

## USCIS Response to Questions from the End SIJS Backlog Coalition

- 1. We first want to express our gratitude for and agreement with the [proposed fee rule's](#) provision exempting SIJS youth from application fees. (Proposed 8 CFR § 106.3(b)(1)). The Coalition submitted a short comment (attached) praising the rule and recommending some minor revisions to more fully protect SIJS youth unable to pay fees.**

A: Thank you for submitting your comment on USCIS' proposed fee rule.

- 2. While practitioners initially reported fast adjudication times for (c)(14) EADs, more recently we are hearing about long wait times after filing a (c)(14)-based EAD. We urge USCIS to allow SIJS youth to file a (c)(14) EAD concurrently with the SIJS petition to reduce delays. These youth are of course already subject to a years-long visa backlog; we encourage USCIS to prevent these youth from facing a second backlog of lengthy EAD wait times after I-360 approval. Allowing SIJS petitioners to file a (c)(14) EAD concurrently with the I-360 would mirror [USCIS policy for EADs filed by U visa petitioners](#).**

A: While concurrent filing of Forms I-360 and I-765 may appear to be an efficiency, USCIS accepts and processes Form I-765(c)(14) and Form I-360 SIJ through different workstreams, and unlike the U visa EAD process, they are adjudicated by different divisions. As a result, it is not operationally feasible to accept and adjudicate them concurrently. Concurrent filing would result in increased processing times for both forms. However, USCIS continues to work on improving internal efficiency processes to reduce adjudication timeframes for (c)(14) EADs for SIJ deferred action recipients.

- 3. We have heard a number of recent reports from practitioners about clients who received deferred action denials despite there being nothing in the child's background that would suggest any basis for a negative exercise of discretion. What is the best way to raise what appears to be an erroneous deferred action adjudication to USCIS so that it can be reviewed?**

A: Because deferred action is by its nature an exercise of prosecutorial discretion and not a benefit, there is no right to file an administrative appeal or a motion to reopen or motion to reconsider. Any decision you or your client received regarding deferred action is final. However, anyone may file a general deferred action request with their local field office at any time. Further information on this process may be found in the Instructions for [Form G-325A](#), Biographic Information (for Deferred Action).

Additionally, if you or your client did not receive a decision regarding deferred action, you may call the USCIS Contact Center at 800-375-5283 to check the status of the deferred action determination. In such a situation, the Contact Center will let you or your client know if a deferred action determination was made in your or your client's case. If no decision was made, the Contact Center will route your inquiry to the jurisdictional USCIS office, who will issue you or your client a written response after further review.

- 4. During our October 6 meeting, we brought up the issue of SIJS youth with removal orders who are seeking to adjust status. Following up now on that issue, we have a specific recommendation for USCIS in cases of SIJS youth with DHS-issued removal orders, and we would appreciate the opportunity to discuss it with you further. In cases where USCIS approves an SIJS petition for a child with a DHS-issued order (e.g. an expedited removal or reinstatement order), we recommend that USCIS, at time of I-360 approval, coordinate with ICE to cancel that order. Canceling such orders would clear the way for adjustment of status and remove barriers that these vulnerable youth would otherwise face due to having unresolved removal orders in their background. We know that the Policy Manual [contemplates](#) USCIS coordinating with ICE to withdraw/rescind removal orders in the adjustment of status context generally; however we believe a more robust policy is warranted with respect to youth approved for SIJS who have DHS-issued orders. A policy directing USCIS officials to generally work with ICE to rescind DHS-issued orders upon SIJS petition approval would also align with DHS's treatment of other victim-based benefit applicants, namely U and T nonimmigrant status recipients. See 8 CFR § 214.14(c)(5)(i) (DHS-issued orders are "deemed canceled by operation of law as of the date of USCIS' approval of Form I-918"); 8 CFR § 214.11(d)(9)(i) (same with respect to Form I-914).**

A: We appreciate this recommendation and will consider it in future policymaking efforts.

- 5. We have heard from a number of practitioners whose SIJS clients have received I-360 SIJS petition receipt notices erroneously reflecting the EB-5, rather than EB-4, category. What is the process practitioners should follow to ask USCIS to correct this information?**

A: We are aware of the issue and have worked with the USCIS Lockbox to resolve it so that no further notices go out with the incorrect preference category. USCIS

has identified all affected individuals who received notices reflecting the EB-5 category instead of EB-4, and we have issued corrected notices.

- 6. As you know, many SIJS youth lack a government-issued photo ID. Often, when filing for EADs, these youth attach the ORR Verification of Release Form, and our understanding is that USCIS has generally accepted this form of ID. However, we are hearing reports of inconsistent treatment of the ORR Verification of Release Form, including USCIS issuing RFEs and denials (eventually resolved through filing Form I-290B) stating that the ORR Verification of Release Form is insufficient identification. We urge USCIS to provide guidance to personnel clarifying that the ORR Verification of Release Form is a valid form of government identification.**

A: We appreciate this information. Adjudication officers have received updated guidance consistent with 8 CFR 204.11(d)(2) with clarification that the ORR Verification of Release Form is sufficient evidence of identity for the purpose of filing for an EAD based on SIJ deferred action.

- 7. During the October 6 meeting we raised the issue of some EADs having a slightly shorter validity period than the corresponding grant of deferred action, and Peter Rosenstock noted that USCIS would be posting information on the USCIS website clarifying that such youth are nevertheless authorized to work for the entire span of deferred action, despite the sooner EAD expiration date. We were wondering if there was an update for when you expect to post this information?**

A: USCIS acknowledges that due to print delay, some individuals who were granted deferred action during May 2022 received EADs where the end date differed from the last date of deferred action by a few days. USCIS resolved the issue for those granted deferred action after May 2022.

Upon further review, USCIS has determined that, while USCIS cannot authorize an individual to work beyond the end date of the EAD, we will provide a deferred action renewal process to allow those granted deferred action who remain ineligible to adjust status due to lack of visa number availability to file a new EAD before their existing EAD expires and therefore avoid a lapse in employment authorization. USCIS intends to post information on this process, including more specific guidance in the SIJ FAQs for those with a discrepancy between the expiration of their deferred action and the expiration of their related EAD.

**8. Finally, we would appreciate updated data from USCIS regarding the SIJS backlog population, as follows:**

- a. We are aware that, as of last summer, USCIS estimated that about 45,000 individuals had an approved SIJS petition but no visa available. During our October 6 meeting, Mr. Rosenstock also relayed that as of 9/20/2022 less than .1 percent of SIJS petitioners had not yet received a deferred action decision. Would USCIS be able to provide updated statistics reflecting, as of March 2023, how many individuals have an approved SIJS but no visa available, and of these, the deferred action outcomes (number of approvals, number of denials, and number awaiting a deferred action decision)?**

A8a. As of July 7, 2023, there were approximately 93,970 individuals with an approved Form I-360 petition for SIJ classification who do not have a visa number currently available. Of those, 92,592 had received a deferred action decision, with 92,499 approvals and 93 denials.

- b. Could USCIS also provide the number of pending SIJS petitions whose priority date is not yet current?**

A8b. As of July 7, 2023, there were 26,017 pending Form I-360 petitions for SIJ classification with no current priority date.