Adjustment of Status

Special Immigrant Juvenile
Objectives

1. To completion.
2. Accurately adjudicate an SIJ based adjustment application and associated AOS, and evidence for SIJ
3. Identify eligibility requirements for Special Immigrant Juvenile (SIJ) based Adjustment of Status (AOS).
4. Immigration Services Officers (ISO) will be able to:
processing.

Immigrant visa from the Department of State, i.e., consular
application for AOS. Instead, the applicant would seek an
application who is outside the United States cannot file an

(1) RPR.

United States becomes a Lawful Permanent Resident
The process by which an applicant physically present in the

AOS is:

AOS in General
The applicant must be physically present in the United States.

The applicant must properly file an AOS application.

The applicant must be inspected and admitted into the United States; or

The applicant must have been for AOS.

INA § 245(a) outlines the general statutory requirements

INA § 245(a) Requirements
The applicant merits a favorable exercise of discretion.

Indelibility or other form of relief.

The applicant must be admissible to the United States for adjudication.

If the applicant files the AOS application and at the time of final hearing, an immigrant visa must be immediately available when the applicant must be eligible to receive an immigrant visa.

INA § 245(a) Requirements, cont.
Entered Without Inspection.

Been inspected and paroled; or

Been inspected and admitted.

An SIJ may have:

INA § 245(a).

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

Inspected and Paroled

Inspected and Admitted or
The fee waiver will be reviewed and adjudicated by the lockbox.

Fee.

Submit a statement explaining why he/she is unable to pay the fee. Applicant may submit Form I-912, Request for a Fee Waiver, or pay.

The fee may be waived if the applicant can show inability to pay.

Fee of $985 is generally required.

Status.

Application to Register Permanent Residence or Adjust The application for AOS under INA § 245 is Form I-485, Application for AOS
When an immigrant visa is immediately available:

With the proper signature of the applicant, and

With the correct filing fees unless granted a fee waiver.

At the correct filing location:

Property Filed refers to an AOS application filed:

An applicant must properly file the AOS application.
If the applicant filed Form I-485 while the Form I-360 is pending, both should be consolidated in the record.

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

An SI applicant may file the Form I-485:

Application for Adjustment of Status
Biographic Information (Form G-325A), if over 14 years of age;

- Two passport style photos;

- Filing concurrently:

  - Form I-797 receipt or approval notice for Form I-360 unless also be accompanied by:

    - The Form I-485 with the correct fee or with a Form I-912 must

Application for AOS
Application for AOS, cont.

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

applicant complied with the requirement or was granted a
residence requirement of INA § 212(e), documentation that the
status (if applicable) and it subject to the 2-year home
Document ation of past or present J-1 or J-2 nonimmigrant

- Application for Waiver of Grounds of Inadmissibility (Form I-
Application for Waiver of Grounds of Inadmissibility (Form I-
applicable);

immigration, criminal charges, arrests, or convictions (if
Certified police and court records of juvenile delinquency

Application for AOS, cont.
The applicant is eligible to receive an immigrant visa because:

Eligibility

- Form I-485
  The applicant is married at the time of filing or adjudication of the determination.

  with that parent(s) not viable reversible of the best interest
  court order, where a juvenile court previously deemed reunification
  of the petitioner with parents by virtue of a juvenile

  meaning none of the following have occurred
  the officer should ensure that the applicant remains classified as an SIJ

  the applicant has an approved Form I-360;

- CFR § 245.1(a)
  date of filing and approval of the Form I-485. INA § 245(a); 8

- The applicant must be physically present in the U.S. on the
eligibility, cont.

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

The officer should review the entire record to adjudication of the Form I-485.

in the United States on the date of filing and

The applicant is required to be physically present

\underline{Physical Presence in the US}
category).

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

Preference Category (EB-4) and are assigned the SLG class of Special Immigrants fall under the Employment Based – 4th time of filing and at the time of approval.

- Have an immigrant visa immediately available both at the
- Have an approved Form I-360, and

To be eligible to adjust status, the SL must.

Visa Eligibility and Availability
law. The court reunified the petitioner with the parent with whom the child previously resided or last habitual residence. (to a placement) into the petitioner's or his or her parent's home. The juvenile court vacated or terminated its determination that an SJS applicant is NOT eligible for AOS at the time of Court Order, cont.
An applicant who is already a conditional permanent resident need not file Form I-508, unless they file a waiver of the requirement and who has not been granted a waiver of the requirement and who is subject to the foreign residence requirement.

An exchange visitor (J) who is subject to the foreign residence adjustment.

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

Ineligible to Adjust
212(d)(3)(B).

Note: An SJI may be eligible for one of the exemptions under

ineligible for AOS.

Therefore if the terrorist-related adjustment bar applies, an SJI is

There is no waiver or exemption to this adjustment bar.

237(a)(4)(B).

involvement in a terrorist activity or group under INA §

which bars from AOS any foreign national deportable due to

SLJ based applicants for AOS are only subject to INA § 245(c)(6).

Bars to Adjustment INA 245(c)
Miscellaneous

Previous removal or unlawful presence

Ineligibility for citizenship

Documentation requirements

Undocumented entry and immigration status violations

Labor certifications

Public charge grounds

Security grounds

Criminal grounds

Health related grounds

There are 10 basic grounds of inadmissibility:

212(a).

