In Re: 20948240

Date: OCT. 18, 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 denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish that he was under the age of 21 at the time he filed his SIJ petition. On appeal, the Petitioner submits a brief asserting his eligibility for SIJ classification. 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 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 [   ] 27, 1999. The Petitioner filed his petition for SIJ classification, which was received by U.S. Citizenship and Immigration Services (USCIS) on [   ] 27, 2020. 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 does not contest the untimely filing of his SIJ petition. Rather, the Petitioner asserts that the late filing was due to circumstances outside of his control, and "likely due to COVID-19 restrictions." He explains, the United States Postal Service (USPS) delivered the SIJ petition three

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[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).

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. The Petitioner asks for USCIS to consider his extraordinary circumstances and limitations, and favorably adjudicate the petition.

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"), 204.11(c)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried); see also § 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(d)(6) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). While we are sympathetic to the hardship this may cause, 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 a petitioner attains 21 years of age and is no longer a child under the Act. See 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). 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.