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## Comparison Chart – November 2019 USCIS Policy Manual Changes to Volume 6, Part J (Special Immigrant Juvenile Status)<sup>1</sup>

December 13, 2019

On November 19, 2019, U.S. Citizenship and Immigration Services (USCIS) announced changes to its Policy Manual section on Special Immigrant Juvenile Status (SIJS) petitions.<sup>2</sup> The changes are effective immediately and apply to cases pending on, and filed on or after, November 19, 2019. In announcing the Policy Manual changes, USCIS stated that they “incorporate recent clarifications made in three adopted Administrative Appeals Office decisions regarding requirements for SIJ classification, as well as other clarifying and technical changes.”<sup>3</sup> Some of the changes reflect adjudication trends that USCIS had already been implementing at least at the AAO level, such as a movement away from the word “findings” in describing SIJS findings and instead using the word “determinations.”<sup>4</sup> Many of these changes and policy interpretations may be subject to challenge on grounds such as being inconsistent with the SIJS statute or imposing USCIS’s own view of state child welfare law rather than deferring to the state court’s determinations. Nevertheless, practitioners should familiarize

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<sup>2</sup> USCIS, PA-2019-08, Policy Alert: USCIS Special Immigrant Juvenile Classification, at 1 (Nov. 19, 2019), <https://www.uscis.gov/sites/default/files/policymanual/updates/20191119-SIJ.pdf> [hereinafter “USCIS SIJS Policy Alert”].

<sup>3</sup> *Id.* (referring to *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019); *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019); *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019)); CLINIC & Immigrant Legal Resource Center, *Practice Alert: SIJS Policy Updates and Proposed Regulations* (Nov. 2019), <https://cliniclegal.org/resources/practice-alert-special-immigration-juvenile-status-policy-updates-and-proposed-regulations>.

<sup>4</sup> CLINIC regularly publishes an Index of Unpublished Administrative Appeals Office Decisions on Special Immigrant Juvenile Status, which can be request by practitioners at <https://cliniclegal.org/index-unpublished-administrative-appeals-office-decisions-special-immigrant-juvenile-status>.

themselves with the current Policy Manual section on SIJS and, to the extent it is in the client’s interest, seek to obtain state court orders that comply with the new requirements. For SIJS petitions already pending with USCIS, this may require reviewing the court order submitted, anticipating potential requests for evidences (RFEs) or notices of intent to deny (NOIDs), and strategizing about RFE/NOID responses including whether it may be advantageous to seek an amended order in state court.

USCIS dismissed retroactivity concerns in announcing these Policy Manual changes. The announcement states that USCIS “is not changing its policy regarding SIJ adjudications” yet acknowledged 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.”<sup>5</sup> USCIS has tried and failed to defend itself in litigation with this approach before, arguing that its policy of denying SIJS to children with certain types of state court orders issued after 18 years of age was not in fact a new policy but instead merely internal guidance clarifying existing law.<sup>6</sup> Despite USCIS’s view that no policy change has occurred and any retroactive effect is legitimate, advocates are concerned that USCIS’s increasingly restrictive policies on SIJS eligibility are improperly retroactive and unfairly impose new rules on children who relied to their detriment on the old rules that existed at the time they took action to seek state court and SIJS protection. CLINIC asks practitioners to complete a web form if they have a case where USCIS has taken adverse action based on applying a new rule or policy to a petition that was filed before the new rule or policy existed.<sup>7</sup>

This resource briefly summarizes some of the key changes, and is followed by a chart comparing the current version with the previous Policy Manual section on SIJS.

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<sup>5</sup> USCIS SIJS Policy Alert, *supra* note 2, at 2, 3.

<sup>6</sup> See, e.g., *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 375 (S.D.N.Y. 2019) (granting summary judgment on plaintiffs’ Administrative Procedure Act challenge to USCIS SIJS policy and noting “the record belies the agency’s assertion that there is not a new policy”); *J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1063 (N.D. Cal. 2018) (granting preliminary injunction based on plaintiffs’ Administrative Procedure Act challenge to USCIS SIJS policy, noting “[w]hether USCIS’s current interpretation of the SIJ statute and regulation is a ‘clarification’ or a ‘policy change’ does not change that fact that the interpretation represents a sharp departure from prior practice.”).

<sup>7</sup> CLINIC Web Form, *SIJS Denials and Revocations Based on Retroactive Policy Interpretations*, <https://cliniclegal.org/sijs-denials-and-revocations-based-retroactive-policy-interpretations>.

## Summary of Significant Changes

### *Definition of “juvenile court”*

- The Policy Manual now states that “state law is controlling as to whether a petitioner is considered a ‘child’ or any other equivalent term for a juvenile”<sup>8</sup> and that a “juvenile court” is one that has “the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued.”<sup>9</sup> This language is also found in two of the October 2019 adopted AAO decisions. If a “court of general jurisdiction . . . issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding,” the Policy Manual states that the court would “generally not be acting as a juvenile court for SIJ purposes.”<sup>10</sup>

### *Definition of “dependency”*

- The Policy Manual changes contain significant discussion about USCIS’s view of what “dependency” means under state child welfare law. It states that a dependent child is “a child subject to the jurisdiction of a juvenile court because the court has determined that allegations of parental abuse, neglect, abandonment, or similar maltreatment concerning the child are sustained by the evidence and are legally sufficient to support state intervention on behalf of the child.”<sup>11</sup> It adds that “[i]ntervention by a juvenile court on behalf of a dependent child generally involves a determination regarding the care and custody of the child or the provision of child welfare services or both” and that the order should state where or with whom the child is placed or what type of services or supervision the child is receiving from the court.<sup>12</sup> The Policy Manual states that “USCIS draws on guidance from family law treatises, national clearinghouses on juvenile court practice, and state laws on the definition of dependency.”<sup>13</sup>

