



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

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

In Re: 20946975

Date: DEC. 16, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native of Mexico, 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, concluding the Petitioner had not provided an acceptable form of evidence documenting his age, date or location or his birth such that he merited USCIS' consent to SIJ classification. On appeal, the Petitioner submits additional evidence and reasserts 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). 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).

To establish that they are under 21 years old, SIJ petitioners must submit, as initial evidence, documentary evidence of their age, "in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the [petitioner's] age" 8 C.F.R. § 204.11(d)(1).¹ A petitioner cannot be compelled to submit evidence that "requires [them] to contact the person(s) who allegedly battered, abused, neglected, or abandoned the petitioner (or the family member of such person(s))." 8 C.F.R. § 204.11(e).

¹ If primary documentation of birth is not available, "USCIS may consider affidavits or secondary evidence of age, which may include baptismal certificates, school records, hospital records, or immunization records," *See generally* 6 USCIS Policy Manual J.3, <https://www.uscis.gov/policymanual>.

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 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

The Petitioner entered the United States without admission or parole in [redacted] 2004, when he was one month old with his mother, a native and citizen of El Salvador. In [redacted] 2018, after his mother was arrested for second-degree child abuse, the Petitioner was placed under the physical and legal custody of the [redacted] Children and Youth Services Agency in [redacted] Pennsylvania. In [redacted] 2019, when the Petitioner was 15 years old, the Court of Common Pleas, Family Court Division in [redacted] Pennsylvania (court) issued an order titled *Special Findings* (SIJ order). The SIJ order states, in pertinent part, that: the Petitioner is currently under the jurisdiction of the court pursuant to Pennsylvania Juvenile Act; he was placed “under the physical and legal custody of the [redacted] Children and Youth Services Agency on November 15, 2018; reunification with his father was not viable as his identity and whereabouts are unknown” or with his mother “due to child abuse”; and it is not in his best interest to return to Mexico. In addition, the Petitioner submitted a copy of an *Evidentiary Hearing Court Order* from the Court of Common Pleas in [redacted] Pennsylvania (court order), an affidavit from his prior counsel, a copy of Form I-213, Record of Deportable/Inadmissible Alien, copies of letters from the General Coordinator of the Civil Registry in [redacted] Mexico stating that it was unable to locate any birth registration records for the Petitioner in Mexico, and the Consulate General of El Salvador in New York, New York evidencing his efforts to clarify his conflicting dates of birth.

The Petitioner filed his SIJ petition in November 2020. With his petition, the Petitioner submitted, among other things, a personal statement in which he asserted that he never knew his real birthdate or place of birth or ever had a birth certificate or identity card as he never had any paperwork. The Petitioner maintained that he believed that he was born on [redacted] 9, 2004, in [redacted] because he trusted his aunt and immigration documents, which reflected that date.² In his statement, the Petitioner

²We note that the Petitioner was detained with his mother in [redacted] 2004 shortly after they entered the United States without being admitted at or near [redacted] Texas. The Form I-213, Record of Deportable/Inadmissible Alien, states that “upon reaching the Mexican border, [the Petitioner’s mother] entered illegally into Mexico and continued traveling by bus until arriving in [redacted] Mexico. [The Petitioner’s mother] then asked for assistance from strangers as she was going into maternity labor on [redacted] 9, 2004. She claims to have spent two days in the hospital located in [redacted]

stated that his mother always told him that he was born on [] 14, 2004, in [] Texas. His maternal grandmother told him that he was born on [] 14, 2004, in Mexico. However, his aunt, who traveled with his mother to the United States from El Salvador, told him that he was born on [] 9, 2004, in [] Mexico when they were en route to the United States.

While the SIJ petition was pending, the Director issued a request for evidence (RFE) seeking evidence of the Petitioner's age such as a birth certificate issued by the appropriate civil authorities, passport, government-issued identification card, a baptismal certificate or school records. In response, the Petitioner submitted an affidavit from his aunt; a baptismal certificate indicating that he was baptized in Maryland in 2005 and listing a date of birth of [] 14, 2004; a copy of a Form I-220A, Order of Release on Recognizance indicating that the Petitioner was a "minor (infant)" on April 26, 2004 ; [] Maryland Department of Human Services' Informal Kinship Caregiver Agreement When Parent is Unavailable; [] Public Schools Enrollment Form; [] High School Student Demographic Information; School Age Individualized Education Program (IEP); [] Office of Children, Youth and Families Report to the Court for Permanency Review Hearing; [] Youth House Transition Plan and Court Report; and copies of the Child's Permanency Plan and Review Order. In a statement, the Petitioner's counsel clarified that the Petitioner's mother used [] 9, 2004, and [] 14, 2004, as his dates of birth and the aforementioned documents reflected a mixture of those dates.

