



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

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

In Re: 17852554

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 the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), finding there was no reasonable factual basis for the parental reunification rulings. 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).<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).

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

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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).

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

The Petitioner is a native and citizen of Ethiopia who attempted to enter the United States in [ ] 2019 without proper documentation and was placed in removal proceedings by U.S. Customs and Border Protection officers.<sup>2</sup> In [ ] 2019 the District Court, [ ] Judicial District, Family Court Division, in [ ] Minnesota, issued a Custody Consent Stipulation and Decree and Findings of Fact, Conclusions of Law and Order for Third Party Custody. The orders appointed the Petitioner's sister as guardian with the ability to make decisions on the Petitioner's education, religious training, and health care, and to obtain public services. The family court found reunification with one or both parents not viable due to abuse, neglect, abandonment or similar basis found under Minnesota law, and that reunification was not viable due to the physical and emotional hardship the Petitioner will suffer if returned to Ethiopia, separated from the guardian, or if "abandoned and assaulted again." The order further found it not in the Petitioner's best interests to be returned to Ethiopia, where she previously fled due to physical and emotional danger, and other extraordinary circumstances, including the current country conditions there.

Based on the court orders the Petitioner filed a Form I-360 in November 2019. The Director issued a request for evidence (RFE) advising the Petitioner that the court order was insufficient as it did not show that reunification with one or both parents was not viable due to abuse, abandonment, neglect or similar basis under state law and that it did not find Petitioner had previously experienced abuse, neglect, or abandonment. The Petitioner responded with a [ ] 2020 Amended Findings of Fact, issued *nunc pro tunc* to [ ] 2019, that determined reunification with one or both parents not viable due to the abuse, neglect, and abandonment the Petitioner was subject to in her country within the meaning of Minnesota Statutes sections 257C.03; 257C.04; and 609.377 and 609.378. The amended order added that it was not in the Petitioner's best interests to be returned to Ethiopia as she previously fled there due to physical and emotional danger to her, including Female Genital Mutilation (FGM) circumcision, attempted forced marriage, physical abuse, and clan-based violence. The order identified the mother in Ethiopia as the only living parent with the Petitioner's father deceased, noted that the mother consented to transfer of the Petitioner's custody, and found reunification with the mother not viable due to the physical and emotional hardship the Petitioner will suffer if returned to Ethiopia, if separated from her guardian, or if abandoned and assaulted again.

The Director denied the SIJ petition, concluding that USCIS' consent was not warranted because there was no reasonable factual basis for the parental reunification rulings. The Director determined that the initial court order and the amended findings allude to *future* abuse, abandonment, and neglect if the Petitioner were to return to Ethiopia but that there was no information to support that any abuse, abandonment, or neglect occurred *in the past* as a result of residing with the biological parents. The

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<sup>2</sup> USCIS records show that the Petitioner applied for and received a grant of asylum by an Immigration Judge in [ ] 2021.

Director concluded that because the record did not indicate a reasonable factual basis for the court's rulings, it could not be determined whether the Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes.

On appeal, the Petitioner argues, through counsel, that the Director made factual errors and failed to consider the totality of the petition, including statements from her and her guardian specifying why she fled to the United States, and she asserts that the record is clear on the abuse, negligence, and abandonment she suffered in her mother's custody. The Petitioner refers to her statement before the court and claims that at six years old her parents allowed her to undergo FGM with no medicine. She further claims that after her father died an uncle, as head of the household, arranged for her to be married at age 16 to a man 40 years older, and when she refused the uncle poured hot oil on her and beat her, with the acquiescence of her mother. The Petitioner contends that her sister was granted custody so she could obtain relief from the abuse, neglect, and abandonment she suffered while in the custody of her mother.

The Petitioner contends that in granting the order of custody the family court cited two provisions under Minnesota Statutes and argues that to warrant the court's order the record needed to show that she was subjected to unreasonable force under section 609.377 of the Minnesota Statutes and that her mother knowingly permitted physical abuse under section 609.378 of the Minnesota Statutes. The Petitioner contests the Director's determination that there was no information to support that any abuse, abandonment, or neglect occurred in the past as a result of residing with the biological parents by asserting that the order speaks to abandonment and assault that happened in the past as the judge referred to her "again" being abandoned and assaulted, and stating that her reunification with one or both parents is not viable due to the abuse, neglect, and abandonment she "was subject to in her country of origin."

