



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

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

In Re: 20889605

Date: OCT. 4, 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), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

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). 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).

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). 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

In [] 2017, a District Court in North Carolina issued a *Child Custody Order* (custody order) granting sole physical and legal custody of the Petitioner to B-D-.¹ The District Court further found that the Petitioner's reunification with his parents is not viable due to their abandonment and neglect under state law, "based in their withholding of affection, protection and financial support," and that it would not be in his best interest to return to China, his country of origin. Based on the custody order, the Petitioner filed his SIJ petition.

The Director denied the petition based on a determination that USCIS' consent was not warranted, explaining that the record contained inconsistencies that the Petitioner had not resolved in his response to a request for evidence (RFE). In response to the Director's RFE, the Petitioner had provided a personal statement, a statement from B-D-, and additional evidence. However, the Director found the Petitioner's explanations and evidence to be insufficient. In the denial decision, the Director noted multiple inconsistencies between the Petitioner's claims before the District Court and government records of his 2016 application for a nonimmigrant student visa. Specifically, the Director noted that the *Verified Complaint for Child Custody* (complaint) indicated that the Petitioner's father left the family when the Petitioner was very young and had not cared for him since that time. The complaint stated that in his father's absence, the Petitioner lived with his grandfather and when his grandfather died, the Petitioner's mother sent him to live with a distant cousin in North Carolina. However, the Petitioner indicated in his student visa application that he was living with his father, who would pay for his education, and he did not have any relatives in the United States. Furthermore, the complaint indicated that the Petitioner was not able to attend school in China after turning 14 years old, but he stated during his student visa interview that he had graduated from high school in [] 2016 and explained why he had chosen the University of [] for an undergraduate program of study. In response to the Director's RFE, the Petitioner claimed that his uncle gave him a fake high school diploma to present during his student visa interview. Additionally, the complaint stated that the Petitioner had resided exclusively in North Carolina with B-D- for six months, but in his written statement to USCIS, he stated that he moved in with B-D- in January 2017, moved to Ohio to work for two months, and then returned to live with B-D-.

On appeal, counsel submits a letter, arguing that the Director's "interpretation of the consent function as a requirement that shifts the burden to the applicant to prove that his pursuit of a custody order is not primarily for the purpose of seeking an immigration benefit is ultra vires and based on legislative history from a prior version of the statute" Counsel does not explain specifically how the Director's interpretation of the consent function was in error, and the record does not establish that the Director improperly applied the requirement. As discussed above, the Petitioner bears the burden of establishing his eligibility for SIJ classification. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). This includes a requirement for the Petitioner to show that his request for SIJ classification is bona fide, meaning that a primary reason he sought the juvenile court determinations was to obtain relief from parental maltreatment. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5).

¹ We use initials to protect privacy.

Counsel also claims on appeal that the Director's "determination that factual inconsistencies exist in the case is not supported by the record." Counsel indicates an intention to file a brief within 30 days, but as of the time of our adjudication, we have not received a brief or additional evidence. The Director raised several inconsistencies between the Petitioner's SIJ petition and his application for a student visa. Where evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide, USCIS may withhold consent. 8 C.F.R. § 204.11(b)(5). Although counsel states generally that the Director's grounds for denial were incorrect, the record does not contain legal argument or evidence specifically addressing any of the inconsistencies the Director discussed. Furthermore, the filing on appeal contains only the assertions of counsel, which do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. In this case, the Petitioner has not provided evidence to support counsel's assertions on appeal or address the grounds for the Director's denial. Accordingly, the Petitioner has not provided sufficient evidence to establish that a primary reason he sought the juvenile court determinations was to obtain relief from parental maltreatment and that his request for SIJ classification is therefore bona fide, as required by section 101(a)(27)(J)(i)–(iii) of the Act and 8 C.F.R. § 204.11(b)(5).

ORDER: The appeal is dismissed.