



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

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

In Re: 17344968

DATE: NOV. 22, 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), concluding that U.S. Citizenship and Immigration Services' (USCIS') consent to her request for SIJ classification was not warranted, and the matter is now before us on appeal. 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), (c)(1).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); 8 C.F.R. § 204.11(c)(2).

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 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

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

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 establish 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 [REDACTED] 2017, when the Petitioner was 19 years old, the New York Family Court for [REDACTED] (Family Court) appointed guardianship of the Petitioner to her paternal uncle, finding that such appointment “shall last until the [Petitioner’s] 21st birthday.” In [REDACTED] 2018, the Family Court issued an *AMENDED ORDER-Special Immigrant Juvenile Status* (SIJ order), determining among other findings necessary for SIJ eligibility under the Act, that the Petitioner was “dependent upon” the court, that her reunification with both her parents was not viable due to abandonment and neglect under applicable state law cited within the order, and that it was not in her best interest to be returned to India, her country of nationality. The SIJ orders also included factual findings by the court in support of the parental and best interest determinations.

Based on the Family Court orders, the Petitioner filed her SIJ petition in March 2018. The Director denied the SIJ petition, concluding that the Petitioner did not demonstrate that her request for SIJ classification was bona fide and warranted USCIS’ consent because the court’s parental reunification determination based on the Petitioner’s claim of her father’s abandonment was inconsistent with government records.

On appeal, the Petitioner submits a brief reasserting her eligibility for SIJ classification. She maintains that her request for SIJ classification is bona fide and warrants USCIS’ consent.

B. USCIS’ Consent Is Warranted

As stated, 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). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. *Id.* To establish that 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). Such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

The Director determined that the Petitioner’s request for SIJ classification was not bona fide because the Family Court’s factual findings in support of its determination that the Petitioner could not reunify with her father due to his abandonment was inconsistent with government records indicating that the

Petitioner regularly resided with her father in the United States since her entry in 2015. Specifically, the Director noted that while the court found that the Petitioner's father had abandoned her when she was two years old, has never contacted her, and has not provided any kind of support, and that she does not know his whereabouts, government records show the Petitioner's father had a driver's license registered to an Ohio address associated with her and her paternal family members, indicating that she and her father may have resided at the same address during the time period from 2015 to 2019.

On appeal, the Petitioner acknowledges that she has been living with her paternal grandparents in Ohio since June 2018 and with her paternal uncle between 2015 and 2018, but she maintains that her father abandoned her when she was two years old, she has not resided with him at her grandparents' residence or anywhere else since then, and she has not seen or heard from him since.² The Petitioner also points out that, irrespective of her request for SIJ classification based in part on the alleged abandonment by her father, the Family Court also determined that she cannot reunify with her mother due to her abandonment.

The record on appeal does not support the Director's determination to withhold USCIS' consent to the Petitioner's request for SIJ classification. Although the Director concluded that government records indicating that the Petitioner's father had registered his driver's license at the Ohio address where the Petitioner and her paternal grandparents resided were inconsistent with the court's factual findings relating to its parental reunification determination with respect to her father, the record does not include the referenced government records. Regardless, the information referenced in the documents with respect to the father's residence does not conflict with the court's separate parental reunification determination relating to the Petitioner's mother. *See* Section 101(a)(27)(J)(i) of the Act (stating that to establish eligibility for SIJ classification, a petitioner must be subject to a state juvenile court order determining that reunification with *one or both parents* is not viable due to abuse, neglect, abandonment, or a similar basis under state law); 8 C.F.R. § 204.11(b), (c)(1)(ii). Here, the Family Court made a qualifying determination that the Petitioner could not reunify with her mother due to abandonment under state law and made specific factual findings in support of that determination. 8 C.F.R. § 204.11(d)(5)(i) (requiring a factual basis for a juvenile court's SIJ related findings to establish that USCIS' consent is warranted). The SIJ order indicates that the court, in making this determination, relied on the Petitioner's and her guardian's testimony that the Petitioner's mother had abandoned the Petitioner, has since remarried and settled in Canada, and "does not want to exercise her parental rights over the [Petitioner]." The record also contains various underlying documents submitted with the Family Court, including the Petitioner's affidavit to the court setting forth assertions consistent with the factual findings in the SIJ order, as well as a sworn affidavit from the mother stating that she waived her right to be served as a parent in the guardianship proceeding, understood that "a finding of neglect, abuse, abandonment and any other judgment [the Family Court] deems just and proper may be entered against [her]," and waived her "rights to any future claim of guardianship, custody, or any other parental rights over [the Petitioner]." The Director's decision did not identify, and our review does not disclose, any inconsistencies in the record related to the Family

² In the Notice of Intent to Deny (NOID), the Director also noted that the court's finding of parental abandonment by the Petitioner's father was inconsistent with the Petitioner's 2015 non-immigrant visa application indicating that her father was paying for her trip to the United States and that he was residing at her claimed residence in India. However, after review of the Petitioner's NOID response, the Director's denial of the SIJ petition did not rely on these purported inconsistencies in determining that the Petitioner's request for SIJ classification is not bona fide. Further, our review of the record does not support the above assertions contained in the NOID.

Court's determination that the Petitioner cannot reunify with her mother due to her abandonment or the factual findings on which the court relied in making that determination. Further, the record reflects that the Family Court granted the Petitioner relief from her mother's abandonment by appointing her a guardian under state law. *See* 8 C.F.R. § 204.11(d)(5)(ii) (stating that in determining whether USCIS' consent is warranted, the juvenile court order or supplemental evidence must establish the relief from parental maltreatment that the juvenile court granted or recognized).

Accordingly, the record demonstrates by a preponderance of the evidence that a primary reason the Petitioner sought the juvenile court orders was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief as evidenced by the guardianship order. As the record otherwise shows that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, she has established her eligibility for SIJ petition under the Act. Accordingly, the following order will be entered.

ORDER: The appeal is sustained.