



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

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

In Re: 21104110

Date: OCT. 31, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish that the primary purpose of seeking his juvenile court order was to obtain relief from parental maltreatment. The matter is now before us on appeal. We review 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) 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. 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.

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).

Section 101(a)(27)(J)(i)–(iii) of the Act; 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 Factual and Procedural History

In [] 2020, when the Petitioner was 17 years old, the Circuit Court of the [] Judicial Circuit, in and for [] Florida (Circuit Court) issued an order appointing C-K-² as the Petitioner’s guardian in guardianship proceedings brought under chapter 744 of the Florida Statutes (Fl. Stat.) (guardianship order). In a separate order, also issued in [] 2020, titled *Special Findings for Minor* (SIJ order), the Circuit Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Circuit Court determined that the Petitioner’s reunification with both of his parents was not viable due to his mother’s mental illness and both of his parents’ abandonment and neglect under section 39.01 of the Fl. Stat. and that it was not in his best interest to be returned to the Democratic Republic of the Congo, his country of nationality.

The Director issued a Notice of Intent to Deny (NOID), notifying the Petitioner that USCIS’ consent was not warranted because the record contained material inconsistencies. The Director noted that the Petitioner initially came to the United States to attend a basketball summer program and upon leaving the program early, without notifying the camp counselors, to live with his uncle, C-K-, he was reported missing by the counselors of the program. The Director acknowledged that the State of Florida appointed C-K- as the Petitioner’s guardian in [] 2020, but indicated that the documentation submitted with the SIJ petition did not show that the Circuit Court addressed his departure from the basketball program prior to its completion. The Director also noted that the appointment of the Petitioner’s “uncle” as guardian is inconsistent with his visa application, which indicated that he did not have any relatives in the United States. Finally, the Director indicated that the Petitioner also applied for an F-1 visa to attend a school in [] Texas after departing the basketball program, but withdrew from the school less than one month later, and the Petitioner subsequently moved to Florida with C-K-. The Director therefore stated that the Petitioner did not establish that his primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment rather than to obtain an order for immigration purposes.

In response to the Director’s NOID, the Petitioner clarified that he did not lie on his visa application as C-K- is not a legal or biological relative, but merely a close family friend that he refers to as his “uncle,” as is culturally appropriate. He also clarified that his departure from the basketball program and missing person report were resolved prior to his guardianship hearing and was therefore not relevant in those proceedings. The Petitioner explained that around September 2018, he was offered an F-1 student visa and scholarship to a school in [] Texas due to his basketball skills and in an attempt to obtain the F-1 student visa, C-K- booked a flight to Haiti in order to visit the U.S. Embassy and change his visa type. However, after boarding the flight, Customs and Border Protection (CBP) officers removed them from the flight to question the missing person report filed by the basketball program. The Petitioner explained that they showed the officers the Power of Attorney his parents

² We use initials to protect the privacy of individuals.

had executed authorizing C-K- parental rights over him and clarified the situation for officers, including C-K-'s actual relation to the Petitioner, at which time, the officers allowed them to leave in the care of C-K-. He stated C-K- then decided not to risk taking another flight and opted to decline the school's offer of an F-1 student visa and scholarship. The Petitioner then explained that September 2018 was the last time he heard from his parents, who remained in the Congo. He stated that, since that time, he has not had any contact with any of his relatives in his home country. He explained that C-K- decided to take care of him until he could return home safely, but they were never able to make any contact with his family again and he did not receive financial or emotional support from his parents or any family members after that time, which is when C-K- pursued a guardianship order from the Florida court.

The Director denied the SIJ petition, concluding that USCIS' consent was not warranted because the Petitioner did not meet his evidentiary burden of showing that his SIJ petition is bona fide where the evidence of record did not establish his primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment and not to obtain an order for immigration purposes. Specifically, the Director reiterated that some of the adverse information outlined in the NOID had not been overcome, such as the Petitioner's sudden departure from the basketball summer program with C-K- and the lack of explanation as to why he would leave with a stranger rather than remain with camp staff, his application for an F-1 visa to attend a school in [] Texas and subsequent immediate withdrawal, and the fact that his pursuit of the guardianship and SIJ orders occurred after he failed to secure a student visa. The Director further stated that the Petitioner did not establish that he provided this information to the Court prior to obtaining the special findings order.

