



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 03 2015**

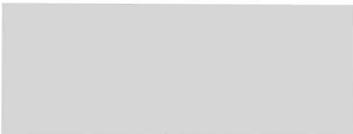
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Juvenile Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(J) of the Act, 8 U.S.C. § 1101(a)(27)(J)

ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, New York, New York (the director), denied the special immigrant visa petition, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be denied and the appeal will remain dismissed.

The petitioner is a -year-old citizen of India who seeks classification as a special immigrant juvenile (SIJ) pursuant to sections 101(a)(27)(J) and 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The director denied the petition because it was filed on the petitioner's twenty-first birthday rendering him ineligible for SIJ classification. On appeal, we affirmed the director's decision and the petitioner filed a motion to reopen.

### *Applicable Law*

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles as described in section 101(a)(27)(J) of the Act. On December 23, 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), was enacted. *See* Pub. L. No. 110-457, 122 Stat. 5044 (2008). Section 235(d) of the TVPRA amended the eligibility requirements for SIJ classification at section 101(a)(27)(J) of the Act, and accompanying adjustment of status eligibility requirements at section 245(h) of the Act, 8 U.S.C. § 1255(h). *Id.*; *see also* Memo. from Donald Neufeld, Acting Assoc. Dir., U.S. Citizenship and Immig. Servs., et al., to Field Leadership, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* (Mar. 24, 2009) (hereinafter "*TVPRA – SIJ Provisions Memo*"). The SIJ provisions of the TVPRA are applicable to this appeal.

Section 101(a)(27)(J) of the Act defines a special immigrant juvenile as:

an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless

the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of Homeland Security, through a U.S. Citizenship and Immigration Services (USCIS) Field Office Director, to consent to the grant of special immigrant juvenile status. This consent determination “is an acknowledgement that the request for SIJ classification is bona fide,” meaning that neither the custody order nor the best interest determination were “sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect or abandonment.” See Memo. from William R. Yates, Assoc. Dir. for Operations, U.S. Citizenship and Immig. Servs., to Reg. Dirs. & Dist. Dirs., *Memorandum #3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, at 2 (May 27, 2004)(quoting H.R. Rep. No. 105-405 at 130 (1997)).

The regulations also require an SIJ petitioner to be “under twenty-one years of age” and to submit documentary evidence of the petitioner’s age in the form of a birth certificate, passport or other official identity document issued by a foreign government. 8 C.F.R. § 204.11(c)(1), (d)(1).

#### *Pertinent Facts*

The petitioner was born in India on [REDACTED], and states that he entered the United States on December 24, 2006. On [REDACTED], [REDACTED], the Family Court of the State of New York, [REDACTED] (juvenile court) issued a temporary order appointing an individual as the petitioner’s guardian. The juvenile court simultaneously issued temporary letters of guardianship and a “Special Immigrant Juvenile Status Order.” The latter order found that the petitioner was under 21 years of age, was unmarried, had been placed in the custody of an individual appointed by the court and that reunification with one or both of his parents was not viable due to neglect and abandonment and that it was not in his best interest to be returned to India. The petitioner filed this Form I-360, Petition for Special Immigrant, on [REDACTED], his twenty-first birthday. The director denied the petition. On appeal, the petitioner did not establish that he was under 21 years old at the time of filing his form I-360. We dismissed his appeal on January 29, 2015, and the petitioner submitted this motion to reopen.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner’s eligibility. The petitioner’s claims and the new evidence submitted on motion fail to overcome the grounds for denial. The motion will be denied and our prior decision will be affirmed for the following reasons.

*Analysis*

The director determined that the petitioner was already 21 years old when his Form I-360 was filed and that he was ineligible for SIJ classification because he was no longer a child. On appeal, counsel submitted a copy of the petitioner's birth certificate issued by the [REDACTED] State, India Department of Health, which stated that the petitioner was born on [REDACTED]. The petitioner did not submit any other relevant evidence to show that he was under the age of 21 when his SIJ petition was filed.

