



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

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

In Re: 27164361

Date: JULY 3, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 SIJ petition, concluding that the Petitioner's request for SIJ classification did not merit U.S. Citizenship and Immigration Services' (USCIS) consent. The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence and claims that he has shown by a preponderance of the evidence that he has been residing with his guardian since July 2017, as claimed on the SIJ petition. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 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)–

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).

(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).

The Petitioner was born in Jamaica in [] 1999. In [] 2020, when the Petitioner was still under 21 years of age, the Family Court of the State of New York, County [] (Family Court), issued an order titled ORDER - SPECIAL IMMIGRANT JUVENILE STATUS (SIJ order). In its SIJ order, the Family Court found that the Petitioner was dependent upon the Family Court, previously had been placed in the care and custody of a guardian appointed by the Family Court, and that reunification with both of the Petitioner's parents was not viable due to neglect and abandonment within the meaning of the law of the state of New York. The Family Court further found that it was not in the Petitioner's best interest to return to his previous country of nationality and country of last habitual residence, but that it was instead in his best interest to remain in the United States.

In September 2020, the Petitioner filed his petition for SIJ classification based on the Family Court's SIJ order. The Director ultimately denied the SIJ petition, concluding that the Petitioner's request for SIJ classification did not merit USCIS consent because his record contained contradictory evidence regarding whether or not he had been residing with his guardian in New York or his father in Massachusetts since approximately July 2017.

On appeal, the Petitioner submits a brief and additional evidence, including a personal statement, school records, and identity documents indicating that he was a full-time student in New York from at least the Fall of 2017. In this case, because the evidence is material to the Director's decision and was first submitted on appeal, the Director did not have an opportunity to consider it prior to issuing the denial. Consequently, we are remanding the matter to the Director for consideration of the evidence submitted on appeal and in order to evaluate whether or not the Petitioner has shown he met all of the requirements for SIJ classification and established that USCIS' consent is warranted.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.