



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

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

In Re: 16005305

Date: DEC. 6, 2022

Appeal of Hartford, Connecticut Field Office 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 Hartford, Connecticut Field Office (Director) denied the petition. On appeal, the Petitioner asserts his eligibility for SIJ classification. We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain 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 if evidence materially conflicts with the eligibility requirements such that the record reflects that the

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).

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 [] 2015, the [] Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner is “dependent on the Family Court.” The Family Court also found that the Petitioner was neglected and abandoned by his parents while he was in their care and “they are not willing to provide the required care and supervision.” The Family Court determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to India, his country of nationality. *Notice of Motion for Special Findings Order* (SIJ order), dated [] 2015. In a [] 2020 amended order, the Family Court determined that the Petitioner’s reunification with his father and mother was not viable due to neglect and abandonment under New York law. The Family Court also detailed that it was not in the Petitioner’s best interest to be returned to India because he would have no one to return to. *Amended Order-Special Immigration Juvenile Status, Nunc Pro Tunc to* [] 2015 (amended SIJ order). The SIJ orders formed the basis of the Petitioner’s SIJ petition, which he filed in October 2015.

In April 2020, the Director denied the SIJ petition, concluding that USCIS’ consent was not warranted because the record contained material inconsistencies that established that the Petitioner’s primary purpose in seeking the juvenile court order was to obtain an order with factual findings to enable him to file a petition for SIJ classification. Specifically, the Director determined that the evidence of record did not support the Petitioner’s testimony to the Family Court that he had been abandoned by his biological parents.

In our Notice of Intent to Dismiss (NOID), we concluded that the Petitioner was abandoned by his biological parents, as corroborated by the Petitioner’s affidavit, immigration records, and the SIJ proceeding records. Therefore, we withdrew the Director’s holding that the evidence in the record did not support his testimony that he was abandoned by his parents and that the information in the record did not support the testimony given by the Family Court. Nevertheless, we did find a potential ground of ineligibility that the Director did not address—that the Petitioner was over 21 years of age at the time he filed the SIJ petition with USCIS. Specifically, the record indicated that the Petitioner was arrested in 2012 and again in 2021 and during both of those arrests, he provided a date of birth of [] 1992, which conflicted with the birth certificate that the Petitioner had submitted with his SIJ petition, which indicated that his date of birth was [] 1994.

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To warrant USCIS’ 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); Furthermore, 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).²

In response to the NOID, the Petitioner maintains that he remains eligible for SIJ classification and warrants USCIS' consent because he was under 21 years of age when his SIJ petition was submitted. In his affidavit he states that contrary to our finding, he was never given or issued a citation in 2012 or had contact with an government official regarding a 2012 citation and thus, he "never provided any official in South Carolina with the date of birth [redacted] 1992." In regard to the 2021 arrest detailed in our NOID, the Petitioner explains that he never provided a [redacted] 1992 date of birth to any law enforcement official or judicial official. He maintains that when he was arrested the arresting officer never asked for his date of birth. When at the detention center, the officer asked for his identification, and he handed him his New York State Identification Card, which displayed his date of birth as [redacted] 1994. Upon release, the Petitioner contends that he noticed that his arrest paperwork had the wrong date of birth. He immediately notified the officer and his attorney, who assured him that the date of birth would be corrected. The case was ultimately dismissed and it never went to court.

In addition to the affidavit, the Petitioner submits a letter from his attorney who represented him with respect to his 2021 arrest. The attorney corroborates the Petitioner's statements in his affidavit. He further details that before he was able to correct the Petitioner's date of birth on the record sheets, the original charges were dismissed. Furthermore, the attorney confirms that there is no arrest data for the Petitioner in 2012, despite our finding to the contrary.

The Petitioner also submits a copy of his New York State Identification Card, listing his date of birth as [redacted] 1994, a South Carolina document from June 7, 2022 confirming that there is no arrest data for the Petitioner, and a copy of his passport displaying a [redacted] 1994 date of birth. We also acknowledge that the Petitioner previously submitted a February 2020 certification of birth from the Government of [redacted] Health and Family Welfare Department, Chief Registrar (Birth and Death), indicating that the Petitioner was born on [redacted] 1994, and his birth registration occurred on [redacted] 1994. Based on a preponderance of the evidence, the Petitioner has established that he was under 21 years of age at the time he filed his SIJ petition.

In summary, the Family Court found that the Petitioner was under 21 years of age and the record supports that finding. The Family Court also determined that reunification with both his parents was not viable due to neglect and abandonment and appointed a guardian accordingly. The guardianship and SIJ orders contain specific factual findings by the court to support its parental reunification and best interest determinations, including that the Petitioner's parents abandoned him. For these reasons,

² In the preamble to the final rule, DHS explained that "USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification such that the record reflects that the request for SIJ classification was not bona fide. . . . This may include situations such as one in which a juvenile court relies upon a petitioner's statement, and/or other evidence in the underlying submission to the juvenile court, that the petitioner has not had contact with a parent in many years to make a determination that reunification with that parent is not viable due to a abandonment, but USCIS has evidence that the petitioner was residing with that parent at the time the juvenile court order was issued. Such an inconsistency may show that the required juvenile court determinations were sought primarily to obtain an immigration benefit rather than relief from parental maltreatment." See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13089 (March 8, 2022).

a preponderance of the evidence establishes that a primary reason that the court's SIJ-related findings and the guardianship appointment were sought was to obtain relief from parental abandonment.

The Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his request for SIJ classification. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, he has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.