



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

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

In Re: 23791705

Date: DEC. 19, 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), concluding that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted because the record contained material inconsistencies. On appeal, the Petitioner asserts her 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

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).

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).

II. ANALYSIS

In [] 2017, the Family Court of [] New York (Family Court)) issued an order placing the Petitioner in the custody of her sister. On the same day, the Family Court issued an order entitled Special Immigrant Juvenile Status (SIJ order), determining that the Petitioner's reunification with her parents was not viable due to neglect and abandonment, and it would not be in the Petitioner's best interest to be removed to El Salvador, her country of nationality. Based on the Family Court's orders, the Petitioner filed her SIJ petition in August 2017.

The Director denied the SIJ petition, concluding that the record contained inconsistent documentation regarding the factual basis for the petition, including the Petitioner's marital status, and therefore, USCIS' consent was not warranted. Specifically, the Director highlighted that upon first arriving in the United States, the Petitioner asserted that she was financially supported by her spouse and the father of her child, N-E-G.² However, when petitioning for SIJ status, she asserted that she was unmarried and financially supported by her sister.

To warrant USCIS' consent, 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). 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.*

On appeal, the Petitioner asserts that she has never been married and submits, *inter alia*, a personal affidavit; an affidavit from N-E-G-, wherein he asserts that he has never been married; and a copy of a July 2021 certification from the El Salvadoran National Registry of Natural Persons indicating that the Petitioner's "current civil status is single." She states that she does not recall telling an immigration official that she was married and that "in Hispanic culture, it is commonly accepted to use the term 'casada' (meaning 'married') in Spanish when someone is not actually legally married."

We acknowledge the Director's finding that the record contains inconsistent evidence regarding the Petitioner's marital status and the circumstances of her life in El Salvador. However, the record on appeal contains new evidence supporting the Petitioner's assertion that she is unmarried. Therefore, the inconsistencies do not constitute a material conflict related to SIJ classification requirements.

² Initials are used in this decision to protect the identities of individuals.

As stated above, USCIS' consent function is limited to determining whether there are reasonable factual bases for the court's parental reunification and best interest determinations, whether relief from parental maltreatment was granted or recognized, and whether the request for SIJ classification is bona fide. 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."). Here, guardianship of the Petitioner was granted to an individual appointed by the Family Court, the Family Court determined that the Petitioner was neglected by her father who "failed to support, protect and provide for the child," and the Family Court made all of the requisite findings relevant to the Petitioner's eligibility for SIJ classification. As such, the Petitioner has established both a factual basis for the Court's determinations and that a primary reason she sought SIJ classification was to obtain relief from parental maltreatment.

Based upon the evidence submitted on appeal, the Petitioner has overcome the Director's determination and established, by a preponderance of the evidence, that a primary reason she sought the juvenile court orders to obtain relief from parental abandonment and neglect and that the Court, in fact, granted such relief. Consequently, the Petitioner's request for SIJ classification merits USCIS' consent under section 101(a)(27)(J)(iii) of the Act.

ORDER: The appeal is sustained.