



U.S. Citizenship and Immigration Services

USCIS Policy Manual

Current as of November 19, 2019

Volume 6 - Immigrants

Part J - Special Immigrant Juveniles

Chapter 1 - Purpose and Background

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 juvenile court determination<sup>[1]</sup> that reunification with one or both parents is not viable is still required for SIJ classification.<sup>[2]</sup>

Children in a variety of different circumstances who are residing in the United States may be eligible for SIJ classification, including but not limited to:

- Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subjected to similar maltreatment by a parent prior to their arrival in the United States, or while in the United States;
- Children in federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement, Unaccompanied Children’s Services Program;<sup>[3]</sup> or
- Children in the state child welfare system in the custody of a state agency (for example, foster care), or in the custody of a person 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 enacted several amendments. The table below provides an overview of major legislation related to SIJ classification.

Special Immigrant Juvenile Classification: Acts and Amendments

Acts and Amendments	Key Changes
<b>The Immigration Act of 1990<sup>[4]</sup></b>	<ul style="list-style-type: none"> <li>• Established an SIJ classification for children declared dependent on a juvenile court in the United States, eligible for long-term foster care, and for whom it would not be in their best interest to return to their country of origin</li> </ul>

Acts and Amendments	Key Changes
<b>Miscellaneous and Technical Immigration and Nationality Amendments of 1991</b> <sup>[5]</sup>	<ul style="list-style-type: none"> <li>• Provided that children with SIJ classification were considered paroled for the purpose of adjustment of status to lawful permanent residence</li> <li>• Provided that alien children cannot apply for admission or be admitted to the United States in order to obtain SIJ classification</li> </ul>
<b>The Immigration and Nationality Technical Corrections Act of 1994</b> <sup>[6]</sup>	<ul style="list-style-type: none"> <li>• Expanded eligibility from those declared dependent on a juvenile court to children whom such a court has legally committed to, or placed under the custody of, a state agency or department</li> </ul>
<b>The 1998 Appropriations Act</b> <sup>[7]</sup>	<ul style="list-style-type: none"> <li>• Limited eligibility to children declared dependent on the court because of abuse, neglect, or abandonment</li> <li>• Provided that children are eligible only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the grant of classification</li> <li>• Prohibited juvenile courts from determining the custody status or placement of a child who is in the custody of the federal government, unless the Attorney General (later changed to the Secretary of the Department of Health and Human Services) specifically consents to the court's jurisdiction</li> </ul>
<b>Violence Against Women Act of 2005</b> <sup>[8]</sup>	<ul style="list-style-type: none"> <li>• Prohibited compelling an SIJ petitioner to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for SIJ classification</li> </ul>

Acts and Amendments	Key Changes
<p><b>The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008)</b><sup>[9]</sup></p>	<ul style="list-style-type: none"> <li>• Removed the need for a juvenile court to deem a child eligible for long-term foster care and replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law</li> <li>• Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court</li> <li>• Provided age-out protections so that SIJ classification may not be denied to anyone, based solely on age, who was under 21 years of age on the date that he or she properly filed the SIJ petition, regardless of the petitioner’s age at the time of adjudication</li> <li>• Simplified the consent requirement: The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order</li> <li>• Altered the “specific consent” function for those children in federal custody by vesting this authority with the Secretary of Health and Human Services, rather than the Secretary of the Department of Homeland Security</li> <li>• Added a timeframe for adjudication: USCIS shall adjudicate SIJ petitions within 180 days of filing</li> </ul>

### C. Legal Authorities

- [INA 101\(a\)\(27\)\(J\)](#); [8 CFR 204.11](#)<sup>[10]</sup> – Special immigrant status for certain children declared dependent on a juvenile court (special immigrant juvenile)
- [INA 203\(b\)\(4\)](#). – Certain special immigrants
- [INA 204\(a\)\(1\)\(G\)\(i\)](#). – Petitioning procedure
- [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

