



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

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

In Re: 28211154

Date: OCT. 23, 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). 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal, which we review *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, 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), (c)(1).<sup>1</sup> 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of 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). USCIS may also withhold consent if evidence materially conflicts with the

---

<sup>1</sup> The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden of proof to establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The Petitioner filed his SIJ petition on [redacted] 2022, five days before his 21<sup>st</sup> birthday, without the requisite juvenile court order. On [redacted] 2022, the Connecticut [redacted] Probate Court (Probate Court) appointed guardianship of the Petitioner to R-P-P-<sup>2</sup> under the state probate code, finding that such appointment will terminate when he turns 21 years of age. On the same date, the court also issued a separate order titled “DECREE/SPECIAL IMMIGRANT JUVENILE FINDINGS” (SIJ order), determining, among other SIJ related findings, that the Petitioner’s reunification with both his parents was not viable due to their abandonment and neglect under Connecticut General Statutes (CGS) sections 45a.610(2)-(5) and 46b-120, and that it was not in the Petitioner’s best interest to be returned to Guatemala, his country of nationality. The Petitioner then submitted the court orders to the Director a month later in April 2022 and the Director subsequently issued a notice of intent to deny (NOID), notifying him that he appeared to be ineligible for SIJ classification at the time he filed his SIJ petition as the record did not show that there was a juvenile court order in effect when he filed his petition. In response to the NOID, the Petitioner submitted the Probate Court’s nunc pro tunc guardianship and SIJ orders (amended orders), issued in [redacted] 2023, stating that the amended orders corrected the initial order date, [redacted] 2022, to retroactively reflect the effective issuance date of the original orders as of August 20, 2021, when he initially sought the SIJ related determinations before the court.

The Director denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because he did not provide the required juvenile court orders at the time he filed his SIJ petition and the court did not issue its orders until *after* he filed his SIJ petition. On appeal, he submits a brief and reasserts his eligibility for SIJ classification. He also resubmits duplicate documents already contained in the record, comprising his birth certificate and the Probate Court’s original and amended orders.

The Petitioner did not establish his eligibility for SIJ classification at the time he filed his SIJ petition. The regulations require that petitioners for an immigration benefit must establish their eligibility for the benefit sought at the time of filing the benefit request and must remain eligible through adjudication. 8 C.F.R. § 103.2(b)(1). Further, the regulations also clearly provide that petitioners for SIJ classification must submit a petition on the form prescribed by U.S. Citizenship and Immigration Services (USCIS) and in accordance with the form instructions, which carry the weight of binding regulations. 8 CFR § 204.11(d)(1); 8 C.F.R. § 103.2(a)(1). The relevant form instructions in turn clearly state that an SIJ petition *must be filed with* a copy of the court or administrative documents that establishes eligibility for SIJ classification, including the specific findings of fact or other relevant evidence in support of the judicial findings.<sup>3</sup>

Here, the Petitioner did not submit evidence of a judicial determination to establish his eligibility for SIJ classification at the time of filing the SIJ petition. *Id.* Additionally, the record shows he was not eligible at the time he filed his SIJ petition as required, as he was not then the subject of a juvenile court order containing the requisite SIJ related determinations relating to dependency or custody.

---

<sup>2</sup> We use initials for privacy.

<sup>3</sup> At the time the Petitioner submitted the court’s nunc pro tunc orders to the Director, the amended regulations at 8 C.F.R. § 204.11(c)(3)(ii) also consistently provided that “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” (effective April 7, 2022) (emphasis added).

Section 101(a)(27)(J) of the Act; 8 C.F.R. § 103.2(b)(1). Although we acknowledge that he initially sought SIJ related determinations before the Probate Court in August 2021, we may not disregard or circumvent the statutory eligibility requirement implemented by regulation that SIJ petitioners must have a juvenile court order and the requisite SIJ findings in effect when they file their SIJ petitions. *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); *United States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry the force and effect of law). The Petitioner concedes that the Probate Court issued, and he subsequently submitted, the requisite court orders, *after* he filed his SIJ petition. On appeal, he does not cite pertinent legal authority for the proposition that such court orders issued (and, thus, in effect) *after* the filing of an SIJ petition with an earlier nunc pro tunc effective date rectifies the failure to submit a properly executed juvenile court order evidencing SIJ eligibility at the time of filing. *See, e.g., Matter of Kutigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (holding that noncitizens must establish eligibility for the benefit sought at the time they request the benefit and that taking additional actions to acquire the necessary qualifications after the filing of the benefit request do not overcome the initial deficiency).

Accordingly, the Petitioner has not established by a preponderance of the evidence that he was eligible for SIJ classification at the time of filing his SIJ petition, as required. We will therefore affirm the Director's denial of the SIJ petition on this ground.<sup>4</sup>

**ORDER:** The appeal is dismissed.

---

<sup>4</sup> The Director also noted that, without the underlying document, "Order to Show Cause," as referenced in the court's amended orders, it is unclear whether the court actually made its original SIJ determinations at the time the Petitioner initially sought the court orders in 2021. Regardless, given our foregoing conclusion, which is dispositive of this appeal, we do not reach any other potential issue. *See, e.g., INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that courts and agencies are not required to address issues that are unnecessary to the results they reach).