



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

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

In Re: 16027154

Date: OCT. 11, 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 petition because the Petitioner did not establish that her petition for SIJ classification was *bona fide* and therefore that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted. 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).<sup>1</sup> 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).

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

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<sup>1</sup> 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).

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 Evidence and Procedural History

In [REDACTED] 2019, when the Petitioner was 17 years old, the Family Court of the State of New York in the [REDACTED] issued an *Order Appointing the Guardian of the Person*, appointing H-Y- as the Petitioner's guardian.<sup>2</sup> In a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), the Family Court made determinations, pursuant to sections 413 and 661 of the New York Family Court Act, and New York Social Services Law section 384-b, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner's parents was not viable due to abandonment pursuant to NYS Social Services Law 384-(b)(5)(a), as the Petitioner's parents "fail[ed] to function as her caretaker" and had not provided financial support since July 2018 or maintained meaningful contact with the Petitioner. The Family Court determined that it was not in the Petitioner's best interest to return to China, her country of nationality, because she did not have a "good relationship with her parents, they will not support her, and she will not be able to continue her education if she were to return to China."

Based on the SIJ order, the Petitioner filed this SIJ petition in October 2019. While the SIJ petition was pending, the Director issued a request for evidence (RFE), requesting evidence to address inconsistencies with information in the Petitioner's record. The Director notified the Petitioner that it was inconsistent for the Family Court to conclude, in 2018, that the Petitioner's father abandoned her when she indicated on her nonimmigrant visa application that her father was paying for her trip, and that the Petitioner and her father resided at the same address in China. In her response to the RFE, the Petitioner submitted a personal statement and additional evidence. In her statement, she indicated that while her father completed the forms indicating that he would pay for her tuition and travel, her parents failed to pay the tuition to the university. She further noted that she had not previously claimed that she was abandoned by her parents while living in China, and that the abandonment occurred after she arrived in the United States. The Director denied the SIJ petition in September 2020 determining that the Petitioner had failed to meet her burden of showing that her petition for SIJ classification was *bona fide* and therefore, she did not warrant USCIS' consent to SIJ classification.

### B. USCIS' Consent Is Not 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). We do not question the Family Court's purpose in issuing its orders, but here, USCIS' consent is not warranted because the Petitioner has not adequately addressed all material inconsistencies in the record regarding her claim of abandonment by her father.

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<sup>2</sup> We use initials to protect the identity of individuals.

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).

In the decision, the Director noted that the evidence provided by the Petitioner was insufficient "to explain the discrepancy between [her] parents abandoning [her] in July 2018 and [her] father paying for [her] trip to the United States in August 2018." However, as noted by the Petitioner in response to the Director's RFE, she arrived in the United States in July 2018, but the airline tickets were booked in June 2018. The Petitioner submitted a copy of her itinerary, dated June 2018, to support this statement, which was not addressed by the Director. The Director erred in determining that the Petitioner's father "pa[id] for her trip . . . in August 2018," and we withdraw the determination that the dates of the Petitioner's travel resulted in a material inconsistency with when she stated the abandonment had occurred.

Further, the Director stated that the Petitioner, "did not explain how the [the Petitioner and her father] were living at the same address when [her] parents abandoned [her]." The Petitioner submitted copies of the *Petition by Person Over 14 for Appointment* (underlying petition), in which she informed the court that she had lived with her parents in China, but she was abandoned after her arrival in the United States. The Petitioner supported this statement with her statement provided in response to the RFE, where she stated that she "never alleged that [her] parents did not support [her] while [she] lived in China. It is after [she] left China that they did not support [her] financially." As this evidence reflects the Petitioner had informed the court of her father's actions while she was in China and that she specified her father abandoned her after she came to the United States, we withdraw the Director's determination that the Petitioner's residence in China with her parents resulted in a material inconsistency.

The Director also noted that the Petitioner "did not disclose that [she] and [her] parents did not have a bonded relationship in [her] nonimmigrant visa application," which "cut off a line of questioning in relation to [her] familial ties in China and would have alerted immigration officers to [her] intent to immigrate." As noted by the Petitioner in her brief on appeal, "the NIV application for a student visa related to her application to attend a university in the USA and [sic] had nothing to do with her relationship with her parents." The Petitioner further noted that "her relationship with her parents is not relevant to an application for a student visa and a question relating to her emotional relationship with her parents does not exist on the NIV application." We agree with the Petitioner and withdraw the Director's determination that the Petitioner's failure to disclose information regarding her relationship with her parents resulted in a material inconsistency.

The Director further noted that the Petitioner answered on her NIV application that she had no other relatives in the United States, when she began living with her cousin, H-Y-, immediately following her arrival in the United States. In her brief on appeal, the Petitioner explains that she did not include information about H-Y- on her NIV application because H-Y- is “a distant relative and does not point to an intention to remain in the USA as her cousin resided in NYC where her initial plan was to remain only for 15 days.” She further explains that she did not have any relatives or friends in Kansas, and that she had no intention to remain in New York after her arrival, but her parents’ failure to pay the tuition at the university in Kansas caused the Petitioner to decide to remain in New York with H-Y-, as she would have had no means to support herself in Kansas.

In review of the remaining issue of the Director’s decision, the Director noted that based upon information provided by the Petitioner on her Form I-485, Application to Adjust Status, the Petitioner started working and had maintained employment shortly after her arrival to the United States. We note that the Petitioner arrived in the United States in July 2018 and the Petitioner noted on her Form I-485 that she began working less than two weeks later in August 2018, at a nail salon in New York. The Petitioner indicated that she remained employed there until September 2019, and then she began working at a tea shop from September 2019 until the concurrent filing of her Form I-485 and SIJ petition. In her brief on appeal, the Petitioner has not provided a response or explanation to the Director’s finding that her employment constituted a material inconsistency with her claims to the Family Court that she was “completely dependent” upon H-Y- financially and emotionally. As such, we determine that the Petitioner has not met her burden of establishing that obtaining employment shortly after her arrival to the United States is not a material inconsistency with the issuance of the SIJ order. 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).

While we determine that the Director erred in the analysis of some evidence submitted by the Petitioner with her SIJ petition, the Petitioner has not established by a preponderance of the evidence that USCIS consent is warranted. The Petitioner has not adequately addressed all the Director’s determinations of material inconsistencies in the record, as she has not provided an explanation for why she informed the Family Court that she was “completely dependent” financially upon H-Y-, when she had obtained employment less than two weeks after her arrival to the United States. Therefore, the Petitioner has not 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.

**ORDER:** The appeal is dismissed.<sup>3</sup>

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<sup>3</sup> We note that USCIS received correspondence from the Petitioner’s attorney in July 2021 requesting that the settlement agreement in *Saravia v. Barr* be applied to the Petitioner’s case and claims that her SIJ petition was denied for reasons addressed in the settlement. “Under the *Saravia* Settlement Agreement, USCIS does not withhold consent based in whole or in part on the fact that the state court did not consider or sufficiently consider evidence of the petitioner’s gang affiliation when deciding whether to issue a predicate order or in making its determination that it was not in the best interest of the child to return to his or her home country.” 6 *USCIS Policy Manual* J.2(D), <https://www.uscis.gov/policymanual>. These circumstances do not apply to the Petitioner’s case, as there is no reference to gang affiliation in the Director’s decision.