



# ADJUSTMENT OF STATUS THROUGH SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)

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## I. Introduction<sup>1</sup>

Special Immigrant Juvenile Status (SIJS) is a federal law that helps certain undocumented young people who cannot be reunified with one or both of their parents due to abuse, abandonment, neglect, or similar reasons. One of its key benefits is allowing SIJS recipients to apply to adjust status to become lawful permanent residents (LPRs) in the United States. This advisory gives an overview of the SIJS-based adjustment of status process. It will give step-by-step guidance for both the affirmative process, for young people who are not in removal proceedings, and for the defensive process, for young people who are in removal proceedings before the Executive Office for Immigration Review.<sup>2</sup>

## II. An Overview of SIJS

SIJS allows young people to apply for permanent residence in the United States. The statutory definition of SIJS, which outlines the eligibility criteria, can be found at INA § 101(a)(27)(J).<sup>3</sup> To be eligible for SIJS, a young person must be under the age of twenty-one and unmarried. Before filing the SIJS application, they must first obtain an order from a juvenile court finding that (1) they have been declared dependent on a juvenile court or legally committed to or placed under

<sup>1</sup> The Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the ILRC is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. For the latest version of this practice advisory, please visit [www.ilrc.org](http://www.ilrc.org).

<sup>2</sup> This practice advisory draws on Chapters 8 and 9 of the ILRC's manual, *Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth* (6th Ed. 2021), which were written and updated by Kristen Jackson, Senior Staff Attorney at Public Counsel in Los Angeles, CA.

<sup>3</sup> 8 U.S.C. § 1101(a)(27)(J).

the custody of a state agency or department or an individual or entity appointed by a state or juvenile court; (2) reunification with one or both of the young person's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, and (3) it is not in the young person's best interest to be returned to their country of nationality or last habitual residence.<sup>4</sup> This order from a juvenile court is often referred to as a predicate order.

Once the young person has obtained a predicate order from a juvenile court, they can apply for SIJS with U.S. Citizenship and Immigration Services (USCIS) on Form I-360.<sup>5</sup> A young person who is granted SIJS is eligible to apply for lawful permanent residence (LPR) in the United States once a visa becomes available to them. One important limitation is that a young person who has been granted SIJS cannot help their parents obtain any immigration benefits by virtue of their relationship, even after they gain LPR status or U.S. citizenship.<sup>6</sup>

This practice advisory will focus on SIJS-based adjustment of status. For additional information about SIJS, including more detailed information about the adjustment of status process and sample adjustment of status application packets, see the ILRC's manual, *Special Immigrant Juvenile Status and Other Immigration Options for Children and Youth* (6th ed. 2021).

#### **New SIJS Regulation and Deferred Action Policy:**

On March 7, 2022, USCIS announced a new deferred action policy for SIJS along with newly promulgated SIJS regulations.<sup>7</sup> Under the new policy, USCIS will consider deferred action and employment authorization for young people who have received SIJS but who cannot yet apply to adjust status because a visa number is unavailable. USCIS will automatically conduct deferred action determinations and does not require a separate request or application. If granted, the young person will receive deferred action for a period of four years and will be eligible to apply for employment authorization during that time.<sup>8</sup>

<sup>4</sup> Id.

<sup>5</sup> For additional information on the juvenile court process in California see Katie Annand (KIND), Ashley Melwani (Legal Services for Children), & Rachel Prandini (ILRC), *Guidance for SIJS State Court Predicate Orders in California* (Jun. 8, 2021), <https://www.ilrc.org/guidance-sijs-state-court-predicate-orders-california-what-you-need-know-2021>.

<sup>6</sup> INA § 101(a)(27)(J)(iii)(II).

<sup>7</sup> See USCIS, USCIS to Offer Deferred Action for Special Immigrant Juvenile, Mar. 7, 2022, <https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles>; 87 Fed. Reg. 13,066 (Mar. 8, 2022).

