



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20067978

Date: SEPT. 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 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 he filed his SIJ petition. On appeal, the Petitioner submits a brief asserting 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).¹ 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 was born on [] 15, 1999. On [] 14, 2020, the Superior Court of California for the [] issued an order, appointing Petitioner's mother as his guardian. On the same date, the Court also issued a document entitled, "Special Immigrant Juvenile Findings." Within the document, the court determined that reunification with the Petitioner's father was not viable under California law because of parental neglect and abandonment as the father was missing and presumed dead. The Petitioner filed his petition for SIJ classification, which was received by U.S. Citizenship and Immigration Services (USCIS) on [] 17, 2020. The Director denied the petition, concluding

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).

that the Petitioner was ineligible for SIJ classification because he was 21 years old when his SIJ petition was filed.²

On appeal, the Petitioner does not contest the untimely filing of his SIJ petition. Rather, the Petitioner asserts that the late filing was due to circumstances outside of his control. He explains that he filed his petition with the Superior Court in [REDACTED] 2020 and that his hearing was not until [REDACTED] 2020 due to coronavirus (COVID-19) pandemic-related court closures. He also describes how the Court initially did not grant the guardianship petition with his mother as guardian but later signed the order the day before he turned 21. The Petitioner asserts that USCIS has the authority to allow for extraordinary circumstances, here the COVID-19 pandemic and delay by the Court, and excuse a late filing, citing to 8 C.F.R. § 208.4(a)(5), *Matter of O. Vazquez*, 25 I&N Dec. 817 (BIA 2012), and USCIS' website discussing special situations. However, the cited guidance is not applicable to the present SIJ petition. The cited regulations discuss late filings of asylum applications. See 8 C.F.R. § 208.4 (explaining how asylum applications shall be filed). The case of *Matter of O. Vazquez* is relevant to the timely filing of an adjustment of status application. Further, while USCIS has discretion to "take measures on a case-by-case basis upon request," if a Petitioner has been "affected by a natural catastrophe or other extreme situation," the measures listed on the agency's website do not include excusing the untimely filing of a petition or application with the agency.³

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). 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 disregard and waive this mandatory requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age and is no longer a child under the Act. 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). As the Petitioner was 21 years old on the date that his petition was received, he is ineligible for SIJ classification.

ORDER: The appeal is dismissed.

² The Director also determined that the Petitioner's SIJ petition was not bona fide and that USCIS consent is not warranted. 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). However, the Director did not provide an explanation for this determination and the Petitioner does not address this issue on appeal. As the Petitioner has not established that he has met all other eligibility criteria, we need not address and hereby reserve the issue of USCIS consent. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("[C]ourts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach."); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

³ See generally Special Situations, <https://www.uscis.gov/humanitarian/special-situations> (last visited Sept. 29, 2022).