



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

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

In Re: 10574036

DATE: MAR. 5, 2021

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under section 101(a)(27)(J) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(27)(J). The Petitioner's Form I-360, Petition for Special Immigrant (original SIJ Petition) was rejected by USCIS. The Petitioner filed a second SIJ petition (second SIJ petition) and the Director of the National Benefits Center (Director) denied it. The Petitioner appealed the Director's decision to our office and we summarily dismissed the appeal. The Petitioner motioned to reopen and reconsider the appeal and we dismissed it as well. The matter is now before us on a second motion to reopen and reconsider. On motion, the Petitioner submits a brief, previously submitted evidence, and no new evidence. Upon *de novo* review, we will dismiss the motions.

**I. LAW**

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must 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 policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format. 8 C.F.R. § 103.2(A)(7). A benefit request which is rejected will not retain a filing date. *Id.* A benefit request will be rejected if it is not: signed with valid signature, executed, filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and submitted with the correct fee(s). *Id.* Further, the USCIS Policy Manual provides that a deficient signature may lead to a denial of the request or a dismissal of a motion or appeal. 1 *USCIS Policy Manual* B.2(A), (B), <https://www.uscis.gov/policy-manual>.

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner cannot

reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c).

## II. ANALYSIS

In January 2017, the Petitioner filed the original SIJ petition which was signed improperly. Pursuant to 8 C.F.R. § 103.2(A)(7), USCIS rejected the application and did not retain the filing date because of the improper signature. When the Petitioner filed a second SIJ petition (second SIJ petition) in March 2017, the Petitioner was over 21 years old and was therefore ineligible for SIJ classification. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c). Therefore, the Director denied the Petitioner's second SIJ petition.

The Petitioner appealed the Director's decision, arguing that her counsel made a clerical error in the original SIJ petition and that the Petitioner should not be prejudiced by her counsel's error. Since the Petitioner's argument addressed the original SIJ petition, which was not at issue in the Director's decision, we denied the appeal for not specifying any erroneous conclusion or statement of fact in the Director's decision. The Petitioner motioned to reopen and reconsider the denied appeal; however, we summarily dismissed the motions because the Form I-290 was an identical copy to the Form I-290 submitted for her first appeal.

Now, the Petitioner motions to reopen and reconsider. The Petitioner submits a brief as well as documents already contained in the record arguing that we should not have denied her first motion to reopen and reconsider because of an improper signature. She contends that the two Form I-290's had signatures that were dated differently. However, contrary to the Petitioner's assertion, the second Form I-290 is a photocopy of the first Form I-290 with edits made on the first page changing the selection from filing an appeal to filing a motion. The edited Form I-290B does not contain original and current signatures. Therefore, our first denial of the Petitioner's motion to reopen and reconsider was correctly decided.

The Petitioner further argues that USCIS erred as a matter of law in rejecting the original SIJ motion,<sup>1</sup> and should have instead issued a request for evidence (RFE) to cure the signature deficiency as a matter of policy. The Petitioner claims that this failure to issue the RFE was due to USCIS' policy at the time to summarily deny all SIJ petitioners who were between the ages of 18 and 21. Contrary to the Petitioner's contentions, when a benefit request does not contain a proper signature at filing, as was the case for the original SIJ petition, the correct course of action for USCIS is to reject the filing and to not retain the filing date. 8 C.F.R. § 103.2(A)(7); *see* 1 *USCIS Policy Manual*, *supra*, at B.2(A), (B). We further note that an RFE is only proper when an adjudicating officer needs more information to adjudicate a properly submitted benefits request and an RFE is not a permissible action for a filing deficiency. *See* 8 C.F.R. § 103.2(A)(7); 7 *USCIS Policy Manual*, *supra*, at A.4(C). Therefore, the original SIJ petition was correctly rejected by USCIS.

The Petitioner also asserts that she was a member of the *R.F.M. v. Nielsen* class when she filed the original SIJ petition. *See* 365 F. Supp. 3d 350 (S.D.N.Y. 2019). In *R.F.M. v. Nielsen*, The court's

---

<sup>1</sup> We note that in her appeal of the Director's decision, counsel for Petitioner conceded that the filing deficiency in the original SIJ petition was her counsel's fault, and not her or USCIS' fault.

judgment certified a class including SIJ petitioners whose SIJ orders were “issued by the New York family court between the petitioners’ 18<sup>th</sup> and 21<sup>st</sup> birthdays” and whose SIJ petitions were denied on the ground that the Family Court “lacks the jurisdiction and authority to enter SFOs [Special Findings Orders] for juvenile immigrants between their 18<sup>th</sup> and 21<sup>st</sup> birthdays.” *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019). While the Petitioner’s original SIJ petition contained an SIJ order issued by the Family Court when the Petitioner was 20 years old, it was not denied on the ground that the Family Court lacks jurisdiction and authority to enter SFOs. Since the original SIJ petition was correctly rejected by USCIS due to a filing deficiency, the Petitioner was not a member of the *R.F.M. v. Nielsen* class. *See R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068.

### III. CONCLUSION

The Petitioner’s motions do not provide new facts or documentary evidence and do not show that our prior decisions were based on an incorrect application of law or policy; therefore, the motion to reopen is denied and the motion to reconsider is denied.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.