<sup>8</sup> See 6 USCIS-PM J.4(G).

### III. SIJS-based Adjustment of Status under INA § 245(h)

Adjustment of status, the process of becoming a lawful permanent resident without leaving the United States to consular process, is governed by INA § 245. Subsection 245(h) outlines the special provisions that govern SIJS-based adjustment.

Adjustment of status generally requires that a person have been inspected and admitted or paroled into the United States.<sup>9</sup> For SIJS-based adjustment, young people with SIJS are deemed to have been paroled into the United States for the purposes of adjustment of status.<sup>10</sup> This means that they can apply to adjust status in the United States even if they entered the United States without inspection and were not initially admitted.<sup>11</sup>

In order to adjust status, a person must be admissible, meaning that they have not triggered the inadmissibility grounds in INA § 212(a). Young people with SIJS are automatically exempted from the inadmissibility grounds for public charge, labor certification, being present without admission or parole, misrepresentation (including false claims to U.S. citizenship), stowaways, not being in possession of a valid visa, and the three- and ten-year unlawful presence bars.<sup>12</sup> Additionally, the subsection provides an SIJS-specific waiver for most of the remaining inadmissibility grounds (except for – notably – the crimes-related grounds). Under the SIJS-specific waiver standard, certain grounds of inadmissibility can be waived for humanitarian purposes, family unity, or where it is otherwise in the public interest.<sup>13</sup> Beyond being admissible, an adjustment applicant must establish that they merit a favorable exercise of discretion.

In order to adjust status, a visa must be available. Visas for SIJS are issued from the fourth preference category of employment-based visas, or EB-4.<sup>14</sup> Due to the limited number of available visas in this category, there has been a backlog for SIJS-based adjustment for young people from certain countries since 2016. Visa availability can also impact the steps of the adjustment process. Young people who have an available visa can apply for SIJS and

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<sup>9</sup> INA § 245(a).

<sup>10</sup> INA § 245(h)(1); 8 C.F.R. § 245.1(e)(3)(i).

<sup>11</sup> The bars to adjustment of status at INA § 245(c) also do not apply to SIJS-based adjustment of status (except the terrorism-related bar). 7 USCIS-PM F.7(C)(3).

<sup>12</sup> INA § 245(h)(2)(A).

<sup>13</sup> INA § 245(h)(2)(B). For more information on SIJS and the grounds of inadmissibility, see Kathy Brady and Rachel Prandini, *Special Immigrant Juvenile Status (SIJS) & the Grounds of Inadmissibility* (Aug. 27, 2020), <https://www.ilrc.org/special-immigrant-juveniles-grounds-inadmissibility>.

<sup>14</sup> INA § 203(b)(4).

adjustment simultaneously.<sup>15</sup> Those who do not must apply for SIJS and then wait until their priority date is current to be able to apply for adjustment of status.<sup>16</sup>

Finally, the young person must remain classified as a special immigrant juvenile in order to adjust status.<sup>17</sup> Pursuant to the new final regulations on SIJS that went into effect on April 7, 2022,<sup>18</sup> there are only two grounds for automatic revocation of SIJS: 1) reunification with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable; or 2) administrative or judicial proceedings determine that it is in the best interest of the young person to be returned to their or their parents' country of nationality or last habitual residence.<sup>19</sup> USCIS may also revoke an approved SIJS petition on notice for "good and sufficient cause."<sup>20</sup>

Note that under the new regulations, special immigrant juveniles no longer need to remain under juvenile court jurisdiction until their application for adjustment of status has been approved. They must still remain under the jurisdiction of the juvenile court that issued the predicate order until their petition for SIJS (the Form I-360) is adjudicated. However, this requirement does not apply if the juvenile court jurisdiction ended solely because: 1) the petitioner was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached, or 2) the petitioner was the subject of a qualifying juvenile court order that was terminated based on age (so long as the petitioner was under twenty-one at the time of filing the petition).<sup>21</sup> Previously, USCIS also required that the young person remain unmarried until the grant of adjustment of status. Under the new regulations, a petitioner must only remain unmarried until the petition for SIJS is adjudicated.<sup>22</sup>

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<sup>15</sup> This will not be possible, however, for young people in removal proceedings (unless they are charged as an "arriving alien") because the immigration court will have jurisdiction over their adjustment of status application. See **Part B** of this Practice Advisory for more information.

