



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

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

In Re: 33358545

Date: SEP. 05, 2024

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.

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 U.S. Citizenship and Immigration Services (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).

In [ ] 2023, when the Petitioner was 20 years old, the Superior Court of New Jersey Chancery Division, Family (family court) issued an order finding the Petitioner dependent on the court and placing her in the custody of her mother. The family court also found that the Petitioner's reunification with her father is not viable due to abandonment and that it is in her best interest to remain in the United States and not return to Spain, her country of nationality.

The Petitioner reached the age of 21 on June [ ] 2023. USCIS received the Special Immigrant Juvenile petition (SIJ petition) on June [ ] 2023. The Director issued a notice of intent to deny (NOID), explaining 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 asserted that the SIJ petition was mailed on May [ ] 2023, and that USCIS processing delays caused the petition to have a later receipt date. The Director denied the SIJ petition because the Petitioner was not under 21 years of age at the time of filing.

On appeal, the Petitioner contends that the Director's denial is in error because the post mark stamp on the envelope is dated prior to the Petitioner's 21st birthday and that USCIS should have receipted the petition in a timely manner. She asserts the backlogs at USCIS and the fact that the petition was receipted at the National Benefits Center instead of the Chicago lockbox, where the petition was mailed, caused the receipt date to be inaccurate. However, the record does not support a mailing date prior to the Petitioner turning 21.<sup>1</sup> The United States Postal Service (USPS) tracking service indicates the petition arrived at the Chicago lockbox on Friday, June [ ] 2023, the receipt date for the petition. The Petitioner is correct in noting USCIS was experiencing processing delays and considered petitions timely filed when they arrived on a holiday or weekend if received at the end of the next business day. USCIS also allowed Petitioners to file at a local field office within 2 weeks of turning 21. However, neither of these policy changes relate to the Petitioner's receipt date as the petition was received on a Friday, not a weekend or holiday, and it was not processed at a USCIS field office but instead it was mailed to the lockbox. The record does not indicate USCIS received the SIJ petition prior to the Petitioner turning 21.

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 the Petitioner has not cited to binding authority in support or otherwise shown USCIS has authority under the Act or the implementing regulations to disregard and waive the eligibility requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age. We lack 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.

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<sup>1</sup> The USPS tracking information for this SIJ petition, mailed priority express, indicates the petition arrived at the USPS processing facility in Queens, NY on June [ ] 2023, 2 days after the Petitioner turned 21 and was subsequently delivered to the Chicago lockbox on June [ ] 2023.