjudication

A. Jurisdiction

USCIS has sole jurisdiction over SIJ petitions.

B. Expeditious Adjudication

USCIS generally adjudicates SIJ petitions within 180 days. See section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (December 23, 2008). The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date. The timeframe imposed on USCIS for processing may stop or be suspended for delays caused by the petitioner.

The following items will stop or suspend the clock for a SIJ adjudication:

- USCIS issues a Request for Evidence (RFE) for additional information; or
- USCIS issues a Notice of Intent to Deny (NOID).

Additional situations, such as if the petitioner requests that the interview be rescheduled, may warrant stopping or suspending the 180 day clock.

The following items will not stop or suspend the clock:

- Referral for an interview;
- Referral to Fraud Detection & National Security (FDNS);
- Petitioner is in removal proceedings; or
- Petitioner has a pending application or petition for another immigration benefit.

If the petitioner does not submit sufficient evidence to establish his or her eligibility, the clock stops the day USCIS sends a RFE or NOID, and resumes the day USCIS receives the requested evidence.

Note: USCIS does not stop or suspend the 180-day clock when the RFE relates only to a pending Form I-485, Application to Register Permanent Residence or Adjust Status.

The 180-day timeframe applies only to initial adjudication of the SIJ Form I-360 petition. The requirement does not extend to the adjudication of any motion or appeal filed after the denial of the SIJ petition.

USCIS may receive an expedite request to adjudicate Form I-360 ahead of the 180 day requirement. The officer should pay particular attention to the following circumstances:

- The petitioner has submitted an expedite request that meets one of USCIS' Expedite Criteria;
- Approval of Form I-485 after the petitioner's 18th birthday would result in the petitioner losing eligibility for foster care benefits, including housing;
- The petitioner cannot get critical medical care until he or she becomes a lawful permanent resident (LPR) ; and/or
- The petitioner will lose a scholarship if he or she does not become a LPR in less than 180 days.

C. Background and Security Checks

The officer must perform TECS checks on all applicants, per the NaBISCOP.

D. Interview Authority

An applicant, a petitioner, a sponsor, a beneficiary, or other individual residing in the United States at the time of filing an application or petition benefit request may be required to appear for fingerprinting or an interview. Per 8 CFR 103.2(b)(9), "A petitioner shall also be notified when a fingerprinting notice or an interview notice is mailed or issued to a beneficiary, sponsor, or other individual."

E. Guidance for Waiving Interviews or Referring Cases to the Field Office

To ensure consistency at the National Benefits Center (NBC) and field offices, USCIS has developed specific criteria for waiving interviews and making referrals to FDNS. The decision to initiate a referral for field interview and/or a referral to FDNS will take into account the full context of training provided to adjudicators, relevant policy and operational guidance, and consideration of the record in its entirety.

1. Cases filed post-centralization

The NBC will use the criteria in Tables 1 and 2 in the following sectionsto determine if a Form I-360 and/or I-485 SIJ case may be interview waived; referred for interview; referred to FDNS; or a combination of actions.

If a case is referred from the NBC FDNS unit to the field office FDNS unit, the field office should use the interview criteria in Table 1 to determine if an interview is necessary after FDNS takes action on the case.

If the NBC refers Form I-360 to a field office for interview, the field office should conduct the interview and process the case (and the accompanying Form I-485, if applicable) to completion using these procedures.

2. Cases pending in field offices prior to centralization

Field offices will follow the criteria in Tables 1 and 2 in the following sections to determine whether to waive the interview, conduct an interview, or make a referral to FDNS.

F. Interview Waiver/Field Referral Criteria

Table 1 serves as a guide in determining when USCIS will waive an interview for Form I-360 and/or Form I-485 or refer to the field for an interview and adjudication, and/or FDNS assistance.

