



U.S. Citizenship and Immigration Services



Special Immigrant Juvenile Adjustment of Status

National Benefits Center
September 29, 2016



Objectives

Immigration Services Officers (ISO) will be able to:

- Identify eligibility requirements for Special Immigrant Juveniles (SIJ) based Adjustment of Status (AOS);
- Identify required documentation and evidence for SIJ based AOS, and; and
- Accurately adjudicate an SIJ based adjustment application to completion.



AOS in General

AOS is:

- The process by which an applicant physically present in the United States becomes a Lawful Permanent Resident (LPR).
- An applicant who is outside the United States cannot file an application for AOS. Instead, the applicant would seek an immigrant visa from the Department of State, i.e., consular processing.



INA § 245(a) Requirements

INA § 245(a) outlines the general statutory requirements for AOS.

- The applicant must have been:
 - Inspected and admitted into the United States; or
 - Inspected and paroled into the United States.
- The applicant must properly file an AOS application.
- The applicant must be physically present in the United States.



INA § 245(a) Requirements, cont.

- The applicant must be eligible to receive an immigrant visa.
- An immigrant visa must be immediately available when the applicant files the AOS application and at the time of final adjudication.
- The applicant must be admissible to the United States for lawful permanent residence or eligible for a waiver of inadmissibility or other form of relief.
- The applicant merits a favorable exercise of discretion.



Inspected and Admitted or Inspected and Paroled

INA § 245(h) provides for SIJ based adjustment of status.

An SIJ based adjustment applicant is considered paroled for the purposes of AOS, thereby meeting the inspected and admitted or inspected and paroled requirement under INA § 245(a).

An SIJ may have:

- Been inspected and admitted;
- Been inspected and paroled; or
- Entered Without Inspection.



Application for AOS

- The application for AOS under INA § 245 is Form I-485, Application to Register Permanent Residence or Adjust Status.
- Fee of \$985 is generally required.
- The fee may be waived if the applicant can show inability to pay.
 - Applicant may submit Form I-912, Request for a Fee Waiver, or submit a statement explaining why he/she is unable to pay the fee.
 - The fee waiver will be reviewed and adjudicated by the lockbox.



Properly Filed AOS Application

An applicant must properly file the AOS application.

Properly filed refers to an AOS application filed:

- At the correct filing location;
- With the correct filing fees unless granted a fee waiver;
- With the proper signature of the applicant; and
- When an immigrant visa is immediately available.



Application for Adjustment of Status

An SIJ applicant may file the Form I-485:

- Concurrently with the Form I-360;
- After Form I-360 has been approved; or
- While the Form I-360 is pending.

If the applicant filed Form I-485 while the Form I-360 is pending, both should be consolidated in the record.



Application for AOS

The Form I-485 with the correct fee or with a Form I-912 must also be accompanied by:

- Form I-797 receipt or approval notice for Form I-360 unless filing concurrently;
- Two passport style photos;
- Biographic Information (Form G-325A), if over 14 years of age;



Application for AOS, cont.

- Copy of the applicant's birth certificate;
- Copy of passport page with nonimmigrant visa (if applicable);
- Copy of passport page with admission or parole stamp (if applicable);
- Copy of Arrival/Departure Record (Form I-94) or copy of U.S. Customs and Border Protection (CBP) admission or parole stamp on the travel document (if applicable);
- Report of Medical Examination and Vaccination Record (Form I-693);



Application for AOS, cont.

- Certified police and court records of juvenile delinquency findings, criminal charges, arrests, or convictions (if applicable);
- Application for Waiver of Grounds of Inadmissibility (Form I-601) or other form of relief (if applicable); and
- Documentation of past or present J-1 or J-2 nonimmigrant status (if applicable) and if subject to the 2-year home residence requirement of INA § 212(e), documentation that the applicant complied with the requirement or was granted a waiver.



Eligibility

- The applicant must be physically present in the U.S. on the date of filing and approval of the Form I-485. INA § 245(a); 8 CFR § 245.1(a)
- The applicant is eligible to receive an immigrant visa because the applicant has an approved Form I-360;
 - the officer should ensure that the applicant remains classified as an SIJ meaning none of the following have occurred
 - Reunification of the petitioner with parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent(s) not viable Reversal of the best interest determination
 - The applicant is married at the time of filing or adjudication of the Form I-485



Eligibility, cont.

- The applicant has an immigrant visa immediately available on the date of filing and approval of the Form I-485;
- The applicant is not subject to any applicable bars to adjustment of status;
- The applicant is admissible to the United State or eligible for a waiver of inadmissibility or other form of relief; and
- The applicant merits a favorable exercise of discretion.



