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Chapter 4 - Adjudication

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A. Jurisdiction

USCIS has sole jurisdiction over petitions for special immigrant juvenile (SIJ) classification.^[1] Provided the petitioner is otherwise eligible, classification as an SIJ establishes eligibility to apply for adjustment of status.^[2]

B. Expedious Adjudication

In general, USCIS issues a decision on a properly filed petition for SIJ classification within 180 days.^[3] The 180-day timeframe begins on the Notice of Action (Form I-797) receipt date.^[4]

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 an SIJ petition.

C. Interview

1. Determining Necessity of Interview

USCIS has discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition.^[5] USCIS recognizes the vulnerable nature of SIJ petitioners and generally conducts interviews of SIJ petitioners only when an interview is deemed necessary. USCIS conducts a full review of the petition and supporting evidence to determine whether an interview may be warranted. USCIS generally does not require an interview if the record contains sufficient information and evidence to approve the petition witho

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However, USCIS retains the discretion to interview SIJ petitioners for the purposes of adjudicating the SIJ petition, as appropriate.

2. Conducting the Interview

Given the vulnerable nature of SIJ petitioners and the hardships they may face because of the loss of parental support, USCIS strives to establish a child-friendly interview environment if an interview is scheduled. During an interview, officers avoid questioning the petitioner about the details of the abuse, neglect, or abandonment suffered, because these issues are handled by the juvenile court. Officers generally focus the interview on resolving issues related to the eligibility requirements, including age.

The petitioner may bring a trusted adult to the interview in addition to an attorney or representative.^[6] The trusted adult may serve as a familiar source of comfort to the petitioner, but should not interfere with the interview process or coach the petitioner during the interview. Given potential human trafficking and other concerns, officers assess the appropriateness of the adult's attendance in the interview and observe the adult's interaction with the child. When appropriate, the officer may interview the child without that adult present. Although USCIS may limit the number of persons present at the interview, such limitations do not extend to the petitioner's attorney or accredited representative of record.^[7]

D. Requests for Evidence

Additional evidence may be requested at the discretion of the officer if needed to determine eligibility.^[8] 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 adjudicate the petition.^[9] The officer may request additional evidence for reasons such as, but not limited to:

- The record lacks the required dependency or custody, parental reunification, or best interest determinations;
- It is unclear if the order was made by a juvenile court or in accordance with state law;
- The evidence provided does not establish a reasonable factual basis for the determinations or indicate what protective relief was granted by the court;
- The record contains evidence or information that materially conflicts with the evidence or information that was the basis for the court order; or
- Additional evidence is needed to determine eligibility.

E. Fraud

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).^[10]

F. Decision

1. Approval

SIJ classification may not be granted absent the consent of the Secretary of Homeland Security. DHS delegates this authority to USCIS. Therefore, USCIS approval of the SIJ petition is evidence of DHS consent. USCIS notifies petitioners in writing upon approval of the petition.^[11]

2. Denial

If the petitioner does not provide necessary evidence or does not meet the eligibility requirements, USCIS denies the [Form I-360](#) petition. If USCIS denies the SIJ petition, USCIS provides the petitioner with a written denial notice which includes a detailed basis for the denial.^[12] An SIJ petitioner may appeal an adverse decision or request that USCIS reopen or reconsider a USCIS decision.^[13] The denial notice includes instructions for filing a Notice of Appeal or Motion ([Form I-290B](#)).

3. Revocation

Automatic Revocation

An approved SIJ petition is automatically revoked as of the date of approval if any one of the circumstances below occurs before USCIS issues a decision on the SIJ's application for adjustment of status:^[14]

- Reunification of the SIJ with one or both parents by virtue of a juvenile court order,^[15] where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment, or a similar basis under state law; or
- Reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned to the petitioner's, or the petitioner's parents', country of nationality or last habitual residence.

