



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

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

MATTER OF Y-X-P-R-

DATE: SEPT. 19, 2016

APPEAL OF BALTIMORE, MARYLAND FIELD OFFICE DECISION

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

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The District Director, Baltimore, Maryland, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner was ineligible for SIJ classification because she had already attained 21 years of age at the time of filing her SIJ petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that based on the timing of her birth, she filed her SIJ petition while still under 21 years of age.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 204(a)(1)(G) of the Act allows an individual to self-petition for classification as an SIJ. Section 101(a)(27)(J) of the Act defines an SIJ 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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(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[.]

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), to consent to the grant of SIJ classification. This consent determination is an acknowledgement that the request for SIJ classification is *bona fide*, which means that the juvenile court order and the best interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain immigrant status.¹

The burden of proof is on a petitioner to demonstrate eligibility for SIJ classification by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The record reflects that the Petitioner was born in El Salvador on [REDACTED] and entered the United States without inspection, admission, or parole in May 2014. On [REDACTED] 2015, the Circuit Court for [REDACTED] Maryland (juvenile court), issued an *Order Appointing Guardian of the Person*, awarding guardianship of the Petitioner to F-R.² On [REDACTED] 2015, the juvenile court issued an *Order Regarding Minor's Eligibility For Special Immigrant Juvenile Status* (court order), making specific findings related to the Petitioner's eligibility for SIJ classification. On [REDACTED] [REDACTED] the Petitioner's 21st birthday, she filed the instant SIJ petition.

¹ H.R. Rep. No. 105-405, at 130 (1997); *see also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQOPS 70/8.5, *Trafficking Victims Protection Reauthorization Act of 2008; Special Immigrant Juvenile Status Provisions* 3 (Mar. 24, 2009), <https://www.uscis.gov/laws/policy-memoranda>.

² We provide the initials of individual names throughout this decision to protect identities.

III. ANALYSIS

Upon *de novo* review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial.

A. The Petitioner Was Not a Child Under the Act at the Time of Filing as Required for SIJ Classification

The Director determined that the Petitioner was ineligible for SIJ classification because she was no longer a child at the time of filing as required under the Act, as the Petitioner had turned 21 years of age several hours prior to the receipt of her SIJ petition on the same date.

On appeal, the Petitioner asserts that the Act and the applicable regulation at 8 C.F.R. § 204.11 do not require that an SIJ petition be filed or received prior to a SIJ petitioner's 21st birthday. She maintains that under a plain reading of the Act and 8 C.F.R. § 204.11(c), she became "eligible" for SIJ classification on [REDACTED] 2015, when the juvenile court issued an order containing findings required to establish her eligibility for such classification and when she was still under 21 years of age. However, the Petitioner provides no binding or precedential authority for her interpretation of 8 C.F.R. § 204.11(c)(1)-(2) as requiring only that a petitioner satisfy the eligibility requirements for SIJ classification at some point prior to his or her 21st birthday, even where the SIJ petition is filed after he or she attains 21 years. Contrary to her assertion, an SIJ petitioner must have been a child under the Act at the time the SIJ petition is *filed* in order to establish eligibility under section 101(a)(27)(J) of the Act. *See* 8 C.F.R. § 204.11(c)(1)-(2) (requiring an SIJ petitioner to be under 21 years of age and unmarried on the date the SIJ petition is filed). In fact, section 235(d)(6) of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. No. 110-457, 122 Stat. 5044 (2008), specifically acknowledged the age requirements for filing an SIJ petition by extending age-out protections so that an SIJ petition would not be denied because a petitioner turned 21 years of age prior to adjudication, so long as he or she was a "child" on the date the petition was filed. Pursuant to section 101(b)(1) of the Act, a child is defined under the Act as an unmarried person *under* the age of 21.³ The Petitioner's interpretation of the eligibility requirements of 8 C.F.R. § 204.11 would render meaningless the age-out protection specifically provided by TVPRA 2008, as such an interpretation would allow individuals to remain eligible for SIJ classification indefinitely regardless of their age at the time of filing. Here, the SIJ petition was received by USCIS on [REDACTED] the Petitioner's 21st birthday. She, therefore, was not "under" 21 years of age and did not qualify as a child under the Act on the date she filed her petition.

