

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Parts 204, 205, and 245

[CIS No. 2474-09; DHS Docket No USCIS-2009-0004]

RIN 1615-AB81

### Special Immigrant Juvenile Petitions

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Homeland Security (DHS) proposes to amend its regulations governing the Special Immigrant Juvenile (SIJ) classification, and related applications for adjustment of status to permanent resident. The Secretary may grant SIJ classification to aliens whose reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. This proposed rule would require a petitioner to be under the age of 21 only at the time of filing for SIJ classification. This proposed rule would require that juvenile court dependency be in effect at the time of filing for SIJ classification and continue through the time of adjudication, unless the age of the juvenile prevents such continued dependency. Aliens granted SIJ classification are eligible immediately to apply for adjustment of status to that of permanent resident.

**DATES:** Written comments must be submitted on or before November 7, 2011.

**ADDRESSES:** You may submit comments, identified by DHS Docket No. USCIS-2009-0004 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* You may submit comments directly to USCIS by e-mail at [USCISFRComment@dhs.gov](mailto:USCISFRComment@dhs.gov). Include DHS Docket No. USCIS-2009-0004 in the subject line of the message.

- *Mail:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529-2020. To ensure proper handling, please reference DHS Docket No. USCIS-2009-0004 on your correspondence. This mailing address may be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* Sunday Aigbe, Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 5012, Washington, DC 20529-2020. Contact Telephone Number (202) 272-8377.

**FOR FURTHER INFORMATION CONTACT:** Rosemary Hartmann, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529-2099, telephone (202) 272-8350 (this is not a toll free number).

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#### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. U.S. Citizenship and Immigration Services (USCIS) also invites comments that relate to the economic, or federalism effects that might result from this proposed rule.

Comments from individuals and agencies with direct experience handling SIJ cases are particularly encouraged. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

*Instructions:* All submissions received must include the agency name and DHS Docket No. USCIS-2009-0004 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. See the **ADDRESSES** section above for information on how to submit comments. Those wishing to submit anonymous comments should do so electronically at <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

#### II. Background and Legislative Authority

Section 101(a)(27)(J) of the Immigration and Nationality Act of 1952 (INA or Act), as amended, 8 U.S.C. 1101(a)(27)(J), permits the Secretary of Homeland Security to grant special immigrant juvenile classification to certain aliens whom a juvenile court has declared to be dependent on the court, or whom the juvenile court has committed to or placed under the custody of a State agency, department, individual, or entity. The juvenile court must determine that reunification of the alien with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under State law. In addition, it must be determined in administrative or judicial proceedings that the return of the alien to the alien's or the alien's parent's country of nationality or last habitual residence would not be in the alien's best interest.

This proposed rule would implement:

- The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, 108 Stat. 4319 (Jan. 25, 1994),

- The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act),

Public Law 105–119, 111 Stat. 2440 (Nov. 26, 1997).

- The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006), and

- The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRPA 2008), Public Law 110–457, 122 Stat. 5044 (Dec. 23, 2008).

The Immigration and Nationality Technical Corrections Act of 1994, the CJS 1998 Appropriations Act and TVPRPA 2008 amended section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J), which permits certain juvenile aliens to petition for special immigrant juvenile classification, and section 245(h) of the Act, 8 U.S.C. 1255(h), which permits aliens classified as special immigrant juveniles to adjust status to permanent resident.

The Immigration and Nationality Technical Corrections Act of 1994 expanded the group of eligible aliens to include not only those dependent on a juvenile court, but those the court has legally committed to, or placed under the custody of, an agency or department of a State. The CJS 1998 Appropriations Act limited SIJ eligibility by requiring that dependency be due to abuse, abandonment, neglect, or a similar basis under State law. In addition, the consent functions were added in 1998. The scant legislative history behind these amendments suggests that Congress intended to limit eligibility to prevent potential abuse of this benefit, tying eligibility more directly to judicial findings of abuse, abandonment, or neglect and allowing the government to consent to the State court's jurisdiction and to the granting of an immigration benefit. *See* H.R. Rep. No. 105–405, at 130 (1997).

VAWA 2005 added section 287(h) to the INA, protecting a child applying for SIJ status from being compelled to contact the child's alleged abuser or any family members of the abuser. INA section 287(h), 8 U.S.C. 1357(h).

The TVPRPA 2008 expanded eligibility for SIJ status in a number of ways. First, TVPRPA 2008 replaced the requirement of eligibility for long-term foster care with a new requirement that a juvenile's reunification with one or both parents is not viable due to abuse, abandonment, neglect or a similar basis under State law. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). Second, TVPRPA 2008 further expanded the group of eligible aliens to include those placed by a juvenile court with an individual or entity. INA section 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). In addition,

Congress modified the consent requirements. DHS consent is simply consent to the grant of SIJ status and not consent to the dependency order serving as a precondition to the grant of SIJ status. INA section 101(a)(27)(J)(iii), 8 U.S.C. 1101(a)(27)(J)(iii). TVPRPA 2008 vested the specific consent function with the Secretary of Health and Human Services. INA section 101(a)(27)(J)(iii)(I), 8 U.S.C. 1101(a)(27)(J)(iii)(I). TVPRPA 2008 includes age out protection so that an alien cannot be denied SIJ classification based on age if the alien was under 21 years of age when the petition was filed. TVPRPA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6).

This proposed rule would clarify procedural and substantive requirements for SIJ petitions. The proposed rule also would implement statutorily mandated changes by revising the existing eligibility requirements, including protections against aging-out, adding the revised consent requirements, and further exempting SIJ adjustment of status applicants from several grounds of inadmissibility.

