



April 4, 2011

PM-602-0034

## Policy Memorandum

SUBJECT: Implementation of the Special Immigrant Juvenile *Perez-Olano* Settlement Agreement

### Purpose

This policy memorandum (PM) guides USCIS personnel in processing requests to reopen petitions for Special Immigrant Juvenile status and related applications for adjustment of status filed under the *Perez-Olano* Settlement Agreement (“Settlement Agreement”).

### Scope

Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees.

### Authority

Immigration and Nationality Act (INA) section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J), INA § 245(h), 8 U.S.C. § 1255(h), as amended by Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law No. 110-457, 122 Stat. 5044 (2008), section 235(d); 8 CFR 204.11, 205.1(a)(3)(iv) and 245.1(e)(3). Memorandum, “Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions,” HQOPS 70/8.5, March 24, 2009. *Perez-Olano, et al. v. Holder, et. al*, Case No. CV 05-3604 (C.D. Cal. 2005).

### Background

Certain juveniles who have been abused, abandoned, or neglected may request a special immigrant classification known as Special Immigrant Juvenile (SIJ) status in order to remain legally in the United States. Aliens granted SIJ classifications are immediately eligible to apply for lawful permanent resident status.

*Perez-Olano v. Holder* is a class-action lawsuit filed on behalf of juvenile aliens who may have been eligible for SIJ status or SIJ-based adjustment of status because they were abused, abandoned, or neglected. The *Perez-Olano* Settlement Agreement took effect December 14, 2010 and expires December 13, 2016. The Settlement Agreement defines class members as all juveniles, “including, but not limited to, SIJ applicants, who, on or after May 13, 2005, apply or applied for SIJ status or SIJ-based adjustment of status based upon their alleged SIJ eligibility.” Settlement Agreement at ¶ 3. Juveniles whose applications for SIJ status or SIJ-based adjustment of status were denied or revoked since May 13, 2005, may be eligible to file a motion to reopen. The class-specific standard for eligibility to file motions to reopen, particularly with

regard to timeliness, is distinct from the general standards for eligibility to file motions to reopen under 8 CFR 103.5.

In accordance with the Settlement Agreement, USCIS will not, based on age or dependency status, deny or revoke any SIJ petition if, at the time the class member files or filed the petition, the class member was under 21 years of age and was the subject of a valid dependency order that was later terminated based on age. Similarly, USCIS may not, based on age or dependency status, deny an SIJ-based application for adjustment of status if, the class member files or filed the application when he or she was under 21 and was the subject of a valid dependency order.

In addition, to comply with the Settlement Agreement, this guidance applies to all SIJ petitions and SIJ-based applications for adjustment of status that are filed while the Settlement Agreement is in effect. USCIS will not, based on age or dependency status, deny or revoke any new, pending, or reopened SIJ petition if, at the time of filing, the petitioner was under 21 years of age and was the subject of a valid dependency order that was later terminated based on age. Similarly, USCIS may not, based on age or dependency status, deny any new, pending, or reopened SIJ-based application for adjustment of status if, the class member filed the application when he or she was under 21 and was the subject of a valid dependency order.

### **Filing Requirements**

Class members filing a motion to reopen under the Settlement Agreement will file Form I-290B, *Notice of Appeal or Motion*, with the appropriate fee or Form I-912, *Request for Fee Waiver*, if desired, at:

<i>U.S. Postal Service (USPS):</i> <b>or</b>	<i>Courier/ Express (non-USPS) Deliveries:</i>
<b>USCIS</b> <b>P.O. Box 5510</b> <b>Chicago, IL 60680-5510</b>	<b>USCIS</b> <b>Attn: Perez-Olano Settlement Agreement</b> <b>or “POSA”</b> <b>131 S. Dearborn – 3<sup>rd</sup> Floor</b> <b>Chicago, IL 60603-5517</b>

When filing a Form I-290B, class members are instructed to:

- Check “box F” in “Part 2,” *Information about the Appeal or Motion*, and
- Write “Perez-Olano Settlement Agreement” or “POSA” in Part 3, *Basis for the Appeal or Motion*.

These specific Settlement Agreement filing instructions are posted on the landing page of the Form I-290B at [www.uscis.gov](http://www.uscis.gov).

The Lockbox will forward the Forms I-290B to the National Benefits Center (NBC) for standard pre-processing. The NBC will then route the Form I-290B and the underlying Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, and, if applicable, the Form I-485, *Application to Register Permanent Residence or Adjust Status*, to the appropriate field office for

adjudication, along with an appropriate cover sheet identifying it as a Settlement Agreement case. It is the responsibility of the NBC to forward the A-file to the proper field office if the juvenile has moved jurisdictions.

