

Matter of Giovana BORGES BORSOI, Petitioner

Decided September 23, 2026¹

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office

- (1) To establish the eligibility requirement under 8 C.F.R. § 204.11(b)(1), requiring that petitioners for special immigrant juvenile classification be “under 21 years of age at the time of filing,” the petition must be filed before the day of the petitioner’s 21st birthday.
- (2) The date of birth, rather than the specific hour, determines whether a petitioner was under 21 years of age at the time he or she filed a petition.

FOR THE PETITIONER: Mayra Meimerck, Esquire, Woburn, Massachusetts

The Petitioner seeks classification as a special immigrant juvenile (“SIJ”). *See* sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101(a)(27)(J), 1154(a)(1)(G) (2024); 8 C.F.R. § 204.11.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, for special immigrant juvenile classification (“SIJ petition”) because the Petitioner did not establish that she was under the age of 21 at the time the SIJ petition was filed. The Petitioner appealed the decision to us. 8 C.F.R. § 103.3. The only issue before us is whether she was *under* 21 years old when she filed her SIJ petition. The Petitioner avers that we must consider the exact moment or hour of her birth in determining this issue.

The Petitioner bears the burden of establishing eligibility by a preponderance of the evidence. INA § 291, 8 U.S.C. § 1361 (2024); *Matter of Chawathe*, 25 I&N Dec. 369, 375–76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

¹ This decision was originally entered on March 5, 2025. Editorial changes have been made consistent with the designation of the case as precedent.

I. LAW

At the outset, we recognize that Congress did not prescribe a specific age requirement for SIJ petitioners. The statutory authority for adjudicating SIJ petitions is contained in the INA's definition section at 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J), which defines aliens who may be classified as "special immigrant" juveniles 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

(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 chapter[.]

Congress created the SIJ classification provision in 1990 to provide protection for alien juveniles who have been declared dependent on a state juvenile court. *See id.* The SIJ eligibility standard has been subsequently amended through several legislative enactments, most recently by section 235(d) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457, 122 Stat. 5079 ("TVPRA").²

² *See also* section 153(a)(3)(J) of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 5005 (1990); section 302(d)(2)(A)-(B) of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991, Pub. L. No. 102-232, 105 Stat. 1744; section 219(a) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4316; section 113 of the 1998 Appropriations Act, Pub. L. No.

However, satisfying the INA definition alone does not make a person eligible for SIJ classification. A petitioner must also meet all the eligibility requirements imposed by agency regulation at 8 C.F.R. § 204.11, which does impose an age requirement.³

Specifically, the regulation at 8 C.F.R. § 204.11(b)(1) states, in pertinent part:

A petitioner is eligible for classification as a special immigrant juvenile under section 203(b)(4) of the [INA] as described at section 101(a)(27)(J) of the [INA], if they . . . [are] under 21 years of age at the time of filing the petition[.]

U.S. Citizenship and Immigration Services (“USCIS”) has sole authority to implement the SIJ provisions of the INA and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002).⁴ SIJ classification may only be granted upon the consent of the Secretary of DHS, through USCIS, when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. *See* INA § 101(a)(27)(J)(i)–(iii); *see also* 8 C.F.R. § 204.11(b)(5). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification is not bona fide. 8 C.F.R. § 204.11(b)(5).

II. ANALYSIS OF THE GOVERNING REGULATION

A. The INS Implemented the SIJ Age Requirement by Regulation

Although the INA does not specify an age requirement, it does require that the petitioner be “declared dependent on a juvenile court,” and the

105-119, 111 Stat. 2460; section 826(i) of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. 109-162, 119 Stat. 3065.

