



# THE 21ST BIRTHDAY ELIGIBILITY CUTOFF FOR SIJS

## *USCIS Policy and the Risks of Applying On or After the 21st Birthday*

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### I. Introduction

Special immigrant juvenile status (SIJS) is a unique pathway to immigration status that requires the involvement of state courts before a child is eligible to apply for SIJS with the U.S. Citizenship & Immigration Services (USCIS) agency. SIJS is a path to legal status for young people who are under the age of 21 and unmarried when they cannot be reunified with one or both parents due to abuse, neglect, or abandonment, and when it is not in their best interest to return to their country of origin.<sup>1</sup>

Youth who are successful in obtaining SIJS are then eligible to apply for adjustment of status to that of a lawful permanent resident (a green card holder), as soon as a visa is available to them.<sup>2</sup> Before a youth may apply for SIJS, they must be subject to the jurisdiction of a state court such as a juvenile, probate, or family court, and that court must issue an order making three specific determinations (often referred to as the “state court predicate order” or “SIJS findings”).<sup>3</sup> The three determinations are: (1) That the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency or department, or an individual or entity appointed by a state juvenile court; (2) That reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and (3) That it is not in the child’s best interest to be returned to their country of nationality or last habitual residence.

The Form I-360 is used to apply for SIJS with USCIS.<sup>4</sup> The entire SIJS petition packet, which includes Form I-360, proof of age, and the SIJS findings/state court predicate order must be

<sup>1</sup> INA § 101(a)(27)(J); 8 CFR § 204.11 (note the regulations for SIJS petitions were updated in March 2022 and went into effect on April 7, 2022).

<sup>2</sup> Note that a visa must be available in order for the child to adjust status. For further information, see ILRC, *Special Immigrant Juvenile Status & Visa Availability* (Mar. 30, 2023), <https://www.ilrc.org/resources/special-immigrant-juvenile-status-visa-availability>; see also ILRC, *End SIJS Backlog*, National Immigration Project (NIP), and the American Bar Association’s (ABA), *Breaking Down the Visa Bulletin: What SIJS Advocates Need to Know* (Apr. 18, 2024), <https://www.ilrc.org/resources/breaking-down-visa-bulletin-what-sijs-advocates-need-know>.

<sup>3</sup> For further information on how to obtain predicate orders or SIJS findings in California, see ILRC, Legal Services for Children (LSC), Immigrant Legal Defense (ILD), and International Rescue Committee’s (IRC), *Guidance for SIJS State Court Predicate Orders in California* (Apr. 26, 2024), <https://www.ilrc.org/resources/guidance-sijs-state-court-predicate-orders-california-what-you-need-know-2024>.

<sup>4</sup> See USCIS Form I-360 Instructions, <https://www.uscis.gov/i-360>.

received before the special immigrant juvenile (SIJ) eligible youth turns 21.<sup>5</sup> This practice alert addresses many of the unsuccessful arguments that USCIS has not accepted when a petition received by USCIS after the youth turns 21. In rare cases, USCIS has accepted petitions received after the petitioner's 21st birthday when there is proof that the petition was improperly rejected or receipted by USCIS before the deadline. This practice alert primarily focuses on USCIS Administrative Appeals Office (AAO) decisions<sup>6</sup> and limited federal court cases to highlight successful and unsuccessful arguments when the SIJS petition is filed on or after the youth's 21<sup>st</sup> birthday.

## II. Importance of Filing the SIJ Petition Before the Age of 21

Under current USCIS regulations, any person under 21 years of age who otherwise meets the eligibility requirements may be granted SIJS.<sup>7</sup> Previously, petitioners needed to complete the entire immigration adjudication process through adjustment of status prior to age 21. The Trafficking Victims Protection Reauthorization Act, however, provided age-out protection to special immigrant juvenile petitioners.<sup>8</sup> As of December 23, 2008, USCIS cannot deny SIJS to a person based on age so long they were under 21 on the date they filed their SIJS petition with USCIS. Accordingly, USCIS officers must consider the petitioner's age at the time of filing to determine whether the petitioner has met the age requirement. The SIJS regulations were updated in 2022 to reflect the TVPRA's statutory changes.<sup>9</sup>

**Because USCIS interprets the age cutoff as a statutory eligibility requirement that is not subject to equitable tolling or other exceptions, it is extremely important that USCIS receive the Form I-360 before the youth turns 21.** Ideally, the SIJS packet would be received by USCIS with ample time before the youth turns 21 so that there is a buffer in case of any mail delays or errors, like a mistake on the Form I-360. If the SIJS petition is received when the youth is 21 years old or older, USCIS has unfortunately rejected most of the arguments made by petitioners to excuse the untimely filing of the petition.

