



# SPECIAL IMMIGRANT JUVENILE STATUS & VISA AVAILABILITY

By Rachel Prandini

## I. Introduction<sup>1</sup>

Special Immigrant Juvenile Status (SIJS) offers a path to a green card for certain immigrant youth. In particular, it provides an avenue for undocumented youth to obtain legal status when they are subject to juvenile court jurisdiction, cannot be reunified with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law, and it is not in their best interest to return to their home country.<sup>2</sup> Youth who are successful in obtaining SIJS may apply for a green card. There is a limit on the number of people per country who can get a green card through SIJS in a given fiscal year. Prior to 2016, there were typically enough visas for youth to adjust status without waiting. In other words, youth were able to get a green card through SIJS as soon as their application for SIJS (the Form I-360) was approved. However, in the spring of 2016, visas ran out for youth applying for SIJS-based adjustment of status from El Salvador, Guatemala, and Honduras. In the summer months, visas also ran out for children from Mexico and India. Currently, there continues to be a visa backlog for El Salvador, Guatemala, Honduras, and Mexico.

## II. What do I need to know to figure out if my SIJS client can adjust status?

In order to adjust status, your client must: 1) be eligible to adjust status,<sup>3</sup> 2) have an immediately available visa, and 3) demonstrate that they merit a favorable exercise of discretion. This practice advisory will focus on the second prong – how to determine if your client has an available visa. A visa must be available before U.S. Citizenship & Immigration Services (USCIS) or the immigration court can adjudicate your client’s application for adjustment of status (the Form I-485). To find out if a visa is available for your client, start by figuring out your client’s priority date. If their priority date is “current” in a given month, then a visa is available to them.

<sup>1</sup> The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. For the latest version of this practice advisory, please visit [www.ilrc.org](http://www.ilrc.org). For questions regarding the content of this advisory, please contact Rachel Prandini at [rprandini@ilrc.org](mailto:rprandini@ilrc.org).

<sup>2</sup> See 8 U.S.C. § 1101(a)(27)(J). For more information on Special Immigrant Juvenile Status, see ILRC, *An Overview to Special Immigrant Juvenile Status* (June 2018), <https://www.ilrc.org/overview-special-immigrant-juvenile-status>.

<sup>3</sup> To satisfy this first requirement, your client will need to show that they were approved for SIJS and are admissible (or eligible for a waiver) under all applicable inadmissibility grounds. For more information about special immigrant juveniles and the grounds of inadmissibility, see ILRC, *Special Immigrant Juveniles & the Grounds of Inadmissibility* (August 2020), <https://www.ilrc.org/special-immigrant-juveniles-grounds-inadmissibility>.

Note that sometimes priority dates retrogress, or move backwards, so you cannot assume once a visa is available that it will remain so.

### III. How do I figure out my client's priority date?

The priority date or Final Action Date is the date that the Form I-360 was filed. You can find this date on the I-360 receipt notice.

### IV. How do I find out if my client's priority date is current?

The State Department issues a chart each month with visa availability for different visa categories and countries. This chart is called the Visa Bulletin and can be found online at: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (or by searching for "Visa Bulletin"). The visa bulletin is used to inform people which categories of visas are backlogged, versus current, and also to track progress while waiting for a priority date to become current. The visa bulletin has two charts within each of the Family-based and Employment-based categories: Chart A, "Final Action Dates," and Chart B, "Dates for Filing". For special immigrant juveniles, look to the Employment-based Preference Cases charts.

- First, look at **Chart A** under the Employment-based Preferences (entitled "FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES")
  - By law, visas for special immigrant juveniles come from the employment-based 4<sup>th</sup> preference category.<sup>4</sup>
- In **Chart A**, look at the "4<sup>th</sup>" preference line for your client's country of origin<sup>5</sup>
  - If a "C" appears, that category is "current" and there are visas available, so you can file the I-485 regardless of your client's priority date.
  - If a date appears, e.g. 01MAR18 (March 1, 2018), that means that a backlog exists, and you can only file the I-485 if the client's priority date is EARLIER than the date listed. When a backlog exists, predicting exactly when the client will be able to adjust status is impossible. You must explain this uncertainty to clients.
  - See below for an example of the visa bulletin.

<sup>4</sup> See INA §§ 201(d), 202(a)(2), 203(b)(4).

<sup>5</sup> Note that only certain countries are listed by name, and all others fall into the first category – "All Chargeability Areas Except Those Listed."

## FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES (January 2021 excerpt)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES	VIETNAM
1st	C	01SEP19	C	01SEP19	C	C	C
2nd	C	01JUN16	C	08OCT09	C	C	C
3rd	C	15DEC17	C	22MAR10	C	C	C
Other Workers	C	01MAR09	C	22MAR10	C	C	C
4th	C	C	01MAR18	C	01DEC18	C	C

**Example:** Albert is from Mexico and filed an SIJS-based I-360 with USCIS on November 4, 2019. His I-360 has been approved and he would like to file his application for adjustment of status. Can he do so based on the above chart? No, Albert cannot file his I-485 at this time, because the category his visa will come from is backlogged, and his priority date (November 4, 2019) falls after the date listed in that category (December 1, 2018).

**Example:** Lucinda is from El Salvador. She filed an SIJS-based I-360 on February 5, 2018. Her I-360 has been approved and she would like to apply for a green card. According to the above chart, can she file her I-485? Yes, Lucinda can file her I-485. Even though the category that her visa will come from is backlogged, her priority date (February 5, 2018) is earlier than the date listed in that category (March 1, 2018).

**Practice Tip:** Even though youth from certain countries seeking a green card through SIJS experience a wait before they can get a green card, SIJS is still available, and youth should continue to seek the predicate findings from state court and apply for special immigrant juvenile status with USCIS as soon as possible.