On appeal the Petitioner also supplements the record with a transcript from her family court hearing, her father's death certificate, a letter indicating that a medical examination showed signs consistent with FGM, and a World Health Organization article about FGM. The court transcript submitted on appeal includes testimony from the sister in requesting guardianship of the Petitioner where she claimed that their father was deceased so an uncle took over and the Petitioner came to the United States because she was intended by the uncle to be married to an older man, was beaten for refusing, was psychologically damaged by it, and came to the United States to get "legal paperwork and get her education and to help herself."

In her written statement to the family court the Petitioner described the circumstances of being circumcised at six years old by a friend of her grandmother, being from an ethnic tribe opposed to treatment by the Ethiopian government, her father being arrested and killed, and an uncle becoming head of the household and arranging her marriage for financial support and then pouring hot oil on her for refusing. The sister's statement submitted in support of the SIJ petition indicated that the family is from a tribe targeted by the Ethiopian government, that she heard in 2018 that their parents had been arrested, that their mother was released but their father killed, and that an uncle took over the household and tried to marry off the Petitioner who refused and was then tortured by the uncle.

## B. Consent is Warranted

As stated above, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria and the request for SIJ classification is *bona fide*. 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). 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)(i). In the instant matter, USCIS' consent is warranted because the Petitioner has established by a preponderance of the evidence that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Minnesota law.

The amended order provides, in part, that it is not in the best interests of the Petitioner “to be returned to Ethiopia as the child previously fled Ethiopia due to the presence of physical and emotional danger to her, including FGM circumcision, attempted forced marriage, physical abuse, and clan-based violence.” The order goes on to conclude that reunification with the living parent “is not viable due to the physical and emotional hardship the child will suffer if returned to Ethiopia, if separated from [her guardian] or if abandoned and assaulted again.” It further clarifies that “reunification with one or both parents is not viable due to the abuse, neglect, and abandonment which the child was subject to in her country of origin within the meaning of...” Minnesota Statutes section 609.377 and 609.378.

Although the Petitioner's statement to the Family Court and the sister's testimony before the judge do not address actions by the parents, the amended order cites to Minnesota Statutes section 609.377, malicious punishment, which addresses where a parent evidences unreasonable force or cruel discipline. It also cites 609.378, neglect or endangerment of a child, that addresses when a parent knowingly permits the continuing physical or sexual abuse of a child; who endangers the child's person or health by intentionally or recklessly permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health; knowingly permits the continuing physical or sexual abuse of a child. Minn. Stat. Ann. §§ 609.377 and 378 (West 2022).

Moreover, the record shows that the court was aware of the facts that the Petitioner was forced to undergo FGM and subjected to an attempted forced marriage, physical abuse, and clan-based violence, as well as who the perpetrators were. The orders show that considering these facts the court made an informed decision in finding that reunification is not viable with the Petitioner's mother due to abuse, neglect, and abandonment under state law. Although the Petitioner's statement suggests that her grandmother arranged the FGM procedure and the uncle tried to force her into marriage, the amended order citing Minn. Stat. 609.377 and 609.378 links those instances to abuse, neglect, and abandonment by the parents. And though the order refers to potential future abuse, it also states that the Petitioner “was subject to” abuse in the past, that she “previously fled Ethiopia” due to abuse, and that reunification is not viable due to hardship she will suffer if “abandoned and assaulted again.” When considered together, documents in the record, as supplemented on appeal, show that the required findings by a preponderance of the evidence.

Accordingly, the SIJ orders establish that a primary reason the Petitioner sought the juvenile court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief. Where the factual basis for the court's determinations demonstrates that the juvenile court order was sought to protect the child and the record shows the juvenile court actually provided relief from abuse, neglect, abandonment, or a similar basis under state law, DHS generally consents to the grant of SIJ classification. 6 *USCIS Policy Manual* J.3(A)2.

The Petitioner has overcome the basis of the Director's denial on appeal and has demonstrated her eligibility for SIJ classification. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, she has established eligibility under section 101(a)(27)(J) of the Act.

**ORDER:** The appeal is sustained.