

Special Immigrant Juvenile Status

OCC-013-01-SIJS

December 2014



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Objective

At the end of this presentation, you should be able to identify and explain:

- Special Immigrant Juvenile (SIJ) eligibility requirements
- The legal basis for the SIJ program
- Adjudication of Form I-360 for SIJ status and SIJ-based Form I-485



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Why is This Important to Adjudicating Officers?

- Increase in SIJ petitions: Number of SIJ petitions filed doubled from 2010 – 2012 (from 1,645 to 3000).
- Growth in eligible population: Many unaccompanied alien children (UAC) may be eligible for SIJ, and the numbers of arriving UACs have nearly doubled over the past year. The number of UACs arriving in the United States is expected to exceed 23,000 in FY13.
- High overturn rate: The AAO **reverses the SIJ Form I-360 denials 55% of the time (as of July 2013)**.
- Liability: Bound by a settlement agreement until 2016.
- Exceptionally vulnerable nature of the population: Children seeking relief from abuse, abandonment or neglect.



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Presentation Overview

- Module 1: Overview and Eligibility
- Module 2: Legislation, Policy and Agreements
- Module 3: Juvenile Court Order
- Module 4: Age-out Protections
- Module 5: Children in Federal Custody
- Module 6: Adjudication of Form I-360 & SIJ-based Form I-485
- Module 7: Review
- Module 8: Administrative Information



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Module 1: Overview and Eligibility



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What is Special Immigrant Juvenile (SIJ) Status?

- A humanitarian protection for abused, abandoned, or neglected children
- An immigrant classification
- A status that allows eligible children to immediately apply for adjustment of status (AOS) and work authorization



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Who are Special Immigrant Juveniles?

Special immigrant juveniles may be:

- Abused prior to the child's arrival in the United States
- Abused while in the United States
- In the state foster care system
- Residing with a guardian or adoptive parent
- In federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Unaccompanied Alien Children Program
- Note: These are examples not an all-inclusive list



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Who is Eligible for SIJ Status?

The child:

- Is physically present in the U.S. (on date of filing and adjudication of Form I-360)
- Unmarried (on date of filing and adjudication of Form I-360)
- Under 21 years of age on the date of filing Form I-360
- Has a juvenile court order that meets the statutory requirements



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Who is Eligible to Apply for SIJ-based AOS?

- Have an approved Form I-360 SIJ petition
- Is physically present (at the time of filing) in the United States and unmarried (at the time of filing and adjudication of the Form I-485)
- Not among those specifically ineligible to apply for adjustment under INA § 245(c)
- Is admissible to the United States or eligible for a waiver of any applicable grounds of inadmissibility that may be waived
- Has a juvenile court order that meets statutory requirements (on date of filing and adjudication of Form I-485)



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Module 2: Legislation, Policy, and Agreements



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Legal Basis

- Immigration Act of 1990 [IMMACT 90] Pub. L. 101-649 (1990)
- Miscellaneous and Technical INA Amendments of 1991 [MTINA] Pub. L. 102-232 (1991)
- Appropriations Act of 1998 Pub. L. 105-119 (1997)
- William Wilberforce Trafficking Victims Protection Reauthorization Act [TVPRA 2008] Pub. L. 110-457 (2008)
- INA § 101(a)(27)(J)—definition and INA § 245(h)—adjustment of status
- 8 C.F.R. § 204.11 and 8 C.F.R. § 205.1(a)(3)(iv) (1993)

Note: The regulation is outdated and USCIS is working on an updated rule.



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Policy Guidance

- Memo: Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement (April 4, 2011)
- Memo: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions (March 24, 2009)
- Memo: Memorandum #3 -- Field Guidance on Special Immigrant Juvenile Status Petitions (May 27, 2004)
- Consolidated Handbook of Adjudication Procedures (CHAP): HQ is currently working on Volumes 6 and 7 SIJ procedures
- Adjudicator's Field Manual (AFM): Chapter 22.3 will be replaced by new Policy Manual
- Policy Manual: HQ is working on consolidated SIJ policy guidance in Volume 6 and Volume 7 of the new USCIS Policy Manual



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Perez-Olano Settlement Agreement (POSA)

- Class action suit effective from Dec. 14, 2010 – Dec. 13, 2016
- Class members: all applicants including, but not limited to, SIJ applicants who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based Adjustment of Status
- USCIS may not deny or revoke an application for SIJ classification or SIJ-based Adjustment of Status on account of age or dependency status if, at the time of filing, the child:
 - was under 21 years of age, or
 - was the subject of a valid dependency order that was subsequently terminated based on age.



