



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

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

In Re: 21220947

Date: NOV. 02, 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 petition because the Petitioner did not establish that he was under 21 years of age at the time he filed his SIJ petition, that the Petitioner's SIJ order did not contain a qualifying parental reunification determination, and that he did not establish that his petition for SIJ classification was *bona fide* and therefore that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted. The Petitioner subsequently filed a combined motion to reopen and reconsider, which was dismissed by the Director. The matter is now before us on appeal. 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 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).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

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).

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 Evidence and Procedural History

In [] 2018, the Family Court of the State of New York in the [] issued an *Order Appointing the Guardian of the Person*, appointing M-A- as the Petitioner’s guardian.² In a separate order titled *Order Regarding Minor’s Eligibility for Special Immigrant Juvenile Status* (SIJ order), the Family Court made findings that the Petitioner had been placed under the custody of M-A-, and that “reunification with one or both of [the Petitioner’s] parents, [names of Petitioner’s father and mother], is not viable due to abuse, neglect, abandonment, financial hardship, or similar basis under New York State law, and under section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J).” The Family Court further found that it was not in the Petitioner’s best interest to be returned to Bangladesh, “within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(27)(J), 8 C.F.R. § 204(d)(2)(iii).”

Based on the SIJ order, the Petitioner filed this SIJ petition in June 2018. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), notifying the Petitioner of insufficiencies with his SIJ petition, specifically asking the Petitioner to substantiate his date of birth and to address inconsistencies with information in the Petitioner’s record. The Director notified the Petitioner that it appeared he had previously used a different date of birth, which was inconsistent with the birth certificate submitted with his SIJ petition. The Director also noted that the birth certificate submitted by the Petitioner was not registered until after he departed Bangladesh, in April 2016. The Director also indicated that the SIJ order stated that reunification with one or both of his parents was not viable due to abuse, neglect, abandonment, financial hardship, or similar basis under New York law; however, the SIJ order did not specify the specific basis that reunification was not viable and did not explain how financial hardship was a similar basis under New York law. Finally, the Director stated that the SIJ order and supporting evidence did not indicate a factual basis for the issuance of the order and noted that it appeared that the Petitioner may have only sought the SIJ order to obtain an immigration benefit.

In response to the NOID, the Petitioner provided additional evidence. The Director analyzed this additional evidence, but concluded that the Petitioner had not established, by a preponderance of the evidence, that he was under 21 years of age when he filed his SIJ petition. To support this argument, the Director indicated that, in his response to the NOID, the Petitioner argued that he has “been using the date of birth” on his birth certificate in every government record; however, the Director noted that

² We use initials to protect the identity of individuals.

the affidavits provided by the Petitioner in response to the NOID in support of this argument all attested to the existence of records, but the Petitioner did not provide any of the actual records. The Director further stated that the Petitioner had not provided a sufficient explanation as to why his birth was not registered until after he departed Bangladesh and was on his way to the United States. Regarding the presence of a different date of birth in the record, the Petitioner argued that he was provided a passport by the smugglers, but he was unaware of how they obtained the passport, or the information contained within. The Director noted that this conflicted with the Petitioner's previous statements that the first passport issued to him contained the same date of birth he has always used.

The Director's decision also set forth a number of inconsistencies present in the record between the Petitioner's statements to the Family Court, his Form I-589, Application for Asylum and Withholding of Removal (asylum application), and his statements in support of his SIJ petition. The Director noted that the Petitioner submitted multiple documents which indicated that both of his parents had waived their rights to appear before the Family Court, but the Petitioner had also stated that his father passed away in 2001. The Director indicated that the Petitioner's asylum application did not indicate that his father was deceased, and instead indicate that he was residing in Bangladesh. The Director stated that the record reflected statements by the Petitioner indicating that his parents could not take care of him financially, but the Petitioner also claimed that his parents arranged for a broker for his travel to the United States, and the Director identified this as an inconsistency with the Petitioner's claim that it was his uncle who contacted smugglers to arrange for his travel to the United States. The Director found further inconsistency with the Petitioner's claim that he was unable to attend school, as the Petitioner provided documentation that he completed Class 7 in 2015 and based on the date of birth the Petitioner has provided, would have made him 17 years old. The Director pointed to an affidavit from the headmaster of the Petitioner's school, which stated that the Petitioner bears good moral character, but made no mention of irregular attendance or poor grades. The Director further noted that the name of the school on the affidavits, [REDACTED] Elementary School, differed from the name the Petitioner had previously provided on his asylum application, [REDACTED] Government Primary School.

