

THE IMMIGRATION AND NATIONALITY ACT § 101 (8 U.S.C. § 1101)  
TITLE I GENERAL

(a) As used in this Act – Definitions

[INA § 101(a)(27)(J)]

(J) an immigrant who is present in the United States –

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that –

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

TITLE 8 – ALIENS AND NATIONALITY  
CHAPTER I – DEPARTMENT OF HOMELAND SECURITY (IMMIGRATION AND  
NATURALIZATION)  
SUBCHAPTER B – IMMIGRATION REGULATIONS  
PART 204 – IMMIGRANT PETITIONS  
SUBPART A – IMMIGRANT VISA PETITIONS

8 CFR 204.11

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) Definitions.

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) Petition for special immigrant juvenile. An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) Who may file. The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) Where to file. The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

(c) Eligibility. An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

(d) Initial documents which must be submitted in support of the petition.

(1) Documentary evidence of the alien's age, 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 establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) Decision. The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

**HISTORY:**

[56 FR 23208, May 21, 1991; redesignated at 58 FR 42849, Aug. 12, 1993; 58 FR 42850, Aug. 12, 1993]

[NOTE: These regulations have not been amended to reflect the 1997 or 2008 SIJS statutory changes.]



3 of 21 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED  
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\*\*\* This document is current for urgency legislation through Chapter 194 of the 2015 Session. \*\*\*

CODE OF CIVIL PROCEDURE  
Part 1. Of Courts of Justice  
Title 1. Organization and Jurisdiction  
Chapter 7. Special Immigrant Juvenile Findings

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Code Civ Proc § 155 (2015)*

**§ 155. Jurisdiction of superior court to make judicial determinations regarding custody and care of children within federal Immigration and Nationality Act; Order of special immigrant juvenile status**

(a) A superior court has jurisdiction under California law to make judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act (*8 U.S.C. Sec. 1101(a)(27)(J)* and *8 C.F.R. Sec. 204.11*), which includes, but is not limited to, the juvenile, probate, and family court divisions of the superior court. These courts may make the findings necessary to enable a child to petition the United States Citizenship and Immigration Service for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

(b)

(1) If an order is requested from the superior court making the necessary findings regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those findings, which may consist of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order, which shall include all of the following findings:

(A) The child was either of the following:

(i) Declared a dependent of the court.

(ii) Legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was ordered.

(B) That reunification of the child with one or both of the child's parents was determined not to be viable because

of abuse, neglect, abandonment, or a similar basis pursuant to California law. The court shall indicate the date on which reunification was determined not to be viable.

(C) That it is not in the best interest of the child to be returned to the child's, or his or her parent's, previous country of nationality or country of last habitual residence.

(2) If requested by a party, the court may make additional findings that are supported by evidence.

(c) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, information regarding the child's immigration status that is not otherwise protected by state confidentiality laws shall remain confidential and shall be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child's counsel, and the child's guardian.

(d) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, records of the proceedings that are not otherwise protected by state confidentiality laws may be sealed using the procedure set forth in *California Rules of Court 2.550* and *2.551*.

(e) The Judicial Council shall adopt any rules and forms needed to implement this section.

#### **HISTORY:**

Added Stats 2014 ch 685 § 1 (SB 873), effective September 27, 2014.

#### **NOTES:**

##### **Note**

Stats 2014 ch 685 provides:

SEC. 16. The Legislature finds and declares that Section 1 of this act, which adds Chapter 7 (commencing with Section 155) to Part 1 of Title 1 to the Code of Civil Procedure, and Section 13 of this act, which adds Chapter 5.6 (commencing with Section 13300) to Part 3 of Division 9 of the Welfare and Institutions Code, impose a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of *Section 3 of Article I of the California Constitution*. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) In order to protect the privacy interests of those minors who are seeking special immigrant juvenile status, it is essential to maintain the confidentiality of the records described in Section 1 of this act.

(b) In order to protect the privacy interests of unaccompanied undocumented minors and to protect records covered by the attorney client privilege, it is essential to maintain the confidentiality of the records described in Section 13 of this act.