³ The Department of Homeland Security (“DHS”) issued a final rule, effective April 7, 2022, amending its prior 1993 SIJ regulations. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

⁴ DHS was created by the Homeland Security Act of 2002. In March 2003, USCIS assumed responsibility for the immigration service functions of the federal government and replaced the former Immigration and Naturalization Service (“INS”).

governing regulation at 8 C.F.R. § 204.11(b)(1) requires that a petitioner be “under 21 years of age at the time of filing the petition.” *Cf.* INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J). Unlike the INA, the regulation also provides that the petitioner must be “unmarried at the time of filing and adjudication” of the SIJ petition. 8 C.F.R. § 204.11(b)(2).⁵

To determine the meaning of a regulation, we must apply the same principles that “imbue exercises in statutory construction.” *Hebert v. Donahue*, 167 F.4th 1, 12 (1st Cir. 2026) (quoting *Jette v. United of Omaha Life Ins.*, 18 F.4th 18, 26 (1st Cir. 2021)); *see also Matter of Aguilar-Aquino*, 24 I&N Dec. 747, 749 (BIA 2009) (“The guiding principles for construing administrative regulations are similar to the rules governing statutory construction.”). We begin with the plain language of the regulation, keeping in mind “that the words of a [regulation] must be read in their context and with a view to their place in the overall [regulatory] scheme.” *United States v. Miller*, 604 U.S. 518, 533 (2025) (citation modified).

Accordingly, in the absence of direct statutory language as to any specific age limit, we read the regulations to plainly require that an alien be under 21 years old on the filing date of the petition.

The preamble and response to public comment support this reading. To implement the SIJ provision Congress created in 1990, the Department of Justice (under which the former INS operated) effectuated SIJ-related administrative changes in 1991 through an interim rule and, following public comments, promulgated a final rule in 1993 where the “eligibility requirements” that an alien be “under” 21 years old and “unmarried” first appeared. *See* 58 Fed. Reg. 42843, 42845-42846 (Aug. 12, 1991) (codified at 8 C.F.R. § 204.11(c)(1), (2) (1993)).

During this rulemaking process, the former INS specifically shared the public’s concern that definitions of terms such as “juvenile,” “minor,” or “child” vary from state to state and thus may cause confusion and inequity among petitioners. 58 Fed. Reg. 42843, 42846 (1991). To “minimize” this “confusion caused by dissimilar state laws,” and acknowledging the lack of clear statutory language restricting juveniles’ age, the agency then promulgated the rule that petitioners “be under twenty-one years of age” to

⁵ The same requirements in the prior 1993 rule have been construed as being “consistent” with the INA’s definition of “child” as set forth in INA § 101(b)(1), 8 U.S.C. § 101(b)(1) (defining the term to mean “an unmarried person under twenty-one years of age”). *See Alvarez Sosa v. Barr*, 369 F. Supp. 3d 492, 508 n.12 (E.D.N.Y. 2019). However, the INA itself does not mention the word “child” in its SIJ provision or expressly require reliance on that definition.

implement a “consistent countrywide definition of the age at which an alien will no longer be eligible for” SIJ classification. *Id.* (codified at 8 C.F.R. § 204.11(c)(1) (1993)). As marriage would alter the requisite dependent relationship with the juvenile court, the final rule also provided that petitioners must be unmarried. The drafters of the rule additionally noted that the eligibility requirements as to age and marital status also conform with the INA’s definition of “child” contained in section 101(b)(1), though the INA itself does not expressly require such conformity.

The original 1993 rule therefore shows that the agency intended a uniform implementation of the two requirements (i.e., age and marital status) in administration of the SIJ program. Consistent with these eligibility requirements with a clear regulatory purpose, Congress later amended the SIJ provision through TVPRA to provide an age-out protection as well as other things. *See* TVPRA (2008), Pub. L. 110-457, 122 Stat. at 5080 (providing that SIJ petitions may not be denied “based on age if the alien was a child on the date on which the alien applied for such status.”).⁶

We read the use of the term “child” in section 235(d)(6) of the TVPRA as Congress’ adoption of the INS’ original administrative interpretation of the SIJ definition, requiring petitioners to be “under 21 years of age at the time of filing the petition.” 8 C.F.R. § 204.11(b)(1). Accordingly, we give the original INS interpretation great weight and presume it is correct.

