



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

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

In Re: 25235418

DATE: Feb. 8, 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), concluding that U.S. Citizenship and Immigration Services' (USCIS') consent to her request for SIJ classification was not warranted, and the matter is now before us on appeal. Upon *de novo* review, we will sustain 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), (c)(1).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. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

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 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

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

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 establish their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2018, when the Petitioner was 20 years old, the California Superior Court for [] (Superior Court) appointed guardianship of the Petitioner to K-T-D- under the state probate code.² On the same date, the court also issued an order titled “Special Immigrant Juvenile Findings” (SIJ order), determining among other findings necessary for SIJ eligibility under the Act, that the Petitioner was placed under the custody of K-T-D-, that the Petitioner’s reunification with both her parents was not viable due to their abuse, neglect, and abandonment under California Code of Civil Procedure (CCP) section 155, and that it was not in her best interest to be returned to Vietnam, her country of nationality. The SIJ order also included the court’s factual findings based on a hearing and evidence supporting its parental reunification and best interest determinations.

Based on the Superior Court orders, the Petitioner filed her SIJ petition in March 2019. Following a request for evidence (RFE), the Director denied the SIJ petition, concluding that the Petitioner did not demonstrate that her request for SIJ classification was bona fide and warranted USCIS’ consent because the court’s parental reunification determination based on the Petitioner’s claim of her parents’ maltreatment was inconsistent with government records.

On appeal, the Petitioner submits a brief reasserting her eligibility for SIJ classification. She also submits additional documents and maintains that her request for SIJ classification is bona fide and warrants USCIS’ consent.

B. USCIS’ Consent Is Warranted

As stated, a request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. *Id.* To establish that USCIS’ consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). Such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

² We use initials for privacy.

The Director determined that the Petitioner's request for SIJ classification was not bona fide because the Superior Court's factual findings in support of its determination that the Petitioner could not reunify with both her parents due to their abuse, neglect, and abandonment were inconsistent with her 2014 nonimmigrant student visa application indicating that she regularly resided with her parents in Vietnam before she entered the United States in August 2014 and that her father was paying for her trip. In concluding that the SIJ petition was not bona fide, the Director also identified additional information that was inconsistent with the court's findings. Specifically, the Director found that the Petitioner failed to disclose her father's alleged abuse when she applied for her student visa, misrepresented that she attended a private school in Vietnam, and falsely stated that she was going to (but did not) attend a specific school in the United States. The Director also found that the Petitioner's claim that her father disowned her was inconsistent with the father's previously denied visa requests, which indicated that he twice attempted to visit the Petitioner in the United States.

On appeal, the Petitioner contends that the fact that she resided with her parents in Vietnam and her parents paid for her trip to the United States is not inconsistent with the court's SIJ findings. She again acknowledges that she lived with her parents in Vietnam and that they paid for her trip here, but she maintains that her father abused her throughout her childhood until she came to the United States in August 2014 and her mother failed to care for her. The Petitioner also reasserts that she has not seen her parents since she came here, and irrespective of her request for SIJ classification based in part on the past parental maltreatments, her parents abandoned and disowned her after she came to this country. In support of these assertions, the Petitioner submits another affidavit reasserting that her parents stopped supporting her in 2015, she has not spoken with them since June 2015, she has no home to return to in Vietnam, and that she has no knowledge of her father's prior attempts to visit her in the United States. The Petitioner also clarifies that she has never attended a private school in Vietnam and explains why she did not attend the school she initially indicated she would attend in the United States and why she had to seek help from K-T-D- who ultimately became her guardian.

