

Special Immigrant Juvenile Status (SIJS): A Legal Analysis for Immigration Practitioners

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FINDINGS

SPECIAL IMMIGRANT JUVENILE STATUS (SIJS): A COMPREHENSIVE LEGAL ANALYSIS FOR IMMIGRATION PRACTITIONERS

This report provides a comprehensive analysis of Special Immigrant Juvenile Status (SIJS) as an immigration relief mechanism for vulnerable youth in the United States. SIJS represents a humanitarian classification that creates a pathway to lawful permanent residence for minors who have experienced abuse, abandonment, or neglect by one or both parents and cannot safely return to their country of origin. The process requires coordination between state juvenile courts, federal immigration authorities, and in many cases, immigration judges in removal proceedings. Recent developments in 2025 have dramatically altered the legal landscape surrounding SIJS protections, particularly regarding deferred action availability and work authorization for youth experiencing visa backlogs. This report synthesizes current statutory law, regulatory requirements, case law precedent, policy guidance, and practical considerations relevant to SIJS eligibility, filing procedures, and strategic implementation within Northern California and nationwide jurisdictions.

Statutory Framework and Historical Development of SIJS

The Special Immigrant Juvenile Status classification originates from the Immigration and Nationality Act (INA) as amended by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).[5] The statute is codified at 8 U.S.C. § 1101(a)(27)(J), which provides the foundational definition of a special immigrant as a juvenile who meets specific criteria. The TVPRA fundamentally restructured SIJS eligibility by eliminating the prior requirement that youth be "deemed eligible for long-term foster care" and instead focusing on three core judicial determinations that must be made by a state juvenile court.[38] This statutory amendment represented a significant expansion of SIJS accessibility, as it no longer tied eligibility exclusively to formal foster care involvement and instead permitted courts to make findings based on guardianship, custody, and dependency determinations under state law.

The regulatory framework governing SIJS was substantially updated through a Final Rule issued on March 8, 2022, which became effective on April 7, 2022.[1] This rule, codified at 8 C.F.R. § 204.11, modernized SIJS definitions, clarified eligibility requirements, and established procedures for USCIS consent to the classification. The 2022 Final Rule was described by USCIS as the "baseline" for determining SIJ requirements, USCIS consent procedures, and SIJS revocation provisions, and it remains the operative regulatory framework as of February 2026.[1] Importantly, this rule confirmed that USCIS relies on the expertise of state juvenile courts in making child welfare determinations and does not reweigh evidence to determine independently whether abuse, neglect, abandonment, or similar bases occurred under state law.[10] Instead, USCIS focuses its review on whether the state court order contains sufficient factual basis demonstrating that an informed judicial determination was made in accordance with state law.

The USCIS Policy Manual, Volume 6, Part J, Chapter 2 (updated regularly through 2025) provides additional guidance on SIJS classification requirements and procedures.[7] This policy manual makes clear that the cornerstone of an SIJS case is a state court order—commonly referred to as a "predicate order"—that contains three specific judicial findings: that the child has been declared dependent on a juvenile court or placed under state custody, that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and that it is not in the child's best interest to return to their country of nationality or last habitual residence.[4][10] These three findings must be made before a child can apply for SIJS with USCIS, and they form the foundation upon which all subsequent federal immigration benefits rest.

SIJS Eligibility Requirements: A Detailed Analysis

To qualify for SIJS classification at the time of filing Form I-360 with USCIS, an individual must satisfy six cumulative requirements, each of which must be met and maintained throughout the process.[1][5]

Understanding each requirement in detail is essential for practitioners working with youth who may be eligible for this relief.

The first requirement is that the applicant must be under 21 years of age at the time the I-360 petition is filed with USCIS.[1][5] This age requirement is strictly interpreted by USCIS as a statutory eligibility requirement that is not subject to equitable tolling or other exceptions.[21] The critical timing element is that USCIS must receive the completed Form I-360 before the applicant's 21st birthday-not the date the application was submitted or signed.[21] The date of actual receipt by USCIS is controlling, and USCIS policy provides that if a petition arrives on the last day before an applicant's 21st birthday and that day is a weekend or federal holiday, the petition is considered timely received even if USCIS does not physically process it until the next business day.[21] For applicants approaching their 21st birthday, USCIS now offers an option that did not previously exist: an applicant may file Form I-360 in person at a USCIS field office within two weeks of their 21st birthday and request an expedited appointment to ensure the petition receives a date stamp before the applicant turns 21.[1][5] This in-person filing option represents a significant procedural accommodation for youth at risk of aging out of SIJS eligibility, though it requires careful coordination with local USCIS field offices.

The second requirement is that the applicant must be unmarried at the time of filing the I-360 petition.[1][4] This requirement applies at the point of SIJS classification, and an applicant who was previously married must have that marriage legally annulled or terminated before filing.[1] However, it is important to note that this unmarried requirement applies specifically to the point of I-360 approval and the grant of SIJS classification. Under updated USCIS policy guidance issued in 2022, marriage of a petitioner is no longer a ground for automatic revocation of SIJS status after it has been granted.[31] This means that an individual who marries after receiving I-360 approval will not have their SIJS status automatically revoked, though they must remain unmarried until the I-360 is actually approved to qualify in the first instance.[31] If an applicant is already in the process of pursuing an I-485 adjustment of status application before they marry, they may continue that adjustment process even though they are now married and no longer meet the technical eligibility criteria for SIJS classification per se, as long as they received I-360 approval while unmarried.

