



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

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

In Re: 14306770

Date: NOV. 1, 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 as the Petitioner did not establish that a primary reason for seeking his juvenile court order was to obtain relief from parental maltreatment. On appeal, the Petitioner asserts 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).¹ 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).

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

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).

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 Evidence and Procedural History

In [redacted] 2017, when the Petitioner was 18 years old, the Juvenile and Domestic Relations Court of [redacted] (Family Court) issued an order granting A-V-D-,² the Petitioner’s uncle, legal and physical custody in custody proceedings brought under sections 16.1-278.15 and 20-124.2 of the Annotated Code of Virginia (Va. Code Ann.). In a separate order titled *ORDER REGARDING MINOR’S ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), the Family Court made determinations, pursuant to section 16.1-241 of the Va. Code Ann. and other statutes, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner’s mother, E-M-G-, and father, B-V-D-, was not viable due to abandonment as defined under Virginia law and that it was not in his best interest to be removed from the United States and returned to Honduras, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in May 2017. The SIJ petition was initially denied in February 2019 as the Director determined the Family Court lacked jurisdiction to make a legal conclusion about returning the Petitioner to his parents’ custody as he already attained the age of majority in Virginia. We withdrew this finding in February 2020 and remanded the SIJ petition to the Director for the entry of a new decision. Before rendering a new decision, the Director issued a request for evidence (RFE). The Director mentioned that USCIS’ consent was not warranted as the documents provided did not provide a factual basis for the Family Court’s findings that reunification with the Petitioner’s mother and father was not viable due to abandonment and that it was not in his best interest to be removed from the United States and returned to Honduras. The Director requested documentation to establish a reasonable factual basis for the Family Court’s determinations. The Petitioner responded to the RFE with a brief and documents including, but not limited to, numerous affidavits and statements from attorneys, family members, coworkers, and friends.

The Director determined that USCIS’ consent was not warranted. The Director concluded that there was a factual basis for the Family Court’s finding that it was not in the Petitioner’s best interest to be removed from the United States and returned to Honduras. However, the Director determined that the evidence submitted did not indicate the manner in which the Petitioner was abandoned by his parents, and therefore he did establish there was a factual basis for the parental reunification ruling. Therefore, the Director concluded that USCIS’ consent was not warranted as the Petitioner did not establish a primary reason for seeking his juvenile court order was to obtain relief from parental maltreatment, and he was not eligible for SIJ classification.

² We use initials to protect the privacy of individuals.

B. 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* 8 C.F.R. § 204.11(b)(5); *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).

On appeal, the Petitioner submits a brief. He asserts that the documentation submitted reflects that his custody hearing was to obtain relief from parental maltreatment and there was a factual basis for the finding of abandonment by his parents. The record supports the Petitioner's assertions. First, the Family Court determined in the SIJ order that reunification with the Petitioner's mother, E-M-G-, and father, B-V-D-, was not viable due to abandonment as set out in section 20-81 of the Va. Code Ann. We note that this section provides "[p]roof of desertion or of neglect of spouse, child or children by any person shall be prima facie evidence that such desertion or neglect is willful; and proof that a person has left his or her spouse, or his or her child or children in destitute or necessitous circumstances, or has contributed nothing to their support for a period of thirty days prior or subsequent either or both to his or her departure, shall constitute prima facie evidence of an intention to abandon such family." *Id.* Second, the underlying petition for the Petitioner's SIJ order provides that his parents "abandoned him. . . [as] they sent [the Petitioner] on the long dangerous journey from Honduras to the United States knowing that they will not see or care for their child. They have not spoken to [the Petitioner] since January 2016."

Considering the foregoing, the Petitioner has established by the preponderance of the evidence that A-V-D- was granted custody of him and he was issued an order with SIJ-related findings in proceedings granting relief from parental maltreatment under Virginia law. Moreover, the Family Court's SIJ-related determinations were supported by the record. The record contains a reasonable factual basis for each of the requisite judicial determinations and the Petitioner has established that he meets the remaining eligibility requirements for SIJ classification. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his SIJ classification.

ORDER: The appeal is sustained.