



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

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

In Re: 17813928

Date: AUG. 26, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish that the court had jurisdiction over his custody and care as a juvenile under state law and was therefore not eligible for SIJ classification. On appeal, the Petitioner submits a brief asserting his eligibility for SIJ classification. 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 remand the matter to the Director for the entry of a new decision.

**I. LAW**

To establish eligibility for SIJ classification, petitioners must show that they are unmarried, under 21 years old, and have been subject to a state juvenile court order determining that they cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b).<sup>1</sup> Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (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

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<sup>1</sup> The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 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 was not *bona fide*. 8 C.F.R. § 204.11(b)(5). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

In January 2017, the Petitioner entered the United States without inspection and was placed in the custody of the Office of Refugee Resettlement (ORR) within U.S. Department of Health and Human Services. In April 2017, ORR released him to the care of a distant relative, I-U-.<sup>2</sup> In [ ] 2017, the State of Michigan’s Probate Court in [ ] issued an order appointing I-U- as limited guardian of a minor. According to the order, the court determined that the minor is in need of a guardian because parental rights of both parents have been terminated by death and the welfare of the minor will be served by the appointment. Listed on the bottom of the order were sections of the Michigan Compiled Laws Annotated (Mich. Comp. Laws Ann.), including sections 700.5204, 700.5205, 700.5212 which are relevant to the appointment for guardianship of a minor. The court also issued a letter of full guardianship to I-U-, expiring a year from issuance, and appointing care, custody, and control of the Petitioner to I-U-. In July 2017, the Petitioner filed a petition for SIJ classification. On the petition, he indicated his birthday was [ ] 1999, and submitted a late registered copy of his birth certificate, issued in 2016.

In February 2019, the Director issued a request for evidence (RFE), explaining that although the court found that the Petitioner could not be reunified with his parents due to death, the order was insufficient because it did not establish how death is a similar basis to abuse, neglect, or abandonment under the law of Michigan. The Director also requested documentation to establish a reasonable factual basis for all of the required findings by the court. In response to the RFE, the Petitioner submitted a copy of section 712A.19b of Mich. Comp. Laws Ann., asserting the law provides that “parental rights may be terminated due to abandonment, even if caused by death, because a child is being left to fend for themselves.” However, the Petitioner did not provide evidence that the court considered or relied on this law or concluded that the death of a parent is legally equivalent to abandonment under Michigan law. Further, section 712A.19b of Mich. Comp. Laws Ann. does not provide that the death of a parent is legally equivalent to abandonment. The Petitioner also submitted documentation he asserts formed the factual basis for the court’s findings. The documentation included the petition filed with the court for appointment of a temporary guardian and a waiver by the Petitioner’s sister giving consent for I-U- to obtain guardianship of the Petitioner. According to the petition for appointment of a guardian, a temporary guardian is necessary because the “[c]hild arrived through [ORR] Program.” With respect to Petitioner’s age, he submitted affidavits by two aunts bearing witness to his date of birth being [ ] 1999, and an affidavit by a former teacher, attesting that he provided religious education to the Petitioner from 2003 to 2007 and stating the Petitioner’s birth date was [ ] 1999.

In July 2019, the Director issued a second RFE, specifying that the Petitioner provide documentation to establish a reasonable factual basis for the court’s findings that the reunification with one or both

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<sup>2</sup> We use initials to protect the privacy of individuals.

of the Petitioner's parents is not viable due to abandonment, or a similar basis under state law, and that it is not in the Petitioner's best interest to be returned to the Petitioner's or to his or her parent's country of residence or last habitual residence. In response to the second RFE, the Petitioner submitted additional documents he said were provided to the court, including copies of unsigned orders regarding "APPOINTMENT OF GUARDIAN OF INCAPACITATED INDIVIDUAL" and "APPOINTMENT OF GUARDIAN [OR] LIMITED GUARDIAN OF A MINOR" and copies of the Petitioner's parents' death certificates.

In April 2020, the Director issued two additional RFEs on the same date. One informed the Petitioner that agency records indicated that the Petitioner has two birthdates, [REDACTED] 1998, and [REDACTED] 1999. Due to the inconsistency, the Director requested additional documentation supporting the Petitioner's date of birth. The second RFE explained that the court order and the documents submitted in the record do not evidence that "DHS consent is warranted as they did not provide the factual bases for the court's determinations on both reunification and why it would not be in [the Petitioner's] best interest to return to [Bangladesh]." In response to the two RFEs, the Petitioner stated he "used a different date of birth of [REDACTED] 1998[,] to facilitate his travel to the United States" but "the submitted evidence establishes that his real date of birth is [REDACTED] 1999." The Petitioner included his vaccination card, school records indicating when he took exams in primary and high school, and a school identification card.

