



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

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

In Re: 18598174

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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), finding that the Petitioner did not show that the SIJ petition was *bona fide* and USCIS' consent warranted. The matter is now before us on appeal. 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, the appeal will be sustained.

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).

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

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).

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

The Petitioner is a native and citizen of Ecuador who entered the United States without inspection in 2013. In [] 2020, the Family Court of the State of New York, [] issued an Order Appointing Guardian of the Person in which the Petitioner's father was appointed guardian. On the same date the Family Court issued a Decision on Application for Special Findings where it determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was dependent upon the juvenile court; that the reunification with one or both parents was not viable due to abuse, neglect, abandonment, or a similar basis found under state law; and that it would not be in the Petitioner's best interest to be returned to her country of nationality as both parents reside in the United States.

Based on the Family Court's orders, the Petitioner filed her SIJ petition in June 2020. The Director denied the SIJ petition, finding that the Petitioner did not show that the SIJ petition was *bona fide* and USCIS' consent warranted. The Director found that evidence indicated the Petitioner's primary purpose in seeking the juvenile court order was to obtain an order with factual findings to enable her to file a petition for SIJ classification. The Director referred specifically to the court order stating that "[t]here is no question the purpose of the guardianship petition is to provide the predicate for the SIJ findings, thereby, facilitating the Child's intended application to USCIS." The Director noted that the court order also stated that "... the guardianship would last a matter of days and the only reason for it is to serve as a possible pathway towards citizenship...." The Director also noted that the court order further observed that the Petitioner's mother protested that she wished to have contact and a relationship with the Petitioner over the prior two years and that the mother is a resident of the United States.

On appeal, the Petitioner argues, through counsel, that regardless of the court's characterization within the order the facts establish all the necessary elements. She asserts that the Director's decision relies on dicta within the order while failing to consider the factual basis on which the order was made and that statements by the court within the decision do not negate the factual findings. The Petitioner also contends that the Director relied on her mother's testimony which the court found to be not credible, that her mother never provided for her, and that the mother conceded she did not provide financial support but opposed the petition because of her own immigration status. The Petitioner claims that testimony cited in the order, her affidavit, and the conclusions of the court do not suggest her motivation was expressly for an immigration benefit. She further contends that the court determined, based on evidence, that it was not in her best interest to return to her native country, that she could not be reunited with one or both parents and was abandoned as defined by New York state law, and that she relied on her father who was appointed guardian.

In an affidavit submitted on appeal the Petitioner claims that her father provided care and assistance for her long before she sought the SIJ petition. She states that after her parents separated in 2018, she lived with her mother who did not provide parental care for her, so she moved in with the father of her own baby, but was abused, and her father then provided her a place to live, food, and emotional support. The Petitioner maintains her request for SIJ classification was always about her mother not providing financially or emotionally for her and not having a relationship with her.

B. USCIS' Consent is Warranted

Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment or a similar basis under state law, the record must contain a factual basis for each of the requisite SIJ determinations to establish that a petitioner's request for SIJ classification merits USCIS' consent. Here the order indicates that the only contested criteria was viability of reunification. In withholding USCIS' consent, the Director concluded that the record indicated the Petitioner's primary purpose in seeking the juvenile court order was to obtain an order with factual findings to enable her to file a petition for SIJ classification. We will withdraw this finding in the Director's decision.

The 2020 court order indicates that the guardianship petition and a motion requesting that the court make factual findings pursuant to 8 U.S.C. § 1101 (a)(27)(J) were both opposed by the Petitioner's mother. The order specifies that the Petitioner, her father, and her mother all testified that the mother and the Petitioner had not been in contact for the last two years, but that the mother protested that she wished to have contact and a relationship with the Petitioner over that time. In the court order the judge acknowledged the mother's claim that the Petitioner cut off contact with the mother, but observed it was the mother's responsibility to foster a relationship and she did not. The judge noted that the mother admitted she provided no financial support for over two years, could not point to any evidence of any effort to reestablish contact, and testified that the only reason she contested the guardianship application was because she feared for her own immigration status if there were a finding that she had abandoned the Petitioner. The order concludes that "[u]nder these circumstances, the Court finds that the Mother did abandon the Child..." and consequently the petition established all grounds for the SIJ finding.

USCIS recognizes that petitioners may have an immigration motive for seeking a juvenile court order. See 6 USCIS Policy Manual, J.2(D), <https://www.uscis.gov/policymanual> (explaining that while there may be some immigration motivation for seeking a juvenile court order, it did not necessarily reflect that the request for SIJ classification was not *bona fide*). In determining whether consent is warranted, we look to the nature and purpose of the juvenile court proceedings and examine whether the court's determinations were sought in proceedings granting relief from parental maltreatment, beyond the factual findings required to file an SIJ petition.

Our review here shows that the juvenile court exercised jurisdiction over the Petitioner as a juvenile under New York state law in custody proceedings, the nature and purpose of which were to protect the Petitioner from further parental maltreatment. The court order indicates that the mother disputed the guardianship petition and motion requesting the court make factual findings, addresses the mother's claims, and nevertheless determined that the Petitioner's reunification with her mother was

not viable due to abandonment under New York law.² The record reflects the factual basis for that determination and shows that the court granted the Petitioner relief from her mother's maltreatment by granting custody of the Petitioner to her father. The court further found that it was not in the Petitioner's best interest to be returned to Ecuador.

Accordingly, the Petitioner has established that she sought the juvenile court orders to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit, and she has shown that the court in fact granted her such relief when it granted custody to her father. Consequently, the Petitioner's request for SIJ classification merits USCIS' consent under section 101(a)(27)(J)(iii) of the Act.

As the Petitioner has overcome the Director's ground for denying the SIJ petition she has met her burden to establish that she is eligible for and merits USCIS' consent to SIJ classification. The Director's decision is therefore withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.

² The order cited New York law that defines abandonment by a parent as the "failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so." Domestic Relations Law § 12(2)(a).