



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

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

In Re: 18139249

Date: FEB. 16, 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) initially denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The Director subsequently granted the Petitioner's motion to reopen and then issued a second denial. The matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their 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(c). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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 juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). 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 Facts and Procedural History

In [] 2016, when the Petitioner was 20 years old, the [] Family Court in New York issued an order appointing the Petitioner's uncle as his guardian in guardianship proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The order stated that "the appointment shall last until the [Petitioner's] 21st birthday" In a separate order titled *ORDER-Special Immigrant Juvenile Status* (initial SIJ order) issued the same day, the Family Court determined, among other findings, that the Petitioner was "dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court." The Family Court also found that the Petitioner's reunification with his parents was not viable due to abandonment and set forth specific factual findings supporting that ground. Further, the Family Court concluded that it was not in the Petitioner's best interest to return to India, his country of nationality, because he would have no place to live and would not have an opportunity to get an education there.

In a supplemental SIJ order issued in [] 2018, when the Petitioner was 23 years old, the Family Court indicated, among other findings, that the Petitioner's reunification with his father and mother was not viable due to abandonment and neglect under New York Social Services Law section 384-b(5) and N.Y. Fam. Ct. Act section 1012(f), and that his reunification with his mother also was not viable due to her death, "a similar basis to abandonment under New York law." The Family Court specified that the Petitioner "could not and should not live with his father with whom the [Petitioner] does not have a relationship," his mother is deceased, his grandmother in India will not allow him to live with her, and he does not have anyone else in India with whom he could live. Additionally, the Family Court noted that "[t]he Court is informed of where the [Petitioner's] father lived in the U.S. and where the [Petitioner] lived in the U.S. Evidence was presented that the [Petitioner] did not live [with] his father in the United States."

In an amended SIJ order issued in [] 2020, dated *nunc pro tunc* to the [] 2016 date of the initial SIJ order, the Family Court noted, in relevant part, that the Petitioner's father "left the family house and did not support and did not visit the [Petitioner] for several years," and that "the Court heard testimony that [the Petitioner] had not had contact with his father or lived with him since he was thirteen years old . . . though he saw him at a temple in []" With regard to the Petitioner's mother, the Family Court referenced its finding that she abandoned and neglected him by "kicking him out of the home in 2010" and later died in 2015. The Family Court further noted that during a hearing, the court concluded that "the [Petitioner's] mother is deceased, and the father does not appear to have stepped up to take any role in the [Petitioner's] life at this point."

The Director denied the SIJ petition based on a determination that the Petitioner had not met his burden of showing that USCIS' consent to his SIJ classification is warranted. In the first denial decision, the

Director noted, in relevant part,¹ that the Petitioner had “given inconsistent accounts of his father’s involvement in his life.” The Director explained that an investigation conducted by USCIS, which included an interview with the Petitioner’s parental grandmother and siblings, revealed that the Petitioner’s “entire family resided together until the mother’s death in 2015. Even after moving to the United States, the petitioner’s father continued to support him by sending money.” Additionally, the Director noted that “[a] review of the father’s record shows that he resided with the petitioner . . . in [redacted] NY.” Accordingly, the Director determined that the Petitioner’s testimony before the Family Court that both of his parents had abandoned him by 2010 was inconsistent with USCIS records, the Family Court did not make an informed decision, and the Petitioner’s request for SIJ classification was not *bona fide*.

In response to the Petitioner’s combined motion to reopen and reconsider, the Director reopened the matter and issued a new denial decision, which is the subject of the instant appeal. The Director determined that the Petitioner still had not established that USCIS’ consent to his SIJ classification is warranted, explaining that USCIS records show that the Petitioner resided with his father in [redacted] New York as recently as July 2014, and had also previously resided with his father in California. The Director noted that this information was inconsistent with the Petitioner’s claim before the Family Court that he had not resided with his father since he was 13 years old and had never resided with him in the United States. Accordingly, the Director determined that the record did not establish that the Petitioner’s primary purpose in seeking the Family Court’s orders was to obtain relief from parental maltreatment, as required to support a conclusion that his SIJ classification merits USCIS’ consent.