### *Abandonment of policy requiring juvenile court to have jurisdiction to return child to custody of unfit parent*

- Consistent with the October 2019 adopted AAO decision *Matter of D-Y-S-C-*, the revised Policy Manual confirms that USCIS has abandoned its previous policy, struck down by several courts,<sup>14</sup> that the state court must have jurisdiction to return the child to the

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<sup>8</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.B., <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>9</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C., <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>10</sup> *Id.*

<sup>11</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.1, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>12</sup> *Id.* n.12.

<sup>13</sup> *Id.* n.13.

<sup>14</sup> See, e.g., *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 382 (S.D.N.Y. 2019); *J.L. v. Cissna*, 341 F. Supp. 3d 1048 (N.D. Cal. 2018); *Moreno-Galvez v. Cissna*, 387 F. Supp. 3d 1208 (W.D. Wash. July 17, 2019); *W.A.O. v. Cissna*, No. 19-11696, 2019 WL 3549898 (D.N.J. July 3, 2019).

parents' custody in order to make a qualifying parental reunification determination.<sup>15</sup> In its announcement of the changes, USCIS states that it "made that change in response to the strain of litigation."<sup>16</sup>

#### *Reunification determination and identification of parents*

- The Policy Manual now requires that the state court order name the petitioner's parents and that the record "establish that the court determined the named person(s) to be the petitioner's parents."<sup>17</sup> If the father against whom findings are made is not on the birth certificate, the Policy Manual continues to require that "a determination that the claimed father is the father should be recognized in the juvenile court order."<sup>18</sup> However, the new version omits the words "under state law" from the previous sentence and adds, "In circumstances where the judge does not make a final determination on parentage or makes a determination as to alleged or purported parentage, the order will not meet the statutory requirements for SIJ classification."<sup>19</sup>

#### *Reunification determination based on "similar basis," including parental death*

- The Policy Manual states that in order for a court to make a qualifying parental reunification determination based on a similar basis under state law, the elements of the state law should be contained in the court order, the petitioner should provide a copy of the law the court relied on and explain how the elements of the similar basis are equivalent, or the petitioner should show that children are "entitled to equivalent juvenile court protection and intervention based on the court's determination of the similar basis to abuse, neglect, or abandonment."<sup>20</sup>
- The Policy Manual states that "[t]he fact that one or both parents is deceased is not itself a similar basis to abuse, abandonment or neglect under state law."<sup>21</sup> In cases of parental death, USCIS requires "[a] legal conclusion from the juvenile court" that "parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law."<sup>22</sup>

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<sup>15</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.2 n.19, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>16</sup> USCIS SIJS Policy Alert, *supra* note 2, at 3.

<sup>17</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.2, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* n.20.

<sup>20</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.A.1, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

### *Best interest determination*

- The Policy Manual changes remove previous language suggesting that the juvenile court must consider specific placements in the country of origin as part of the best interest analysis. The new language states that “[i]f . . . the court places the child with a person in the United States pursuant to state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent. The analysis would not change even if the chosen caregiver is a parent.”<sup>23</sup>

### *Continuing jurisdiction when child moves to a new jurisdiction*

- The Policy Manual states that, if a petitioner moves to another jurisdiction, “[a] juvenile court order does not necessarily terminate” and “a juvenile leaving the court-ordered placement without permission or authorization does not by itself affect SIJ eligibility.” It largely retains previous language that a court generally “maintains jurisdiction when it orders the juvenile placed in a different state or makes a custody determination and the juvenile and the legal custodian relocate to a new jurisdiction” but USCIS requires additional evidence if the child permanently relocates to a new jurisdiction and is not living in the court-ordered placement.

### *Consent requirement – new “nature and purpose” inquiry*

- The Policy Manual adds language, also found in the three October 2019 adopted AAO decisions, stating that when determining whether to consent to the grant of SIJS, USCIS “looks to the nature and purpose of the juvenile court proceedings and whether the court order was sought in proceedings granting relief from abuse, neglect, or abandonment beyond an order with factual findings to enable a person to file a petition for SIJ classification.”<sup>24</sup> It adds, “Where the factual basis for the court’s determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law, USCIS generally consents to the grant of SIJ classification.”<sup>25</sup> The Policy Manual requires that the record show the “type of relief the court is providing, such as child welfare services or custodial placement,” and directs that USCIS may issue a RFE if the record does not “indicate what protective relief was granted by the court.”<sup>26</sup>

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<sup>23</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.3, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>24</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.D, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>25</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.A.3, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3>.

<sup>26</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 4.D, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>.