Table 1

Interview Waiver/Field Referral Criteria

If the case…	Then the case…	Additional Guidance
Contains sufficient information to determine eligibility and exercise consent; and **Contains a petitioner/applicant with an established identity; and** **Has no derogatory information to indicate fraud; and** **Has no public safety concerns; and** **Has no national security concerns**	May be interview-waived and the NBC adjudicates the petition	Identity will be established using the evidence in the Record of Proceedings (ROP) and through data systems checks (CIS, C-3, CCD, etc.). When applicable, identity should be corroborated by background/security checks. The petition will be evaluated for derogatory information, public safety, and national security concerns based on background/security checks and the (ROP) and through /data systems checks (CIS, C-3, CCD, etc.).
Has anomalies related to eligibility, identity, fraud, public safety, or national security	Must be reviewed by the NBC for potential resolution, and/or referral to the NBC Background Check Unit (BCU)/Fraud Detection National	NBC will attempt to resolve identity anomalies by research and/or issuance of an RFE for additional documentation. Anomalies involving fraud, public safety concerns, or national security are referred for vetting BCU/FDNS. The NBC will determine as to whether the issue is resolved by the NBC using a

	Security (FDNS) for further processing The case may then be referred for interview and/or to FDNS, or interview-waived as appropriate.	RFE or NOID, or requires additional field assistance.
Contains *unresolved* eligibility, identity, fraud, public safety, or national security issues	Must be referred to the field for interview and/or FDNS	Resolution will be attempted by NBC prior to referral.
Is missing information needed to determine eligibility, exercise consent, or has discrepancies *unresolved* by internal NBC review, RFE, or NOID which require further explanation	Must be referred to the field for interview	Resolution will be attempted by NBC prior to referral.

G. Adjudicative Aid: Referral and/or Fraud Indicators

Table 2 explains issues that officers may identify in a case that would generally warrant further exploration, including when there are fraud indicators.

Note: Identifying one or more of these issues is not in itself a sole reason for referral to a field office or FDNS. The NBC should attempt to resolve any issues identified.

When reviewing the petition, the officer should promptly notify his or her supervisor if it appears the petitioner has committed fraud. The officer should consult with his or her supervisor to determine whether to refer such a case to Fraud Detection and National Security (FDNS).

Table 2

Adjudicative Aid

	Review Items	Indicators for Referral to Field Office and/or FDNS
1.	Age of Child	• Date of birth listed on the petition contradicts another date of birth found in the Record or other systems and the discrepancy is not reconciled.

		• One date of birth reflects child was under 18 at the time the court order was granted, but another date of birth reflects the child was already 18 at the time the court order was granted. In this case, the court may not have had jurisdiction in some states.
2.	Identity of Child	• Discrepancy that has not been reconciled between the name listed on the petition and names found in the Record or systems. • Discrepancy that has not been reconciled between the country of birth on the petition and a country of birth found in the Record or systems. • Discrepancy that has not been reconciled between information on the birth certificate and/or information in the court order is found in the Record or systems. Examples include: names, dates of birth or registration, parent's information • Identity History Summary (idHS), formerly known as RAP sheet, indicates that the child was in the U.S. under a different identity. • Biometric search results in alternate(s) identity (s), A# (s), DOB(s), COB(s).
3.	Documentary Fraud Indicators	• Boiler plate stories being filed from one particular region or by one organization. • Suspicious/altered/fraudulent documents (documents that appear to have sections whited out and/or written over), dates changes, inconsistent dates, etc.
4.	General Discrepancies in the Record	• Information on Form I-360 conflicts with the information provided in other sources contained in the Record or systems and the discrepancy has not been reconciled.
5.	Juvenile Court Order Concerns	• Court orders which reflect that they are based on evidence and information that directly and substantively differs from the evidence and information that is contained in the USCIS record. • Court orders which do not establish that the family reunification finding is permanent in nature (i.e., is meant to last until the child ages out of the court's jurisdiction). The temporary unavailability of parents is not sufficient for SIJ eligibility.

		• Placements with custodians that are acting *in loco parentis*. • Temporary court orders. (There may be rare circumstances under which a temporary court order may be sufficient). • Court orders that don't appear to have been made under state law (e.g., state age of majority is 18, and court order cites the INA as the authority for issuing an order for a child up to 21 years of age).
6.	Other unusual situations indicating that the further review may be required.	• The child enters the United States in order to be adopted. • Child is not residing in the court-ordered placement. • Evidence which shows the petitioner/applicant is married, i.e. children's birth certificates and income taxes. • Preparers or attorneys of concern submitting the petitions.

