

Furthermore, if the adjustment application is denied for ineligibility, improper filing, or abandonment of the application, the applicant should not be placed into removal proceedings and an NTA should not be completed at the local field office.

3. Motions to Reopen

Jurisdiction over each Motion to Reopen filed under the Perez-Olano Settlement Agreement (POSA) lies with the field office that denied the Form I-360 and Form I-485 as stated in 8 CFR 103.5(a)(1)(ii). If the applicant moves to a different jurisdiction, the field office near the new location assumes jurisdiction.

The *Perez-Olano* Class action suit is effective from Dec. 14, 2010 to Dec. 13, 2016. Class members are all applicants including, but not limited to, SIJ applicants who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based Adjustment of Status. Class members can file a Motion to Reopen (Form I-290B), if their petition or application was denied solely because:

- The child turned 21 years of age after filing the SIJ I-360 petition but before adjudication of the I-360 or I-485 (age-out).
- The child's dependency order terminated based on age after filing the SIJ petition and/or AOS application, but before adjudication.
- The child did not receive a grant of specific consent before going before the juvenile court and the court order did not alter the child's custody status or placement.

Motions to Reopen or Notice of Appeal (Form I-290B) filed by Class members under the Settlement Agreement are to be mailed to the Chicago Lockbox. Class Members should write "*Perez-Olano Settlement Agreement*" or "POSA" in Part 3, Basis for the Appeal or Motion. The Lockbox will forward the forms to the National Benefits Center for pre-processing and routing to the field office with jurisdiction for adjudication.

applicant and his or her representative. The NOID gives applicants a meaningful opportunity to address questions and concerns before being subject to denial.

The following factors must be considered when issuing a denial:

- If every effort to obtain the necessary documents has been exhausted but the request is not complied with, the application may be denied.
- If the applicant fails to establish eligibility for the benefit sought, the officer should deny the application and notify the applicant of the reasons in writing.
- Form I-485 should be denied on the grounds that the juvenile does not have a basis to adjust status when the Form I-360 has been revoked.

The following are factors why a denial should not be issued:

- **Age:** The child turns 21 before the adjudication of Form I-360 or Form I-485. If an SIJ petitioner was under 21 years of age on the date of proper filing, USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.
- **Age-related Termination of Juvenile Court Order:** The juvenile court order ended after filing the I-360, but prior to adjudication of the I-360 or I-485 because of an age-related reason. For example, in some jurisdictions the court order may automatically terminate when a juvenile reaches 18 years of age. A juvenile's eligibility for SIJ would not be affected by this age-related reason for termination of the order. This covers situations in which the juvenile court order ended prior to adjudication because the juvenile relocated to a new state with a lower age of emancipation.
- **Termination of Juvenile Court Order Due to Adoption or Permanent Guardianship:** The otherwise qualifying juvenile court case ended because the child was adopted, or placed in a permanent guardianship or another permanent living situation (other than reunification with the abusive parent(s)).

If the officer issues a denial notice, it should set forth all reasons for the denial in a clear language which can be understood by the applicant. Although there are no appeal rights for the denial of an SIJ based adjustment application, the denial notice should include instructions for filing a Motion to Reopen or Reconsider using a Form I-290B, Notice of Appeal or Motion. The application may also be renewed in Immigration Court.

that cannot be waived) found in the case file, the officer should follow the I-485 SOP and approve the I-485. It is important that the officer:

- Annotate and complete the appropriate blocks on the I-485,
- Ensure the proper "As of Date" is annotated in the Preference block on the I-485,
- Stamp the Form I-485 with the approval stamp, and
- Indicate action on the I-485 Processing Worksheet.

The effective date of permanent residence is the approval date of the adjustment of status application. The Special Immigrant Juvenile who adjusts status is also eligible to naturalize after 5-years as a lawful permanent resident, but may not confer an immigration benefit to his or her natural or prior adoptive parents. See INA 101(a)(27)(J)(iii)(II).

