



SPECIAL IMMIGRANT JUVENILE STATUS & VISA AVAILABILITY

By Rachel Prandini

I. Introduction¹

Special immigrant juvenile status (SIJS) offers a path to a green card for certain immigrant youth. In particular, it provides an avenue for undocumented youth 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 country of nationality.² Youth who are successful in obtaining SIJS are eligible to apply for a green card. However, there is a limit on the number of people who can get a green card through SIJS in a given fiscal year, as well as a “per country” cap. Prior to 2016, there were typically enough visas for youth with SIJS to adjust status without waiting. In other words, youth 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, a visa backlog first emerged for youth applying for SIJS-based adjustment of status from El Salvador, Guatemala, and Honduras. In summer 2016, visas also ran out for children from Mexico and India.

In March 2023, the Department of State (DOS) issued a notice stating that it was changing its interpretation of the Immigration & Nationality Act (INA) provisions regarding the availability of visas in categories that are subject to an annual numerical limit.³ Because the DOS corrected the way it was calculating visa availability for special immigrant juveniles (among others), the landscape of visa availability for special immigrant juveniles will shift considerably as of April 2023.

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* (July 2021), <https://www.ilrc.org/overview-uscis%E2%80%99s-new-sijs-regulations>.

³ Department of State, Public Notice 11985, *Employment-Based Preference Immigrant Visa Final Action Dates and Dates for Filing for El Salvador, Guatemala, and Honduras* (March 21, 2023), <https://travel.state.gov/content/dam/visas/SIVs/EB-4-Federal-Register-Advance-Notice-3-22-2023.pdf>; subsequently published in the Federal Register at 88 Fed. Reg. 18252 (Mar. 28, 2023).

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

In order to adjust status as a special immigrant juvenile,⁴ your client must: 1) be eligible to adjust status,⁵ 2) have an immediately available visa, and 3) demonstrate that they merit a favorable exercise of discretion. This practice advisory will focus on the second prong—how to determine if your client has an available visa.⁶ A visa must be available before U.S. Citizenship & Immigration Services (USCIS) or the immigration court can adjudicate your client'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 priority date. If their priority date is "current" in a given month, then a visa is available to them. Note that sometimes priority dates retrogress, or move backwards, so you cannot assume once a visa is available that it will remain so. For example, in April 2023, many priority dates for special immigrant juveniles will retrogress based on DOS's change in how they interpret countries and categories that are "oversubscribed," and how they allocate visas, mentioned above and discussed in further detail below.

III. How do I figure out my client's priority date?

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

IV. How do I find out if my client's priority date is current?

The State Department issues a chart each month with visa availability for different visa categories and countries. This chart is called the Visa Bulletin and can be found online at: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html> (or by searching for "Visa Bulletin"). The Visa Bulletin is used to inform people which categories of visas are backlogged, versus current, and to track progress while waiting for a priority date to become current. The Visa Bulletin has two charts within each of the Family-based and Employment-based categories: Chart A, "Final Action Dates," and Chart B, "Dates for Filing." By law, visas for special immigrant juveniles come from the employment-based 4th preference category,⁷ so for special immigrant juveniles, look to the Employment-based Preference Cases charts.

- *Step one:* Look at Chart A, "FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES" under the Employment-based Preferences.

⁴ See INA § 245(h).

⁵ To satisfy this first requirement, your client will need to show that they have an approved petition for SIJS and are admissible (or eligible for a waiver) under all applicable inadmissibility grounds. For more information about special immigrant juveniles and the grounds of inadmissibility, see ILRC, *Special Immigrant Juveniles & the Grounds of Inadmissibility* (August 2020), <https://www.ilrc.org/special-immigrant-juveniles-grounds-inadmissibility>.

⁶ For more information about adjustment of status for special immigrant juveniles, see ILRC, *Adjustment of Status through Special Immigrant Juveniles Status* (June 2022), <https://www.ilrc.org/resources/adjustment-status-through-special-immigrant-juvenile-status-sijs-june-2022>.

⁷ See INA §§ 201(d), 202(a)(2), 203(b)(4).

- **Step two:** In Chart A, look at the “4th” preference line for your client’s country of origin.⁸
 - 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 priority date.
 - If a date appears, e.g. 15MAR18 (March 15, 2018), that means that a backlog exists, and you can only file the I-485 if the client’s priority 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 the below example of Chart A of the Visa Bulletin for employment-based preference cases.

**FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES
(MARCH 2023 EXCERPT)**

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1 st	C	01FEB22	C	01FEB22	C	C
2 nd	01NOV22	08JUN19	01NOV22	08OCT11	01NOV22	01NOV22
3 rd	C	01AUG18	C	15JUN12	C	C
Other Workers	01JAN20	01JUL14	01JAN20	15JUN12	01JAN20	01JAN20
4 th	01FEB22	01FEB22	15MAR18	01MAR21	01AUG20	01FEB22

Example: Albert is from Mexico and filed an SIJS-based I-360 with USCIS on November 4, 2021. 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 priority date (November 4, 2021) falls after the date listed in that category (August 1, 2020) for Mexico.

Example: Lucinda is from El Salvador. She filed an SIJS-based I-360 on February 5, 2018. 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 is backlogged, her priority date (February 5, 2018) is earlier than the date listed in that category (March 15, 2018). (Note that if Lucinda waits until April 2023 to file, she will look to the “All Chargeability Areas Except Those Listed” column, because the column for El Salvador, Guatemala, and Honduras will be removed starting in April.)

⁸ Note that only certain countries are listed by name, and all others fall into the first category— “All Chargeability Areas Except Those Listed.” Beginning with the April 2023 Visa Bulletin, El Salvador, Guatemala, and Honduras will no longer be a separate category.

PRACTICE TIP: Even though youth seeking a green card through SIJS experience a wait before they can get a green card, SIJS is still available, and youth should continue to seek the predicate findings from the state court and apply for special immigrant juvenile status with USCIS *as soon as possible*.

As discussed above, the DOS issued a notice in March 2023 stating that it was changing its interpretation of the INA regarding visa allocation. As a result of this change, beginning in April 2023, there is no longer a separate column for El Salvador, Guatemala, and Honduras, as there has been since May 2016; instead, those countries are included in the “All Chargeability Areas Except Those Listed.” This is because under the DOS’s new interpretation, these three countries are not actually “oversubscribed” in that they are not using up seven percent of the total employment and family-based preference visas available in a year (though they do exceed seven percent of the EB-4 subcategory). As a result of this corrected interpretation of the INA provisions on visa allocation, the final action dates for individuals from El Salvador, Guatemala, and Honduras in the EB-4 category will move forward several months in the April 2023 Visa Bulletin. However, for individuals from all other countries, this has led to a significant retrogression of final action dates. An excerpt of the April 2023 Visa Bulletin reflects these changes:

FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES (APRIL 2023 EXCERPT)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1 st	C	01FEB22	01FEB22	C	C
2 nd	01JUL22	08JUN19	01JAN11	01JUL22	01JUL22
3 rd	C	01NOV18	15JUN12	C	C
Other Workers	01JAN20	01OCT14	15JUN12	01JAN20	01JAN20
4 th	01SEP18	01SEP18	01SEP18	01SEP18	01SEP18

V. Even if my client’s priority date is not current, can I still file the I-485?

Maybe. In some months, 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 a benefit of filing the I-485 early (even though it cannot yet be adjudicated) is that it will allow the client to apply for an employment authorization document (EAD) in the (c)(9) category based on having a pending application for adjustment. Having an EAD 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.

ALERT! USCIS announced a new policy that went into effect on May 6, 2022 and that applies to young people who have been granted SIJS but are not yet able to apply for adjustment of status because they are waiting for a visa to be available. The new policy provides that young people stuck in the visa backlog will be considered for deferred action on a case-by-case basis. If deferred action is granted, it will be for a period of four years. Young people granted deferred action are then eligible to apply for an EAD for the period of deferred action by filing an Application for Employment Authorization (Form I-765), indicating eligibility category (c)(14). For more information on this new policy, see 6 U.S. Citizenship and Immigration Services Policy Manual (USCIS-PM) J.4(G).

USCIS stated in an April 27, 2022 Stakeholder Engagement on this new policy that it would not consider deferred action for special immigrant juveniles with a pending or approved Form I-485.⁹ Because of this, some individuals may wish to hold off on filing under Chart B as discussed in this section so that they will be eligible for deferred action and the associated potential for a four-year EAD (versus a one-year EAD based on having a pending I-485).¹⁰ Conversely, because deferred action is discretionary, some individuals may prefer to pursue an EAD based on having a pending application for adjustment of status.

