

# U.S. Citizenship and Immigration Services



# Special Immigrant Juvenile Petitions

Training for NBC Officers

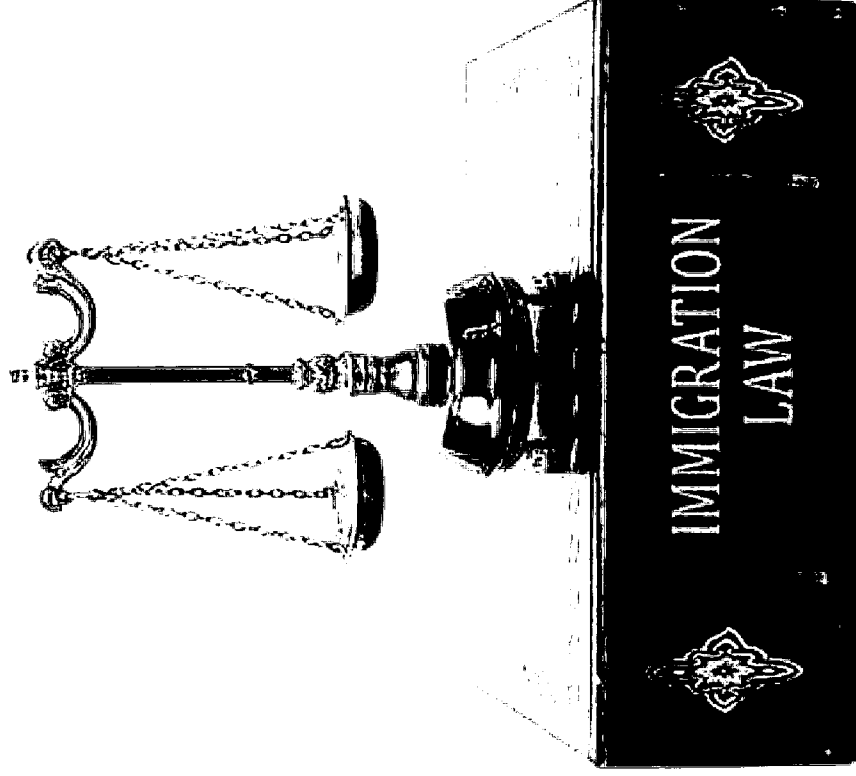
July 1, 2016



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# Module I: Overview

- Scope
- Legislative History
  - Statute
  - Regulations
- Current Requirements
- Eligible Populations
- Roles



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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

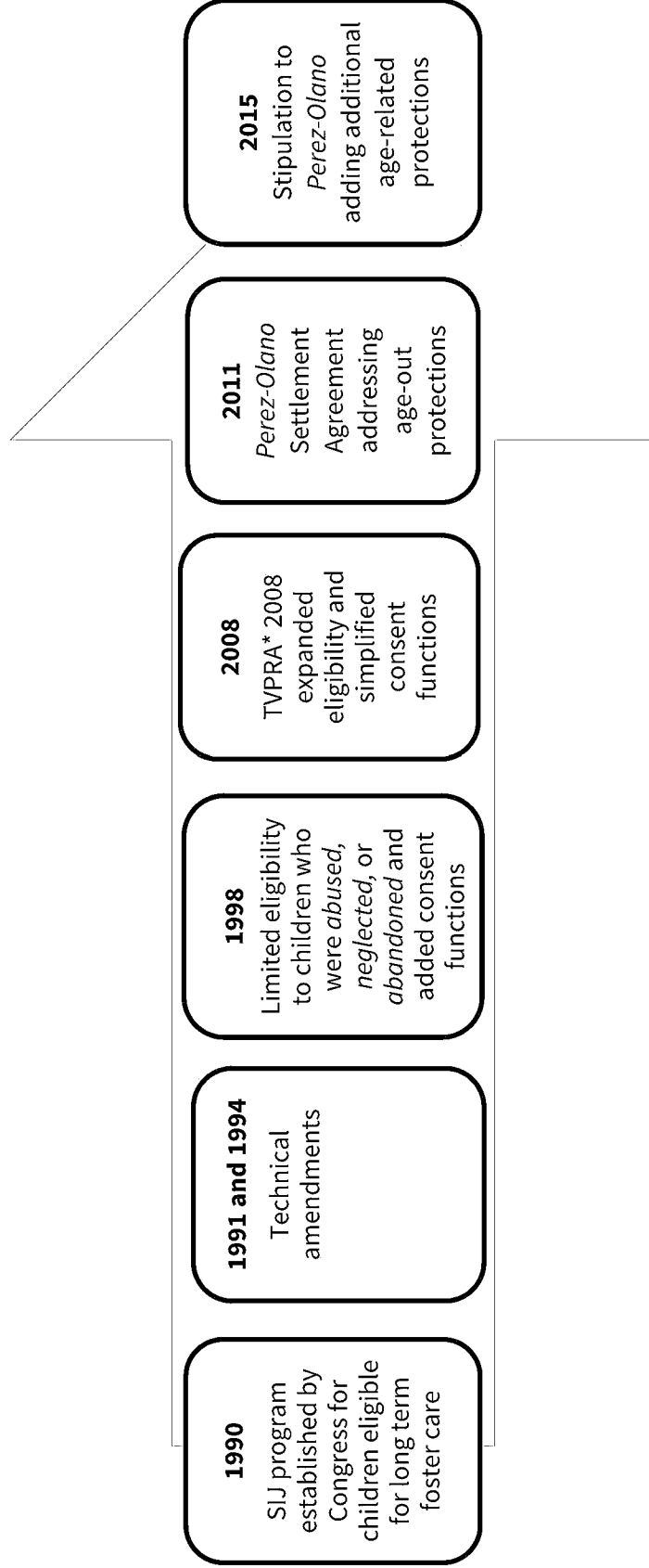
Allows for an otherwise eligible child to concurrently file for LPR status, if a visa is available.



