



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

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

In Re: 24863916

Date: July 24, 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). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the petition, concluding that the Petitioner was 18 years old when she sought an SIJ order from a family court and therefore did not establish that the court that issued the SIJ order had jurisdiction over her as a juvenile under state law. 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) of the Act; 8 C.F.R. § 204.11(c)(2).

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).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 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)–(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 Petitioner claims that she was born in Afghanistan in [REDACTED] 1998. With her SIJ petition, the Petitioner included a June 2014 court order titled FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, showing that the Superior Court of the [REDACTED] Family Court (Family Court) stated that the Petitioner's date of birth is in [REDACTED] 1998, concluded that she had been subjected to neglect under the law of the [REDACTED] and placed her in the custody of the Child and Family Services Agency of the [REDACTED] (CFSA). In [REDACTED] 2017, the Family Court issued an ORDER REGARDING RESPONDENT'S ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJ order). In its SIJ order, the Family Court found that the Petitioner previously had been committed to the care and custody of CFSA in accordance with the law of the [REDACTED] by its juvenile division, and that reunification with both of the Petitioner's parents was not viable due to neglect within the meaning of the law of the [REDACTED]. The Family Court further found that it was not in the Petitioner's best interest to return to her or her parents' previous country of nationality or country of last habitual residence, and that it was instead in her best interest to remain in the United States.

In October 2017, the Petitioner filed her petition for SIJ classification based on the SIJ order. The Director subsequently denied the SIJ petition, stating that although the Petitioner's date of birth was in [REDACTED] 1998, as she claimed, the Family Court did not have jurisdiction over the Petitioner as a juvenile under state law when it issued the SIJ order in 2017 because she was over the age of 18 years. On appeal, the Petitioner asserts that the Family Court exercised jurisdiction over her as a juvenile under state law because she is considered a minor under the laws of the [REDACTED] until the age of 21 years.

Although the Petitioner has submitted evidence on appeal to show that, as a general matter, a Family Court in [REDACTED] exercises jurisdiction over a juvenile up to the age of 21 years, we are withdrawing the Director's underlying conclusion that the Petitioner established that her date of birth is in [REDACTED] 1998. Instead, based on contradictory and unresolved evidence regarding her identity and date of birth, the Petitioner has not established her date of birth is in [REDACTED] 1998 or any other date. Therefore, the Petitioner has not met her burden of proof to show that she filed the SIJ petition prior to reaching the age of 21 years of age, as required for SIJ classification. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1). Because this issue is dispositive, we need not reach the issue as to whether USCIS' consent is warranted.

The Petitioner claimed on her SIJ petition that she is named S-K-² and that her date of birth is in [REDACTED] 1998. She also stated on the SIJ petition that her family had obtained fake identification documents for her under the name S-H- so that she could obtain health care and attend school while residing in Iran. The Petitioner further noted on her SIJ petition that she had used the alias M-J- to travel from Iran to Turkey in 2012. In response to a request for evidence (RFE) from the Director regarding her aliases,³ the Petitioner provided school records from Iran showing that she was named S-H- and had a [REDACTED] 1993 date of birth,⁴ and a 2012 bus ticket for her under the name M-J- for a departure from [REDACTED] Turkey.⁵ However, her refugee processing record is internally inconsistent or contains assertions that have since been contradicted by other evidence. In the Petitioner's 2013 Best Interests Determination Report from the United Nations High Commissioner for Refugees (UNHCR), her date of birth is listed on the first page as January 1, 1998, and at "Section 2: Options and Recommendations" the interviewer wrote that the Petitioner was born in [REDACTED] 1998." Further, according to February 2014 interview notes relating to the Petitioner's Form I-590, Registration for Classification as Refugee (Form I-590), she stated to the interviewing USCIS officer that her name was S-K- and that she had no aliases, whereas on her subsequent 2017 SIJ petition the Petitioner indicated that she had used the two aliases discussed above.

We advised the Petitioner of the contradictory and derogatory information in a Notice of Intent to Dismiss (NOID). The Petitioner has responded with a brief and the following additional evidence: (1) an Asylum Seeker Certificate; (2) a "Copy of Birth Certificate" assigning her a Turkish identification number in 2013; (3) a Social Review Report Baseline from the Turkish Social Services Protection Unit in 2013; (4) a photograph of her mother's gravestone; (5) an updated personal statement; and (6) a February 2023 statement from her former guardian ad litem (GAL) during Family Court proceedings in the United States.

