



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

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

In Re: 22457524

Date: JAN. 9, 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 petition because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment and therefore U.S. Citizenship and Immigration Services' (USCIS) consent is not warranted. On appeal, the Petitioner submits a brief and asserts that his SIJ classification warrants USCIS consent. We review the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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).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).

U.S. Citizenship and Immigration Services (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.

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).

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).

The petitioner bears the burden of proof to demonstrate 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 [REDACTED] 2017, when the Petitioner was 16 years old, the Superior Court of California, [REDACTED] (Family Court) issued an order granting his mother’s Petition to Establish Parental Relationship pursuant to its authority under proceedings brought under section 7650 of the California Family Code. The order, titled *SPECIAL IMMIGRANT JUVENILE FINDINGS* (SIJ order), stated that the Petitioner was “placed under the custody of [his mother].”² In the order, the Family Court also made determinations pursuant to section 155(a) of the California Code of Civil Procedure, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. Specifically, the Family Court determined that reunification with the Petitioner’s father was not viable under California law due to abuse, neglect, and abandonment and that it was not in the Petitioner’s best interest to be removed from the United States and returned to Guatemala, his country of nationality.

The Director denied the SIJ petition, concluding that the Petitioner had not established that his request for SIJ classification was bona fide and that USCIS’ consent therefore is not warranted because the record lacked evidence explaining purported inconsistencies in the Petitioner’s prior claims regarding his relationship with each of his parents to officers of U.S. Customs and Border Protection (CBP) when he was encountered entering the United States, to USCIS in his 2015 asylum application, and in his assertions to the Family Court in 2016, and the Petitioner did not show that the Family Court was aware of these inconsistencies when it issued the SIJ order.

On appeal, the Petitioner contends that there are no material inconsistencies between his claims to CBP officers when he was first encountered, to USCIS in the context of his subsequent asylum application, and then to the Family Court. He therefore contends that his request for SIJ classification is bona fide and USCIS’ consent is warranted.

B. USCIS’ Consent Is Warranted

To warrant USCIS’ consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)–(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings

² Name withheld to protect the individual’s identity.

is central to whether USCIS' consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings). Furthermore, 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).

To establish 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).

In denying the SIJ petition, the Director concluded that the Petitioner had not shown that consent was warranted after determining that information in the record conflicted with the Family Court's findings and the Petitioner's claims before the Family Court. Specifically, the Director stated the Petitioner told the Family Court that his father had abandoned him at birth and had never provided support, and that his mother had been his sole provider since birth except for a brief period of separation. The Director indicated that, in contrast, the Petitioner later told USCIS³ he had resided with both of his parents in Guatemala until his father moved to the United States when the Petitioner was around eight years old, that his mother moved to the United States one year later (around 2008). The Director also stated that after the Petitioner entered the United States (in 2014), he had told CBP officers that he intended to reunite with both of his parents in the United States and in fact did so upon his release from federal custody. The Director also noted that, in response to a notice of intent to deny (NOID) the SIJ petition, the Petitioner had submitted an April 2021 statement addressed to USCIS claiming that his father had resided with him in Guatemala until the Petitioner was six years old and that his father had used drugs and alcohol and physically abused the Petitioner; however, the Director stated that the Petitioner had not made these claims to the Family Court in 2016. Finally, the Director stated that a 2018 death certificate for the Petitioner's father indicated that the father's residential address was the same as the Petitioner's residential address, although the Petitioner had claimed to the Family Court in 2016 that his father abandoned him in February 2016. The Director denied the SIJ petition, concluding that "the facts provided to the court do not accurately reflect the facts provided to USCIS" and, therefore, the Director was unable to determine whether the Petitioner's primary purpose in seeking the SIJ order was to obtain relief from parental maltreatment or to obtain an SIJ order for immigration purposes.

On appeal, the Petitioner claims that his SIJ petition was incorrectly completed by his prior attorney and therefore asserts that his case may have been prejudiced by ineffective assistance of prior counsel. In *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), the Board of Immigration Appeals (the Board) established a framework for asserting and assessing claims of ineffective assistance of counsel. However, we need not reach this issue here because, as will be discussed, the Petitioner has established on appeal that consent is warranted.

The Petitioner further asserts on appeal that his statements to CBP and USCIS are not in conflict with the information he provided to the Family Court. He contends that his father never provided financial

³ The statements to USCIS were in the context of the Petitioner's 2015 asylum application and related asylum interview.

support for him, either in Guatemala or in the United States, and that his mother had been his sole provider. The Petitioner also states that although he told CBP officers that he hoped to be reunited with his father and mother in the United States and in fact resided with them after his release from federal custody in 2014, his father ultimately abandoned the family in February 2016. Further, he notes that his mother had sought sole custody of the Petitioner and the separate SIJ findings from the Family Court based on her specific assertions that the Petitioner's father subjected the Petitioner to abuse, neglect, and abandonment. Therefore, the Petitioner contends, his NOID response was not the first time that the claims of paternal abuse and neglect were raised. Based on these factors, the Petitioner contends that the Family Court's findings that he had been abandoned by his father in California in February in 2016 are not in conflict with evidence in the record reflecting that the Petitioner had told CBP in 2014 that he wished to reunite with his father (and mother) and told USCIS in 2015 that he was residing with his mother, father, and sibling in the United States.