### **Adjudication**

The field office that denied the underlying Form I-360 and, if applicable, the Form I-485 has jurisdiction over each Motion to Reopen filed under the Settlement Agreement, as stated in 8 CFR 103.5(a)(1)(ii). If the applicant has moved to the geographical jurisdiction of a different field office, that field office assumes jurisdiction.

The immigration service officers (ISOs) will grant the Motion to Reopen if the case meets *all four* prongs of the following test:

1. The applicant applied for SIJ status or SIJ-based adjustment of status on or after May 13, 2005.
2. The applicant filed a complete Form I-360 for SIJ classification before his or her 21st birthday.
3. At the time of filing the Form I-360, the applicant was the subject of a valid order(s) issued by a state juvenile court within the United States that:
  - Made a finding of abuse, abandonment or neglect, or a similar basis found under state law (see Juvenile Court Orders below for more information); *and*
  - Determined that it would not be in the applicant's best interest to be returned to the applicant's or parent's previous country of nationality or country of last habitual residence; *and*
  - Did *one* of the following:
    - Declared the applicant dependent on the court, *or*
    - Legally committed the applicant to or placed the applicant under the custody of a state agency or department, *or*
    - Placed the applicant under the custody of an individual or entity appointed by a guardianship.

4. The Form I-360 was denied or revoked *solely* because of *one* of the three following reasons:
- The applicant, who was under 21 years of age at the time of filing, turned 21 years of age after filing the Form I-360 but before adjudication of the Form I-360 or Form I-485 (age-out); *or*
  - The applicant's dependency order, which was valid and in effect at the time of filing the Form I-360, was terminated based on age after filing the Form I-360 but before adjudication of the Form I-360 or Form I-485 (dependency age-out); *or*
  - The applicant did not receive a grant of specific consent *before* invoking the jurisdiction of the state juvenile court and the juvenile court order did *not* determine or alter the applicant's custody status or placement. As a reminder, specific consent from the Department of Health and Human Services (and, before December 23, 2008, U.S. Immigration and Customs Enforcement) is needed only if the applicant was in federal custody at the time the juvenile court issued the order and the juvenile court order altered or determined custody status or placement. (Such an order is more than a restatement of current placement; it requires a change to the applicant's placement.)

If the Motion to Reopen is granted, the ISO will adjudicate the Form I-360 in accordance with INA § 101(a)(27)(J), as amended by the TVPRA 2008, and in accordance with the Settlement Agreement.

Denials of a Motion to Reopen and of a reopened Form I-360 can be appealed to the Administrative Appeals Office. 8 CFR 103.5(a)(6).

### **Juvenile Court Orders**

Before enactment of the TVPRA 2008, INA § 101(a)(27)(J) required SIJ applicants to have been deemed eligible by a juvenile court for long-term foster care due to abuse, neglect, or abandonment. USCIS will not deny or revoke an SIJ petition or SIJ-based adjustment application on account of ineligibility for long-term foster care, as this is no longer a statutory requirement. But where a class member files a Motion to Reopen and the juvenile court order submitted in support of the original Form I-360 contains the outdated statutory language of eligibility for long-term foster care, adjudicators do not need to request an updated juvenile court order. Some Motions to Reopen will be from applicants who, due to their age, will no longer be able to invoke the jurisdiction of the juvenile court to obtain an updated order. In those cases, adjudicators can rely on the original juvenile court order to establish the current statutory requirement of non-viability of reunification with one or both parents due to abuse, neglect, abandonment, or a similar basis found under State law.

### **Statistics**

Under the Settlement Agreement, USCIS must compile, and make available to the public via Internet posting, annual reports disclosing the number of SIJ-based Forms I-360 received, approved, and denied. The number should include the filing and adjudication of Forms I-360 under the Settlement Agreement, as well as regularly filed SIJ-based Forms I-360. Therefore, ISOs must ensure that all decisions are properly entered into the Interim Case Management System.

### **Implementation**

This PM is effective as of April 4, 2011. Any USCIS personnel handling these Settlement Agreement cases will apply the guidance in this PM.

### **Use**

This PM is intended solely for the guidance of USCIS personnel in performing their duties under the Settlement Agreement as they relate to adjudication of Forms I-290B, I-360, and I-485. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

### **Contact Information**

Questions or suggestions regarding this PM and USCIS policy on the Settlement Agreement should be addressed through appropriate channels to Headquarters Field Operations Directorate, Adoptions and Humanitarian Branch.