



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

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

In Re: 26685877

Date: MAY 9, 2023

Appeal of National Benefits Center Decision

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

The Petitioner seeks classification as a special immigrant juvenile (SIJ). See Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. The Director of the National Benefits Center denied the petition because the Petitioner was not under age 21 at the time of filing, as required. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show 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). The 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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. Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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).

II. ANALYSIS

In [REDACTED] 2021, when the Petitioner was 20 years old, the Superior Court of New Jersey [REDACTED] (Superior Court) issued an order finding the Petitioner dependent on the court and placing her in the sole legal custody of her mother. The Superior Court also found, in relevant part, that the Petitioner's reunification with her father is not viable due to his death, which "constitutes abandonment" or a similar basis under New Jersey law, and that it would not be in her best interest to return to Honduras, her country of nationality.

The Petitioner reached the age of 21 in [REDACTED] 2021. Subsequently, the Petitioner filed her SIJ petition in February 2022, when she was 21 years old. The Director issued a notice of intent to deny (NOID), stating that the Petitioner was ineligible for SIJ classification because she was not under the age of 21 at the time of filing, as 8 C.F.R. § 204.11(b)(1) requires. In response to the NOID, the Petitioner submitted letters from her attorney and the executive director of the legal services organization that represents her, stating that the filing delay was not the Petitioner's fault. The Petitioner's attorney indicated that the legal services organization had experienced staffing and communication challenges related to the COVID-19 pandemic, and that the legal services coordinator handling her case "negated her case and did not file it on a timely basis." The executive director reiterated the communication and staffing difficulties the organization faced, in addition to challenges with the postal service, and that the office generally was "not functioning at full capacity." The writers requested that the late filing be excused because it was not the fault of the Petitioner. However, the Director denied the SIJ petition because the Petitioner was not under 21 years of age at the time of filing, as required.

On appeal, the Petitioner asserts that denial of her case due to a filing delay would be contrary to public policy, and again emphasizes that the delay was not her fault. She also states that USCIS requires filing by mail¹ but "makes no allowance for unavoidable delays attributable to circumstances beyond the applicant's control," and did not extend SIJ filing deadlines despite providing other filing flexibilities relating to the COVID-19 pandemic. Accordingly, she requests that we accept and adjudicate her SIJ petition.

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 they are "eligible for the requested benefit at the time of filing the benefit request") and 204.11(b)(1) (stating that an SIJ petitioner must be under 21 years of age). We acknowledge the Petitioner's arguments and difficult circumstances, but we lack

¹ Although not applicable to the Petitioner's case, USCIS recently began accepting in-person filing for petitioners within two weeks before turning 21 years of age. USCIS Alert, *Provision Allowing Special Immigrant Juveniles to File Form I-130 in Person Before Their 21st Birthday*, Mar. 30, 2023, <https://www.uscis.gov/newsroom/alerts/provision-allowing-special-immigrant-juveniles-to-file-form-i-130-in-person-before-their-21st#:~:text=SIJ%20petitioners%20nearing%20age%2021,weeks%20before%20they%20turn%2021>. Nevertheless, the Petitioner does not claim that problems with mail delivery or filing requirements actually contributed to her late filing, but instead admits that a staff member at the legal services organization failed to submit it on time. The Petitioner filed her SIJ petition nine months after the Superior Court issued it and more than two months after she turned 21, and the evidence does not indicate that the requirement that she file by mail was a factor in the delay in her case.

authority to waive the requirements of the statute and regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (explaining that governing regulations are binding on government officials).

ORDER: The appeal is dismissed.