



AN OVERVIEW OF USCIS'S NEW SIJS REGULATIONS

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I. Introduction

Special immigrant juvenile status (SIJS) provides a way for certain young people who have been abandoned, abused, or neglected by a parent to obtain immigration status. This practice advisory reviews the history of the federal regulations implementing the SIJS statute and then provides an overview of the new SIJS regulations, published in the spring of 2022. In the overview, the advisory highlights notable policy changes implemented through the new regulations.

II. History of SIJS Regulations

Congress created SIJS in 1990 to provide a path to lawful permanent residence for certain young people who had been abandoned, abused, or neglected by a parent.¹ In its original iteration, it benefitted only young people in long-term foster care.² The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, enacted on December 23, 2008, clarified and expanded the definition of a special immigrant juvenile (SIJ).³ Under the current law, unmarried people under the age of twenty-one: 1) who are subject to certain types of juvenile court proceedings, 2) who cannot reunify with at least one parent due to abuse, neglect, or abandonment, and 3) whose return to their country of origin is not in their best interest, may be able to obtain SIJS and, based on that, apply for lawful permanent residency.⁴ To demonstrate eligibility, the young person must obtain a juvenile court⁵ order(s), often referred to as the “predicate order” or the “SIJS findings order,” setting out the three eligibility requirements. The juvenile court order must be submitted to U.S. Citizenship & Immigration Services (USCIS) with the petition for SIJS.

¹ Section 101(a)(27)(J) of the Immigration and Nationality Act (INA) was added by section 153 of the Immigration Act of 1990 and amended most recently by the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

² 6 U.S. Citizenship and Immigration Services Policy Manual (USCIS-PM) J.1(A).

³ See TVPRA § 235(d)(1)–(6).

⁴ INA § 101(a)(27)(J).

⁵ The regulations define juvenile court broadly as “a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.” 8 CFR § 204.11(a).

Despite broadening the eligibility criteria for SIJS in 2008, the government did not update the federal regulations implementing the statute, which still referenced provisions of the statute no longer in effect, causing considerable confusion. In 2011, USCIS—the agency that adjudicates petitions for SIJS—proposed updated regulations and received public comment⁶ but took no further regulatory action.⁷ In the interim, USCIS issued SIJS-related portions of its Policy Manual on October 26, 2016.⁸ This guidance, contained in Volumes 6 and 7 of the USCIS Policy Manual, was more comprehensive than any prior guidance that USCIS issued on SIJS, and largely implemented the stalled proposed regulations. In 2019, USCIS reopened the public comment period for the proposed regulations, and on March 8, 2022, USCIS at long last published final regulations on SIJS.⁹ The final regulations differ from the proposed rule in significant ways, but largely track the guidance that had been contained in the Policy Manual, with two notable exceptions. What follows is an overview of the new, final SIJS regulations, which went into effect on April 7, 2022.

III. Overview of New SIJS Regulations

A. Summary of 8 CFR § 204.11 (Governing SIJS Petitions)

Section	Purpose	Notable Changes/Summary of Provision
(a)	Defines various terms used in the statute and regulations.	Defines “judicial determination,” provides an updated definition of “juvenile court,” etc.
(b)	Outlines the eligibility requirements for SIJS.	<p>Notable Change—8 CFR § 204.11(b)(2): SIJS applicant now required to remain unmarried <i>only</i> through the adjudication of the SIJS petition, rather than through the adjudication of the subsequent application for adjustment of status.</p> <p>Example: Shana secured SIJS findings from the juvenile court in 2021. She then applied for SIJS, and USCIS approved her petition in April 2022. Since there is a visa backlog for SIJs, she will not be able to apply for adjustment of status for years. She got married in August 2022. Because of the new SIJS regulations, Shana’s marriage that occurred after her petition for SIJS was approved will no longer jeopardize her ability to adjust status based on SIJS in the future.</p>
(c)	Specifies the judicial determinations that the juvenile court order must contain, including: (1) the dependency or	<p>Notable Change—8 CFR § 204.11(c)(3)(ii): The juvenile court order must be in effect on the date the applicant files the SIJS petition and continue <i>only</i> through USCIS’s adjudication of the SIJS petition, rather than through the adjudication of the subsequent application for adjustment of status.¹⁰</p>

⁶ 76 Fed. Reg. 54,978 (Sept. 6, 2011).

