



# OLR RESEARCH REPORT

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## **OLR BACKGROUNDER: SPECIAL IMMIGRANT JUVENILE STATUS**

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You asked about the (1) eligibility requirements for a child to be granted special immigrant juvenile status (SIJS), (2) SIJS application process, and (3) *Perez-Olano v. Holder* settlement agreement.

### **BACKGROUND**

In the Immigration Act of 1990, Congress created the “special immigrant juvenile” status (SIJS). The statute enabled undocumented children whose parents were unable to care for and protect them to become permanent U.S. residents. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) updated the SIJS eligibility criteria and streamlined the application process.

### **ELIGIBILITY REQUIREMENTS**

In order to qualify for SIJS:

1. the child must be (a) under age 21, (b) present in the United States, and (c) unmarried;
2. the child must be (a) declared dependent on a state juvenile court (see below) or (b) committed to, or placed in the custody of, a state agency, state department, or court-appointed person; and

3. a juvenile court must find that (a) reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar state law basis; and (b) it is not in the child's best interest to return to the child's or the parent's home country or country of last habitual residence (8 C.F.R. § 204.11(c)(1-3)), (Immigration and Naturalization Act (INA) § 101(a)(27)(J)).

A child is dependent on a juvenile court if he or she has been the subject of juvenile court judicial or administrative proceedings (8 C.F.R. § 204.11(c)(6)). The child does not have to be in state custody or financially dependent on the state to be eligible for SIJS.

Under federal law, state juvenile courts do not have the jurisdiction to determine the custody status or placement of an alien in federal custody unless the U.S. Department of Health and Human Services (DHHS) Secretary grants the court such jurisdiction.

Once a child is designated SIJS, he or she may apply to become a lawful permanent resident (8 USC § 1255).

## **APPLICATION PROCESS**

An applicant must file at least two United States Citizenship and Immigration Services (USCIS) forms in order to get an SIJS-based green card:

1. [Form I-360](#) (Petition for Amerasian, Widow(er), or Special Immigrant) and
2. [Form I-485](#) (Application to Register Permanent Residence or Adjust Status).

The applicant may either file the forms together or file the Form I-360 (the SIJS petition) first and wait for a decision before filing the Form I-485 (the green card application). USCIS advises applicants to file the forms simultaneously. The applicant must include a filing fee with the I-485. The filing fee is \$1,070 or \$985 if the child is under age 14. There is no fee for filing the Form I-360 seeking SIJS.

Additionally, an applicant may file a:

1. [Form I-765](#) (Application for Employment Authorization) or

2. [Form I-601](#) (Application for Waiver of Grounds of Inadmissibility).

Both Forms I-765 and I-602 require filing fees (\$380 and \$585 respectively) unless the applicant has been granted a fee waiver after filing a [Form I-912](#) (Request for Fee Waiver).

## **PEREZ-OLANO V. HOLDER**

### ***Parties***

*Perez-Olano et al., v. Holder et al.*, CV 05-3604 (C.D. Cal. 2005) was a class action lawsuit filed against the U.S. attorney general, the Homeland Security secretary, and the Office of Refugee Resettlement, an agency in DHHS. The plaintiff class was composed of two subclasses, juveniles whose:

1. specific consent requests for state court jurisdiction were denied before they turned age 18 or
2. SIJS petitions were denied or revoked because they had “aged-out” before their petitions were processed.

The plaintiffs filed the class action on May 13, 2005 to challenge policies and practices they [alleged](#) unlawfully blocked children from SIJS designation and SIJS-based lawful permanent residence. The parties [settled](#) the case out of court.

### ***Settlement***

The *Perez-Olano v. Holder* settlement agreement took effect on December 14, 2010 and expires December 13, 2016. An April 4, 2011, USCIS [policy memorandum](#) outlined the agreement’s details. Under the terms of the agreement, juveniles whose applications for (1) SIJS or (2) SIJS-based adjustment of status were denied or revoked since May 13, 2005 may be eligible to file a motion to reopen. For the motion to be granted, the applicant must have:

1. applied for SIJS or SIJS-based adjustment of status on or after May 13, 2005;
2. filed a complete Form I-360 for SIJS classification before his or her 21<sup>st</sup> birthday; and

3. at the time of filing the Form I-360, been the subject of a valid juvenile court order that (a) made an abuse, abandonment, neglect, or similar finding under state law and (b) determined it was not in the applicant's best interest to be returned to the applicant's or parent's previous country of nationality or last residence.

Additionally, the juvenile court must have:

1. declared the applicant dependent on the court,
2. legally committed the applicant or placed the applicant in state custody, or
3. placed the applicant under the custody of a guardianship-appointed individual or entity.

The motion to reopen may be granted if each of the above criteria is met and the Form I-360 was originally revoked or denied solely because the:

1. applicant, who was under age 21 at the time of filing the Form I-360, turned 21 after filing the form but before either that form or the Form I-485 was adjudicated;
2. applicant's dependency order, which was valid and in effect when the I-360 was filed, was terminated based on age after filing the Form I-360 but before the Form I-360 or I-485 was adjudicated; or
3. applicant did not receive a grant of jurisdiction from federal authorities to the state juvenile court before invoking the juvenile court's jurisdiction and the juvenile court did not determine or alter the applicant's custody status or placement.

When a motion to reopen is granted, an immigration service officer reexamines the applicant's Form I-360 and either grants or denies the application. An applicant may appeal a denial to the USCIS Administrative Appeals Office.

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