



Frequently Asked Questions About USCIS’s SIJS Deferred Action Policy¹

Updated June 28, 2023

On May 6, 2022, U.S. Citizenship and Immigration Services (USCIS) began implementation of a policy benefitting certain individuals who have been granted Special Immigrant Juvenile Status (SIJS) (*i.e.*, have an approved SIJS petition, Form I-360). Under this policy, USCIS individually considers for four-year grants of deferred action individuals with approved SIJS petitions who are not able to apply for adjustment of status (a “green card”) because they do not have a currently available visa. Once granted deferred action, these individuals are eligible to apply for employment authorization (a “work permit”). This policy helps children and youth in the SIJS “green card backlog,” who, despite having been approved for SIJS, must wait years before they can apply for a green card because of annual numerical visa limits. Before the deferred action policy, children and youth in the SIJS green card backlog—which now affects SIJS beneficiaries from all parts of the world²—had no way of obtaining a work permit during their years-long wait for a visa number.

The [End SIJS Backlog Coalition](#), a project of the National Immigration Project, is a nationwide coalition of directly impacted youth and allied advocates seeking to eradicate the SIJS backlog legislatively, and in the meantime mitigate its worst harms through administrative reforms. The Coalition appreciates USCIS’s deferred action policy as a needed first step in protecting these youth. However, we continue to encourage Congress to pass legislation eliminating the numerical visa limits and to urge the Department of Homeland Security (DHS) to enact more robust and

¹ Publication of the End SIJS Backlog Coalition, <https://www.sijsbacklog.com/>, 2023, 2022. This FAQ is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). This FAQ was written by Rebecca Scholtz, Senior Staff Attorney, National Immigration Project of the National Lawyers Guild, with contributions from Elizabeth Badger, Senior Attorney, Political Asylum/Immigration Representation Project; Dalia Castillo-Granados, Director, Children’s Immigration Law Academy of the American Bar Association; Kristen Jackson, Senior Staff Attorney, Public Counsel; Rachel Prandini, Staff Attorney, Immigrant Legal Resource Center; Elizabeth Rieser-Murphy, Staff Attorney, The Legal Aid Society of New York; and Alexandra Rizio, Managing Attorney for Training and Partnerships, Safe Passage Project. The FAQ is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case.

² In the [April 2023 Visa Bulletin](#), the “final action date” for all SIJS beneficiaries seeking to adjust status, regardless of their country of origin, was September 1, 2018. This means that only those SIJS beneficiaries who filed their SIJS petition before September 1, 2018, had a visa available for obtaining their green card in April 2023. The April 2023 Visa Bulletin reflected a “[retrogression](#)” in final action dates for SIJS beneficiaries from all countries other than El Salvador, Guatemala, and Honduras. For more on how the April 2023 Visa Bulletin changes impact SIJS recipients, see the End SIJS Backlog Coalition’s [Practice Alert](#) on this topic.

lasting protection through regulations that recognize that all Special Immigrant Juveniles should be afforded employment authorization and protection from removal until they are able to apply for a green card. This FAQ provides an overview of the SIJS deferred action policy.

1. What Is Deferred Action?

Deferred action, [according to USCIS](#), is an “act of prosecutorial discretion” to defer removal of a noncitizen from the United States for a certain period of time. Persons granted deferred action are eligible to apply for employment authorization under 8 CFR § 274a.12(c)(14). Deferred action does not confer lawful status and does not prevent DHS prosecutors in immigration court from advocating for a removal order, nor does it prevent an immigration judge from issuing a removal order. However, unless deferred action is terminated, it **does** prevent immigration authorities from physically removing a noncitizen from the United States.

2. Who Qualifies for Consideration of Deferred Action Under the Policy?

USCIS will consider deferred action for individuals who:

- Have an approved SIJS petition (Form I-360), and
- Are not eligible to apply for adjustment of status solely due to [visa unavailability](#).

USCIS will consider individuals for deferred action under this policy regardless of their status in any immigration court removal proceedings—*e.g.* individuals can receive deferred action even if they have pending immigration court proceedings or a final order of removal.

3. Who Is Not Eligible for Consideration for Deferred Action Under the Policy Despite Having an Approved SIJS Petition?

Despite meeting the criteria described in Question 2 above, individuals will not be considered for deferred action if they are in Immigration and Customs Enforcement (ICE) detention.

Initially, USCIS also stated that those with a pending adjustment of status application (Form I-485) were ineligible for deferred action, even if they lack a current priority date *e.g.* because the [visa bulletin](#) retrogressed after they filed their adjustment application. However, on a [new SIJS FAQ webpage](#) published on June 15, 2023, USCIS acknowledged that individuals with pending adjustment applications—whether pending with USCIS or the immigration court—whose visas retrogressed after they applied for adjustment of status would be considered for deferred action. Starting in early 2023, many practitioners reported receiving deferred action grants for clients with approved SIJS petitions and pending, but retrogressed, adjustment of status applications.

