



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

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

In Re: 20498984

Date: OCT. 4, 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), because the Petitioner did not establish that he was under the age of 21 at the time of filing. On appeal, the Petitioner asserts 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 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>

A SIJ petition must be filed on the form prescribed by U.S. Citizenship and Immigration Services (USCIS) in accordance with the form instructions, and will be considered properly filed when the petition is filed in accordance with 8 C.F.R. § 103.2. 8 C.F.R. § 204.1(b). The filing date of a SIJ petition is the date it is properly filed and received by USCIS, and that date will constitute the priority date. *Id.* USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. 8 C.F.R. § 103.2(a)(7)(i).

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] 2020, the Circuit Court of [REDACTED] Maryland (Family Court) appointed custody of the Petitioner to I-M-V-M-.<sup>2</sup> In a separate order titled *ORDER FOR FINDINGS SUFFICIENT FOR SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), the Family Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner's mother and father was not viable due to abandonment and neglect and that it was not in his best interest to be removed from the United States and returned to El Salvador, his country of nationality.

The Petitioner filed his SIJ petition on [REDACTED] 7, 2020. The Director issued a notice of intent to deny (NOID) stating the Petitioner was not under 21 years old on the date he filed his SIJ petition. The Director referenced evidence provided by the Petitioner and USCIS records which showed he was born on [REDACTED] 30, 1999. The Director then stated that USCIS did not receive his SIJ petition until [REDACTED] 7, 2020, which made the Petitioner 21 years old at the time of filing. The Petitioner responded to the NOID with a brief, court hearing notice, SIJ order, SIJ petition cover letter, internal email from counsel's office, and USCIS lockbox filing flexibilities announcement. The Petitioner mentioned that he obtained his SIJ order before he turned 21 years old, on [REDACTED] 17, 2020, and signed and mailed his SIJ petition to USCIS on [REDACTED] 23, 2020, [REDACTED] before he turned 21 years old. The Petitioner claimed that his SIJ petition should have been received by USCIS within four to five days, but it was not received until [REDACTED] 7, 2020, as the U.S. Postal Service (USPS) was facing significant delays due to the Covid pandemic. As evidence of the date the Petitioner mailed his SIJ petition, he submitted an internal email from counsel's office indicating that his SIJ petition was mailed on [REDACTED] 23, 2020. The Petitioner next asserted that USCIS indicated there were delays in lockbox processing of some applications received between October 1, 2020, and April 1, 2021. He pointed to the June 2021 USCIS announcement related to lockbox filing flexibilities in certain situations where benefit requests were initially rejected by USCIS due to expired filing fee payments. After reviewing the evidence submitted in response to the NOID, the Director cited 8 C.F.R. § 204.1(b) and 8 C.F.R. § 103.2(a)(7)(i) in denying the SIJ petition, concluding that the Petitioner was over 21 years old at the time he filed his SIJ petition and therefore he was ineligible for SIJ classification.

On appeal, the Petitioner submits a brief and previously submitted evidence. The Petitioner repeats the claims he made in response to the NOID, as detailed above, and he further contends that delays caused by USPS and USCIS were outside of his control. The record indicates that the Petitioner may have mailed his SIJ petition via regular USPS mail to USCIS prior to turning 21 years old. However, as noted above, the filing date is the date USCIS receives the petition. 8 C.F.R. § 103.2(a)(7)(i). In this case, the receipt date of the SIJ petition was [REDACTED] 7, 2020, after the Petitioner turned 21 years old. There are no exceptions to the requirement listed in 8 C.F.R. § 103.2(a)(7)(i) due to USPS delays as a result of the Covid pandemic. Furthermore, the USCIS announcement regarding lockbox flexibilities only applied to benefit requests that were rejected due to expired filing fee payments while the benefit requests were awaiting processing. In this case, the Petitioner's SIJ petition was not rejected by USCIS, rather it was received on [REDACTED] 7, 2020. Therefore, the USCIS announcement does not apply to the Petitioner.

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<sup>2</sup> We use initials to protect the privacy of individuals.

Based on the foregoing and upon *de novo* review of the entire record, the Petitioner has not established by a preponderance of the evidence that he was under the age of 21 at the time of filing his SIJ petition. While we are sympathetic to the hardship this may cause, there is no provision in the Act or the implementing regulations which authorizes USCIS to waive this eligibility requirement. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations have “the force of law” and must be adhered to by government officials). Therefore, the Petitioner is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

**ORDER:** The appeal is dismissed.