The third requirement is that the applicant must reside in the United States at the time of filing the I-360 petition.[1][4] SIJS is exclusively an affirmative classification available to youth who are physically present in the United States; it cannot be filed from abroad through consular processing or any other overseas mechanism. This requirement means that a youth who leaves the United States before obtaining I-360 approval will lose the opportunity to apply for SIJS, as they will no longer meet the residency requirement. This requirement is particularly significant given that travel outside the United States while an I-360 petition is pending can result in abandonment of the application, meaning the application will be denied if the applicant is not in the United States when the petition is adjudicated.[5]

The fourth requirement involves obtaining a state juvenile court predicate order that contains three specific judicial determinations.[1][4][10] This requirement is perhaps the most complex in practice because it requires navigation of state-specific juvenile court systems, timing considerations related to state jurisdiction over youth at particular ages, and coordination with state court judges and family law practitioners. The predicate order must establish that the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency, department, individual, or entity appointed by a state or juvenile

court.[10] The order must also determine that reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law.[10] Finally, the order must determine that it is not in the child's best interest to be returned to their country of nationality or last habitual residence.[10] These three findings must be based on state law definitions of abuse, neglect, and abandonment, and the court order should cite to applicable state law provisions.[56]

The factual basis for each judicial determination does not need to be extraordinarily detailed but must be sufficient to demonstrate that the juvenile court made an informed decision.[10][56] Best practice guidance suggests that two to four sentences describing facts supporting each of the three required findings provides an adequate factual basis.[56] In California, for example, a uniform Judicial Council Form (FL-357 for family court, GC-224 for probate court, or JV-357 for dependency/delinquency proceedings) is now available and should be used for all SIJS findings, with specific state law citations included.[56] If a state court order does not include adequate factual basis, USCIS may issue a Request for Evidence (RFE) asking the petitioner to provide supplemental documentation supporting the court's findings, which can add three to six months or more to the processing timeline.[55]

The fifth requirement is obtaining written consent from the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), but this requirement applies only to certain applicants.[1][4] Specifically, if an applicant is an unaccompanied child (as defined by the TVPRA) who was in HHS custody at the time the dependency order was granted or who was receiving services under the Refugee Education Assistance Act at the time the order was granted, written consent from ORR is required.[8] The consent requirement reflects statutory protections to ensure that HHS is notified of cases involving youth previously in its custody. For applicants not in HHS custody, this consent requirement does not apply.[8][11] However, it is critical to determine at the outset whether an applicant falls within the HHS custody population, as failure to obtain the required ORR consent can result in SIJS petition denial. ORR provides "specific consent" through a formal request process that must be submitted by an attorney or authorized representative, and ORR has committed to issuing decisions within thirty business days, or fifteen business days in cases marked as urgent.[11]

The sixth and final requirement is that the Secretary of Homeland Security (now through USCIS) must consent to the grant of SIJS classification.[1] This consent requirement is distinct from the ORR consent requirement and represents a core feature of SIJS that distinguishes it from many other immigration benefits. DHS consent is not automatic; rather, USCIS must affirmatively consent to the classification, meaning USCIS reviews whether all statutory and regulatory requirements are met. However, USCIS has made clear through policy guidance that 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." [10] This guidance, while not creating an absolute entitlement to consent, establishes that DHS consent is a routine outcome when the predicate order is properly constructed with adequate factual support.

Practitioners must be aware that while approval rates for SIJS applicants are generally favorable when cases are properly prepared, the rates vary significantly by applicant age.[1][5] Approval rates are significantly higher for applicants who are under 18 years old compared to those who are between 18 and 21 years of age.[1] This disparity reflects several factors, including the fact that some state courts lose jurisdiction over individuals at age 18, making it more difficult for older teenagers to obtain predicate orders in the first place. In states like Texas and Utah, for example, state law does not permit juvenile courts to retain jurisdiction past age 18 for purposes of making SIJS determinations.[45] In other states like Florida and Virginia, jurisdiction can be extended specifically for purposes of SIJS if a predicate order is pending before the youth turns 18.[45] This variation among state jurisdictions creates significant strategic planning challenges for youth who are

approaching or have reached age 18, as the window for obtaining a predicate order can narrow dramatically or close entirely depending on where the youth resides.

The Three-Step SIJS Process: Predicate Orders, I-360 Petitions, and I-485 Adjustments

SIJS operates as a clearly defined three-step process, each step involving distinct legal actors, timelines, and procedural requirements.[5][42] Understanding the sequencing and interplay of these three steps is essential to effective advocacy for SIJS-eligible youth.

Step One: Obtaining a Predicate Juvenile Court Order

The first step requires obtaining a predicate order from a state juvenile court that contains the three required SIJS findings.[1][4][5] This step is exclusively within the domain of state law and state judicial systems; no federal authority can make these findings. A youth or their legal representative (typically a pro bono attorney, legal services organization attorney, or private counsel) must petition a state juvenile court to make the required SIJS determinations. The specific procedural mechanisms for requesting SIJS findings vary significantly by state and even by judicial district within states.

