



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

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

In Re: 16384819

Date: JAN. 31, 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), concluding the Petitioner was not under the age of 21 at the time of SIJ petition filing, as required. On appeal, the Petitioner asserts his eligibility for SIJ classification and submits additional evidence. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners 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 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(c). Petitioners 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. The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

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 the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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

In his SIJ petition, the Petitioner claims his date of birth is [REDACTED], 1999, and submits a birth certificate from the Civil Registry of Natural Persons in [REDACTED] Guatemala in support of this assertion. On [REDACTED] 2020, when the Petitioner was 20 years old, the Superior Court of New Jersey, [REDACTED] (Superior Court) issued a *Predicate Order Special Immigrant Juvenile Status*. The Superior Court placed the Petitioner in the custody of his brother and made other SIJ-related determinations. On [REDACTED] 2020, the Petitioner filed his petition for SIJ classification.

The Director denied the petition, concluding the Petitioner is ineligible for SIJ classification because he was 21 years old at the time of SIJ petition filing. On appeal, the Petitioner asserts his SIJ petition was denied in error. Specifically, the Petitioner claims that as he was born on [REDACTED] 1999 at 8:00 p.m. and his SIJ petition was filed on [REDACTED] 2020 at 10:02 a.m., he was under 21 at the time of SIJ petition filing.

The record contains a birth certificate for the Petitioner that was filed with his SIJ petition, which indicates he was born on [REDACTED] 1999 in [REDACTED] Guatemala and his birth was registered on [REDACTED] 1999 “in entry 1823, page 147 and 148 of book 284, of the Civil Registry of the Municipality of [REDACTED] department of [REDACTED]” The Petitioner contends that his amended birth certificate, filed on appeal, supports his claim that he was born on [REDACTED] 1999 at 8:00 p.m. The amended birth certificate, like the initially submitted birth certificate, is purportedly issued from the Civil Registry of Natural Persons in [REDACTED] Guatemala. The amended birth certificate claims the Petitioner’s birth was registered on June 26, 1999 “in entry 1823, page 147 of book 284, of the Civil Registry of the Municipality of [REDACTED] Department of [REDACTED]” and contains a note that a correction was made to the time of his birth at the request of his mother. The amended birth certificate contains a time of birth of 8:00 p.m., but contrary to the Petitioner’s assertions as to his date of birth, states the Petitioner was born on [REDACTED] 1999. The Petitioner previously submitted a July 2022 notarized document from his mother stating that when the Petitioner’s father presented himself on [REDACTED], 1999, to obtain the Petitioner’s birth certificate, the hour of the Petitioner’s birth was mistakenly written as eight hundred hours when the correct time is 8:00 p.m. But the amended birth certificate submitted on appeal indicates the Petitioner’s birth was registered on June 26, 1999, rather than [REDACTED] 1999; and reflects the Petitioner’s date of birth as [REDACTED] 1999, rather than [REDACTED] 1999. Overall, the Petitioner has not satisfied his burden of demonstrating by a preponderance of the evidence that he was under 21 at the time of SIJ petition filing, and eligible for SIJ classification.

Counsel for the Petitioner asserts, in the alternative, that any delay in filing his SIJ petition should be excused based on extraordinary circumstances due to COVID-19 related delays. Counsel asserts that changes in New Jersey court procedures and counsel’s own staff procedures related to COVID-19, and the mailing of the SIJ order from the Superior Court to counsel’s prior address, resulted in a delay in SIJ petition filing. While USCIS has issued extended flexibility guidance with the respect to specific forms and responses, such guidance has not been issued for SIJ petition filings. All petitioners for immigration benefits must establish their eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1). Although we acknowledge counsel’s argument that the delay was beyond the Petitioner’s control, we lack the 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) (explaining that as long as regulations remain in force, they are binding on government officials).

III. CONCLUSION

The Petitioner has not overcome the basis of the Director's decision and has not demonstrated he was under 21 years old at the time of SIJ petition filing.

ORDER: The appeal is dismissed.