



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

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

In Re: 18468366

Date: SEP. 22, 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), and the matter is now before us on appeal. 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 of age, 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) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them under 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. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to his or her parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii).

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, 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). 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 Bangladesh, claims a date of birth of [REDACTED] 2000, and the record reflects that he entered the United States without inspection in [REDACTED] 2017. He was apprehended by U.S. Customs and Border Protection agents and placed in removal proceedings where he filed an application for asylum. On [REDACTED], 2019, the Family Court of the State of New York, [REDACTED] issued an Order-Special Findings in which it determined reunification with the Petitioner's parents was not viable due to neglect and abandonment under New York state law, noting specifically that the Petitioner was subject to intentional beatings from his father that resulted in physical injury; that his father failed to provide adequate food, shelter, and financial and emotional support by committing corporal punishment; and that he abandoned the Petitioner by not communicating with him when the Petitioner left Bangladesh. The order also found reunification with the Petitioner's mother was not viable due to neglect in allowing harm inflicted by her husband; failing to provide adequate supervision, food, shelter, and financial and emotional support; and by sending the Petitioner off to care for himself. The court further found it not in the Petitioner's best interest to return to Bangladesh where he had no suitable caretaker, but rather in his best interest to remain in the United States with the support of a court-appointed guardian, access to school and medical care, and support for educational and emotional development with long-term safety.

On the same date the court issued an Order Appointing Guardian of the Person (guardianship order) identifying the Petitioner as "in all respects competent to act as such guardian and to raise the subject of the preceding to adulthood." The guardianship order stated that the Petitioner "upon taking the official oath and filing the designation as required by law, is appointed guardian..." of the Petitioner.

Based on the Family Court order the Petitioner filed a Form I-360 on April 10, 2019. Following the Petitioner's response to a notice of intent to deny (NOID), the Director denied the petition by finding that the Petitioner did not establish that he was under 21 years of age when he filed the Form I-360 petition, as required, and that the court order lacked a qualifying determination that he was dependent on the court, or under custody of an agency or department of the state or of an individual appointed by the court, as required.

The Director listed the evidence submitted by the Petitioner that included a birth certificate issued in 2017 with an explanation of late birth registrations in Bangladesh, school records, immunization records, and affidavits from relatives. The Director concluded that although the Petitioner provided a birth certificate giving a date of birth of [REDACTED] 2000, he had also used 1997 and 1998 as years of birth and had used another name. The Director observed that evidence submitted to establish the Petitioner's date of birth was dated 2017 or later and that a 2020 affidavit¹ explained that the late birth registration was due to a change in law that made registration required, with the Petitioner's birth then registered on [REDACTED] 2008. The Director noted that the Petitioner did not submit a copy of the registration or other official record that existed prior to his departure from Bangladesh and concluded, therefore, that it could not be determined whether Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or for immigration purposes, so he did not

¹ The affidavit identifies the affiant as a local administrative chairman.

meet his burden of establishing that the petition for SIJ classification was *bona fide* and USCIS consent warranted.

The Director further found that the juvenile court order lacked a qualifying determination that the Petitioner was dependent on the court or in the custody of an individual appointed by the court as the Order-Special Findings did not actually appoint a guardian, but rather appointed the Petitioner as guardian of himself. The Director determined that the order was insufficient for classification as an SIJ, and concluded USCIS consent to the Petitioner's SIJ classification was not warranted, the Petitioner was ineligible for SIJ classification, and he did not meet his burden in demonstrating the petition should be approved.

B. The Petitioner's Age at Filing

On appeal, the Petitioner, through counsel, refers to his NOID response that included documentation of his age and his affidavit explaining the use of alternate years of birth. In his affidavit the Petitioner claimed that smugglers told him to use a different name and date of birth because as a minor he would be returned to Bangladesh, that he relied on the smugglers, but since his arrival in the United States he has used his correct date of birth. He explained that his birth was not registered until 2008 because there was no mandatory registration at the time of his birth and that his birth certificate was issued in 2017. In addition to school and immunization records the Petitioner also submitted affidavits from two aunts and an uncle all indicating that he was born in [redacted] 2000.

