



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

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

In Re: 18570700

Date: OCT. 06, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for a 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 petition because the Petitioner did not establish that a 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 asserts her eligibility for SIJ classification. 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

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).

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

A. Relevant Background and Procedural History

On [REDACTED] 2017, when the Petitioner was 19 years old, the Probate Court of [REDACTED] Alabama (Family Court), issued a Guardianship Order (SIJ order) appointing M-G-D-L-C-,² the Petitioner's sister, as the Petitioner's guardian pursuant to section 26-2A-70 of the Code of Alabama 1975 (Ala. Code 1975). In this order, the Family Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. In this SIJ order, the Family Court found that, pursuant to Ala. Code 1975 § 26-2A-73(a), the rights of the Petitioner's parents had "been suspended by circumstances of neglect and abandonment" therefore reunification of parents not viable due to this neglect and abandonment.³ Citing to sections 26-2A-75(c) and 26-2A-76 of the Code of Alabama 1975 the Family Court found that it was not in the Petitioner's best interest to be removed from the United States and returned to Guatemala; it further found that it was in the Petitioner's best interest to have a guardian appointed and to remain in the United States where her "emotional, physical, and spiritual needs are being met."

Based on the SIJ order, the Petitioner filed this SIJ petition on October 30, 2017. With her SIJ petition, she provided the SIJ order, document titled JOINT PETITION FOR GUARDIANSHIP ORDER (Minor) (guardianship petition), as well as CONSENT FOR GUARDIANSHIP ORDERS executed by her mother and by her father. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID) requesting evidence to clarify discrepancies between the SIJ order submitted with the Petitioner's SIJ petition and documents in government records.⁴ In this NOID, the Director notified the Petitioner that it was inconsistent for the Family Court to conclude that she had traveled to the United States with strangers when the guardianship petition and the Petitioner's Form I-589, Application for Asylum and for Withholding of Removal indicated that she had traveled to the United States with her father.⁵ The Director further indicated that both the guardianship petition and the original SIJ order stated that the Petitioner had not resided with either parent which was inconsistent

² Initials are used throughout to protect the individuals' privacy.

³ Section 26-2A-73(a) of the Ala. Code provides, in relevant part, that "the court may appoint a guardian for an unmarried minor if all parental rights have been terminated or suspended by circumstances."

⁴ The Director also requested additional evidence to establish the Petitioner's age, but did not raise this in denying her SIJ petition.

⁵ The Director referenced a second Guardianship Order (amended SIJ order) dated [REDACTED] 2017; and an affidavit from M-G-D-L-C- dated [REDACTED] 2017.

with the court's finding in the amended SIJ order that the Petitioner had been residing with her father and not with her sister. With her timely response to the Director's NOID, the Petitioner submitted a copy of the amended SIJ order, M-G-D-L-C-'s [REDACTED] 2017 affidavit, a document titled MOTION TO CORRECT PETITION filed with the Family Court in [REDACTED] 2020, affidavits from the attorney filing the motion and from the Petitioner in support of this motion, the Family Court's order granting the motion, and a copy of her father's consent to the original guardianship petition. The Director's decision advised that evidence submitted did not establish that the Petitioner had disclosed to the Family Court that she lived with her father prior to the date of the original SIJ order. The Director therefore denied the SIJ petition in December 2020, determining that consent was not warranted because the Petitioner had not established that a primary reason for seeking SIJ classification was to gain relief from parental neglect and abandonment.

B. Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). Here the record demonstrates, by a preponderance of the evidence, that the Petitioner's request for SIJ classification was bona fide, and therefore that USCIS' consent to her classification 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).⁶

On appeal, the Petitioner submits a brief. She reiterates that she came to the United States with her father, that they lived in Alabama with her sister who supported both of them, and that even while residing with her father, her sister was their main source of support. With regard to the inconsistency between the

⁶ 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).

original and amended SIJ orders identified by the Director, the Petitioner explains that the amended SIJ order submitted with her NOID response was sought upon the request of the immigration judge overseeing her removal proceedings to ensure that the Family Court judge was aware that the Petitioner had previously resided with her father. The Petitioner notes that this amended SIJ order provided additional factual information that she had resided with her father prior to their arrest, but that even then he was not able to fully support her. Regarding the inconsistency identified by the Director between the guardianship petition and the amended SIJ petition, the Petitioner states that the original guardianship petition erred when indicating that she had traveled to the United States with strangers, and that this error had been corrected in a subsequent motion to correct granted by the Family Court in [redacted] 2020. The Petitioner also notes on appeal that the Family Court's parental reunification determination remained the same in the amended SIJ order which contained factual information that the Petitioner had resided with her father prior to filing the original SIJ order and that he had not been able to fully provide for her.

Upon *de novo* review, the record contains evidence sufficient to demonstrate that consent is warranted. In exercising the consent function, we look to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court. 6 USCIS Policy Manual J.2(D), www.uscis.gov/policy-manual. USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. *Id.*

Here, contrary to the Directors' conclusion, evidence in the record demonstrates, by a preponderance of the evidence, that the Family Court was aware that the Petitioner had previously resided with her father when determining that parental reunification with her father was not viable due to abandonment and neglect. In the [redacted] affidavit, M-G-D-L-C- stated that after the Petitioner and her father arrived in the United States in October 2015, they lived with her, and that in October 2016, M-G-D-L-C-, her husband, and their three children moved to a new home in April 2016. M-G-D-L-C- explained that when she moved, she left all of the furniture, appliances, bedding, and dishes as her father could not afford to furnish the place. She stated that her father was working, but was not earning enough to support himself and the Petitioner, so she would bring food and supply them with medicine and other essentials. In the amended SIJ order, the Family Court modified the facts set forth therein, newly finding that the Petitioner and her biological father resided together with M-G-D-L-C- in approximately September 2015, that the Petitioner's father "helped to care for [her], but was not able to fully support her," and that although M-G-D-L-C- moved to another address, she continued to help provide for the Petitioner. The Family Court did not modify its finding that, pursuant to sections 26-2A-73(a) of the Code of Alabama, 1975, the rights of the Petitioner's parents "have been suspended by circumstances of neglect and abandonment, therefore the child's reunification with the biological parents is not viable due to said neglect and abandonment." The record therefore establishes by the preponderance of the evidence that the Family Court was aware that the Petitioner had resided with her father before it issued the amended SIJ order finding that reunification with her father was not viable due to neglect or abandonment and placing the Petitioner under the guardianship of her sister.

As we noted above, the record below also included a [redacted] 2020 Motion to Correct Petition for the Court's Record, along with an affidavit from the Petitioner explaining that she and her father traveled together, and that they left Guatemala because they were in danger. The Family Court granted this

motion, deeming that the guardianship petition be amended to reflect that the Petitioner traveled to the United States with her father, rather than alone, and did not modify the amended SIJ order.⁷

Here, the Petitioner has established, by a preponderance of the evidence that the Family Court was aware that she had resided with her father prior to issuing the amended SIJ order and that the court aware that she traveled to the United States with her father, rather than with strangers. Further, the Petitioner has shown that after being made aware of these facts, the Family Court found that the Petitioner's reunification with her parents was not viable due to abandonment and neglect under Alabama law and placed her under the guardianship of her sister. The record reflects that the Petitioner satisfies the remaining evidentiary requirements for SIJ classification and that she has met her burden of establishing, by a preponderance of the evidence, that her SIJ petition is bona fide such that USCIS' consent to a grant of SIJ classification is warranted. Accordingly, the Petitioner has established her eligibility for SIJ classification.

ORDER: The appeal is sustained.

⁷ We note that in the amended SIJ order, the Family Court had not found that she had entered the United States with strangers. Rather, the Family Court found only that the Petitioner had entered the United States in September 2015.