



To: KIND Staff & KIND Pro Bono Attorneys
From: KIND Legal Services Management
Date: September 14, 2016

Re: Update on October 2016 Visa Bulletin regarding status adjustment for certain Special Immigrant Juvenile Status (SIJS) clients

Effective October 1, 2016, adjustment of status applications on behalf of Special Immigrant Juveniles (“SIJs”) born in El Salvador, Guatemala, or Honduras (hereinafter “Northern Triangle countries”) can be adjudicated if and only if the applicant has a “priority date” earlier than June 15, 2015. For SIJ-based status adjustment, the “priority date” is the date when USCIS accepts the applicant’s properly filed Form I-360 for processing.¹ SIJs from all other countries, including Mexico and India, currently can apply for status adjustment irrespective of their priority dates. This update is the fifth in a series of KIND practice advisories on visa number availability for SIJs,² and discusses the following developments under the October 2016 Department of State (DOS) Visa Bulletin:³

- I. A “Final Action Date” of June 15, 2015 will apply to Northern Triangle applicants
- II. Monitoring cutoff dates
- III. SIJs from India and Mexico are not currently subject to a cutoff date
- IV. Visa availability in the coming months; practice tips

I. A “Final Action Date” of June 15, 2015 will apply to Northern Triangle applicants

From May 1 through September 30, 2016, a “Final Action Date” of January 1, 2010 applied to all adjustment applicants from the Northern Triangle in the Employment-Based 4th Preference (EB-4) category, which includes SIJs. That limitation, announced in the May 2016 Visa Bulletin, effectively halted the filing of Form I-485 applications by Salvadoran, Guatemalan or Honduran SIJs during that

¹ See, e.g., USCIS, “Visa Availability and Priority Dates,” November 5, 2015, available at <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-and-priority-dates>.

² See Kids in Need of Defense, “Practice advisory on updated procedures for status adjustment filings for certain SIJS clients” (April 18, 2016), available at <https://supportkind.org/resources/update-procedures-status-adjustment-filings-certain-sijs-clients> (hereinafter, “KIND April 2016 Practice Advisory”); “Update to practice advisory on status adjustment for certain Special Immigrant Juvenile Status (SIJS) clients” (May 19, 2016), available at <https://supportkind.org/resources/update-practice-advisory-status-adjustment-certain-special-immigrant-juvenile-status-clients>; “Update on July 2016 Visa Bulletin regarding status adjustment for certain Special Immigrant Juvenile Status (SIJS) clients” (June 9, 2016), available at <https://supportkind.org/wp-content/uploads/2016/06/Update-on-July-2016-Visa-Bulletin-regarding-status-adjustment-for-certain-Special-Immigrant-Juvenile-Status-SIJS-clients2-copy.pdf>; “Update regarding status adjustment for certain Special Immigrant Juvenile Status (SIJS) clients pursuant to August 2016 Visa Bulletin” (July 18, 2016), available at <https://supportkind.org/wp-content/uploads/2016/07/KIND-Update-to-Practice-Advisory-re-SIJ-visas-re-Aug2016-VisaBulletin-7.18.16.pdf>.

³ U.S. Department of State, “Visa Bulletin for October 2016,” September 8, 2016, available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2017/visa-bulletin-for-october-2016.html> (hereinafter, “October 2016 Visa Bulletin”).

five-month period.⁴ As anticipated, the October 2016 Visa Bulletin instituted a new Final Action Date of June 15, 2015 for EB-4 applicants from the Northern Triangle.⁵ This means that visa numbers in the EB-4 category are now available to applicants from the Northern Triangle whose “priority dates” are earlier than June 15, 2015. Generally, an adjustment of status application (Form I-485) may not be filed unless a visa number is available for the applicant’s country and category.⁶

II. Monitoring cutoff dates

A potential source of confusion is that the October Visa Bulletin designates “Dates for Filing Applications” as “current” across the EB-4 category. Final Action Dates and Dates for Filing Applications are distinct terms of art. In September 2015, USCIS explained two new charts used in the monthly DOS Visa Bulletins and related USCIS announcements.⁷ As explained by USCIS on its webpage “Adjustment of Status Filing Charts from the Visa Bulletin”:

If USCIS determines that there are more immigrant visas available for a fiscal year than there are known applicants for such visas, we will state on this page that you may use the **Dates for Filing Visa Applications** chart. Otherwise, we will indicate on this page that you must use the **Application Final Action Dates** chart to determine when you may file your adjustment of status application.⁸

At this date, USCIS has not updated the referenced webpage, <https://www.uscis.gov/visabulletininfo>, to indicate which chart applies. However, USCIS and DOS have widely announced that demand exceeds supply for SIJS-based adjustment applicants from Northern Triangle countries; accordingly, the Final Action Date chart supplies the cutoff date of June 15, 2015.

