



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

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

In Re: 20237373

Date: NOV. 14, 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 the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment and was therefore not eligible for SIJ classification. On appeal, the Petitioner asserts her eligibility for SIJ classification. 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) 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. 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.

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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).

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 determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner is “dependent upon the juvenile court.” The Family Court also found that the Petitioner’s reunification with both of her parents was not viable due to abandonment as a result of the parents’ “sporadic contact” and failure “to provide for [the Petitioner’s] basic and financial needs.” The Family Court also determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to China, her country of nationality. *Proposed Order-Special Findings* (SIJ order), dated August 1, 2018. The SIJ order formed the basis of the Petitioner’s SIJ petition, which she filed in October 2018.

In April 2021, the Director denied the SIJ petition, concluding that USCIS’ consent was not warranted because the record contained material inconsistencies that established that 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. Specifically, the Director noted that while the Petitioner had stated in her guardianship proceedings and SIJ petition that she had been abandoned by her parents, the record indicated that she had reunited with her mother, as her mother’s Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), indicated that she lived at the same address as the Petitioner. Further, the Director detailed that while the Petitioner indicated that her mother was residing in China on both her SIJ petition and her Form I-485 application, the Petitioner’s mother was in fact living in the United States and had provided the same address as the Petitioner’s on her I-485 application. Moreover, the Director noted that the Petitioner’s father had filed an immigrant visa petition indicating that he “may be planning to immigrate.” Therefore, the Director denied the SIJ petition, determining that there was insufficient evidence to establish that the Petitioner’s primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment, rather than for immigration purposes.

### 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 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).<sup>2</sup>

On appeal, the Petitioner maintains that she remains eligible for SIJ classification and warrants USCIS’ consent, irrespective of the Director’s findings regarding her mother, because the record does not contradict the Family Court’s finding that reunification with her father is not viable due to actual abandonment. The Petitioner asserts that she has not spoken to her father since before she left China and he has not provided any financial support to her while in the United States. Moreover, the Petitioner explains that she recently learned that her father was convicted of financial related crimes and sentenced to six years in prison in China and thus, his abandonment is clear and ongoing and reunification with him continues to not be viable. As for her mother, the Petitioner contends that she does not live with her mother, is seldomly contacted by her, and her mother provides no financial support. The Petitioner’s aunt/guardian echoes the Petitioner’s statements, confirming that the Petitioner’s father never contacts the Petitioner or provides any financial support and is currently serving a prison sentence. Counsel for the Petitioner concludes by asserting that the Petitioner’s mother’s conduct is irrelevant “given that the statute is satisfied if either parents commits maltreatment under state law and the father’s abandonment [of the Petitioner] is sufficient to warrant USCIS’s consent.”

As discussed, the Family Court here found that the Petitioner’s reunification with both her parents was not viable due to abandonment, and appointed her aunt as her guardian. The guardianship and SIJ orders contain specific factual findings by the court to support its parental reunification and best interest determinations, including that the Petitioner’s parents abandoned her and have not supported her financially. The inconsistencies identified by the Director do not inherently conflict with the Family Court’s findings regarding the Petitioner’s abandonment by her father. Irrespective of the Petitioner’s relationship with her mother, the court’s findings relating to the father’s abandonment are sufficient because, as correctly noted by Petitioner’s counsel, petitioners only need to be unable to reunify with one parent. The record shows that the nature and purpose of the SIJ proceedings were to protect the Petitioner from parental abandonment: in its decree, the court identified the father’s abandonment as a grounds for removing him as a guardian under New York state law, simultaneously appointing her aunt as a guardian.

For these reasons, a preponderance of the evidence establishes that the court had a reasonable factual basis for its determinations, and, consequently, a primary reason that the court’s SIJ-related findings

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<sup>2</sup> 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).

and the guardianship appointment were sought was to obtain relief from parental abandonment. We withdraw the Director's determination to the contrary.

On appeal, the Petitioner has demonstrated that she is eligible for and merits USCIS' consent to her request 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.