



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

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

In Re: 23117979

Date: DEC. 14, 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 petition because the Petitioner did not establish that a primary reason of seeking the juvenile court order was to obtain relief from parental maltreatment and was therefore not eligible for SIJ classification. On appeal, the Petitioner submits a brief and asserts that he has established his eligibility for SIJ classification and warrants USCIS' consent. 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 sustain the appeal.

**I. LAW**

To be eligible 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).<sup>1</sup> 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.

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<sup>1</sup> 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).

In these proceedings, it is the petitioner’s burden to establish eligibility for the requested benefit. The petitioner bears 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

### A. Relevant Facts and Procedural History

On March 21, 2014, the Petitioner entered the United States using a Mali passport and a B2 nonimmigrant visa, both of which were fraudulently obtained. On [REDACTED] 2015, when the Petitioner was 16 years old, the Family Court of the State of New York in [REDACTED] (Family Court) issued a *FINAL ORDER OF CUSTODY*, awarding custody to M-K-,<sup>1</sup> the Petitioner’s father; and on [REDACTED] 2015, issued an initial *ORDER - SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order).

On October 18, 2019, the Petitioner submitted his current SIJ petition.<sup>2</sup> On May 4, 2021, the Director issued a notice of intent to deny (NOID) requesting that the Petitioner provide additional evidence to establish that the Surrogate [sic]<sup>3</sup> Court orders contained a qualifying parental reunification determination. The Director noted that USCIS’ consent was not warranted because the Petitioner did not demonstrate that his request for SIJ classification was bona fide. The Director advised the Petitioner that, due to material inconsistencies in the record, USCIS was unable to determine if a primary reason for obtaining the SIJ order was to get relief from parental maltreatment, or for immigration purposes. Specifically, the Director noted the following inconsistencies: the SIJ order indicated that reunification with the Petitioner’s mother was not viable because of her death, however during his nonimmigrant visa interview, he stated that he was travelling with his mother O-C- and his brother; the Petitioner’s birth certificate listed his name as A-K- (which he used in Family Court and his current SIJ filing), his mother as Mo-K-, and his father as M-K-, however in his nonimmigrant visa application, the Petitioner’s mother is listed as O-C- and his father as M-T-, and he is listed as A-T-; the Petitioner’s 2013 passport listed his name as A-T-;<sup>4</sup> during his interview for SIJ status and adjustment of status in April 2016, the Petitioner stated that his mother passed away when he was 2 years old, he did not have any siblings, and he entered the United States posing as O-C-’s son, while using the 2013 passport she obtained on his behalf. The Director noted that the Petitioner did not submit any documents with his name listed as A-K-, other than his birth certificate. Thus, the Director observed, “[y]ou stated you do not have a passport with your real name. Due to the inconsistencies and your lack of proof of identity, we are unable to determine whether your primary purpose in seeking

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<sup>2</sup> In December 2015, the Petitioner filed his first SIJ petition and it was denied in June 2016, along with a concurrently filed Form I-485, Application to Adjust Status (Form I-485), after the Petitioner did not respond to the New York District Director’s NOID. The Petitioner did not appeal the decision.

<sup>3</sup> We note that in the NOID, the Director erroneously refers to the Family Court as the Surrogate [sic] Court.

<sup>4</sup> We note that in conjunction with his Form I-485, the Petitioner submitted a Form I-693, Report of Medical Examination and Vaccination Record (Form I-693), dated July 2015, which lists his name as A-T- and his Mali passport valid from October 2013 through October 2018 as his identification document.

the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes.”

Because the initial SIJ order was deficient, on [REDACTED] 2021, the Family Court issued an *AMENDED ORDER - SPECIAL FINDINGS* (amended SIJ order). In the amended SIJ order, the Family Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The amended SIJ order cited to the New York Family Court Act sections 661(a) and 115(c), and the New York Surrogate’s Court Procedure Act section 103(27) for the court’s jurisdiction. The Family Court reaffirmed that a final order of custody was issued to M-K-, and the Petitioner was declared dependent on the Family Court. In the amended SIJ order, the Family Court found that reunification with the Petitioner’s mother was not viable due to death, and that death under the cited New York case law and statutes was a similar basis to abandonment. In addition, the amended SIJ order determined that it was not in the Petitioner’s best interest to return to Mali, his country of birth, because it would be harmful to the Petitioner’s well-being and happiness, he would be left without a home or family to care for him, and that it was in his best interest to remain in the United States in the care of M-K-, where he was happy and thriving.

