



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

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

In Re: 18276045

Date: NOV. 21, 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 (SIJ petition), concluding that the Petitioner had not established that the Family Court of the State of New York (Family Court) made a qualifying parental reunification determination or that USCIS consent was warranted, as required. The matter is now before us on appeal. 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 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

In addition, USCIS must consent to granting SIJ status, which requires petitioners to demonstrate that their request for SIJ classification is bona fide. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). A bona fide request is defined as one in which a petitioner establishes 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." 8 C.F.R. § 204.11(b)(5). USCIS may withhold consent if evidence materially conflicts with eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. *Id.*

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).

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

In [] of 2020, the Family Court issued an Order Appointing Guardian of the Person (guardianship order) appointing a guardian for the Petitioner to last until she turned 21 years old in [] of 2020. The Family Court issued a separate Order of “Special Findings,” (SIJ order) concluding that the Petitioner was unmarried and under the age of 21. It further found that reunification with her parents, P-M- and J-L-², was not viable due to “a similar basis [to abuse, neglect, or abandonment] under New York law” because both parents were deceased. The Family Court also found that it was not in the Petitioner’s best interest to return to the Democratic Republic of the Congo (DRC), her country of nationality or country of last habitual residence of her or her parents, because she had no living relatives able and willing to care for her there, and she would be deprived of the stable and nurturing home environment and educational opportunities that she currently enjoyed in the United States.

The Petitioner filed her SIJ petition in March of 2020, submitting, among other things, copies of the Family Court’s Orders. The Director issued a notice of intent to deny the petition (NOID) finding that the SIJ order did not contain a qualifying parental reunification determination and advising the Petitioner that the record contained material inconsistencies with regard to the identity of her parents such that USCIS’ consent was not warranted.

In response to the NOID, the Petitioner submitted a birth certificate from the DRC, an affidavit from her aunt, copies of New York court decisions, and a Supplemental Decision from the Family Court. The Director denied the SIJ petition, concluding that the record still lacked a qualifying parental determination; the Director also determined that USCIS’ consent was not warranted as the record contained material inconsistencies regarding the identity of the Petitioner’s biological parents. Specifically, the Director advised that government records showed that J-M-, the Petitioner’s uncle, listed the Petitioner as his child on his immigration application; that he submitted a birth certificate identifying the Petitioner’s parents as P-M- and B-B-; and that on her nonimmigrant visa application (NIV) she listed her parents as J-M- and Y-M-, in contrast with the Family Court order naming the Petitioner’s parents as P-M- and J-L-.

On appeal, the Petitioner argues that the Family Court made a qualifying parental reunification determination and contends that USCIS’ consent to her SIJ petition is warranted.

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

² We use initials to protect the privacy of individuals in this case.

(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).³

In denying the Petitioner’s SIJ petition, the Director concluded that USCIS consent was not warranted because, due to numerous inconsistencies in the record regarding the Petitioner’s parents’ identities, the Petitioner had not satisfied her burden to establish that her request for SIJ classification was bona fide. The Petitioner has not overcome this ground for dismissal on appeal.

In the SIJ order, the Family Court found “after examining the motion papers, supporting affidavits, pleadings and prior proceedings in this matter...” that reunification with her parent P-M- and her parent J-L- was not viable. According to USCIS policy, this is sufficient to establish that the Family Court made the required determination regarding the petitioner’s parentage. *See 6 USCIS Policy Manual*, J.2(C)(2) (stating that “[t]he record must establish the petitioner’s parentage and that “where the juvenile order names the petitioner’s parents...USCIS generally considers this requirement to have been met.”) However, upon *de novo* review of the record, inclusive of the evidence submitted by the Petitioner on appeal, the inconsistencies identified by the Director remain unresolved, and the evidence submitted on appeal introduces a new inconsistency into the record.

As the Director noted in denying the SIJ petition, the Petitioner’s NIV application and her uncle’s immigration petition contained information that was inconsistent with the claims presented to the Family Court regarding the identity of her parents. Specifically, government records reflect that in the Petitioner had previously filed a B-2 nonimmigrant visa application (NIV) in which she claimed that J-M-, the Petitioner’s uncle, was her father, and that Y-M- was her mother. In addition, USCIS records show that J-M- later filed a Form I-589, Application for Asylum and Withholding of Removal, on which he identified the Petitioner as his biological daughter; with the NIV application he submitted a birth certificate, with translation, identifying the Petitioner’s parents as P-M- and B-B-, and her place of birth as [REDACTED] DRC.