The Petitioner further asserts that because the relevant statute and regulations are silent as to a filing or receipt deadline for the filing of an SIJ petition, USCIS should apply the "mailbox" rule to her

³ *See also* Memorandum from Donald Neufeld, Acting Associate Director for Domestic Operations, USCIS, HQOPS 70/8.5, *Trafficking Victims Protection Reauthorization Act of 2008; Special Immigrant Juvenile Status Provisions 2-3* (Mar. 24, 2009), <https://www.uscis.gov/laws/policy-memoranda> (USCIS adjudicators "must" consider a SIJ "petitioner's age at the time of filing to determine" whether the petitioner was a "child," as defined at section 101(b)(1), when she or she filed the petition).

petition because it was mailed prior to her 21st birthday. However, pursuant to 8 C.F.R. § 103.2(a)(7)(i), which is applicable to benefit requests before USCIS, including SIJ petitions, a properly completed petition is considered filed on the date of actual receipt by USCIS. Consequently, the SIJ petition was not “filed” for purposes of establishing the Petitioner’s eligibility until USCIS actually received the petition on the Petitioner’s 21st birthday.

The Petitioner also submits a copy of her amended birth certificate and a federal express tracking receipt for her SIJ petition in support of her assertion that she was still a “child” under the Act at the time she filed her SIJ petition because USCIS had received her petition several hours prior to the specific hour that she officially attained 21 years of age. However, neither the Act nor the regulations indicate that a day is a divisible unit or period of time when determining whether a petitioner is a child under the Act. Moreover, absent an indication that Congress intended them to be read otherwise, we give the words of a statute their ordinary, contemporary, common meaning. *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Here, as noted, the language of section 101(b)(1) of the Act provides that a child is defined as an unmarried person “under twenty-one years of age.” Interpreting section 101(b)(1) as referring to a person’s biological age is an unreasonable reading of the statute where it is clear from the plain language of the statute that it refers to “age” in the “traditional, legal sense.” *See generally Duarte-Ceri v. Holder*, 630 F.3d 83, 95 (2nd Cir. 2010) (Livingston, D., dissenting).⁴ Consequently, in determining whether the Petitioner was a child at the time she filed her SIJ petition, the relevant inquiry is the date of her birth, rather than the hour or time of her birth. As such, we withdraw the Director’s decision in part, insofar as the Director engaged in the latter inquiry and considered the specific time of the Petitioner’s birth in determining whether the Petitioner was a child under the Act. Regardless, the Petitioner has not established her eligibility. As the Petitioner filed her SIJ petition on her 21st birthday, she was not under 21 years of age and was no longer a child on the date the petition was filed as required. She, therefore, is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

B. No Reasonable Factual Basis for the Juvenile Court’s Best Interest Determination

Although not addressed in the Director’s decision, the instant SIJ petition is also not approvable because the present record does not provide a reasonable, factual basis for the juvenile court’s best interest determination.⁵

⁴ In *Duarte-Ceri v. Holder*, the Court of Appeals for the Second Circuit (Second Circuit) 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. 630 F.3d at 91 (stating that “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* 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 decision in a matter involving an immigrant visa petition.

⁵ We may deny an application or petition that does not comply with the technical requirements of the law even if the District Director 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).

When adjudicating an SIJ petition, USCIS examines the juvenile court order only to determine if it contains the requisite findings of dependency or custody; non-viability of reunification due to abuse, neglect or abandonment; and that return is not in the petitioner's best interests, as stated in section 101(a)(27)(J)(i)-(ii) of the Act. Where the juvenile court order includes the requisite findings, USCIS must determine whether there is a sufficient factual basis for the juvenile court's non-viability of parental reunification and best interest determinations so it may fulfill its required consent function under section 101(a)(27)(J)(iii).⁶ A juvenile court order that includes or is supplemented by specific findings of fact as to its SIJ findings will generally be sufficient to establish eligibility for consent. Although a juvenile court's findings need not be overly detailed, they must reflect that the juvenile court made an informed decision.⁷

Here, the juvenile court order includes the requisite determination that it was not in the Petitioner's best interest to be returned to El Salvador, but does not forth any factual findings to support the court's determination. The record, therefore, does not establish a reasonable factual basis for the juvenile court's best interest determination. Consequently, the Petitioner's request for SIJ classification does not warrant USCIS consent, as required by section 101(a)(27)(J)(iii) of the Act.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-X-P-R-*, ID# 09820 (AAO Sept. 19, 2016)

⁶ A "factual basis" means the facts upon which the juvenile court relied in making its rulings or findings. See Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQADN 70/23, *Memorandum No. 3 – Field Guidance on Special Immigrant Juvenile Status Petitions* 4-5 (May 27, 2004), <https://www.uscis.gov/archive/archive-laws/archive-memos>.

⁷ See *id.*