Model Hearing Program Substantive Law Lecture:

Juveniles, Human Trafficking, and Adjustment of Status

March 2023

Disclaimer

- *Any information provided as part of the Model Hearing Program (MHP) is **intended solely as an educational resource** for legal advocates to improve the quality of advocacy before the immigration courts.*
- *Any information provided by the MHP **does not replace any Executive Office for Immigration Review (EOIR) manual, policy, publication, or case law**, and may not be construed to create or limit any rights enforceable by law.*
- *The information provided as part of the MHP, including anything communicated orally or in writing, **is not legal advice** and **does not constitute any legal opinion** by the Department of Justice or the Department of Homeland Security.*
- *The **case scenarios** included in the MHP are **fictional**. Any resemblance to actual persons, living or dead, or actual cases is purely coincidental. Nothing herein should be construed as mandating a particular outcome in any specific case.*

Purpose

- Provide a basic overview of issues pertaining to **juveniles** in immigration proceedings, **human trafficking**, and the legal framework underlying **Adjustment of Status**.
- The information in this lecture is **not a comprehensive review** of the topics that will be covered in the model hearings. Rather, this lecture provides targeted information to give context to the issues raised in the model hearings.
- For further information, please consult the relevant legal authorities, including statutes, regulations, and case law.

Overview

In this session, we will review:

- Issues specific to immigration proceedings involving juveniles;
- Human trafficking; and
- Adjustment of Status

Note that this overview is accurate based on the law as of March 21, 2023.

Legal Authorities

- Statutes
  - Immigration and Nationality Act (INA), Title 8 of the U.S. Code
  - The Trafficking Victims Protection Act (TVPA)
  - The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)
- Regulations
  - Title 8 of the Code of Federal Regulations (8 C.F.R.)
- Board of Immigration Appeals (BIA or Board) precedent decisions
- Attorney General (AG) precedent decisions
- Federal Court decisions
- Supreme Court decisions

Terminology

Practice Tip

- It is important to be aware that immigration law defines the terms **child**, **juvenile**, and **minor** differently, and the definition of these terms themselves can even vary in different legal contexts.
- It is <u>always</u> important to check the definition under the law at hand. We will touch on this issue in the next several slides, with a focus on the definitions applicable to the current fact pattern.

Child

1. **Child**:

   - An unmarried individual under the age of 21.
   - Most relevant to visa petitions, Adjustment of Status, and Cancellation of Removal for Certain Nonpermanent Residents.
   - Reference: INA § 101(b)(1), (c)(1).

Juvenile

2. Juvenile:

- An individual under 18 years of age.
- Reference: 8 C.F.R. § 1236.3(a).

Minor

3. **Minor**:

- Relevant to the rules governing service of process and *in absentia* orders for individuals under the age of 14.

- Reference: 8 C.F.R. §§ 103.8(c)(2)(ii), 236.2(a); 1236.2(a).

Unaccompanied Child

4. Unaccompanied child (UC):

A child

- who has no lawful immigration status in the United States;
- who has not attained 18 years of age; and
- with respect to whom:
  - there is no parent or legal guardian in the United States; or
  - no parent or legal guardian in the United States who is available to provide care and physical custody.

- References: 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(g).

Special Immigrant Juvenile

5. Special Immigrant Juvenile Status (SIJ status or SIJS):

- A classification available to certain individuals under the age of 21 who have been abused, abandoned, or neglected and meet other requirements, including being eligible under state law.

- Reference: INA § 101(a)(27)(J)(i).

Juvenile Court

- State courts in the United States that make decisions about the dependency and custody of juveniles.
- In some states, also known as family court.
- Some juvenile courts may only be able to issue an order if the individual is under 18 years old.

Unaccompanied Children

Role of DHS

- Upon apprehension, DHS determines whether a juvenile is unaccompanied and subject to removal, if such a determination is yet to be made.
  - DHS must then notify the Department of Health and Human Services (HHS) within 48 hours.
- Within 72 hours, DHS must transfer a UC to HHS, Office of Refugee Resettlement (ORR).
- Reference: 8 U.S.C. § 1232(b).