This rule proposes to require that an alien be under the age of 21 at the time of filing. The proposed rule would require that a juvenile be declared dependent on a juvenile court or have been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. TVPRPA 2008 section 235(d)(1)(A). The proposed rule would require that such dependency, commitment, or custody, be in effect at the time of filing and continue through the time of adjudication, unless the age of the juvenile prevents such continuation. TVPRPA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6); *see* proposed 8 CFR 204.11(b)(1)(iv) and 8 CFR 205.1(a)(3)(iv)(B).

### III. Special Immigrant Juvenile Classification and Related Adjustment of Status

#### A. Eligibility Requirements

An alien seeking classification as a special immigrant juvenile must file a Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360). DHS proposes to require that an alien is eligible for SIJ classification if he or she:

- (1) Is present in the United States;
- (2) Is under 21 years of age at the time of filing;
- (3) Is unmarried;
- (4) Has been declared dependent on a juvenile court, or has been legally committed to, or placed under the custody of, an agency or department of

a State, or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation;

(5) Is the subject of a State or juvenile court determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;

(6) Has been the subject of a determination in judicial or administrative proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(7) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

Based on the CJS 1998 Appropriations Act and TVPRPA 2008, the proposed regulation would significantly change the Form I–360 eligibility criteria. *See* proposed 8 CFR 204.11(b) (currently 204.11(c)). DHS proposes to require the petitioner to be under the age of 21 at the time of filing as provided by TVPRPA 2008. DHS also proposes to require that dependency, commitment, or custody per section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i), as amended by the TVPRPA 2008, be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

#### 1. Under 21 Years of Age

Under TVPRPA 2008, USCIS may not deny SIJ classification based on age if the alien was a child on the date on which the alien petitioned for SIJ classification. TVPRPA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). Under section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), a child is defined as under 21 years of age and unmarried. Through these provisions, Congress has expressed an intent that special immigrant juvenile classification requires that the alien be under the age of 21 only at the time of filing. *See* proposed 8 CFR 204.11(b)(1)(ii). The TVPRPA 2008 prohibition would also require removal of existing 8 CFR 205.1(a)(3)(iv)(A), which provides for automatic revocation of the petition of an alien who reaches the age of 21 prior to adjudication of an application for adjustment of status. It would be contrary to the purpose of the statute for Congress to bar denial of a petition because the petitioner aged out, yet permit USCIS to continue to revoke the classification automatically if the alien's subsequent application for adjustment

of status has not been adjudicated before the alien's 21st birthday.

## 2. Unmarried

Under existing regulations, a juvenile must remain unmarried both at the time the Form I-360 is filed and through adjudication in order to qualify for SIJ classification. 8 CFR 204.11(c)(2) and 205.1(a)(3)(iv)(B). The proposed rule continues this approach, proposed 8 CFR 204.11(b)(1)(iii), for the following reasons. Marriage alters the dependent relationship with the juvenile court and emancipates the child. Furthermore, no derivative benefits for spouses are provided under the SIJ statute. This omission suggests that Congress did not intend for married juveniles to be eligible for SIJ classification. See 58 FR 42843-51 (1993). No legislative changes or intervening facts have caused USCIS to alter this provision. This interpretation, moreover, is consistent with Congress's use of the term "child" in its Transitional Rule provision of section 235(d)(6) of the TVPRA 2008.

The TVPRA 2008 age-out protection preserves eligibility for SIJ status by precluding USCIS from denying SIJ classification based on age if the alien was a child on the date on which the alien petitioned for SIJ classification. TVPRA 2008 section 235(d)(6), 8 U.S.C. 1232(d)(6). This section of the TVPRA uses the term "child," which is defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), as a person who is under 21 years of age and unmarried. Section 235(d)(6) of the TVPRA 2008 links the age-out prohibition specifically to age, by providing that SIJ status may not be denied "based on age," but does not link the age-out protection to marital status. USCIS believes that Congress intended that SIJ classification require that the alien be under the age of 21 only at the time of filing, but that Congress did not intend a similar time-of-filing standard with respect to marital status. See proposed 8 CFR 204.11(b)(1)(iii).

## 3. Juvenile Court Dependency

An alien seeking SIJ classification must have been declared dependent on a juvenile court located in the United States, or such a court must have legally committed the juvenile to, or placed him or her under the custody of, a State agency or department of a State, or an individual or entity appointed by a State or juvenile court. The term "juvenile court" includes any court having jurisdiction to make judicial determinations about the custody and care of juveniles. The use of the term "dependency" throughout this proposed rule encompasses dependency,

commitment, or custody as provided in amended section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i).

Dependency, commitment, or custody must be in effect when the Form I-360 is filed and must continue through the time of adjudication, unless the age of the petitioner prevents such continuation. See Proposed 8 CFR 204.11(b)(1)(iv). State juvenile court age limitations on jurisdiction and dates of "emancipation" vary greatly from state to state. Eligibility for special immigrant juvenile classification, however, depends only in part on the findings of the State court, since USCIS retains the discretionary authority to grant, deny, or revoke SIJ classification. The proposed rule would ensure that juveniles who age out of State court dependency after filing the Form I-360 would remain eligible for SIJ classification. USCIS, therefore, would not deny SIJ classification to a juvenile with a valid dependency order at the time of filing if the dependency order is no longer in effect at the time of adjudication as a result of the petitioner's age or emancipation, other than emancipation by marriage, based on State law.

