



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

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

In Re: 18939521

Date: APR. 28, 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), concluding that the Petitioner did not establish he was under the age of 21 at the time of filing and that he warranted the consent of U.S. Citizenship and Immigration Services (USCIS). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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).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).

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

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).

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).

II. ANALYSIS

The record reflects that the Petitioner, a native and citizen of Bangladesh, submitted an SIJ petition in March 2020. The Petitioner submitted documentation with his SIJ petition and in response to a request for evidence (RFE). The Director listed these documents, and we incorporate that list into our decision. The Petitioner included an order from the Family Court of the State of New York, County [REDACTED] (Family Court) appointing M-H-² as his guardian in guardianship proceedings. The Petitioner also submitted a separate order titled *ORDER – On a Motion for Special Findings* (SIJ order), which provided that reunification with his father is not viable due to abuse, neglect, and abandonment as defined under New York law, and it is not in his best interest to be removed from the United States and returned to Bangladesh.

The Director denied the SIJ petition in February 2021, concluding that the Petitioner did not establish that he was under the age of 21 at the time of filing his SIJ petition or that he warranted the consent of USCIS. The Director noted government records indicated that the Petitioner previously used [REDACTED] 1999, as his date of birth, and admitted to previously using a Bangladeshi passport with an additional date of birth in 1997, which would have made him over 21 years old at the time of filing his SIJ petition. However, in the SIJ petition the Petitioner claimed he was born on [REDACTED] 2000. The Director noted inconsistencies in the record relating to the Petitioner's birth documentation. The Director outlined that the Petitioner submitted a birth certificate, showing his date of birth as [REDACTED] 2000, with his SIJ petition indicating that it was registered on April 6, 2009, eight years after the date of birth indicated. The Petitioner also submitted a copy of verification of birth from the Office of the Registrar General, Birth and Death Registration website showing the same date of birth in response to the RFE, indicating that his birth was registered in the online system on April 6, 2018. Further, the Director observed that the Petitioner entered the United States on April 17, 2018, and was already in transit to the United States when his birth was registered in the online system.

In response to the Director's RFE, the Petitioner provided a statement indicating that the smugglers traveling with him to the United States from South America, told him that he should use an age over 18 so they would not be detained or held back during their travels, which is when he chose to use the [REDACTED] 1999, date of birth. He recalled that he used the [REDACTED] 1999 date of birth when he was detained in Panama, Costa Rica, and Mexico. The Petitioner also recalled that at the time, his mother started a process to obtain his Bangladeshi passport using a male friend to go to the passport office with him and submit the documentation. The Petitioner asserted that he does not believe the passport listed a different name and does not recall the date the passport was issued or the exact date of birth

² We use initials to protect the privacy of individuals.

listed on the passport, but he believes the birth year listed on the passport was 1997, making it look like he was already 20–21 years old when leaving Bangladesh.³ He indicated that they used this birth year because otherwise, he would only be allowed to leave the country with a parent or a person given a power of attorney by his parents. Lastly, the Petitioner stated that he only used the Bangladeshi passport with the 1997 birth year for a short period of time while traveling until the smugglers took it away from him.

Considering the evidence in the record, the Director concluded that the Petitioner did not establish he was under the age of 21 at the time of filing his SIJ petition. In addition, the Director determined the record contained material inconsistencies such that the Director was unable to determine whether a primary reason the required juvenile court determinations were sought was to obtain relief from parental maltreatment. As such, the Director also determined that USCIS' consent was not warranted.

On appeal, the Petitioner submits a brief and previously submitted evidence. The Petitioner asserts that he has established, by a preponderance of the evidence, that he was under the age of 21 when he filed his SIJ petition. The Petitioner refers to the Office of Refugee and Resettlement (ORR) age determination procedures as a basis for evaluating his evidence. He states these procedures include the consideration of official government issued documentation or other reliable records, individual testimony of those with personal knowledge of the individual's age, and dental maturity assessments using radiographs. The Petitioner states that upon his entry to the United States in April 2018, he was transferred to the ORR and determined to be a minor under the age of 18. Furthermore, he mentions that in response to the RFE, he produced a statement concerning birth registrations in Bangladesh, his primary examination certificate, high school payment receipts, his vaccination card, age progression photos, a printout verifying his birth certificate from Bangladesh's online verification page, two individual statements from people with personal knowledge of his birthdate in Bangladesh, and results from an age assessment using dental and wrist x-ray exams. The Petitioner notes the dentist performing the assessment determined that he was over 18 but under 21 years of age on [REDACTED] 2020, which is consistent with his birth certificate and the ORR's age assessment. The Petitioner claims that the Director did not consider the affidavits submitted in support of establishing his age and the x-ray results showing that he was between the age of 18 and 21 when the exam took place in [REDACTED] 2020. Furthermore, the Petitioner asserts that the Director violated his due process rights when it did not disclose where and when he used a different date of birth and did not describe the material inconsistencies.

