



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

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

In Re: 16773593

DATE: JAN. 30, 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 New York Field Office (Director) initially denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner filed a motion to reopen with the National Benefits Center (NBC). The Director of the NBC (Director) subsequently denied the SIJ petition, also concluding that the Petitioner did not establish that his petition for SIJ classification is bona fide and that U.S. Citizenship and Immigration Services (USCIS) consent is warranted. The matter is now before us on appeal. 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, the appeal will be sustained.

**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. 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 that the request for SIJ classification is bona fide, which requires the petitioner to establish that a

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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).

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). 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 Factual and Procedural History

In [ ] 2016, when the Petitioner was 20 years old, the [ ] Family Court in New York (Family Court) appointed guardianship of the Petitioner to S-S,<sup>2</sup> finding that such appointment would last “until the subject’s 21st birthday.” In a separate order issued on the same day and titled *ORDER – Special Immigrant Juvenile Status* (SIJ order), the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner is “dependent upon the Family Court.” The Family Court also found that the Petitioner’s reunification with his father was not viable due to neglect and abandonment, that his reunification with his mother was not viable due to neglect, and that it was not in his best interest to be removed from the United States to India, his country of nationality. The Family Court orders formed the basis of the Petitioner’s SIJ petition, which he filed in November 2016.

The Director initially denied the SIJ petition, concluding that USCIS consent was not warranted because the Petitioner did not establish that his petition for SIJ classification was bona fide where he did not show that he sought for the purpose of obtaining relief from abuse, neglect, or abandonment. The Director also determined that the SIJ order did not contain a qualifying determination regarding parental reunification and was not issued by a juvenile court.

After the Petitioner’s filing of a motion to reopen, the Director subsequently denied the SIJ petition, again concluding that the Petitioner did not establish that his petition for SIJ classification is bona fide and that USCIS consent is warranted. In the decision, the Director listed purported discrepancies in the record<sup>3</sup> relating to the Petitioner’s life and living arrangements in India before coming to the United States and his intentions in leaving India.

On appeal, the Petitioner asserts that he has fully addressed the Director’s concerns regarding any perceived inconsistencies in the record, and submits additional evidence, including affidavits from his mother and sister addressing their interview in India and clarifying the information presented at that time.

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<sup>2</sup> We use initials to protect the privacy of individuals.

<sup>3</sup> We incorporate by reference the Director’s description of the purported discrepancies in the record and therefore do not restate them here.

## B. 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. *Id.* 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).

Here, the Petitioner has established, by a preponderance of the evidence, that USCIS' consent is warranted. Our review indicates that the inconsistencies in the evidence noted by the Director do not contradict or otherwise conflict with the court's findings of abandonment and neglect by the Petitioner's parents or the factual findings on which the court relied in making that determination, and as such, do not materially conflict with the eligibility requirements for SIJ classification. *See* 8 C.F.R. § 204.11(b)(5) (stating that USCIS may withhold consent if the evidence materially conflicts with the SIJ eligibility requirements such that the request for SIJ classification is not bona fide). Likewise, the evidence in the record does not conflict with the Petitioner's assertions before the court as set forth in the guardianship petition and other underlying documents presented to the court.

In the decision, the Director concluded that the evidence in the record was inconsistent with the Petitioner's claims that: 1) his father abused him since the age of 14; 2) his father stopped him from attending school full-time and forced him to work; and 3) his mother arranged for his travel outside of India without his father's knowledge. First, contrary to Director's finding, evidence in the record indicating that the Petitioner's father was in the Indian army and stationed at [REDACTED] through March 2013 and that the Petitioner was not residing at home with his father during the two years prior to his 2013 departure from India does not directly conflict with the Family Court's findings that the Petitioner's father subjected him to corporal punishment or the Petitioner's assertions to the Family Court that he was physically abused since the age of 14 (approximately December 2009) as the evidence does not indicate that the Petitioner asserted the physical abuse by his father occurred exclusively during the two-year period immediately prior to his 2013 departure from India. Further, the affidavits submitted on appeal, from the Petitioner, his mother, and his sister, address the discrepancies outlined in the Director's decision, and clarify that, while the Petitioner's father was enlisted in the Indian Army and stationed at an army camp, it was only 35 kilometers from their home and he would come home frequently on leave and physically abuse them on every occasion. It further clarified that the physical abuse persisted to the

point where the Petitioner's uncle would sometimes hide him from his father at his house for a couple of days to shelter the Petitioner from his father's abuse. Second, evidence reflecting the Petitioner's completion of education through 12th standard, some college attendance, and participation in extracurricular activities does not conflict with the Petitioner's statements to the Family Court about his father stopping him from attending school full-time; in fact, the Petitioner specifically told the Family Court that he attended school two days per week and did not claim that he was unable to finish school. Finally, contradictory evidence in the record about who arranged for the Petitioner's travel to the United States does not conflict with his statements to the Family Court or the Family Court's findings that his father subjected him to corporal punishment.

Here, the Family Court concluded that the Petitioner's father had abandoned and neglected him, as defined under New York law, because he failed to financially support the Petitioner and had subjected the Petitioner to excessive corporal punishment. The court also concluded that the Petitioner's mother had neglected him, as defined under New York law, because she failed to protect the Petitioner from his father. The court further determined that it was not in the Petitioner's best interest to be returned to India because he would have no choice but to return to the home of his parents where he was subjected to excessive corporal punishment, did not feel safe, and would lose his opportunity to continue his education, as well as, because he is now living in a home where he feels safe and happy. The documentation provided by the Petitioner, including the guardianship petition, the notice of motion for SIJ order, the memorandum of law in support of the SIJ order, counsel's affirmation to the court, the Petitioner's affidavit to the court, and the hearing transcript before the Family Court, is consistent with and establishes the factual bases for the court's findings. As stated, the court's reunification determination and related findings of parental abandonment and neglect, as well as the factual assertions of the Petitioner before the court and USCIS in support of the determination, do not conflict with, and are not contradicted by, other evidence in the record. Accordingly, the purported discrepancies in the record noted by the Director are not a sufficient basis to withhold USCIS' consent to the Petitioner's request for SIJ classification.

As discussed, in determining whether consent is warranted, we look to the nature and purpose of the juvenile court proceedings and examine whether the court's determinations were sought in proceedings granting relief from parental maltreatment, beyond the factual findings required to file an SIJ petition. Our review here shows that the Family Court exercised jurisdiction over the Petitioner as a juvenile under New York state law in guardianship proceedings, the nature and purpose of which were to protect the Petitioner from further parental maltreatment. The court orders indicate that the Family Court determined that the Petitioner's reunification with his parents was not viable due to abandonment and neglect under New York law, and as discussed, the record reflects the factual basis for that determination. The record further shows that the court granted the Petitioner relief from his parents' maltreatment by granting guardianship of the Petitioner to S-S-. The court also found that it was not in the Petitioner's best interest to be returned to India based on evidence before the court, including the guardianship petition, indicating that the Petitioner would not be safe in his parents' care there. Finally, our review of the record does not disclose evidence that materially conflicts with the court's SIJ related determinations and the Petitioner's assertions before the court. As the Petitioner has overcome the grounds for denial of his SIJ petition, and otherwise established that he is eligible and warrants USCIS' consent to his request for SIJ classification, the appeal is sustained.

**ORDER:** The appeal is sustained.