



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

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

In Re: 18968388

Date: OCT. 26, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of El Salvador, 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 Amerasian, Widow(er), or Special Immigrant (SIJ petition), and the Petitioner appealed that decision to us. On appeal, the Petitioner submits additional evidence¹ and reasserts her eligibility for SIJ classification. We review the questions raised 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) of the Act; 8 C.F.R. § 204.11 (b).² 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. 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

¹ The Petitioner submits a copy of an *Order Certifying the Settlement Class and Granting Final Approval of Class Action Settlement*, and a USCIS Policy Alert titled "Special Immigrant Juvenile Classification and *Saravia v. Barr* Settlement,"

² 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).

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 Evidence and Procedural History

In [redacted] 2017, when the Petitioner was 20 years old, the Circuit Court for [redacted] Maryland (Circuit Court) issued an order granting custody of the Petitioner to D-V-C-³ custody proceedings brought under Maryland law. The order stated that “custody is granted in the best interests of [the Petitioner]” and “[D-V-C-] is awarded sole physical and sole custody of [the Petitioner]. . .” In a separate order titled *Order Regarding Factual Findings Pursuant to MD FL § 1-201(b)(10)* (SIJ order), the Circuit Court made determinations, pursuant to sections 5-701 and 9-101 of the Maryland Family Law Code (Md. Fam. Law Code) necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Circuit Court determined that reunification with the Petitioner’s father was not viable due to abandonment and neglect as defined under Maryland law and that it was not in her best interest to be removed from the United States and returned to El Salvador, her country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in November 2017. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID) requesting that the Applicant explain discrepancies in her residential address. The Director noted that there was a discrepancy in her mailing address. In response to the NOID, the Petitioner submitted an updated personal statement, a letter from D-V-C-, and other documentation. The Director denied the SIJ petition in March 2021, concluding that, although she resolved the address discrepancy, language in the *Complaint for Custody and Approval of Factual Findings to Permit Minor’s Application for Special Immigrant Juvenile Status* (custody complaint) indicated that the Petitioner’s primary purpose in seeking the juvenile order was to obtain an order with factual findings to enable her to file a petition for SIJ classification.⁴ The Director also noted that the Circuit Court issued the order two days before the Petitioner turned 21 years old.

On appeal, the Petitioner reasserts her eligibility for SIJ classification. She asserts that Maryland law requires that a petitioner specifically request SIJ findings in order to vest the court with authority to adjudicate the request. She further asserts that her age at the time of the custody order was issued has no bearing on the validity of the SIJ findings regarding the maltreatment by her non-custodial parent.

³ Initials are used to protect the individual’s privacy.

⁴ The Director highlighted the following language in the custody complaint: the Petitioner “request[ed] this court to make the necessary factual findings to enable the minor to petition the U.S. Citizenship & Immigration Services (USCIS) for Special Immigrant Juvenile Status (SIJ). . .” and “[t]hat under the Immigration & Nationality Act, the Minor Child cannot file her petition for SIJS with USCIS until this court, as the court having jurisdiction over the Minor Child and her custody, makes the following factual findings establishing her eligibility to submit the petition.”

B. USCIS' 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). 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, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b)(5). 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 exercising its consent function, USCIS looks to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court. *See* 8 C.F.R. § 204.11(d)(5). USCIS recognizes that petitioners may have an immigration motive for seeking a juvenile court order, and a special order issued to help clarify the determinations that were made so that USCIS can determine the petitioner's eligibility for SIJ classification does not mean that the order is not bona fide. *See* 6 *USCIS Policy Manual*, J.2(D), <https://www.uscis.gov/policymanual>. As the Petitioner asserts, Maryland law requires a petitioner to request SIJ status findings in their pleadings. *Romero v. Perez*, 463 Md. 182 (2019) citing *Simbaina v. Bunay*, 221 Md. App. 440, 458-59 (2015) (stating that "[t]he Federal Immigration and Nationality Act . . . requires that a State 'juvenile court' make specific factual findings before a minor can petition the United States Citizenship and Immigration Services for SIJ status."); *Romero*, 463 Md. at 190 (No separate motion is required, but a party's filings must put "the court . . . on notice" that such findings have been requested.). Furthermore, the fact that the Circuit Court issued its order two days prior to the Petitioner's 21st birthday does not negate the validity of the order. Maryland amended its equity court jurisdiction, effective of October 2014, to include "custody or guardianship of an immigrant child pursuant to a motion for [SIJ] factual findings requesting a determination that the child was abused neglected, or abandoned before the age of 18 years for purposes of [section] 101(a)(27)(J) of the federal Immigration and Nationality Act." Maryland Code Annotated Family Law (Md. Code Ann. Fam. Law § 1-201(b)(10). It further specified that, "[f]or the purposes of subsection (b)(10) . . . , 'child' means an unmarried individual under the age of 21 years." *Id.* at § 1-201(a). In this case, the Circuit Court issued a valid SIJ order because the Petitioner was under 21 years of age at the time of the order.

In the instant matter, the Petitioner has established by a preponderance of the evidence that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Maryland law, rather than to obtain an immigration benefit. Here, the Circuit Court placed the Petitioner in the custody of an individual appointed by the state and made determinations that reunification with the Petitioner's father is not viable due to abandonment and neglect and that it is not in the Petitioner's best interest to return to El Salvador. *See* 8 C.F.R. § 204.11(d) (evidentiary requirements for USCIS consent). The evidence submitted also provides a factual basis for the parental reunification and best interest determinations. The SIJ order states that "the father has played no role in the [Petitioner's] life since 2006" and "has not provided her with any financial or emotional support since that time" or "attempted to maintain or foster a parental relationship." The order further states that the Petitioner "has no one in El Salvador to provide and care for her and she would be subject to gang violence" if returned there. It states, "[the Petitioner] received death threats from gang members in El Salvador, and it is in [her] best interests to remain in the United States."

The Petitioner has established that a primary reason she sought the juvenile court orders was to obtain relief from parental neglect and abandonment and that she was granted such relief, and her request for SIJ classification is thus bona fide. Since the Petitioner has met all eligibility requirements for SIJ classification and USCIS' consent is warranted, and we withdraw the Director's determination otherwise.

III. CONCLUSION

The Petitioner has overcome the grounds for denial of her SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, she has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.