



To: KIND Staff & KIND Pro Bono Attorneys  
From: KIND Legal Services Management  
Date: April 18, 2016

**Re: Practice advisory on updated procedures for status adjustment filings for certain SIJS clients**

On April 12, 2016, the U.S. Department of State (DOS) published its Visa Bulletin for May 2016,<sup>1</sup> indicating that the visa category for Special Immigrant Juveniles (SIJ) from El Salvador, Guatemala, and Honduras is now oversubscribed, and that USCIS will soon stop accepting status adjustment (green card) applications for such children. On April 15, 2016, U.S. Citizenship and Immigration Services (USCIS) clarified that, for this category of adjustment applicants, it will hold the remainder of April 2016 filings in abeyance until adjudication is possible, and after May 1, 2016, will accept only those new applications that have a priority date earlier than January 1, 2010.<sup>2</sup> For convenience, the text of those documents is included below.

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<sup>1</sup> U.S. Department of State, “Visa Bulletin For May 2016,” Number 92, Volume IX, May 2016 (April 12, 2016), *available at* <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-may-2016.html> (hereinafter “May 2016 Visa Bulletin”).

<sup>2</sup> USCIS, “Employment-Based Fourth Preference (EB-4) Visa Limits Reached for Special Immigrants from El Salvador, Guatemala, and Honduras,” April 16, 2016, *available at* <https://www.uscis.gov/news/employment-based-fourth-preference-eb-4-visa-limits-reached-special-immigrants-el-salvador-guatemala-and-honduras> (hereinafter “USCIS April 15 Announcement”).

## **Part I: Understanding the Background**

### **Who is Affected by the Announcements?**

The new limitations on I-485 filings apply to:

- All prospective and current Special Immigrant Juvenile Status (SIJS) (Form I-360) petitioners, and all prospective and current SIJS-based adjustment of status (Form I-485) applicants from El Salvador, Guatemala, and Honduras.
- The U.S. Department of State (DOS) indicated that this may soon also apply to SIJS-based adjustment applicants from India and Mexico.

These changes do not apply to:

- Applicants for adjustment of status based on other forms of relief such as asylum (Form I-589), U visa (Form I-918), or T visa (Form I-914).
- SIJS-based status adjustment of applicants from countries other than those mentioned above.

### **Announcement from the U.S. Department of State**

Below is relevant text excerpted from the DOS' May 2016 Visa Bulletin; commentary in footnotes and emphasis in text was supplied by KIND.

**"E. OVERSUBSCRIPTION OF THE EL SALVADOR, GUATEMALA, AND HONDURAS EMPLOYMENT-BASED FOURTH (E4) AND CERTAIN RELIGIOUS WORKERS (SR) PREFERENCE CATEGORIES**

There is currently extremely high demand in the E4 and SR categories for applicants from El Salvador, Guatemala, and Honduras. This demand is primarily for Juvenile Court Dependent cases filed with U.S. Citizenship and Immigration Services for adjustment of status. Pursuant to the Immigration and Nationality Act, this requires implementing E4 and SR Application Final Action Dates<sup>3</sup> for these countries, which will allow the Department to hold worldwide number use within the maximum allowed under the FY-2016 annual limits. Any forward movement during the remainder of FY-2016 is unlikely although no specific prediction is possible.

**A determination as to whether these countries will remain subject to E4 and SR final application dates under the FY-2017 annual numerical limitation will be made in early September [2016]. Future visa**

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<sup>3</sup> "Application Final Action Dates" are dates when visas for particular categories of applicants may finally be issued. DOS and USCIS compile charts of such dates according to preference categories. When DOS or USCIS notifies the public that the number of applicants in a category exceeds the number of available visas, applicants must use the table of Application Final Action Dates to determine when an application can be accepted for filing. *See, e.g.,* May 2016 Visa Bulletin at 1, USCIS, "DOS Publishes Updated Visa Bulletin for October 2015," September 25, 2015, available at <https://www.uscis.gov/news/dos-publishes-updated-visa-bulletin-october-2015>.

availability will depend on a combination of demand for numbers being reported each month, and the extent to which otherwise unused numbers become available.”<sup>4</sup>

### **USCIS Announcement of April 15, 2016**

Below is the text of U.S. Citizenship and Immigration Services’ (USCIS) April 15, 2016 Announcement, elaborating on the implications for special immigrant juveniles (SIJ) of the DOS May 2016 Visa Bulletin; commentary in footnotes and emphasis in text was supplied by KIND.

“The Department of State’s Visa Bulletin for May 2016 reflects a final action date of January 1, 2010, for EB-4 visas for special immigrants from El Salvador, Guatemala and Honduras. This means that starting in May, applicants from these countries who filed Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on or after January 1, 2010, will not be able to obtain an immigrant visa or adjust status until new visas become available.

These three countries have reached their EB-4 visa limits as congressionally mandated for fiscal year 2016, which ends September 30. Information on EB-4 visa availability for fiscal year 2017 for El Salvador, Guatemala and Honduras will appear in the Department of State’s October Visa Bulletin, which will be published this September.

EB-4 visas are for special immigrants. These are individuals who may be eligible for lawful permanent resident status based on specific classifications, including Special Immigrant Juvenile.

What this action means to EB-4 applicants from El Salvador, Guatemala and Honduras:

Petitioners from any country, including El Salvador, Guatemala and Honduras, may continue to file Form I-360. There is no annual limit on the number of Form I-360 petitions that USCIS may approve.

The final action date is January 1, 2010.<sup>5</sup> This final action date became effective upon publication of the May Visa Bulletin on April 12.

USCIS will accept all properly filed submissions of Form I-485, Application to Register Permanent Residence or Adjust Status, under the EB-4 classification until April 30, 2016.<sup>6</sup>

- We will process and make a decision on your Form I-485 application only if you have a Form I-360 filed before January 1, 2010, that is ultimately approved.
- If you have a pending Form I-360 filed on or after January 1, 2010, we will process and make a decision on your Form I-360 but withhold a decision to approve your Form I-485 application pending availability of an EB-4 visa.

If you file Form I-485 under the EB-4 classification after April 30, 2016:

<sup>4</sup> May 2016 Visa Bulletin (emphasis added).

<sup>5</sup> “Final action date” appears to be synonymous with “Application Final Action Date”; see footnote 3, *supra*.

<sup>6</sup> Note, however, that April 30, 2016 is not a business day, so it is unlikely that any application filed that day will be acceptable. The last business day of the month is April 29, 2016.

