SIJS: From State Court to Green Card

by Sally M. Joyner, Melissa M. Lopez, and Christina I. Thomas

Sally M. Joyner is a staff attorney with Mid-South Immigration Advocates, Inc., a nonprofit law firm she co-founded in 2013 to expand access to legal representation for low-income immigrants living in the jurisdiction of the Memphis Immigration Court. Her practice focuses on removal defense for children and asylum seekers and immigration benefits for victims of gender-based violence. Sally is a member of the Tennessee Bar Association Immigration Section, the AILA Mid-South Chapter, and the National Immigration Project of the National Lawyers Guild. She also serves on the Board of Directors of People for the Enforcement of Rape Laws (PERL), an organization that challenges practices within the political and justice systems that decriminalize rape and sexual assault. Sally is a graduate of the University of Memphis Cecil C. Humphreys School of Law and earned her MBA from Christian Brothers University.

Melissa M. Lopez is the executive director of Diocesan Migrant & Refugee Services, Inc (DMRS), the largest provider of free and low-cost immigration legal services in West Texas and New Mexico. Prior to becoming the Director, she represented individuals in removal proceedings. She is a 2004 graduate of the University of Texas at El Paso and a 2007 graduate of the University of Texas School of Law. Melisa has been practicing immigration and nationality law exclusively since graduating from law school and is a member of the American Immigration Lawyers Association (AILA), the National Immigration Project of the National Lawyers Guild, and a Founding Member of the Borderland Immigration Council. In 2010, the Board of Immigration Appeals issued a precedent decision in one of Melissa's cases, which allowed her client to retain their Lawful Permanent Resident status. She was awarded the El Paso Bar Association's Professionalism Award in 2011.

Christina I. Thomas is the managing attorney at the Atlanta Field Office of Kids in Need of Defense (KIND). KIND's staff and its pro bono attorney partners at law firms, corporations, and law schools nationwide represent unaccompanied immigrant and refugee children in their deportation proceedings. KIND's mission is to ensure that no unaccompanied child stands in court alone. Prior to joining KIND, Christina worked at the Latin American Association as a Staff Attorney representing unaccompanied minors. She also worked at the Southern Poverty Law Center's Immigrant Justice Project and LatinoJustice PRLDEF (formerly the Puerto Rican Legal Defense and Education Fund), defending the rights of immigrants in the United States through impact litigation. Christina is a graduate of University of California, Hastings College of Law and has a Master's in Political Science from the University of Florida. She is admitted to practice law in Georgia and New York.

****

INTRODUCTION

Until recently, Special Immigrant Juvenile Status (SIJS) was a reliable, rapid form of relief for immigrant children suffering from the effects of abuse, abandonment, or neglect. Today, the remedy has been narrowed through revised policy guidance and centralized adjudication while also being subjected to extreme processing delays and inconsistent decisions.[1] Even after the SIJS is petition is approved, clients face further delays in obtaining lawful permanent resident (LPR) status, all while facing the threat of removal.

What changed? According to the Immigrant Legal Resource Center (ILRC), "[I]n the spring of 2016, visas ran out for children applying for SIJS-based adjustment of status from Northern Triangle countries (El Salvador, Guatemala, and Honduras). In the summer months, visas also ran

[1] In FY2014, USCIS approvals 4,606 SIJS petitions and denied 247. In FY2018, 4,712 were approved and 1,678 were denied; 33,830 petitions remained pending without decision at the end of the fiscal year. U.S. Citizenship and Immigration Services (USCIS), Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year, Quarter and Case Status Fiscal Year 2018, *available at* www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I360_sij_performancedata_fy2018_qtr4.pdf.

out for children from Mexico and India."[2] This phenomenon has led to a backlog of green cards for Special Immigrant Juveniles (SIJs), primarily affecting children from the Northern Triangle—and often Mexico and India.