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POSA Motions to Reopen

- Class members can file a Motion to Reopen (Form I-290B), if their petition or application was denied solely because:
 - The child turned 21 years of age after filing the SIJ Form I-360 petition but before adjudication of the Form I-360 or Form I-485 (age-out).
 - The child's dependency order terminated based on age after filing the SIJ petition and/or AOS application, but before adjudication.
 - The child did not receive a grant of specific consent before going before the juvenile court and the court order did not alter the child's custody status or placement.



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Regulations Governing SIJ Eligibility

The regulation is outdated and parts are superseded by statutory changes. See USCIS memo issued March 24, 2009, on TVPRA 2008 changes.

- **PRIOR REQUIREMENT:** Child was deemed eligible for long term foster care by a juvenile court
CHANGE – Expanded to: Child cannot be reunited with one or both of the child's parents due to abuse, neglect, abandonment, or similar basis under state law
- **PRIOR REQUIREMENT:** Child must be dependent upon the juvenile court
CHANGE: Expanded eligibility to also include children under the custody of an agency or department of a State, or an individual or entity appointed by the court



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Regulations Governing SIJ Eligibility (cont'd)

- **PRIOR REQUIREMENT:** Continues to be dependent on the juvenile court
CHANGE: If the juvenile court's jurisdiction ends solely because the minor ages-out, this requirement does not apply



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Module 3: Juvenile Court Order



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Which Courts Can Issue the Order?

- "Juvenile" court is defined by regulation as a court in the United States having jurisdiction under state law to make judicial determinations about the custody and care of children.
- Examples may include these courts:
 - juvenile or family
 - dependency
 - orphan's
 - guardianship
 - probate
 - delinquency



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Juvenile Court Order Requirements

The juvenile court order must make the required three findings:

- 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
- The child is dependent on the court, or under the custody of an agency or department of a State, or an individual or entity appointed by the court
- It would not be in the child's best interest to be returned to the child's or his or her parent's country of nationality or last habitual residence



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Orders and One Parent Cases

- An individual appointed by the court can be the parent who did *not* abuse, abandon, or neglect the child.
- For example, if a minor is declared dependent upon the court because of abuse by the mother, a state court may place the minor with the non-abusive father, without affecting the minor's eligibility for SIJ status.

NOTE: These can be challenging cases to adjudicate, and may require additional guidance on a case by case basis.



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Orders and Effective Period

- **Time of Filing:** In general the court order must be in effect at the time of filing both the Form I-360 and Form I-485.
- **Time of Adjudication:** The court order must be in effect through the time of adjudication of both the Form I-360 and Form I-485, unless:
 - Prevented by the age of the beneficiary, or
 - The juvenile court case ended because the beneficiary was placed in adoption, permanent guardianship, or another permanent living situation (other than reunification with the abusive parent(s)).



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Orders and Jurisdictional Changes

- If a juvenile relocates to a different jurisdiction, he or she *may* need a new state court order if the original order is no longer in effect.
- A juvenile court order does not automatically end because of a juvenile's move to another court's jurisdiction.
- Lapses in Orders: Dependency will be considered in effect through the time of adjudication, if there is a lapse between two orders due to a move.
 - For example, a juvenile relocates from State A to State B. If the juvenile can get a court order in State B, the lapse in time between the two orders will not be grounds for denial of the petition.



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Termination of Order

- If the order ends prior to adjudication, the juvenile will be *ineligible* for SIJ.
- This does not apply if the order ended because of
 - aging-out, or
 - because the child was placed in a permanent living situation (other than reunification with the parent(s) who abused, abandoned, or neglected the child).
- Example: Reunification is ordered with the parent on which the court order based its findings of abuse, abandonment, or neglect.



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Module 4: Age-out Protections



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No SIJ Age-Out

- Previously (before the TVPRA 2008):
 - Juvenile would age-out of eligibility if the Form I-360 or the Form I-485 was not adjudicated before the 21st birthday.
- Now:
 - USCIS will *NOT* deny SIJ status after the 21st birthday based solely on age if the self-petitioner was under 21 at time of filing the Form I-360.
 - USCIS will *NOT* revoke the Form I-360 after the 21st birthday based solely on age if the self-petitioner was under age 21 at the time of filing.



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Exercise 1

Question: A juvenile files a Form I-360 while under 18 (order is in effect) in a state where the age of emancipation is 18. The state court order automatically terminates when the juvenile reaches 18.

Does the juvenile remain eligible for SIJ status, even if the Form I-360 is adjudicated after the juvenile turns 18?

Answer: Yes. If otherwise eligible, the juvenile remains eligible for SIJ status, even if the Form I-360 is adjudicated after the juvenile turns 18.