- We will process and make a decision on your Form I-485 only if you filed your Form I-360 petition before January 1, 2010, and your Form I-360 is ultimately approved.
- We will reject and return other Form I-485 applications but will continue to process Form I-360 petitions (even if submitted together with a Form I-485 that gets rejected).<sup>7</sup>

### **What is the Visa Bulletin, and Why is the “EB-4” Category Relevant to SIJS-Based Status Adjustment?**

Congress has imposed numerical limits on the issuance of immigrant visas to applicants in the various family-based and employment-based categories. INA §§ 201-203. The DOS publishes data on current immigrant visa availability for each type of visa, organized by “preference categories,” in a monthly Visa Bulletin, available online.<sup>8</sup>

Actual paper visas are not issued to special immigrant juveniles, but an available visa number is necessary in order to adjust status on the basis of SIJ status. As USCIS explains, “You may not file your Form I-485 until a visa is available in your category. If an immigrant visa is currently available to you, you may be able to apply for permanent residence status on Form I-485.”<sup>9</sup> Adjustment of status applications for SIJs and other special immigrants are processed as part of category designated as “Employment-Based, 4<sup>th</sup> Preference,” or “EB-4.”<sup>10</sup>

The State Department Visa Bulletin indicates whether each preference category is “current” (i.e., whether visa numbers are immediately available). When the supply of available visas for a particular category is exhausted, the category is deemed “oversubscribed,” such that I-485 adjustments cannot be approved until visa numbers again become available.

### **What do “Priority Dates,” “Cutoff Dates,” and “Application Final Action Dates” Signify?**

- **Priority date:** Generally, a “priority date” is the date when a petitioner properly files a visa petition that will underlie a request for a green card.<sup>11</sup> Specifically, in the case of a SIJ self-petition, the priority date is the date when USCIS accepts the filer’s Form I-360 for processing. The priority date is designated as such on the Form I-797 Notice of Action issued by USCIS to acknowledge receipt of a properly filed I-360.<sup>12</sup>

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<sup>7</sup> USCIS April 15 Announcement (emphasis added).

<sup>8</sup> USCIS, “DOS Publishes Updated Visa Bulletin for October 2015,” September 25, 2015, *available at* <https://www.uscis.gov/news/dos-publishes-updated-visa-bulletin-october-2015>

<sup>9</sup> USCIS, “Adjustment of Status,” July 14, 2015, *available at* <https://www.uscis.gov/green-card/green-card-processes-and-procedures/adjustment-status>.

<sup>10</sup> USCIS, “Visa Availability Priority Dates,” November 5, 2015, *available at* <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates>.

<sup>11</sup> USCIS, “USCIS Announces Revised Procedures for Determining Visa Availability for Applicants Waiting to File for Adjustment of Status,” September 9, 2015, *available at* <https://www.uscis.gov/news/uscis-announces-revised-procedures-determining-visa-availability-applicants-waiting-file-adjustment-status>.

<sup>12</sup> USCIS, “Visa Availability and Priority Dates,” November 5, 2015, *available at* <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates>.

- **Cutoff date:** The numbers of applicants who qualify on the papers for visas or for status adjustment are tracked by DOS and USCIS, respectively.<sup>13</sup> When any category is “oversubscribed” (i.e., demand exceeds supply, see above), the DOS and USCIS consider applicants in chronological order by priority date, and designate as a so-called “cut-off date” the priority date of the first applicant who could not be reached within the numerical limits.<sup>14</sup>
- **Application Final Action Date:** The term formally used in the Visa Bulletin to refer to a cutoff date is the “Application Final Action Date.” In the May 2016 Visa Bulletin, instructions accompanying the Application Final Action Dates chart explain: “[Visa] Numbers are authorized for issuance only for applicants whose priority date is earlier than the cut-off date listed below.”<sup>15</sup> The May 2016 Visa Bulletin, effective May 1, 2016, designates an Application Final Action Date of January 1, 2010 for EB-4 applicants from El Salvador, Guatemala, and Honduras. This cutoff date may change from time to time, so it is vital for prospective applicants and their attorneys to track the date in the monthly State Department Visa Bulletin and in corresponding USCIS announcements. Advocates should check the Department of State and USCIS websites regularly, and may sign up to receive notifications via email.<sup>16</sup>

### **Why Were These Numerical Limits Not Relevant Before April 2016?**

Annually, around 140,000 employment-based visas are available, with specific percentages of the total allocated to each preference category. Given the further per-country caps within the EB-4 preference category, approximately 696 EB-4 visas are available per country, per year.<sup>17</sup>

In past years, the EB-4 preference category typically stayed “current” (i.e., sufficient numbers of visas were available to accommodate all applicants), with minor exceptions. In recent years, SIJS petitions and related status adjustment applications increased sharply. In FY 2015, a record high number of 11,500 SIJS petitions were received, and 8,739 were approved, compared with the 5,776 petitions received in FY 2014. In FY15 the cap was reached for about one to two weeks, briefly enough that most people did not notice the pause in issuing green cards. However, in FY16, in the first quarter alone from October to December 2016, 4,047 petitions have already been received, and 3,117 petitions approved.<sup>18</sup>

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<sup>13</sup> For more detail, see, e.g., May 2016 Visa Bulletin at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 4. Note that confusingly, DOS and USCIS also promulgate a parallel set of tables, denominated “Dates for Filing Applications,” which are currently inapplicable to SIJS filers and should be disregarded until further notice from DOS and CIS. As explained by the DOS and USCIS, this set of dates is never used as a benchmark for application filing unless the supply of visas exceeds demand for a category. See USCIS, “USCIS Announces Revised Procedures for Determining Visa Availability for Applicants Waiting to File for Adjustment of Status,” September 9, 2015, available at <https://www.uscis.gov/news/uscis-announces-revised-procedures-determining-visa-availability-applicants-waiting-file-adjustment-status>; May 2016 Visa Bulletin at 1.

<sup>16</sup> See, e.g., <https://public.govdelivery.com/accounts/USDHSCIS/subscriber/new> and May 2016 Visa Bulletin at 4.

<sup>17</sup> INA § 203(b)(4).

<sup>18</sup> U.S. Citizenship and Immigration Services, “Data Set: Form I-360 Petition for Special Immigrant Juveniles (Fiscal Year 2016, 1<sup>st</sup> Qtr),” March 21, 2016, available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-360-petition-special-immigrant-juveniles>.