<sup>16</sup> For additional information on visa availability, see Rachel Prandini, *Special Immigrant Juvenile Status and Visa Availability* (Jan. 21, 2021), <https://www.ilrc.org/special-immigrant-juvenile-status-visa-availability>.

<sup>17</sup> See 7 USCIS-PM F.7(C)(2).

<sup>18</sup> See 87 Fed. Reg. 13,066 (Mar. 8, 2022).

<sup>19</sup> 8 C.F.R. § 204.11(j)(1).

<sup>20</sup> 8 C.F.R. § 204.11(j)(2).

<sup>21</sup> 8 C.F.R. § 204.11(c)(3)(ii).

<sup>22</sup> 8 C.F.R. § 204.11(b)(2).

## A. The Affirmative Adjustment Process: For Young People who are not in Removal Proceedings

A young person who has not been placed in removal proceedings can apply for adjustment of status affirmatively with USCIS. Once you have confirmed that the client is eligible for SIJS and adjustment of status, they can file for adjustment on Form I-485, Application to Register Permanent Residence or Adjust Status.

### **Risks and Considerations when Applying Affirmatively:**

There are several considerations practitioners and clients must keep in mind when deciding whether to apply for SIJS affirmatively. When a young person files for SIJS affirmatively, they are essentially alerting immigration officials to their presence in the United States and their current immigration status. Although USCIS has repealed its more aggressive 2018 guidance on the issuance of Notices to Appear (NTA), it is possible that if the young person's application is denied, USCIS could issue an NTA, placing them in removal proceedings. It is therefore crucial to confirm the young person's eligibility for SIJS and adjustment of status, as well as discuss the risks and benefits of applying with them.

### 1. When to File

Once you have confirmed your client's eligibility for SIJS and adjustment of status, the first step is determining whether they can file for adjustment concurrently with their SIJS application. If the visa bulletin indicates that the young person has a visa available to them, they may file their I-485, simultaneously with their SIJS-based I-360 petition.<sup>23</sup> If the visa bulletin indicates that the young person does not have an available visa, they must first file the I-360 and wait until they can adjust status.<sup>24</sup> The receipt date for the I-360 serves as the priority date for when a visa will become available. For that reason, it is important to file the I-360 as soon as possible after obtaining the predicate order from the state juvenile court.

<sup>23</sup> The Visa Bulletin has different charts for "Final Action Dates" that are now current and "Dates for Filing" that are close to becoming current. In some months USCIS may allow people who will be filing applications for adjustment of status to file early, based on the "Dates for Filing" chart, even though their priority dates are not yet current. The benefit of filing for adjustment before the priority date becomes current is that it allows the young person to also file an application for employment authorization. Soon after the upcoming month's Visa Bulletin is posted, USCIS will announce whether it will allow use of the second chart. The State Department's Visa Bulletin website includes a link to USCIS's announcement as to which filing chart may be used in a particular month.

<sup>24</sup> Until 2016, the SIJS visa cap had never been reached and visas were available to all applicants. Since 2016, young people from El Salvador, Guatemala, Honduras, and Mexico have had to wait several months or years for an available visa. Young people from India have also been in a visa backlog intermittently in recent years.

