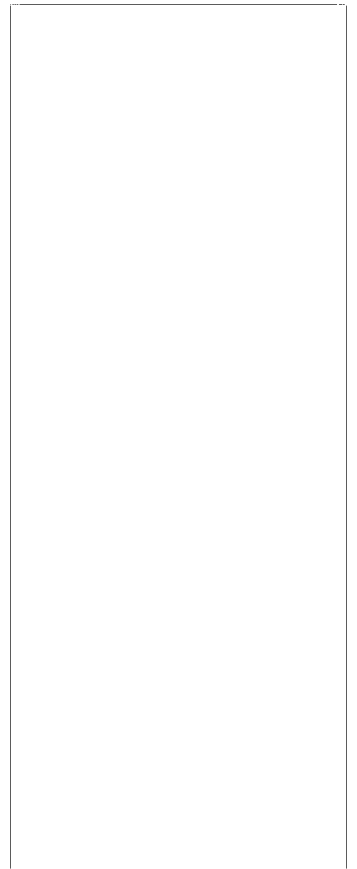


U.S. Citizenship and Immigration Services



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Special Immigrant Juvenile Petitions

Training for Field Offices

September 2016



U.S. Citizenship
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Scope and Benefits

For certain children who are the subject of juvenile court orders and who cannot be reunified with their parent(s) due to:

- Abuse
- Neglect
- Abandonment
- A similar basis under state law

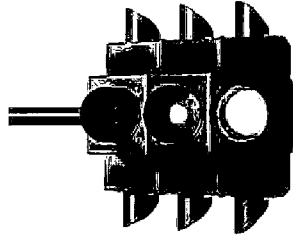
Allows for an otherwise eligible child to concurrently file for LPR status, if a visa is available.



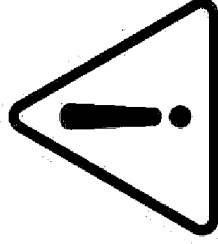
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Requirements

0559



Refer to **INA 101(a)(27)(J)** for current statutory requirements. (See handout).



Regulations at 8 CFR 204.11 are being updated. (See handout).



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Juvenile Courts and USCIS Role

0560

	Juvenile Court	USCIS
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Does Make child-welfare related findings under **state law**. Determine if a child meets the statutory requirements for SIJ classification under **immigration law**.

Does Have authority to determine eligibility for SIJ classification. Reweigh evidence to determine if child was abused, neglected, or abandoned under state law.



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Initial Review

- Completed, signed Form I-360 petition (Note: There is no fee)
- Birth certificate or evidence of age
- Juvenile court order(s) that makes the required findings, and includes or is supplemented by the factual basis for the court's findings
- TECS check in accordance with the NaBISCOP
- A file review

Only if Applicable

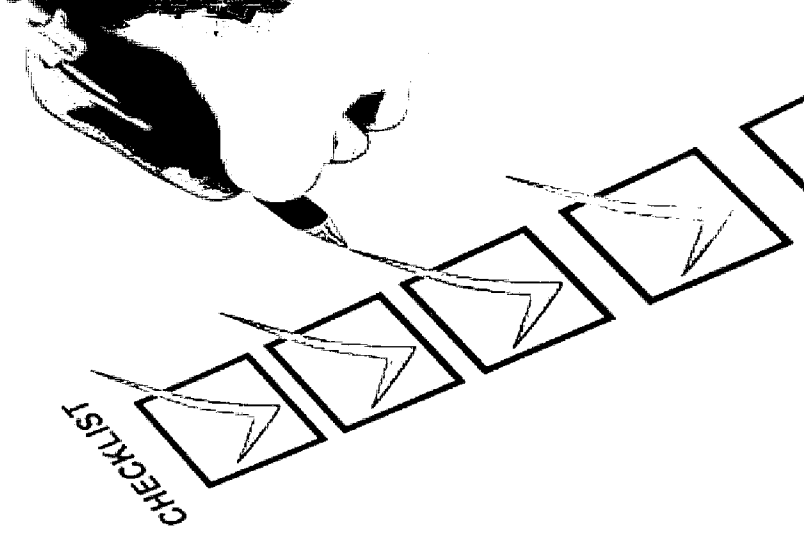
- HHS consent, (if in HHS care and order changes custody status or placement)
- Completed G-28, if represented by an attorney or accredited representative



