
BASIC PROCEDURAL MANUAL FOR REPRESENTING CHILDREN AND YOUTH SEEKING SPECIAL IMMIGRANT JUVENILE STATUS

December 2014



**NATIONAL
IMMIGRANT
JUSTICE CENTER**

A **HEARTLAND ALLIANCE** PROGRAM

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COMMON ACRONYMS

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AG	Attorney General
AAO	Administrative Appeals Office
BIA	Board of Immigration Appeals
CBP	Customs and Border Protection
DHS	Department of Homeland Security
EOIR	Executive Office for Immigration Review
FOIA	Freedom of Information Act
ICE	Immigration and Customs Enforcement
IJ	Immigration Judge
INA	Immigration and Nationality Act
LPR	Lawful Permanent Resident
NOID	Notice of Intent to Deny
NTA	Notice to Appear
ORR	Office of Refugee Resettlement
OCC	Office of Chief Counsel
SIJS	Special Immigrant Juvenile Status
SSA	Social Security Administration
TA	Trial Attorney
TVPRRA	Trafficking Victims Protection Reauthorization Act
UAC	Unaccompanied Alien Child
UIC	Unaccompanied Immigrant Child
USCIS	United States Citizenship & Immigration Services
VAWA	Violence Against Women Act

INFORMATION ON THE *PRO BONO* PROGRAM

* * *

The National Immigrant Justice Center

Heartland Alliance's National Immigrant Justice Center is a Chicago-based nongovernmental organization dedicated to ensuring human rights protections and access to justice for all immigrants, refugees and asylum seekers through a unique combination of direct service, policy reform, impact litigation and public education.

NIJC's *pro bono* program relies almost entirely on volunteer attorneys, most of whom have no previous experience in immigration law. NIJC assists its *pro bono* partners by providing materials, support services, and consultations. Largely as a result of the efforts of its *pro bono* partners, NIJC has helped many immigrant men, women, and children find safety and stability in the United States.

For more information visit www.immigrantjustice.org.

NIJC's Clients

NIJC's special immigrant juvenile status (SIJS) clients are immigrant children who have been abandoned, abused or neglected by their parents. Some were suffering from dire poverty and had no caregiver who could provide them with basic needs like shelter and food. Other clients have been subjected to mental, physical, sexual and verbal abuse by their parents.

Many of NIJC's clients traveled to the United States alone as unaccompanied immigrant children (UICs). Most of these children are in removal proceedings before the immigration court, which is the last step before the U.S. government will deport them to their home countries. Children in removal proceedings face an adversarial system that is confusing and frightening, but they do not have the right to appointed counsel. Without an attorney to help them navigate the complex immigration system, only 10% of children in removal proceedings are allowed to remain in the United States¹.

What *Pro Bono* Attorneys Can Expect from NIJC

NIJC's *pro bono* partners report that SIJS cases are some of the most rewarding cases of their careers. NIJC understands the majority of its *pro bono* attorneys have limited immigration law experience. Attorneys who accept an NIJC case for *pro bono* representation can expect that NIJC will provide the support and assistance necessary to capably represent NIJC clients.

NIJC provides *pro bono* attorneys with:

¹ TRAC Immigration, "New Data on Unaccompanied Children in Immigration Court," available at <http://trac.syr.edu/immigration/reports/359> (last accessed Nov. 26, 2014).

- basic trainings offered live and via webinar. NIJC may also provide specialized training upon request. NIJC trainings are typically recorded as webinars and archived. They are available through NIJC's web page: www.immigrantjustice.org.
- information regarding immigration law, practice, and procedure; sample applications, motions, and pleadings; documentation; and other case resources.
- consultation with experienced NIJC practitioners regarding case-related questions, theories, and trial strategies. NIJC attorneys remain current on immigration law, policy, and practice, and frequently serve as faculty at local and national immigration law trainings.
- professional liability insurance. NIJC carries comprehensive professional liability insurance, which specifically covers its *pro bono* attorneys.
- involvement in ground-breaking legal issues and opportunity to interact with clients from different cultural, ethnic, religious, and socio-economic backgrounds.
- unique litigation experience, with opportunities to represent clients before federal agencies.
- exceptional legal experience that will enhance a *pro bono* attorney's career development.

What NIJC expects from *Pro Bono* Partners

NIJC clients' futures are quite literally at stake. For that reason, NIJC treats every case very seriously and asks that *pro bono* partners do the same.

NIJC asks that *pro bono* attorneys agree:

- to attend the next available NIJC training, if the attorney has not already attended a training.
- to provide representation on a case for its duration. This means through completion of the adjudication on the merits of the claim, and if necessary, at the appellate level before the Administrative Appeals Office (AAO) or the Board of Immigration Appeals (BIA). When federal court appeals become necessary, NIJC may ask that the representing firm consider remaining involved.
- to transfer representation of the case to another attorney in the partner firm if the *pro bono* attorney is compelled to withdraw representation for any reason

other than emergence of a conflict of interest or a termination of representation due to client misconduct. NIJC is unable to absorb *pro bono* cases in-house, except in very limited circumstances.

- to inform NIJC of any transfer of representation within the firm or of the addition of attorneys to the legal team assigned to the case.
- to keep NIJC informed of the status of the case. NIJC maintains an agreement with every client referred for *pro bono* representation and remains “of counsel.”
- to contact NIJC if the client appears eligible for another immigration benefit. *Pro bono* attorneys should understand that applying for other immigration benefits may impact the client’s case. If the client becomes eligible for another immigration benefit, NIJC may execute a supplementary retainer with the client to assist in seeking that benefit.
- to contact NIJC if the client requests assistance regarding other legal matters. NIJC’s involvement in the case is limited to immigration matters. NIJC is unable to provide technical support on other legal matters.
- to contact NIJC before speaking with the media or any member of Congress about the case. NIJC is actively involved in immigration policy and advocacy efforts at the state and national levels, and with local and national media. Coordinating with NIJC will ensure that any advocacy efforts achieve the best possible result for the client.

Obtaining a Case

NIJC circulates a list of descriptions of SIJS cases in need of representation via NIJC’s *pro bono* case list email, which is circulated twice a month. To obtain a case from this list, prospective *pro bono* partners should contact Rebecca Cabezas, Children’s Project Paralegal, at (312) 660-1623 or rcabezas@heartlandalliance.org. Once a *pro bono* attorney has accepted an SIJS case for representation, NIJC will send a copy of the client’s file and contact information to the attorney.

First Steps

NIJC recommends *pro bono* attorneys take the following steps upon receipt of a case:

Contact the client. NIJC advises the client when her case has been assigned to a *pro bono* attorney. Often clients have waited months for assignment to an attorney and are eager to hear from their new lawyers.

Determine a timeline for filing. Attorneys should plan to file their client's I-360 SIJS petition before the client's 18th birthday, but other events, including immigration court hearings, may impact the filing timeline.²

Review the file in full. NIJC attempts to obtain relevant documentation from clients prior to case acceptance and will share these documents when assigning a case to a *pro bono* attorney. Upon review of the file, *pro bono* attorneys will likely identify additional documents that would be useful in supporting the SIJS claim and should begin working with the client to obtain these documents.

Review the Notice to Appear. If the client's case is before the immigration court, the judge will require a response to the charging document known as the Notice to Appear (NTA) at the initial hearing. Carefully review the allegations and charges on the NTA with the client to ensure accuracy. Errors on the NTA can be extremely detrimental and should be discussed with the government trial attorney and the judge at the hearing.

Review the records of the state court proceedings. The state court proceedings have already determined that the child was abandoned, abused, neglected or something similar under state law, by one or both of his parents and that it is not in the child's best interest to return to his home country. It is important for the *pro bono* attorney to know what evidence was presented in the state court proceedings before the state court judge issued a final order.

Submit a FOIA request to obtain the client's full immigration file. If the client was detained upon entry to the United States (i.e., designated as an unaccompanied alien child or "UAC"), has applied for any immigration benefits or given statements to immigration officials, the *pro bono* attorney should request a copy of the client's government immigration file through the Freedom of Information Act (FOIA). FOIA requests from clients in removal proceedings receive expedited treatment. For clients not in removal proceedings, a response may take a year or more. See "Additional Information" section of this manual for FOIA instructions.

Submit a request to obtain the client's full ORR file. If the client was in the Office of Refugee Resettlement (ORR) custody at any point, the *pro bono* attorney should request a copy of the client's ORR file. See the "Additional Information" section of this manual for the instructions for requesting an ORR file.

Review the Court Practice Manuals. If the client's case is before the immigration court, the Immigration Court Practice Manual, available at www.usdoj.gov/eoir, describes the procedures and requirements for immigration court practice. The Practice Manual is binding on all parties who appear before the immigration court, unless the immigration judge directs otherwise in a particular case.

² Although the *Perez-Olano* settlement provided age-out protections for those seeking SIJS status, USCIS adjudications on this issue remain inconsistent. To ensure that clients do not age-out of eligibility, NIJC advises that the I-360 SIJS petition be filed before a child turns 18.

Register with EOIR and File an Appearance Form. If the client's case is before the immigration court, register with the Executive Office for Immigration Review (EOIR) and file an E-28 appearance form with the Court and the Immigration and Customs Enforcement (ICE) Office of the Chief Counsel (OCC) as soon as possible. Registration includes both an online and in-person component. *See* pages 20 for more information about this process.

BACKGROUND

* * *

Like all immigrants, immigrant children enter the United States in different ways. The majority of children NIJC represents, however, entered the United States without inspection either as unaccompanied children or with one or both parents. Some of these children were never stopped by immigration officers upon entering the United States and so while they remain undocumented, the Department of Homeland Security (DHS) is not actively trying to deport them and they are not in immigration court removal proceedings. Children in this posture seek immigration relief affirmatively. Other children were apprehended by immigration officials, either at the border or within the United States, and were then placed into immigration court removal proceedings. These children seek immigration relief defensively, as a defense to removal from the United States. For purposes of SIJs, whether or not a child is in immigration court proceedings determines the route the child may take to seek immigration status.

Unaccompanied Children

If, at the time an immigration official apprehends a child, the child is without the care of a parent or legal guardian, the child is deemed unaccompanied.³ U.S. immigration law has special procedures for the treatment of unaccompanied children who are apprehended by immigration officers. Pursuant to the Trafficking Victims Protection Reauthorization Act (TVPRA), if a child is apprehended and is deemed unaccompanied, that child must be transferred to the custody of the Office of Refugee Resettlement (ORR) within 72 hours. ORR has more than 120 shelters for unaccompanied children throughout the United States including 11 in the Chicagoland area. The locations of these shelters are not disclosed for the safety of the children. Although children in ORR custody are “detained” and cannot leave the shelters on their own, ORR shelters are very different than immigrant detention facilities for adults. In ORR shelters, children attend classes, go on field trips, and play outside.

