



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

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

In Re: 21964052

Date: NOV. 04, 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 that the record did not establish that the Petitioner was under the age of 21 at the time the SIJ petition was filed, as required.

On appeal, the Petitioner submits a brief and evidence and asserts that he is eligible for and warrants USCIS' consent to his request 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.

**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)(i) of the Act; 8 C.F.R. § 204.11(b).<sup>1</sup> 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; 8 C.F.R. § 204.11(c)(1). 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); 8 C.F.R. § 204.11(c)(2).

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).

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<sup>1</sup> The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

## II. ANALYSIS

On [redacted] 2021, when the Petitioner was 20 years of age, the Family Court of the State of New York, [redacted] (Family Court), issued an *ORDER-Special Immigrant Status* pursuant to its jurisdiction under section 113 of the N.Y. Family Court Act (Fam. Ct. Act), in which it made findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. It found that it had taken jurisdiction over the Petitioner during guardianship proceedings under section 141 of the Fam. Ct. Act that it had placed the Petitioner under the guardianship of B-P-G-, his brother, and that, as a result of these proceedings, the Petitioner was dependent upon it. The Family Court further cited to section 384(b) of the New York Social Services Law, found that the Petitioner's reunification with his father is not viable due to abuse, abandonment, neglect and a "similar basis" under New York law, and set forth facts forming the basis for this determination. The Family Court found that, pursuant to reunification with the Petitioner's mother was not viable because she was deceased. Additionally, the Family Court found that it was not in the Petitioner's best interest to be returned to Ecuador, his country of nationality, and provided a factual basis for this determination.

Based on this Family Court order, the Petitioner filed his SIJ petition on March 18, 2021, more than [redacted] after his 21st birthday. The Director issued a notice of intent to deny (NOID) requesting evidence that the Petitioner was under 21 years old at the time of the filing. The Petitioner responded with a brief and documents from FedEx. After receiving the Petitioner's response to the NOID, the Director denied the SIJ petition because the Petitioner was not under 21 years old at the time of the filing.

On appeal, the Petitioner contends first that he is eligible for SIJ classification because the term "SIJ petition" is ambiguous and could equally refer to his Form 6-1, Petition for Appointment as Guardian of a Person or Permanent Guardian (guardianship petition), which is used to initiate guardianship proceedings in New York, and which was filed prior to his 21st birthday. The Petitioner also argues that the term "filed" is capricious and that USCIS failed in its "legal duty to implement clear-cut pieces of binding authority." The Petitioner contends that USCIS erroneously reweighed evidence assessed by the Family Court and that the Petitioner is eligible for *nunc pro tunc* relief because the delay in filing was out of his control. Citing to *Eduards v. I.N.S.*, 393 F.3d 29, 308 (2d Cir. 2004),<sup>2</sup> the Petitioner states that "[n]un [sic] *pro tunc* is an equitable remedy to rectify error in immigration proceedings" and that in order to obtain this relief, he needs to show that "he was erroneously denied an opportunity for immigration relief" and that "the denial would be irremediable absent *nunc pro tunc* relief."

We do not find these arguments persuasive. The instructions for the SIJ petition state "[t]his petition is used to classify an alien as ... a Special Immigrant Juvenile," and, as noted above, a request for SIJ classification is made under section 101(a)(27)(J) and 204(a)(1)(G) of the Act, a Federal statute. A SIJ petition is therefore distinct from a petition governed by New York State law. In addition, the regulations concerning receipt dates for petitions and applications provide that benefit requests before USCIS, including SIJ petitions, are considered filed on the date of actual receipt by USCIS. See 8 C.F.R. § 103.2(a)(7)(i). Consequently, the SIJ petition here was "filed" when USCIS received it in

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<sup>2</sup> Counsel for the Petitioner appears to have made a scrivener's error here and seems to be referencing *Edwards v. I.N.S.*, 393 F.3d 29, 308 (2d Cir. 2004).

March 2021. Although the Petitioner argues on appeal that his attorney applied due diligence and submitted the petition promptly to FedEx for overnight mailing, and offers evidence demonstrating that FedEx held the petition and was unable to deliver it until after his 21st birthday, 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). The Petitioner has not shown that the Director's denial was in error such that he was erroneously denied an opportunity for immigration relief. Instead, the record reflects that USCIS received his SIJ application in March 2021, after his 21st birthday and that pursuant to 8 C.F.R. §103.2(a)(7)(i), the Director properly denied the Petitioner's SIJ petition on the ground that it had not been filed when the Petitioner was under 21 years of age.

With regards to the Petitioner's request on appeal that the deadline for filing his SIJ petition be subject to estoppel, we have no authority to apply the judicially devised doctrine of equitable estoppel to preclude a USCIS component from undertaking a lawful course of action that it is empowered to pursue by statute and regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts. There is no delegation of authority, statute, regulation, or other law that permits us to apply this doctrine to the cases before us. *Id.*

As the Petitioner was not under 21 years of age on the date his petition was filed as required, he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

**ORDER:** The appeal is dismissed.