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# Evolution of SIJ

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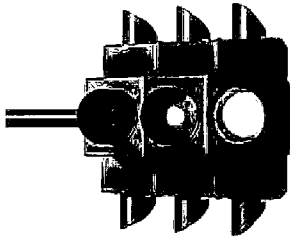


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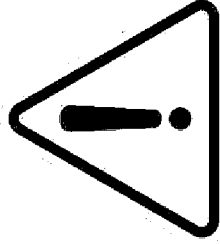
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# Current Requirements



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



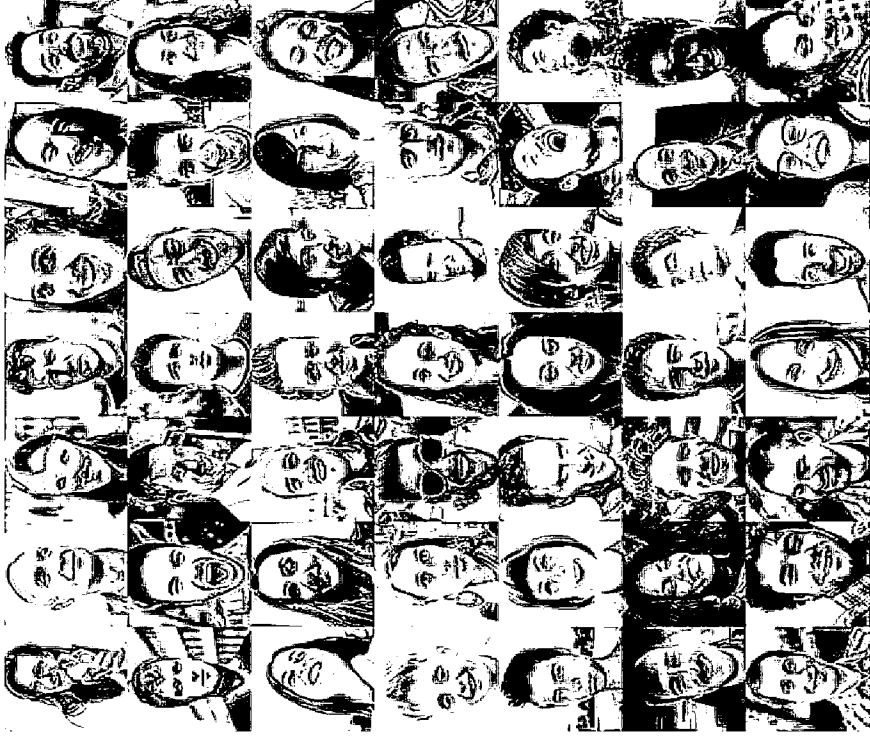
Regulations at 8 CFR 204.11 are being updated. (See handout).