⁷ 84 Fed. Reg. 55,250 (Oct. 16, 2019).

⁸ 6 USCIS-PM J; 7 USCIS-PM F.7.

⁹ 87 Fed. Reg. 13066 (Mar. 8, 2022).

¹⁰ This continuing jurisdiction requirement does not bar relief when juvenile court jurisdiction terminated before the SIJS petition is adjudicated solely because: 1) the petitioner was adopted, placed in a permanent guardianship, or

Section	Purpose	Notable Changes/Summary of Provision
	<p>custody determination, (2) the determination that the young person cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under State law, and (3) the best interest determination.</p>	<p>Example: The juvenile dependency court made SIJS findings for Marc in 2021. With the help of a legal services provider, he then applied for SIJS with USCIS. USCIS approved his petition in June 2022. Marc has an upcoming hearing in juvenile court during which the judge will want to terminate jurisdiction because he is now 19 years old. Because the new regulations only require that juvenile court jurisdiction continue through the time that the petition for SIJS is adjudicated, Marc’s immigration case will not be negatively impacted by the impending termination of juvenile court jurisdiction.</p> <p>Practice Tip: The juvenile court order should include the “factual basis” for each of the three SIJS findings/judicial determinations as required by 8 CFR § 204.11(d) and should also cite to state law for each of the determinations. For additional guidance about what to include in the juvenile court order, see 6 USCIS-PM J.3(A)(1).</p>
(d)	<p>Sets forth the evidentiary requirements for an SIJS petition.</p>	<p>Evidentiary requirements are:</p> <ul style="list-style-type: none"> • The Form I-360; • Evidence of age; • Juvenile court order;¹¹ and • Evidence necessary for USCIS to consent (contained in the juvenile court order itself and any supplemental evidence needed): 1) the factual basis for the court’s judicial determinations regarding dependency or custody, reunification, and best interest, and 2) the relief from parental abuse, neglect, or abandonment provided by the juvenile court (e.g. the custodial placement or court dependency to provide services or other protective relief). • If the applicant is or was in the custody of the U.S. Department of Health & Human Services (HHS), and while in the custody of HHS they obtained a juvenile court order that altered their custody or placement status, the applicant must provide documentation of specific consent from HHS with the petition. (Note that specific consent is <i>not</i> needed in most cases.)
(e)	<p>Prohibits certain types of USCIS action.</p>	<p>Prohibits USCIS from taking any action that would require the applicant to contact the person who battered, abused, neglected, or abandoned them (or the family member of such person).¹²</p>

another child welfare permanency goal was reached, or 2) the petitioner aged out of juvenile court jurisdiction. The new regulations added the exception for when “another child welfare permanency goal was reached.” 8 CFR § 204.11(c)(3)(ii)(A).

¹¹ If the juvenile court indicates that parental reunification was not viable due to a basis other than abuse, neglect, or abandonment, the applicant must include evidence of how that basis is legally similar to abuse, neglect, or abandonment under state law.

¹² This provision comes from section 287(h) of the INA.

