



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

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

In Re: 25118772

Date: FEB. 28, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of India, 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 the Petitioner was under 21 years of age at the time of filing her petition for 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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, 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). Finally, 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).

¹ 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).

In [redacted] 2021, when the Petitioner was 20 years old, the Family Court of the State of New York – County of [redacted] (Family Court) issued an Order Appointing Guardian of the Person (guardianship order) granting guardianship of the Petitioner to S-K-², the Petitioner’s uncle. The guardianship order, as well as an SIJ order issued the same day, contains factual findings relating to the Petitioner’s eligibility for SIJ classification. In the SIJ order, the Family Court found the Petitioner dependent on the Family Court and subsequently granted custody to her uncle. Specifically, in the guardianship order, the Family Court found it was in the Petitioner’s best interest to be placed under the guardianship of S-K-. The Family Court further determined reunification with the Petitioner’s father was not viable due to his being deceased; additionally, reunification with the Petitioner’s mother was not viable due to neglect under New York Family Court Act §§ 661(a), 1012(f)(i) and New York Social Services Law §§ 371, 384-b(5). As a factual basis for that conclusion, the Family Court found the Petitioner’s mother had a history of alcohol and drug abuse, which caused her to be “violent and physically abusive” towards the Petitioner, and she “failed to care for [Petitioner]’s well-being.” Finally, the Family Court found it would not be in the Petitioner’s best interest to be returned to her or her parents’ last country of residence – India – because she did not have anyone there who could care for her.

Based on the guardianship order and SIJ findings, the Petitioner filed this SIJ petition in February 2021, and it was initially rejected for failure to attach the proper fee. The Petitioner refiled the SIJ petition in April 2021, shortly after receiving notice of the rejection and after her 21st birthday. In April 2022, the Director denied the SIJ petition, determining the Petitioner failed to submit evidence that showed the Petitioner was eligible for SIJ classification at the time the SIJ petition was filed with USCIS.

The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant Juvenile, and supporting documentation submitted by the Petitioner in February 2021 clearly indicate the filing was for a Special Immigrant Juvenile. We therefore find that the Petitioner’s SIJ petition was properly filed in February 2021, before she turned 21, and was erroneously rejected for an incorrect payment amount.³ Although the Petitioner has overcome the sole basis for the Director’s denial, the Director did not make all the requisite determinations regarding parental reunification, custody or dependency, best interest, and whether USCIS’ consent to her SIJ classification is warranted. Therefore, we withdraw the Director’s decision and remand this matter for the entry of a new decision with complete analysis of the Petitioner’s eligibility for SIJ classification and if USCIS’ consent is warranted.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

² Initials are used to protect the privacy of this individual.

³ Although there is a fee for a Form I-360 petition filed under certain categories, there is no filing fee required for a Special Immigrant Juvenile petition.