If USCIS denies an SIJS petition because it was not filed before the youth turned 21, the youth may appeal to the AAO and pursue federal litigation. Because the likelihood of success in either of these venues is not high, and because of the time-consuming nature of additional litigation, it is always preferable to file in advance of your client's 21<sup>st</sup> birthday.

**To help ensure that young people are able to file their SIJS petition before turning 21, USCIS has adopted a policy to allow SIJS petitioners to file in person at a local field**

<sup>5</sup> For more information on the procedure of submitting a complete SIJS petition to USCIS see *Special Immigrant Juvenile Status and Other Immigration Options for Children & Youth* (ILRC 2021) (note that this publication will be updated in 2025).

<sup>6</sup> The AAO is a USCIS office dedicated to administratively review appeals from petitioners or applicants who have received a denial on their application or petition. For more information on the AAO, appeals process, and AAO decisions, see USCIS *The Administrative Appeals Office*, <https://www.uscis.gov/about-us/organization/directorates-and-program-offices/the-administrative-appeals-office-aaos>.

<sup>7</sup> 8 CFR § 204.11(b)(1).

<sup>8</sup> TVPRA § 235(d)(6).

<sup>9</sup> New regulations went into effect on April 7, 2022.

**office within the two-week period before their 21<sup>st</sup> Birthday.**<sup>10</sup> To make an expedited appointment with the petitioner’s local field office, the petitioner or their accredited representative or attorney may contact the USCIS contact center at 1-800-375-5283 or make an appointment through their online portal account under the “My Appointment” option.<sup>11</sup> At the appointment, the field office will accept the petitioner’s Form I-360, date-stamp the first page, and provide a copy of the first page of the petitioner’s Form I-360.<sup>12</sup> The field office does not review the petition for completeness. This makes it extremely important to ensure that the Form I-360 is properly completed and signed. The field office sends Form I-360 and any supporting documents to the corresponding USCIS lockbox for processing and receipting.<sup>13</sup> If the Form I-360 is properly filed, USCIS then issues a Notice of Action (Form I-797) using the date the field office physically received the Form I-360 as the receipt date.

**PRACTICE TIP: If the USCIS Contact Center is unable to assist in scheduling an expedite appointment with a field office, try contacting the field office directly through a community relations officer or any other liaison for that field office.** Note that certain field offices have different protocols on allowing visitors inside the field office and may not let the petitioner or representative inside the building without an appointment. Security guards in certain field offices should be trained to let petitioners or their representatives inside the building to file SIJS petitions, but not all field offices have trained their security officers on this protocol. To avoid delay or having an officer turn away the petitioner or the representative, have proof on hand of the confirmation of the appointment, attempts made to make an appointment, or written communication via email with the field office regarding the appointment.

**PRACTICE TIP FOR CALIFORNIA PETITIONERS:** Beginning January 1, 2025, when a California court grants an SIJS predicate order, and the individual requests expedited processing with a proposed order, the court “shall” provide the youth with a certified copy of the order within three court days of the date of the hearing, or the date the proposed order was submitted, whichever is later.<sup>14</sup> With this new law, SIJS petitioners in California can request expedited processing to receive the predicate order. This may particularly benefit young people who are close to aging out of SIJS eligibility, ensuring that they receive the predicate order in a timely fashion and are thus able to file with USCIS in advance of their 21<sup>st</sup> birthday.

<sup>10</sup> See 6 USCIS-PM J.2(B); see also USCIS, *Provision Allowing Special Immigrant Juveniles to File Form I-360 in Person Before Their 21<sup>st</sup> Birthday Policy* (Mar. 30, 2023), <https://www.uscis.gov/newsroom/alerts/provision-allowing-special-immigrant-juveniles-to-file-form-i-360-in-person-before-their-21st>.

<sup>11</sup> See *id.* 6 USCIS-PM J.2(B); see also USCIS, *Special Immigrant Juveniles* (Apr. 1, 2024), <https://www.uscis.gov/working-in-US/eb4/SIJ>.

