



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

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

In Re: 20947073

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). In November 2021, the Director of the National Benefits Center (Director) denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) finding that the Petitioner was not under the age of 21 at the time of filing, and the record contained inconsistencies as to his date of birth. 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 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)(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, 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 [] 2018, the Circuit Court for [] (Circuit Court), in Maryland, appointed guardianship of A-S-², the Petitioner, to G-S- in an *ORDER OF COURT*. Concurrently, the Circuit Court issued an *ORDER REGARDING MINOR'S ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS PURSUANT TO FL § 1-201(b)(10)* (SIJ order), determining that the Petitioner's reunification with his parents was not viable due to abuse and neglect, and that it was not in his best interest to return to India, his parent's country of nationality or last habitual residence. The Circuit Court listed the Petitioner's date of birth as [] 27, 1999, which would have made him under the age of 21 years old on August 17, 2020, the date he filed his SIJ petition.

In March 2021, the Director issued a request for evidence (RFE) noting that the record showed that on his journey to the United States, the Petitioner used [] 28, 1994, as his date of birth which was inconsistent with [] 27, 1999. The Director provided a list of documents the Petitioner could submit to establish his actual date of birth. In July 2021, the Petitioner responded to the RFE with the following: his statement where he proffers "agents" told him to use a fake name and birthdate as he travelled from Dubai³ to the United States; his passport, identification card and birth certificate from India; documents from the Circuit Court; affidavits from various individuals including his parents; and school records.

After reviewing all the evidence in the record, the Director denied the SIJ petition, concluding that the Petitioner did not meet his burden of proof that he was born on [] 27, 1999, thus he did not establish he was under 21 years old at the time of filing. The Director noted that prior to his arrival in the United States, the Petitioner had multiple international flights and border crossings and he used "authentic travel documents" showing a date of birth of [] 28, 1994, under the name A-T-, and claimed that he was from Nepal.

On appeal, the Petitioner re-submits previously submitted evidence, and argues that multiple sources show that he was under 21 years old when he filed his U petition. He contends that the Director did not consider all the evidence. The Petitioner claims that he followed the instructions of his "traffickers" and told the foreign authorities that his name was A-T-, and he was born on [] 8, 1994, in Nepal. He claims that once he was in the custody of Customs and Border Protection and the Office of Refugee Resettlement, he gave his correct name and date of birth.

The burden of proof is on the Petitioner to establish by a preponderance of the evidence that his true date of birth is [] 27, 1999, which would have made him under the age of 21 years old at the time

² We use initials to protect the privacy of individuals.

³ A city in the United Arab Emirates.

he filed his SIJ petition. We acknowledge the documents submitted by the Petitioner that list or refer to [] 27, 1999, as his date of birth; in particular, the Indian passport that was issued in March 2015 and valid until March 2025. Moreover, at the time of his apprehension in [] 2016, the Petitioner was subjected to a dental examination that concluded he was approximately 17 years of age. We do not condone the Petitioner's fraudulent use of documents to facilitate his entry into the United States. However, based on the foregoing and upon de novo review of the entire record, the Petitioner has established by a preponderance of the evidence that his date of birth is [] 27, 1999. *See* 8 C.F.R. § 204.11(d)(2) (explaining that the decision as to whether a SIJ petitioner has submitted sufficient documentation of their age is within the discretion of USCIS). Therefore, because this was the sole basis for denial, and the Petitioner has established that he was under 21 years of age on the date his SIJ petition was filed, he is eligible for, and warrants USCIS' consent to, his request for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.