



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

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

In Re: 20149375

DATE: APR. 18, 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). 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 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 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).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. 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 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,

¹ 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).

neglect, abandonment, or a similar basis under State law. *See* Section 101(a)(27)(J)(i)–(iii) of the Act; *see also* 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 establish 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 [] 2016, when the Petitioner was 20 years old, the New York Family Court for [] County (Family Court) appointed guardianship of the Petitioner to M-S-², finding that it “shall last until the [Petitioner’s] 21st birthday.” On the same date, the court also issued a separate order (SIJ order), which determined, among other SIJ eligibility findings, that the Petitioner’s reunification with both his parents was not viable due to their abuse, neglect, and abandonment, and that it was not in the Petitioner’s best interest to be returned to India, his country of nationality. In making these determinations, the court found that the Petitioner “was beaten, neglected and thrown out of his family home at the age of 17.” The court also found that the Petitioner’s father was “abusive and would beat [him],” “[t]he father wanted [the Petitioner] to work and would beat him when he refused to do so,” and “[h]is mother was also abusive and wanted him to work.”

Based on the Family Court orders, the Petitioner filed his SIJ petition in July 2016. Following a notice of intent to deny (NOID), the Director denied the SIJ petition, concluding that the Petitioner did not demonstrate that his request for SIJ classification was bona fide and warranted USCIS’ consent because the court’s parental reunification determination based on the Petitioner’s claim of parental maltreatment was inconsistent with his previous statements under oath during a January 2016 credible fear interview. The Director also found that the court’s best interest determination lacked a factual basis such that the Petitioner’s request for SIJ classification did not warrant USCIS’ consent. The Director did not rely on any other grounds in denying the SIJ petition.

On appeal, the Petitioner submits a brief reasserting his eligibility for SIJ classification. He also maintains that his request for SIJ classification is bona fide and warrants USCIS’ consent.

B. USCIS’ Consent Is Not Warranted

As stated, 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 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. *Id.* To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best interest determinations and 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). If,

² We use initials for privacy.

however, 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. 8 C.F.R. § 204.11(b)(5).

As the Director noted, the record contains evidence that materially conflicts with the Family Court's finding that the Petitioner could not reunify with both his parents due to their abuse, neglect, and abandonment and the factual bases on which the court relied in making the determination. The Director specifically identified information in the record reflecting that during a credible fear interview in January 2016, the Petitioner stated under oath that in April 2015 at age 19, he was beaten by rival political party members in India and his father helped him report the incident to the police, and after a second attack in August 2015 when the Petitioner was 20 years old, his father decided to send him to the United States for safety. The Petitioner also stated during the credible fear interview under oath that he was never harmed or threatened by anyone in his family at any time in his life. The Director therefore determined that these statements materially conflicted with the court's [redacted] 2016 parental reunification determination based on the Petitioner's claim that his abusive parents threatened and beat him and ultimately kicked him out of the family home in 2012 or 2013 when he was 17 years old.³ In concluding that the SIJ petition was not bona fide, the Director further identified additional inconsistencies contained in the Petitioner's April 2017 sworn statement from his adjustment interview based on the underlying SIJ petition. This sworn statement indicates that the last time he was in contact with his parents was in 2012 or 2013, shortly after they kicked him out, which conflicts with his claim during the credible fear interview that in 2015 his father personally helped him file a police report and subsequently made the decision for the Petitioner to leave India. Further, contrary to the credible fear interview statement that his father decided to send him to the United States for safety, the April 2017 sworn statement indicates that traveling to the United States was the guardian cousin's (M-S-'s) idea.

On appeal, the Petitioner does not reasonably explain why his January 2016 credible fear interview statements under oath indicate that no one in his family ever threatened or harmed him at any time in his life, if, in fact, his parents abused, neglected, and abandoned him at age 17. The Petitioner asserts through counsel that the Director did not consider the parental abuse he suffered as indicated in the SIJ order and improperly relied on statements he made at the time he entered the United States. Specifically, the appeal brief reiterates that he made these statements as a minor out of fear of being deported with no knowledge of the English language and under duress of the smugglers who "instructed" or "seduced" him to make the inconsistent claims. However, counsel's assertions are not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be supported with independent evidence, which may include affidavits. Here, the Petitioner himself did not submit a statement explaining the materially conflicting information. Additionally, the January 2016 interview record does not indicate that the Petitioner was under duress, was unable to understand the purpose of the interview, or had language or any other difficulties in answering the questions. Instead, the record reflects that the interview was conducted with a Punjabi interpreter whom the Petitioner indicated understood clearly throughout the interview; he was reminded of the confidential nature of the interview; and no one else was present except the interviewing officer.

