



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

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

In Re: 18973639

Date: NOV. 16, 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), determining that USCIS' consent was not warranted because the record contained material inconsistencies between the SIJ findings and the Petitioner's statement when apprehended attempting to enter the United States. 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, 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).

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.

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).

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 Facts and Procedural History

The Petitioner, born on [REDACTED] 2000, is a native and citizen of Vietnam apprehended in [REDACTED] 2017 by U.S. Customs and Border Protection (CBP) agents as she attempted to enter the United States without inspection by being concealed in the trunk of a vehicle. She was then placed in removal proceedings. On [REDACTED] 2018, the Chancery Court of [REDACTED] Mississippi, [REDACTED] Judicial District, issued a Judgment of General Guardianship in which it determined the Petitioner an unmarried, un-emancipated minor and appointed an adult cousin as guardian. According to the order, the “Court has been informed” that the Petitioner’s family was under surveillance for their roles in protesting government policies and that when the Petitioner was 16 years old her parents “deposited her with an elderly aunt and left the village, taking with them their belongings” and left the Petitioner without provisions for education and welfare and neither parent has contacted her. The order found that the parents demonstrated willful desertion of the Petitioner and were unsuitable to be guardians, pursuant to section 93-13-1 of the Mississippi Code; that the parents deserted the Petitioner and severed ties while no one knows their whereabouts, so reunification with either parent was not viable; and that it was not in the Petitioner’s best interest to be returned to Vietnam where she has no apparent suitable relations with whom she can live and where her security may be at the hands of an authoritarian government.

Based on that order, the Petitioner filed a Form I-360 in October 2018. The Director issued a request for evidence (RFE) identifying inconsistencies between the Petitioner’s statement to CBP agents and the SIJ findings. The Director indicated that the Petitioner misrepresented her relationship with her parents to procure an immigration benefit, claiming in the Judgment of General Guardianship that her parents left her with an aunt, never communicated with her, and never provided for her education or welfare, which contradicted her statement to CBP agents that she had problems with police where her parents protested against a factory, then decided to send the Petitioner to the United States for work to help them, and that her parents arranged and paid for her to leave Vietnam.

In response to the RFE the Petitioner submitted an affidavit in which she stated that in Vietnam many people protested factory pollution and that her parents were put under house arrest. She claimed that in August 2016, when she was 16 years old, her parents sent her to an aunt’s home, and that after speaking with the aunt her parents said good-bye and left. The Petitioner maintained that she lived with the aunt for more than a year, that her aunt explained her parents had taken their things and gone away but did not discuss their situation, and that in [REDACTED] 2017 the aunt prepared a travel bag, told the Petitioner she would go to the United States and be safe, and took her to a city where she boarded an airplane. The Petitioner maintained that her aunt did not discuss any details of the trip, only that the trip had been arranged. The Petitioner recalled that when arriving in the United States she explained about the protests, her parents’ house arrest, living with her aunt, and having little money,

but claimed that she did not believe she said her parents arranged her passage to the United States or that she came to the United States to work to help her parents.

The Petitioner also submitted a statement from the cousin appointed guardian where the cousin claimed that in early [REDACTED] 2017, she “received word from a family relation in Vietnam”² that the Petitioner would come visit, then in mid-[REDACTED] the cousin’s father said the Petitioner was in a group home for children apprehended crossing the border. The cousin stated that while in the group home the Petitioner was allowed to call her mother but contended that no one from the Petitioner’s family in Vietnam has communicated with the Petitioner or offered to help with expenses since she came to live with the cousin, and that the Petitioner told the cousin that family friends in California were able to send a copy of her birth certificate.

The Director denied the SIJ petition, finding that USCIS’ consent was not warranted because the record contained material inconsistencies where the special immigrant juvenile findings contradicted the Petitioner’s statement to CBP. The Director noted specifically that the Petitioner told CBP agents that her parents paid smuggling costs for her to come to the United States to support them whereas the Judgment of General Guardianship stated that the parents abandoned her and broke off all ties. The Director indicated that in response to the RFE the Petitioner claimed that her aunt arranged and paid for the smuggling and that she, the Petitioner, did not tell anyone her parents arranged her travel or that she came to the United States to work to support her parents. The Director concluded that the Petitioner provided details of the smuggling operation and the purpose for coming to the United States in her statement to CBP, determined that she did not adequately explain the discrepancies, and surmised that as evidence suggested the Petitioner intended to immigrate to the United States it could not be determined whether her 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 none of the answers identified by the Director are recorded anywhere other than on a Form I-213, Record of Deportable/Inadmissible Alien, as there is no Form I-831, Continuation Page, or other records of her statements to CBP officers.³ With the appeal the Petitioner submits a redacted copy of Form I-213 along with a CBP Form 93, Unaccompanied Alien Child Screening Addendum. Through counsel she denies that she told CBP officers that her parents sent her for work to help them but also maintains that although according to the Form I-213 she stated her parents sent her to the United States to help them, it only relates to the parents’ motives, not to her intent. The Petitioner argues that the CBP Form 93 offers more probative information where she stated that she left Vietnam to seek a better life and is afraid of returning.

