



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

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

In Re: 17679135

Date: AUG. 26, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner was ineligible for SIJ classification because he was 21 years old when his SIJ petition was filed. The matter is now before us on appeal. On appeal, the Petitioner asserts that his petition was filed before he reached age 21. 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 remand the matter to the Director for the issuance of a new decision.

I. LAW

To establish eligibility for SIJ classification, a petitioner 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 of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) 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 the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a 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. 8 C.F.R. § 204.11(b)(5). USCIS may withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. *Id.* The petitioner bears 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 was born on [] 1999. On [] 2020, when the Petitioner was 20 years old, the Superior Court of California, [] issued an order titled *Special Immigrant Juvenile Findings*. In its order, the Court appointed a guardian for him upon determining that he was a vulnerable youth based on abuse, neglect, and abandonment by his parents. The court further found that the Petitioner could not be reunited with either parent and that it was not in his best interest to return to El Salvador, his country of nationality. On [] 2020, the Petitioner's 21st birthday, USCIS received in the Petitioner's petition for SIJ classification.

The Director denied the petition, concluding that the Petitioner was ineligible for SIJ classification because he was 21 years old when his SIJ petition was filed.

On appeal, the Petitioner asserts that USCIS received the SIJ petition prior to his 21st birthday. The Petitioner submits a copy of a U.S. Postal Service express mail receipt. The tracking information obtained from that receipt shows that the SIJ petition was received by USCIS on [] 2020, two days prior to the Petitioner's 21st birthday. As such, the Petitioner contends that his SIJ petition was filed and received by USCIS prior to his 21st birthday. In support, the Petitioner cites to 8 C.F.R. § 204.1(b) (stating "the filing date of a petition is the date it is properly filed and received by USCIS"), and contends that the filing date of his SIJ petition is [] 2020, and not [] 2020, as suggested by the Director. The Petitioner also cites to 8 C.F.R. § 103.2(a)(7)(i) (providing that "USCIS will consider a benefit request received . . . as of the actual date of receipt at the location designated for filing such benefit request"), and further contends that he complied with this requirement as he sent the SIJ petition to the address designated by USCIS to receive SIJ petitions that are mailed using the U.S. Postal Service. We agree with the Petitioner's assertions.

A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be unmarried and 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 request") and 204.11(b)(1)-(2) (stating that an SIJ petitioner must be under 21 years of age and unmarried). Here, based on the evidence in the record, we conclude that the Petitioner's SIJ petition was properly filed and received by USCIS on [] 2020, prior to his 21st birthday, as required by the regulations. As the Petitioner's SIJ petition was received by USCIS prior to his 21st birthday, he was a child on the date the SIJ petition was filed. The Petitioner has therefore overcome the Director's sole basis for denial. Accordingly, the Director's determination shall be withdrawn.

III. CONCLUSION

The Petitioner has demonstrated that he was 20 years old on the date that his petition was received. The matter will be remanded to the Director for consideration of whether the Petitioner meets the remaining statutory eligibility criteria for SIJ classification.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.