



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

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

In Re: 16303071

Date: SEP. 12, 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, concluding the Petitioner had not provided a factual basis for the court order and therefore, that she did not warrant U.S. Citizenship and Immigration Services (USCIS)' consent to SIJ classification. On appeal, the Petitioner asserts his eligibility for SIJ classification. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their 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).<sup>1</sup> Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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. 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

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<sup>1</sup> 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).

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 History

In [ ] 2018, when the Petitioner was 13 years old, the District Court in [ ] Texas (district court) entered an *Order in Suit Affecting the Parent-Child Relationship* (order) which appointed H-C-L-, the Petitioner's father, as sole managing conservator.<sup>2</sup> The order also contained findings that the Petitioner had been "neglected and wholly abandoned" by her mother in her home country of Mexico. The district court further found that it was not in the Petitioner's best interest to be returned to Mexico or to be reunited with her mother "based on . . . abandonment and due to the political and socio-economic climate in Mexico."

In November 2019, the Petitioner filed her SIJ petition based on the court's order. After reviewing the record, which included the order, a copy of the *Original Petition in Suit Affecting the Parent-Child Relationship* (underlying petition), an undated affidavit from H-C-L-, and copies of the [ ] Mexico kidnapping report for M-A-C-S-, the Petitioner's brother, the Director denied the SIJ petition, concluding that there was no factual basis for the parental reunification findings. The Director determined that as the record did not indicate a factual basis for the court's rulings, the Petitioner had not established that a primary purpose in seeking her order was to obtain relief from parental maltreatment.

On appeal, the Petitioner submits a new affidavit from her father, H-C-L-. After reviewing all the evidence, we conclude that the Petitioner has not overcome the Director's determinations.

### B. USCIS's Consent Is Not 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). For USCIS to consent, the juvenile court order(s) and any supplemental evidence submitted by the petitioner must include the factual basis for the requisite determinations regarding the non-viability of reunification with one or both of the petitioner's parents. 8 C.F.R. § 204.11(d)(5)(i), (c)(1). If a petitioner does not provide a court order that includes facts that establish a factual basis for all of the required determinations, USCIS may request evidence of the factual basis for the court's determinations. USCIS does not require specific documents to establish the factual basis or the entire record considered by the court. However, the burden is on the petitioner

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<sup>2</sup> We use initials to protect the identity of individuals.

to provide the factual basis for the court's determinations. 6 *USCIS Policy Manual* J.3(A)(2), <https://www.uscis.gov/policymanual>.

In our review of the original evidence submitted, the order stated that the district court “examin[ed] the record and the evidence and argument of counsel,” in supporting their findings that the Petitioner was neglected and abandoned by her mother, and that it was not in the Petitioner’s best interest to return to Mexico or be reunited with her mother. As noted above, the Petitioner’s father, H-C-L-, was named sole managing conservator as a result of the proceedings. The remainder of the order does not discuss the underlying factual basis that led the district court to make these findings. In reviewing the underlying petition, it is noted that “[i]t is in the best interest of [the Petitioner] that [H-C-L-] be appointed sole managing conservator of [the Petitioner] due to abandonment and neglect of [the Petitioner] by [her mother] in their home country of Mexico. Further it would not be in [the Petitioner’s] best interest to return to [her] home country nor be reunited with [her mother].”

Prior to the issuance of the decision, the Director determined the Petitioner had not established USCIS’ consent to SIJ classification was warranted as the record did not contain evidence of a factual basis for the district court’s grant of the order, and the Director issued a request for evidence (RFE), requesting documentation to establish a factual basis for the district court’s determinations. In response to the RFE, the Petitioner provided an undated affidavit from H-C-L-, and the copies of the kidnapping report from [REDACTED] Mexico, regarding when her brother was kidnapped. The Director determined that as the affidavit from H-C-L- was not dated, it was not clear if it was submitted to the court as evidence for the reunification findings, and noted that the records from [REDACTED] Mexico regarding her brother’s kidnapping did not provide any evidence regarding the reunification findings for abandonment by her mother.

On appeal, the Petitioner submits a new affidavit from her father, H-C-L-, dated in December 2020. In this affidavit, H-C-L- recounts how the family was apprehended after crossing the border, and the children, including the Petitioner, went with their mother after being released from custody. The Petitioner and her siblings went with their mother to stay with a relative, and once H-C-L- was released from custody, the mother “gave them to [him]” and left, and never contacted H-C-L- or the Petitioner after that. H-C-L- notes that the Petitioner’s mother did not take the Petitioner to her immigration court appointments or show interest in the case, and only left the Petitioner with H-C-L-. The affidavit also states that the Petitioner and H-C-L- “explained to the family judge about everything [they] went through.” However, the affidavit does not reflect what evidence was provided to the district court to make their determinations, and the Petitioner has not submitted any additional documentation to substantiate a factual basis for the district court’s order. We agree with the Director’s determinations that neither the order nor the underlying petition contain sufficient information to support the district court’s reunification findings, and the Petitioner has not submitted additional evidence that was provided to the court to support the determinations made in the order. While the submission of the updated affidavit from H-C-L- provides information regarding the abandonment of the Petitioner by her mother, the statements are not supported by evidence that the affidavit was provided to the district court. As such, it is insufficient to help the Petitioner meet her burden of proof with respect to the factual basis for the court’s order. See 6 *USCIS Policy Manual* J.3(A)(2), <https://www.uscis.gov/policymanual>, at footnote 13. 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). As a result, the Petitioner has not overcome the Director's determination that she did not warrant USCIS' consent in granting her SIJ classification.

### III. CONCLUSION

The Petitioner has not overcome the Director's determination that she has not provided a reasonable factual basis for the district court's order and therefore, that she did not warrant USCIS' consent to SIJ classification. Accordingly, the Petitioner has not established her eligibility for SIJ classification.

**ORDER:** The appeal is dismissed.