In many jurisdictions, the SIJS findings can be requested within existing child welfare dependency proceedings, family court custody cases, or probate guardianship proceedings.[10] In dependency cases, if a child has been declared dependent due to abuse, neglect, or abandonment, the dependency court may make SIJS findings as part of its existing jurisdiction. In family court, if a child's custody has been transferred away from parents due to abuse or neglect, the family court judge can make SIJS findings regarding that custody arrangement. In probate court, if a guardian has been appointed for a child due to parental abandonment, abuse, or death, the probate judge can make SIJS findings in the guardianship proceeding.[10] In some states, practitioners must initiate new court proceedings specifically to seek SIJS findings.[42]

The timing of obtaining a predicate order is critical for two reasons. First, the applicant must be under 21 years old when filing the I-360 petition with USCIS, which means the predicate order must typically be obtained before the applicant turns 20 to allow adequate time to prepare and file the I-360 petition. Second, the priority date for determining visa availability (discussed below) is the date the I-360 petition is received by USCIS, so obtaining the predicate order quickly and filing the I-360 immediately thereafter is strategically important to minimize the wait for visa availability.[2][51]

Courts must be careful to include adequate factual basis in their SIJS predicate orders. The court order should specify facts establishing that the child has suffered abuse, neglect, or abandonment (or a similar basis under state law) by one or both parents.[56] For example, an order might state that "the minor's reunification with the mother is not viable based on physical abuse he suffered in the form of weekly beatings which left bruises on the minor's body," rather than simply stating "reunification is not viable due to abuse."[38] The order should also establish that the current custody arrangement (whether in state custody, with a guardian, or with another state-appointed entity) represents appropriate protection for the child and that reunification is not viable.[10] Finally, the order should include a clear statement that it is not in the child's best interest to return to their country of origin, supported by facts such as country conditions, family circumstances in the home country, or the child's strong ties to the United States.[39]

California provides a particularly well-developed model for SIJS state court practice, with uniform judicial council forms designed specifically to incorporate the required SIJS findings along with adequate factual basis. The California forms (FL-357 for family court, GC-224 for probate court, and JV-357 for dependency/delinquency proceedings) include specific spaces to articulate factual support for each of the three

required findings and to cite applicable California state law provisions.[56][59] Other jurisdictions are increasingly adopting similar standardized forms or guidance. The use of such forms, when available, significantly reduces the risk of inadequate factual basis and subsequent RFEs from USCIS.

Step Two: Filing Form I-360 with USCIS

Once a valid predicate order has been obtained, the second step is filing Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) with USCIS.[1][5] This form must be filed before the applicant's 21st birthday, and the date of receipt by USCIS is what controls, not the date the form was signed or mailed.[21] There is no filing fee for the I-360, which removes a significant financial barrier for low-income youth and families.[1][4][5] This no-fee provision reflects the humanitarian intent of the SIJS program and distinguishes it from many other USCIS forms, which now carry inflation-adjusted fees.[32]

The I-360 form is currently nineteen pages long, but not all sections pertain to SIJS cases, so applicants should skip over sections that do not apply to avoid confusion.[5] The completed form must be accompanied by specific documents including a birth certificate or passport (with certified English translation if not in English), the juvenile court predicate order(s) establishing the required SIJS findings, evidence supporting the court's factual findings (if the court order does not contain adequate factual basis), proof of age, and Form G-28 (Notice of Entry of Appearance) if the applicant is being represented by an attorney.[1][5] For applicants in HHS custody or receiving ORR services, written ORR consent must also be included with the I-360 filing.[1][5]

USCIS has committed to adjudicating SIJS petitions within 180 days pursuant to the TVPRA statutory requirement.[55][58] However, in practice, many SIJS petitions take significantly longer to process. As of 2025, USCIS reported over 34,000 "unopened cases" (applications that had not yet been entered into the USCIS processing system) in the SIJS backlog.[55] Processing times have been extended due to staffing shortages at USCIS, increased filing volume, and issues with incomplete or inadequate predicate orders.[55] Practitioners should anticipate that I-360 approval may take 6-8 months or longer, though some cases are approved more quickly.[55]

During the I-360 pendency, USCIS may issue an RFE if the predicate order lacks adequate factual basis, if the applicant's age is unclear, if documentation of abuse/neglect/abandonment is insufficient, or if other eligibility issues require clarification.[1][33] Responding to an RFE requires careful attention to USCIS's specific questions and submission of supplemental evidence within the 87-day response deadline (though USCIS has updated its policy to permit filing until the end of the next business day for applications approaching deadlines).[33][21] An inadequate RFE response can result in petition denial, so it is critical that responses be organized, specific, and thorough.

Step Three: Filing Form I-485 and Adjustment of Status

The third step is filing an Application for Adjustment of Status (Form I-485) to become a lawful permanent resident. However, the timing of this step depends entirely on visa availability, which creates significant complexity and delay for many SIJS applicants.[3][49] SIJS beneficiaries are allotted visas from the employment-based fourth preference (EB-4) category, which has an annual numerical limit of 7.1 percent of the worldwide employment-based preference limit, or approximately 10,000 visas per fiscal year.[3][6] These visas must be allocated among all four subcategories within the EB-4 category (religious workers, special immigrants, employees of international organizations, and Iraqi and Afghan special immigrants), meaning the actual number of visas available for SIJS beneficiaries is substantially less than 10,000 annually.[3][6]

Starting in 2016, the EB-4 category became oversubscribed, meaning demand for visas exceeded the annual

numerical limit.[51][54] This oversubscription resulted in the creation of a visa backlog for SIJS applicants from certain countries, particularly Mexico, El Salvador, Guatemala, Honduras, and India.[51][54] The priority date for visa availability purposes is the date the I-360 petition was received by USCIS, not the approval date.[51][54] This is why filing the I-360 immediately after obtaining a predicate order is strategically important—each day of delay potentially means a delay of months or years in visa availability.

