



## U.S. Citizenship and Immigration Services

Home > Policy Manual > Volume 6 - Immigrants > Part J - Special Immigrant  
Juveniles > Chapter 2 - Eligibility Requirements

# Chapter 2 - Eligibility Requirements

## Guidance

Resources (12)

Appendices (1)

Updates (7)

History (1)

Special immigrant juvenile (SIJ) classification is available to children who have been subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. If a juvenile court has made certain judicial determinations and issued orders under state law on dependency or custody, parental reunification, and the best interests of the child, then the child may be eligible for SIJ classification.

USCIS determines if the petitioner meets the requirements for SIJ classification by adjudicating a Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)).<sup>[1]</sup> USCIS' adjudication of the SIJ petition includes review of the petition, the juvenile court order(s), and supporting evidence to determine if the petitioner is eligible for SIJ classification. USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about the best interest of the juvenile and abuse, neglect, abandonment, or a similar basis under state law.

## A. General

A petitioner must satisfy the following requirements to qualify for SIJ classification:

### **General Eligibility Requirements for SIJ Classification**

Physically present in the United States at the time of filing and adjudication of the Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#))

## General Eligibility Requirements for SIJ Classification

Unmarried at the time of filing and adjudication of [Form I-360](#)

Under the age of 21 at the time of filing [Form I-360](#)

Subject to juvenile court determinations issued in the United States that meet the specified requirements

Obtain U.S. Department of Homeland Security consent

Obtain U.S. Department of Health and Human Services (HHS) consent, if applicable

## B. Age-out Protections for Filing with USCIS

In general, a juvenile may seek SIJ classification if he or she is under 21 years of age and unmarried at the time of filing the petition with USCIS.<sup>[2]</sup> However, state law is controlling as to whether a petitioner is considered a “child” or any other equivalent term for a juvenile subject to the jurisdiction of a state juvenile court for custody or dependency proceedings.<sup>[3]</sup>

If a petitioner was under 21 years of age on the date of the proper filing of the [Form I-360](#), and all other eligibility requirements under the statute are met, USCIS cannot deny SIJ classification solely because the petitioner is older than 21 years of age at the time of adjudication.<sup>[4]</sup>

## C. Juvenile Court Order

For purposes of SIJ classification, a juvenile court is defined as a U.S. court having jurisdiction under state law to make judicial determinations on the dependency and/or custody and care of juveniles.<sup>[5]</sup> This means the court must have the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued.<sup>[6]</sup> Depending on the circumstances, such a determination generally would be expected to remain in place until the juvenile reached the age of majority, or until the goal of a child welfare permanency plan, such as adoption, or other protective relief ordered by the juvenile court has been reached.<sup>[7]</sup>

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

Not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification. For example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be

acting as a juvenile court for SIJ purposes. The burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued.<sup>[8]</sup>

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

- Dependency or Custody – Declares the petitioner dependent on the court, or legally commits or places the petitioner under the custody of either a state agency or department, or a person or entity appointed by a state or juvenile court;
- Parental Reunification – Declares, under state law, that the petitioner cannot reunify with one or both of the petitioner’s parents due to abuse, neglect, abandonment, or a similar basis under state law; and
- Best Interests – Determines 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. The best interest determination may be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court.

## 1. Dependency or Custody

The petitioner must be the subject of a juvenile court order that declares the petitioner dependent on a juvenile court, or legally commits to or places the petitioner under the custody of either an agency or department of a state, or a person or entity appointed by a state or juvenile court.

