



June 25, 2015

PM-602-0117

## Policy Memorandum

SUBJECT: Updated Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement

### Purpose

The purpose of this policy memorandum (PM) is to update the guidance previously provided to U.S. Citizenship and Immigration Services (USCIS) personnel in PM-602-0034: Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement, in light of the recent agreement entered into between USCIS and the plaintiffs in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal.), which took effect on March 27, 2015.

### Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

### Authorities

- Immigration and Nationality Act (INA) section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J)
- INA § 245(h), 8 U.S.C. § 1255(h), as amended by Trafficking Victims Protection Reauthorization Act of 2008 (Trafficking Victims Protection Reauthorization Act of 2008 [TVPRA 2008]), Public Law No. 110-457, 122 Stat. 5044 (2008), section 235(d); 8 CFR 204.11, 205.1(a)(3)(iv) and 245.1(e)(3)
- Memorandum, "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions," HQOPS 70/8.5, March 24, 2009
- *Perez-Olano, et al. v. Holder, et al.* Case No. CV 05-3604 (C.D. Cal. 2005)

### Background

Certain juveniles who have been abused, abandoned, or neglected may request a special immigrant classification known as Special Immigrant Juvenile (SIJ) status in order to remain legally in the United States. Aliens granted SIJ classification are immediately eligible to apply for lawful permanent resident status if a visa is available in the EB-4 category.

*Perez-Olano v. Holder* is a class-action lawsuit filed on behalf of juvenile aliens who may have been eligible for SIJ classification or SIJ-based adjustment of status because they were abused,

abandoned, or neglected. The underlying *Perez-Olano* Settlement Agreement (“Settlement Agreement”) took effect December 14, 2010, and expires December 13, 2016. The underlying Settlement Agreement includes age-related protections and clarifies the circumstances under which petitioners in the custody of the U.S. Department of Health and Human Services (HHS) must obtain HHS specific consent. Pursuant to the underlying Settlement Agreement, USCIS will not deny or revoke an SIJ petition solely because of any one of the following reasons:

- The applicant, who was under 21 years of age at the time of filing, turned 21 years of age after filing the SIJ petition, but before adjudication;
- The applicant’s juvenile court order, which was valid and in effect at the time of filing the SIJ petition, was terminated based on age *after* filing the SIJ petition but before adjudication; or
- The applicant did not receive a grant of HHS specific consent before going before the juvenile court and the court order did not alter the applicant’s HHS custody status or placement.

On July 21, 2014, class members filed a motion for class-wide enforcement of the Settlement Agreement. USCIS and plaintiffs entered into a Stipulation settling the plaintiffs’ motion for class-wide enforcement of the Settlement Agreement. The Stipulation relates to cases in which petitions for SIJ classification or SIJ-based applications for adjustment of status were denied because the applicant’s court dependency order had expired at the time of filing. Under the Stipulation, USCIS will not deny or revoke an SIJ petition if the applicant’s valid juvenile court order was terminated based solely on age *prior* to filing the Form I-360. Previously, USCIS only applied this protection if the juvenile court order was terminated based on age *after* filing the Form I-360, but prior to adjudication. The Stipulation took effect on March 27, 2015, and expires on June 15, 2018.

The underlying Settlement Agreement defines class members as all juveniles, “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 based upon their alleged SIJ eligibility.” Settlement Agreement at ¶ 3. Additionally, the Settlement Agreement explains that juveniles whose applications for SIJ classification or SIJ-based adjustment of status were denied or revoked since May 13, 2005, may be eligible to file a motion to reopen. Juveniles are those who are “eligible to apply for a dependency order or SIJ predicate order in a State court as determined by the law of the State in which the alien is domiciled.” Settlement Agreement at ¶ 8. The class-specific standard for eligibility to file motions to reopen, particularly with regard to timeliness, is distinct from the general standards for eligibility to file motions to reopen under 8 CFR 103.5.

The Stipulation allows class members whose applications for SIJ classification or SIJ-based adjustment of status were denied, revoked, or terminated on or after December 15, 2010, to request that USCIS reopen their petitions and/or applications without an additional fee if the denial was based, in whole or in part, on the ground that class members’ valid dependency orders had been terminated based, in whole or in part, on age prior to filing the Form I-360 with USCIS. Stipulation at ¶¶ 2, 5. The standard for eligibility to file motions to reopen pursuant to the

Stipulation, particularly with regard to timeliness, is likewise distinct from the general standards for eligibility to file motions to reopen under 8 CFR 103.5.

## Policy

In accordance with the Settlement Agreement and Stipulation, USCIS will not deny, revoke, or terminate a class member's application for SIJ classification or SIJ-based adjustment of status if, at the time of filing an application for SIJ classification (Form I-360):

1. The class member is or was under 21 years of age, unmarried, and otherwise eligible; and
2. The class member either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.