Finally, the Director determined that the SIJ order lacked a qualifying parental reunification determination, as the SIJ order did not specify a basis of either abuse, abandonment, neglect, or a similar basis under New York law, and further did not specify what New York law was used to reach the determination of the non-viability of reunification of the Petitioner with one or both of his parents. The Director further noted that the SIJ order lacked a factual basis for the Family Court's findings, as the *Memorandum in Support of Request for Order Regarding Child's Eligibility for Special Immigrant Juvenile Status* (underlying memorandum) contained inconsistencies, such as noting that the Petitioner's father waived his right to appearance and consented to the Petitioner's guardian, and also used the first names of other individuals unrelated to the Petitioner when presenting arguments before the Family Court. As a result of the above, the Director determined that the Petitioner had not established, by a preponderance of the evidence, that he was under 21 years of age when he filed his SIJ petition. The Director further determined that the SIJ order did not contain a qualifying parental reunification determination under New York law, and that the Petitioner did not warrant USCIS' consent to SIJ classification due to inconsistencies in the record.

The Petitioner subsequently filed a combined motion to reopen and reconsider. As an initial matter, we note that the Petitioner's motion, on Page 2 of the Form I-290B, Notice of Appeal or Motion, indicated in the field at Part 2, Number 4, "SIJS-RFM CLASS MEMBER," and further, on page 6 of

the form, Part 7, Number 3.d, the Petitioner stated, “I am a class member in *R.F.M. v. Nielsen*. My SIJS APPLICATION WAS DENIED AND SHOULD BE RECONSIDERED.” As a result, although the Petitioner submitted additional arguments and evidence to address the Director’s initial decision, the Director dismissed the Petitioner’s combined motion, as he was found not to be a member of the *R.F.M. v. Nielsen* class. On appeal, the Petitioner submits a brief and additional evidence.

B. Lack of Qualifying Parental Reunification Determination

The Act requires a juvenile court’s determination that SIJ petitioners 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. The plain language of the Act requires this reunification determination to be made under state law. *See id.*; 8 C.F.R. § 204.11(c)(1).

In our review of the underlying record, including the SIJ order, underlying memorandum, and the transcript of the guardianship hearing, we do not find that the state court determined that the Petitioner’s reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or any similar mistreatment by his parents as defined in New York law, as he asserts. While the transcript of the guardianship hearing reflects that the Family Court indicated that “[the Petitioner] was faced with abuse by the grand -- the mother and he was forced to work to support the family,” the transcript does not reflect any citation of New York law. Further, review of the underlying memorandum submitted to the Family Court prior to the hearing and issuance of the SIJ order reflects that there was no discussion of specific New York laws the Petitioner was asking the court to apply to his case. As discussed above, the Petitioner’s SIJ order stated, “reunification with one or both of [the Petitioner’s] parents, [names of Petitioner’s father and mother], is not viable due to abuse, neglect, abandonment, financial hardship, or similar basis under New York law, and under section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J).”

On appeal, the Petitioner states that he “was in need of a guardian and that his parents had neglected and/or abandoned him. In concert with the Family Court’s best interest standards and child welfare obligations, the Court’s order specifically underscores its jurisdiction over [the Petitioner’s] care and custody as a juvenile. Significantly, as part of these proceedings, [the Petitioner] was found to be neglected & abandoned by both of his parents, which triggered the court’s specialized ability to address his welfare” (emphasis removed). However, in our *de novo* review, we do not find that the Family Court made these findings in the Petitioner’s case. The SIJ order only noted that the Petitioner could not reunify with his parents “due to abuse, neglect, abandonment, financial hardship, or similar basis under New York State law, and under section 101(a)(27)(J) of the Act, 8 U.S.C. 1101(a)(27)(J)” and, as noted by the Director, did not specify either the New York law underlying this finding, or the specific ground that applied to the Petitioner. As a result, we find that the SIJ order does not contain the required parental reunification determination under state law, as required by 8 C.F.R. § 204.11(c)(1).

Since the identified basis for denial with respect to the lack of qualifying parental reunification determination from the state juvenile court is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the issues of whether the Petitioner has established that he was under 21 years of age at the time he filed his SIJ petition, or whether he warrants USCIS’ consent to his SIJ classification, along with making determinations regarding inconsistencies noted by the Director in the initial

decision. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner has not met his burden of establishing that the New York Family Court made a qualifying determination that his reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under New York law as section 101(a)(27)(J)(i) of the Act and the regulation require.

Consequently, the Petitioner has not overcome this basis of the Director's denial on appeal and has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.