### *Dependency*<sup>[10]</sup>

A determination of dependency requires that the petitioner be declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency.<sup>[11]</sup> The petitioner must be in the United States and under the jurisdiction of the court. The term dependent child, as used in state child welfare laws, generally means a child subject to the jurisdiction of a juvenile court because the court has determined that allegations of parental abuse, neglect, abandonment, or similar maltreatment concerning the child are sustained by the evidence and are legally sufficient to support state intervention on behalf of the child.<sup>[12]</sup> Dependency proceedings may include abuse, neglect, dependency, termination of parental rights, or other matters in which the court intervenes to provide relief from abuse, neglect, abandonment, or a similar basis under state law.<sup>[13]</sup>

### *Custody*<sup>[14]</sup>

Placing the petitioner “under the custody of” a natural person or entity may encompass legal or physical custody.<sup>[15]</sup> Commitment to, or placement under the custody of a person may include certain types of guardianship, conservatorship, or adoption.<sup>[16]</sup> When the court places the petitioner under the custody of a specific person, the court order should identify that person by name. A qualifying court-appointed custodial placement could be with one parent, if reunification with the other parent is found to be not viable due to that parent’s abuse, neglect, abandonment, or similar maltreatment of the petitioner.

## 2. Parental Reunification<sup>[17]</sup>

The juvenile court must determine that reunification with one or both parents<sup>[18]</sup> is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state laws.<sup>[19]</sup> This generally means that the court intends for its determination that the child cannot reunify with his or her parent(s) to remain in effect until the child ages out of the juvenile court's jurisdiction.<sup>[20]</sup> However, actual termination of parental rights is not required.<sup>[21]</sup>

The record should contain the factual basis for this determination, and must establish that the court made a determination regarding the petitioner's parentage. If the juvenile court order names the petitioner's parents, or the record is supported by other evidence of parentage that was considered by the court, such as the birth certificate, USCIS generally considers this requirement to have been met. If a parent is unknown, the record should reflect that the parent is unknown. If the record does not establish that the court made a determination regarding the petitioner's parentage, USCIS may request additional evidence.

## 3. Best Interests

While juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country, it must be determined by the juvenile court (or in administrative proceedings recognized by the juvenile court) that it would not be in the best interest of the petitioner to be returned to the country of nationality or last habitual residence of the petitioner or the petitioner's parents.<sup>[22]</sup> This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court's determination.

The standards for making best interest determinations may vary between states, and the court may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child's potential caregiver(s).<sup>[23]</sup> The child's safety and well-being are typically the paramount concern. For example, if the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent. The analysis would not change even if the chosen caregiver is a parent. USCIS defers to the juvenile court in making this determination and as such does not require the court to conduct any analysis other than what is required under state law.<sup>[24]</sup>

The juvenile court may make the required determination that it is not in the petitioner's best interest to be returned to the petitioner's or the petitioner's parents' country of nationality or last habitual residence. However, other judicial or administrative bodies authorized or recognized by a juvenile court, such as a state child welfare agency, may also make this required determination. If a particular juvenile court establishes or endorses an alternate process for a best interest determination, a determination from that process may satisfy this requirement.<sup>[25]</sup>

## 4. Validity of Order

## *Jurisdiction under State Law*

All determinations in the juvenile court order must have been properly issued under state law to establish eligibility for SIJ classification. This includes the need for the juvenile court<sup>[26]</sup> to have jurisdiction under state law to make the required judicial determinations about the custody and care and/or dependency of the juvenile.<sup>[27]</sup> For example, a state juvenile court may not be able to take jurisdiction and issue a qualifying dependency or custody order for a person who is no longer a juvenile under the state's dependency or custody laws even though the federal statute allows a petitioner to file for SIJ classification until the age of 21. The state law definition of juvenile controls jurisdiction to determine dependency or custody proceedings before the juvenile court. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.

### *Continuing Jurisdiction*

In general, the petitioner must remain under the jurisdiction of the juvenile court at the time of the filing and adjudication of the SIJ petition, subject to some exceptions discussed below. If the petitioner is no longer under the jurisdiction of the juvenile court for a reason related to their underlying eligibility for SIJ classification, the petitioner is not eligible for SIJ classification. This may include cases in which the petitioner is no longer under the jurisdiction of the court because:

- The court vacated or terminated its determinations that made the petitioner eligible because of subsequent evidence or information that invalidated the determinations; or
- The court reunified the petitioner with the parent with whom the court previously deemed reunification was not viable because of abuse, neglect, abandonment, or a similar basis under state law.