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# Potentially Eligible Populations

- Live with a court appointed custodian (may include a parent)
- Adopted
- In state foster care system
- Currently or previously in federal custody with ORR because they were unaccompanied and undocumented



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# Juvenile Courts and USCIS Role

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	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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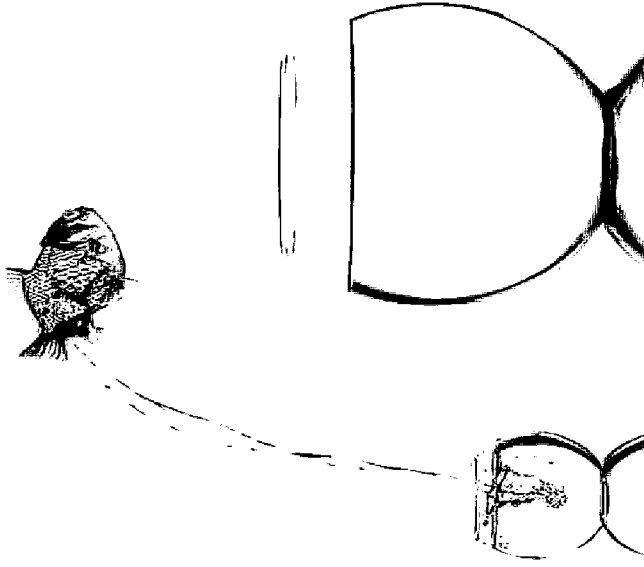
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# Module II: The Bigger Picture

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Why is this small program such a  
BIG deal?



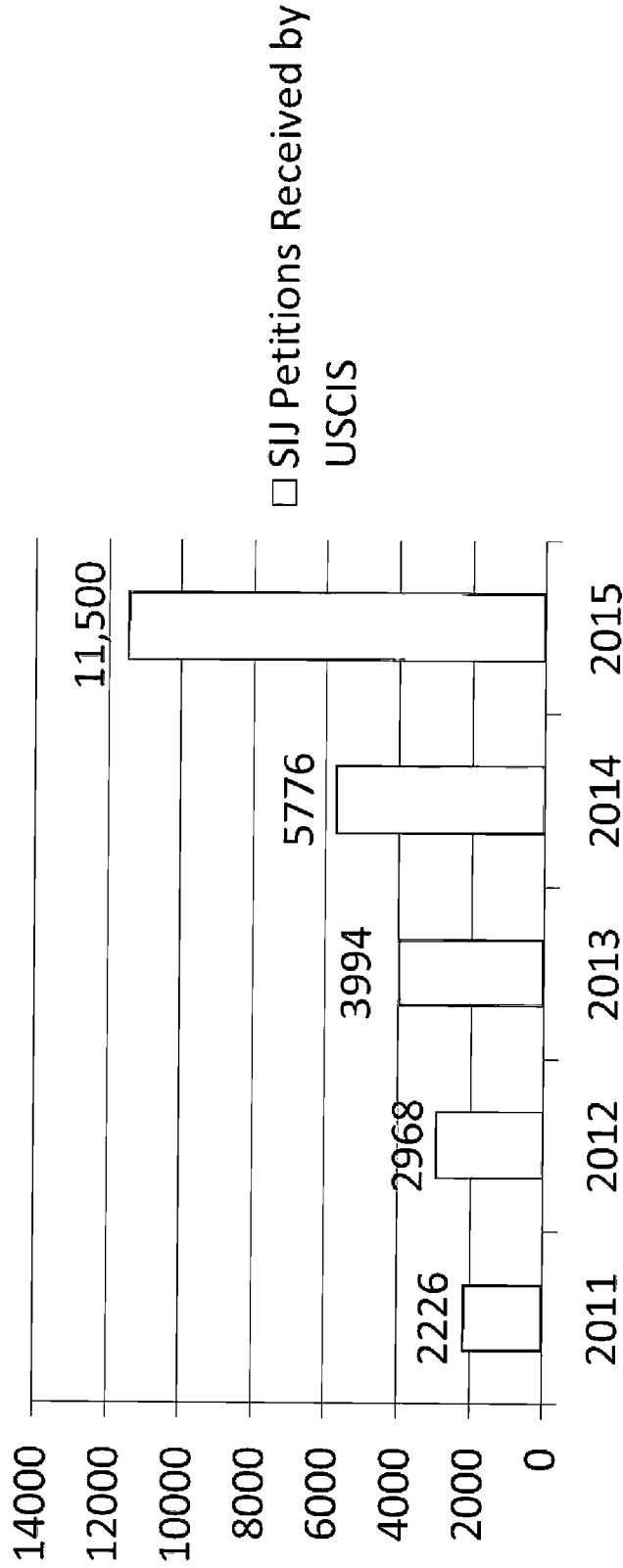
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# Annual Numbers

## SIJ Petitions Received by USCIS by Fiscal Year



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# Module III: I-360 Adjudication

OPDS No. 16150028 Expires 03/31/2015  
**I-360, Petition for Amerasian, Widower(er), or Special Immigrant**

Department of Homeland Security  
 U.S. Citizenship and Immigration Services

**START HERE - Type or print in black ink.**  
**PART 1 - Type or Print in Black Ink**  
 Petitioner (or both) must be a U.S. citizen or lawful permanent resident. If you are a self-prosecuting spouse or child and do not want USCIS to send notices about this petition to your home, you may show an alternate address in the "Other Address" field. Do not use an address that is not your current address. (Do not print.)

