



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

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

MATTER OF A-E-G-D-

DATE: NOV. 17, 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 us on appeal. The decision of the Director will be withdrawn and the petition will be remanded to the Director for further action.

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.

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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 El Salvador on [REDACTED] 1994. She claims she entered the United States without inspection, admission, or parole on October 23, 2013. On January 14, 2015, when the Petitioner was [REDACTED] years old, the Family Court of [REDACTED] New York, (juvenile court) granted the guardianship of the Petitioner to [REDACTED]. See Special Findings Order, Fam. Ct. of [REDACTED] New York, Docket No. [REDACTED] File No. [REDACTED] 2015). The Petitioner then filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant which USCIS stated was received on January 16, 2015. The Director found the Petitioner ineligible for SIJ classification and denied the petition. The Petitioner timely appealed.

III. ANALYSIS

The Director determined that the Petitioner was already 21 years old when she filed her Form I-360 and that she was ineligible for SIJ classification because she was no longer a child. On appeal, the Petitioner asserts that the instant Form I-360 was actually received by U.S. Citizenship and Immigration Services (USCIS) on [REDACTED] 2015, the day before the Petitioner's 21st birthday. The Petitioner also asserts that she initially mailed a Form I-360 on [REDACTED] and therefore "applied for" SIJ classification prior to her 21st birthday as required by the TVPRA. She states that Congress did not intend for "applied for" to mean that the petition was received USCIS. In addition, the Petitioner claims that her first Form I-360 was received by USCIS at 7:31 a.m. on [REDACTED] 2015, which was prior to the hour of the Petitioner's birth as indicated on her birth certificate.

Contrary to the Petitioner's assertions, a properly completed petition is considered filed on the date of actual receipt by USCIS. See 8 C.F.R. § 103.2(a)(7)(i). Consequently, the Form I-360 initially filed in this case was not received until [REDACTED] 2015. Further, we are expected to give the words of a statute their ordinary, contemporary, common meaning, absent an indication that Congress

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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 (2d 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. 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 receipted by USCIS is not the relevant inquiry because we look only to the date of filing, not the time of filing. Because [REDACTED] 2015, was the date on which the Petitioner both filed her initial SIJ petition and turned 21, she 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 based on that filing. Our previous decisions cited to by the Petitioner on appeal that indicate otherwise were non-precedent decisions and we do not announce new interpretations of law or establish agency policy through non-precedent decisions.

The Petitioner has, however, established that the second Form I-360 that she submitted by same day courier service, was received by USCIS on [REDACTED] 2015, the day before her 21st birthday. Accordingly, the Director’s determination that the Petitioner did not meet the definition of a child when she filed her Form I-360 is withdrawn. Nonetheless, the Form I-360 is not approvable because the juvenile court order is deficient under section 101(a)(27)(J)(i)-(ii) of the Act. When adjudicating a petition for special immigrant juvenile status, USCIS examines the juvenile court order only to determine if the order contains the requisite findings of dependency or custody; nonviability of family reunification due to parental abuse, neglect or abandonment; and the best-interest determination, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. USCIS then reviews the relevant evidence to ensure that the record contains a reasonable factual basis for the court’s determinations, which demonstrate that the court order was sought primarily to obtain relief from abuse, neglect or abandonment. USCIS is not the fact finder in regards to issues of child welfare under state law. Rather, the statute explicitly defers such findings to the expertise and judgment of the juvenile court. Section 101(a)(27)(J)(i)-(ii) of the Act, 8 U.S.C. § 1101(a)(27)(J)(i)-(ii) (referencing the determinations of a juvenile court or other administrative or judicial body).³ Where the record lacks evidence providing a reasonable factual basis for the juvenile court order, USCIS may request

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 See Memorandum from William R. Yates, USCIS, *No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions*, 4-5 (May 27, 2004), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2004/sij_memo_052704.pdf (indicating that, where the record demonstrates a reasonable factual basis for the juvenile court’s order, USCIS should not question the court’s rulings).

additional evidence from the Petitioner to establish a reasonable basis for the agency's consent to SIJ classification.⁴

Here, the juvenile court order lacks a specific nonviability determination and instead repeats the language, almost verbatim, of section 101(a)(27)(J)(i)-(ii) of the Act. The order further states that it is not in the Petitioner's best interest to be returned to El Salvador, but does not state a reason for that determination. Accordingly, the present record still lacks sufficient evidence to provide a reasonable factual basis for the juvenile court's determinations and to warrant the agency's consent to the Petitioner's request for SIJ classification, as required by section 101(a)(27)(J)(iii) of the Act

The Director's April 25, 2015, decision was based on the ground that the Petitioner was not under 21 when she filed her Form I-360 and was therefore not eligible for SIJ classification. This ground for denial has been overcome, but the Petitioner remains ineligible for SIJ classification because the juvenile court order is deficient and the record does not establish a reasonable factual basis for the requisite determinations. Because the Director did not address this deficiency in her decision, the matter must be remanded to the Director for further action, such as issuance of a Request for Evidence (RFE), to provide the Petitioner with the opportunity to address the remaining deficiencies of record.

IV. CONCLUSION

In this case, as in all visa petition proceedings, the Petitioner bears the burden of proof to establish her 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). Although the Petitioner has overcome the Director's grounds for denial, she remains ineligible for SIJ classification on other grounds. Accordingly, the Director's decision will be withdrawn and the matter will be remanded to the Director for further action in accordance with the preceding discussion. The Director shall then issue a new decision.

ORDER: The matter is remanded to the District Director, New York, New York, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of A-E-G-D-*, ID# 14969 (AAO Nov. 17, 2015)

⁴ *Id.* at 5.