



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

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

In Re: 20471276

Date: JAN. 27, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of Guatemala, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the record did not establish that USCIS' consent was warranted due to material inconsistencies in the record evidence. Sections 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5).

The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification and warrants USCIS consent. 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 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).<sup>1</sup> 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).

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

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<sup>1</sup> 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).

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). Petitioners bear 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 Evidence and Procedural History

In [REDACTED] 2017, when the Petitioner was 13 years old, the Superior Court of California, County of [REDACTED] (Family Court) issued an order granting sole custody of the Petitioner to his mother “pursuant to Family Code §§ 7600, 3402(a), 3424(a), and 3421.” Additionally, in the order entitled *SPECIAL IMMIGRANT JUVENILE FINDINGS* (SIJ order), the Family Court 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. The Family Court determined that reunification with the Petitioner’s father was not viable due to abuse, neglect, and abandonment as defined under California law and that it was not in his best interest to be removed from the United States and returned to Guatemala, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in May 2017. The Director later issued a notice of intent to deny (NOID), requesting that the Petitioner provide additional evidence to establish the petition for SIJ classification was bona fide and to explain why USCIS’ consent was warranted. The Director denied the SIJ petition in May 2021, determining that there was insufficient evidence to establish that the Petitioner sought the Family Court order to obtain relief from parental maltreatment, rather than simply for immigration purposes, because the record contained the inconsistencies identified in the NOID that called into question why the Petitioner obtained the SIJ order. In denying the SIJ petition, the Director found the additional evidence provided by the Petitioner in response to the NOID did not resolve the conflicts in the record, thus failing to establish the petition was bona fide and USCIS’ consent was warranted.

### B. USCIS’ Consent Is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS’ consent is warranted because the Petitioner has established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under California law. Accordingly, we withdraw the Director’s finding to the contrary.

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’’)). 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).

In denying the SIJ petition, the Director found the record contained evidence inconsistent with the Family Court’s findings that prevented the Petitioner from showing his SIJ petition was bona fide, and thus, USCIS’ consent was not warranted. The Director stated the Petitioner told USCIS that he had resided with both of his parents in Guatemala until his father moved to the United States when the Petitioner was around four or five years old, and his mother moved to the United States one year later. Further, the Director stated that when the Petitioner encountered U.S. Customs and Border Protection (CBP) while entering the United States, he told CBP officers he intended to reunite with both of his parents in the United States, and other evidence subsequently provided by the Petitioner confirmed that he had resided with both parents as recently as February 2016. The Director concluded these statements were inconsistent with the SIJ order that was issued in [REDACTED] 2017, in which the Family Court found the Petitioner’s father did not provide for him while the Petitioner resided with his mother and that the Petitioner’s father had abused, neglected, and abandoned him.

On appeal, the Petitioner contends he was prejudiced by his prior counsel’s ineffective assistance, such that he was prevented from pursuing relief for which he was eligible.<sup>2</sup> The Petitioner further argues that USCIS inappropriately scrutinized the Family Court’s findings and in doing so, violated the Petitioner’s privacy rights. The Petitioner, through counsel, further states there is no evidence that his father continued to reside with him after the issuance of the Family Court order, other than his father’s death certificate, which lists his father’s address as that of the Petitioner. Finally, the Petitioner argues the Director erred in denying his SIJ petition where he had established eligibility for that benefit.

Upon de novo review, we find that the Petitioner has established that USCIS’ consent to his request for SIJ classification is warranted. Contrary to the Director’s decision, we do not find the record contains material inconsistencies that would support a finding that the Petitioner’s request is not bona fide. The SIJ order indicates the Family Court found the Petitioner’s father “did not provide any support for [the Petitioner] when [the Petitioner’s father] lived with [the Petitioner’s mother]” and states that the Petitioner’s mother “has been [his] sole provider.” The Petitioner’s *Confidential Request for Special Immigrant Juvenile Findings – Family Law* (request for SIJ findings) states that the Petitioner’s father “abandoned . . . and is no longer providing support for his children.” In the request for SIJ findings, the Petitioner’s mother listed the last time the Petitioner’s father resided with the family as February 2016. The Family Court further found that as of [REDACTED] 2017, the Petitioner’s father still did not cohabitate with the family.

The findings of the Family Court, the request for SIJ findings, and the SIJ order are not materially inconsistent with the Petitioner’s statements to CBP and USCIS indicating he was entering the United States to reunite with his parents – both mother and father – and that he resided with both parents until February 2016. The SIJ order indicates the Petitioner’s father did not provide for him, either when they lived apart or together. While he might have previously lived with his father, this is not inconsistent with

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<sup>2</sup> 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 finding that his father subsequently abandoned him. Similarly, the assertions in the request for SIJ findings, that the Petitioner's father abandoned them and left the family in February 2016 and was not providing support, are not inconsistent with the findings that the family had previously reunited upon the Petitioner's arrival in the United States. The Petitioner also submitted his father's death certificate from July 2018, which lists his father's last address as that of the Petitioner. On appeal, the Petitioner claims he was not cohabitating with his father at the time of his death, and the inclusion of this address was in error. While it is unclear why the Petitioner's address was listed on the death certificate, it is not materially inconsistent with the finding that his father abandoned him in February 2016. As noted, the Family Court found at the time of the SIJ findings, the Petitioner did not cohabit with his father, and his father was providing no support for the Petitioner.

Thus, the Petitioner has overcome the Director's basis for denial. The record below contains a factual basis for the SIJ findings; specifically, the Family Court found the Petitioner's father abandoned him and his mother after a history of being verbally abusive towards them both. The Family Court further found the Petitioner had no family members to care for him should he be returned to Guatemala, as his grandmother who previously cared for him would no longer be able to do so. Finally, the Family Court granted the Petitioner relief from the abandonment of his father by granting the Petitioner's mother sole custody of him. Thus, the Petitioner has shown by a preponderance of the evidence that his SIJ petition is bona fide, as required under 8 C.F.R. § 204.11(b)(5), in that a primary reason the juvenile court determinations were sought was to gain relief from parental abuse, neglect, abandonment, or similar basis under state law. As such, the Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification, as section 101(a)(27)(J)(i)-(iii) of the Act requires. The Director's contrary decision is withdrawn, and the appeal is sustained.

**ORDER:** The appeal is sustained.