Juveniles granted Special Immigrant Juvenile status receive the following *code of admission*:

- SL-6 Special Immigrant Juvenile (4th preference visa required prior to approval)

Once a 4th preference visa is received through the Immigrant Visa Allocation Management System (IVAMS) and the case has been approved, the officer must ensure that the Special Immigrant Juvenile's new Class of Admission (COA) Information is updated in the Interim Case Management Solution (ICMS) system so that a permanent resident card can be produced upon approval of Form I-485. After completion, the officer transfers the alien file (A-file) to the National Records Center (NRC).

If no visa is immediately available, the case may be pre-adjudicated to this point, a required checklist completed and signed, and the case either held or transferred out to the Texas Service Center (TSC).

SIJs who file for adjustment of status are subject to the cap on the EB-4 preference category. Technically, a visa must be available at the time an SIJ applicant files for adjustment of status. However, if the cap is unexpectedly reached, the USCIS Lockbox will continue to accept these applications regardless of visa availability.

2. Denials

It is generally more appropriate to issue an RFE where the evidence is initially insufficient to grant adjustment of status and the maximum response time allowed for an RFE is 12 weeks. When a preliminary decision has been made to deny an application or petition based on derogatory evidence, USCIS must issue a written Notice of Intent to Deny (NOID) to the

TABLE 2	
Inadmissibility Ground	No Waiver Available
<u>INA 212(a)(2)(A)</u>	Conviction or Commission of a CIMT (exception: single offense of simple possession of 30-grams or less of marijuana).
<u>INA 212(a)(2)(B)</u>	Two or more convictions and sentenced to at least 5 years
<u>INA 212(a)(2)(C)</u>	Controlled Substance Traffickers
<u>INA 212(a)(3)(A)</u>	Espionage, Sabotage, Illegal Export of Goods, Technology, or Sensitive Information, and Unlawful Overthrow or Opposition to U.S. Government.
<u>INA 212(a)(3)(B)</u>	Terrorist Activities
<u>INA 212(a)(3)(C)</u>	Adverse Foreign Policy
<u>INA 212(a)(3)(E)</u>	Participants In Nazi Persecutions or Genocide.

When a ground of inadmissibility cannot be waived, the adjustment application must be denied. (See [CHAP. Vol. 9, Part A](#) for the general waiver processes and procedures)

D. Fraud

When reviewing the application, the officer should promptly notify his or her supervisor if it appears the applicant has committed fraud (e.g. fraud in establishing eligibility to obtain the court order.) The officer should consult with his or her supervisor to determine whether to refer such a case to Fraud Detection and National Security (FDNS). Furthermore, the field should follow established protocol procedures to contact the regional office for assistance, and if needed, the region will contact HQ Field Operations if additional assistance is required. FDNS will determine if there is a pattern of fraud which needs to be addressed on a larger scale and entered into the FDNS-DS. If it is determined that fraud has been committed, the officer must explain the finding of fraud in the denial notice.

E. Approval, Denials, Revocation, and Motions to Reopen

1. Approvals

If the officer has verified that the underlying SIJ petition has been approved, the applicant is admissible (under section 212(a) of the INA) or eligible for a waiver if inadmissible, a 4th preference visa is available, and there is no derogatory evidence (e.g., an inadmissibility ground

the juvenile. This provision was added by the Violence Against Women Act of 2005, Pub. L. 109-162, 119 Stat. 2960 (2006) and is incorporated at INA 287(h).

C. Exemptions and Inadmissibilities

1. Inadmissibility Grounds that SIJ Applicants are Exempted From

Applicants may be found inadmissible based on information in the A-file, information submitted with the adjustment application, or through security checks. Table 1 lists the grounds of inadmissibility that SIJ applicants are exempted from.