USCIS has publicly confirmed that El Salvador, Guatemala and Honduras “have reached their EB-4 visa limits as congressionally mandated for fiscal year 2016, which ends September 30.” By purposefully setting the cutoff date at an early date of January 1, 2010, USCIS effectively ensures that no visas will issue in this category for applicants from those countries for the remainder of the 2016 fiscal year.<sup>19</sup>

**How Do I Interpret the Application Final Action Date Charts?**

- **Interpreting the Application Final Action Date Charts:** In the April 2016 Visa Bulletin, also reflected on the USCIS web page “When to File your Adjustment of Status Application”<sup>20</sup> for that month, the EB-4 category was designated “C” for “current,” meaning that eligible applicants could apply to adjust status immediately, as reflected in this excerpt from the relevant chart, with KIND’s emphasis and highlights added:<sup>21</sup>

APRIL 2016: Application Final Action Dates For Employment-Based Preference Cases:

Employment-Based	All Chargeability Areas Except Those Listed	CHINA - mainland born	INDIA	MEXICO	PHILIPPINES
1 <sup>st</sup>	C	C	C	C	C
2 <sup>nd</sup>	C	01SEP12	08NOV08	C	C
....					
4 <sup>th</sup>	C	C	C	C	C

The May 2016 Visa Bulletin adds a new category for EB-4 applicants from El Salvador, Honduras, and Guatemala, who, as of May 1, 2016, may apply for status adjustment only if their priority date predates January 1, 2010. The relevant charts are excerpted below.

MAY 2016: Application 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
1st	C	C	C	C	C	C
2nd	C	01SEP12	C	22NOV08	C	C
....						
4th	C	C	01JAN10	C	C	C

<sup>19</sup> In this particular instance, the 2010 cutoff date does not necessarily signify that the applications most recently processed had priority dates in 2009; in fact, in KIND’s recent experience, children with I-360 receipt dates in 2014 and 2015 have had their I-485 applications adjudicated and/or accepted.

<sup>20</sup> USCIS, “When to File Your Adjustment of Status Application for Family-Sponsored or Employment-Based Preference Visas: April 2016,” March 14, 2016, available at <https://www.uscis.gov/visabulletin-apr-16>.

<sup>21</sup> “If the date on the chart is current (“C”) or your priority date is earlier than the date on the chart, you may file your adjustment of status application, if otherwise eligible to do so.” *Id.*

Going forward, it will be essential that attorneys for SIJS clients closely monitor cutoff date announcements on the websites of the DOS (go to “Visa Bulletin”<sup>22</sup> page and then click on “Upcoming Visa Bulletin”) or USCIS (go to “Adjustment of Status Filing Charts from the Visa Bulletin”<sup>23</sup>). Unless USCIS instructs otherwise, you will use the “Application Final Action Dates” chart, to check the fourth preference employment-based category for the country your client was born. If your client is not from one of the countries specifically listed, check the category “All Chargeability Areas Except Those Listed.”

- **Cross-chargeability:** In limited circumstances, applicants born in an oversubscribed country may be “cross-chargeable” to another country for status adjustment purposes. One basis for cross-chargeability is having been born in a country where neither parent was born or residing permanently. For more information, review the relevant statutory provisions, regulations (*see e.g.* 22 CFR 42.12) and the Foreign Affairs Manual at 9 FAM 503.2-4(C).

## **Part II: Strategy Considerations**

### **Can Special Immigrant Juvenile Status Still Be Granted Even if Status Adjustment is Not Granted?**

Yes, USCIS can adjudicate I-360 SIJS petitions without regard to priority dates. The requirement of an available visa number is relevant only to the adjustment phase of your client’s case.

Moreover, absent special reasons to the contrary, a prospective SIJS applicant will benefit by filing a SIJS petition at the earliest opportunity because:

1. Proper filing of Form I-360 establishes the client’s priority date for purposes of status adjustment.
2. For clients in removal proceedings, an I-360 filing receipt is a common form of support for a motion to terminate removal proceedings.
3. A pending I-360 petition may support eligibility for benefits under the Affordable Care Act or under state law.

### **What Filing Strategies Can You Consider for Clients Subject to the New Cutoff Date?**

It is not yet known what processing changes will be implemented or how long the wait times for adjustment will be in future years. On a case-by-case basis, you may want to consider the following:

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<sup>22</sup> U.S. Department of State, “Visa Bulletin,” available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>.

<sup>23</sup> USCIS, “Adjustment of Status Filing Charts from the Visa Bulletin,” April 8, 2016, available at <https://www.uscis.gov/visabulletininfo>.

- **If your client has, or will soon obtain, a state court predicate order, consider making every effort to file Form I-485 (adjustment of status application) as soon as feasible before April 29, 2016.**
  - **Filing before April 29, 2016:** If you have not already done so on behalf of your client, you will need to file Form I-360 prior to filing the I-485 Form (or concurrently, if the client is not in removal proceedings). If USCIS receives your client’s properly filed SIJS petition (I-360) before April 29, 2016, your client will establish an April 2016 priority date, and her I-485 application may possibly also be accepted for filing if filed before April 29, 2016.
  - **Removal proceedings:** Removal proceedings generally must be terminated by the immigration judge to permit filing of the I-485 with USCIS. This commonly requires proof of having filed the I-360, but a state court predicate order might be sufficient support. Also, some advocates report that USCIS has accepted I-485 Forms filed while proceedings are pending, but this is not guaranteed.
  - **Possible local efforts to expedite filings:** Check if stakeholders in your jurisdiction have instituted, or would be willing to institute, revised procedures or accommodations to improve children’s chances of filing applications before the cutoff date takes effect on May 1. For example, if possible in your jurisdiction, the Executive Office for Immigration Review (EOIR) and Immigration and Customs Enforcement Office of the Chief Counsel (ICE OCC) could agree to simplified procedures for motions to terminate removal proceedings; or USCIS could by special arrangement accept some filings at the local District Office.
- **Filing before April 29, 2016:** April 30, 2016 is a Saturday, so April 29, 2016 is the last possible date that USCIS could accept an application during the month of April 2016; however, we are informed that the USCIS Lockbox may close at 3:00pm EST on the day before the last day of the month, so applications delivered to the Lockbox on the April 28<sup>th</sup> or 29<sup>th</sup> might not be deemed timely, thus, filing earlier is advisable.
  - **Properly filed application:** A properly filed application is assigned a “priority date” based on the date it was received at USCIS, not the postmarked date. KIND recommends using certified and/or expedited delivery methods to ensure a record of receipt at USCIS.
  - **Completeness:** An application that is not properly filed may be rejected by USCIS.
  - **Fee waiver:** Allow extra time when seeking a fee waiver from USCIS or the immigration judge.
  - **Grounds of inadmissibility:** If concerns about inadmissibility are present (e.g., due to arrests or alleged misconduct), carefully consider the issues before filing your forms; your KIND mentor is available for guidance.
- **If your client has an upcoming SIJS-based adjustment of status interview:** Even if your client is found to be eligible for SIJS-based adjustment during a USCIS interview, USCIS may tell you that



the cap has been reached, or that they are working only on cases with a 2010 priority date, and that your client's application will remain on hold and "in limbo" until USCIS is allowed to issue more green cards.

