



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 20902622

Date: OCT. 24, 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 denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish that he was under the age of 21 at the time he filed his SIJ petition. On appeal, the Petitioner submits portions of the record in support of his eligibility.<sup>1</sup> 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>2</sup> 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).

## II. ANALYSIS

The Petitioner was born on [REDACTED] 10, 2000. The Petitioner filed his SIJ petition, which was received by U.S. Citizenship and Immigration Services (USCIS) on [REDACTED] 12, 2021. The Director

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<sup>1</sup> The Petitioner indicated on the Form I-290B, Notice of Appeal or Motion, that his brief and/or additional evidence would be submitted to the AAO within 30 calendar days of filing the appeal. To date, we have not received a brief or additional evidence. As a result, the appeal does not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision, which presents grounds for a summary dismissal. 8 C.F.R. § 103.3(a)(1)(v). Submitted with the appeal is a cover letter stating, “[p]lease accept the attached for proceedings,” and copies of Petitioner’s response to the Director’s notice of intent to deny (NOID) and exhibits from the file. As the Director denied the case on a single issue, we will review the decision, broadly interpreting the arguments in Petitioner’s NOID response as his basis for the appeal.

<sup>2</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).

denied the petition, concluding that the Petitioner was ineligible for SIJ classification because he was 21 years old when his SIJ petition was filed.

The Petitioner did not contest the untimely filing of his SIJ petition. Rather, the Petitioner asserted that the late filing was due to circumstances outside of his control. He explained that the courts were operating under “COVID-19” guidance and he was not able to obtain the court order, serving as the basis of his SIJ filing, until [REDACTED] 8, 2021. The Petitioner asked for USCIS to consider his extraordinary circumstances and limitations, and favorably adjudicate the petition. The Petitioner also asserted that we should consider that the Petitioner was under the age of 21 at the date the petition was mailed and should USCIS apply the “common law mailbox rule” his Petition would be timely filed.

A benefit request is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). The “mailbox rule” does not apply in these proceedings and the Petitioner did not cite to authority mandating our application of the common law principle when the regulations clearly speak to the filing date and eligibility requirements, which rely on the filing date. Although the Petitioner mailed his SIJ petition prior to his 21st birthday, USCIS did not receive it until after he had turned 21 years of age. A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be unmarried and under the age of 21. See 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit “must establish that he or she is eligible for the requested benefit at the time of filing the benefit”), 204.11(c)(1)-(2) (providing that an SIJ petitioner must be under 21 years of age and unmarried); see also § 235(d)(6) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 8 U.S.C. § 1232(d)(6) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). While we are sympathetic to the hardship this may cause, there is no provision in the Act or the implementing regulations which authorizes USCIS to disregard and waive this mandatory requirement by accepting an SIJ petition as timely filed after a petitioner attains 21 years of age and is no longer a child under the Act. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that both governing statutes and their implementing regulations have “the force of law” and must be adhered to by government officials). As the Petitioner was 21 years old on the date that his petition was received, he is ineligible for SIJ classification.

ORDER: The appeal is dismissed.