



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

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

In Re: 21199890

Date: NOV. 7, 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 petition, concluding that the Petitioner did not meet the threshold requirements, as he was 21 at the time he filed his SIJ petition. The matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews the questions in 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 establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their parents due to 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).¹ Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden of proof

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

of demonstrating their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner was born on [] 2000. On [] 2021, when the Petitioner was 20 years old, the Probate and Family Court of Massachusetts issued an order titled *Order [of Special] Findings of Fact and Rulings of Law*. In its order, the Court found that the Petitioner was dependent upon the Court; he was neglected and abused by his father; reunification with his father was not viable; and it was not in his best interest to return to Guatemala, his country of nationality. On [] 2021, the Petitioner filed his petition for SIJ classification. The Director denied the petition, concluding that the Petitioner was ineligible for SIJ classification because he was 21 years old when his SIJ petition was filed.

On appeal, the Petitioner acknowledges that his SIJ petition was untimely filed but asks that the filing deadline is equitably tolled due to extraordinary circumstances beyond his control, noting that though he mailed his SIJ petition on [] 2021, by overnight priority mail on the same day the Court issued its order, USCIS did not receive the SIJ petition until [] 2021. The Petitioner argues in the alternative that USCIS' application of the receipt rule under 8 C.F.R. § 103.2(a)(7) to determine timely filing of an SIJ petition is inconsistent with the age-out protections authorized under the Trafficking Victims Protection Reauthorization Act of 2008. However, we do not have the discretion to overlook the Petitioner's late filing of his SIJ petition, as we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry "the force and effect of law"). A petitioner for SIJ classification must submit their SIJ petition prior to the age of 21, as required by 8 C.F.R. § 204.11(b)(1). Here, the Petitioner was 21 at the time his SIJ petition was received by USCIS, and as such, remains ineligible.

III. CONCLUSION

The Petitioner filed his SIJ petition on his 21st birthday and is thus ineligible for SIJ classification. 8 C.F.R. § 204.11(b)(1).

ORDER: The appeal is dismissed.