The Department of State publishes a monthly Visa Bulletin that indicates which priority dates are current for each visa category and country.[3][16][26] To determine when an SIJS applicant can file an I-485, practitioners must consult the Visa Bulletin's Employment-Based Fourth Preference section and determine whether the applicant's priority date falls before the "final action date" listed for their chargeability area (country of birth).[51][54] If a "C" appears in the chart, that category is current and visas are available regardless of priority date; an applicant can file the I-485 immediately.[51] If a date appears (e.g., 01MAR21), the category is backlogged and an applicant can only file if their priority date is earlier than the listed date.[51] When a backlog exists, predicting exactly when an applicant will be able to adjust status is impossible because visa allocation depends on demand, processing rates, and whether dates retrograde (move backwards) if demand increases.[51][54]

As of the February 2026 Visa Bulletin, the final action date for EB-4 SIJS beneficiaries is 01JAN21 for all chargeability areas except certain religious worker subcategories.[26][43] This means an SIJS applicant with a priority date of January 1, 2021 or earlier can file their I-485, but those with later priority dates must continue waiting. For applicants from countries with high demand like Mexico, Guatemala, El Salvador, and Honduras, the wait between I-360 approval and I-485 eligibility can range from three to eight years or longer.[42][54] This prolonged wait created significant hardship for SIJS beneficiaries who lacked work authorization or protection from removal, which is why the SIJS deferred action policy (discussed below) became so critical.

An applicant can file Form I-485 in three different scenarios depending on their particular circumstances and visa availability. An applicant with a currently available visa can file the I-485 simultaneously with the I-360 petition.[49] An applicant without a current visa can file the I-485 after the I-360 is approved but before the priority date is current (if USCIS allows filing under the "Dates for Filing" chart rather than the "Final Action Dates" chart).[49] An applicant can also file the I-485 after their priority date becomes current and the I-360 is approved.[49] Practitioners should consult with experienced SIJS counsel regarding timing given the month-to-month variations in the Visa Bulletin and USCIS policies regarding which chart to use for filing determinations.

Form I-485 must be accompanied by numerous supporting documents including two passport-style photographs, birth certificate with English translation, government-issued photo identification, completed medical examination (Form I-693), vaccination records, employment authorization application (Form I-765) if applicable, and for applicants with any police contact, criminal dispositions and an affidavit explaining rehabilitation and mitigating factors.[5][31] If the applicant cannot afford the filing fees, a Form I-912 (Request for Fee Waiver) can be submitted. The current I-485 filing fee as of 2026 is \$1,440 (increased from \$1,140 in prior years due to new annual inflation-adjustment requirements).[32][35] If filing with a fee waiver, the biometrics fee is also waived.[5]

Upon USCIS approval of the I-485 application, the applicant becomes a lawful permanent resident as of the approval notice date and will subsequently receive a green card by mail.[31] This represents the culmination of the SIJS process and is the gateway to eventual naturalization as a U.S. citizen. However, it is critical to note that an SIJS-based green card comes with significant limitations compared to other family-based immigration options: the SIJS beneficiary can never petition for either parent, even after becoming a U.S.

citizen.[4][17][42] Additionally, SIJS-based adjustment does not allow for derivative beneficiaries-spouses and children cannot be included in the SIJS application and must pursue immigration benefits through separate channels if they exist.[4][17]

The Medical Examination Requirement and Form I-693

All applicants seeking adjustment of status through the I-485 process, including SIJS beneficiaries, must undergo a medical examination performed by a civil surgeon designated by USCIS.[25][28] This examination is documented on Form I-693 (Report of Medical Examination and Vaccination Record). As of December 2, 2024, Form I-693 must be submitted with the I-485 application; if not submitted with the initial application, USCIS may reject the I-485.[28] Previously, practitioners could wait for an RFE to obtain the medical examination, but this is no longer permitted.

The medical examination includes tests for tuberculosis (TB), syphilis (for ages 18-44), and gonorrhea (for ages 18-24).[25] A chest X-ray is required if the TB blood test is positive to rule out active TB disease. The civil surgeon also verifies that all required vaccinations have been completed, including measles, mumps, rubella (MMR), varicella, hepatitis B, influenza, COVID-19, and diphtheria/tetanus/pertussis (DTaP).[25] If vaccination records are unavailable, titer tests (blood tests) may be used to verify immunity, and if immunity cannot be documented or achieved through titer tests, additional vaccinations may be required.

The Form I-693 that is signed by the civil surgeon on November 1, 2023, or later does not expire and can be used for any immigration benefit application at any time in the future.[28] Applicants should be aware that the civil surgeon will place the completed Form I-693 in a sealed envelope, and the applicant must not open or alter this envelope under any circumstances; USCIS will not accept an opened or altered Form I-693.[28] Applicants should request that the civil surgeon provide them with a copy of the signed form for their records, while keeping the sealed copy for submission to USCIS.