Another context in which a petitioner may age out relates to relocation to another state. Jurisdiction over a juvenile by a state juvenile court typically ends upon the juvenile's relocation. For example, if an 18-year-old SIJ petitioner with a valid dependency order in one state relocates to another state, the petitioner might not be subject to the jurisdiction of the juvenile court in the new state because the new state deems age 18 to be the age of emancipation. Under the proposed rule, a juvenile who cannot obtain a new juvenile court dependency order because of age would remain eligible for SIJ classification so long as he or she meets all other applicable requirements. Proposed 8 CFR 204.11(b)(1)(iv) would not require dependency to continue through adjudication for petitioners in this situation.

When an SIJ petitioner relocates to another state, the initial juvenile court dependency order will no longer be in effect because the juvenile will no longer be under the initial court's jurisdiction. The petitioner must therefore obtain a new dependency order. Despite the lapse between dependency orders, USCIS will consider dependency to have continued through the time of adjudication under proposed 8 CFR 204.11(b)(1)(iv). USCIS recognizes that the calendaring of State court proceedings is beyond the petitioner's control and that a lapse between dependency orders based on relocation does not signify a change in

the underlying facts on which special immigrant juvenile classification is based, but rather a technical transfer of jurisdiction that may be the cause of the lapse. USCIS, accordingly, will not consider a petitioner ineligible for SIJ classification due to a lapse in time between the two orders.

Proposed 8 CFR 204.11(b)(2)(i) clarifies that a juvenile who is adopted or placed under guardianship is eligible for SIJ classification under amended section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i). This section allows eligibility where a petitioner has been "legally committed to, or placed under the custody of \* \* \* an individual \* \* \* appointed by a State or juvenile court located in the United States." Therefore, commitment to, or placement under the custody of an individual, can include adoption and guardianship.

## 4. Viability of Reunification Due To Abuse, Neglect, Abandonment, or a Similar Basis Under State Law

An SIJ petitioner must additionally establish that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Section 101(a)(27)(J)(i) of the Act, 8 U.S.C. 1101(a)(27)(J)(i). The proposed rule would require the juvenile to establish that he or she is the subject of a State court order determining that reunification with one or both parents is not viable for one of the reasons enumerated in section 101(a)(27)(J)(i). Determining the viability of reunification with one or both of a child's parents due to abuse, neglect, abandonment, or a similar basis under State law is a question that lies within the expertise of the juvenile court, applying relevant State law. See Proposed 8 CFR 204.11(b)(1)(v). Section 101(a)(27)(J)(i) of the Act previously required a State court determination of eligibility for long-term foster care due to abuse, neglect, or abandonment.

The concepts of abuse, neglect, and abandonment are not defined in immigration law. Specific legal definitions of the terms "abuse, neglect, or abandonment" for the purposes of juvenile dependency proceedings derive from State law and therefore vary from state to state.

For example, in California, "abuse" encompasses distinct definitions of physical abuse, neglect (including severe and general neglect), sexual abuse, and emotional abuse. The basic definition of child abuse or neglect includes physical injury inflicted by other than accidental means upon a child by another person; willful

harming or injury of the child or the endangering of the person or health of the child; and unlawful corporal punishment or injury. Cal. Penal Code sections 11165.3, 11165.6. In the District of Columbia, however, “physical child abuse” refers to infliction of physical or mental injury upon the child and sexual abuse or exploitation of a child. The law also specifies which acts are considered abusive and, therefore, do not constitute mere “discipline.” DC Code Ann. section 16–2301.

In New York, a child is deemed “abandoned” if a parent shows “an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency.” NY Soc. Serv. Law section 384–b. Virginia law, by contrast, simply states, “*Abused or neglected child* means any child less than age 18 whose parents or other person responsible for his or her care abandons such child.” VA Code Ann. section 63.2–100. Thus, the language of the dependency orders varies based on individual State laws as well.

If a juvenile court order includes a finding that reunification with one or both parents is not viable under State law, the petitioner must establish that this State law basis is similar to a finding of abuse, neglect, or abandonment. The petitioner has the burden of proof relating to the scope of the State law. The nature and elements of the State law must be similar to the nature and elements of abuse, abandonment, or neglect. This is a case-by-case determination because of the variations in State law.

For example, under Connecticut law, a child may be found “uncared for” if the child is “homeless” or if his or her “home cannot provide the specialized care that the physical, emotional or mental condition of the child requires.” See Conn. Gen. Stat. Ann. section 46b–120(9). “Uncared for” may be similar to abuse, abandonment, or neglect because children found “uncared for” are equally entitled to juvenile court intervention and protection. The outcomes for children adjudged “uncared for” are the same as they are for children adjudged abused, abandoned, or neglected. See Conn. Gen. Stat. Ann. section 46b–120(8),(9); 121(a).

Petitioners are encouraged to include copies of the State laws on abuse, abandonment, and neglect, or equivalent concepts as defined in the State, and the State definition for the basis on which the juvenile court has

made its finding in order to more clearly meet their burden of proof. Additional evidence to establish the basis for a finding that reunification is not viable due to a similar basis found under State law may include:

- Evidence that shows the conduct that occurred and any acts that led to the victimization of the petitioner (this may be contained in the court order itself);
- Other findings from the court;
- Evidence of how a child subject to a finding under State law is treated similarly by the State, for example is eligible for the same programs, as a child who has been adjudicated abused, abandoned or neglected;
- Opinions or letters from social workers, victim advocates, medical professionals, and others who work with the juvenile; and
- Affidavits of the petitioner, other witnesses or those who know the juvenile.