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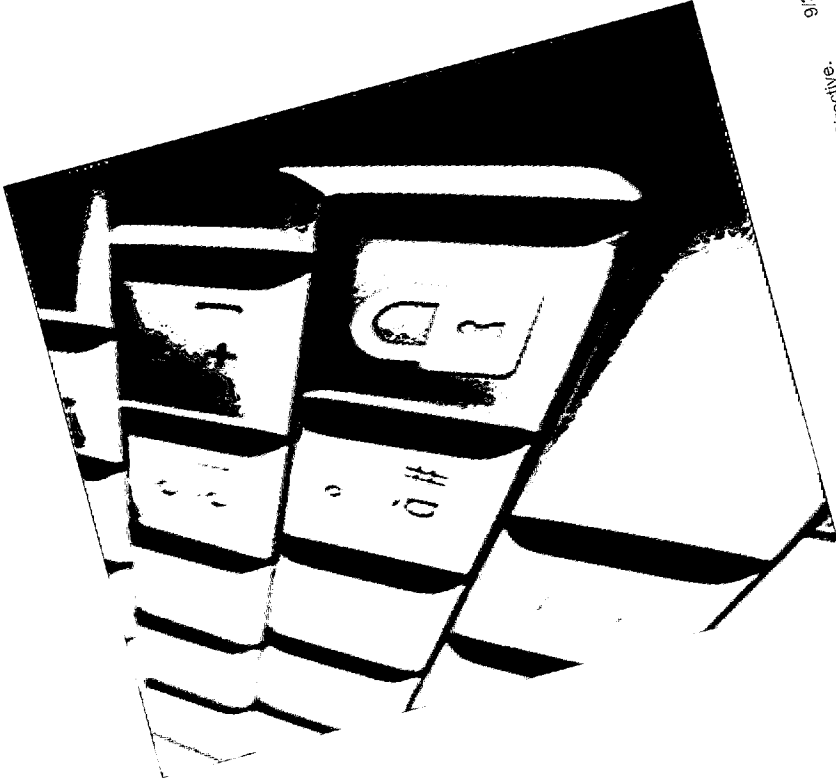
Eligibility Review

- Under 21 at time of filing only
- Unmarried
- Present in the U.S.
- Have a juvenile court order that is in effect that makes certain findings
- Meets consent requirements



Age

- Must be under 21 at time of filing only.
- There are age-out protections.



9/29 June 17, 2003

This training module does not have the force of law or a DHS Directive. Presenter's Name

OP&S Rev. 9/22/16

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Age Documentation

Documentary evidence of the petitioner's age may be in the form of:

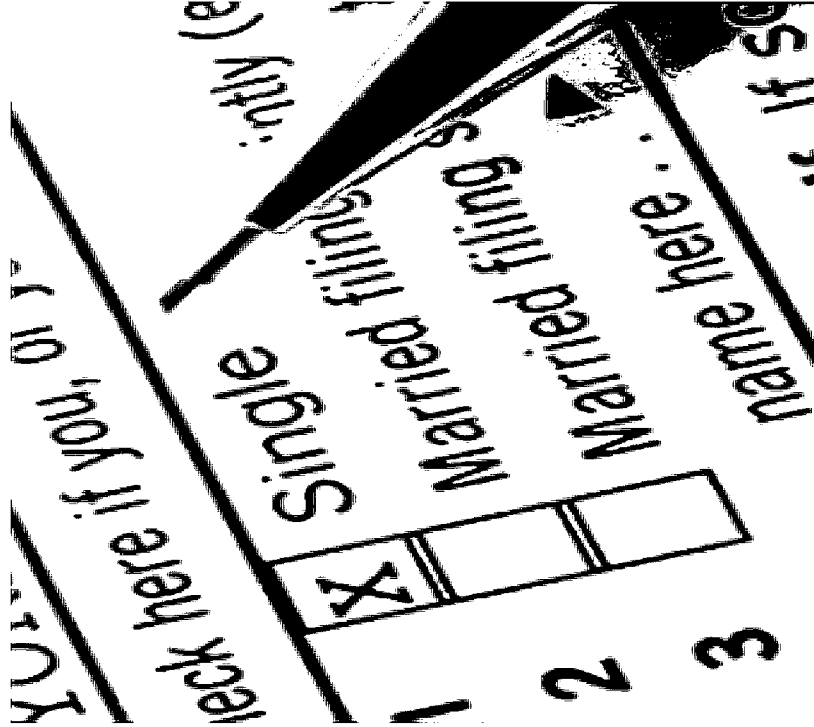
- A birth certificate;
- Passport;
- Official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula; or
- Other document which in the discretion of the director established the petitioner's age.