With respect to the information on the 2018 death certificate showing that the Petitioner and his father had the same residential address, on appeal the Petitioner asserts that he was residing with his uncle and not his father. He states that his uncle worked with his father and brought the father home for observation after the father suffered a head injury during their workday. However, the father was taken to hospital by ambulance the same day and ultimately died from the injury. Although the Petitioner stated that he had provided some information about his father for the death certificate, he claimed that he was not even present in his own house the day his uncle brought the father home for observation and does not know why his own address is listed as his father's residential address. The Petitioner asserts that the 2018 death certificate is a single piece of evidence that is insufficient to have allowed the Director to conclude that he and his father were residing together at any time after the father abandoned him in 2016.

Upon de novo review, the Petitioner has established that USCIS' consent to his request for SIJ classification is warranted. Our review does not support the Director's determination that the record reflects material inconsistencies with the court's SIJ related determinations and the Petitioner's assertions before the court and in his SIJ proceedings. In making the parental reunification determination based on the father's abuse, neglect, and abandonment of the Petitioner, the Family Court specifically found that the Petitioner's father "did not provide any support for [the Petitioner] when the [the father] resided with [the mother], . . . was verbally abusive towards the [the mother and the Petitioner], . . . [and] has not inquired about [the Petitioner's] well-being and welfare." The record shows that in seeking sole custody of the Petitioner and the separate SIJ order, the Petitioner's mother advised the Family Court that the father had verbally abused the Petitioner, neglected him even when they had all resided together in Guatemala and the United States, and had abandoned the Petitioner first by coming to the United States and then by leaving the family once they were reunited in the United States. The mother explained that she had been the Petitioner's sole provider even when the father had resided with the Petitioner and his mother, noting that she had registered the Petitioner for school as soon as he had arrived in the United States and "made sure that [he] had everything he needed."

The Director stated that the Petitioner's response to the NOID was the first time that he had claimed that his father abused drugs and alcohol and had been abusive to the Petitioner, and we acknowledge that the Petitioner and his mother never mentioned physical or drug abuse to the court. Regardless, no material conflict exists since the court's findings of abuse, neglect, and abandonment are not based

on physical or drug abuse by the father. The mother's 2016 declaration to the Family Court reflects that she had claimed that the Petitioner's father "was an angry man" who was verbally abusive to the Petitioner in addition to neglecting and abandoning him and therefore she sought sole custody of the Petitioner based on the father's abuse, abandonment, and neglect of the Petitioner. The Director also found that the Petitioner told the Family Court that his father had abandoned him at birth and never provided support, and that this was contrary to statements to USCIS in 2015 that he did reside with his father. The SIJ order states that the Petitioner's father "did not provide any support for [the Petitioner] when [the father] lived with" the Petitioner. That the Petitioner told CBP in 2014 that he wished to reunite with his parents in the United States and was actually residing with them in 2015 does not conflict with the information and the timeline that the Petitioner and his mother had provided to the Family Court showing that his father verbally abused and neglected the Petitioner, abandoned him in Guatemala, again abandoned him in California in 2016, and failed to support the Petitioner even when they resided together. Moreover, although the Director noted that the father's 2018 death certificate listed the same residential address for the Petitioner and his father, the Petitioner claims that he was not residing with his father and does not know why his own address is listed as his father's address on the death certificate. Regardless, the information on the 2018 death certificate does not preclude the Petitioner from establishing that his father previously had abandoned him in 2016. Consequently, the residential information at the time of the 2018 death certificate also does not materially conflict with the facts presented to the Family Court and its findings in the 2016 SIJ order.

The record below also contains a factual basis for the SIJ related determinations, including the best interest determination, made by the Family Court in the SIJ orders. 8 C.F.R. § 204.11(d)(5)(i). The Family Court also granted the Petitioner protective relief from the abuse, neglect, and abandonment by his father by granting sole custody of the Petitioner to his mother. Additionally, contrary to the Director's findings and as discussed above, the record does not reflect material conflicts in the record between the court's findings and the Petitioner's assertions. Therefore, the Petitioner has established by a preponderance of the evidence that that his request for SIJ classification was bona fide such that a primary reason that the requisite juvenile court determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. The Petitioner therefore has established that USCIS' consent to his request for this classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

ORDER: The appeal is sustained.