



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 20582737

Date: OCT. 17, 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 are under 21 years of age. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c). 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).

The Petitioner filed the instant SIJ petition in November 2020, when he was 21 years old, based on an order issued by a family court in New York in [ ] 2020, dated *nunc pro tunc* to [ ] 2020. The Director denied the petition because the Petitioner was not under the age of 21 at the time of filing, as section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c) require. On appeal, the Petitioner argues that we should accept the SIJ petition *nunc pro tunc* due to the coronavirus (COVID-19) pandemic and that we have the authority to accept the late-filed SIJ petition *nunc pro tunc* based on our own policy entitled "USCIS Extends Flexibility for Responding to Agency Requests." The Petitioner further asserts that he would have obtained the court order and filed the SIJ petition prior to his 21st birthday if the New York State Family Court had not shut down because of the COVID-19 pandemic.

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). As the Petitioner was not under 21 years of age on the date he filed his petition, he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

**ORDER:** The appeal is dismissed.