Role of ORR (1 of 3)

- ORR provides "people in need with critical resources to assist them in becoming integrated members of American society."

- ORR has exclusive authority over the care, custody, and placement of UCs.

- ORR is responsible for the care and custody of UCs while case managers locate a family member or trusted adult ("sponsor") to whom the UC will be released.

- Reference: 6 U.S.C. § 279(b)(1); 8 U.S.C. § 1232(b)(1), (c)(3); ORR – What We Do website.

Role of ORR (2 of 3)

- Depending on a UC's specific situation, ORR places the UC in the least restrictive setting that is in the **best interest of the child**. In doing so, ORR may consider:
  - Danger to self
  - Danger to community
  - Risk of flight

Role of ORR (3 of 3)

- ORR cooperates with EOIR to ensure custodians receive legal orientation presentations that address the custodian's responsibility to attempt to ensure the child's appearance at all immigration proceedings and to protect the child from mistreatment, exploitation, and trafficking.
- With limited exceptions, by utilizing pro bono services where practicable, HHS ensures access to counsel for all UCs in HHS or DHS custody.
- Reference: 8 U.S.C. § 1232(c)(2), (4)-(5).

Removal Proceedings

- **Contiguous Countries** (Mexico and Canada)
  - UCs who do not elect voluntary return will be placed in removal proceedings.
- **Noncontiguous Countries**
  - UCs are automatically placed in removal proceedings.
- **UCs** are not subject to expedited removal.

Removal Proceedings (Cont.)

In removal proceedings, UCs are entitled to certain rights and benefits under the TVPRA, including:

- **Asylum Jurisdiction**: Non-adversarial adjudication of their asylum claim before USCIS. INA § 208(b)(3)(C).
- **Asylum One-Year Bar**: Not applicable. INA § 208(a)(2)(E).
- **Voluntary Departure**: Departure bond/financial means requirement waived. 8 U.S.C. § 1232(a)(2)(D)(ii).

Special Immigrant Juvenile Status (SIJ Status or SIJS)

What is SIJ Status?

- An immigration classification available to certain noncitizens under the age of 21 who have been abused, abandoned, or neglected by one or both parents.
- Provides a path to obtain lawful permanent residence in the United States.

Benefits of SIJ Status

- Waives inadmissibility due to:
  - Unlawful entry (INA § 212(a)(6)(A))
  - Working without authorization (INA § 212(a)(5)(A))
  - Status as a public charge (INA § 212(a)(4))

Benefits of SIJ Status (Cont.)

- Individuals with SIJ status can:
  - Apply for adjustment to lawful permanent resident (LPR, “green card”) (INA § 245(h); 8 C.F.R. § 245.1(a), (e)(3))
  - Obtain work authorization and are exempt from unauthorized employment bars (INA § 245(c)(2), (8))
  - Eventually apply for U.S. citizenship (INA § 316)

What are the qualifications for SIJ Status?

Eligibility Requirements

Individuals seeking SIJ status:

1. Must be under 21;
2. Must be unmarried;
3. Must be present in the United States; and

Eligibility Requirements (Cont.)

4. Must obtain a juvenile court order finding:

   A. Dependency or custody –

      - The individual is dependent on the court, under the custody of the state agency or entity, or an individual or entity appointed by the court;

   B. Family reunification is not viable –

      - Reunification with one or both of the individual's parents is not viable due to abuse, abandonment, neglect, or similar basis under state law;

   C. Not in best interest of juvenile to return –

      - Court must make a finding that it would not be in the juvenile's best interest to be returned to the juvenile's (or the juvenile's parent's) country of nationality or last habitual residence.

- Reference: INA § 101(a)(27)(J).

Examples

Examples of when a child may be eligible for SIJ status include (but are not limited to):

- Child abused before arriving to or while in the United States; or
- Child in state agency custody (e.g., foster care).

