



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

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

In Re: 18692463

Date: FEB. 6, 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 denied the SIJ petition and 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, a petitioner 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). The petitioner 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 petitioner'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).

SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (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 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 [ ] 2017, the Circuit Court for [ ] Maryland issued an *Order of Findings of Special Immigrant Juvenile Status* (SIJ order), finding the Petitioner dependent on the court and placing him in the guardianship of his cousin. The Circuit Court further stated that the Petitioner's reunification with his parents was not viable due to abuse, abandonment, and neglect because they "relinquished control" of him when they sent him to live with his uncle in the United States, allowed him to live under the supervision of his 17-year-old brother when his uncle abandoned him, failed to provide him with any financial or emotional support, and "did not concern themselves with [his] education or living arrangements." Accordingly, the court determined that it would not be in the Petitioner's best interest to return to India, his parents' country of nationality, because he would suffer neglect and abandonment by his parents and there is no other adult willing or able to care for him.

Based on the SIJ order, the Petitioner filed his SIJ petition. The Director denied the petition, explaining that the record contains evidence that materially conflicts with the Circuit Court's order. The Director noted that the SIJ order indicated that the Petitioner's parents were "both living in India" but that USCIS records show that his mother has been living at his address since May 2016 and that his father visited for 40 days beginning in May 2016. Accordingly, the Director concluded that USCIS' consent to the Petitioner's SIJ classification was not warranted.

On appeal, the Petitioner submits a brief and copies of previously submitted evidence. He contends that the Director erred in withholding USCIS' consent because he submitted sufficient evidence to establish that his "mother was in India at all relevant times," and that although his parents visited the United States on occasion, the Petitioner always lived with and was in the care of his cousin. In the appeal brief, counsel states, "At the time the custodian filed the petition with the Maryland circuit court on November 16, 2016, until the Maryland court entered the orders on [ ] 2017, petitioner's parents were living in India." In a personal statement in response to a notice of intent to deny (NOID) from the Director, the Petitioner states that his sister filed an application for lawful permanent residence on his mother's behalf. He claims that his sister lived at "various addresses . . . in Maryland" while relocating from Michigan, stayed with the Petitioner and his cousin briefly, and "may have used [his cousin's] address because she owns her property and has a stable address . . . [which is] secure to receive important government papers." He states that his mother lives with his sister at a separate Maryland residence, is a dependent of his sister, and has no means to support the Petitioner or herself. Further, he indicates that his mother has not lived with or cared for him since 2008. In response to the NOID and again on appeal, the Petitioner provides documents relating to his own address history and that of his sister and mother.

### B. USCIS' Consent is Not Warranted

During our adjudication of this appeal, we issued a NOID informing the Petitioner that he has not met his burden of showing that his request for SIJ classification is bona fide. The Petitioner has not responded to the NOID. SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. For USCIS to consent, the request for SIJ classification must be bona

fide, which requires the petitioner to establish that a primary reason for seeking the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5) (2022). USCIS may 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. *Id.*

As we discussed in our NOID, the record contains copies of his mother's passports which show, in relevant part, that his mother arrived in India in November 2016 after a stay of approximately six months in the United States. Government records confirm that his mother departed the United States in November 2016 and remained in India until April 2017, when she returned to the United States. Accordingly, we withdraw the Director's statement that the Petitioner's "mother has been living at [his] residence in the United States continuously since May of 2016." Furthermore, the fact that the Petitioner's father visited the United States temporarily does not materially conflict with the Circuit Court's determinations.