#### **Hierarchy Notes:**

Code Civ Proc Note

Pt. 1, Tit. 1 Note



HQOPS 70/8.5

## Memorandum

TO: Field Leadership

FROM: Donald Neufeld /s/  
Acting Associate Director  
Domestic Operations

Pearl Chang /s/  
Acting Chief  
Office of Policy & Strategy

DATE: March 24, 2009

SUBJECT: Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant  
Juvenile Status Provisions

### 1. Purpose

This memorandum will inform immigration service officers working Special Immigrant Juvenile (SIJ) petitions about new legislation affecting adjudication of petitions filed for SIJ status.

### 2. Background

On December 23, 2008, the President signed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA 2008 amends the eligibility requirements for SIJ status at section 101(a)(27)(J) of the Immigration and Nationality Act (INA), and accompanying adjustment of status eligibility requirements at section 245(h) of the INA. Most SIJ provisions of the TVPRA 2008 take effect March 23, 2009, although some provisions took effect on December 23, 2008, the date of enactment of the TVPRA 2008.

### 3. Field Guidance

#### *Eligibility for Special Immigrant Juvenile Status*

The TVPRA 2008 amended the definition of a “Special Immigrant Juvenile” at section 101(a)(27)(J) of the INA in two ways. First, it expanded the group of aliens eligible for SIJ status. An eligible SIJ alien now includes an alien:

- who has been declared dependent on a juvenile court;
- whom a juvenile court has legally committed to, or placed under the custody of, an agency or department of a State; or
- who has been placed under the custody of *an individual or entity appointed by a State or juvenile court.*

Accordingly, petitions that include juvenile court orders legally committing a juvenile to or placing a juvenile under the custody of an individual or entity appointed by a juvenile court are now eligible. For example, a petition filed by an alien on whose behalf a juvenile court appointed a guardian now may be eligible. In addition, section 235(d)(5) of the TVPRA 2008 specifies that, if a state or an individual appointed by the state is acting *in loco parentis*, such a state or individual is not considered a legal guardian for purposes of SIJ eligibility.

The second modification made by the TVPRA 2008 to the definition of special immigrant juvenile concerns the findings a juvenile court must make in order for a juvenile court order to serve as the basis for a grant of SIJ status. Previously, the juvenile court needed to deem a juvenile eligible for long term foster care due to abuse, neglect or abandonment. Under the TVPRA 2008 modifications, the juvenile court must find that the juvenile’s *reunification with one or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.* In short, the TVPRA 2008 removed the need for a juvenile court to deem a juvenile eligible for long-term foster care and replaced it with a requirement that the juvenile court find reunification with one or both parents not viable. If a juvenile court order includes a finding that reunification with one or both parents is not viable due to *a similar basis found under State law*, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment. Officers should ensure that juvenile court orders submitted as evidence with an SIJ petition filed on or after March 23, 2009, include this new language.

A petitioner is still required to demonstrate that he or she has been the subject of a determination in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.

### ***Age Requirements***

Section 235(d)(6) of the TVPRA 2008 provides age-out protection to SIJ petitioners. As of December 23, 2008, if an SIJ petitioner was a “child” on the date on which an SIJ petition was properly filed, U.S. Citizenship and Immigration Services (USCIS) cannot deny SIJ status to anyone, regardless of the petitioner’s age at the time of adjudication. *Officers must now consider the petitioner’s age at the time of filing to determine whether the petitioner has met the age requirement.* Officers must not deny or revoke SIJ status based on age if the alien was a child on

the date the SIJ petition was properly filed if it was filed on or after December 23, 2008, or if it was pending as of December 23, 2008. USCIS interprets the use of the term “child” in section 235(d)(6) of the TVPRA 2008 to refer to the definition of child found at section 101(b)(1) of the INA, which states that a child is an unmarried person under 21 years of age. The SIJ definition found at section 101(a)(27)(J) of the INA does not use the term “child,” but USCIS had previously incorporated the child definition at section 101(b)(1) of the INA into the regulation governing SIJ petitions.

### ***Consent***

The TVPRA 2008 also significantly modifies the two types of consent required for SIJ petitions.