Current Legal Landscape: SIJS Deferred Action Policy Changes (2025)

The legal landscape surrounding SIJS underwent significant disruption in 2025 with the June 6 rescission of the SIJS deferred action policy and the subsequent November 19, 2025 federal court stay of that rescission. These developments represent the most significant policy shift affecting SIJS beneficiaries in years and require careful explanation for practitioners advising clients.

The March 2022 SIJS Deferred Action Policy

Beginning in March 2022, USCIS implemented a policy providing that individuals with approved SIJS classifications (meaning I-360 petitions approved) who were unable to adjust status due to visa unavailability would be automatically considered for deferred action on a case-by-case basis.[12][23] Deferred action is an exercise of prosecutorial discretion under which the government defers removal of an individual and, in practice, affords protection from deportation while the individual awaits a decision on an underlying benefit (in this case, adjustment of status).[60] Under the March 2022 policy, SIJS beneficiaries who received deferred action were granted protection for four years, with eligibility for work authorization (Form I-765) under the (c)(14) category, and the work authorization was issued without a filing fee.[15][23] This policy represented a significant humanitarian measure because thousands of SIJS beneficiaries faced multi-year waits for visa availability with no protection from removal and no ability to work legally.

Between 2022 and June 2025, approximately 200,000 SIJS beneficiaries received deferred action through this policy.[41] Many of these individuals obtained employment, pursued education, and established stable lives in

the United States while awaiting visa availability. Employers regularly verified work authorization through the SIJS-based EAD, and young people built economic independence while remaining vulnerable to removal but with protection during the visa backlog period. The policy was grounded in USCIS's explanation that it reflected congressional humanitarian goals, allowed for focused enforcement resources on higher-priority cases, and permitted SIJS youth to support themselves while waiting for green card eligibility.

June 6, 2025 Rescission

On June 6, 2025, the USCIS rescinded its SIJS deferred action policy under the Trump administration.[1][12][15][23] The rescission was accompanied by an official policy alert stating that USCIS would no longer consider granting deferred action on a case-by-case basis to SIJS beneficiaries who were ineligible to apply for adjustment of status solely due to visa unavailability.[1][12] The policy alert further indicated that USCIS could terminate existing deferred action grants and revoke SIJS-based employment authorization before the validity period expired as a matter of discretion.[1][12] USCIS's justification for this rescission was that "While Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available, Congress also did not expressly permit deferred action and related employment authorization for this population." [12]

The rescission created immediate hardship for SIJS beneficiaries. Youth with approved I-360 petitions who were waiting for visa availability suddenly faced potential removal and loss of work authorization. Even before the official June 6 announcement, practitioners reported that USCIS had begun issuing I-360 approvals without simultaneously granting deferred action, signaling the shift in policy.[1][23] The rescission was particularly damaging because it affected youth in the midst of established lives-many were attending school, employed, paying taxes, and contributing to their communities.

November 19, 2025 Federal Court Stay

On November 19, 2025, the U.S. District Court for the Eastern District of New York issued a decision in the case *A.C.R. et al. v. Noem et al.*, No. 25-03962 staying the June 6, 2025 rescission.[12][15][23][41] The court found that the plaintiffs (nine immigrant youth and two legal service organizations, CARECEN-NY and Centro Legal de La Raza) were likely to succeed on their claim that the rescission violated the Administrative Procedure Act (APA).[12][15][41] Specifically, the court found that USCIS failed to adequately consider reliance interests of the hundreds of thousands of youth who had relied on the 2022 policy in making life decisions-pursuing education, obtaining employment, establishing communities, and foregoing other immigration options.[12][15][41] The court emphasized that USCIS had not provided a reasoned explanation for why it was not taking these reliance interests into account and had not considered reasonable alternatives to completely rescinding the policy.[12][15][41]

The court's reasoning applied principles from *Department of Commerce v. New York*, 139 S. Ct. 2551 (2019), a Supreme Court decision establishing that agencies must consider reliance interests when rescinding prior policies and must provide a reasoned explanation for policy changes. The court noted that even state governments could be impacted by the rescission, as SIJS recipients who lost work authorization and deferred action protections could become more dependent on state child welfare services and benefits, creating additional costs for states like New York.[12][15][41]

The court's order stated: "The government must therefore conduct deferred-action and employment-authorization adjudications pursuant to the 2022 Policy Alert." [12][15][23][41] This language mandates that USCIS apply the March 2022 SIJS deferred action policy to applications and renewals filed on or after November 19, 2025. The court did not rule on class certification or grant a preliminary injunction but

instead issued a stay of the rescission, meaning the 2022 policy is restored and in effect as of February 2026.[12][15][23][41]

Current Status: The 2022 Policy Is Restored

As of February 2026, the 2022 SIJS Deferred Action Policy is in full effect pursuant to the federal court's November 2025 stay order.[12][15][23][41][57] USCIS must consider SIJS beneficiaries for deferred action on a case-by-case basis if they have approved I-360 petitions and lack immediately available visas.[60] Deferred action is granted based on a favorable exercise of discretion, considering totality of the circumstances.[60] USCIS has identified strong positive discretionary factors as including the fact that the individual has an approved SIJS petition and will be able to apply for adjustment when a visa becomes available, plus the humanitarian circumstances underlying SIJS eligibility (that a state court determined it was not in the individual's best interest to return to their home country).[60]