The Petitioner further contends that the Director’s decision misstates that she claimed her aunt arranged and paid for her to be smuggled into the United States. She maintains that her affidavit was silent about who paid or arranged her travel and that she stated that her aunt did not discuss details. The Petitioner asserts that she did not know who made the arrangements but argues that an assumption that her parents helped her would be reasonable. She also disputes that she provided detail of the smuggling operation to CBP agents, arguing that details on the Form I-213 are sparse since she could

² The relative identified by the cousin appears to be the aunt with whom the Petitioner claims she lived prior to departing Vietnam for the United States.

³ The record contains a Form I-831, Continuation Page that provides the CBP agent’s account of the Petitioner’s interview statement, but it does not contain a separate verbatim statement from the Petitioner.

not recall the route of her travels and stated that an unknown man traveled with her. Finally, the Petitioner asserts that the juvenile dependency determination has a proper basis as Mississippi law only requires a finding that the parent has not provided adequate support for education and that abandonment puts the burden on the parent to initiate contact, so it would not be inconsistent if she were the one who initiated contact with her parents. She further argues that her statement to the court that her parents broke off ties would not preclude them from reconnecting with her now that she is in the United States.

B. USCIS Consent Is Not Warranted

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). As indicated above, 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).

In withholding consent, the Director described inconsistencies between the Petitioner's claims for her SIJ petition and the information that she provided to CBP agents when apprehended so that it could not be determined whether she was seeking the juvenile court order to obtain relief from parental maltreatment or for immigration purposes. On appeal the Petitioner has not overcome the Director's determination.

Although the information provided by the Petitioner when detained by CBP agents is included on Form I-213 and Form I-831 as a summarization by the interviewing agents and is not a transcript of the interview, the information contains sufficient detail about the Petitioner's travel, including the amount paid by her parents, to indicate that it was provided by the Petitioner. In her response to the Director's RFE the Petitioner contended that she did not believe she made the statements, but she did not dispute the accuracy of the information on the Form I-213, present argument or evidence of how the information was otherwise gathered by CBP agents, nor did she suggest what information she did provide agents if it differed. The record reflects that in [REDACTED] 2017 the Petitioner told CBP agents that her parents arranged her smuggling and that they were living together in the city of [REDACTED] Vietnam, while the 2018 court order indicates that she claimed her parents had abandoned her in August 2016 with no subsequent contact and their whereabouts were unknown. The record contains the SIJ order indicating that the court "reviewed and considered all evidence" and the underlying petition for guardianship from the Petitioner's cousin, but there is no other evidence in the record noting what the Petitioner told the court regarding abandonment by her parents. Although not addressed by the Director, the affidavit from the cousin states that the Petitioner was able to call her mother from the United States while in the group home in [REDACTED] 2017.

The Petitioner's statement to CBP materially conflicts with testimony provided in order to meet eligibility requirements. We recognize the Petitioner's assertion that the Director erred in stating that she identified her aunt as arranging and paying for her to be smuggled. Review of the Petitioner's affidavit does not reveal that she claimed her aunt arranged and paid for the smuggling, but rather that the aunt said it had been arranged. That notwithstanding, the Petitioner has not provided sufficient evidence to overcome the Director's decision and to establish that a primary reason she sought the juvenile court determination was to obtain relief from parental maltreatment and that her request for SIJ classification is therefore *bona fide* such that USCIS' consent to a grant of SIJ classification is warranted.

C. Qualifying Parental Reunification Determination

As described above, the Director determined that USCIS's consent was not warranted because the record contains material inconsistencies where the Petitioner's statement to U.S. Border Patrol that her parents smuggled her into the United States to support them contradicted the court order that stated her parents abandoned her and broke off ties and the Director was therefore unable to determine whether the primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes. The Director's decision referred to the requirement for a juvenile court determination that reunification with one or both parents is not viable due to abuse, neglect, or abandonment, or a similar basis found under state law, but did not specifically address the court's determination in this regard.

To be eligible for SIJ classification, the Act requires a juvenile court determination that a juvenile's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. 8 C.F.R. § 204.11(c)(1)(ii). Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) ("Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.").

The court order shows the court determined that the conduct of both parents in leaving the Petitioner "without provision for her education and welfare and their complete absence and lack of contact or communication with their minor daughter amply demonstrate their willful desertion of [the Petitioner]. As such, this Court finds that both [parents are] unsuitable to be the guardians of [the Petitioner] pursuant to Section 93-13-1 of the Mississippi Code as revised."

At the time of the court order, the Mississippi code provided, in part, at section 93-13-1, Parental Guardianship, that "if any father or mother be unsuitable to discharge the duties of guardianship, then the court, or chancellor in vacation, may appoint some suitable person, or having appointed the father or mother, may remove him or her if it appear that such person is unsuitable, and appoint a suitable person." Miss. Code Ann. § 93-13-1 (West 2018).

A review of the record shows that although the court described the parents' actions and appointed the Petitioner's cousin as the guardian pursuant to the Mississippi code, the court order did not provide an abandonment finding and related state law, and though referencing the parents' willful desertion of the Petitioner, the court order did not cite to a state law. We are therefore unable to conclude that the court order provided a qualifying parental reunification determination, as required.

III. CONCLUSION

In sum, the Petitioner has not established by a preponderance of the evidence that USCIS' consent is warranted, as she has not adequately addressed the material inconsistencies in the record. We additionally find the Petitioner has not shown there was a juvenile court determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law. Accordingly, the Petitioner has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.