Summary of Eligibility Requirements

Petitioner Must:	When?
Be under 21 years old	At time of filing Form I-360
Be living in the United States	At time of filing Form I-360 **AND** At time decision made on Form I-360
Be unmarried	At time of filing Form I-360 **AND** At time decision made on Form I-360
Have a valid juvenile court order declaring dependency	At time of filing Form I-360 **AND** At time decision made on Form I-360, *unless* individual*:* • Was adopted or placed in a permanent guardianship or • Aged out of the juvenile court's jurisdiction

The SIJS Process

1. Noncitizen **must** obtain state court dependency order.

2. Noncitizen **must** file a petition with USCIS for SIJ status (Form I-360).

3. Noncitizen **may** seek Adjustment of Status (Form I-485).

    - Generally, noncitizen may file for adjustment only after the Form I-360 has been approved and the priority date is current.

SIJS Petition

Form:

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant

Supporting Documents:

- Evidence of age
- Evidence of biometrics completion
- Valid juvenile court order(s)
- If applicable:
  - Written consent from the U.S. Department of Health & Human Services
  - Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative

Human Trafficking

Basics of Human Trafficking

- Human trafficking is a crime that involves exploiting a person for labor, services, or commercial sex.
- According to the International Labour Organization, out of the 27.6 million people worldwide trapped in forced labor, 17.3 million people are exploited in the private sector through such work as domestic work, construction or agriculture; 6.3 million people are trapped in forced sexual exploitation, and 3.9 million people are exploited through forced labor imposed by state authorities.

Basics of Human Trafficking (Cont.)

- Although human trafficking can happen to anyone, some individuals are more vulnerable than others. Significant risk factors may include recent migration or relocation, substance abuse, involvement with the child welfare system, and homelessness.
- To report suspected human trafficking incidents, contact the National Human Trafficking Resource Center at (888) 373-7888. For emergencies, call 911.

Learn more, visit: International Labour Organization; Polaris (polarisproject.org)

Human Trafficking Misconceptions and Facts

Misconception	Fact
Human trafficking usually or always involves physical violence.	Legally, human trafficking is a violent crime, but most traffickers use psychological means, including false representation, manipulation, or threats.
All human trafficking involves sex.	Worldwide, experts believe there are more instances of labor trafficking than sex trafficking.

Human Trafficking Misconceptions and Facts (Cont.)

Misconception	Fact
Only women and girls can be victims and survivors of sex trafficking.	Men and boys are also victimized. LGBTQ+ boys and young men are particularly vulnerable to trafficking.
People in active trafficking situations always want help getting out.	Fear, isolation, guilt, shame, misplaced loyalty, and expert manipulation are among the many factors that may keep a person from identifying as a victim or seeking help even if they are, in fact, being actively trafficked.

Learn more, visit: [Myths, Facts, and Statistics – Polaris (polarisproject.org)]

Child Trafficking Misconceptions and Facts

Misconception	Fact
All children are equally at risk for human trafficking.	As with adults, children who have certain other risk factors are also going to be more at risk for trafficking. These include children who have been abused or faced trauma, children in unstable living situations, and children in families battling addiction.

Child Trafficking Misconception and Facts (Cont.)

Misconception	Fact
All child trafficking involves commercial sex.	Children are victimized in labor trafficking situations as well.
Most victims of human trafficking are children.	Adults make up the majority of human trafficking victims.

Learn more, visit: Child Sex Trafficking - Polaris (polarisproject.org)

Definition of Human Trafficking

The TVPA defines "severe forms of trafficking in persons" as:

- Sex trafficking in which a commercial sex act is induced by **force, fraud,** or **coercion,** or in which the person induced to perform such act has not attained 18 years of age; **or**

- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of **force, fraud,** or **coercion** for the purpose of subjection to **involuntary servitude, peonage, debt bondage,** or **slavery**.