However, this requirement does not apply if the juvenile court jurisdiction ended solely because:

- The petitioner was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached;<sup>[28]</sup> or
- The petitioner was the subject of a qualifying juvenile court order that was terminated based on age before or after filing the SIJ petition (provided the petitioner was under 21 years of age at the time of filing the SIJ petition).<sup>[29]</sup>
- A juvenile court order does not necessarily terminate because of a petitioner's move to another court's jurisdiction, and a juvenile leaving the court-ordered placement without permission or authorization does not by itself affect SIJ eligibility. In general, a court maintains jurisdiction when it orders the juvenile placed in a different state or makes a custody determination and the juvenile and the legal custodian relocate to a new jurisdiction.<sup>[30]</sup>

If the original order is terminated due to the relocation of the child but another order is issued in a new jurisdiction, USCIS considers the dependency or custody to have continued through the time of adjudication of the SIJ petition, even if there is a lapse between court orders.

## D. DHS Consent

The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008) simplified but did not remove the DHS consent requirement.<sup>[31]</sup> In order to consent to the grant of SIJ classification, USCIS must review the juvenile court order(s) and any supporting evidence submitted to conclude that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law.<sup>[32]</sup>

In exercising this consent function, USCIS therefore looks to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court.<sup>[33]</sup> Such relief may include custodial placement, dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief.<sup>[34]</sup> USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law.

Under the *Saravia* Settlement Agreement, USCIS does not withhold consent based in whole or in part on the fact that the state court did not consider or sufficiently consider evidence of the petitioner's gang affiliation when deciding whether to issue a predicate order or in making its determination that it was not in the best interest of the child to return to his or her home country. USCIS does not use its consent authority to reweigh the evidence that the juvenile court considered when it issued the predicate order.<sup>[35]</sup>

USCIS recognizes that there may be some immigration motive for seeking the juvenile court order. For example, the court may make determinations in separate hearings and the petitioner may request an order that compiles the determinations of several orders into one order to establish eligibility for SIJ classification. A special order issued to help clarify the determinations that were made so that USCIS can determine the petitioner's eligibility for SIJ classification does not mean that the order is not bona fide. USCIS may, however, withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification.<sup>[36]</sup>

## E. U.S. Department of Health and Human Services Consent

If a petitioner is or was previously in the custody of HHS, and obtained a juvenile court order that also altered the petitioner's custody status or placement while the petitioner is or was in HHS custody, the petitioner must provide documentation of HHS' consent to the juvenile court's jurisdiction.<sup>[37]</sup> HHS consent is not required if the order simply restates the juvenile's placement in HHS custody.<sup>[38]</sup>

## F. Inadmissibility and Waivers

Grounds of inadmissibility do not apply to the adjudication of the SIJ petition.<sup>[39]</sup> Therefore, a petitioner does not need to apply for a waiver of any applicable grounds of inadmissibility in order to be eligible for SIJ classification.

## G. Family Members

Unlike some other immigrant visa petitions, SIJ classification does not allow the petitioner’s family members to be included on the petition as derivative beneficiaries. SIJ petitioners that have adjusted status to that of a lawful permanent resident may petition for qualifying family members through the family-based immigration process. However, a petitioner who adjusts status as a result of an SIJ classification may not confer an immigration benefit to the petitioner’s natural or prior adoptive parents, even after naturalization.<sup>[40]</sup> This prohibition applies to a custodial parent when the juvenile court has found reunification is not viable with the other parent.<sup>[41]</sup>

## Footnotes

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[<sup>1</sup>] USCIS also adjudicates the Application to Register Permanent Residence or Adjust Status (Form I-485), which determines eligibility for adjustment of status to lawful permanent residence. See Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [7 USCIS-PM F.7].