USCIS issues a notice to the petitioner of such revocation of the SIJ petition.^[16]

Revocation on Notice

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.^[17] 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.^[18]

Under the *Saravia* Settlement Agreement, USCIS does not revoke a petition for SIJ classification based in whole or in part on the fact that the state court's best interest determination was not made with consideration of the petitioner's gang affiliation.^[19]

G. Deferred Action

1. Consideration for Deferred Action

A person granted SIJ classification may apply for adjustment of status to that of a lawful permanent resident if an immigrant visa number is immediately available in the employment-based 4th preference (EB-4) category, and the person is otherwise eligible for adjustment of status.^[20] There is an annual limit on the total number of immigrant visa numbers available in the EB-4 category^[21] and an annual limit to the number of applicants

from a given country.^[22] When an immigrant visa number is not immediately available, an alien with SIJ classification cannot apply for adjustment of status until new visas become available and the SIJ's priority date becomes current.^[23]

USCIS considers deferred action for an alien with SIJ classification if the person cannot apply for adjustment of status solely because an immigrant visa number is not immediately available. Deferred action is an act of prosecutorial discretion that defers proceedings to remove an alien from the United States for a certain period of time.

Deferred action does not provide lawful status. Generally, persons granted deferred action are eligible for work authorization if they can demonstrate economic necessity for employment.^[24]

A separate request for deferred action is not required, nor will it be accepted, for aliens with SIJ classification who are ineligible to adjust status solely because an immigrant visa number is not immediately available. USCIS automatically conducts deferred action determinations for such persons.

2. Case-by-Case Discretionary Determination

As in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion.^[25] In doing so, USCIS weighs all relevant positive and negative factors that apply to the person's case.^[26] USCIS may generally grant deferred action if, based on the totality of the facts and circumstances of the case, the positive factors outweigh the negative factors.^[27]

One particularly strong positive factor that weighs heavily in favor of granting deferred action is that the person has an approved [Form I-360](#) and will be eligible to apply for adjustment of status as soon as an immigrant visa number becomes available. Additionally, the eligibility criteria for SIJ classification are generally strong positive factors in such a determination, including that a juvenile court determined that it was in the best interest of the SIJ not to be returned to the country of nationality or last habitual residence of the SIJ or the SIJ's parents.

A person who has been granted deferred action may apply for and be granted employment authorization for the period of deferred action.^[28] The person must file an Application for Employment Authorization ([Form I-765](#)) indicating eligibility category (c)(14).

3. Period of Deferred Action

If USCIS grants deferred action to an alien with SIJ classification in the exercise of discretion, USCIS authorizes deferred action for a period of 4 years. USCIS may consider requests for renewal of deferred action for aliens with SIJ classification who remain ineligible to apply for adjustment of status because an immigrant visa number is not immediately available. A person may submit a deferred action renewal request to USCIS 150 days before expiration of the period of deferred action. Renewal requests are subject to the guidance outlined above regarding eligibility and adjudication.

4. Termination

USCIS reserves the right to terminate the grant of deferred action and revoke the related employment authorization at any time as a matter of discretion. Examples may include, but are not limited to, cases where:

- USCIS determines the favorable exercise of discretion is no longer warranted;
- The [Form I-360](#) petition for SIJ classification is revoked; or
- The prior deferred action and related employment authorization were granted in error.

Footnotes

[^1] See Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)). See [8 CFR 204.11\(h\)](#).

[^2] See Application to Register Permanent Residence or Adjust Status ([Form I-485](#)). Generally, an applicant may only apply to USCIS for adjustment of status if there is a visa number available for the special immigrant classification (EB-4), and the applicant is not in removal proceedings. If an SIJ is in removal proceedings, the immigration court must terminate the proceedings before USCIS can adjudicate the adjustment application. Conversely, the applicant may seek adjustment of status with the immigration court based on USCIS' approval of the SIJ petition. For more information, see Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures [[7 USCIS-PM A](#)], Part B, 245(a) Adjustment [[7 USCIS-PM B](#)], and Part F, Special Immigrant-Based Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

[^3] See Section 235(d)(2) of the Trafficking Victims Protection and Reauthorization Act of 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008).

