



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 18069324

Date: SEPT. 01, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish that his petition for SIJ classification was bona fide and that USCIS consent was warranted. On appeal, the Petitioner submits a brief and additional documents, asserting his eligibility for SIJ classification. 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).

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). 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 Facts and Procedural History

In [] 2018, the Petitioner, a national of Spain, entered the United States as a visitor through the visa waiver program. On [] 2018, about two months after the Petitioner turned 18 years of age, the Petitioner's paternal aunt and uncle filed for his guardianship with the Family Court of the State of New York []. In [] 2019, the Court issued an order appointing the aunt and uncle as guardians of the Petitioner until he turned 21 years of age. According to the order, the Court determined that the best interest of the Petitioner will be promoted by the guardianship. In a "Special Findings" order, the Court made the following findings pursuant to New York law: the Court had jurisdiction of minors up to the age of 21 years, took jurisdiction of the Petitioner's guardianship and the Petitioner is dependent on the Court. The Court determined that: reunification with the Petitioner's parents was not viable due to abandonment or a similar basis under New York State law because the Petitioner was born in Spain, moved with his parents to Ecuador, the country of their nationality, and was abandoned by his parents. According to the Court's special findings, the Petitioner's parents did not financially or emotionally support him, have failed to communicate with him, the Petitioner would be homeless should he return to Ecuador, and it is in his best interest to remain in the care of his guardians. In July 2019, based upon these orders, the Petitioner filed his SIJ petition.

The Director issued a notice of intent to deny (NOID) the SIJ petition, explaining that the Petitioner had not met his burden in establishing his SIJ petition was bona fide and USCIS consent was warranted. In response, the Petitioner's attorney submitted affirmations filed with the guardianship petition explaining the following: the Petitioner moved from Spain to Ecuador with his parents when he was two years old. The Petitioner's father developed a substance abuse problem and his parents could no longer care for him. He graduated from high school in Ecuador prior to traveling to the United States to live with this aunt and uncle and attend school in New York. The Petitioner was not in contact with his parents, his aunt and uncle were his sole caretakers and had developed a close and stable relationship with him, providing food, clothing, shelter, and guidance. Also included in the response to the NOID was a letter by the Petitioner's aunt dated March 2020, stating her brother became an alcoholic in 2010, which brought the Petitioner and his siblings "challenges that dramatically affected their livelihood." She described how the Petitioner began to change, turning into a "shy, angry person" due to the "violent events demonstrated towards [him] and his siblings." She stated she invited the Petitioner to join her and her husband in the United States so they can support him to develop his skills and pursue his goals. We note that this letter was dated after the guardianship proceedings were completed. The Petitioner's counsel also submitted a reply to the NOID, wherein she stated that the Petitioner suffered "physical and emotional abuse" by his "alcoholic father" so he went to Spain to work and pay for his schooling. Counsel did not state where in the record it was established that the Petitioner was physically and emotionally abused by his father. Counsel added that the Petitioner returned to Ecuador when he could not afford housing, board, and school in Spain.

based on his earnings and that he had no one to help him in Spain. Again, counsel did not state where in the record it was established that there was no one in Spain to help the Petitioner or that the Petitioner was unable to provide for himself in Spain. In April 2020, the Director denied the SIJ petition, finding the Petitioner had not established that his request was bona fide, explaining the record evidenced the Petitioner's intent was to attend school and the Court's order indicated he had an "immigration intent."²

On appeal, the Petitioner submits new evidence, including a personal statement dated September 2018. In his statement, he explains he was attending university in Ecuador but left due to a "lack of economic resources and moral support from [his] father" who was "becoming an alcoholic" which affected the "resources, academic and personal life" of him and his family. He says he went to Spain to study, to become independent, and help his family, but he faced difficulties adapting to the lifestyle, paying expenses, and saving for university studies at the same time. He explains that he reached out to his aunt and uncle, who offered to help him. The Petitioner did not state whether his personal statement was submitted to the Court for consideration and there is no indication on the document, such as a filing stamp, to support that the statement was submitted to the Court. Also submitted on appeal is a "certificate" dated March 2019 and authored by a psychologist in Ecuador. The author states he met with Petitioner and his parents and had twelve sessions in 2017 due to "couple conflicts, intrafamily violence because of the alcoholism problem of the father." The author adds there were "favorable results in terms of their personal behavior." Again, there is no representation by the Petitioner or indication on the document itself that it was submitted to the Court, nor does the author explain what he meant by conflicts or intrafamily violence. Also submitted on appeal is a document entitled, "Court Ordered Investigation" authored by an employee of the Administration for Children's Services (report). The report states the investigation was to address any indicated cases against the Petitioner's aunt and to assess the safety to Petitioner. Within the report, the author summarizes that the Petitioner was having "great difficulty" with his father, which "was the reason he left the country" and that his father "abuses alcohol" but the author had "no knowledge of domestic violence." In addition, according to the report, the aunt came to care for the Petitioner because he:

was having issues and a difficult time with his father . . . in Ecuador and [] went to stay with his [g]odmother in Spain for two months. After being there for some time his godmother wanted him to start contributing financially to the household. [The Petitioner] had no job and he called and asked [the aunt] if he could come to visit.