Section	Purpose	Notable Changes/Summary of Provision
(f)	Discusses USCIS interviews.	USCIS <i>may</i> interview an applicant for SIJS, and if an interview is conducted, the applicant may bring a trusted adult to the interview. While USCIS may limit the number of people at the interview, the applicant's attorney or accredited representative can be present. ¹³
(g)	Sets out the timeline for adjudication.	Generally, USCIS will make a decision on a petition for SIJS within 180 days of receipt of a properly filed petition, ¹⁴ except that the time period will be reset or suspended as described in 8 CFR §103.2(b)(10)(i). ¹⁵
(h)	Discusses how USCIS will notify the applicant of its decision on the petition.	If USCIS denies the petition, it will state both the reasons for the denial and the right to appeal the decision.
(i)	Discusses the statutory bar to parents receiving status through their SIJ child.	The natural or prior adoptive parents of an SIJ may not obtain "any right, privilege, or status" under the INA by virtue of their parentage of the SIJ.
(j)	Sets forth the circumstances in which USCIS can revoke an approved petition for SIJS.	<p>USCIS will notify the beneficiary of an automatic revocation, which will only occur if either of the following take place before the decision on the beneficiary's application for adjustment of status: 1) reunification with one or both parents via a juvenile court order, where the juvenile court had previously determined reunification with that parent(s) not viable, or 2) administrative or judicial proceedings determine that it is in the beneficiary's best interest to be returned to their country of origin. USCIS may also revoke an approved petition on notice "for good and sufficient cause" via the process described in 8 CFR § 205.2.</p> <p>Example: Rita was granted SIJS but is still waiting for a visa to be available so she can apply for adjustment of status. In the family court proceedings in which the juvenile court judge signed an SIJS findings order, the judge awarded sole legal and physical custody of Rita to her mom and determined that reunification with her dad was not viable due to neglect. Rita has since turned 18 and the family court no longer has jurisdiction over her. At present, Rita</p>

¹³ Note that under current practice, interviews of applicants for SIJS are extremely rare.

¹⁴ In this regard, the regulations are inconsistent with the statute, which states that "[a]ll applications for special immigrant status under section 101(a)(27)(J) ... *shall* be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed. TVPRA § 235(d)(2) (emphasis added). USCIS's failure to adjudicate petitions for SIJS within 180 days of filing is currently subject to several legal challenges. See *Moreno Galvez v. Jaddou*, No. 20-36052, 2022 WL 16643107 (9th Cir. Nov. 3, 2022) (affirming a district court injunction requiring that USCIS adjudicate SIJS petitions for youth in Washington State within the statutory 180 days); Complaint for Injunctive and Declaratory Relief, *Casa Libre/Freedom House v. Mayorkas*, No. 22-01510 (C.D. Cal. filed Mar. 7, 2022) (challenging USCIS's nationwide delays in adjudicating SIJS petitions).

¹⁵ Per 8 CFR § 103.2(b)(10)(i), if the petition is missing initial evidence and USCIS issues a request for initial evidence, the timeframe is reset, whereas if the petition contained all initial evidence but USCIS requires additional evidence in order to determine eligibility, the timeframe is suspended from the time USCIS issues a request for evidence (RFE) until USCIS receives the RFE response.

Section	Purpose	Notable Changes/Summary of Provision
		occasionally visits with her dad. Rita's SIJS is not at risk of automatic revocation despite her occasional contact with her dad, because the juvenile court has not changed its determination that reunification with the dad is not viable.

B. Summary of 8 CFR § 205.1 (Governing Automatic Revocation)

This section of the regulations governs the automatic revocation of various types of immigration petitions. Pursuant to the new SIJS regulations, section (a)(3)(iv) now states that an approved petition for classification as an SIJ will be revoked as provided in 8 CFR § 204.11(j)(1), described above.