B. New 8 C.F.R. § 204.11’s Unchanged Age Requirement

To further implement the SIJ-related enactments over the years and update the 1993 rule, DHS issued a proposed rule and, following public comments, promulgated a final rule in 2022. *See* 76 Fed. Reg. 54978 (Sept. 6, 2011); 84 Fed. Reg. 55250 (Oct. 16, 2019); 87 Fed. Reg. 13066 (Mar. 8, 2022) (codified at 8 C.F.R. § 204.11 (2022)). This regulation, which governs all the requirements and procedures for SIJ classification today, continues to require that a juvenile must be “under 21 years of age at the time

⁶ USCIS has since referenced the INA’s definition of “child” at section 101(b)(1) in interpreting TVPRA’s age-out protection tied to the date of filing. *See* USCIS, Policy Manual, Vol. 6, Pt. J, Ch. 2(B), n.2, <https://www.uscis.gov/policy-manual>. In addition to the age-out protection, TVPRA provided that children who have been granted SIJ classification may be eligible for various placement and services and states could seek reimbursement from the federal government for providing foster care, subject to the availability of appropriations.

of filing the petition.” 8 C.F.R. § 204.11(b)(1). There is no other direct, unequivocal authority specifically pertaining to the SIJ age requirement.

III. CALCULATING “UNDER 21 YEARS OF AGE”

Turning to the crux of the Petitioner’s appeal, we ask how an agency is to calculate whether an individual is “under 21 years of age.” Given Congress’ silence on the question with respect to SIJ petitions, as well as the near universal legal implications of certain birthdays—such as the age of majority, voting age, age of military conscription, the age at which one may legally buy alcohol and tobacco, motor vehicle driving age—we seek to give effect to the common understanding of “under 21 years of age.” 8 C.F.R. § 204.11(b)(1). Additionally, as we are interpreting our own regulations, we also consider policy implications. *Venigalla v. USCIS AAO*, 822 F.Supp.3d 1, 4 n.1 (D.D.C. Jan. 20, 2026) (“Regulations must also be read to avoid ‘unreasonable . . . , unjust and absurd’ results.” (quoting *Cannon v. Watermark Ret. Cmtys.*, 45 F.4th 137, 149 (D.C. Cir. 2022))).

We have for the most part consistently held that a petition filed on the alien’s 21st birthday, regardless of the claimed hour of birth, does not satisfy the eligibility requirement that the petitioner be under 21 years old at the time of filing. *See, e.g., In re 21st Birthday Denials of Special Immigrant Juv. Status Applications by USCIS*, No. 22-CV-1926 (GRB), 2023 WL 3949736, at *2 (E.D.N.Y. Feb. 10, 2023) (pointing out the agency’s largely consistent application of the age requirement by noting that of over 60 non-precedential decisions identified in an amicus brief, only four considered the hour of birth).⁷

The Petitioner urges us to change that practice and follow the lead of a district court that favored calculating a person’s “biological” age for SIJ purposes, using the divisibility method of fractionalizing a day. *See In re 21st Birthday Denials of Special Immigrant Juv. Status Applications by USCIS*, 637 F. Supp. 3d 23 (E.D.N.Y. Oct. 28, 2022) (relying on *Duarte-Ceri v. Holder*, 630 F.3d 83 (2d Cir. 2010), and its calculation of “biological” age for purposes of citizenship). In contrast to the precedential authority of a United States circuit court opinion, we are not bound to follow the published decision of a United States district court beyond the specific parties

⁷ We conclude that past decisions that may have considered the hour of birth in adjudicating SIJ petitions filed on 21st birthdays were in error.

of that decision. *Matter of N-A-G-C-*, 29 I&N Dec. 662, 665 (BIA 2026) (citing *Matter of K-S-*, 20 I&N Dec. 715, 718 (BIA 1993)).

While not binding, we will consider the reasoning of the key case cited by the district court in support of a divisible day. In *Duarte-Ceri*, the court found a “day” to be a divisible unit of time and a person’s hour of birth determinative of eligibility for United States citizenship. *See Duarte-Ceri v. Holder*, 630 F.3d at 87–88 (holding that former INA § 321(a)(4)’s requirement that an applicant for derivative citizenship be “under” 18 is ambiguous). The Court reached this conclusion on the assumed facts of his time of birth, since “as a matter of biological fact,” he had only lived 17 years, 364 days, and 12 hours, and thus not yet lived full 18 years. *Id.* In *Matter of L-M- & C-Y-C-*, 4 I&N Dec. 617 (BIA 1952), which the *Duarte-Ceri* decision referenced, the Board of Immigration Appeals (“Board”) acknowledged that “[a]s a general rule, in the computation of time, a day is to be considered an indivisible unit or period of time and the law will not, unless there is sufficient reason therefor, take cognizance of fractions of a day.” *Id.* at 619. However, rather than relying on the divisibility method, the Board in that case interpreted the statutory phrase “by the time he reaches the age of sixteen years” under former INA § 201 pertaining to loss of citizenship as including the entirety of the 16th birthday.⁸ *See id.* at 621. Like the Petitioner, others who filed SIJ petitions on their respective 21st birthdays have relied on these two cases in attempting to show that they have met the age requirement at 8 C.F.R. § 204.11(b)(1).