1a. Family Name: \_\_\_\_\_ 1b. Given Name: \_\_\_\_\_ 1c. Maiden Name: \_\_\_\_\_  
 5. Company or Organization Name: \_\_\_\_\_

3. Address - C/O: \_\_\_\_\_  
 4. Street Number and Name: \_\_\_\_\_ 5. Apt. Number: \_\_\_\_\_  
 6. City: \_\_\_\_\_ 7. State or Province: \_\_\_\_\_  
 8. Country: \_\_\_\_\_ 9. Zip Postal Code: \_\_\_\_\_

10. U.S. Social Security Number (H.A. Number) (1-800-768-NSP (if any))

**PART 2 - Classification Requested (Check one):**  
 a. Amerasian  
 b. Widower(er) of a U.S. citizen  
 c. Special Immigrant Juvenile  
 d. Special Immigrant Religious Worker  
 e. Will be doing or working in a ministerial,  Yes  No  
 f. Special Immigrant Religious Worker, Ministerial, or Charismatic Company, Church, or Other Religious Organization, or U.S. Government in the Canal Zone.  
 g. Special Immigrant Physician  
 h. Special Immigrant International Organization Employee or family member  
 i. Special Immigrant Armed Forces Member  
 j. Self-Prosecuting Spouse of Absentee U.S. Citizen or Lawful Permanent Resident  
 k. Self-Prosecuting Child of Absentee U.S. Citizen or Lawful Permanent Resident  
 l. Special Immigrant Afghanistan or Iraq National who worked with the U.S. Armed Forces in a ministerial,  Yes  No  
 m. Special Immigrant Afghanistan or Iraq National who was employed by or on behalf of the U.S. Government  
 n. Other: (print) \_\_\_\_\_

For USCIS Use Only:  
 Forward: \_\_\_\_\_ Review: \_\_\_\_\_  
 Transmitted: \_\_\_\_\_  
 Filing Stamp: \_\_\_\_\_  
 Name Bar #: \_\_\_\_\_  
 Pending  
 Approved  
 Rejected  
 I-360 Total Cases Ready for Review: \_\_\_\_\_  
 Case Number: \_\_\_\_\_  
 Classification: \_\_\_\_\_  
 Priority Date: \_\_\_\_\_  
 Remarks: \_\_\_\_\_  
 Alien Bar #: \_\_\_\_\_

To Be Completed By: \_\_\_\_\_  
 Attorney or Representative of user  
 Petitioner or Applicant  
 VLSAA Number: \_\_\_\_\_  
 ATTY Store Location Number: \_\_\_\_\_

Form I-360 (03/01/03)

- Initial Review
- Eligibility Review
- Juvenile Court Order Requirements
- Consent Requirements



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# Initial Review

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- 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

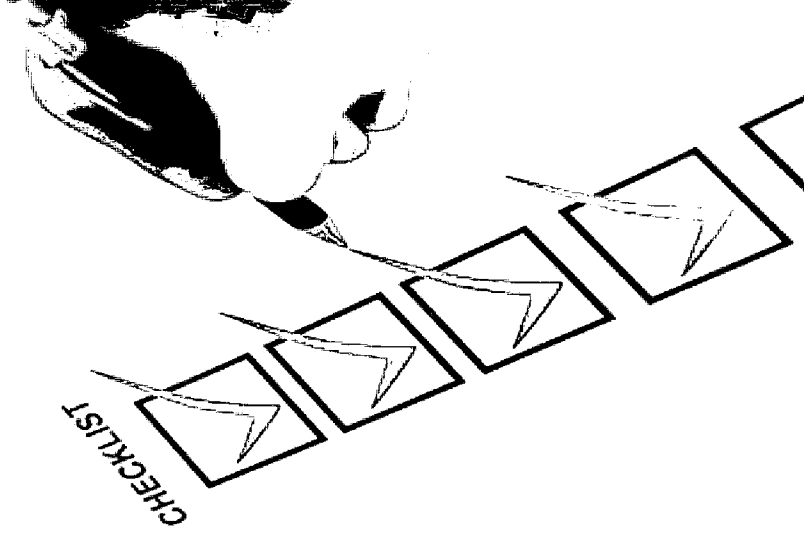
- HHS consent, (if in HHS care and order changes custody status or placement)
- Completed G-28, if represented by an attorney or accredited representative