<sup>12</sup> See *id.* USCIS, *Special Immigrant Juveniles* (Apr. 1, 2024), <https://www.uscis.gov/working-in-US/eb4/SIJ>.

<sup>13</sup> *Id.*

<sup>14</sup> See Assem. Bill 2224, 2023-2024 Reg. Sess. (Cal. 2024), <https://legiscan.com/CA/text/AB2224/id/3023187/California-2023-AB2224-Chaptered.html>; see also *Governor Newsom issues legislative update 9.29.2024*, <https://www.gov.ca.gov/2024/09/29/governor-newsom-issues-legislative-update-9-29-24/>.

### III. AAO Non-Precedential Decisions Pertaining to the SIJS Age Requirement

As noted above, it is always advisable to file with plenty of time before the youth's 21<sup>st</sup> birthday. A properly completed SIJS petition is considered filed on the date of actual receipt by USCIS.<sup>15</sup> However, under certain limited circumstances an SIJS petition may still be granted even when it is technically received after the 21<sup>st</sup> birthday. These circumstances are very limited and the AAO has taken different positions on them throughout the years. A valuable resource to review is the National Immigration Project (NIP) Index, Unpublished AAO Decisions on SIJS, which gathers unpublished AAO decisions pertaining to SIJS that are categorized by issue and state.<sup>16</sup> Below we highlight arguments that have been unsuccessful and those that have been successful.

#### A. Unsuccessful arguments

Many arguments made to the AAO about the age requirement unfortunately have not been successful. It is important to note that USCIS may take a different position in the future on these arguments and petitioners should continue to research the latest AAO decisions pertaining to the age requirement for SIJS.

**Arguments Regarding Time of Birth.** Throughout the years, USCIS has been inconsistent in accepting arguments that an SIJS petition received before the time of birth on the 21<sup>st</sup> birthday is timely. For example, in at least one case, the AAO accepted that an SIJS petition received before the time of birth listed in a petitioner's birth certificate met the age requirement.<sup>17</sup> Similarly, the AAO accepted an argument where the birth certificate lacked the time of day, but the petitioner's parent submitted a credible affidavit attesting to the time of birth of the petitioner.<sup>18</sup> However, more recently, the AAO has taken a different position and has rejected this argument. The AAO in *In Re: 2216203* (AAO Nov. 29, 2022) held that that the requirement to file the petition before the petitioner turns 21 is a substantive eligibility requirement and not a technical requirement.<sup>19</sup> The AAO noted that there is no provision in the Immigration and Nationality Act (INA) or in the regulations authorizing USCIS to waive the requirement or that provides that a day is divisible or age is determined by time of birth.<sup>20</sup> Furthermore, the AAO held that unlike a filing deadline related to appeals and motions that are subject to equitable

<sup>15</sup> See 8 CFR § 103.2(a)(7)(i) (note that the mail-box rule or postmark rule does not apply to SIJS petition per the regulation); see also 8 CFR § 103.2(a)(7)(i) ("A benefit request which is rejected will not retain a filing date.").

<sup>16</sup> You can request the index online at: <https://secure.nationalimmigrationproject.org/np/clients/nationalimmigration/product.jsp?product=33&> (note that there is a fee associated to access this resource).

<sup>17</sup> *[Name withheld] [File Number withheld]*, (AAO Aug. 27, 2013), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2013/AUG272013\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2013/AUG272013_01C6101.pdf) (note that the AAO ultimately held that the youth was ineligible on other grounds).

<sup>18</sup> *[Name withheld] [File Number withheld]*, (AAO Nov. 18, 2013), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2013/NOV182013\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2013/NOV182013_01C6101.pdf).

<sup>19</sup> Available at [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2022/NOV292022\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/NOV292022_02C6101.pdf).

<sup>20</sup> *Id.*

tolling, there is not “any binding authority finding that filing deadlines for visa petitions are also subject to equitable tolling.”<sup>21</sup> Although this AAO decision was non-precedential, it is an indication that an argument that posits a divisible time of day or that age is determined by time of birth will not likely be successful with the AAO.