- **If your client's I-485 application was filed and remains pending:** USCIS has said that visa numbers are already exhausted for FY 2016, so currently pending status adjustments are unlikely to be processed until at least October 2016. You should counsel your client accordingly.
- **Clients who previously filed Form I-360, but file Form I-485 after April 30, 2016:** These applicants should expect the I-485 to be rejected and returned, if their priority date is later than January 1, 2010. The I-360 may be adjudicated (if not done already), and you may refile the I-485 when USCIS is prepared to accept adjustment applications for the applicant's priority date.
- **Prospective SIJS applicants who have filed neither Form I-360 nor Form I-485 by May 1, 2016:** Generally, these applicants should at their earliest opportunity file Form I-360, which may be processed immediately and will serve to establish a priority date. However, attorneys should not file the I-485 for these applicants until USCIS is prepared to accept the filing of adjustment applications with the applicant's priority date; expect any I-485 filed before such time but after April 30, 2016, to be rejected and returned.

For more detailed scenarios, please consult the chart in Appendix I.

### **Does My Client Face Risks of Aging Out of SIJS and SIJS-Based Adjustment of Status?**

Under the *Perez-Olano* settlement<sup>24</sup> concluded in April 2015, USCIS agreed that it will not deny, revoke, or terminate a SIJS application (Form I-360) or SIJS-based adjustment of status if, at the time of filing a SIJS application (1) the applicant is or was under 21 years of age, unmarried, and otherwise eligible, and (2) the applicant either 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.

Accordingly, SIJs should be protected from age out by properly filing Form I-360, even if SIJS-based adjustment is delayed after age 21.

### **What Other Concerns Should I Consider for My Client?**

Additional considerations that do not pertain directly to the cutoff date announcement nonetheless bear repeating given the newly projected extended timeframes:

- **Marriage:** You will want to advise your client that marrying will render them ineligible to adjust status based on SIJS.<sup>25</sup>

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<sup>24</sup> USCIS, "Settlement Agreement in *Perez-Olano, et al. v. Holder, et al.*, Case No. CV 05-3604, in U.S. District Court for the Central District of California," June 25, 2016, available at <https://www.uscis.gov/laws/legal-settlement-notices/settlement-agreement-perez-olano-et-al-v-holder-et-al-case-no-cv-05-3604-us-district-court-central-district-california>.

<sup>25</sup> 8 CFR § 205.1(a)(3)(iv)(B).

- **Triggering New Grounds of Inadmissibility:** While awaiting SIJS-based adjustment, your client is not protected from removal, and arrests or uncharged misconduct can trigger new grounds of inadmissibility.
- **Updating Information:** It will be important to also make sure that all information is up to date when you eventually assist your client with submitting the I-485, especially if there is a delay—do not rely solely on information or case history (particularly regarding juvenile or criminal records) given to you in the past by your client.
- **Travel:** Until a green card is issued, you should counsel your client not to travel abroad without special documents or permission in the form of advance parole, as this may put your client’s status and application at risk.
- **Medical Exams and Biometrics:** Regarding the medical exam report on Form I-693, which is completed at the client’s expense, USCIS has explained: “Because a completed Form I-693 has limited validity, if you submit your Form I-693 at the same time as your Form I-485, it may no longer be valid at the time USCIS adjudicates your Form I-485. Therefore, in order to avoid having to repeat the immigration medical examination, you may choose to wait until after receiving an RFE or until an interview to provide your Form I-693.”<sup>26</sup> If your client’s “biometrics” (photos and fingerprints) expire while your client is awaiting adjudication, it may be necessary to re-do the biometrics appointment. The passport-style photographs enclosed with the I-485 application are required to be recent, so it is possible that the photos will need to be replaced.
- **Financial and Economic Concerns:** At present, SIJS applicants cannot apply for employment authorization until the filing of an I-485, so it will be important to monitor developments on this front. Coverage under the Affordable Care Act<sup>27</sup> is available while an I-360 is pending, and certain state benefits may be available to your client.<sup>28</sup> Be aware that financial pressure can increase risk of homelessness, trafficking, and exploitation.
- **Other Forms of Relief:** If alternate avenues to SIJS-based adjustment are open to your client, you will want to help your client reevaluate those options in light of the extended wait times.

### **What Options Are Advocates Pursuing to Alleviate this Situation?**

Advocates are discussing a variety of proposals that, if implemented by the government, would support children affected by this change in visa allotments.

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<sup>26</sup> USCIS, “Visa Availability and Priority Dates,” November 5, 2015, available at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates#Medical>.

<sup>27</sup> HealthCare.gov, “Immigration status and the Marketplace,” retrieved April 16, 2016, available at <https://www.healthcare.gov/immigrants/immigration-status>.

<sup>28</sup> For example, visit the National Immigration Law Center, “Economic Support,” available at <https://www.nilc.org/issues/economic-support/>.

- **Employment Authorization Documents (EADs):** One possibility would be a provision to permit the filing of Form I-485 even before visa numbers are available, to allow an applicant to pursue employment authorization while the application is pending.
- **“Deferred Action” Status:** Alternatively, SIJS applicants could be granted “deferred action” status, a strategy previously employed on behalf of VAWA Self-petition I-360 applicants and applicants for oversubscribed U Visas, which would similarly make employment authorization available.
- **Temporary Protected Status:** Another possibility would be designating recently arrived nationals of the affected countries for Temporary Protected Status.

### **How Does this Affect Analysis of Other Potential Legal Remedies?**

When assessing other potential immigration legal remedies available to your client, you will want to balance the respective merits of the potential claims, timeframes for obtaining the remedies, and consequences that flow from each remedy. Some considerations include:

- **Asylum (Form I-589):** Youth who fear return to their home country because of an individualized fear of persecution on account of their race, religion, nationality, political opinion, or membership in a particular social group may be able to apply for asylum. If the Department of Homeland Security (DHS) designated your client as a UAC and did not revoke that designation, the asylum office of USCIS has jurisdiction to hear the asylum claim. If you and your client are comfortable with the claim’s merits, you and your client may wish to proceed with asylum. Generally, an asylum applicant may apply for an Employment Authorization Document 150 days after the asylum application is filed, although exceptions apply in some situations, such as rescheduling the interview. If your local office schedules interviews quickly, and if the asylum office approves your client’s application, it could be a faster route to status adjustment than SIJS in the current climate. If not granted, the asylum claim can be renewed in immigration court. While it is possible to pursue SIJS and asylum concurrently, bear in mind the limitations that attach when each remedy is granted, and be sure to discuss these with your client.
- **U Visa (Form I-918):** Undocumented immigrant children and youth who have been the victims of certain serious crimes and suffered substantial abuse as a result and who cooperated with the investigation of the crime may be eligible for U nonimmigrant status, also known as a U visa.<sup>29</sup> Each year, 10,000 U visas are available, but the Vermont Service Center of USCIS, which adjudicates U visa applications, has reached the 10,000 U visa statutory cap for FY 2016 for a seventh year in a row.<sup>30</sup> USCIS will not resume issuing U visas until October 1, 2016, the first day of fiscal year 2017. As of mid-April 2016, USCIS states that it is processing U visa applications submitted in May 2014.<sup>31</sup> Because U visas are also “oversubscribed,” most U visa applicants can expect to wait up to two years for their U visa applications to be adjudicated. If approved while no

<sup>29</sup> For eligibility criteria, see INA § 101(a)(15)(U) and 8 CFR § 214.14.

