



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

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

In Re: 13868081

Date: OCT. 12, 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), finding that he was not under 21 years of age at the time of filing. The matter is now before us on appeal. We review 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 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).

II. ANALYSIS

The Petitioner, whose date of birth is [REDACTED] 24, 1998, is a native and citizen of El Salvador who attempted to enter the United States without proper documentation in [REDACTED] 2016 and was placed in removal proceedings. On [REDACTED] 2019, the Petitioner filed a motion for a Special Findings of Fact and Rulings of Law before the Probate and Family Court, Commonwealth of Massachusetts. On [REDACTED] 19, 2019, the Family Court issued a Judgment of Dependency Pursuant to Massachusetts General Laws chapter 119, section 39M in which it determined that the Petitioner's father was deceased, which was "akin to abandonment" in Massachusetts, citing Massachusetts General Laws

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).

chapter 208C, section 10(c); that the Petitioner was dependent on the court for his protection, well-being, care and custody; that it was not in the Petitioner's best interest to return to his parents' country of nationality, El Salvador; and that a guardian was appointed.

Based on the order the Petitioner submitted a SIJ petition, which was received by U.S. Citizenship and Immigration Services (USCIS) on [REDACTED] 24, 2019. The Director issued a notice of intent to deny (NOID) the SIJ petition, concluding that the Petitioner was not under 21 years of age at the time of filing because evidence in the record showed his date of birth as [REDACTED] 24, 1998, making him ineligible for SIJ classification. In response to the NOID the Petitioner maintained that he sent his SIJ petition package via overnight mail on Friday, [REDACTED] 20, 2019, and that the U.S. Postal Service (USPS) attempted twice to deliver the package on [REDACTED] 21, 2019, which was a Saturday, but the USCIS office was closed. With the response the Petitioner submitted a USPS tracking printout showing two delivery attempts on [REDACTED] 21, 2019, with a notation "No Access to Delivery Location." The SIJ petition was then received by USCIS on Tuesday, [REDACTED] 24, 2019.

In denying the SIJ petition, the Director found that the Petitioner was not under 21 years of age at the time of filing. The Director acknowledged the Petitioner's response to the NOID but cited to 8 C.F.R. § 103.2(a)(7)(i) that USCIS will consider benefit requests received and record the receipt date as of actual date of receipt at the designated location. The Director also cited to 8 C.F.R. § 204.1(b) that petitions must be filed in accordance with form instructions and will be considered properly filed when filed in accordance with 8 C.F.R. § 103.2, and that the filing date of a petition is the date it is properly filed and received by USCIS.

On appeal, the Petitioner reasserts that USPS twice attempted delivery on [REDACTED] 21, 2019, but the USCIS office was not open, so USPS was only able to deliver the SIJ petition on [REDACTED] 24, 2019. The Petitioner argues that he attempted to file three days before he turned 21 years of age, so USCIS was in "constructive receipt" of his SIJ petition, and that his attempt to file Form I-360 was thwarted because of USCIS's own practices.

Immigration regulations require that a petitioner be eligible for the immigration benefit sought at the time of filing, and that a petitioner seeking SIJ classification must be unmarried and under the age of 21. Regulations also provide that USCIS considers a benefit request received as of the actual date of receipt at the location designated for filing such a request. 8 C.F.R. § 103.2(a)(7)(i). Although the Petitioner mailed his SIJ petition prior to his 21st birthday, USCIS did not receive it at the designated filing location until after he had turned 21 years of age. As indicated by the Director, a properly completed petition is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). 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) (as long as regulations remain in force, they are binding on government officials); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (immigration regulations carry the force and effect of law).

Accordingly, the Petitioner has not overcome the Director's determination that he is ineligible for SIJ classification due to his age at the time of filing. As the Petitioner was already 21 years old on the date that his petition was received, he is ineligible for SIJ classification.

ORDER: The appeal is dismissed.