**Example:** On July 26, 2024, a state juvenile court placed Ana under the custody of her mother, found that reunification with her father was not viable due to abuse, and found that it is not in her best interest to return to her country of nationality. Ana is therefore eligible to apply for SIJS with USCIS. Ana was born on July 29, 2003, at 5:45 AM as demonstrated by her birth certificate. Ana’s attorney mails Ana’s SIJS petition to USCIS. The mail vendor’s tracking notification of delivery shows that the SIJS petition did not arrive to USCIS until 2:00 AM on July 29, 2024. Did Ana’s SIJS petition arrive on time to USCIS before her 21st birthday?

Given USCIS’s recent AAO decisions, Ana’s SIJS petition would likely not be deemed timely filed before her 21st birthday. However, the argument can be made that the petition arrived before her time of birth: Her time of birth was 5:45 AM and the petition arrived before that, at 2:00 AM.

Note that Ana’s attorney could have filed her SIJS petition in person at her local field office, using the new in-person filing option for SIJS petitioners filing within two weeks of their 21<sup>st</sup> birthday. In Ana’s case, the attorney could have worked to schedule an in-person filing appointment on July 26th, assuring that the filing would be stamped received prior to Ana’s 21<sup>st</sup> birthday.

**Arguments Regarding USCIS Filing Rejections (Under the Petitioner’s Control).** If the SIJS petition is rejected by USCIS because of a circumstance under the petitioner’s control, the SIJS petition will likely be deemed untimely. The filing will not retain the initial receipt date when it must be re-filed due to a rejection that USCIS views as in the petitioner’s control. For example, in the following cases, the AAO held that the petitioner did not meet the eligibility requirement of filing while under the age of 21:

- An SIJS petitioner filed the petition before his 21<sup>st</sup> birthday but used an outdated version of the form that USCIS specifically instructed should not be used past a certain date.<sup>22</sup>
- An SIJS petitioner filed the SIJS petition without the necessary signatures for a proper filing.<sup>23</sup>
- An SIJS petitioner checked the wrong classification box and did not include the fee for the wrong classification.<sup>24</sup>

<sup>21</sup> *Id.*

<sup>22</sup> See *In Re: 30234996* (AAO Feb. 22, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/FEB222024\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/FEB222024_01C6101.pdf); see also *[Name withheld] [File Number withheld]*, (AAO May 7, 2015), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/FEB222024\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/FEB222024_01C6101.pdf).

<sup>23</sup> See *In Re: 28112408*, (AAO Sept. 26, 2023), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2023/SEP262023\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2023/SEP262023_01C6101.pdf).

<sup>24</sup> See *In Re: 31319029* (AAO May 9, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/MAY092024\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/MAY092024_01C6101.pdf).



- An SIJS petitioner did not complete the form correctly because the petitioner failed to include her date of birth on the Form I-360.<sup>25</sup>

**Example:** Joseph is eligible to apply for SIJS after a probate court found on April 2, 2024 that reunification with his mother was not viable due to physical abuse and it is not in his best interest to return to his country of nationality. The probate court also appointed his aunt to be his guardian. Joseph now wants to file his SIJS petition with USCIS. Joseph was born on April 21, 2003. Joseph mails his SIJS petition to USCIS via express mail on April 3, 2024. Subsequently, USCIS rejects his SIJS petition because he forgot to sign it. He resends his SIJS petition with the proper signature and it is received by USCIS on April 22, 2024. Could Joseph argue on appeal that his clerical error should be excused, and his initial filing date should be retained?

Unfortunately, because Joseph did not file a complete Form I-360 prior to turning 21, USCIS will take the position that his initial filing was properly rejected and thus that the initial filing date will not be retained. USCIS will likely deny his second SIJS petition as not meeting the age requirement for SIJS eligibility.

**Arguments Regarding Mailing/Courier Errors.** Historically, arguments based on mail delays caused by a courier, or a mail delivery service have not been successful. Even if a mail service guaranteed a specific delivery date prior to the youth's 21<sup>st</sup> birthday but then failed to deliver the petition prior to the youth's 21<sup>st</sup> birthday, USCIS will deny the SIJS petition.<sup>26</sup>

**Example:** Lucia is eligible to apply for SIJS after obtaining a state dependency court order finding that she could not be reunited with her parents due to abandonment and it was not in her best interest to return to her country of origin. Lucia's birthday is January 15, 2003. Lucia's accredited representative sends her SIJS petition to USCIS on January 13, 2024 through FedEx's next day delivery service. FedEx guarantees that it will be delivered on January 14, 2024. However, due to a mail delay, Lucia's SIJS petition does not arrive until January 17, 2024. Could Lucia argue on appeal that her SIJS petition would have been filed timely but for FedEx's delay, which guaranteed a delivery before her 21<sup>st</sup> birthday?