H. Process for Interview Referrals

Prior to referring a case to a field office for an interview, the NBC will first consider whether an RFE and/or NOIDis likely to resolve outstanding issues. If it is determined that an interview is necessary to aid in resolving any outstanding issues, the reason(s) for referral for field interview must be clearly articulated in a memo to the field office. The memo will outline in detail the specific reasons for referral and what actions were taken by the NBC to resolve the issue(s). If the NBC officer determines a fraud referral is warranted, the NBC officer should first refer to NBC/FDNS using the procedures outlined in the Fraud Referral section below. NBC/FDNS may determine the case should be referred to field office FDNS unit. Referrals from NBC/FDNS to field office FDNS unit should include a detailed Statement of Findings (SOF).

If the record contains sufficient information and evidence to grant the petition an interview will not be required, thereby eliminating unnecessary interviewing of vulnerable children. Where there is sufficient evidence to merit a denial of the petition the NBC may issue the decision without referral to a field office for interview.

When the NBC determines that an interview is needed to resolve an issue, the NBC officer will do the following:

- Prepare a detailed memo to the field office which contains a description of their concerns, actions requested, and name and contact information of the adjudicating officer;
- Update Interim Case Management Solution (ICMS) indicating that the case is being transferred; and
- Transfer the case to the field office.

I. Interview Guidelines

For guidance on general interview procedures, including interpreters and authorized representatives, please see CHAP Vol 1, Part E, Chapter 10 and CHAP Vol 7, Part A.

When conducting interviews of juveniles, officers should ensure that interview techniques appropriate for children are used. Officers should ensure they create a comfortable, non-adversarial environment, establish rapport with the child, and ask age-appropriate questions. The officer must not ask questions regarding the abuse, neglect, or abandonment. The officer should focus his or her questioning on the aspects of eligibility for SIJ classification. Officers must review the entire immigration record.

If the officer discovers that the child has had past encounters with DHS, the officer may ask the child questions about the prior encounters and the information the child provided during the encounters. However, officers should be aware that children may not have provided accurate information to other DHS entities such as Customs and Border Protection (CBP) and officers must, therefore, be cautious in solely relying on this information.

The juvenile may bring a trusted adult to the interview, in addition to an attorney or representative (at no expense to the government). The trusted adult may serve as a familiar and trusted source of comfort to the applicant but should not interfere with the interview process or coach the applicant during the interview.

The officer should also assess whether the juvenile is comfortable to speak freely or if the juvenile is afraid and uncomfortable to speak freely in front of the adult. The officer should note in the record any behaviors that may indicate the juvenile is not comfortable speaking freely in front of the adult. Examples may include: the juvenile will not answer questions without turning turning to the adult for permission to answer; the adult answers the questions without allowing the juvenile to speak; and the juvenile's body language towards the adult.

If at any point the officer determines that the juvenile is uncomfortable or afraid of the adult, the officer should continue the interview without that adult. Given the concerns regarding human trafficking, particularly involving juveniles, attention to the nature of the relationship between the juvenile and the adult is particularly important.

J. Process for Field Office FDNS Referrals

If an officer at the NBC or the field office determines a referral to FDNS is warranted, the officer should refer the case per the Fraud Detection and National Security Standard Operating Procedure. The officer should request priority FDNS processing and note that USCIS must generally make a decision on Form I-360 within 180 days.

NBC FDNS may refer cases to a field office FDNS unit for assistance. Cases referred to a field office FDNS unit may or may not be interviewed; the field office should use the interview criteria in Table 1 to determine if an interview is necessary after FDNS takes action on the case.

K. Requests for Evidence

Juvenile courts handle issues and details surrounding the SIJ petitioner's abuse, neglect, or abandonment. Due to the particular vulnerability of SIJ petitioners and the complexity and sensitivity of the cases, a Request for Evidence (RFE) is generally most appropriate where the evidence is insufficient to approve the petition.