In the fall of 2016, USCIS published its first guidance on SIJS and SIJS-based adjustment of status in the USCIS Policy Manual,[3] and the agency centralized the processing of SIJS petitions from local field offices to the National Benefits Center (NBC).[4] Policy shifts by both the immigration courts and the Department of Homeland Security Immigration and Customs Enforcement Office of the Chief Counsel (OCC) have changed the way practitioners must approach SIJS. This practice advisory provides updated guidance on navigating SIJS in this new era.

SIJS PRACTICE IN STATE COURT

State court proceedings involving SIJS have become commonplace in courtrooms throughout the U.S. with wide variations in procedure and accessibility. State law, demographics, and prevailing social attitudes control the availability of this critical form of relief for children and youth. As some states have increased protections for potential SIJs through statutory schemes or positive precedent, others have narrowed eligibility through unfavorable interpretations of state law. Particularly in recalcitrant jurisdictions, practitioners should be aware of the range of forums with the authority to issue qualifying state court orders as well as any precedential or persuasive authority in the jurisdiction.

State Court Forums

Any court in the U.S. with "jurisdiction under state law to make determinations about custody and care of children" can issue a qualifying order.[5] State court proceedings can include, but are certainly not limited to:

- Dependency/neglect
- Divorce
- Delinquency or criminal proceedings
- Adoption
- Custody/visitation
- Guardianship[6]

---

[2] ILRC, "Update on Special Immigrant Juvenile Status: What Is Visa Availability?" (Feb. 2017), www.ilrc.org/sites/default/files/resources/update_on_sijs_visa_availability_2.28.17.pdf

[3] 6 *USCIS Policy Manual* Part J, www.uscis.gov/policymanual/HTML/PolicyManual-Volume6-PartJ.html; 7 *USCIS Policy Manual* Part F Ch. 7, www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartF-Chapter7.html.

[4] USCIS, "USCIS to Centralize Processing of Special Immigrant Juvenile Cases" (Nov. 1, 2016), www.uscis.gov/news/alerts/uscis-centralize-processing-special-immigrant-juvenile-cases.

[5] 8 CFR §204.11 (a) (2018); 6 USCIS-PM J.2(D)(4).

[6] For a comprehensive table of state court proceedings, *see* Eileen Lohmann, Rafaela Rodrigues, and Leslye E. Orloff, National Immigrant Women's Advocacy Project, American University, Washington College of Law (NIWAP), "Types of Proceedings in Which State Courts Can Make Special Immigrant Juvenile Status Findings" (Dec. 2017) *available at* http://niwaplibrary.wcl.american.edu/wp-content/uploads/Appendix-J-Types-of-Proceedings-SIJS-Findings.pdf.

Where a court has general jurisdiction, such as a district or circuit court, the court must exercise its jurisdiction over the subject of the order as a juvenile under state law.[7] For example, adult adoptions or conservatorships, even of particularly vulnerable young people, are insufficient vehicles for obtaining qualifying orders.[8]

State Law and Judicial Decisions on SIJS

State legislation addressing SIJS has remained relatively rare, while judicial precedent has emerged throughout the U.S. over the past five years. California, Connecticut, Florida, Illinois, Nebraska, and New Mexico are among the few states that have specific statutes pertaining to SIJS eligibility, procedure, or care and screening of SIJS-eligible wards of the state.[9]

New York leads the nation with an extremely high volume of state court decisions involving SIJS.[10] Apart from New York, the District of Colombia and twenty-five other states have precedential or nonprecedential decisions issued by appeals-level-or-higher courts, including Alabama, California, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Texas, and Virginia.[11]

Best Practices for Drafting Proposed Orders

A detailed predicate order supported by citations to state law is the best defense against Requests for Evidence (RFEs) and denials. Although USCIS may not question a state court's judgement in making child welfare determinations, the agency still has wide discretion in determining whether the petitioner has demonstrated eligibility for SIJS through its consent authority.[12]

---

[7] *See Matter of J-I-D-L-S-*, ID# 00043501 at 4 (AAO Mar. 6, 2017).