In addition, to comply with the Settlement Agreement and Stipulation, this guidance applies to all SIJ petitions and SIJ-based applications for adjustment of status that are filed while the Settlement Agreement and Stipulation are in effect.

In other words, an applicant who is otherwise eligible will remain eligible even if he or she:

- Turns 21 years of age after filing the SIJ petition (Form I-360) but prior to the USCIS decision on the SIJ petition, and/or
- Ages out of the juvenile court's jurisdiction prior to filing the SIJ petition (Form I-360).

## Filing Instructions for Class Members Filing Motions to Reopen under the Settlement Agreement

### *Filing Requirements*

Class members filing a motion to reopen under the Settlement Agreement will file Form I-290B, Notice of Appeal or Motion, with the appropriate fee or with the Form I-912, Request for Fee Waiver, if desired, at: U.S. Postal Service (USPS) or Courier/Express (non-USPS) Deliveries.

<u>USPS</u> <b>USCIS</b> <b>P.O. Box 5510</b> <b>Chicago, IL 60680-5510</b>	<u>non-USPS</u> <b>USCIS</b> <b>Attn: Perez-Olano Settlement Agreement or "POSA"</b> <b>131 S. Dearborn – 3<sup>rd</sup> Floor</b> <b>Chicago, IL 60603-5517</b>
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When filing a Form I-290B, class members are instructed to:

- Check "box F" in "Part 2," Information about the Appeal or Motion; and
- Write "Perez-Olano Settlement Agreement" or "POSA" in Part 3, Basis for the Appeal or Motion.

These specific Settlement Agreement filing instructions are posted on the landing page of the Form I-290B at [www.uscis.gov](http://www.uscis.gov).

The Lockbox will forward the Forms I-290B to the National Benefits Center (NBC) for standard pre-processing. The NBC will then route the Form I-290B and the underlying Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and, if applicable, the Form I-485, Application to Register Permanent Residence or Adjust Status, to the appropriate field office for adjudication, along with an appropriate cover sheet identifying it as a Settlement Agreement case. It is the responsibility of the NBC to forward the A-file to the proper field office if the juvenile has moved jurisdictions.

### *Adjudication*

The field office that denied the underlying Form I-360 and, if applicable, the Form I-485, has jurisdiction over each motion to reopen filed under the Settlement Agreement, as stated in 8 CFR 103.5(a)(1)(ii). If the applicant has moved to the geographical jurisdiction of a different field office, that field office assumes jurisdiction.

USCIS will grant the motion to reopen if the case meets all three prongs of the following test:

1. The applicant filed a complete Form I-360 for SIJ classification before his or her 21<sup>st</sup> birthday.
2. At the time of filing the Form I-360, the applicant was the subject of a valid order(s) issued by a state juvenile court within the United States that:
  - Made a finding of abuse, abandonment, or neglect, or a similar basis found under state law (see Juvenile Court Orders below for more information).
  - Determined that it would not be in the applicant's best interest to be returned to the applicant's or parent's previous country of nationality or country of last habitual residence.
  - Did one of the following:
    - Declared the applicant dependent on the court;
    - Legally committed the applicant to or placed the applicant under the custody of a state agency or department; or
    - Placed the applicant under the custody of an individual or entity.
3. The Form I-360 was denied or revoked on or after May 13, 2005, solely because of one of the three following reasons:

- The applicant, who was under 21 years of age at the time of filing, turned 21 years of age after filing the Form I-360 but before adjudication of the Form I-360 or Form I-485 (age-out);
- The applicant's dependency order as defined by ¶ 5 of the Settlement Agreement, which was valid and in effect at the time of filing the Form I-360, was terminated based on age after filing the Form I-360 but before adjudication of the Form I-360 or Form I-485 (dependency age-out); or
- The applicant did not receive a grant of specific consent before invoking the jurisdiction of the state juvenile court and the juvenile court order did not determine or alter the applicant's custody status or placement. As a reminder, specific consent from HHS (and, before December 23, 2008, U.S. Immigration and Customs Enforcement) is needed only if the applicant was in Federal custody at the time the juvenile court issued the order and the juvenile court order altered or determined custody status or placement. (Such an order is more than a restatement of current placement; USCIS only requires evidence of HHS consent if the order changes the applicant's placement.)

If the motion to reopen is granted, USCIS will adjudicate the Form I-360 in accordance with INA § 101(a)(27)(J), as amended by the TVPRA 2008, and in accordance with the Settlement Agreement.

Denials of a motion to reopen and of a reopened Form I-360 can be appealed to the Administrative Appeals Office. 8 CFR 103.5(a)(6).