- Reference: 22 U.S.C. § 7102(11); 8 U.S.C. § 1375b(f)(2); *see also* DOJ Human Trafficking Webpage.

Purposes of TVPA

- **Prevent** human trafficking domestically and overseas.
- **Protect** victims and help them rebuild their lives in the U.S. with Federal and State support;
  - Establish immigration relief for victims, including the T visa.
- **Prosecute** traffickers and seek justice for victims.

- Reference: TVPA of 2000

Basics of T Visas

- Jurisdiction for adjudication lies with USCIS.
- Provides victims lawful status to remain temporarily in the United States to assist with the investigation or prosecution of criminal activity.
- T Visa (Form I-914) = victims of human trafficking.
    - Annual cap of 5,000 for principal applicants.

T Visa Requirements

The noncitizen:

- is or was a victim of a severe form of human trafficking;
- is in the United States, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
- has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking;
    - Exceptions: the victim (1) has not attained 18 years of age or (2) is unable to cooperate due to physical or psychological trauma

T Visa Requirements (Cont.)

- would suffer *extreme hardship* involving unusual and severe harm if removed from the United States; **and**
- is admissible to the United States.
- Reference: INA § 101(a)(15)(T)(i).

T Visa Benefits and Obligations

Benefits

- Remain and work in the United States for up to four years.
- May apply for adjustment to LPR after three years or sooner if the investigation or prosecution is completed.

Obligations

- Ongoing duty to cooperate with law enforcement.
- Cannot unreasonably refuse to assist with the investigation or prosecution of the case.

Adjustment of Status

What is Adjustment of Status?

- A process for an individual to obtain LPR status without having to leave the United States:
  - Not in removal proceedings – apply with USCIS.
  - In removal proceedings – apply with the immigration court.
    - Noncitizens without status may apply to adjust status.
    - LPRs may apply to readjust status.
- Adjustment of Status is governed by INA § 245.

Benefits of Adjusting to LPR Status

- Lawful immigrant status in the United States.
- Permitted to work without restriction.
- More freedom to travel (no need for advance parole).
- Provide a path to citizenship through naturalization.

Qualifications for Adjustment of Status

A noncitizen must generally meet the following requirements:

1. Has been inspected and admitted or paroled by an immigration officer (except Violence Against Women Act (VAWA) self-petitioners and SIJS petitioners);
2. Be admissible to the United States for permanent residence;
3. An immigrant visa is immediately available to the noncitizen at the time of applying for adjustment; and
4. Merit a favorable exercise of discretion.

- Reference: INA § 245(a).

The Adjustment of Status Process

1. Applicant **must** file a visa petition with USCIS and receive an approval.
2. Applicants in removal proceedings **must** file a Form I-485, Application to Register Permanent Residence or Adjust Status, along with supporting documentation with the immigration court.

Step 1: Visa Petition

Visa Categories & Preference Category

- Noncitizen must have an approved visa petition in order to be granted Adjustment of Status.
- USCIS adjudicates visa petitions and assigns visa category and preference category.

Visa Categories & Preference Categories

Visa Category	Preference Category
Family-based – Form I-130, Petition for Alien Relative	1. Unmarried sons and daughters of U.S. citizens (F1) 2. Spouses and children of permanent residents (F2A) 3. Unmarried sons and daughters (age 21 or older) of permanent residents (F2B) 4. Married sons and daughters of U.S. citizens (F3) 5. Brothers and sisters of adult U.S. citizens (F4)

Visa Categories & Preference Categories

Visa Category	Preference Category
Employment-based – Form I-140, Petition for Alien Workers	1. Priority workers (EB-1) 2. Members of the professions holding advanced degrees or persons of exceptional ability (EB-2) 3. Skilled workers, professionals, and other workers (EB-3) 4. **Certain Special Immigrants (including SIJS) (EB-4)** 5. Employment Creation (EB-5)

Annual Quotas

- The INA sets annual quotas for immigrant visas that may be issued to noncitizens seeking LPR status:
  - "Immediate Relatives" are exempted from visa quotas
    - *See* INA § 201(b)(2)(A)(i).
  - "Preference Visas" are issued based on the priority date.
    - The priority date is the date that the:
      - Visa petition is filed with USCIS, or
      - Labor certification is filed with U.S. Department of Labor.