## Footnotes

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1. [△] The term “determination” refers to a conclusion of law. See [8 CFR 204.11\(a\)](#) (defining “juvenile court” to be one in the United States with jurisdiction under state law to make judicial determinations regarding juveniles).
2. [△] There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA or otherwise deviate from reliance upon state law and procedure in issuing state court orders.
3. [△] See Section 462 of the Homeland Security Act of 2002, [Pub. L. 107-296 \(PDF\)](#), 116 Stat. 2135, 2202 (November 25, 2002).
4. [△] See [Pub. L. 101-649 \(PDF\)](#) (November 29, 1990).
5. [△] See [Pub. L. 102-232 \(PDF\)](#) (December 12, 1991).
6. [△] See [Pub. L. 103-416 \(PDF\)](#) (October 25, 1994).
7. [△] See [Pub. L. 105-119 \(PDF\)](#) (November 26, 1997).
8. [△] See [Pub. L. 109-162 \(PDF\)](#) (January 5, 2006).
9. [△] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).
10. [△] Certain portions of the regulations have been superseded. Up-to-date guidance is provided in this Part.

## Legal Authorities

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[8 CFR 205.1\(a\)\(3\)\(iv\)](#) - Reasons for automatic revocation

[8 CFR 205.2](#) - Revocation on notice

[INA 101\(a\)\(27\)\(J\)](#), [8 CFR 204.11](#) - Special immigrant juveniles

[INA 203\(b\)\(4\)](#) - Certain special immigrants

[INA 204\(a\)\(1\)\(G\)\(i\)](#) - Petitioning procedure

[INA 245\(h\)](#) - Adjustment of special immigrant juveniles

[INA 287\(h\)](#) - Protecting abused juveniles

## Forms

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[G-28, Notice of Entry of Appearance as Attorney or Accredited Representative](#)

[I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#)

## Appendices

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## Update to Special Immigrant Juvenile Policy and Administrative Procedure Act (APA) Considerations

### Appendix: Update to Special Immigrant Juvenile Policy and Administrative Procedure Act (APA) Considerations

On November 19, 2019, USCIS provided more clarity on several requirements for special immigrant juvenile (SIJ) classification, including the following:

- USCIS reaffirmed and clarified that the petitioner must have been a juvenile under the relevant state law definition of “juvenile” (or equivalent term) when the juvenile court order was issued;<sup>[1]</sup>
- USCIS clarified the definition of a juvenile court for purposes of SIJ classification and provides examples of the types of evidence that may be provided to establish that a court is acting as a qualifying juvenile court;<sup>[2]</sup>
- USCIS clarified guidance on what constitutes a qualifying “dependency” or “custody” determination from the juvenile court for the purposes of SIJ classification eligibility;<sup>[3]</sup>
- USCIS clarified guidance on the statutorily-mandated USCIS consent function;<sup>[4]</sup>
- USCIS clarified guidance on what qualifies as a similar basis to abuse, neglect, or abandonment under state law;<sup>[5]</sup> and
- USCIS reaffirmed for officers that the agency no longer requires that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification.<sup>[6]</sup>

These updates and clarifications of current USCIS policy guidance are based on USCIS interpretation of the applicable terms in DHS regulations and the Immigration and Nationality Act (INA). An agency is not required to use the Administrative Procedure Act’s (APA) notice-and-comment procedures to issue an interpretive rule or one that amends or repeals an existing interpretive rule,<sup>[7]</sup> or when modifying rules of agency organization, procedure, or practice.<sup>[8]</sup> However, the instruction to not require evidence that a state court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification was a policy change in response to the resource strain of ongoing litigation. As with all other policy guidance USCIS issues, these updates and clarifications to officers do not add to the substantive regulations, create legally binding rights, obligations, or change the substantive standards by which USCIS will evaluate SIJ petitions. Accordingly, USCIS published no Federal Register notices requesting public comment because public notice is not required for these internal policy changes and clarifications.

#### Unfair Surprise and Reliance Interest

An agency can change its interpretation of a regulation at different times in its history as long as the interpretative changes create no unfair surprise.<sup>[9]</sup> In this case, USCIS is not changing its policy regarding SIJ adjudications. USCIS is updating this guidance to clarify what the law and regulations permit or require because of potential confusion. It has never been USCIS official policy to grant SIJ classification based on a state judge’s order that is sought primarily to permit the alien to obtain lawful immigration status.

