



November 19, 2019

PA-2019-08

## Policy Alert

SUBJECT: USCIS Special Immigrant Juvenile Classification

### Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating the [USCIS Policy Manual](#) regarding the Special Immigrant Juvenile (SIJ) classification.

### Background

The SIJ classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. In order to apply for SIJ classification, eligible children must file the Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). To qualify for SIJ classification, a child must submit a state juvenile court order making certain judicial determinations on dependency or custody, parental reunification, and the best interests of the child in addition to satisfying all other eligibility requirements under the statute.<sup>1</sup> USCIS has sole discretion to adjudicate the Form I-360 and to determine whether to consent to SIJ classification.

USCIS is updating Volume 6, Part J of the Policy Manual to incorporate recent clarifications made in three adopted Administrative Appeals Office decisions<sup>2</sup> regarding requirements for SIJ classification, as well as other clarifying and technical changes. These clarifications are effective immediately and apply to both cases pending on, and filed on or after November 19, 2019. This guidance is controlling and supersedes any prior guidance on the topic.

### Policy Highlights

- Reaffirms and clarifies that the petitioner must have been a juvenile under the relevant state law definition of “juvenile” (or equivalent term) when the juvenile court order was issued.

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<sup>1</sup> See [INA 101\(a\)\(27\)\(J\)](#).

<sup>2</sup> See [Matter of E-A-L-O-](#), Adopted Decision 2019-04 (AAO Oct. 11, 2019). See [Matter of D-Y-S-C-](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019). See [Matter of A-O-C-](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019).

- Clarifies the definition of a juvenile court for purposes of SIJ classification and provides examples of the types of evidence that may be provided to establish that a court is acting as a qualifying juvenile court.<sup>3</sup>
- Clarifies guidance on what constitutes a qualifying “dependency” or “custody” determination from the juvenile court for the purposes of SIJ classification eligibility.
- Clarifies guidance on the statutorily-mandated USCIS consent function.
- Clarifies guidance on what qualifies as a similar basis to abuse, neglect, or abandonment under state law.
- Reaffirms that USCIS does not require evidence that a state court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification.

**Citation:** Volume 6, Part J: Special Immigrant Juveniles [[6 USCIS-PM J](#)].

### **Additional Considerations**

#### **Administrative Procedure Act (APA)**

USCIS will publish no Federal Register notices requesting public comment because public notice is not required for these internal policy clarifications. This clarification of policy is based on our interpretation of the applicable terms in 8 CFR and the Immigration and Nationality Act (INA). The APA excepts rules of agency organization, procedure or practice from notice and comment requirements.<sup>4</sup> USCIS is issuing this Policy Manual update to explain and provide clarification to adjudicators but not add to the substantive regulations, create legally binding rights, obligations, or change the substantive standards by which USCIS evaluated applications for immigration benefit requests. An agency is not required to use the APA’s notice-and-comment procedures to issue an interpretive or procedural rule that amends or repeals an interpretive<sup>5</sup> or procedural rule.<sup>6</sup>

#### **Unfair Surprise and Reliance Interest**

An agency can change its interpretation of a regulation at different times in its history as long as the interpretative changes create no unfair surprise.<sup>7</sup> In this case, USCIS is not changing its policy regarding SIJ adjudications. We are issuing this guidance to clarify what the law and regulations permit or require because of potential confusion. It has never been USCIS official

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<sup>3</sup> Consistent with the district court’s decision in *R.F.M., et al. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and INA 101(a)(27)(J)(i), USCIS interprets the definition of juvenile court at 8 CFR 204.11(a) to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles.

<sup>4</sup> See [5 U.S.C. 553\(b\)\(A\)](#).

<sup>5</sup> See *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199 (2015).

<sup>6</sup> See *James v. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000);

<sup>7</sup> See *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 171 (2007). See *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012).

policy to grant SIJ classification based on a state judge's order that is sought primarily to permit the alien to obtain lawful immigration status.

USCIS has analyzed the potential for and taken into account serious reliance interests that may be engendered by the practices USCIS officers may have followed prior to this clarification. USCIS acknowledges that a person who may have been approved for SIJ classification before this policy alert may no longer be approved by an officer following this clarifying guidance in rendering their decision. An advocate or representative of an SIJ petitioner, not knowing of this policy, may erroneously petition the state court judge who is handling their client's case to issue an order with findings of fact in support of the petitioner's eligibility for SIJ that does not provide relief from parental abuse, neglect, abandonment or a similar basis under state law. However, the statutory and regulatory eligibility criteria have never permitted SIJ classification to be approved using such erroneous state court orders, nor has it been official USCIS policy. Thus an SIJ petitioner cannot be said to have acted in reliance on the continuation of a practice and policy that has not been a USCIS practice and policy and which is contrary to the law. USCIS must limit the approval of SIJ classification to cases which are eligible based on a valid court order as required by the INA regardless of its effects on parties who may rely on erroneous state court orders.

With respect to the policy change to no longer require evidence that a state court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification, USCIS made that change in response to the strain of litigation. USCIS anticipates that the change would not negatively impact petitioners with potential reliance interests, rather it would reduce their evidentiary burden.

### **Implementation**

USCIS will implement this policy immediately, as it is merely a clarification. However, USCIS will still allow interested parties an opportunity to comment on these updates by providing a 10-day comment period, as is generally provided for Policy Manual publications.

Visit the [Policy Manual for Comment](#) page to comment on this update.