4. What Factors Will USCIS Use to Decide Whether to Grant an Eligible Individual Deferred Action?

USCIS will make deferred action decisions on an individualized, case-by-case basis, considering the totality of the evidence to decide if the person merits a favorable exercise of discretion. USCIS has indicated that it will weigh all relevant positive and negative factors and will grant deferred action if the positive factors outweigh the negative.

USCIS has stated that strong **positive discretionary factors** include:

- The fact that the individual has an approved SIJS petition and will be able to apply to adjust status when they have an available visa number, and
- The SIJS eligibility criteria, including that a state court determined it was not in the individual’s best interest to be returned to their country of origin.

USCIS has stated that strong **negative discretionary factors** that might weigh against a deferred action grant include:

- Where background and security checks indicate an admissibility ground that cannot be waived, and
- Serious unresolved criminal charges that may result in an inadmissibility ground that cannot be waived.

However, USCIS [acknowledges](#) that it may grant deferred action despite the above-mentioned negative factors if “case-specific circumstances warrant it.”

USCIS has not requested or suggested that practitioners submit additional evidence with their client’s SIJS petition to support a favorable exercise of discretion to grant deferred action. Some practitioners may wonder whether such submissions are critical if their client presents negative factors such as an extensive juvenile delinquency record. Though each situation must be judged on its own merits, as a general rule it may be wise to forgo submitting such evidence. Its submission may both draw unnecessary attention to the negative factors the evidence is attempting to outweigh and inadvertently raise the bar for other young people with similar case profiles.

The Coalition is tracking SIJS deferred action adjudication trends as part of our ongoing administrative advocacy. We encourage practitioners to report deferred action denials and terminations through our SIJS deferred action [survey](#).

5. What Is the Procedure for USCIS’s Deferred Action Adjudications?

The following details about the deferred action adjudication process come from the [USCIS Policy Manual provisions on the deferred action policy](#), [notes from USCIS](#) on their April 27, 2022 stakeholder event, and the [USCIS SIJS FAQ webpage](#):

- USCIS will conduct deferred action determinations automatically for individuals who meet the criteria. There is no separate deferred action application process.
- USCIS will not issue Requests for Evidence or Notices of Intent to Deny in connection with deferred action adjudications.
- USCIS will review biographic background checks performed during the SIJS petition adjudication during its deferred action adjudication. Submission of biometrics is generally not part of the process, but USCIS may require an individual to submit biometrics or attend an interview before granting deferred action.
- While USCIS has not committed to a time frame in which it will make deferred action decisions, for cases where the SIJS petition has not yet been approved, USCIS generally issues a deferred action decision at the same time as the SIJS petition approval. However, USCIS may issue the deferred action decision after the SIJS petition approval if USCIS determines that biometrics are needed to complete the deferred action review.

- USCIS has stated that there is no appeal or reconsideration process if USCIS denies an individual deferred action or terminates a previous deferred action grant. However, USCIS notes that individuals who believe their deferred action denial or termination was erroneous can contact the USCIS Contact Center at 800-375-5283.
- USCIS can terminate an individual's grant of deferred action at any time as a matter of discretion, for example, if USCIS determines that favorable discretion is no longer warranted, if the previous deferred action was granted in error, or if the individual's SIJS petition is revoked. The Coalition is aware of a small number of cases where USCIS terminated deferred action for an individual after fingerprints were taken for their work permit application.

6. How Long Will Deferred Action Grants Last?

USCIS will grant deferred action for a period of four years. If, 150 days before the individual's deferred action grant is set to expire, they are still ineligible to apply for adjustment of status because of visa unavailability, they can submit a renewal request to USCIS. Renewal requests will be subject to the same eligibility requirements as apply to the initial deferred action decision. USCIS has indicated that it will provide guidance about a renewal process in the future.

7. How Will USCIS Provide Notice of Deferred Action Decisions Under This Policy?

For individuals who have already received an SIJS petition approval, USCIS will mail the individual a new Form I-797 (Notice of Action) reflecting the deferred action decision. USCIS will also mail a copy of the Form I-797 to the individual's legal representative if a Form G-28 is on file for the SIJS petition, Form I-360. [Here](#) is a sample notice of a deferred grant on Form I-797 for an individual whose SIJS petition had previously been approved. For individuals whose SIJS petitions are approved on or after May 6, 2022, USCIS will generally include notice of the deferred action decision with the Form I-797 informing the individual of the SIJS petition's approval. [Here](#) is a sample Form I-797 concurrently notifying an individual that their SIJS petition was approved and that they were granted deferred action. Individuals can also check the [USCIS online case status tool](#), which USCIS will update with deferred action decisions (see Question 8 below).

