U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22106203

Date: NOV. 29, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the Petitioner is ineligible for SIJ classification because she was over the age of 21 when she filed her SIJ petition. On appeal, the Petitioner asserts her eligibility for SIJ classification. 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, 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(b).[1]

A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be unmarried and under the age of 21. See 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit "must establish that he or she is eligible for the requested benefit at the time of filing the benefit") and 204.11(c)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried); see also 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). 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).

[1] 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

The Petitioner was born on [redacted] 23, 2000. On [redacted] 19, 2021, when the Petitioner was 20 years old, the Family Court in [redacted] New York (Family Court) issued an order entitled ORDER-Special Findings (SIJ order). The SIJ order provided, in pertinent part, that the Petitioner was placed in the custody of an individual appointed by Family Court, reunification with her parents was not viable due to abandonment, and it was not in the Petitioner's best interest to be returned to Venezuela, her country of nationality. Based on the SIJ order, the Petitioner filed her SIJ petition on February 23, 2021.

The Director denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because she was not under 21 years old when her SIJ petition was filed, as required under 8 C.F.R. § 204.11(c)(1).

On appeal, the Petitioner contends that because her petition was delivered to USCIS at 11:12 a.m. on the morning of [redacted] 23, 2021, and she was born at 1:30 p.m. in the afternoon on [redacted] 23, 2001, her SIJ petition was filed before she reached the age of 21. Citing Duarte-Ceri v. Holder, 630 F.3d 83 (2d Cir. 2010) and Coniglio v. Garland, 556 F. Supp. 3d 187 (E.D.N.Y. 2021), she further contends that courts and administrative agencies support the notion that petitioners should not lose the chance to obtain lawful status based upon ambiguities in statutory language.

In Duarte-Ceri, the U.S. Court of Appeals for the Second Circuit (Second Circuit) held that a day was divisible for purposes of applying former section 321(a) of the Act in assessing whether unmarried children "under the age of eighteen years" have derived citizenship. Duarte-Ceri, 630 F.3d at 91. Although the Second Circuit ruled in favor of the divisibility of a day in that case, the court explained that a primary consideration was "'the most precious right' of citizenship," which was at stake in its determination. Id. at 89. In Coniglio, which related to the revocation of a petitioner's status as an "immediate relative" because he was over 18 at time of his mother and stepfather's marriage, the U.S. District Court for the Eastern District of New York (District Court) held that USCIS's decision was unlawful and that the principles articulated in the Duarte-Ceri applied by analogy to the petitioner because "[l]ike the right to derivative citizenship, the right to rejoin [one's] immediate family . . . ranks high among the interests of the individual." Coniglio, 556 F. Supp. 3d at 207.

The principles considered in Duarte-Ceri and Coniglio are inapplicable to the present SIJ petition. The requirement for an SIJ petitioner to file the petition prior to attaining 21 years of age is not a technical requirement, but rather, a substantive eligibility requirement. There is no provision in the Act or the implementing regulations which authorizes USCIS to disregard and waive this mandatory requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age and is no longer a child under the Act. Further, neither the Act nor the regulations indicate that a day is a divisible unit or that an SIJ petitioner's age is determined by the specific time of birth. Consequently, the date of the Petitioner's birth, rather than the specific hour, is determinant of whether she was under 21 years old at the time she filed her SIJ petition. In addition, while we, as well as some courts, have found filing deadlines related to appeals and motions to be subject to equitable tolling in the context of removal or deportation, the Petitioner does not cite to, and we are unaware of, any binding authority finding that filing deadlines for visa petitions are also subject to equitable tolling. Compare Albillo-DeLeon v. Gonzalez, 410 F.3d 1090, 1098 (9th Cir. 2005) (finding that the time limit for filing motions

to reopen under NACARA is a statute of limitations subject to equitable tolling) with Balam-Chuc v. Mukasey, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (noting that the deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling).[2]

Based on the foregoing, the Petitioner has not overcome the Director's finding that she was not under 21 years old on the date that her SIJ petition was received as required by the Act. Accordingly, she has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.

[2] Referring to two of our non-precedent decisions wherein we dismissed appeals by petitioners who filed their SIJ petitions after attaining 21 years of age, the Petitioner contends that her case should be distinguished because her SIJ petition was filed on the day she was set to turn 21 years old. These cited decisions were not published as a precedent and therefore do not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c) (providing that precedential decisions are "binding on all [USCIS] employees in the administration of the Act"). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.