



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

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

In Re: 15946622

Date: APR. 12, 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). See Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. The Director of the National Benefits Center (Director) denied the SIJ petition, concluding that the Petitioner did not establish that U.S. Citizenship and Immigration Services' (USCIS) consent to his request for SIJ classification is warranted. 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, 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).<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); 8 C.F.R. § 204.11(c)(2).

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

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<sup>1</sup> 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).

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

### A. Relevant Factual and Procedural History

In [ ] 2018, when the Petitioner was 20 years old, the [ ] County Family Court in New York appointed guardianship of the Petitioner to J-M-V-<sup>2</sup> finding that such appointment would last “until the subject’s 21st birthday” (guardianship order). In a separate order issued on 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 New York case law, the Petitioner is dependent upon the Family Court. The Family Court also found that the Petitioner’s reunification with her father was not viable due to neglect and abandonment, pursuant to section 1012(f) of the New York Family Court Act and section 384-b(5) of the New York Social Services Laws, respectively, and that it was not in her best interest to be removed from the United States to Mexico, her country of nationality. The Family Court orders formed the basis of the Petitioner’s SIJ petition, which she filed in December 2018.

The Director issued a Notice of Intent to Deny (NOID) notifying the Petitioner that she did not establish her petition for SIJ classification was sought for the purpose of obtaining relief from abuse, neglect, or abandonment, rather than to obtain an immigration benefit, in light of material inconsistencies in the record. In response to the NOID, the Petitioner submitted, in part, an *AMENDED ORDER – On a Motion for Special Finding* (amended order), dated [ ] 2020, clarifying the Family Court’s parental reunification and best interest determinations. The Director considered the Petitioner’s NOID response but denied the SIJ petition, concluding that she had not shown that USCIS’ consent was warranted, noting that there was conflicting information in the record pertaining to the Petitioner’s place of physical residence during the period in which she sought the Family Court orders. The Director specified that government records indicated that the Petitioner only resided at her guardian’s address during [ ] 2018, the same month the Family Court appointed her guardianship, and prior to this, she resided with both of her biological parents at another address and resumed living there after her guardianship was appointed.

On appeal, the Petitioner asserts that she fully addressed the Director’s concerns regarding any perceived inconsistencies in the record, and that the evidence submitted in response to the NOID is sufficient to demonstrate that she has been residing at her guardian’s residence for several years and USCIS’ consent is warranted. The Petitioner resubmits the evidence previously presented in response to the NOID and additionally submits copies of tax documents and employment documents from 2019 addressed to her at her guardian’s residence.

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<sup>2</sup> We use initials to protect the privacy of individuals.

## B. USCIS' Consent Is Warranted

As stated, petitioners must satisfy all other SIJ eligibility criteria and establish that their request for SIJ classification is bona fide for USCIS to grant consent to SIJ classification. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). 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.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, 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.*

Here, contrary to the Director's decision, our review does not reflect evidence in the record that contradicts or otherwise materially conflicts with the Family Court's parental reunification determination based on its findings of abandonment and neglect by the Petitioner's father or the court's factual findings on which that determination was based. *See* 8 C.F.R. § 204.11(b)(5) (stating that USCIS may withhold consent if the evidence materially conflicts with the SIJ eligibility requirements such that the request for SIJ classification is not bona fide). Likewise, the evidence in the record does not conflict with the Petitioner's assertions before the court as set forth in the guardianship petition and other underlying documents presented to the court.<sup>3</sup>

In support of its determination that the Petitioner's reunification with her father is not viable, the Family Court, in its original SIJ order, found that her father had abandoned and neglected her, as defined under New York law, because he did not supply her with adequate necessities or a college education and he did not support her since the age of 15 by not providing her with the necessities of life, including clothing or helping her pay for college. In its amended order, the Family Court clarified that the Petitioner's father had abandoned and neglected her because he has an ongoing alcohol addiction that affected her childhood upbringing and studies, failed to financially support her since the age of 15, willfully failed to provide any emotional affection toward her for more than two years, clearly failed to provide her a minimum degree of care for years despite her diligent past efforts to help him seek treatment, and had not communicated with her for more than six months prior to the Family Court proceedings. The amended order also separately concluded that the Petitioner could not be reunited with her mother because she continues to reside with her father who still wrestles with his addiction issues. The underlying documentation to the court provided by the Petitioner, including the guardianship petition, the motions for SIJ order and later amended order, counsel's affirmations to the court for the SIJ order and later amended order, and the Petitioner's multiple affidavits to the court, is

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<sup>3</sup> We note that, though the Director's decision referenced inconsistencies in the Petitioner's place of residence, it did specifically identify the evidence containing the purported inconsistencies referenced in the decision.

consistent with and supports the court's reunification determination and related factual findings. In response to the Director's NOID, the Petitioner further clarified that her father was not providing any financial or emotional support to her for several years and remained addicted to alcohol, which negatively affected her emotional state. She further maintained that she was residing with her guardian both prior to and during the period in which she sought the Family Court orders. Nevertheless, in withholding consent, the Director, citing unspecified government records indicating that the Petitioner only resided at her guardian's address in [REDACTED] 2018 and was residing with her biological parents before and after she sought and obtained the Family Court orders that same month, concluded that the Petitioner had sought the court orders for the purpose of obtaining an immigration benefit rather than to seek protection from parental neglect and abandonment as she claimed. However, the record, including the SIJ orders and the Petitioner's underlying documents to the Family Court, establishes that the court relied on factual findings independent of whether or not the Petitioner resided with her father when it made the requisite determination that the Petitioner could not reunify with her father due to abandonment and neglect. Consequently, even if the Petitioner was residing with her biological parents at the time she sought and obtained the guardianship and SIJ orders in [REDACTED] 2018, this does not materially conflict with the court's parental reunification determination and related factual findings, as set forth in the SIJ orders, or the factual assertions of the Petitioner before the court in support of that determination.<sup>4</sup>

As discussed, in determining whether consent is warranted, we look to the nature and purpose of the juvenile court proceedings and examine whether the court's determinations were sought in proceedings granting relief from parental maltreatment, beyond the factual findings required to file an SIJ petition. Our review here shows that the Family Court exercised jurisdiction over the Petitioner as a juvenile under New York state law in guardianship proceedings, the nature and purpose of which were to protect the Petitioner from further parental maltreatment. The court orders indicate that the Family Court determined that the Petitioner's reunification with her father was not viable due to abandonment and neglect under New York law, and as discussed, the record reflects the factual bases for that determination. The record further shows that the court granted the Petitioner relief from her father's maltreatment by granting guardianship of the Petitioner to J-M-V-. The court also found that it was not in the Petitioner's best interest to be returned to Mexico based on evidence before the court. Finally, as discussed, our review of the record does not disclose evidence that materially conflicts with the court's SIJ related determinations and the Petitioner's assertions before the court. Accordingly, the Petitioner has established that her request for SIJ classification warrants USCIS' consent and that she is otherwise eligible for SIJ classification.

**ORDER:** The appeal is sustained.

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<sup>4</sup> In making the best interest determination within the initial SIJ order, the Family Court found that the Petitioner "legally may not live with her father" due to the finding of abandonment and neglect, and in the 2020 amended SIJ order, the Family Court found that the Petitioner was residing with her guardian at that time. However, as discussed, the court's parental reunification determination and finding of parental abandonment and neglect by the Petitioner's father did not rely on whether or not the Petitioner was residing with her father prior to or during her Family Court proceedings.