To be classified as an SIJ, an individual must be a child on the date the SIJ petition is filed. *See* TVPRA section 235(d)(6). The term "child" refers to the definition of child under section 101(b)(1) of the Act, which states that a child is an unmarried person under 21 years of age. *TVPRA – SIJ Provisions Memo* at 2-3; *see also* 8 C.F.R. § 204.11(c)(1) - (2) (SIJ regulations incorporating the definition of child from the Act). On appeal, counsel claimed that the petitioner was still under 21 at the time his Form I-360 was filed because it was received by USCIS at 9:56 a.m. on [REDACTED] but he was born at 11:35 p.m. on [REDACTED]. On motion, the petitioner submits four affidavits as evidence that his time of birth was after the filing time.

We are expected to give the words of a statute their ordinary, contemporary, common meaning, absent an indication that Congress intended them to be read otherwise. *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Here, the language of the statute provides that a child is defined as an unmarried person "under twenty-one years of age." 101(b)(1) of the Act (emphasis added). To refer to a person's biological age when it is clear from the plain language of the statute that it refers to "age" in the traditional, legal sense, is an unreasonable reading of the statute. *See Duarte-Ceri v. Holder*, 630 F.3d 83, 95 (2nd Cir. 2010) (Livingston, D., dissenting).<sup>1</sup> Nowhere in the Act or the regulations is it indicated that a day is a divisible unit or period of time when determining an individual's age. Therefore regardless of the evidence on motion, the time of the beneficiary's birth as compared to the time that the petitioner's SIJ petition is received by USCIS is not the relevant inquiry because we look only to the date of filing, not the time of filing. Because [REDACTED] was the date on which the petitioner both filed his SIJ petition and turned 21, he was not a child on the date the petition was filed, and is therefore ineligible for SIJ classification under section 101(a)(27)(J) of the Act. To the extent that our previous decision indicated otherwise, that portion of the decision is withdrawn although our ultimate determination was correct.

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<sup>1</sup> In *Duarte-Ceri v. Holder*, the Second Circuit Court of Appeals held that a day is a divisible unit of time when determining an individual's age in derivative U.S. citizenship proceedings under former section 321(a) of the Act, 8 U.S.C. § 1432(a). 630 F.3d 83, 91 (stating, "the law favors the interpretation that preserves the right of citizenship over the interpretation that forfeits it."). We decline, however, to follow the holding in *Duarte-Ceri v. Holder* in these proceedings because this matter does not involve derivation of U.S. citizenship from a naturalized parent. The petitioner has not shown an analogous Second Circuit Court of Appeals decision in a matter involving an immigrant visa petition.

In addition, even if the petitioner had filed the Form I-360 prior to his 21<sup>st</sup> birthday, he would still not be eligible for SIJ classification because the juvenile court order is deficient under subsections 101(a)(27)(J)(i),(ii) of the Act.<sup>2</sup> The juvenile court order is dated [REDACTED] and granted [REDACTED] temporary guardianship for only 8 days, until [REDACTED] when the petitioner turned 21 years of age. Accordingly, the petitioner did not demonstrate that he is or was the subject of a qualifying juvenile court dependency or custody order because the ex parte custody order only made a temporary finding that reunification with the petitioner's parents was not viable. The plain language of the statute requires that an SIJ petitioner demonstrate that "reunification with 1 or both of the immigrant's parents is not viable." Section 101(a)(27)(J)(i) of the Act. Here, the juvenile court appointed [REDACTED] "temporary guardian" of the petitioner. The juvenile court's finding of nonviability-of-reunification with the petitioner's parents was issued on a temporary basis and does not establish that "family reunification is no longer a viable option" because the petitioner has not shown that the court ultimately granted permanent custody to [REDACTED]. See Section TVPRA 235(d)(5)(providing that a court-appointed custodian who acting as a temporary guardian is not considered a legal custodian for purposes of SIJ eligibility). Accordingly, the petitioner is the subject of a temporary custody order that does not contain the requisite nonviability-of-reunification determination under section 101(a)(27)(J)(i) of the Act.

### *Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The motion is denied. The appeal remains dismissed.

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<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).