



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

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

In Re: 15801366

Date: SEP. 14, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), because the record included material inconsistencies and the Petitioner did not establish that a primary purpose of seeking his juvenile court order was to obtain relief from parental maltreatment. On appeal, the Petitioner asserts 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 Evidence and Procedural History

In [] 2018, when the Petitioner was 20 years old, the Superior Court of California, [] (Family Court) issued an order appointing T-Q-T-², the Petitioner’s uncle, as his guardian in guardianship proceedings brought under sections 1510 and 1514 of the California Probate Code. The order stated that “extension of the guardianship of the person past the ward’s 18th birthday is necessary or convenient.” In a separate order titled *SPECIAL IMMIGRANT JUVENILE FINDINGS* (SIJ order), the Family Court made determinations, pursuant to section 155 of the California Code of Civil Procedure, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner’s mother and father was not viable due to abandonment and neglect as defined under California law and that it was not in his best interest to be removed from the United States and returned to Vietnam, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in June 2018. While the SIJ petition was pending, the Director issued a request for evidence (RFE). The Director requested evidence of the Petitioner’s age. In addition, the Director mentioned that the Petitioner’s file and immigration databases showed that he may have misrepresented his relationship with his parents to procure an immigration benefit. Specifically, the Petitioner claimed in his SIJ order that his parents told him in 2016 to leave their home as he did not want to become a priest, however in his March 2017 F-1 nonimmigrant student visa application he stated that his father was paying for his trip to the United States and that he lived with his parents. As such, the Director asked the Petitioner to explain the discrepancies in the record. The Petitioner responded with a letter from counsel, a copy of his birth certificate with an English translation, and an affidavit. The Petitioner explained that the information related to his parents was on his 2017 nonimmigrant visa application as he copied information from a 2105 nonimmigrant visa application into it.

The Director determined that USCIS consent was not warranted as the record contained material inconsistencies. The Director noted that the evidence indicated that the Petitioner misrepresented his relationship with his parents in order to obtain a nonimmigrant visa in 2017. The Director referenced the Petitioner’s explanation in his affidavit but noted he did not disclose that his relationship with his parents changed or that they abandoned him when he refused to become a priest. Therefore, the Director determined that the Petitioner provided misleading information in his nonimmigrant visa application which cut off a line of questioning related to his family ties in Vietnam and his immigrant intent. Due to the material inconsistencies, the Director determined that the Petitioner did not establish a primary purpose of seeking his juvenile court order was to obtain relief from parental maltreatment and he was therefore not eligible for SIJ classification.

² We use initials to protect the privacy of individuals.

B. Consent Not 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). We do not question the Family Court's purpose in issuing its orders, but here, USCIS' consent is not warranted because evidence materially conflicts with the eligibility requirements and the Petitioner has not established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under California law.

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).³

On appeal, the Petitioner submits a brief. He asserts that he had a good relationship with his parents when he applied for an F-1 nonimmigrant student visa in 2015, and his father helped him get a visa. The Petitioner hoped his parents would support his education, but they insisted he become a priest or he would not be part of the family. The Petitioner states that his parents stopped financially supporting him and he tried to reconcile with them when he returned to Vietnam in 2017. However, when he told them again that he did not want to be a priest, his father said they will not support him or allow him to live with them. The Petitioner states that T-Q-T- agreed to support him. The Petitioner again explains why his 2017 nonimmigrant visa application provided that his father was paying for his trip to the United States and that he lived with his parents. The Petitioner states he provided the same information from his 2015 nonimmigrant visa application without giving it a second thought, and although his parents kicked him out, he did not have a permanent address so he listed their address.

The Petitioner states that under the USCIS Policy Manual, children in credible fear proceedings cannot be presumed capable of disclosing their entire history, and SIJ petitioners are exempt from misrepresentation inadmissibility grounds. In this case, the Petitioner was not in credible fear

³ In the preamble to the final rule, DHS explained that "USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification such that the record reflects that the request for SIJ classification was not *bona fide*. . . . This 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." Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13089 (March 8, 2022).

proceedings, rather he was applying for a nonimmigrant visa when he was 19 years old. He prepared the application himself and signed it under penalty of perjury. Furthermore, the Petitioner was not found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Rather, his misrepresentation resulted in a material inconsistency resulting in USCIS consent not being warranted.

Next, the Petitioner asserts that Congress has never empowered USCIS to exercise discretion in SIJ petitions, the Director violated congressional intent, and the Director's actions were *ultra vires* and unlawful. However, the Petitioner then refers to section 101(a)(27)(J)(iii) of the Act, which specifically refers to the consent requirement. The Petitioner further contends that as the Family Court made the necessary factual findings upon which to issue the SIJ order and USCIS must give deference to the order, the Director did not have the authority to probe further into the details of the SIJ order findings. The Petitioner references the 2008 Trafficking Victims Protection Reauthorization Act (TVPRA 2008) and 2015 USCIS Ombudsman Report (Ombudsman report) in support of his claim.⁴ Lastly, the Petitioner states that USCIS' role in consenting to SIJ classification involves verifying that all required elements are included in the SIJ order, and while USCIS is permitted to issue an RFE if fraud is a concern, he properly explained the content of his 2017 nonimmigrant visa application.

In our examination of whether USCIS' consent is warranted, we note that TVPRA 2008 simplified but did not remove the consent requirement, and we rely on the expertise of the juvenile court in matters of child welfare under state laws and do not reweigh the evidence to determine parental abuse, neglect, abandonment, or any similar basis under state law. *See* USCIS Policy Manual J.2(D), <https://www.uscis.gov/policymanual> (discussing, as guidance, the deference given to juvenile courts as it relates to issues of state law). However, USCIS may properly inquire further and request additional evidence to establish a reasonable basis for the court findings where there is significant contradictory information of which the state court was unaware, or which could affect whether a reasonable factual basis exists for the court's determinations. *Id.* at J.3(B). Furthermore, while the Ombudsman report contains findings and recommendations, it does not supersede the SIJ statute, regulation, or USCIS policy.

The Petitioner is correct that the Family Court made a qualifying parental reunification determination based on his parents' past abandonment and neglect. However, the Petitioner has not established by a preponderance of the evidence that a primary reason he sought the SIJ order was to gain relief from parental maltreatment such that USCIS' consent is warranted. Despite evidence submitted by the Petitioner, there is no indication that the Family Court was aware of the information in his 2017 nonimmigrant visa application reflecting that his father was paying for his trip to the United States and that he lived with his parents. This information directly relates to whether his parents actually abandoned or neglected him in 2016, as determined by the Family Court. Although the Petitioner claims that listing the information about his parents was an oversight, he filed the nonimmigrant visa application on his own and signed it under penalty of perjury.

⁴ The Petitioner cites to *Flores Zabaleta v. Nielsen*, 367 F.Supp.3d 208 (S.D.N.Y. 2019), in which the United States District Court for the Southern District of New York held that USCIS "went beyond the scope of its consent function when it second-guessed the Family Court's factual determinations as part of the adjudication of the plaintiff's SIJ petition." However, the District Court's decision in *Flores Zabaleta* is binding on only the parties before it and, accordingly, does not bind USCIS in future adjudications.

The information regarding the Petitioner's living situation with his parents and financial support from his father support a determination that he sought the SIJ order primarily for an immigration benefit, and not to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. *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*"). Therefore, the Petitioner has not met his burden of establishing, 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. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.