### *Requirement that order cite state law*

- The Policy Manual requires that the record specify what state law the court relied on in making the SIJS determinations. It directs that this “requirement may be met if the order(s) cite those state law(s), or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court.”<sup>27</sup> According to USCIS, the agency “looks at the documents submitted in order to ascertain the role and actions of the court and to determine whether the proceedings provided relief to the child under the relevant state law(s).”<sup>28</sup> It warns that “[m]ere copies of” state law or legal arguments drafted in response to an RFE “may not be sufficient unless supported by evidence that the court actually relied on those laws when making its determinations.”<sup>29</sup>

### *“Final order” requirement*

- The Policy Manual contains expanded language regarding temporary versus “final” orders. It states that while the title of an order is “not necessarily controlling,” an order that “clearly indicates that the order was issued for a limited purpose (for example, medical guardianship) or expires before the child reaches the age of majority is generally not sufficient for SIJ eligibility.”<sup>30</sup> But an “order entitled ‘temporary’ may, in fact reach the legal conclusion that reunification is not viable and is legally binding on the parties until the age of majority.”<sup>31</sup> The Policy Manual retains the previous version’s directive that “[a] court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent for a time-limited period, is generally not considered a custodian for purposes of establishing SIJ eligibility” but adds that “a child may be placed with a temporary caregiver in the context of a dependency proceeding (for example, when placed with a foster parent) and still meet the criteria for being dependent on a juvenile court.”<sup>32</sup>

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<sup>27</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 3.A.1, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-3>.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 2.C.3, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-2>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

Expanded language on revocation

- The Policy Manual adds language about when revocation of an approved petition on notice may be appropriate. The previous version gave the sole example of fraud in describing what might constitute “good and sufficient cause.” The new version adds “if USCIS determines the petition was approved in error” as a reason revocation may be justified.<sup>33</sup>

## Chart Showing Changes to Policy Manual Volume 6, Part J (SIJS)

The below chart compares the current Policy Manual section on SIJS (Part J) with the previous version, which was issued in October of 2016.<sup>34</sup> The chart attempts to include all significant changes, but does not contain the entire part J and uses ellipses (. . .) to reflect text that has been omitted.<sup>35</sup> Text in yellow highlights indicate new language that was added in November 2019. Bracketed, crossed out text reflects language that has been removed with the November 2019 changes. Sentences beginning with an asterisk followed by italicized language are clarifying notes provided by the authors.

| SECTION                                   | NOVEMBER 2019 CHANGES   |
|---|---|
| <b>Chapter 1 – Purpose and Background</b> |   |
| <b>A. Purpose</b>                         | . . . .<br><br>While there is no longer a requirement that a child be found eligible for long-term foster care, a juvenile court <b>determination</b> <sup>[1]</sup> <del>[finding]</del> that reunification with one or both parents is not viable is still required for SIJ classification. |

<sup>33</sup> USCIS Policy Manual, Vol. 6, Pt. J, Ch. 4.F.3, <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>.

<sup>34</sup> According to the USCIS website, the only intervening change to the SIJS section since its creation in October 2016 was the replacement of “foreign national” with the word “alien” in October of 2019. See USCIS Policy Manual, Vol. 6, Pt. J, Special Immigrant Juveniles, <https://www.uscis.gov/policy-manual/volume-6-part-j>. During a December 10, 2019 stakeholder teleconference, USCIS officials stated that the agency made no changes to the SIJS section of the Policy Manual between October 2016 and the publication of the updates in November 2019. The authors used an October 2018 version of the SIJS section of the Policy Manual, obtained through a FOIA request, in preparing this resource.

<sup>35</sup> The chart does not include most footnotes, nor does it include, for example, every instance where USCIS removed “finding” and replaced it with “determination.”

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|-----------------------------|---|
|                             | <p>Children in a variety of different circumstances <b>who are residing in the United States</b> may be eligible for SIJ classification, including but not limited to:</p> <ul style="list-style-type: none"> <li>• <del>[Children who have been abused prior to their arrival in the United States, or while in the United States]</del></li> <li>• <b>Children in the care or custody of a family member or other caregiver who have been abused, neglected, abandoned or subjected to similar maltreatment by a parent prior to their arrival in the United States, or while in the United States;</b></li> </ul> <p style="text-align: center;">. . . .</p> <p>1. The term "determination" refers to a conclusion of law. See 8 CFR 204.11(a) (defining "juvenile court" to be one in the United States with jurisdiction under state law to make judicial determinations regarding juveniles).</p>   |
| <p><b>B. Background</b></p> | <p style="text-align: center;">. . . .</p> <ul style="list-style-type: none"> <li>• Provided that <b>alien</b> <del>[foreign national]</del>* children cannot apply for admission or be admitted to the United States in order to obtain SIJ classification</li> </ul> <p style="text-align: center;">. . . .</p> <ul style="list-style-type: none"> <li>• Provided that children are eligible only if the Attorney General (later changed to the Secretary of the Department of Homeland Security) expressly consents to the juvenile court order serving as a precondition to the grant of <b>classification</b> <del>[status]</del>**</li> </ul> <p>* This language describes legislative changes made through the Miscellaneous and Technical Immigration and Nationality Amendments of 1994. The change, throughout the Policy Manual, from "foreign national" to "alien," happened in October 2019 and was not part of the November 2019 SIJS specific Policy Manual. USCIS, Technical Update: Replacing the Term "Foreign National" (Oct. 8, 2019), <a href="https://www.uscis.gov/policy-manual/volume-6-part-j">https://www.uscis.gov/policy-manual/volume-6-part-j</a>.</p> <p>** This language describes legislative changes made through the 1998 Appropriations Act.</p> |