In the decision denying the SIJ petition, the Director found the evidence insufficient to establish a reasonable factual basis for the court's reunification and best interest determinations, which is relevant to our analysis on consent. However, under grounds for denial, the Director stated:

In order for a court to determine that parental reunification is not viable, the court must have jurisdiction over your custody and care as a juvenile under state law. Therefore, you must establish that the court issuing the order had the authority to determine whether the allegedly unfit parent should regain or lose custody of you. Otherwise, the juvenile court order is not valid for the purpose of establishing your eligibility for SIJ classification.

Based on our *de novo* review of the record, the Director did not determine the Petitioner's eligibility prior to addressing the issues surrounding consent. *See* section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5) (explaining SIJ classification may only be granted upon consent of the agency when the petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is *bona fide*). Furthermore, the stated ground for denial does not follow the analysis in the denial and appears to have been included in error.

As described above, in order to establish eligibility, the Petitioner's burden is to establish, in relevant part, that he was subject to a state juvenile court order. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(a), (b)(4), (c)(3). Pursuant to section 700.5204 of Mich. Comp. Laws Ann., "[a] person interested in the welfare of a minor, or a minor if 14 years of age or older, may petition for the appointment of a guardian for the minor" and "the court may appoint a guardian for an unmarried minor if . . . [t]he parental rights of both parents or the surviving parent are terminated . . . by death . . ." (West 2017). A minor is defined as an individual who is less than 18 years of age. Mich. Comp. Laws Ann. § 700.1106 (West 2017). There are discrepancies in the record with respect to whether the Petitioner was under 18 years of age when the court order was issued. The Petitioner

submitted documents in support of his being under 18 years of age at the time the order was entered. However, the Petitioner did not explain how he was able to obtain an official document for travel that had [REDACTED] 1998, as his date of birth, which raises issue with the probative value of the documentation submitted to support [REDACTED] 1999, as his actual date of birth. In addition, the Director's decision did not determine whether the Petitioner established by a preponderance of the evidence that he was considered a juvenile under state law and thereby subject to a juvenile state court order. *See* 8 C.F.R. § 204.11(a) (providing that for an order to be considered an eligible juvenile court order, the court must have jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles); *see also* 8 C.F.R. § 204.11(c)(3) (providing that the juvenile court must have exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law to establish eligibility).

Further, the Petitioner has not established that reunification with his parent(s) was not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(1). While we acknowledge that the death certificates provided a reasonable factual basis for the court's findings that reunification with the Petitioner's parents was not viable, the evidence in the record does not establish that the court determined the death of a parent is a similar basis under Michigan State law to that of abuse, neglect, or abandonment. *See* 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policymanual> (explaining, as guidance, that the court must make a legal conclusion that the death of the parent(s) is legally equivalent). While the Director raised these issues in the RFEs, they were not stated grounds for denial in the decision.

Returning to the issue of consent, juveniles must establish that the request for SIJ classification was *bona fide*, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect"). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D) (explaining, as guidance, that in exercising consent, USCIS looks to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court.) In order to obtain consent, the burden is on the Petitioner to provide the factual basis for the court's determinations. The record does not reflect the reasonable factual basis for the court's best interest determination. *See* 6 USCIS Policy Manual at J.2(C)(3) (explaining, as guidance, that a best interest finding requires the juvenile court to make an individualized assessment under state law considering the factors that it normally takes into account when making best interest determinations and the record should reflect the factual basis for the juvenile court's determination). The Petitioner provided a waiver form signed by his sister checking a box that she gives consent to having I-U- become his guardian. The petition for guardianship informed the court that the Petitioner "arrived through the ORR program." The Petitioner did not explain how these submissions provided a reasonable factual basis for the court's findings that it was in his best interest to remain with I-U- rather than to be returned to Bangladesh or his last habitual residence. Without evidence speaking to the factual basis proffered to and considered by the court, the agency is unable to determine whether the Petitioner's primary

purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes. Again, while this issue was raised by the Director in the record, it was not a ground for denial in the decision.

### III. CONCLUSION

The stated ground for the Director's denial appears to have been entered in error and as a result, the Director's decision did not explain whether the Petitioner established his eligibility for SIJ classification under section 101(a)(27)(J) of the Act and the guiding regulations at 8 C.F.R. § 204.11. Accordingly, we will remand the matter for the Director to determine whether the Petitioner has met his burden of establishing his eligibility for SIJ classification.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.