Practice Alert: Guidance on Adjustment of Status for Youth with Special Immigrant Juvenile Status Using INA § 245(h) with a Non-SIJS Petition[1]

June 30, 2025

I. Introduction

Special Immigrant Juvenile Status (SIJS) is a humanitarian immigration protection that provides a pathway to lawful permanent residence for noncitizen children up to the age of 21 years who have been abused, neglected, or abandoned by their parent(s), and where a state juvenile court has determined that it is not in the child's best interest to be returned to their country of origin.[2] A child who receives SIJS can apply for lawful permanent residence once a visa is available and they meet other eligibility requirements.[3] Visas for Special Immigrant Juveniles come from the employment-based fourth preference (EB-4) category by statute, pursuant to which no more than 7.1 percent of the worldwide level of employment-based visas may be allocated to all categories of "special immigrants," which includes but is not limited to SIJS youth.[4] Since 2016, there has been more demand for EB-4 visas than yearly visas available, which has led to a growing backlog of available EB-4 visas. Because of this visa backlog, SIJS youth must wait years before a visa is available for them to seek SIJS-based lawful permanent residence. However, some youth with approved SIJS may have a non-SIJS-based path to adjustment of status, such as through a family-based immigration petition. Most SIJS youth, however, did not enter the United States after having been "inspected and admitted or paroled" as is generally required to adjust status.[5]

There is a largely un-tested legal argument that young people with approved SIJS petitions can use the SIJS-specific adjustment provisions at INA § 245(h) to satisfy the "inspected and

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[1] Publication of the End SIJS Backlog Coalition, a project of the National Immigration Project. This practice alert is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). The authors of this resource are Dalia Castillo-Granados, Director, American Bar Association's Children's Immigration Law Academy; Rachel Prandini, Managing Attorney, Immigrant Legal Resource Center; and Rebecca Scholtz, Senior Staff Attorney, National Immigration Project. The authors would like to thank the following individuals for their thoughtful contributions to this resource: Rachel Davidson, Director, End SIJS Backlog Coalition; Michelle Méndez, National Immigration Project Director of Training and Legal Resources; and Clara Shanabrook, National Immigration Project Summer Law Clerk. This resource is not a substitute for independent legal advice provided by legal counsel familiar with a client's case.

[2] *See* INA § 101(a)(27)(J).

[3] See INA § 245(h), (a).

[4] *See* INA §§ 203(b)(4), 101(a)(27)(J).

[5] *See* INA § 245(a).

admitted or paroled" requirement that applies to many other forms of adjustment. Using INA § 245(h) to allow an SIJS youth to pursue adjustment of status with a non-SIJS petition requires that immigration adjudicators accept a "juvenile-based" reading of the SIJS-specific adjustment provision, allowing the youth with SIJS to use that provision even if they are not seeking adjustment based on their approved SIJS petition but rather using some other non-SIJS immigrant petition. This practice alert gives a background on SIJS and adjustment of status under INA § 245(h), provides legal arguments for a "juvenile-based" reading, discusses potential roadblocks to successfully advancing these arguments, and provides tips for advising clients about this approach.

This practice alert, which is intended for practitioners representing SIJS youth, was created by the End SIJS Backlog Coalition. The Coalition is a national group of directly impacted SIJS youth and allied advocates working together to end the SIJS backlog and its harms, including by protecting the right of SIJS youth to remain safely in the United States while they pursue permanency. While we wait for a legislative solution to the visa backlog, the Coalition seeks solutions to mitigate the worst of its harms. Allowing SIJS youth to use INA § 245(h) with a non-SIJS petition would not only further the congressional intent behind the SIJS program—to provide permanency for child survivors of parental maltreatment—but it would also alleviate the EB-4 backlog for all individuals with special immigrant petitions. Moreover, as the Trump administration has made it harder and harder for SIJS youth to avoid removal while they wait for a visa to become available, it is important that SIJS youth consider all available options to obtain lawful permanent residence.

