



U.S. Citizenship
and Immigration
Services

(b)(6)



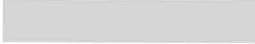
Date:

JUN 23 2015

FILE #: 

PETITION RECEIPT #: 

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 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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The New York District Director (the “director”) denied the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 21-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 determined that the petitioner is not eligible for SIJ classification because he was 21 years old at the time he filed his SIJ petition, and denied the petition accordingly.

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[.]

Pertinent Facts

The petitioner's birth certificate reflects that he was born in India on August 13, 1993. Department of Homeland Security (DHS) records show that he entered the United States on or about February 19, 2014 from the Mexico border. The petitioner was apprehended by U.S. Border Patrol during his entry at or near ██████████ Arizona. He was detained by DHS and placed in removal proceedings. The petitioner was released from DHS custody upon payment of a bond and he thereafter relocated to New York.¹

On ██████████ 2014, the Family Court of the State of New York, ██████████ (hereinafter "juvenile court") determined that reunification of the petitioner with his parents is not viable and it is not in his best interest to return to India. *Order - Special Juvenile Status*, N.Y. Fam. Ct., ██████████. The juvenile court subsequently appointed ██████████ guardian of the petitioner for one day, until he turned 21 years old, and issued Mr. ██████████ letters of guardianship. *Order Appointing Guardian of the Person*, N.Y. Fam. Ct., ██████████; *Letters of Guardianship*, N.Y. Fam. Ct., ██████████.

The petitioner filed the instant Form I-360, Petition for Special Immigrant, (SIJ petition) on ██████████, the date of his 21st birthday. The director determined that the petitioner is not eligible for SIJ classification because he was 21 years old at the time he filed the SIJ petition. On appeal, the petitioner asserts that he was still 20 years old when he filed the SIJ petition based on his time of birth.

Analysis

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). The FedEx Express receipt provided on appeal reflects that on ██████████ at 10:30 A.M., U.S. Citizenship and Immigration Services (USCIS) received the petitioner's SIJ petition. The petitioner asserts that he was born at 9:10 P.M. on ██████████ at his family's home and submits an internet print-out of time zone conversions. He indicates that he is submitting a notarized letter from the midwife who assisted in his birth as proof that his time of birth was after the filing time. However, no such letter was provided with the appeal. Regardless of this evidence or lack thereof, the time of the beneficiary's birth as compared to the time that the petitioner's SIJ petition is received by

¹ The petitioner remains in removal proceedings. His next hearing before the ██████████ Immigration Court is on ██████████

USCIS is not the relevant inquiry because we look only to the date of filing, not the time of filing.

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).² 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. 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.³

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.

² 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.

³ On appeal, the petitioner also asserts that his case is similar to another, non-precedent AAO decision that was remanded to the director. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.