See 8 CFR 204.11(d)(1).



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Marital Status



- Must be unmarried at time of filing and adjudication of the Form I-360.
- Means: never married; or previously married, and the marriage ended in annulment, divorce or death.
- Determine by reviewing the Form I-360 petition and the petitioner's record.



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Physical Presence



Requirement

Must be physically present in the United States.

- Must be physically present at time of filing and adjudication of the Form I-360.
- Determine by reviewing the Form I-360 petition and the petitioner's record.



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Juvenile Court Order Requirements

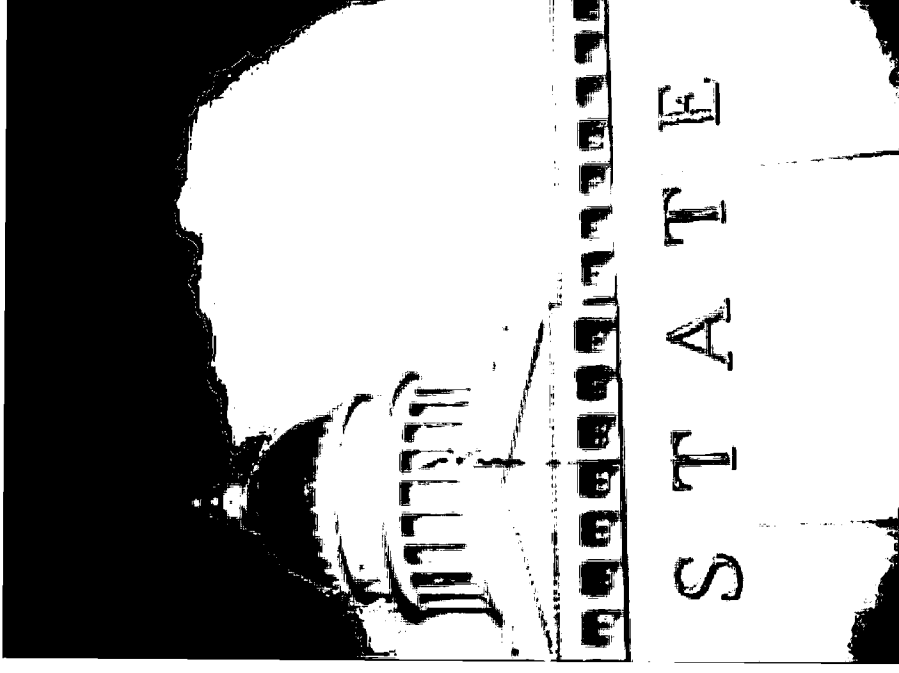
- Was it issued by a “juvenile” court?
- Were all of the required findings made?
- Is it valid?
- Is there a factual basis for the court’s findings?



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“Juvenile” Courts

- A court in the U.S. that has jurisdiction under state law to make findings about the care and custody of juveniles.
- Not limited to courts named “juvenile” courts.
- Orders that are issued in various types of state court proceedings may help establish eligibility for SIJ.
- See 8 CFR 204.11(a).



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Required Findings

Required Findings

The court order(s) must make the required findings (under state law) on:

- Dependency or custody;
- Non-viability of parental reunification; and
- Best interests.

- The language in the order should have the same legal meaning as the requirements of INA 101(a)(27)(J);

HOWEVER,

- The language does not need to exactly mirror the language from immigration law.
- The findings may be found in one single court order or separate juvenile court orders.