II. Background on SIJS and adjustment of status under INA § 245(h)

The requirements for SIJS are found at INA § 101(a)(27)(J) and 8 CFR § 204.11. An SIJS petitioner must be under the age of 21 when the petition is filed, be unmarried and physically present in the United States through the filing and adjudication of the SIJS petition, be the subject of a qualifying state court order with the required judicial determinations, and the request for SIJS must warrant consent from the Department of Homeland Security (DHS). The state court judicial determinations required for SIJS are: (1) that the child cannot reunify with their parent or parents due to abuse, neglect, abandonment or a similar state law basis; (2) that it is not in the child's best interest to be returned to their country of origin; and (3) that the child has been declared dependent on the court or has been placed by the court into the custody of an individual or state entity.[6] USCIS is required by statute to adjudicate SIJS petitions within 180 days.[7]

A grant of the SIJS petition means that the child is now "in line" for an immigrant visa and on the pathway to adjust their status to lawful permanent residence. To qualify for adjustment of status, the SIJS youth must have a visa available to them and meet other requirements discussed below. Starting in 2016, SIJS youth from certain countries were unable to immediately apply for lawful permanent residence because annual visa caps were reached—and what is known as the SIJS visa backlog began.[8] As mentioned previously, SIJS youth are subject to annual visa caps

[6] INA § 101(a)(27)(J).
[7] 8 U.S.C. § 1232(d)(2); *see* 8 CFR § 204.11(g)(1).
[8] *See* Dep't of State, Visa Bulletin (May 2016), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2016/visa-bulletin-for-may-2016.html.

because, by statute, their visas derive from a numerically-restricted employment-based visa category, INA § 203(b)(4). As of December 2024, there were almost 180,000 individuals, including SIJS youth, with approved employment-based petitions waiting for visa availability.[9] While historically SIJS youth from El Salvador, Guatemala, Honduras, and Mexico were the ones impacted by the visa backlog, the current Visa Bulletin reflects the current reality that now all EB-4 petitioners from all countries, including SIJS youth, are impacted by the backlog.[10]

Once an SIJS youth has reached the "front of the line," in other words their priority date is before the final action date on that month's visa bulletin, they may apply for adjustment of status. The SIJS-specific adjustment provision found at INA § 245(h) allows those with approved SIJS petitions to adjust status regardless of their manner of entry because they are deemed paroled for purposes of adjustment under INA § 245(a).[11] The SIJS-specific provisions of the adjustment statute also make certain grounds of inadmissibility and bars to adjustment inapplicable to Special Immigrant Juveniles and provide a waiver for other grounds of inadmissibility.[12]

Nothing in the statute prohibits a youth classified as a Special Immigrant Juvenile from adjusting status using a non-SIJS petition for which there is an immediately available visa. In October 2023, the End SIJS Backlog Coalition requested that USCIS issue guidance to adjudicators instructing them that a youth with an approved SIJS petition should be able to use the benefits conferred on them at INA § 245(h) to pursue an application for adjustment of status based on any other basis for adjustment available to that youth. USCIS responded in December 2023 that they would "consult internally on the feasibility of implementing this suggestion."[13] USCIS did not issue guidance on this topic before the end of the Biden administration, but practitioners can move forward with these arguments despite a lack of a specific policy.

III. Arguing that clients with an approved SIJS petition can use the SIJS-specific adjustment provisions to adjust using a non-SIJS petition

This section offers arguments that practitioners might make to USCIS or in immigration court to argue that a client with an approved SIJS petition meets certain adjustment of status requirements related to a non-SIJS adjustment application. The arguments are based on the plain text of the SIJS adjustment statute and implementing regulations, as well as the fact that this interpretation would align with longstanding USCIS policy interpreting a similar statutory provision.

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[9] *See* USCIS Immigration and Citizenship Data, Form I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability (Fiscal Year 2025, Quarter 1), https://www.uscis.gov/sites/default/files/document/data/eb_i140_i360_i526_performancedata_fy2025_q1.xlsx.

[10] *See* Dep't of State, Visa Bulletin (June 2025), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2025/visa-bulletin-for-june-2025.html (showing "Unauthorized" for all countries in the EB-4 category).

