



Frequently Asked Questions About USCIS’s SIJS Deferred Action Policy¹

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On May 6, 2022, U.S. Citizenship and Immigration Services (USCIS) began implementation of a policy benefitting certain individuals who have been granted Special Immigrant Juvenile Status (SIJS) (*i.e.*, have an approved SIJS petition, Form I-360). Under this policy, USCIS individually considers for four-year grants of deferred action individuals with approved SIJS petitions who are not able to apply for adjustment of status (a “green card”) because they do not have a currently available visa. Once granted deferred action, these individuals are eligible to apply for employment authorization (a “work permit”). This policy helps children and youth in the SIJS “green card backlog,” who, despite having been approved for SIJS, must wait years before they can apply for a green card because of annual numerical visa limits. Before the deferred action policy, children and youth in the SIJS green card backlog—which affects SIJS beneficiaries from El Salvador, Guatemala, Honduras, and Mexico—had no way of obtaining a work permit during their years-long wait for a visa number.

The [End SIJS Backlog Coalition](#) is a nationwide coalition of directly impacted youth and allied advocates seeking to eradicate the SIJS backlog legislatively, and in the meantime mitigate its worst harms through administrative reforms. The Coalition welcomes USCIS’s deferred action policy as a needed first step in protecting these youth. However, we continue to encourage Congress to pass legislation eliminating the numerical visa limits and to urge the Department of Homeland Security (DHS) to enact more robust and lasting protection through regulations that recognize that all Special Immigrant Juveniles should be afforded employment authorization and protection from removal until they are able to apply for a green card. This FAQ provides an overview of what we know so

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far about the policy; we plan to update it as USCIS's implementation rolls out and we learn more about how it is being applied.

1. What Is Deferred Action?

Deferred action, [according to USCIS](#), is an “act of prosecutorial discretion” to defer removal of a noncitizen from the United States for a certain period of time. Persons granted deferred action are eligible to apply for employment authorization under 8 CFR § 274a.12(c)(14). Deferred action does not confer lawful status and does not prevent DHS prosecutors in immigration court from advocating for a removal order, nor does it prevent an immigration judge from issuing a removal order. However, unless deferred action is terminated, it **does** prevent immigration authorities from physically removing a noncitizen from the United States.

2. Who Qualifies for Consideration of Deferred Action Under the Policy?

USCIS will consider for deferred action individuals who:

- Have an approved SIJS petition (Form I-360), and
- Are not eligible to apply for adjustment of status solely due to [visa unavailability](#).

USCIS will consider individuals for deferred action under this policy regardless of their status in any immigration court removal proceedings—*e.g.* individuals can receive deferred action even if they have pending immigration court proceedings or a final order of removal.

3. Who Is Not Eligible for Consideration for Deferred Action Under the Policy Despite Having an Approved SIJS Petition?

Despite meeting the criteria described in Question 2 above, individuals will not be considered for deferred action if:

- They are in Immigration and Customs Enforcement (ICE) detention, or
- They have a pending adjustment of status application (Form I-485), even if they lack a current priority date *e.g.* because the [visa bulletin](#) retrogressed after they filed their adjustment application.²

² If, however, USCIS rejected an individual's adjustment of status application outright, for example due to lack of priority date, then the individual could be considered for deferred action. An individual with a pending adjustment application may seek employment authorization under the (c)(9) category, even if their priority date retrogressed after filing. 8 CFR § 274a.12(c)(9).

4. What Factors Will USCIS Use to Decide Whether to Grant an Eligible Individual Deferred Action?

USCIS will make deferred action decisions on an individualized, case-by-case basis, considering the totality of the evidence to decide if the person merits a favorable exercise of discretion. USCIS has indicated that it will weigh all relevant positive and negative factors and will grant deferred action if the positive factors outweigh the negative.

USCIS has stated that strong positive factors include:

- The fact that the individual has an approved SIJS petition and will be able to apply to adjust status when they have an available visa number, and
- The SIJS eligibility criteria, including that a state court determined it was not in the individual's best interest to be returned to their country of origin.

USCIS has stated that strong negative discretionary factors that might weigh against a deferred action grant include:

- Where background and security checks indicate an admissibility ground that cannot be waived, and
- Serious unresolved criminal charges that may result in an inadmissibility ground that cannot be waived.