#### 5. Determination of “Best Interest”

The State judicial or administrative proceedings must additionally determine, under applicable State law, that it would not be in the alien’s best interest to be returned to the country of nationality or last habitual residence of the alien or of his or her parents. Congress has not altered these requirements, and this proposed rule would continue the existing requirement. Typically, the juvenile court order itself will include this finding. This finding, however, can be made in any State judicial or administrative proceeding. See current 8 CFR 204.11(c)(6) and proposed 8 CFR 204.11(b)(1)(vi).

#### B. Consent Requirements

##### 1. DHS Consent to the Grant of SIJ Classification

All petitioners for SIJ classification must obtain the consent of the Secretary of Homeland Security to the SIJ classification. Section 101(a)(27)(J)(iii) of the Act, 8 U.S.C. 1101(a)(27)(J)(iii), as amended; see proposed 8 CFR 204.11(c)(1). Consent to the dependency order was historically a precondition to granting special immigrant juvenile classification. Section 235(d)(1)(B) of TVPRA 2008, however, replaced that precondition with the requirement that the Secretary consent to the SIJ classification itself. This proposed rule provides that consent will be granted to otherwise eligible SIJ petitioners where the qualifying State court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or some similar basis

under State law, and not primarily for the purpose of obtaining lawful immigration status. See proposed 8 CFR 204.11(c)(1)(i). This policy is consistent with congressional intent in creating the consent function. See H.R. Rep. No. 105–405, at 130 (1997) (noting that the language of the statute was modified to limit the SIJ provisions to those for whom it was created by requiring a determination that neither the dependency order nor the judicial determination of best interest was sought primarily to obtain an immigration benefit, rather than relief from abuse, abandonment or neglect). The proposed rule clarifies that the approval of a Form I–360 is evidence of the Secretary’s consent, rather than consent being a precondition of the juvenile court order. See proposed 8 CFR 204.11(c)(1)(iii). The removal of consent to the juvenile court order as a statutory precondition renders two separate decisions by USCIS unnecessary and redundant.

The petitioner bears the burden of proving that the State court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment, or some similar basis under State law. Evidence can include information about the juvenile court proceedings such as a dependency or guardianship order, findings accompanying the order, actual records from the proceedings, or other evidence that summarizes the evidence presented to the court. Dependency orders that include or are supplemented by specific findings of fact regarding the basis for a finding of abuse, neglect, abandonment, or some similar basis under State law are usually sufficient to provide a basis for the Secretary’s consent. Orders lacking specific factual findings generally are not sufficient to provide a basis for consent, and must be supplemented by separate findings or any other relevant evidence establishing the factual basis for the order.

Evidence can also include information from persons who know the petitioner in a personal or professional manner. This evidence could include, but is not limited to, affidavits, letters, evaluations, or treatment plans from the court, State agency, department, or individual with whom the juvenile has been placed, health care professionals, social workers, others with responsibility to evaluate and treat the juvenile, attorneys, guardians, adoptive parents, family members, and friends.

USCIS may seek or consider additional relevant evidence if the evidence presented is not sufficient to establish a reasonable basis for consent. USCIS may request additional evidence

from the petitioner in such cases. Moreover, USCIS may consider any evidence of the role of a parent or other custodian in arranging for a petitioner to travel to the United States or to petition for SIJ classification. *See Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216 (3d Cir. 2003). If USCIS determines that the State court order is sought primarily to obtain lawful immigration status, USCIS will deny consent.

## 2. Specific Consent of HHS

TVPR 2008 vested custody of unaccompanied alien children, who are often petitioners for SIJ classification, with the Secretary of Health and Human Services rather than the Secretary of Homeland Security. In addition, TVPR 2008 simplified the language to refer simply to "custody," in contrast to the previous "actual or constructive custody" language.

No juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction. Section 101(a)(27)(J)(iii)(I) of the Act, 8 U.S.C. 1101(a)(27)(J)(iii)(I). A juvenile in the custody of the Department of Health and Human Services (HHS) is required to obtain specific consent from HHS to a State court order modifying custody status or placement prior to filing a petition for SIJ classification. *See* proposed 8 CFR 204.11(c)(2). The specific consent requirement was introduced by the 1998 Appropriations Act and amended by TVPR 2008.

An SIJ petitioner who is in the custody of HHS must now seek specific consent from HHS if he or she seeks a juvenile court order that would determine or alter his or her custody status or placement. The SIJ petitioner is not required to obtain specific consent from HHS if the juvenile court order makes no findings as to custody status or placement. Where required, an SIJ petitioner must submit evidence of an HHS grant of specific consent when filing a petition for SIJ classification with USCIS.

## C. Application Process

An alien must file Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, to petition for SIJ classification under section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J). All petitioners for SIJ classification must submit all required initial evidence, and supporting documentation, with the Form I-360. *See* 8 CFR 103.2(b)(1) and proposed 8 CFR 204.11(d).

