

## Chapter 2 - Eligibility ~~Requirement~~Requirements

### A. Determining Eligibility

~~The special~~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 ~~findings, judicial determinations and issued orders~~ findings, 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~~Form I-360).<sup>(b)(1)</sup> USCIS' adjudication of the SIJ petition includes review of the petition, the juvenile court order ~~(or orders(s))~~ (or orders(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, ~~or~~ abandonment, or a similar basis under state law.

### B. 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
Unmarried
Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant ( <del>Form I-360</del> Form I-360)
Juvenile court order <del>(or orders(s))</del> issued in the United States that meets the specified requirements
U.S. Department of Homeland Security consent
U.S. Department of Health and Human Services (HHS) consent, if applicable

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

In general, a "child" is an unmarried person under 21 years of age for purposes of SIJ classification.<sup>(b)(2)</sup> USCIS considers the petitioner's age at the time the SIJ petition is filed when determining whether the petitioner has met the age requirement.<sup>(b)(3)</sup>

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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 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>

## D. C. Juvenile Court Order

To be eligible for SIJ classification, a juvenile court in the United States must have issued order (or orders) with the following findings:

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 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 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.<sup>[10]</sup>
- Parental Reunification— Declares, under the state child welfare law, that the petitioner cannot reunify with one or both of the petitioner’s parents prior to aging out of the juvenile court’s jurisdiction, due to abuse, neglect, abandonment, or a similar basis under state law; and
- Best Interests— Finds - Determines that it would not be in the petitioner’s best interest to be returned (to a placement) in the petitioner’s, or his or her parent’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

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## 1. Dependency or Custody

The petitioner must be the subject of a juvenile court order that declares him or her 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. ~~Placing the petitioner “under the custody of” a person requires physical custody.~~

### 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

~~Placing the petitioner “under the custody of” a natural person or entity generally encompasses both legal and physical custody. Commitment to, or placement under the custody of a person may include certain types of guardianship, conservatorship, or adoption.<sup>(14)</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, ~~or abandonment or similar maltreatment~~ of the petitioner.

~~Court ordered dependency or custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification.<sup>(15)</sup> A court appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent,<sup>(16)</sup> is not considered a custodian for purposes of establishing SIJ eligibility.<sup>(18)</sup>~~

## 2. Parental Reunification<sup>(19)</sup>

### 2. Parental Reunification<sup>(15)</sup>

The juvenile court must ~~find~~ determine that reunification with one or both parents<sup>(16)</sup> is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state child welfare laws.<sup>(17)</sup> Lack of viable reunification generally means that the court intends its finding that the child cannot reunify with his or her parent ~~(or parents(s))~~ remains in effect until the child ages out of the juvenile court’s jurisdiction.<sup>(18)(18)</sup> The temporary unavailability of a child’s parent(s) does not meet the eligibility requirement that family reunification is not viable. However, actual termination of parental rights is not required.<sup>(19)</sup>

The findings must be based upon the person (or persons) who is the petitioner’s parent (or parents)<sup>(19)</sup> under state law. If the juvenile court order establishes that the person (or persons) is the petitioner’s parent (or parents), USCIS generally considers ~~should~~ contain the factual basis for this

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~~requirement met. However, if determination, which includes naming the petitioner's parents, and the record does not must establish that the court determined the named person (or persons) is(s) to be the petitioner's parent (or parents). USCIS may request additional evidence, if this is not established. For example, if the findings court's determinations are based on a father not listed on the petitioner's birth certificate, a determination that the claimed father is the father under state law should be established recognized in the juvenile court order.~~<sup>[20]</sup>

### 3.- Best Interests

Juvenile courts do not have the authority to make decisions on the removal or deportation of a child to another country. However, 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 his or her parents. ~~Accordingly, this requires a determination by the juvenile court that a placement in the child's, or his or her parents', country of nationality or last habitual residence is not in the child's best interest~~ 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. While the standards for making best interest determinations may vary between states, 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>[21]</sup> The child's safety and well-being are typically the paramount concern.

