



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

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

In Re: 22268033

Date: DEC. 7, 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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

To establish eligibility for SIJ classification, petitioners must establish, among other requirements, that they are under 21 years of age. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c). U.S. Citizenship and Immigration Services (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). 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).

The Petitioner filed the instant SIJ petition on March 15, 2021, when he was 21 years old, based on an order issued by a family court in Oklahoma on [REDACTED] 2021. The Director denied the petition because the Petitioner was not under the age of 21 at the time of filing, as section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c) require. On appeal, the Petitioner argues that USCIS failed to consider that he was subject to a valid dependency order at the time of filing and, therefore, should remain eligible for SIJ status due to the settlement agreement in *Perez-Olano v. Holder*, No. CV 05-3604 (C.D. Cal. 2005).¹

¹ The *Perez-Olano* settlement agreement relates to a class action suit involving SIJ petitions that had been denied, revoked, or terminated because the SIJ petitioners' valid dependency orders had been terminated due to age before they filed their petitions. USCIS Policy Memorandum PM-602-0117, *Updated Implementation of the Special Immigrant Juvenile Perez-Olano Settlement Agreement 2* (June 25, 2015), <https://www.uscis.gov/laws/policy-memoranda>. The settlement agreement is not applicable to the Petitioner's case, as this petition was not denied on this basis. Moreover, the Stipulation to the *Perez-Olano* settlement agreement, executed March 4, 2015, specifically provides that, under the agreement, USCIS may not deny, revoke, or terminate a SIJ petition "if, at the time of filing [of the petition], (1) [the SIJ petitioner] is or was under 21 years of age, unmarried, and otherwise eligible, and (2) [he or she] either is the subject of a valid dependency order or was the subject of a valid dependency order that was terminated based on age prior to filing." (Emphasis added). Thus,

Section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c) require that an SIJ petitioner be under the age of 21 at the time of filing, and we lack the authority to waive this requirement. *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). As the Petitioner was not under 21 years of age on the date he filed his petition, he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The appeal is dismissed.

in order to invoke protection under *Perez-Olano*, a SIJ petitioner must have been *both* under 21 years *and* the subject of a valid dependency order at the time of filing (and otherwise eligible for SIJ classification under section 101(a)(27)(J)). The Petitioner does not meet the second prong to trigger the protections afforded under *Perez-Olano*.