



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

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

In Re: 18234717

Date: SEP. 09, 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 petition because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment and was therefore not eligible for SIJ classification.

On appeal, the Petitioner asserts her eligibility for SIJ classification. We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain 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

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).

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 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 [REDACTED] 2020, when the Petitioner was 20 years old, the Circuit Court For [REDACTED] Maryland (Family Court), issued a Custody Order placing the Petitioner in the sole legal and physical custody of S-D-P-R-, her aunt.² In a separate order titled ORDER REGARDING SPECIAL FINDING OF FACT (SIJ order), the Family Court made determinations pursuant to its jurisdiction under Md. Code Ann. Fam. Law § 1-201 necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court found that the Petitioner is dependent upon it and is placed under the custody of her aunt; that reunification with the Petitioner's mother and father was not viable due to neglect and abandonment under Maryland law; and that it was not in her best interest to be removed from the United States and returned to Guatemala, her country of nationality due to abandonment.

Based on the SIJ order and custody order, the Petitioner filed this SIJ petition in September 2020. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID) requesting evidence to clarify three discrepancies identified between the Petitioner's statements made to the Family Court and statements she made to a USCIS officer during an interview. The Director indicated that the Petitioner's allegations made to the officer regarding the nature and duration of her father's abuse were inconsistent with those made to the Family Court, and that the Petitioner described her abuser to this same officer as her stepfather, but described him as her father in statements made before the Family Court. In her response to the NOID, the Petitioner submitted a letter from her counsel, a statement, and a handwritten note. The Director denied the SIJ petition in July 2020, determining that there was insufficient evidence to establish that the Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment, rather than for immigration purposes, because the record contained the inconsistencies identified in the NOID that called into question why the Petitioner obtained the SIJ order. Specifically, the Director noted that: 1) the SIJ order determined that reunification with her biological father was not viable due to abuse and neglect, but that the Petitioner identified her stepfather as the abuser in an interview; 2) in the undated note submitted with the Petitioner's NOID response, she indicated that the abuse occurred while she was a child, in contrast with the Petitioner's statements during her interview that the abuse began within a year of her departure from Guatemala; and 3) during her interview the Petitioner indicated that she was sexually abused by her stepfather, but that neither the SIJ order nor her NOID letter mentioned sexual abuse.³

² We use initials to protect the privacy of the individual.

³ On appeal the Petitioner explains that she wrote this note in the detention center shortly after she was apprehended crossing into the United States, in preparation for her interview with the USCIS officer.

In addition, the Director advised specifically that the handwritten note was insufficient evidence because there was nothing to indicate the time or date that it was written. On appeal, the Petitioner contends that consent is warranted as she has established that a purpose for which she obtained an SIJ order was to seek relief from parental maltreatment.

B. USCIS' Consent Is Warranted

Classification as an SIJ 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). 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).⁴

Upon *de novo* review, USCIS' consent is warranted because the Petitioner has established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Maryland law. As discussed above, the Director determined that, although the SIJ order found that parental reunification with the Petitioner's father was not viable due to abandonment under section 9.5 101(b) of the Maryland Uniform Child Custody Jurisdiction and Enforcement Act and due to neglect as defined by section 5-701(s) of the Maryland Family Law Article, consent was not warranted due to the inconsistencies in the record between Petitioner's reports of her father's abuse before the Family Court and those made to the USCIS officer during an interview.

On appeal, the Petitioner provides a reasonable explanation for the discrepancies identified by the Director. She first addresses her statements of sexual abuse by her stepfather during her interview. The Petitioner states that she does not recall telling the USCIS officer that her father had attempted to sexually abuse her; rather she states that she told the officer that her father had raped and sexually abused her mother. She further notes that the circumstances in which the interview took place impacted the statements she made during the interview. Specifically, she states that this interview was conducted six weeks after her apprehension at the border, during which time she had been incarcerated, and that she felt she could not trust anyone where she was being held. The Petitioner also indicates

