



March 7, 2022

PA-2022-10

Policy Alert

SUBJECT: Special Immigrant Juvenile Classification and Deferred Action

Purpose

U.S. Citizenship and Immigration Services (USCIS) is updating the [USCIS Policy Manual](#) to consider deferred action (and related employment authorization) for noncitizens classified as Special Immigrant Juveniles (SIJs) who are ineligible to apply for adjustment of status to lawful permanent resident (LPR) status solely due to visa unavailability.

Background

The SIJ classification is available to noncitizen children subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law.¹ SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization. A noncitizen classified as an SIJ, however, may seek to adjust status to that of an LPR based on the SIJ classification if the noncitizen meets certain requirements. One of the requirements is that an immigrant visa number be immediately available at the time of filing the adjustment application.²

Due to ongoing visa number unavailability, the protection that Congress intended to afford SIJs through adjustment of status is often delayed for years, leaving this especially vulnerable population in limbo. Therefore, USCIS is updating its policy guidance to provide that USCIS will consider granting deferred action on a case-by-case basis to noncitizens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visa numbers.

Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available, since for many years after implementation of the program, SIJs did have visas immediately available. Deferred action and related employment authorization will help to protect SIJs who cannot apply for adjustment of status solely because they are waiting for a visa number to become available. This process furthers congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children for whom a juvenile court has determined that it is in their best interest to remain in the United States.³

¹ See [INA 101\(a\)\(27\)\(J\)](#). See [8 CFR 204.11](#).

² See [INA 245\(a\), \(h\)](#). See [8 CFR 245.2\(a\)\(2\)\(i\)\(A\)](#).

³ See [INA 101\(a\)\(27\)\(J\)](#).

This update, contained in Volume 6 of the Policy Manual, is effective May 6, 2022 and applies to eligible noncitizens classified as SIJs before, on, or after that date based on an approved Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#)). This guidance is controlling and supersedes any prior guidance on the topic.

Policy Highlights

- Provides that USCIS automatically conduct deferred action determinations for noncitizens with SIJ classification who cannot apply for adjustment of status solely because an immigrant visa number is not immediately available. Noncitizens with SIJ classification are not required to submit a separate request for deferred action, and a separate request will not be accepted.
- Explains that USCIS considers deferred action on a case-by-case basis to determine whether the noncitizen with SIJ classification warrants a favorable exercise of discretion.
- Provides that a grant of deferred action to a noncitizen with SIJ classification is for a period of 4 years.
- Explains that a noncitizen with SIJ classification who has been granted deferred action by USCIS may apply for, and be granted, employment authorization for the period of deferred action, by filing an Application for Employment Authorization ([Form I-765](#)), indicating category (c)(14).

Citation

Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 4, Adjudication [[6 USCIS-PM J.4](#)].

Additional Background

Noncitizens without lawful status who have an approved SIJ petition remain subject to removal and do not have the ability to obtain employment authorization until they can apply to adjust status, unless they are otherwise in a category that authorizes them to apply for employment authorization, including deferred action. SIJs who are granted deferred action would be eligible to apply for employment authorization under [8 CFR 274a.12\(c\)\(14\)](#).

Employment authorization will provide invaluable assistance to these vulnerable noncitizens who are children or young adults, and have limited financial support systems in the United States, especially as they age out of care, while they await an immigrant visa number.

In general, SIJs are unlikely to be enforcement priorities as evidenced by the broad waivers of inadmissibility Congress established,⁴ as well as [ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims](#), which states that absent exceptional circumstances, ICE

⁴ See [INA 245\(h\)\(2\)](#). See [8 CFR 245.1\(e\)\(3\)](#).

defers enforcement actions against SIJs until they adjust status to that of an LPR.⁵ Therefore, the granting of deferred action⁶ to SIJs further conserves DHS resources by focusing on the enforcement of higher priority cases, such as noncitizens who pose a threat to national security, public safety, and border security.

USCIS will not publish Federal Register notices requesting public comment because public notice is not required for internal policy clarifications. This policy update is based on our interpretation of the applicable terms in the Code of Federal Regulations and the Immigration and Nationality Act .

In addition to the above considerations, USCIS has analyzed this policy for any reliance interests that may have accrued to any regulated parties or the affected public. USCIS does not think there are any parties who will have taken actions or expended resources in reliance on USCIS not providing deferred action and employment authorization to noncitizens classified as SIJs who are ineligible to apply for adjustment of status to LPR. Approved SIJs already reside in the United States and are unlikely to be enforcement priorities.

Exercising our discretion to grant deferred action and possibly authorizing employment provides significant benefits to the U.S. labor pool and the economy in general compared to delaying such status. To the extent that this policy will result in any increased expenditures by any state for schools, services, or driver's licenses, USCIS anticipates such costs will be exceeded by the benefits to those states from the person being employed and contributing to the economy.

Conversely, USCIS believes that approved SIJ petitioners have a reliance interest in being provided with employment authorization consistent with the congressional intent in creating the SIJ program to protect vulnerable children by providing them with a pathway to LPR status, without having to wait years before a visa is available. Accordingly, USCIS has decided that any reliance interest that an affected party may have for maintaining the status quo is outweighed by the need for and benefits of this policy change.

⁵ The directive states, "absent exceptional circumstances, ICE will exercise discretion to defer decisions on civil immigration enforcement action against the applicant or petitioner (primary and derivative) until USCIS makes a final determination on the pending victim-based immigration benefit application(s) or petition(s), including adjustment of status for noncitizens with approved Special Immigrant Juvenile status." See [ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims](#), Section 2.1.

⁶ As in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion.