



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

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

MATTER OF M-A-C-S-

DATE: OCT. 21, 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 appeal will be dismissed.

**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. 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

(b)(6)

*Matter of M-A-C-S-*

(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[.]

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. See Section 101(b)(1) of the Act.

## II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner was born in El Salvador on [REDACTED] and is currently 22 years old. The Petitioner claims that he entered the United States without inspection, admission, or parole on April 22, 2013. On [REDACTED] 2014, when the Petitioner was [REDACTED] years old, the Family Court of [REDACTED] New York, (juvenile court) granted the guardianship of the Petitioner to his mother, [REDACTED]. See Order- Special Immigrant Juvenile Status, [REDACTED] New York, Docket No. [REDACTED], Family No. [REDACTED]. The Petitioner filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on Monday, July 14, 2014. 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 Petitioner's assertions on appeal do not overcome the grounds for denial and the appeal will be dismissed for the following reasons.

## III. ANALYSIS

The Director correctly determined that the Petitioner was not eligible for SIJ classification because he was 21 years old at the time of filing his Form I-360. On appeal, the Petitioner asserts that the Director erroneously denied his Form I-360 because it was filed after the Petitioner's 21st birthday when, in fact, it was received by U.S. Citizenship and Immigration Services (USCIS) on Sunday, [REDACTED] 2014, the day that the Petitioner turned 21. He further asserts that the regulations require only that the Form I-360 be filed and received by USCIS, which was done on [REDACTED] 2014. To be classified as an SIJ, the Petitioner must have been a child on the date that the Form I-360 was filed, which is defined as an unmarried person under the age of 21. See 8 C.F.R. § 204.11(c)(1)-(2); see also section 101(b)(1) of the Act. Even when taking into consideration the Petitioner's contention that the I-360 was received by USCIS on [REDACTED] 2014, he nonetheless does not establish that he met the definition of a child at the time his I-360 was filed as he was no longer under 21 years old on [REDACTED] 2014.

Beyond the Director's decision, the relevant evidence also fails to establish that the Petitioner is eligible for SIJ classification because the juvenile court order is deficient under section

(b)(6)

*Matter of M-A-C-S-*

101(a)(27)(J)(i) of the Act.<sup>1</sup> The juvenile court order dated [REDACTED], 2014, contains instructions to check the applicable basis for the order and lists abuse, neglect, abandonment and/or a similar basis under New York law as the options. However, none of the options were checked and the juvenile court order does not otherwise specify on which ground family reunification is not viable. Accordingly, in addition to not meeting the definition of a child upon filing his Form I-360, the Petitioner has not met the first requirement of subsection 101(a)(27)(J) of the Act.

### III. 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 M-A-C-S-*, ID# 14677 (AAO Oct. 21, 2015)

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).