



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

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

In Re: 15922591

Date: SEP. 29, 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. The Administrative Appeals Office (AAO) reviews 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, the appeal will be sustained.

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). 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. 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

In [] 2018, when the Petitioner was 17 years old, the [] Family Court in New York issued an order appointing N-M-T-N-¹ as the Petitioner's guardian in guardianship proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). In a separate order issued the same day and titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that pursuant to sections 661 and 1012 of the N.Y. Fam. Ct. Act and section 384-b(5) of the N.Y. Soc. Services Act, the Petitioner had been "placed in the custody or guardianship of N-M-T-N-, an individual appointed by this Family Court." Additionally, the Family Court found that the Petitioner's reunification with his father is not viable due to abuse, neglect, and abandonment under New York law, noting that the Petitioner's father physically beat the Petitioner, held a knife to his throat, and did not provide him with financial support or adequate supervision. Furthermore, the Family Court determined that it would not be in the Petitioner's best interest to be removed from the United States and returned to Vietnam, his country of nationality, because his father abused, neglected, and abandoned him there, his mother was unable to protect him from his father, and he has no other relatives with whom he could stay.

Based on the Family Court's orders, the Petitioner filed his SIJ petition in August 2018. The Director denied the petition based on a determination that the Petitioner had not met his burden of establishing that USCIS' consent to his SIJ classification is warranted. The Director reasoned that the record contained an unresolved inconsistency between the Petitioner's statements to the Family Court that his father failed to provide for him, and his indication on his F-1 student visa application that his father would pay for his trip. The Director noted that although the Petitioner explained that his father paid for the trip and his first semester of school in the United States but failed to provide for him or pay his tuition after that time, and that he would have been unable to attend if his guardian had not paid his tuition instead, USCIS records indicate that the Petitioner did not return to school after the first semester. Additionally, the Director noted that the Petitioner did not "disclose [he] came from an abusive home," which "cut off a line of questioning in relation to [his] familial ties to Vietnam and would have alerted immigration officers to his intent to immigra[te]."

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish that a primary reason for seeking the requisite juvenile

¹ We use initials to protect identities.

court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. *Id.*

On appeal, the Petitioner states that he informed the Family Court that his father had not supported him *since* his arrival in the United States, and that the SIJ order reflects that the court's determination was based on information that his parents "did not accompany him on [his] journey to the US and did not provide for him financially since he has been here and failed to plan for his future." He therefore asserts that the fact that his father paid for his trip and first month's tuition does not conflict with the Family Court's determination that his father abused, neglected, and abandoned him. Furthermore, he states that regardless of his father's involvement in his trip to the United States, the evidence separately indicates that his father abused him, which formed an independent basis for the Family Court's parental reunification determination. The Petitioner also contends that the Director's reference to his failure to disclose that he came from an abusive home was in error. He correctly notes that children cannot always be expected to disclose such information during border interviews. *See 6 USCIS Policy Manual J.3(B)* (explaining that "officers should exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the determinations made by the juvenile court.") Moreover, he notes that SIJ petitioners are exempt from grounds of inadmissibility, including for misrepresentation under section 212(a)(6)(C) of the Act. Section 245(h)(2)(B) of the Act; *6 USCIS Policy Manual, supra*, at J.2(F).²

Upon *de novo* review, the Petitioner has established by a preponderance of the evidence that a primary reason he sought the Family Court's orders was to obtain protection from parental maltreatment. The record establishes that the Family Court had a reasonable factual basis for its determination that the Petitioner's reunification with his father is not viable due to abuse. Therefore, although the Petitioner does not address on appeal the Director's statement that USCIS records show he did not attend school after the first semester, contrary to his statement to the Family Court that his guardian paid for subsequent semesters, the Family Court made a qualifying parental reunification determination based on abuse by the Petitioner's father. The information about the Petitioner's father's involvement in his life does not "materially conflict[]" with his SIJ petition assertions and the juvenile court's findings of parental abuse such that consent may be withheld. *See 8 C.F.R. § 204.11(d)* ("USCIS may withhold consent if evidence materially conflicts with the eligibility requirements . . . such that the record reflects that the SIJ classification was not bona fide."). Further, we do not go behind a court order to reevaluate determinations of abuse, neglect, abandonment, or a similar basis properly made under state law. *See 87 Fed. Reg. 13066, 13086* (March 8, 2022) ("USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law."); *see also 6 USCIS Policy Manual J.2(A)*, <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court determinations made under state law and explaining that we do not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law). Accordingly, he has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn and the appeal is sustained.

² The Petitioner also argues that USCIS' consent authority is limited to a determination of whether the court order contains all required findings. As we are sustaining the appeal, we need not address this here.

ORDER: The appeal is sustained.