



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29547376

Date: DEC. 15, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner seeks classification as a special immigrant juvenile (SIJ). See 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). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), determining the Petitioner had not submitted all required initial evidence at the time of filing. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 In order to meet the petition requirements, a petitioner must submit, in relevant part, juvenile court order(s) with the required judicial determinations. 8 C.F.R. § 204.11(d). The juvenile court order(s) must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition, with limited exceptions pertaining to the termination of the court's jurisdiction. 8 C.F.R. § 204.11(c)(3)(ii). Petitioners must establish that they are eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b). Each benefit

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).

request must be properly completed and filed with all initial evidence required by applicable regulations and other U.S. Citizenship and Immigration Services (USCIS) instructions. *Id.* Every form, benefit request, or document must be submitted and executed in accordance with the form instructions. 8 C.F.R. § 103.2(a)(1). The form’s instructions are incorporated into the regulations requiring its submission. *Id.*

II. ANALYSIS

The Petitioner filed her SIJ petition on August 9, 2022. In March 2023, the Director issued a request for evidence (RFE) explaining that the order submitted as the basis for SIJ classification was not a qualifying juvenile court order because it was not signed or dated and therefore did not appear to have been issued by a juvenile court. In response to the RFE, the Petitioner submitted two orders dated [REDACTED] 2022, a day before the Petitioner’s 21st birthday. In April 2023, the Director issued a notice of intent to deny (NOID) informing the Petitioner that the orders were issued after the filing of the SIJ petition and did not establish eligibility for SIJ classification at the time of filing. The Petitioner responded to the NOID with a brief, a copy of the previously submitted orders, and a copy of a USCIS policy memorandum relating to the issuance of RFEs. The Director denied the SIJ petition.

On appeal, the Petitioner asserts that all the required evidence to establish eligibility for SIJ classification existed before she turned 21 years of age and the orders were signed before she turned 21 years, so she timely submitted her application for SIJ status. The Petitioner does not cite to binding authority in support of this interpretation of the Act and governing regulations concerning SIJ classification. Rather, the regulations provide that a petitioner must submit a juvenile court order with the required judicial determinations and the order must be in effect on the date the petitioner files the petition and continue through the time of adjudication of the petition. See 8 C.F.R. § 204.11 (b)-(d) (providing eligibility, juvenile court order, and petition requirements).

The Petitioner also asserts that 8 C.F.R. § 204.11(d) does not state that the required initial evidence must be submitted at the time the SIJ petition was filed and that subsection 204.11(g)(1) notes that USCIS generally will adjudicate the filing after submission of all the required evidence.² However, the Petitioner must have been eligible for SIJ status at the time of filing the benefit request pursuant to 8 C.F.R. § 103.2(b). At the time of filing, the Petitioner was not the subject of a juvenile court order containing the necessary determinations for SIJ status, nor was an order in effect, as required under 8 C.F.R. § 204.11(c). Further, the benefit request for SIJ classification must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. 8 C.F.R. § 103.2(b). The form instructions for the SIJ petition provides, in relevant part, that the “petition must be filed with . . . [a] copy of the court or administrative documents that establishes eligibility for this classification, including the specific findings of fact or other relevant evidence in support of the judicial determinations[.]” See Instructions for USCIS Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, at 3 (explaining what must be filed with the petition). Form instructions carry the weight of binding regulations. See 8 C.F.R. § 103.2(a)(1) (explaining every benefit request must be submitted and executed in accordance with the form instructions, which are “hereby incorporated into the regulations requiring its submission”). The Petitioner did not submit court documents establishing eligibility for SIJ classification and including the specific findings of

² The previous version of the regulations at 8 C.F.R. § 204.11(d) addressed required initial evidence. However, as discussed above, the language was amended as of April 7, 2022.

fact or other relevant evidence in support of the judicial determinations, as described in the form instructions. As a result, the Petitioner has not established she was eligible for SIJ status at the time of filing.

The Petitioner further asserts that USCIS provided her with an opportunity to remedy the deficiency in the initial SIJ petition filing, which the Director would not have been empowered to do if she could not cure the filing deficiencies. Again, the Petitioner does not cite pertinent legal authority for her assertion. While the Director issued a discretionary request for additional evidence to determine the Petitioner's eligibility under 8 C.F.R. § 103.2(b)(8), the issuance of the RFE does not waive the requirement that the Petitioner establish eligibility at the time of filing. Rather, the RFE provided the Petitioner with an opportunity to establish her eligibility, i.e., to clarify whether she was the subject of a juvenile court order containing the requisite determinations for SIJ status at the time of filing. The Petitioner concedes that the court issued the court orders after she filed her SIJ petition, and even if the court issued the order before her 21st birthday, the order was not in effect at the time of filing.

III. CONCLUSION

The Petitioner did not meet her burden of establishing by a preponderance of the evidence that she met all of the eligibility requirements at the time of filing and therefore has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.