USCIS has analyzed the potential for and taken into account serious reliance interests that may be engendered by the practices USCIS officers may have followed prior to this clarification. USCIS acknowledges that a person who may have been approved for SIJ classification before this policy alert may no longer be approved by an officer following this clarifying guidance in rendering their decision. An advocate or representative of an SIJ petitioner, not knowing of this policy, may erroneously petition the state court judge who is handling their client's case to issue an order with findings of fact in support of the petitioner's eligibility for SIJ that does not provide relief from parental abuse, neglect, abandonment or a similar basis under state law. However, the statutory and regulatory eligibility criteria have never permitted SIJ classification to be approved using such state court orders, nor has it been official USCIS policy. Therefore, an SIJ petitioner cannot be said to have acted in reliance on the continuation of a practice and policy that has not been a USCIS practice and policy and which is contrary to the law. USCIS must limit the approval of SIJ classification to cases who are eligible based on a valid court order as required by the INA regardless of its effects on parties who may rely on erroneous state court orders.

With respect to the policy change to no longer require evidence that a state court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification, USCIS made that change in response to the strain of litigation. USCIS anticipated that the change would not negatively impact petitioners with potential reliance interests, rather it would reduce their evidentiary burden.

### **Implementation**

USCIS implemented this policy update immediately, as it was merely a clarification. However, USCIS still allowed interested parties an opportunity to comment by providing a 10-day comment period, as is generally provided for Policy Manual publications.

### **Footnotes**

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1. [^] See Chapter 2, Eligibility Requirements, Section A, General [6 USCIS-PM J.2(A)] and Section B, Age-out Protections For Filing with USCIS [6 USCIS-PM J.2(B)].
  2. [^] See Chapter 2, Eligibility Requirements, Section C, Juvenile Court Order [6 USCIS-PM J.2(C)].
  3. [^] See Chapter 2, Eligibility Requirements, Section C, Juvenile Court Order, Subsection 1, Dependency or Custody [6 USCIS-PM J.2(C)(1)].
  4. [^] See Chapter 2, Eligibility Requirements, Section D, USCIS Consent [6 USCIS-PM J.2(D)].
  5. [^] See Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Determinations [6 USCIS-PM J.3(A)(1)].
  6. [^] See Chapter 2, Eligibility Requirements, Section C, Juvenile Court Order, Subsection 2, Parental Reunification [6 USCIS-PM J.2(C)(2)].
  7. [^] See *Perez v. Mortgage Bankers Assoc.*, 135 S.Ct. 1199 (2015).
  8. [^] *James v. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000)
  9. [^] See *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 171 (2007). See *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012).

## **POLICY ALERT - USCIS Special Immigrant Juvenile Classification**

November 19, 2019

U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual regarding the special immigrant juvenile (SIJ) classification.

[Read More](#)

## AFFECTED SECTIONS

**6 USCIS-PM J - Part J - Special Immigrant Juveniles**

## Technical Update - Replacing the Term “Foreign National”

October 08, 2019

This technical update replaces all instances of the term “foreign national” with “alien” throughout the Policy Manual as used to refer to a person who meets the definition provided in INA 101(a)(3) [“any person not a citizen or national of the United States”].

[Read More](#)

## AFFECTED SECTIONS

**1 USCIS-PM - Volume 1 - General Policies and Procedures**

**2 USCIS-PM - Volume 2 - Nonimmigrants**

**6 USCIS-PM - Volume 6 - Immigrants**

**7 USCIS-PM - Volume 7 - Adjustment of Status**

**8 USCIS-PM - Volume 8 - Admissibility**

**9 USCIS-PM - Volume 9 - Waivers**

**10 USCIS-PM - Volume 10 - Employment Authorization**

**11 USCIS-PM - Volume 11 - Travel and Identity Documents**

**12 USCIS-PM - Volume 12 - Citizenship and Naturalization**

## POLICY ALERT - Special Immigrant Juvenile Classification and Special Immigrant-Based Adjustment of Status

October 26, 2016

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance regarding the special immigrant juvenile (SIJ) classification and special immigrant-based (EB-4) adjustment of status, including adjustment based on classification as a special immigrant religious worker SI 1 and G-4 international organization or NATO-6 employee or

classification as a special immigrant religious worker, sis, and a member of an international organization of native employees or family member, among others.

[Read More](#)

## AFFECTED SECTIONS

**6 USCIS-PM J - Part J - Special Immigrant Juveniles**

**7 USCIS-PM F - Part F - Special Immigrant-Based (EB-4) Adjustment**

Current as of November 19, 2019