## V. Even if my client's priority date is not current, can I still file the I-485?

Maybe. At times, USCIS permits the filing of I-485s (applications to adjust status) even though visas are not currently available because USCIS has determined that there are more visas available for the fiscal year than there are known applicants. This means that in some instances, it may be possible to *file* the I-485 with USCIS even if no visa is currently available to the client. The client will not be able to adjust status until there is a visa available, but the benefit of filing the I-485 (even though it cannot yet be adjudicated) is that it will allow the client to apply for work authorization based on having a pending adjustment. Having work authorization while waiting to be able to adjust status is a huge benefit to clients, as it provides them with a government-issued form of identification and authorization to work.

The Visa Bulletin contains a separate chart – Chart B – with information about when you may be able to file the I-485 even if there is no visa available. Remember that it's only necessary to look at Chart B if your client does not have a current visa available under Chart A.

➤ *Step one:* Check the USCIS website to see if you can rely upon Chart B for the current month: <https://www.uscis.gov/visabulletininfo>

- If the USCIS website says you can use the “Dates for Filing” chart (Chart B), then you can rely upon **Chart B** and may be able to file the I-485 even though visas are not yet available. For example, in December 2020, USCIS allowed applicants to rely on Chart B. By contrast, in January 2021, USCIS requires employment-based applicants to rely on Chart A:

*For Employment-Based Preference Filings:*

For all employment-based preference categories, you must use the Final Action Dates chart in the Department of State Visa Bulletin for [January 2021](#).

- If the USCIS website says you must use the “Final Action Dates” chart (Chart A), then you cannot rely upon **Chart B**, and must use **Chart A**. Recall that if you must use Chart A, then you cannot file the I-485 unless your client’s priority date is 1) earlier than any date that appears in the employment-based 4<sup>th</sup> preference category for your client’s country of origin, or 2) current, as reflected by a “C” appearing in the 4<sup>th</sup> preference category for your client’s country of origin.
- *Step two:* If you *can* rely upon Chart B per USCIS, look at Chart B (entitled “DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS”)
- In **Chart B**, look at the “4<sup>th</sup>” preference line for your client’s country of origin
    - If a “C” appears, that category is “current,” so you can file the I-485 regardless of when your client’s I-360 was filed.
    - If a date appears, e.g. 01JUL18 (July 1, 2018), you can only file the I-485 if your client’s I-360 was filed BEFORE that date.

DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS (January 2021 excerpt)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	01NOV20	C	01NOV20	C	C
2nd	C	01OCT16	C	15MAY11	C	C
3rd	C	01JUN18	C	01JAN14	C	C
Other Workers	C	01JUL09	C	01JAN14	C	C
4th	C	C	01JUL18	C	C	C

**Example:** Marc is from Mexico. He filed an SIJS-based I-360 on April 17, 2020. His I-360 has been approved and he would like to apply for a green card in January 2021. Can he file his I-485? No, Marc cannot file his I-485. Even though the category that his visa will come from is listed as current according to the above chart, Chart B (reflected by a “C”), USCIS has not allowed filing under Chart B for January 2021. Instead, in January 2021, applicants must follow Chart A, which lists a date of December 1, 2018 for 4<sup>th</sup> preference category applicants from Mexico, and Marc’s priority date is not earlier than that date, so he does not yet have a visa available.

## VI. What steps can I take to best protect my SIJS client considering the visa backlog?

- Seek the state court order with SIJS findings as soon as possible.
- File the I-360 as quickly as possible (the same day the state court findings are made, if possible). Remember that the date the I-360 is filed is very important because it secures your client’s place in line for a visa – and even a few days difference in filing could make a difference of months or years in waiting for a visa.
- Remember that you can always file the I-360; there is no limit on the number of I-360s that can be filed.
- Around the 15<sup>th</sup> of every month, the next month’s Visa Bulletin is usually posted online, so you can start getting the I-485 application ready to file if you see that your client’s visa will be current in the coming month.
- Check the Visa Bulletin for the current month as outlined above before filing the I-485 to avoid having it rejected.
- If your client’s visa is current, file the I-485 as soon as possible.
- If your client’s visa is not current under Chart A but filing the I-485 is permitted under Chart B, file the I-485 as soon as possible to ensure your client can get work authorization. Work authorization can be important even for clients who are too young to work, because it will provide them with a government-issued form of ID.
- Be aware that your client should remain under state court jurisdiction until the I-485 is adjudicated, unless they age out.<sup>6</sup>
- Inform your client that they should not get married until the I-485 is adjudicated (if they do, the I-360 approval will be revoked).<sup>7</sup>
- Warn your client about the risks of becoming inadmissible, particularly through interactions with the criminal or juvenile system.
- If your client’s visa is (or would be) backlogged, consider applying for other forms of relief as well (such as U visas, VAWA, or T visas).

<sup>6</sup> 6 USCIS-PM J.2(C)(4); 8 CFR § 205.1(a)(3)(iv)(C).

<sup>7</sup> 8 CFR § 205.1(a)(3)(iv)(B).



**San Francisco**

1458 Howard Street  
San Francisco, CA 94103  
t: 415.255.9499  
f: 415.255.9792

[ilrc@ilrc.org](mailto:ilrc@ilrc.org)   [www.ilrc.org](http://www.ilrc.org)

**Washington D.C.**

1015 15th Street, NW  
Suite 600  
Washington, DC 20005  
t: 202.777.8999  
f: 202.293.2849

**Austin**

6633 East Hwy 290  
Suite 102  
Austin, TX 78723  
t: 512.879.1616

**San Antonio**

500 6<sup>th</sup> Street  
Suite 204  
San Antonio, TX 78215  
t: 210.760.7368

**About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.