



U.S. Citizenship
and Immigration
Services

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Memorandum

TO: January Contreras
Citizenship and Immigration Services Ombudsman

FROM: Lori Scialabba *Lori Scialabba*
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SUBJECT: Response to Recommendation 47, Special Immigrant Juvenile (SIJ) Adjudications:
An Opportunity for Adoption of Best Practices

Recommendations

The CIS Ombudsman recommends that USCIS:

- Standardize its practices of:
 - Providing specialized training for those officers adjudicating SIJ status;
 - Establishing dedicated SIJ units or Points of Contact (POCs) at local offices; and
 - Ensuring adjudications are completed within the statutory timeframe.
- Cease requesting the evidence underlying juvenile court determinations of foreign child dependency.
- Issue guidance, including agency regulations, regarding adequate evidence for SIJ filings, including general criteria for what triggers an interview for the SIJ petition, and make this information available on the USCIS website.

USCIS Response to Recommendations

USCIS thanks the CIS Ombudsman for the thorough review and analysis of the SIJ Program offered in her report. USCIS appreciates the sensitivity and urgency surrounding these cases and makes every effort to provide the proper attention to this vulnerable population. The following provides the USCIS response to each recommendation, illustrating ways in which the agency

believes it can best address the issues noted by the CIS Ombudsman and provide a fair adjudication of each SIJ case. Minor technical corrections can be found in Appendix A.

1. Standardize its practices of:

(a) Providing specialized training for those officers adjudicating SIJ status.

USCIS concurs with this recommendation and has already provided extensive training. During the first week of April 2011, USCIS presented SIJ training to 235 persons comprised of regional office staff, field office personnel, and the National Benefits Center (NBC) staff responsible for administering the SIJ Program. USCIS offered three web-based training sessions providing attendees a refresher on the SIJ Program as well as details of a recent lawsuit. The training consisted of:

- Legal definitions, basic eligibility requirements, types of relief available, and general processes under the SIJ program;
- An overview of recent legislative and regulatory changes to the program;
- An introduction and background of the Perez-Olano class action law suit; and
- Instructions on how to implement the process agreed upon in the Perez-Olano Settlement Agreement (Settlement Agreement).

Reference materials were provided to the attendees and included the SIJ Training Power Point, Settlement Agreement guidance, and Health and Human Service (HHS) Foster Care Program information. An internal information sheet answering questions commonly raised by field officers is forthcoming.

USCIS also provided training after the issuance of the March 24, 2009 memorandum *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provision*. In January and February 2010, USCIS offered four teleconference training sessions providing attendees a breakdown of:

- Recent legislative changes to the SIJ program made by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008);
- An overview of the interplay between the SIJ program and unaccompanied minors as a whole; and
- The role of HHS regarding the care and custody of unaccompanied minors.

USCIS is in the process of updating SIJ training materials presented to all new officers attending BASIC training at the USCIS Academy. USCIS will also continue to identify and provide training to those responsible for administering the SIJ Program, as needed. Additionally, USCIS is willing to explore the feasibility of child-sensitive interviewing as the topic of a future web-based training.

(b) Establishing dedicated SIJ units or Points of Contact (POCs) at local offices.

While USCIS appreciates this recommendation, the limited volume of petitions makes specific SIJ units or a dedicated officer within each field office impractical. USCIS received 1,484 SIJ petitions in FY2009 and 1,879 in FY2010. These petitions are transferred to one of the 87 field offices having jurisdiction over the SIJ petitioner's current place of residence for review and adjudication. USCIS data shows that of the 87 field offices, only 10 offices received more than 50 SIJ petitions in FY2010.

The New York City (NYC) Field Office, which designates an officer to handle SIJ cases, was highlighted for its "best practice." This office, however, had the second largest number of SIJ filings in FY2010 with 157 cases and does not represent the standard field office in regard to overall case volume. Furthermore, the NYC Field Office has one of the agency's larger staffs and, thus, can more easily establish specialized units. USCIS does recognize the sensitive nature of these cases, but we feel that the adjudication can be completed by properly trained officers with supervisory oversight. Training officers to adjudicate a wide variety of cases best serves long term goals for the agency. Extensive adjudicative experience for officers also reduces the vulnerability of an office to unexpected changes. Local managers need flexibility to utilize resources as appropriate for their office.

In 2010, USCIS Headquarters (HQ) established SIJ POCs within the four regional offices to provide support to the field offices. These POCs are available to answer any SIJ-related questions from the field offices in regard to the adjudication of the SIJ petition and/or the related adjustment of status application. The POCs work closely with HQ to ensure accuracy of information to the field.

