



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23557096

DATE: Dec. 09, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), because she did not establish that she was under 21 years of age when she filed her SIJ petition. On appeal, the Petitioner reasserts her eligibility for SIJ classification. We review this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must show, inter alia, that they are unmarried, under 21 years old, and have been subject to a state juvenile court order determining that they cannot reunify with one or both parents due to parental abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b), (c)(1).¹ Petitioners bear the burden of proof to demonstrate their eligibility for SIJ classification by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner, whose undisputed date of birth is [redacted] 2000, entered the United States on or about July 28, 2019. On [redacted] 2021, [redacted] before the Petitioner turned 21 years old, the Massachusetts Probate and Family Court (Family Court), [redacted] issued an order titled *Special Findings of Fact and Rulings of Law* (SIJ order), releasing the Petitioner "to the care and custody of her guardian, [P-G-H-G]."² This order further provided that the Petitioner's reunification with her father was not viable due to his neglect and abandonment and that it is not in her best interest to be returned to Brazil, her country of nationality. On [redacted] 2021, [redacted] after the Petitioner turned 21 years old, the court issued a "*Judgment of Dependency*" (amended SIJ order). This order

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

² We use initials to protect the privacy of individuals.

clarified that the court asserted jurisdiction over the Petitioner as a juvenile and made the parental reunification determination pursuant to “G. L. c. 119, § 39M.” The Petitioner filed her SIJ petition, which U.S. Citizenship and Immigration Services (USCIS) received on April 6, 2021, [REDACTED] after she had turned 21 years old.³ The Director denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because she did not establish that she was under 21 years of age at the time she filed her SIJ petition.

On appeal, the Petitioner submits a brief, along with the previously submitted documents, and maintains that she is eligible for SIJ classification. She does not contest the actual date USCIS received her SIJ petition. However, the Petitioner asserts that, due to circumstances beyond her control, she did not receive the first SIJ order, which was issued [REDACTED] before she turned 21 years old, until [REDACTED] 2021, [REDACTED] after her twenty-first birthday. The Petitioner also asserts that she sent her SIJ petition to USCIS via priority mail on the same date as soon as she received the SIJ order from the court on [REDACTED] 2021, but USCIS did not receive the package until April 6, 2021, due to further delay. Given these circumstances, the Petitioner contends that the “mailbox rule” applies here and authorizes USCIS’ acceptance of her otherwise disqualifying, untimely filing of the SIJ petition, so long as it was properly mailed.

The Petitioner has not demonstrated that she timely filed her SIJ petition before she attained 21 years of age, as required. Thus, she has not established her eligibility for SIJ classification under the Act.

The relevant regulations clearly provide that a petitioner must be eligible for the immigration benefit sought *at the time of filing*, and individuals, like the Petitioner, seeking SIJ classification must be under the age of 21 and unmarried at the time their SIJ petitions are filed. 8 C.F.R. § 103.2(b)(1) (providing that a petitioner for an immigration benefit must show his or her eligibility for the benefit sought at the time of filing the benefit); 8 C.F.R. § 204.11(b)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried at the time of filing the petition); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(d)(6), Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). A properly completed SIJ petition is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). Here, the Petitioner admits that she mailed her SIJ petition on [REDACTED] 2021, [REDACTED] after her twenty-first birthday. Consequently, the Petitioner has not shown that she was under 21 years of age at the time she filed her SIJ petition with USCIS.

The Petitioner also has not otherwise shown that USCIS has authority to disregard and waive this eligibility requirement. She asserts that the mailbox rule should apply without explaining how this rule enables us to circumvent the requirement that SIJ petitions must be filed before the petitioners turn 21 years of age, where she admits she only mailed her SIJ petition [REDACTED] after her twenty-first birthday. We are unpersuaded by the assertions that the delay in receiving the first SIJ order from the Family Court and the delay in the mail delivery *after* the Petitioner sent her SIJ petition to USCIS authorizes USCIS to disregard the statutory eligibility requirement. While we acknowledge that the Petitioner sought the first SIJ order before she turned 21 years old, there is no provision in the Act or the implementing regulations authorizing USCIS to disregard and waive the mandatory age requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age and

³ Although the Petitioner states that she mailed her SIJ petition package to USCIS on [REDACTED], 2021, we observe that the first page of the Family Court orders each contain a handwritten “[REDACTED]/21” date, a notation and an initial.

they are no longer a “child” under the Act. *See, e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound by governing statutes and regulations in force); *see also United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry the force and effect of law).

As the Petitioner has not overcome the Director’s determination that she was over 21 years of age on the date her SIJ petition was filed, she has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.