[8] *See Matter of J-Y-R-P-*, ID# 1481080 at 2 – 4 (AAO Aug. 29, 2018).

[9] *See, e.g.,* Cal. Prob Code §1510.1 (2018), Cal. Civ. Pro. Code §155, Conn. Gen. Stat. §45a-608o (2018), Fla. Stat. Ch. 39 §5075 (2018), Fla. Stat. Ch. 39 §013, 705 ILCS 405/2-4a (2018), Neb. Rev. Stat. §43-4505 (2018), and NM Stat. §32A-4-23.1 (2018).

[10] Sheerin Tehrani, et al., NIWAP, Special Immigrant Juvenile Status - Case Law Chart (Feb. 2, 2018), *available at* http://niwaplibrary.wcl.american.edu/wp-content/uploads/Appendix-X-SIJS-Case-Law-Chart.pdf.

[11] *Id.*, *see also*, *In re Luis* (Ind. App., 2018), *N.B.D. v. Cabinet for Health & Family Servs.* (Ky. Ct. App., 2018), *G.H.M. v. Cabinet for Health & Family Servs.* (Ky. Ct. App., 2019), *De Rubio v. Herrera*, 541 S.W.3d 564 (Mo. App., 2017), *Baltierra-Gomez v. Guardado* (*In re Guardianship of the Pers. & Estate of Guardado*) (Nev., 2016), *Ramirez v. Menjivar* (Nev., 2018), *In the Matter of M.X.*, No. COA09-514 (N.C. App. 11/3/2009), *Zetino-Cruz v. Benitez-Zetino*, 791 S.E.2d 100 (N.C. App., 2016), *In re Juvenile 2002-098*, 813 A.2d 1197 (N.H., 2002), *M.J.A.S. v. M.J.A.S.* (Pa. Super. Ct., 2015), *In re Domingo C.L.* (Tenn. App., 2017), *In re Danely C.* (Tenn. App., 2017).

[12] (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[.]

8 USC §1101(a)(27)(J)(2018)(emphasis added).

USCIS "generally consents" to SIJS classification where the request is bona fide—meaning the agency determines that the predicate court order was "sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit."[13] The USCIS Policy Manual (Policy Manual) describes how the agency makes the determination:

> In order to exercise the statutorily mandated [Department of Homeland Security] consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the findings necessary for classification as a SIJ. The evidence needed does not have to be overly detailed, but must confirm that the juvenile court made an informed decision in order to be considered "reasonable."[14]

Form orders and generic templates are no longer sufficient. Each predicate order must contain an individualized factual basis for the judge's findings. Avoid unnecessary RFEs and denials by following these practice pointers:

- **Connect the state law on abuse, abandonment, neglect, or similar basis and "best interest" directly to the facts of the case.** The order should cite to the relevant state law defining abuse, abandonment, or neglect and describe the actions or inactions of the parent(s) that meet each element. The order should also demonstrate that the judge analyzed the child's best interest in accordance with state law. Cite to the factors outlined in state law that are specific to your case—consider needs relating to safety, education, medical treatment, and development (physical and mental). ***Never cite to the INA in a state court order.***[15]

- **Address other custody placement options.** When drafting best interest findings, keep in mind that the court must explicitly find that it is in your client's best interests to remain in the U.S. It is not enough for the court to find that "a particular custodial placement is the best alternative available to the petitioner in the United States."[16] Rather, the order "should reflect that the juvenile court considered a petitioner's return to his or her home country, or that of his or her parents, and any possible placement there."[17]

- **Avoid inconsistencies in the record.** USCIS will review the complete A file for inconsistencies in your client's application, so practitioners should review any asylum application, I-213, or other record that contains information about your client's parents, family, past addresses, or motivation for coming to the United States.[18] Practitioners should also

