



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

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

MATTER OF J-C-S-M-

DATE: NOV. 9, 2015

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as a special immigrant juvenile (SIJ). Immigration and Nationality Act (the Act) §§ 101(a)(27)(J) and 203(b)(4), 8 U.S.C. §§ 1101(a)(27)(J), 1153(b)(4). The District Office Director, New York, New York, denied the petition. The matter is now before the AAO on appeal. The decision of the Director will be affirmed and the petition will remain denied.

I. 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.¹ 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;

¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (2008), enacted on December 23, 2008, 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). See section 235(d) of the TVPRA H.R. Rep. No. 105-405 at 130 (1997). See also Memorandum from Donald Neufeld, Acting Associate Director, USCIS, *Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions* 3 (Mar. 24, 2009), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/2009/TVPRA_SIJ.pdf; The SIJ provisions of the TVPRA are applicable to this appeal. See section 235(h) of the TVPRA.

(b)(6)

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(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[.]

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in Ecuador on [REDACTED]. He claims he entered the United States without inspection, admission, or parole in September 2009. On [REDACTED] when the Petitioner was [REDACTED] years old, the Family Court of [REDACTED] New York, (juvenile court) granted the guardianship of the Petitioner to his father, [REDACTED]. See Special Findings Order, Fam. Ct. of [REDACTED] New York, Docket No. [REDACTED] File No. [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on February 23, 2015. The Director found the Petitioner ineligible for SIJ classification and denied the petition. The Petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record does not establish the Petitioner's eligibility. The brief submitted on appeal does not overcome the Director's ground for denial. The appeal will remain dismissed for the following reasons.

III. ANALYSIS

The Director determined that the Petitioner was already 21 years old when he filed his Form I-360 and that he was ineligible for SIJ classification because he was no longer a child. On appeal, the Petitioner asserts that the Form I-360 petition was mailed on [REDACTED] 2015 for overnight delivery, but due to errors of the package carrier, the Form I-360 was not delivered to USCIS until [REDACTED] 2015. Alternatively, the Petitioner asserts that his 21st birthday fell on a Saturday and that, as per regulations, he was afforded until Monday, [REDACTED] 2015 to submit his Form I-360.

Contrary to the Petitioner's assertions, 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 Form I-360 filed in this case was not received until [REDACTED] 2015, two days after the Petitioner turned 21 years old. In addition, to be classified as an SIJ, the Petitioner must have been a child on the date the Form I-360

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was filed, which we was not. *See* 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). As the Form I-360 in this proceeding was filed after the Petitioner's 21st birthday, the Director correctly determined that the Petitioner is ineligible for SIJ classification because he was not a child on the date that the Form I-360 SIJ petition was filed, as required by 8 C.F.R. § 204.11(c)(1) - (2).

IV. CONCLUSION

In this case, as in all visa petition 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 Director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.

Cite as *Matter of J-C-S-M-*, ID# 14968 (AAO Nov. 9, 2015)