



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

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

In Re: 20256151

Date: NOV. 01, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that because the Petitioner did not establish the factual basis for the best interest determination, the Petitioner had not shown that USCIS' consent for his SIJ classification was warranted.

On appeal, the Petitioner asserts his eligibility for SIJ classification and that USCIS' consent is warranted in granting that classification.¹ We review the questions in this matter *de novo*. See *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).² 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).

¹ We note that on the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, filed with the Petitioner's appeal, part 4.2.b. Date of Signature of Client or Authorized Signatory for Entity, was not completed. Appeals filed by representatives must contain a new, properly completed Form G-28. 8 C.F.R. § 292.4(a). As the Form G-28 submitted with this appeal was not properly completed, we treat the Petitioner as self-represented in this matter.

² 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).

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

A. Relevant Facts and Procedural History

In [redacted] 2019, when the Petitioner was 17, the State of Wisconsin, Circuit Court, [redacted] (Circuit Court), issued a *Determination and Order on Petition for Guardianship of a Minor* (guardianship order) appointing T-K-³ as the Petitioner’s guardian in proceedings brought under chapter 54 and section 54.46 of the Wisconsin Statutes.⁴ In issuing this guardianship order, the Circuit Court found that it had jurisdiction “over the matter and the minor” and made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Circuit Court found that it was not in the Petitioner’s best interest to return to India. In the guardianship order, the Circuit Court additionally found his parents were not appointed as his guardian because reunification with his father in India was not viable, that his father “physically abused him,” and that reunification with his mother was not viable because, after arriving in the United States, she became unable to care for him due to her mental health. Based upon the guardianship order, the Petitioner filed his SIJ petition in October 2019.

In May 2020, the Director issued a notice of intent to deny (NOID) the Petitioner’s SIJ petition, advising that USCIS’ consent to his SIJ classification was not warranted, because the record lacked a reasonable factual basis for the Circuit Court’s best interest determination. In response to this NOID, the Petitioner submitted the following relevant evidence: an affidavit, a letter from the Guardian ad Litem appointed in the Petitioner’s guardianship proceedings, and the Guardian ad Litem’s report to the Circuit Court. Upon review of this evidence, the Director denied the SIJ petition on the ground that USCIS’ consent was not warranted because the guardianship order did not set forth the factual findings or cite the evidence on which the court relied in making the best interest determination.

On appeal, the Petitioner submits a brief and contends that the record contained a reasonable factual basis for the Circuit Court’s determination that it was not in his best interest to be returned to India. He therefore asserts that he has established that his request for the juvenile order was bona fide and accordingly that USCIS’ consent to his request for SIJ classification is warranted.

³ We use initials to protect the privacy of this individual.

⁴ Section 54.56 of the Wisconsin Statutes provides the court with the authority to appoint a guardian when, in relevant part, the proposed ward is found to be a minor.

B. USCIS' Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). 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); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , 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. *See id.*; *see also Budhathoki v. Nielsen*, 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). Furthermore, USCIS may 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).⁵

As noted above, the Petitioner must demonstrate that in a juvenile court order (or in administrative proceedings recognized by the juvenile court), the juvenile court made a determination that it would not be in the best interest of the Petitioner to be returned to the country of nationality or last habitual residence of the Petitioner or the Petitioner's parents. *See* section 101(a)(27)(J)(ii) of the Act; *see also* 8 C.F.R. § 204.11(c)(2). This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court's determination. *See* 6 *USCIS Policy Manual* J.2(C)(3), <https://www.uscis.gov/policymanual>.

Upon *de novo* review, the Petitioner has established, by a preponderance of the evidence, that the record contains a reasonable factual basis for the Circuit Court's best interest determination, and therefore that USCIS' consent to his request for SIJ classification is warranted. In the record below, the Petitioner provided correspondence from the Guardian ad Litem appointed in the guardianship proceedings, stating that during his visit with the Petitioner, the Petitioner reported being abused by his father in India. The Guardian ad Litem stated that after this visit he "came to believe, and later reported to the Court, that it was in [the Petitioner's] best interest that he . . . not be returned to India" and that he found the Petitioner "to be in a safe home and a good school." In the *Report of Guardian ad Litem Guardianship of Minor* submitted to the Circuit Court as part of the guardianship proceedings, the Guardian ad Litem reported to the court and recommended that the Circuit Court find

⁵ In the preamble to the final rule, DHS explained that "USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification such that the record reflects that the request for SIJ classification was not bona fide. . . . This may include situations such as one in which a juvenile court relies upon a petitioner's statement, and/or other evidence in the underlying submission to the juvenile court, that the petitioner has not had contact with a parent in many years to make a determination that reunification with that parent is not viable due to a abandonment, but USCIS has evidence that the petitioner was residing with that parent at the time the juvenile court order was issued. Such an inconsistency may show that the required juvenile court determinations were sought primarily to obtain an immigration benefit rather than relief from parental maltreatment." *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13089 (March 8, 2022).

that “is in the best interest of the minor” to appoint T-K- as the Petitioner’s permanent guardian. In the guardianship order appointing T-K- as the Petitioner's guardian, the Circuit Court found, “[a]fter consideration of the reports and other documents on file, all factors required by the statutes, and such additional information presented...” that the Petitioner’s reunification with his father in India was not viable because his father “physically abused him, subjecting him to regular beatings,” that reunification with the Petitioner’s mother in the United States was not viable as she was unable to care for him due to her mental health, that it was not in the Petitioner’s best interest to be returned to India, and that, since living with T-K-, the Petitioner “has been attending school, and is safe.” When considered in its entirety, the record contains a sufficient factual basis for the Circuit Court’s determination that it was not in the Petitioner’s best interest to be returned to India, his father’s country of residence and nationality. *See 6 USCIS Policy Manual, supra* at J.2(C)(3) (providing as an example that “if the court places the child with a person in the United States under state law governing the juvenile court dependency or custody proceedings, and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent.”). The Petitioner therefore has shown that his request for SIJ classification is bona fide such that USCIS’ consent is warranted under section 101(a)(27)(J)(iii) of the Act.

III. CONCLUSION

The Petitioner has overcome the Director’s ground for denying the SIJ petition and has otherwise met his burden to establish that he is eligible for and merits USCIS’ consent to his SIJ classification.

ORDER: The appeal is sustained.