[13] "In order to consent, USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit." 6 USCIS-PM J.2(D)(5).
[14] 6 USCIS-PM J.2(D)(5).
[15] 6 USCIS-PM J.3(A)(2).
[16] 6 USCIS-PM J.2(D)(3).
[17] *Matter of J-A-L-S-*, ID# 1566863 at 4 (AAO Aug. 29, 2018).
[18] *Matter of T-W-*, ID# 00032162 at 4 (AAO Dec. 15, 2016).

request a complete file from the Office of Refugee Resettlement if their client spent any time at a shelter for unaccompanied minors after arrival.[19]

- *Ensure the order finds permanent—not temporary—nonviability of reunification.* If the condition causing the child to be removed from one or both parents is only temporary, the finding is insufficient.[20]

- *Review AAO decisions in novel or complicated factual scenarios.* Examining recent nonprecedential AAO decisions presenting similar facts provide useful guidance and prevent practitioners from making easily preventable errors or omissions.

    - Search the USCIS AAO Non-Precedent Decision Repository: www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-aao/aao-non-precedent-decisions
    - Sign up for Catholic Legal Immigration Network, Inc. (CLINIC)'s Index of Unpublished Administrative Appeals Office Decisions on Special Immigrant Juvenile Status: https://cliniclegal.org/index-unpublished-administrative-appeals-office-decisions-special-immigrant-juvenile-status

As USCIS's requirements of state court orders become more stringent and state law continues to develop, immigration attorneys should ensure that their staff and contract family attorneys have access to accurate, updated information on drafting qualifying orders.

PETITIONING FOR SIJS CLASSIFICATION

Special Immigrant Juvenile Status is one of over a dozen diverse classes of immigrants who use Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, including religious workers, physicians, and abused spouses of U.S. citizens. Because the form is used for so many classifications, practitioners should ensure that only the correct sections of the forms are completed. Carefully review the form instructions and only complete and sign the relevant sections of the petition.

Practitioners should regularly review the form instructions to ensure all required evidence is submitted with the I-360. Initial evidence includes the state court order and the petitioner's birth certificate with a certified English translation. A carefully drafted state court order will demonstrate that the petitioner meets each element to merit classification as a Special Immigrant Juvenile. The petition must be filed while the petitioner is under the age of 21 and unmarried. Petitioners are not subject to "aging out," but they must remain unmarried until granted LPR status.[21]

Adjudication Delays

[19] See instructions at https://www.acf.hhs.gov/orr/resource/requests-for-uac-case-file-information.
[20] 6 USCIS-PM J.2(D)(2).
[21] 7 USCIS-PM F.7(C)(2); 7 USCIS-PM F.7(E)(3).

USCIS is statutorily required to adjudicate the SIJS petition within 180 days;[22] however, the current average processing time for SIJS petitions is well over one year. Discussions among practitioners suggest that it may be counterproductive to challenge the agency's failure to act in a timely manner due to its wide discretion in adjudicating these petitions and the increasing number of inconsistent decisions and denials. Nonetheless, it is appropriate to create a record of best efforts in seeking a timely adjudication of the petition, particularly if your client is in removal proceedings.

> **Practice Pointer:** To inquire about a petition pending over 180 days, contact the National Benefits Center at nbcsij@uscis.dhs.gov. Include:
>
> - Complete name of representative of G-28
> - Petitioner/beneficiary's name
> - Form I-360 receipt number
> - Alien number of the petitioner
> - Date of birth of the petitioner
> - Address of record

Another option if the agency fails to respond to an inquiry with a timely adjudication is filing a complaint with the Office of the Citizenship and Immigration Services Ombudsman (Ombudsman). Practitioners widely report that following a complaint to the Ombudsman, USCIS will issue an RFE rather than adjudicate the petition.

Common RFEs and NOIDs

Among the most common RFE and Notice of Intent to Deny (NOID) issues are a result of the agency's questioning of the validity or sufficiency of the state court order. USCIS officers are typically not attorneys; this results in adjudicators without formal legal training making determinations concerning state law and procedure. Adjudicators may be unaware that state law principles develop through statutes as well as case law, custom, court rules and procedures, and other means. As a result, persistence is critical when in conflict with the agency over a state law concept. Practitioners should be prepared to appeal improper denials with the AAO or ultimately in federal court.

