



APRIL 2024

BREAKING DOWN THE VISA BULLETIN: WHAT SIJS ADVOCATES NEED TO KNOW

Special immigrant juvenile status (SIJS) is a humanitarian status that provides protections and a pathway to lawful permanent residence to immigrant children up to the age of 21 years who have been abused, abandoned, or neglected by their parent(s), and where a state juvenile court has determined that it is not in their best interest to be returned to their country of origin. See INA § 101(a)(27)(J). A child who receives SIJS can apply for lawful permanent residence once a visa is immediately available and they meet the other eligibility requirements. See INA § 245(h). As further explained below, until Congress fixes the SIJS visa backlog, SIJS youth must wait years before a visa is available for them to seek lawful permanent residence.

This resource is intended to help SIJS advocates better understand the system used by the U.S. Department of State (DOS) to allocate visas. Advocates are critical in helping SIJS youth through this lengthy process, starting with helping SIJS youth understand how the visa system works.

What is the Visa Bulletin and how does it work?

DOS issues a chart each month that summarizes visa availability for different visa categories and countries. This chart is called the [Visa Bulletin](#). The chart for the upcoming month is released around the middle of each month.

The Visa Bulletin tells people which categories of visas are backlogged, versus immediately available or “current,” and allows people to track their progress toward having a current priority date. An SIJS youth’s priority date is the date that the petition for SIJS (Form I-360) was received by USCIS.



TAKING A CLOSER LOOK: PRIORITY DATE

Priority Date:

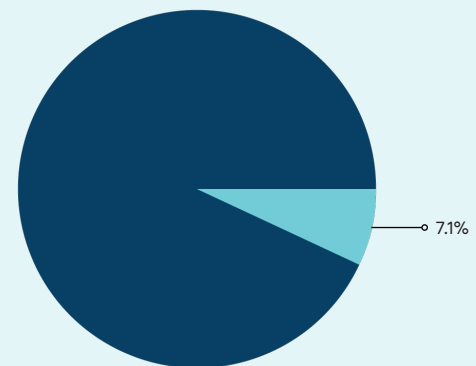
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Department of Homeland Security U.S. Citizenship and Immigration Services	
THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS	
NOTICE TYPE	Receipt
CASE TYPE	I-360, Petition for Amerasian, Widow(er) or Special Immigrant
RECEIPT NUMBER	MSC [REDACTED]
RECEIVED DATE	October 5, 2021
PRIORITY DATE	October 5, 2021
PREFERENCE CLASSIFICATION	SPECIAL IMMIGRANT JUVENILE
202 S 1ST STREET STE 300 HARLINGEN, TX 78550	
3	00001012

How many visas are available in the EB-4 category?

Visas for special immigrant juveniles come from the employment-based fourth preference (EB-4) category by statute, pursuant to which no more than 7.1 percent of the worldwide level of employment-based visas may be allocated to all categories of “special immigrants,” which includes but is not limited to SIJS youth. See INA § 203(b)(4). The worldwide level of available employment-based visas in a given fiscal year is 140,000, plus any unused family-based visas (if any). See INA § 201(d). So, for example, if there were no unused family-based visas in a given year, the EB-4 category would receive 7.1 percent of 140,000, or 9,940 visas. In addition, there are statutory “per-country” caps that require that visas for people from any single country may not exceed 7 percent annually of the total number of visas available for all family-sponsored and employment-based preference immigrant visas available worldwide, or 25,620 (7 percent of 226,000 and 140,000). See INA § 202(a)(2). This results in DOS restricting the visas available to people from certain countries that reach the 7 percent per-country cap, as explained below.

PERCENT OF EB-4 CATEGORY VISAS GRANTED PER YEAR (out of total employment-based visas available)



What is the difference between the Final Action Date and Filing Date charts?

The Visa Bulletin has two charts within each of the family-based and employment-based categories: Chart A, “Final Action Dates,” and Chart B, “Dates for Filing.” Chart A lists the Final Action Dates for each category. This chart tells individuals whether they have a visa available, based on their specific priority date, or whether they still need to wait for a visa to be available. A person has a visa available if their priority date is a date before the Final Action Date listed in the chart. Chart B lists the “Dates for Filing” for each category. In some months, USCIS permits people to file their applications for adjustment of status based on the dates in Chart B, even if their priority date is not quite current under Chart A and there is not a visa currently available for them. This allows USCIS to accept applications that may soon have a visa available in order to streamline the adjudication process. Soon after the upcoming month’s Visa Bulletin is posted, **USCIS announces** whether it will allow filing based on Chart B for a particular month.

EXAMPLE: Talia’s priority date for her SIJS petition (Form I-360) is October 5, 2021. Does she have a visa available according to the **May 2024 Visa Bulletin**? No, Talia does not yet have a visa available, because the Final Action Date across the EB-4 category in May 2024 is November 1, 2020, a date that is earlier than Talia’s priority date.

