



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

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

In Re: 29183007

Date: NOV. 17, 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) 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 Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the record did not establish that the Petitioner was subject to a qualifying order from a juvenile court at the time of filing his 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 dismiss the appeal.

To establish eligibility for SIJ classification, a petitioner 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). The petitioner 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 petitioner's 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).

The Petitioner filed his SIJ petition in January 2022. The Director issued a notice of intent to deny (NOID) because the Petitioner had not submitted an order from a juvenile court with his SIJ petition. With his September 2022 response to the NOID, the Petitioner provided a guardianship order, letters of guardianship, and a *Special Immigrant Juvenile Findings* order (SIJ order) issued by the Superior Court of California, County of [redacted] (juvenile court), in [redacted] 2022. The juvenile court placed the Petitioner under the custody of a guardian; determined that the Petitioner's reunification with his father is not viable due to abandonment under California law; and found that it would not be in the Petitioner's best interest to return to Mexico, his country of nationality, because his health, safety, and welfare would be at risk there.

The Director denied the SIJ petition because the Petitioner had not submitted the juvenile court's orders at the time of filing his SIJ petition, as required.

On appeal, counsel for the Petitioner explains that they filed the SIJ petition prior to issuance of the juvenile court's orders because of concerns that the Petitioner would reach the age of 21 and age out of eligibility for SIJ classification. Counsel notes that the hearing was originally scheduled only two days before the Petitioner's twenty-first birthday. After successfully petitioning the court to reschedule the hearing to an earlier date about two weeks before the Petitioner's birthday in [redacted] 2022, counsel felt confident the juvenile court would issue the required orders but was concerned about processing times. Therefore, counsel filed the SIJ petition in [redacted] 2022, prior to the hearing, to prevent the Petitioner from losing SIJ eligibility due to his age. The juvenile court subsequently made the required findings during the [redacted] 2022 hearing, before the Petitioner reached the age of 21, but the certified copies of the orders were not ready for counsel to pick up until more than seven months later. Upon receipt of the NOID, counsel communicated with the juvenile court and finally obtained certified copies of the orders in September 2022.

Counsel asserts that the Petitioner was eligible for SIJ classification at the time of filing, as he was under the age of 21 when he filed the petition and when the juvenile court issued its orders. Further, he was and remains unmarried and present in the United States, and the juvenile court placed him in the custody of a guardian and made the required findings regarding the viability of his reunification with his father and best interest. According to counsel, the juvenile court would not have agreed to advance the hearing to an earlier date without first reviewing the evidence, and the facts making the Petitioner eligible for SIJ classification existed at the time of filing the SIJ petition. Counsel states the Petitioner should not be penalized for his attorney's decision to file the SIJ petition early out of an abundance of caution and an attempt to protect the Petitioner's interests. Further, counsel indicates willingness to request a nunc pro tunc order from the juvenile court with a date prior to the filing of the SIJ petition<sup>1</sup> or to arrange for the filing of a claim of ineffective assistance of counsel<sup>2</sup> to prevent the Petitioner from being punished for counsel's actions.

We acknowledge counsel's explanations and efforts to preserve the Petitioner's SIJ eligibility due to concerns about juvenile court processing times and the Petitioner's age. However, the Petitioner has not established eligibility for SIJ classification. The regulations require that the juvenile court order must be in effect on the date a petitioner files their SIJ petition. 8 C.F.R. § 204.11(c)(3)(ii); *see also* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13078 (Mar. 8, 2022) (listing "[v]alid juvenile court order" as an eligibility requirement that must be met at both the time of filing and the time of adjudication).

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<sup>1</sup> A nunc pro tunc order may be insufficient absent evidence that the order memorializes prior findings and amounts to a properly executed juvenile court order establishing eligibility at the time of filing. *See* 8 C.F.R. § 204.11(c)(3)(ii); *see generally* 6 USCIS Policy Manual J.2(C)(4) (stating that the petitioner must be under the jurisdiction of the juvenile court at the time of filing and adjudication). The Petitioner does not cite to any authority to suggest that a court order issued after the filing of an SIJ petition with an earlier nunc pro tunc effective date will overcome the failure to submit a properly executed juvenile court order establishing eligibility at the time of filing.

<sup>2</sup> A claim of ineffective assistance of counsel under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) does not provide as a remedy the waiver of applicable eligibility requirements established by statute and implemented by the regulations. *See Castillo-Perez v. I.N.S.*, 212 F.3d 518, 528 (9th Cir. 2000).

Additionally, a petitioner for SIJ classification must submit a petition on the form prescribed by USCIS and in accordance with the form instructions. 8 C.F.R. § 204.11(d)(1); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that every form must be submitted and executed in accordance with the form instructions, which are hereby incorporated into the regulations requiring its submission). According to the form instructions for SIJ petitions, a petition must be filed with a copy of the court or administrative documents that establish eligibility for this classification, including the specific findings of fact or other relevant evidence in support of the judicial determinations. The requirement that an SIJ petitioner be the subject of a juvenile court dependency or child custody order at the time of filing and submit such order with the SIJ petition as initial evidence are substantive eligibility requirements that we may not disregard. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

Here, the Petitioner's SIJ order was issued after the time of filing the SIJ petition. Thus, the Petitioner was not the subject of a juvenile court order containing the requisite dependency or custody determination and did not establish his eligibility for SIJ classification at the time of filing, as required. *See* 8 C.F.R. § 204.11(c)(3)(ii); *see also* 8 C.F.R. § 103.2(b)(1) (providing that petitioners for immigration benefits must establish eligibility for the requested benefit at the time of filing). Accordingly, the Petitioner has not overcome the Director's ground for denial and we must dismiss his appeal.

**ORDER:** The appeal is dismissed.