



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

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

In Re: 21761484

Date: DEC. 13, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of El Salvador, 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 the Petitioner was ineligible for SIJ classification as he was over the age of 21 when he filed his SIJ petition, and the matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification. 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 establish, among other requirements, that they were under 21 years of age at the time of filing their SIJ petition. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). 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).

In [redacted] 2021, when the Petitioner was 20 years old, the Family Court for the [redacted] New York (Family Court) issued an order entitled *ORDER – Special Immigrant Juvenile Status* (SIJ order). Based on that SIJ order, the Petitioner filed his SIJ petition. The SIJ petition was received on [redacted] 2021 – the Petitioner's 21st birthday. The Director issued a notice of intent to deny (NOID) in July 2021, 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 August 2021, submitting a copy of the tracking information for the SIJ petition package and articles describing a severe weather event in [redacted] 2021 in Chicago, where the USCIS lockbox is located. The Director subsequently denied the SIJ petition in December 2021, 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 “superseding and unforeseen causes” that delayed the arrival of his mailing to the USCIS lockbox.

Although the Petitioner has demonstrated that the late filing was due to something outside his control – a snowstorm – the age requirement for SIJ petitions is not one we can set aside. Section 101(a)(27)(J) of the Act proscribes a firm age requirement, setting clear boundaries on eligibility and inherently prohibiting inclusion of those who do not meet the requirement. The statute also specifically identifies the time at which the age requirement must be determined. *See* Section 235(d)(6) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (2008) (stating that an SIJ petitioner may not be denied SIJ status based on age if they were a child on the date on which they “applied for” such status). *See also* 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”) and 204.11(b)(1) (stating that an SIJ petitioner must be under 21 years if age). Thus, the age requirement for SIJ filing must be met at the time of filing, and we lack authority to waive the requirements of the statute, as implemented by the regulations. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). As USCIS received the Petitioner’s SIJ petition on his 21st birthday when he was no longer a child under the Act, he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

Accordingly, the Petitioner has not demonstrated the Director erred in finding his ineligible for SIJ classification.

ORDER: The appeal is dismissed.