USCIS has not requested or suggested that practitioners submit additional evidence with their client's SIJS petition to support a favorable exercise of discretion to grant deferred action. Some practitioners may wonder whether such submissions are critical if their client presents negative factors such as an extensive juvenile delinquency record. Though each situation must be judged on its own merits, as a general rule it may be wise to forgo submitting such evidence. Its submission may both draw unnecessary attention to the negative factors the evidence is attempting to outweigh and inadvertently raise the bar for other young people with similar case profiles.

5. What Is the Procedure for USCIS's Deferred Action Adjudications?

As of the date of this FAQ's issuance, details were not yet available about how USCIS would conduct its deferred action decision-making process. The following is what we do know so far about the process, according to the [USCIS Policy Manual provisions on the deferred action policy](#) and statements made by USCIS personnel during an [April 27, 2022 stakeholder event](#):

- USCIS will conduct deferred action determinations automatically for individuals who meet the criteria. There is no separate deferred action application process.
- USCIS will not issue Requests for Evidence or Notices of Intent to Deny in connection with deferred action adjudications.

- USCIS will review biographic background checks performed during the SIJS petition adjudication during its deferred action adjudication. Submission of biometrics is not an automatic part of the process, but USCIS may require an individual to submit biometrics or attend an interview before granting deferred action.
- While USCIS has not committed to a time frame in which it will make deferred action decisions, it appears that for cases where the SIJS petition has not yet been approved, USCIS will generally issue a deferred action decision at the same time as the SIJS petition approval. However, USCIS may issue the deferred action decision after the SIJS petition approval if USCIS determines that biometrics are needed to complete the deferred action review.
- We do not know how USCIS prioritizes deferred action determinations for youth in the backlog whose SIJS petitions were approved before the policy went into effect. However, according to a [declaration](#) by a senior USCIS official filed in pending litigation, as of May 12, 2022—six days after the deferred action policy went into effect—USCIS had granted deferred action to more than 38,500 individuals with approved SIJS petitions, out of an estimated 45,000 individuals who have an approved SIJS petition but no visa available.
- USCIS has stated that there is no appeal or reconsideration process if USCIS denies an individual deferred action or terminates a previous deferred action grant.
- USCIS can terminate an individual’s grant of deferred action at any time as a matter of discretion, for example, if USCIS determines that favorable discretion is no longer warranted, if the previous deferred action was granted in error, or if the individual’s SIJS petition is revoked.

6. How Long Will Deferred Action Grants Last?

USCIS will grant deferred action for a period of four years. If, 150 days before the individual’s deferred action grant is set to expire, they are still ineligible to apply for adjustment of status because of visa unavailability, they can submit a renewal request to USCIS. USCIS has indicated that it will provide guidance about a renewal process in the future.

7. How Will USCIS Provide Notice of Deferred Action Decisions Under This Policy?

For individuals who have already received an SIJS petition approval, USCIS will mail the individual a new Form I-797 (Notice of Action) reflecting the deferred action decision. [Here](#) is a sample notice of a deferred grant on Form I-797 for an individual whose SIJS petition had previously been approved. For individuals whose SIJS petitions are approved on or after May 6, 2022, USCIS will generally include notice of the deferred action decision with the Form I-797 informing the individual of the SIJS petition’s approval. [Here](#) is a sample Form I-797 concurrently notifying an individual that their SIJS petition was approved and that they were granted deferred action. Individuals can also check the [USCIS online case status tool](#), which USCIS will be updating with deferred action decisions (see Question 8 below).

8. How Can an SIJS Beneficiary Check the Status of USCIS's Consideration of Deferred Action?

Individuals can check the status of deferred action decisions by entering their 13-character SIJS petition (Form I-360) receipt number, with no spaces, into the [USCIS online case status tool](#). The Coalition's youth organizing group created a one-page flyer, in [Spanish](#) and [English](#), for SIJS youth in the backlog explaining how to use the online case status tool and linking to a video demonstration. [Here](#) is an example of notice via the USCIS case status tool of a deferred action grant at the same time as the I-360 approval, and [here](#) is an example of notice of a deferred action grant for an individual whose I-360 had already been approved. If the online case status tool provides no information about a deferred action decision and the individual wishes to submit a status inquiry to USCIS, they should do so through the [USCIS Contact Center](#).³ Contacting the USCIS Contact Center will generate an internal notice within USCIS that will go to the National Benefits Center, where USCIS adjudicates SIJS petitions and makes SIJS deferred action decisions.