C. Summary of 8 CFR § 245.1(e)(3) (Governing SIJS-Based Adjustment of Status)

Subsection	Purpose	Notable Changes/Summary of Provision
(i)	Discusses parole.	SIJs are deemed to have been paroled into the United States for the "limited purpose of meeting one of the eligibility requirements for adjustment of status under section 245(a) of the [INA]." ¹⁶
(ii)	Discusses bars to adjustment of status.	SIJs are subject to only one bar to adjustment of status—the bar that applies if someone is deportable due to engagement in terrorist activity or association with terrorist organizations as set forth in section 245(c)(6) of the INA. There is no waiver for this bar.
(iii)	Lists the grounds of inadmissibility that do <i>not</i> apply to SIJs.	The following seven grounds of inadmissibility do <i>not</i> apply to SIJs: public charge, labor certification, being present without admission or parole, misrepresentation, stowaways, lack of proper documentation, and the three- and ten-year unlawful presence bars.
(iv)	Discusses the grounds of inadmissibility that <i>do</i> apply to SIJs.	All other inadmissibility grounds besides those listed in subsection (iii) apply to SIJs.
(v)	Discusses waivers.	The waiver standard for SIJs is "for humanitarian purposes, to assure family unity, or in the public interest." ¹⁷ The relationship between the SIJ and their natural or prior adoptive parents cannot be considered a factor in issuing a waiver based on family unity.

¹⁶ Note that this runs counter to creative legal arguments that SIJs are parolees entitled to work authorization, but the argument is not currently necessary because of USCIS's new policy of granting deferred action to SIJs who are not yet eligible to adjust status because of the visa backlog. For more information about USCIS's deferred action policy, see 6 USCIS-PM J.4.G. See also End SIJS Backlog Coalition, *2022 FAQs About USCIS's SIJS Deferred Action Policy*, https://nipnl.org/PDFS/2022_16May_CoalitionFAQs-USCIS-SIJS-Deferred-Action-Policy.pdf.

¹⁷ See INA § 245(h)(2)(B).

Subsection	Purpose	Notable Changes/Summary of Provision
		<p>The following grounds of inadmissibility cannot be waived with the SIJS waiver:</p> <ul style="list-style-type: none"> • Conviction of certain crimes, multiple criminal convictions, and controlled substance traffickers (section 212(a)(2)(A)–(C) of the INA), <i>except for a single offense of simple possession of 30 grams or less of marijuana</i>;¹⁸ • Security and related grounds (section 212(a)(3)(A) of the INA); • Terrorist activities (section 212(a)(3)(B) of the INA); • Foreign policy (section 212(a)(3)(C) of the INA); and • Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (section 212(a)(3)(E) of the INA). <p>Example: Manoj has an approved petition for SIJS. While he is preparing to apply for adjustment of status, he is convicted in adult criminal court for possession of 28 grams of marijuana. Although his conviction makes him inadmissible under INA § 212(a)(2)(A), as a special immigrant juvenile, he can request that this ground be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, by filing a Form I-601. <i>Note that other than a single offense of simple possession of 30 grams or less of marijuana, which can be waived under INA 245(h)(2)(B), SIJS-based adjustment of status applicants cannot waive a controlled substance conviction or admission.</i></p>
(vi)	Discusses the statutory bar to parents receiving status through their SIJ child.	The natural or prior adoptive parents of an SIJ may not obtain “any right, privilege, or status” under the INA by virtue of their parentage. This prohibition applies to all parents and remains in effect even after the SIJ becomes a lawful permanent resident or U.S. citizen.
(vii)	Prohibits certain types of USCIS action.	Prohibits USCIS from taking any action that would require the applicant to contact the person who battered, abused, neglected, or abandoned them (or the family member of such person). ¹⁹

IV. Conclusion

These new SIJS regulations provide needed clarity for practitioners, state court judges, USCIS officials, and the young people whose lives they directly impact. Close attention to their legal and evidentiary requirements will help practitioners prepare winning cases for their clients.

¹⁸ The regulations now clarify that possession of 30 grams or less of marijuana is waivable if it triggers any part of section 212(a)(2)(A)–(C) of the INA, consistent with *Matter of Moradel*, 28 I&N Dec. 310, 315 (BIA 2021).

¹⁹ This provision comes from section 287(h) of the INA.



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