



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

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

In Re: 21161878

Date: JAN. 27, 2023

Appeal of Nebraska Service 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The matter is now before us on appeal. 8 C.F.R. § 103.3. 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 U.S. Citizenship and Immigration Services (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. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

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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).

## II. ANALYSIS

### A. Relevant Facts and Procedural History

In [ ] 2016, when the Petitioner was 20 years old, the [ ] Family Court (family court) in New York issued an *Order Appointing Guardian of the Person* (guardianship order), in which it determined that the Petitioner's best interest would be promoted by the appointment of the Petitioner's cousin as his guardian. In [ ] 2016, the family court issued an *Order – Special Immigrant Juvenile Status* (SIJ order), determining that the Petitioner was "dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the State of New York Family Court." Additionally, the family court found that the Petitioner's reunification with her parents was not viable due to a similar basis to abuse, neglect, or abandonment under state law, stating that "both parents fail[ed] to provide support for the minor, as required by Family Court Act Section 413." The family court further found that it would not be in the Petitioner's best interest to be removed from the United States and returned to India, his country of nationality. Based on the family court's orders, the Petitioner filed his SIJ petition in October 2016.

In February 2021, the Director issued a notice of intent to deny (NOID) requesting that the Petitioner provide additional evidence to establish that the family court orders contained a qualifying parental reunification determination. The Director explained that the SIJ order does not cite to or discuss any provision of New York law that references abuse, neglect, or abandonment. The Director also determined that USCIS' consent was not warranted because the record lacked a reasonable factual basis for the family court's best interest determination and the record contained several inconsistencies. Specifically, the Director noted the following inconsistencies: the Petitioner has previously provided inconsistent dates of birth; the Petitioner stated that his father kicked him out of the house when he was 16 or 17 years for refusing to be a member of the [ ] Party; however, he has also stated that he joined the [ ] Party in January 2014; at the time of initial apprehension, the Petitioner claimed his intended destination was [ ] CA; however, he immediately began residing in [ ] NY; documents provided claim the Petitioner attended [ ] School in India, however at his interview for SIJ status and adjustment of status in September 2018, he stated that he last attended [ ] School; and the Petitioner previously claimed to have traveled to Mexico in February 2014, which is prior to claims made that he was kicked out of his home and attacked by the [ ] Party. The Director noted that due to the inconsistencies, they were unable to determine whether the Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes.

The Petitioner responded to the NOID with the following: a personal affidavit, an *AMENDED ORDER - SPECIAL FINDINGS* (amended SIJ order), copy of Indian birth certificate, copy of India Identity Card, copy of identification card issued by the Income Tax Department of the Indian Government, copy of identification card issued by the Election Commission of India, copies of school certificates from 2011 and 2013, and a letter from [ ] School. In May 2021, the Director denied the SIJ petition, concluding that the Petitioner had not established that USCIS' consent was warranted because of the unresolved inconsistencies in the record. In the denial, the Director also noted the record lacked a reasonable factual basis for the family court's best interest determination

and the SIJ order does not cite to or discuss any provision of New York law that references abuse, neglect, or abandonment.

On appeal, the Petitioner asserts that he has submitted sufficient evidence to establish his eligibility for SIJ classification, and that USCIS acted outside the scope of its consent authority by second guessing the Family Court's determination.

#### B. Qualifying Parental Reunification Determination

The record establishes that the family court made a qualifying parental reunification determination. The Act requires a juvenile court's determination that SIJ petitioners cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act. The plain language of the Act requires this reunification determination to be made under state law. *Id.* Accordingly, state court orders that only cite or paraphrase immigration law and regulations will not suffice if the petitioner does not otherwise establish the basis in state law for the juvenile court's reunification finding.

The amended SIJ order assessed its reunification determination with the Petitioner's parents, finding that "a parent has a statutory obligation to support his or her child until such time as the child reaches 21 years of age" and "a parents' failure to support or maintain contact constitute abandonment" under *In re Amandeep S.*, 44 Misc. 3d 1201(A) (N.Y. Fam. Ct. 2014). The amended SIJ order notes that reunification with the Petitioner's father and mother was not possible due to abandonment, and that "the parents have failed to support their son for more than six months." Accordingly, the record establishes the state law upon which the family court based its findings, and the Petitioner has shown by a preponderance of the evidence that the family court made a qualifying parental reunification determination under New York law, as section 101(a)(27)(J)(i) of the Act requires.