## 2. Preparing the Filing Packet

The adjustment of status application will consist of the following forms:

- Form G-28, Notice of Entry of Appearance;
- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (if filing concurrently);
- Form I-485, Application to Register Permanent Residence or Adjust Status;
- Form I-765, Application for Employment Authorization (optional but helpful for a majority of clients);
- Form I-601, Application for Waiver of Grounds of Inadmissibility (if a ground of inadmissibility that is not automatically waived for SIJS applies, and is waivable under the SIJS waiver standard);
- Form I-912, Request for Fee Waiver, or required filing fee (note there are special SIJS-specific instructions as discussed below);
- Form I-693, Report of Medical Examination and Vaccination Record (in a sealed envelope, sometimes filed separately after USCIS requests it due to time-limited validity);
- Supporting documentation as required for each form.

### **Form G-28, Notice of Entry of Appearance:**

A G-28 provides notice that an attorney or accredited representative will appear on the young person's behalf before USCIS. A G-28 is required to make inquiries to USCIS about the petition or serve as the young person's legal representative at an interview.

### **Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant:**

The SIJS petition must be filed before or concurrently with the application to adjust status depending on visa availability. There is no filing fee for the I-360. In support of the I-360, the young person must file a copy of the juvenile court predicate order as well as proof of age. The I-360 also requires evidence of the factual basis for the juvenile court order's SIJS findings. Ideally, this factual basis information should be included in the juvenile court order itself, but USCIS will accept alternate forms of evidence.<sup>25</sup>

### **Form I-485, Application to Register Permanent Residence or Adjust Status:**

Form I-485 is the application used to apply to adjust status to permanent residence. You should file the Form I-485 and required supporting documentation as soon as the young person's priority

<sup>25</sup> See 6 USCIS-PM J.3(A)(3).



date allows them to file.<sup>26</sup> In addition to completing the I-485, the young person must submit two passport photographs, a copy of a government issued identity document, and a copy of their birth certificate or proof of age.

### **Form I-765, Application for Employment Authorization:**

A young person who has a pending application to adjust status is eligible for an employment authorization document (EAD).<sup>27</sup> While applying for an EAD is optional, it is beneficial for most young people to have one. An EAD authorizes the young person to work in the United States and allows them to apply for a social security number (SSN). Even clients who are too young to work may benefit from having an EAD to use as a photo identification document and to allow them to obtain an SSN. In order to apply for work authorization, the young person must file a Form I-765 and submit two passport photographs, in addition to the two required for the I-485, for a total of four. There is currently no filing fee for the I-765 when it is filed concurrently with an I-485 for which the fee is being paid. If it is filed with an I-485 for which a fee waiver is being sought, then a fee waiver for the I-765's filing fee should also be sought.<sup>28</sup>

### **Form I-601, Application for Waiver of Grounds of Inadmissibility:**

If the young person has triggered one of the grounds of inadmissibility that is not automatically exempted for SIJS and that can be waived with the SIJS waiver, they must file an application for a waiver of the grounds of inadmissibility on Form I-601. They should also submit supporting documentation showing that they are eligible for the waiver and merit a favorable exercise of discretion. The standard for the SIJS inadmissibility waiver is that it may be granted “for humanitarian purposes, family unity, or when it is otherwise in the public interest.”<sup>29</sup> For additional information on waiving inadmissibility for SIJS, see the ILRC’s practice advisory *Special Immigrant Juvenile Status (SIJS) and the Grounds of Inadmissibility*.<sup>30</sup>

### **Form I-912, Request for Fee Waiver:**

Currently, the filing fee for an I-485 application is \$1140 if the young person is under the age of fourteen. For young people over the age of fourteen, it is \$1225 because of an added \$85 biometrics fee. This fee, or a fee waiver request, must be included with the I-485 filing or the

<sup>26</sup> In some cases this may be while the Form I-360 is still pending. Additionally it is sometimes possible to file the I-485 before the priority date is current if USCIS allows for filing under the “Dates for Filing” chart in the Visa Bulletin that month.

<sup>27</sup> 8 CFR § 274a.12(c)(9).