#### Consent to the grant of SIJ status (previously express consent)

The TVPRA 2008 simplified the “express consent” requirement for an SIJ petition. *The Secretary of Homeland Security (Secretary) must consent to the grant of special immigrant juvenile status.* This consent is no longer termed “express consent” and is no longer consent to the dependency order serving as a precondition to a grant of SIJ status.

The consent determination by the Secretary, through the USCIS District Director, is an acknowledgement that the request for SIJ classification is bona fide. This means that the SIJ benefit was not “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” See H.R. Rep. No. 105-405, at 130 (1997). An approval of an SIJ petition itself shall be evidence of the Secretary’s consent.

#### Specific consent

The TVPRA 2008 completely altered the “specific consent” function for those juveniles in federal custody. The TVPRA 2008 vests this function with the Secretary of Health and Human Services (HHS) rather than the Secretary of the Department of Homeland Security as previously delegated to Immigration and Customs Enforcement (ICE). In addition, Congress simplified the language to refer simply to “custody,” not actual or constructive custody, as was previously delineated. However, the requirement remains that an SIJ petitioner need only seek specific consent if the SIJ petitioner seeks a juvenile court order determining or altering the SIJ petitioner’s custody status or placement. If an SIJ petitioner seeks to obtain or obtains a juvenile court order that makes no findings as to the SIJ petitioner’s custody status or placement, the SIJ petitioner is not required to have sought specific consent from HHS. Therefore, on or after March 23, 2009, *officers must ensure that juveniles in the custody of HHS obtained specific consent from HHS to juvenile court jurisdiction where the juvenile court order determines or alters the juvenile’s custody status or placement.* USCIS will provide HHS guidance regarding adjudications of specific consent as soon as it is available.

Due to the complex nature and changing requirements of specific consent determinations, USCIS Headquarters (HQ) is temporarily assisting in making the determination on specific consent

requirements. As outlined in the February 20, 2009 guidance email, Field Officers are instructed to forward certain documents to HQ for those SIJ petitions that may involve specific consent that are filed prior to March 23, 2009. HQ will notify the Field Office of the decision on specific consent. The Field Office will then complete adjudication of the petition. This temporary guidance providing HQ assistance with specific consent determinations will remain in effect until further notice.

### ***Expeditious Adjudication***

Section 235(d)(2) of the TVPRA 2008 *requires USCIS to adjudicate SIJ petitions within 180 days of filing.* Field Offices need to be particularly aware of this new requirement and take measures locally to ensure timely adjudication. Officers are reminded that under 8 CFR 245.6 an interview may be waived for SIJ petitioners under 14 years of age, or when it is determined that an interview is unnecessary. Eliminating unnecessary interviewing of SIJ petitioners may help in expeditiously adjudicating petitions. Necessary interviews should be scheduled as soon as possible. During an interview, an officer should focus on eligibility for adjustment of status and should avoid questioning a child about the details of the abuse, abandonment or neglect suffered, as those matters were handled by the juvenile court, applying state law. Under no circumstances can an SIJ petitioner, at any stage of the SIJ process, be required to contact the individual (or family members of the individual) who allegedly abused, abandoned or neglected the juvenile. This provision was added by the Violence Against Women Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006) and is incorporated at section 287(h) of the INA. Officers must ensure proper completion of background checks, including biometric information clearances and name-checks.

### ***Adjustment of Status for Special Immigrant Juveniles***

The TVPRA 2008 amends the adjustment of status provisions for those with SIJ classification at section 245(h) of the INA, to include four new exemptions. Approved SIJ petitioners are now exempted from seven inadmissibility grounds of the INA:

- 212(a)(4) (public charge);
- 212(a)(5)(A) (labor certification);
- 212(a)(6)(A) (*aliens present without inspection*);
- 212(a)(6)(C) (*misrepresentation*);
- 212(a)(6)(D) (*stowaways*);
- 212(a)(7)(A) (documentation requirements); and
- 212(a)(9)(B) (*aliens unlawfully present*).

On or after March 23, 2009, none of the above listed grounds of inadmissibility shall apply to SIJ adjustment of status applicants.

