



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

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

In Re: 17306218

Date: SEP. 06, 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 petition, concluding that the Petitioner did not meet the threshold requirements, as she was over the age of 21 at the time she filed her SIJ petition. The matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *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 establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their 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 a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden of proof

---

<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).

of demonstrating their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

The Petitioner was born on [REDACTED] 1999. In [REDACTED] 2020, when the Petitioner was 20 years old, the Superior Court of California, in the [REDACTED] issued an order titled *Order Appointing Guardian or Extending Guardianship of the Person* and issued *Special Immigrant Juvenile Findings*. In its order, the Court appointed R-E-S-A- as guardian for the Petitioner upon determining that she was abandoned by her father.<sup>2</sup> The court further found that the Petitioner could not be reunited with her father and that it was not in her best interest to return to El Salvador, her country of nationality. On May 26, 2020, the Petitioner filed her petition for SIJ classification.

The Director denied the petition, concluding that the Petitioner was ineligible for SIJ classification because she was 21 years old when her SIJ petition was filed.

On appeal, the Petitioner acknowledges that her SIJ petition was untimely filed but asks for discretion as “there were many obstacles that prevented her application to be filed on time” and explains that due to COVID-19, and the date on which her findings were available, she was unable to mail her SIJ petition earlier. However, we do not have the discretion to overlook the Petitioner’s late filing of her SIJ petition, as we lack the authority to waive the requirements of the regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry “the force and effect of law”). A petitioner for SIJ classification must submit their SIJ petition prior to the age of 21, as required by 8 C.F.R. § 204.11(b)(1). Here, the Petitioner was over the age of 21 at the time her SIJ petition was received by USCIS, and as such, remains ineligible.

## III. CONCLUSION

The Petitioner filed her SIJ petition [REDACTED] after her 21st birthday and is thus ineligible for SIJ classification. 8 C.F.R. § 204.11(b)(1).

**ORDER:** The appeal is dismissed.

---

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