



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

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

In Re: 18708896

Date: OCT. 31, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish that his petition for SIJ classification was *bona fide* and therefore that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted. The Petitioner filed an appeal of that decision with this office. 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, 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).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).

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

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).

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 [] 2020, when the Petitioner was 19 years old, the Superior Court of New Jersey, Chancery Division – Family Part in [] (Court), issued an *Order of Custody and Special Findings* (Order) appointing the Petitioner’s mother, R-H-S-G-,² as his custodian. In the same order, the Court determined, among other things, that reunification with the Petitioner’s father was not viable due to abandonment pursuant to sections 9:6-1 and 9:6-8.21 of the New Jersey Statutes Annotated (N.J. Stat. Ann.), as the Petitioner’s father had “abandoned his son before birth,” and “has willfully failed to provide for any of the minor’s needs, and has not cared for, and has very little to no contact with the minor.” Based on the Order, the Petitioner filed this SIJ petition in January 2020.

While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), requesting evidence to address inconsistent information in the record. The Director noted that in the documentation submitted to the Court, the Petitioner claimed that he did not have a close relationship with his father although he lived in New Jersey; he always lived with his mother and two sisters until October 2015 when he fled to the United States; his mother and younger sister came to join him and his older sister in 2016; his father was not providing him with financial or emotional support since he has been in the United States; his father did not care for him financially or emotionally; he did not know much about his father; from time to time his father called and spoke to him; and he sees his father from time to time. The Director also noted, in contrast, when the Petitioner entered the United States on October 1, 2015, he indicated that his father had arranged for him to travel to the United States, and he stated that he intended to reside with his father in New Jersey; and on [], 2015, the Petitioner was released into his father’s custody, to reside with him in New Jersey.³ Therefore, the Director noted that it was inconsistent for the Petitioner to claim that his father never provided or cared for him, and that he only had contact with his father from time to time.

In his response to the NOID, the Petitioner submitted a letter from his attorney explaining the delay in responding to the NOID; an affidavit from the Petitioner; and an affidavit from his mother. The Petitioner explained that he intended to reside with his father when he came to the United States and did so when he was released from immigration custody. He states that his father was barely home and that his older sister took care of him and made sure he went to school. He states that although his father resided in the apartment, he did not see him every day. He claims his relationship with his father was not good, and when his father moved out of the apartment, his mother moved in. He further

² We use initials to protect the privacy of individuals.

³ The record reflects that the Petitioner continues to reside at the same location.

claims that he knows where his father lives and he sees him occasionally, but they do not have a close relationship.

After review, the Director denied the SIJ petition, determining that the Petitioner's response to the NOID was insufficient to overcome the inconsistencies in the record. The Director noted, amongst other things, that the documentation filed with the Court omitted the fact that the Petitioner resided with his father upon entering the United States and that he did not reside with his mother until at least August 2017. The Director further noted that there was no indication that the Court was aware of this conflicting information when making its findings, because the Court concluded that the Petitioner had very little to no contact with his father, and that his father willfully failed to provide for any of his needs and has not cared for him. Consequently, the Director determined that the Petitioner failed to meet his burden of establishing that his petition for SIJ classification was *bona fide* and therefore, he did not warrant USCIS' consent to SIJ classification.

B. USCIS' Consent is Not Warranted

Classification as a special immigrant juvenile 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 Court's purpose in issuing its orders, but here, USCIS' consent is not warranted because the Petitioner has not adequately addressed material inconsistencies in the record regarding his claim of abandonment by his father.

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"). 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).

On appeal, the Petitioner submits, among other documents, a brief from his attorney; his affidavit; and his mother's affidavit. The Petitioner's affidavit mirrors the one he submitted in response to the NOID. He states that he lived with his father after he was released from immigration custody, that his father was barely home, he did not see him every day and that they are not as close as he would like them to be. The Petitioner's attorney argues that the Director second guesses the Court; improperly assumes certain facts about the Petitioner's family; conducts independent fact finding; and assumes that the Court did not ask the right questions.

Although we acknowledge these arguments and the documents submitted on appeal, the evidence in the record reflects that the Court determined, based on the information provided to it, that the Petitioner's father abandoned him, in that he "willfully failed to provide for any of the minor's needs, and has not cared for, and has very little to no contact with the minor." However, no evidence in the record reflects that the Petitioner or any other party informed the Court, or that the Court was aware the Petitioner was released into his father's custody and then lived with and was in contact with his

father prior to petitioning the Court for SIJ-related determinations. Considering this materially conflicting evidence in the record pertaining to the parental reunification determination, the Petitioner has not established by a preponderance of the evidence that his SIJ petition is *bona fide*, such that USCIS' consent to a grant of SIJ classification is warranted. *See* 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*"). Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.