<sup>25</sup> See *Matter of L-L-L-D-*, ID#00627021 (AAO Oct. 31, 2017), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2017/OCT312017\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2017/OCT312017_02C6101.pdf).

<sup>26</sup> See *In Re: 335845* (AAO Sep. 5, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/SEP052024\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/SEP052024_01C6101.pdf) (note AAO reviewed the United States Postal Service (USPS) tracking service that indicated the petition was not received prior to the youth turning 21 years old); *In Re: 31686022* (AAO Mar. 19, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/MAR192024\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/MAR192024_01C6101.pdf); *In Re: 25652662* (AAO Jan. 1, 2023), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2023/JAN192023\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2023/JAN192023_02C6101.pdf) (note the AAO also rejected petitioner's alternate argument that his time of birth should have been considered); see also *In Re: 18977846* (AAO Sept. 29, 2022), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2022/SEP292022\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/SEP292022_02C6101.pdf) (USCIS rejected petitioner's SIJS petition because it was delivered by a private messenger service that was not FedEx or UPS, which forced the petitioner to refile her SIJS petition through FedEx past her 21st birthday. The AAO held that USCIS did not improperly reject her petition and therefore did not sustain the appeal).

While Lucia could make this argument, USCIS will not waive the age requirement due to FedEx's failure to deliver as guaranteed. Note again that in Lucia's case, it would have been best for her accredited representative to have used the in-person filing option at a local USCIS field office.

**Other Filing Delay Arguments.** Untimely SIJ petition filings due to other unforeseeable circumstances out of the petitioner's control have also not been successful. For example, USCIS has denied cases based on the age requirement when mail delays were due to severe weather conditions<sup>27</sup> or when delays were due to personal emergency circumstances.<sup>28</sup> In addition, the AAO has held that even if a petitioner meets the *Lozada* requirements to show ineffective assistance of counsel, this "does not provide as a remedy the waiver of applicable eligibility requirements."<sup>29</sup> In other words, even when the cause of the late filing was ineffective assistance of counsel, USCIS will still deny the SIJS petition.

## B. Successful arguments

Although most arguments will not overcome the SIJS age requirement, there are a few arguments that the AAO has accepted. These are essentially limited to circumstances in which USCIS made a mistake, or under the new policy for paper-based filings received on a weekend or federal holiday, when the Form I-360 was received prior to the petitioner's 21<sup>st</sup> birthday but not receipted until the next business day.

**USCIS Receipted the Petition Incorrectly.** In rare circumstances, an SIJS petition may be timely filed but USCIS incorrectly records the receipt date.<sup>30</sup> A petitioner should always keep

<sup>27</sup> See *In Re: 31541152* (AAO Apr. 22, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/APR222024\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/APR222024_02C6101.pdf); *In Re: 29894814* (AAO Jan. 22, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/JAN222024\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/JAN222024_02C6101.pdf); *In Re: 21761484* (AAO Dec. 13, 2022), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2022/DEC132022\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/DEC132022_02C6101.pdf).

<sup>28</sup> *In Re 15260052* (AAO Aug. 24, 2022), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2022/AUG242022\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/AUG242022_01C6101.pdf) (The AAO denied petitioner's appeal when petitioner failed to deliver his petition before his 21<sup>st</sup> birthday because "he was enrolled as a full-time student and unable to go to his attorney's office to provide information for his SIJS petition so that it could be submitted prior to turning 21 years old."); see also *In Re: 15804741* (AAO Dec. 27, 2021), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2022/AUG242022\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/AUG242022_01C6101.pdf) (The AAO denied in part petitioner's appeal when the petitioner failed to timely file her SIJS petition "due to family struggles and issues with her daughter.").

<sup>29</sup> *In Re: 31767307* (AAO Apr. 12, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/APR122024\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/APR122024_02C6101.pdf).