## Chapter 2 – Eligibility Requirements

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| <p><b>Introductory paragraphs</b></p>                          | <p>. . . . If a juvenile court has made certain <b>judicial determinations</b> <del>[findings]</del> <b>and issued orders</b> under state law on dependency or custody, parental reunification, and the best interests of the child, then the child may be eligible for SIJ classification.</p> <p>. . . . USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about <b>the best interest of the juvenile and</b> abuse, neglect, abandonment, <b>or a similar basis under state law.</b></p>   |
| <p><b>A [B]. General</b></p>                                   | <p>No substantive changes.</p>  |
| <p><b>B [C]. Age-out Protections for Filing with USCIS</b></p> | <p><del>[In general, a “child” is an unmarried person under 21 years of age for purposes of SIJ classification. USCIS considers the petitioner’s age at the time the SIJ petition is filed when determining whether the petitioner has met the age requirement].</del></p> <p><b>In general, a juvenile may seek SIJ classification if he or she is under 21 years of age and unmarried at the time of filing the petition with USCIS. However, state law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings.</b></p> <p>If a petitioner was under 21 years of age on the date of the proper filing of the <b>Form I-360</b>, <b>and all other eligibility requirements under the statute are met,</b> USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.</p> |
| <p><b>C [D]. Juvenile Court Order</b></p>                      | <p><b>For purposes of SIJ classification, a juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations on the custody and care of juveniles.<sup>[5]</sup> This means the court must have the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued.<sup>[6]</sup> Depending on the circumstances, such a determination generally would be expected to remain</b></p>   |

in place until the juvenile reached the age of majority, or until the goal of a child welfare permanency plan, such as adoption, or other protective relief ordered by the juvenile court has been reached.<sup>[7]</sup>

The title and the type of court that may meet the definition of a juvenile court varies from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and youthful offender courts.\*

Not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification. For example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes. The burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued.<sup>[8]</sup>

To be eligible for SIJ classification, ~~[a juvenile court in the United States must have issued order (or orders)]~~ the petitioner must submit a juvenile court order(s) with the following determinations ~~[findings]~~ and provide evidence that there is a reasonable factual basis<sup>[9]</sup> for each of the determinations:

- Dependency or Custody – Declares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court;
- Parental Reunification – Declares, under the state child welfare law, that the petitioner cannot reunify with one or both of the petitioner’s parents ~~[prior to aging out of the juvenile court’s jurisdiction]~~ due to abuse, neglect, abandonment, or a similar basis under state law; and
- Best Interests – **Determines** ~~[finds]~~ that it would not be in the petitioner’s best interest to be returned ~~[(to a placement) in]~~ to the petitioner’s, or his or her parents’, country of nationality or last habitual residence. **The best interest determination may be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court.**

5. See 8 CFR 204.11(a). 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 or custody and care of juveniles (or both).

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|  | <p>6. See INA 101(a)(27)(J)(i). See <i>Matter of A-O-C</i> (PDF, 309 KB), Adopted Decision 2019-03 (AAO Oct. 11, 2019).</p> <p>7. See 8 CFR 204.11(d)(2)(i).</p> <p>8. [4] For more information on <del>[which state courts USCIS considers a juvenile court]</del> what evidence is sufficient to establish that the court is acting as a juvenile court for SIJ purposes, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Determinations [6 USCIS-PM J.3(A)(1)].</p> <p>9. For information on what evidence may suffice to establish a reasonable factual basis, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 3, Factual Basis and USCIS Consent [6 USCIS-PM J.3(A)(3)].</p> <p><i>* These two sentences were previously found in Chapter 3.A.1. The previous version used the term "delinquency," which has been replaced here with "youthful offender."</i></p>   |
| <p><b>C.1 [D-1].</b><br/> <b>Dependency or Custody</b></p> | <p style="text-align: center;">. . . .</p> <p><b>Dependency</b><br/> A determination of dependency requires that the petitioner be declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency.<sup>[11]</sup> The petitioner must be in the United States and under the jurisdiction of the court.* The term dependent child, as used in state child welfare laws, generally means a child subject to the jurisdiction of a juvenile court because the court has determined that allegations of parental abuse, neglect, abandonment, or similar maltreatment concerning the child are sustained by the evidence and are legally sufficient to support state intervention on behalf of the child.<sup>[12]</sup> Dependency proceedings may include abuse, neglect, dependency, termination of parental rights, or other matters in which the court intervenes to provide relief from abuse, neglect, abandonment, or a similar basis under state law.<sup>[13]</sup></p> <p><b>Custody</b><br/> Placing the petitioner "under the custody of" a natural person or entity generally [requires] encompasses both legal and physical custody.</p> |

Commitment to, or placement under the custody of a person may include certain types of guardianship, conservatorship, or adoption.<sup>[14]</sup> When the court places the petitioner under the custody of a specific person, the court order should identify that person by name. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent's abuse, neglect, abandonment or similar maltreatment of the petitioner.

~~[Court ordered dependency or custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification. A court appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent, is not considered a custodian for purposes of SIJ eligibility.] \* \*~~

11. See 8 CFR 204.11(c)(3). See *Matter of E-A-L-O-* (PDF, 304 KB), Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying the requirement that a juvenile court dependency declaration is not sufficient for USCIS' to consent to SIJ classification absent evidence that the dependency declaration actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law). For an example of state law governing declarations of dependency, see California Welfare and Institutions Code Section 300, \* \* \* et seq.

