



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

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

In Re: 28112408

Date: SEP. 26, 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), because he did not establish that he was under 21 years of age when he filed his SIJ petition. On appeal, the Petitioner submits a brief reasserting his eligibility. 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, petitioners must show, inter alia, 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 parental 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 bear the burden of proof to demonstrate their eligibility for SIJ classification by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

The Petitioner, whose undisputed date of birth is [redacted] 2000, entered the United States on or about January 22, 2016. On [redacted] 2021, nine days before the Petitioner turned 21 years old, the Massachusetts Probate and Family Court (Family Court) [redacted] issued an order titled *Judgment of Dependency* (SIJ order), appointing guardianship of the Petitioner to C-J-M-.<sup>2</sup> This order further provided that the Petitioner's reunification with his father was not viable due to abuse, neglect, and abandonment and that it is not in his best interest to be returned to Brazil, his country of nationality. Based on the SIJ order, the Petitioner filed his SIJ petition, which U.S. Citizenship and Immigration Services (USCIS) received on [redacted] 2021, after he had turned 21 years old. The Director denied the SIJ petition, ultimately concluding that the Petitioner was ineligible for SIJ classification because he did not establish that he was under 21 years of age at the time he filed his SIJ petition.

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<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).

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

The Petitioner points out on appeal, and the record shows, that he attempted to file his SIJ petition on [REDACTED] 2021, three days before he turned 21 years old. However, USCIS rejected this filing because the initial SIJ petition did not contain necessary signatures for a proper filing, as required. The Petitioner subsequently submitted his corrected SIJ petition with the required signatures, and USCIS received it on [REDACTED] 2021, approximately two weeks after he had turned 21 years old.

On appeal, the Petitioner does not dispute the above facts or contest the actual date USCIS received the SIJ petition, [REDACTED] 2021. But he asserts that because the delay was due to an unintentional “scrivener’s error,” his SIJ petition nonetheless must be deemed as timely filed as of the date his initial unsigned petition was rejected, [REDACTED] 2021. The Petitioner also argues that USCIS improperly rejected his initial SIJ petition. Specifically, he contends that USCIS should have accepted his initial incomplete SIJ petition even though it was not properly signed and provided him an opportunity to correct the deficiency before rejecting it. He further contends that the relevant INA sections and regulations do not clearly mandate SIJ petitions to be filed before petitioners turn 21 years of age, and denying his petition based on his age alone amounts to a due process violation. We disagree.

The relevant regulations clearly provide that a petitioner must be eligible for the immigration benefit sought *at the time of filing*, and individuals, like the Petitioner, seeking SIJ classification must be under the age of 21 and unmarried at the time their SIJ petitions are filed. 8 C.F.R. § 103.2(b)(1) (providing that a petitioner for an immigration benefit must show his or her eligibility for the benefit sought at the time of filing the benefit); 8 C.F.R. § 204.11(b)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried at the time of filing the petition); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(d)(6), Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). Contrary to the Petitioner’s appeal argument, a properly completed SIJ petition is considered filed on the date of actual receipt by USCIS. *See* 8 C.F.R. § 103.2(a)(7)(i); *see also* 8 C.F.R. § 103.2(a)(7)(h) (“A benefit request which is rejected will not retain a filing date.”).<sup>3</sup> Further, form instructions carry the weight of binding regulations. *See* 8 C.F.R. § 103.2(a)(1) (“Every form, benefit request, or document must be submitted . . . and executed in accordance with the form instructions. . . The form’s instructions are hereby incorporated into the regulations requiring its submission.”). Here, although the Petitioner initially mailed his unsigned SIJ petition prior to his twenty-first birthday, it was rejected and thus not received by USCIS. Although USCIS later received the Petitioner’s corrected SIJ petition, the subsequent submission was not received until after he had already attained 21 years of age. Consequently, the Petitioner has not established that he was under 21 years of age at the time he filed his SIJ petition with USCIS.

The Petitioner also argues that denying his petition based on his age alone is a due process violation, particularly where the relevant INA sections and regulations do not clearly require SIJ petitions to be filed before petitioners turn 21 years of age. However, as stated, the related regulations clearly indicate that petitioners must be under 21 years old and unmarried at the time of filing. As for the due process violation argument, as an administrative agency, we lack authority to rule on the constitutionality of

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<sup>3</sup> Form I-360 instructions also clearly state in multiple places the following: “Each petition must be properly signed and filed”; “Every petition **MUST** contain the signature of the petitioner (or parent or legal guardian, if applicable)”; “Every petition **MUST** contain the signature of the petitioner or authorized signatory of the organization”; “**USCIS will reject any Form I-360 that is not signed or accompanied by the correct filing fee and send you a notice that Form I-360 is deficient.** You may correct the deficiency and resubmit Form I-360. A petition is not considered properly filed until accepted by USCIS.” [emphasis original].

law or regulations. *See, e.g., Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992) (“[I]t is settled that the immigration judge and the [Board of Immigration Appeals] lack jurisdiction to rule upon the constitutionality of the Act and the regulations.”); *Chang v. United States*, 327 F.3d 911, 924 (9th Cir. 2003) (explaining that constitutional challenges to the rule of law “lie outside the scope and jurisdiction of the immigration judges and the BIA”). Our review is limited to whether the Director complied with the relevant statute and regulations.

The Petitioner also relies on *Perez-Olano v. Holder*, No. CV 05-3604, 2010 WL 9594539 (C.D.Cal. Aug. 31, 2010) in asserting that [REDACTED] 2021, the date USCIS rejected his initial attempt to file the unsigned petition, should suffice as a proper filing date. We are unpersuaded because he has not shown that he is a class member of the *Perez-Olano* Settlement Agreement, or that he initially sent a “complete” SIJ petition, which was, as explained, undisputedly missing the required signatures, and thus properly rejected by USCIS. He does not otherwise cite pertinent legal authority for the assertion that USCIS should have backdated the receipt of his SIJ petition. While we acknowledge the Petitioner’s initial attempt to file his SIJ petition before he turned 21 years of age, there is no provision in the Act or the implementing regulations authorizing USCIS to disregard and waive this mandatory 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) (stating that immigration regulations carry the force and effect of law).

As the Petitioner has not overcome the Director’s determination that he was over 21 years of age on the date his SIJ petition was filed, the Petitioner has not established his eligibility for SIJ classification. Accordingly, the following order will be entered.

**ORDER:** The appeal is dismissed.