Negative discretionary factors that might weigh against deferred action include background and security checks indicating an inadmissibility ground that cannot be waived (such as terrorist activity or serious criminal conviction for drug trafficking) or serious unresolved criminal charges that may result in non-waivable inadmissibility.[60] However, USCIS acknowledges that it may grant deferred action despite such negative factors if case-specific circumstances warrant it.[60] The burden is on the applicant to present positive equities and affirmatively request deferred action, as USCIS stated that it has not requested or suggested that practitioners submit additional evidence specifically to support a favorable exercise of discretion for deferred action.[60]

Deferred action is granted for a four-year period.[23][60] An individual with SIJS-based deferred action can file a Form I-765 to obtain an Employment Authorization Document (EAD) under category (c)(14) at no cost.[15][23] The EAD is valid for the duration of the deferred action grant (four years) and can be renewed. An individual whose SIJS deferred action will expire within 150 days can file a request to renew their deferred action if they continue to lack an immediately available visa, using Form G-325A and supporting documentation.[23][60] Renewals are processed similarly to initial deferred action requests, with USCIS considering whether the individual continues to warrant a favorable exercise of discretion.

Existing deferred action and EAD grants issued before June 2025 remain valid until their stated expiration dates and have not been revoked by the June 6 rescission or by any subsequent action.[1][23][30] However, individuals whose deferred action expired or will expire after June 6 and before November 19, 2025 will need to file renewal applications under the now-restored 2022 policy to restore their protections.

Work Authorization and Employment Authorization Documents (EAD/Form I-765)

Once an SIJS beneficiary has either (a) received approval of an I-360 petition and a grant of deferred action, or (b) filed a pending I-485 application, they become eligible to apply for work authorization.[20][23][50] Work authorization allows an individual to accept lawful employment anywhere in the United States and requires employers to verify work eligibility through the Form I-9 process.

An individual with an approved I-360 but no pending I-485 (because their priority date is not yet current) can apply for work authorization using Form I-765 and selecting category (c)(14), indicating they are requesting work authorization based on deferred action.[20][23] There is no filing fee for this I-765 under the (c)(14) category, though the applicant must provide evidence of the approved I-360 and the deferred action grant.[20][23]

An individual with a pending I-485 application (filed after their priority date became current) can apply for

work authorization using Form I-765 and selecting category (c)(9), indicating they are requesting work authorization based on a pending adjustment of status application.[20][50] Filing the I-765 with the I-485 results in no filing fee for the I-765; if filed separately, the I-765 filing fee (currently \$275 as of 2026, though subject to annual inflation adjustments) must be paid or a fee waiver requested.[20][32][50]

An individual can also request authorization for travel outside the United States (advance parole) by filing Form I-131 concurrently with the I-765 and I-485. This allows an SIJS beneficiary to travel outside the United States and return without abandoning their pending adjustment application.

State Court Predicate Orders: California Focus and Practical Implementation

Practitioners in Northern California must work closely with state court judges and family law counsel to ensure that predicate orders contain adequate factual basis and comply with both state law and federal SIJS requirements. California has developed particularly sophisticated guidance for SIJS state court practice.

In California, the three SIJS findings are most commonly made in probate guardianship proceedings, family court custody cases, dependency proceedings, or delinquency proceedings.[10][42][56][59] California has created uniform Judicial Council Forms designed specifically for SIJS: Form FL-357 (family court), Form GC-224 (probate court), and Form JV-357 (dependency/delinquency court).[56][59] These forms incorporate the three required SIJS findings and provide dedicated space for including factual basis and state law citations.[56][59]

The California courts have held that probate courts are required to issue SIJS determinations based on state law and to cite to state authority for the judicial determinations in their orders.[56] The 2019 decision in *O.C. v. Superior Court*, 44 Cal.App.5th 76 (2019) established this requirement, making clear that courts cannot simply mirror or cite to federal immigration law; instead, orders must ground findings in California state law.

In California, the state law definitions that support SIJS findings include the following: For dependency, California Welfare and Institutions Code § 300(a)-(j) provides the dependency definitions. For abandonment, California Welfare and Institutions Code § 300(g) (child left without provision for support) and California Penal Code § 270 (criminal child abandonment) provide grounds. For neglect, California Welfare and Institutions Code § 300(b), among other provisions, provides the definition of neglect as failure or inability of parent to supervise or protect the child. For similar bases under state law, California courts have recognized that death of a parent (leaving the child without provision for support), harm or substantial risk of harm from parental failure to protect, and placement that would be detrimental to the child's health, safety, or welfare can all constitute similar bases.[56][59]

The second SIJS finding-that reunification is not viable-does not require formal termination of parental rights or a determination that reunification will never be possible.[38] For purposes of SIJS, reunification is deemed non-viable if it is not currently feasible or possible due to the parental abuse, neglect, or abandonment. While short separations from parents would likely not support this finding, the possibility of future reunification need not be eliminated entirely.[38] The focus is on whether returning the child to the parent or pursuing reunification services at present is viable given the circumstances.

