



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 11185002

Date: SEPT. 14, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the Petitioner is ineligible for SIJ classification because she was over the age of 21 when she filed her SIJ petition. On appeal, the Petitioner asserts her eligibility for SIJ classification. The Administrative Appeals Office 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 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) 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 [] 1997. On [] 2018, when the Petitioner was 20 years old and one day before she turned 21 years old, the Family Court in [] New York (Family Court) issued an order entitled ORDER-Special Immigrant Juvenile Status (SIJ order). The SIJ order provided, in pertinent part, that the Petitioner “is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court.” The SIJ order further provided that the Petitioner’s reunification with her father was not viable due to neglect, and it is not in the Petitioner’s best interest

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).

to be returned to Mexico, her country of nationality. Based on the SIJ order, the Petitioner filed her SIJ petition on [REDACTED] 2018.

The Director denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because she was not under 21 years old when her SIJ petition was filed, as required under 8 C.F.R. § 204.11(c)(1).

On appeal, citing *Duarte-Ceri v. Holder*, 630 F.3d 83, 91 (2d Cir. 2010), the Petitioner claims that because the SIJ petition was delivered to USCIS on the morning of [REDACTED] 2018,² and she was born in the “late evening” on [REDACTED] 1997,³ her SIJ petition was filed before she reached the age of 21. The Petitioner also contends that even if it is determined that USCIS did not receive her SIJ petition by the required deadline of one day prior to her 21st birthday, she deserves to have the deadline equitably tolled because the untimely filing was due to the ineffective assistance of her former counsel.⁴

In *Duarte-Ceri*, the U.S. Court of Appeals for the Second Circuit (Second Circuit) held that a day was divisible for purposes of applying former section 321(a) of the Act in assessing whether unmarried children “under the age of eighteen years” have derived citizenship. *Id.* at 83. Although the Second Circuit ruled in favor of the divisibility of a day in that case, the court explained that a primary consideration was “‘the most precious right’ of citizenship,” which was at stake in its determination. *Id.* at 89. However, that consideration is inapplicable to the present SIJ petition. Further, neither the Act nor the regulations indicate that a day is a divisible unit or that an SIJ petitioner’s age is determined by the specific time of birth. Absent an indication that Congress intended them to be read otherwise, we are expected to give the words of a statute their “ordinary, contemporary, common meaning.” *Williams v. Taylor*, 529 U.S. 420, 431 (2000). And, “[a]s a general rule, in the computation of time, a day is to be considered an indivisible unit or period of time and the law will not, unless there is sufficient reason therefor, take cognizance of fractions of a day.” *Matter of L-M- & C-Y-C-*, 4 I&N Dec. 617, 619 (BIA 1952). Consequently, the date of the Petitioner’s birth, rather than the specific hour, is determinant of whether she was under 21 years old at the time she filed her SIJ petition.

With respect to the Petitioner’s argument regarding the equitable tolling of the filing deadline due to ineffective assistance of counsel, the requirement for an SIJ petitioner to file the petition prior to attaining 21 years of age is not merely a technical requirement, but rather, a substantive eligibility requirement that is not subject to equitable tolling. 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

² The Petitioner states that she does not have a copy of the mail courier’s post-delivery tracking confirmation indicating the exact time the SIJ petition was received by USCIS because the company does not maintain tracking information on packages beyond one year of the delivery date; however, the estimated time of delivery provided by the mail courier upon the mailing of the petition was 10:30 a.m.

³ The Petitioner states her mother recalls that she was born in the late evening; however, her birth certificate does not indicate the exact time of her birth.

⁴ Specifically, the Petitioner states that her former counsel did not zealously advocate on her behalf and failed to alert the Family Court of the urgent need for an earlier hearing date in order to ensure that the SIJ petition would be received by USCIS prior to her 21st birthday.

child under the Act. While we, as well as some courts, have found filing deadlines related to appeals and motions to be subject to equitable tolling in the context of removal or deportation, the Petitioner does not cite to, and we are unaware of, any binding authority finding that filing deadlines for visa petitions are also subject to equitable tolling. Compare *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (finding that the time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) with *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (noting that the deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling).

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(c)(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 she was not under 21 years old on the date that her SIJ petition was received as required by the Act. Accordingly, she has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.