Can Talia file her application for adjustment of status with USCIS in May 2024 despite not yet having a visa available? No. **USCIS does not permit filing under Chart B for May 2024.** Even if USCIS did permit Chart B filing in May 2024, Talia still could not file her application for adjustment of status because her priority date of October 5, 2021 is later than the application date listed across the EB-4 category in Chart B (December 1, 2020).

However, because Talia does not have a visa available, if she has an approved SIJS petition she should be eligible for consideration for deferred action under USCIS’s **SIJS deferred action program**. For more information about the SIJS deferred action program, see the End SIJS Backlog Coalition’s **FAQ**.

Why are there more visas available to SIJS youth in some years than others?

Due to unused family-based visas in the previous year, there may be more than the allotted 140,000 employment-based visas available in a given year. Beginning in fiscal year 2021, due to the COVID pandemic, many unused family-based visas were rolled over into the employment-based categories. In fiscal year 2024, **DOS estimates** that 161,000 visas are available in the employment-based categories. The visas are then distributed among the categories based on the fixed percentages found in the statute. See INA § 203(b). Thus, in fiscal year 2024, the EB-4 category (which includes but is not limited to SIJS youth) will receive about 11,431 visas—7.1 percent of the 161,000 visas available.

How do the April 2023 Visa Bulletin changes impact SIJS youth?

From 2016 until 2023, DOS limited the number of visas in the EB-4 category for individuals from El Salvador, Guatemala, and Honduras because the demand for visas from nationals from those countries in the EB-4 category was over the 7 percent per country cap. However, in 2023, DOS admitted they had **committed a legal error** in interpreting the per country cap in this way. In reality, the 7 percent per country cap found at INA § 202(a) only applies if a country's demand is more than 7 percent in all preference categories combined, not just within a subcategory. Thus, under the correct interpretation of the statute that DOS now follows, only applicants from China, India, Mexico, and the Philippines are subject to the 7 percent per country cap, and their visas are “prorated,” or proportionately distributed. See INA § 202(e).

EXAMPLE: Talia is from Honduras. When Talia's SIJS petition was approved in June 2022, her attorney reviewed the Visa Bulletin with her. Talia checked the Visa Bulletin each month as her attorney advised her. In March 2023, Talia's attorney contacted her to let her know about DOS's change in interpretation and to explain that El Salvador, Guatemala, and Honduras would no longer have their own column in the Visa Bulletin. Now, Honduras would fall under the “All Chargeability Areas” column. This will shorten Talia's wait time because now visas for nationals from El Salvador, Guatemala, and Honduras will no longer be prorated.

For other SIJS youth, the new DOS interpretation may lengthen their wait time. For someone from Ecuador, for example, the change required DOS to retrogress the Final Action Date in the April 2023 Visa Bulletin, from February 1, 2022 to October 1, 2018.

What is the difference between a visa backlog and retrogression?

A backlog refers to a buildup of demand in a certain visa category that exceeds supply. When the demand for visas in a category is more than the supply of visas available, DOS will set a Final Action Date, rather than listing that category as “current,” to limit the applications filed. The applicant must wait for their priority date to reach the Final Action Date before a visa is available to them.

Retrogression occurs when DOS moves the Final Action Date back because their estimate of demand was incorrect. Those applications filed before the change in Final Action Date are “retrogressed” and **USCIS will hold the application in abeyance** and not adjudicate it until a visa becomes available. Adjustment applications filed in immigration court should similarly be held in abeyance by the immigration court until a visa is available. See *Matter of Briones*, 24 I&N Dec. 355, 357 n.3 (BIA 2007).

CHECKING THE FACTS

FALSE

The Visa Bulletin allows you to accurately calculate your client's visa wait time.

Some people mistakenly believe that you can use simple subtraction to learn how long an SIJS youth will have to wait in the visa backlog. The incorrect approach involves subtracting the client's priority date from the current month's EB-4 Final Action Date. So, in Talia's case, she might subtract her priority date of October 5, 2021 from the [May 2024 Visa Bulletin's](#) EB-4 Final Action Date of November 1, 2020—arriving at a time difference of about 1 year. But this number does **not** reflect Talia's true wait time! What is accurate is that someone with a priority date of November 1, 2020 waited more than three years for their visa to become available, but again, the Final Action Date cannot be used as a projection for individuals whose priority date is not yet current.

Instead, Talia's true wait time will depend on how many people in the EB-4 category have earlier priority dates than she does (a number that USCIS does not share publicly), and of those people, how many actually act on their approved EB-4 petition, thus taking up a visa from the limited EB-4 visas.

TRUE

There is no clear way for advocates to accurately predict how much time an SIJS youth will have to spend waiting in the backlog.