From month to month, or even within a given month, cutoff dates may advance, retrogress, or be designated “C,” for “current,” in accordance with fluctuations in visa supply and demand. It is therefore vital to monitor new monthly Visa Bulletins as they are published, as well as related USCIS announcements; see, e.g., “When to File Your Adjustment of Status Application for Family-Sponsored or Employment-Based Preference Visas: September 2016.”⁹ Moreover, where the filing of an adjustment application is otherwise appropriate, KIND recommends doing so promptly for a client whose priority date falls earlier than the applicable cutoff date, since that cutoff date may retrogress if visa numbers are exhausted.

⁴ U.S. Department of State, “Visa Bulletin for May 2016” (April 12, 2016), available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-may-2016.html>.

⁵ U.S. Department of State, “Visa Bulletin for July 2016” (June 8, 2016) at 8-9, available at <https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html> (hereinafter “July 2016 Visa Bulletin”).

⁶ See, e.g., KIND April 2016 Practice Advisory, *supra*, at 4-5.

⁷ USCIS, “USCIS announces revised procedures for determining visa availability for applicants waiting to file for adjustment of status” (September 9, 2015), available at <https://www.uscis.gov/news/uscis-announces-revised-procedures-determining-visa-availability-applicants-waiting-file-adjustment-status>; see also KIND April 2016 Practice Advisory at 4-5.

⁸ USCIS, “Adjustment of Status Filing Charts from the Visa Bulletin,” available at <https://www.uscis.gov/visabulletininfo>.

⁹ Available at: <https://www.uscis.gov/visabulletin-sep-16>

III. SIJs from India and Mexico are not currently subject to a cutoff date

In recent months, SIJs born in India or Mexico were unable to file status adjustment applications due to the imposition of January 1, 2010 “Final Action Dates” for those countries. As anticipated,¹⁰ with the October 2016 Visa Bulletin, visa availability for applicants from India and Mexico is once again “current” for those in the EB-4 preference category. This means that as of October 1, 2016, SIJs from India or Mexico for whom an adjustment of status application is otherwise appropriate may file Form I-485 without regard to the “priority date.”

IV. Visa availability in the coming months; practice tips

Projecting future visa availability is an inexact science. The October 2016 Visa Bulletin projects “potential monthly movement” of “up to two months” in the EB-4 category for the Northern Triangle countries, with most other countries projected to be “current.” (Under these assumptions, one could forecast, e.g., a possible cutoff date in mid-August 2015 for Northern Triangle EB-4 applicants as of November 2016.) However, the DOS goes on to caution:

The above projections for the Family and Employment categories indicate what is likely to happen on a monthly basis through January based on current applicant demand patterns. Readers should never assume that recent trends in final action date movements are guaranteed for the future, or that ‘corrective’ action will not be required at some point in an effort to maintain number use within the applicable annual limits. The determination of the actual monthly final action dates is subject to fluctuations in applicant demand and a number of other variables.¹¹

It bears repeating that applicable cutoff dates may be adjusted in either direction monthly, or even within a month. There is no substitute for monitoring monthly Visa Bulletins and USCIS announcements in real time. KIND recommends that attorneys:

- Check the relevant webpages of the DOS (<https://travel.state.gov/content/visas/en/law-and-policy/bulletin.html>) and USCIS (<https://www.uscis.gov/visabulletininfo>) in the early part of each month, and regularly during the month.
- Determine whether the Final Action Dates chart or the Application Filing Dates chart is in effect for your client’s country and visa category.
- Compare the relevant cutoff date to your client’s priority date, and:
 - If visa availability is “current,” indicated by the letter “C” for your client’s category and country, the client may file Form I-485 without regard to his or her priority date.

¹⁰ July 2016 Visa Bulletin at 8-9.

¹¹ October 2016 Visa Bulletin at 9.

- If your client's priority date is earlier than the relevant cutoff date, where otherwise appropriate, your client should file promptly, while the favorable cutoff date is in effect.
 - If your client's priority date is later than the relevant cutoff date, he or she must wait for the cutoff date to advance sufficiently before filing.
- Keep in touch with your local KIND staff, to give and receive updates regarding progress in your SIJ cases and wider trends.

KIND thanks you for your time, patience, and commitment to ensuring the rights of unaccompanied children. We will continue to work diligently to provide you with updated information as it develops. Please do not hesitate to reach out to your local KIND contact with any questions.