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Exercise 2

Question: State "A" age of emancipation is 21. State "B" age of emancipation is 18. A juvenile obtains a court order that meets the SIJ requirements in state "A" and files Form I-360 while under 21. At age 19, the juvenile moves to state "B" before adjudication. The juvenile cannot get a new order in state "B" because of age.

Does the juvenile remain eligible for SIJ status?

Answer: Yes. The juvenile remains eligible for SIJ status.



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Module 5: Juveniles in Federal Custody



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Juveniles in Federal Custody

- HHS is charged with the care of unaccompanied minors taken into Federal custody
- Definition of unaccompanied minor (unaccompanied alien child (UAC)):
 - under the age of 18,
 - in the U.S.,
 - has no legal status, and
 - has no parent or legal guardian available in U.S. to provide care and physical custody.



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Juveniles in Federal Custody (cont'd)

- ICE or CBP must transfer the juvenile to the care of HHS within 72 hours.
- The ORR/UAC Program arranges for the care and custody of these juveniles.
- The ORR/UAC Program runs a network of ORR-funded facilities, including shelters, foster care, and secure care.
- The ORR/UAC Program is a short term care program that retains custody until ORR releases the juvenile to a sponsor, the juvenile reaches the age of 18, is returned to his or her country of origin, or obtains legal status.



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Specific Consent from HHS

- Specific consent from HHS is needed ONLY if:
 - The child was in ORR/UAC Program custody when the court order was issued, AND
 - The court altered or determined custody status or placement (rather than just restating HHS's current placement).
- HHS has instructions available on their website. Proof of HHS consent should be filed with Form I-360, if applicable. (RFE if necessary.)



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The Unaccompanied Refugee Minors (URM) Program

- URM became available to SIJ children under the TVPRA 2008.
- Eligible youths include asylees, victims of human trafficking, Cubans/Haitians, and U-visa and SIJ status recipients.
- Children receive housing benefits based upon individual need (foster home, therapeutic care, independent living, etc.).
- It is a long term care program for eligible youth. Depending on the State, a youth could be in the program up to age 23.
- Custody must be established with the state, county, or private agency; ORR does not maintain custody.



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The URM Program and SIJ

- The URM program may be critical because abused or abandoned children could otherwise end up homeless and may not be eligible for state benefits.
- To ensure eligibility for URM, the Form I-360 must be approved before the juvenile turns 18, and with sufficient time to establish custody in the receiving jurisdiction.
 - HQ recognizes it may be appropriate to expedite a case when a child is at risk of ageing-out. Adjudicators may receive a request to expedite for this purpose from HHS, from an attorney or petitioner, or from HQ.
- Note: A child may need to be moved from one state to another for placement in a URM program.



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Module 6: Adjudication of the SIJ Form I-360 and SIJ-based Form I-485



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How Does a Child Apply for SIJ Status?

- Submits **Form I-360** to the Lockbox along with:
 - Proof of age (birth certificate, passport, foreign identity document etc.)
 - Juvenile court order with proper findings (dependency or custody, non-viability of reunification, and best interest)
 - Specific consent from HHS (if necessary)
- No fee
- Can be filed alone or concurrently with Form I-485 (if the self-petitioner is not in removal proceedings or subject to a final order of removal)



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How Does a Child Apply for an SIJ-based Green Card?

- Files Form I-485 along with supporting documentation
- With correct fee or fee waiver request
- Form I-485 can be filed concurrently with the Form I-360 for a juvenile not in removal proceedings
- Supporting documentation includes:
 - Concurrently filed Form I-360 or copy of the Form I-797 approval notice
 - Copy of the applicant's birth certificate and/or a finding of both the applicant's date of birth and country of birth
 - Evidence that the applicant continues to have a valid dependency or juvenile order, unless terminated due to age



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How Does a Child Apply for an SIJ-based Green Card? (cont'd)

- Required documentation continued:
 - Two (2) passport-style photographs
 - Report of Medical Examination and Vaccination Record (Form I-693)
- If available or applicable:
 - Biographic Information Sheet (G-325A), if over 14
 - Application for Waiver of Grounds of Inadmissibility (Form I-601)
 - Application for Employment Authorization (Form I-765)
 - Certified copies of court disposition(s), if the juvenile has any convictions or an arrest record



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Adjudication Issues

Form I-360

- USCIS has exclusive jurisdiction.
- All cases must be adjudicated within 180 days upon receipt. (The clock stops for RFEs)

Form I-485

- EOIR has jurisdiction only if child is in removal proceedings.
- SIJs who file for Adjustment of Status are subject to the cap on the EB4 category.



