



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

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

In Re: 12756970

Date: DEC. 5, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner appealed that decision to us. On appeal, the Petitioner submits a brief and asserts that the record establishes his eligibility for SIJ classification. We exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Upon *de novo* review, we will remand 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) 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. 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. *Id.* at section 101(a)(27)(J)(ii); 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 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

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).

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 in [] 2018, when the Petitioner, a native and citizen of Guatemala, was 16 years old, the Circuit Court for [] Maryland (circuit court) granted guardianship of him to his brother, H-R-.² The circuit court further issued an order entitled *Order Regarding Factual Findings for Minor's Eligibility for Special Immigrant Juvenile Status* (SIJ order), which states, in pertinent part, that: the Petitioner has been placed in the custody of H-R-; his reunification with his parents is not viable due to neglect and abandonment pursuant to sections 5-701(b)(1), (s) and 9.5-101(b) of the Maryland Code Annotated, Family Law; and it is not in his best interest to be returned to Guatemala, his country of nationality. Based on the SIJ order and guardianship, the Petitioner filed the instant SIJ petition in June 2018. The Director denied the petition, determining that the Petitioner had not demonstrated that USCIS' consent to his SIJ classification was warranted. The Director explained that unresolved discrepancies in the record undermined the validity of his claim.

USCIS may 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). In the instant case, the SIJ order and *Petition for Guardianship by Consent of the Minor Child* state that the Petitioner's father abandoned him when he was four years old and "stopped supporting him emotionally and financially."³ In a March 2020 request for evidence (RFE), the Director noted that the Petitioner would have been four years old between July 2005 and July 2006, making his statements inconsistent with that of H-R-, who previously testified to the circuit court in his own SIJ-related proceedings that their father left the family home when H-R- was 14 years old, which would have been between April 2009 and April 2010. In response, the Petitioner provided a written statement explaining that he did not remember much because he was very young, that H-R- told him that their father came to their house several times after he left their mother, that H-R- believed that their father would ultimately return to live with them, and that the last time their father came to the house was when H-R- was 14 years old. The Petitioner stated that he did not recall having seen their father in the house after he was four years old.

In the decision denying the SIJ petition, the Director explained that the Petitioner had provided insufficient evidence to overcome the timeline discrepancy between his testimony and that of H-R- regarding when their father left the family home, emphasizing the four-year difference between the accounts. The Director further stated that the record indicated that the Petitioner stated to Customs and Border Patrol (CBP) officers that he had lived with his father prior to entering the United States and that he "provided significant details regarding the plan his father developed to get him smuggled into the United States."

² We use initials to protect the privacy of individuals.

³ The record shows that both of the Petitioner's parents consented to the guardianship. In a March 2018 *Consent to Guardianship of the Person of an Infant Minor and Recognition of Service of Process*, the Petitioner's father stated that he had "not been directly involved in [the Petitioner's] life ever since he was four years old."

In November 2021, we issued a notice of intent to dismiss (NOID) clarifying that according to the record, the statements to CBP officers were made in 2012 by H-R- and not by the Petitioner, thereby withdrawing the portion of the decision that indicated otherwise. Nevertheless, we determined that that discrepancies still existed and thus, the Petitioner had not satisfied his burden in establishing his eligibility for SIJ classification. In response to the NOID, the Petitioner submitted a written statement by H-R- explaining his recollection of their father's abandonment of the family and the statement he made to CBP. The Petitioner additionally submitted a 2017 expert affidavit from S-L-, a psychiatrist, regarding trauma and asylum seekers.

The record reflects that the Director mistakenly stated that H-R-'s statements to CBP were made by the Petitioner. The record further shows that the Petitioner has provided relevant evidence on appeal that the Director has not had the opportunity to review. As such, we will remand the matter to the Director to consider this evidence in the first instance and issue a new decision.

ORDER: The decision of the Director is withdrawn, and the matter is remanded for consideration of new evidence and issuance of a new decision.