Note: The maximum response time for an RFE cannot exceed 12 weeks. Officers must provide the petitioner the maximum response time unless they receive concurrence from a supervisor to shorten the time frame. See USCIS Policy Memorandum PM-602-0040.

USCIS may request additional evidence from the petitioner for reasons such as, but not limited to, the following:

- The record lacks a factual basis to support the required dependency or custody, parental reunification, and best interest findings;

- The evidence provided does not establish a reasonable factual basis for the order;
- The record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for the court order; and/or
- Additional evidence is needed to determine eligibility.

The burden is on the petitioner to establish a factual basis for the court's findings; however, the officer may not request specific documents to establish the factual basis. The officer instead should provide a sample list of documents which may establish the factual basis. Examples include:

- Any supporting documents submitted to the juvenile court, if available;
- The petition for dependency or complaint for custody or other documents that initiated the juvenile court proceedings;
- Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and
- Affidavits or records that are consistent with the findings made by the court.

IMPORTANT NOTE:

Prohibition on Contact with Parents

In the course of SIJ adjudications, including RFE or NOID issuance, officers must not direct the petitioner to contact the abusive or neglectful parent(s). Due to confidentiality concerns, the officer should not request information or documents from sources other than the SIJ petitioner and his or her legal representative.

L. Approval, Denials, Revocations, Withdrawals, Appeals and Motions to Reopen

1. Approvals

If the officer has verified that the SIJ petition warrants USCIS consent to SIJ classification, the officer should approve the Form I-360. It is important that the officer:

- Annotate and complete the appropriate blocks on the Form I-360;
- Ensure the proper date is annotated in the Priority Date box on the Form I-360;
- Stamp the Form I-360 with the approval stamp; and
- Update Interim Case Management Solution (ICMS) to show the receipt as approved and generate the approval notice.

2. Denials

Prior to denying the petition based on derogatory evidence, USCIS should issue a written Notice of Intent to D eny (NOID) to the petitioner and his or her representative with a maximum response time of 30 days. The NOID provides the petitioner the opportunity to overcome the derogatory information. Officers should follow their local procedures for SIJ NOID review, which may include supervisory and counsel review. If the petitioner is statutorily ineligible for SIJ status, USCIS may issue a denial without a NOID.

To complete the denial the officer must:

- Annotate and complete the appropriate blocks on the Form I-360;
- Stamp the Form I-360 with the denial stamp;
- Update ICMS to show the case is denied; and
- Issue the denial notice (officers should follow their local procedures for SIJ denial review which may include supervisory and counsel review).

If the officer issues a denial notice, it should set forth all reasons for the denial in clear language that can be understood by the petitioner. The denial notice should include instructions for filing an appeal using a Form I-290B, Notice of Appeal or Motion.

3. Revocations

Automatic Revocations

An approved SIJ petition is automatically revoked as of the date of approval if any one of the following circumstances occurs before USCIS' decision on the petitioner's application for adjustment of status (See 8 CFR 205.1(a)(3)(iv)):

- Petitioner marries.
- Petitioner reunites with one or both parents by virtue of a juvenile court order, 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. (**Note**: Revocation will not occurif the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.)
- Administrative or judicial proceedings determine that it is in the petitioner's best interest to be returned to the country of nationality or last habitual residence of the petitioner, or of his or her parent(s).

The officer will issue a notice of such revocation of the SIJ petition to the petitioner's last known address.

Revocations on Notice

USCIS does not re-adjudicate the petition at the time of adjustment of status to LPR. However, USCIS may revoke an approved SIJ petition upon notice if the record contains evidence or information that directly and substantively conflicts with the evidence or information that was the basis for petitioner's eligibility for SIJ classification.

If the officer discovers derogatory information that warrants revocation of the Form I-360 for reasons other than the automatic revocations grounds, the officer must issue a Notice of Intent to Revoke (NOIR) and afford the petitioner an opportunity to overcome the derogatory information with a maximum response time of 30 days. O fficers should follow their local procedures for SIJ NOIR review, which may include supervisory and counsel review.

To issue the NOIR, the officer must:

- Update ICMS to show a NOIR was issued, and
- Prepare and mail a NOIR.