Physical Presence in the US

- The applicant is required to be physically present in the United States on the date of filing and adjudication of the Form I-485.
- The officer should review the entire record to determine physical presence.



Visa Eligibility and Availability

To be eligible to adjust status, the SIJ must:

- Have an approved Form I-360, and
- Have an immigrant visa immediately available both at the time of filing and at the time of approval.

Special Immigrants fall under the Employment Based – 4th Preference Category (EB-4) and are assigned the SL6 class of admission.

The priority date is considered the filing date of the Form I-360.

Visa availability and chargeability are normally determined by the applicant's country of birth (in addition to the preference category).



Approved Form I-360 Validity of Court Order, cont.

An SIJ applicant is NOT eligible for AOS if at the time of adjustment if:

- The juvenile court vacated or terminated its determination that it would not be in the petitioner's best interest to be returned (to a placement) in to the petitioner's or his or her parent's country of nationality or last habitual residence.
- 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.



Ineligible to Adjust

Any SIJ who meets any of the following scenarios is ineligible to adjust:

- An exchange visitor (J) who is subject to the foreign residence requirement and who has not been granted a waiver of the requirement
- An applicant classified as A, E, or G status, unless they file Form I-508
- An applicant who is already a conditional permanent resident



Bars to Adjustment INA 245(c)

SIJ based applicants for AOS are only subject to INA § 245(c)(6) which bars from AOS any foreign national deportable due to involvement in a terrorist activity or group under INA § 237(a)(4)(B).

There is no waiver or exemption to this adjustment bar. Therefore if the terrorist-related adjustment bar applies, an SIJ is ineligible for AOS.

Note: An SIJ may be eligible for one of the exemptions under 212(d)(3)(B).



Admissibility under INA § 212(a)

The SIJ adjustment applicant must be admissible under INA § 212(a).

- There are 10 basic grounds of inadmissibility:
 - Health related grounds
 - Criminal grounds
 - Security grounds
 - Public charge grounds
 - Labor certifications
 - Undocumented entry and immigration status violations
 - Documentation requirements
 - Ineligibility for citizenship
 - Previous removal or unlawful presence
 - Miscellaneous



Admissibility under INA § 212(a), cont.

SIJs are **not** subject to the following inadmissibility grounds:

INA § 212(a)(4) – Public Charge

INA § 212(a)(5)(A) – Labor Certification

INA § 212(a)(6)(A) – Alien Present without Admission or Parole
(C) – Misrepresentation
(D) – Stowaways

INA § 212(a)(7)(A) – Immigrants without valid documents

INA § 212(a)(9)(B) – Unlawful Presence



Admissibility under INA § 212(a), cont.

The following inadmissibility grounds *may* be waived using a SIJ-specific waiver:

- INA § 212(a)(1) - Health Related
- INA § 212(a)(2)(D) - Prostitution and Commercialize Vice
- INA §§ 212 (a)(3)(D), (F), (G) – Security Related Grounds
- INA § 212(a)(6)(B) – Failure to Attend Removal Proceedings
- INA § 212(a)(6)(E) – Alien Smugglers
- INA § 212(a)(6)(F) – Subject to a Civil Penalty
- INA § 212(a)(6)(G) – Student Visa Abusers



Admissibility under INA § 212(a), cont.

The following inadmissibility grounds **cannot** be waived using a SIJ-specific waiver:

INA § 212(a)(2)(A) – Conviction of one of more CIMT*

INA § 212(a)(2)(B) – Multiple Criminal Convictions

INA § 212(a)(2)(C) – Drug Trafficker

INA § 212(a)(3)(A), (B), (C), and (E) – Security Related Grounds*

INA § 212(a)(3)(C) – Foreign Policy Concerns

INA § 212(a)(3)(E) – Nazi Persecution

*Except for a conviction of 30g or less of marijuana

* INA §§ 212(a)(3)(D), (F), and (G) are the **ONLY** security related grounds that may be waived



Admissibility under INA § 212(a), cont.

The following inadmissibility grounds may be waived, cont:

- INA § 212(a)(8) - Ineligible for Citizenship
- INA § 212(a)(9)(A) – Certain Foreign Nationals Previously Removed
- INA § 212(a)(9)(C) – Foreign Nationals Previously Removed
- INA § 212(a)(10) Practicing Polygamists, Guardians Required to Accompany Helpless Persons, International Child Abductors, Unlawful Voters, and Former Citizens who Renounced Citizenship to Avoid Taxation



Waivers of Inadmissibility

If the SIJ adjustment applicant is inadmissible for a ground under INA § 212(a) and the ground may be waived under INA 245(h) for an SIJ, the applicant must file a waiver using a Form I-601 at the correct filing location with proper fee or Form I-912.