The Director denied the SIJ petition, determining that the Petitioner did not provide an acceptable form of evidence documenting his age, date of birth or location of his birth. Specifically, the Director determined that the Petitioner's documentation was insufficient because it "include[ed] different dates of birth such as [] 9, 2004, and [] 14, 2004. . ." The Director highlighted the Petitioner's mother's and aunt's inconsistent statements regarding his date of birth, and his baptismal certificate and school records which reflected different dates and locations of birth.

A. Evidence of the Petitioner's Age

On appeal, the Petitioner contends that the Director "erroneously interpreted and applied the law when [she] stated in [her] decision that [he] failed to meet his burden of proof in establishing his age." H argues that, under the statute and regulation, he is only required to prove that he is under 21 years of age. He maintains that he was under 21 years of age when he filed his SIJ petition as the regulation requires, and his previously submitted and supplemental documentation are evidence of that fact. In support of his contentions, the Petitioner references the previously submitted court order, which was issued in [] by the same judge who issued the SIJ order. During the evidentiary hearing, the judge heard testimony from the Petitioner's aunt, who testified credibly about the date and circumstances of the Petitioner's birth in Mexico while she and the Petitioner's mother were traveling to the United States. After hearing her credible testimony, the court "ma[de] a specific finding of fact that [the Petitioner] was born in [] Mexico on [] 9, 2004." Additionally, the Petitioner points to notes on his Form I-213, Record of Deportable/Inadmissible Alien, indicating that he was born in [] 2004 in Mexico and subsequently apprehended by U.S. Customs and Border Patrol

[] Mexico. After being discharged with her newborn child from the hospital, she resided temporarily with a stranger in [] until March 28, 2004."

(CBP) officials as an infant — two facts which were later corroborated by his aunt in court. Furthermore, the Petitioner highlights other previously submitted evidence, namely school records, baptismal certificate and court documents indicating that he was born in [REDACTED] 2004, and argues that, regardless of whether he was born on [REDACTED] 9, 2004, or [REDACTED] 14, 2004, he was still under 21 years of age at the time he filed his SIJ petition. Lastly, the Petitioner submits additional evidence of his age on appeal, a Dental Age Assessment Report from a forensic odontology consultant, which concluded that the empirical statistical probability that he had attained 18 years of age was 40.50% as of November 11, 2021.

The Petitioner has established that he is unable to obtain a birth certificate or other primary documentation of his birth due to his mother's failure to register his birth in Mexico, and he submits other evidence that is sufficient to prove his age. This evidence includes an affidavit from his aunt, who was present and had personal knowledge of the circumstances of his birth, a record of her detailed testimony before the juvenile court, and a Form I-213 and other immigration records indicating the Petitioner was detained by CBP along with his mother in [REDACTED] 2004, shortly after his birth in Mexico. This evidence, along with a baptismal certificate, school records, and other documentation on the record, supports the Petitioner's claim that he was born in [REDACTED] 2004. Therefore, based on the totality of the evidence submitted before the Director and supplemented on appeal, the Petitioner has established that he was under the age of 21 when he filed his SIJ petition in November 2020.

B. USCIS' Consent is Warranted

SIJ classification may only be granted upon the consent of 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). 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.*

Upon *de novo* review, the Petitioner has established that USCIS' consent is warranted in his case. In his case, the court issued an order finding that parental reunification was not viable because the Petitioner's father's whereabouts were unknown and his mother had engaged in conduct which constituted second degree child abuse under Maryland law. The court also found that it was not in the Petitioner's best interest to return to El Salvador as he had never lived in the country, and returning there could potentially subject to him to further abuse by his mother. The record further establishes that a primary reason for seeking SIJ classification was to obtain relief from parental maltreatment and that such relief was granted. Since the Petitioner has met all eligibility requirements for SIJ classification and established that his request is bona fide, USCIS' consent is warranted, and we withdraw the Director's determination otherwise.

III. CONCLUSION

The Petitioner has overcome the ground for denial of his SIJ petition. 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.