<sup>28</sup> USCIS, Instructions for Form I-765, Aug. 25, 2020, <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.

<sup>29</sup> INA § 245(h)(2)(B).

<sup>30</sup> Kathy Brady and Rachel Prandini, *Special Immigrant Juvenile Status (SIJS) and the Grounds of Inadmissibility* (Aug. 27, 2020), [https://www.ilrc.org/sites/default/files/resources/sijs\\_and\\_grounds\\_of\\_inadmissibility\\_8.27.20.pdf](https://www.ilrc.org/sites/default/files/resources/sijs_and_grounds_of_inadmissibility_8.27.20.pdf).

application will be rejected. Young people who are applying for adjustment through SIJS are eligible for a fee waiver. An applicant for SIJS-based adjustment can request a fee waiver by including Form I-912 in their application packet. According to the form instructions, young people applying for adjustment through SIJS do not need to fill out Parts 4-6 of Form I-912 nor submit supporting documentation showing proof of income.<sup>31</sup> Instead, they can simply include evidence that they were approved for or filed for SIJS classification.<sup>32</sup>

### **3. Next Steps after Filing: Biometrics, Work Authorization, Medical Examination, and Interview**

#### **Biometrics:**

After the adjustment of status packet is received, USCIS will send a notice of receipt and a biometrics appointment notice. Young people over the age of fourteen must attend the appointment at a USCIS Application Support Center to have their biometric data collected, including a photograph, signature, and fingerprints. USCIS has also sometimes required children younger than fourteen to come in for biometric data collection. It is important for the young person to attend this appointment. Failure to attend a biometrics appointment could result in the denial of the adjustment application.

#### **Work Authorization:**

Following the biometrics appointment, USCIS will typically adjudicate the application for employment authorization and issue the young person an employment authorization document (EAD). Processing times for the I-765 vary, but generally take several months. Many practitioners report extended wait times. In some cases, practitioners have reported the adjustment application being adjudicated before the EAD was issued.

#### **Form I-693, Report of Medical Examination and Vaccination Record:**

A medical examination is required for adjustment of status to confirm that the young person is not subject to any health-related inadmissibility grounds.<sup>33</sup> Although it can be submitted at the same time as the I-485, it has a limited validity.<sup>34</sup> Thus, it is sometimes preferable to wait until USCIS requests it through a Request for Evidence (RFE) to ensure that it does not expire while the I-485 is pending. The medical examination must be performed by a civil surgeon designated

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<sup>31</sup> Department of Homeland Security, *Instructions for Request for Fee Waiver*, 7, <https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf>.

<sup>32</sup> *Id.* Because USCIS sometimes fails to apply this special rule for special immigrant juveniles, you may want to annotate the relevant page of the instructions and attach it to the I-912 to underscore that this special rule applies to your client's case.

<sup>33</sup> See INA § 212(a)(1).

<sup>34</sup> 8 USCIS PM B.4(C)(4).



by USCIS.<sup>35</sup> Once the examination is conducted, the civil surgeon will fill out the medical examination form, Form I-693, Report of Medical Examination and Vaccination Record and place it in a sealed envelope. The examination must then be submitted, in the sealed envelope, to USCIS.

**Medical Exam and Talking to Young People about Substance Use:**

The medical exam may include questions about drug use to determine whether the young person has a substance-related disorder that would render them inadmissible. You should be prepared to talk to your client about the impact that any drug use or involvement can have on their immigration case, including possible inadmissibility. This is especially important regarding marijuana, which is illegal under federal law and continues to carry harsh immigration penalties, despite its widespread legality at the state level. For more information about talking with clients about the risks of marijuana use, even in states where it is legal, see ILRC, Warning for Immigrants About Medical and Legalized Marijuana (May 21, 2021), <https://www.ilrc.org/warning-immigrants-about-medical-and-legalized-marijuana>.