This proposed rule would amend what constitutes acceptable supporting documentation or initial evidence that must accompany the Form I-360. *See* proposed 8 CFR 204.11(d). The proposed rule would require the following initial evidence, which may be contained in one document or in several documents:

- Form I-360, completed in accordance with the instructions on the form;
- Evidence of the alien's age, such as a birth certificate, passport, official foreign identity document issued by a foreign government, or other document which, in the discretion of USCIS, establishes the alien's age;
- Biometrics as provided in the instructions on the form;
- A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the juvenile to be dependent upon that court or that the court has legally committed the juvenile to, or placed the juvenile under the custody of, an agency or department of a State or an individual or entity appointed by a State or juvenile court;
- Specific findings of fact or other relevant evidence, either incorporated into the court order or separate from the order, establishing that reunification with one or both parents was deemed not viable due to abuse, neglect, abandonment, or a similar basis under State law. If the evidence includes a finding that reunification is not viable due to a similar basis under State law, the petitioner must establish that such a basis is similar to a finding of abuse, neglect, or abandonment;
- Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s); and
- If a juvenile is in HHS custody and obtained a juvenile court order that determined or altered his or her custody status or placement, evidence that HHS granted specific consent to the new custody status or placement ordered by the court.

USCIS may obtain initial or additional supporting evidence, documents, or materials directly from a court, government agency, or other administrative body in either paper or electronic format.

The Application to Register Permanent Residence or Adjust Status, Form I-485, is used by SIJ petitioners to apply for related adjustment of status to

that of a permanent resident, either concurrently with or subsequent to filing Form I-360. Where possible, USCIS encourages concurrent filing of Form I-485 and Form I-360.

## D. Adjudication and Post-Adjudication

### 1. Interview Process

USCIS may interview the petitioner for purposes of adjudicating the Form I-360 petition. 8 CFR 103.2(b)(9). USCIS has discretion to determine whether an interview is necessary. The determination not to interview may apply when an SIJ petitioner files Form I-360 alone, without an accompanying Form I-485. *See* proposed 8 CFR 204.11(e). USCIS will consider such factors as the age of the juvenile, the sensitive nature of issues of abuse, neglect, or abandonment involved in the case, and whether the USCIS officer expects to gather additional relevant evidence at an interview. In some instances, an officer may require information that can only be provided by the juvenile or a person acting on the juvenile's behalf, such as when a petition is missing information or the juvenile has a criminal record.

USCIS seeks to establish a nonthreatening interview environment that would promote an open, productive discussion about the SIJ petition. Juveniles seeking SIJ classification, unlike other juveniles, are under specific pressures and hardships relating to the loss of parental support and to juvenile court proceedings. The juvenile could bring a trusted adult (who is familiar with the juvenile and can be supportive), in addition to an attorney or representative (at no expense to the Government). The trusted adult or the attorney may present a statement at the end of the interview. The interviewing officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing. USCIS still maintains discretion to interview a child separately when necessary. Generally, in the context of the SIJ interview, it is not necessary to interview a juvenile (whether alone or accompanied) about the facts regarding the abuse, neglect, or abandonment upon which the dependency order is based. However, USCIS retains the discretion to interview the juvenile.

USCIS cannot compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any point during the petition or interview process. INA section 287(h), 8 U.S.C. 1357(h), proposed 8 CFR 204.11(f).

As a general rule, USCIS must interview any applicant for adjustment of status, regardless of the underlying status and how the applicant is adjusting status to lawful permanent resident. 8 CFR 245.6. This general interview requirement for all adjustment of status applications also applies to SIJ petitioners. It applies when, as is most often the case, an SIJ petitioner files the Form I-360 concurrently with the Form I-485. It also applies when USCIS grants a Form I-360 filed separately, and then the SIJ petitioner files a Form I-485.

Although the general interview requirement does apply to SIJ petitioners, USCIS does have discretion to waive an adjustment of status interview for SIJ petitioners. USCIS may waive an interview in the case of a child under the age of 14, or where USCIS determines on a case-by-case basis that an interview is not necessary. See 8 CFR 245.6. USCIS will review the underlying Form I-360 (if not already approved) and the Form I-485 during the interview and will generally provide safeguards outlined above regarding interviews for SIJ classification.

## 2. Decisions

TVPRA 2008 contained a provision for expeditious adjudication of SIJ petitions within 180 days. See TVPRA 2008 section 235(d)(2), 8 U.S.C. 1232(d)(2). USCIS intends to adhere to the 180-day benchmark, taking into account general USCIS regulations pertaining to receipting of petitions, evidence and processing, and assuming the completeness of the petition and supporting evidence. Proposed 8 CFR 204.11(h); 8 CFR 103.2. The 180-day timeframe begins when the SIJ petition is receipted, as reflected in the receipt notice sent to the SIJ petitioner. 8 CFR 103.2(a)(7). If USCIS sends a request for initial evidence, the 180-day timeframe will start over from the date of receipt of the required initial evidence. 8 CFR 103.2(b)(10)(i). If USCIS sends a request for additional evidence, the 180-day timeframe will stop as of the date USCIS sends the request, and will resume once USCIS receives a response from the SIJ petitioner. 8 CFR 103.2(b)(10)(i). USCIS will not count delay attributable to the petitioner or his or her representative within the 180-day timeframe. USCIS interprets the 180-day timeframe to apply to adjudication of the Form I-360 petition for SIJ status only, and not to the Form I-485 application for adjustment of status. USCIS does not interpret the 180-day timeframe to mean that an unadjudicated petition at the end of the timeframe will be automatically approved.

## 3. Revocation

Current 8 CFR 205.1(a)(3)(iv) provides conditions under which a grant of an underlying petition for SIJ classification is automatically revoked during the period when a Form I-485 is pending, but before a decision on the Form I-485 becomes final. This proposed rule would alter this section consistent with TVPRA 2008.