Based on the evidence in the record, including that submitted on appeal, the Petitioner asserts he has established his eligibility for the benefit sought.

B. USCIS' Consent is Not 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.

² In July 2020, after the denial of the underlying SIJ petition, USCIS approved a duplicate filing of the SIJ petition [redacted] in error. In April 2021, the Director revoked approval of the duplicate SIJ petition after providing notice.

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 and the agency must consider whether the court’s determinations were sought in proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond a predicate order enabling an individual to file an SIJ petition with USCIS. See H.R. Rep. No. 105-405, at 130; *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). USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. 6 USCIS Policy Manual, J.2(D), <https://www.uscis.gov/policymanual>. However, 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. 8 C.F.R. § 204.11(b). Based on our de novo review, there are inconsistencies with respect to whether the Petitioner was abandoned by his parents and whether seeking relief from parental abuse, neglect, abandonment, or a similar basis under state law was a primary reason the Petitioner sought SIJ classification.

The Petitioner asserts on appeal that his request for SIJ classification is bona fide because he sought relief from the Court for abuse and abandonment by his parents. However, the Court did not make a determination regarding whether the Petitioner was abused. While documents were submitted to USCIS claiming abuse, the record does not establish that the Court was aware of abuse when it made its abandonment determination. Nor, does the Petitioner claim that these documents relaying abuse were submitted to the Court. The documents that were submitted to the Court mentioned the Petitioner’s father’s substance abuse problem, but did not address how it amounted to abuse, neglect, abandonment, or a similar basis under state law. Further, according to the Court ordered investigation, the author of the report had no knowledge of domestic violence in the home of the Petitioner’s parents. While counsel asserted in the record below and again on appeal that the Petitioner was abused by his father, these statements are not supported by the record. For example, the statements by the Petitioner’s aunt, his therapist, and himself mention violence in the household due to the Petitioner’s father’s alcoholism, but details were not provided to establish the Petitioner was verbally, emotionally, or physically abused. Unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); see also *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (noting that counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations).

As its reason for finding abandonment, the Court order stated that the Petitioner’s parents did not financially or emotionally support the child and have failed to communicate with him. The attorney affirmation submitted in support of the guardianship petition explained that the Petitioner’s parents could not afford to care for him and his father had a substance abuse problem. The report regarding the investigation stated that the parents do not have a phone and “all correspondence is done through mail” and that the parents do not send money. Based on these representations to the Court, it appears as if the Court’s determination that the Petitioner was abandoned, was on the basis that they did not support him financially or emotionally. However, the therapist’s letter, submitted on appeal, evidences that the Petitioner and his parents attended therapy together which ended some months before he left

for Spain. According to the therapist, there were favorable results at the end of the twelve-week sessions. While the therapist letter did not state who paid for these sessions or whether the parents attended each session, it does raise a material inconsistency with whether the Petitioner was indeed unsupported emotionally and financially by his parents. As noted previously, the Petitioner does not indicate whether this evidence was provided to the Court for its consideration. Further, on appeal, the Petitioner submits a 2018 statement explaining that he chose to leave Ecuador to pursue his studies, be independent, and to help support his family. The Petitioner's statement evidences he had other reasons for leaving Ecuador and does not discuss being abandoned. The Petitioner also did not explain how he supported himself in Spain or how he funded his travel to Spain. Moreover, the record supports that the Petitioner had a godmother who cared for him in Spain and he chose to leave her care because of "difficulties," not because he was abandoned, neglected, abused or on account of some similar basis while in Spain. According to his aunt's statements in the report, he elected to leave Spain when his godmother asked him to contribute to the household, as he preferred to study in the United States. The report and the aunt's statements further raise issue with representations made to the Court, which was that he had no one to care for him in Spain. The issues raised are material to whether the Petitioner was abandoned and whether he meets the eligibility requirements for SIJ classification.

The Director also raised in the denial that the Petitioner had some immigration motive in applying for SIJ classification. However, USCIS recognizes that petitioners may have an immigration motive for seeking a juvenile court order. See 6 USCIS Policy Manual, *supra*, at J.2(D), (explaining, as guidance, that while there may be some immigration motivation for seeking a juvenile court order, it did not necessarily reflect that the request for SIJ classification was not bona fide). It is the Petitioner's burden to establish, however, that a primary reason for seeking SIJ classification was to avoid abandonment, neglect, or abuse, which the Petitioner here has not done by a preponderance of the evidence. As discussed above, there are discrepancies in the record as to whether the Petitioner was abandoned. Further, the record as a whole does not support that the Petitioner's intent was bona fide. By the time guardianship proceedings were initiated with the Court, the Petitioner was already living independent of his parents, was over the age of 18, had moved to Spain, and had arranged to live with his godmother. According to the report and the aunt's statements, the Petitioner chose to leave Spain because he preferred to attend school in the United States rather than contribute to his godmother's household. According to the Petitioner's statement, when he sought help from his aunt and uncle, it was for them to support him "economically." The Petitioner's acknowledged reason for not wanting to return to Ecuador or Spain was that he would be unable to pursue his education. Based on this record, the Petitioner has not established by a preponderance of the evidence that 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, as required under 8 C.F.R. § 204.11(b).

III. CONCLUSION

The Petitioner has not demonstrated that he warrants USCIS' consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.