[<sup>2</sup>] USCIS interprets the use of the term “child” in Section 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in INA 101(b)(1), which states that a child is an unmarried person under 21 years of age.

[<sup>3</sup>] See INA 101(a)(27)(J)(i). See 8 CFR 204.11(a) (defining “juvenile court” as a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles). See 8 CFR 204.11(c)(1)(i). See 8 CFR 204.11(c)(3).

[<sup>4</sup>] Section 235(d)(6) of the TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008), provides age-out protection to SIJ petitioners.

[<sup>5</sup>] See INA 101(a)(27)(J)(i). See 8 CFR 204.11(a).

[<sup>6</sup>] See INA 101(a)(27)(J)(i). See 8 CFR 204.11(c)(3).

[<sup>7</sup>] See 8 CFR 204.11(c)(3)(ii)(A) and (B).

[<sup>8</sup>] For more information on what evidence is sufficient to establish that the court is acting as a juvenile court for SIJ purposes, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 1, Qualifying Juvenile Court Determinations [6 USCIS-PM J.3(A)(1)].

[<sup>9</sup>] For information on what evidence may suffice to establish a reasonable factual basis, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 2, Evidentiary Requirements for DHS Consent [6 USCIS-PM J.3(A)(2)].

[<sup>10</sup>] See 8 CFR 204.11(c)(1)(i)(A).

[<sup>11</sup>] See 8 CFR 204.11(c)(1)(i)(A). For an example of state law governing declarations of dependency, see California Welfare and Institutions Code Section 300, et seq.

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

[^13] USCIS draws on guidance from family law treatises, national clearinghouses on juvenile court practice, and state laws on the definition of dependency. See, for example, Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases*, Section 12.1 (Thompson Reuters 3rd ed. 2018); and National Council of Juvenile and Family Court Judges, [Enhanced Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases \(PDF\)](#) (2016).

[^14] See [8 CFR 204.11\(c\)\(1\)\(i\)\(B\)](#).

[^15] However, a department or agency of a state, or a person or entity appointed by a state court or juvenile court located in the United States, acting in loco parentis, is not considered a legal guardian for purposes of a qualifying custody determination. See Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPR 2008), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5080 (December 23, 2008).

[^16] SIJ is generally not an appropriate option for those children who come to the United States for the primary purpose of adoption. Although it does not apply to all SIJ cases involving adoption, SIJ classification is not meant to provide a way to circumvent the Hague Adoption Convention or other requirements for receiving legal status via adoption. See Hague Conference on Private International Law, *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, May 29, 1993, 32 I.L.M. 1134, Art. 2, 28. See [8 CFR 204.300](#) (regulations governing the intercountry adoption of a Hague Adoption Convention adoptee).

[^17] The TVPRA 2008 replaced the need for a juvenile court to deem a juvenile eligible for long-term foster care with a requirement that the juvenile court find reunification with one or both parents not viable. USCIS interprets the TVPRA changes as a clarification that petitioners do not need to be eligible for or placed in foster care and that they may be reunified with one parent or other family members. However, USCIS requires that the reunification no longer be a viable option with at least one parent. USCIS maintains that the court’s determination generally should be in place on the date the petitioner files the [Form I-360](#) and continue through the time of adjudication, unless the juvenile court’s jurisdiction over the petitioner terminated solely because a child welfare permanency goal was reached or due to age, provided the petitioner was under 21 at the time of filing the petition. See [8 CFR 204.11\(c\)\(3\)\(ii\)\(A\) and \(B\)](#). See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5079 (December 23, 2008).



[^ 18] The term “parent” does not encompass a stepparent unless the stepparent is recognized as the petitioner’s legal parent under state law, such as when a stepparent has adopted the petitioner.

[^ 19] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [8 CFR 204.11\(c\)\(1\)\(ii\)](#).

[^ 20] For example, when parental reunification is no longer the goal of the child welfare authority’s plan for a permanent living situation for the child (known as a “permanency plan”). See U.S. Department of Health and Human Services, Child Welfare Information Gateway, [How the Child Welfare System Works \(PDF\)](#).