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Inadmissibility

- An applicant for SIJ-based AOS must be admissible to the United States or obtain a waiver of inadmissibility unless exempted.
- SIJ applicants for adjustment of status are exempted from the following INA § 212(a) grounds of inadmissibility:
 - (4) Public Charge
 - (5)(A) Labor Certification
 - (6)(A) Present without Admission or Parole
 - (6)(C) Misrepresentation
 - (6)(D) Stowaways
 - (7)(A) Valid Documentation
 - (9)(B) Unlawful Presence



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Inadmissibility (cont'd)

- These INA § 212(a) inadmissibility provisions DO apply, and cannot be waived:
 - (2)(A)*, (B), (C) Criminal Grounds- except for a single offense of simple possession of 30 grams or less of marijuana
 - (3)(A), (B), (C), (E) Security and Related Grounds
- Waivers for all grounds that can be waived may be for humanitarian purposes, family unity, otherwise in the public interest, or as otherwise allowed under INA § 212(a).
- Note: SIJs are deemed paroled into the United States for purposes of SIJ based adjustment of status.

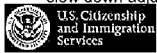


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Interviews

Field offices may **waive** the interview for the SIJ petition or SIJ-based AOS application on a case-by-case basis.

- A flexible policy is appropriate because of the population, the 180-day deadline, and URM expedites.
- When deciding if it would be appropriate to waive an SIJ interview, the officer should consider:
 - Does the file contains sufficient information and evidence to grant the petition without an interview?
 - Would the interview be particularly difficult such that it would be a hardship to the petitioner?
 - The age of the juvenile (e.g., 14 years of age and younger)
 - The sensitive nature of issues of abuse, neglect, or abandonment
 - The need for an expedited decision if conducting an interview will slow down adjudication processing times



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Conducting the Interview

- Establish a child-friendly interview environment.
- Avoid questioning the child about the details of the abuse/abandonment/neglect.
- Focus the interview on:
 - Eligibility for adjustment of status (only for Form I-485s).
 - Is the court order still valid, and if not, why not?
 - Has the child submitted proof of age?
 - Does the court order establish a basis for its findings? If not, does the child have any additional documents or evidence for the officer to consider?



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USCIS Consent

- USCIS must consent to the grant of the Form I-360.
- Approval of an SIJ petition itself is the evidence of consent.
- This is an acknowledgement that the SIJ petition is *bona fide*. This means that the child sought the juvenile court order (and any other administrative best-interest determination) *primarily* to obtain relief from abuse, neglect or abandonment rather than *primarily* for obtaining an immigration benefit.
- Because SIJ status is an immigration benefit, petitioners will almost always be seeking SIJ status, in part, to obtain the related immigration benefit. Therefore, if it is determined that the petition is not *bona fide*, the record should sufficiently reflect that the order was sought *primarily* as an immigration benefit.
- Defer to juvenile court's findings and expertise.



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Factual Basis for Court Findings

- Consent should be granted if the petition is *bona fide*; and
- The facts that formed the basis for the court's order are established, or a reasonable basis in fact exists.
- Officers should not second-guess the court's rulings. Orders containing the necessary findings that include or are supplemented by specific findings of fact or a factual basis will usually be sufficient to establish eligibility.
- USCIS may issue an RFE if the record does not reflect that there was a sufficient factual basis for the court's findings.



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RFE Limitations

- Carefully consider all relevant factors when contemplating reliance on statements made by children at the time of initial apprehension.
- Be mindful of confidentiality rules that may restrict disclosure of records from juvenile-related proceedings.
- Do not request documents such as school or employment records, confirmation of compliance with the Vienna Convention on Consular Relations, etc.
- Do NOT request that a petitioner contact the individual or family members of the individual who allegedly abused, abandoned, or neglected the child.



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Consent Case Example #1

- A 15 year old child was sexually abused by her father in her home country. Her mother assisted her daughter with making plans to come to join her in the United States. The child was apprehended, taken into ORR custody, and released to the care of her mother in New York. The child has never been in the child welfare system. The child has obtained an SIJ compliant juvenile court order identifying her mother as the court-appointed individual with custody so she can apply for SIJ status. May consent be given?
- Answer: Yes.



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Consent Case Example #2

- A 17 year old, unmarried, child from a foreign country has been living with her biological mother in the United States for the past 10 years. Her mother goes to court to request that her sister (the child's aunt) be granted custody. The child has no father listed on her birth certificate. Based on this information alone, should consent be given?
- Answer: No. Should request additional evidence (issue RFE) or issue a NOID.