Another common RFE is a request for documentation submitted with the original I-360 packet. USCIS regularly issues RFEs for information that has been submitted previously, and practitioners cannot ignore these requests. Practitioners must respond to these RFEs and re-submit the information. Failing to respond to the RFE will result in denial of the petition as abandoned. Other common bases for RFEs and NOIDs include:

- Whether a court is exercising its jurisdiction as a "juvenile court."
- Establishing parentage where birth certificate does not contain father's name.
- Order is "temporary" rather than "permanent."
- Insufficient "factual basis" for non-viability of reunification and best interest findings.

[22] TVPRA, Pub. L. No. 110-457 at §235(d)(2).

- Conflicting information in the record.

USCIS updated its policy on the issuance of RFEs and NOIDs as of July 13, 2018, allowing the agency to issue a denial under certain circumstances without first issuing an RFE or NOID; the impact of this policy change has not yet been seen widely.[23]

Inconsistent Decisions

In addition to RFEs and NOIDs, practitioners note an increasing number of inconsistent decisions issued by USCIS for similarly situated clients. For example, siblings may receive different decisions, or one sibling may experience a lengthy processing delay for no discernable reason. While practitioners might be tempted to alert USCIS to inconsistent decisions resulting from the same or similar factual basis, this may result in the revocation of a previously approved petition rather than having the desired effect.[24]

THE PATH TO LAWFUL PERMANENT RESIDENCE

Approval of an SIJS petition alone does not grant any permanent status in the United States, nor is SIJS relief from removal. SIJS is a classification that allows the beneficiary of the approved petition to apply for LPR status by filing Form I-485, Application to Register Permanent Residence or Adjust Status with USCIS or the immigration court.[25] According to the USCIS Policy Manual:

> [T]he INA expressly states that SIJs are considered paroled into the United States for purposes of adjustment under INA 245(a). Accordingly, the beneficiary of an approved SIJ petition is treated for purposes of the adjustment application as if the beneficiary has been paroled, regardless of his or her manner of arrival in the United States.[26]

Practitioners new to SIJS may be surprised to learn the path toward residency is a lengthy process during which your client may wait years between approval of the SIJS petition and eligibility to apply for or be granted adjustment of status. Clients in removal proceedings are particularly vulnerable due to these lengthy wait times, as immigration judges may more frequently begin to view adjustment of status as "speculative" relief where a priority date is remote under *Matter of L-A-B-R-*, 27 I&N Dec. 405, 418 (A.G. 2018).[27] Further, drastic changes in the prosecutorial

[23] USCIS Memorandum, "USCIS Updates Policy Guidance for Certain RFEs and NOIDs" (July 13, 2018) AILA Doc. No. 18071380.

[24] Disparate results among family members may present an ethical conflict for practitioners. It may be in the best interest of the client with the denied petition to consult with alternate counsel if it would harm the sibling with the approved petition to exhaust all avenues of relief.

[25] "Green Card Based on Special Immigrant Juvenile Classification", available at https://www.uscis.gov/green-card/special-immigrant-juveniles/green-card-based-special-immigrant-juvenile-classification

[26] 7 USCIS-PM F.7(C)(1).

