



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

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

In Re: 21103826

Date: DEC. 9, 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). In January 2019, the Director of the New York City Field Office (FO Director) denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), because the Petitioner did not establish that there was a reasonable factual basis for the juvenile court's best interest determination. After the SIJ petition was reopened, the Director of the National Benefits Center (Director) denied the SIJ petition in January 2021 finding that the Petitioner was not under the age of 21 at the time of filing. The Director denied a subsequent combined motion to reopen and reconsider in June 2021. On appeal before the Administrative Appeals Office, 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. *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

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).

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 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 [] 2016, the Family Court of the State of New York, [] (Family Court), appointed guardianship of J-A-,² the Petitioner, to M-M- in an *ORDER APPOINTING GUARDIANSHIP OF THE PERSON*. The Family Court issued a concurrent *BEST INTEREST ORDER* holding that the Petitioner’s reunification with his parents was not viable due to abandonment, and that it was not in his best interest to return to Bangladesh, his country of origin. The Family Court listed the Petitioner’s date of birth as [] 5, 1998, which would have made him under the age of 21 in September 2016, the date he filed his SIJ petition.

In December 2018, the FO Director issued a notice of intent to deny (NOID) noting that the Family Court did not specify whether the Petitioner was declared dependent on the court or placed under the custody of a state agency or department, or an individual entity; did not reference any state law in making its reunification determination; because the Petitioner was over 18 years old, the record did not establish that the Family Court had jurisdiction over the Petitioner as a juvenile; and the Family Court intended to make a decision regarding the Petitioner’s removal from the United States rather than whether a placement in the Petitioner’s or his parent’s country of nationality or last habitual residence is not in his best interests. On January 7, 2019, the Petitioner responded to the NOID with a brief, an expert affidavit from a former judge discussing the role of the Family Court in the context of issuing “special findings,” as well as various copies of other SIJ-related court filings, case law, USCIS Policy Manuals, and the Consolidated Handbook of Adjudication Procedures. The Petitioner also submitted copies of the following Family Court filings: an *AMENDED ORDER - SPECIAL FINDINGS* issued in [] 2019, *PETITION (Appointment of Guardian of Person)*, *OATH OF GUARDIANSHIP*, *PREFERENCE OF MINOR OVER 14 YEARS OF AGE*, *NOTICE OF MOTION*, *MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR BEST INTEREST FINDINGS*, and *AFFIDAVIT OF J-A-*. On January 8, 2019, the FO Director denied the SIJ petition stating that the Petitioner did not respond to the NOID, and consequently did not overcome the concerns raised in the NOID.

At the outset, we note that the Petitioner’s response to the NOID was received prior to the issuance of the decision. The SIJ petition was subsequently transferred and re-opened by the Director. After reviewing all the evidence in the record, the Director issued another NOID in May 2020 stating the Petitioner had not met his burden of proof that he was under 21 on the date he filed his SIJ petition. Specifically, during previous encounters with immigration officials outside of the United States, the Petitioner stated that he was born on [] 5, 1992, which was inconsistent with [] 5, 1998, the

² We use initials to protect the privacy of individuals.

date on his birth certificate. The Director also noted that his birth certificate was registered on September 2, 2003, several years after the alleged date of birth. The Director listed additional evidence the Petitioner could provide to establish his actual date of birth. In August 2020, the Petitioner responded to the NOID with his affidavit; a letter from counsel; a copy of his birth certificate issued in March 2015; a copy of his madrasah identification card and madrasah school records; affidavits from a midwife, a religious teacher, a grandparent, and an uncle; a vaccination record; a photograph of the Petitioner; articles regarding birth registration in Bangladesh; and the Department of State Reciprocity Schedule for Bangladesh.