[^4] In *Casa Libre/Freedom House v. Mayorkas*, the court issued a Declaratory Judgment that the tolling provisions in [8 CFR 204.11\(g\)\(1\)](#) are not in accordance with the 180-day timeframe in [8 U.S.C. 1232\(d\)\(2\)](#) to the extent that they allow adjudication beyond the 180-day timeframe. See *Casa Libre/Freedom House v. Mayorkas*, No: 2:22-cv-01510-ODW, 2023 WL 4872892 (C.D. Cal. July 31, 2023).

[^5] See [8 CFR 103.2\(b\)\(9\)](#).

[^6] See [8 CFR 204.11\(f\)](#).

[^7] See [8 CFR 204.11\(f\)](#).

[^8] See [8 CFR 103.2\(b\)\(8\)](#).

[^9] For more information on timeframes and responses to Requests for Evidence and Notices of Intent to Deny, see Volume 1, General Policies and Procedures, Part E, Adjudications, Chapter 6, Evidence, Section F, Requests for Evidence and Notices of Intent to Deny [[1 USCIS-PM E.6\(F\)](#)].

[^10] 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\(b\)\(10\)](#). See [8 CFR 204.11\(g\)\(1\)](#).

[^11] See [8 CFR 204.11\(h\)](#).

[^12] See [8 CFR 204.11\(h\)](#).

[^13] See [8 CFR 103.3](#). See [8 CFR 103.5](#). See [8 CFR 204.11\(h\)](#).

[^14] See [8 CFR 204.11\(j\)\(1\)](#).

[^ 15] Revocation does not occur, however, where the juvenile court places the petitioner with the parent who was not the subject of the nonviable reunification determination.

[^ 16] See [8 CFR 205.1\(b\)](#).

[^ 17] See [INA 205](#). See [8 CFR 204.11\(j\)\(2\)](#). See [8 CFR 205.2](#).

[^ 18] See [8 CFR 205.2\(b\)](#).

[^ 19] See [Saravia v. Barr \(PDF\)](#), 3:17-cv-03615 (N.D. Cal. January 14, 2021).

[^ 20] See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)].

[^ 21] See [INA 203\(b\)\(4\)](#).

[^ 22] See [INA 202\(a\)\(2\)](#).

[^ 23] See Volume 7, Adjustment of Status, Part A, Adjustment of Status Policies and Procedures, Chapter 3, Filing Instructions, Section B, Definition of Properly Filed, Subsection 4, Visa Availability Requirement [[7 USCIS-PM A.3\(B\)\(4\)](#)].

[^ 24] See [8 CFR 274a.12\(c\)\(14\)](#).

[^ 25] While separate biometrics submission is not required for consideration of deferred action, the officer may need to update the biographic background checks performed for the SIJ petition adjudication. Depending on the facts and circumstances of the individual case, the officer may also request that the person submit biometrics for a background check or interview the person before granting deferred action. See [8 CFR 103.2\(b\)\(9\)](#).

[^ 26] See Volume 10, Employment Authorization, Part A, Employment Authorization Policies and Procedures, Chapter 4, Adjudication [[10 USCIS-PM A.4](#)].

[^ 27] Aliens with approved SIJ classification awaiting visa availability to apply for adjustment of status are among the beneficiaries of victim-based immigration benefits who receive consideration for prosecutorial discretion regarding civil immigration enforcement actions. USCIS may grant deferred action to aliens with approved SIJ classification who have never been in removal proceedings, as well as those in removal proceedings, those with a final order, or those with a voluntary departure order (as long as they are not in immigration detention).

[^ 28] See [8 CFR 274a.12\(c\)\(14\)](#).

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