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Consent Case Example #3

- A child was removed from his mother's care by child protective services in California due to child abuse and was placed in long term foster care. His mother's parental rights were terminated and the child was adopted by his foster family at the age of 15. At the age of 17, the child files a Form I-360 SIJ petition, when the family realizes the child is not authorized to work or receive financial aid. The juvenile court order is not current at the time of filing the Form I-360, since the court terminated its supervision due to the finalization of the adoptive placement. If the child is otherwise eligible, should consent be given?
- Answer: Yes.



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Denials

- A Request for Evidence is generally most appropriate where the evidence is initially insufficient to approve the petition.
- NOIDs and denials of SIJ petitions should be reviewed by a supervisor or designee.
- Officers may consult with the local management, who may in turn consult with the regional POC on complex SIJ cases.
- An SIJ petitioner with a denied Form I-360 may file a Form I-290B with the AAO to appeal an adverse decision or request that USCIS reopen and reconsider an adverse USCIS decision.
- An SIJ-based applicant for AOS does not have appeal rights but may file a motion to reopen or reconsider.



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Auto Revocation

- Note that the regulation at 8 C.F.R. § 205.1(a)(3)(iv) is outdated and parts are superseded by law.
- Currently, automatic revocation occurs if:
 - The applicant marries;
 - The juvenile court order terminates (unless for reasons outlined earlier- related to the effective period of the order);
 - The court orders reunification with the parent(s) that was not previously viable due to abuse, neglect, abandonment, or a similar basis; OR
 - Determination is made that it is in the applicant's best interests to return to country of origin.



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What Documentation does USCIS Give to the Juvenile?

Form I-360

- Form I-797C for receipt
- Approval Notice, Form I-797

Form I-485

- Lawful Permanent Resident Card ("green card")
- EAD card (if applied for with Form I-765)
- Permanent Resident (ADIT) stamp in passport (if juvenile has passport)



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Module 7: Review



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Review

Q: Who of the following may be eligible for SIJ? Children:

- a. Abused in their home country.
- b. Abused while in the United States.
- c. In the state foster care system.
- d. Residing with an adoptive parent.
- e. In federal custody with ORR.
- f. All of the above

A: f - All of the above



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Review (cont'd)

Q: If an otherwise eligible child turns 21 prior to the adjudication of the Form I-360, he/she is not eligible for SIJ status. True or False?

A: False

Q: If a child moves to a new jurisdiction, he/she must automatically get a new juvenile court order. True or false?

A: False

Q: Specific consent from HHS is not needed for all children in HHS custody prior to seeking the juvenile court order. True or False?

A: True



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Review (cont'd)

Q: Who is eligible for SIJ status? A child:

- a. Deemed eligible by a juvenile court for long term foster care
- b. Who cannot be reunited with one or both parents due to abuse, neglect, abandonment, or similar basis under state law
- c. Both
- d. Neither

A: b – Who cannot be reunited with one or both parents due to abuse, neglect, abandonment, or similar basis under state law



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Review (cont'd)

Q: Which courts may issue a juvenile court order?*

- a. immigration court
- b. juvenile
- c. probate
- d. delinquency
- e. b, c, and d*
- f. all of the above

A: e - Juvenile, probate, and delinquency, if they qualify as juvenile courts in the state they are in.



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Review (cont'd)

Q: When is it appropriate for USCIS to deny consent?

A: If the record shows that the order was sought **primarily** to obtain an immigration benefit.

Q: The court order must contain the details of the abuse, neglect or abandonment to establish the factual basis. True or false?

A: False. (However, note that the record must establish that there was a valid factual basis for the court's findings.)



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Review (cont'd)

Q: What are some child-friendly interviewing techniques?

A:

- Be sensitive to the child's needs/comfort level: let the child take breaks, reassure the child, etc.
- Use child-friendly language: use simple language, keep questions separate, and avoid leading questions
- Understand the impact of trauma and abuse: accept that children may not be forthcoming about events that have caused pain
- Consider the child's developmental level and culture
- Establish a non-adversarial interview environment: be very clear with the child about the purpose of the interview, build rapport, explain how to respond to questions, and explain any repetition of questions



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Questions?



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Case Consultations

You may submit cases for consultation, via your regional point of contact, to the speaker panel:

FOD/Angela Honer: angela.g.honer@uscis.dhs.gov

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Module 8: Administrative



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HQ Contacts

- Questions or suggestions regarding this training module should be addressed through appropriate channels to the Field Operations Directorate.



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About this Presentation

- Author: USCIS, Office of Policy and Strategy, Field Office Directorate, and Office of the Chief Counsel
- Date of last revision: December 2014
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