



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

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

In Re: 21788233

Date: NOV. 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 petition. On appeal, the Petitioner asserts his eligibility for SIJ classification. We review 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 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).¹ 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).

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). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the

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).

request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5). 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).

II. ANALYSIS

The record establishes that the Petitioner's date of birth is [REDACTED] 1999. The Petitioner filed his SIJ petition on December 29, 2020. The Director denied the petition, concluding that the Petitioner had not shown that he was under the age of 21 when he filed the petition, as required. The Director additionally observed that the Petitioner did not submit a valid state juvenile court order.

On appeal, the Petitioner contends that he was unable to file the SIJ petition prior to his twenty-first birthday due to delays caused by the COVID-19 pandemic. He states that he filed a guardianship petition and special findings motion with a state family court on [REDACTED] 2020, but that approximately a week later most in-person court functions were shut down and non-essential matters were rescheduled. As a result, the Petitioner's guardianship hearing was not scheduled until [REDACTED] 2020, but was subsequently delayed until [REDACTED] 2020, and ultimately not adjudicated for unknown reasons. The Petitioner claims that he was unable to obtain an emergency hearing due to the Christmas and new year holidays and was also unable to timely file his SIJ petition due to mail-related delays. The Petitioner argues that, had his family court proceedings taken place as scheduled, he would have been granted orders of guardianship and special findings. Finally, the Petitioner states that he aged out of the state family court's jurisdiction and that his matter is still pending with the state surrogate court at the time the appeal was filed.

We acknowledge the Petitioner's arguments, but they do not overcome the reason for the Director's denial. A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must under the age of 21. 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit "must establish that he or she is eligible for the requested benefit at the time of filing the benefit") and 204.11(b)(1) (stating that an SIJ petitioner must be under 21 at the time of filing the petition). Here, the Petitioner was 21 years old on the date that his petition was received, a fact he does not contest on appeal. While we recognize the extraordinary circumstances argued by the Petitioner regarding his failure to timely file, we lack the authority to waive the requirements of the statute, as implemented by the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that as long as regulations remain in force, they are binding on government officials). The Petitioner has not identified, and we are unaware of, any authority that would permit the AAO or USCIS to disregard its own regulations regarding this requirement for the SIJ petition.

The Petitioner's age at the time of filing is dispositive of the remaining eligibility requirements for SIJ classification. Therefore, we will not reach the additional issues identified by the Director and argued by the Petitioner on appeal. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). However, we note that, while the Petitioner argues on appeal that he would have received the requisite state juvenile court order had his family court proceedings taken place as scheduled, the Petitioner has still not submitted

evidence that he has been subject a state juvenile court order determining that he cannot reunify with one or both parents due to maltreatment, as required.

As the Petitioner was 21 years old on the date that his petition was received, he is ineligible for SIJ classification.

ORDER: The appeal is dismissed.