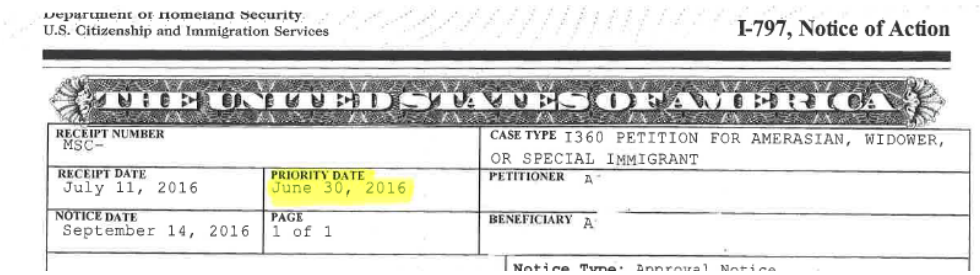
[27] *Matter of L-A-B-R-*, 27 I&N Dec. 405, 418 (AG 2018).

discretion policies of OCC have also affected where and when SIJs may file their applications for adjustment of status.[28]

Visa Retrogression and the Visa Bulletin

SIJS is not the only category of beneficiaries of approved immigrant petitions subjected to long waits before becoming eligible applying for LPR status. Family- and employment-based immigration practitioners are familiar with the peculiar process involved in deciphering the U.S. Department of State's (DOS) Visa Bulletin.[29]

The first step in analyzing how the Visa Bulletin will affect your client's eligibility for LPR status is to determine his or her "priority date." The SIJS petition receipt notice (I-797C, Notice of Action) and approval notice (I-797, Notice of Action) indicate the petitioner's priority date, which is the date the SIJS petition was received by USCIS (highlights added):[30]



Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797, Notice of Action

THE UNITED STATES OF AMERICA

RECEIPT NUMBER MSC-		CASE TYPE I360 PETITION FOR AMERASIAN, WIDOWER, OR SPECIAL IMMIGRANT
RECEIPT DATE July 11, 2016	PRIORITY DATE June 30, 2016	PETITIONER A
NOTICE DATE September 14, 2016	PAGE 1 of 1	BENEFICIARY A
		Notice Type: Approval Notice

The priority date designates your client's place in line, while the Visa Bulletin indicates who is at the front of the line—and who remains cut off from eligibility to apply for LPR status. SIJS petitioners—and all "Special Immigrants"—fall under the Visa Bulletin's Employment Fourth Preference Certain Special Immigrants Category (EB-4). The chart below is from the March 2019 Visa Bulletin and adjusted for clarity (highlights added):[31]

A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

Employment-based	**All Chargeability Areas Except Those Listed**	**CHINA-mainland born**	**EL SALVADOR GUATEMALA HONDURAS**	**INDIA**	**MEXICO**	**PHILIPPINES**	**VIETNAM**

[28] DHS Memorandum, T. Short, "Guidance to OPLA Attorneys Regarding the Implementation of the President's Executive Orders and the Secretary's Directives on Immigration Enforcement" (Aug. 15, 2017), AILA Doc. No. 18100807.
[29] DOS, Visa Bulletin, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html.
[30] For an in-depth explanation of the visa bulletin, see ILRC, "Update on Special Immigrant Juvenile Status: What Is Visa Availability?" (Feb. 2017), https://www.ilrc.org/sites/default/files/resources/update_on_sijs_visa_availability_2.28.17.pdf. Note that this advisory refers to the priority date as the "final action" date.
[31] U.S. Dep't of State Visa Bulletin, Vol. X, No. 27 (March 2019).

4th	C	C	01MAR16	C	01JAN18	C	C

According to the Final Action chart, SIJs with a priority date on or before March 1, 2016 are eligible for LPR status. Applicants from Mexico with a priority date of January 1, 2018 or earlier are eligible for LPR status. Applicants from all other listed countries—or other "chargeability areas"—are listed as C for current, meaning SIJs from those countries may be granted LPR status immediately upon approval of their SIJS petition.

Each month the Visa Bulletin is published, Final Action (chart A - above) and Dates for Filing of Employment-Based Visa Applications (chart B) may move forward in time or backwards, known as visa retrogression, or not move at all, depending on the number of visas available per country, per month. This can be frustrating to both the petitioner and the practitioner, as it requires constant monitoring to know when the petitioner will be allowed to proceed to apply for residency.