<sup>30</sup> USCIS, “USCIS Approves of 10,000 U Visas for 7<sup>th</sup> Straight Fiscal Year,” December 29, 2015, *available at* <https://www.uscis.gov/news/uscis-approves-10000-u-visas-7th-straight-fiscal-year>.

<sup>31</sup> USCIS, “USCIS Processing Time Information for the Vermont Service Center,” retrieved April 15, 2016, *available at* <https://egov.uscis.gov/cris/processingTimesDisplay.do;jsessionid=abc3xg-SQGJNx6W0JQCqv>.

U visas are available, the applicant is placed on a waitlist, granted Deferred Action status, and is eligible to obtain an EAD.<sup>32</sup> U visa applicants cannot apply to adjust their state to become lawful permanent residents (LPR) until three years after the date of their U visa approval. Accordingly, for applicants eligible to pursue both SIJS and U Visas, it may be prudent to counsel them to submit the I-360 and I-485 as soon as possible in conjunction with filing the I-918 application. Although SIJS currently appears to be a faster avenue to adjustment than a U Visa, there is no guarantee, and it may be helpful to your client to recommend that they have both applications on file.

- **T Visa (Form I-914):** Immigrant children and youth who are victims of a severe form of human trafficking and qualify under other eligibility standards may be eligible for T nonimmigrant status, also known as a T visa.<sup>33</sup> Each year, 5,000 T visas are available, but the statutory cap has never been reached.<sup>34</sup> The USCIS website as of mid-April 2016 states that it is processing T visa applications submitted from July 2015.<sup>35</sup> EADs are only issued if T visas are approved, or unless Continued Presence is issued. If your client was a minor when they were trafficked, they may be subject to the law enforcement reporting exception;<sup>36</sup> however, if they receive a T visa based on this exception, they will have to wait a full three years before being able to apply for adjustment of status.<sup>37</sup> If the client was trafficked when she was 18 years or older, then she must cooperate with law enforcement; moreover, if you are able to obtain a letter for your client from the Department of Justice stating that your client has cooperated in the investigation and that the matter is closed, you will be able to apply to adjust your client's status immediately. In either of these scenarios, it is unclear if a SIJS-based adjustment will be adjudicated more quickly than a T visa and a T visa-based adjustment, but it would be best to pursue both SIJS and T visa and adjustment related options. If your client's parent or sibling has a T visa, you may also counsel your client to have a derivative T visa application submitted on their behalf.
- **Family-Based Petition (Form I-130):** Children and youth who have certain qualifying family relationships with U.S. citizens (USCs) or LPRs may be eligible to obtain lawful status through family-based immigration. This is a two-step process. The first step is the family visa petition, filed by the USC or LPR relative. The second step is the application to become a permanent resident, filed by the foreign national child. An important consideration is that if your client entered the US without being "admitted" (e.g., if she was charged in removal proceedings as being present without admission), she will be required to undergo consular processing, i.e., attend an interview

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<sup>32</sup> Employment authorization eligible pursuant to 8 CFR 274a.12(c)(14).

<sup>33</sup> For eligibility criteria, see INA § 101(a)(15)(T); 8 USC § 1101(a)(15)(T); 8 CFR § 214.11(b).

<sup>34</sup> USCIS, "Data Set: Form I-914 Application for T Nonimmigrant Status," available at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-914-application-t-nonimmigrant-status>.

<sup>35</sup> USCIS, "USCIS Processing Time Information for the Vermont Service Center," retrieved April 15, 2016, available at <https://egov.uscis.gov/cris/processingTimesDisplay.do;jsessionid=abc3xg-SQGJNx6W0JQCqv>.

<sup>36</sup> Trafficking Victims Protection Reauthorization Act (TVPRA), §4(b)(1)(A); INA § 101(a)(15)(T)(III). Note that some T visa regulations under 8 CFR §214.11 are outdated by statutory amendments. In this case, in the Trafficking Victims Protection Act (TVPA) as originally enacted, the exception to the compliance requirement applied only to children under the age of 15. The exception was expanded to include children under the age of 18 by the TVPRA of 2003. See TVPRA 2003, § 4(b)(1)(A).

<sup>37</sup> Dustin Stubbs, VAWA Unit Section Chief from the Vermont Service Center of USCIS, stated this at the "USCIS Panel" at the Freedom Network USA conference "Bridging the Gap and Building a Movement," on April 4, 2016 in Chicago, IL.

at the U.S. consulate in her country of citizenship, in order to gain LPR status through a family-based petition.

If your client is a “child” as defined in INA § 101(b)<sup>38</sup> or a spouse of a USC, she will qualify as an immediate relative, a category for which visas are immediately available irrespective of priority date,<sup>39</sup> so processing times can be much faster than some other options. Outside of the immediate relative category, visas are allocated according to the preference system described above. There are preference categories for, e.g., unmarried adult (over age 21) “sons or daughters”<sup>40</sup> of USCs (F1), spouses or children (unmarried and under 21) of LPRs (2A), unmarried sons and daughters 21 years or older of LPRs (2B), married sons and daughters (of any age) of USCs (F3), and siblings<sup>41</sup> of USCs (where the USC is 21 years or older) (F4). Unlike an immediate relative, the beneficiary of a petition in one of these categories may experience a long wait for an available visa number in her preference category. The length of the wait time, and how it compares to wait times for SIJS-based adjustment, will depend on the preference category and priority date. For example, current priority dates for the F2A preference category are in August 2014 for Mexican applicants and November 2014 applicants for all other countries. In contrast, current priority dates for the F4 preference category are in 1997 for Mexican applicants and in 2003 for most other countries, including Honduras, Guatemala, and El Salvador.<sup>42</sup> Another consideration is that future life events may cause a change in the beneficiary’s preference category or status as an immediate relative. In comparing family-based petition options with SIJS-based adjustment options, you may also want to consider that many grounds of inadmissibility and deportability are inapplicable to, or waivable for, SIJs; however, those immigrating through family-based petitions are subject to most grounds of inadmissibility, including the public charge ground, and do not have all of the waiver options available to SIJs.<sup>43</sup>

