



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

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

MATTER OF E-Y-A-U-

DATE: SEPT. 30, 2016

MOTION ON 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). *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 children in the United States who have been abused, neglected, or abandoned, and found dependent on a juvenile court in the United States.

The District Director, New York, New York, denied the petition, concluding that the Petitioner is not eligible for SIJ classification because she was 21 years of age or older on the day she filed her Form I-360, Application for Amerasian, Widow(er), or Special Immigrant (SIJ petition). We dismissed the Petitioner's appeal.

The matter is now before us on motion to reconsider. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that she filed her SIJ petition prior to her 21st birthday by sending an email to the Vermont Service Center (VSC) hotline, and that to deny the motion would go against Congressional intent. Upon review, we will deny the motion.

#### I. LAW

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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 (AAO 2010).

#### II. ANALYSIS

In our prior decision, incorporated here by reference, we found that the Petitioner was not under 21 years of age at the time of filing of her SIJ petition, as required by the regulations. *See* 8 C.F.R. § 204.11(c)(1), (d)(1). We further held that the Petitioner's guardianship order was deficient for

various reasons. All the evidence in the record of proceeding has been reviewed, even if all of the evidence is not discussed in the decision. On motion, the Petitioner has not overcome our findings for the reasons stated below.

The Petitioner's SIJ petition was filed with the Service Center on February 17, 2015. A properly completed petition is considered filed on the date of actual receipt by USCIS. 8 C.F.R. § 103.2(a)(7)(i). On motion, the Petitioner claims that she "filed" her SIJ petition on February 13, 2015, prior to her 21st birthday, because on that date she e-mailed the VSC at Hotlinefollowup1360@uscis.dhs.gov, and received a response indicating that her e-mail was received. The Petitioner further contends that USCIS, in order to respect Congress' intent, is obligated by statute and regulation to accept her SIJ petition as filed through e-mail.

However, according to its *Form Instructions*, an SIJ petition must be filed at the Chicago Lockbox. USCIS regulations at 8 C.F.R. § 103.2(a)(1) require that every benefit request or other document submitted to the agency "be executed and filed in accordance with the form instructions."<sup>1</sup> The Petitioner cited to no statute, regulation, or pertinent precedent decisions that would suggest otherwise. Furthermore, we lack authority to waive the requirements of the statute, as implemented by the regulations. See *United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (as long as regulations remain in force, they are binding on government officials). As such, the Petitioner's SIJ petition is not approvable because she was not under the age of 21 years at the time of filing on February 17, 2015.<sup>2</sup> Even if the Petitioner could have cured this deficiency, she would still remain ineligible for the requested benefit because her guardianship order is deficient in that it does not state the basis for jurisdiction over the Petitioner as a juvenile, and we would not consent to a grant of SIJ classification due to the lack of a reasonable factual basis for the court's determinations.

### III. 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 motion to reconsider is denied.

Cite as *Matter of E-Y-A-U-*, ID# 7865 (AAO Sept. 30, 2016)

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<sup>1</sup> The Petitioner incorrectly asserts that because the VSC hotline "did not reject receipt" of the petition and received the e-mail, USCIS accepted receipt of the petition, particularly where, as here, the Petitioner received a response indicating that the e-mail cannot be used for that type of inquiry and that VSC would be unable to assist her.

<sup>2</sup> The Petitioner requests that we remand this matter to the District Director to provide her with the opportunity to address the other deficiencies in her SIJ petition (as stated in our prior decision); that the juvenile court order was otherwise deficient and that consent was not warranted in her case. However, as the Petitioner is otherwise ineligible for SIJ classification, there is no basis on which to remand her SIJ petition.