[^ 21] See [8 CFR 204.11\(c\)\(1\)\(ii\)](#). USCIS does not require that the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification. See *R.F.M. v Nielsen*, 365 F.Supp.3d 350, 382 (S.D. NY Mar. 15, 2019). See *J.L., et al v. Cissna*, 341 F.Supp.3d 1048 (N.D. CA 2018), *Moreno-Galvez v. Cissna*, No. 19-321 (W.D. WA July 17, 2019). See *W.A.O. v. Cissna*, No. 19-11696 (D. NJ July 3, 2019).

[^ 22] See [INA 101\(a\)\(27\)\(J\)\(ii\)](#). See [8 CFR 204.11\(c\)\(2\)](#).

[^ 23] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, [Determining the Best Interests of the Child](#).

[^ 24] See [8 CFR 204.11\(c\)\(2\)\(ii\)](#).

[^ 25] See [8 CFR 204.11\(c\)\(2\)](#). The burden is on the petitioner to prove that the other judicial or administrative body is authorized or recognized by a juvenile court to make best interest determinations. Evidence to support this may include, but is not limited to, copies of the relevant state law(s) or court documents indicating that the judicial or administrative body is authorized to make such determinations.

[^ 26] As defined in this Section C, Juvenile Court Order [\[6 USCIS-PM J.2\(C\)\]](#).

[^ 27] For an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles. See [8 CFR 204.11\(a\)](#).

[^ 28] See [8 CFR 204.11\(c\)\(3\)\(ii\)\(A\)](#).

[^ 29] See [8 CFR 204.11\(c\)\(3\)\(ii\)\(B\)](#).

[^ 30] Nearly all states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the Interstate Compact for the Placement of Children (ICPC). The UCCJEA is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws. The UCCJEA is effective only upon adoption by state legislatures. See Sections 201-204 of UCCJEA available at the [Uniform Law Commission website on UCCJEA](#). ICPC is a binding contract between member jurisdictions. The ICPC establishes uniform legal and administrative procedures governing the interstate placement of children. Each state and the District of Columbia have enacted the provisions of the ICPC under state law.

[^ 31] See [Pub. L. 110-457 \(PDF\)](#) (December 23, 2008).

[^ 32] See [INA 101\(a\)\(27\)\(J\)\(iii\)](#). See [8 CFR 204.11\(b\)\(5\)](#). See [8 CFR 204.11\(d\)\(5\)](#). See [H.R. Rep. 105-405 \(PDF\)](#), p. 130 (1997).

[^ 33] See [8 CFR 204.11\(d\)\(5\)](#).

[^ 34] See [8 CFR 204.11\(d\)\(5\)\(i\)\(A\) and \(B\)](#).

[^ 35] See [Saravia v. Barr \(PDF\)](#), 3:17-cv-03615 (N.D. Cal. January 14, 2021).

[^ 36] See [8 CFR 204.11\(b\)\(5\)](#).

[^ 37] See [8 CFR 204.11\(d\)\(6\)\(ii\)](#).

[^ 38] For more information on juvenile court orders for youth in HHS custody that do not alter their custodial placement, see Chapter 3, Documentation and Evidence, Section A, Juvenile Court Order(s) and Administrative Documents, Subsection 2, Evidentiary Requirements for DHS Consent [[6 USCIS-PM J.3\(A\)\(2\)](#)].

[^ 39] For discussion on the applicability of inadmissibility grounds to SIJ-based applicants for adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juveniles [[7 USCIS-PM F.7](#)]. See [8 CFR 245.1\(e\)\(3\)\(iii\) and \(iv\)](#).

[^ 40] See [INA 101\(a\)\(27\)\(J\)\(iii\)\(II\)](#). See [8 CFR 204.11\(i\)](#).

[^ 41] See [8 CFR 204.11\(i\)](#).

Current as of July 18, 2022

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