On July 14, 2021, the Petitioner responded to the NOID with the following: amended SIJ order; October 2017 Mail identification card; Mali birth certificate; Mali passport valid from July 2018 through July 2023; school records from the Ivory Coast (where he attended school before returning to Mali); and photographs taken in Mali. On February 1, 2022, the Director denied the SIJ petition, concluding that the Petitioner had not established that USCIS’ consent was warranted because of the inconsistencies in the record. In the denial, the Director also noted that the Petitioner had not established his identity.

On appeal, the Petitioner asserts that the record below establishes his eligibility for SIJ classification, and that USCIS acted outside the scope of its consent authority by second guessing the Family Court’s determination. The Petitioner references an affidavit he previously submitted to explain the inconsistencies; however, we note the Petitioner did not submit an affidavit with this current SIJ petition to address the inconsistencies.

#### B. USCIS’ Consent is Warranted

To warrant USCIS’ consent, petitioners must establish that 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, 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); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted. *See* 8 C.F.R. § 204.11(b)(5); *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings). 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).

Upon de novo review, the Petitioner has established that USCIS' consent to his request for SIJ classification is warranted. In determining that the Petitioner had not established his identity, the Director stated that the 2018 Mali passport in the name of A-K-, did not match the 2013 Mali passport submitted in the name of A-T-. However, as the Petitioner explained, the 2013 passport was obtained to facilitate his entry to the United States while posing as a member of O-C-'s family. While he was in the United States, the Petitioner obtained the 2018 Mali passport in his own name, and submitted a copy of it to the Director, to establish his identity. Therefore, it is incongruent for the Director to deem the 2018 passport as "not matching" the 2013 passport, when the Petitioner has already admitted that the 2013 passport was fraudulently secured to facilitate his unlawful entry into the United States. As indicated in the Petitioner's April 2016 Record of Sworn Statement, the 2013 passport and the nonimmigrant visa were fraudulently obtained by O-C- on the Petitioner's behalf when he was a minor.<sup>5</sup> We do not condone the Petitioner's use of a fraudulent passport or a fraudulently obtained nonimmigrant visa to enter the United States, even as a minor. However, such actions do not affect his eligibility for SIJ classification and the Petitioner's 2018 passport, school records, birth certificate, and identification card reflect his name. Considering these documents and the Petitioner's explanations, he has established his identity by a preponderance of the evidence.

The Petitioner provided a reasonable explanation for some of these inconsistencies concerning his entry into the United States in a November 2015 affidavit submitted with his prior SIJ petition. The remaining inconsistencies identified by the Director are de minimis, and upon de novo review, the Petitioner has established by a preponderance that USCIS' consent to his request for SIJ classification is warranted. According to the Family Court, the amended SIJ order was issued "after examining the motion papers, supporting affidavits, pleadings and prior proceedings in this matter, and/or hearing testimony." The Family Court set forth facts and law that formed the basis for its parental reunification and best interest determinations, as well as its placement of the Petitioner in the sole legal and physical custody of his father. The Family Court determined that the Petitioner's mother was deceased, and that under New York law, death precipitated the Petitioner's "orphan status, effectively leaving the child abandoned and/or a destitute child, falls within the "similar basis" category."

Based upon the foregoing, the Petitioner has demonstrated, by a preponderance of the evidence, that a primary reason he sought the requisite juvenile court or administrative determinations was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, such that his request for SIJ classification was bona fide. The Petitioner therefore has established, by a preponderance of the evidence, that USCIS' consent to his request for this classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

**ORDER:** The appeal is sustained.

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<sup>5</sup> The Director's finding that the Petitioner "stated [his] parents were the ones who arranged for [him] to be smuggled out of the country and supported [him] for [his] trip, yet, in [his] notarized declaration supporting the original court order, [he] stated that [he] did not know [his] father until [he] met him in March 2014," is not supported by the record. The record reflects that some of the Petitioner's relatives, who no longer wanted to care for him, made fraudulent arrangements for the Petitioner, a minor at the time, to travel to the United States to live with his father.