



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

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

In Re: 15784516

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, concluding the Petitioner had not demonstrated she merits USCIS' consent to SIJ classification. On appeal, the Petitioner asserts her eligibility for SIJ classification. 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

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 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). The petitioner bears 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).

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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [REDACTED] 2018, when the Petitioner was 20 years old, the California Superior Court, [REDACTED] (Superior Court) issued an *Order Appointing Guardian or Extending Guardianship of the Person* (custody order). The Superior Court appointed U-T-T-B-² as the Petitioner's guardian in its custody order, and its accompanying *Letters of Guardianship* were issued on the same date. Also in November 2018, the Superior Court issued a *Special Immigrant Juvenile Findings* order (SIJ order) indicating the Petitioner was placed in the custody of U-T-T-B- as the Petitioner was abused and abandoned by her parents. In its SIJ order, the Superior Court determined the Petitioner could not reunify with her mother and father under California law due to abuse, neglect, and abandonment. The Superior Court specified the Petitioner's father was an abusive alcoholic and the Petitioner's mother bullied and physically attacked the Petitioner. The Superior Court determined the Petitioner began living on the streets in Vietnam when her parents no longer let her live in their home. The Superior Court further determined it would not be in the Petitioner's best interest to return to Vietnam, as she would have nowhere to reside.

The Petitioner filed her SIJ petition in November 2018. The Director denied the petitioner concluding the Petitioner had not demonstrated she merits USCIS' consent to SIJ classification.

B. USCIS' Consent

The Director determined that due to material inconsistencies between the Petitioner's SIJ findings and her 2018 nonimmigrant visa application, the Petitioner did not merit USCIS' consent to SIJ classification. Specifically, the Petitioner's SIJ order contains a finding that her parents would not let the Petitioner live at home, abandoning her to live on the streets. However, the Petitioner's 2018 nonimmigrant visa application indicated she was still residing at her parents' address and her father would be financing her travel to the United States.

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). A request for SIJ classification must be *bona fide* for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5).

The Petitioner submitted an affidavit asserting her father was an alcoholic who would sexually abuse her when he drank and when the Petitioner told her mother about her father's actions, her mother physically assaulted her. The Petitioner claims her home environment led the Petitioner to start drinking alcohol and doing drugs until she was kicked out of the home by her mother. The Petitioner contends she lived on the streets until a priest took her in and helped her to contact U-T-T-B-, her cousin residing in the United States. The Petitioner explains that through a friend of U-T-T-B-, she became connected with a visa agency, E-T-M-P-C-, which assisted her with her student visa application. E-T-M-P-C- informed the Petitioner that her visa would not be approved unless the Petitioner demonstrated she resided with and was supported by her parents. The Petitioner's residence

² Initials are used to protect the privacy of this individual.

with her parents coupled with her father's financing of her trip to the United States would present a material conflict with her claims of parental abandonment. However the Petitioner acknowledges she both falsely listed her parents' address as her place of residence on the application and indicated her father would be financing her trip, solely to gain approval of her student visa. In addition, the Superior Court found made a qualifying parental reunification determination for the Petitioner, including Petitioner cannot reunify with her parents on three separate grounds: abuse, abandonment, and neglect. And the Director does not identify discrepancies related to the Superior Court's findings that her parents abused her.

Further, we do not go behind a court order to reevaluate determinations of abuse, neglect, abandonment, or a similar basis properly made under state law. *See* 87 Fed. Reg. 13066, 13086 (March 8, 2022) ("USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law."); *see also* 6 *USCIS Policy Manual* J.2(A), <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court determinations made under state law and explaining that we do not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law). Here, the Petitioner sought the guardianship of her cousin and an order with SIJ-related findings in proceedings granting relief from parental abuse, abandonment, and neglect under California law. And the Petitioner has met her burden of demonstrating the Superior Court appointed her a guardian who would have care and custody due to the abandonment and abuse of her parents. The Superior Court's SIJ order includes findings that the Petitioner's father was an abusive alcoholic and the Petitioner's mother bullied and physically attacked the Petitioner. In totality, after reviewing the Petitioner's affidavit with the entirety of the record, a preponderance of the evidence demonstrates the Petitioner merits USCIS' consent to her SIJ classification. The Petitioner has also established that she meets the remaining eligibility requirements for SIJ classification.

ORDER: The appeal is sustained.