

Question & Answer Session
Special Immigrant Juvenile (SIJ) Policy Clarifications Engagement
Tuesday, Dec. 10, 2019

- 1. What remedy is available for SIJ petitions that were previously denied but would now be approvable under the clarification of SIJ policies published in the USCIS policy manual and corresponding [Administrative Appeals Office] AAO opinions (i.e. for lack of a citation to state statute, lack of an "appropriate" factual basis, best interest finding based on appropriate placement in the U.S.)?**

The AAO Adopted Decisions were effective upon issuance and apply to all cases pending on, or filed on or after, Oct. 15, 2019. The Policy Manual Update was also effective immediately upon issuance and applies to all cases pending on, or filed on or after, Nov. 19, 2019. As with any case, if you believe that your SIJ petition was improperly denied, you may file a motion to reopen or a motion to reconsider with the USCIS office that denied the petition. You may also file an appeal with the Administrative Appeals Office. For more information on filing an appeal or motion, please visit the USCIS website at <https://www.uscis.gov/i-290b>. You may also file a new SIJ petition on Form I-360.

- 2. When will the Proposed Regulations regarding Special Immigrant Juveniles be finalized?**

On Oct. 15, of this year, USCIS reopened the comment period for the Special Immigrant Juvenile Petitions proposed rule, 76 FR 54986 with the goal of finalizing a rule to realign this classification with congressional intent, implement statutorily mandated changes and address threats to program integrity. The comment period was extended for 30 days and closed on Nov.15. Given many variables within the rulemaking process, both internal and external to the agency, USCIS is unable to speculate on the timing of the publication of a final rule at this time.

- 3. What is the best way to contact the National Benefits Center in urgent cases?**

For expedite requests on cases pending at the National Benefits Center post-centralization, applicants and their Form G-28 representatives can make direct case status inquiries to the National Benefits Center at

NBCSIJ@USCIS.DHS.GOV. For expedite requests on cases pending at the Field Offices, you may contact the USCIS Contact Center at 800-375-5283.

4. What is the processing time for SIJ petitions to be approved?

There is no requirement that the case be *approved* within a certain timeframe, However, the Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008 provides that SIJ petitions be *adjudicated* by USCIS within 180 days. The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date. If the petitioner has not submitted sufficient evidence to establish his or her eligibility for SIJ classification, the clock stops the day USCIS sends a request for additional evidence and resumes the day USCIS receives the requested evidence from the petitioner. The 180-day timeframe applies only to the initial adjudication of the SIJ petition. The requirement does not extend to the adjudication of any motion or appeal filed after a denial of a SIJ petition. USCIS is currently processing SIJ petitions beyond the 180-day time due to several litigation related holds and the steady volume of SIJ petitions, consistent with its discretion over the pace of adjudication.

5. Does USCIS hold certain SIJ petitions for longer than others? If so, how are those cases identified and what kinds of cases are they?

Previously, USCIS held certain SIJ cases that were included in various lawsuits. At this time, USCIS is not holding those SIJ cases. The vast majority of cases are generally adjudicated in the order they are received.

6. Are all I-485 applications processed by the National Benefits Center? Do local field offices process I-485 applications for I-360 petitions filed before centralization?

SIJ-based I-360s and I-485 applications to adjust status that were filed on or after Nov. 1, 2016, are processed and adjudicated by the National Benefits Center. SIJ-based I-360s and I-485s that were filed prior to Nov. 1, 2016, and remain pending are still being adjudicated by the Field Offices. Additionally, the National Benefits Center may refer a SIJ based I-360 and I-485 to a field office for an interview.

7. Can USCIS please clarify what constitutes “*evidence of a court’s intervention to provide relief from abuse, neglect, or abandonment beyond a statement that the juvenile is dependent on the court?*” In other words, what evidence is USCIS looking for in I-360 Petitions seeking SIJ classification

showing that the court intervened in order to provide relief from abuse, neglect or abandonment? For example, would a separate custody order awarding full legal and physical custody to a third party or parent constitute such intervention?