On appeal, the Petitioner asserts that he has fully addressed the Director's concerns regarding any perceived inconsistencies in the record, and submits additional evidence, including C-K-'s *Petition for Appointment of Plenary Guardian (Juvenile)* (guardianship petition), which was submitted to the Florida Circuit Court in [] 2019.

B. USCIS' Consent Is Warranted

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain 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). If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ determinations must be made under state law

in connection with proceedings in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. 8 C.F.R. § 204.11(d)(5)(ii).

Here, the Petitioner has established, by a preponderance of the evidence, that USCIS' consent is warranted. As an initial matter, the Petitioner provided reasonable explanations to overcome the purported discrepancies in the record. Moreover, our review indicates that the inconsistencies in the evidence noted by the Director do not contradict or otherwise conflict with the court's findings of abandonment and neglect by the Petitioner's parents or the factual findings on which the court relied in making that determination, and as such, do not materially conflict with the eligibility requirements for SIJ classification. *See* 8 C.F.R. § 204.11(b)(5) (stating that USCIS may withhold consent if the evidence materially conflicts with the SIJ eligibility requirements such that the request for SIJ classification is not bona fide). Likewise, the evidence in the record does not conflict with the Petitioner's assertions before the court as set forth in the guardianship petition and other underlying documents presented to the court. Further, the court's findings in the guardianship and SIJ orders are based on events that occurred after the events to which the discrepancies relate and do not contradict the court's findings that the Petitioner's parents abandoned and neglected him after September 2018.

Specifically, the court concluded that the Petitioner's parents had abandoned and neglected him as defined under Florida law, finding that after sending the Petitioner to the United States, the Petitioner's parents executed a document awarding temporary guardianship of the Petitioner to C-K- in [REDACTED] 2018 and thereafter ceased to have any communication with the Petitioner or provide him with any financial assistance. The court further determined that it was not in the Petitioner's best interest to be returned to the Democratic Republic of the Congo, in part because it was unknown whether his parents were still alive and able to care for him and he would be in danger due to the widespread violence there. The documentation provided by the Petitioner, including the guardianship petition, the juvenile court guardianship and SIJ orders, and his and C-K-'s personal affidavits to USCIS, is consistent with and establishes the factual bases for the court's findings. C-K-'s petition for guardianship also outlines the circumstances surrounding the guardianship situation and clarifies the purported discrepancies in the record. The Petitioner stated in his affidavit that he has not had contact with his parents or any other relatives in the Congo since September 2018 and has not received any financial or emotional support from any of them. As stated, the court's reunification determination and related findings of parental abandonment and neglect, as well as the factual assertions of the Petitioner before the court and USCIS in support of the determination, do not conflict with, and are not contradicted by, the Petitioner's actions in prematurely leaving the basketball program that served as the basis for his admission to the United States or his subsequent immigration history and violations. Further, the facts surrounding the Petitioner's premature removal from the basketball program and ensuing missing person report have been addressed in the record and appear to have been resolved prior to the Circuit Court's issuance of the guardianship and SIJ orders. Accordingly, the purported discrepancies in the record noted by the Director are not sufficient basis to withhold USCIS' consent to the Petitioner's request for SIJ classification.

As discussed, in determining whether consent is warranted, we look to the nature and purpose of the juvenile court proceedings and examine whether the court's determinations were sought in proceedings granting relief from parental maltreatment, beyond the factual findings required to file an SIJ petition. Our review here shows that the circuit court exercised jurisdiction over the Petitioner as

a juvenile under Florida state law in guardianship proceedings, the nature and purpose of which were to protect the Petitioner from further parental maltreatment. The court orders indicate that the circuit court determined that the Petitioner's reunification with his parents was not viable due to abandonment and neglect under Florida law, and as discussed, the record reflects the factual basis for that determination. The record further shows that the court granted the Petitioner relief from his parents' maltreatment by granting guardianship of the Petitioner to C-K-. The court also found that it was not in the Petitioner's best interest to be returned to the Democratic Republic of the Congo based on evidence before the court, including the guardianship petition, indicating that the Petitioner would have no parent to care for him there. Finally, our review of the record does not disclose evidence that materially conflicts with the court's SIJ related determinations and the Petitioner's assertions before the court. As the Petitioner has overcome the grounds for denial of his SIJ petition, and otherwise established that he is eligible and warrants USCIS' consent to his request for SIJ classification, the appeal is sustained.

ORDER: The appeal is sustained.