



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

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

In Re: 20199107

Date: JAN. 5, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), because the Petitioner did not establish that he was under the age of 21 at the time of filing and that he warranted the consent of U.S. Citizenship and Immigration Services (USCIS). 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, 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. 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 the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes

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).

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

The record reflects that the Petitioner, a native and citizen of Bangladesh, submitted an SIJ petition in May 2017. The Petitioner submitted documentation with his SIJ petition and in response to a request for evidence and notice of intent to deny (NOID). The Director listed these documents, and we incorporate that list into our decision. The Petitioner included an order from the Family Court of the State of New York, [REDACTED] (Family Court) appointing M-A-² as his guardian in guardianship proceedings. The Petitioner submitted a separate order titled *AMENDED ORDER-ON A MOTION FOR SPECIAL FINDINGS* (SIJ order), which provided that reunification with his father and mother was not viable due to abandonment and neglect as defined under New York law, and that it was not in his best interest to be removed from the United States and returned to Bangladesh.

The Director denied the SIJ petition in February 2021, concluding that the Petitioner did not establish that he was under the age of 21 at the time of filing and that he warranted the consent of USCIS. The Director noted government records indicated the Petitioner previously used [REDACTED] 1994, as his date of birth, which would have made him over 21 years old at the time of filing his SIJ petition. This date was inconsistent with [REDACTED] 1998, the date listed on his birth certificate. Furthermore, the Petitioner's birth certificate was registered on February 17, 2016, more than 17 years after the date of birth listed on his birth certificate, and it was registered while he was in transit to the United States. The Director also mentioned that the Petitioner submitted two versions of his birth certificate which were issued on February 17, 2016, from the same office and signed by the same chairman of the [REDACTED] [REDACTED] M-L-, but they included a different design and signatures from different secretaries. In response to the NOID, the Petitioner explained that his brother went to request a second copy of his birth certificate and a new secretary was employed at the office, and it is likely M-L- looked up the registration and put the same registration date on it since he signed it previously. The Director noted that the Petitioner did not provide official documentation from the Office of the Registrar to confirm the "likely" explanation. The Petitioner submitted an affidavit from M-L- stating the Petitioner's brother told him the initially issued birth certificate was lost and confirming the same birth certificate was provided a second time after the arrival of a new secretary. However, the Director noted the signature on the affidavit and accompanying national identification card did not match M-L-'s signature from the birth certificates. The Petitioner also included another inconsistent birth certificate in response to the NOID, registered on August 25, 1998, and issued on February 25, 2003. The Petitioner did not explain the inconsistent birth certificate. Lastly, the Petitioner submitted a statement from a primary school headmaster stating he was in classes one through five from 2006 to 2010, and payment receipts from a high school indicating he was in classes six through eight from 2012 to 2014. However, the Director noted these dates were inconsistent with the Petitioner's asylum application which listed primary school attendance from January 2004 until June 2008, and high school attendance from

² We use initials to protect the privacy of individuals.

January 2009 until December 2010. As such, these documents were determined to be insufficient to establish the Petitioner's age.

Considering the evidence in the record, the Director concluded that the Petitioner did not provide sufficient documentary evidence of his age. In addition, the Director was unable to determine whether a primary reason the required juvenile court determinations were sought was to obtain relief from parental maltreatment. As such, the Director determined that USCIS' consent was not warranted.

On appeal, the Petitioner submits a brief and statements in support of his case. The Petitioner asserts that he has established, by the preponderance of the evidence, that he was under the age of 21 when he filed his SIJ petition. The Petitioner refers to Office of Refugee and Resettlement age determination procedures as a basis for evaluating his evidence. He states these procedures include the consideration of official government issued documentation or other reliable records, individual testimony of those with personal knowledge of the individual's age, and dental maturity assessments using radiographs. The Petitioner states he previously submitted his immunization and vaccination card, age progression photographs, a statement from the headmaster of his primary school, payment receipts for his high school, affidavits from individuals with personal knowledge of his age, and results from a dental and wrist x-ray exam. The Petitioner claims that the Director did not consider the affidavits submitted in support of establishing his age and the x-ray results showing that he was between the age of 20 and 22 when the exam took place in September 2020. The Petitioner asserts that a second NOID should have been issued to address the difference in his birth certificates. He includes statements from M-L- and R-I-, the current chairman, on appeal. M-L- states that he signed both birth certificates of the Petitioner, he signed his previously submitted statement, and his signature discrepancies are due to him using a specimen signature and a normal signature on the documents. R-I- mentions that the Bangladeshi government enacted a new Birth and Death Registration Act in 2004 and this explains why the Petitioner's 2003 birth certificate, which is true and authentic, is different from his February 2016 birth certificate. Furthermore, the Petitioner claims that the Director erred in relying on inconsistencies in his asylum application. Lastly, the Petitioner asserts that the Director violated his due process rights when it did not disclose where and when he used a different date of birth and did not describe the material inconsistencies.

The burden of proof is on the Petitioner to establish by a preponderance of the evidence that his true date of birth is [redacted] 1998, which would have made him under the age of 21 at the time he filed his SIJ petition. We acknowledge the documents submitted by the Petitioner that list or refer to [redacted] 1998, as his date of birth. However, the Petitioner's birth certificate which he initially submitted was registered on February 17, 2016, more than 17 years after the date of birth listed on his birth certificate, and it was registered while he was in transit to the United States. As this date is many years after his claimed date of birth, the evidentiary weight of the birth certificate is diminished. We acknowledge M-L-'s statement that he provided the second birth certificate dated February 17, 2016, signed by a different secretary, but this has the same issues as the first birth certificate. In regard to the third birth certificate, which was registered on August 25, 1998, and issued on February 25, 2003, R-I-'s statement adds further inconsistencies to the record. R-I- states that the Petitioner's birth was recorded on August 25, 1998, in the book prescribed by the Government of the People's Republic of Bangladesh for birth registration. However, he then states that the Bangladeshi government did not collect the birth registration of people in the form of any record, rather parents would remember their child's date of birth and then in 2003, door to door registration was started. Therefore, it is not clear

how the Petitioner's third birth certificate was registered on August 25, 1998, and we give it diminished weight.

Furthermore, we give minimal weight to the statement from the headmaster of the Petitioner's primary school and payment receipts for his high school, as they relate to his age, since they are inconsistent with his dates of attendance in his asylum application. Additionally, the "age progression photographs" do not provide sufficient background to help establish the Petitioner's date of birth. We have reviewed the Petitioner's immunization and vaccination card, affidavits from individuals regarding his age, and results from his x-ray exam. However, they do not outweigh U.S. governments records, which are based on the Petitioner's fingerprints, which reflect that the Petitioner used [redacted] 1994, as his date of birth during at least one encounter outside the United States. The Petitioner states that his smuggler in Bangladesh provided a passport with [redacted] 1994, as his date of birth, his smugglers in Peru told him detention officials would hold him if they knew his actual age, he was detained in Panama and Mexico, and he therefore provided [redacted] 1994, as his date of birth to the officials who detained him. However, there is no supporting evidence for these claims and we give them minimal weight. Based on the foregoing and upon de novo review of the entire record, the Petitioner has not established by a preponderance of the evidence that his actual date of birth is [redacted] 1998. Therefore, the Petitioner has not established that he was under 21 years of age on the date his SIJ petition was filed and he is not eligible for SIJ classification under section 101(a)(27)(J) of the Act.

As we determined that the Petitioner has not established by a preponderance of the evidence that he was under the age of 21 when he filed his SIJ petition, we decline to reach and hereby reserve the Petitioner's arguments that he warrants USCIS' consent. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.