12. Intervention by a juvenile court on behalf of a dependent child generally involves a determination regarding the care and custody of the child or the provision of child welfare services or both. If a custodial placement is being made, the order should state where or with whom the child is being placed. If the court is providing relief through child welfare services, the order or supplemental evidence should reference what type of services or supervision the child is receiving from the court. For example, court-ordered child welfare services may include psychiatric, psychological, educational, occupational, medical or social services, services providing protection against trafficking or domestic violence, or other supervision by the court or a court appointed entity. See, for example, U.S. Department of Health and Human Services, Child Welfare Information Gateway, How the Child Welfare System Works (PDF). See *Budhathoki v. Nielsen* (PDF), 898 F.3d 504, 513 (5th Cir. 2018) (concluding "that before a state court ruling constitutes a dependency order, it must in some way address custody or at least supervision").

13. USCIS draws on guidance from family law treatises, national clearinghouses on juvenile court practice, and state laws on the definition of dependency. See, for example, Ann M. Haralambie, Handling Child Custody, Abuse and

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|  | <p>Adoption Cases, Section 12.1 (Thompson Reuters 3rd ed. 2018); and National Council of Juvenile and Family Court Judges, Resource Guidelines Improving Court Practice in Child Abuse &amp; Neglect Cases (PDF) (1995).</p> <p>14. SIJ is generally not an appropriate option for those children who come to the United States for the primary purpose of adoption. Although it does not apply to all SIJ cases involving adoption, SIJ classification is not meant to provide a way to circumvent the Hague Adoption Convention or other requirements for receiving legal status via adoption. See Hague Conference on Private International Law, Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134, Art. 2, 28. See 8 CFR 204.301 and 8 CFR 204.303.</p> <p>* Language substantially similar to these first two sentences was previously found in footnote 5 of this section.</p> <p>** The second sentence is now found in Chapter 3.</p> <p>*** Language previous found in footnote 5.</p>   |
| <p><b>C.2 [D.2].</b><br/><b>Parental Reunification</b></p> | <p>. . . . However, actual termination of parental rights is not required.<sup>[19]</sup></p> <p>The juvenile court order should contain the factual basis for this determination, which includes naming the petitioner's parents, and the record must establish that the court determined the named person(s) to be the petitioner's parents. USCIS may request additional evidence if this is not established. <del>[The findings must be based upon the person (or persons) who is the petitioner's parent (or parents) under state law. If the juvenile court order establishes that the person (or persons) is the petitioner's parent (or parents), USCIS generally considers this requirement met. However, if the record does not establish that the person (or persons) is the petitioner's parent (or parents), USCIS may request additional evidence.]</del> For example, if the court's determinations <del>[findings]</del> are based on a father not listed on the petitioner's birth certificate, a determination that the claimed father is the father <del>[under state law]</del> should be recognized in the juvenile court order.</p> <p>19. USCIS does not require that the juvenile 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. See R.F.M. v Nielsen, 365 F.Supp.3d 350, 382 (SDNY Mar. 15, 2019). See J.L., et al v. Cissna, 341 F.Supp.3d 1048 (N.D.C.A. 2018), Moreno-Galvez v. Cissna, No. 19-321 (W.D.W.A. July 17, 2019). See W.A.O. v. Cissna, No. 19-11696 (D.N.J. July 3, 2019).</p> |

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|   | <p>20. In circumstances where the judge does not make a final determination on parentage or makes a determination as to alleged or purported parentage, the order will not meet the statutory requirements for SIJ classification.</p>   |
| <p><b>C.3 [D-3]. Best Interests</b></p> | <p style="text-align: center;">. . . .</p> <p>“Accordingly, this requires a determination by the juvenile court that a placement in the child’s, or his or her parents’, country of nationality or last habitual residence is not in the child’s best interest.” This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations. While the standards for making best interest determinations may vary between states, [a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.] the court may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child’s potential caregiver(s). The child’s safety and well-being are typically the paramount concern.</p> <p>The court’s determination [finding] that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that being returned to [a placement in] the petitioner’s (or petitioner’s parents’) country of nationality or last habitual residence would not be in the child’s best interest. However, if for example the court places the child with a person in the United States pursuant to state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent. The analysis would not change even if the chosen caregiver is a parent. USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.</p> <p>The juvenile court may make the required determination that it is not in the petitioner’s best interest to be returned to the petitioner’s or his or her parents’ country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court, such as a state child welfare agency, may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a determination from that process may satisfy this requirement.<sup>[23]</sup>*</p> |

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|  | <p>23. See 8 CFR 204.11(d)(2)(iii). The burden is on the petitioner to prove that the other judicial or administrative body is authorized or recognized by a juvenile court to make best interest determinations. See <i>Matter of A-O-C-</i> (PDF, 309 KB), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (providing, consistent with decisions in <i>R.F.M. v. Nielsen</i>, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and INA 101(a)(27)(J)(i), that the definition of juvenile court at 8 CFR 204.11(a) means 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). Evidence to support this may include, but is not limited to, copies of the relevant state law(s) or court documents indicating that the judicial or administrative body is authorized to make such determinations.</p> <p>* This paragraph was previously found in Chapter 3.A.1.</p>  |
| <p><b>C.4 [D.4].</b><br/><b>Validity of</b><br/><b>Order</b></p> | <p><i>Jurisdiction</i> <del>[Issued]</del> under State Law</p> <p>All determinations in the juvenile court order must have been properly issued under state law <del>[to be valid for the purposes of establishing]</del> to establish eligibility for SIJ classification. This includes the need for the juvenile court <del>[to follow their state laws on jurisdiction]</del> to have jurisdiction under state law to make the required judicial determinations about the custody and care and/or dependency of the juvenile.<sup>[25]</sup> For example, a state juvenile court may not be able to take jurisdiction and issue a qualifying dependency or custody order for a person who is no longer a juvenile under the state's dependency or custody laws <del>[juvenile who is 18 years of age or older]</del> even though the federal statute allows a petitioner to file for SIJ classification until the age of 21 <del>[the juvenile may file his or her petition with USCIS until the age of 21]</del>. The state law definition of juvenile is controlling on the dependency or custody proceedings before the juvenile court. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.</p> <p>25 [14]. For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the custody and care <b>and/or dependency</b> of juveniles. See 8 CFR 204.11(a). See <i>Perez-Olano v. Holder</i> (PDF, 5.34 MB), Case No. CV 05-3604 (C.D. Cal. 2010) at paragraph 8.</p> <p><i>Continuing Jurisdiction</i></p> <p style="text-align: center;">. . . .</p> |

