



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

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

In Re: 23530536

Date: DEC. 13, 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 record included material inconsistencies, and the Petitioner did not establish that a primary reason for seeking his juvenile court order was to obtain relief from parental maltreatment. 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, the appeal will be sustained.

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).

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.

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).

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 [] 2017, the Petitioner entered the United States unlawfully. He was apprehended by Customs and Border Patrol (CBP), and later an asylum officer conducted a credible fear interview. In [] 2018, when the Petitioner was 19 years old, the Chancery Court of the [] Judicial District of [] in Mississippi (Chancery Court) issued a *DECREE APPOINTING GUARDIAN* (Decree) appointing J-S-² as his guardian in proceedings brought under sections 93-13-1 of the Mississippi Code Annotated (Miss. Code Ann.). The Decree stated that “[j]urisdiction is proper in this Court” and determined it was not viable for “the minor” to be returned to his father in India because his father abused him, and his mother was unable to protect him. Thus, the Chancery Court found that it was not in the Petitioner’s best interest to be returned to India where there was no suitable guardian, whereas J-S- had assumed the responsibilities of guardian for the Petitioner. We note that under section 1-3-27 of the Miss. Code Ann., the term “minor” when used in any statute includes any person, male or female, under 21 years of age.

Based on the Decree, the Petitioner filed this SIJ petition in October 2018. While the SIJ petition was pending, the Director issued a request for evidence (RFE) in February 2020. The Director noted that the Petitioner’s birth certificate indicated that he was born on [] 1999, but his “birth certificate was registered on January 6, 2014.”³ The Director determined that the birth certificate was insufficient to establish his age because it was not timely registered. The Director requested acceptable evidence of the Petitioner’s age and provided examples of the type of evidence that he could submit to satisfy the RFE. In April 2020, the Petitioner responded with a letter from counsel; a copy of his Indian identification card; and school records.

In May 2020, after reviewing the evidence, the Director issued a notice of intent to deny (NOID). The Director acknowledged that the Petitioner established his age, however the record contained material inconsistencies relevant to the [] 2018 affidavit that the Petitioner submitted to the Chancery Court in support of the guardianship proceedings. Specifically, when the Petitioner was interviewed by an asylum officer in [] 2017, he answered “no” to the following questions: (1) has anyone else in your country ever threatened or harmed you? and (2) have you ever been harmed by a family member or a domestic partner such as a girlfriend? However, in the affidavit, the Petitioner stated that his father regularly came home drunk, beat him, and forced him to leave school, and “work in (*sic*) a farm.” The Director determined that the juvenile court order and the parental reunification and best interest determinations were sought primarily or solely to obtain an immigration benefit. Therefore, USCIS’ consent was not warranted because the SIJ petition was not bona fide. The Director requested that the Petitioner submit evidence to overcome these concerns.

² We use initials to protect the privacy of individuals.

³ A review of the birth certificate indicates that the registration date was June 2014, not January 2014.

In December 2021, the Petitioner responded to the NOID with a letter from counsel, his statement, a copy of the *PETITION TO APPOINT GUARDIAN*, and copies of several articles addressing duress, child abuse, neglect, and interviewing immigrant children.⁴ In July 2020, the Director denied the SIJ petition finding that the Petitioner did not overcome the material inconsistencies in the record, and thus the SIJ petition was not bona fide. This subsequent appeal followed. On appeal, the Petitioner submits a brief from counsel, copies of caselaw, copies of USCIS policy manuals and an article on SIJ adjudications.

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted, or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.*

Upon de novo review, the Petitioner has established by a preponderance of the evidence that a primary reason he sought the Chancery Court's order was to obtain protection from parental maltreatment. The record establishes that the Chancery Court had a reasonable factual basis for its determination that the Petitioner's reunification with his father was not viable due to abuse. The information about the Petitioner's unwillingness to reveal the circumstances of his family dynamics to an asylum officer does not "materially conflict[]" with his SIJ petition assertions and the Chancery Court's findings of parental abuse such that consent may be withheld. During the credible fear interview, the Petitioner claimed to have left India due to political persecution and did not mention mistreatment or abuse by his father. However, credible fear inquiries typically do not determine an individual's eligibility for SIJ classification under section 101(a)(27)(J) of the Act. In his statement submitted in response to the NOID, the Petitioner claimed that he did not report his father's abuse because he was scared that he would be sent back to India, his father would be made aware of the allegations and would therefore hurt the Petitioner. We note that an asylum officer found the Petitioner's claims credible. In addition, the Chancery Court found that the Petitioner's father abused the Petitioner because he beat the Petitioner. Both the claims made before an asylum officer and the Chancery Court are not in conflict with each other, and merely represent what the Petitioner chooses to emphasize in a particular forum. Further, we do not go behind a court order to reevaluate determinations of abuse, neglect, abandonment, or a similar basis properly made under state law. *See* 87 Fed. Reg. 13066, 13086 (March 8, 2022) ("USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law."); *see generally* 6 *USCIS Policy Manual* J.2(A), <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court determinations made under state law and explaining

⁴ The Petitioner also submitted an article concerning the crisis faced by children from Latin America who are at risk for sexual abuse and HIV/AIDS, although we note the Petitioner is a native and citizen of India.

that we do not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law). Whether a state court order submitted to USCIS establishes a petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511-512 (5th Cir. 2018) ("Whatever responsibilities are exclusively for the state court, USCIS must evaluate if the actions of the state court make the applicant eligible for SIJ status."). Accordingly, the Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification, as required by section 101(a)(27)(J) of the Act. The Director's decision is withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.