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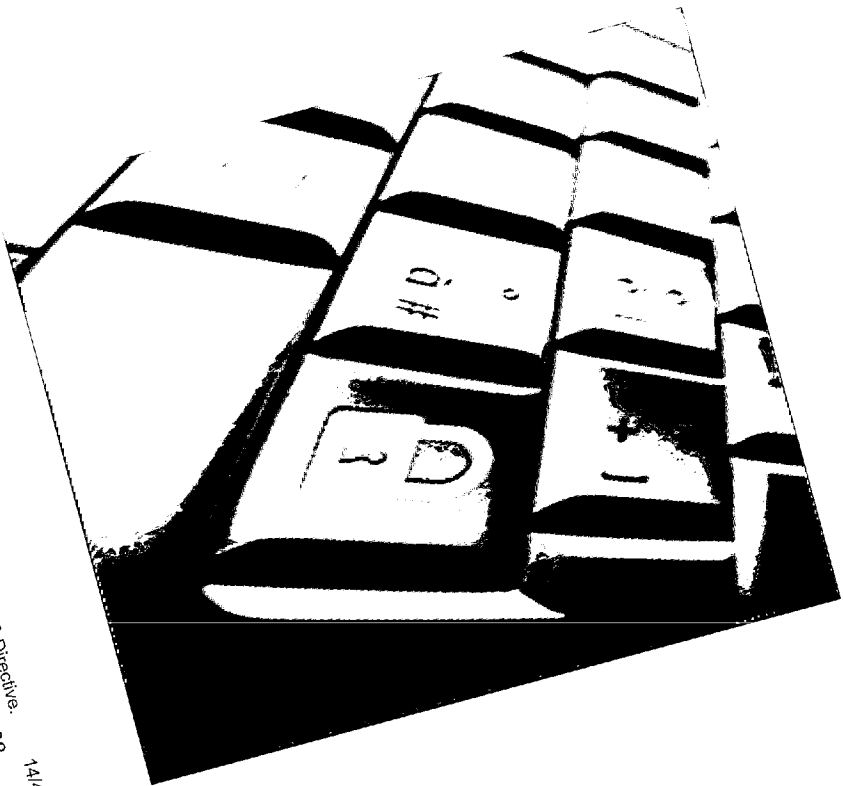
# Eligibility Review

- 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.



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# Age Documentation

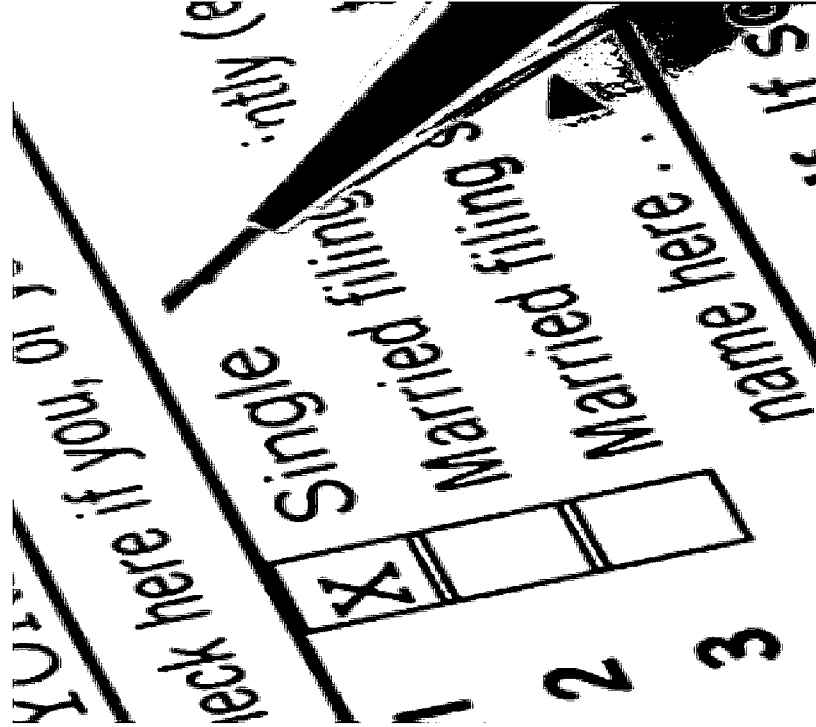
Documentary evidence of the petitioner's age may be in the form of:

- 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.