~~While the standards for making best interests determinations may vary between states, a best interests determination generally involves the deliberation that courts undertake under state law when deciding what types of services, actions, and orders will best serve a child, as well as a deliberation regarding who is best suited to take care of a child.~~<sup>[22]</sup> The court's finding The court's determination that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that ~~a placement in the petitioner's country of nationality would not be in the child's best interest.~~<sup>[23]</sup> being returned to the petitioner's (or petitioner's parents') country of nationality or last habitual residence would not be in the child's best interest.<sup>[22]</sup> However, if for example the court places the child with a person in the United States pursuant to 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 qualifying best interest finding with a sufficient factual basis to warrant USCIS 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.

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 his or her 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>[23]</sup>

### 4.- Validity of Order

*Issued Jurisdiction under State Law*

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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 his or her natural or prior adoptive parents, <sup>1323</sup> [even after naturalization.](#)<sup>1341</sup> This prohibition ~~also~~ applies to a ~~non-abusive,~~ custodial parent, ~~if applicable when the juvenile court has found reunification is not viable with the other parent.~~

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## Footnotes

1. <sup>[^]</sup><sup>[^]</sup> USCIS also adjudicates the Application to Register Permanent Residence or Adjust Status ~~(Form I-485)~~ <sup>(Form I-485)</sup>, 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~~ <sup>Juvenile</sup> ~~[7 USCIS-PM F.7]~~.

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2. <sup>[^]</sup> USCIS interprets ~~2.~~ <sup>[^]</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)~~ <sup>Pub. L. 110-457 (PDF)</sup>, 122 Stat. 5044, 5080 (December 23, 2008), to refer to the definition of child in ~~INA 101(b)(1)~~ <sup>INA 101(b)(1)</sup>, which states that a child is an unmarried person under 21 years of age.

3. <sup>[^]</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.

4. <sup>[^]</sup> <sup>[^]</sup> See INA 101(a)(27)(J)(i). See 8 CFR 204.11(a), (d)(2)(i) and (iii). See *Matter of A-O-C* (PDF, 309 KB), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (clarifying that juveniles must have been subject to a dependency or custody order issued by a "juvenile court," which is defined as a court "in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.").

4. <sup>[^]</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.

5. <sup>[^]</sup> See 8 CFR 204.11(a). Consistent with the district court's decision in *R.F.M., et al. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and INA 101(a)(27)(J)(i), USCIS interprets the definition of juvenile court at 8 CFR 204.11(a) to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency or custody and care of juveniles (or both).

6. <sup>[^]</sup> See INA 101(a)(27)(J)(i). See *Matter of A-O-C* (PDF, 309 KB), Adopted Decision 2019-03 (AAO Oct. 11, 2019).

7. <sup>[^]</sup> See 8 CFR 204.11(d)(2)(i).

8. <sup>[^]</sup> For more information on [which state courts USCIS considers 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 ~~Orders~~ <sup>Order(s)</sup> and Administrative Documents, Subsection 1, Qualifying Juvenile Court ~~Proceedings~~ <sup>[6 USCIS-PM J.3(A)(1)]</sup> ~~Determinations~~ <sup>[6 USCIS-PM J.3(A)(1)]</sup>.

9. [^] 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 3, Factual Basis and USCIS Consent](#) [6 USCIS-PM J.3(A)(3)].

10. 5. [^] This requires that the petitioner has been declared dependent upon a juvenile court located in the United States in accordance with [^] See 8 CFR 204.11(c)(3).

11. [^] See 8 CFR 204.11(c)(3). See [Matter of E-A-L-O- \(PDF, 304 KB\)](#), Adopted Decision 2019-04 (AAO Oct. 11, 2019) (clarifying the requirement that a juvenile court dependency declaration is not sufficient for USCIS' to consent to SIJ classification absent evidence that the dependency declaration actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law governing such declarations of dependency, while he or she is in the United States and under the jurisdiction of the court. See 8 CFR 204.11(c)(3)). 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, [Resource Guidelines Improving Court Practice in Child Abuse & Neglect Cases \(PDF\) \(1995\)](#).

14. 6. [^] USCIS generally requires that the court order be valid at the time of filing and must determine that the court intends that the child will not reunify with at least one parent until the child reaches the age of majority. See 8 CFR 204.11(c)(5). See Subsection 2, Parental Reunification [6 USCIS-PM J.2(D)(2)].