While in removal proceedings the Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, before the Executive Office of Immigration Review (immigration court) in March 2018, prior to the filing of his SIJ petition, where he indicated his date of birth as [redacted] 2000. The record contains evidence submitted in support of the Petitioner's asylum application that includes a 2021 letter from a doctor in Bangladesh claiming that in March 2017 he treated the Petitioner for injuries, a 2021 family certificate from Bangladesh, and a 2021 letter from a high school headmaster indicating that the Petitioner passed exams. Each document identifies the Petitioner's date of birth as [redacted] 2000. In addition, a document from the Office of Refugee Resettlement provides an [redacted] 2000, date of birth for the Petitioner.

In the NOID the Director notified the Applicant that records indicated he had also used 1997 and 1998 as years of birth and had used another name while outside of the United States. In the Applicant's affidavit, which he submitted in response to the NOID, he did not dispute the Director's determination but explained that he was accompanied by smugglers during travel to the United States and was told by them to use a different name and date of birth. The Applicant stated that he therefore "lied my date of birth during my way to the United States" and that "[t]his is only the reason why I used my name and date of birth differently."

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 under 21 years of age. 8 C.F.R. § 204.11(b)(2). Although the record contains reference to the Petitioner's use of alternate dates of birth enroute to the United States, the record does not contain a document indicating other dates of birth. The Petitioner provided multiple notarized documents and affidavits submitted in support of his SIJ petition and of his asylum application that consistently indicate his date of birth as [redacted]

2000. The Petitioner has also offered an explanation for his use of other dates of birth as instructed by smugglers. As such, our *de novo* review of the record shows that the Petitioner has established by a preponderance of the evidence that his date of birth is [REDACTED] 2000, and that he was under 21 years of age at filing, as required.

C. Appointment of Guardian

The Petitioner further argues that the court clearly appointed another individual as his guardian and granted physical custody to that person. He maintains that his parents provided the court with a consent letter that constitutes abandonment where they consented to a waiver of their rights and to the court appointing a guardian as custodian for his care. The Petitioner asserts that the court considered his testimony and that of his guardian to determine that placing him with a guardian was in his best interest. The record contains an affidavit before the court from the guardian identifying himself as a cousin who has known the Petitioner since birth and indicating his willingness to be guardian as he had been caring for the Petitioner at the parents' request since the Petitioner came to the United States. He stated that he was happy to serve as legal guardian as he had helped the Petitioner get admission to school here and had been providing financial and emotional support.

SIJ petitioners must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of, a state agency or department, or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act. The record shows that the Petitioner requested the court appoint his cousin as guardian, that affidavits to the court from the Petitioner's parents requested the cousin be appointed guardian, and that the cousin petitioned the court to be appointed guardian of the Petitioner. The Order-Special Findings identifies the cousin as guardian. However, the guardianship order itself does not provide the name of the Petitioner's cousin or any other individual as appointed guardian, but rather indicates that the Petitioner is "in all respects competent to act as such guardian and to raise the subject of the proceeding to adulthood" and that the Petitioner is appointed guardian. The Petitioner has not submitted an amended guardianship order despite the Director identifying the deficiency in a request for evidence and in the subsequent NOID. As the guardianship order does not identify an individual or other entity to where the Petitioner is placed in custody, we cannot conclude that the record reflects that the guardianship petition was granted by the Family Court and the Petitioner placed in custody, as required. Therefore, we agree with the Director that the juvenile court order lacks a qualifying determination that the Petitioner was dependent on the court or in the custody of an individual appointed by the court and is insufficient for classification as an SIJ pursuant to section 101(a)(27)(J)(i) of the Act.

As the Petitioner has not overcome the Director's determination, we will dismiss his appeal.

ORDER: The appeal is dismissed.