### **Filing Instructions for Certain Class Members Requesting Reopening Under the Stipulation**

#### *Filing Requirements*

Class members, or counsel acting on their behalf, have until June 15, 2018, to advise USCIS by written correspondence that they request their cases be reopened in accordance with the Stipulation. Class members or their counsel must send the request via email or mail to USCIS at:

- [SIJ.ClassAction@uscis.dhs.gov](mailto:SIJ.ClassAction@uscis.dhs.gov), or
- USCIS Field Operations Directorate  
Attn: Perez-Olano Settlement  
111 Massachusetts Avenue, NW  
Suite 2000, MS: 2030  
Washington, DC 20529

Class members' motions to reopen filed pursuant to the Stipulation must be emailed or mailed (and post-marked) on or before June 15, 2018. No fee is required.

The request must contain the following information:

- The applicant's name.
- The applicant's address.
- A Change of Address, [Form AR-11](#), if applicable.
- USCIS alien "A" number or file number (if known):
  - Date of birth, place of birth, and any other personal identity information (if USCIS "A" number or file number is not known).
- Statement saying, "Please reopen my SIJ case based on the *Perez-Olano* Settlement Agreement."
- A Notice of Entry of Appearance as Attorney or Accredited Representative ([Form G-28](#)), if applicable.

#### *Adjudication*

USCIS will reopen if the case meets the following criteria:

- The SIJ petition (Form I-360) or SIJ-based application for adjustment of status (Form I-485) was denied, revoked, or terminated on or after December 15, 2010, on the ground, in whole or in part, that the class member's valid dependency order had been terminated, in whole or in part, based on age prior to filing Form I-360 with USCIS; and
- The class member was under 21 years of age and unmarried at the time the petition for SIJ status (Form I-360) was filed.

Upon reopening, USCIS will approve those petitions for SIJ classification or applications for SIJ-based adjustment of status that are approvable on the basis of the existing administrative record. If a decision on a reopened petition for SIJ status or SIJ-based adjustment of status application cannot be made on the existing record, USCIS will issue a request for evidence or a notice of intent to deny. The applicant shall thereafter be permitted 180 days to provide USCIS such additional evidence or response to the notice of intent to deny.

In cases that qualify for reopening, USCIS will re-adjudicate applications for SIJ classification and SIJ-based adjustment of status for class members under the Stipulation, without additional fee, in accordance with the Stipulation as discussed herein, and all applicable laws and regulations. Except for criminal activity that would disqualify an applicant for adjustment of status, USCIS will apply the facts, law, and regulations in existence at the time USCIS initially denied, revoked, or terminated the class member's petition for SIJ classification. USCIS will make good faith efforts to promptly re-adjudicate such reopened petitions for SIJ classification over later-filed petitions for SIJ classification or SIJ-based adjustment of status applications.

### **Juvenile Court Orders**

Before enactment of the TVPRA 2008, INA § 101(a)(27)(J) required SIJ applicants to have been deemed eligible by a juvenile court for long-term foster care due to abuse, neglect, or abandonment. USCIS will not deny or revoke an SIJ petition or SIJ-based adjustment application on account of ineligibility for long-term foster care, as this is no longer a statutory requirement. But where a class member files a motion to reopen and the juvenile court order submitted in support of the original Form I-360 contains the outdated statutory language of eligibility for long-term foster care, adjudicators do not need to request an updated juvenile court order. Some motions to reopen will be from applicants who, due to their age, will no longer be able to invoke the jurisdiction of the juvenile court to obtain an updated order. In those cases, adjudicators can rely on the original juvenile court order to establish the current statutory requirement of non-viability of reunification with one or both parents due to abuse, neglect, or abandonment, or a similar basis found under State law.

### **Statistics**

Under the Settlement Agreement, USCIS must compile, and make available to the public via Internet posting, annual reports disclosing the number of SIJ-based Forms I-360 received, approved, and denied. The number should include the filing and adjudication of Forms I-360 under the Settlement Agreement, as well as regularly filed SIJ-based Forms I-360. Therefore, USCIS must ensure that all decisions are properly entered into the Interim Case Management System.

### **Implementation**

This PM is effective as of June 25, 2015. Any USCIS personnel handling these Settlement Agreement and Stipulation cases will apply the guidance in this PM.

### **Use**

This PM is intended solely for the guidance of USCIS personnel in performing their duties under the Settlement Agreement and Stipulation as they relate to adjudication of Forms I-290B, I-360, and I-485. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### **Contact Information**

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Headquarters Field Operations Directorate, Special Adjudications Branch, at [SIJ.ClassAction@uscis.dhs.gov](mailto:SIJ.ClassAction@uscis.dhs.gov).