



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

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

In Re: 22359131

Date: NOV. 08, 2022

Motion on Administrative Appeals Office Decision

Form I-360C, 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), and we rejected the subsequently filed appeal. The matter is now before us on combined motion to reopen and reconsider.

Upon review, we will dismiss the combined motion to reopen and to reconsider.

**I. LAW**

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

To establish eligibility for SIJ classification, petitioners must show 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 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).<sup>1</sup> Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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<sup>1</sup> 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).

## II. ANALYSIS

In [REDACTED] 2018, when the Petitioner was 20 years of age, the Family Court of the State of New York, [REDACTED] (Family Court), issued an *ORDER APPOINTING GUARDIAN OF THE PERSON* (guardianship order) appointing the Petitioner's aunt as his guardian. At that time the Family Court also issued an *ORDER-Special Immigrant Juvenile Status* in which it made findings under section 384b of the N.Y. Social Services Law necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court found that the Petitioner was dependent upon it pursuant to section 661 of the N.Y. Family Court Act and that the Petitioner had been placed in the physical custody or guardianship of an individual or entity appointed by the state or Family Court. The Family Court additionally found that the Petitioner's reunification with his father was not viable due to a similar basis under New York law because his father was deceased and that reunification with his mother was not viable due to abandonment because the Petitioner had not seen his mother since he was 12 years old. Further, the Family Court found that it was not in the Petitioner's best interest to be removed from the United States and returned to the Philippines, his country of nationality, and set forth the factual basis for this determination. Based upon these orders the Petitioner filed his SIJ petition in April 2018.

The Director subsequently issued a notice of intent to deny (NOID) the SIJ petition. On January 21, 2018, after reviewing the Petitioner's timely NOID response, the Director denied the SIJ petition, concluding that the Petitioner had not met his burden to establish that his request for SIJ classification such that USCIS' consent to this request was warranted.

On April 21, 2021 the Petitioner filed an appeal of the Director's decision with us. In February 2022 we issued a notice of rejection in which we advised that the Petitioner must appeal an unfavorable decision within 33 days of that decision. See 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b). We noted further that we may consider a Form I-290B, Notice of Appeal or Motion, filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021.<sup>2</sup> However, as the Petitioner had filed the instant appeal 90 days after the Director's decision, we determined that the appeal was untimely filed and rejected it.

In March 2022, the Petitioner filed the instant motion to reopen and motion to reconsider, requesting that we consider his appeal as timely filed because the delay in filing his appeal was beyond his control. However, as we noted in our notice of rejection, 8 C.F.R. §§ 103.3(a)(2)(i) and 103.8(b) provide that an appeal must be filed within 33 days of the adverse decision. We lack the authority to waive requirements set by regulation. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials).

We acknowledge the remainder of the Petitioner's arguments on motion relating to the merits of the rejected appeal. However, when we reject an appeal, the appeal does not retain a filing date. See 8

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<sup>2</sup> At the time the adverse decision was issued, USCIS advised that it would consider a Form I-290B filed up to 60 calendar days from the issuance of such a decision. See USCIS Alert, *USCIS Extends Flexibility for Responding to Agency Requests* dated 12/30/2021, <https://www.uscis.gov/newsroom/alerts/uscis-extends-covid-19-related-flexibilities> (noting that "[u]nder previously announced flexibilities, USCIS considered a Form I-290B ... if the form was filed up to 60 calendar days from the issuance of a decision by USCIS, and if such decision was issued between March 1, 2020, and Oct. 31, 2021, inclusive.").

C.F.R. §103.2(a)(7)(iii). Accordingly, there is no merits-based decision for us to review. *See AAO Practice Manual*, Ch. 4.5(a), <https://www.uscis.gov/aao-practice-manual>. We therefore will dismiss the Petitioner's combined motion to reopen and to reconsider.

**ORDER:** The motion to reconsider is dismissed.

**FURTHER ORDER:** The motion to reopen is dismissed.