However, we explained in our NOID that the record still indicates that between 2014 and 2016, the Petitioner's mother spent significant time residing at the Petitioner's address in [redacted] Maryland, where he lives with his cousin [redacted] address). He claims that he moved in with his cousin at the [redacted] address in July 2012. Government records show that his mother was in the United States from May to August 2014, May to September 2015, and May to November 2016. At the time of each admission, she listed the [redacted] address as her destination address on her Form I-94, Arrival/Departure Record. This information materially conflicts with the Petitioner's claims that he has not lived with his mother since 2008 and the Circuit Court's determinations that his reunification with his parents was not viable due to abandonment and neglect because they failed to provide him with any financial or emotional support and "did not concern themselves with [his] . . . living arrangements." Accordingly, this evidence weighs against a determination that the Petitioner's request for SIJ classification is bona fide.

Additionally, the Petitioner's mother obtained a Maryland driver's license in November 2016, listing the [redacted] address as her own. Further, as he indicated in his NOID response to the Director, the Petitioner's sister filed a Form I-130, Petition for Alien Relative, on his mother's behalf in June 2016, indicating that his mother resided at the [redacted] address, and his mother filed a related Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-765, Application for Employment Authorization, again listing the [redacted] address as her own. Although the Petitioner claims his sister may have listed his cousin's [redacted] address on his mother's immigration filings because his sister was moving and did not have a stable address at which to receive important mail, he provides evidence reflecting that shortly after filing the Form I-130, his sister arranged stable housing in Maryland, signing two subsequent leases that each lasted at least one year. The Petitioner's mother has never filed a Form AR-11, Alien's Change of Address Card, to reflect that she resides with his sister at either of those locations or anywhere other than the [redacted] address. Additionally, his mother is not listed as a resident on either of the leases the Petitioner submitted to show his sister's address in Maryland. Finally, the Petitioner's mother is listed in publicly available records as the contact person for a business registered to the [redacted] address. The evidence that the Petitioner's mother has resided at the [redacted] address between 2014 and 2016, where the Petitioner has lived with his cousin since 2012, is materially inconsistent with the Circuit Court's determination that his mother lived in India and did not concern herself with his living arrangements. The Petitioner did not

respond to our NOID about this evidence. Accordingly, he has not met his burden of showing that his request for SIJ classification is bona fide such that USCIS' consent is warranted, as 8 C.F.R. § 204.11(b)(5) requires.

### C. No Qualifying Parental Reunification Determination

Furthermore, we notified the Petitioner in our NOID that the record reflects an additional ground for denial that the Director did not raise. The Act requires a juvenile court's determinations that an SIJ petitioner cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law, and that it would not be in the petitioner's best interest to return to their home country. Section 101(a)(27)(J)(i)-(ii) of the Act. The order should use language showing that the required determinations were made under state law. 6 *USCIS Policy Manual* J.6(3)(A)(1) (citing 8 C.F.R. § 204.11(c)(3)). Accordingly, state court orders that only cite or paraphrase immigration law and regulations will not suffice if the petitioner does not otherwise establish the basis in state law for the juvenile court's reunification finding. 6 *USCIS Policy Manual* J.6(3)(A)(1).

In the SIJ order, the Circuit Court declared that the Petitioner's reunification with his parents was not viable due to abuse, abandonment, and neglect and that it would not be in his best interest to return to India. However, the Circuit Court did not reference any Maryland law that formed the basis for those findings and the record does not contain any supporting documentation, such as the underlying petition for special findings filed with the Circuit Court, that might establish the state law upon which the Circuit Court relied. Although the SIJ order cites Maryland Family Law section 1-201 as the basis for its jurisdiction over the Petitioner, there is no evidence in the order or elsewhere in the record that the court relied on that statute or any other Maryland child welfare law in making its parental reunification and best interest determinations. Again, the Petitioner has not responded to our NOID with any argument or evidence regarding this ground. Accordingly, a preponderance of the evidence does not establish that the Circuit Court's determinations were based in state law, as required.

### III. CONCLUSION

The Petitioner has not met his burden of establishing that USCIS' consent to his SIJ classification is warranted. Furthermore, the record does not show that the Circuit Court made a qualifying parental reunification determination under state law. Accordingly, he has not met the eligibility requirements for SIJ classification.

**ORDER:** The appeal is dismissed.