[11] INA § 245(h)(1); *see also* 8 CFR § 245.1(e)(3)(i) ("For the limited purpose of meeting one of the eligibility requirements for adjustment of status under section 245(a) of the Act, which requires that an individual be inspected and admitted or paroled, an applicant *classified as a special immigrant juvenile* under section 101(a)(27)(J) of the Act will be deemed to have been paroled into the United States as provided in § 245.1(a) and section 245(h) of the Act." (emphasis added)).

[12] INA § 245(h)(2), 245(c); 8 CFR § 245.1(e)(3)(ii)-(v).

[13] *See* Letter from Avideh Moussavian, Office of Policy and Strategy Chair, to author (Dec. 5, 2023) (on file with author), https://www.uscis.gov/sites/default/files/document/foia/SpecialImmigrantJuveniles-Scholtz.pdf.

A. The plain language of the SIJS adjustment provisions tie them to the noncitizen classified as a Special Immigrant Juvenile, rather than the type of adjustment sought.

The INA's plain text allows a noncitizen with an approved SIJS petition to use the SIJS-specific adjustment provisions regardless of the basis for the adjustment. This section lays out the argument for interpreting the SIJS-specific language in the adjustment statute to follow the *individual* classified as a Special Immigrant Juvenile, rather than the *type* of adjustment sought.

The plain text of the SIJS adjustment statutory and regulatory provisions demonstrate that a noncitizen with an approved SIJS petition can use the SIJS-specific adjustment provisions regardless of the basis for the adjustment. INA § 245(h)(1) states, "[i]n applying this section to a special immigrant described in [INA § 101(a)(27)(J)] such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled." In other words, if a person has been classified as a Special Immigrant Juvenile under INA § 101(a)(27)(J) through an SIJS I-360 Petition approval, when they seek adjustment under INA § 245(a) they are deemed to have been paroled. The provision carries no further requirement limiting the underlying visa petition the INA § 245(a) adjustment can be based on. So, for example, an SIJS youth who entered the United States without inspection should be eligible to seek adjustment through an approved I-130 immediate relative petition filed by a U.S. citizen stepparent, satisfying the INA § 245(a) "admitted or paroled" requirement through INA § 245(h)(1).

Similarly, the adjustment statute specifically exempts from certain INA § 245(c) adjustment bars "a special immigrant described in [INA § 101(a)(27)(J)]." *See* INA § 245(c)(2). Here again, if the person has been classified as a Special Immigrant Juvenile under INA § 101(a)(27)(J), when they seek adjustment under INA § 245(a) they are exempt from certain INA § 245(c) bars, with no requirement that the INA § 245(a) adjustment be based on an underlying SIJS visa petition. So, for example, an SIJS youth who married a lawful permanent resident after their SIJS petition was approved[14] and whose approved I-130 relative petition filed by their LPR spouse now has a current priority date under the F2A family preference category can argue that they are not barred under INA § 245(c) from adjustment of status due to prior unauthorized employment or failure to maintain lawful status.

Likewise, the inadmissibility exemptions found at INA § 245(h)(2)(A) "shall not apply" when "applying [INA §245(a)] to a special immigrant juvenile described in [INA § 101(a)(27)(J)]." The plain meaning of that language is that when a person classified as a Special Immigrant Juvenile seeks adjustment of status under INA § 245(a), the specified inadmissibility grounds "shall not apply," INA § 245(h)(2)(A), because of their classification as a Special Immigrant Juvenile and regardless of the visa petition being used. The same is true for the inadmissibility waiver provisions found at INA § 245(h)(2)(B). Thus, for example, an SIJS youth who made a false claim to U.S. citizenship but who is otherwise eligible for family-based adjustment could argue that, under INA § 245(h)(2)(A), the inadmissibility misrepresentation ground "shall not apply" in determining their inadmissibility as an immigrant.

[14] Per the 2022 final regulations, marriage after SIJS petition approval is not a grounds for revocation. 8 CFR § 204.11(j)(1). However, if an SIJS applicant gets married *before* the SIJS petition is approved, the marriage renders them ineligible for SIJS. 8 CFR § 204.11(b)(2).

