



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

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

In Re: 29185689

Date: DEC. 19, 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* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 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, concluding that the record did not establish that the consent of U.S. Citizenship and Immigration Services (USCIS) for approval of the SIJ petition was warranted. 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).¹ Petitioners must have been declared dependent upon the juvenile court; alternatively, 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 juvenile's 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).

¹ The Petitioner provides citations to adopted decisions issued by our office in 2019. However, 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). Our decision in this case is therefore made in accordance with the current regulatory requirements.

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.

In [] 2021, when the petitioner was under 18 years old, the [] Texas (family court) issued a “Default Final Order in Suit Affecting the Parent Child Relationship” (final order). The family court made the following determinations: the Petitioner’s mother was appointed as sole managing and possessory conservator; allowing the Petitioner’s father possession or access to the Petitioner would endanger her physical or emotional welfare; the Petitioner had been subject to parental abuse and neglect as defined by the Texas code; reunification with the Petitioner’s father was not viable due to abuse, abandonment, and neglect; and it was not in the Petitioner’s best interest to return to Mexico.²

The Petitioner submitted the SIJ petition to USCIS, relying on the final order and the underlying pleadings that had been filed before the family court. The Director denied the petition, concluding that the Petitioner had not established that the record included a factual basis for the determination that it was not in the Petitioner’s best interest to return to Mexico.

On appeal, the Petitioner submits a brief contesting the Director’s analysis of the family court order and the Director’s refusal to consent to SIJ classification. The Petitioner argues that the Director’s decision, while somewhat unclear, ultimately rests on a determination that consent is not warranted. She contends that the Director misunderstood the role that consent plays in the decision-making process. Specifically, the Petitioner argues that the legislative history of the SIJ program shows that consent should only be withheld where it is determined that a petition is not bona fide; the consent function was not intended to allow USCIS to conduct a de novo review of a state court’s findings. The Petitioner argues that the record before the state court judge did demonstrate that the proceedings were bona fide, as it outlined a pattern of abuse by the Petitioner’s father. This evidence is sufficient to support the family court’s determination that returning to Mexico is not in the Petitioner’s best interest.

After de novo review of the record, we agree with the Petitioner that the pleadings and underlying documentation submitted to the family court provide an ample factual basis for the court’s best interest finding. The family court noted that it examined the pleadings in the case and heard evidence before taking jurisdiction. The initial pleadings indicate that the Petitioner’s father engaged in sustained

² The final order did not specifically state that the family court was acting as a juvenile court as required by section 101(A)(27)(J) of the Act and 8 C.F.R. § 204.11. However, the family court cited to the chapter of the Texas Family Code that allows investigations of child abuse or neglect. Tex. Stat. Ann. § 261.011. This section is contained in Subtitle E of the Texas Family Code, “Protection of the Child,” and only outlines the investigation of neglect or abuse as it relates to children. The Texas Family Code generally defines a child as a “person under 18 years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes.” See Tex. Stat. Ann. § 101.033(a). The section cited by the family court does not provide an alternative definition. The Petitioner has established by a preponderance of the evidence, given the family court pleadings and final order, that the family court was acting as a juvenile court.

abuse of the Petitioner and her mother before disappearing in 2014. Subsequently, the Petitioner's mother began to receive threats from a cartel member. This cartel member indicated that he was aware that the Petitioner's father was not present. He threatened that, if the Petitioner's mother did not become his girlfriend, he would harm the Petitioner. The Petitioner's mother also submitted an affidavit to the family court. She detailed the ways in which the Petitioner was physically and emotionally abused by her father. She also provided further information on the cartel member's threats, which included threats to kidnap and disappear the Petitioner.

Reading the family court documentation in its totality, the record establishes that the family court granted sole conservatorship to the Petitioner's mother, who was residing in the United States after previously acting as the Petitioner's sole caretaker in Mexico. The family court record also shows that the Petitioner was the subject of serious threats of harm or disappearance made by an organized crime member. The documentation presented before the family court establishes the factual basis that the family court relied upon in making its determination that returning to Mexico was not in the Petitioner's best interest. 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.