



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

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

In Re: 17460913

Date: NOV. 18, 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 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 submits a brief and asserts that he has established his eligibility for SIJ classification and that he warrants USCIS' consent in granting it. 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)(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

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).

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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2019, when the Petitioner was 18 years old, the New York Family Court for [] (Family Court) appointed the Petitioner’s brother, R-O,² as his guardian pursuant to proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate’s Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The order stated that “the appointment shall last until the [Petitioner’s] 21st birthday” In a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), also issued in [] 2019, the Family Court determined, among other findings, that the Petitioner was “dependent upon the Family Court and has been placed in the custody or guardianship of R-O-, an individual appointed by this Family Court.” The Family Court also found that the Petitioner’s reunification with his father was not viable due to abuse and abandonment, explaining that the Petitioner’s father “severely beat him on numerous occasions causing [the Petitioner] to seek medical help.” Further, the Family Court specified that the Petitioner’s father had abandoned the Petitioner in that when the Petitioner was 17 years old, “he ran away from home and was not allowed back in the house,” and since then the father “has been unwilling to care for his son and had not provided for him in any way.” The Family Court separately concluded that the Petitioner’s mother had failed to protect the Petitioner from his father and to ensure his safety, and also had abandoned him by failing to look for or provide for the Petitioner when he ran away from home at 17 years of age. The Family Court added that the Petitioner’s reunification with both of his parents is not viable, citing to sections 1012(e) and (f) of the N.Y. Fam. Ct. Act, which provides the definitions of “abused child” and “neglected child,” and section 384-b(5) of the New York Social Services Law, which defines an abandoned child. In addition, the Family Court concluded that it would not be in the Petitioner’s best interest to return to Ukraine, his country of nationality or last habitual residence, because “his father abused him and both parents abandoned him by cutting off any contact with him and failing to provide him with shelter, . . . to protect him from the outside world[,] . . . to provide him with adequate supervision and guardianship in his journey to the United States” and because the Petitioner “will be in physical danger in his native country and will have no place to live.”

In November 2020, the Director issued a notice of intent to deny (NOID), advising the Petitioner, in pertinent part, that USCIS was unable to determine if the Petitioner’s primary purpose for obtaining the SIJ order was to obtain relief from parental mistreatment or for immigration purposes because the Petitioner’s guardian had the same first and last name as the Petitioner’s father and therefore it appeared that the Family Court had placed the Petitioner in the custody of his father. Finally, the

² We use initials to protect identities.

Director advised the Petitioner that he had provided a Hungarian passport as evidence of his age and therefore the SIJ order was insufficient because it reflected the Family Court's best interest determination with respect to returning the Petitioner to Ukraine, his country of birth, but did not address whether it was in the Petitioner's best interest to be returned to Hungary, which the record indicated is his country of nationality.

With his timely response to the NOID, the Petitioner explained that his brother and father have identical first and last names, and that the Family Court's guardianship order appointed the Petitioner's brother as his guardian, not his father. He included an amended SIJ order issued in [REDACTED] 2020, containing the same findings by the court but in which the court separately concluded that it was not in the Petitioner's best interest to be returned to Hungary and Ukraine, his countries of nationality or last habitual residence.

The Director denied the SIJ petition, concluding that the Petitioner had not established that his request for SIJ classification was bona fide and that USCIS' consent is warranted because the record lacked evidence explaining purported inconsistencies identified in the NOID or otherwise showing that the Family Court was aware of these inconsistencies when it issued the SIJ order.

On appeal, the Petitioner contends that there are no material inconsistencies between his claims in support of his application in U.S. Customs and Border Protection's (CBP) Electronic System for Travel Authorization (ESTA) and the record below, and therefore his request for SIJ classification is bona fide and USCIS' consent is warranted.

B. USCIS' Consent Is 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). 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).

To establish USCIS' consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii).

In denying the SIJ petition, the Director concluded that the Petitioner had not shown that consent was warranted after determining that information in the record conflicted with the Family Court's findings