7. [^] See Black's Law Dictionary (10th ed. 2014) (defining "in loco parentis").

8. [^] A department or agency of a State, or an individual or entity appointed by a State court or juvenile court located in the United States, acting in loco parentis, shall not be considered a legal guardian for purposes of this section or section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279). See Section 235(d)(5) of the TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008).

9. [^][^] 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 204.301 and 8 CFR 204.303.

15. [^] 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. The term “eligible for long-term foster care” is defined at [8 CFR 204.11\(a\)](#), as requiring that family reunification no longer be viable and that this determination would be expected to remain in place until the child reached the age of majority. 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, and USCIS maintains that the court’s determination [generally](#) is meant to be in place until the child reaches the age of majority. ~~See 8 CFR 204.11~~ See [8 CFR 204.11\(a\)](#). See Section 235(d)(1)(A) of TVPRA 2008, [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5079 (December 23, 2008).

16. [^] ~~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”).~~

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

17. [^] See [INA 101\(a\)\(27\)\(J\)\(i\)](#). See [Matter of D-Y-S-C- \(PDF, 306 KB\)](#), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (interpreting section 101(a)(27)(J)(i) to mean that that a qualifying reunification finding must include a judicial determination that the juvenile was subjected to such parental maltreatment by one or both parents under state law).

18. [^] ~~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 \(PDF\)](#).

19. [^] 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 (SDNY Mar. 15, 2019). See [J.L., et al v. Cissna](#), 341 F.Supp.3d 1048 (N.D.C.A. 2018). [Moreno-Galvez v. Cissna](#), No. 19-321 (W.D.W.A. July 17, 2019). See [W.A.O. v. Cissna](#), No. 19-11696 (D.N.J. July 3, 2019).

20. [^] In circumstances where the judge does not make a final determination on parentage or makes a determination as to alleged or purported parentage, the order will not meet the statutory requirements for SIJ classification.

21. [^] See U.S. Department of Health and Human Services, Child Welfare Information Gateway, [Determining the Best Interests of the Child](#). See [Matter of A-O-C- \(PDF, 309 KB\)](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (providing, consistent with decisions in [R.F.M. v. Nielsen](#), 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and [INA 101\(a\)\(27\)\(J\)\(i\)](#), that the definition of juvenile court at [8 CFR 204.11\(a\)](#) means 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.).

22. [^] See 58 FR 42843-01, 42848 (Aug. 13, 1993).

23. [^] See [8 CFR 204.11\(d\)\(2\)\(iii\)](#). 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. See [Matter of A-O-C- \(PDF, 309 KB\)](#), Adopted Decision 2019-03 (AAO Oct. 11, 2019) (providing, consistent with decisions in [R.F.M. v. Nielsen](#), 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and [INA 101\(a\)\(27\)\(J\)\(i\)](#), that the definition of juvenile court at [8 CFR 204.11\(a\)](#) means 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). 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.

24. [^] As defined in this Section D, Juvenile Court Order [6 USCIS-PM J.2(D)].

25. [^] ~~12. [^]~~ See U.S. Department of Health and Human Services, Child Welfare Information Gateway, Determining the Best Interests of the Child.

~~13. [^]~~ See 58 FR 42843-01 (PDF), 42848 (August 12, 1993).

~~14. [^]~~ 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 care and custody of juveniles. See 8 CFR 204.11(a). See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005) custody and care and/or dependency of juveniles. See 8 CFR 204.11(a). See *Perez-Olano v. Holder* (PDF, 5.34 MB), Case No. CV 05-3604 (C.D. Cal. 2010) at paragraph 8.

~~15. [^]~~ See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).

~~16. [^]~~ 26. [^] See *Perez-Olano v. Holder* (PDF, 5.34 MB), Case No. CV 05-3604 (C.D. Cal. 2010).

27. [^] Some 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](#); [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.

28. [^] See 8 CFR 204.11(c)(5) (stating that an alien is eligible for SIJ classification if he or she continues to be dependent on the juvenile court).

29. [^] See Pub. L. 110-457 (PDF) (December 23, 2008). See *Matter of D-Y-S-C-* (PDF, 306 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019).