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# Marital Status



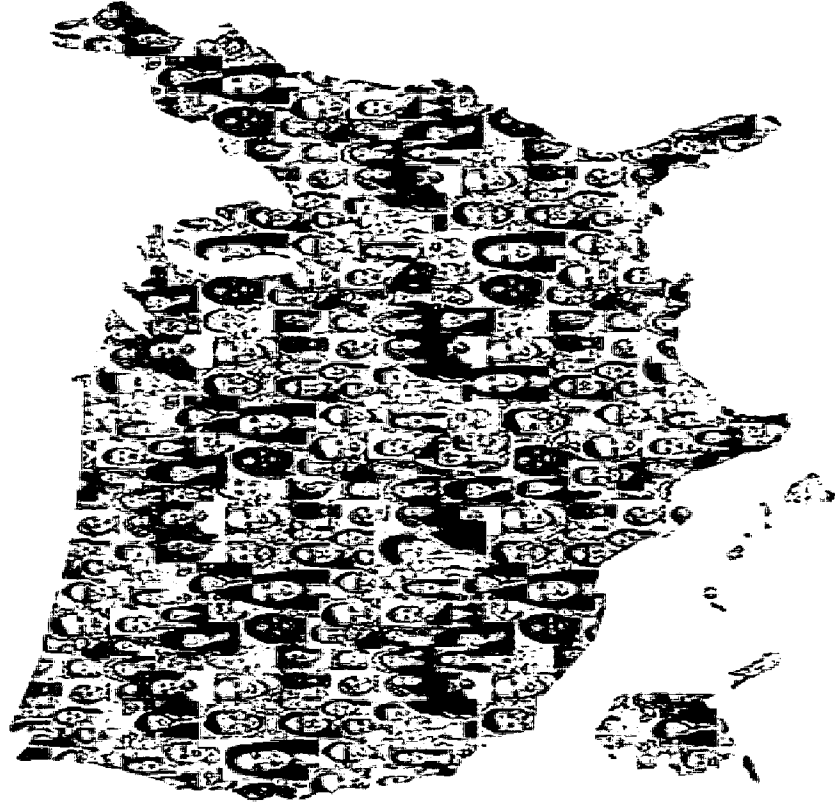
- Must be unmarried at time of filing and adjudication of the Form I-360.
- Means: never married; or previously married, and the marriage ended in annulment, divorce or death.
- Determine by reviewing the Form I-360 petition and the petitioner's record.



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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

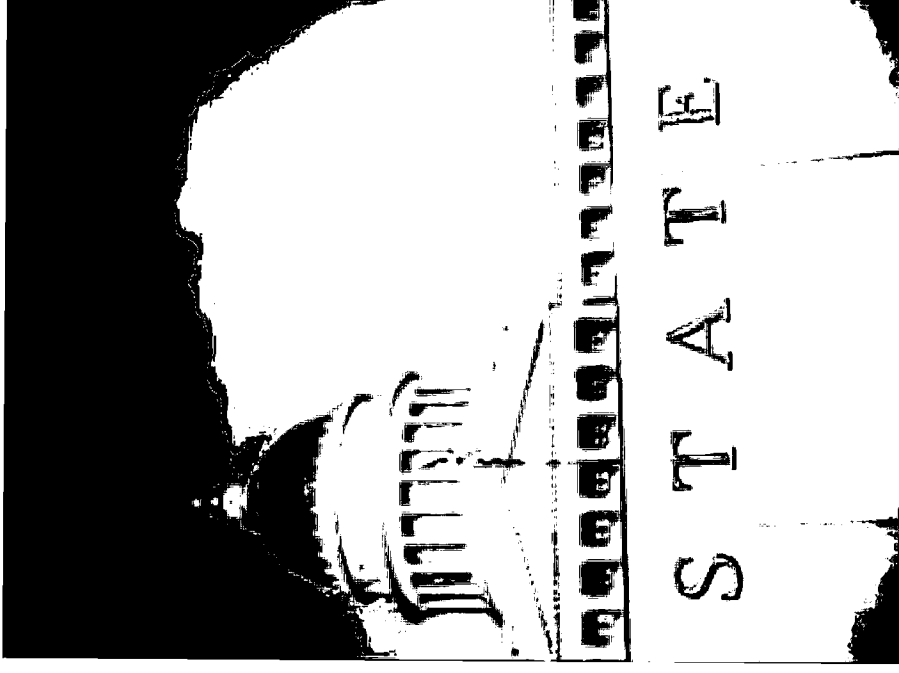
- Was it issued by a “juvenile” court?
- Were all of the required findings made?
- Is it valid?
- Is there a factual basis for the court’s findings?



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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.



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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.