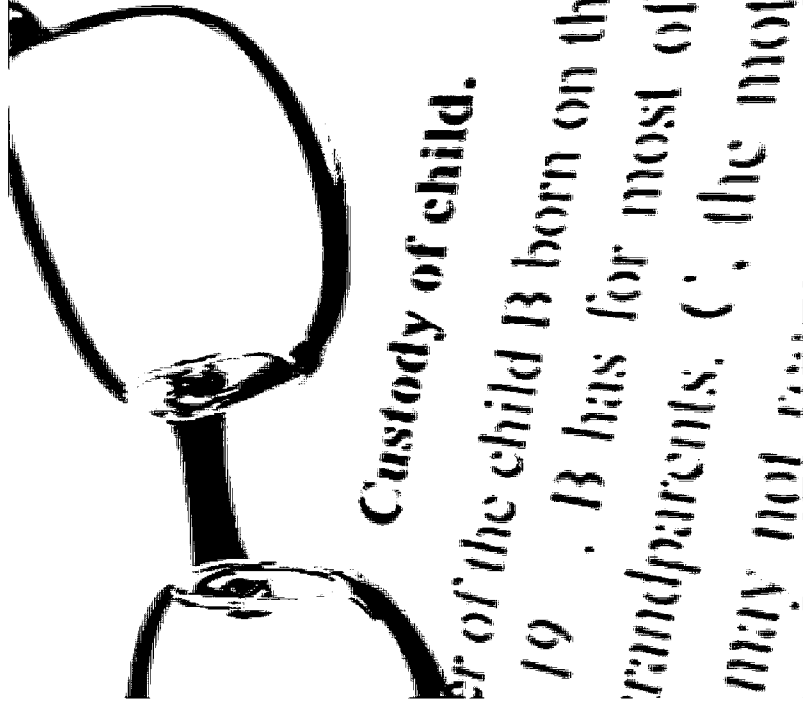
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Dependency/Custody Finding

Required Finding

The child is either found to be:

- Dependent on the court;
- OR
- Placed under the custody of a state agency or department, or a court-appointed individual or entity.



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Dependency/Custody Details

- The order should indicate with whom the child is placed.
- Court-ordered dependency or custodial placements that are intended to be temporary generally do not qualify.
- Placing the petitioner “under the custody of” a person requires physical custody.
- The court-ordered placement can be with one of the child’s parents.



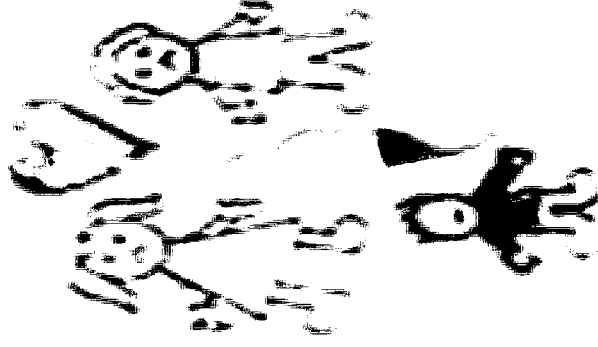
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Family Reunification

Required Finding

Reunification with one or both of the child's parents is not viable due to:

- Abuse,
- Neglect,
- Abandonment, or
- A similar basis under state law.



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Family Reunification Details

- Order should state specifically which of the grounds apply to which of the parent(s).
- “Not viable” generally means that the court intends for this finding to remain in effect until the child ages out of the court’s jurisdiction.
- The findings must be based upon the person(s) that are the petitioner’s parent(s) under state law.
- If the findings are based upon a similar basis, need evidence of how it is a legally equivalent concept.