To the contrary, we find that the regulation refers to the term “age” in a simple legal sense as it is normally understood, rather than an unfamiliar and rarely used “biological” sense that is supposed to calculate the exact hour or even minute of a person’s birth, many years ago. *Cf. Duarte-Ceri*, 630 F.3d at 88; *see also id.* at 95 (Livingston, J., dissenting). Further, the more natural reading of the regulatory phrase “under 21 years of age” based on common and ordinary understanding reflected in everyday use suggests one plain meaning—*prior to* or *before* the day of the person’s 21st birthday, as many judges also have interchangeably used these phrases. *See, e.g., U.S. v. Casasola*, 670 F.3d 1023, 1027 (9th Cir. 2012) (using interchangeably the same former INA § 321(a)(4)’s phrase “under the age of eighteen years” that the *Duarte-Ceri* court also considered and the phrase “before [the person’s] 18th birthday”); *Carino v. Garland*, 997 F.3d 1053, 1060 (9th Cir. 2021)

⁸ As the issue is not before us, we decline to reach whether issues of citizenship or statutes of repose might require a more lenient, fractional calculation under those specific laws. We limit our discussion to SIJ petitions.

(using former INA § 321(a)(5)’s “under” 18 phrase and “prior to [the person’s] eighteenth birthday” interchangeably); *United States v. Diaz-Guerrero*, 132 Fed. Appx. 739, 740 (9th Cir. 2005) (using former INA § 320’s “under the age of eighteen years” and “before [the person’s] 18th birthday” interchangeably); *see also Duarte-Ceri*, 630 F.3d at 93 (Livingston, J., dissenting) (collecting more cases from different circuits where many other federal judges also have interchangeably used similar terms). A vast majority of SIJ petitioners also file their petitions on a day before the day of their 21st birthdays, indicating that they too have a plain understanding of the simple requirement.

Finally, as a basic canon of interpretation, we observe that the English common law provided for an indivisible day. “Long ago in the realization that approximation . . . serves equally well, . . . a most useful fiction was introduced into the law—the maxim that a day has no fractions, or put another way, a day is an indivisible point of time.” 5 A.L.R.2d 1143 (1949); *see also* 2 William Blackstone, Commentaries *141 (“the law generally rejecting all fractions of a day, in order to avoid disputes”); *Parker v. State*, 61 Md. App. 35, 38, 484 A.2d 1020, 1021–22 (1984) (citing the English case of *Herbert v. Turball* (1663), 83 Eng. Reprint 1129, among other authorities, to conclude the appellant was 18 when he committed the charged offense on his birthday). When a federal regulation includes a term that has “accumulated settled meaning under . . . the common law,” we infer that the rule intended to incorporate that meaning unless a statute or rule dictates otherwise. *Info-Hold, Inc. v. Sound Merch., Inc.*, 538 F.3d 448, 455 (6th Cir. 2008) (quoting *Neder v. United States*, 527 U.S. 1, 21 (1999) (internal citations deleted)). Other than referencing *Duarte-Ceri*, 630 F.3d at 88, which states that “courts may ascertain the precise time” of an act “when substantial justice requires it,” the Petitioner has not pointed to any statute or rule that requires us to consider a fraction of a day in calculating “under 21 years of age.”⁹

⁹ To be clear, we do not conclude that the common law rule for computing age supersedes the plain language of the governing regulation and its common-sense meaning. *See, e.g., United States v. Wright*, 197 F. 297, 298 (8th Cir. 1912) (“The [common] law ordinarily taking no cognizance of fractions of days, one becomes of full age *the first moment of the day before his twenty-first anniversary*.” (emphasis added)); *but see People v. Woolfolk*, 304 Mich. App. 450, 464 (2014) (“certain other jurisdictions have rejected the common-law rule in favor of the birthday rule, where ‘a person attains a given age on the anniversary date of his or her birth.’” (quoting *In re Robinson*, 120 N.C. App. 874, 877, 464 S.E.2d 86 (1995))).