<sup>30</sup> See *Matter of S-D-R-R-*, ID# 1342018 (AAO May 30, 2018), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2018/MAY302018\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2018/MAY302018_02C6101.pdf) (Petitioner was able to show that the SIJS petition was delivered by Priority Express Mail on a Saturday three days before the petitioner's 21<sup>st</sup> birthday.); see also *Matter of A-Y-L-L-*, ID#8128 (AAO Oct. 7 2016), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2016/OCT072016\\_04C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2016/OCT072016_04C6101.pdf) (AAO denied for other grounds but held that the USPS express mail receipt clearly showed that the petition was received by USCIS before the petitioner's 21<sup>st</sup> birthday.).

their confirmation of delivery of their SIJS petition to have as proof should USCIS erroneously deny a petition based on an incorrect receipt date. It is always advisable to mail an SIJS petition (or any application to USCIS, for that matter), by certified or priority mail rather than First Class, so that you can track the delivery.

**USCIS Improperly Rejected the Filing.** If USCIS rejects an SIJS petition improperly, a petitioner can retain their initial filing date. For example, in the following cases the AAO has held that the petitioner did meet the eligibility requirement of filing under the age of 21:

- An SIJS petitioner mailed her SIJS petition and USCIS initially rejected the petition for failure to submit a complete Form I-360. However, it was an improper rejection because the supporting documentation “clearly indicate[d] that all parts of the form were complete, and the required signature was present.”<sup>31</sup>
- An SIJS petitioner mailed her SIJS petition and USCIS initially rejected the petition for failure to attach the proper fee. However, it was an improper rejection because the initial petition “clearly indicate[d] the filing was for a Special Immigrant Juvenile,” which does not require a fee.<sup>32</sup>
- An SIJS petitioner’s initial petition was improperly rejected for using a new version of Form I-360 that “was neither available nor required to be used by the Petitioner.”<sup>33</sup>

**Example:** Danielle is eligible to apply for SIJS after obtaining a family court order finding that she cannot be reunified with her mother due to abuse and it is not in her best interest to return to her country of origin. Danielle’s date of birth is November 21, 2003. Danielle’s attorney sends her SIJS petition to USCIS via USPS and it is received on November 19, 2024. However, USCIS rejected the petition because she did not include a fee for her SIJS petition. Could Danielle argue that her initial SIJS petition was properly filed?

YES! Danielle’s SIJS petition does not require a fee per the instructions of Form I-360. USCIS erroneously rejected Danielle’s petition, and she should file a motion to reopen and/or reconsider with the AAO.

**Filing was Received on a Weekend or Federal Holiday.** USCIS does not accept paper-based applications on Saturdays, Sundays, or federal holidays.<sup>34</sup> Because of this, when the last day of the filing period falls on a Saturday, Sunday, or federal holiday, then USCIS applies the regulatory definition of a day under 8 CFR § 1.2, which extends the filing deadline until the

<sup>31</sup> *In Re: 34892135* (AAO Sept. 3, 2024), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2024/SEP032024\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2024/SEP032024_02C6101.pdf).

<sup>32</sup> *In Re: 25118772* (AAO Feb. 28, 2023), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2023/FEB282023\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2023/FEB282023_02C6101.pdf); see also *Matter of R-S- ID# 873604* (AAO Jul. 16, 2018), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2018/JUL162018\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2018/JUL162018_01C6101.pdf) (Although the AAO denied on other grounds, the AAO held the petitioner’s initial petition should have not been rejected because it did not require a filing fee.).

<sup>33</sup> *In Re: 12236515* (AAO May 4, 2021), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2021/MAY042021\\_01C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2021/MAY042021_01C6101.pdf).

<sup>34</sup> See the U.S. Office of Personnel Management’s website for a list of federal holidays, <https://www.opm.gov/policy-data-oversight/pay-leave/federal-holidays>; see also 1 USCIS-PM B.6(D).



end of the next business day that is not a Saturday, Sunday or federal holiday. When this happens, USCIS's receipt notice will still contain the physical receipt date but USCIS will consider the application to be timely filed. Note that USCIS updated its policy on March 29, 2023, to allow the filing of petitions or applications until the *end* of the next business day.<sup>35</sup>

For SIJS petitioners, sometimes the last day before their 21<sup>st</sup> birthday falls on a Saturday, Sunday, or a federal holiday. If their petition arrives to USCIS on the last day before they turn 21 and that day is a weekend or federal holiday, then the petition was timely received by USCIS even though it was not receipted by USCIS until the next business day.<sup>36</sup>

**Example:** Martin is eligible to apply for SIJS after obtaining a family court order finding that he cannot be reunified with his father due to abandonment and neglect and it is not in his best interest to return to his country of origin. Martin's date of birth is June 24, 2003, and his 21<sup>st</sup> birthday falls on a Monday. Martin's attorney sends his SIJS petition to USCIS via FedEx next day delivery on June 21, 2024. It is physically received by USCIS on Saturday June 22, 2024, but it is receipted by USCIS on Monday, June 24, 2024 because USCIS does not accept paper-based application on the weekends. Was Martin's petition timely filed before his 21<sup>st</sup> birthday?

