



UPDATE ON SPECIAL IMMIGRANT JUVENILE STATUS: WHAT IS VISA AVAILABILITY?¹

February 2017

Special Immigrant Juvenile Status (SIJS) offers a path to a green card for certain immigrant youth. In particular, it provides an avenue for undocumented children to obtain legal status when they are subject to juvenile court jurisdiction, cannot be reunified with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law, and it is not in their best interest to return to their home country.² Youth who are successful in obtaining SIJS may apply for a green card. There is a limit on the number of children per country who can get a green card through SIJS in a given fiscal year. In the past, however, there were typically enough visas for children to adjust status without waiting. In other words, children were able to get a green card through SIJS as soon as their application for SIJS (the Form I-360) was approved. However, in the spring of 2016, visas ran out for children applying for SIJS-based adjustment of status from Northern Triangle countries (El Salvador, Guatemala, and Honduras). In the summer months, visas also ran out for children from Mexico and India. Currently, there continues to be a visa backlog for children from Northern Triangle Countries and Mexico.

What do I need to know to figure out if my SIJS client can adjust status?

In order to adjust status, your client must be 1) eligible to adjust status, and 2) have an immediately available visa. To satisfy the first prong, your client will need to show that she was approved for SIJS and is admissible (or eligible for a waiver). This practice advisory will focus on the second prong – how to determine if your client has an available visa. A visa must be available before U.S. Citizenship & Immigration Services (USCIS) can adjudicate the child’s application for adjustment of status (the Form I-485). To find out if a visa is available for your client, start by figuring out your client’s final action date.

How do I figure out my client’s final action date?

The Final Action Date is the date that the Form I-360 was filed. You can find this date on the I-360 receipt notice.

How do I find out if my client’s final action date is current?

The State Department issues a chart each month with visa availability for different visa categories. This chart is called the Visa Bulletin and can be found by searching online for “Visa Bulletin ‘Month’ 2017.” The visa bulletin is used to inform people which categories are backlogged, versus current. The visa bulletin has two charts within each of the Family-based and Employment-based categories: Chart A, and Chart B. For Special Immigrant Juveniles, look to the Employment-based Preference Cases Charts.

¹ 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. For questions regarding the content of this advisory, please contact Rachel Prandini at rprandini@ilrc.org.

² See 8 U.S.C. § 1101(a)(27)(J). For more information on Special Immigrant Juvenile Status, see ILRC, *An Overview to Special Immigrant Juvenile Status*, available at <https://www.ilrc.org/overview-special-immigrant-juvenile-status-updated-march-2015>.

- First, look at **Chart A** (“FINAL ACTION DATES FOR **EMPLOYMENT**-BASED PREFERENCE CASES”)
 - By law, visas for Special Immigrant Juveniles come from the employment-based 4th preference category.
- In **Chart A**, look at the “4th” preference line for your client’s country of origin³
 - If a “C” appears, that category is “current” and there are visas available, so you can file the I-485 regardless of your client’s final action date.
 - If a date appears, e.g. 15OCT13 (October 13, 2015), that means that a backlog exists, and you can only file the I-485 if the client’s final action date is EARLIER than the date listed. When a backlog exists, predicting exactly when the client will be able to adjust status is impossible. You must explain this uncertainty to clients.
 - See below for an example of the visa bulletin.

Employment based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C	C
2nd	C	15OCT12	C	15APR08	C	C
3rd	01AUG16	08SEP13	01AUG16	15MAR05	01AUG16	22JUL11
Other Workers	01AUG16	01DEC05	01AUG16	15MAR05	01AUG16	22JUL11
4th	C	C	15JUL15	C	15JUL15	C

Example: Albert is from Mexico and filed an SIJS-based I-360 with USCIS on November 1, 2015. His I-360 has been approved and he would like to file his application for adjustment of status. Can he do so based on the above chart? No, Albert cannot file his I-485 at this time, because the category his visa will come from is backlogged, and his final action date (November 1, 2015) falls after the date listed in that category (July 15, 2015).

