



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

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

In Re: 25693117

Date: APR. 4, 2023

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, which we review 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), (c)(1).<sup>1</sup> 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. Section 101(a)(27)(J)(ii) of the Act; 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 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

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<sup>1</sup> The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

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 establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

In [ ] 2021, when the Petitioner was 9 years old, a Texas District Court for [ ] County (District Court) issued a “DEFAULT FINAL ORDER IN SUIT AFFECTING THE PARENT CHILD RELATIONSHIP” (SIJ order), in which the court asserted its jurisdiction over the Petitioner and her older sister; found that they had been subject to parental abuse and neglect under Texas Family Code sections 261.001(1) and 261.001(4); and determined that their reunification with their father was not viable due to his abuse, abandonment and neglect and that it was not in their best interest to be returned Mexico, their country of nationality. The court also appointed the Petitioner’s mother as a “sole managing conservator” of the Petitioner and her sister with exclusive parental rights and declared that the mother alone will designate any possession of or access to the two children. The court also determined that appointment of the Petitioner’s father as a “possessory conservator” was not in the Petitioner’s and her sister’s best interest and that the father’s possession of or access to them would endanger their physical or emotional welfare.

Based on the SIJ order, the Petitioner filed her petition in July 2021. Following a request for evidence, the Director denied the petition, concluding that the Petitioner “did not provide factual evidence as to why it would not be in [her] best interest to return to Mexico.” The Director did not rely on any other basis in denying the petition. On appeal, the Petitioner submits a brief, reasserts her SIJ eligibility, and maintains that her request for SIJ classification warrants USCIS’ consent. We agree.

As stated, to be eligible for SIJ classification, the record must 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. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2). We have explained in policy guidance that the juvenile court must individually assess and consider the factors that it ordinarily considers when making best interest findings. 6 *USCIS Policy Manual* J.2(C)(3), <https://www.uscis.gov/policy-manual>; *see also id.* (explaining that the “child’s safety and well-being are typically the paramount concern.”). USCIS defers to the juvenile court in making such determination, which may vary between states, and does not require the court to conduct any analysis other than what is required under state law. *See id.* Further, as stated, a request for SIJ classification also must merit USCIS’ consent. To establish that USCIS’ consent is warranted, the record must show, *inter alia*, that 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).

The Petitioner has demonstrated that the District Court in its SIJ order provided a qualifying best interest determination and a factual basis for this determination. The SIJ order shows that the court specifically determined that it is not in the Petitioner’s best interest to be returned to Mexico, and clearly indicates that the court considered the sworn statement by the Petitioner’s mother, “examined the parties’ pleadings,” and “heard evidence and arguments.” The record also contains the original and amended petitions the Petitioner’s mother filed with the District Court in order to initiate a suit affecting the parent child relationship on behalf of the Petitioner and her sister as well as the mother’s sworn affidavit. These underlying court documents consistently indicate that the Petitioner lived with

her mother in Mexico since birth and her father “disappeared” when she was two years old in 2014, and further provide detail as to the father’s neglect and abandonment, the surrounding circumstances in Mexico that affected the Petitioner, and why she came to the United States with her mother when she was 7 years old in 2019. The record also reflects that the court considered the support and care provided by the Petitioner’s mother in granting her sole managing conservatorship of the Petitioner while declining to allow possessory conservatorship to the father because such arrangement is not in the Petitioner’s best interest due to his risk of endangering her physical or emotional well-being. In addition to making a qualifying best interest determination relevant to the Petitioner’s SIJ eligibility, the court also found that the Petitioner currently resides with her mother and specifically determined that all the decrees pertaining to the mother’s sole conservatorship and the related arrangements in caring for the Petitioner were also made in her best interest. Thus, the record demonstrates that the District Court conducted an individualized assessment under state law in determining that it was in the Petitioner’s best interest to remain with her mother in Texas, and that it was not in her best interest to be returned to Mexico. As the record contains a qualifying best interest determination and a sufficient factual basis for this determination, we withdraw the Director’s conclusion to the contrary.<sup>2</sup>

Further, the record shows that the District Court made the requisite SIJ related findings regarding juvenile dependency and/or custody and parental reunification (and as to best interest, as noted above), and establishes a factual basis for these determinations. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5), (d)(5)(i). The Petitioner has also shown that a primary reason she sought the court order was to obtain relief from parental maltreatment, and that she was granted such relief under applicable state law, as evidenced by the court’s conservatorship order. 8 C.F.R. § 204.11(d)(5)(ii). Moreover, we discern no record evidence that materially conflicts with the SIJ eligibility requirements. 8 C.F.R. § 204.11(b)(5). The Petitioner thus has demonstrated that her request for SIJ classification merits USCIS’ consent. The record otherwise establishes that she meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS’ consent. 8 C.F.R. §§ 204.11(b), (d). Therefore, the Petitioner has established her eligibility for SIJ classification under the Act.

**ORDER:** The appeal is sustained.

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<sup>2</sup> It is unclear whether the Director denied the petition by withholding USCIS’ consent due to lack of a factual basis for the court’s best interest determination. As noted above, the Director’s only basis for denying the petition was that the record lacks “*factual evidence as to why* it would not be [in the Petitioner’s] best interest to return to Mexico” (emphasis added). However, as explained, the record contains sufficient factual bases for this determination. Furthermore, we do not go behind the court order to reevaluate the court’s findings. 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”); 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 findings about parental maltreatment and the juvenile’s best interest).