For one, SIJS youth, like all others awaiting a visa, are not given information about their "place in line" that might help them predict their wait time. To illustrate this point, note that USCIS publishes the number of approved EB-4 petitions who are awaiting a current priority date. As of [September 2023](#), there were over 155,000 people with approved EB-4 petitions awaiting visa availability. And remember that there are about 10,000 EB-4 visas available per year—so, theoretically, if Talia were the very last person in the EB-4 "line" based on her priority date, she might predict a 15.5-year wait time. But Talia has no way of knowing where her priority date falls within the "line" of 155,000 people, something she would need to know to predict how many more years she must wait.

Even if Talia was told her exact place in line, she still would not be able to precisely calculate her wait time. This is because there are a number of variables that impact how the EB-4 Final Action Date advances from one month to the next. These variables include:

- How many individuals actually act on their approved EB-4 petitions once they have a visa available and thus "use up" an EB-4 visa, as opposed to, for example, pursuing another adjustment route available to them;
- The possibility that some EB-4 visa applications may be denied, thus not "using up" an EB-4 visa;
- Whether there will be surplus visas available in a given year that allow for the issuance of more than the statutory minimum of 9,940 annual EB-4 visas; and
- How many EB-4-based adjustment applications and EB-4-based immigrant visa applications are pending with USCIS and consular offices, respectively, at a given time, which impacts how DOS personnel choose a Final Action Date in the Visa Bulletin each month. See INA 203(g) (requiring the State Department to make "reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year . . . and to rely upon such estimates in authorizing the issuance of visas").



The Final Action Date in the Visa Bulletin advances at an even rate from month to month.

Some people might reasonably think that each month, the Final Action Date listed for the EB-4 category will move forward by one month or by some other consistent interval. However, this is not how the Visa Bulletin’s Final Action Dates progress.

Although there is a statutorily limited number of visas available each year, there is no limit to how many petitions can be approved each year. In the EB-4 category, there are more petitions approved each year than visas available. As an analogy, the family-sponsored, fourth-preference category (for siblings of U.S. citizens) is one of the most backlogged preference categories. The Final Action Date in this category for “All Chargeability Areas” was March 22, 2007 in February 2023 and it was May 22, 2007 in February 2024. That is a movement of 2 months in a 12 month period. This slow forward movement reflects the fact that the number of approved beneficiaries in this category far exceeds the availability of visas. Similarly, because the number of approved EB-4 petitions has grown over the years, the EB-4 Final Action Date will likely advance more slowly than it did in the past.



From one month to the next, the Final Action Date in the Visa Bulletin could stay the same, move forward, or even move backward.

DOS personnel decide the Visa Bulletin Final Action Date for each visa category each month based on various factors and “reasonable estimates” about how visas will be used. You can read more about how the DOS makes these estimates [here](#). However, this process is not very transparent to the public, and from the perspective of someone like Talia, it can be frustrating to see the Final Action Date stay the same for many months or even move back in time (retrogress). Conversely, sometimes, particularly at the beginning of a fiscal year in October, Final Action Dates may advance significantly. It is thus important to have a system in place to check all clients’ priority dates against the Visa Bulletin on a monthly basis.

TALKING TO CLIENTS ABOUT THE SIJS VISA BACKLOG

While the SIJS visa backlog is incredibly unfortunate, it will continue to exist until Congress acts to eliminate it. The End SIJS Backlog Coalition advocates for a legislative fix to the SIJS visa backlog, including through the Protect Vulnerable Immigrant Youth Act, introduced in the U.S. [House](#) in 2022 and [Senate](#) in 2023. In the meantime, advocates must inform clients about the SIJS visa backlog, explaining the potential impacts on their life while they endure the wait time, and the lack of transparency in the visa allocation system which makes it impossible to predict with accuracy when a visa will be available to them. The realization of how large the backlog is and that they will likely have to wait many years before being able to apply for lawful permanent residence can be especially difficult for SIJS youth. One way a young person can maintain hope while in the backlog is through building community with other impacted youth. Therefore, advocates may also want to encourage clients to join the End SIJS Backlog Coalition to build community and power with other youth impacted by the SIJS visa backlog. Advocates should also communicate to clients how to stay eligible for adjustment of status during the years they will spend

waiting for a visa. Given the long wait time, advocates must also screen for and discuss the pros and cons of any alternative paths to immigration status with clients.

Advocates can join the End SIJS Backlog Coalition and help us put an end to the backlog and its harms by signing up [here](#).

Youth can join the Coalition by signing up [here](#). The Coalition also has youth resource pages in [English](#) and [Spanish](#). These resource pages are meant to empower impacted youth and for them to grow in their personal autonomy in a system that leaves so much out of their control.

Publication of the [End SIJS Backlog Coalition](#), 2024. This FAQ is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0). This resource was written by Dalia Castillo-Granados, Director, Children’s Immigration Law Academy of the American Bar Association, Rebecca Scholtz, Senior Staff Attorney, National Immigration Project of the National Lawyers Guild, and Rachel Prandini, Senior Staff Attorney, Immigrant Legal Resource Center. This resource is not a substitute for independent legal advice provided by legal counsel familiar with a client’s case.