Consistent with congressional intent, USCIS will continue to favorably exercise its consent authority to SIJ classification and approve the SIJ petition only when the petitioner has shown that his or her request for SIJ classification is bona fide. In the context of the SIJ classification, bona fide means that a state court order was sought to protect the juvenile and provide relief from parental abuse, neglect, abandonment or similar mistreatment, rather than primarily for an immigration benefit. Generally, the court-ordered dependency or custodial placement of the juvenile is the relief being sought from and provided by the state court and would generally show a bona fide request for SIJ classification if the state court, dependency, custody or related order(s) included the required legal determination of parental mistreatment and a reasonable factual basis to support those determinations. The example provided in the question, a custody order awarding full legal and physical custody to a third party or non-maltreating parent, may therefore satisfy this requirement.

USCIS is clarifying that it will consider evidence of court-ordered relief from abuse, neglect, abandonment or similar mistreatment when determining if approval of the SIJ petition is warranted. Although the dependency or custody is generally the court-ordered relief from such mistreatment, USCIS is clarifying that a dependency declaration in words alone is not sufficient to warrant USCIS' approval of SIJ classification without evidence that the dependency declaration was issued in proceedings that actually granted relief from parental abuse, neglect, abandonment or a similar basis under state law, beyond an order with statements to enable an individual to file a petition for SIJ classification. Qualifying dependency proceedings may include abuse, neglect, termination of parental rights or other matters in which the juvenile court intervenes to provide relief to the juvenile from parental maltreatment.

8. When will these new “adoptions” apply? For example – for those cases that have been pending for several months will these new adoptions apply retroactively or is there a date of filing when the new adoptions will start to apply?

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was also effective immediately upon issuance and applies to all cases pending on, or filed on or after, Nov. 19, 2019. This guidance is controlling and supersedes any prior guidance on the topic.

9. Can USCIS confirm that it made no changes to the SIJS sections of the Policy Manual between October 2016 and November 18, 2019?

USCIS made no changes to the SIJ sections of the Policy Manual between the initial publication of those sections in October 2016 and the publication of the updates to those sections on Nov. 19, 2019.

10. In several instances throughout the Policy Manual, “finding” or similar terms have been changed to “determination,” with a footnote stating that a “determination refers to a conclusion of law.” Given that many tribunals interchangeably use synonyms such as determination, finding, conclusion, holding, ruling, declaration or decision, what training will USCIS provide to ensure that adjudicators do not devalue provisions in juvenile court orders solely based on a court’s choice of one term rather than another?

USCIS has provided training to its officers adjudicating SIJ petitions on the policy clarifications in the Adopted Decisions and Policy Manual update. SIJ petitioners bear the burden of proof to establish their eligibility. The Adopted Decisions and Policy Manual update clarify that this burden includes showing by a preponderance of the evidence that a juvenile court made the required judicial determinations under the relevant state law. USCIS recognizes that there is diversity in the legal terms that may be used in various juvenile courts. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. USCIS generally defers to juvenile courts on matters of state law, however, whether a state court order establishes a petitioner’s eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. USCIS assesses the juvenile court order(s) as a whole and considers an SIJ petitioner’s eligibility based on the preponderance of the evidence, which requires examination of the juvenile court order(s) and other relevant evidence individually and within the context of the totality of the evidence regarding the SIJ petitioner’s juvenile court proceedings.

11. USCIS has added a new statement to the Policy Manual: “The Trafficking Victims Protection and Reauthorization Act of 2008 provides that SIJ petitions be adjudicated by USCIS within 180 days,” (6 USCIS-PM

J.4.B.). Currently, excluding stoppages based on an RFE for initial evidence, what proportion of petitions are adjudicated within the 180-day time limit? What plans are there to comply with the TVPRA's requirement that SIJS petitions be adjudicated in 180 days?

The previous version of 6 USCIS PM J.4(B) contained a statement regarding the requirement in the Trafficking Victims Protection and Reauthorization Act (TVPRA) that SIJ petitions be adjudicated by USCIS within 180 days, and a statement regarding that provision also appears in the updated version of the Policy Manual at 6 USCIS-PM J.4(B). The steady increase in filings has resulted in a backlog of SIJ petitions. In order to address these backlogs, the National Benefits Center has temporarily reorganized staffing to apply more officer resources to the SIJ workload. The National Benefits Center will continue to work SIJ-based I-360 in date order, with priority given to cases over the 180-day processing time.