The officer should review the response to the NOIR. If the petitioner overcomes the derogatory information, the approval of the Form I-360 will stand and the officer should update the ICMS to reflect a response to the NOIR was received. If the petitioner fails to respond to the notice, or responds and fails to overcome the derogatory information in the record, the officer must:

- Draw a diagonal line through the approval stamp and write "REVOKED," and include officer initials and date;
- Update ICMS to show the approval of Form I-360 was revoked; and
- Prepare and mail a notice of revocation.

4. Withdrawals

At any time prior to the approval of Form I-360, the petitioner may request to withdraw the petition in writing. If the petitioner submits a request in writing to withdraw Form I-360, the officer must:

- Stamp Form I-360 with the denial stamp and write "Withdrawn" on the top of the denial stamp;
- Update ICMS to show the case withdrawn; and
- Prepare and mail an acknowledgement of withdrawal notice.

5. Appeals and Motions to Reopen

A petitioner may appeal the denial of his or her SIJ petition to the Administrative Appeals Office (AAO) within 30 days of the adverse decision by filing Form I-290B, Notice of Appeal or Motion. Officers should handle a ppeals to the AAO per PM-602-0124, Initial Field Review of Appeals to the Administrative Appeals Office and CHAP Vol 7 Part T, Notice of Appeal or Motion.

6. Perez-Olano Litigation Class Members

See PM Vol 6, Part J, Special Immigrant Juveniles and PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile* Perez-Olano *Settlement Agreement* for specific guidance and handling.

The NBC will follow PM-602-0117 when handling Form I-290B appeals and requests to reopen under the Settlement Agreement and Stipulation, which requires the NBC to route Form I-290B and underlying Form I-360, and if applicable, the Form I-485, to the appropriate field office for adjudication along with an approporiate cover sheet identifying it as a Settlement Agreement case. It is the responsibility of the NBC to forward the A-fil e to the proper field office if the juvenile has moved jurisdictions. In addition, OCC Refugee and Asylum Law Division (RALD) must review all denials.

M. Cases Requiring Headquarters Field Operations Directorate (HQFOD) Assistance

If a case contains novel and/or compelling issues, field offices may seek assistance from HQFOD via the regional office. The regional office may resolve and/or elevate the request to HQFOD on behalf of the office. A request for assistance from HQFOD should include a summary of the case and actions taken to date.

A request for assistance from the NBC can be elevated through the appropriate chain of command.

Updates

CHAP UPDATE ALERT – New Content: Vol 6, Part F has been reorganized

December 01, 2017

Guidance regarding to assisst officers when adjudicating immigrant investor petitions and regional center applications. This part provides procedural guidance, operational instructions, resources and tools, as well as links to applicable laws, regulations and content within Vol 6, Part G

CHAP UPDATE ALERT – New Content: Vol 6, Part G: Petitions for Refugee and Aslyee Relatives

October 27, 2017

Guidance regarding individuals who were admitted to the United States as a principal refugee or granted status in the United States as a principle asylee within the previous two years

CHAP UPDATE ALERT – New Content: Vol 6, Part F, Chapter 4: Immigrant Petition (Form I-526)

June 29, 2017

New content summarizing procedures for adjudicating Form I-526, Immigrant Petition by Alien Entrepeneur, has been added to CHAP.

CHAP UPDATE ALERT – New Vol 6 Content: Petitions for Special Immigrant Juveniles

October 20, 2016

Guidance on granting petitions for SIJs has been added to CHAP, Volume 6, Part D. Congress first established the SIJ immigrant visa classification in 1990 and is eligible to children in a variety of circimstances, to include those who have been abused prior to their arrival in the US or while here; are in the state child welfare system in the custody of a state agency; or in other eligible circumstances.

CHAP UPDATE ALERT – New Content: Petitions for Investors and Entrepreneurs

October 05, 2016

Procedural guidance regarding the EB-5 immigrant visa category has been added to CHAP Volume 6, Part F! The Immigration and Nationality Act (INA) makes visas available to qualified foreign nationals who will contribute to the economic growth of the United States by investing in U.S. businesses and creating jobs for U.S. workers.