



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

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

In Re: 26925809

Date: JUN. 12, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner, a native and citizen of Guatemala, 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), concluding the Petitioner was ineligible for SIJ classification as he was over the age of 21 when he filed his SIJ petition. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 sustain the appeal.

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). A petitioner 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 petitioner's 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). Finally, SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (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).

In [ ] 2021, when the Petitioner was 20 years old, the Superior Court of California, County of [ ] (Superior Court) issued an order entitled *ORDER – Special Immigrant Juvenile Findings* (SIJ order). The SIJ order placed the Petitioner under the custody of L-G-H-P-<sup>1</sup>, under California Probate Code section 1514. Further, the Superior Court concluded in the SIJ order that reunification was not viable with either of the Petitioner’s parents due to neglect and a similar basis under California Family Code section 3041 and California Welfare and Institutions Code section 300(b). Finally, the SIJ order contains a finding that it would not be in the Petitioner’s best interest to return to Guatemala because his “health, safety, and welfare” would be compromised. Based on that SIJ order, the Petitioner filed his SIJ petition. USCIS received the SIJ petition on [ ] 2021 – the day after the Petitioner’s 21st birthday. The Director issued a request for evidence (RFE) in November 2021, asking the Petitioner to submit a signed court order from a juvenile court with the required SIJ determinations. The Petitioner responded in December 2021, submitting a letter from his attorney, an SIJ order from [ ] 2021, a guardianship order from [ ] 2021, and a letter of guardianship from [ ] 2021. The Director then issued a notice of intent to deny (NOID) in January 2022, indicating the SIJ petition would be denied on the basis the Petitioner was not under 21 years of age at the time of filing and inviting the Petitioner to submit any additional supporting his eligibility for SIJ classification. The Petitioner responded to the NOID in March 2022, submitting a copy of the tracking information for the SIJ petition package, a letter from his attorney, copies of a policy memorandum and legal decisions, and two orders discussing pandemic-related procedure from the Superior Court. The Director subsequently denied the SIJ petition in March 2022, finding the Petitioner failed to establish he was under 21 years of age at the time of filing his SIJ petition.

On appeal, the Petitioner asserts his SIJ petition should be granted an exception by USCIS and received as timely filed. He acknowledges he was over 21 years old when USCIS received his SIJ petition, but he requests the SIJ petition be treated as timely filed due to staffing reductions and backlogs in both his attorney’s office and the State Court of California, resulting from the COVID-19 pandemic.

During the pendency of the Petitioner’s appeal, USCIS issued policy guidance clarifying the definition of “day” at 8 C.F.R. § 1.2 and associated paper-based filing periods ending on Saturdays, Sundays, or federal holidays. *See* 1 *USCIS Policy Manual* B.6, <https://www.uscis.gov/policy-manual>; *see also* Policy Alert PA-2023-10 *Filing Periods and Response Timeframes Ending on Saturdays, Sundays, or Federal Holidays* (March 29, 2023), <https://www.uscis.gov/policy-manual/updates>. The policy guidance clarifies that, when the last day of a filing period for a paper-based benefit request, such as the last day before the requestor’s birthday, ends on a Saturday, Sunday, or a federal holiday, 8 C.F.R. § 1.2 extends the filing period until the end of the next business day. *See* 1 *USCIS Policy Manual*, *supra*, at B.6(D). Here, the Petitioner’s 21st birthday was Sunday, [ ] 2021, and the day prior to the Petitioner’s birthday was a Saturday. Therefore, the Petitioner’s SIJ petition received by USCIS on the following business day, [ ] 2021, was timely filed.

Based on the evidence in the record and foregoing analysis, we conclude the Petitioner’s SIJ petition was timely filed. As such, the Petitioner established he was under the age of 21 at the time he filed his SIJ petition, thereby meeting the definition of a child under section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The Director’s determination to the contrary is withdrawn.

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<sup>1</sup> Initials are used to protect the privacy of this individual.

Further, the SIJ order includes a qualifying custodial placement, which indicates the appointed guardian shall have sole custody of the Petitioner. The SIJ order further contains a finding that reunification with the Petitioner's parents is not viable due to neglect and a similar basis, as defined in California state law. The record contains a factual basis for this finding, indicating the Petitioner's parents failed to provide for his basic needs and he was forced to drop out of school at 13 years old to work after his parents stopped providing for him. Finally, the SIJ order also includes a finding that it would not be in the Petitioner's best interest to be returned to his home country of Guatemala because he was previously neglected there and his "health, safety, and welfare would be at risk if he is sent back." The Superior Court concluded it would instead be in the Petitioner's best interest to remain in the United States in the care and custody of the court-appointed guardian.

For these reasons, the Petitioner has overcome the Director's ground for denying his petition. The Petitioner was under the age of 21 years old at the time he filed his SIJ petition, and the record indicates he remains unmarried. The SIJ order from the Superior Court contains a qualifying custody placement and parental reunification and best interest determinations, and it was sought in proceedings granting relief from parental abandonment. Accordingly, the Petitioner has established that his eligibility for SIJ classification and that his request warrants USCIS' consent. Thus, the Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn, and the appeal is sustained.

**ORDER:** The appeal is sustained.