As noted above, USCIS cannot deny SIJ classification based on age if the alien was a child on the date on which the alien filed the petition. Current regulations, however, provide for automatic revocation of the underlying SIJ petition if the juvenile reaches the age of 21 or dependency on the juvenile court was terminated before the Form I-485 was adjudicated. 8 CFR 205.1(a)(3)(iv)(A) and (C). As discussed above, it would be contrary to the language and purpose of the amended statute to continue this automatic revocation. Accordingly, the proposed rule removes 8 CFR 205.1(a)(3)(iv)(A) and (C) because these grounds relate to a juvenile's age.

The rule also proposes to modify the language at current 8 CFR 205.1(a)(3)(iv)(D) to reflect current statutory language at section 101(a)(27)(f)(i) of the Act, 8 U.S.C. 1101(a)(27)(f)(i), requiring automatic revocation of an approval of the Form I-360 if a court deems reunification with one or both parents a viable option. The proposed rule would not change the language of current 8 CFR 205.1(a)(3)(iv)(B) (revoking approval of the petition upon the marriage of the juvenile). As discussed above, Congress intended an SIJ petitioner to remain unmarried.

## 4. No Parental Rights

The proposed rule references the statutory language at section 101(a)(27)(f)(iii)(II) of the Act that parents cannot be accorded any right, privilege, or status under the Act. Proposed 8 CFR 204.11(g). USCIS interprets this provision to mean that any parent or prior adoptive parent cannot gain lawful status through the alien granted SIJ status, regardless of whether the alien goes on to become a permanent resident or even a United States citizen. When TVPRA 2008 added the language regarding the non-viability of reunification with one or both parents, Congress did not amend section 101(a)(27)(f)(iii)(II) of the INA to permit a non-abusive parent to gain any right, privilege, or status under the INA by virtue of the parental relationship. USCIS continues to interpret this language to apply to any parent or any

prior adoptive parent, regardless of that parent's involvement in the abuse, abandonment or neglect.

## E. Adjustment of Status

As provided by the TVPRA 2008 amendments to section 245(h)(2)(A) of the Act, 8 U.S.C. 1255(h)(2)(A), SIJ adjustment of status applicants are exempt from four additional grounds of inadmissibility. The full list of exempted grounds of inadmissibility in proposed 8 CFR 245.1(e)(3) would be modified to include:

- Public charge (section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4));
- Labor certification (section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A));
- Aliens present without inspection (section 212(a)(6)(A) of the Act, 8 U.S.C. 1182(a)(6)(A));
- Misrepresentation (section 212(a)(6)(C) of the Act, 8 U.S.C. 1182(a)(6)(C));
- Stowaways (section 212(a)(6)(D) of the Act, 8 U.S.C. 1182(a)(6)(D));
- Documentation requirements (section 212(a)(7)(A) of the Act, 8 U.S.C. 1182(a)(7)(A)); and
- Aliens unlawfully present (section 212(a)(9)(B) of the Act, 8 U.S.C. 1182(a)(9)(B)).

The following grounds of inadmissibility cannot be waived:

- Conviction of certain crimes (section 212(a)(2)(A) of the Act, 8 U.S.C. 1182(a)(2)(A));
- Multiple criminal convictions (section 212(a)(2)(B) of the Act, 8 U.S.C. 1182(a)(2)(B));
- Controlled substance traffickers (section 212(a)(2)(C) of the Act, 8 U.S.C. 1182(a)(2)(C)) except for a single offense of simple possession of 30 grams or less of marijuana;
- Security and related grounds (section 212(a)(3)(A) of the Act, 8 U.S.C. 1182(a)(3)(A));
- Terrorist activities (section 212(a)(3)(B) of the Act, 8 U.S.C. 1182(a)(3)(B));
- Foreign policy (section 212(a)(3)(C) of the Act, 8 U.S.C. 1182(a)(3)(C)); and
- Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing (section 212(a)(3)(E) of the Act, 8 U.S.C. 1182(a)(3)(E)).

Under section 245(h)(2)(B) of the Act, 8 U.S.C. 1255(h)(2)(B), any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The proposed rule amends 8 CFR 245.1(e)(3) accordingly.

#### IV. Regulatory Requirements

##### A. Regulatory Flexibility Act

DHS has reviewed this proposed rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals, who are not small entities as defined by 5 U.S.C. 601(6). There are no costs added by this rule and no change in any process as a result of this proposed rule that would have a direct effect, either positive or negative, on a small entity.

##### B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

##### D. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed

by the Office of Management and Budget. An analysis of the costs and benefits of this rule has been prepared and submitted to OMB for review as required by the Executive Order. The results of that analysis are as follows.

This rule proposes several changes to the SIJ program that are necessary to bring the regulations into conformity with statutory requirements and agency practice. No additional regulatory compliance requirements will be added that will cause a detectable change in costs for petitioning individuals. In addition, this rule is expected to result in no changes in program costs for the government. Qualitatively, this proposed rule would codify the practices and procedures currently implemented via internal policy directives issued by USCIS. This rule would establish clear guidance for petitioners and applicants regarding the procedural and interpretative issues raised following statutory amendments.