On appeal, the Petitioner submits, among other evidence, a medical certificate from the [REDACTED] Health Center, in the [REDACTED] municipality, DRC. She contends that the inconsistencies identified in the Director’s denial are contained wholly within immigration documents submitted by the Petitioner’s

³ 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).

uncle and that the materials submitted by the Petitioner herself are consistent with the evidence presented to the Family Court.

With regard to the claims made by the Petitioner's uncle on his Form I-589 and the Petitioner's birth certificate that he provided with this Form I-589, we note that in the Petitioner's affidavit, submitted to the Family Court with the guardianship proceedings, she advised the Family Court that her uncle had submitted such an application on her behalf, but explained that she was unaware of its contents. Accordingly we assign this evidence lesser weight in our analysis.

However, government records reflect that in February 2016, the Petitioner applied for a NIV and that on this application the Petitioner identified J-M- and Y-M- as her parents and indicated that she was born in [REDACTED]. Although the Petitioner asserts on appeal that this NIV was filed on her behalf by her uncle and that she was unaware of its contents, the record shows that the Petitioner signed and attested to the information submitted on this visa application. We further note that a copy of the passport submitted by the Petitioner with her SIJ petition identified her place of birth as [REDACTED] and not [REDACTED] as claimed in her SIJ petition.

Additional evidence submitted by the Petitioner with her NOID response and on appeal to establish that P-M- and J-L- are her birth parents, as found by the Family Court, is also inconsistent with the Petitioner's passport and with her attestation on the NIV petition. With her NOID, the Petitioner submitted a Certificat de Naissance No [REDACTED] (Birth Certificate No [REDACTED])⁴ along with a certified translation, identifying J-L- as her birth mother and P-M- as her birth father, stating that she was born in [REDACTED]. She also provided an affidavit from J-L-'s sister stating that the Petitioner was born to J-L- and P-M- in [REDACTED]. The medical certificate from [REDACTED] Health Center, [REDACTED] Health Zone, [REDACTED] similarly attests that the Petitioner was born in [REDACTED]. However, the place of birth identified on these documents is discrepant with the Petitioner's place of birth, as attested to by the Petitioner and indicated on her passport, and that reported to the Family Court. These discrepancies detract from the credibility of her claim on appeal that the only inconsistencies in the record were in documentation submitted by her uncle. They further lessen the credibility of the Petitioner's assertion on appeal that the documents that she herself has submitted are consistent with the facts presented to the Family Court.

In summary, and considering the inconsistencies in the record regarding her birthplace, the Petitioner has not resolved the inconsistencies in the record with regard to her parents' identities. Specifically, the record reflects that the Petitioner submitted an affidavit to the Family Court in which she identified her parents as P-M- and J-L- and her place of birth as [REDACTED], and that the Family Court made the required determination of her parentage based upon this affidavit. However, evidence in government records and also submitted by the Petitioner with her SIJ petition and on appeal submitted to establish that her parents were P-M- and J-L- is inconsistent with what the Petitioner told the Family Court and

⁴ We note that, per the U.S. Department of State's Reciprocity Schedule for the DRC, this document is not the required birth certificate for visa applications; the required birth certificate for the DRC is titled "Acte de Naissance." Further certified copies of this birth certificate are available and are titled "Copie Intégrale d'Acte de Naissance," and "Extrait d'Acte de Naissance/Extrait du Registre des Déclarations des Naissances" is an acceptable alternate document. See U.S. Department of State, *U.S. Visa: Reciprocity and Civil Documents by Country, Democratic Republic of the Congo*, <https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/CongotheDemocraticRepublicofthe.html>

therefore materially conflicts with the Family Court's determination regarding the Petitioner's parentage. Accordingly, the Petitioner has not shown, by a preponderance of the evidence, that her request for SIJ classification is bona fide, as required under 8 C.F.R. § 204.11(b).

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether the parental reunification determination made by the Family Court was a qualifying one. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.