



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

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

In Re: 256526620

Date: JAN. 19, 2023

Motion on Administrative Appeals Office 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 Juvenile (SIJ petition), and we dismissed the Petitioner's subsequent appeal. The matter is now before us on a combined motion to reopen and motion to reconsider. Upon review, we will dismiss the motions.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

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).

The Petitioner was born on [] 1999. On July 22, 2020, the [] Family Court (Family Court) in New York issued an order entitled ORDER-SPECIAL IMMIGRANT JUVENILE STATUS (SIJ order) and ORDER APPOINTING GUARDIAN OF THE PERSON (guardianship order). The Family Court placed the Petitioner in the custody of an individual appointed by the Court and made other SIJ-related determinations. The Petitioner mailed his SIJ petition to U.S. Citizenship and Immigration Services (USCIS) on July 23, 2020, and USCIS received it on [] 2020. The Director denied the petition, concluding that the Petitioner was ineligible for SIJ classification because he was 21 years old when his SIJ petition was filed. On appeal, the Petitioner did not contest the

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).

untimely filing of his SIJ petition but asked USCIS to favorably adjudicate the petition, because the late filing was due to the delay by United States Postal Service (USPS) and outside of his control. We dismissed the Petitioner's appeal.

On motion, the Petitioner asserts that his petition was filed before he reached age 21, as the petition was delivered at 6:10 am on [] 2020, and his birth certificate, which is included in the record, states that he was born at 2:44 pm CST [] 1999. He asserts "USCIS erroneously denies I-360 petitions received on their 21st birthday without taking into consideration the time in which the applicant turns 21 years old as required by circuit precedent." 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). And, "[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 he was under 21 years of age at the time he filed his SIJ petition.

The Petitioner again contends that he should not be held responsible for a mailing delay that occurred with USPS through no fault of his own, and that we should accommodate a late submission. He explains, the USPS delivered the SIJ petition three days after the guaranteed delivery date and but for the delay by USPS, the SIJ petition would have arrived before the Petitioner's 21st birthday. The Petitioner asserts through counsel that USCIS "should consider whether an unexplained error by an overnight courier constitutes 'extraordinary or unique circumstances' justifying a delayed jurisdictional filing." We acknowledge that the Petitioner paid for a service guaranteeing delivery of the SIJ petition to USCIS before he turned 21 years old; however, 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 the petitioner attains 21 years of age and is no longer a child under the Act. *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 motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.