As is true for any clear statutory language, we should “decline to manufacture ambiguity” where none exists and the regulatory language has a clear meaning and purpose. *See United States v. Batchelder*, 442 U.S. 114, 122 (1979). There is no dispute that a birthday ordinarily means the *entire* 24-hour day, and therefore petitioners must file their SIJ petitions on a day *before* the day they turn 21 for their petitions to be considered as filed while still *under* the age of 21. *See Duarte-Ceri*, 630 F.3d at 90 (concluding that because someone’s birthday necessarily includes the *entirety* of the birthday, from 12:00 a.m. to 11:59 p.m., a phrase like “before” or “prior to” a birthday clearly means *before* the birthday begins at 12:00 a.m.).

To the extent that the regulatory phrase “under 21 years of age” may be construed as being susceptible to more than one reasonable reading, though we concede no ambiguity, we would still interpret it to mean on a day *before* the day of the petitioner’s 21st birthday as the best interpretation. This is so particularly because the implementing SIJ rule in setting forth this requirement aimed to minimize confusion and promote a consistent and uniform age limit at which an alien will no longer be eligible for the classification. *See* 58 Fed. Reg. 42843, 42846 (1991) (codified at 8 C.F.R. § 204.11(c)(1) (1993)); 87 Fed. Reg. 13066, 13078 (2022) (codified at 8 C.F.R. § 204.11(b)(1) (2022)). A fractional computation of one’s age would disadvantage those who were born, for example, at 12:01 a.m. on a given day, compared to those born at 11:59 p.m. on the same day. Although both share the same date of birth, the person born at 12:01 a.m. would be required to file their SIJ petition effectively a day earlier, while the person born at 11:59 p.m. would have until the end of day to file.¹⁰ This method also presents an undue administrative burden on the agency charged with receiving and processing the petitions, reviewing related birth evidence, and determining and accounting for different time zones in various countries. There is no evidence that the INA and implementing regulations intended to impose such a granular, malleable, and individualized standard for purposes of the age requirement. We must also presume, unless there is reason to think otherwise, that the implementing agency intended the ordinary meaning of words in its own regulations, as would be the case when Congress enacts statutes. *See, e.g., Diamond v. Diehr*, 450 U.S. 175, 182 (1981) (holding that in statutory construction, “words will be interpreted as taking their ordinary contemporary, common meaning”); *see also Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is

¹⁰ Further complicating the matter, not all countries include a time of birth on their birth certificates. *See, e.g.,* National Library of Australia, “Find what time you were born,” available at <https://www.library.gov.au/research/family-history/family-history-research-guide/find-what-time-you-were-born>.

that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”) (citation omitted).

The divisibility method also may undermine a state juvenile court’s age determination required for a dependency or custody order. *See* 8 C.F.R. §§ 204.11(a), 204.11(c)(3) (requiring a juvenile court to have exercised its authority over an SIJ petitioner as a *juvenile* under state law). A state juvenile court may not be able to take jurisdiction and issue a qualifying dependency or custody order for an alien who is no longer a juvenile due to an age limit imposed by each state’s dependency or custody laws, even though the federal law and regulation allow an alien to file an SIJ petition until the age of 21. Because DHS is not supposed to question state juvenile courts’ independent age determinations under dissimilar state laws that may or may not have to rely on the method of fractionalizing a day in exercising their jurisdiction over an alien as a juvenile, potential disparity in application of the divisibility method among different states would inherently be at tension with the clear regulatory goal of a uniform application of the SIJ age requirement. *See generally* USCIS, Policy Manual, Vol. 6, Pt. J, Ch. 2(C)(4), <https://www.uscis.gov/policy-manual> (explaining that the state law definition of “juvenile” controls jurisdiction to determine dependency or custody proceedings before the juvenile court, and “[t]here is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law”); *see also* 87 Fed. Reg. 13066, 13086 (Mar. 8, 2022) (“USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law.”). However, we have yet to see a case where an alien files a request for a dependency or custody order with a state juvenile court on the day an alien reaches the age of majority under state law (typically, age 18 or 21) and where a state court applied the divisibility method, as those seeking such an order usually file court petitions well before reaching the age of majority. This fact further indicates that those seeking a dependency or custody order and state juvenile courts too have a plain understanding of similarly phrased age requirements under state law (e.g., “under 18” or “under 21”).