Once a child is transferred to an ORR shelter, ORR immediately begins the process of determining whether a child has a parent, family member or other “sponsor” to whom the child can be safely released. This “family reunification” process typically takes two weeks – several months.

If a child does not have any available sponsor to whom she can be released, the child may be transferred to long term foster care if the child is deemed eligible for immigration relief. Because a child’s eligibility for long term foster care generally ends when the child turns 18, foster care providers typically will not accept children who are 17 and a half years old or older. If a child does not have an available sponsor and is not deemed relief eligible, the child may remain in ORR custody until she is deported or until

³ 6 U.S.C. § 279(g).

she turns 18 and is transferred to the custody of ICE and placed in an adult detention facility.

If a child has previously been in ORR custody, the child will have an ORR file that will include statements the child made to ORR staff, including clinicians and case workers; incident reports; and other documentation regarding the child's time in ORR custody. If an attorney's client has previously been in ORR custody, it is important that the attorney request the ORR file at the beginning of representation in case the file contains information that is helpful or harmful to the child's immigration case.

Working with Immigrant Children

When representing an immigrant child, *pro bono* attorneys may encounter unique challenges they are not accustomed to dealing with in other matters. For example, many children come from rural areas and have had a very limited education. They may have grown up in communities that strongly and seriously believed in witchcraft. Hitting or beating children may have been a common form of punishment, such that the child doesn't perceive it as abuse. Some children may be illiterate or have no comprehension of what it means to have an attorney or go to court. Others were the primary breadwinners in their families or effectively raised themselves from a young age and have had few, if any, authority figures in their lives. Often, children are used to telling adults what they think the adults want to hear or what will prevent the child from abuse or violence. In many cases, the very adults who were supposed to protect the children are the same adults who harmed them. For these and other reasons, representing an immigrant child often requires extra preparation, patience, and time to build trust.

In addition, it is important for attorneys to consider their client's maturity level and developmental stage, and remember that a child's emotional and mental maturation may not correspond to the child's age. Younger children may have a hard time distinguishing what is real from what is fantasy. Older children may hide facts because they fear retribution by adults or they do not want to be singled out as different from their peers.

Attorneys representing an immigrant child may also find it necessary to remind their client of her role and responsibility in her immigration case much more than would be necessary with an adult client. Attorneys may need to repeatedly emphasize the importance of arriving promptly for appointments, notifying the attorneys of any changes in contact information, and the need for the client to assist the attorneys in gathering documentation to support her case.

Despite the differences that may exist between an adult client and a child client, the attorney's role remains the same. The attorney's job is not to determine the client's best interest, but to help the client make an informed decision about her immigration options and zealously advocate for the client's expressed legal interest.

Working with the Child's Parent or Guardian

The role and involvement of a parent or guardian will vary from case to case. It is important to remember that the *pro bono* attorney's legal duty is to the child and not the parent or guardian. Information provided by the parent to the attorney cannot be kept "confidential" from the child and information provided by the child must be kept confidential from the parent unless the child waives confidentiality. However, due to the nature of the SIJS petition and in some cases, the age of the child, it is likely that the child's parent or guardian will have some involvement in the child's immigration case.

NIJC recommends that *pro bono* attorneys meet with their client shortly after representation begins to reiterate that the attorneys represent the child and not her parent/guardian and to determine whether the child waives confidentiality as to her parent/guardian. Even if the child waives confidentiality, the child may not be fully comfortable discussing all aspects of her case in front of her parent/guardian. For this reason, attorneys should generally meet with the child outside the presence of her parent/guardian. In addition, although the logistics of getting the child to meetings and court hearings may require the involvement of the parent/guardian, attorneys should always try to communicate directly with the child instead of liaising through the parent/guardian (except in the case of very young children). Doing so will help develop the attorney-client relationship and emphasize that the child is in control of her own case.

Soon after representation begins, *pro bono* attorneys will also likely need to meet with the parent or guardian to discuss what happened in the state court proceedings since the parent or guardian was likely the petitioner in those proceedings. Attorneys may find it useful to discuss at this time how the parent/guardian will be involved in the child's immigration case as well.

Working with Child Advocates

Some immigrant children may be assigned a "child advocate" if the child has been deemed particularly vulnerable. Child advocates serve a similar function in the immigration context as guardians *ad litem* do in civil proceedings involving children. The goal of the child advocate is to determine and advocate for the child's best interest⁴⁴, whereas the attorney's role is to advocate for the expressed wishes of the child. Unlike attorney-client privilege, communications between a child and her advocate do not have legal protections.

Unfortunately, best interest determinations have limited relevance in immigration law because there is no form of immigration relief that allows a child to remain in the United States based solely on a best interest determination. In an SIJS case, the best interest determination can help support the SIJS petition, but the child must still meet other eligibility requirements. Nevertheless, if the child has a child advocate and if the advocate is able to provide a best interest determination letter, a *pro bono* attorney should

⁴⁴ The primary organization in the United States today that provides child advocates for unaccompanied immigrant children is the Young Center. See e.g., www.theyoungcenter.org/learn/what-young-center-does.

consider using that letter to support the child's case.⁵ It is important that the *pro bono* attorney carefully review the letter provided by the child advocate to ensure that the facts stated in the letter are consistent with the facts the child has provided to the *pro bono* attorney. If inconsistencies appear to exist, the attorney should first consult with the child to determine which information is correct and then coordinate with the child advocate to ensure that a consistent description of the child's experiences is provided in the best interest letter.

Attorneys and law students often volunteer to serve as child advocates, which at times can create confusion for the child regarding the various parties involved in her case. If *pro bono* attorneys learn that their client has a child advocate, they should be sure to explain the different roles that an attorney and advocate play in the client's case.⁶

⁵ If the child has not previously signed a release allowing her attorneys and child advocate to share information regarding her case, the attorney will likely need to obtain a release before communicating with the child advocate.

⁶ If a *pro bono* attorney believes her client needs a child advocate because she is particularly vulnerable, please contact NIJC.

THE BASICS OF SIJS

* * *

Background

In 1990, Congress established SIJS as a form of immigration relief for certain vulnerable immigrant children who are in the United States without status. Through SIJS, certain immigrant children are able to obtain lawful permanent residency (often called a “green card”) and eventually, citizenship.

Since 1990, Congress has significantly modified the requirements for establishing SIJS. Most recently, the TVPRA modified the SIJS statute to its current version. A child may now obtain SIJ status if (1) she has been declared dependent on a juvenile court or has been committed to the custody of a state agency, department, individual or entity (2) because reunification with *one or both parents* is not viable (3) due to abuse, neglect, abandonment, or a similar state law basis; (4) it has been determined that it would not be in the child’s best interest to return to her home country; and (5) the Secretary of Homeland Security consents to the grant of SIJ status. INA § 101(j); TVPRA § 235(d).

Although children who obtain SIJS become eligible for several significant benefits, the SIJS statute does provide one significant consequence for the children who obtain SIJS: no natural parent or prior adoptive parent can receive an immigration benefit from a child who has obtained SIJS. INA § 101(j)(iii). In other words, a child who has been granted SIJS can never petition for one or both parents to obtain lawful immigration status. Although NIJC explains this consequence to all children considering seeking SIJS status, *pro bono* attorneys may want to reiterate this information during their representation of their client.

Since Congress passed the TVPRA, there have been no implementing regulations and only a few published decisions (none in any court having jurisdiction over NIJC’s clients) regarding SIJS adjudications. Likewise, U.S. Citizenship and Immigration Services (USCIS) – the agency within DHS responsible for adjudicating SIJS petitions – has only provided minimal instructions regarding SIJS adjudications under the current statute. As a result, attorneys representing clients who seek SIJS have limited legal resources on which they can rely. These resources⁷ include:

- 8 C.F.R. § 204.11⁸
- Department of Homeland Security Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54982-54982 (proposed Sept. 6, 2011)⁹

⁷ All government memoranda and guidance listed above can be found on NIJC’s website at <https://www.immigrantjustice.org/useful-documents-attorneys-representing-unaccompanied-immigrant-children>.

⁸ These regulations **do not** reflect the statute’s modification as a result of TVPRA.

⁹ These are **proposed regulations**. They are not binding until they are finalized and published.

- USCIS, William R. Yates, “Memorandum #3—Field Guidance on Special Immigrant Juvenile Status Petitions” (May 27, 2004)
- USCIS, Donald Neufeld, “Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions” (Mar. 24, 2009)
- USCIS, “Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement” (Apr. 4, 2011)
- USCIS Policy Memorandum. “Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement” (Apr. 3, 2011)
- Information Regarding the Settlement Agreement in *Perez-Olano, et al. v. Holder, et al.*
- USCIS Ombudsman, January Contreras, “Special Immigrant Juvenile Adjudications: An Opportunity for Adoption of Best Practices” (Apr. 15, 2011)
- USCIS, Lori Scialabba, “Response to Recommendation 47, Special Immigrant Juvenile (SIJ) Adjudications: An Opportunity for Adoption of Best Practices” (July 13, 2011).

Eligibility Requirements for SIJS

As discussed *supra*, a petitioner for SIJS must establish five elements. The petitioner must demonstrate:

1. that she has been declared dependent on a juvenile court located in the United States, or that such a court has legally committed her to, or placed her under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States;
2. that reunification with one or both parents is not viable;
3. due to abuse, neglect, abandonment, or a similar basis found under State law;
4. that it has been determined that it would not be in her best interest to return to her home country; and
5. the Secretary of Homeland Security consents to the grant of SIJ status.

INA § 101(j). NIJC recommends that attorneys structure their legal memoranda around these five requirements.

State Court Orders

The first four elements of the SIJS definition must be established through an order issued by a state juvenile court, also known as a “predicate order.” Although a state court predicate order that contains the requisite findings may be sufficient to establish the first four elements of the SIJS definition, as discussed *infra*, it is not uncommon for USCIS to demand additional proof of these elements. Nonetheless, if the state court order does not address these elements, the SIJS petition cannot succeed.

Under immigration regulations, a “juvenile court” is “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). The specific state courts that constitute “juvenile courts” for SIJS purposes vary state to state. In Illinois, the relevant state court are generally juvenile court, family court, and probate court, and the state court order is usually obtained in legal proceedings that determine matters of paternity, child support, child custody, guardianship, juvenile delinquency, and orders of protection. Generally, NIJC will not refer a child to a *pro bono* attorney for representation in an SIJS case until a state court order has already been obtained and this manual does not discuss the process for obtaining the state court order.

