



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

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

In Re: 17252839

DATE: MAY 23, 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 (SIJ petition), and the matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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). 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 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 petitioner's best interest to return to his or her parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

The Petitioner filed the SIJ petition in June 2017. Prior to issuing a decision, the Director issued two notices of intent to deny (NOID). The first NOID stated that the Petitioner failed to submit sufficient evidence of his date of birth because he did not submit the second page of his birth certificate. The Director requested the second page of the birth certificate or other evidence of his age. In response to the first NOID, the Petitioner submitted the second page of his birth certificate issued in 2014 stating his date of birth as [redacted] 1997, as well as a passport stating his date of birth as [redacted] 1996 (original passport). The second NOID noted that the original passport and the birth certificate contained differing dates of birth for the Petitioner, and requested additional evidence to establish the Petitioner's date of birth. In response, the Petitioner submitted additional documentation, including a copy of a birth certificate issued in 2017, a copy of his current passport (new passport), a copy of his national identification card from his home country, and a copy of a 2020 affidavit submitted in his SIJ proceedings, all of which indicated that his date of birth was [redacted] 1997.

The Director denied the SIJ petition based on the discrepancies within the record regarding the Petitioner's date of birth. She underscored that since the SIJ petition was filed in June 2017, the

Petitioner's date of birth would determine his eligibility for SIJ classification: if he was born on [REDACTED] 1997, he would have been under 21 years of age at the time of filing and eligible for SIJ classification, and if he was born on [REDACTED] 1996, he would have been over 21 years of age and not eligible for SIJ classification. The Director held that the Petitioner did not demonstrate by a preponderance of the evidence that his date of birth is [REDACTED] 1997, and not [REDACTED] 1996, because the birth certificates were issued after the original passport was issued, and the Petitioner did not submit the birth certificate used to obtain the original passport.

On appeal, the Petitioner argues that the Director erred in finding that he had not established his date of birth by a preponderance of the evidence. The Petitioner contends that the original passport that he submitted to the Director was potentially fraudulent and that he did not realize that it was fraudulent until the Director issued the second NOID. The Petitioner also argues that the birth certificates he submitted did not postdate the original passport because they both state that they were registered on [REDACTED] 1998, and were only printed in 2014 and 2017, respectively. In support of his arguments, the Petitioner submits a brief, an affidavit, state and federal documents and forms that state his date of birth, and previously submitted documentation.

Upon *de novo* review, the Petitioner has not met his burden of establishing that he was under 21 years of age on the date that he filed his SIJ petition. We acknowledge that the Petitioner has submitted evidence that his date of birth was [REDACTED] 1997. He submitted two birth certificates, the new passport, a national identification card, two 2020 affidavits, and other documentation recognized or issued by USCIS or other U.S. government agencies showing his date of birth as [REDACTED] 1997. We also note that the record includes a guardianship order, an amended order for special immigrant juvenile status, and a 2018 affirmation from his counsel that identify his date of birth as [REDACTED] 1997.

However, in response to the first NOID, the Petitioner submitted a passport that indicates his date of birth was [REDACTED] 1996. In his affidavit submitted on appeal, the Petitioner states that he used a birth certificate to obtain the passport in 2011 and brought the birth certificate to the United States with him, however, has not provided the underlying birth certificate or explained why that birth certificate is unavailable. Further, while the Petitioner's affidavit suggests that the original passport is fraudulent, he described going to a government building, speaking with a government employee, showing the employee his birth certificate, paying a passport fee, and receiving the original passport: all of which are steps to obtain an authentic passport. The original passport that the Petitioner submitted in response to the first NOID is significant evidence contradicting the Petitioner's contention that he was under 21 years of age at the time of filing.

Due to the inconsistencies in the record regarding the Petitioner's date of birth,¹ he has not demonstrated by a preponderance of the evidence that he was under 21 years of age at the time he filed his SIJ petition. *See* section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c). It is the Petitioner's burden

¹ In addition, we note that the record regarding the Petitioner's date of birth is further complicated because it also includes evidence that his date of birth is [REDACTED] 1998. Specifically, the record includes a copy of an order for special immigrant juvenile status, a copy of the petition for guardianship, a copy of the petition and memorandum of law in the state SIJ proceedings, a copy of a 2017 attorney affirmation, and a copy of a 2017 affidavit from the Petitioner, all indicating that his date of birth is [REDACTED] 1998. Importantly, the Petitioner's 2017 affidavit contradicts his 2020 affidavits and his counsel's 2017 affirmation contradicts his counsel's 2018 affirmation.

to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden, and he is therefore ineligible for SIJ classification.

ORDER: The appeal is dismissed.