The record on appeal does not support the Director's determination to withhold USCIS' consent to the Petitioner's request for SIJ classification. The Director concluded that the Petitioner's visa application indicating that she was living with her parents in Vietnam and her father was paying for her trip was inconsistent with the court's parental reunification determination and related factual findings, but this information does not necessarily conflict with the court's determination that her reunification with both her parents is not viable due to their abuse, neglect and abandonment, and the court's factual findings in support of that determination. The Director also relied on additional derogatory information in withholding consent, including the purported discrepancies that the Petitioner during her visa application process falsely claimed that she attended a private school in Vietnam and designated a school she was supposed to (but did not) attend in the United States. However, these other purported discrepancies on which the Director relied similarly do not conflict with the court's findings and do not support withholding of USCIS' consent. Even if the Director properly relied on all the alleged inconsistencies, they do not conflict with the court's parental reunification determination relating to abuse, neglect, and abandonment. Here, the court made a qualifying determination that the Petitioner could not reunify with her parents due to abuse, neglect, and abandonment under state law and made specific factual findings in support of that determination. 8 C.F.R. § 204.11(d)(5)(i) (requiring a factual basis for a juvenile court's SIJ related findings to establish that USCIS' consent is warranted). The SIJ order indicates that the court, in making this finding, held a hearing in the guardian's presence, and relied on "the evidence" presented to the court.

The SIJ order shows that the court specifically determined that, “per [the Petitioner’s] allegations,” not only did her parents abandon and physically abuse her, but her father also “threatened to kill her if she attempts to return to Vietnam and the family home.” The court further determined that the Petitioner’s father physically abused her in the past and later disowned her due to her religious conversion and her mother had also abandoned her, telling her that she was ashamed of the Petitioner and that she can no longer return home. The court found the Petitioner would find no support or no place to live if she returned to Vietnam.

The information in the record indicating that the Petitioner lived with her parents at the time of the visa application and that her father paid for her trip does not contradict the court’s parental reunification determination or any of the above court findings in support of that determination, particularly where the record does not indicate that the court specifically found that the Petitioner’s parents abandoned her while she was still in Vietnam. Similarly, the filing of the Petitioner’s visa application or her alleged failure to disclose the abuse at the time of her visa application do not contradict the court’s determination that her father physically abused her and that her parents had abandoned and neglected her, where the record does not reflect that the Petitioner was ever asked about parental abuse during her visa application process. The other information on which the Director also relied, including the purported discrepancies that the Petitioner during her visa application process falsely claimed that she attended a private school in Vietnam and designated a school she was supposed to attend in the United States, do not conflict with the court’s findings pertaining to parental maltreatment, particularly where the court specifically found that the Petitioner’s father later abandoned and disowned her “for wanting to be a Protestant rather than Catholic” and the Petitioner’s mother also abandoned her, saying that she was ashamed of the Petitioner and that she cannot return home. Contrary to the Director’s conjecture, the Petitioner’s affidavits before the Director and on appeal also consistently describe in detail the parental maltreatment she experienced while still living with her parents in Vietnam and why they abandoned and disowned her while she was in the United States and after they learned of her new faith, as well as her assertions that they subsequently stopped supporting her and she has not spoken with them since June 2015.³ The purported discrepancies on which the Director relied thus are not supported by the record. The Director’s decision did not identify, and our review does not disclose, any other inconsistencies in the record that materially conflict with the court’s determination that the Petitioner cannot reunify with her parents due to their abuse, neglect, and abandonment or the factual findings on which the court relied in making that determination. Further, the record also establishes that the court found that it was not in the Petitioner’s best interest to be returned to Vietnam and a factual basis for this determination and granted her relief from parental maltreatment by appointing her a guardian under state law. 8 C.F.R. § 204.11(d)(5)(i), (d)(5)(ii).

Accordingly, the record shows by a preponderance of the evidence that a primary reason the Petitioner sought the juvenile court orders was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief. As the record otherwise shows that she meets the remaining eligibility criteria, her request for SIJ classification warrants USCIS’ consent. The Petitioner therefore has established her eligibility for SIJ petition under the Act.

ORDER: The appeal is sustained.

³ In addition to her affidavit, the Petitioner also submits on appeal a school report containing information regarding her education history in Vietnam and other documents related to her school attendance in the United States.