



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

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

In Re: 26529797

Date: Aug. 17, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* 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 denied the petition, determining the Petitioner had not established his eligibility because the juvenile court order, serving as the basis of the SIJ petition, did not contain the factual basis for its parental reunification determination. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner provides additional documentation, including an amended order and underlying court filings. We issued a notice of intent to deny (NOID) and included in the Petitioner's response are a second amended order, an affidavit by the Petitioner, a birth certificate, and school records.

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).

II. ANALYSIS

I. Relevant Background and Procedural History

In [] 2020, the [] Probate Court (court), located in the state of Connecticut, issued an order (SIJ order) providing: it has jurisdiction over the Petitioner as a minor in guardianship proceedings pursuant to Connecticut General Statutes Annotated (Conn. Gen. Stat. Ann.) section 45a-616;¹ the Petitioner is under 21 years of age and unmarried and dependent on the court pursuant to Conn. Gen. Stat. section 45a-608n;² and the Petitioner's father is deceased and it would not be in his best interest to return to Bangladesh because his family has been subject to political retribution and violence from which his mother is unable to protect him. Based on this SIJ order, the Petitioner filed his SIJ petition on January 11, 2021. With his SIJ petition the Petitioner included a birth certificate, registered in June 2018, which indicated he was born on [] 2001. He also submitted a passport, issued on January 29, 2020, which supports the 2001 date of birth. The Petitioner included an undated personal statement attesting, in relevant part, to being born in 2001, his father dying on January 29, 2017, and that he went into hiding and stopping school during that time. The Petitioner stated he "flew to Mexico," and entered the United States in June 2018.

In May 2021, the Director issued a request for evidence (RFE) seeking documents supporting the Petitioner's age because government records indicate, prior to entering the United States, the Petitioner used [] 2000, as his date of birth. The Director noted that the Petitioner's birth certificate was registered after he departed Bangladesh and one day before entering the United States. The Petitioner responded to the RFE with documents supporting a 2001 birthdate. In March 2022, the Director issued a second RFE explaining that the SIJ order indicates the Petitioner's father has died but did not make a judicial determination that reunification is not viable due to abuse, abandonment, neglect, or a similar basis under state law. The Director explained that the court must make a legal conclusion that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law. Within the Petitioner's response to the second RFE was a June 2020 letter addressed to the court, authored by a social worker from the state of Connecticut's "Department of Children and Families." The letter provides, in relevant part: the Petitioner did not attend eighth grade because he stopped attending school after February 2017 to go into hiding; took a plane to Brazil by himself in March 2018; traveled through Peru, Ecuador, Columbia, Panama, Costa Rica, Nicaragua, Honduras, Guatemala, and then Mexico, before crossing into the United States. The letter conflicts with the Petitioner's statement that he flew to Mexico. In the decision denying the SIJ petition, the Director did not address whether the Petitioner established he was under 21 years at the time of filing because the petition was denied on other grounds. The Director concluded that the record lacked a factual basis for the court's determination that the Petitioner cannot reunify with his parent(s) due to abuse, neglect, abandonment, or a similar basis under state law.

¹ Titled, "Appointment of guardian or coguardians for minor. Rights and obligations of guardians or coguardians[.]" Conn. Gen. Stat. Ann. § 45a-616 (2020).

² Titled, "Designation of minor child as having special immigrant juvenile status pursuant to pending petition for removal or appointment of guardian[.]" Conn. Gen. Stat. Ann. § 45a-608n (2020).

II. The SIJ Orders Lack Qualifying Parental Reunification and Best Interest Determinations

The regulation at 8 C.F.R. § 204.11(c) provides, in relevant part, that the juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law and it would not be in the petitioner's best interest to be returned to their or their parent's country of nationality or last habitual residence. *See generally* 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policymanual> (explaining, as guidance, the juvenile court order(s) must provide the required judicial determinations regarding dependency or custody, parental reunification, and best interests using language establishing that the specific judicial determinations were made under state law).

With his appeal, the Petitioner submitted an order issued [REDACTED] 2023 (second SIJ order). The second SIJ order differs from the first in determining that the Petitioner's father was killed as a result of political violence and his mother abandoned him as she could not protect him from political violence, has not been in contact with him since he arrived in North America at the age of 17, has not responded to the court's notices, and is deemed unavailable to support and care for him. The second SIJ order also provides the court's reasoning for its abandonment determination. However, the second SIJ order no longer contains a best interest determination. We issued a NOID, in part, because even reading the two SIJ orders together, we concluded the Petitioner had not established the court's parental reunification and best interest determinations were made pursuant to Connecticut child welfare laws. As the NOID explained, in the SIJ orders, the court did not cite to state law regarding its abandonment or best interest determinations. While the underlying motion to the court, also submitted on appeal, generally cites to Conn. Gen. Stat. Ann. section 45a-608n, the statute does not address abandonment or best interest. *See* Conn. Gen. Stat. Ann. section 45a-608n (describing dependency on the court, the findings the court can make, and hearing procedures and defining a minor).³ In response to the NOID, the Petitioner provided a second amended order (third SIJ order), issued in [REDACTED] 2023, which only differs from the second SIJ order in that it includes the sentence: "It would not be in the minor's best interest to be returned to the country of nationality or last habitual residence of the minor's parents." While the third SIJ order includes a best interest determination, without a factual basis for the determination, reading all the orders together, we conclude that although the court has provided an explanation for its parental reunification and best interest determinations, it has not provided under which state laws it is making its determinations. The SIJ orders therefore do not meet the requirements of section 101(a)(27)(J) of the Act or 8 C.F.R. § 204.11.

