



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

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

In Re: 15843900

Date: SEP. 27, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of Vietnam, 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 that USCIS' consent was not warranted because the SIJ findings were inconsistent with information in the Petitioner's nonimmigrant visa application. On appeal, the Petitioner reasserts 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 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 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 Facts and Procedural History

In [] 2019, when the Petitioner was 17 years old, the Superior Court in [] California (Superior Court) issued an order titled *Letters of Guardianship* appointing C-M-N-² her uncle, as the Petitioner's guardian in guardianship proceedings brought under sections 1510 and 1514 of the California Probate Code. The order stated that the appointment of C-M-N- as guardian of the Petitioner “[wa]s extended past the [the Petitioner’s] 18th birthday as of (date).” In a separate order issued on the same day and entitled *Special Immigrant Juvenile Findings* (SIJ order), the Superior Court made determinations, pursuant to section 155 of the California Code of Civil Procedure (Cal. Code of Civ. Proc.), necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Superior Court determined that reunification with either parent was not viable due to abandonment and neglect under California law, and that “it was not in [her] best interest to return to Vietnam as she has no where [*sic*] to live, as both parents abandoned her at age nine and her grandmother is too old and sick to help her in Vietnam.”

Based on the SIJ order, the Petitioner filed this SIJ petition in June 2019. While the SIJ petition was pending, the Director issued a request for evidence (RFE), requesting evidence to clarify a discrepancy identified between the SIJ order and her nonimmigrant visa application. The Director notified the Petitioner that it was inconsistent for the Superior Court to conclude that her parents abandoned and stopped supporting her at age nine when government records indicated that her parents paid for her school fees and travel to the United States. In response to the RFE, the Petitioner submitted notarized statements from herself and her uncle, copies of her school invoice, her uncle’s [] bank statements, and airline ticket purchases. The Director denied the SIJ petition in October 2020, concluding that she was unable to determine whether 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 material inconsistencies identified in the SIJ order and her nonimmigrant visa application.

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

² Initials are used to protect the individual’s privacy.

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).

On appeal, the Petitioner contends that the Director erred by largely dismissing her explanation addressing the inconsistency between her SIJ petition and the visa application. She further contends that the Director erred by disregarding the best interest determination and withholding USCIS’ consent in violation of Congressional intent.

In a letter submitted in response to the RFE, the Petitioner explained that her uncle accompanied her to the travel agency to submit her visa application. She stated that her uncle explained to the agent that her parents had not provided for her for nearly seven years, and that he would be paying for her schooling and expenses. According to the Petitioner, the agent told her uncle that they had to list one parent since he was not her legal guardian or the application would not be approved. Her uncle told the agent that they could write what they wanted and they submitted the application. The Petitioner emphasized that, “[d]espite what [wa]s written on that application concerning the payor, neither [her] father, nor [her] mother, gave her a penny for [her] trip or [her] education, it was [her] uncle [C-M-N-].” The Petitioner also submitted a letter from her uncle confirming that the travel agency told him to list the Petitioner’s father on the visa application because he was not her legal guardian at the time. He further confirmed that he paid for the Petitioner’s travel to the United States, and schooling and living expenses in [REDACTED] Washington. He maintained that “[the Petitioner] received no money from her parents, not a penny since [he has] been taking care of her.” The Petitioner also submitted a copy of her uncle’s bank statements reflecting purchases for her flight and schooling in the United States. Therefore, contrary to the Director’s decision, we find that the notarized statements, school invoice, bank statements, and flight itinerary and receipt submitted by the Petitioner explained why the Petitioner listed her parents on her visa application and clarified that her uncle, not her parents, paid for her schooling.

The preponderance of the evidence, including the previously submitted statements and other documentation from the Petitioner and her uncle, establishes that the Petitioner sought the SIJ order to obtain relief from her parent’s abandonment and neglect, and did not seek the SIJ order primarily to obtain an immigration benefit. The Superior Court order provided the Petitioner with relief in the form of a guardianship order and found that reunification with the Petitioner’s parents was not viable due to abandonment and neglect, as defined in Cal. Code of Civ. Proc. section 511, and that it was not in her best interest to be removed from the United States and returned to Vietnam. Although the Director found the record contained material inconsistencies between the SIJ order and her nonimmigrant visa application, the Petitioner provided information and evidence to explain this inconsistency. This evidence, which indicates that the Petitioner’s parents had not provided for her since she was nine years old, establishes that her uncle paid for her travel and schooling, and explains why her parents were listed on her visa application, is consistent with the Superior Court’s parental reunification finding. We therefore find that the evidence on the record does not materially conflict

with SIJ eligibility requirements. Since the Petitioner has met all eligibility requirements for SIJ classification, USCIS' consent is warranted, and we withdraw the Director's determination otherwise.

III. CONCLUSION

The Petitioner has overcome the ground for denial of her SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, she has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.