



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

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

In Re: 28952300

Date: DEC. 15, 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). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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). 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.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner under 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 petitioner's best interest to return to his or her parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [REDACTED] 2020, when the Petitioner was 17 years old, the [REDACTED] [REDACTED] (Court), in the Commonwealth of Virginia, issued an order titled *ORDER FOR CUSTODY/PARENTING TIME/VISITATION GRANTED TO INDIVIDUAL(S)* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that “. . . the child is 17 years old, unmarried and is in the jurisdiction of this Court” pursuant to VA. Code Ann. §§ 16.1-278.15 and 20-124.2. The Court found that “. . . the father. . . abandoned the child. . . and it is in the best interest of the child to be placed with her mother.” Thereafter, the Court granted the mother full legal and physical custody.

Based on the SIJ order, the Petitioner filed this SIJ petition in March 2020. In June 2020, the Director issued a request for evidence (RFE) informing the Petitioner that the SIJ Order was insufficient because it did not show that reunification with one or both parents was not viable due to abuse, abandonment, or neglect; or that it would not be in her best interest to be returned to her country of nationality or last habitual residence. The Director requested that the Petitioner provide a copy of a juvenile court order declaring that: 1) she was dependent on the court or under the custody of an agency or department of the state, or an individual entity appointed by the court; 2) reunification with one or both of her parents was not viable due to abuse, neglect, abandonment, or a similar basis under state law; and 3) it would not be in her best interest to be returned to her or her parent’s country of nationality or last habitual residence.

In September 2020, the Petitioner responded to the RFE with a brief; several affidavits, including one from her attorney; letters of support from family and friends, country condition reports on Honduras and copies of previously submitted documents. In April 2021, the Director denied the SIJ petition. The Director acknowledged that the Petitioner was under the jurisdiction of the Court, was placed in the custody of her mother and that her father abandoned her according to state law. However, the Director explained that the SIJ Order lacked the required finding that it was not in the Petitioner’s best interest to be returned to her or her parent’s country of nationality or last habitual residence. Therefore, the Director concluded that the Petitioner did not meet her burden of proof in demonstrating that the petition should be approved under section 101(a)(27)(J) of the Act.

On appeal, the Petitioner submits a brief, copies of previously submitted documents, several letters of support from friends, family, her school principal and teacher, and a [REDACTED] 2021 *ORDER AMENDING NUNC PRO TUNC* (Amended SIJ Order). In the Amended SIJ Order, the Court retained jurisdiction over the Petitioner pursuant to VA. Code Ann. § 16.1-241.¹ The Court noted that the Petitioner was legally committed to her mother; that reunification with the Petitioner’s father was not viable due to his abandonment and abuse of the Petitioner; that it was not in the Petitioner’s best interest to be

¹ Allowing the Court to continue to exercise jurisdiction until the Petitioner reaches the age of 21 years old for SIJ purposes.

returned to her or her parent's previous country of nationality or last habitual residence; and it was in the Petitioner's best interest to remain in the United States.

B. Qualifying Best Interest Determination

SIJ classification requires an administrative or judicial determination "that it would not be in the [juvenile's] best interest to be returned to the [juvenile's] or parent's previous country of nationality or country of last habitual residence[.]" Section 101(a)(27)(J)(ii) of the Act. A petitioner must submit evidence of a best-interest determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions. 8 C.F.R. § 204.11(d)(2)(iii). While the standards may vary among states, the best-interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services and orders are best for a child, as well as who is best suited to care for the child. *See* U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway (2016), *Determining the Best Interests of the Child*.

When adjudicating an SIJ petition, USCIS must read the juvenile court order(s) as a whole and consider the Petitioner's eligibility based on the preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. USCIS generally defers to juvenile courts on matters of state law. However, whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511-512 (5th Cir. 2018) ("Whatever responsibilities are exclusively for the state court, USCIS must evaluate if the actions of the state court make the applicant eligible for SIJ status."). At the outset, we note that the Amended SIJ Order, in conjunction with the Court pleadings, illustrates the factual basis describing the abandonment or abuse, and the reasons the Petitioner should remain in the United States with her mother, rather than be returned to Honduras.

The Petitioner argues that the Court was unambiguous in its findings, heard testimony, conducted an exhaustive hearing, and based on the submitted evidence, and Virginia law, she met the factual findings required for SIJ. We agree with the Petitioner. In this case, we do not question the validity of the Court awarding custody of the Petitioner to her mother. In totality, a preponderance of the evidence must establish that the Court considered the facts relating to the Petitioner's circumstances in Honduras and her circumstances in the United States, while conducting an individualized assessment, and before determining that it was in the Petitioner's best interest to be placed in the custody of her mother, thus constituting a qualifying best interest determination for purposes of SIJ eligibility. *See 6 USCIS Policy Manual*, J.2(C)(3), <https://www.uscis.gov/policy-manual/>, stating that the juvenile court is required to "make an individualized assessment and consider the factors that it normally takes into account when making best interest determination, and the record should reflect the factual basis for the juvenile court's determination." When the record is viewed as a whole, the Petitioner has established by a preponderance of the evidence that the Court made a qualifying judicial determination that it would not be in her best interest to return to Honduras, her country of nationality.

In the Amended SIJ Order, the Court determined that it was in the best interest of the Petitioner to remain in the United States with her custodian mother, and that it was in her best interest not to return to Honduras. The pleadings upon which this Amended SIJ Order is based explains the Petitioner's

dire circumstances in Honduras should she return, including that the Petitioner's father has not provided for her or been in her life since birth, and there was no one in Honduras to care for the Petitioner. Based on the foregoing, the Petitioner has established by a preponderance of the evidence that the Court considered the facts relating to the Petitioner's circumstances in Honduras versus her circumstances in the United States before determining that it was in the Petitioner's best interest to be placed under the sole responsibility of a custodian in the United States. As such, the Petitioner has established that the Court made a qualifying best interest determination as required by the Act and regulations.

III. CONCLUSION

The Petitioner has overcome the basis of the Director's denial and demonstrates her eligibility for SIJ classification.

ORDER: The appeal is sustained.