



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

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

In Re: 19008710

DATE: NOV. 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 Juvenile (SIJ petition), because he did not establish that he was under 21 years of age when he filed his SIJ petition. On appeal, the Petitioner submits a brief reasserting 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.

I. LAW

To establish eligibility for SIJ classification, petitioners must show, *inter alia*, 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 parental 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), (c)(1).¹ Petitioners bear the burden of proof to demonstrate their eligibility for SIJ classification by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

The Petitioner, whose undisputed date of birth is [redacted] 16, 1999, entered the United States on or about February 13, 2018. On [redacted] 14, 2020, two days before the Petitioner turned 21 years old, the California Superior Court for [redacted] issued an order titled "Special Immigrant Juvenile Findings" (SIJ order), appointing guardianship of the Petitioner to L-S-². This order further provided that the Petitioner's reunification with both his parents was not viable due to abuse and neglect and that it is not in his best interest to be returned to Mexico, his country of nationality. Based on the SIJ order, the Petitioner filed his SIJ petition, which U.S. Citizenship and Immigration Services

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

² We use initials to protect the privacy of individuals.

(USCIS) received on [REDACTED] 18, 2020, after he had turned 21 years old. The Director denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because he did not establish that he was under 21 years of age at the time he filed his SIJ petition.

The Petitioner points out on appeal, and the record evidence shows, that he sent his SIJ petition through his counsel via FedEx overnight mail on [REDACTED] 14, 2020, the same date the SIJ order was issued. FedEx attempted delivery on [REDACTED] 15, 2020, but the USCIS lockbox facility was closed. Following the weekend and a federal holiday on [REDACTED] 17, 2020, USCIS received the SIJ petition on [REDACTED] 18, 2020, two days after his twenty-first birthday.

On appeal, the Petitioner does not contest the actual date USCIS received the SIJ petition but asserts that because the delay was due to circumstances beyond his control and USCIS' unreliable mailing instructions, his SIJ petition must be accepted as timely filed before he turned 21 years old. The Petitioner specifically argues that he detrimentally relied on USCIS' misleading mailing instructions, which lack proper guidance for utilizing different postal services and warning as to when USCIS will or will not accept filings. The Petitioner argues that because of USCIS' misleading instructions, USCIS' improvident practices must be equitably estopped and the date he "requested" or "applied for" his SIJ classification before he turned 21 years old—essentially when he mailed his SIJ petition—should be controlling in satisfying the age requirement, not the actual date USCIS received his SIJ petition. We disagree with the Petitioner.

The relevant regulations clearly provide that a petitioner must be eligible for the immigration benefit sought *at the time of filing*, and individuals, like the Petitioner, seeking SIJ classification must be under the age of 21 and unmarried at the time their SIJ petitions are filed. 8 C.F.R. § 103.2(b)(1) (providing that a petitioner for an immigration benefit must show his or her eligibility for the benefit sought at the time of filing the benefit); 8 C.F.R. § 204.11(b)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried at the time of filing the petition); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(d)(6), Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). A properly completed SIJ petition is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). Here, although the Petitioner mailed his SIJ petition prior to his twenty-first birthday, it was not received by USCIS until after he had already attained 21 years of age. Consequently, the Petitioner has not shown that he was under 21 years of age at the time he filed his SIJ petition with USCIS.

The Petitioner has not otherwise shown that USCIS has authority to disregard and waive this eligibility requirement, as he maintains.

Contrary to the Petitioner's appellate argument, as an administrative agency, we lack authority to apply the doctrine of equitable estoppel. *See, e.g., Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991); *Chang v. United States*, 327 F.3d 911, 924 (9th Cir. 2003) (explaining that equitable relief claims "lie outside the scope and jurisdiction of the immigration judges and the BIA"); *see also Maunting v. INS*, 16 Fed. Appx. 788, 790 (9th Cir. 2001) (holding that administrative agencies lack jurisdiction to apply equitable estoppel against the immigration service) (unpublished decision citing *Matter of Hernandez-Puente*). The Petitioner relies on *Schwebel v. Crandall*, 967 F.3d 96 (2d Cir. 2020) in arguing that equitable relief is warranted here because USCIS' misleading filing instructions amounted to affirmative government misconduct. Although the United States Court of

Appeals for the Second Circuit in *Schwebel* equitably estopped USCIS from rescinding a derivative beneficiary's employment-based adjustment application or placing her in removal proceedings, this case does not stand for the proposition that we have authority to apply the doctrine of equitable estoppel. *Id.* at 99, 102-107. While we acknowledge that the Petitioner attempted to file his SIJ petition two days before he turned 21 years of age, there is no provision in the Act or the implementing regulations authorizing USCIS to disregard and waive this mandatory eligibility requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age and they are no longer a "child" under the Act. *See, e.g., United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound by governing statutes and regulations in force); *see also United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry the force and effect of law).

As the Petitioner has not overcome the Director's determination that he was over 21 years of age on the date his SIJ petition was filed, he has not established his eligibility for SIJ classification. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.