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 for the current month: <https://www.uscis.gov/visabulletininfo>.
 - If the USCIS website says you can use the “Dates for Filing” chart (Chart B) for the relevant month, then you can rely upon Chart B and may be able to file the I-485 even though a visa is not yet available. For example, in March 2023, USCIS allowed applicants to rely on Chart B:

For Employment-Based Preference Filings:

For all employment-based preference categories, you must use the [Dates for Filing chart in the Department of State Visa Bulletin for March 2023](#).

- 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 priority date is 1) earlier than the 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.

⁹ USCIS, *Special Immigrant Juvenile Policy Updates, Pre-Submitted and Live Q&A, National Engagement* (Apr. 27, 2022), 5, https://www.uscis.gov/sites/default/files/document/outreach-engagements/National_Engagement-Special_Immigrant_Juvenile_Policy_Updates-Q%26A.pdf.

¹⁰ Note however that USCIS has in fact granted deferred action to some special immigrant juveniles with a pending Form I-485. It is unclear at this time if these were granted in error or if USCIS has changed its policy on this point.

- *Step two:* If you *can* rely upon Chart B per USCIS, look at Chart B (entitled “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. 15APR18 (April 15, 2018), you can only file the I-485 if your client’s I-360 was filed BEFORE that date.

See the following example of Chart B of the Visa Bulletin for employment-based preference cases.

DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS (JANUARY 2021 EXCERPT)

Employment-based	All Chargeability Areas Except Those Listed	CHINA-mainland born	EL SALVADOR GUATEMALA HONDURAS	INDIA	MEXICO	PHILIPPINES
1 st	C	01NOV20	C	01NOV20	C	C
2 nd	C	01OCT16	C	15MAY11	C	C
3 rd	C	01JUN18	C	01JAN14	C	C
Other Workers	C	01JUL09	C	01JAN14	C	C
4 th	C	C	01JUL18	C	C	C

Note: In January 2021, USCIS required employment-based applicants to rely on Chart A.

Example: Marc is from Mexico. He filed an SIJS-based I-360 on April 17, 2020. His I-360 has been approved and he would like to apply for a green card in January 2021. Could he file his I-485?

No, Marc could not have filed his I-485 in January 2021. Even though the category that his visa will come from is listed as current according to the above chart, Chart B (reflected by a “C”), in January 2021, USCIS did not allow filing under Chart B. Instead, in January 2021, applicants had to follow Chart A, which listed a date of December 1, 2018 for 4th preference category applicants from Mexico. Marc’s priority date was not earlier than that date, so he did not yet have a visa available.

VI. What steps can I take to best protect my SIJS client considering 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.

- Around the 15th of every month, the next month's Visa Bulletin is usually posted online, so you can start getting the I-485 application ready to file if you see that your client's visa will be current in the coming month. The Visa Bulletin goes into effect on the first day of that month, e.g., the March 2023 Visa Bulletin went into effect on March 1, 2023.
- Check the Visa Bulletin for the current month as well as whether USCIS is allowing use of Chart B that month (if you hope to rely on Chart B to file early) 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, consider filing the I-485 to allow your client to apply for work authorization under the (c)(9) category. However, also consider whether filing the I-485 may make your client ineligible to receive deferred action, which could provide them the opportunity to seek work authorization under the (c)(14) category for a period of four years. Keep in mind that 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 your client must remain under state court jurisdiction until the I-360 is adjudicated, unless they age out of state court jurisdiction.¹¹ (Note that aging out of eligibility for SIJS-based adjustment of status is not an issue so long as the Form I-360 is filed with USCIS prior to your client's twenty-first birthday.)¹²
- Inform your client that they must not get married until the I-360 is adjudicated.¹³
- Warn your client about the risks of becoming inadmissible, particularly through interactions with the criminal or juvenile system.
- If your client's visa is (or would be) backlogged, consider applying for other forms of relief as well (such as asylum, VAWA, T visas, or U visas).

¹¹ 6 USCIS-PM J.2(C)(4); 8 CFR § 204.11(c)(3)(ii). It is also okay if juvenile court jurisdiction terminates because the petitioner was adopted, placed in a permanent guardianship, or another child welfare permanency goal was reached. *Id.*

¹² William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5080 (December 23, 2008), Section 235(d)(6).

¹³ 8 CFR § 204.11(b)(2).

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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 the fundamental rights of immigrant families and communities.