



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

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

In Re: 15777538

Date: SEP. 15, 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 her juvenile court order was to obtain relief from parental maltreatment. On appeal, the Petitioner asserts her 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 [REDACTED] 2018, when the Petitioner was 19 years old, the Superior Court of California, [REDACTED] (Family Court) issued an order appointing N-K-D-² the Petitioner’s cousin, as her 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 abuse and neglect as defined under California law and that it was not in her best interest to be removed from the United States and returned to Vietnam, her country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in December 2018. While the SIJ petition was pending, the Director issued a request for evidence (RFE). The Director mentioned that the Petitioner’s file and immigration databases showed that she may have misrepresented her relationship with her parents to procure an immigration benefit. Specifically, the Petitioner claimed in her SIJ order that her parents abused and abandoned her, and she was raised by her aunt. However, these statements contradicted her 2017 F-1 nonimmigrant student visa (student visa) application in which she listed her father as the payer of her trip and stated that she lived with him. As such, the Director asked the Petitioner to explain the discrepancies in the record. The Petitioner responded with a letter from counsel, an affidavit, and a financial certification form from the University of [REDACTED] listing N-K-D- as her sponsor. The Petitioner explained that she was raised mostly by her aunt since her father was an abusive alcoholic. She detailed his abusive behavior and how her mother never protected her or left him. The Petitioner stated that when her aunt became too sick to care for her, N-K-D- advised her to obtain a student visa and she would help her financially. Next, the Petitioner mentioned that when she applied for her first student visa in 2016, she told the agency assisting her that she lived with her aunt and that N-K-D- would financially provide for her, but they advised her to list her parents address and that they will financially support her. The Petitioner stated that she used a different agency when she applied for a student visa in 2017, she told them she does not live her parents, and they advised her to keep everything consistent with her first student visa application. The Petitioner apologized for the misinformation in her student visa applications, noting that she was 16 years old and following the advice of experts, and the experts assured her there was nothing wrong with her actions.

² We use initials to protect the privacy of individuals.

The Director determined that USCIS' consent was not warranted as the record contained material inconsistencies. The Director noted the evidence indicated that the Petitioner misrepresented her relationship with her parents in order to obtain student visas in 2016 and 2017. The Director referenced information described above from the Petitioner's affidavit and determined that she provided false information on her parental relationship in her student visa applications which cut off a line of questioning related to her family ties in Vietnam and her immigrant intent. Due to these material inconsistencies, the Director was unable to determine whether a primary purpose of the Petitioner seeking her juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes.

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. 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).³

On appeal, the Petitioner submits a brief. The Petitioner repeats the information from her affidavit, as described in detail above. 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 proceedings, rather she was applying for student visas. Furthermore, the Petitioner

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).

was not found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. Rather, her misrepresentations resulted in material inconsistencies which led to a determination that USCIS' consent was not 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 her claim.⁴ 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, she explained in detail the abuse she suffered and provide financial documents confirming that her parents did not pay for her education.

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. *See id.* at J.3(B) (discussing, as guidance, reasonable basis determinations). 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 her parents' past abuse and neglect. However, the Petitioner has not established by a preponderance of the evidence that a primary reason she 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 her 2016 and 2017 student visa applications reflecting that her father was paying for her trip to the United States and that she lived with her parents. This information directly relates to whether her parents actually abused or neglected her, as determined by the Family Court. Although the Petitioner claims that different agencies assisted her in preparing her student visa applications and advised her to misrepresent herself, her student visa applications do not reflect that she was assisted in filling out the applications. Moreover, she signed the applications under penalty of perjury. Although the Petitioner submitted a financial certification form from the University of [REDACTED] listing N-K-D- as her

⁴ The Petitioner cites to *Flores Zabaleta v. Nielsen*, 367 F.Supp.3d 208, 217 (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.

sponsor, this form does not address whether or not her father paid for her trips to the United States, as provided on the 2016 and 2017 student visa applications.

The information regarding the Petitioner's living situation with her parents and financial support from her father support a determination that she 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 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 not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.