USCIS's regulations interpreting INA § 245 likewise recognize that the SIJS-specific adjustment provisions are tied to the individual SIJS youth, not to the type of petition under which adjustment is sought. For example, 8 CFR § 245.1(e)(3)(i) states that an adjustment applicant "classified as a special immigrant juvenile under [INA § 101(a)(27)(J)]" will be deemed paroled for purposes of INA § 245(a)—without limiting language about the type of visa petition underlying the INA § 245(a) adjustment. Likewise, 8 CFR § 245.1(e)(3)(ii) recognizes that an "applicant classified as a special immigrant juvenile" is not subject to many INA § 245(c) bars. Further, 8 CFR § 245.1(e)(3)(iii) recognizes that an adjustment applicant "classified as a special immigrant juvenile" is exempt from certain inadmissibility grounds.[15]

B. A "juvenile-based" reading of the SIJS adjustment provisions aligns with longstanding USCIS policy in a similar context.

Not only is the statutory language clear that the SIJS adjustment provisions are "juvenile-based," but the "juvenile-based" reading aligns with longstanding USCIS policy interpreting a similar statute. INA § 245(i) makes eligible for adjustment those who filed a visa petition or labor certification prior to the sunset of the provision; for those who filed after January 14, 1998, the statute also requires physical presence in the United States on December 21, 2000. Since the amendment to the statute in 1997, the Immigration and Naturalization Service (INS) adopted an "[noncitizen]-based" reading of INA § 245(i).[16] As the individual is grandfathered under the statutory provision, they preserve their eligibility to adjust status using the INA § 245(i) provisions, but they do not have to adjust based on the initial petition or application that gave rise to their INA § 245(i) eligibility. They can use a different petition as the basis for adjustment under INA § 245(i), so long as the initial visa petition was approvable when filed.

Applying a "noncitizen-based" approach to the INA § 245(h) is thus consistent with existing USCIS policy, which applies a noncitizen-based approach to INA § 245(i). Once a child's SIJS petition is approved, they become a "special immigrant described in section 1101(a)(27)(J) of this title"—the description of whom the INA § 245(h) benefits apply to. The provisions found at INA § 245(h) are conferred on any individual classified as a Special Immigrant Juvenile who is adjusting status under INA § 245(a), regardless of the underlying basis. Further, a "noncitizen-based" reading of INA § 245(h) would allow certain SIJS youth subject to the visa backlog to benefit from an alternative petition to adjust their status. That means fewer youth in the backlog, and more youth likely able to move forward with their permanent residency after much instability in their lives. This result furthers the congressional intent behind the SIJS program to provide permanency, safety, and stability to vulnerable young people whom a juvenile court has recognized should remain in the United States.

[15] See also the corresponding EOIR adjustment regulations. 8 CFR § 1245.1(e)(3) (referring to a "qualified special immigrant under [INA § 101(a)(27)(J)]").

[16] *See* Memorandum for All Regional Directors All District Directors All Officers in Charge All Service Center Directors Asylum Directors District Counsels Training Facilities: Glynco, GA and Artesia, NM, 1999 WL 33435638, at *1 (1999); Adjustment of Status to That Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility, 66 Fed. Reg. 16383, 16384–85 (Mar. 26, 2001); *Matter of Estrada*, 26 I&N Dec. 180, 185 (BIA 2013).

IV. Potential roadblocks to approval of non-SIJS-based adjustment applications seeking to use the SIJS-specific adjustment provision

While the Coalition believes there is a strong textual argument for the "juvenile-based" reading of the SIJS adjustment provisions, we do not have data regarding the success rate of this argument with either USCIS or in immigration court. Given the anti-immigrant approach taken by the Trump administration, it is unclear what the chances of success are for young people who choose to try these arguments. In part for that reason, it may be wise to make the narrowest argument necessary given the client's particular circumstances. For example, for a client who entered without inspection but has no INA § 245(c) or inadmissibility-based barriers to adjustment, the practitioner would only make the parole argument but not, for example, argue that the client is exempt from inadmissibility grounds pursuant to INA § 245(h)(2)(A).