YES! Martin's application was physically received on Saturday, June 22, 2024 before his 21<sup>st</sup> birthday. Even if USCIS issues a receipt stating it was received on June 24, 2024, USCIS should still consider the application timely filed based on USCIS policy regarding applications received on a weekend or holiday.

### C. Federal litigation

If an SIJS petition is erroneously denied, in addition or as an alternative to appealing the decision to the AAO, federal litigation is another possibility.

In a few instances, federal litigation has been a helpful tool to assist clients who missed the 21<sup>st</sup> birthday filing deadline. The Administrative Procedure Act (APA) is a federal law that governs agency action. Pursuant to the APA, an individual can challenge certain unlawful decisions or actions by immigration agencies.<sup>37</sup> To file an APA claim in federal district court, you must initiate a civil lawsuit by filing a complaint that in essence alleges a federal agency has acted unlawfully under the APA.<sup>38</sup>

An important case to review is *In re 21st Birthday Denials of Special Immigrant Juv. Status Applications by USCIS*, 637 F. Supp. 3d 23 (E.D.N.Y. 2022), *reconsideration denied in part*, No. 22-CV-1926 (GRB), 2023 WL 3949736 (E.D.N.Y. Feb. 10, 2023), and *reconsideration*

<sup>35</sup> See USCIS, *USCIS Updates Policy on Time Frames for Paper-Based Filings and Responses Ending on Saturdays, Sundays, or Federal Holidays*, <https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-on-time-frames-for-paper-based-filings-and-responses-ending-on-saturdays>.

<sup>36</sup> See *In Re: 26351914* (AAO May 23, 2023), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2023/MAY232023\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2023/MAY232023_02C6101.pdf).

<sup>37</sup> See 5 U.S.C. § 706.

<sup>38</sup> For more information on how to file a district court action see the American Immigration Council (AIC), National Immigration Litigation Alliance (NILA), and the ABA, *Immigration Lawsuits and the APA: Basics of a District Court Action* (Sept. 22, 2021), [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/immigration\\_lawsuits\\_and\\_the\\_apa\\_basics\\_of\\_a\\_district\\_court\\_action\\_0.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/immigration_lawsuits_and_the_apa_basics_of_a_district_court_action_0.pdf).

*stricken*, No. 22-CV-1926 (GRB), 2023 WL 3949514 (E.D.N.Y. Apr. 25, 2023). This case outlines the main issues with requiring SIJ eligible youth to file while under the age of 21.

In its memorandum of decision and show cause order, the court held that USCIS ignored Second Circuit precedent of *Duarte-Ceri v. Holder* and was required to consider the SIJS petitioner's birth hour when determining whether the petition was timely filed.<sup>39</sup> In addition, the Court held that USCIS did not adhere to its own regulation under 8 CFR § 1001.1 because it did not consider that the petition was delivered on a legal holiday.<sup>40</sup> Furthermore, the Court held that USCIS's requirement that SIJ petitions be sent via mail to the Chicago lockbox facility is unjustifiable because USCIS regulations contemplate electronic or paper filings under 8 CFR § 103.2 (a)(7)(i) and the petition could easily be electronically filed since Form I-360 "requires only copies of court documents, and USCIS permits electronic copies of original signatures."<sup>41</sup> Since USCIS has not made the Form I-360 available to file electronically, this argument can be used in future litigation where the application could have been received timely if electronic filing were available. The Court also noted that USCIS "inexplicably" disallowed personal delivery of the Form I-360, which was an important point that may have led USCIS to now allow in-person filings of the Form I-360.<sup>42</sup>

Moreover, the Court held that 8 CFR § 103.8(b) builds in a three-day window for delivery for its service by mail and provides no reciprocity for applicants required to use mail.<sup>43</sup> In other words, service for USCIS is complete upon mailing and builds a three-day window for delivery to account for possible mailing delays, but the same is not given to applicants required to use mail. This is another argument that USCIS has not addressed and can be used in future litigation. Lastly, the Court held that USCIS failed to take into account the severe weather event that occurred in the petitioner's case.<sup>44</sup> Although USCIS has refused to accept this argument in the past as seen in various AAO non-precedential decisions, it is still worth making this argument should USCIS reconsider its policy in the future.