30. [^] See INA 101(a)(27)(J)(iii) ~~17. [^]~~ See 8 CFR 204.11(c)(5).

~~18. [^]~~ See Pub. L. 110-457 (PDF) (December 23, 2008).

~~19. [^]~~ See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

~~20. [^]~~ See *Perez-Olano v. Holder*, Case No. CV 05-3604 (C.D. Cal. 2005).

31. [^] *Id.*; see also *Matter of D-Y-S-C-* (PDF, 306 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (clarifying SIJ classification may only be granted upon USCIS' consent to juveniles who meet all other eligibility criteria and establish that they sought the requisite juvenile court or administrative determinations in order to gain relief from parental abuse, neglect, abandonment, or similar basis under state law, and not primarily to obtain an immigration benefit).

32. [^] See *Perez-Olano v. Holder* (PDF, 5.34 MB), Case No. CV 05-3604 (C.D. Cal. 2010).

33. [^] ~~21. [^]~~ 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 Juvenile [7 USCIS-PM F.7].

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34. <sup>[^]</sup> See INA 101(a)(27)(J)(iii)(II).

~~22.~~ <sup>[^]</sup> See INA 101(a)(27)(J)(iii)(II).



prior to issuing the order, or briefs or legal arguments submitted to the court. USCIS looks at the documents submitted in order to ascertain the role and actions of the court and to determine whether the proceedings provided relief to the child under the relevant state law(s). Mere copies of, or references to, state law(s), and/or briefs or legal arguments drafted in response to a request for evidence provided on their own, may not be sufficient unless supported by evidence that the court actually relied on those laws when making its determinations. The juvenile court order may use different legal terms than those found in the Immigration and Nationality Act (INA) as long as the findings/determinations have the same meaning as the requirements for SIJ classification: (for example, “guardianship” or “conservatorship” may be equivalent to custody).<sup>[6]</sup> Orders that just mirror or cite to federal immigration law and regulations are not sufficient.

There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law. Juvenile courts should follow their state laws on issues such as when to exercise their authority, evidentiary standards, and due process.

#### *Similar Basis under State Law*

The language of the order may vary based on individual state child welfare law: due to variations in terminology and local state practice in making child welfare decisions. If a juvenile court order makes the findings/determinations based upon a state law similar to abuse, neglect, or abandonment, the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. Petitioners are encouraged to submit the juvenile court’s findings of how the basis is similar to abuse, neglect, or abandonment and copies of the relevant laws. This requirement may be met if the elements of the state law are contained in the order, by providing a copy of the law the court relied upon and a description of how the elements of the similar basis are equivalent, or by showing that the child is entitled to equivalent juvenile court protection and intervention based on the court’s determination of the similar basis to abuse, neglect, or abandonment.<sup>[6]</sup>

### 3. The **Factual Basis and USCIS Consent**

Template orders that simply recite the immigration statute or regulatory language are both parents is deceased is not itself a similar basis to abuse, abandonment or neglect under state law. A legal conclusion from the juvenile court is required that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law.

## 2. Final Orders

A court order for dependency or custody that clearly indicates that the order was issued for a limited purpose (for example, medical guardianship) or expires before the child reaches the age of majority is generally not sufficient for SIJ eligibility. However, the title of the court order is not necessarily controlling. For example, an order entitled “temporary” may, in fact reach the legal conclusion that reunification is not viable and is legally binding on the parties until the age of majority. In such a case, the order should generally contain language to that effect or the SIJ petitioner should submit evidence that the court intended the order to be legally in effect until the age of majority. Such evidence could include, for example, the underlying petition or copies of relevant state law.

A court-appointed custodian that is acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent for a time-limited period,<sup>[7]</sup> is generally not considered a custodian for purposes of establishing SIJ eligibility.<sup>[8]</sup> However, a child may be placed with a temporary caregiver in

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## B. Limitations on Additional Evidence

USCIS is mindful that there are often confidentiality rules that govern disclosure of records from juvenile-related proceedings. For this reason, officers generally do not request information or documents from sources other than the SIJ petitioner or his or her legal representative.<sup>101121</sup>

Children often do not share personal accounts of their family life with an unknown adult until they have had the opportunity to form a trusting relationship with that adult. Therefore, officers **should** exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the **findings/determinations** made by the juvenile court.<sup>101131</sup>

