



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

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

In Re: 18783067

Date: SEP. 15, 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).<sup>1</sup> 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

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<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).

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 [ ] 19, 1999. On [ ] 10, 2020, when the Petitioner was 20 years old, the Family Court of the State of New York (Family Court) issued a *Special Findings Order – Special Immigrant Juvenile Status* (SIJ order), in which it determined that the Petitioner was dependent on the District Court; that the Petitioner's reunification with his parents was not viable due to neglect and abandonment under section 1046(a)(iii) of the New York Family Court Act.

The Petitioner filed his SIJ petition on [ ] 25, 2020, based on the SIJ order. 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.

On appeal, the Petitioner contends, as he did before the Director, that he was unable to file the SIJ petition prior to his twenty-first birthday due to complications and delays caused by the COVID-19 pandemic and not within his control. He states that he began the process of obtaining SIJ status when he arrived in New York in January 2020 and had his first appearance hearing in [ ] 2020, but due to pandemic-related court and business closures, he obtained his SIJ order nine days before his twenty-first birthday. He argues that the Director's denial due to the Petitioner's age was an abuse of discretion and should have considered the extraordinary circumstances of the pandemic.

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 be 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). While we recognize the extraordinary circumstances argued by the Petitioner, 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.

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.