Lastly, interpreting 8 C.F.R. § 204.11(b)(1)’s SIJ age requirement as blanketly permitting a lenient filing on the *entire* day of an alien’s 21st birthday until 11:59 p.m., as was done in the loss of citizenship context in *Matter of L-M- & C-Y-C-*, *supra*, would be contrary to the “*under 21* at filing” requirement and render inapplicable the fractional method.

IV. FACTS AND DISCUSSION

As with all eligibility criteria, the Petitioner must meet 8 C.F.R. § 204.11(b)(1)'s age requirement "at the time of filing the benefit request." 8 C.F.R. § 103.2(b)(1). A petition is considered filed on "the date it is properly filed and received by USCIS." 8 C.F.R. § 204.1(b). "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)(i). The SIJ final rule further requires that a petitioner must submit, among other things, a "petition by or on behalf of a juvenile, filed on the form prescribed by USCIS in accordance with the form instructions." 8 C.F.R. § 204.11(d)(1). The Form I-360 instructions in turn state that an individual may file a Form I-360 for SIJ classification if he or she is "unmarried and less than 21 years of age." See www.uscis.gov/sites/default/files/document/forms/i-360instr.pdf.

The Petitioner was born on March 8, 2002, in Imperatriz, Brazil. On Wednesday, March 1, 2023, a week before she turned 21, she sought a dependency order and SIJ-related findings before the Commonwealth of Massachusetts Probate and Family Court. After a hearing on Friday, March 3, 2023, the court then issued a *Judgment of Dependency Pursuant to G.L. c. 119 § 39M* and *Special Findings of Fact and Rulings of Law* (SIJ order) determining that the Petitioner, "age 20 years, is an unmarried juvenile ward" under state law and dependent upon the court. The court further concluded that reunification with the Petitioner's mother was not viable due to neglect and abandonment, and that it was not in her best interest to return to Brazil, her country of nationality. The Petitioner mailed her SIJ petition on Monday, March 6, 2023. She sent two additional SIJ petition packages on March 7, 2023. USCIS received all three petitions on March 8, 2023, the day of her 21st birthday.

The Director denied all three petitions, concluding that the Petitioner was ineligible because she was not under 21 years old when her petitions were filed, as required under 8 C.F.R. § 204.11(b)(1). She appealed one of the three denials. Relying on *Duarte-Ceri*'s fractional method of calculating a day and one's "biological" age, 630 F.3d at 87–91, the Petitioner asserts that she was still hours under age 21 when her petitions were filed because she was born in the afternoon, and her petitions were filed on the morning of her 21st birthday.

At the outset, this matter arose in the First Circuit, and we are not required to accept a potentially adverse decision like *Duarte-Ceri*, decided by another

circuit, as binding authority. See *Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989). We also see no compelling reason to follow it. In *Duarte-Ceri*, the Second Circuit held, after concluding that the statutory age requirement at issue is ambiguous, that a day was divisible for purposes of assessing former INA § 321(a)(4)'s requirement that children be "under" 18 in order to derive citizenship by operation of law. See 630 F.3d at 83. Although the court, in a two-to-one decision, ruled in favor of the divisibility of a day in that specific case on the assumed facts as to the alien's time of birth, the court explained that its primary consideration was "'the most precious right' of citizenship" and the stakes were "high" and "momentous" particularly given that the alien (or putative U.S. citizen) was otherwise facing deportation. *Id.* at 89 (citations omitted). The majority further specifically opined, *id.* at 89, that the divisibility method should have limited application, as "circumstances like these are not common occurrences." See also *id.* at 91 n.4 (stating that reliance on a foundational case like *Matter of L-M- & C-Y-C-*, *supra*, which also took "a lenient view" in determining a citizenship claim that turned on the alien's age under another former INA section, should be "such a rare circumstance").