and the Petitioner's statements before the Family Court that his mother and father had abandoned him because they had not sought to find him after he ran away from home and the court's finding that he has "not had contact with [his] parents since" running away. Specifically, the Director noted that in April 2019, when the Petitioner completed an application in CBP's ESTA, he listed his father's name and his mother's e-mail address as his emergency contact information, whereas the Family Court SIJ orders reflect that the Applicant ran away from home at age 17 (which was approximately in 2018) and had not had contact with his parents since. In addition, the Director stated that immigration records show that his father arrived in the United States in December 2019 and had been residing at the address of O-V-, an individual with whom the Petitioner had also claimed he would reside when he had arrived to the United States in April 2019. The Director stated that when USCIS had conducted a site visit to the Petitioner's new residence with his brother (his guardian), the brothers had provided conflicting information about how well each of them knew O-V-. The Director also stated that the Petitioner had not provided "a creditable explanation for listing emergency contact information for parents" who the Petitioner told the Family Court had subjected him to parental maltreatment. The Director concluded that "[t]his information is contrary to the information provided to the court" and, therefore, the Director was unable to determine whether the Petitioner's primary purposes in seeking the SIJ order was to obtain relief from parental maltreatment or to obtain an SIJ order for immigration purposes.

On appeal, the Petitioner claims that he provided his father's name and his mother's e-mail address as contact information in ESTA because the Petitioner had been living in the basement of a commercial building and had no residential address or phone number after he left his parents' home. The Petitioner also states that he provided O-V-'s address as his intended residence because his brother was residing in the United States without lawful immigration status, and he did not want to give his brother's information and did not even know if he could list his brother. The Petitioner further states that O-V- was a family friend, and that he listed her address but never resided with her in the United States. Finally, the Petitioner asserts that the inconsistencies that the Director's cites to are not supported by evidence, that his father does not reside with or share a relationship with the Petitioner, and that there are no material inconsistencies with respect to the Family Court's conclusion that he could not be reunified with his father due to his father's abusive treatment of the Petitioner. The Petitioner emphasizes that listing an abusive parent as a contact does not mean that the parent was not abusive.

Upon *de novo* review, the Petitioner has established that USCIS' consent to his request for SIJ classification is warranted. As explained later, our review does not support the Director's determination that the record reflects material inconsistencies with the court's SIJ related determinations and the Petitioner's assertions before the court and in his SIJ proceedings. Regardless, as noted by the Petitioner on appeal, even if the record established a material conflict with the court's finding that the Petitioner's father had abandoned him, the record does not show, nor did the Director conclude, that there is a material conflict with the Family Court's separate determinations that the Petitioner cannot be reunified with his father and his mother because his father physically *abused* him, resulting in the Petitioner needing medical attention, and his mother failed to protect him from his father and ensure his safety.

Additionally, the record below contained a factual basis for the parental reunification and best interest determinations made by the Family Court in the SIJ orders, as the court, in making those determinations, specifically found "his father abused him and both parents abandoned him by cutting off any contact with him and failing to provide him with shelter, . . . to protect him from the outside

world[,] . . . to provide him with adequate supervision and guardianship in his journey to the United States[,] and because the Petitioner “will be in physical danger in his native country and have no place to live.” The Family Court also found that the Petitioner’s father had severely beat him on several occasions, requiring the Petitioner to seek medical attention, and his mother had failed to protect him from his father and ensure his safety. The Family Court also granted the Petitioner relief from the maltreatment by his father by granting sole legal and physical custody of the Petitioner to his brother. Additionally, contrary to the Director’s findings, the court orders do not reflect that the court made a factual finding that the Petitioner did not have contact with his parents after he ran away from home, and the fact that the Petitioner listed his father’s name and mother’s email address on the ESTA application in 2019 does not directly conflict with the court’s specific factual findings or the Petitioner’s assertions in his court and SIJ proceedings that: his parents abandoned him after he ran away from home at the age of 17 (approximately 2018) and that his father did not allow him back in the house, was unwilling to care for him and has not provided for him since then. Moreover, he reasonably explained that he provided his parents’ information on the ESTA application because he did not have his own address or phone number to provide after he ran away. Likewise, although the Applicant’s information from ESTA indicated that he and his father separately provided O-V-’s address as their intended place of residence, the Petitioner explained that he did not actually reside with O-V- and instead resided with his brother upon admission to the United States. According to the Petitioner, he had listed O-V-’s address because his brother did not have status in the United States. The record moreover confirms that the Petitioner was living with his brother at the time of USCIS’ site visit to their shared residence. Therefore, the Petitioner has established by a preponderance of the evidence that the evidence in the record establishes that the requirements for consent are met. *See* 8 C.F.R. § 204.11(d)(5) (explaining that for USCIS to consent, the juvenile court order and supplemental evidence must establish a factual basis for the court’s SIJ determinations and the relief from parental maltreatment that the court granted).

The Petitioner has shown, by a preponderance of the evidence, that his request for SIJ classification was bona fide such that a primary reason that 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. The Petitioner therefore has established that USCIS’ consent to his request for this classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

ORDER: The appeal is sustained.