⁴ In the preamble to the final rule, DHS explained that "[t]his may include situations such as one in which a juvenile court relies upon a petitioner's statement, and/or other evidence in the underlying submission to the juvenile court, that the petitioner has not had contact with a parent in many years to make a determination that reunification with that parent is not viable due to abandonment, but USCIS has evidence that the petitioner was residing with that parent at the time the juvenile court order was issued. Such an inconsistency may show that the required juvenile court determinations were sought primarily to obtain an immigration benefit rather than relief from parental maltreatment." *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13089 (March 8, 2022).

that the interview was conducted by phone, through an interpreter, and that while she tried to answer all of the questions, on occasion the interpreter did not understand her responses. As noted in the USCIS Policy Manual, “children often do not share personal accounts of their family life with an unknown adult until they have had the opportunity to form a trusting relationship with that adult.” See 6 *USCIS Policy Manual* J(3)(B), www.uscis.gov/policy-manual.

With regard to her statements identifying her stepfather as the abuser, rather than her father, the Petitioner explains on appeal that she did not consider her father to be her “real” father, so she called him a stepfather. This echoes statements made by the Petitioner in the record below. For example, in the undated note, which she explains was written in the detention center in preparation for her interview with the USCIS officer, the Petitioner referenced her “supposed father” and stated that she considered him to be a “bad stepfather” because “a real dad loves, takes care of, and protects his children.” In this note the Petitioner stated that this man was an alcoholic and that he verbally and physically abused her. The Petitioner reiterated this in the sworn statement submitted with her NOID response.

As it relates to the discrepancy in the dates during which she was abused, in a statement submitted on appeal, the Petitioner reasonably explains that the abuse happened until she was 12 years old, that her father abandoned the family for six years, during which time the abuse stopped, and that her father returned in 2018, at which time the abuse began again, a year prior to when she left Guatemala. As with her explanation for why she referred to her father as her stepfather, this narrative is repeated in statements in the record below, including both the sworn statement and undated note proffered with her NOID response. The Petitioner explains that, although she may have indicated to the USCIS officer that this abuse occurred only in the year prior to her departure from Guatemala, she was later able to explain the abuse in more detail to the Family Court during a hearing.

Moreover, the SIJ order reflects that the Family Court also found that reunification with the Petitioner’s mother is not viable due to neglect and abandonment under Maryland state law. In reaching this finding, the Family Court stated that the Petitioner’s mother “cannot care for or provide for” the Petitioner in her home. A qualifying parental reunification determination may be made regarding one parent or both. See section 101(a)(27)(J)(i) of the Act (requiring a judicial determination that a juvenile’s “reunification with 1 or both ... parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.”). Therefore, regardless of the noted inconsistencies in the record with regard to the Petitioner’s father’s abuse, the record establishes, by a preponderance of the evidence that the Petitioner sought and received relief from the neglect and abandonment by her mother. The record does not show that the Director considered the Family Court’s qualifying reunification determination with respect to the Petitioner’s mother.

In the SIJ order, the Family Court also found that the Petitioner was dependent upon it and that the Petitioner had been placed in the custody of her aunt, who filed the custody action “primarily for the purpose of obtaining relief from neglect and abandonment of [Petitioner].” The custody order reflects that the Petitioner’s aunt was awarded sole legal and physical custody of the Petitioner. The SIJ order further cited to Maryland case law and determined that it was not in the Petitioner’s best interest to return to Guatemala as she has no family that she can live with in Guatemala without abandonment or neglect.

In summary, the record reflects, by a preponderance of the evidence that a primary purpose for which the Petitioner sought the requisite judicial determinations was for relief from parental abuse, neglect, or abandonment, or a similar basis under state law. Further, the inconsistencies in the evidence noted by the Director relate to the Petitioner's father's abuse, and do not materially conflict with the eligibility requirements, as the record also establishes that reunification with the Petitioner's mother was not viable due to neglect and abandonment. Therefore, the Petitioner has met her burden of establishing, by a preponderance of the evidence, that her SIJ petition is bona fide such that USCIS' consent to a grant of SIJ classification is warranted. Accordingly, the Petitioner has established her eligibility for SIJ classification.

ORDER: The appeal is sustained.