9. What Is the Process for Requesting a Work Permit for Those Granted Deferred Action Under the Policy?

A deferred action grant provides a basis to apply for work authorization through Form I-765, indicating category (c)(14). 8 CFR § 274a.12(c)(14). USCIS has stated that individuals must wait until USCIS has granted deferred action to submit Form I-765. They may include proof of the deferred action grant with the application, such as the Form I-797 or a printout from the online case status tool, but they do not need to provide such proof as USCIS is able to verify in its system that deferred action has been granted. They should generally follow the [Form I-765 instructions](#), such as by including two color passport-style photos with the application as well as a copy of one of the specified identification documents listed on page 25. They do **not** need to submit the [Form I-765 Worksheet](#), as USCIS will presume economic necessity. USCIS has also indicated that there is no minimum age requirement for seeking an employment authorization document.

Applicants for work authorization must submit the [filing fee](#) or apply for a fee waiver using [Form I-912](#). USCIS has indicated that it will apply a generous fee waiver policy toward work authorization requests submitted by SIJS deferred action recipients, the same procedure it now applies to fee waiver requests filed by SIJS-based adjustment of status applicants. Under that policy, found on page 7 of the [Form I-912 instructions](#), individuals should submit a copy of the SIJS approval notice with the fee waiver request and need not fill out Parts 4-6 of the Form I-912 nor

³ Unfortunately, USCIS discontinued the dedicated inbox it previously provided for SIJS inquiries, and now only responds to inquiries sent to that inbox regarding expedite requests for children detained in Office of Refugee Resettlement custody who are seeking to enter the Unaccompanied Refugee Minors program and are at risk of aging out.

show proof of income.⁴ If the fee waiver is incorrectly denied, it is recommended that the applicant re-file and flag for supervisory review. An email to lockboxsupport@uscis.dhs.gov may also help in resolving the issue. A sample I-765 filing based on SIJS deferred action can be viewed [here](#).

Applicants for work authorization based on SIJS deferred action should file Form I-765 and supporting documents with the USCIS Lockbox in Chicago or Phoenix, depending on the address where the individual physically resides.⁵

USCIS indicated that there will be no special expedite process for these work permit requests. Individuals who meet the general criteria for requesting an expedite can do so through the process outlined on the [USCIS website](#).

10. How Long Will Work Permits Based on (c)(14) Deferred Action Last?

USCIS stated during the April 2022 stakeholder event that work permits will expire on the date that the individual's deferred action expires.

11. Can an SIJS Beneficiary Who Already Has a Pending Work Permit Request Filed Under Category (c)(11) Request That USCIS Convert the Work Permit Request to (c)(14)?

USCIS stated during an April 2022 stakeholder event that individuals who previously filed (c)(11)-based work permit requests would be required to file a separate work authorization request under category (c)(14) after being granted deferred action. However, according to a [declaration](#) by a senior USCIS official filed in pending litigation, on May 9, 2022 USCIS “directed officers to convert all prior filed (c)(11) employment authorization applications (Form I-765) to (c)(14) if and when the applicant was granted SIJ deferred action.” And, according to the declaration, as of June 24, 2022, USCIS had converted approximately 195 (c)(11)-based work permit requests to category (c)(14) and then approved them. A number of practitioners have reported receiving work permit request approvals under category (c)(14) for clients who had applied under category (c)(11).

⁴ If an applicant qualifies for a fee waiver based on a different ground, nothing prevents them from relying on that ground instead.

⁵ See USCIS, Direct Filing Addresses for Form I-765, Application for Employment Authorization (last reviewed/updated July 11, 2022), <https://www.uscis.gov/i-765-addresses> (providing addresses for (c)(14) employment authorization requests based on SIJS deferred action).

12. Are SIJS Beneficiaries Who Already Have a Work Permit Based on a Pending Asylum Application (Category (c)(8)) Eligible for Deferred Action and a (c)(14) Work Permit Under This Policy?