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|                                      | <p><del>[A petitioner with a juvenile court order who moves to the jurisdiction of a different juvenile court may need to either submit evidence that the petitioner is still under the jurisdiction of the court that issued the order or submit a new order.]</del></p> <p>A juvenile court order does not necessarily terminate because of a petitioner’s move to another court’s jurisdiction, and a juvenile leaving the court-ordered placement without permission or authorization does not by itself affect SIJ eligibility. In general, a court maintains jurisdiction when it orders the juvenile placed in a different state or makes a custody determination and the juvenile and the legal custodian relocate to a new jurisdiction. If, however, a juvenile permanently [child]-relocates to a new state [jurisdiction] and is not living in a court-ordered placement [or with the court ordered custodian], then the petitioner must submit:</p> <p style="text-align: center;">. . . .</p>  |
| <p><b>D. [D.5] USCIS Consent</b></p> | <p>The <del>[William Wilberforce]</del> Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) simplified but did not remove the <del>[Department of Homeland Security]</del> DHS consent requirement. In order to consent to the grant of SIJ classification, USCIS must review the juvenile court order and any supporting evidence submitted to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to protect the child and provide <del>[to obtain]</del> relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily <del>[or solely]</del> to obtain an immigration benefit. USCIS therefore looks to the nature and purpose of the juvenile court proceedings and whether the court order was sought in proceedings granting relief from abuse, neglect, or abandonment beyond an order with factual findings to enable a person to file a petition for SIJ classification.<sup>[31]</sup> Generally, the court-ordered dependency or custodial placement of the child is the relief being sought from the juvenile court, and the factual basis of each of the required determinations [findings] is evidence that the request for SIJ classification is bona fide.</p> <p>USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the determinations [findings] necessary for SIJ classification [as a SIJ]. <del>[The evidence needed does not have to be overly detailed, but must confirm that the juvenile</del></p> |



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|   | <p><del>court made an informed decision in order to be considered “reasonable.” USCIS generally consents to the grant of SIJ classification when the order includes or is supplemented by a reasonable factual basis for all of the required findings.]</del></p> <p>USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make <b>determinations</b> <del>[findings]</del> in separate hearings and the petitioner may request an order that compiles the <b>determinations</b> <del>[findings]</del> of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the <b>determinations</b> <del>[findings]</del> that were made so that USCIS can determine the petitioner’s eligibility for SIJ classification does not mean that the order is not bona fide.</p> <p><b>31. Id.; see also <i>Matter of D-Y-S-C-</i> (PDF, 306 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (clarifying SIJ classification may only be granted upon USCIS’ consent to juveniles who meet all other eligibility criteria and establish that they sought the requisite juvenile court or administrative determinations in order to gain relief from parental abuse, neglect, abandonment, or similar basis under state law, and not primarily to obtain an immigration benefit).</b></p> |
| <b>E. HHS Consent</b>                         | No substantive change.   |
| <b>F. Inadmissibility and Waivers</b>         | No change.   |
| <b>G. Family Members</b>                      | Unlike some other immigrant visa petitions, SIJ classification does not allow the petitioner’s family members to be included on the petition as derivative beneficiaries. SIJ petitioners that have adjusted status to that of a lawful permanent resident may petition for qualifying family members through the family-based immigration process. However, a petitioner who adjusts status as a result of an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents, <b>even after naturalization</b> . This prohibition applies to a <del>[non-abusive,]</del> custodial parent <del>[, if applicable]</del> <b>when the juvenile court has found reunification is not viable with the other parent.</b>  |
| <b>Chapter 3 – Documentation and Evidence</b> |  |
| <b>A. Juvenile Court Order(s) and</b>         | . . . .  |