In fiscal year 2009, USCIS received 1,484 SIJ petitions; in 2008 USCIS received 1,361 petitions; in 2007 USCIS received 739 petitions; and in 2006 USCIS received 541 petitions. In fiscal year 2009, USCIS approved 1,212 SIJ petitions; in 2008 USCIS approved 697 petitions; in 2007 USCIS approved 521 petitions; and in 2006 USCIS approved 389 petitions. It does not follow that USCIS denied the remainder of petitions filed in each fiscal year. These approval numbers do not take into account cases that, by the end of the fiscal year, were only initially receipted, awaiting response on a Request for Further Evidence, still pending, transferred, or rejected. The approval numbers may also include petitions filed in a previous fiscal year. According to the DHS Office of Immigration Statistics, in fiscal year 2008, 989 SIJs adjusted status to permanent resident; in fiscal year 2007 772 SIJs adjusted status to permanent resident; and in fiscal year 2006, 894 SIJs adjusted status to permanent resident. The volume of petitions for SIJ classification is not expected to change significantly as a result of this proposed rule if finally promulgated and, therefore, the burden of compliance both in time and fees will not increase above that currently imposed.

USCIS funds the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs, by charging and collecting fees. USCIS has determined, under its discretionary fee setting authority, however, that no fee should be charged for filing Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed by petitioners

seeking SIJ classification. See 8 CFR 103.7(b)(1). These petitioners are subject to dependency orders of a State court and are not able to pay the filing fee for adjudication of the special immigrant juvenile petition. USCIS believes that these limited numbers of juvenile petitioners should be exempt from fees in the same manner as asylees under INA section 286(m), 8 U.S.C. 1356(m).

Most petitioners seeking SIJ classification will also file a Form I-485, Application to Register Permanent Residence or Adjust Status, with a current \$985 fee, and Form I-601, Application for Waiver of Ground of Inadmissibility, with a current \$585 fee. SIJ petitioners who cannot afford the fees for Forms I-485 or I-601 may request a waiver of the fees. The respective fees are not affected by this rule.

The fee impacts of this rule on each SIJ petitioner as well as on USCIS are neutral because USCIS estimates that filings for SIJ classification will continue at about the same volume as they have in the relatively recent past.

##### E. Executive Order 13132 (Federalism)

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, USCIS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

##### F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

##### G. Family Assessment

This regulation may affect family well-being as that term is defined in section 654 of the Treasury General Appropriations Act, 1999, Public Law 105-277, Div. A. This action has been assessed in accordance with the criteria specified by section 654(c)(1). This regulation will enhance family well-being by enabling juvenile aliens who have been abused, neglected, or abandoned and placed in State custody by a juvenile court to obtain special immigrant classification. Such classification will enable these juveniles to be placed into more stable, permanent home environments and release them from reliance on their



abusers. Statutory mandate prevents the granting of immigration benefits to the abusive parent of an SIJ. 8 U.S.C. 1101(a)(27)(J)(iii)(II). This classification will also encourage reporting of abuse to the authorities for appropriate legal action.

#### H. Paperwork Reduction Act (PRA)

On June 25, 2009, USCIS published a 60-day notice in the **Federal Register** requesting comments on the revised Form I-360 that included the SIJ provisions required by Public Law 105-119, Public Law 109-162, and Public Law 110-457. 74 FR 30312. The one comment that USCIS received on the revised form did not relate to the SIJ provisions but rather was a suggestion to break up the Form I-360 into separate forms for SIJ and religious workers. USCIS responded to the commenter directly, advising him that creating a new form solely for religious workers and SIJs would require modification to the established electronic systems that would be extremely cumbersome and costly at this time. On September 8, 2009, USCIS published a 30-day notice in the **Federal Register** requesting further comments on the revised form. USCIS did not receive any further comments. 74 FR 46216.

On December 30, 2009, the Office of Management and Budget approved the revised Form I-360 in accordance with the PRA. The approved OMB Control No. is 1615-0020.

#### List of Subjects

##### 8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

##### 8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

##### 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1232, 1255; 8 CFR Part 2.

2. Section 204.11 is revised to read as follows:

#### § 204.11 Special immigrant classification for certain aliens declared dependent on a juvenile court (Special Immigrant Juvenile).

(a) *Definitions.* As used in this section, the terms:

*Juvenile court* means any court located in the United States having jurisdiction to make judicial determinations about the custody and care of juveniles.

*Petition* means Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, or a successor form as may be prescribed by DHS.

*State* includes an Indian tribe, tribal organization, or tribal consortium, operating a program under a plan approved under 42 U.S.C. 671.

(b) *Eligibility.* (1) An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if he or she:

(i) Is physically present in the United States;

(ii) Is under 21 years of age at the time of filing;

(iii) Is unmarried;

(iv) Has been declared dependent on a juvenile court or has been legally committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court. Such dependency, commitment, or custody must be in effect at the time of filing and continue through the time of adjudication, unless the age of the petitioner prevents such continuation.

(v) Is the subject of a State or juvenile court determination, under applicable State law, that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law;

(vi) Has been the subject of judicial proceedings or administrative proceedings in which it has been determined, under applicable State law, that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the alien or his or her parent(s); and

(vii) Obtains consent from the Secretary of Homeland Security to classification as a special immigrant juvenile.

(2) For the purposes of establishing classification as a special immigrant juvenile, a juvenile who has been adopted or placed under guardianship after having been found dependent upon a juvenile court in the United States, or having been committed to or placed under the custody of a State agency or department or an individual or entity appointed by a State or juvenile court, is considered eligible for SIJ classification. Commitment to or placement under the custody of an

individual can include adoption and guardianship.

(c) *Consent.* (1) Every alien must obtain the consent of the Secretary of Homeland Security to the classification as a special immigrant juvenile.

