



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

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

In Re: 27750607

Date: AUG. 28, 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) 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 denied the petition, concluding that the record did not establish that USCIS' consent was warranted in granting SIJ classification. 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 sustain the appeal.

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). 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. *Id.* at 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 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). 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).

In [] 2022, when the Petitioner was 20 years old, the [] Massachusetts Trial Court, Probate and Family Court (Family Court) issued an *Order: Findings of Fact and Rulings of Law* and also a *Judgment of Dependency Pursuant to G.L. c. 119 § 39M* (SIJ order) determining that the Petitioner was an unmarried juvenile under Massachusetts law, declared dependent upon the Massachusetts Probate and Family Court, reunification with her father was not viable due to abuse, neglect, and abandonment, and that it was not in her best interest to be returned to Brazil, her country of nationality. In the SIJ order, the Family Court noted that the Petitioner “suffered abuse, abandonment and neglect by her father” and that she was forced to start working at a young age to financially provide for her family. The SIJ order further noted that the Petitioner had “witnessed her own father trying to kill her mother and brother with a knife” and that at age 16, she was kicked out of the house, leaving her to sleep on the streets. The Petitioner filed her Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) in January 2022, based upon this order. With her SIJ petition, the Petitioner submitted an *Affidavit of [the Petitioner] in Support of [Her] Petition Before the Plymouth Family Court* (affidavit).

Following the review of the SIJ petition and the initial evidence submitted, the Director issued a request for evidence (RFE), informing the Petitioner that it did not appear that the record included a factual basis for the court’s determination that it was not in her best interest to return to Brazil. In response to the RFE, the Petitioner submitted a legal brief, and copies of the SIJ order and her affidavit submitted to the court, which were included in the initial submission. After reviewing the RFE response, the Director denied the SIJ petition, concluding that the Petitioner had not established that the record included a factual basis for the court’s determination that it was not in her best interest to return to Brazil.

On appeal, the Petitioner submits a brief, as well as the copies of the SIJ order and her affidavit submitted to the court, which were already included in the record. In our de novo review, including review of the Director’s decision, it does not appear as though the Director considered the contents of the Petitioner’s affidavit, which was submitted to the Family Court. In the affidavit, the Petitioner described the conditions in which she lived in Brazil. The Petitioner noted that she grew up in a very rural area, that had no asphalt or streets to walk in, only dirt roads. She stated that she was forced to work and did not attend school when she was 12 years old. The Petitioner further discussed how her father was “drunk all the time” and that he was abusive to her, her mother, and her brother, going so far as to threaten her brother and mother with a knife. She was kicked out of the home and forced to sleep in the streets, and when she returned to the house a long time later, her father grabbed her arm and pushed her out of the house.

In our review, the Family Court took the information from the Petitioner’s affidavit and incorporated it into the SIJ order, and determined that as a result of her abuse, neglect, and abandonment, it was not in her best interest to return to Brazil. The SIJ order notes “the following facts in support of this judgment,” namely that her father was an alcoholic who abused and neglected her, threatened to kill

her mother and brother with a knife, forced her to work at the age of 12, and kicked her out of the house, leaving her to sleep in the streets. As such, we conclude that the documentation provided by the Petitioner established the factual basis that the Family Court relied upon in making their determination. Consequently, the Petitioner has demonstrated that she is eligible for and merits USCIS' consent to her request for SIJ classification.

ORDER: The appeal is sustained.