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DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Parts 204, 205, and 245

[CIS No. 2474-09; DHS Docket No USCIS-2009-0004]

RIN 1615-AB81

Special Immigrant Juvenile Petitions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Department of Homeland Security (DHS) announces the reopening of the public comment period for the proposed rule titled, Special Immigrant Juvenile Petitions, 76 FR 54978. DHS published the proposed rule on September 6, 2011, and accepted comments until November 7, 2011. To provide the public with further opportunity to comment on the proposed rule, DHS will reopen the comment period for an additional 30 days. DHS will consider comments received during the entire public comment period in its development of a final rule.

DATES: The comment period for the proposed rule published on September 6, 2011 (76 FR 23534) is reopened. You must submit written comments and related material on or before [Insert date 30 days from the date of publication in the Federal Register].

ADDRESSES: You may submit comments on the entirety of this proposed rule package, to include the proposed information collection requirements, which is identified as DHS Docket No. **USCIS-2009-0004**, by any one of the following methods:

- **Federal eRulemaking Portal** (preferred): <http://www.regulations.gov>. Follow the website instructions for submitting comments.

- Mail: Samantha Deshommnes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW, Washington, DC 20529-2140. To ensure proper handling, please reference DHS Docket No. **USCIS-2009-0004** in your correspondence. Mail must be postmarked by the comment submission deadline. Please note that we will not accept any comments that are hand delivered or couriered. In addition, we will not accept any comments that are on removable media (e.g. thumb drives, CDs, etc.). All comments that are mailed must be addressed as specifically written above.

FOR FURTHER INFORMATION CONTACT: Maureen Dunn, Chief, Division of Humanitarian Affairs, Office of Policy & Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts NW, Washington, DC 20529-2140; telephone number 202-272-8377 (This is not a toll-free number. Comments are not accepted via telephone message).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. DHS also invites comments that relate to the economic or federalism effects that might result from this rule. Comments that will provide the most assistance to DHS will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2009–0004. Providing comments is entirely voluntary. Regardless of how comments are submitted to DHS, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov> and will include any personal information provided by commenters. Because the information submitted will be publicly available, commenters should consider limiting the amount of personal information provided in each submission. DHS may withhold information provided in comments from public viewing if it determines that such information is offensive or may affect the privacy of an individual. For additional information, please read the Privacy Act notice available through the link in the footer of <http://www.regulations.gov>.

Docket: For access to the docket, go to <http://www.regulations.gov> and enter this rulemaking's eDocket number: USCIS-2009-0004.

II. Background

On September 6, 2011, DHS published a Notice of Proposed Rulemaking (NPRM) in the Federal Register at 76 FR 54978 and received 58 public comments. USCIS proposed to amend its regulations governing the Special Immigrant Juvenile (SIJ) classification, *see* Immigration and Nationality Act (INA) sec. 101(a)(27)(J), 8 U.S.C. 1101(a)(27)(J), and related applications for adjustment of status to that of a lawful permanent resident, *see* INA sec. 245(h), 8 U.S.C. 1255(h). *See also* 8 U.S.C. 1232(d)(2). Specifically, the NPRM sought to revise DHS regulations at 8 CFR 204.11, 205.1, and 245.1 to:

- Implement statutorily mandated changes by revising the existing eligibility requirements under the following statutes:
 - Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, 108 Stat. 4319 (Jan. 25, 1994);

- Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (CJS 1998 Appropriations Act), Public Law 105-119, 111 Stat. 2440 (Nov. 26, 1997);
 - Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109-162, 119 Stat. 2960 (Jan. 5, 2006);
 - William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Public Law 110-457, 122 Stat. 5044 (Dec. 23, 2008).
- Clarify the use of the term “dependency” as used in section 101(a)(27)(J)(i) of the INA, 8 U.S.C. 1101(a)(27)(J)(i), including that such dependency, commitment, or custody must be in effect when a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) is filed and must continue through the time of adjudication, unless the age of the petitioner prevents such continuation.
- Clarify that the viability of parental reunification with one or both of the child’s parents due to abuse, neglect, or abandonment, or similar basis under state law must be determined by the juvenile court based on applicable state law.
- Clarify that DHS consent to the grant of SIJ classification is only warranted when the petitioner demonstrates that the state court order was sought primarily for the purpose of obtaining relief from abuse, neglect, abandonment or some similar basis under state law and not primarily for the purpose of obtaining lawful immigration status; and that the evidence otherwise demonstrates that there is a bona fide basis for granting SIJ classification.
- Clarify that USCIS may seek or consider additional evidence if the evidence presented is not sufficient to establish a reasonable basis for DHS consent.

- Remove automatic revocation under 8 CFR 205.1(a)(3)(iv)(A) and (C) to the extent that they pertain to a juvenile's age and are inconsistent with age-out protections under TVPRA 2008.
- Implement statutory revisions exempting SIJ adjustment-of-status applicants from four additional grounds of inadmissibility and clarify grounds of inadmissibility that cannot be waived.
- Improve the application process by clearly listing required initial evidence that must accompany Form I-360 and amend what constitutes supporting documentation; and
- Make technical and procedural changes; and conform terminology.

DHS is reopening the comment period to refresh this proposed rule and allow interested persons to provide up-to-date comments in recognition of the time that has lapsed since the initial publication of the proposed rule. Both the public and the Government will benefit from clarifications regarding eligibility and procedures for the SIJ classification. Due to the lapse in time since the NPRM was issued, DHS seeks to reengage the public and allow further input on the proposed changes.

Kevin K. McAleenan
Acting Secretary

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