³ The Petitioner admitted to having previously used another date of birth ([redacted] 1992) out of fear, but he claims that his true date of birth is [redacted] 1995, and provided official identification documentation showing the 1995 date of birth.

The Petitioner also asserts through counsel that, despite the Director's acknowledgement that the court also specifically found that the Petitioner's parents "fully abdicated their parental responsibility" and "have not provided any assistance" for his care, the Director nonetheless ignored these findings. However, neither the Director's decision nor the SIJ order contains these specific findings as the Petitioner claims. Although the Petitioner again references, as he did before the Director, the Petitioner's written affidavit and oral testimony he presented to the Family Court, the record still does not contain any of these underlying court documents and it is unclear how the above assertions on appeal, even if accurate, help resolve the materially conflicting information. Moreover, USCIS generally defers to the court on matters of state law and do not reweigh evidence or make independent determination regarding parental reunification. *See generally 6 USCIS Policy Manual J.2(A)*, <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court findings 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).

Lastly, the Petitioner further broadly asserts through counsel that his "departure from India in 2015 and limited telephone contact with his parents after his departure" is not inconsistent with the court's determination that his parents abandoned and neglected him. However, again, these assertions are unsupported by any affidavit or other independent evidence. Moreover, the vague assertion by counsel that the Petitioner had "limited telephone contact with his parents" *after* he came to the United States in December 2015 conflicts with the Petitioner's April 2017 sworn statement, which he provided under oath when he was 21 years old, that he last contacted his parents in 2012 or 2013 shortly after they threw him out when he was 17 years of age. To the extent that the above assertions can be construed as an argument that his parents abandoned and neglected him after he came to this country, the Petitioner has not demonstrated that the court made a parental reunification finding in this context such that regardless of the materially conflicting information related to his claim of parental maltreatment in India, his request for SIJ classification still warrants USCIS' consent. Therefore, the Petitioner's appeal assertions do not overcome the record evidence of material inconsistencies arising from his January 2016 interview statements under oath as well as his April 2017 sworn statement.⁴ The Petitioner also asserts that he is a class member under *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019); *R.F.M. v. Nielsen*, Amended Order, No. 18 Civ. 5068 (S.D.N.Y. May 31, 2019). However, here, the Director did not deny the SIJ petition based on a determination that the New York Family Courts lacked jurisdiction over the custody of individuals who were over 18 years of age. The Petitioner does not establish, therefore, that he is a member of the *R.F.M. v. Nielsen* class.

As stated, petitioners bear the burden to establish their eligibility for SIJ classification, including that their request for SIJ classification is bona fide and merits USCIS' consent. *Matter of Chawathe*, 25 I&N Dec. at 375. Further, as noted, USCIS may withhold such consent where the record contains material conflicts related to SIJ eligibility requirements indicating that the request is not bona fide. 8 C.F.R. § 204.11(b)(5). Here, the Petitioner has not overcome the evidence that materially conflicts with the court's parental reunification determination that he cannot reunify with both his parents due to

⁴ The Director's NOID noted that the Petitioner's work history on his July 2016 Form G-325A, Biographic Information, also conflicted with his January 2016 credible fear statement that he was working for a political party in India. However, after review of the Petitioner's NOID response, the Director's denial of the SIJ petition did not rely on this purported discrepancy in concluding that the SIJ petition is not bona fide. We also do not rely on it here.

their abuse, neglect, and abandonment. Therefore, the Petitioner has not established that his request for SIJ classification is bona fide and warrants USCIS' consent. 8 C.F.R. § 204.11(b)(5).⁵

ORDER: The appeal is dismissed.

⁵ Given the foregoing, we do not reach whether there is a sufficient factual basis for the court's best interest determination.