III. The Petitioner Has Not Established He Was Under the Age of 21 Years at Filing

As described above, to establish eligibility for SIJ classification, petitioners must show that they are under 21 years old at the time of filing. 8 C.F.R. § 204.11(b)(1). Evidence of age can be in the form of a valid birth certificate, official government-issued identification, or other documents that in U.S. Citizenship and Immigration Services' discretion establishes age. 8 C.F.R. § 204.11(b). When adjudicating a benefit request under the preponderance of the evidence standard, the officer examines each piece of evidence for relevance, probative value, and credibility, both individually and within the

³ We note that in response to the Director's second RFE, the Petitioner included a printout which defined neglect and provided the relevant statute as Conn. Gen. Stat. Ann. section 45b-120(6). The neglect statute is not cited in the SIJ orders and there is no evidence in the record that this document was included or cited to in the court filings.

context of the totality of the evidence, to determine whether the fact to be proven is more likely than not or probably true. *See generally* 1 *USCIS Policy Manual*, *supra* at E.6 (explaining, as guidance, the use of evidence in the adjudications process).

The Petitioner's response to the May 2021 RFE did not address the Director's concerns regarding the timing of his birth registration nor did the Petitioner explain why he used a different birth date prior to entering the United States. Further, the Petitioner's submitted evidence did not credibly support his 2001 birth date. For example, he provided a document dated June 2021 by a "chairman" who confirmed the Petitioner's birth registration number and birth date. The Petitioner did not provide information on the identity of the author and what authority the author has to confirm a birth date or birth registration number. The document entitled "School leaving Certificate" was issued in December 2018 and indicates the Petitioner passed class eight in 2016, which contradicts the information provided by the social worker in the June 2020 letter, who stated the Petitioner did not attend eighth grade and stopped attending school in 2017, not 2016. The Petitioner did not provide context for why the certificate was issued in December 2018 if he left school in 2016, nor did he provide evidence substantiating the signatory as the "Head Master." The identity cards the Petitioner provided appear to have the birth date written in and were submitted with no additional evidence regarding the cards' authenticity.⁴ According to the dates and grades on the cards, the Petitioner would have been in grade nine in 2017, which again contradicts the information provided by the social worker indicating the Petitioner completed grade seven in 2017. The letter from the Petitioner's doctor and the vaccination cards indicate he was born in 2001, but do not provide the source of this information. The Petitioner provided hospital records evidencing his mother being admitted on January 8, 2001, to the gynecology department and discharged on January 14, 2001. He also provided letters from two aunts and one uncle attesting to being present at his birth, but the family members do not provide details surrounding his birth, nor do they identify him as being born in a hospital.

These issues were raised in the NOID and in response the Petitioner submitted an affidavit to "clarify the truth." He explained that he miscommunicated in his personal statement by saying he flew to Mexico and that he actually flew to Brazil. He also stated he did not know what date of birth was on his passport because he flew with a group of people and the "elders" held on to it for control and told him to say his birthdate was in 2000 because he would be unable travel without a legal guardian. However, the social worker's June 2020 letter specifically states that the Petitioner traveled alone from Bangladesh to Brazil. Further, the Petitioner does not explain who these "elders" were and why they would not have been able to serve as his guardian for travel purposes if he was indeed 17 years old. Moreover, the Petitioner's affidavit does not explain the inconsistencies and authenticity concerns raised in the NOID regarding the documentary evidence he provided in response to the Director's RFE. The Petitioner's affidavit raises additional inconsistencies into the record and does not add probative value in support of his age.

The Petitioner also submits a copy of a previously issued birth certificate from 2008 and another "School Leaving Certificate," this one dated December 30, 2016. The 2008 birth certificate supports his 2001 date of birth but indicates the Petitioner's date of birth was registered "01/01/2008." The registration number field is blank, but there is a personal identification number. Turning to his 2018 birth certificate, the document states the Petitioner's birth was registered on December 6, 2018, and has a registration number that is the same as the personal identification number on the 2008 birth certificate. Again, this 2008 document raises additional inconsistencies, i.e., the Petitioner does not explain why he would have

⁴ We acknowledge that the notary authenticated the translation.

two different registration dates for his birth, or why the 2008 version would designate a field for the registration number and be blank. The 2016 school leaving certificate aligns with the social worker's 2020 letter in that it states he stopped attending school in the seventh grade and says he left the institution on the date of the letter, December 30, 2016, which is within a few months of when other parts of the record evidence he left school. However, the school leaving certificate does not contain a translation of the name of the "Head Master" to compare to the previously issued school leaving certificate and does not explain why the head master, if the same person, would provide different information from one certificate to the next, i.e. the 2018 certificate stated the Petitioner completed grade eight in 2016. The documents submitted in response to the NOID do not explain the inconsistencies in the record, and themselves contain authenticity issues and raise additional inconsistencies. Considering the foregoing, the Petitioner did not meet his burden of providing probative and credible evidence in support of his age to overcome, by the preponderance of the evidence, government records indicating he previously used [REDACTED] 2000, as his date of birth. As a result, the Petitioner has not established by a preponderance of the evidence that he was under 21 years old at the time of filing.

III. CONCLUSION

The Petitioner's response to the NOID does not cure the material inconsistencies contained in the record and, ultimately, the Petitioner has not established his eligibility for SIJ status.

ORDER: The appeal is dismissed.