1. Dependency, Guardianship or Custody Orders

Most of NIJC’s clients obtain a state court predicate order in proceedings to establish legal guardianship or custody. For example, the sponsor (often a relative) with whom the child resides may request that the probate court issue an order granting the sponsor legal guardianship over the child. Similarly, a parent may request that a family court issue an order granting the parent sole custody over the child. In juvenile court, the state’s attorney may prosecute a dependency petition on behalf of a child. Whatever the type of proceedings, the “juvenile court” order must declare the child dependent or commit the child to or place under the custody of an agency, individual, or entity.

2. Reunification with One or Both Parents is Not Viable

The state court order must also state that the child’s reunification with *one or both* parents is not viable. Prior to the TVPRA, SIJS petitioners needed to establish that reunification was not viable with *both* parents, but the TVPRA modified this provision to require that reunification need only be not viable with one parent, not both.¹⁰ Thus, if a child’s father abandoned him at birth, but the child now lives with his mother, the child’s ongoing relationship with his mother should not prevent a child from establishing eligibility for SIJS. Nonetheless, even though the statute clearly makes one-parent SIJS viable, in reality, state courts and USCIS often create obstacles to SIJS based on one parent.¹¹

3. Abuse, Neglect, Abandonment, or a Similar Basis

Next, the state court order must specifically find that the child has been abused, neglected, abandoned or something similar under state law. Neither the INA nor the regulations define “abuse,” “neglect,” or “abandonment.” Instead, state courts make their own determination as to whether a child was abused, neglected, abandoned, or something similar, based on the state’s own definitions. In Illinois, the Juvenile Court Act of 1987,

¹⁰ TVPRA § 235(d)(1)(A)

¹¹ See, e.g., *H.S.P. v. J.K.*, 435 N.J. Super. 147, 166 (App. Div. 2014) (finding that the statutory requirement for SIJS that “reunification with 1 or both of the immigrant’s parents is not viable” cannot be satisfied where reunification with one parent is viable).

Abused and Neglected Child Reporting Act, Uniform Child-Custody Jurisdiction and Enforcement Act, and the Illinois Domestic Violence Act of 1986 all have definitions of abuse, neglect and abandonment.

4. Best Interest Determinations

Finally, the state court order must find that it is not in the child's best interest to return to her country of nationality (or her parent's country of nationality or country of last habitual residence). INA § 101(a)(27)(J)(ii). Neither the INA nor Illinois law explain how to make a best interest determination in the case of a child. Instead, state court judges typically use their discretion after considering all the factors in a case (sometimes including the recommendations of a guardian *ad litem* or a child advocate) to make a best interest determination.¹²

USCIS Consent to Granting SIJS

The SIJS statute references two different types of consent necessary for the grant of an SIJS petition: USCIS consent to grant SIJ status and specific consent for children in ORR custody.¹³ This manual will not discuss the specific consent requirement for children in ORR custody because these cases rarely are referred to *pro bono* attorneys.

USCIS has interpreted the statutory requirement that USCIS consent to a grant of SIJS to mean that USCIS must find that the SIJ classification is bona fide. According to USCIS, this means that SIJS was not "sought primarily for the purposes of obtaining [permanent resident] status . . . rather than for the purpose of obtaining relief from abuse or neglect or abandonment." 2009 Neufeld Memorandum at 3; Department of Homeland Security Special Immigrant Juvenile Petitions, 76 Fed. Reg. 54978, 54982-54982 (proposed Sept. 6, 2011).

Immigrant children, along with their parent or guardian, seek state court orders for a variety of reasons. For instance, a guardianship order may be sought to ensure that a child is able to receive medical care and enroll in school. Similarly, a parent might decide to go into state court to obtain sole custody over her child to be able to make legal decisions for the child that typically require both parents' consent. To make clear that the SIJS classification is bona fide, it can be useful for the state court order to reference the non-immigration reasons why the petitioner needs guardianship or sole custody. Ultimately though, the most important part of the state court order is the finding that the child cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law (whichever is applicable), and that it is not in the child's best interest to return to her home country.

¹² The Illinois Marriage and Dissolution of Marriage Act contains a list of factors that a state court can consider when making best interest determinations. 750 ILCS 5/602.

¹³ See INA § 101(a)(27)(J)(iii)

ALTERNATIVES TO SIJS

* * *

NIJC screens clients for all forms of relief before referring them to *pro bono* attorneys for representation. However, while representing an immigrant child, a *pro bono* attorney may learn information about the child that may indicate the child is also eligible for other forms of relief. If this occurs, the attorney should contact NIJC immediately to discuss the child's options. Other common forms of relief for which immigrant children may be eligible are described below.

Asylum

Asylum is a form of relief for individuals who have suffered or fear persecution in their home country on account of their race, religion, nationality, membership in a particular social group of political opinion. INA § 101(a)(43). Children who have experienced or fear domestic violence, gender-based violence, or gang violence in their home country might be eligible asylum.

U Visa

A U visa is a form of relief for non-citizens who have been victims of certain crimes in the United States and assist in the investigation or prosecution of the crime. INA § 101(a)(15)(U). Children who have been abused **while living in the United States** might prefer to seek a U visa instead of SIJS. This is particularly relevant when a child suffered abuse at the hands of one parent, but the child would like to provide an immigration benefit to the other parent. In addition, NIJC often encounters children who reside with parents who have also been the victim of a crime – particularly domestic violence – in the United States. If a child's parent is eligible for a U visa, the child can usually seek a U visa as well as a derivative on the parent's application.

VAWA

The Violence Against Women Act (VAWA) provides a form of relief for certain abused, non-citizen spouses, children, and parents. Children who have been battered or subject to extreme cruelty by a U.S. citizen or lawful permanent resident parent, regardless of whether the abuse took place in or outside of the United States, might be eligible for relief under VAWA. Similar to the U visa, if a child's parent is eligible for VAWA, the child may also be eligible as a derivative.

OVERVIEW OF THE SIJS AND ADJUSTMENT OF STATUS PROCESS

* * *

Once a client has obtained a state court order with the necessary findings for SIJS, the *pro bono* attorney can begin to prepare the petition for SIJS. A client who is eligible to seek SIJS will file two separate immigration petitions/applications: the I-360 petition establishing that she is a special immigrant juvenile and the I-485 application for adjustment of status (AOS) based on SIJS. Adjustment of status is the process by which a non-citizen obtains lawful permanent residence (green card) in the United States. While USCIS has jurisdiction over the I-360 SIJS petition, jurisdiction over the I-485 AOS application generally depends on whether or not the client is in immigration court removal proceedings.

An immigration court removal proceeding is the legal process by which the Department of Justice's Executive Office for Immigration Review (EOIR) determines whether or not a non-citizen is removable (deportable) from the United States. A non-citizen is in removal proceedings if the Department of Homeland Security (DHS) has issued a charging document called a Notice to Appear (NTA) to the non-citizen and then filed the NTA with the immigration court. If DHS has not served an NTA on a non-citizen or filed the NTA with the court, the individual is not in removal proceedings.¹⁴

The majority of NIJC clients currently seeking SIJS were apprehended by immigration officers at the border and placed into immigration court removal proceedings. Some clients, however, entered the United States without inspection and were not apprehended, or entered the United States legally on a visa and then overstayed their visa and have never been in removal proceedings.

If a client is not in immigration court removal proceedings, she can file for adjustment of status simultaneously with the I-360 SIJS petition because USCIS has jurisdiction over both forms of relief. If the client is in immigration court removal proceedings, USCIS maintains exclusive jurisdiction over the I-360 SIJS petition, but only the immigration judge has jurisdiction over the I-485 adjustment of status application. As a result, the client cannot apply for the I-360 petition and the I-485 application together. Instead, the client must first file the I-360 SIJS petition with USCIS. Then, once USCIS has approved the SIJS petition, the client can seek adjustment of status before the immigration judge or can request that her immigration court removal proceedings be terminated so that USCIS will have jurisdiction over the adjustment of status application. If an attorney's client is in removal proceedings, the attorney should consult with NIJC to determine whether it would be best for the client to seek adjustment of status before the immigration judge or USCIS.

¹⁴ A significant number of unaccompanied children were served an NTA at the border, but DHS never filed the NTA with the Court. As a result, these children are not in removal proceedings unless and until the NTA is filed with the Court.

Special Considerations for Clients in Removal Proceedings

Even though a client in removal proceedings must first file the I-360 SIJS petition with USCIS, the client must continue appearing before the court when ordered and comply with any requirements of the immigration court. As soon as possible after accepting a case of a client in removal proceedings, the attorney should file an E-28 appearance form with the immigration court.¹⁵ In addition, if the attorney has not already completed the immigration court's e-registry process, the attorney must first do so via <https://portal.eoir.justice.gov/>. Any time the attorney files a document with the immigration court (including the E-28), the attorney must also serve a copy on the Department of Homeland Security entity that serves as the "prosecutor" in immigration court proceedings – the Office of Chief Counsel (OCC) – via e-service to chicagooccfilings@ice.dhs.gov. Information regarding the format for e-service filings on the OCC can be found at <https://www.immigrantjustice.org/legal-materials>.

Throughout the time that the client is in the process of obtaining a state court predicate order and seeking SIJS before USCIS, the client and her attorney are still required to attend any and all immigration court hearings. Failure to do so will result in the client being ordered removed (deported) in absentia.

There are two types of hearings in immigration court: master calendar hearings and merits hearings. Master calendar hearings are status hearings in which the judge may take pleadings and receive updates from the client and her attorney regarding the relief being sought. A merits hearing is the final hearing in which the attorney will conduct a direct examination of the client and other supporting witnesses; the OCC government attorney will cross-examine the witnesses, and the judge will issue a decision.

If the client is scheduled for a hearing while the I-360 SIJS petition is still pending with USCIS, the attorney should typically request a continuance by filing a motion to continue one-two months before the hearing date.¹⁶ The immigration judge will typically grant this motion without holding a separate motions hearing, but unless and until the motion is granted, the attorney and client must plan to attend the scheduled hearing date. In some cases, if the client has already been scheduled for a merits hearing, the judge may be less inclined to grant a continuance. Attorneys with clients who have been scheduled for a merits hearing and do not yet have a decision regarding their client's I-360 SIJS petition should contact NIJC at least two months prior to the hearing date to discuss next steps.

¹⁵ Please note that the immigration court is part of the Executive Office of Immigration Review (EOIR), a component of the Department of Justice, and therefore uses different appearances forms than USCIS, which is part of the Department of Homeland Security. An E-28 appearance form for immigration court removal proceedings is inapplicable to USCIS. Likewise, the G-28 appearance form for USCIS is inapplicable to the immigration court.