The regional POC model worked very well when TVPRA 2008 changed the SIJ program. For the first 6 months after TVPRA 2008, the POCs collected specific consent cases from across the regions to assist HQ, the Office of Policy and Strategy (OP&S), and the Office of the Chief Counsel (OCC) with their review for quality and consistency in adjudications. The regional POCs also assist with cases that need to be expedited in order for the SIJ petitioners to receive benefits through the Unaccompanied Refugee Minor (URM) program of HHS. Often cases come to USCIS that require a very quick turn around, sometimes in a matter of weeks or even days, in order for the juvenile to be eligible for placement. Through the regional POCs, USCIS is able to handle and track these expedite requests. USCIS is not aware of any instances where an expedite request made for URM purposes has not been granted.

USCIS believes the regional POC model coupled with the training efforts described above has resulted in improved and more consistent SIJ adjudication as well as better customer service. USCIS believes over time this model will continue to work and improve service.

(c) Ensuring adjudications are completed within the statutory timeframe.

USCIS concurs with this recommendation and has taken proactive measures to ensure that SIJ filings are adjudicated within the 180-day requirement. On a monthly basis, the NBC generates a report of all pending SIJ cases. This report is distributed to the field offices via the regional SIJ

POCs. The regional SIJ POC works closely with the field offices to monitor and complete adjudication-ready cases.¹

USCIS notes that legally the 180-day requirement applies to the SIJ petition only, and not to the related adjustment of status application. Additionally, the 180 days do not include the days between a missed appointment and a rescheduled appointment or the days between when USCIS sends an RFE and the date the petitioner responds to an RFE.

2. Cease requesting the evidence underlying juvenile court determinations of foreign child dependency.

USCIS appreciates that there is a delicate balance between the role of the state juvenile court providing for the best interest of the child and the role of USCIS in ensuring the immigration benefit is granted properly. Congress amended the SIJ Program by creating a consent function for the Department of Homeland Security (DHS), which was delegated to USCIS. Under the Immigration and Nationality Act (INA), USCIS must consent to the SIJ classification. Based on legislative history, USCIS looks to see if the state court order was sought primarily for the purpose of obtaining relief from abuse, abandonment, or neglect and not primarily for the purpose of obtaining lawful immigration status. *See* H.R. Rep. No 105-405, 105th Cong., 1st Sess., at 130 (1997).

The consent function is essentially a discretionary determination that the petition is *bona fide* and that there is a reasonable basis for the agency's consent to the SIJ classification. Juvenile court orders that include or are supplemented by specific findings of fact regarding the basis for a finding of abuse, abandonment, or neglect are usually sufficient to provide a basis for consent. Orders that lack specific findings may not be sufficient, and may need to be supplemented by separate findings or other relevant evidence to establish the factual basis for the order. Evidence can also include information from persons who know the petitioner in a personal or professional manner. This evidence could include, but is not limited to, affidavits, letters, evaluations, or treatment plans from the court, state agency, individual with whom the juvenile has been placed, health care professionals, social workers, others with responsibility to evaluate and treat the juvenile, attorneys, guardians, adoptive parents, family members, and friends. The petitioner bears this evidentiary burden.

In some cases, USCIS may request further evidence from the petitioner of the factual basis for the juvenile court order if the initial evidence is insufficient. Such a request is not a re-examination of the state court's determination. USCIS recognizes that it does not have the jurisdiction or expertise to evaluate a child's claim of parental abuse, neglect, or abandonment under the relevant state law. However, where, for example, the state court order does not state the pertinent facts underlying its dependency determination or the USCIS record contains evidence that the state court was not apprised of critical facts, USCIS cannot consent to the grant of SIJ status without further evidence that the request is *bona fide*. For example, USCIS has reviewed a case where the child's administrative file contained evidence that the child's mother

¹ Incomplete filings require a response to a Request for Evidence (RFE) for initial evidence before they become adjudication-ready.

was alive, but the state court order was granted, in part, on the child's assertion that her mother had died. There are other reasons USCIS may seek more evidence, even on matters not related to the court dependency order – for example, to establish the petitioner's age or identity.

The May 27, 2004 memorandum entitled *Memorandum #3 -- Field Guidance on Special Immigrant Juvenile Status Petitions* discusses when it is appropriate to request further evidence for purposes of making a consent determination. Although parts of this memorandum are outdated due to TVPRA 2008, the rest of the memorandum is still in effect, including the parts relating to evidence. This guidance was confirmed in the March 24, 2009 memorandum on the new TVPRA 2008 provisions. In addition, USCIS has trained on this point in the web-based courses discussed above. More information will be available when the SIJ proposed regulation is published.