For clients seeking to adjust via a non-SIJS petition who want to argue that they are exempt from certain inadmissibility grounds and/or eligible for an inadmissibility waiver under INA § 245(h)(2), practitioners should also be aware of limiting language in agency guidance related to these issues. For example, the regulations on inadmissibility waivers for SIJS youth describes those eligible for the waiver as "applicant[s] seeking to adjust status based upon their classification as a special immigrant juvenile."[17] Similarly, the instructions for the waiver application, Form I-601, describe the INA § 245(h) waiver provisions as relevant to those "applying for adjustment of status based on your approved Form I-360 classifying you as an SIJ."[18] Similarly, the instructions accompanying the adjustment of status application, Form I-485, state, "USCIS considers anyone granted special immigrant juvenile classification to have been paroled into the United States for the purpose of special immigrant juvenile based adjustment, regardless of how you actually arrived in the United States."[19] In other words, while the statutory plain language does not limit those with approved SIJS petitions to a specific type of adjustment, other sources of authority do suggest that the INA § 245(h)'s provisions apply specifically to SIJS-based adjustment of status.

While it is important to be aware of this guidance, practitioners can argue that the statutory language is clear, and that this guidance simply describes the traditional context in which SIJS youth are seeking adjustment of status. It does not address, nor foreclose, the ability of a small number of SIJS youth to adjust status based on a non-SIJS petition using the INA § 245(h) adjustment provisions.

V. Advising clients about the possibility of pursuing these arguments

Given the roadblocks identified in Section IV, clients must be informed of the risks of pursuing adjustment of status based on a non-SIJS petition, but relying upon the SIJS-specific adjustment

[17] 8 CFR § 245.1(e)(3)(v).
[18] USCIS, Form I-601 Instructions, at 16 (Jan. 20, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-601instr.pdf; *see also* USCIS Policy Manual, Vol. 7, Pt. F, Ch. 7.C.4 (describing INA § 245(h) inadmissibility exemption and waiver as applying to "applicants seeking LPR status based on the SIJ classification").
[19] USCIS, Form I-485 Instructions, at 23 (Jan. 20, 2025), https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf.

provision. For clients who are not in removal proceedings, this includes the risk of being issued a Notice to Appear (NTA) and placed into removal proceedings if USCIS denies the adjustment application. Under current USCIS guidance, USCIS will issue an NTA upon issuance of an unfavorable decision on a benefit request if the person is not lawfully present in the United States.[20] Because the government does not believe that SIJS alone confers lawful immigration status, a person whose application for adjustment of status is denied and who has no other lawful status should expect to be issued an NTA. When a noncitizen is placed into removal proceedings, there is also a possibility that DHS could detain them during the pendency of those removal proceedings.[21] Note, however, that the person could then renew their application for adjustment of status in front of the IJ.

For clients pursuing adjustment either affirmatively with USCIS or defensively in immigration court, another risk of pursuing this approach is that the client could lose significant money paid for the adjustment fees if the application is denied. Although SIJS-related forms are now fee exempt pursuant to 8 CFR § 106.3(b)(1), USCIS may not consider a family-based adjustment application to fall into these fee exemptions, which could result in the application being rejected if it is filed without a fee. One could try arguing that USCIS should apply a "juvenile-based" reading of the regulation on fee exemptions as well, but it is unclear whether this would be successful, and thus the risk of rejection based on lack of a fee remains high. If the client opts to pay the fee to avoid this uncertainty, they risk losing their money if the application is denied.

Should the client decide to move forward with a non-SIJS-based application for adjustment of status, arguing that one or more of the special provisions for adjustment as a Special Immigrant Juvenile should apply, practitioners must ensure they are competent to represent the client in the specific type of adjustment of status case. If the client is pursuing family-based adjustment and the practitioner is newer to family-based adjustment applications, the ILRC's manual *Families & Immigration*[22] may provide a helpful introduction to the eligibility requirements and the process of applying. Practitioners may also consider referring the case out if they feel they cannot competently represent the client in their application for adjustment of status.

