



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

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

In Re: 23249888

Date: NOV. 22, 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), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *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, among other requirements, that they were under 21 years of age at the time of filing their SIJ petition. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1).<sup>1</sup> 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). 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 Petitioner was born on [REDACTED] 19, 2000. On [REDACTED] 2020, the Circuit Court for [REDACTED] Maryland (Circuit Court) issued an order entitled ORDER REGARDING FACTUAL FINDING PURSUANT TO MD FL § 1-201(b)(10) (SIJ order) and ORDER GRANTING SOLE LEGAL AND PHYSICAL CUSTODY (custody order). The Circuit Court placed the Petitioner in the custody of an individual appointed by the Court and made other SIJ-related determinations. The Petitioner mailed his SIJ petition to USCIS on [REDACTED] 12, 2021, and USCIS received it on [REDACTED] 22, 2021.

---

<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).

Upon review, the Director denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because he was not under 21 years old when his SIJ petition was filed, as required under 8 C.F.R. § 204.11(b)(1).

On appeal, the Petitioner asserts that SIJ eligibility should be based on the date of mailing, rather than the date of receipt, and that his SIJ petition was sent to USCIS before he reached turned 21 years old. The Petitioner also contends that he should not be held responsible for a mailing delay that occurred with United States Postal Service (USPS) through no fault of his own, and that we should accommodate a late submission considering filing deadline flexibilities that USCIS has offered in relation to the Covid-19 pandemic. He explains, the USPS delivered the SIJ petition several days after the guaranteed delivery date and but for the delay by USPS, the SIJ petition would have arrived before the Petitioner's 21st birthday.

We acknowledge that the Petitioner mailed the SIJ petition to USCIS before he turned 21 years old; however, the date of receipt of the SIJ petition, and not the date the SIJ petition was sent, is considered the filing date. *See* 8 C.F.R. § 103.2(a)(7)(i) (providing that USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing. There is no provision in the Act or the implementing regulations which authorizes USCIS to disregard and waive this mandatory requirement by accepting an SIJ petition as timely filed after the petitioner attains 21 years of age and is no longer a child under the Act. *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations have “the force of law” and must be adhered to by government officials).

A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be unmarried and under the age of 21. *See* 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)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried); *see also* 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).

The Petitioner has not overcome the Director’s finding that he was not under 21 years old on the date that his SIJ petition was received as required by the Act. Accordingly, he has not established his eligibility for SIJ classification.

**ORDER:** The appeal is dismissed.