The third SIJS finding-that it is not in the child's best interest to return to their home country-requires consideration of factors similar to those used in VAWA (Violence Against Women Act) extreme hardship cases.[39] These factors include country conditions, the child's length of stay in the United States, family circumstances in the home country, educational opportunities, economic circumstances, medical considerations, and the child's own established ties and community in the United States.[39] For children from

Central America, documentation of country conditions (gang violence, gang recruitment, gender-based violence, extortion, police impunity, lack of education) is often critical to establishing this finding.

Grounds of Inadmissibility and Waivers for SIJS Beneficiaries

An applicant for adjustment of status through the I-485 process must be admissible to the United States, meaning they have not triggered grounds of inadmissibility specified in INA § 212(a). However, SIJS beneficiaries receive special treatment under INA § 245(h), which provides statutory exemptions and waivers not available to other applicants.[17][19][22][31][34]

SIJS beneficiaries are automatically exempted from the following grounds of inadmissibility: public charge, labor certification, being present without admission or parole, misrepresentation (including false claims to U.S. citizenship), stowaways, not being in possession of a valid visa, and the three-year and ten-year unlawful presence bars.[31] These exemptions remove significant obstacles that would otherwise block adjustment for undocumented youth who entered the United States without inspection.

Additionally, an approved SIJS petition acts as parole for purposes of adjustment of status, meaning the applicant is deemed to have been paroled into the United States even if they actually entered without inspection or documentation.[31][34] This parole fiction is critical because INA § 245(a) generally requires that an applicant have been "inspected and admitted or paroled" into the United States; without this deeming provision, many SIJS beneficiaries would be unable to adjust due to their manner of entry.

Most other grounds of inadmissibility are waivable for SIJS beneficiaries under INA § 245(h)(2)(B) and INA § 212(h), provided the waiver serves humanitarian purposes, family unity, or the public interest, and the applicant merits a favorable exercise of discretion.[17][19][31][34] However, certain grounds are specifically NOT waivable for SIJS applicants.

Non-waivable grounds for SIJS beneficiaries include the following: (1) drug trafficking (under INA § 212(a)(2)(C)) - anyone whom the Attorney General has "reason to believe" is a trafficker or has engaged in drug trafficking is deportable and no waiver is available for SIJS beneficiaries, and this determination requires only "reason to believe," not a criminal conviction;[19] (2) crimes involving moral turpitude (CIMT) or multiple criminal convictions cannot be waived using the SIJS-specific waiver, though a § 212(h) waiver may be available in limited circumstances;[19][22] and (3) terrorism and security-related grounds are never waivable.[19][22][31]

Conditions-based grounds of inadmissibility that apply to SIJS beneficiaries and are waivable include health-related grounds, prostitution and commercialized vice (except child prostitution, which is not a crime for minors under federal law), foreign government officials who committed religious freedom violations, significant traffickers in persons, and money laundering.[22][34] These grounds can be waived if USCIS or an immigration judge finds that waiver serves humanitarian purposes, family unity, or the public interest and the applicant merits a favorable exercise of discretion.

Practitioners must carefully evaluate clients with any criminal history, juvenile delinquency adjudications, or gang involvement before filing SIJS applications. While juvenile delinquency adjudications are generally not treated as criminal convictions for immigration purposes and thus do not trigger conviction-based grounds, they can serve as negative discretionary evidence in the adjustment decision and can implicate conduct-based grounds of inadmissibility (such as reason to believe regarding drug trafficking or entry to engage in unlawful activity/gang involvement).[22][34] If a client has any adverse juvenile or criminal history, an immigration law expert should conduct a detailed analysis before filing to assess eligibility and the strength of any

available waivers.

Visa Availability and the EB-4 Backlog: Strategic Considerations

The employment-based fourth preference (EB-4) category into which SIJS beneficiaries are placed has been oversubscribed since 2016, creating a significant backlog for SIJS youth from Mexico, Guatemala, El Salvador, Honduras, and India.[6][51][54] Understanding visa availability mechanics and the Visa Bulletin is essential for advising clients on realistic timelines and strategic options.

The monthly Visa Bulletin, published by the Department of State, indicates which visa categories have available visas and which are backlogged.[16][26][43][46] For SIJS beneficiaries, the critical chart is the "Employment-Based Fourth Preference" section under "Final Action Dates for Employment-Based Preference Cases." [16][26][43] This chart lists countries and the applicable final action date for each chargeability area. An applicant's chargeability area is typically their country of birth.[16][51]

If a "C" appears in the chart for an applicant's chargeability area, that means the category is "current" and visas are available; the applicant can file an I-485 regardless of their priority date.[51][54] If a date appears (such as 01JAN21), that means the category is backlogged for that chargeability area and visas are available only to applicants whose priority date is earlier than the listed date.[51][54]

It is critical to understand that priority dates can retrograde (move backwards) from month to month if demand increases or if fewer visas are allocated to a particular chargeability area.[51][54] An applicant cannot assume that because their priority date was current in one month, it will remain current in future months. Additionally, practitioners should monitor whether USCIS will be using the "Final Action Dates" chart or the alternative "Dates for Filing Applications" chart for a particular month, as USCIS sometimes switches between these charts based on visa availability projections.[51]

For countries like Mexico, Guatemala, El Salvador, and Honduras, SIJS applicants filed before 2021 may now be approaching current priority dates, while those who filed in 2021 or later face multi-year waits. The wait times and uncertainty create significant challenges for youth planning their education, employment, and family formation while in immigration limbo. The restoration of the SIJS deferred action policy in November 2025 directly addresses this hardship by allowing youth to work legally and remain protected from removal while awaiting visa availability.