USCIS will consider the waiver based on:

- Humanitarian Purposes
- Family Unity
- Public Interest



Medical Requirements

Medical Reports:

- 8 CFR § 245.5 reads as follows:
Pursuant to section 232(b) of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record.



Medical Requirements, cont.

Medical Reports:

- The applicant must submit Form I-693, Report of Medical Examination and Vaccination Record. The report must be:
 - Received in a sealed envelope and must be an original;
 - Completed and signed by the applicant and a designated civil surgeon;
 - Executed no more than one year before the date of filing the Form I-485; and
 - The current revision date for the time of filing the I-485.

Note: A Form I-693 is only valid for a period of one year from the date USCIS receives the Form I-693.



Favorable Exercise of Discretion

The applicant must merit a favorable exercise of discretion:

- INA § 245(a) provides that an alien may be adjusted by the Attorney General “in his [or her] discretion.”
 - The ISO must determine whether the applicant for adjustment merits a favorable exercise of discretion.
 - This is a separate determination from other eligibility factors, including admissibility.
 - A finding of eligibility is not an automatic grant as the officers should review the entire record to determine if the approval is warranted as a matter of discretion



Discretion, cont.

An officer should determine whether to approve an adjustment application as a matter of discretion by:

- Considering any positive or negative factors relevant to the applicant's case;
- Evaluating the case – specific considerations for each factor;
- Avoiding the use of numbers, points, or any other analytical tools that suggests quantifying the exercise of favorable or unfavorable discretion; and
- Assessing whether on balance a favorable exercise of discretion is warranted in light of all the facts and the positive and negative factors.



Discretion, cont.

Absent compelling negative factors, an ISO should exercise favorable discretion and approve the adjustment application. If the officer finds there are negative factors, the officer must weigh all of the positive and negative factors. The list of issues considerations and factors may include, but is not limited to:

- Eligibility;
- Immigration status and history;
- Family unity;
- Length of residence in the United States;
- Business and employment; and
- Community standing and good moral character.



Jurisdiction

USCIS generally has jurisdiction over the AOS application unless the SIJ adjustment applicant is in removal proceedings which have not been terminated.

USCIS has jurisdiction over the adjustment application of an SIJ in removal proceedings if he/she is considered an “arriving alien”.



Background/Security Checks

- TECS Checks must be performed on all applicants following the guidance provided in the NABISCOPE;
- Applicants age 14 and older are required to appear for fingerprinting; and
- Applicants age 14 and older are subject to the FBI name check requirement.

Note: If an applicant turns 14 while the Form I-485 is pending, the ISO must request fingerprints and a name check prior to final adjudication.



Interview

- 8 CFR § 245.6 provides:

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. This interview may be waived in the case of a child under the age of 14; when the applicant is clearly ineligible under section 245(c) of the Act or § 245.1 of this chapter; or when it is determined by the Service that an interview is unnecessary.

- USCIS has developed guidance for interviews and field referral for SLJ related adjudications which can be found in CHAP Volume 6, part D, Petitions for Special Immigrants.



Interviews

In general interviews should be waived for SIJ AOS applicants unless the case:

- Contains unresolved eligibility, identity, fraud, public safety, or national security issues; or
- Is missing information needed to determine eligibility, a favorable exercise of discretion, or has discrepancies unresolved by internal NBC review, RFE, or NOID which require further explanation.



Interviews, cont.

- In all cases, the officer should make every effort to resolve issues of eligibility using a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) prior to referring for interview.



Derivative Beneficiaries

- There is not a derivative category for family members under the SIJ category. SIJ beneficiaries may petition for qualifying family members through family – based immigration after they have adjusted status.
- A juvenile who adjusts status based on an SIJ classification may not confer an immigration benefit to his or her natural or prior adoptive parents. This prohibition also applies to a non-abusive, custodial parent, if applicable.



Travel

- Departure from the U.S., even to Canada or Mexico, is an abandonment of the SIJ's pending AOS application.
- The SIJ must:
 - have “advance parole” to travel, and
 - be paroled into the U.S.



Record of Proceedings

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



Additional Resources

- **CHAP PART D – Petitions for Special Immigrant Juveniles (SIJ)**
- **CHAP PART F – Special Immigrant Juvenile (SIJ) Based Adjustment**
- **Policy Manual Volume 6, Part J, Special Immigrant Juveniles**
- **Policy Manual Volume 7, Part A, Adjustment of Status Policies and Procedures**
- **Policy Manual Volume 7, Part F, Special Immigrant Based (EB-4 Adjustment)**



About this Presentation

- Author: USCIS, Field Operations Directorate
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 - This presentation is current only as of the date of last revision.
- This presentation contains no sensitive Personally Identifiable Information (PII).



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Questions?