- **VAWA Self-Petition (Form I-360):** If your client is or was abused by a USC or LPR parent or spouse, the client may be eligible for an I-360 VAWA self-petition.<sup>44</sup> Your client may qualify as an “abused child” if she is an abused, unmarried child under 21. You may assist your client to file as an “abused child” after age 21 but before age 25 if your client can demonstrate that the abuse was the main reason for the delay in filing. Your client may also qualify for this form of a relief as an “abused spouse” of a USC or LPR, or if their unmarried children under 21 are abused by their USC

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<sup>38</sup> For family petition purposes, a “child” is defined as unmarried and under 21 years of age, and having a specified child-parent relationship. See INA § 101(b)(1). See also provisions of the Child Status Protection Act (CSPA), which provides ageout protection in some circumstances for children of U.S. citizens who turn 21 while the matter is pending. INA § 201(f)(1).

<sup>39</sup> USCIS, “Family of U.S. Citizens,” May 1, 2014, available at <https://www.uscis.gov/family/family-us-citizens>.

<sup>40</sup> For definition of “son or daughter,” see 22 CFR § 40.1(s).

<sup>41</sup> For an explanation of the definition of “siblings,” see e.g. *Matter of Lin Lee*, 19 I&N Dec. 435 (BIA 1987).

<sup>42</sup> May 2016 Visa Bulletin.

<sup>43</sup> See INA §§ 212 and 237; and see INA § 245(h), deeming SIJs to have been paroled into the United States and exempting them from the public charge ground of inadmissibility, among others. See also USCIS Memorandum, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions*, HQOPS 70, 8.5, pp. 4–5 (Mar. 24, 2009).

<sup>44</sup> USCIS, “Policy Memorandum: Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen, Revisions to Adjudicator’s Field Manual (AFM) Chapter 21.15 (AFM Update AD 06-32),” PM-602-0046, August 30, 2011, available at <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/August/VAWA-Elder-Abuse.pdf>.

or LPR spouse.<sup>45</sup> The USCIS website as of mid-April 2016 states that it is processing I-360 VAWA self-petition applications submitted from September 14, 2015.<sup>46</sup> Upon receiving an I-360 based on a VAWA self-petition, your client will be placed into Deferred Action status and will be eligible to apply for work authorization. If an abused child of a USC self-petitions before the child turns 21, the child will be able to apply for adjustment of status much earlier based on first preference category priority dates. Children of LPRs are who under 21 years of age and unmarried are in the 2A preference category, but children who are over 21 years of age and/or married are in the 2B preference category, which has significantly longer waiting periods for adjustment.<sup>47</sup> You will want to compare these priority dates to the SIJS-priority date.

While delays in status adjustments are unwelcome for SIJ clients, it is worth remembering that the wait times are the product of the increasing numbers of SIJS petitions and SIJS-adjustment applications filed. Dedicated advocacy over the years by advocates like KIND's staff and pro bono attorneys converted SIJS from a little-known legal remedy to a primary form of relief benefitting unaccompanied immigrant children. KIND thanks you for your time, patience, and commitment to ensuring the rights of unaccompanied immigrant children. We will work diligently to provide you with updated information as it develops. Please do not hesitate to reach out to KIND for any questions.

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<sup>45</sup> To see other eligibility criteria and relevant forms, see USCIS, "Battered Spouse, Children & Parents," February 16, 2012, available at <https://www.uscis.gov/humanitarian/battered-spouse-children-parents>.

<sup>46</sup> USCIS, "USCIS Processing Time Information for the Vermont Service Center," retrieved April 15, 2016, available at <https://egov.uscis.gov/cris/processingTimesDisplay.do;jsessionid=abc3xg-SQGJNx6W0JQCqv>.

<sup>47</sup> To check the priority dates, see U.S. Department of State, "Visa Bulletin," available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>.



**Appendix I: Postures Before EOIR and USCIS, and Strategy Considerations for Each Posture**

**Immigration court posture**

	<b>YES</b>	<b>NO</b>
<b>Is your client now in removal proceedings before the Immigration court?</b>	If YES, factors to consider include: (1) Termination of proceedings <u>before</u> filing Form I-485 is the rule, but in some instances USCIS has accepted Form I-485 during the client’s proceedings; <i>see discussion below of defensive filings</i> . (2) A defensive posture may increase time pressure by the Immigration Judge (IJ) and/or Immigration and Customs Enforcement Office of the Chief Counsel (ICE OCC) to pursue alternative relief, but note that such pressure is not a mandate to forego pursuit of SIJS-based adjustment nor to pursue other relief if not appropriate and desired by client.	If NOT in proceedings, you may file I-360 and I-485 concurrently. Filing both forms (or at minimum, Form I-360) <u>before</u> April 29, 2016 offers stark advantages for most clients. But, denial of an affirmatively-filed application for relief can lead to removal proceedings against client, <u>so carefully consider any risk factors before filing an I-360 application given that USCIS is part of DHS</u> . Note that this calculation is even starker if a client has NEVER been in removal proceedings, as compared with a client who was previously in proceedings.
<b>Has your client’s Notice to Appear (NtA) been filed with the immigration court?</b>	If YES, considerations for clients in removal proceedings apply. Also, if wishing to terminate proceedings but no Master Calendar Hearing (MCH) is scheduled, you may need to advocate with ICE OCC and court administrator to get the motion before an IJ. <u>Be aware that this may place the client’s immigration court case on a faster timeline than might otherwise occur.</u>	<u>If NO, depending on timing, you may be able to file Forms I-360 and I-485 concurrently, before proceedings commence.</u> Given a small chance that the NtA might never be filed, again, <u>carefully consider any risk factors before filing Form I-360.</u>
<b>Have your client’s removal proceedings been administratively closed?</b>	If YES, moving to recalendar will be a necessary component in moving to terminate, standard procedure after the I-360 is filed and before the I-485 is filed ( <i>but see discussion of defensive filings</i> ). As a practical matter, recalendar adds no significant substance to termination process, except possibly to the extent that the client’s court file takes longer to locate. Note: while unlikely, it is technically possible that proceedings could be recalendarated but not terminated, which will make it very important to prevail in pursuing relief as a defense to removal.	If NO, removal proceedings are pending, unless they have been terminated. <i>See “Is your client now in removal proceedings?” above, and related discussions.</i>

