



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

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

In Re: 22815922

Date: OCT. 25, 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(b). 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 March 2021, when he was 21 years old. The SIJ petition was based on an order issued by the Commonwealth of Massachusetts Probate and Family Court on [REDACTED] 22, 2021, two days before he turned 21 years old. In October 2021, the Director issued a notice of intent to deny (NOID) informing the Petitioner that he was over 21 years old at the time of filing. The Petitioner responded to the NOID with a letter from his attorney and a copy of his completed Form I-360. The Director denied the petition because the Petitioner was not under 21 years old at the time of filing, as section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(b) require.

On appeal, the Petitioner does not dispute that he was born on [REDACTED] 24, 2000, a fact substantiated by his birth certificate and passport. Instead, the Petitioner again asserts that the Director improperly interpreted the terms "applied for" and "properly filed" thus undermining the age-out protection provided in section 235(d)(6) of the William Wilberforce Trafficking Victim Protection Reauthorization Act of 2008 (TVPRA).¹ Pub. L. 110-457, 122 Stat. 5044 (2008). The Petitioner contends that when he submitted his SIJ petition in [REDACTED] 2021, he "applied for" SIJ status, and

¹ We note that the Petitioner's arguments on appeal are nearly identical to those he submitted in response to the NOID.

USCIS' requirement of a "properly filed" application is against the plain language and spirit of the TVPRA, and inconsistent with the intent of Congress. The Petitioner's argument is unavailing.

Section 235(d)(6) of the TVPRA specifically acknowledged the age requirements for filing an SIJ petition, recognizing that some SIJ petitioners turned 21 years of age and "aged out" prior to adjudication of their petitions, such that they were no longer eligible for the benefit under the Act. Consequently, the TVPRA 2008 extended age-out protections so that an SIJ petition would not be denied because a petitioner turned 21 years of age prior to adjudication, so long as he or she was a "child" on the date the petition was filed. Pursuant to section 101(b)(1) of the Act, a child is defined under the Act as an unmarried person under the age of 21. USCIS properly considers a petitioner's age at the time the SIJ petition is received by USCIS when determining whether the petitioner is a "child" at the time of filing and qualifies for the age-out protections under the TVPRA 2008 amendments. *See generally* 6 USCIS Policy Manual J.2(C) (noting that "a juvenile may seek SIJ classification if he or she is under 21 years of age and unmarried at the time of filing the petition with USCIS"). Therefore, the age-out protections apply only when an SIJ petitioner properly files a petition prior to turning 21 years old.

Here, a review of the record indicates that the Petitioner attempted to file the SIJ petition on [REDACTED] 22, 2021, and USCIS rejected it as improperly filed on [REDACTED] 19, 2021. A rejected benefit request does not retain a filing date. 8 C.F.R. § 103.2(a)(7)(ii). The Petitioner re-filed the SIJ petition on March 4, 2021, after he turned 21 years old. Section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c) require that an SIJ petitioner be under 21 years old 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). Therefore, the Petitioner has not met his burden of establishing he was under 21 years old at the time he filed his SIJ petition. As the Petitioner was not under 21 years old 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.