



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

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

In Re: 21599625

Date: OCT. 13, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for 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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

To establish eligibility for SIJ classification, petitioners must establish, among other requirements, that they were under 21 years of age at the time of filing their SIJ petition. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1). 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). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

On [] 14, 2021, when the Petitioner was 20 years old, the Massachusetts Probate and Family Court (juvenile court) issued a *Judgment of Dependency* and associated *Special Findings of Fact and Rulings of Law*. The juvenile court declared the Petitioner dependent on the court and found that her reunification with her father is not viable due to neglect and abandonment under Massachusetts law. Further, the juvenile court determined that it would not be in the Petitioner's best interest to return to Brazil, her country of nationality, and referred her to probation for educational, occupational, and counseling services. Based on the SIJ order, the Petitioner filed her SIJ petition, which USCIS received on [] 20, 2021, the day after the Petitioner's 21st birthday. The Director denied the petition because the Petitioner was not under 21 years of age at the time of filing, as section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(b)(1) require.

On appeal, the Petitioner states that she mailed her SIJ petition on [] 14, 2021, by overnight mail with a scheduled delivery date of [] 15, 2021. She asserts that tracking information shows that an office of the U.S. Postal Service (USPS) in Chicago, Illinois received the package on [] 15, and that delivery to USCIS may not have been completed on that date if the USCIS Chicago Lockbox

was closed. The USPS tracking information confirms that the Petitioner mailed her SIJ petition with a scheduled delivery date of [redacted] 15, 2021, but that it was not actually delivered to USCIS until [redacted] 20, 2021. Instead, the item “Arrived at Post Office” on [redacted] 15 and was marked as “Available for Pickup,” after which the tracking information listed a “Reminder to Schedule Redelivery of your item.”

The Petitioner also contends that she should not be held responsible for a mailing delay that occurred with USPS through no fault of her own, and that we should accommodate a late submission in light of filing deadline flexibilities that USCIS has offered in relation to the Covid-19 pandemic. However, 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. Section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c) require that an SIJ petitioner be under the age of 21 at the time of filing, and we lack the authority to waive this requirement. *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). The regulations concerning receipt dates for petitions and applications provide that benefit requests before USCIS, including SIJ petitions, are considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i).

We acknowledge the Petitioner’s arguments that she obtained the juvenile court’s order and mailed her SIJ petition prior to her 21st birthday, and that the delay occurred during USPS handling despite the scheduled delivery date of [redacted] 15, 2021. However, we do not have authority to waive the requirements of the applicable statute and regulation. As the Petitioner was not under 21 years of age on the date she filed her petition, she is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The appeal is dismissed.