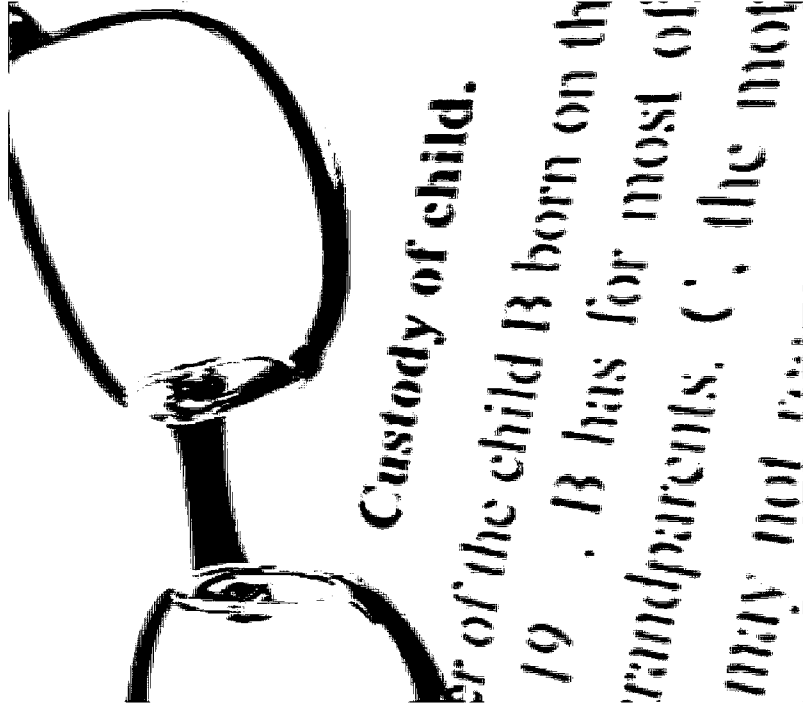
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# Dependency/Custody Finding

## 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.



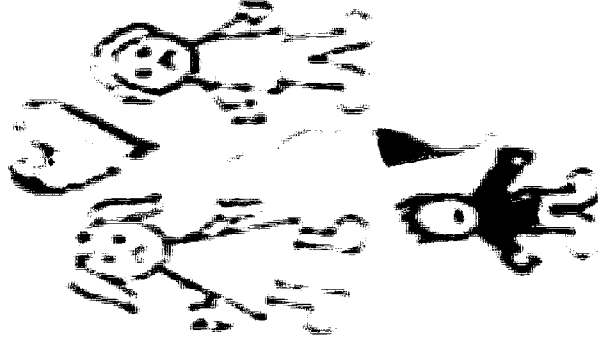
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# Family Reunification

## 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.



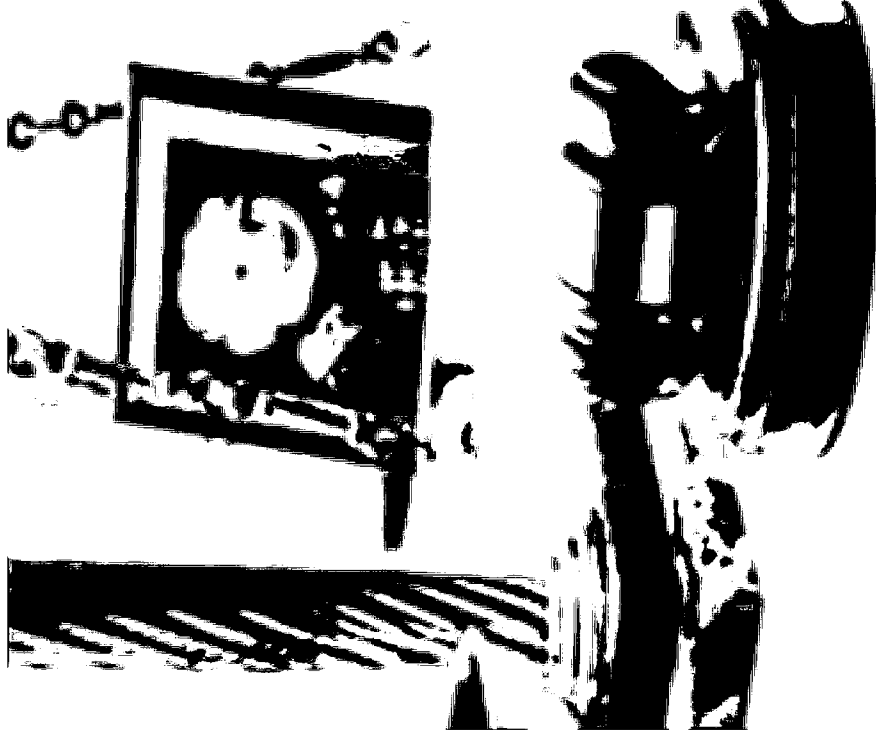
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# Best Interests Finding

## 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.

- If child is not currently in the custody of HHS/ORR

## OR

- 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*.