¹⁶ A sample motion to continue can be found in the brief/motions bank in the registered users section of NIJC's website.

Attending a master calendar hearing

If an attorney is not able to obtain a continuance of a master calendar hearing, then the attorney and client must attend the hearing. Master calendar hearings are generally straight-forward and simple hearings that take little time, although the attorney and client may spend significant time waiting for the hearing to begin.

1. Attendance of the client

Unless the immigration judge waives the appearance of the client, the client must attend all hearings before the immigration court, including the master calendar hearings. Even if the client is an infant, the attorney cannot appear alone. The judge can order the client removed *in absentia* if she fails to appear. If there is a compelling reason why a client does not believe she is able to appear in person at the hearing, the attorney can file a motion to waive her appearance in advance of the hearing, but there is no guarantee that the judge will grant the motion.

Many of the children NIJC represents live with parents or family members who are undocumented and are not in immigration court removal proceedings. Although NIJC is not currently aware of any instances in which DHS has arrested undocumented family members who attended court with a minor family member, NIJC recommends that undocumented family members who are not in immigration court removal proceedings avoid attending court.

2. Arriving at the court

The Chicago Immigration Court is located at 525 W. Van Buren Street, Suite 500 Chicago, IL 60607. Although master calendar hearings are technically scheduled for specific times, in reality, hearings are held on a first-come, first-serve basis in the morning and in the afternoon. To avoid experiencing a long wait, NIJC recommends that attorneys and their clients arrive for morning master calendar hearings by 8:30 a.m. and for afternoon master calendar hearings by 12:30 p.m.

Once the attorney and client have arrived, the attorney should sign up on the bulletin board in the waiting area under the name of the judge before whom the client's hearing has been scheduled. The judge's clerk will then call the names of the attorneys in the order in which they signed up and will escort them and their clients to the judge's courtroom.

If the attorney has not already filed an appearance, the attorney can do so at the master calendar hearing by bringing two, completed copies of form E-28 to court or obtaining two copies from the clerk's window, filling them out, and serving one on the OCC trial attorney and one on the judge.

3. The immigration judge

The judge who presides over the client's master calendar hearing will also be the judge who conducts the hearing on the merits and decides all motions. (In contrast, the trial attorney present at the client's master calendar hearing will most likely not be the same trial attorney who appears at the client's merits hearing.)

4. Interpreters

Although the attorney may wish to bring along an interpreter to communicate with the client at court if the attorney does not speak the client's primary language, during the hearing itself, only the court-designated interpreter can be used. A Spanish-speaking contract interpreter is present at most master calendar hearings. Generally, the judge will have minimal communication with the client at a master calendar hearing, but if the judge must communicate with a client who does not speak Spanish or English, the judge may call a telephonic interpreter.

In addition, at the master calendar hearing, the attorneys should state whether the client will require an interpreter at the merits hearing and specify whether a particular dialect is required. At the merits hearing, all interpreters will be in person, even for non-Spanish languages.

5. Confirming representation

When the attorney's case is called, the immigration judge will likely talk with her off the record to determine the attorney's intentions and to straighten out any procedural problems. At that time, the attorney can advise the judge that she is an NIJC *pro bono* attorney. On the record, through an interpreter where necessary, the judge will state the nature of the proceedings and ask the client if she understands what is happening.

The judge will first ask the client if the attorney is her representative. If an individual appears without counsel, the judge will usually ask the individual if she would like a continuance in order to seek legal counsel.

6. Pleadings

The judge will ask the attorney or the client if the client has received a copy of the NTA. If not, the attorney should say so and ask for a copy. The judge will often grant continuances so that the attorney can go over the NTA with the client to determine whether the charges are correct and if there is any question, even remotely, about their accuracy, then the attorney should seek a continuance.

If the attorney has the NTA, the judge will ask if she is ready – on behalf of the client – to either admit or deny the specific charges in the NTA, namely, that she entered without inspection on a certain date or overstayed her visa and is removable.¹⁷ The

¹⁷ Sometimes, NIJC clients – especially unaccompanied children who were previously detained – have

attorney will also be asked to either contest or concede removability as charged on the NTA. In most cases, it will be clear that the client is removable as charged because the client entered without inspection or overstayed a visa.¹⁸ However, if there is more than one charge of removability, discuss it with the client and with NIJC staff.

7. Designating a country of removal

Next, the judge will ask if the client wishes to designate a country of removal. Generally, the attorney should simply request to designate the client's country of citizenship. Some of NIJC's SIJS clients are also applying for asylum as an alternative form of relief and these clients should not designate a country of removal. If a client is seeking asylum in addition to SIJS, the *pro bono* attorney should state that she does not wish to designate a country of removal. The judge will then identify the client's country of citizenship as the country of removal.

8. Asserting the client's intention to seek SIJS

The attorney or the client will then state for the record that the client is seeking SIJ status from USCIS. If the *pro bono* attorney has already filed the I-360, she can provide the court and the trial attorney a copy of the receipt notice. The *pro bono* attorney should then request that the court either administratively close the client's proceedings or continue the client's proceedings to allow the attorney time to prepare the I-360 petition or to allow USCIS time to adjudicate the I-360 petition.

Administrative closure means that the client's case is taken off the active docket. The client remains in removal proceedings, but the court will not schedule the client for a hearing unless the client or the OCC trial attorney requests that the court recalendar the case, or if the judge decides to do so *sua sponte*. Administrative closure is usually the best option for clients who are seeking relief before USCIS because it means the client and attorney can avoid having to appear in court or file motions to continue while the I-360 petition is pending before USCIS. In some cases, particularly where the client has not yet filed the I-360 petition, the OCC and/or the immigration judge may be reluctant to administratively close a case and prefer to simply continue the client's proceedings. However, even if the OCC oppose a grant of administrative closure, the immigration judge is still able to grant the request. *See Matter of Avetisyan*, 25 I&N Dec. 688, 694 (BIA 2012) (holding that an immigration judge may administratively close proceedings even if a party opposes it).

Once another hearing date has been set or the case has been administratively closed, the master calendar hearing is over.

already appeared before other immigration courts and have already pled to the charges in the NTA and admitted to removability. In such cases, appearance at the Master Calendar will involve nothing more than simply requesting a continuance or administrative closure while the SIJS petition is adjudicated.

¹⁸ Clients who have reasonable grounds to challenge removability are unlikely to be referred to *pro bono* attorneys. However, if, in the course of interviewing the client, some fact is revealed that may impact the client's removability, the *pro bono* attorney should consult with NIJC staff.

PREPARING THE SIJS CASE

* * *

Although the SIJS petition itself is relatively simple and straightforward, the adjudication of SIJS petitions has grown increasingly complex. NIJC recommended that *pro bono* attorneys begin preparing an SIJS petition by reading the USCIS guidance on the adjudication of SIJS cases that was referenced at the beginning of this manual.

Step One: Interviewing the Client

Meeting with and interviewing the client provides an opportunity for the attorney and client to build rapport, discuss the SIJS process, discuss the factual basis for the state court determination, and review documents. Building rapport and trust with the client is essential, especially when the client is a child. The majority of NIJC clients come from countries whose legal systems and legal officials are corrupt and inept at best. As a result, NIJC's clients are generally unfamiliar with and suspicious of legal proceedings. In addition, children who have suffered abuse or have survived unstable home environments may have a hard time trusting adults and authority figures. Part of the *pro bono* attorney's job is attempting to overcome this built-in distrust.

Pro bono attorneys will likely need to use a different interview style when interviewing immigrant children and preparing their cases than the attorney may typically use with other clients. An intense, rapid-fire approach, bearing down hard on minor inconsistencies, may be very frightening to any immigrant client, but particularly children. Moreover, attorneys should be aware that perceived inconsistencies or inaccuracies in a client's narrative may be due to external factors or the client's difficulty placing events in chronological order or distinguishing between events she witnessed and those she heard about from others.

NIJC recommends that at least in initial sessions, *pro bono* attorneys begin by helping the client relax and trust them. Attorneys should be as friendly as possible, explain things thoroughly, and urge the client to ask questions. *Pro bono* attorneys may find it helpful in establishing trust with their client to share something about themselves. If there are difficult topics that must be discussed, attorneys should avoid discussing them during their first meeting with the client and instead wait until the attorneys have established rapport with the client.

During the first meeting, it is important to remind the client that everything discussed will remain confidential, even from the child's parent or guardian, unless the client gives the attorney permission to share information about the client's case with others. The attorney may, however, want to ask the client whether she is comfortable sharing information about her case with her parent, guardian, or other parties. The attorney should also establish the best way to contact the client and encourage the client to contact the attorney directly regarding any questions, rather than having the parent or guardian call on behalf of the child.

Finally, when explaining the SIJS process, *pro bono* attorneys should explain that an SIJS petition is prepared by the attorney and the client together and that the client has an important role in helping the attorney gather important information and documentation for the petition. If, however, the decision is not positive, this is not the child's fault, but instead reflective of complex immigration laws.

Step Two: Preparing the Filing

As discussed *supra*, there are two parts to the process through which a child seeks SIJs and permanent residency. The first part involves the filing of Form I-360, Petition for Special Immigrant. Approval of this form means that USCIS has determined that the child constitutes a special immigrant and has met the four elements set out in INA § 101(j). An approved I-360 does not grant immigration status. The second part involves the filing of Form I-485, Application to Register Permanent Residence or Adjust Status. An approval of Form I-486 means that the adjudicator has determined the client merits adjustment of status and that the client is now a lawful permanent resident of the United States.

After interviewing the client, the *pro bono* attorney can begin to complete the Form I-360, Petition for Special Immigrant, and supporting documents. The following forms and documents must be included with the I-360 filing:

- A legal memorandum, in the form of a cover letter, that serves as a roadmap to the evidence included and establishes how the client meets the four SIJS elements
- Form G-28, Notice of Appearance as Attorney (*on blue paper*)
- Form I-360, Petition for Special Immigrant Juvenile Status
- Birth Certificate, with translation if necessary
- State court order containing SIJS findings
- Documents from the state court proceeding if they are determined necessary
- Copy of the Notice to Appear, if the client is in removal proceedings
- Other documents to support the petition, if necessary

Client affidavits

Depending on the documents that the client provides from the state court proceeding, an affidavit from the client may be helpful to support the I-360 petition. Attorneys should consult with NIJC to determine whether an affidavit should be filed. The affidavit should focus on the facts that support the findings of abuse, neglect or abandonment and why it is in the client's best interest to remain in the United States. Attorneys can find more tips and best practices for drafting an affidavit on NIJC's website at <http://immigrantjustice.org/nijc-pro-bono-seminars>.

