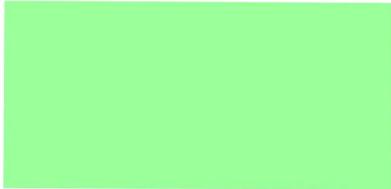




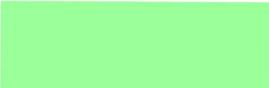
U.S. Citizenship
and Immigration
Services

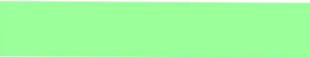
(b)(6)



Date: **JAN 29 2015**

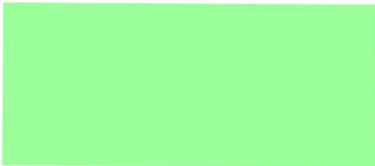
Office: NEW YORK, NY

FILE: 

IN RE: Self-Petitioner: 

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:

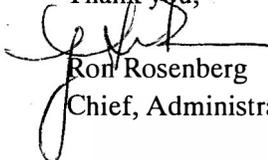


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 22-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, the petitioner, through counsel, submits a brief and additional evidence.

Applicable Law

Section 203(b)(4) of the Act allocates immigrant visas to qualified special immigrant juveniles. Section 101(a)(27)(J) of the Act defines a special immigrant juvenile as, in pertinent part:

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

The regulation also requires 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 May [REDACTED] and states that he entered the United States on December 24, 2006. On May 7, 2013, the Family Court of the State of New York, [REDACTED] County (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 May [REDACTED] his twenty-first birthday. The director denied the petition and counsel timely appealed. *De novo* review of the record as supplemented on appeal fails to establish the petitioner's eligibility and the appeal will be dismissed 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 submits a copy of the petitioner's birth certificate issued by the Haryana State, India Department of Health, which states that the petitioner was born on May [REDACTED], but does not specify the time of his birth. Counsel also submits a December 31, 2013 affidavit from the petitioner's mother briefly stating that the petitioner was born at 11:35 p.m. on May [REDACTED] and evidence that the petitioner's Form I-360 was delivered to U.S. Citizenship and Immigration Services (USCIS) at 9:56 a.m. on May 15, 1992.

Counsel asserts that the Form I-360 petition was mailed on May 10, 2013, but due to errors of the package carrier, the petition was not delivered to USCIS until May 15, 2013. Counsel claims that the petition was timely filed under the "mailbox rule" as of the date it was mailed on May 10, 2013. The "mailbox rule" does not apply in these proceedings. A properly completed petition is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). Consequently, the petition in this case was not filed until May 15, 2013.

In the alternative, counsel claims 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 May [REDACTED] but he was born at 11:35 p.m. on May [REDACTED]. The present record does not establish the time of the petitioner's birth. The petitioner's birth certificate and passport state the date, but not the time of his birth. His mother's brief affidavit states he was born at 11:35 p.m., but does not provide any other information regarding the specific circumstances of his birth to support her assertion, such as, for example whether he was born in a hospital or home and what other individuals, if any, were present at his birth. On appeal, the petitioner submits no other relevant evidence, such as, for example, other documents stating the time of his birth, or affidavits from his father, other relatives or any other witnesses to his birth. The preponderance of the relevant evidence does not establish the time of the petitioner's birth nor show that he was under the age of 21 when his SIJ petition was filed. He is consequently ineligible for SIJ classification.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *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 and the petition will remain denied.

ORDER: The appeal is dismissed.