TABLE 1		
Inadmissibility	Grounds	Do Not Apply
<u>INA 212(a)(4)</u>	Public Charge	Exempt
<u>INA 212(a)(5)(A)</u>	Labor Certification	Exempt
<u>INA 212(a)(6)(A)</u>	Present without admission or parole	Exempt
<u>INA 212(a)(6)(C)</u>	Misrepresentation	Exempt
<u>INA 212(a)(6)(D)</u>	Stowaways	Exempt
<u>INA 212(a)(7)(A)</u>	Valid Documentation	Exempt
<u>INA 212(a)(9)(B)</u>	Unlawful Presence	Exempt

2. Inadmissibility Grounds that SIJ Applicants are Not Exempted From and Need a Waiver

If an inadmissibility ground applies to an applicant and a waiver is possible, then a waiver must be requested. The supporting documents need to establish that a waiver is warranted for humanitarian purposes, family unity, or in the public interest.

Juvenile delinquency adjudications are not considered criminal convictions for immigration purposes. However, certain grounds of inadmissibility do not require a conviction, but rather certain conduct may be sufficient to trigger the inadmissibility ground. If an SIJ applicant for adjustment of status committed a crime as an adult, eligibility for adjustment of status depends on the crime and whether there is a waiver available.

3. Inadmissibility Grounds that May Not Be Waived

The grounds of inadmissibility that cannot be waived for SIJ applicants for adjustment are:

- Attending the interview would be so extremely difficult that it would be a hardship to the applicant; or
- Other reasons that the applicant may need an expedited decision; or
- The applicant is under the age of 14.

It is very important that officers establish a child-friendly interview environment that promotes an open and productive discussion that is non-adversarial. SIJ applicants for adjustment of status are often under pressures and hardships relating to the loss of parental support and juvenile court proceedings. During an interview, the officer should focus on eligibility for adjustment of status and avoid questioning the child about the details of the abuse, abandonment, or neglect suffered, as those matters are handled by the juvenile court, applying state law. Under no circumstances can an SIJ applicant for adjustment of status be required to contact the individual (or family members of the individual) who allegedly abused, abandoned, or neglected the juvenile. See INA 287(h).

The juvenile may bring a trusted adult to the interview, in addition to an attorney or representative (at no expense to the government). The trusted adult may serve as a familiar and trusted source of comfort to the applicant but should not interfere with the interview process or coach the applicant during the interview. As appropriate, the officer may allow the adult to provide clarification but should ensure the applicant is given the opportunity to present his or her claim in his or her own words. The trusted adult may be able to provide information that the applicant's age or competency may prevent him or her from fully participating in the interview.

The officer should also assess whether the juvenile is comfortable to speak freely or afraid and uncomfortable to speak freely in front of the adult. If at any point the officer determines that the juvenile is uncomfortable or afraid of the adult, the officer should continue the interview without that adult. Given the concerns regarding human trafficking, particularly in juveniles, attention to the nature of the relationship between the juvenile and the adult is particularly important.

Finally, during an interview, the officer should focus on eligibility for adjustment of status and should avoid questioning the juvenile about the details of the abuse, abandonment or neglect suffered, as those matters are handled by the juvenile court, applying state law. Under no circumstances can an SIJ applicant for adjustment of status, be required to contact the individual (or family members of the individual) who allegedly abused, abandoned or neglected

Chapter 4: Adjudication Procedures

A. Jurisdiction

USCIS generally does not have jurisdiction to adjudicate a Form I-485 which has been filed by an applicant in removal proceedings. Instead, jurisdiction over the adjustment application rests exclusively with the immigration judge and USCIS cannot act on the Form I-485 until the immigration judge terminates the removal proceedings.

If an SIJ was ordered removed in absentia, and remained in the country, the SIJ must move to reopen proceedings before the immigration judge and either apply for adjustment of status before the immigration judge or move to terminate proceedings and apply for adjustment of status with USCIS. The applicant may be subject to certain grounds of inadmissibility for which a waiver may be available.