Submitting client documents

Translations: Any document not in English must be translated. The translation must include a signed and dated statement from the translator certifying that she is competent in both languages to render an accurate translation.¹⁹

Original Documents: Although all affidavits and USCIS forms must be submitted in the original, attorney should not submit originals of any supporting evidence, including birth certificates, photographs, medical records or other similar documents, unless requested by USCIS. USCIS will not return original documents once they are submitted.

Step Three: Filing the Petition

The SIJS petition is filed with the USCIS- Chicago Lockbox. NIJC recommends filing via courier/Federal Express/UPS to:

USCIS
Attn: FBAS
131 S. Dearborn—3rd Floor
Chicago, IL 60603-5517²⁰

Please retain a complete copy of the application for your client's file.

Post-Filing

The client and attorney of record will receive a receipt notice from USCIS within two – three weeks of filing the petition. The TVPRA mandates that USCIS adjudicate the I-360 petition within 180 days of receipt by USCIS. TVPRA § 235(d)(2). If a client's petition been pending for 180 days without a decision, the attorney should contact NIJC to determine next steps.

Requests for Evidence (RFE) or Notices of Intent to Deny (NOID): Before issuing a decision regarding the I-360 petition, USCIS may issue an RFE to demand additional evidence or a NOID to articulate the reasons USCIS believes it cannot grant the I-360. RFEs and NOIDs include strict deadlines by which responses must be provided, so attorneys should contact NIJC immediately if they receive an RFE or NOID.

Interview Notice for the SIJS Petition: USCIS may schedule an interview with an SIJS petitioner prior to issuing a final decision. An attorney's role during an SIJS interview is limited, so preparing a client for the interview is extremely important. Although some USCIS guidance cautions USCIS against re-adjudicating the state court proceeding during the SIJS interview, USCIS officers may still ask the petitioner about the facts

¹⁹ See Appendix I for a sample certificate of translation.

²⁰ Attorneys should always confirm the correct filing address prior to submitting the petition by reviewing the I-360 instructions on the USCIS website.

underlying the findings in the state court order. Attorneys should contact NIJC immediately if they receive an interview notice regarding the SIJS petition.

Denial Notice: If USCIS denies the SIJS petition, the petitioner only has 30 days to appeal. **Attorneys must contact NIJC immediately if they receive a denial.**

I-360 Approval Notices: When an SIJS petition is approved, the attorney will receive an I-360 approval notice. Attorneys should carefully review the approval notice to make sure it does not contain any errors and then provide the client with the original approval notices and keep a copy for their records. Attorneys should contact NIJC after receiving an approval notice to discuss next steps in the SIJS process.

PREPARING THE SIJS ADJUSTMENT OF STATUS APPLICATION

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As explained *supra*, clients who are not in removal proceedings are eligible to apply for SIJS and adjustment of status simultaneously. In contrast, clients who are in removal proceedings must file the I-360 petition first and can only pursue adjustment after she has received an approval notice for the I-360 petition.

An applicant for adjustment of status based on SIJS must establish that the child:

- Is the beneficiary of an approved SIJS petition (or has a pending SIJS petition that if approved, would render the applicant eligible for adjustment of status)
- Has a current visa number (at present, there has never been a shortage of visas available for SIJS and so this prong is not currently a relevant concern for SIJS clients)
- Is admissible

Approved SIJS Petition

To establish that a client is the beneficiary of an approved SIJS petition, the attorney can simply submit a copy of the SIJS approval notice. If the client is eligible to file the I-360 SIJS petition simultaneously with AOS application, the attorney simply needs to submit the I-360 petition and supporting documents with the AOS application in order to establish that the client has a pending SIJS petition that would render the client eligible for AOS if approved.

Admissible

An SIJS applicant for AOS must demonstrate that she is admissible to the United States, meaning that she is not subject to any of the grounds of inadmissibility set out in INA § 212. Significantly, an SIJS applicant for AOS is exempt from several inadmissibility grounds, including:

- INA § 212(a)(4) (Public Charge)
- INA § 212(a)(5)(A) (Labor Certification)
- INA § 212(a)(6)(A) (Present Without Admission or Parole)
- INA § 212(a)(6)(C) (Document Fraud and Misrepresentation)
- INA § 212(a)(6)(D) (Stowaway)
- INA § 212(a)(7)(A) (Documentation requirements)
- INA § 212(a)(9)(B) (Unlawful Presence)²¹

²¹ Minors do not accumulate unlawful presence. This ground would likely only apply to individuals who sought AOS after they turned 18, but before turning 21.

Attorneys should carefully examine whether their clients may have triggered any of the following inadmissibility grounds:

- INA § 212(a)(1) (Health related grounds)
- INA § 212(a)(2) (Criminal related grounds)²²
- INA § 212(a)(3) (Security and related grounds)
- INA § 212(a)(6)(B) (Failure to attend removal proceedings)
- INA § 212(a)(6)(E) (Smugglers)
- INA § 212(a)(8) (Ineligible for citizenship)
- INA § 212(a)(9)(A) (Certain aliens previously removed)
- INA § 212(a)(9)(C) (Aliens unlawfully present after previous immigration violations)

There are waivers available for some of these grounds of inadmissibility, but applying for a waiver can be complicated. NIJC screens all clients for inadmissibility issues and generally does not refer SIJS clients that need waivers to *pro bono* attorneys. However, if, during the course of *pro bono* representation, an attorney becomes aware of facts that could trigger one of the inadmissibility grounds, the attorney should consult with NIJC immediately to determine how to proceed.

Preparing the I-485 AOS Application

Whether the client is eligible to file a Form I-485 AOS application and I-360 SIJS petition jointly with USCIS or must file it separately after the SIJS petition is approved, the forms and documents below must be submitted as part of the AOS application package. However, the order in which these documents are submitted depends on whether the client is filing the Form I-485 AOS application with USCIS or the immigration court.

An AOS applicant is eligible to apply for employment authorization without paying a separate fee for this application. Generally, if AOS is sought before USCIS, the employment authorization application (Form I-765) should be submitted with the AOS application. If AOS is sought before the immigration court, then the employment authorization application can be filed with USCIS after the filing fee has been submitted or waived. Although SIJS applicants may be too young to work, an employment authorization document (EAD) will allow an individual to obtain a social security number and a state ID or drivers license, all of which can be useful documents for children and young adults.

²² Generally, juvenile delinquency adjudications or youthful offender adjudications do not constitute convictions for immigration purposes, but attorneys should consult with NIJC if their client has been arrested for or convicted of any juvenile or criminal offenses.

AOS Filing Checklist

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|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;"><u>Applying for AOS before USCIS</u></p> <ul style="list-style-type: none"><input type="checkbox"/> A legal memorandum, in the form of a cover letter, that serves as a roadmap to the evidence included and establishes how the client meets the four SIJS elements<input type="checkbox"/> Form G-28, Notice of Appearance as Attorney (on blue paper)²³
<input type="checkbox"/> Form I-485, Application to Adjust Status<input type="checkbox"/> Filing fee or fee waiver request<input type="checkbox"/> Two passport-style photographs<input type="checkbox"/> Form G-325A, Biographic Information<input type="checkbox"/> Sealed Form I-693, Medical Examination, completed by an authorized civil surgeon²⁴
<input type="checkbox"/> Birth certification, with translation if necessary<input type="checkbox"/> Form I-765, Application for Employment Authorization<input type="checkbox"/> Two passport-style photos for Form I-765 | <p style="text-align: center;"><u>Applying for AOS before the Court</u></p> <ul style="list-style-type: none"><input type="checkbox"/> A pre-hearing brief that serves as a roadmap to the evidence included and establishes how the client meets the four SIJS elements
<input type="checkbox"/> Form E-28, Notice of Entry of Appearance as Attorney (on green paper), unless previously filed<input type="checkbox"/> Form I-485, Application to Adjust Status<input type="checkbox"/> Filing fee or motion to waive filing fee<input type="checkbox"/> Two passport-style photographs<input type="checkbox"/> Form G-325A, Biographic Information<input type="checkbox"/> Sealed Form I-693, Medical Examination, completed by an authorized civil surgeon (submitted in open court)<input type="checkbox"/> Birth certification, with translation if necessary<input type="checkbox"/> Form I-765, Application for Employment Authorization<input type="checkbox"/> Two passport-style photos for Form I-765 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Filing the Form I-485 AOS Application and I-360 Petition Simultaneously with USCIS

When filing a joint I-360 SIJS petition and I-485 AOS application with USCIS, the attorney should prepare three separate packets (one for the I-360, one for the I-485, and one for the I-765), each with their own individual cover letter, but mail them to USCIS in the same envelope.

Filing fee and fee waiver

Although there is no filing fee for the I-360 SIJS petition, there are filing fees for an application for adjustment of status and an application for employment authorization. If the Form I-485 AOS application and the Form I-765 application for employment

²³ Even if you filed a G-28 appearance form with the I-360 petition, you must file a new, separate G-28 with the AOS application.

²⁴ The *pro bono* attorney should encourage the client to ask the medical service provider for a copy of the medical examination so that the *pro bono* attorney can become familiar with the results of the medical examination prior to filing.

authorization are filed together, the filing fee is \$1,070 if the child is 14 years old or older and \$985 if the child is less than 14 years old.²⁵

If the client is unable to pay the filing fees, the attorney can request a fee waiver.²⁶ USCIS can grant a fee waiver to an individual who a) is receiving a means-tested benefit, b) has a household income of 150% or below of the poverty guidelines or c) can demonstrate financial hardship. The attorney can assert the client's eligibility under more than one of these categories.

To request a fee waiver, the attorney must complete I-912 and submit documentation in support of the fee waiver request, including means-tested benefits statements (including healthcare benefits, like the Illinois All Kids program), taxes, pay stubs, utility bills, rent receipts, and medical bills. In addition, if the client does not work and relies on her parent or guardian to provide all her needs, the attorney should usually include a brief statement from the client explaining that she does not have any income of her own and relies solely on her parent or guardian.

A separate fee waiver request should be included with the I-485 AOS application package and the I-765 employment authorization application. If USCIS denies the fee waiver request, USCIS will reject the entire application packet. If this occurs, the attorney should discuss with the client whether the client wants to try to re-file the application package with a stronger fee waiver request or simply submit the required fees.

Mailing the Form I-485 AOS application to USCIS

The attorney should mail the I-485 application package to the USCIS-Chicago Lockbox at:

USCIS
Attn: FBAS
131 S. Dearborn—3rd Floor
Chicago, IL 60603-5517

What happens after filing

Two to three weeks after USCIS receives the application, it will send the client and the attorney of record a receipt notice and a fingerprint appointment notice. The fingerprint appointment notice (otherwise known as the biometrics notice) will instruct the client to go to a local Application Support Center (ASC) with her original fingerprint notice and a government-issued photo identification document. If the client does not have government-issued photo identification, a school photo identification document is usually acceptable.