**Interview:**

Since USCIS centralized SIJS processing in 2016, its policy has been to generally not interview young people seeking adjustment of status based on SIJS. However, USCIS retains discretion to schedule interviews if it deems it necessary. If an interview is required, USCIS will send a scheduling notice by mail instructing the young person to come to a local USCIS field office. In addition to a legal representative and interpreter, if one is needed, the young person may also bring a “trusted adult.”<sup>36</sup>

During the interview, an officer will typically ask questions that correspond to those on the I-360 and I-485 applications concerning eligibility for relief as well as admissibility. In some cases, officers may ask questions about the child’s underlying SIJS eligibility or about their past abuse, abandonment, and neglect. Given that USCIS relies on the juvenile court to make such determinations and “does not reweigh evidence” to determine whether the young person suffered abuse, neglect, or abandonment, this type of questioning may be inappropriate.<sup>37</sup>

If the interviewing officer insists on pursuing inappropriate or irrelevant lines of questioning, consider speaking to a supervisor, or ending the interview if necessary. Ideally, the interview will

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<sup>35</sup> To find a USCIS designated civil surgeon, go to <https://my.uscis.gov/findadoctor>. The amounts that civil surgeons charge varies and it may be preferable to call several civil surgeons to obtain and compare price quotes before scheduling the examination.

<sup>36</sup> 7 USCIS-PM F.7(E)(2).

<sup>37</sup> See 6 USCIS-PM J.2(D).

be short and focused on the young person's eligibility to adjust status. In some cases, the interviewing officer may be able to approve the adjustment application at the interview and the young person can immediately become an LPR. Otherwise, the young person will have to wait until USCIS mails a decision following the interview.

#### **4. Agency Decision**

If USCIS decides that additional evidence is needed, it may issue an RFE or Notice of Intent to Deny (NOID), requesting additional documentation within a certain timeframe. It is important to respond to an RFE or NOID prior to the deadline.

If USCIS approves the I-485, the young person will become a lawful permanent resident as of the date on the I-485 approval notice. Following the approval, they will receive their lawful permanent resident card, or "green card" by mail.

If USCIS denies the adjustment application, a young person can file a motion to reopen or reconsider the denial using Form I-290B, Notice of Appeal or Motion. Generally the motion to reopen or reconsider must be filed within thirty calendar days of the adverse decision, thirty three days if the denial is served by mail.<sup>38</sup> If USCIS denies both the I-360 and I-485, the I-360 denial decision can be appealed to USCIS's Administrative Appeals Office (AAO). It is also possible to bring a case in federal court challenging an I-360 denial under the Administrative Procedure Act or another federal law provision. Unlike the I-360, the denial of an I-485 cannot be administratively appealed.

### **B. The Defensive Process: Adjusting while in Removal Proceedings**

#### **1. Immigration Court Jurisdiction**

The immigration court has jurisdiction over applications to adjust status for most people who are in removal proceedings.<sup>39</sup> There is an exception for someone who is in proceedings but was charged as an "arriving alien." In that case, USCIS will retain jurisdiction over the adjustment application even if that person remains in proceedings.<sup>40</sup>

A young person who is in removal proceedings can also move to dismiss or terminate their removal proceedings so that they can file for adjustment before USCIS. In that case, once proceedings are dismissed, they can proceed as an affirmative applicant. Many young people

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<sup>38</sup> See 8 C.F.R. § 103.3.

<sup>39</sup> 8 C.F.R. § 1245.2(a)(1)(i).