> **Practice Pointer:** To receive a monthly email alerting your to Visa Bulletin updates, send an email to listserv@calist.state.gov with "Subscribe Visa-Bulletin" in the message body.[32]

Medical Examination

As of November 1, 2018, USCIS expanded the validity of Form I-693, Report of Medical Examination and Vaccination Record to "enhance operational efficiencies and reduce the need to request updated Form I-693 from applicants."[33] Under current guidelines, an I-693 is valid if:

1. The civil surgeon signs it no more than 60 days before the date the I-485 is filed; and
2. USCIS adjudicates the application within 2 years from the date of the civil surgeon's signature.

If there will be a lengthy processing time for the I-485, practitioners should wait until receiving an RFE or interview notice before having their clients undergo the expensive medical examination.

Affirmative Applicants – Special Immigrant Juveniles Not in Removal Proceedings

SIJS is most commonly associated with unaccompanied minors seeking relief from removal; however, many SIJs have never had contact with immigration enforcement. These applicants (as well as those whose removal proceedings have been terminated) may apply for adjustment of status[34] before USCIS upon their priority date meeting the final action or filing cut-off date, depending upon USCIS's Adjustment of Status Filing Charts.[35]

---

[32] *Id.*
[33] USCIS Policy Alert, "Validity of Report of Medical Examination and Vaccination Record (Form I-693)" (Oct. 16, 2018), www.uscis.gov/policymanual/Updates/20181016-I-693Validity.pdf.
[34] Practitioners should advise clients about the risk of being placed into removal proceedings before filing affirmatively. USCIS announced that it may issue NTAs based on both SIJS denials and adjustment of status denials. USCIS Notice to Appear Policy Memorandum (*last updated* Feb. 26, 2019), www.uscis.gov/legal-resources/notice-appear-policy-memorandum.
[35] USCIS, Adjustment of Status Filing Charts from the Visa Bulletin, www.uscis.gov/visabulletininfo.

> **Practice Pointer:** This date which allows status adjustment applications to be submitted has no effect on a child's ability to petition for classification as an SIJ.[36] Prospective petitioners may file Form I-360 regardless of any visa numerical limitations or cutoff date restrictions on residency.[37] Filing Form I-360 at the earliest feasible date is strongly advisable and beneficial for most prospective SIJs.[38]

To control the flow of applications, USCIS may allow applicants to file Form I-485 based on the Visa Bulletin's chart A, "Final Action Dates for Employment-based Visas" or chart B, "Dates for Filing Employment-based Visa Applications." Just as with the Visa Bulletin, practitioners must check each month to determine which chart controls for filing for adjustment of status before USCIS.

Adjustment applicants may or may not be required to appear for an interview with a USCIS officer at the local field office who will ask, at his or her discretion, a subset of questions from the I-485 and probe into any relevant grounds of inadmissibility. Before any interview, is important to review the application with your client to identify any information that has changed and to evaluate if there are any new possible grounds of inadmissibility triggered since filing the I-485. The USCIS Policy Manual discusses in detail which grounds of inadmissibility may be waived and which grounds do not apply to SIJs.[39]

> **Practice Pointer:** If your client's priority date is current after retrogression occurred while the I-485 was pending with USCIS, contact NBC at nbcsij@uscis.dhs.gov to ensure processing resumes. Include:
>
> - Complete name of representative of G-28
> - Applicant's name
> - Form I-485 receipt number
> - Form I-360 receipt number
> - Priority Date
> - Alien number of the petitioner
> - Date of birth of the petitioner
> - Address of record

Applicants in Removal Proceedings

Prior to 2017, immigration judges routinely terminated proceedings with for children in removal proceedings who demonstrated prima facie eligibility for SIJS. Applicants would then proceed

---

[36] KIND Practice Advisory to KIND Staff and KIND Pro Bono Attorneys, "Update to Practice Advisory on Status Adjustment for Certain Special Immigrant Juvenile Status (SIJS) Clients," (May 19, 2016) *available at* https://supportkind.org/resources/update-practice-advisory-status-adjustment-certain-special-immigrant-juvenile-status-clients/.
[37] *Id.*
[38] *Id.*
[39] 7 USCIS-PM F.7(C)(2)–(4).

with their adjustment of status before USCIS. After OCC began opposing motions for termination for SIJs in 2017, children have been required to file for adjustment of status as a defense to removal rather than an affirmative, non-adversarial benefit.

