



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

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

In Re: 17851732

Date: SEP. 06, 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 Petitioner subsequently filed a combined motion to reopen and reconsider, which was dismissed by the Director, and 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.

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

The Petitioner, a native and citizen of Guatemala, entered the United States with her young child in December 2018, at the age of 19 years. In [REDACTED] 2019, when the Petitioner was still 19 years old, the Family Court in the State of New York (juvenile court) issued an *Order Appointing Guardian of the Person* appointing B-L-T-A-², the Petitioner’s mother, as the Petitioner’s guardian. On the same date, the juvenile court issued an *Order of Special Findings for Special Immigrant Juvenile Status* (SIJ order), determining in part that the Petitioner’s reunification with her father was not viable due to abandonment under section 384 of the New York Social Services Law, and as defined by the New York Family Court Act, section 1012(f) and 413. The court noted that the Petitioner’s father had “completely abandoned [the Petitioner], and never provided any emotional or financial support . . . and never cared about her stability, home, education and welfare.” Furthermore, the juvenile court concluded that if the Petitioner was returned to Guatemala, “she [would] be alone and destitute” and that it was not in her best interest to be returned to her country of last nationality or habitual residence.

In a notice of intent to deny (NOID), the Director notified the Petitioner that USCIS records indicated that at the time of her entry and apprehension, she informed U.S. Customs and Border Protection (CBP) officials that A-A-Y-, the father of her child, was her husband and they were traveling together. The Director further noted in the NOID that the Petitioner told the CBP official that she was only entering the United States to work and then return to Guatemala six years later, and as such, it appeared that the Petitioner’s primary purpose for obtaining the SIJ order was not to seek relief from parental maltreatment, but rather to enable her to file an SIJ petition.

In response to the NOID, the Petitioner submitted an “Evidence of Celibacy” certificate from Guatemala, issued in February 2020, showing there is no record that she has been married, and a copy of her “National Register of Persons – Personal Document of Identification DPI,” issued in February 2018, likewise indicating that the Petitioner was single. The Petitioner also argued that “[a]t the time of her entry, [she] did not know that she could be eligible for SIJ classification” which would offer her relief from the neglect of her father.

The Director denied her SIJ petition, determining that she was married to A-A-Y- based on her statements to CBP, and further noted that it appeared that she and A-A-Y- were residing in the United States together, which indicated that her “primary purpose in seeking the juvenile court order was to obtain an order with factual findings to enable [her] to file a petition for SIJ classification rather than parental maltreatment.”

² We use initials to protect identities.

In response to the Director's denial, the Petitioner submitted a combined motion to reopen and reconsider. The Petitioner submitted a legal brief addressing the Director's determination that the Petitioner was married to A-A-Y-; however, the Director dismissed the combined motion, determining that the Petitioner had not addressed all of the grounds of denial, and therefore the original decision had not been overcome.

B. Evidence of the Petitioner's Marriage

Federal immigration law mandates that a petitioner must be eligible for the immigration benefit sought at the time of filing and that a petitioner seeking SIJ classification must be unmarried. 8 C.F.R. § 204.11(b)(2). Our *de novo* review of the record shows that the Petitioner has established by a preponderance of the evidence that she is unmarried, as required.

On appeal, the Petitioner argues that the records upon which the Director relied do not show that she is married, and that she has submitted sufficient evidence to show that she is not married. The Petitioner argues that the Director's decision opted to give more weight to an oral statement made in an interview with a CBP official than to documentary evidence issued by the Petitioner's country of birth and did not consider whether the documentary evidence from Guatemala met the standard of preponderance of the evidence as "more likely than not" to be true. We agree with this assessment. The Director's acknowledgement of the evidence submitted was brief, and only stated, "USCIS considers [the Petitioner] married despite [her] submission of evidence from the Guatemalan government showing that [her] marital status is single." We note that the Director did not provide a summary of what this evidence was, when it was issued, or why it specifically was not considered sufficient to overcome her prior apparent oral statements made following her apprehension. As the Petitioner argues on appeal, it appears that the Director excluded this relevant documentary evidence without providing a sufficient explanation for its exclusion. While the Petitioner may have stated to the CBP officials that A-A-Y- was her husband, the Petitioner submitted relevant official documents from the Guatemalan government indicating she was single. The Petitioner further filed a Form I-589, Application for Asylum and Withholding of Removal, before the Executive Office of Immigration Review (immigration court) in May 2019, prior to the filing of her SIJ petition, where she once again indicated that she was single.

The Petitioner has submitted sufficient evidence to show by a preponderance of the evidence that she has not been married to A-A-Y-. She has submitted significant supporting documentation, including government documents from Guatemala, which were not given appropriate weight by the Director. A totality of relevant, credible evidence supports a conclusion that the Petitioner did not marry A-A-Y-, and she has therefore met the requirement at 8 C.F.R. § 204.11(b)(2).

C. USCIS' Consent is Warranted

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).

In the Director's dismissal of the Petitioner's combined motion to reopen and reconsider, the Director noted that the Petitioner had not established that she had sought the SIJ order primarily to obtain relief from parental maltreatment. 8 C.F.R. § 204.11(b)(5). However, the Director's denial and finding that the Petitioner did not warrant consent was based on the Director's determination that there were "material inconsistencies" in the record. While the Director noted in the NOID that the Petitioner told CBP officials that she was coming to the US to work and then return to Guatemala, that determination was not included in the denial of the SIJ petition. In the denial of the SIJ petition, the Director only noted that the Petitioner was residing with A-A-Y- and their son. The relevant authority only states that the petitioner must be unmarried. 8 C.F.R. § 204.11(b)(2). We determine that the Petitioner's sharing a residence with A-A-Y- does not create a material inconsistency with the issuance of the SIJ order, and as such, we determine that her request for SIJ status was *bona fide* and withdraw the Director's determination to the contrary.

III. CONCLUSION

As the Petitioner has overcome the Director's determination that she was married, and that she had not established that her request for SIJ classification was not *bona fide*, we will sustain her appeal.

ORDER: The appeal is sustained.