Additionally, the juvenile court may make child welfare placement, custody, and best interest decisions that differ from the child's stated intentions at the time of apprehension. However, if there is significant contradictory information in the file that the juvenile court was likely not aware of or that may impact whether a reasonable factual basis exists for the court's **findings/determinations**, officers may request additional evidence from the petitioner or his or her legal representative.<sup>101133</sup>

However, officers may not require or request an SIJ petitioner to contact the person or family members of the person who allegedly abused, neglected, or abandoned the SIJ petitioner.<sup>101133</sup>

## Footnotes

1. <sup>101121</sup> See Instructions for [Form I-360-Form I-360](#). There is no fee to file [Form I-360 Form I-360](#) to seek SIJ classification.

2. <sup>101121</sup>, <sup>101121</sup> For more information on evidence that can be used to provide proof of age see [8 CFR 204.11\(d\)\(1\)](#).

3. <sup>101131</sup>, <sup>101131</sup> For information on SIJ-based adjustment of status, see Volume 7, Adjustment of Status, Part F, Special Immigrant-Based (EB-4) Adjustment, Chapter 7, Special Immigrant Juvenile [[7 USCIS-PM F.7](#)].

4. <sup>101131</sup> See [8 CFR 204.11\(a\)](#).

5. <sup>101131</sup> The term "findings" refers to the conclusions of law.

6. <sup>101131</sup> See [101\(a\)\(27\)\(J\)](#).

7. <sup>101133</sup>, <sup>101133</sup> See [8 CFR 204.11\(d\)\(2\)](#); *Matter of D-Y-S-C* (PDF, 306 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (explaining that petitioners bear the burden of establishing the state law applied in the reunification, dependency or custody, and best-interest determinations.).

5. <sup>101133</sup> See [INA 101\(a\)\(27\)\(J\)](#).

6. <sup>101133</sup> For example, under Connecticut law, a child may be found "uncared for" if the child is "homeless" or if his or her "home cannot provide the specialized care that the physical, emotional or mental condition of the child requires." See Conn. Gen. Stat. Ann. section 46b-120(9). "Uncared for" may be similar to abuse,

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neglect, or abandonment because children found “uncared for” are equally entitled to juvenile court intervention and protection. The outcomes for children found “uncared for” are the same as they are for children found abused, neglected, or abandoned. See Conn. Gen. Stat. Ann. section 46b-120(8),(9); 121(a).

8. ~~[^]~~ See Black’s Law Dictionary (10th ed. 2014) (defining “in loco parentis”).

8. <sup>[^]</sup> 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, must not be considered a legal guardian for purposes of this section or Section 462 of the Homeland Security Act of 2002 (codified at 6 U.S.C. 279). See Section 235(d)(5) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008).

9. <sup>[^]</sup> See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997).

10. <sup>[^]</sup> See INA 101(a)(27)(J)(iii) (consent requirement). See H.R. Rep. No. 105-405, at 130 (1997); see also *Matter of D-Y-S-C-* (PDF, 306 KB), Adopted Decision 2019-02 (AAO Oct. 11, 2019) (requiring that, for USCIS’ consent to be warranted, the judicial determination to find that the juvenile was subjected to such maltreatment by one or both parents under state law); *Matter of E-A-L-O-* (PDF, 304 KB), Adopted Decision 2019-04 (AAO Oct. 11, 2019 (clarifying that, for USCIS’ to consent to SIJ classification, a juvenile court dependency declaration must be issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law)).

11. <sup>[^]</sup> Such affidavits or records will be assigned low evidentiary value unless they are accompanied by evidence that the court considered the information contained therein in the course of issuing its judicial determinations.

12. <sup>[^]</sup> USCIS Fraud Detection and National Security (FDNS) officers conducting fraud investigations follow separate FDNS procedures on documentation requests.

9. ~~[^]~~ See Violence Against Women Act of 2005, Pub. L. 109-162 (January 5, 2006), codified at INA 287(h).

13. <sup>[^]</sup> See Violence Against Women Act of 2005, Pub. L. 109-162 (PDF) (January 5, 2006) (codified at INA 287(h)).

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