²⁵ Attorneys should always confirm the current filing fee before filing the applications by reviewing the I-485 instructions on the USCIS website.

²⁶ See 8 C.F.R. § 103.7

In addition, the client and the attorney might receive the following documents:

I-765 Approval Notice: When USCIS approves the application, it will send an approval notice to the attorney of record and the employment authorization document to the client.

Request for Evidence (RFE) or Notice of Intent to Deny (NOID): As with the SIJS petition, USCIS may issue an RFE to demand additional evidence or a NOID to articulate the reasons USCIS believes it cannot grant the I-360. Attorneys should contact NIJC immediately if they receive an RFE or NOID.

Interview Notice: Generally, USCIS will interview all applicants for AOS based on SIJS. Attorneys should contact NIJC once an interview notice is received.

Final decision from USCIS

Once USCIS approves the I-485 application, it will send an approval notice to the attorney of record and the lawful permanent resident card (green card) to the client. Once the client receives the card, the attorney should confirm with the client that all information on the card is accurate, including her name and date of birth. Finally, the attorney should immediately notify NIJC of the decision. If USCIS issues a denial regarding the I-360 SIJS petition or the I-485 AOS application, the attorney must notify NIJC immediately so next steps can be discussed and, if appropriate, an appeal filed.

Filing Form I-485 While in Immigration Court Removal Proceedings

As explained *supra*, a client who is in removal proceedings cannot file the I-360 SIJS petition and I-485 AOS application simultaneously because USCIS has jurisdiction over the I-360, while the immigration judge has jurisdiction over the I-485. However, once USCIS has approved the I-360, the attorney can discuss with the client whether or not to remain in immigration court proceedings and seek AOS before the immigration judge or request that the immigration judge terminate proceedings so that the client can then file the I-485 AOS application before USCIS. There are a number of factors that should be considered when determining whether a client should remain in immigration court proceedings or seek termination, including the timing of the immigration court process; whether the client has other applications for immigration relief pending with the immigration judge; and whether the attorney is aware of any delays in the adjudication of SIJS-based AOS applications before USCIS. NIJC strongly recommends that attorneys discuss the pros and cons of each process with NIJC before discussing options with the client.

Terminating removal proceedings

If a client decides she wants to seek termination of her proceedings before the immigration court so she can file for AOS before USCIS, the attorney should prepare a

joint motion to terminate and email it to the OCC at chicagooccfilings@ice.dhs.gov²⁷ with a cover letter explaining that the client is a beneficiary of an approved I-360 SIJS petition; that the client wishes to withdraw any and all other applications for relief pending with the immigration judge; and that the client requests that the OCC join in the motion to terminate so that she can seek adjustment before USCIS. The attorney should also include a copy of the skeletal Form I-485 that will be filed with USCIS once proceedings are terminated. The attorney does should not submit the original I-485, any supporting documents, or the filing fee.

The OCC will usually agree to join in the motion or will file their own motion to terminate. Once the Court grants the motion, the attorney is free to file the Form I-485 AOS application with USCIS, following the instructions discussed *supra*.

Filing Form I-485 with the immigration court

The immigration judge is only able to adjudicate the client's form I-485 AOS application during a merits hearing. If the client's next hearing after the I-360 SIJS petition approval is a master calendar hearing, the attorney can file a motion to recalendar the hearing as a merits hearing.²⁸ Similarly, if the client has already been scheduled for a merits hearing, but the hearing date is not for many months or years, the attorney can file a motion requesting that the merits hearing date be advanced.²⁹ Generally, the attorney should not file the motion to advance until the attorney is nearly ready to file all documents related to the form I-485 AOS application.

Filing a form I-485 AOS application with the immigration court involves the same documents as are filed with USCIS, but the procedural steps are slightly different.

1. Submitting the filing fee or fee waiver request

The filing fee for form I-485 is the same whether the application is filed with the immigration court or USCIS. If the client is pursuing AOS before the immigration court, the filing fee must still be submitted to USCIS, along with a copy of the skeletal form I-485 (without any supporting documents).

²⁷ See the Office of Chief Counsel's e-service fact sheet at <https://www.immigrantjustice.org/legal-materials> for information regarding contacting the Office of Chief Counsel via email.

²⁸ If the client has not yet plead to the charges in the NTA, the attorney will usually need to plead in the motion as well. An attorney who wishes to plead in the motion should contact NIJC to discuss whether this is a good strategy for the client.

²⁹ A sample motion to advance can be found in the brief/motions bank of the registered users section of NIJC's website.

The filing fee and skeletal form I-485 should be mailed to

USCIS
Texas Service Center
4141 N. Saint Augustine Dr.
Dallas, TX 75227-4818³⁰

More information about submitting the filing fee to USCIS can be found on here: <http://www.uscis.gov/sites/default/files/files/article/PreOrderInstr.pdf>.

If the client is unable to pay the filing fees, the attorney can request a fee waiver, but the fee waiver request must be submitted to the immigration court. Rather than using the fee waiver request form – form I-912 – that is utilized with USCIS, a fee waiver request to the court should be made as a motion to waive filing fees.³¹

Once the immigration judge grants the motion, the attorney should still mail a copy of the skeletal form I-485 application, along with the judge's order granting the fee waiver motion, to the Texas Service Center address listed above in order to obtain a fingerprint appointment for the client.

2. Filing the I-485 application package with the immigration court

All filings are due to the immigration court 15 calendar days prior to the merits hearing date, unless the immigration judge has set a different deadline. Prior to filing the I-485 AOS package with the immigration court, the attorney should review the Immigration Court Practice Manual, specifically chapter four, at http://www.justice.gov/eoir/vll/OCIJPracManual/ocij_page1.htm for filing formatting requirements and other filing rules. Attorneys should be aware that failure to comply with the Immigration Court Practice Manual can result in the immigration court rejecting a filing.

As explained *supra*, the I-485 AOS application package is essentially the same whether the filing is submitted to USCIS or the immigration court. The only differences are the filing format (see the Immigration Court Practice Manual for immigration court filing requirements), the filing fee or fee waiver procedures (see *supra*), and the Form I-694, medical examination. Unlike the USCIS filing, NIJC strongly recommends that attorneys submit the sealed medical examination to the OCC in open court on the date of the merits hearing rather than forwarding it to the OCC prior to the hearing date.

After the attorney submits the original I-485 and supporting documents to the immigration court, a copy must be served on the OCC. The OCC prefers e-service to chicagooccfilings@ice.dhs.gov. The attorney should also keep a full copy of the filing for her own records.

³⁰ Please note that the address noted on the USCIS instructions is a P.O. Box address. The address above is the address used for certified mail or overnight delivery service.

The merits hearing

Merits hearings for SIJS adjustment of status applications are normally very brief and straightforward, but it is still important for the attorney to prepare the client for the hearing.

1. Preparing the client to testify

Clients, especially children, are often very nervous about the merits hearings, so it is important to prepare the client for the logistics of the hearing and for her testimony. *Pro bono* attorneys should instruct the client to dress nicely for the hearing, like she would for an important event or school pictures. The attorneys should also explain the hearing process in detail to their client, so that she understands what will occur and what is expected of her at the hearing, as well as the potential outcomes.

Attorneys should be well-prepared for direct examination and make sure they have carefully prepared the client too. The attorney should advise the client to answer questions succinctly without engaging in long narratives, and to state clearly when she does not understand a question. NIJC recommends that attorneys practice the direct examination with the client numerous times so that the client feels well-prepared during the hearing.

When preparing the client for the hearing, *pro bono* attorneys should review the Form I-485 with the client. The main issues that the attorneys should plan to address at the hearing through direct examination include:

- Is the client's name and address correct for the records?
- Is the client's date of birth correct?
- Is the client married?
- Has the client left the United States since her last entry?
- Has the client triggered any inadmissibility grounds?

2. Contacting the trial attorney prior to the merits hearing

DHS is represented at the merits hearing by an OCC trial attorney. NIJC recommends that *pro bono* attorneys attempt to contact the trial attorney at 312-542-8200 about three days prior to the hearing to explore whether OCC might stipulate to any aspects of the case and to make sure the trial attorney understands the nature of the case. Trial attorneys do not always have significant experience with SIJS adjustment of status cases and discussing the case ahead of time with the trial attorney can help ensure a smooth merits hearing.

3. The immigration judge

Judges play a very active role in merits hearings and almost always actively question the client during the hearing. Currently, there are five immigration judges in

Chicago that hear non-detained immigration cases. The Court is in the process of transferring most children to a non-detained juvenile docket before Judge Jennie Giambastiani. No matter which judge is presiding over a client's case, NIJC strongly recommends that *pro bono* attorneys attend a merits hearing held before the judge in their case to observe the judge's trial procedures. If it is not possible to attend a hearing before the client's judge, *pro bono* attorneys should, at a minimum, consult with NIJC to determine their judge's preferences.

EOIR has provided very broad guidelines for immigration judges adjudicating the cases of immigrant children: "Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children" available at <http://www.justice.gov/eoir/efoia/ocij/oppm07/07-01.pdf>. The immigration judges in Chicago generally conduct hearings for children very similarly to the way they conduct hearings for adults (e.g., in a robe and in a formal court setting), but may be more informal in their procedure and demeanor, depending on the age of the client.

4. Interpreters

As previously noted, an in-person interpreter will be available at the merits hearing if the client does not speak English. If the attorney did not request an interpreter at an earlier Master Calendar hearing, the *pro bono* attorney should contact the court by phone and in a written motion well in advance of the merits hearing to request an interpreter.

5. Hearing logistics

In most Chicago immigration courtrooms, the client and her attorney sit at the table on the right side of the room (facing the judge's bench), while the trial attorney sits on the left. Different judges take testimony in different ways. Some require the witnesses to take the witness stand next to the bench, while others permit the client to remain seated next to the attorney. Some judges ask attorneys to conduct examinations from a podium, while others do not.

Removal hearings are open to the public, although there are almost never any spectators at a merits hearing other than the persons connected with the case. If unknown individuals appear at a child's merits hearing and the child is not comfortable having her hearing observed, the attorney can request that the hearing be closed.

6. Arriving at the court

Merits hearings usually begin promptly, so *pro bono* attorneys and their client should arrive at the Chicago Immigration Court well in advance of the scheduled hearing time. After arriving at the immigration court, the *pro bono* attorney should first report to the clerk at the window to state that the attorney and client are present. The clerk will then ask the attorney and client to wait until the courtroom is opened.

