



U.S. Citizenship
and Immigration
Services

November 14, 2016

Jennifer Podkul
Director of Policy
Kids in Need of Defense
1300 L Street, NW, Suite 1100
Washington, DC 20005

Dear Ms. Podkul:

Thank you for your September 14, 2016 letter regarding Special Immigrant Juvenile (SIJ) status and SIJ-based adjustment of status. U.S. Citizenship and Immigration Services (USCIS) appreciates the work of Kids in Need of Defense (KIND), and similar organizations and working group members, to provide support to this vulnerable population. In addition, we understand that SIJ-based adjustment of status applicants have only recently had to consult the Department of State's Visa bulletin to track visa availability, so we are happy to provide clarification.

Please find below responses to your questions, as well as responses to follow-up questions received through our Customer Service and Public Engagement Directorate.

- How many I-360s filed by the first half of 2015 are still pending adjudication?
- Please estimate the number of approvable I-485s received but not yet approved, for children from (a) El Salvador, Honduras and Guatemala, (b) Mexico, (c) India.
- How many I-485s with priority dates in first half of 2015 have items outstanding (expired medical, missing document, etc.)? If possible, please break down into numbers from (a) El Salvador, Honduras and Guatemala, (b) Mexico, (c) India. At this date, have all such applicants received RFEs?
- How many approvable I-485s were filed (and in which months) of 2015? If possible, please break down into numbers from (a) El Salvador, Honduras and Guatemala, (b) Mexico, (c) India.

USCIS posts quarterly Data Sets for Special Immigrant Juvenile Form I-360 Petitions on our website at <https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-360-petition-special-immigrant-juveniles>. Requests for data beyond what is posted should be made through the

Freedom of Information Act (FOIA) process. Information regarding the FOIA process can be found at <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/freedom-information-act-0>.

- Are all pending applications being sent to the Texas Service Center or are others still with the local field offices?

SIJ-based Form I-360s and Form I-485s are currently filed at the Chicago lockbox. On November 1, 2016, USCIS centralized the adjudication of SIJ based Form I-360s and Forms I-485s at the National Benefits Center (NBC) with the NBC referring cases to a Field Office as necessary. The NBC and Field Offices adjudicate the Form I-360 to completion and review the Form I-485 for eligibility. Form I-485s at Field Offices that cannot be approved because a visa is not available will be relocated to the NBC to be held in abeyance until a visa becomes available.

- Is there a specific procedure an attorney should follow on behalf of a client with a pending adjustment application whose priority date becomes current? Is there a contact we can reach out to in order to ensure that the AOS application is adjudicated as soon as the priority date is current?

There is no need for attorneys to contact USCIS as the NBC tracks and monitors this workload, based on priority date, for visa availability. If USCIS needs updated information from an applicant, we may send out correspondence, such as a request for evidence. Therefore, it is very important that applicants keep their addresses current with USCIS.

Additional questions from the telephone call on October 3, 2016, with KIND, Public Counsel, and USCIS.

- Is there a downside to filing during the month of October? Could these cases be administratively closed, and eventually require a fee for "motion to reopen," if there is no visa available?

USCIS will review each adjustment of status application for eligibility and will adjudicate the underlying Form I-360 petition. If there is no visa available, then the adjustment of status application will remain pending, and USCIS will hold it in abeyance until a visa becomes available. USCIS will administratively close the Form I-485 only where USCIS lacks jurisdiction over the application because the applicant is in proceedings before the Immigration Judge. In this case, once

proceedings have been terminated, the applicant may request the case be reopened without a fee. To request reopening, the applicant may contact the NBC by written correspondence or by calling the National Customer Service Center (NCSC), at 1-800-375-5283. The NCSC will generate an electronic referral to NBC with the details of the request. The applicant should also provide a copy of the Order from the Immigration Judge indicating that proceedings have been terminated.

Written correspondence may be sent to the following address:

USCIS National Benefits Center
P.O. Box 648006
Lee's Summit MO 64002

During the pendency of the adjustment of status application, the applicant will be eligible to apply for work authorization. There is no fee for filing Form I-765 in cases where the applicant previously paid the Form I-485 fee. In cases where the applicant was granted a fee waiver for the Form I-485 and files the Form I-765 separately, the applicant will need to submit a new Form I-912 to be considered for a waiver of the Form I-765 filing fee.

- Does the first-in, first-out filing practice apply to the population of individuals who are not within the current priority date?

The Form I-485 is generally processed first-in, first-out, with the primary exception being cases that cannot be adjudicated due to an unavailable visa. In this case, USCIS holds the application in the order of priority date, which generally corresponds to the date the I-360 is filed. NBC tracks and monitors this workload and works each case as the priority date becomes current and the visa becomes available.

- Can individuals still file even if their case hasn't been terminated by the courts?

USCIS has jurisdiction over an application for adjustment of status, unless the Immigration Judge has jurisdiction. *See* 8 CFR 245.2(a)(1). Applicants who are under the jurisdiction of the Immigration Judge should continue to follow the instructions provided in the Direct Filing Addresses for Form I-485, Application to Register Permanent Residence or Adjust Status at <https://www.uscis.gov/i-485-addresses>. More information can be found in the Pre-Order Instructions at: <https://www.uscis.gov/sites/default/files/files/article/PreOrderInstr.pdf>.

In closing, we appreciate the questions raised by KIND and the SIJ status working group and believe these responses will be beneficial to all persons and organizations who serve SIJ petitioners. As such, we are developing a document that will include detailed information in response to questions we have received from stakeholders about the SIJ program and SIJ-based adjustment of status. Once the document has been finalized, we will post it to our website and distribute it to those that have registered to receive information from USCIS.

Thank you again for your letter and for your thoughtful questions regarding this important program.

Sincerely,

A handwritten signature in black ink, appearing to read "León Rodríguez", written in a cursive style.

León Rodríguez
Director