Lastly, the Petitioner claims the Director created an impermissible requirement to establish his age, the Trafficking Victims Protection Reauthorization Act of 2008 and USCIS policy do not require a birth certificate in a particular format, and various forms of evidence should be considered where children have limited access to documentary evidence.

The burden of proof is on the Petitioner to establish by a preponderance of the evidence that his true date of birth is [REDACTED] 2000, which would have made him under the age of 21 at the time he filed his SIJ petition. We acknowledge the documents submitted by the Petitioner that list or refer to [REDACTED] 2000, as his date of birth. However, the Petitioner's birth certificate, submitted with his

³ Government records indicate that the Petitioner was issued a Bangladeshi passport on April 23, 2017, with a slight variation in the spelling of his first name and reflecting his date of birth as [REDACTED] 1993.

SIJ petition, lists a registration date of April 6, 2009, more than eight years after the date of birth indicated. The online system showing the same birth registration number as the birth certificate provided, submitted in response to the RFE, lists a different registration date of April 6, 2018, during which he was in transit to the United States. As the registration date on the original birth certificate is many years after his claimed date of birth, and the registration date for the same birth certificate in the online system differs from the original registration date, the evidentiary weight of the birth certificate and the online verification system is diminished. Further, the Petitioner has not explained the reasons for the different dates of registration of his birth certificate and the online verification system. Rather, the Petitioner asserts that the ORR's consideration of him as a minor and secondary forms of evidence should be used to establish his date of birth as [redacted] 2000. The record indicates that the Petitioner self-reported his age to the ORR and there is no indication the ORR was aware of his prior use of [redacted] 1999, as his date of birth, or the passport he claims reflected a birth year of 1997, or of the multiple, discrepant dates of registration for his birth certificate.

Furthermore, while the Petitioner submitted his educational certificate indicating that he completed his primary examination in 2015, the original high school payment receipts from Bangladesh for 6th and 7th "class" and his original vaccination card appear internally inconsistent. For example, though it appears the signatory is the same on both original high school payment receipts, the signatures are significantly different from each other. The original vaccination card appears to have been filled out completely by the same person on the same date. However, although the card indicates a registration date of November 12, 2000, some vaccines are claimed to have been administered in 2002. Additionally, the results of the age assessment from the Petitioner's dental and wrist x-ray exam are recorded on a one-page checklist showing a header referring to the former Immigration and Naturalization Service (INS) though it was completed in October 2020, more than 17 years after the INS became USCIS, and does not include a written statement or explanation regarding the doctor's conclusions of the Petitioner's age. Likewise, the "age progression photographs" do not provide sufficient background to help establish the Petitioner's date of birth.

Other inconsistencies in the record involve U.S. government records, which are based on the Petitioner's fingerprints, and which reflect that the Petitioner self-reported his date of birth as [redacted] 1999, during at least one encounter outside the United States, and self-reported his date of birth as [redacted] 2000, when encountered by ORR and USCIS. The Petitioner's multiple self-reported dates of birth to government officials, throughout multiple encounters, introduce additional inconsistencies that are not adequately explained in the record. The Petitioner stated that someone procured a Bangladeshi passport for him listing a 1997 year of birth in order for him to leave Bangladesh and that his smugglers told him detention officials would hold him if they knew his actual age, and he therefore provided [redacted] 1999, as his date of birth to the officials in multiple countries who detained him. However, there is no supporting evidence for these claims and, in considering other discrepancies in the record, we give them minimal weight. Based on the foregoing and upon de novo review of the entire record, the Petitioner has not established by a preponderance of the evidence that his actual date of birth is [redacted] 2000. Therefore, the Petitioner has not established that he was under 21 years of age on the date his SIJ petition was filed and he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

As we determined that the Petitioner has not established by a preponderance of the evidence that he was under the age of 21 when he filed his SIJ petition, we decline to reach and hereby reserve the

Petitioner's arguments that he warrants USCIS' consent. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.