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| <p><b>Administrative Documents</b></p> | <p><b>1. Qualifying Juvenile Court Determinations</b> [Proceedings]</p> <p><del>[A juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations about the custody and care of children. The title and the type of court that may meet the definition of a juvenile court varies from state to state. Examples of state courts that may meet this definition include: juvenile, family, dependency, orphans, guardianship, probate, and delinquency courts.</del></p> <p><del>[The juvenile court may make the required determination that it is not in the petitioner’s best interest to be returned (to a placement) in the petitioner’s or his or her parents’ country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a determination from that process may satisfy this requirement.”] *</del></p> <p><i>* Much of the deleted language from these two paragraphs is now found elsewhere in the Policy Manual, as noted in other parts of this resource.</i></p> <p><b>[2. Findings]</b></p> <p>The juvenile court order(s) must provide the required <b>judicial determinations</b> [findings] regarding dependency or custody, parental reunification, and best interests. These determinations may be made in a single juvenile court order or in separate juvenile court orders. The order(s) should use language establishing that the specific <b>judicial determinations</b> [findings (conclusions of law)] were made under state law. <del>[The order (or orders) should not just mirror or cite to immigration law and regulations.]</del> This requirement may be met if the order(s) cite those state law(s), or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court. USCIS looks at the documents submitted in order to ascertain the role and actions of the court and to determine whether the proceedings provided relief to the child under the relevant state law(s). Mere copies of, or references to, state law(s), and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, may not be sufficient unless supported by evidence that the court actually relied on those laws when making its determinations. The juvenile court order may use different legal terms than those found in the <b>Immigration and Nationality Act (INA)</b> as long as the <b>determinations</b> [findings] have the same meaning as the requirements for SIJ</p> |
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classification (for example, “guardianship” or “conservatorship” may be equivalent to custody). Orders that just mirror or cite to federal immigration law and regulations are not sufficient.

There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.

#### *Similar Basis under State Law*

The language of the order may vary based on individual state child welfare law due to variations in terminology and local state practice in making child welfare decisions. If a juvenile court order makes the determinations [findings] based upon a state law similar to abuse, neglect, or abandonment, the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. [Petitioners are encouraged to submit the juvenile court’s findings of how the basis is similar to abuse, neglect, or abandonment and copies of the relevant laws.] This requirement may be met if the elements of the state law are contained in the order, by providing a copy of the law the court relied upon and a description of how the elements of the similar basis are equivalent, or by showing that the child is entitled to equivalent juvenile court protection and intervention based on the court’s determination of the similar basis to abuse, neglect, or abandonment.

The fact that one or both parents is deceased is not itself a similar basis to abuse, abandonment or neglect under state law. A legal conclusion from the juvenile court is required that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.

## **2. Final Orders**

A court order for dependency or custody that clearly indicates that the order was issued for a limited purpose (for example, medical guardianship) or expires before the child reaches the age of majority is generally not sufficient for SIJ eligibility. However, the title of the court order is not necessarily controlling. For example, an order entitled “temporary” may, in fact reach the legal conclusion that reunification is not viable and is legally binding on the parties until the age of majority. In such a case, the order should generally contain language to that effect or the SIJ petitioner should submit evidence that the court intended the order to be legally in effect until the age of majority. Such evidence could include, for example, the underlying petition or copies of relevant state law.

A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent for a time-limited period, is generally not considered a custodian for purposes of establishing SIJ eligibility.<sup>\*\*</sup> However, a child may be placed with a temporary caregiver in the context of a dependency proceeding (for example, when placed with a foster parent) and still meet the criteria for being dependent on a juvenile court.

<sup>\*\*</sup> This sentence was previously found in Chapter 2.D.1.

### 3. Factual Basis and USCIS Consent

~~[Template orders that simply recite the immigration statute or regulatory language are generally not sufficient.]~~ Orders that have the necessary determinations ~~[[findings or rulings]]~~ and include, or are supplemented by, the factual basis for the court's determinations ~~[[findings]]~~ (for example, the judicial findings of fact) are usually sufficient to establish eligibility and to demonstrate that the request for SIJ classification is bona fide. Where the factual basis for the court's determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law, USCIS generally consents to the grant of SIJ classification.<sup>[10]</sup> If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all of the required determinations ~~[[findings]]~~, USCIS may request evidence of the factual basis for the court's determinations ~~[[findings]]~~. USCIS does not require specific documents to establish the factual basis or the entire record considered by the court. However, the burden is on the petitioner to provide the factual basis for the court's determinations ~~[[findings]]~~.

Examples of documents that a petitioner may submit to USCIS that may support the factual basis for the court order include:

- Any supporting documents submitted to the juvenile court, if available;
- The petition for dependency or complaint for custody or other documents which initiated the juvenile court proceedings;
- Court transcripts;
- Affidavits summarizing the evidence presented to the court and records from the judicial proceedings; and

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|  | <ul style="list-style-type: none"> <li>• Affidavits or records that are consistent with the determinations made by the court.<sup>[11]</sup></li> </ul> <p>10. See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997); see also <i>Matter of D-Y-S-C-</i> (PDF, 306 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (requiring that, for USCIS’ consent to be warranted, the judicial determination to find that the juvenile was subjected to such maltreatment by one or both parents under state law); <i>Matter of E-A-L-O-</i> (PDF, 304 KB), Adopted Decision 2019-04 (AAO Oct. 11, 2019 (clarifying that, for USCIS’ to consent to SIJ classification, a juvenile court dependency declaration must be issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law).</p> <p>11. Such affidavits or records will be assigned low evidentiary value unless they are accompanied by evidence that the court considered the information contained therein in the course of issuing its judicial determinations.</p> <p><b>4. Supporting Evidence</b><br/>The order or supporting evidence should specifically indicate:</p> <ul style="list-style-type: none"> <li>• What type of relief the court is providing, such as child welfare services or custodial placement;</li> <li>• With whom the child is placed, if the court has appointed a specific custodian or guardian, (for example, the name of the person, or entity, or agency <del>if the child is adjudicated dependent</del>) and the factual basis for this finding;</li> <li>• Which of the specific grounds (abuse, neglect, abandonment, or similar basis under state law) apply to which of the parent(s) and the factual basis for the court’s determinations <del>findings</del> on non-viability of parental reunification; and</li> <li>• The factual basis for the determination that it is not in the petitioner’s best interest to return to <del>the placement in</del> the petitioner’s or his or her parents’ country of nationality or last habitual residence (for example, addressing family reunification with family that remains in the child’s country of nationality or last habitual residence).</li> </ul> |
| <b>B. Limitations on Additional Evidence</b> | No substantive change.  |