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

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

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

INA § 212(a)(8) – Stowaways

INA § 212(a)(6)(A) – Alien Present without Admission or Parole

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

INA § 212(a)(4) – Public Charge

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

Admissibility under INA § 212(a), cont.
INA § 212(a)(6)(G) – Student Visa Abusers

INA § 212(a)(6)(F) – Subject to a Civil Penalty

INA § 212(a)(6)(E) – Alien Smugglers

INA § 212(a)(6)(B) – Failure to Attend Removal Proceedings

INA § 212(a)(3)(D)(F) – Security Related Grounds

INA § 212(a)(2)(D) – Prostitution and Commercialize Vice

INA § 212(a)(1) – Health Related

Specific waiver:
The following inadmissibility grounds may be waived using a SIJ.
grounds that may be waived

* INA §§ 212(a)(3)(D), (E), and (G) are the ONLY security-related

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

IN A § 212(a)(3)(E) – Nazi Persecution

IN A § 212(a)(3)(C) – Foreign Policy Concerns

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

IN A § 212(a)(2)(C) – Drug Trafficker

IN A § 212(a)(2)(B) – Multiple Criminal Convictions

IN A § 212(a)(2)(A) – Conviction of one of more CMT

SIJ-Specific waiver:

The following inadmissibility grounds cannot be waived using a

Admissibility under INA § 212(a), cont.
Renounced Citizenship to Avoid Taxation
Abductors, Unlawful Voters, and Former Citizens who
Accompany Helpless Persons, International Child
Guardians, Polymaths

- INA § 212(a)(10) Previously Removed
- INA § 212(a)(9)(C) - Foreign Nationals Previously Removed
- INA § 212(a)(9)(A) - Certain Foreign Nationals Previously Removed
- INA § 212(a)(8) - Ineligible for Citizenship

The following inadmissibility grounds may be waived, cont.

Admissibility under INA § 212(a), cont.
Waivers of Inadmissibility

Public Interest

Family Unity

Humanitarian Purposes

USCIS will consider the waiver based on:

the correct filing location with proper fee or Form I-912.
for an S1, the applicant must file a waiver using a Form I-601 at
INA § 212(a) and the ground may be waived under INA 245(h).
If the S1 adjustment applicant is inadmissible for a ground under

National Benefits Center | 485 Overview
Medical Requirements

Medical Reports:

- 8 CFR § 245.5 reads as follows:
USCIS receives the Form I-693.

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

The current revision date for the time of filing the I-485.

- The Form I-485; and

- Executed no more than one year before the date of filing

- Civil surgeon;

- Completed and signed by the applicant and a designated

- Received in a sealed envelope and must be an original;

- Examination and Vaccination Record. The report must be:

Medical Reports:

Medical Requirements, cont.
Approval is warranted as a matter of discretion.

If officers should review the entire record to determine if the
A finding of eligibility is not an automatic grant as the

factors, including admissibility.
This is a separate determination from other eligibility.

Adjustment merits a favorable exercise of discretion.
The ISO must determine whether the applicant for

Attorney General "in his [or her] discretion."
INA § 245(a) provides that an alien may be adjusted by the

The applicant must merit a favorable exercise of discretion:

Favorable Exercise of Discretion
and negative factors. Discretion is warranted in light of all the facts and the positive
Assessing whether an balance a favorable exercise of

 And unfavorable discretion; and
 tools that suggests quantifying the exercise of favorable or
 Avoiding the use of numbers, points, or any other analytical

 Evaluating the case — specific considerations for each factor;
 Applicants case;

 Considering any positive or negative factors relevant to the
 application as a matter of discretion by:
 An officer should determine whether to approve an adjustment.

 Discretion, cont.
Community standing and good moral character.

Business and employment; and

Length of residence in the United States;

Family unity;

Immigration status and history;

Eligibility;

Compelling negative factors may include, but is not limited to: all of the positive and negative factors. The list of issues the officer finds there are negative factors, the officer must weigh favorable discretion and approve the adjustment application. If absent compelling negative factors, an ISO should exercise discretion, cont.
USCIS generally has jurisdiction over the AOS application unless the SJE adjustment applicant is in removal proceedings which have not been terminated. USCIS has jurisdiction over the adjustment application of an arriving alien in removal proceedings if he/she is considered an “arriving alien.”
Background/Security Checks

Note: If an applicant turns 14 while the Form I-485 is pending,
• Applicants age 14 and older are subject to the FBI name check
• Applicants age 14 and older are required to appear for

fingerprinting; and

the guidance provided in the NABISCO.

TECS checks must be performed on all applicants following

adjudication.

the ISO must request fingerprints and a name check prior to final

requirement.
CHAP Volume 6, Part D, Petitions for Special Immigrants

Referral for SIJ related adjudications which can be found in
USCIS has developed guidance for interviews and field

Service that an interview is unnecessary.

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

8 CFR § 245.6 provides:

Interview
require further explanation.
unresolved by internal NBC review, RFE, or NOID which
favorable exercise of discretion, or has discrepancies
is missing information needed to determine eligibility,

national security issues; or

contains unresolved eligibility, identity, fraud, public safety, or

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

Interviews
Evidence (RFE) or Notice of Intent to Deny (NOID) prior to referring for interview.

In all cases, the officer should make every effort to resolve issues of eligibility using a Request for Interview, cont.
 abusive, custodial parent, if applicable.

Prior adoptive parents. This prohibition also applies to a non-

may not confer an immigration benefit to his or her natural or

A juvenile who already is based on an S-1 classification

have already status.

family members through family – based immigration after they

the S-1 category. S-1 beneficiaries may petition for qualifying

There is not a derivative category for family members under

Derivative Beneficiaries
be paralyzed into the U.S.

- have "advance parole" to travel, and

The SIJ must:

- abandonment of the SIJ's pending AOS application.

Departure from the U.S., even to Canada or Mexico, is an

TRAVEL
Standard Operating Procedures (SOP) established in the Form I-485 Proceedings (ROP) order as established in the Record of RFE should be placed in the file according to the Record of a document including any documents received as a result of a Record of Proceedings.
Additional Resources
This presentation contains no personally identifiable information (PII).

This presentation is current only as of the date of last revision.

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