Expeditious Adjudication

Officers should attempt to expeditiously adjudicate the adjustment of status application. Officers are reminded that a Form I-485 adjustment interview may be waived for those under 14 years of age or when it is determined that an interview is unnecessary. (See section B, Interview) Eliminating unnecessary interviews may help in expeditiously adjudicating adjustment applications. The officer should schedule necessary interviews as soon as possible.

B. Interview

USCIS has discretion to waive the interview for an SIJ applicant for adjustment of status on a case by case basis. See 8 CFR 245.6. USCIS will consider factors such as the age of the juvenile and whether the officer expects to gather additional evidence at an interview. In some instances, Form I-485 adjudication may require information that can only be provided by the juvenile or a person acting on the juvenile's behalf, such as when an application is missing information or the juvenile has a criminal record. USCIS may waive the interview on a case by case basis, for reasons that may include:

- An approval of the adjustment application after the applicants 18th birthday would result in the applicant losing eligibility for foster care benefits including housing;
- The applicant cannot get critical medical care until he or she becomes a lawful permanent resident;
- The applicant will lose a scholarship if he or she does not become a U.S. permanent residence in less than 180 days;

Generally, no other documentary evidence, other than what is noted above, is required for SIJ adjustment of status applicants. In particular, officers should not seek documents such as the Form I-864, Affidavit of Support, school or employment records, confirmation of compliance with the Vienna Convention on Consular Relations, or other information not directly related to or required for adjustment of status.

Fee Waivers

Although no fee is required for the Form I-360, SIJs are subject to the filing fee for the Form I-485. Applicants may submit the form with the fee or submit a request for a fee waiver of the adjustment of status application. Requests for fee waivers should be adjudicated expeditiously, and consistent with the prevailing policy guidance. In considering the applicant's inability to pay the fee, officers should pay particularly close attention to fee waiver guidance relating to consideration of humanitarian or compassionate reasons in support of a request.

The following forms of evidence may be submitted to support a fee waiver request. Evidence may include one or more of the following:

- Evidence the SIJ is receiving a federal means-tested benefit;
- Pay stubs or bank statements indicating the SIJ's income is under the federal poverty guidelines;
- Recent juvenile court order (within the last 6 months) establishing dependency or custodial assignment of the SIJ;
- Letter from foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay; or
- Approval Notice (Form I-797) for the petition (Form I-360) filed for the SIJ.

Fingerprinting

An SIJ who is 14 and over must also comply with fingerprinting and other agency background check requirements.

Requests for Evidence and Record of Proceedings

All documents, including any documents received as a result of a Request for Evidence (RFE), should be placed in the file according to the Record of Proceedings order as established in the Form I-485 Standard Operating Procedures (I-485.SOP) dated January 3, 2013.

For purposes of meeting the “inspected and admitted or paroled” requirements of INA 245(a), an individual granted SIU status is considered to have been “paroled” into the United States, regardless of the petitioner’s actual manner of entry.

Chapter 3: Required Evidence

The following documentation or evidence is required with Form I-485, Application to Register Permanent Residence or Adjust Status:

- Correct fee or request for a fee waiver on Form I-912. ISO should look for approved motions and court orders where the IJ has waived the I-485 fee.
- Concurrently filed Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) or copy of the Approval Notice (Form I-797) that classifies the applicant as a special immigrant juvenile.
- Form G-325A, Biographic Information Sheet (if over age 14);
- Birth certificate or other proof of identity in compliance with 8 CFR 103.2(b)(2);
- Evidence of inspection, admission, or parole into the United States (manner of entry, if applicable as stated in the last paragraph of Chapter two);
- Form I-693, Report of Medical Examination and Vaccination Record (sealed);
- Certified copies of arrest/court records of disposition (if applicable);
- Form I-601, Waiver for Grounds of Inadmissibility (if applicable for a ground that is not automatically waived under INA 245(h)(2)(A)). The juvenile must also submit supporting documentation which establishes that the waiver is warranted for humanitarian purposes, family unity, or in the public interest (may include affidavits, letter, press clippings, etc.).
- Form I-765, Application for Employment Authorization (if needed)
- Two (2) Passport-Style color photos (full frontal taken within 30 days)
- Evidence that the applicant continues to have a valid dependency or state court order (at separate or concurrent I-485 and I-360 filing), unless terminated due to age or because the child was placed in adoption, permanent guardianship, or another permanent living situation (other than reunification with the abusive parent(s)).

