



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

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

In Re: 25951569

Date: MAY 25, 2023

Appeal of National Benefits Center Decision

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

The Petitioner, a native and citizen of Mexico, 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 petition, concluding that the record did not establish that the Petitioner was under 21 years of age at the time of filing his petition for SIJ classification (SIJ petition). 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 withdraw the prior decision and remand to the Director for new decision consistent with the following analysis.

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). Finally, 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).

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).

In [] 2022, when the Petitioner was 20 years old, the Superior Court of Washington, County of [] Juvenile Court (Juvenile Court) issued an order entitled *Findings and Order Regarding Eligibility for Special Immigrant Juvenile Status* (SIJ order). Based on that SIJ order, the Petitioner filed his SIJ petition. The Director subsequently denied the SIJ petition in May 2022, finding the Petitioner failed to establish he was under 21 years of age at the time of filing his SIJ petition.

The Petitioner's SIJ petition was received on [] 2022, his 21st birthday. We find that he has established he satisfied the age requirement under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(b). *See Duarte-Ceri v. Holder*, 630 F.3d 83, 90-91 (2d Cir. 2010) (finding an individual is under the age of eighteen years until that individual has lived for eighteen full years, inclusive of their birthday); *Matter of L-M- and C-Y-C-*, 4 I&N Dec. 617 (BIA 1952) (applying the Rule of Lenity to hold that the appellants seeking entry to the United States on their birthday were "under 16" as a matter of law). Thus, we withdraw the Director's decision finding that the Petitioner did not establish he was under 21 years of age at the time of filing his SIJ petition. The Director did not make any findings as to the other eligibility requirements for SIJ classification. Therefore, we remand this matter to the Director to issue a new decision with complete findings as to the Petitioner's eligibility for SIJ classification and whether USCIS' consent is warranted.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.