## Chapter 4 – Adjudication

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| <b>A. Jurisdiction</b>             | No change.   |
| <b>B. Expeditious Adjudication</b> | <p><del>[USCIS generally adjudicates SIJ petitions with 180 days.]</del> The Trafficking Victims Protection and Reauthorization Act 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.</p> <p>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.</p>                   |
| <b>C. Interview</b>                | No substantive change.   |
| <b>D. Requests for Evidence</b>    | <p>Additional evidence may be requested at the discretion of the officer if needed to determine eligibility. To provide petitioners an opportunity to address concerns before issuing a denial, officers generally issue a Request for Evidence (RFE) or a Notice of Intent to Deny (NOID), where the evidence is insufficient to <b>adjudicate</b> <del>[approve]</del> the petition. The officer may request additional evidence for reasons such as, but not limited to:</p> <p style="text-align: center;">. . . .</p> <ul style="list-style-type: none"> <li>• The evidence provided does not establish a reasonable factual basis for the <del>[findings]</del> <b>determinations or indicate what protective relief was granted by the court;</b></li> </ul> <p style="text-align: center;">. . . .</p> |
| <b>E. Fraud</b>                    | * New section  |

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|   | <p>There may be cases where the officer suspects or determines that a petitioner has committed fraud in attempting to establish eligibility for SIJ classification. In these cases, officers follow current procedures when referring a case to Fraud Detection and National Security (FDNS).<sup>[7]</sup></p> <p>7. A referral to FDNS does not change the 180-day timeframe for adjudication. However, the timeframe for processing will stop or be suspended for delays caused by the petitioner. See 8 CFR 103.2(b)(10).</p>  |
| <b>F [E]. Decision</b>  | <p><b>1. Approval</b><br/>No substantive change.</p> <p><b>2. Denial</b><br/>No substantive change.</p> <p><b>3. Revocation</b></p> <p><i>Automatic Revocation</i><br/>No substantive change.</p> <p><i>Revocation on Notice</i><br/>In addition, USCIS, with notice, may revoke an approved petition for SIJ classification for good and sufficient cause such as fraud, or if USCIS determines the petition was approved in error. In these instances, USCIS issues a Notice of Intent to Revoke (NOIR) and provides the petitioner an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval.</p> |
| <p><b>Chapter 5 – Appeals, Motions to Reopen, and Motions to Reconsider</b></p> |  |
| <b>[A. General]</b>   | No substantive change.   |

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| <p><del>[B. Requirements for Perez-Olano Litigation Class Members]</del></p> | <p><del>* Removed entire section.</del></p> <p><del>[Perez-Olano v. Holder is a class action lawsuit filed on behalf of certain foreign national juvenile who may have been eligible for SIJ classification or SIJ-based adjustment of status but whose SIJ petition or adjustment application was denied or revoked for certain reasons. Certain persons whose petition for SIJ classification or SIJ-based application for adjustment of status was denied or revoked on or after May 13, 2005, may be eligible to file a motion to reopen the denied or revoked SIJ petition or SIJ-based application for adjustment of status.</del></p> <p><del>A class action member may file a motion to reopen if his or her petition or SIJ-based application for adjustment of status was denied or revoked on account of:</del></p> <ul style="list-style-type: none"> <li><del>• Age if, at the time the class member filed a complete petition for SIJ classification, he or she was under 21 years of age;</del></li> <li><del>• Dependency status if, at the time the class member filed a complete petition for SIJ classification, he or she was the subject of a valid dependency order that was subsequently terminated based on age; or</del></li> <li><del>• Specific consent, if the petitioner did not receive a grant of HHS specific consent before going before the juvenile court and the court order did not alter the petitioner's HHS custody status or placement.</del></li> </ul> <p><del>There is also a stipulation to the settlement agreement involving cases in which SIJ petitions or SIJ-based applications for adjustment of status were denied, terminated, or revoked on or after December 15, 2010 because the applicant's state court dependency order had expired at the time of the filing. The requirements and process for a class member to request that his or her case be reopened under the stipulation differ from requirements under the original Settlement Agreement.</del></p> <p><del>Under the stipulation, USCIS will not deny, revoke, or terminate an SIJ petitioner or SIJ-based adjustment of status if, at the time of filing the SIJ petition, the applicant:</del></p> <ul style="list-style-type: none"> <li><del>• Is or was under 21 years of age, unmarried, and otherwise eligible; and</del></li> <li><del>• Is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing.]</del></li> </ul> |
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Chapter 6 – Data



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|  | <p>USCIS compiles, and makes available to the public, annual reports disclosing the number of special immigrant juvenile (SIJ) petitions received, approved, and denied. The number is limited to properly filed SIJ petitions. <del>The number includes the filing and adjudication of SIJ petitions under the Settlement Agreement, as well as the filing and adjudication of regularly filed SIJ petitions.</del> To ensure accuracy of information, officers must promptly enter all decisions on all petitions and motions related to SIJ into the relevant systems.</p> |