Example: Lucinda is from El Salvador. She filed an SIJS-based I-360 on July 1, 2015. Her I-360 has been approved and she would like to apply for a green card. According to the above chart, can she file her I-485? Yes, Lucinda can file her I-485. Even though the category that her visa will come from

³ Note that only certain countries are listed by name, and all others fall into the first category – “All Chargeability Areas Except Those Listed.”

is backlogged, her final action date (July 1, 2015) is earlier than the date listed in that category (July 15, 2015).

Practice Tip: Even though youth from certain countries seeking a green card through SIJS may now experience a wait before they can get a green card, SIJS is still available, and youth should continue to seek the predicate findings from state court, and apply for Special Immigrant Juvenile Status with USCIS as soon as possible.

Even if my client's final action date is not current, can I still file the I-485?

Maybe. At times, USCIS permits the filing of I-485s (applications to adjust status) even though visas are not currently available because USCIS has determined that there are more visas available for the fiscal year than there are known applicants. This means that in some instances, it may be possible to file the I-485 with USCIS even if no visa is currently available to the client. The client will not be able to adjust status until there is a visa available, but the benefit of filing the I-485 (even though it cannot yet be adjudicated) is that it will allow the client to apply for work authorization. Having work authorization while waiting to be able to adjust status is a huge benefit to clients, as it provides them with a government-issued form of identification, and authorization to work.

The Visa Bulletin contains a separate chart – Chart B – with information about when you may be able to file the I-485 even if there is no visa available. Remember that it's only necessary to look at Chart B if your client does not have a current visa available under Chart A.

➤ *Step one:* Check the USCIS website to see if you can rely upon Chart B:

<https://www.uscis.gov/visabulletininfo>

- If the USCIS website says you can use the “Dates for Filing” chart (Chart B), then you can rely upon **Chart B** and may be able to file the I-485 even though visas are not yet available. For example, in October of 2016, USCIS allowed applicants to rely on Chart B:

For Employment-Based 1st through 4th Preference Filings:

You must use the Dates for Filing of Employment Based Visa Applications chart in the Department of State Visa Bulletin for **October 2016**.

- If the USCIS website says you must use the “Final Action Dates” chart (Chart A), then you cannot rely upon **Chart B**, and must use **Chart A**. Recall that if you must use Chart A, then you cannot file the I-485 unless your client's final action date is 1) earlier than any date that appears in the employment-based 4th preference category for your client's country of origin, or 2) current, as reflected by a “C” appearing in the 4th preference category for your client's country of origin.
- *Step two:* If you can rely upon Chart B per USCIS, look at Chart B (“B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS”)
- In **Chart B**, look at the “4th” preference line for your client's country of origin
 - If a “C” appears, that category is “current,” so you can file the I-485 regardless of when your client's I-360 was filed.
 - If a date appears, e.g. 15JAN17 (January 17, 2015), you can only file the I-485 if your client's I-360 was filed BEFORE that date.

What steps can I take to best protect my SIJS client in light of the visa backlog?

- Seek the state court order with SIJS findings as soon as possible.
- File the I-360 as quickly as possible (the same day the state court findings are made, if possible!). Remember that the date the I-360 is filed is very important because it secures your client's place in line for a visa – and even a few days difference in filing could make a difference of months or years in waiting for a visa.
- Remember that you can always file the I-360; there is no limit on the number of I-360s that can be filed.
- Check the Visa Bulletin for the current month as outlined above before filing the I-485 to avoid having it rejected.
- If your client's visa is current, file the I-485 as soon as possible.
- If your client's visa is not current under Chart A but filing the I-485 is permitted under Chart B, file the I-485 as soon as possible to ensure your client can get work authorization. Work authorization can be important even for clients who are too young to work, because it will provide them with a government-issued form of ID.
- Be aware that the child should remain under state court jurisdiction until the I-485 is adjudicated, unless he or she ages out.
- The child should not get married until the I-485 is adjudicated (if he or she does, the I-360 approval will be revoked).
- If your client's visa is (or would be) backlogged, consider applying for other forms of relief as well (such as U visas, VAWA, or T visas).