



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

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

In Re: 26685329

Date: MAY 26, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for 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 Special Immigrant Juvenile (SIJ petition), because the Petitioner did not establish that he was under the age of 21 at the time the SIJ petition was filed. 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).

II. ANALYSIS

The Petitioner was born on [] 2000. The Petitioner filed his SIJ petition, which was received by U.S. Citizenship and Immigration Services (USCIS) on [] 2021. 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.

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 states on [] 2021,

the [REDACTED] Family Division Court, located in the state of New Jersey, issued an order serving as the basis of his SIJ petition. He mailed his SIJ petition the same day via the U.S. Postal Service (USPS) for delivery the next day, Tuesday, [REDACTED] 2021. He explains the USPS was experiencing delays in delivering letters and packages on time as a result of the “global COVID-19 pandemic, limited employee availability, and increased volume of mail.” As a result, his SIJ petition was not received until Thursday, [REDACTED] 2021, one day after his 21st birthday.

According to the Petitioner, the USCIS lockbox system eliminates the possibility of local or personal deliveries as USCIS requires delivery by the USPS or overnight courier, USCIS does not allow for the electronic filing of SIJ petitions, and USCIS disallows personal service of SIJ petitions in [REDACTED] or at other USCIS offices. The Petitioner asserts that these factors indicate USCIS’ filing requisites are arbitrary and capricious.¹ The Petitioner also asserts that the intent of the [REDACTED] Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), 8 U.S.C. § 1232(d)(6) is to allow children to apply for SIJ classification when their petitions are postmarked by USPS and that regulations designating the filing date as USCIS’ receipt date conflicts with the intent of the TVPRA and should be preempted. Further, the Petitioner asserts that USCIS has acknowledged the “Covid-19 crisis” and delays caused by the pandemic by allowing for extensions on filings due to the exceptional circumstances that the pandemic has caused.

A benefit request is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). The requirement listed in 8 C.F.R. § 103.2(a)(7)(i) does not designate an exception for USPS delays. *Id.* Although the Petitioner mailed his SIJ petition prior to his 21st birthday, USCIS did not receive it until after he had turned 21 years of age. The filing flexibilities relating to COVID-19 do not indicate that we have discretion to accept SIJ petitions filed after a petitioner has reached the age of 21 years. While we are sympathetic to the hardship this may cause, 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”), 204.11(c)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried); see also § 235(d)(6) of the TVPRA (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). While we acknowledge the Petitioner’s remaining arguments, the Petitioner has not cited to binding authority in support or otherwise shown that USCIS has authority under the Act or the implementing regulations to disregard and waive the eligibility requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age and they are no longer a “child” under the Act. See, e.g., *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound by governing statutes and regulations in force); see also *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954)

¹ The Petitioner quotes the district court in *Cabrera Cabrera v. United States Citizenship & Immigr. Servs.*, 374 F. Supp. 3d 153, 162 (D.D.C. 2019) for noting, in dicta, there may be a plausible claim for disparate treatment if USCIS does not provide electronic filing for SIJ petitions while doing so for other petitions. However, the district court continues to clarify that USCIS may successfully defend its regulations and paper-filing system, but it would not make the determination in a ruling on a motion to dismiss. *Id.*

(stating that immigration regulations carry the force and effect of law).² 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 USCIS will apply the regulatory definition of a day and extend the deadline for filing a paper benefit request if the last day of the filing period falls on a Saturday, Sunday, or federal holiday. See generally 1 USCIS Policy Manual B.6(D), <https://www.uscis.gov/policy-manual> (relying on 8 C.F.R. § 1.2 and providing guidance on filing periods ending on weekends or federal holidays). The Petitioner's filing was received on a Thursday and the guidance provided in 8 C.F.R § 1.2 does not apply here.