Unless a Special Immigrant Juvenile was charged as an arriving alien on the Notice to Appear, an applicant for adjustment of status in removal proceedings must file Form I-485 with the immigration court rather than USCIS.[40] Arriving aliens proceed before USCIS in the same manner as affirmative applicants, but practitioners should be sure to request termination of proceedings upon being granted LPR status.

Regulations require that the applicant's priority date be current before filing the I-485 with the immigration court;[41] however, practitioners have reported that some immigration courts accept applications for adjustment upon approval of the SIJS petition without regard to the priority date. This "early filing" is a huge benefit for youth and young adults who need the stability of work authorization.

Although in some jurisdictions OCC may agree to the termination of proceedings where an applicant has an approved SIJS petition and a current priority date, it may be more expedient to adjust status during an individual hearing before the immigration court. Prolonged I-485 processing times with USCIS should be weighed against the potential trauma of a hearing for any particular client. During the immigration court hearing, the client will testify under oath before a judge, and the government attorney has the right to cross examine the client.

Status Docket

Adjudication delays, the EB-4 backlog, and OCC's opposition to termination have forced immigration courts to implement new docketing strategies to accommodate the thousands of SIJs awaiting eligibility to adjust. Many immigration judges continue to issue long continuances while other courts are adopting a "status docket," which requires periodic updates with the court on the posture of the SIJS petition and priority date without a formal master calendar hearing.

However, in a small minority but growing number of jurisdictions, judges are issuing removal orders under *Matter of L-A-B-R-* where the SIJS petition is not yet approved and the priority date remains distant. This is particularly true if the respondent has no other available remedy for immigration relief. Practitioners should regularly rescreen clients in this position to identify any other potential remedies that the respondent should be pursuing simultaneously.

In cases where a judge issues a removal order, practitioners must consider an appeal to the BIA and/or motions to reopen or reconsider immediately—particularly if there is a risk of enforcement against the respondent. As the battle continues, watch the minority of courts to see what may be coming next in the evolution of SIJS and a child's path to residency.

CONCLUSION

[40] 8 CFR §1245.2(a)(1)(i).
[41] 8 CFR §1245.2(a)(2)(i).

As a result of the ongoing changes to SIJS, it is important for practitioners to prepare their clients by explaining current procedures and processing times and by maintaining contact with their clients as they await adjustment. Even if there is no specific reason to reach out, practitioners may find it helpful to regularly touch base with clients with pending and approved SIJS petitions. Collecting alternate contact numbers and addresses will prove useful in these cases, such as phone numbers found in the client's ORR file.[42] Keeping in contact with child clients as they transition into young adults will help ease some of their fear and frustration—although practitioners must set realistic expectations for them in terms of when things might improve. Our clients' cases have the best outcomes when they know their attorney is not going anywhere and will continue to fight alongside them.

ADDITIONAL RESOURCES

- Practice Pointer, AILA, "*Matter of L-A-B-R-*" (Aug. 28, 2018), AILA Doc. No. 18082834.
- Practice Pointer, AILA National Benefits Center (NBC) Liaison Committee, "Crafting SIJ Findings with State Law and Factual Bases to Avoid RFEs" (Nov. 28, 2017), AILA Doc. No. 17112834.
- A. Rizio and G.Stampur, *Special Immigrant Juvenile Status Manual: A Step-by-Step Guide for Safe Passage Project Pro Bono Attorneys*, (Summer 2017), AILA Doc. No. 17092200.

[42] The ORR file often contains contact information for family members in addition to the child, and those family members may be helpful in re-establishing contact with a client.