



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

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

In Re: 18121544

DATE: SEP. 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 Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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). 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; 8 C.F.R. § 204.11(c)(1). 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).

A petitioner must meet the statutory and regulatory requirements for SIJ classification and establish their eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see Matter of Kutigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (visa petition may not be approved at future date after petition becomes eligible under new set of facts). SIJ petitioners must be the subject of a qualifying juvenile court order(s) that "must be in effect on the date the petitioner files petition." 8 C.F.R. § 204.11(b)(4), (c)(3)(ii). Evidence that a state juvenile court order made the requisite determinations must be submitted in support of the SIJ petition. 8 C.F.R. § 204.11(d)(3) (stating "a petitioner must submit all of the following evidence, as applicable to their petition: . . . Juvenile court order(s) with the judicial determinations required"). 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

The Petitioner submitted her SIJ petition on June 1, 2020, [REDACTED] before she turned 21 years old. In support of her petition, she submitted a brief, copies of U.S. identification cards, and a copy of a case summary from the California Superior Court for [REDACTED] (family court). The Petitioner did not submit required evidence that established her eligibility for SIJ classification, including a juvenile court order containing specific judicial determinations regarding the Petitioner's custody or dependency and parental reunification, as required by 8 C.F.R. § 204.11(b)(4), (d)(3). The Director issued a request for evidence (RFE) stating that the Petitioner had not filed a juvenile court order with the SIJ petition and a complete copy of her birth certificate. The Petitioner responded timely to the RFE, but only submitted a complete and translated copy of her birth certificate and did not submit a juvenile court order. In January 2021, the Director denied the SIJ petition because the Petitioner had not submitted a juvenile court order with her SIJ petition as required. The Director also held that USCIS' consent was not warranted because the Petitioner had not met all the eligibility requirements for SIJ classification.

On appeal, the Petitioner submits a brief reasserting her eligibility for SIJ classification, a copy of an order issued by the family court, a copy of correspondence from the Petitioner to USCIS, and previously submitted documentation. In her brief, the Petitioner, though counsel, erroneously argues that the Director denied her SIJ petition because the SIJ orders were dated after the Petitioner turned 21 years old. The Director did not make such a determination and, instead, as stated, denied the petition because the Petitioner had never submitted a juvenile court order containing SIJ related findings, as required.

The newly submitted family court order on appeal is titled SPECIAL IMMIGRANT JUVENILE FINDINGS (SIJ order) and is dated [REDACTED] 2020, two days after the Petitioner turned 21 years old. The order makes determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act as well as appointing guardianship of the Petitioner to E-G-J,¹ her mother.² The Petitioner argues that due to delays caused by the COVID-19 pandemic, she was unable to obtain a copy of the SIJ order before she turned 21 years old, so she filed her SIJ petition without the SIJ order. The Petitioner also submits a copy of a correspondence, dated two weeks after the SIJ order was issued, allegedly sent by the Petitioner to USCIS and attaching the SIJ order. However, there is no evidence in the record indicating that this correspondence was sent by the Petitioner or received by USCIS, other than the assertions by the Petitioner's counsel on appeal.³ Furthermore, the Director's RFE, dated August 2020, requested the Petitioner to submit a qualifying juvenile court order, since the Petitioner did not

¹ We use initials to protect the privacy of individuals.

² While the SIJ order indicates that the court appointed a guardian for the Petitioner on [REDACTED] 2020, the most recent case summary indicates that the proposed order for guardianship filed on [REDACTED] 2020 was not granted until [REDACTED] 2020. See Case Access, The Superior Court of California, [REDACTED] court.org/casesummary/ui/ (last visited on September 27, 2022).

³ Assertions of counsel do not constitute evidence and must be substantiated in the record with independent evidence, which may include affidavits and declarations. See *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (unsupported statements in brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

do so when she filed her SIJ petition. Additionally, when she responded to the RFE, the Petitioner did not submit the [] 2020 SIJ order that post-dated the filing of her SIJ Petition.

The Petitioner goes on to argue that the SIJ order qualifies her for SIJ classification even though it was issued after she turned 21 years old and was not initially submitted when she filed her SIJ petition because of exceptional circumstances that occurred due to the Covid-19 pandemic. However, in the most updated case summary of the family court proceedings,⁴ the docket indicates that the family court's delay in issuing the SIJ order was due to its rejection of the Petitioner's proposed orders, and not the Covid-19 pandemic. The case summary demonstrates that the Petitioner's proposed SIJ order was rejected by the family court six times after the court held its hearing on [] 2020, including twice on [] 2020, once on [] 2020, once on [] 2020, and twice on [] 2020.

However, regardless of why the Petitioner was unable to submit the required documentation with her SIJ petition, we lack the authority to waive the requirements prescribed by 8 C.F.R. § 103.2(b)(1); *see United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (immigration regulations carry force and effect of law). As stated above, a petitioner must meet the statutory and regulatory requirements for SIJ classification and establish their eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1); *see Matter of Kutigbak*, 14 I&N Dec. at 49. The Petitioner in this case did not establish that she was the subject of a qualifying juvenile court order that was in effect at the time she filed her SIJ petition, as required by 8 C.F.R. § 204.11(b)(4) and (c)(3)(ii). *See also* 8 C.F.R. § 204.11(d)(3) (requiring petitioners to submit juvenile court order to establish SIJ eligibility). The [] 2020 order submitted on appeal does not establish the Petitioner's SIJ eligibility as it was issued by the family court after the filing of this SIJ petition and after her 21st birthday, and therefore, was not in effect when she filed her SIJ petition. *Id.* Accordingly, the Petitioner has not established her eligibility for SIJ classification at the time of petition filing.

III. CONCLUSION

The Petitioner has not overcome the basis of the Director's denial as she has not established her eligibility for SIJ classification at the time she filed her SIJ petition.

ORDER: The appeal is dismissed.

⁴ Case Access, The Superior Court of California [] court.org/casesummary/ui/ (last visited on September 27, 2022).