



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

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

In Re: 28112080

Date: SEPT. 27, 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 petition, concluding that the Petitioner did not establish that he was under the age of 21 when he filed the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and was therefore not eligible for SIJ classification. On appeal, the Petitioner submits a brief and evidence, claiming that he has shown by a preponderance of the evidence that he was under 21 years of age when he filed the 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.

**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).<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

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<sup>1</sup> 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).

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); 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). USCIS may also withhold consent if evidence materially conflicts with the 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).

## II. ANALYSIS

The Petitioner was born in El Salvador in [REDACTED] 2000. The record shows that he and his mother came to the United States in October 2016. In [REDACTED] 2021, when the Petitioner was still under 21 years of age, the Circuit Court for [REDACTED] County, Maryland, Family Division (Family Court) issued an order titled ORDER REGARDING FACTUAL FINDING PURSUANT TO MD FL § 201(b)(10) (SIJ order). In its SIJ order, the Family Court found that the Petitioner was dependent on the court and had been placed in the custody of his mother in accordance with Maryland law, and that the Petitioner's reunification with his father was not viable due to abandonment within the meaning of the laws of Maryland. The Family Court further found that it was not in the Petitioner's best interest to return to his country of nationality, but that it was instead in his best interest to remain in the United States.

In June 2021, while the Petitioner was still under 21 years of age, he sought to file a Form I-360 petition with USCIS, but he completed the Form I-360 to erroneously reflect that he was seeking classification as a special immigrant religious worker. Because he did not include the filing fee required for a special immigrant religious worker petition, USCIS rejected the filing. The Petitioner resubmitted the rejected copy of the Form I-360 but switched page 2 to a version that reflects he is seeking approval of an SIJ petition. The Petitioner also included a cover letter responding to the USCIS reject notice, stating that he is seeking SIJ classification rather than classification as a special immigrant religious worker. He also argued that the SIJ petition should retain the June 2021 filing date of the rejected petition because a filing fee is not always required for the filing of an SIJ petition. USCIS accepted the Petitioner's SIJ petition as properly filed on July 29, 2021. However, because the Petitioner had turned 21 years of age on [REDACTED] 2021, the Director denied the SIJ petition, explaining that the Petitioner was over the age of 21 years of age when he filed the petition on July 29, 2021, and therefore he is statutorily ineligible for SIJ classification. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1).

On appeal, the Petitioner asserts that his SIJ petition should be considered timely filed using the June 2021 date of the rejected submission because the USCIS lockbox incorrectly rejected that earlier submission. In the alternate, the Petitioner asks that USCIS exercise discretion regarding the filing date of the SIJ petition in the interests of justice.

In this case, the Petitioner has not demonstrated that the Director's denial was incorrect due to USCIS' erroneous rejection of the initial Form I-360 submission. The Petitioner confirmed that his June 2021 Form I-360 was marked as a special immigrant religious worker petition instead of as an SIJ petition. As discussed by the Director, a filing fee is required with a special immigrant religious worker petition,

but the Petitioner did not include a filing fee with his June 2021 submission; therefore, it was properly rejected based on the Petitioner's own erroneous completion of the Form I-360. 8 C.F.R. § 103.2(a)(7)(ii)(D). Although the Petitioner asks, in the alternate, that USCIS exercise discretion in applying the initial filing date to his SIJ petition, a rejected filing does not retain a filing date. 8 C.F.R. § 103.2(a)(7)(iii).

As an additional matter, the Petitioner also claims on appeal that he established his eligibility prior to turning 21 years of age in that he "came to [his attorney's] office and signed all needed paperwork . . . and supporting documents" prior to June 14, 2021. In this case, the record shows that the Petitioner filed his SIJ petition in July 2021, after he had turned 21 years of age.

The Petitioner has not overcome the Director's decision on appeal. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Petitioner has not established by a preponderance of the evidence that he was under 21 years old on the date that he properly filed his SIJ petition on July 29, 2021, and he is therefore ineligible for SIJ classification. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b).

**ORDER:** The appeal is dismissed.