(i) In determining whether to provide consent to classification as a special immigrant juvenile as a matter of discretion, USCIS will consider, among other permissible discretionary factors, whether the alien has established, based on the evidence of record, that the State court order was sought primarily to obtain relief from abuse, neglect, abandonment, or a similar basis under State law and not primarily for the purpose of obtaining lawful immigration status; and that the evidence otherwise demonstrates that there is a bona fide basis for granting special immigrant juvenile status.

(ii) The alien has the burden of proof to show that discretion should be exercised in his or her favor.

(iii) Approval by USCIS of the SIJ petition also will constitute the granting of consent on behalf of the Secretary.

(2) An alien in the custody of the Department of Health and Human Services, who seeks a juvenile court order determining or altering the alien's custody status or placement, must obtain specific consent from the Secretary of Health and Human Services to the State court's jurisdiction to determine or alter custody status prior to filing the SIJ petition with USCIS.

(d) *Petition procedures.* The alien, or an adult acting on the alien's behalf, may file the petition for special immigrant juvenile classification. Each individual requesting special immigrant juvenile classification must submit:

(1) A Petition completed in accordance with the instructions on the form;

(2) Evidence of the alien's age; and

(3) One or more documents which reflect the following:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the juvenile to be dependent upon that court, or that the court legally committed the juvenile to, or placed the juvenile under the custody of, a State agency or department, or an individual or entity appointed by a State or juvenile court;

(ii) Specific findings of fact or other relevant evidence, either incorporated into the court order or separate from the order, establishing the basis for a finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law; and



(iii) Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s).

(4) If a juvenile is in the custody of the Secretary of Health and Human Services and obtained a juvenile court order that determined or altered the custody status or placement of the juvenile, evidence that the Secretary of Health and Human Services granted specific consent.

(e) *Interview.* In accordance with 8 CFR 103.2(b) and 245.6, although an interview is not a prerequisite to the adjudication of a Special Immigrant Juvenile petition, USCIS may require an interview as a matter of discretion.

(1) The SIJ petitioner may be accompanied by a trusted adult, in addition to an attorney or representative, at the interview. USCIS, in its discretion, may place reasonable limits on the number of persons who may be present at the interview.

(2) The trusted adult or attorney or representative may present a statement at the end of the interview. USCIS, in its discretion, may limit the length of such statement or comment and may require its submission in writing.

(f) *No contact.* USCIS will not compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any time during the petition or interview process.

(g) *No parental rights.* No natural or prior adoptive parent of any alien with an approved Special Immigrant Juvenile petition shall, by virtue of such parentage, be accorded any right, privilege, or status under the Act. This prohibition remains in effect even after the alien becomes a lawful permanent resident or a United States citizen.

(h) *Timeframe.* USCIS will adjudicate a petition for Special Immigrant Juvenile classification within 180 days of receipt of a properly filed petition. The date of receipt will be as provided in 8 CFR 103.2(a)(7). A request for required initial evidence from USCIS to the petitioner or a request from the petitioner for rescheduling of biometrics or an interview will restart the 180-day timeframe. Any request for additional evidence will suspend the timeframe as of the date of the request up until the date the requested evidence, response, or a request for a decision based on the evidence already provided is received. Any delay requested or caused by the applicant will not be counted as part of the 180-day adjudication period.

**PART 205—REVOCATION OF APPROVAL OF PETITIONS**

3. The authority citation for part 205 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

- 4. Section 205.1 is amended by:
  - a. Removing paragraph (a)(3)(iv)(A);
  - b. Removing paragraph (a)(3)(iv)(C);
  - c. Redesignating paragraphs (a)(3)(iv)(B), (D) and (E) as paragraphs (a)(3)(iv)(A), (B) and (C) respectively; and by
  - d. Revising newly redesignated paragraph (a)(3)(iv)(B).

The revision reads as follows:

**§ 205.1 Automatic revocation.**

- (a) \* \* \*
- (3) \* \* \*
- (iv) \* \* \*

(B) Upon reunification of the beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, or abandonment; or

\* \* \* \* \*

**PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE**

5. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229; 8 CFR part 2.

6. Section 245.1 is amended by revising paragraph (e)(3) to read as follows:

**§ 245.1 Eligibility.**

- \* \* \* \* \*
- (e) \* \* \*

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) of the Act nor the inadmissibility provisions of sections 212(a)(4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), or (9)(B) of the Act shall apply to any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act. The inadmissibility provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for a single offense of simple possession of 30 grams or less of marijuana), (3)(A),

(3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination based on family unity.

\* \* \* \* \*

**Janet Napolitano,**  
*Secretary.*

[FR Doc. 2011–22625 Filed 9–2–11; 8:45 am]

**BILLING CODE 9111–97–P**

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Chapter I**

[NRC–2011–0209]

**NRC Enforcement Policy**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed enforcement policy revision; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (*i.e.*, reactor, fuel cycle, and materials licensees, vendors, and contractors), on several topics addressed in this document to assist the NRC in revising its Enforcement Policy. The NRC staff is currently evaluating these topics for inclusion in the next revision to the NRC Enforcement Policy. The proposed Policy topics discussed in this document will not address all the items in SRM–SECY–09–0190, “Major Revision to NRC Enforcement Policy,” dated August 27, 2010 (NRC’s Agencywide Documents Access and Management System (ADAMS) Accession No. ML102390327). Before the staff submits the next proposed Policy revision to the Commission for approval in early Calendar Year 2012, it will publish a second document in the **Federal Register** to solicit public comments on additional topics.

**DATES:** Submit comments by October 6, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2011–0209 in the subject line of