The majority in *Duarte-Ceri* also held that the claim that a day is indivisible is a "legal fiction," and courts may ascertain the precise time when substantial justice requires it. *Id.* 630 F.3d at 88–89. But the cases cited in support of this proposition all dealt with transactional matters with economic consequences, such as bankruptcy debts, township bonds, and land patents, rather than computing a biological age. See *id.*; see also *id.* at 96 n.13 (Livingston, J., dissenting). Here, we are not presented with a privilege similar to U.S. citizenship by operation of law, land or property ownership, or other monetary claims. We are considering real regulatory authority mandating the SIJ age requirement, its plain meaning, and related best practice and interpretation, rather than a "legal fiction."

We discern no administrative prudence in extending the divisibility method of calculating one's biological age to SIJ petitions and decline to read *Duarte-Ceri*'s majority opinion as mandating its application to all immigration cases before DHS with similar regulatory or statutory age requirements.¹¹ As noted above, the INA's SIJ provision does not include

¹¹ Courts have applied *Duarte-Ceri*'s method to a visa petition filed by a stepfather and two SIJ petitions filed on the aliens' 21st birthdays. See, e.g., *Coniglio v. Garland*, 556 F. Supp. 3d 187 (E.D.N.Y. 2021); *In re 21st Birthday Denials of Special Immigrant Juv. Status Applications by USCIS*, *supra*. However, these decisions are also not binding authority. The Petitioner has not identified, and we are unaware of, any SIJ precedent case that has directly dealt with the "under 21" requirement and would require us to apply the fractional method.

any specific age limit, and the original and new regulations intended the requirement to be uniformly applied nationwide to minimize confusion. An age determination based on each alien's individual time of birth, varying from 12 a.m. to 11:59 p.m. and tied to different time zones in various countries, would unfairly favor those born closer to 11:59 p.m., create confusion among the aliens, add undue operational and adjudicative burden on the implementing agency, and be contrary to its regulatory intent. Further, as explained, the divisibility method could also undermine a state juvenile court's independent age determination typically required for and included in a juvenile dependency or custody order, a finding under state law DHS is not supposed to question. Neither the INA, TVPRA, nor the regulations indicate that a day is a divisible unit or that a petitioner's age is determined by the specific hour of birth. Absent an indication otherwise, we are expected to give the words of a statute their "ordinary, contemporary, common meaning." *Williams v. Taylor*, 529 U.S. 420, 431 (2000). Similar rules of statutory construction apply for considering agency regulations. *See, e.g., Garcia v. Garland*, 64 F.4th 62, 72–74 (2d Cir. 2023). Consequently, the date of the Petitioner's birth, rather than the specific hour, determines whether she was under 21 years old at the time she filed her SIJ petition.

The Petitioner also notes that, soon after her petition was filed, USCIS began allowing in-person filing within the 2-week period before petitioners turn 21 years old. The Petitioner did not have this option prior to turning 21 years old and maintains that, had it been available, her petition would have been filed prior to March 8, 2023.

Although the Petitioner correctly notes that during the pendency of her petition there was a policy change permitting SIJ petitioners nearing their 21st birthday to file in person, she has not cited support for the claim that this change in filing procedure retroactively applied in her case.

There is no provision in the INA or the implementing regulations which authorizes USCIS to disregard and waive this mandatory eligibility requirement where an alien has not filed a petition on a day before the day of his or her 21st birthday. *See United States v. Nixon*, 418 U.S. 683, 695–96 (1974) (holding that government officials are bound by governing statutes and regulations in force); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (stating that immigration regulations carry the force and effect of law); *see also Matter of Anselmo*, 20 I&N Dec. at 30 (same).

V. CONCLUSION

The Petitioner has not overcome the Director's finding that she was not under 21 years old on the date that her SIJ petition was received, as required. Accordingly, she has not established her eligibility for SIJ classification.

ORDER: The appeal is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the INA through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in the aliens' removal from the United States and possible ineligibility for future visas or other immigration benefits.