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*After the Court issued a memorandum of decision and show cause order on October 28, 2022, USCIS made various policy changes, such as updating their policy on filings received on the weekend or a federal holiday and creating the in-person filing option for youth within two weeks of their 21<sup>st</sup> birthday.*

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<sup>39</sup> *Id.* at 32-35.

<sup>40</sup> *Id.* at 35.

<sup>41</sup> *Id.* at 36.

<sup>42</sup> See 6 USCIS-PM J.2(B); see also USCIS, *USCIS Provision Allowing Special Immigrant Juveniles to File Form I-360 in Person Before Their 21<sup>st</sup> Birthday*, (Mar. 30, 2023), <https://www.uscis.gov/newsroom/alerts/provision-allowing-special-immigrant-juveniles-to-file-form-i-360-in-person-before-their-21st>.

<sup>43</sup> *Id.* at 36-37.

<sup>44</sup> *Id.* at 37.

Outside of the SIJS context, in the Second Circuit, there is precedent that supports the argument that days are divisible, and the time of birth and receipt should matter when determining timeliness (as noted in the above case in the Eastern District of New York). In *Duarte-Ceri v. Holder*, 630 F.3d 83, 89 (2d Cir. 2010), the Court held that the legal fiction of a day being indivisible “is a rule of convenience that is satisfactory only as long as it does not operate to destroy an important right.” In addition, the Court held that “it is important to the ends of justice to parse the day into hours.” Although this case was in a different context—naturalization—the case has been used numerous times by SIJS petitioners to assert that their petition was timely filed before their time of birth. Similarly, in *Coniglio v. Garland*, 556 F. Supp. 3d 187 (E.D.N.Y. 2021), a case involving revocation of a family-based petition, the Court held that the principles articulated in *Duarte-Ceri* applied even outside of the naturalization context (the case was in the context of a family-based petition). However, as discussed above, USCIS has not been consistent in accepting this argument in the SIJS context and in fact has outright dismissed these cases.<sup>45</sup>

#### IV. Conclusion

SIJ eligible youth and their representatives should be extremely cautious when drafting the Form I-360 to avoid rejections. In addition, the SIJS petition should be filed as soon as possible before the youth turns 21. If an SIJS petition cannot be filed with ample time before the youth turns 21, advocates should utilize the new USCIS policy that allows in-person filing of the SIJS petition within two weeks of the youth turning 21. The only circumstances in which people have been successful in overcoming denials based on the age requirement are when USCIS receipted or rejected the petition incorrectly (in other words, when the petition was actually filed prior to the age of 21, but USCIS made an error), or when the filing was received prior to the 21<sup>st</sup> birthday, but on a weekend or federal holiday. Although it is possible to file a motion to reconsider and/or motion to reopen a denial of an I-360 with the AAO or file a civil lawsuit in federal court to challenge a denial, both of these options are time-intensive and may not ultimately be successful. For all of these reasons, the best way to ensure a young person’s eligibility for SIJS is to file well in advance of their 21<sup>st</sup> birthday, or to file in-person if they are within two weeks of turning 21.

<sup>45</sup> See *In Re: 2216203* (AAO Nov. 29, 2022)(The AAO held a day is not divisible. In so doing, the AAO explicitly referenced *Duarte-Ceri v. Holder*, 630 F.3d 83 (2d Cir. 2010) and *Coniglio v Garland*, 556 F. Supp. 3d 187 (E.D.N.Y. 2021) and held that the principles in both of these cases do not apply to the SIJ petition.), [https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions\\_Issued\\_in\\_2022/NOV292022\\_02C6101.pdf](https://www.uscis.gov/sites/default/files/err/C6%20-%20Dependent%20of%20Juvenile%20Court/Decisions_Issued_in_2022/NOV292022_02C6101.pdf).



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**About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC’s mission is to protect and defend the fundamental rights of immigrant families and communities.

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