Officers are reminded that this list of exemptions is in addition to the waivers available for most other grounds of inadmissibility for humanitarian purposes, family unity, or otherwise being in the public interest. The only unwaivable grounds of inadmissibility for SIJ petitioners are those listed at INA 212(a)(2)(A)-(C) (conviction of certain crimes, multiple criminal convictions, and

controlled substance trafficking (except for a single instance of simple possession of 30 grams or less of marijuana)), and 212(a)(3)(A)-(C), and (E) (security and related grounds, terrorist activities, foreign policy, and participants in Nazi persecution, genocide, torture or extrajudicial killing).

#### **4. Use**

This guidance is created solely for the purpose of USCIS personnel in performing their duties relative to adjudication of applications. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantial or procedural, enforceable at law by any individual or any other party in removal proceedings, in litigation with the United States, or in any other or form or matter.

#### **5. Contact Information**

This guidance is effective immediately. Please direct any questions concerning these changes through appropriate supervisory channels to Rosemary Hartmann, Office of Policy and Strategy or Tina Lauver, Office of Field Operations.

Distribution List:      Regional Directors  
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**NON-DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
BALTIMORE, MARYLAND**

In the Matter of

E [REDACTED]  
W [REDACTED]

In Removal Proceedings

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A [REDACTED]  
A [REDACTED]

Immigration Judge Phillip T. Williams

Next Hearing: May 6 [REDACTED]

LINE

NOW COMES the Department of Homeland Security (hereinafter "DHS"), by and through its undersigned counsel, and files this line to inform the court that DHS will not object to continuances for the respondents to seek relief as abandoned children.

The undersigned has consulted with counsel for USCIS who has confirmed that a child who enters the United States illegally to join his/her parent in the United States may be considered "abandoned" for the purposes of an I-360. However, a child who enters the United States illegally to join both parents may not be considered abandoned.

DHS objects to administrative closure in these matters because USCIS typically adjudicates I-360s efficiently. Administrative closure is therefore unnecessary and will only create more administrative work for DHS's Office of Chief Counsel. Should an I-360 be granted, DHS will terminate proceedings provided that all other conditions of the August 20, 2010 Morton memo are met.

Respectfully submitted,



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FEDERAL REGISTER  
VOL. 58, No. 154  
Rules and Regulations  
DEPARTMENT OF JUSTICE (DOJ)  
Immigration and Naturalization Service  
8 CFR Parts 101, 103, 204, 205, and 245  
[INS No. 1424-92]

Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status

58 FR 42843

DATE: Thursday, August 12, 1993

ACTION: Final rule.

EFFECTIVE DATE: August 12, 1993.

\* \* \* \* \*

#### Best Interest of the Child

The Service received two written comments and several telephonic inquiries indicating that some confusion existed regarding the type of administrative proceeding in which this determination may be made. Two commenters expressed concern about the Service's ability to make this determination in deportation proceedings or other administrative immigration hearings. Another commenter urged the Service to reduce possible abuse of this benefit by narrowly defining the elements which could be considered in determining the best interest of the alien child. This commenter recommended that the Service rewrite the eligibility criteria to exclude children who were brought or sent to the United States to take advantage of the special immigrant juvenile provision. This commenter also recommended that juvenile courts be required to request and obtain a report from the Service prior to declaring an alien child dependent upon the court.

The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court. Such administrative proceedings would most commonly be conducted by state or local social service agency officials. The Service does not intend to make determinations in the course of deportation proceedings regarding the "best interest" of a child for the purpose of establishing eligibility for special immigrant juvenile classification. The rule does not contain any restrictions on factors which may be considered in determining the best interest of the child. The Service believes that it would be both impractical and inappropriate for the Service to routinely readjudicate judicial or social service agency administrative determinations as to the juvenile's best interest. Abuse of this provision is of concern both to Congress, as shown by the statutory restriction on the grant of future immigration benefits for the juvenile's parent(s) based upon the relationship, and to the Service. However, the Service believes that a child in need of the care and protection of the juvenile court should not be precluded from obtaining special immigrant status because of the actions of an irresponsible parent or other adult. The Service also believes it would be impractical and inappropriate to impose consultation requirements upon the juvenile courts or the social service system, especially requirements which could possibly delay action urgently needed to ensure proper care for dependent children.

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