



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

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

In Re: 18977846

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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner had not established that she was under the age of 21 when she filed her SIJ petition and therefore was not eligible for SIJ classification.

On appeal, the Petitioner submits a brief and asserts that she has established her eligibility for SIJ classification and that she warrants USCIS' consent in granting it. We review 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 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).¹ 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).

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

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).

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). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 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

A. Relevant Facts and Procedural History

The Petitioner was born on [REDACTED] 1999. In [REDACTED] 2020, when she was 20, the Superior Court of New Jersey Chancery Division – Family Part [REDACTED] (Family Court) issued an order (SIJ order) granting B-L-L-M, her aunt, sole legal and physical custody of the Petitioner. In this SIJ order, the Family Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court found that the Petitioner was an unemancipated child and in need of a court-ordered custodian and that she is dependent upon the Family Court because it must determine an appropriate custodian for her pursuant to the New Jersey Statutes Annotated (N.J.S.A.) §§ 9:2-3 and 9:2-4. The Family Court additionally found that reunification with the Petitioner’s father was not viable due to abandonment and neglect under N.J.S.A. § 9:6-1; N.J.S.A. § 9:6-8:21; and N.J.S.A. § 9:6-8.9 and that reunification with the Petitioner’s mother was not viable due to neglect pursuant to N.J.S.A. § 9:6-1. It set forth facts forming the bases for each of these determinations. The Family Court also found that, pursuant to N.J.S.A. § 9:2-4, it was in the Petitioner’s best interest to remain in the care of her aunt and not to return to Honduras and set for the factual basis for this determination. Based on this SIJ order, the Petitioner filed her SIJ petition on [REDACTED] 2020.

In December 2020, the Director issued a notice of intent to deny (NOID) requesting evidence to establish that the Petitioner was under the age of 21 at the time that she filed her SIJ petition, as required at 8 C.F.R. § 204.11(b)(1). Upon review of the Petitioner’s timely NOID response, the Director denied her SIJ petition. The Director noted that the Petitioner’s birth certificate, provided in the record below, stated that her birth date was [REDACTED] 1999, and that the receipt date of her SIJ petition was [REDACTED] 2020. Based upon this evidence, the Director determined that the Petitioner was 21 years old at the time that she filed her SIJ petition, and denied the SIJ petition.

On appeal, the Petitioner contends that she timely filed her SIJ petition. She requests that we schedule an oral argument to consider her appeal because it raises issues of particular significance such as “the enforcement of unwritten and unenforceable rules” resulting in the denial of her SIJ petition and a “likely” violation of the Administrative Procedures Act as a result of USCIS’ “failure to provide same-day filing services for some forms but not I-360s.” We decline the Petitioner’s request for oral argument. 8 C.F.R. § 103.3(b).

B. Petitioner Was 21 Years of Age at Time of Filing

The Petitioner contends on appeal that she timely filed her SIJ on [REDACTED] via a private messenger service, but that USCIS refused to accept this the delivery as the courier was not employed by FedEx or UPS and provides an affidavit from the courier attesting to the same. She asserts that USCIS' refusal to accept her SIJ petition on [REDACTED] "forced" her to send the SIJ petition by FedEx for overnight delivery as pandemic restrictions prevented same day delivery. The Petitioner contends that, as she mailed her SIJ petition by FedEx on the day before her 21st birthday, "pursuant to the mailbox rule," she has established that she filed her SIJ petition on that day. Although we acknowledge the Petitioner's arguments, regulations concerning receipt dates for petitions and applications provide that benefit requests before USCIS, including SIJ petitions, are considered filed on the date of actual receipt by USCIS. *See* 8 C.F.R. § 103.2(a)(7)(i). Consequently, the SIJ petition here was "filed" when USCIS received it on the Petitioner's 21st birthday, and not when it was mailed. We lack authority to waive the requirements of the statute, as implemented by the regulations. *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).

The Petitioner further contends that we should sustain the instant appeal as in the past we have sustained appeals in the past when a USCIS field office rejected a filing in error. She refers to our non-precedent decision concerning a SIJ petition filed on the day before that Petitioner turned 21 in which we concluded that the field office improperly rejected the SIJ petition and sustained the appeal.² However, the decision referenced by the Petitioner on appeal was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). 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. Further, in the referenced decision, the specific facts were distinguishable from the instant case. In our decision sustaining that appeal, we noted that the USCIS field office in question rejected the underlying SIJ petition and returned it to the Petitioner. We then reviewed the record and determined that the USCIS field office had improperly rejected the underlying SIJ petition. With the instant appeal the Petitioner does not offer evidence, such as a Form I-797C, Notice of Action, demonstrating that her SIJ petition had been rejected, improperly or otherwise, and had been returned to her.

We also acknowledge the Petitioner's contention on appeal that "it is certainly possible that the Petition did, in fact, arrive before the time at which [she] was born." However, 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. Absent an indication that Congress intended them to be read otherwise, we are expected to give the words of a statute their "ordinary, contemporary, common meaning." *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Additionally, "[a]s a general rule, in the computation of time, a day is to be considered an indivisible unit or period of time and the law will not, unless there is sufficient reason therefor, take cognizance of fractions of a day." *Matter of L M- & C-Y-C-*, 4 I&N Dec. 617, 619 (BIA 1952). Consequently, the date of the Petitioner's birth, rather than the specific hour, is determinant of whether she was under 21 years of age at the time she filed her SIJ petition. As discussed above, the record reflects that the SIJ petition was filed on the Petitioner's 21st birthday, and not before.

² *See In Re: 2160811* (AAO Nov. 27, 2020).

For the foregoing reasons, the Petitioner has not demonstrated on appeal that she filed her SIJ petition when she was under the age of 21. She therefore has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.