USCIS recognizes the need for outreach to state courts, judges, social workers, and attorneys who can all work to ensure that the juvenile court order is sufficiently detailed for purposes of USCIS's consent determination. USCIS is examining ways to reach out to state courts and judges through our partners at the Department of Justice. USCIS has already completed several in-person trainings for state and county juvenile attorneys and social workers, and remains open to the possibility of continuing this outreach.

3. Issue guidance, including agency regulations, regarding adequate evidence for SIJ filings, including general criteria for what triggers an interview for the SIJ petition, and make this information available on the USCIS website.

USCIS concurs with this recommendation and has already drafted several pieces of guidance. USCIS has written a proposed regulation relating to SIJ petitions and related adjustment of status applications. This proposed regulation has been cleared by the Office of Management and Budget and is awaiting signature by the Secretary.

When TVPRA 2008 became effective, USCIS immediately issued policy guidance on the changes to the SIJ Program and trained officers on the new statutory provisions. As stated above, the May 27, 2004 memorandum remains in effect as to those sections that are not changed by TVPRA 2008. USCIS is also working to update the Adjudicators Field Manual (AFM) to reflect the legislative changes.

In December 2010, the Settlement Agreement in the Perez-Olano SIJ litigation entered into force. Guidance and training were provided to USCIS personnel on processing requests to reopen SIJ petitions and related applications for adjustment of status filed under the Settlement Agreement. This information is available on the USCIS website and USCIS intranet.

USCIS has enhanced the information available to the public regarding the SIJ program by updating the USCIS webpage and the National Customer Service Center (NCSC) scripts. The updated webpage includes SIJ background information; eligibility requirements; inadmissibility grounds, exemptions, and waivers; documentary requirements; and processing information.

SIJ customer service scripts correspond with the new information posted on the USCIS webpage. Specific scripts for inquiries regarding the Settlement Agreement are in effect. The new set of scripts provide customer service representatives with indicators on when to transfer a call to Tier 2 where an Immigration Services Officer (ISO) can respond to more technical SIJ questions.

With respect to interviews, USCIS has discretion to determine whether one is needed for the purpose of adjudicating an SIJ petition (Form I-360). The determination not to interview may apply when an SIJ petitioner files a Form I-360 alone, without an accompanying application for adjustment of status (Form I-485). USCIS will consider factors such as the age of the juvenile, the sensitive nature of issues of abuse, neglect, or abandonment involved in the case, and whether USCIS expects to gather relevant evidence at an interview. In some instances, an officer may require information that can only be provided by the juvenile, such as when a petition is missing information or the juvenile has a criminal record. This will be discussed in the proposed regulation.

Per 8 CFR 245.6, all applicants for adjustment of status, regardless of the underlying status, are to be interviewed. However, USCIS does have discretion under the regulations to waive an adjustment of status interview. Generally, USCIS can waive an adjustment interview for children under 14 years of age, or on a case-by-case basis where USCIS determines an interview is not necessary. Such a determination relates to the specific circumstances of an SIJ petitioner and will also be discussed in the proposed regulation.

Appendix A: Technical Corrections

USCIS would like to clarify the following items in the report:

- Page 3 of the report states that the vast majority of SIJ petitioners enter the U.S. as unaccompanied minors. However, USCIS does not have a way to track how the petitioners for SIJ status entered the U.S. Data does not exist to show whether the majority of SIJ petitioners are unaccompanied minors or whether they come to the U.S. in the care of a parent or other family member. The data from Customs and Border Protection (CBP) cited in footnote 11 refers to apprehensions of unaccompanied minors generally, and is not reflective of those that ultimately file for SIJ status.
- Page 4 of the report states that the officer adjudicates 30 SIJ cases per week and has space in her schedule for emergency interview appointments. USCIS would like to provide clarification. The NYC Field Office maintains 30 SIJ interview slots per month rather than per week. The other information in the paragraph is accurate.
- Page 5 of the report states that TVPRA 2008 permits USCIS to seek additional evidence relating to the basis for a juvenile dependency order only in limited circumstances. It goes on to explain that USCIS can only request evidence if the order fails to say that the order is based on abuse, abandonment or neglect, or in circumstances where the state law basis is similar to abuse, abandonment or neglect but is termed something else, such as “parental failure.” However, TVPRA 2008 is totally silent as to evidence and state court orders. In addition, the report states that USCIS is prohibited from *de novo* review, and footnote 15 cites the INA, the regulations, and policy guidance. However, none of those sources actually prohibits *de novo* review. As explained above, USCIS is not engaging in a *de novo* review, but is seeking evidence relating to the factual basis of the juvenile court findings in order to determine whether exercising discretion to grant consent would be proper.