- INA 203(b)(4) - Certain Special Immigrants
- Public Law 101-649 - Immigration Act of 1990 [IMMACT 90]
- Public Law 105-119 - Appropriations Act of 1998
- Public Law 102-232 - Miscellaneous & Technical INA Amendments of 1991 [MTINA]
- Public Law 110-457 - TVPRA of 2008

Chapter 2: Eligibility

The applicant must meet the following requirements to be eligible for adjustment of status as a special immigrant juvenile (SIJ):

- Have an approved Form I-360 petition or a copy of the Form I-797 approval notice that classifies them as a Special Immigrant Juvenile;
- Be physically present in the United States at the time of filing a Form I-485, Application to Register Permanent Residence or Adjust Status;
- Must be unmarried at time of filing and final adjudication of the Form I-485 adjustment application;
- Not be among those specifically ineligible to apply for adjustment under INA 245(c);
- Be admissible to the United States or eligible for a waiver of any applicable grounds of inadmissibility (see inadmissibility section in Chapter 4);
- Have a visa number (EB-4) immediately available (see Chapter 4, Section E on codes of admission); and
- Continue to be the subject of a dependency order that has not been vacated, terminated, or otherwise ended. **Exception:** The juvenile court order must be valid at time of filing and at time of adjudication unless:
 - The juvenile court case ended because the child was placed in adoption, permanent guardianship, or another permanent living situation (other than reunification with the abusive parent(s), or
 - Prevented by the age of the beneficiary.

PART F – SPECIAL IMMIGRANT JUVENILE (SIJ) BASED ADJUSTMENT

Chapter 1: Purpose, Background, and Legal Authority

A. Purpose and Background

Congress initially created Special Immigrant Juvenile (SIJ) status in 1990 to provide humanitarian protection for abused, abandoned and neglected juvenile immigrants eligible for foster care. This protection has evolved to include juveniles for whom reunification with one or both parents is not viable because of abuse, neglect, abandonment or a similar basis under state law. A significant number of people eligible for classification as an SIJ were ineligible to become lawful permanent residents because they could not meet the statutory requirements for immigrant visa issuance or adjustment of status.

In 1991, Congress passed the Miscellaneous and Technical Immigration and Nationality Amendments. These amendments reduced or eliminated the obstacles facing most special immigrant juveniles from becoming lawful permanent residents. The amendments allowed for someone granted SIJ classification to immediately be eligible to apply for SIJ-based adjustment of status.

USCIS adjudicates Form I-360, which determines eligibility for SIJ classification, and also adjudicates the Form I-485, Application to Register Permanent Residence or Adjust Status, which determines eligibility for lawful permanent residency.

Note: If a child is in removal proceedings, the immigration judge may determine eligibility for lawful permanent resident status or the court may terminate proceedings after the final approval of a Form I-360 to allow USCIS to adjudicate the I-485.

See PM Vol 6, Part H, Special Immigrant Juveniles, to learn more about general eligibility requirements for SIJs. See PM Vol 7, Part F, Special Immigrant Based (EB-4) Adjustment, and Chapter 7, Special Immigrant Juveniles, to learn more about adjustment of status for SIJs.

B. Legal Authority

- INA 245(h) - Adjustment of Status of Special Immigrants
- 8 CFR 204.11 - Adjustment of Status of Special Immigrant Juveniles
- 8 CFR 245 - Adjustment of Status to that of a Person Admitted for Permanent Residence
- 8 CFR 245.1(e)(3) - Eligibility for Adjustment of Status
- INA 101(a)(27)(J) - Statutory Definition of Special Immigrant Juvenile