7. Off the record formalities

Before the start of the hearing, the judge will usually engage in substantial off-the-record conversations with the *pro bono* attorney and trial attorney, reviewing the file, identifying exhibits, and clarifying issues, such as the status of previously filed motions. Sometimes, the judge may ask that the client wait outside while the judge confers privately with the trial attorney and *pro bono* attorney.

8. Submitting the medical examination

As previously noted, NIJC recommends that the *pro bono* attorney submit the sealed medical examination to the OCC trial attorney at the beginning of the merits hearing. The *pro bono* attorney should encourage the client to ask the medical service provider for a copy of the medical examination so that the *pro bono* attorney can become familiar with the results of the medical examination prior to the hearing.

9. Correcting and updating information

At the beginning of the hearing on the record, the judge usually allows the *pro bono* attorney to verbally update or correct any information on the adjustment application or other materials previously submitted. It is important to make certain that names, addresses, dates, A-numbers, etc. are up-to-date and correct. If there are significant updates or corrections that need to be made, NIJC recommends that the attorney submit a written list of the changes to the judge.

10. Identifying and admitting exhibits

Next, the judge will go through all submitted exhibits and admit them into evidence. The OCC trial attorney usually will not submit any documents into evidence. As the judge reviews all exhibits, she will ask if either party objects to their admission into evidence. The trial attorney usually will not object to the evidence, but if she does object to a particular document, the judge typically permits brief arguments and then rules quickly.

11. Opening statements

Most of the judges at the Chicago Immigration Court will permit opening statements, although the judge may indicate that she does not think an opening statement is necessary. Opening statements, where permitted, can be helpful in reminding the judge of the issues in the case before testimony begins. *Pro bono* attorneys should be aware that opening statements in immigration court are extremely brief – no more than one minute – and should simply summarize the client’s case.

12. Direct examination

Examination of witnesses in immigration court is largely the same as in other courts. The respondent's attorney offers her case first, conducting direct examination, then the trial attorney conducts a cross-examination, and then the respondent's attorney can redirect where necessary.

Direct examination in an SIJS adjustment of status case should focus on answering the questions discussed *supra*. Trial attorneys will object to leading questions in the direct examination and the judge will generally sustain the objection. To avoid time-consuming arguments regarding leading questions, *pro bono* attorneys should simply prepare the client in advance on how to answer non-leading questions. It may be helpful to prepare a written question and answer sheet with the client, reviewing for accuracy. Check it against the written adjustment application. However, do not have the client memorize a prepared direct examination because it can make the real direct examination sound scripted and the client seem less credible.

13. Cross-examination

After direct examination, the trial attorney has the opportunity conduct cross-examination. Unless there are any concerns regarding the client's admissibility, generally trial attorneys will decline to cross examine a respondent in an SIJS adjustment of status case. If the trial attorney does engage in cross examination regarding the specifics of the abuse, neglect or abandonment the client endured, the *pro bono* attorney should object on relevance grounds.

14. Examination by the immigration judge

All the immigration judges will usually conduct their own brief examination, generally after direct and cross. Some judges, however, will interrupt direct and cross-examination repeatedly and extensively, which can disrupt the flow of the attorney's questions and rattle the client. Usually, SIJS adjustment of status cases are not contentious and the questions the judges ask are not inappropriate or offensive. If the *pro bono* attorney believes the questioning is creating stress for the client or is not appropriate for the type of case or age of the child, the attorney can consider reminding the judge of the client's age and the basis of the claim.

15. Closing statements

Most judges permit very brief closing statements, but a closing statement generally is not necessary for adjustment of status cases.

The decision of the immigration judge

Typically, the judge will issue her oral decision immediately at the close of the case. After the judge issues an oral decision, each side will be asked whether they choose to reserve appeal. If the client wins, the trial attorney will most likely waive appeal.

When the immigration judge issues her decision, whether favorable or unfavorable, the client receives only a minute order form filled out and signed by the judge. It is crucial that the attorney review the order before leaving the courtroom and ensure that all information in the order is correct.

After the merits hearing, please notify NIJC of the outcome as soon as possible. If the client receives a final grant of adjustment of status, the *pro bono* attorney should email a copy of the client's complete file to Rebecca Cabezas at rcabezas@heartlandalliance.org for NIJC's records.

ADDITIONAL INFORMATION

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Public Benefits

Children in general, and especially those granted permanent residency, often qualify for different types of assistance programs in Illinois, including medical benefits, nutritional assistance, and cash assistance. Because the requirements for each program vary, please visit your local Illinois Department of Human Services, <http://www.dhs.state.il.us>, for more information on eligibility requirements for specific benefits. The Illinois Department of Human Services maintains a helpful chart of program eligibility by citizenship status on their website at <http://www.dhs.state.il.us/page.aspx?item=16628>.

Employment Authorization Document (EAD)

An individual is not eligible to receive an employment authorization document (EAD) based solely on a pending or approved SIJS petition. However, as previously noted, once the client files the adjustment of status application, she can file an I-765 application for employment authorization at the same time. Please see the Preparing the SIJS Adjustment of Status Application section on page 28 for information about applying for an EAD.

Once the client's adjustment of status application is approved, she is automatically authorized to work and no longer needs an EAD.

Obtaining a Social Security Number

Upon receipt of an EAD, the client should apply for a social security number at the nearest Social Security Administration (SSA) office. The SSA will issue the client a restricted social security number that is only valid when presented with a valid EAD. With the social security number, the client can apply for an Illinois state identification or driver's license, if otherwise qualified to do so.

Later, when the client obtains permanent residency, she should return to the social security office with her permanent resident card and request a new, unrestricted social security card.

Freedom of Information Act Requests

If a client is in removal proceedings, NIJC recommends that the *pro bono* attorney file a Freedom of Information Act (FOIA) request with DHS to obtain copies of the client's file because DHS may have documents that the client does not have or that the client has forgotten.

Clients in immigration court removal proceedings are eligible for expedited or “Track Three” processing of the FOIA request. It generally takes DHS a few months to respond to a Track Three FOIA request and DHS generally responds more quickly to a faxed or emailed request. Depending on the time frame of the case, *pro bono* attorneys may need to file the request as soon as they accept the case.

All FOIA Requests should be sent to:

FOIA Officer
Department Of Homeland Security
National Records Center
P.O. Box 648010
Lee’s Summit MO 64064-8010

The fax number for Track Three requests is 816-350-5785 and the email address is uscis.foia@uscis.dhs.gov.

ORR Record Requests

If the client has ever been in ORR custody, NIJC recommends that the *pro bono* attorney file a request to obtain the client’s ORR records. Like the FOIA request, it may take several months to receive the ORR records, so attorneys should file the request as soon as they begin representation. Information regarding request a client’s ORR file can be found in the Appendix for NIJC’s SIJS Manual on NIJC’s website.

CONTACT INFORMATION

* * *

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The National Immigrant Justice Center is located at
208 S. LaSalle, Ste. 1300 Chicago, IL 60604

IMPORTANT PHONE NUMBERS AND ADDRESSES

* * *

USCIS-Chicago Lockbox

Attn: FBAS
131 S. Dearborn—3rd Floor
Chicago, IL 60603-5517

USCIS-Chicago District Office

101 W. Congress Parkway
Chicago, IL 60605

DHS-ICE Chief Counsel

525 W. Van Buren Street, Ste. 701
Chicago, IL 60607
Phone: 312-542-8200
Electronic Filing Address:
ChicagoOCCFilings@ice.dhs.gov

Executive Office for Immigration Review Chicago Immigration Court

525 W. Van Buren St, Ste. 500
Chicago, IL 60607
Phone: 312-697-5800

Immigration Judges

Judge Carlos Cuevas
Judge Philip DiMarzio (detained only)
Judge James Fujimoto (detained only)
Judge Jennie L. Giambastiani (juvenile docket judge)
Judge Eliza C. Klein (detained only)
Judge Sheila McNulty
Judge Virginia Perez-Guzman
Judge Robert D. Vinikoor

Important Websites

Forms/Applications: www.uscis.gov
EOIR: www.usdoj.gov/eoir
ORR: <http://www.acf.hhs.gov>

NIJC: www.immigrantjustice.org

<p>EOIR Automated Information Line</p>

<p>1-800-898-7180</p>

GLOSSARY OF IMMIGRATION TERMS

* * *

A

- “A” Number:** An eight digit number (or nine digits, if the first number is a zero) beginning with the letter "A" that the DHS gives to some non-citizens. (Please note that EOIR now requires all A Numbers to be submitted as nine digit numbers. If the client’s A Number only has eight digits, add a “0” to the beginning of the number.)
- Adjustment of Status:** A process by which a non-citizen in the United States becomes a lawful permanent resident without having to leave the U.S.
- Admission:** The decision of the DHS to allow a non-citizen at the United States border or international airport or seaport to enter the United States.
- Admissible:** A non-citizen who may enter the U.S. because he/she is not among the classes of aliens who are ineligible for admission or has a waiver of inadmissibility.
- Affidavit of Support:** A form (I-864) filed by a U.S. citizen or lawful permanent resident for a non-citizen seeking lawful permanent residence.
- Aggravated Felon:** One convicted of numerous crimes set forth at INA § 101(a)(43). An aggravated felony includes many crimes, but the most common are: (1) drug trafficking--any crime involving distribution, importation or sale of drugs, no matter the amount or the sentence; (2) the crime of theft, robbery or burglary with one year sentence whether imposed or suspended; and (3) the crime of violence with a one year sentence whether imposed or suspended.
- Alien:** A person who is not a citizen or national of the United States.
- Alien Registration Receipt Card:** The technical name for a "green card," which identifies an immigrant as having permanent resident status.
- Aliens Previously Removed:** Ground of inadmissibility, for persons previously removed for anywhere from five years to twenty years depending on prior circumstances.
- Aliens Unlawfully Present:** Ground of inadmissibility for three years for an individual unlawfully present in the U.S. for more than 180 days but less than one year commencing April 1, 1997 or for ten years if unlawfully present for one year or more.