8. How Can an SIJS Beneficiary Check the Status of USCIS's Consideration of Deferred Action?

Individuals can check the status of deferred action decisions by entering their 13-character SIJS petition (Form I-360) receipt number, with no spaces, into the [USCIS online case status tool](#). The Coalition's youth organizing group created a one-page flyer, in [Spanish](#) and [English](#), for SIJS youth in the backlog explaining how to use the online case status tool and linking to a video demonstration. [Here](#) is an example of notice via the USCIS case status tool of a deferred action grant at the same time as the I-360 approval, and [here](#) is an example of notice of a deferred action grant for an individual whose I-360 had already been approved.

9. What Can Be Done If USCIS Does Not Make a Deferred Action Decision in a Case That Is Eligible for Consideration for Deferred Action?

Individuals who are eligible for consideration for deferred action but have not received a deferred action adjudication from USCIS can contact the [USCIS Contact Center](#) to ask for a deferred action adjudication. Contacting the USCIS Contact Center will generate an internal notice within USCIS that will go to the National Benefits Center, where USCIS adjudicates SIJS petitions and makes SIJS deferred action decisions. Many practitioners representing SIJS clients have expressed dissatisfaction with the USCIS Contact Center, finding it to be a poor substitute for the NBC SIJ email inbox that USCIS largely discontinued.³ The Coalition encourages practitioners to document specific problems with using the Contact Center in SIJS cases and to send those examples, along with a request for reinstatement of the NBC SIJ email inbox, to USCIS's Office of Public Engagement inbox, public.engagement@uscis.dhs.gov.

10. What Is the Process for Requesting a Work Permit for Those Granted Deferred Action Under the Policy?

A deferred action grant provides a basis to apply for work authorization through Form I-765, indicating category (c)(14). 8 CFR § 274a.12(c)(14). USCIS has stated that individuals must wait until USCIS has granted deferred action to submit Form I-765. They may include proof of the deferred action grant with the application, such as the Form I-797 or a printout from the online case status tool, but they do not need to provide such proof as USCIS is able to verify in its system that deferred action has been granted. They should generally follow the [Form I-765 instructions](#), such as by including two color passport-style photos with the application as well as a copy of one of the specified identification documents listed on page 25. USCIS has clarified that the ORR Verification of Release Form is a valid form of government identification for purposes of the SIJS deferred action work permit requests. USCIS has also indicated that there is no minimum age requirement for seeking an employment authorization document. Applicants do **not** need to submit the [Form I-765 Worksheet](#), as USCIS will presume economic necessity.

Applicants for work authorization must submit the [filing fee](#) or apply for a fee waiver using [Form I-912](#). USCIS applies the same generous fee waiver policy toward work authorization requests submitted by SIJS deferred action recipients as it applies to fee waiver requests filed by SIJS-based adjustment of status applicants. Under that policy, found on page 7 of the [Form I-912 instructions](#), individuals should submit a copy of the SIJS approval notice with the fee waiver request and need not fill out Parts 4-6 of the Form I-912 nor show proof of income.⁴ If the fee waiver is incorrectly denied, it is recommended that the applicant re-file and flag for supervisory review. An email to lockboxsupport@uscis.dhs.gov may also help in resolving the issue. A sample I-765 filing based on SIJS deferred action can be viewed [here](#).

³ USCIS discontinued the dedicated inbox it previously provided for SIJS inquiries, and now only responds to inquiries sent to that inbox regarding expedite requests for children detained in Office of Refugee Resettlement custody who are seeking to enter the Unaccompanied Refugee Minors program and are within four months of aging out.

⁴ If an applicant qualifies for a fee waiver based on a different ground, nothing prevents them from relying on that ground instead.

Applicants for work authorization based on SIJS deferred action should file Form I-765 and supporting documents with the USCIS Lockbox in Chicago or Phoenix, depending on the address where the individual physically resides.⁵ After filing Form I-765, SIJS deferred action recipients will be scheduled for an appointment at an Application Support Center to submit biometrics, at which photo identification is generally required. However, USCIS recognizes that SIJS petitioners and recipients may lack official government-issued photo identification and has [clarified](#) that a “juvenile court-issued order citing the SIJ petitioner or recipient as the subject of the order is typically enough to verify identity” even if it lacks a photo; an ORR Verification of Release form is also a valid form of government identification.

USCIS indicated that there will be no special process to expedite these work permit requests. Individuals who meet the general criteria for expedite requests can make such a request through the process outlined on the [USCIS website](#) and based on the criteria listed in the [USCIS Policy Manual](#). The Coalition invites practitioners who experience long adjudication delays or receive work permit application denials to complete our [survey](#) regarding USCIS adjudications of SIJS deferred action work permit requests.

