



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

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

In Re: 19007586

Date: DEC. 1, 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 (Director) denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), because the Petitioner did not establish that he was under the age of 21 at the time of filing and that he warranted the consent of U.S. Citizenship and Immigration Services (USCIS). On appeal, the Petitioner asserts 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 dismiss the appeal.

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).¹ 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).

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 was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)-(iii)

¹ 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).

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

The record reflects that the Petitioner, a native and citizen of Bangladesh, submitted an SIJ petition in July 2017. The Petitioner included an order from the Family Court of the State of New York, [REDACTED] (Family Court) appointing M-S-² as his guardian in guardianship proceedings. He submitted a separate order titled *CORRECTED ORDER-SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), which provided that reunification with his father and mother was not viable due to abandonment, abuse, and neglect as defined under New York law, and that it was not in his best interest to be removed from the United States and returned to Bangladesh.

The Director initially denied the SIJ petition in March 2019, concluding that the Family Court did not have jurisdiction under state law to make a legal conclusion about returning the Petitioner to his parents' custody. The Petitioner filed an appeal, and we rejected it in October 2019 for being untimely filed. The Petitioner filed a motion to reopen and reconsider and the Director reopened the SIJ petition. The Director issued a notice of intent to deny (NOID) providing that the Petitioner had not met his burden of proof to establish he was under 21 years old on the date he filed his SIJ petition. The birth certificate provided with the SIJ petition reflects that the Petitioner was born on [REDACTED] 1998, which would have made him under 21 years old at the time of filing. However, the Director noted that government records indicate that while traveling outside of the United States the Petitioner previously used [REDACTED] 1996, as his date of birth, which would have made him over 21 years old at the time of filing his SIJ petition. Furthermore, the Petitioner's birth certificate was registered on November 20, 2007, more than nine years after the date of birth listed on the birth certificate. The Director also mentioned that USCIS' consent was not warranted because the record contained material inconsistencies and the Petitioner did not establish a primary reason in seeking his juvenile court order was to obtain relief from parental maltreatment. Lastly, the Director noted that USCIS' consent was not warranted because there was no reasonable factual basis for the best interest determination. The Petitioner responded to the NOID with a brief, affidavits, birth certificates, a vaccination card, educational records, identification documents, Family Court records, and information on Bangladesh.

After review, the Director denied the SIJ petition, noting that government records indicate the Petitioner previously used [REDACTED] 1996, as his date of birth prior to entering the United States, which was inconsistent with the [REDACTED] 1998, date of birth on the birth certificate provided with his SIJ petition. The Director acknowledged secondary evidence of age, including a school admission form and a statement from the school principal, and mentioned that it was inconsistent with information listed on the Petitioner's asylum application. Specifically, his admission form and principal's statement indicate he attended [REDACTED] School from 2003 until 2007, although his asylum application reflects he only attended [REDACTED] School from January 2003 until June 2014. Considering the evidence in the record, the Director concluded that the

² We use initials to protect the privacy of individuals.

Petitioner did not meet his burden of proof to establish that he was under 21 years old on the date he filed his SIJ petition.³

On appeal, the Petitioner submits a brief, a statement, and evidence he requested the withdrawal of his asylum application. The Petitioner asserts that he was born on [REDACTED] 1998, and he was therefore under the age of 21 when he filed his SIJ petition. The Petitioner claims that he attended [REDACTED] School from 2003 until 2007 and [REDACTED] School from 2008 until 2015. The Petitioner states he was never interviewed for his asylum application, he was unable to correct information in it, and he eventually withdrew his asylum application. Also, the Petitioner mentions that he presented corroborating evidence that he was born on [REDACTED] 1998, including his original birth certificate and vaccination record.

The burden of proof is on the Petitioner to establish by a preponderance of the evidence that his true date of birth is [REDACTED] 1998, which would have made him under the age of 21 at the time he filed his SIJ petition. We acknowledge the documents submitted by the Petitioner that list or refer to [REDACTED] 1998, as his date of birth. However, the Petitioner's birth certificate which he initially submitted was registered in November 2007, issued in November 2015, and signed by the registrar in November 2016. As these dates are many years after his claimed date of birth, the evidentiary weight of the birth certificate is diminished. The record also contains the same birth certificate, but with the registrar signing it in September 2018. The Petitioner submitted an "original" of this version, and he included a different "original" birth certificate on letterhead for [REDACTED] Hospital. The latter version does not include a date of registration or issuance and the signature block for the signing physician indicates a different facility than [REDACTED] Hospital. Therefore, we give these versions of his birth certificates diminished weight. More importantly, U.S. government's records, which are based on the Petitioner's fingerprints and as such are given significant weight, reflect that the Petitioner used [REDACTED] 1996, as his date of birth during multiple encounters outside the United States. Previously, the Petitioner asserted that when he arrived in Panama, his smugglers told him not to tell the Panamanian authorities his true age as they may harm him. However, there is no supporting evidence for this claim, and we give it minimal weight. Based on the foregoing and upon *de novo* review of the entire record, the Petitioner has not established by a preponderance of the evidence that his actual date of birth is [REDACTED] 1998. Therefore, the Petitioner has not established that he was under 21 years of age on the date his SIJ petition was filed and he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

³ The Director also concluded that USCIS' consent was not warranted as the record contains material inconsistencies. First, the Director noted the findings in the SIJ order that the Petitioner's father forced him to drop out of school at the age of 17 and smugglers did not allow him contact with his parents for at least six months. The Director then mentioned that the Petitioner stated his father forced him to drop out of school in 2015, at the age of 17 and when he was in ninth grade. However, this is inconsistent with other documentation indicating he would have been in ninth grade in 2012. Furthermore, the Director noted that the Petitioner's asylum application established he attended from school from 2003 until 2014, without any gaps in his education, and this is inconsistent with his claim that he attended school until 2015. The Director also referenced the Petitioner's asylum application and statements indicating he had already left home and was not in contact with his parents at the time he claimed to have been neglected and abandoned. The Director also determined that USCIS' consent was not warranted as there was no reasonable factual basis for the Family Court's best interest ruling, namely the information on prior violence he experienced in Bangladesh and a human rights report were not reviewed by the Family Court. The Director was therefore unable to determine whether a primary reason in seeking the Petitioner's juvenile court order was to obtain relief from parental maltreatment.

As we determined that the Petitioner has not established by a preponderance of the evidence that he was under the age of 21 when he filed his SIJ petition, we decline to reach and hereby reserve the Petitioner's arguments that he warrants USCIS' consent. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (explaining that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.