



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

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

In Re: 23988994

Date: DEC. 19, 2022

Appeal of New York District 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 New York District (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 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 is 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(b). 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 February 22, 2016, when he was 21 years old. The SIJ petition was based on an *ORDER APPOINTING GUARDIAN OF THE PERSON* and an *ORDER - SPECIAL IMMIGRANT JUVENILE STATUS* issued by the Family Court of the State of New York on [redacted] 2016, [redacted] before he turned 21. In September 2016, the Director issued a notice of decision informing the Petitioner that because he was over 21 at the time of filing, his SIJ petition was denied.

On appeal, the Petitioner does not dispute that he was born on [redacted] 1995, a fact substantiated by his birth certificate and passport. Instead, the Petitioner argues that the AAO has the discretion to grant the SIJ petition *nunc pro tunc* because the Petitioner was eligible for SIJ status on the day he mailed his SIJ petition. However, section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c) require that an SIJ petitioner be under 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). And USCIS properly considers a petitioner's age at the time the SIJ petition is received by USCIS, not when it is mailed. See 8 C.F.R. § 103.2(a)(7)(i) (providing that USCIS considers a benefit request received as of the actual date of receipt at the location designated for filing such a request); see generally 6 USCIS Policy Manual

J.2(C) (noting that “a juvenile may seek SIJ classification if he or she is under 21[] and unmarried at the time of filing the petition with USCIS”). Therefore, the Petitioner has not met his burden of establishing he was under 21 at the time he filed his SIJ petition. Therefore, he is ineligible for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The appeal is dismissed.