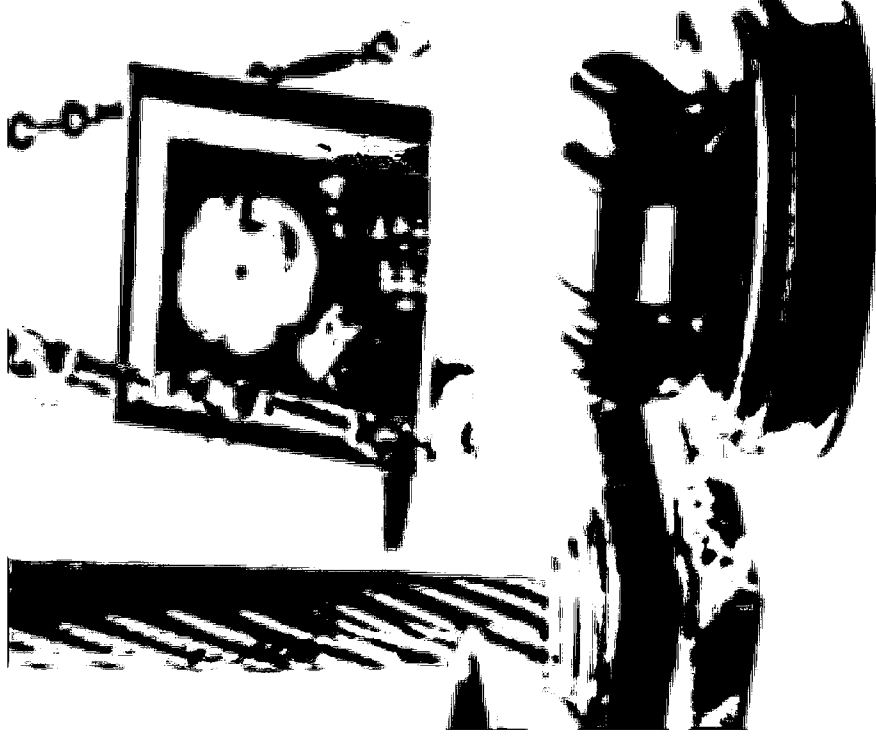


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Best Interests Finding

Required Finding

It would not be in the child's best interest to be returned to the child's or his/her parent's country of nationality or last habitual residence.



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Best Interests Details

- The standards for making best interests determinations may vary between states.
- This provision is a determination that a placement in the child's or his or her parent's country of nationality or last habitual residence is not in the child's best



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Validity (Age and Jurisdiction)

- The legal basis for the court order must be state law, not federal immigration law.
- This includes the need for the juvenile court to follow their state laws on jurisdiction.

Example

Language such as the following may indicate that the order is not valid.

“Pursuant to authority in the INA to exercise jurisdiction until the age of 21...”



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Validity (cont. jurisdiction)

Generally, the petitioner must remain under the jurisdiction of the juvenile court at the time of filing and adjudication of the SIJ petition.

Exception (Child Eligible)

If the court's jurisdiction ended solely because the petitioner:

- Was adopted, or placed in a permanent guardianship; or
- Was the subject of a valid order that was terminated based on age before or after filing the SIJ petition

Child Not Eligible

If the petitioner is no longer under the jurisdiction of the juvenile court for a reason related to their underlying eligibility for SIJ classification, the petitioner is not eligible for SIJ classification.



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Validity (cont. jurisdiction)

A petitioner who moves to the jurisdiction of a different juvenile court may need to either submit evidence that the petitioner is still under the jurisdiction of the court that issued the order or submit a new court order.

In general, a court maintains jurisdiction when it orders the child placed in a different state or the legal custodian relocates to a new jurisdiction

If a child relocates to a new jurisdiction and is not living in a court ordered placement or with the court ordered custodian then evidence that the court is still exercising jurisdiction over the petitioner is needed.



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HHS/ORR Consent

Needs HHS/ORR Consent

Do NOT Need HHS/ORR Consent

ONLY

- If child is currently in the custody of HHS/ORR,

AND

- If the child asks for a juvenile court order that also changes his/her HHS custody status or placement, in addition to making the required findings.

OR

- If child is not currently in the custody of HHS/ORR
- If child is currently in the custody of HHS/ORR, but only asks for a juvenile court order that makes the required findings without changing his/her HHS/ORR placement.



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USCIS Consent and Factual Basis

In order to consent, USCIS must review the juvenile court order to conclude that the request for SIJ classification is *bona fide*.

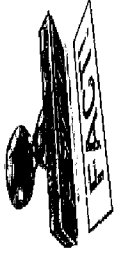
This means the order was sought for relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily or solely to obtain an immigration benefit.




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USCIS Consent and Factual Basis cont.

The juvenile court order should contain or be supplemented by the factual basis for the court's findings.



Findings should reflect that the court considered the facts of the case and made an informed decision for each of the required findings, but do not need to be overly detailed.



Template orders that only recite language from U.S. immigration law usually do not provide sufficient information for USCIS consent purposes.



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USCIS Consent and Factual Basis Cont.