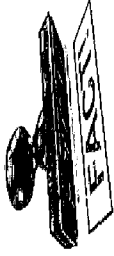
This means the order was sought for relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily or solely to obtain an immigration benefit.



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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

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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.”

# Module IV: Actions & Decisions



- Requests for Evidence
- Field Interview & Fraud Referral
- 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

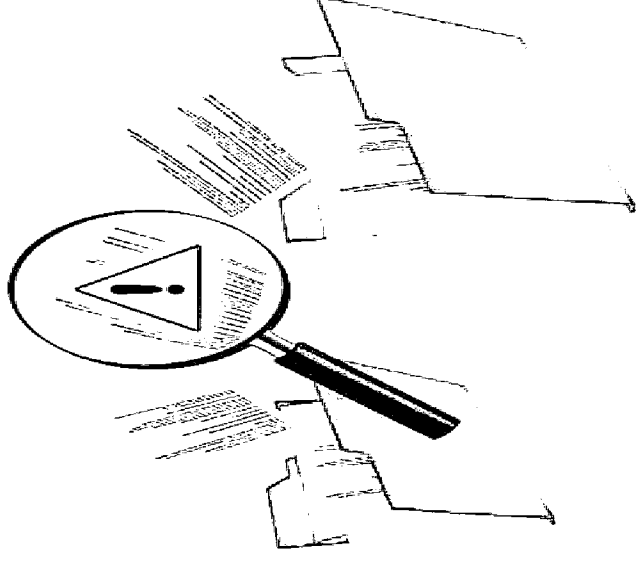
- Do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.
- Exercise careful judgement when considering statements made by children at the time of initial apprehension by immigration or law enforcement.
- You may not require specific documents 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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# Field Interview and/or Fraud Referral

- USCIS recognizes the vulnerable nature of SIJ petitioners.
- Conduct a full review of the petition and supporting evidence to determine whether an interview and/or referral to FDNS may be necessary, using the CHAP guidance.

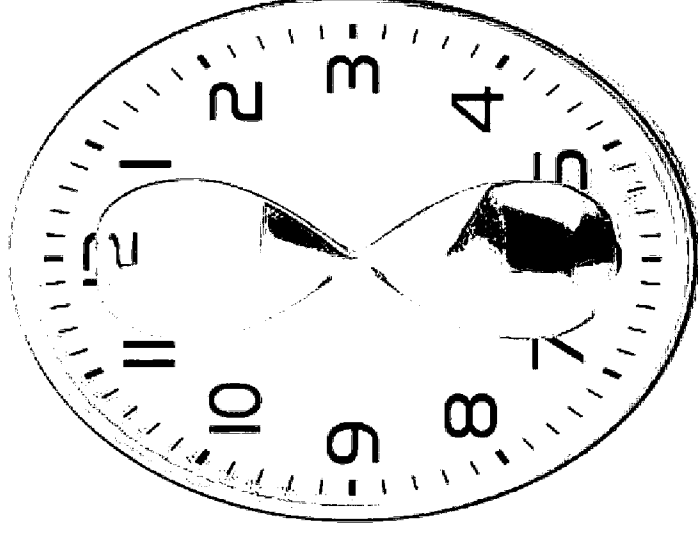


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# Expeditions Adjudication

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

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## 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)

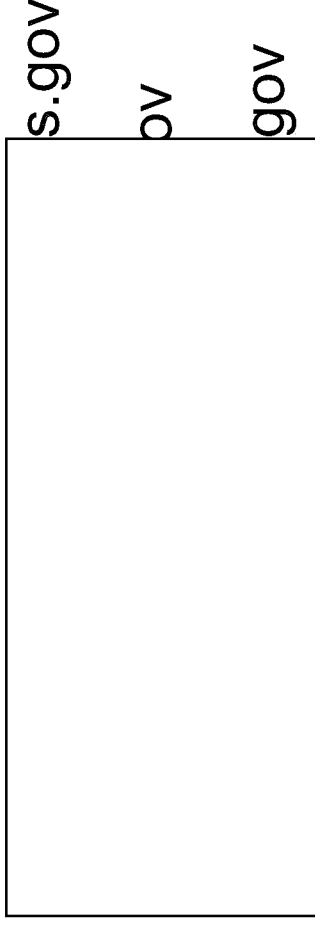
- Reserved for state juvenile courts and child welfare agencies: USCIS-IGAO outreach@uscis.dhs.gov

Materials available at:

[www.uscis.gov](http://www.uscis.gov) on the SIJ Program Webpages

## Policy Inquiries

### OP&S/FIVP Contacts (Internal Only)



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# About this Presentation

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  - USCIS materials
    - *Immigration Relief for Abused Children* [Brochure]. Washington DC (2014)
    - USCIS website humanitarian page



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