



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

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

MATTER OF S-S-

DATE: NOV. 23, 2015

MOTION OF ADMINISTRATIVE APPEALS 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 or INA) §§ 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on motion to reconsider. The motion will be 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.<sup>1</sup> 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;

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<sup>1</sup> 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](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 Petitioner was born in India on [REDACTED]. He entered the United States from Mexico on or about October 19, 2010. On [REDACTED] the Family Court of the State of New York, [REDACTED] (juvenile court) appointed [REDACTED] guardian of the Petitioner until he turned 21 years old, and issued him letters of guardianship. *See Order Appointing Guardian of the Person*, N.Y. Fam. Ct., [REDACTED]. The juvenile court also determined that reunification of the Petitioner with his parents is not viable and it is not in his best interest to return to India. *See Order – Special Immigrant Juvenile Status*, N.Y. Fam. Ct., [REDACTED].

The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 4, 2013. The Director denied the Petitioner's request for SIJ classification because the Petitioner was 21 years old at the time that he filed the Form I-360. On appeal, the Petitioner asserted that U.S. Citizenship and Immigration Services (USCIS) received the Form I-360 prior to his 21st birthday, and that it was erroneously rejected. We dismissed the Petitioner's appeal on May 7, 2015, affirming the Director's decision, and he timely filed this motion to reconsider.

## III. ANALYSIS

To be classified as an SIJ, an alien must be a child on the date the Form I-360 SIJ petition is filed. *See* 8 C.F.R. § 204.11(c)(1) - (2). A child is defined as an unmarried person under the age of 21. INA § 101(b)(1), 8 U.S.C. § 1101(b)(1). The TVPRA provides age-out protection to SIJ petitioners so that a petition for SIJ status may not be denied based on age "if the alien was a child on the date on which the alien applied for such status." TVPRA section 235(d)(6); *TVPRA - SIJ Provisions Memo* at 2-3. In addition, the regulations applicable to all petitions and other benefit requests to the U.S. Department of Homeland Security, which includes USCIS, provide that "[e]very benefit request

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or other document submitted to DHS must be executed and filed in accordance with the form instructions.” See 8 C.F.R. 103.2(a)(1).

On appeal, the Petitioner submitted a copy of a Form I-797C (Notice of Action) and a copy of his initial Form I-360 as evidence that he filed his petition for SIJ classification prior to his 21st birthday. While the Petitioner is correct that he initially submitted his Form I-360 to the USCIS Chicago Lockbox on [REDACTED] 2013, eight days prior to his 21st birthdate, the petition was filed on a prior version of the Form I-360 dated January 18, 2011, and not the new edition of the Form I-360 issued on March 5, 2013. The form instructions mandate that USCIS will only accept prior versions of the Form I-360 until July 4, 2013.<sup>2</sup> The USCIS Chicago Lockbox rejected the initial submission of the Petitioner’s Form I-360 because it was received over three months after this deadline. The Petitioner’s Form I-360 was not refiled with USCIS on the correct form until November 4, 2013, which was after the Petitioner’s 21st birthday. The regulations do not allow for the retention of a filing date on a rejected benefit request. See 8 C.F.R. 103.2(a)(7)(iii). 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).

In our prior decision, we also determined that although the juvenile court order includes the requisite nonviability-of-reunification and best-interest determinations, the record does not contain a reasonable factual basis for these rulings and consent to SIJ classification under subsection 101(a)(27)(J)(iii) of the Act is not warranted in this case. The Petitioner does not address these issues on motion.

#### 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.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of S-S-*, ID# 15002 (AAO Nov. 23, 2015)

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<sup>2</sup> See U.S. Citizenship and Immigration Services (USCIS) *Form Updates*, <http://www.uscis.gov/forms-updates> (accessed March 30, 2015). See also the definitions of *Form* and *Form Instructions* at 8 C.F.R. § 1.2.