



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

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

In Re: 15776805

Date: OCT. 27, 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). 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 sustained.

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 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

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).

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 Facts and Procedural History

In [redacted] 2018, when the Petitioner was 20 years old, the Family Court of the State of New York in the [redacted] issued an *Order Appointing the Guardian of the Person*, appointing P-N- as the Petitioner's guardian.² In a separate order titled *ORDER-Special Findings* (SIJ order), the Family Court made determinations, pursuant to section 661 of the New York Family Court Act (NY FCA), and New York Surrogate's Court Procedure Act sections 1701-1707, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner's father was not viable due to neglect as defined by NY FCA section 1012(f), as the Petitioner's father physically and emotionally abused her, that the Petitioner's father had not maintained contact with her since July 2016, and reunification with her father would risk further harm. The Family Court also determined that reunification with the Petitioner's mother was not viable due to neglect as defined by NY FCA section 1012(f), as her mother failed to protect her from physical and emotional abuse by her father, and reunification would risk further harm to the Petitioner. The Family Court also determined that it was not in the Petitioner's best interests to be returned to Vietnam, as she would be at risk of further physical and emotion abuse, and has no other adult resources willing or able to care for her in Vietnam.

Based on the SIJ order, the Petitioner filed this SIJ petition in August 2018. While the SIJ petition was pending, the Director issued a request for evidence (RFE), requesting evidence to address apparent 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 neglected or abused her when she indicated on her nonimmigrant visa application that her father was paying for her trip to the United States. In her response to the RFE, the Petitioner submitted a personal statement. In her statement, she indicated that she talked to her mother about coming to the United States and asked if her mother could talk to her father about providing funds for the trip. The Petitioner further noted that her mother provided her funds for her travel, and that once her father found out, her mother told her not to call anymore, and has not had contact with either parent since that time. The Petitioner maintained that she did not misrepresent any information and noted that she never denied residing with her parents prior to her travel to the United States, and that her parents did provide funding for her studies 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.

² We use initials to protect the identity of individuals.

B. USCIS' Consent 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).

In the decision, the Director noted that the evidence provided by the Petitioner was insufficient "to explain the discrepancy between [her] parents neglecting [her] and [her] father paying for [her] trip to the United States." However, as noted by the Petitioner in response to the Director's RFE, the Petitioner obtained funding for her studies in the United States from her mother, which led to the Petitioner's father cutting off contact. Further, the neglect noted in the SIJ order is discussed as physical and emotional neglect, where the Petitioner's father beat her with a stick and forced her to dress as a boy. This form of neglect, found by the Family Court, does not create a material inconsistency with the Petitioner's parents providing funding for her travel to the United States. As such, we find that the Director erred in determining that the Petitioner's father paying for her travel to the United States constituted a material inconsistency with the Family Court's findings that the Petitioner was physically and emotionally neglected.

Further, the Director stated that the SIJ order noted that she had not had contact with her father since 2016 and stated that records indicated that her father visited her three times since 2016. While the Director did not previously notify the Petitioner of this potential inconsistency prior to the decision, the Petitioner has supplemented the record on appeal, providing a copy of her father's only I-94 Arrival Record, which indicates that he arrived in the United States in May 2016, and departed in July 2016. Based upon the record provided by the Petitioner on appeal, the Petitioner's father departed the United States in July 2016, which is the same time the SIJ order indicated that contact between the Petitioner and her father ceased. Further, as the Petitioner's SIJ order was not issued on the basis of abandonment under New York law, we withdraw the Director's determination that the Petitioner's father's travel to the United States created a material inconsistency.

The Director also noted that the Petitioner "did not disclose that [her] father neglected [her]," on her student visa application, which "cut off a line of questioning in relation to [her] familial ties in Vietnam and would have alerted immigration officers to [her] intent to immigrate." However, a nonimmigrant student visa application, related to an application to attend a university in the United States does not question an applicant regarding their relationship with their parents. As such, we withdraw the Director's determination that the Petitioner's failure to disclose information regarding her relationship with her parents during her student visa application resulted in a material inconsistency.

As a result, the record reflects that the Petitioner has established that a primary reason she sought the SIJ order was to obtain relief from parental neglect. The order contained the necessary findings, including that it was not in her best interest to be returned to Vietnam, and that reunification was not possible under New York state law. Further, the Petitioner obtained relief from parental neglect by being placed in the custody of P-N-. The inconsistencies noted by the Director have been withdrawn, and we find that the Petitioner has established, by a preponderance of the evidence, that her petition for SIJ classification is *bona fide*.

III. CONCLUSION

As the Petitioner has overcome the basis of the Director's denial, we find that her petition for SIJ classification is *bona fide*, and that the applicable juvenile court determinations were sought to obtain relief from parental neglect, and therefore warrants USCIS consent.

ORDER: The appeal is sustained.