Asylee:	A person who is granted asylum in the United States.
Asylum:	A legal status granted to a person who has suffered harm or who fears harm because of his/her race, religion, nationality, political opinion or membership in a particular social group.
B	
Beneficiary:	A person who will gain legal status in the United States as a result of a visa petition approved by the DHS.
C	
Cancellation of Removal:	Discretionary remedy for an LPR who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status and has not been convicted of an aggravated felony, or anyone physically present in the United States for a continuous period of not less than ten years, who has been a person of good moral character during such period, has not been convicted of certain offenses and who establishes that removal would result in “exceptional and extremely unusual hardship” to the U.S. citizen or LPR spouse, parent, or child.
Child:	The term "child" means an unmarried person under twenty-one years of age who is: (1) a legitimated child; (2) a stepchild; (3) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile; (4) an illegitimate child; (5) a child adopted while under the age of sixteen; and (6) a child who is an orphan. There is a significant amount of case law interpreting these categories.
Citizen (USC):	Any person born in the fifty United States, Guam, Puerto Rico, or the U.S. Virgin Islands; or a person who has naturalized to become a U.S. citizen. Some people born abroad are also citizens if their parents were citizens.
Conditional Permanent Resident Status:	A person who received lawful permanent residency based on a marriage to a U.S. citizen, which was less than two years old at the time. Conditional residents must file a second petition with the United States within two years of receiving their conditional resident status in order to retain their U.S. residency.
Consular Processing:	The process by which a person outside the United States obtains an immigrant visa at a U.S. consulate in order to travel to the U.S. and enter as a lawful permanent resident.

Conviction: Formal judgment of guilt entered by a court or, if adjudication of guilt was withheld, if a judge or jury has found the person guilty or the person has entered a plea of guilty or *nolo contendere* and has admitted sufficient facts to warrant a finding of guilt and the judge has ordered some form of punishment, penalty or restraint.

Credible Fear Interview: An interview which takes place if an alien who arrives in the United States with false documents or no documents, and is therefore subject to expedited removal, expresses a fear of persecution or a desire for asylum. The purpose of the interview is to determine if the alien can show that there is a significant possibility that he/she can satisfy the qualifications for asylum.

D

Deferred Action for Childhood Arrivals (DACA): A form of temporary relief from deportation announced by the Obama Administration in July 2012 for certain young immigrants who were brought to the United States as children and educated here.

Department of Homeland Security (DHS): The federal department charged, in part, with implementing and enforcing immigration law and policy.

Deportation: The ejection of a non-citizen from the United States. Prior to the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), non-citizens were ejected from the United States through deportation proceedings. Now known as removal proceedings.

Detention: Asylum seekers who enter the U.S. without documentation may be detained at a DHS detention facility until they pass a credible fear interview or until the completion of their asylum hearing.

E

Entry: Being physically present in the U.S. after inspection by the DHS or after entering without inspection.

Entry Without Inspection (EWI): Entering the United States without being inspected by the DHS, such as a person who crosses the border between the United States and Mexico or Canada. This is a violation of U.S. immigration laws.

Employment The I-688 card that the DHS issues to a person granted

Authorization Document (EAD): permission to work in the U.S. The EAD is a plastic, wallet-sized card.

Executive Office for Immigration Review (EOIR): The immigration court, the Board of Immigration Appeals, and one other agency within the Department of Justice that decides immigration cases.

Expedited Removal: An abbreviated removal procedure applied to aliens who arrive in the United States with false documents or no documents.

I

I-94 Card: A small white paper card issued by the DHS to most non-citizens who do not have green cards upon entry to the U.S. It is usually stapled to a page of the non-citizen's passport. The DHS may also issue I-94 cards in other circumstances. The I-94 card usually states the date by which the non-citizen's authorized stay in the United States expires.

Illegal Alien: See "Undocumented".

Immigration and Customs Enforcement (ICE): The agency within the Department of Homeland Security responsible for overseeing detention and release of immigrants and the investigation of immigration-related administrative and criminal violations.

Immediate Relative: The spouse, parent, or unmarried child under 21 of a U.S. citizen. Generally speaking, the immigration laws treat immediate relatives better than other relatives of citizens or legal permanent residents.

Immigrant: A person who has the intention to reside permanently in the United States; usually a lawful permanent resident.

Immigrant Visa: A document required by the INA and required and properly issued by a consular office outside of the United States to an eligible immigrant under the provisions of the INA. An immigrant visa has six months validity.

Immigration and Nationality Act (INA): The immigration law that Congress originally enacted in 1952 and has modified repeatedly.

Immigration and Naturalization Former branch of the United States Department of Justice charged with enforcing the immigration laws. On March 1, 2003, the INS

Service (INS): ceased to exist. Responsibility for immigration policy and immigration functions is now shared between the Department of Justice and the Department of Homeland Security.

Immigration Judge: Presides over removal proceedings.

Inspection: The DHS process of inspecting a person's travel documents at the U.S. border or international airport or seaport.

L

Lawful Permanent Resident (LPR): A person who has received a "green card" and whom the DHS has decided may live permanently in the U.S. LPRs eventually may become citizens, but if they do not, they could be deported from the U.S. for certain activities, such as drug convictions and certain other crimes.

N

Native: A person born in a specific country.

National: A person owing permanent allegiance to a particular country.

Naturalization: The process by which an LPR becomes a United States citizen. A person must ordinarily have been an LPR for five years before applying for naturalization. A person who became an LPR through marriage to a U.S. citizen and is still married to that person in most cases may apply for naturalization after three years as an LPR.

Non-citizen: Any person who is not a citizen of the U.S., whether legal or undocumented. Referred to in the INA as an "alien."

Nonimmigrant: A person who plans to be in the U.S. only temporarily, such as a person with a tourist or student visa. A nonimmigrant will ordinarily have a visa stamp in his/her passport, and an I-94 card which states how long the person can stay in the U.S.

Nonimmigrant Visa: A document issued by a consular officer signifying that the officer believes that the alien is eligible to apply for admission to the US for specific limited purposes and does not intend to remain permanently in the US. Nonimmigrant visas are temporary.

Notice to Appear (NTA): Document issued to commence removal proceedings, effective April 1, 1997.

O

Overstay: To fail to leave the U.S. by the time permitted by the DHS on the nonimmigrant visa (as ordinarily indicated on the I-94 card), or to fail to arrange other legal status by that time.

P

Parole: To permit a person to come into the United States who may not actually be eligible to enter, often granted for humanitarian reasons, or to release a person from DHS detention. A person paroled in is known as a "parolee."

Petitioner: A U.S. citizen or LPR who files a visa petition with the DHS so that his/her family member may immigrate.

Priority Registration Date (PRD): Everyone who files an I-130 Petition For Alien Relative receives a priority registration date. Once a person's PRD becomes current, meaning that a visa is available, he/she can apply for LPR status. This may take a long time, as visa numbers often are not available for many years after the I-130 is approved.

R

Refugee: A person who is granted permission to enter the U.S. legally because of harm or feared harm due to his/her race, religion, nationality, political opinion or membership in a particular social group. Unlike an asylum applicant, a refugee must meet this definition while outside of the United States and enters the United States with refugee status.

Relief: Term used for a variety of grounds to avoid removal from the United States.

Removal: Proceedings to enforce departure of persons seeking admission to the US who are inadmissible or persons who have been admitted but are removable.

Rescission: Cancellation of prior adjustment to permanent resident status.

Residence: The principal and actual place of dwelling.

Respondent: The term used for the person in removal proceedings.

S

Service Centers: Offices of the DHS that decide most visa petitions. There are four regional Service Centers for the entire U.S.: the Vermont Service Center (VSC); the Nebraska Service Center (NSC); the Texas Service Center (TSC); and the California Service Center (CSC).

Stowaway: One who obtains transportation on a vessel or aircraft without consent through concealment.

T

Temporary Protected Status (TPS): A status allowing residence and employment authorization to the nationals of foreign states, for a period of not less than six months or more than eighteen months, when such state (or states) has been appropriately designated by the Attorney General because of extraordinary and temporary conditions in such state (or states).

Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008: A law which, among other things, changed the process by which “unaccompanied alien children” apply for asylum. Pursuant to the TVPRA, USCIS (the Asylum Office) has initial jurisdiction over all asylum applications filed by unaccompanied alien children, even if the child is already in immigration proceedings. The TVPRA went into effect on March 23, 2009.

U

Unaccompanied Alien Child (UAC): An unaccompanied alien child means a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody. 6 U.S.C. § 729(g)(2).

Undocumented: A non-citizen whose presence in the U.S. is not known to the DHS and who is residing here without legal immigration status. Undocumented persons include those who originally entered the U.S. legally for a temporary stay and overstayed or worked without DHS permission, and those who entered without inspection. Often referred to as "illegal aliens."

United States Citizenship And Immigration Services (USCIS): The agency within the Department of Homeland Security responsible for adjudicating all applications for immigration benefits.

U-Visa: A non-immigrant visa that allows non-citizen victims of crime to stay in the U.S. and obtain employment authorization. After three years in U-visa status, the non-citizen may be able to adjust status to obtain lawful permanent residency. Certain family members of the U-visa holder may also be eligible for derivative U-visa status.

V

Violence Against Women Act (VAWA): Legislation passed by Congress in 1994, which contained certain immigration provisions. The immigration law provisions allow a spouse and children, or parents of children, who have been abused or subject to extreme cruelty by their legal permanent resident or United States citizen spouse or parent to immigrate without the assistance of the LPR or USC spouse or parent, provided that they meet certain conditions.

Visa: A document (or a stamp placed in a person's passport) issued by a United States consulate abroad to a non-citizen to allow that person to enter the U.S. Visas are either nonimmigrant or immigrant visas.

Visa Petition: A form (or series of forms) filed with the DHS by a petitioner, so that the DHS will determine a non-citizen's eligibility to immigrate.

Voluntary Departure: Permission granted to a non-citizen to leave the U.S. voluntarily. The person must have good moral character and must leave the U.S. at his/her own expense, within a specified time. A non-citizen granted voluntary departure can reenter the U.S. legally in the future.

W

Waiver: The excusing of a ground of inadmissibility by the DHS or the immigration court.

Work Permit: There is no single document in U.S. immigration law that is a "work permit." Citizens, nationals, and lawful permanent residents are authorized to be employed in the U.S. Certain nonimmigrant visa categories include employment in the U.S. Other aliens in the U.S. may have the right to apply for an Employment Authorization Document (EAD).

Appendix of Sample Forms and Documents

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Please [click here](#) to download the following documents from NIJC's website:

Appendix Sample Forms and Documents

- A Form I-360 SIJS Petition and Instructions
- B Form I-485, Application for Adjustment to Register Permanent Residence or Adjust Status and Instructions
- C Notices of Appearances as Attorney
 - For Court (EOIR-28) (green paper)
 - For DHS/ICE/USCIS (G-28) (blue paper)
- D Freedom of Information Act (FOIA) Request
 - Sample Cover Letter for Track Three Request
 - FOIA Request Form G-639
- E Request for ORR Records
 - Instructions
 - Authorization for Release of Records
- F Form I-765, Application for Employment Authorization and Instructions
- G Change of Address Forms
 - For DHS (AR-11)
 - For court (E-33)
- H Sample Notice to Appear
- I Sample Certificate of Translation for Foreign Language Affidavits and Documents
- J Sample Certificate of Service