Defensive SIJS: Use in Removal Proceedings

SIJS is not exclusively an affirmative relief available to youth who initiate immigration applications voluntarily. SIJS can also be used defensively by youth who are already in removal proceedings (deportation hearings) before an immigration judge in the Executive Office for Immigration Review (EOIR).[44][47] Defensive SIJS involves filing an I-360 petition with USCIS while simultaneously pursuing removal defense arguments before an immigration judge.

For a youth in removal proceedings, defensive SIJS presents both opportunities and risks. The opportunity is that if the I-360 petition is approved, the youth becomes SIJS-classified and eligible for adjustment of status, which can lead to termination of removal proceedings either by motion or by the immigration judge.[44][47] However, the risk is that if the I-360 petition is denied, the youth remains in removal proceedings with no immigration status and potentially enhanced vulnerability to removal.

A key tactical decision in defensive SIJS cases is whether to seek termination of removal proceedings based on the SIJS petition. Under 8 C.F.R. §§ 1003.18(d)(1)(ii) and 1003.1(m)(1)(ii), termination of removal

proceedings is mandatory in some circumstances if DHS (Department of Homeland Security) joins or affirmatively does not oppose the motion to terminate.[44] For other SIJS cases, termination is discretionary with the immigration judge.[44]

Practitioners defending SIJS clients in removal proceedings should consider multiple preservation strategies: challenging defects in the Notice to Appear (Form I-862, the charging document), denying rather than admitting allegations to preserve the alienage issue for appeal, seeking suppression of evidence through Fourth Amendment or other motions, seeking termination or administrative closure of proceedings while the I-360 is pending, and carefully preserving all arguments for potential BIA (Board of Immigration Appeals) appeal or federal court review.[44][47]

It is also critical for practitioners to understand that filing an SIJS petition in removal proceedings alerts DHS that the client is undocumented. If the SIJS petition is ultimately denied, the youth may become subject to a deportation order. For this reason, the decision to pursue defensive SIJS must be carefully considered with informed client consent, and practitioners should assess the strength of the SIJS case before advising the client to proceed with defensive filing.

SIJS in the San Francisco Immigration Court and Northern California Context

Northern California practitioners working with SIJS cases should be familiar with specific aspects of immigration court practice in the San Francisco Immigration Court (located at 100 Montgomery Street, Suite 800, 630 Sansome Street, 4th Floor, Room 475, and the Concord Hearing Location at 1855 Gateway Blvd., Suite 850) and the San Francisco Asylum Office.

The San Francisco Immigration Court serves a large population of Central American youth and families, many of whom may be candidates for SIJS. The court has specific procedural expectations regarding master calendar hearings, evidence submission deadlines, and continuances. Practitioners should obtain local court rules and understand individual judge preferences regarding SIJS cases, as judges vary in their receptiveness to particular legal arguments and their procedural requirements.

The San Francisco Asylum Office also interviews SIJS-eligible youth regarding their credible fear of persecution should they be removed. Understanding the Asylum Office's interview patterns and procedures can inform strategy for youth in removal proceedings who may also be eligible for asylum or other forms of relief.

Northern California has significant resources for SIJS advocacy, including legal services organizations, law school immigration clinics, and private immigration attorneys with expertise in SIJS practice. The intersection of California state law (particularly PC §§ 1203.43 and 1473.7 regarding post-conviction relief for immigration consequences) with SIJS practice is also relevant for clients with prior juvenile adjudications or criminal convictions.

Conclusion: Current Status and Strategic Framework

As of February 2026, SIJS remains a viable and critical pathway to lawful permanent residence for vulnerable youth who have experienced abuse, abandonment, or neglect by one or both parents. The restoration of SIJS deferred action protections through the November 2025 federal court stay has reinstated essential protections for hundreds of thousands of SIJS beneficiaries who would otherwise face removal and loss of work authorization while awaiting visa availability.

Practitioners advising potentially SIJS-eligible youth should initiate action promptly to obtain predicate orders

before clients age out of state court jurisdiction, file I-360 petitions immediately upon obtaining valid predicate orders to establish priority dates, and prepare comprehensive I-485 adjustment applications with adequate supporting documentation. The visa backlog for SIJS beneficiaries from certain countries remains substantial, with waits extending several years; however, deferred action now provides a bridge to legal work authorization and protection from removal during this wait period.

For youth in removal proceedings, defensive SIJS remains a viable option that should be carefully evaluated with experienced counsel to assess both opportunities for relief and risks of petition denial. For youth in Northern California, practitioners should engage with local courts, the San Francisco Asylum Office, and established SIJS advocacy organizations to ensure that cases receive appropriate judicial attention and that statutory requirements are met.

The legal landscape remains dynamic, with ongoing litigation regarding SIJS policy and potential future congressional action regarding the visa backlog. Practitioners should monitor developments through AILA (American Immigration Lawyers Association) resources, BIA precedent decisions, federal court litigation updates, and USCIS policy guidance to remain current on emerging issues affecting their SIJS clients.