



U.S. Citizenship  
and Immigration  
Services

April 19, 2016

TO: Maria Odom  
CIS Ombudsman

FROM: León Rodríguez  
Director

SUBJECT: **Response to Recommendations on Special Immigrant Juvenile Adjudications**

I would like to thank the Citizenship and Immigration Services (CIS) Ombudsman for her thoughtful review of U.S. Citizenship and Immigration Services' (USCIS) processes and procedures for Special Immigrant Juvenile (SIJ) adjudications. I appreciate the work her office put into this review and welcome the insights and recommendations offered on this important topic.

The CIS Ombudsman recommends the following:

- **Centralization:** Centralize SIJ adjudications in a facility whose personnel are familiar with the sensitivities surrounding the adjudication of humanitarian benefits for vulnerable populations;
- **Interview Criteria:** Take into account the best interests of the child when applying criteria for interview waivers;
- **State Juvenile Court Orders:** Interpret the consent function consistently with the statute by according greater deference to State court findings; and
- **Regulations:** Issue final SIJ regulations that fully incorporate all statutory amendments.

USCIS generally concurs with the recommendations and will work to implement them.

Centralization and Interview Criteria

In April 2015, USCIS considered and endorsed the centralizing of SIJ adjudications, taking into account considerations both internal and external to the agency. Currently, USCIS is preparing to centralize the processing of SIJ petitions (Form I-360) and SIJ-based adjustment of status applications (Form I-485) at the National Benefits Center (NBC). Centralization means that both SIJ petitions and SIJ-based applications will be adjudicated at one central location with USCIS retaining the discretion to interview petitioners as needed. Centralization will allow USCIS to improve consistency in the SIJ program and provide an enhanced ability to monitor cases and track processing times. Additionally, the NBC adjudicates immigration applications and petitions for intercountry adoption which, like SIJ petitions, involve vulnerable populations.

The Ombudsman notes centralization will necessitate waiving many interviews. With regards to the CIS Ombudsman concern that the Fraud Detection and National Security Directorate (FDNS) is the only component developing the interview waiver criteria, USCIS respectfully notes that this is not accurate. The Field Operations Directorate is considering input on interview criteria from numerous program offices and directorates within the agency, including the Office of Policy and Strategy, FDNS, and the Office of Chief Counsel. In consideration of the vulnerable nature of SIJ petitioners, USCIS plans to only refer cases for interview when it is necessary to secure information through an in-person assessment. As part of centralization, USCIS is working to ensure a more consistent approach in the administration of the SIJ program.

USCIS officers are experienced in interviewing a diverse range of applicants, including children. In addition to their overall interviewing experience, officers have been provided specific guidelines for conducting interviews of children. The guidance included instructions to officers that they are not to ask questions concerning the details of any abuse suffered, but rather to focus their questions on the SIJ eligibility requirements.

The CIS Ombudsman and other stakeholders have expressed concern that seeking clarification from a petitioner when information in the petitioner's immigration file differs from information contained in a juvenile court order is overreaching. However, an officer has an obligation to review the entire immigration record when adjudicating an SIJ petition. At times the officer may encounter evidence or information in the record that directly and substantively conflicts with other evidence or information that was the basis for the juvenile court order. When this occurs, an officer must exercise due diligence to ensure that any such discrepancies are explained, which may include asking questions during an interview or requesting additional documentation. USCIS interviews are designed to serve as information-gathering opportunities to determine eligibility for a particular immigration benefit request. USCIS officers take a number of different factors into account when considering all of the information in the record, including the vulnerable nature of SIJ petitioners.

#### State Juvenile Court Orders

The CIS Ombudsman recommends that USCIS give deference to State court orders and not revisit the factual findings made by State courts. Pursuant to statutory requirements and implementing policy, USCIS will generally defer to State court orders that:

- 1) Have been properly issued under State law; and
- 2) Include or are supplemented by a reasonable factual basis that establishes the court order was sought for relief from abuse, neglect, abandonment, or a similar basis under State law, and not sought solely or primarily to obtain an immigration benefit.<sup>1</sup>

However, if the juvenile court order does not meet these requirements, USCIS may request further evidence.

There is nothing in the Immigration and Nationality Act (INA) that allows or directs juvenile courts to rely upon provisions of the INA for jurisdiction or otherwise deviate from reliance upon

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<sup>1</sup> H.R. Rep. No. 105-405, at 130 (1997).

State law and procedure in issuing orders. The order(s) should use language that establishes that the specific findings or rulings were made under State law, and should not just mirror or cite to immigration law and regulations. The juvenile court order may use different legal terms than those found in the INA as long as the findings have the same meaning as the requirements for SIJ classification.<sup>2</sup>

The CIS Ombudsman expressed concerns with the USCIS interpretation and application of its consent function. As part of its analysis, the Ombudsman noted that the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) eliminated the express consent function. However, the TVPRA of 2008 simplified but did not remove the consent requirement. INA 101(a)(27)(J)(iii). USCIS no longer expressly consents to the juvenile court order but rather reviews the order as part of the determination that the eligibility requirements have been met. The Department of Homeland Security (DHS)/USCIS continues to interpret its consent function in line with the congressional history from when the term “consent” was first added to the statute. DHS/USCIS will consent to SIJ classification when it is determined that the request for SIJ classification is bona fide, which means the court order was sought for relief from abuse, neglect, abandonment, or a similar basis under State law, and not sought solely or primarily to obtain an immigration benefit<sup>3</sup>. USCIS does not determine whether or not a child has been abused, abandoned, or neglected or re-weigh the evidence to form independent conclusions about what is in a child’s best interests. Orders that include or are supplemented by a reasonable factual basis for the required findings will usually be sufficient to establish eligibility. The juvenile court findings need not be overly detailed, but must reflect that the court made an informed decision for each of the required findings.

### Regulations and Policy

Additionally, the CIS Ombudsman noted that the SIJ regulations, which have not been updated since 1994, no longer fully comport with statutory language. The Ombudsman acknowledged that DHS issued a Notice of Proposed Rulemaking in September 2011, and recommends that DHS complete the rulemaking process.

To meet the goal of issuing consolidated and updated guidance in the short term, USCIS plans to issue clarifying policy guidance via the USCIS Policy Manual. This forthcoming guidance<sup>3</sup> on SIJ classification will provide one set of comprehensive policies on SIJ classification. This guidance will include additional clarification on long-standing USCIS policy as to the USCIS consent function. USCIS estimates that this policy guidance will be issued in 2016. Once published, this policy guidance will be publically available on the USCIS website.

In addition, USCIS has published outreach materials that are available on the USCIS website. USCIS also conducts nationwide outreach for stakeholders to further build understanding of the current requirements. In Fiscal Year 2015, USCIS conducted over 25 SIJ outreach engagements.

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<sup>2</sup> See [101\(a\)\(27\)\(J\)](#).

<sup>3</sup> H.R. Rep. No. 105-405, at 130 (1997).

<sup>3</sup> USCIS notes that the guidance cited in the CIS Ombudsman’s recommendation (footnote 37) was draft and has not yet been finalized. This policy is undergoing internal clearance and is subject to change.

Finally, USCIS will continue the Federal rulemaking process to amend its regulations governing the SIJ classification and related applications for adjustment of status to lawful permanent residence. The final rule will implement updates to eligibility requirements and other changes made by the Trafficking Victims Protection Reauthorization Act of 2008. Information on the estimated timeline for publication can be found in the Unified Agenda of Proposed Regulatory and Deregulatory Actions, which is published on a biannual basis.

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