Visa Bulletin

For current visa availability and priority information, please visit the Visa Bulletin published monthly by the U.S. Department of State on the Travel.State.Gov website.

Step 2: Adjustment Application

Typical Contents of an Adjustment Application

- Application for Adjustment of Status (AOS) (Form I-485);
- Notice of Action acknowledging fee receipt or fee waiver approval (Form I-797);
- Visa petition application; and
- Notice of Action acknowledging approval of the underlying visa petition (Form I-797).

Typical Supporting Documentation for SIJS AOS

- Two passport style photographs.
- Copy of a government-issued identity document with photograph.
- Copy of birth certificate.
- Proof of date and manner of entry.

Typical Supporting Documentation for SIJS AOS (Cont.)

- Proof of biometrics completion.
- Certified police and court records of any juvenile delinquency findings, criminal charges, arrests, or convictions.
- A sealed medical examination and vaccination record.

Requirement #1: Noncitizen has been inspected and admitted or paroled by an immigration officer

Admission v. Parole

- Admission:
  - Occurs when an immigration officer allows a noncitizen to enter the United States pursuant to a visa or other entry document.
- Parole:
  - Occurs when an immigration officer allows a noncitizen, who may be inadmissible or otherwise ineligible for admission (e.g., without valid entry document), to enter the United States for a temporary period.
  - Most often is for humanitarian reasons.

Commonly Used Evidence to Establish Method of Entry Into the United States

- Copy of the Form I-94, Arrival/Departure Record,
- Copy of the passport with an admission stamp,
- Other relevant travel documents, such as a border crossing card or affidavits, and/or
- Testimonial evidence.

“Wave-Through” Admission

- Noncitizens may satisfy the admission requirement by showing that they were “waved through.”
- “Waved through” = an immigration officer allows an individual to pass through the port of entry without asking questions or inspecting documents.
- Must show procedural regularity.
- Reference: *See Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010).

Requirement #2: Be Admissible to the United States for Permanent Residence

Grounds of Inadmissibility under INA § 212(a)

Ground of Inadmissibility	INA Section
Health-related	212(a)(1)
Criminal convictions	212(a)(2)
Terrorism or security grounds	212(a)(3)
Public charge	212(a)(4)
Present without admission or parole	212(a)(6)(A)
Failure to attend removal proceedings	212(a)(6)(B)

Grounds of Inadmissibility under INA § 212(a) (Cont.)

Ground of Inadmissibility	INA Section
Fraud or false claim to U.S. citizenship	212(a)(6)(C)
Stowaways	212(a)(6)(D)
Documentation requirements for immigrants	212(a)(7)(A)
Ineligibility for citizenship	212(a)(8)
Prior immigration violations	212(a)(9)

If inadmissible, the noncitizen may qualify for and request a waiver.

Exempted Grounds of Inadmissibility for SIJS

Individuals with SIJ status are not subject to the following grounds of inadmissibility:

Ground of Inadmissibility	INA Section
Public charge	212(a)(4)
Labor certification	212(a)(5)(A)
Present without admission or parole	212(a)(6)(A)
Fraud or false claim to U.S. Citizenship	212(a)(6)(C)
Stowaways	212(a)(6)(D)
Documentation requirements for immigrants	212(a)(7)(A)
Unlawful presence	212(a)(9)(B)

Waivable Grounds of Inadmissibility for SIJ Status (1/3)

Individuals granted SIJ status who are found to be inadmissible under the following grounds may be eligible for a waiver for humanitarian purposes, family unity, or in the public interest:

