



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

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

In Re: 23589885

Date: DEC. 20, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of El Salvador, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the record did not establish that USCIS' consent was warranted because it did not establish the SIJ petition was bona fide. Sections 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5).

The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated 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 dismiss 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).<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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

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

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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).

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). 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

### A. Relevant Evidence and Procedural History

In [ ] 2018, when the Petitioner was 19 years old, the [ ] District Court of [ ] Utah (District Court) issued an order (custody order) granting custody of the Petitioner to K-L-<sup>2</sup>. Based on the custody order, the Petitioner filed an SIJ petition in March 2018. The Director issued a request for evidence (RFE) in January 2020, and the Petitioner submitted a response with additional documentation. Subsequently, in June 2021, the Director issued a notice of intent to deny (NOID), advising the Petitioner that he had failed to establish USCIS consent was warranted because the record did not establish there was a reasonable factual basis for the parental reunification and best interest determinations. In response, the Petitioner submitted additional documentation including letters from family members and copies of articles on conditions in El Salvador. The Director denied the SIJ petition in March 2022, determining USCIS' consent was not warranted, as the Petitioner did not establish his petition for SIJ classification was bona fide. Now on appeal, the Petitioner asserts the Director failed to consider the totality of the evidence in denying the SIJ petition, improperly "summarily dismissed all of the submitted evidence," and imposed standards upon the Petitioner's request that are not based in law, regulation, or policy.

### B. USCIS' Consent Is Not Warranted

Classification as an SIJ may only be granted upon the consent of USCIS when a petitioner meets all the other eligibility criteria under section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). We do not question the Family Court's purpose in issuing its orders, but here, USCIS' consent is not warranted because the Petitioner has not established that a primary purpose in seeking the custody order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Utah law.

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). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5).

Here, the District Court's custody order and the record of supplemental evidence do not establish a factual basis for the parental reunification or best interest determinations; thus, the Petitioner has not demonstrated by a preponderance of the evidence his request for SIJ classification was bona fide. *See* 8 C.F.R. § 204.11(d)(5)(i). The custody order states "its [sic] not in [the Petitioner's] best interests to

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<sup>2</sup> Initials are used to protect the privacy of this individual.

be returned to his home country or reunited with his mother because he was abandoned.” The District Court did not cite to any state law supporting that conclusion nor did it include any factual findings underlying the determinations. *See* 8 C.F.R. § 204.11(b).

The Petitioner argues the evidence he submitted in response to the RFE and the NOID explain both the District Court proceedings that led to the custody order and the factual basis for the District Court’s determinations. Specifically, he provided affidavits from himself, his father, and his attorney in District Court proceedings, as well as various articles relating to country conditions in El Salvador. We have considered the entire record of evidence in this case. We acknowledge the custody order states that the District Court made its decision “[f]rom the records, files and other documents in his matter as well as the stipulation of the parties”. Still, the Petitioner has not submitted below or on appeal any supporting documentation or evidence the court considered in making its findings, such as copies of the underlying guardianship petition, motion papers, supporting affidavits, pleadings, or testimony transcripts, that reflect the facts on which the Petitioner relied in seeking the reunification and best interest determinations.

Here, the custody order does not include the factual bases for the parental reunification and best interest determinations, and the Petitioner has not provided copies of the custody petition or any of the evidence that was submitted to the District Court in support of the request for custody. Further, the evidence that was provided, including the affidavits, does not provide any detail about what the District Court considered in issuing the custody order.<sup>3</sup> For example, the affidavit from the Petitioner’s attorney indicates that “[t]estimony was taken at multiple hearings”, but does not explain what that testimony included. The affidavits from the Petitioner and his father contain information related to the Petitioner’s mother and why reunification is not possible, but the affidavits do not indicate whether this information was presented to the District Court. As such, the evidence is not sufficient to establish the factual basis the District Court considered in making the parental reunification and best interest determinations, and the Petitioner has not met his burden of establishing that the request for SIJ classification is bona fide. *See* 8 C.F.R. § 204.11(d)(5).

### III. CONCLUSION

The record does not establish a factual basis for the custody order’s parental reunification and best interest determinations. Therefore, the preponderance of the evidence does not establish that 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, such that the record demonstrates that the request for SIJ classification is bona fide. As the Petitioner has not demonstrated that his request is bona fide, USCIS consent to his SIJ classification is not warranted.

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<sup>3</sup> The evidence submitted in response to the RFE and NOID was largely produced after the issuance of the custody order. While we are conscious some evidence – such as the affidavit from the Petitioner’s attorney in custody proceedings describing those proceedings – could only reasonably be produced after the completion of the District Court proceedings, the Petitioner has not submitted any other evidence from the proceedings themselves. *See generally* 6 *USCIS Policy Manual* J.3(A)(2), <https://www.uscis.gov/policy-manual>, at footnote 13 (“Such affidavits or records will be assigned low evidentiary value unless they are accompanied by evidence that the court considered the information contained therein in the course of issuing its judicial determinations.”).

**ORDER:** The appeal is dismissed.