<sup>40</sup> *Id.* at § 1245.2(a)(1)(ii).

find it preferable to adjust before USCIS rather than in court before an immigration judge, though there can be benefits to in-court adjustment as well (for example, it can sometimes be a quicker process). If your client would prefer to adjust before USCIS, you should ask the Immigration and Customs Enforcement (ICE) attorney in your case to join a motion to dismiss the removal proceedings. Under new guidance on prosecutorial discretion, ICE attorneys may agree to join a motion to dismiss, and the immigration judge may grant such dismissal of the removal proceedings upon the issuance of the juvenile court order, filing or approval of the SIJS petition, or once a visa is available to the young person.<sup>41</sup>

**Practice Tip: Prosecutorial discretion**

On May 27, 2021, ICE issued a department-wide memorandum (“Trasviña memo”) providing interim guidance about how and when ICE should exercise prosecutorial discretion (“PD”) under its interim enforcement priorities.<sup>42</sup> The memo covers various decisions made by ICE attorneys including whether to file or cancel a Notice to Appear; initiating or joining motions for continuances, dismissal, motions to remand or reopen, motions for relief; bond and release; and whether to pursue appeal. Additionally, following the Attorney General’s ruling in *Matter of Cruz Valdez*,<sup>43</sup> ICE attorneys may exercise PD by agreeing to administrative closure (and even if they do not, an immigration judge can grant administrative closure without ICE’s agreement).<sup>44</sup> The Trasviña memo provides a non-exhaustive list of mitigating and aggravating factors that should be considered for PD. On April 3, 2022, the ICE Principal Legal Advisor issued Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (“Doyle Memo”) further detailing how ICE should use these priorities to exercise PD in the context of removal proceedings.<sup>45</sup> This guidance provides an important advocacy tool for practitioners. Additionally, because of the different enforcement decisions covered by the memoranda beyond dismissal of the removal proceedings, practitioners should think strategically about what form of PD they want to request.

<sup>41</sup> ICE, *Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities* (May 27, 2021), <https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement-interim-guidance.pdf>. Note that the enforcement priorities on which the prosecutorial discretion memo is based are currently being litigated.

<sup>42</sup> *Id.*

<sup>43</sup> *Matter of Cruz Valdez*, 28 I. & N. Dec. 326 (A.G. 2021) (overruling *Matter of Castro Tum*, 27 I. & N. Dec. 271 (A.G. 2018) in its entirety).

<sup>44</sup> See *Matter of Avetisyan*, 25 I. & N. Dec. 688 (BIA 2012).

<sup>45</sup> ICE, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* (April 3, 2022), <https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement-guidanceApr2022.pdf>.

## 2. Adjusting Status before the Immigration Judge

The adjustment of status application for young people in removal proceedings has several important differences from the affirmative process before USCIS. The I-485 packet is filed with the immigration court and the immigration judge will generally adjudicate the adjustment application at an individual hearing. Some forms, including the I-360 petition and I-765 application for employment authorization, must still be submitted to USCIS, but the adjustment application itself must be filed with the immigration court.

A defensive SIJS adjustment packet will generally consist of the following forms:

### Filed with the immigration court:

- Form E-28, Notice of Entry of Appearance as Attorney or Representative before the Immigration Court;
- Form I-485, Application to Register Permanent Residence or Adjust Status;
- Form I-601, Application for Waiver of Grounds of Inadmissibility (if a ground of inadmissibility that is not automatically waived for SIJS applies, and is waivable with the SIJS waiver);
- Form I-693, Report of Medical Examination and Vaccination Record (served on ICE in a sealed envelope);
- Supporting documentation for the I-485 and I-601;
- Motion for fee waiver.

### Filed with USCIS:

- Required filing fees for all forms (if not moving to waive fees);
- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant;
- Form I-765, Application for Employment Authorization;
- Supporting documentation for the I-360 and I-765.

USCIS has jurisdiction over all I-360 SIJS petitions, even for people in removal proceedings. A young person in proceedings will therefore first have to file their I-360 with USCIS. Once a visa is available to them, they can file their I-485 with the immigration court.