**Stages of SIJS matters, with possible strategies for progressing under retrogressed priority date**

<p><b>What is the posture of client's case as of April 2016?</b></p>	<p><b>What is the client's 'priority date'?</b></p>	<p><b>Possible next steps for clients in this posture to consider</b></p>
<p><b>STATE COURT</b></p>		
<p><b>My client does not yet have an order of factual findings from a state court... (further breakdown below)</b></p>	<p>This client does not yet have a priority date, but will get one by properly filing Form I-360 with USCIS.</p>	<p>A state court order is a prerequisite to filing Form I-360; for clients in this posture, you must complete the state court process before filing Form I-360, then filing I-485 under procedures in effect at that future time (<i>further breakdown below</i>).</p>
<p><b>...and my client has not yet filed in state court</b></p>	<p>Same as above.</p>	<p>If just starting the state court process, reaching the I-485 stage or even the I-360 stage within weeks is extremely difficult in most jurisdictions, <u>but if you feel it is warranted in an exigent case, consider trying</u>. See <i>further steps below</i>.</p> <p>If the state court order issues during April 2016, it may be feasible to file Form I-360 and even Form I-485 before April 29, 2016. Even if efforts at completion during April 2016 fail, getting the state court order as soon as feasible is advantageous, as it will permit filing Form I-360 at the soonest feasible date, which will become client's priority date. Note that client's priority date will determine the timing of the future I-485 filing.</p>
<p><b>...and my client is scheduled for a state court hearing on SIJ findings</b></p>	<p>Same as above.</p>	<p>You can ask the state court to advance the hearing if needed. Try to anticipate and address in advance any local requirements that could delay issuance of the state court order (e.g., service requirements). Consider preparing Form I-360 now, so that the form will be ready for immediate filing if the state hearing is successful.</p> <p>If the state court order issues during April 2016, it may be feasible to file Form I-360, and even Form I-485, before April 29, 2016. Even if efforts at completion during April 2016 fail, completing the state court process as soon as feasible will be advantageous, as it will permit filing Form I-360 at the soonest feasible date, which will become client's priority date. Note that client's priority date will determine the timing of the future I-485 filing.</p>



What is the posture of client's case as of April 2016?	What is the client's 'priority date'?	Possible next steps for clients in this posture to consider
<b>My client <u>has</u> received a state court predicate order, but <u>has not</u> yet filed Form I-360.</b>	For SIJ-based adjustment, priority date = date when USCIS receives client's properly filed Form I-360  This client does not yet have a priority date, but you can assist her to obtain a priority date in April 2016 by properly filing Form I-360 before April 29, 2016.	<b>Note:</b> In all cases, before filing Form I-485, carefully consider any grounds of inadmissibility, such as encounters with law enforcement.  <u>You should consider filing Form I-360 and Form I-485 as soon as feasible before April 29.</u> <i>See discussion below re further steps.</i>  Filing an I-360 during April 2016 will permit you to also file Form I-485 during April 2016 on behalf of your client. USCIS has stated that it will accept Form I-485 without regard to priority date BEFORE May 1, 2016, but after that date a January 1, 2010 priority date will be required.
<b>I-360 FILING</b>		
<b>My client has not yet filed Form I-485, but has <u>already</u> filed Form I-360, which has not yet been adjudicated... (further breakdown below)</b>	This client's priority date is the date USCIS accepted Form I-360 as properly filed. Note that for any client with a priority date later than January 1, 2010, you can file an I-485 by April 29, 2016, but not thereafter.	<u>You should consider filing Form I-485 as soon as feasible before April 29, 2016 if appropriate.</u> USCIS will accept Form I-485 without regard to priority date BEFORE May 1, 2016, but after that date a January 1, 2010 priority date will be required; <i>further breakdown below.</i>  Note that it is NOT necessary to await approval of Form I-360 before filing the I-485.
<b>...and my client IS NOT in removal proceedings (i.e., proceedings were terminated, OR client was never in proceedings)</b>  <i>(affirmative posture)</i>	Same as above.	You may have been able to file Forms I-360 and I-485 concurrently for your client; since her I-360 is already filed, you should consider filing the I-485 for your client as soon as possible before April 29, 2016 if appropriate and feasible. <i>See further discussion below.</i>  Especially if the client has NEVER been in removal proceedings, carefully consider risk factors that may trigger inadmissibility.

<b>What is the posture of client's case as of April 2016?</b>	<b>What is the client's 'priority date'?</b>	<b>Possible next steps for clients in this posture to consider</b>
<p>...and my client IS in removal proceedings</p> <p><b>Considerations:</b>  <b>Has client moved to terminate removal proceedings?</b> (See discussion)</p> <p>(defensive posture)</p>	<p>For SIJ-based adjustment, priority date = date when USCIS receives client's properly filed Form I-360</p> <p>Same as above.</p>	<p>Note: In all cases, before filing Form I-485, carefully consider any grounds of inadmissibility, such as encounters with law enforcement.</p> <p>USCIS cannot adjudicate Form I-485 with removal proceedings pending, so <u>moving successfully to terminate proceedings before filing the I-485 is standard practice; however, USCIS reportedly has accepted I-485 Forms filed during proceedings.</u></p> <p>Potential alternative strategies include:</p> <ol style="list-style-type: none"> <li>1) <u>Seek prompt adjudication of a motion to terminate proceedings.</u> ICE OCC and EOIR may support expedited procedures, e.g. for ICE joinder or non-opposition, and may accept evidentiary support in the form of: <ul style="list-style-type: none"> <li>• <u>I-360 filing receipt from the USCIS Lockbox</u> (standard procedure),</li> <li>• some other form of filing confirmation from the Lockbox,</li> <li>• proof of sending or delivery to the Lockbox,</li> <li>• a filing receipt from the local USCIS district office IF local filing is permitted,</li> <li>• (if appropriate) state court order as proof of SIJ eligibility.</li> </ul> </li> </ol> <p>--OR--</p> <ol style="list-style-type: none"> <li>2) <u>Consider filing the I-485 with USCIS without an order terminating proceedings</u></li> </ol> <p>--OR--</p> <ol style="list-style-type: none"> <li>3) <u>Consider asking if your USCIS district office will permit local filing of Form I-485 in this situation, with or without prior termination of removal proceedings, if expeditious.</u> Note: if local filing is permitted at all, it may have stringent limitations.</li> </ol> <p>--OR--</p> <ol style="list-style-type: none"> <li>4) <u>Consider filing the I-485 with EOIR.</u> This entails first discharging the I-485 filing fee (either by getting a fee receipt for "feeing in" Form I-485 with DHS, OR by moving successfully for a judicial fee waiver order), then promptly serving Form I-485 on DHS, and filing it with EOIR before April 29, 2016. Consider how scheduling of an Individual Hearing (IH) may affect timing. Note that USCIS has not stated that EOIR's acceptance of the I-485 before April 29, 2016 would have the same effect as filing with USCIS by that date.</li> </ol> <p><u>Although USCIS is unlikely to approve any status adjustments in FY 2016, filing Form I-485 before April 29, 2016 will avoid the wait for a current priority date, and may facilitate EAD eligibility.</u></p>