Nothing in USCIS's deferred action policy indicates that having another basis for a work permit precludes an individual from being considered for deferred action and, if approved, applying for a deferred action-based work permit. (Though if the individual has a pending adjustment of status application, they will not be considered for deferred action). We are interested in learning about how USCIS is treating deferred action adjudications for individuals with other types of work permits, such as those based on category (c)(8), and ask that practitioners please report outcomes through our [survey](#) about the SIJS deferred action policy. Through the survey results we have received so far, we have learned that USCIS is granting deferred action to individuals with approved SIJS petitions even if they have another work permit application pending or already have work authorization through another category, such as (c)(8).

13. How Long Is USCIS Taking to Adjudicate Work Permit Requests Under This Policy?

As of the date of this FAQ's issuance, it is too early to know what the average processing time is for USCIS adjudications of work permit requests under this policy. Practitioners generally report serious processing delays in USCIS adjudications including for work permit requests. USCIS has [indicated](#) that it is taking steps to reduce processing times. As of mid July 2022, some practitioners have reported that clients have already received their EADs—which would reflect a swift adjudication time in those cases of two months or less.

The Coalition invites practitioners to complete our [survey](#) regarding USCIS adjudications of SIJS deferred action work permit requests, so that we can collect and share information about adjudication trends including processing times.

14. How Can Individuals with Pending or Approved SIJS Petitions Update Their Address with USCIS?

Individuals with a pending SIJS petition should update their address by mailing [Form AR-11](#) to USCIS. Individuals with approved SIJS petitions can update their address using the [online AR-11 form](#), or by mailing Form AR-11 to USCIS.

15. How Does a Deferred Action Grant Impact an SIJS Beneficiary's Removal Proceedings?

A grant of deferred action does not directly impact an SIJS beneficiary's removal proceedings, though it does impact physical removal. The deferred action grant does not prevent ICE from advocating in immigration court for a noncitizen's removal or prevent an immigration judge from

ordering removal. It does prevent immigration authorities from physically removing an individual from the United States while the individual has deferred action. Though the deferred action does not directly impact ongoing removal proceedings, it is certainly a relevant factor that could help to persuade ICE prosecutors to agree to dismiss the removal case or take other favorable action. For more information on seeking prosecutorial discretion with ICE OPLA, see ICE OPLA's [webpage on prosecutorial discretion](#).⁶ The Coalition asks practitioners to report your experiences seeking prosecutorial discretion on behalf of SIJS clients in the green card backlog via [this survey](#).

16. Can a Person Granted Deferred Action Under This Policy Obtain [Advance Parole](#)?

No.

17. How Can I Get Involved in Efforts to End the SIJS Backlog and Improve Administrative Policies Impacting SIJS Youth?

If you are interested in joining our efforts to advocate for an end to the SIJS Backlog, please consider [joining the End SIJS Backlog Coalition](#). If you are a directly impacted youth, you can join the Coalition's youth organizing group and/or Whatsapp group by contacting youth organizer Geo, via email at geo@sijsbacklog.com or by phone/Whatsapp at (646) 912-8823.

18. Where Can I Find More Information About the USCIS SIJS Deferred Action Policy?

This FAQ largely draws from four USCIS sources, which individuals seeking more information about the deferred action policy should review:

1. The March 7, 2022 [policy alert](#)
2. [USCIS Policy Manual provisions](#) that now incorporate the deferred action policy
3. Statements made by USCIS personnel during an [April 27, 2022 stakeholder event](#) discussing the policy. USCIS has indicated that it will post the Powerpoint and notes from the April 27 event on its website.
4. The July 2022 [declaration](#) of Rose Kendrick, the Deputy Director of the USCIS National Benefits Center, filed in pending litigation concerning (c)(11)-based EAD requests for SIJS youth.

Practitioners can submit general questions about the policy to USCIS's Office of Public Engagement, at public.engagement@uscis.dhs.gov.

⁶ An ICE prosecutorial discretion guidance document specifically recognizes individuals with pending or approved SIJS petitions as potentially warranting favorable discretion. *See* ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (Aug. 10, 2021), <https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf>.