If the young person cannot pay the filing fee, they can file a motion for a fee waiver with the court with their adjustment application. Note that EOIR takes the position that it cannot waive the \$85 biometrics fee. If the young person is not eligible for a fee waiver, they must pay the filing fee for

the I-485 before they can file in court. The immigration court does not accept filing fees.<sup>46</sup> Instead, the fees for the I-485 must be submitted by mail to USCIS.<sup>47</sup> If they need to apply for a waiver of a ground of inadmissibility, they must also pay the filing fee for the Form I-601 to USCIS before they can file it in court.

Once the young person has received a receipt for the filing fee (if they are not moving to waive the filing fee), they may file their I-485 packet with the immigration court. This can be done at the immigration court clerk's office. Alternatively, the immigration judge may order that it be filed in court at the young person's master calendar hearing. A copy of the packet must be served upon ICE counsel as well.

### **3. Next Steps after Filing: Biometrics, Work Authorization, and Medical Exam**

Once the I-485 has been received by the immigration court, the young person may apply for work authorization by filing the I-765 with USCIS. The I-765 packet, which includes the I-765, and all supporting documentation, must be filed with the USCIS Chicago Lockbox.<sup>48</sup> In addition to the I-765, the packet should include a Form G-28 Notice of Entry of Appearance, a Form I-912 Request for Fee Waiver, proof that the I-485 was filed with the immigration court, and two passport style photographs.

The young person must also file a biometrics packet with USCIS. Complying with biometrics requirements is crucial, as failure to do so could result in the application for adjustment not being considered. Once the biometrics packet is received, USCIS will issue a receipt notice that will later be filed with the immigration court. It will then send a biometrics appointment notice instructing the young person to come to a USCIS Application Support Center for the collection of their biometrics.

As with affirmative applications, in order to adjust status before the immigration court, the young person must submit a Form I-693, Report of Medical Examination and Vaccination Record prepared by a USCIS designated civil surgeon. For defensive adjustment applications, the sealed envelope containing the I-693 is served on ICE counsel. See Section III.A.3 above for information about preparing your client for the medical examination.

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<sup>46</sup> 8 C.F.R. § 1103.7(a)(3).

<sup>47</sup> For instructions on how to file the I-485 fee see USCIS, *Immigration Benefits in EOIR Removal Proceedings*, <https://www.uscis.gov/laws-and-policy/other-resources/immigration-benefits-in-eoir-removal-proceedings>.

<sup>48</sup> USCIS occasionally changes its filing procedures and addresses. For current filing information, please consult <http://www.uscis.gov/i-765>.

#### 4. Hearing before the Immigration Judge

After the adjustment application and biometrics packet are submitted, the immigration judge will generally schedule a merits hearing. At that hearing, the immigration judge may take testimony and will likely issue a decision on the young person's case.<sup>49</sup> Any supplemental materials or evidence must be filed no fewer than thirty days before the merits hearing unless the immigration judge issues a different deadline.<sup>50</sup>

In some cases the application may be adjudicated without a full merits hearing. Some immigration courts have standing orders providing for adjudicating relief “on the papers,” or without an evidentiary hearing. Some immigration judges may also adjudicate the adjustment application at the end of a master calendar hearing. You should consult with local practitioners to determine what the adjudication practices are in your immigration court, and which options are available to your client.

#### 5. Immigration Judge Decision and Appeals

If the immigration judge approves the case, the young person becomes a lawful permanent resident. If the case is denied, the child can file an appeal with the Board of Immigration Appeals (BIA). The BIA must receive the appeal no later than thirty calendar days after the immigration judge's oral decision or the mailing of their written decision.<sup>51</sup> BIA rulings can then be appealed to the federal appellate courts, depending upon the circumstances.

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<sup>49</sup> Some immigration courts' standing orders address the option of having applications for relief adjudicated on the papers—that is, without an evidentiary hearing at which the respondent testifies and is subject to cross-examination.

<sup>50</sup> Immigration Court Practice Manual 3.1(b)(ii)(A).

<sup>51</sup> See 8 C.F.R. § 1003.38.



## End Notes

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### About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend