



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 19320653

Date: SEPT. 19, 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 he did not establish that he was under the age of 21 when he filed his SIJ petition. On appeal, the Petitioner asserts his 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).<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. 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).

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.

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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).

Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). 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).

## II. ANALYSIS

On [redacted] 2020, the Family Court of [redacted] New York (Family Court) issued an order entitled Order-Special Immigrant Juvenile Status (SIJ Order), which made SIJ-related determinations pertaining to the Petitioner. Based on the SIJ Order, the Petitioner filed an SIJ petition in September 2020. In March 2021, prior to issuing a decision, the Director issued a notice of intent to deny (NOID) advising the Petitioner that the record contained inconsistent documentation regarding his date of birth. The Director noted that while the Petitioner submitted a birth certificate indicating that he was born on [redacted] 23, 2001, government records reflect that he was issued a Bangladeshi passport on April 15, 2018, listing a date of birth of [redacted] 23, 1999, as well as a different spelling of his first and last name. The Director also noted that the birth certificate submitted by the Petitioner was registered on August 30, 2018, after his passport. Further, government records reflect that while he was in transit to the United States, the Petitioner used a third date of birth, namely, [redacted] 12, 1996. In response to the NOID, the Petitioner submitted, *inter alia*, a personal statement, a certificate entitled Certificate about Birth Registration, school and vaccination records from Bangladesh, a United States student identification card, and a Bangladeshi passport issued on September 26, 2019, with a date of birth of [redacted] 23, 2001.

The Director denied the SIJ petition, concluding that the Petitioner did not meet his burden of proof in establishing that he was under the age of 21 when he filed his SIJ petition. The Director highlighted that while the Petitioner claimed that registration of his birth was not required prior to departing Bangladesh, valid registration of an individual's birth is required to obtain a passport in Bangladesh. The Director also emphasized that the copies of the passport that the Petitioner obtained in 2019 contain a different spelling of his name, date of birth, and personal number than the passport issued in 2018.

On appeal, the Petitioner asserts that he was under 21 years old when he filed his SIJ petition and that the documents that he submitted in response to the NOID as well as the SIJ order confirm that [redacted] 23, 2001, is his date of birth. He also contends that his correct name is reflected in his SIJ petition and 2019 passport and claims that he did not willfully use the incorrect name noted in his 2018 passport but rather believed it be the correct spelling of his name owing to the fact that he only has a seventh-grade education. In addition, he maintains that he did not need to submit a birth certificate to obtain his previous passport, and instead, submitted “substitute” documents as evidence of his name and date of birth.

Upon *de novo* review, the Petitioner has not met his burden of establishing that he was under 21 years of age on the date that he filed his SIJ petition. We acknowledge that the Petitioner has submitted evidence that his date of birth is [redacted] 23, 2001. We also note that the record includes a guardianship order, SIJ Order, and other documentation indicating that his date of birth is [redacted] 23, 2001. However, the determination of the Petitioner's date of birth by the Family Court does not resolve the legitimacy concerns surrounding the birth certificate issued in 2018 and the decision is not binding on USCIS. See 8 C.F.R. § 204.11(d)(1) (explaining that the decision as to whether an SIJ

petitioner has submitted sufficient documentation of their age is within the discretion of USCIS). In this regard, the original passport the Petitioner used when departing Bangladesh, indicating his date of birth as [REDACTED] 23, 1999, and evidence in the record regarding his use of a third date of birth – [REDACTED] 12, 1996 – contradict and call into question the Petitioner’s contention that he was under 21 years of age at the time of filing.

Moreover, we note that the Bangladesh Births and Deaths Registration Act, enacted in 2004, requires individuals to provide a birth certificate when, among other things, applying for a passport, an identification card, or when enrolling a child into school.<sup>2</sup> The Petitioner has not submitted the birth certificate used to obtain his original passport, and the birth certificate he did submit into the record was issued after the original passport. Based on the foregoing and due to the inconsistencies that remain in the record, the Petitioner has not established by a preponderance of the evidence that his date of birth is [REDACTED] 23, 2001, and not [REDACTED] 23, 1999.

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). Here, the Petitioner has not overcome the Director’s finding that he was not under 21 years old on the date that his SIJ petition was received as required by the Act. Accordingly, he has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.

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<sup>2</sup> Bangladesh: Births and Deaths Registration Act, 2004, Act No. 29 of 2004, 7 December 2004.