- You do not conduct your own analysis of a petitioner's motivations, which may be mixed.
- There may be some immigration motive for seeking the juvenile court order.
 - A special order issued to help clarify the findings that were made so that USCIS can determine eligibility for SIJ classification does not mean that the order is not *bona fide*.



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Finding Language

0584

Helpful to USCIS to Establish Factual Basis

“Child X cannot reunite with her biological mother, Jane Doe, because she abandoned the child in Country Y when she was 10-years-old, as abandonment is defined by (applicable section of state law). Reasonable efforts were made for family reunification, and the permanency plan is being changed to legal permanent guardianship.



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Not Helpful to USCIS to Establish Factual Basis

The court order simply states,
“Reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.”

Actions & Decisions



- Requests for Evidence
- Expeditious Adjudication
- Appeals, Motions to Reconsider and Motions to Reopen
- Revocation



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Requests for Evidence (RFE)

- An RFE or Notice of Intent to Deny (NOID) is generally appropriate where the evidence is insufficient to establish eligibility.
- May request additional evidence for reasons such as:
 - The record lacks the required dependency or custody, parental reunification, or best interest findings;
 - The evidence provided does not establish a reasonable factual basis for the findings in 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; or
- Additional evidence is needed to determine eligibility.



Requests for Evidence: Limitations

- Do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.
- Exercise careful judgement when considering statements made by children at the time of initial apprehension by immigration or law enforcement.
- You may not require specific documents to establish the factual basis (but may request evidence of the factual basis for the court's findings).
- You may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner.

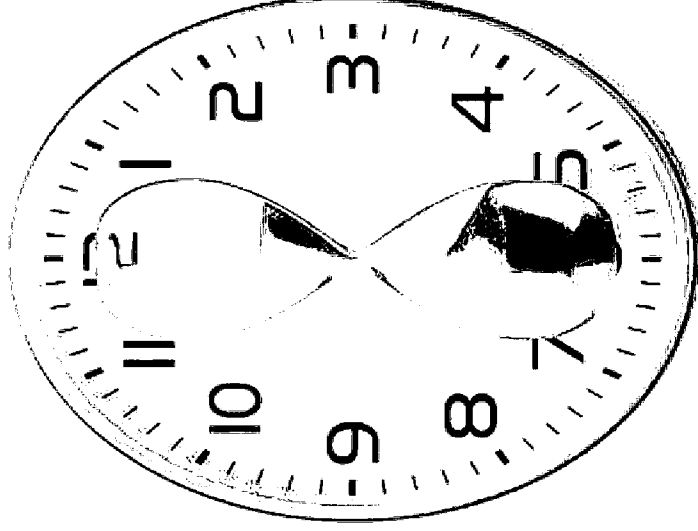


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Expeditions Adjudication

Form I-360 petitions generally should be adjudicated within 180 days.

- May receive case expedite requests.
- Example: Unaccompanied children may need approval prior to age 18 to access federally funded housing and services.



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Appeals, Motions to Reopen & Motions to Reconsider

0589

General

- A petitioner may file an appeal, a motion to reconsider, or a motion to reopen a USCIS decision by filing a Notice of Appeal or Motion.

Perez-Olano Settlement Agreement Class Members

- The requirements for adjudicating a class member's request to reopen his case under the Settlement Agreement differs from general requirements.
- See "Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement," issued (6/25/15).



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Revocation

Automatic Revocation

- Marriage of the petitioner.
- Reunification of the petitioner 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.
- 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).

Revocation on Notice

- May revoke upon notice at any time for good and sufficient cause.



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USCIS SIJ Resources

Information and Updates

SIJ Questions and Outreach Requests (External)

- Reserved for state juvenile courts and child welfare agencies: USCIS-IGAO outreach@uscis.dhs.gov

Policy Inquiries

OP&S/FIVP Contacts (Internal Only)



Materials available at:

www.uscis.gov on the SIJ Program Webpages

(b)(6)



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About this Presentation

- Author: USCIS, Office of Policy and Strategy
- Date of last revision: 9/22/16
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 - USCIS materials
 - *Immigration Relief for Abused Children* [Brochure]. Washington DC (2014)
 - USCIS website humanitarian page



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Presenter's Name June 17, 2003

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