What is the posture of client's case as of April 2016?	What is the client's 'priority date'?	Possible next steps for clients in this posture to consider
...and my client has <b>not</b> received notice of an interview on Form I-360	For SIJ-based adjustment, priority date = date when USCIS receives client's properly filed Form I-360	Note: In all cases, before filing Form I-485, carefully consider any grounds of inadmissibility, such as encounters with law enforcement.
...and my client has been interviewed by USCIS on Form I-360 (but has not received a decision)	Same as above.	USICS does not conduct interviews on every I-360 application. In any event, <u>it is NOT necessary to await approval of Form I-360 before filing the I-485</u> , so you can consider filing Form I-485 before April 29, 2016 <i>as outlined above for affirmative and defensive filers</i> . If an interview is noticed, <i>see discussion below</i> .  Again, <u>it is NOT necessary to await approval of Form I-360 before filing the I-485</u> , so you client can consider filing Form I-485 before April 29 <i>as outlined above for affirmative and defensive filers</i> . If special concerns are present, consider querying the interviewer and/or supervisor about the I-360 status, but for clients in this posture, filing Form I-485 is probably the higher priority. Note: at the interview, the officer may have indicated that the I-485 cannot be adjudicated in FY 2016; after the interview, the officer may issue a Request for Evidence. Neither occurrence should have ANY bearing on adjudication of the I-360 or filing of the I-485.
My client has already received a decision from USCIS on Form I-360 but has not filed Form I-485	Same as above.	Once USCIS has issued a decision on the I-360, if it was: 1) AN APPROVAL: you should consider filing Form I-485 as soon as feasible before April 29, 2016 <i>as outlined above for affirmative &amp; defensive filers</i> . 2) A DENIAL: you may timely seek reconsideration of the decision, or may file a new Form I-360; given the impending cutoff date, you should consider filing the I-485 despite the denial (although Form I-485 can't be adjudicated until the I-360 is approved).

<b>What is the posture of client's case as of April 2016?</b>	<b>What is the client's 'priority date'?</b>	<b>Possible next steps for clients in this posture to consider</b>
<b>I-485 FILING</b>	For SIJ-based adjustment, priority date = date when USCIS receives client's properly filed Form I-360	Note: In all cases, before filing Form I-485, carefully consider any grounds of inadmissibility, such as encounters with law enforcement.
<b>My client has already filed Form I-485 with USCIS, and no interview has been noticed.</b>	This client's priority date is the date USCIS accepted Form I-360 as properly filed. Priority dates will be considered as of May 1, 2016, but not before.	<p><u>If you have not received an I-485 filing receipt, it would be prudent to promptly confirm that USCIS accepted Form I-485 as properly filed, and if not, to resolve any flaws and confirm proper filing before April 29, 2016 to avoid being subject to the a January 1, 2010 priority date requirement. Among other things, if you filed the I-485 while removal proceedings were pending, you may want to seek termination as promptly as feasible to ensure that USCIS has jurisdiction.</u></p> <p>USCIS has announced that applications properly filed before May 1, 2016, but after the cap was met, cannot be approved until visa numbers become available, most likely after October 1, 2016. USCIS may or may not interview your client. If you did not file an application for employment authorization (Form I-765) already, you may want to do so now. Be aware that the medical report, biometrics, and applicant photos can expire while awaiting adjudication, and may need to be replaced. You should vigilantly monitor developments in visa number availability; timely file address change notices if required; be alert to arrival of a biometrics appointment notice, Request for Evidence, interview notice, or any other communication from USCIS; and counsel your client about these steps and requirements for continuing eligibility.</p>
<b>My client has already filed Form I-485 with USCIS, and an interview has been noticed.</b>	This client's priority date is the date USCIS accepted Form I-360 as properly filed. Since the interview notice indicates that the I-485 was also properly filed, priority date should not be a concern for this client.	You and your client should attend the interview and avoid 'abandonment' of the application. At the interview, USCIS will likely reiterate its announcement that applications properly filed before May 1, 2016, but after the cap was met, cannot be approved until visa numbers become available, most likely after October 1, 2016. If you did not file an application for employment authorization (Form I-765) already, you may want to do so now. You should vigilantly monitor developments in visa number availability; timely file address change notices if required; be alert to any communications from USCIS; and counsel your client about these steps and requirements for continuing eligibility. Be aware that the medical report, biometrics, and applicant photos can expire while awaiting adjudication, and may need to be replaced. You will need to update USCIS if information changes before a final decision is made.

<b>What is the posture of client’s case as of April 2016?</b>	<b>What is the client’s ‘priority date’?</b>	<b>Possible next steps for clients in this posture to consider</b>
<b>My client has filed Form I-485 with the immigration court, and (is/is not) scheduled for an Individual Hearing (IH)</b>	<p>For SIJ-based adjustment, priority date = date when USCIS receives client’s properly filed Form I-360</p> <p>This client’s priority date is the date USCIS accepted Form I-360 as properly filed. If the I-485 is approved in April 2016, the priority date will not be relevant.</p>	<p>Note: In all cases, before filing Form I-485, carefully consider any grounds of inadmissibility, such as encounters with law enforcement.</p> <p>USCIS has said that no visa numbers remain for FY 2016, so it is not clear if the court will grant status adjustment during April 2016, but doing so would resolve uncertainty and conclude removal proceedings. Consider moving to advance the IH to the earliest available date, but be aware that the court may not be able to accommodate the request or approve the adjustment.</p> <p>If in-court adjustment is not granted in April, note that <u>USCIS has not stated whether EOIR’s acceptance of an I-485 before April 29, 2016 will have the same effect as USCIS accepting the filing before April 29, 2016—i.e., avoiding the May 1, 2016 onset of a the January 1, 2010 priority date cutoff.</u> You may want to assess whether adjustment is likely to proceed faster before EOIR or USCIS, but be aware that if you seek termination of proceedings to refile the I-485 with USCIS, your client risks missing the window for filing with USCIS before April 29, 2016. You may want to file an application for employment authorization (Form I-765) if not done already. You should vigilantly monitor developments in visa number availability; timely file address change notices if required; be alert to any communications from EOIR, ICE, or USCIS; and counsel your client about these steps and requirements for continuing eligibility. Be aware that the medical report, biometrics, and applicant photos can expire while awaiting adjudication, and may need to be replaced. You will also be required to update any information that changes before a final decision is made.</p>