



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

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

In Re: 22223057

Date: JAN. 10, 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 November 2018. The Petitioner submitted documentation with his SIJ petition, in response to a request for evidence, and in response to two notices of intent to deny. 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-H-B-² as his guardian in guardianship proceedings. The Petitioner submitted a separate order titled *AMENDED ORDER-SPECIAL FINDINGS* (SIJ order), which provided that reunification with his father was not viable due to abandonment and neglect as defined under New York law, reunification with his mother was not viable due to neglect, and it was not in his best interest to be returned to Bangladesh.

The Director denied the SIJ petition in May 2021, concluding that the Petitioner did not establish that he was under the age of 21 at the time of filing his SIJ petition or that he warranted the consent of USCIS. The Director noted government records indicated the Petitioner previously used [REDACTED] 1997, as his date of birth on at least four occasions prior to entering the United States in August 2017, which would have made him over 21 years old at the time of filing his SIJ petition. However, in the SIJ petition the Petitioner claimed he was born on [REDACTED] 2000. The Director mentioned that the Petitioner submitted two versions of his birth certificate. The first showed an issue date of August 12, 2017, and the second showed an issue date of June 1, 2008, as well as signs of modification. Furthermore, the Petitioner's birth certificates were registered on June 1, 2008, more than eight years after the date of birth listed. In addition, the Director noted inconsistent statements from the Petitioner related to his date of birth. He initially stated he never claimed a false date of birth but in a subsequent statement he mentioned he used a false date of birth while traveling through four different countries.

Next, the Director determined that the Petitioner's new passport issued on August 3, 2020, which lists [REDACTED] 2000, as his date of birth, was insufficient to establish his true date of birth. The Petitioner mentioned his new passport was issued after verification of information in his record. However, he subsequently stated that his parents and smugglers arranged to obtain his old passport which included a false date of birth. The Petitioner did not establish how his new passport was issued based on verification of his old record when his old passport contained a different date of birth. He also did not establish how he knew information in his old passport was inaccurate despite claiming multiple times that he was unaware of information in his old passport. Furthermore, the new passport contained a permanent address in Bangladesh despite the Petitioner residing in the United States since 2017, and it listed his father as his emergency contact despite his claim that his father abandoned and neglected him. Considering the evidence in the record, the Director concluded that the Petitioner did not establish he was under the age of 21 at the time of filing his SIJ petition. In addition, the Director

² We use initials to protect the privacy of individuals.

determined the record contained material inconsistencies such that 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 previously submitted evidence. 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 the Office of Refugee and Resettlement (ORR) 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 that upon his entry to the United States in August 2017, he was transferred to the ORR and he was likely screened by immigration officials and determined to be a minor under the age of 18. Furthermore, he mentions that he produced a statement concerning birth registrations in Bangladesh, a letter and test results from his school in Bangladesh, his mother's discharge certificate, vaccination records, and results from an age maturity assessment using radiographs. The Petitioner notes the dentist performing the assessment determined that he was under the age of 21 on December 16, 2020, which is consistent with his birth certificate and the ORR's age assessment.

Lastly, the Petitioner claims the Director created an impermissible requirement to establish his age, the Trafficking Victims Protection Reauthorization Act of 2008 and USCIS policy do not require a birth certificate in a particular format, and various forms of evidence should be considered where children have limited access to documentary evidence.

The burden of proof is on the Petitioner to establish by a preponderance of the evidence that his true date of birth is [REDACTED] 2000, 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] 2000, as his date of birth. However, the Petitioner's first birth certificate lists an issuance date of August 12, 2017, and the second birth certificate lists an issuance date of June 1, 2008, along with showing signs of modification. As the certificates were registered on June 1, 2008, many years after his claimed date of birth, the evidentiary weight of the birth certificates is diminished. Furthermore, the Petitioner has not explained the reasons for the different dates of issuance of his two birth certificates and for the signs of modification on the second birth certificate. Rather, the Petitioner asserts that the ORR's consideration of him as a minor and secondary forms of evidence should be used to establish his date of birth as [REDACTED] 2000. The record indicates that the Petitioner self-reported his age to the ORR and there is no indication the ORR was aware of his prior use of [REDACTED] 1997, as his date of birth or of his multiple, discrepant birth certificates.

We have reviewed the Petitioner's educational records from Bangladesh, his mother's discharge certificate, his vaccination records, and results from his age maturity assessment. However, they do not outweigh U.S. governments records, which are based on the Petitioner's fingerprints and reflect that he used [REDACTED] 1997, as his date of birth during at least four encounters outside the United States. We also give minimal weight to the Petitioner's new passport in relation to establishing his date of birth as [REDACTED] 2000, as he has not addressed how his new passport was issued based on verification of his old record when his old passport contained a different date of birth. We also note

the Petitioner has not provided supporting evidence for his claim that his smugglers insisted he use [REDACTED] 1997, as his date of birth when traveling through multiple countries or immigration officials would not let him enter. 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] 2000. 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.