11. How Long Will Work Permits Based on (c)(14) Deferred Action Last?

According to USCIS, work permits will expire on the date that the individual’s deferred action expires.

12. Can an SIJS Beneficiary Who Already Has a Pending Work Permit Request Filed Under Category (c)(11) Request That USCIS Convert the Work Permit Request to (c)(14)?

USCIS has stated that individuals who previously filed (c)(11)-based work permit requests would be required to file a separate work authorization request under category (c)(14) after being granted deferred action. However, according to a [declaration](#) by a senior USCIS official filed in pending litigation, on May 9, 2022 USCIS “directed officers to convert all prior filed (c)(11) employment authorization applications (Form I-765) to (c)(14) if and when the applicant was granted SIJ deferred action.” And, according to the declaration, as of June 24, 2022, USCIS had converted approximately 195 (c)(11)-based work permit requests to category (c)(14) and then approved them. A number of practitioners have reported receiving work permit request approvals under category (c)(14) for clients who had applied under category (c)(11).

13. Are SIJS Beneficiaries Who Already Have a Work Permit Based on a Pending Asylum Application (Category (c)(8)) Eligible for Deferred Action and a (c)(14) Work Permit Under This Policy?

Nothing in USCIS’s deferred action policy indicates that having another basis for a work permit precludes an individual from being considered for deferred action and, if approved, applying for a deferred action-based work permit. Through results from a survey the Coalition circulated to immigration practitioners, we have learned that USCIS is granting deferred action to individuals

⁵ See USCIS, Direct Filing Addresses for Form I-765, Application for Employment Authorization (last reviewed/updated Apr. 3, 2023), <https://www.uscis.gov/i-765-addresses> (providing addresses for (c)(14) employment authorization requests based on SIJS deferred action).

with approved SIJS petitions even if they have another work permit application pending or already have work authorization through another category, such as (c)(8).

14. How Can Individuals with Pending or Approved SIJS Petitions Update Their Address with USCIS?

Individuals with pending or approved SIJS petitions should update their address by using the [online AR-11 form](#), or by mailing [Form AR-11](#) to USCIS, at U.S. Department of Homeland Security, Citizenship and Immigration Services, Attn: Change of Address, 1344 Pleasants Drive, Harrisonburg, VA 22801.

15. How Does a Deferred Action Grant Impact an SIJS Beneficiary's Removal Proceedings?

A grant of deferred action does not directly impact an SIJS beneficiary's removal proceedings, though it does impact physical removal. The deferred action grant does not prevent ICE OPLA from advocating in immigration court for a noncitizen's removal or prevent an immigration judge from ordering removal. It does prevent immigration authorities from physically removing an individual from the United States while the individual has deferred action. Though the deferred action does not directly impact ongoing removal proceedings, it is certainly a relevant factor that could help to persuade ICE OPLA to agree to dismiss the removal case or take other favorable action. For more information on seeking prosecutorial discretion with ICE OPLA, see ICE OPLA's [webpage on prosecutorial discretion](#).⁶ The Coalition asks practitioners to report your experiences seeking prosecutorial discretion on behalf of SIJS clients in the green card backlog via [this survey](#).

16. Can a Person Granted Deferred Action Under This Policy Obtain [Advance Parole](#)?

No.

17. How Can I Get Involved in Efforts to End the SIJS Backlog and Improve Administrative Policies Impacting SIJS Youth?

If you are interested in joining our efforts to advocate for an end to the SIJS Backlog, please consider [joining the End SIJS Backlog Coalition](#). If you are a directly impacted youth, you can join the Coalition's youth organizing group by completing this [form](#).

18. Where Can I Find More Information About the USCIS SIJS Deferred Action Policy?

This FAQ largely draws from five USCIS sources, which individuals seeking more information about the deferred action policy should review:

1. The USCIS [SIJS FAQ webpage](#).
2. The March 7, 2022 [policy alert](#).
3. [USCIS Policy Manual provisions](#) that incorporate the deferred action policy.

⁶ An ICE prosecutorial discretion guidance document specifically recognizes individuals with pending or approved SIJS petitions as potentially warranting favorable discretion. See ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (Aug. 10, 2021), <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>.

4. Statements made by USCIS personnel during an [April 27, 2022 stakeholder event](#) and memorialized in notes, [USCIS Special Immigrant Juvenile Policy Updates Pre-Submitted and Live Q&A National Engagement Apr. 27, 2022](#).
5. The July 2022 [declaration](#) of Rose Kendrick, the Deputy Director of the USCIS National Benefits Center, filed in litigation concerning (c)(11)-based EAD requests for SIJS youth.

Practitioners can submit general questions about the policy to USCIS's Office of Public Engagement, at public.engagement@uscis.dhs.gov.