Another consideration is that given the novel nature of these arguments, the practitioner must be prepared to represent the client in removal proceedings if they apply affirmatively for adjustment and then are issued an NTA, or to file an appeal if they apply for adjustment in immigration court and the IJ denies the application. If the client is in removal proceedings and they have not had an opportunity to first advance these arguments before USCIS, they may request discretionary termination under 8 CFR § 1003.18(d)(1)(ii) arguing that they are prima facie eligible for adjustment of status. However, a decision from an IJ may be the best opportunity for judicial review, given restrictions on judicial review of adjustment denials.[23] To preserve the best

[20] USCIS, Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, at 5 (Feb. 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

[21] Practitioners should also assess, based on the individual client's circumstances, whether or not the client would be eligible for release on an IJ bond.

[22] ILRC, *Families & Immigration* (6th ed. 2021), https://store.ilrc.org/publications/families-immigration (updated version forthcoming in 2025).

[23] *See Patel v. Garland*, 596 U.S. 328, 347 (2022) (holding that "[f]ederal courts lack jurisdiction to review facts found as part of discretionary-relief proceedings") ; *see generally* NILA, *Practice Advisory: Judicial Review of*

chance for judicial review in the event the IJ denies the adjustment, practitioners should frame the argument as a legal issue and submit a pre-hearing brief making the legal argument for eligibility for adjustment of status. Both clients and practitioners must understand and plan for these potential possibilities.

Practitioners should also be aware of the possibility of receiving an approval of adjustment of status based on a non-SIJS petition based on the above-described arguments, that the government later claims was issued in error. This is because USCIS or the IJ could grant adjustment without fully understanding the novel nature of the arguments being advanced, especially if the arguments are not clearly articulated in the cover letter or a pre-hearing brief. Given the lack of written policy on this issue, it is also possible that the agency could change its position at a later point in the client's immigration journey. While an approval of this nature could certainly be a success for the client, it is possible that USCIS could later attempt to rescind the client's adjustment of status or find them ineligible for naturalization,[24] or that DHS could place the client into removal proceedings claiming that they were admissible at the time of adjustment under INA § 237(a)(1)(A). One way to mitigate this risk is to be explicit in the cover letter or pre-hearing brief about the SIJS-related argument for adjustment eligibility.

VI. Conclusion

Now more than ever, SIJS youth are at risk of removal while they are waiting for a visa to become available, despite Congress' intent to offer these youth permanency in the United States. For those SIJS youth who have another potential path to adjustment of status, it may be worthwhile to pursue the argument that the SIJS-specific adjustment provision is tied to the youth, not to the petition used, and thus that the SIJS youth meets the eligibility criteria for the non-SIJS form of adjustment.

To help us track the development of this argument, please reach out to us at rebecca@nipnlg.org and dalia.castillo-granados@abacila.org if you make this argument to USCIS or the immigration court.

To help The End SIJS Backlog Coalition monitor trends and develop resources to support SIJS youth, please consider completing the following surveys:

- ICE/OPLA Practices Vis a Vis SIJS-Eligible Children
- EOIR Practices Vis a Vis SIJS-Eligible Children
- SIJS Deferred Action Policy
- EAD Decisions for SIJS Deferred Action Recipients

Advocates can join the Coalition and help us put an end to the SIJS backlog and its harms by signing up here.

Discretionary Relief After Patel v. Garland (Nov. 29, 2022), https://immigrationlitigation.org/wp-content/uploads/2022/11/PATEL-Advisory-Update.pdf.

[24] If they apply for naturalization, USCIS will consider whether they were lawfully admitted for permanent residence. USCIS will find the person ineligible for naturalization if their LPR status was obtained in error, even if the absence of fraud or willful misrepresentation (in other words, even when it was granted due to government error). *See* USCIS Policy Manual, Vol. 12, Pt. D, Ch. 2.A.5.

The End SIJS Backlog Coalition is organizing SIJS youth impacted by the backlog. It is important for SIJS youth to have peer support and community in this time and to learn how to advocate for themselves in case they are stopped, arrested, or detained. We invite practitioners to encourage their clients to join our community of trained and activated SIJS youth by signing up here or by reaching out to our Youth Organizer, Alejandra Cruz, at alejandra@nipnlg.org.