#### C. USCIS' Consent is Warranted

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence 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). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit 8 C.F.R. § 204.11(b). If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS may withhold consent. *Id.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner seeks and is granted some form of relief

or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. 8 C.F.R. § 204.11(d)(5)(ii).

The Petitioner argues that the Director erred in finding that USCIS' consent was not warranted because there was no reasonable factual basis for the best interest determination. Here, the Petitioner has met his burden. The amended SIJ order states that in the United States, the Petitioner "has a good home with his guardian" and "is happy and thriving in his current home." The amended SIJ order also states that the guardian is "meeting all of [the Petitioner's] needs." The family court, after considering the evidence, made determinations regarding the Petitioner's ability to reunify with his parents and best interest, and the record demonstrates that the court had a reasonable factual basis for its findings. Therefore, a preponderance of the evidence demonstrates that there was a reasonable factual basis for the best interest determination, and we withdraw the Director's determination to the contrary.

The Petitioner additionally contends that the Director erred in finding that USCIS' consent was not warranted because USCIS was unable to determine if a primary reason for obtaining the SIJ order was to get relief from parental maltreatment, or for immigration purposes, due to material inconsistencies in the record. The Director found that the Petitioner's voluntary, continued membership in the [redacted] Party is inconsistent with the Petitioner's claim that his father abandoned him for refusing to join the same political party. However, the Petitioner explained that he decided to join the [redacted] Party on his own after his father had already kicked him out of the house. Furthermore, the Petitioner is not required to show that he left his country because of parental maltreatment. Based on the circumstances of each case, the parental maltreatment may take place after the minor arrived in the United States, and in the instant case, the family court found that the Petitioner's parents failed to support the Petitioner for more than six months prior to issuing the amended SIJ order. Additionally, the Petitioner provided a reasonable explanation in his affidavit for the previous use of inconsistent dates of birth, specifically he states that the use of [redacted] 1996, and [redacted] 1996, in Form I-912, Request for Fee Waiver, was a typographical error. He submitted multiple supporting documents establishing his date of birth as [redacted] 1996, including a copy of Petitioner's Indian birth certificate, a copy of Petitioner's identification card issued by the Income Tax Department of the Indian Government, a copy of Petitioner's identification card issued by the Election Commission of India, a school certificate from 2011, and a letter from [redacted] School. The Director also noted that the Petitioner testified at his interview for SIJ status and adjustment of status that he attended [redacted] School; however documents provided indicate the Petitioner attended [redacted] School in India. The Petitioner explained in his affidavit that the schools are co-located in the same building and managed by the same organization. Finally, the Director noted that the Petitioner testified that he traveled to Mexico in February 2014, which is prior to claims made that he was kicked out of his home and attacked by the [redacted] Party. In his affidavit, the Petitioner confirms that he did travel to Mexico in February 2014, was denied entry, and returned to India; however, he clarifies it was after he was kicked out of his home. The Petitioner was not asked to provide the motive for his travel in February 2014 and this testimony is not inconsistent with any other information provided by the Petitioner.

Upon de novo review, the Petitioner has established by a preponderance that USCIS' consent to his request for SIJ classification is warranted. According to the family court, the amended SIJ order was issued "after examining the motion papers, supporting affidavits, pleadings and prior proceedings in this matter, and/or hearing testimony." The family court set forth facts and law that formed the basis

for its parental reunification and best interest determinations, as well as its placement of the Petitioner in the guardianship of his cousin. The family court determined that the Petitioner's parents failed to support the Petitioner for more than six months, and that under New York law, their failure to support or maintain contact with the Petitioner constitutes abandonment.

### III. CONCLUSION

The Petitioner has overcome the Director's grounds for denying the SIJ petition and has otherwise met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is therefore withdrawn, and the appeal is sustained.

**ORDER:** The appeal is sustained.