After reviewing all the evidence in the record including the responses submitted to the 2019 and 2020 NOIDs, the Director denied the SIJ petition, concluding that the Petitioner did not meet his burden of proof of establishing he was under 21 at the time of filing. The Director also noted that the record contained material inconsistencies and thus USCIS' consent was not warranted. The Director referenced the Petitioner's use of [REDACTED] 5, 1992, as his date of birth during previous immigration encounters outside the United States, and that his identity was confirmed during these encounters with his fingerprints. The Director noted that the Petitioner used the [REDACTED] 5, 1992 date of birth when he travelled outside to Brazil in 2013, and again when he travelled outside of Bangladesh in 2015. The Director observed that the Petitioner did not disclose his prior travel in 2013 while using a different date of birth. Moreover, the Director noted that the Petitioner did not submit sufficient secondary documentation which existed prior to the Petitioner's use of the alternate date of birth in 2013 to establish his date of birth consistent with the requirements of 8 C.F.R. § 204.11(d)(1). Therefore, the Director concluded that the SIJ petition was not bona fide. In February 2021, the Petitioner filed a motion to reopen and reconsider claiming that the decision showed "irrational bias" because the Director denied the SIJ petition based on "reasons never mentioned in the NOID." The Petitioner further argued that he was deprived of his due process rights because he was not afforded an in-person interview where he could "supplement the record through testimonial evidence to address USCIS' concerns and questions in connection" with his SIJ petition. In June 2021, the Director denied the motions finding that the Petitioner did not overcome the reasons for the denial. The Petitioner filed this subsequent appeal.

On appeal, the Petitioner submits a brief and previously submitted evidence. The Petitioner contends that he has submitted substantial evidence which shows that he was under 21 on the date he filed the SIJ petition; the Director's decision was unsubstantiated and unsupported by the Petitioner's credible evidence; the Petitioner should have been scheduled for an in-person interview to explain the inconsistencies in the record as a matter of due process; the Director did not permit the Petitioner to explain his 2013 travel to Brazil; the Director showed bias towards the Petitioner because of the Petitioner's manner of entry, and in their evaluation of the documents; and the Director erroneously claimed that the Petitioner sought SIJ status primarily for an immigration benefit because the Petitioner demonstrated that he was trafficked as a minor and he suffered abandonment under New York law. The record does not reflect that the Director showed bias by requesting that the Petitioner meet his burden of proving that he was under 21; petitioners bear the burden of establishing eligibility for SIJ classification. And the Petitioner's manner of entry, though unlawful, does not affect his eligibility for SIJ classification. Further, the Petitioner is not entitled to an in-person interview as they are

discretionary.³ Moreover, the Director's consideration of the Petitioner's 2013 travel is de minimus, because ultimately, the Petitioner did not establish by a preponderance of the evidence that he was under the age of 21 when he filed the SIJ petition. We acknowledge the Petitioner's contention that there are widespread delays in the registration of births in Bangladesh, and that according to the United Nations Children's Fund, as of 2018, only 37 percent of children under the age of 5 years were registered.⁴ We also note that the Petitioner argues that he submitted his birth certificate "as well as online verification of the birth registration as recorded in Bangladesh Online Birth Registration System [] BRIS []." However, no such verification was submitted to USCIS.

The burden of proof is on the Petitioner to establish by a preponderance of the evidence that his true date of birth is [] 5, 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 [] 5, 1998, as his date of birth, but they do not establish his date of birth by a preponderance of the evidence. First, the Petitioner's birth certificate was registered nearly 5 years after the date of birth listed which diminishes its evidentiary weight. Second, U.S. governments records, which are based on the Petitioner's fingerprints and as such are given significant weight, reflect that he used [] 5, 1992, as his date of birth during previous immigration encounters outside the United States. 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 date of birth is [] 5, 1998, such that he was under 21 when he filed his SIJ petition. As the Petitioner has not established that he was under 21 on the date he filed his SIJ petition, he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.⁵

ORDER: The appeal is dismissed.

³ USCIS *may* require any applicant, petitioner, sponsor, beneficiary, or individual filing a benefit request, or any group or class of such persons submitting requests, to appear for an interview and/or biometric collection. 8 C.F.R. § 103.2(b)(9) (emphasis added).

⁴ See <https://www.unicef.org/bangladesh/en/timely-and-accessible-birth-registration> [accessed November 29, 2022].

⁵ Because this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve his remaining appellate arguments. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting 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).