Ground of Inadmissibility	INA Section
Health-related	212(a)(1)
Certain criminal convictions	212(a)(2)
Failure to attend removal proceedings	212(a)(6)(B)
Smugglers	212(a)(6)(E)
Subject of civil penalty	212(a)(6)(F)

Waivable Grounds of Inadmissibility for SIJ Status (2/3)

Ground of Inadmissibility	INA Section
Student visa abuse	212(a)(6)(G)
Ineligibility for citizenship	212(a)(8)
Certain noncitizens previously removed	212(a)(9)(A)

Waivable Grounds of Inadmissibility for SIJ Status (3/3)

Ground of Inadmissibility	INA Section
Unlawful presence after previous immigration violations	212(a)(9)(C)
Practicing polygamists, guardians required to accompany helpless persons, international child abductors, unlawful voters, and former citizens who renounced citizenship to avoid taxation	212(a)(10)

Reference: INA § 245(h)(2)(B).

Non-waivable Grounds of Inadmissibility for SIJ Status

However, the following grounds of inadmissibility cannot be waived under INA § 245(h):

Ground of Inadmissibility	INA Section
Conviction of certain crimes	212(a)(2)(A)
Multiple criminal convictions	212(a)(2)(B)
Controlled substance traffickers	212(a)(2)(C)

Non-waivable Grounds of Inadmissibility for SIJ Status (Cont.)

Ground of Inadmissibility	INA Section
Security and related grounds	212(a)(3)(A)
Terrorist activities	212(a)(3)(B)
Foreign policy-related grounds	212(a)(3)(C)
Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing	212(a)(3)(E)

Requirement #3:
Visa Immediately Available

Two Ways for a Visa to be “Immediately Available”

- Priority date for the visa is current, **or**
- No waiting list for the noncitizen’s visa category (e.g., immediate relative category).

Requirement #4: Discretion

Discretionary Factors to Consider

Equities

- Family ties and closeness of the relationships
- Length of lawful residence in the U.S.
- History of employment
- Property, investment, or business ties in the United States
- Service in the U.S. armed forces
- Hardship to the noncitizen or close relatives
- Rehabilitation

Adverse Factors

- Unauthorized employment in the United States
- Failure to pay taxes
- Failure to pay child support
- Abuse or deception connected to a qualifying relationship
- Criminal history
- Lack of reformation of character or rehabilitation

Recap

Summary of Adjustment of Status

- Generally, to qualify for Adjustment of Status, the noncitizen must:
  - have a USCIS-approved visa petition;
  - have been inspected and admitted or paroled by an immigration officer;
  - be admissible under INA § 212(a); and
  - have an immigrant visa number immediately available.
- Even if statutory eligibility for Adjustment of Status is established, granting or denying is ultimately up to the immigration judge's discretion.
- If granted, the noncitizen receives LPR status and may ultimately pursue naturalization.

Other Considerations

Treatment of Family Members

- Family members of an SIJS beneficiary cannot be included as derivative beneficiaries in Adjustment applications.

- However, SIJS beneficiaries may petition for certain qualifying family members through family-based immigration after the SIJS beneficiary has adjusted status to LPR.

- A noncitizen who adjusts status as a result of an SIJS classification may not confer an immigration benefit to their biological or adoptive parents, even after naturalization.

- References: INA § 101(a)(27)(J)(iii)(II); 8 C.F.R. § 204.11(i).

Friend of the Court (1 of 3)

- Individual who assists pro se respondents—including juveniles—in navigating the immigration court system, creating greater efficiency and fairness by helping respondents to better understand court proceedings.
- **Not a legal representative.**

Friend of the Court (2 of 3)

Role:

- Help with courtroom mechanics.
- Communicate helpful information pertinent to the respondent's case.
- Communicate concerns regarding competency to the immigration court.

Friend of the Court (3 of 3)

- Provide basic assistance with certain forms.
- Facilitate attendance at hearings.
- Serve as a liaison.
- Reference: DM 22-06, Friend of the Court.

Thank You