B. USCIS’ Consent is Not Warranted

The Petitioner has not met his burden of establishing that USCIS’ consent to his SIJ classification is warranted. SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 6-7 (citing H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement “that neither the dependency order nor the administrative or judicial determination of the alien’s best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, 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 and the agency must consider whether the court’s determinations were sought in proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond an order enabling an individual to file an SIJ petition with USCIS. *See* H.R. Rep. No. 105-405, at 130; *Budhathoki*, 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); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the *USCIS Policy Manual* explained).

¹ The Director’s initial denial was also based on additional grounds, which the Petitioner subsequently overcame and are not at issue here.

As the Director discussed, USCIS records establish that the Petitioner resided with his father in New York and California after the Petitioner's arrival in the United States in 2010, and as recently as July 2014. Additionally, a USCIS investigation and interview with the Petitioner's grandmother and siblings in India showed that the Petitioner's father continued supporting the family in India even after relocating to the United States. This information conflicts with the Petitioner's testimony before the Family Court that he last lived with his father when he was "thirteen to thirteen and a half years old," which would have been between late 2008 and mid-2009, and that although he had seen his father at a temple in [redacted] New York, he "do[es] not speak to him" and has not lived with him in the United States. We recognize that the Family Court indicated in the 2018 supplemental SIJ order that the "[t]he Court is informed of where the [Petitioner's] father lived in the U.S. and where the [Petitioner] lived in the U.S." and had determined based on evidence that the Petitioner had not lived with his father in this country. The transcript of the [redacted] 2016 hearing indicates that the Petitioner provided the court an address for his father in [redacted] New York, but his testimony there is inconsistent with USCIS records showing that he did live with his father.

On appeal, the Petitioner submits a statement in which he asserts that he did not live with his father in New York, California, or anywhere else in the United States. Although he claims on appeal that the Director did not provide him with specifics about the derogatory information upon which the denial was based and an opportunity to respond, the Director did inform the Petitioner of the address at which USCIS records show he lived with his father in New York, and that the information came from his "father's record." The Director also indicated in their December 2018 notice of intent to deny (NOID) that the Petitioner's father listed the shared address as his residence on his own documents. The Petitioner had the opportunity to rebut this information in response to the Director's NOID, in his motion before the Director, and again on appeal. In response to the NOID, he alleged that the Director was merely confused and had mistaken two similar addresses as the same. However, USCIS records clearly show that the Petitioner and his father shared residential addresses in both New York and California. The Petitioner has not provided any evidence on appeal other than his own brief statement in which he states only that the derogatory information is not true. In light of USCIS records that the Petitioner shared two addresses with his father as recently as 2014, several years after he claims his father abandoned him in India, his statement merely asserting that it is incorrect is not sufficient. He also does not address on appeal the evidence that his father continued supporting him and the rest of his family after going to the United States.

The information in the USCIS investigation also showed that the Petitioner, his mother, and the rest of the family all lived together until he left for the United States in 2010, which conflicts with the Petitioner's claim before the Family Court that his mother kicked him out of her house in 2010, after which he went to live with his grandmother. The Petitioner's grandmother informed USCIS investigators that the entire family lived together until the Petitioner's departure in 2010 and his mother's subsequent death in 2015. The Petitioner does not address this information on appeal.

In this case, a preponderance of the evidence does not establish that the guardianship order was sought to compel an action that provides "relief from abuse or neglect," or abandonment. H.R. Rep. No. 105-405, at 130; 6 *USCIS Policy Manual* J.2(D)(5), <https://www.uscis.gov/policy-manual> (explaining that the court-ordered dependency or custodial placement of the child is the relief being sought from the juvenile court). Although USCIS generally consents to the grant of SIJ classification where the record contains a reasonable factual basis for all the required rulings, USCIS' consent is not warranted where

the state court orders lack required rulings or the record indicates the order was sought primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7; 6 *USCIS Policy Manual*, *supra*, at J.2(D)(5). The Petitioner here has not provided sufficient evidence to overcome the USCIS records that show that he resided with his father in the United States as recently as 2014, that his father continued to support him and his family in India after departing that country, and that the Petitioner continued to live with his mother until his departure for the United States. This information is contrary to the Petitioner's testimony before the Family Court that his father abandoned him when he was 13 years old, in 2008 or 2009, and that his mother kicked him out of the house. The Petitioner has not met his burden of showing by a preponderance of the evidence that he sought the Family Court's orders primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis to these grounds, and he therefore has not demonstrated that his request for SIJ classification merits USCIS' consent.

ORDER: The appeal is dismissed.