



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

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

In Re: 18689778

Date: FEB. 24, 2023

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) and the matter is now before us on appeal. On appeal, the Petitioner submits a brief and 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).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).

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

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).

conflicts with the eligibility requirements such that the record reflects that the 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 Petitioner filed his SIJ petition on [REDACTED] 2020, the day before his 21st birthday, without the requisite juvenile court order. The Director issued a request for additional evidence (RFE) requesting, in part, a copy of the required juvenile court order. In response to the RFE, the Petitioner submitted a guardianship order titled “X PARTE Special Immigrant Juvenile Findings” (SIJ order) that was signed on [REDACTED] 2020, the day of the Petitioner’s 21st birthday, by the Superior Court of California in [REDACTED] California (Probate Court). The Probate Court indicated the SIJ order had a nunc pro tunc effective date of June 8, 2020. Referring to him as a minor and child, the Probate Court placed the Petitioner in the custody of a guardian, M-A-S-,² found that reunification with his father and mother was not viable due to parental neglect and abandonment, and further found that it was not in his best interest to return to Guatemala, his country of nationality. Thereafter, the Director issued a notice of intent to deny (NOID). In response to the NOID, the Petitioner submitted a copy of the Probate Court’s record of proceedings for the [REDACTED] hearing, which indicated that the underlying petition to the court was filed by M-A-S- on June 5, 2020 and that the SIJ order was issued nunc pro tunc with a June 8, 2020 effective date based on the petition’s filing date. The Probate Court record further indicated that the guardianship order was effective until September 21, 2020.

The Director denied the SIJ petition, determining that the Petitioner’s request for SIJ classification did not merit USCIS’ consent because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment. The Director also concluded that the Petitioner was ineligible at the time of filing because he did not provide a copy of the required juvenile court order at that time and because the SIJ order later provided in response to the RFE was not issued until after he filed his SIJ petition. The Director further concluded that the Petitioner had not met his burden to show that the Probate Court had properly exercised jurisdiction over him as a juvenile under state law because he was 21 years old on the date the SIJ order was issued.

On appeal, the Petitioner asserts that he merits USCIS’ consent because the effective date of the SIJ order and the filing of his SIJ petition both occurred before his 21st birthday. He further asserts that USCIS lacks the authority to overrule or “second-guess” the Probate Court’s exercise of jurisdiction and findings in the SIJ order because the order was issued in accordance with California state law.

A. Eligibility at Time of Filing the SIJ Petition

The Petitioner has not established his eligibility for SIJ classification. First, the Petitioner did not submit a valid juvenile court order at the time of filing his SIJ petition. The regulations require that a petitioner for SIJ classification *must* submit a petition on the form prescribed by USCIS and in accordance with the form instructions. 8 CFR § 204.11(d)(1); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that every form must be submitted and executed in accordance with the form instructions,

² We use initials to protect the privacy of individuals.

which are hereby incorporated into the regulations requiring its submission). According to the form instructions for SIJ petitions, a petition *must* be filed with a copy of the court or administrative documents that establishes eligibility for this classification, including the specific findings of fact or other relevant evidence in support of the judicial determinations. However, the Petitioner did not submit any evidence of a judicial determination to establish his eligibility for SIJ classification at the time of filing the SIJ petition.³ The requirement that an SIJ petitioner be the subject of a juvenile court dependency or child custody order at the time of filing and that the petitioner submit such order with the SIJ petition as initial evidence are substantive eligibility requirements that we may not disregard. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Moreover, the regulations require that juvenile court orders *must* be in effect on the date the petitioner files the petition and continue through the time of adjudication. 8 C.F.R. § 204.11(c)(3)(ii). Here, the Petitioner's SIJ order was not yet issued by the Probate Court at the time of filing the instant SIJ petition, thus the Petitioner was not the subject of a juvenile court order containing the requisite dependency or custody determination and did not establish his eligibility for SIJ classification at the time of filing, as required. *See id.*; *see also* 8 C.F.R. § 103.2(b)(1) (providing that petitioners for immigration benefits must establish eligibility for the requested benefits at the time of filing). On appeal, the Petitioner does not cite to any authority⁴ for the proposition that a court order issued *after* the filing of an SIJ petition with an earlier nunc pro tunc effective date will overcome the failure to submit a properly executed juvenile court order establishing SIJ eligibility at the time filing. Accordingly, the Petitioner has not established by a preponderance of the evidence that he was the subject of a juvenile court order containing the requisite dependency or custody determination at the time of filing his SIJ petition, as required. Therefore, the Petitioner has not met his burden to establish that he is eligible for SIJ classification.

B. Additional Eligibility Issues

The Director further determined that the Petitioner did not demonstrate that the Probate Court had proper jurisdiction over him as a juvenile under state law and that his request for SIJ classification did not merit USCIS' consent because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment. As our findings that the Petitioner has not established that he was the subject of a juvenile court order containing the requisite dependency or custody determination at the time of filing his SIJ petition is dispositive of his appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments on these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where a Petitioner is otherwise ineligible).

³ We note that the Petitioner also did not submit a copy of his birth certificate or other evidence of his age, pursuant to 8 CFR § 204.11(d)(2), as required by form instructions.

⁴ Instead, the Petitioner only cites to California case law for the general proposition that nunc pro tunc orders are enforceable retroactive exercises of the inherent power of a court for the purpose of doing justice. *See Leavitt v. Gibson*, 3 Cal. 2d 90, 102-106, 43 P.2d 1091 (1935)

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that at the time of filing his SIJ petition he was the subject of a properly issued juvenile court order. Accordingly, the Petitioner has not demonstrated his eligibility for nonimmigrant SIJ classification.

ORDER: The appeal is dismissed.