In her personal statement, the Petitioner contends that: (1) the [REDACTED] 1998 date of birth was an error on the part of her January 2013 UNHCR interviewer; (2) she had told her UNHCR interviewer her date of birth is [REDACTED] . . . which is equivalent to [REDACTED] (3) the UNHCR interviewer responded that the date of birth was "not an issue;" (4) she does not know how her parents obtained fake identity documents in Iran (with respect to the [REDACTED] 1998 date of birth); and (5) she only used the M-J- alias to travel from Iran to Turkey. The Petitioner also asserts that, based on documents she has from UNHCR, the [REDACTED] 1998 date of birth was subsequently corrected on the Asylum Seeker Certificate. The Petitioner asserts in her cover letter that it is arbitrary and capricious for us to make "ever changing determinations" in her case, particularly with respect to withdrawing the Director's conclusion that she had shown her date of birth is in [REDACTED] 1998. Further, she contends that she has established her true identity by the preponderance of the evidence because, beginning with her

² Name withheld to protect the individual's identity.

³ The RFE was issued in 2020 and related to a Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485), filed by the Petitioner in 2015 with respect to adjusting her refugee status to that of a lawful permanent resident. On the 2015 Form I-485, she claimed to have no aliases but subsequently admitted to them in a 2019 adjustment interview with USCIS. The 2015 Form I-485 remains pending.

⁴ The Iranian school records show that: (1) she attended Junior High School from Grades 1 through 3 during unspecified periods and one semester during the 2010-2011 school year; and (2) she was exempted from tuition during the 2012-2013 school year.

⁵ The record does not reflect a date of birth that relates to the Petitioner under the name M-J-.

2013 refugee processing in Turkey, she has continuously claimed that her date of birth is in [] 1998.

With respect to the [] 1998 date of birth in the UNHCR documents, although the Petitioner asserts in her NOID response that she told UNHCR interviewer (in January 2013) that her real date of birth was in [] 1998, this is not reflected in those interview notes. Moreover, notes taken in February 2014 during the Petitioner's Form I-590 interview contradict her claim because when the USCIS officer asked the Petitioner about the [] 1998 date of birth, the Petitioner denied that she was asked to provide any date of birth, claiming that "when I have interview with UNHCR I was quite ill and they didn't ask me anything about birthday, and they wrote [the [] 1998 date of birth] themselves."

It remains that the [] 1998 date of birth was listed twice on the UNHCR Best Interest Determinations Report and on the contemporaneous Asylum Seeker Certificate. Although the Asylum Seeker Certificate she now provides has handwritten annotations changing the Petitioner's date of birth from [] 1998, there is no indication on the certificate as to who made the annotations and on what date. In contrast, the same Asylum Seeker Certificate is part of the Petitioner's original refugee processing record and as of November 29, 2013, the date that it was stamped "COPIED FROM A COPY" and "SEEN BY ICMC,"⁶ lacks any handwritten notations changing her date of birth. As a consequence, the amended Asylum Seeker Certificate does not reflect that the [] 1998 date of birth was an error on the part of her UNHCR interviewer that was subsequently formally or officially corrected by that or another UNHCR interviewer to a [] 1998 date of birth. Because the Petitioner's explanations as to whether or not she was questioned about her date of birth by UNHCR and whether the Asylum Seeker Certificate was corrected by UNHCR are inconsistent, the Petitioner's assertions and evidence in response to the NOID are not sufficient to establish that her listed date of birth in [] 1998 is false or otherwise incorrect.

Although the Petitioner claims that her [] 1998 date of birth on her Iranian school records is based on fake identity documents that her parents obtained, a review of the Petitioner's October 2013 UNHCR Refugee Resettlement Form shows that she asserted to the UNHCR interviewer that her family initially lived in Iran without legal residence permits because of a "simple mistake done by the Foreigner Dept[.]," but "when the mistake was corrected her family obtained residence permits and she was thereafter able to study in Iran for seven years." The notes do not reflect that she told UNHCR that her parents obtained false identity documents. Consequently, rather than advise UNHCR that she had attended school in Iran with a false name and incorrect date of birth in [] 1998, as she now claims, she stated that the residence permit that allowed her to attend school in Iran for seven years was corrected by the Iranian government *before* she began her school studies. Therefore, her claim to have used false identity documents to attend school is not supported by her previous assertions.

Although she claims that it is arbitrary and capricious for us not to rely on her government-issued documents with the [] 1998 date of birth, the Turkish and U.S. government-issued documents submitted below and on appeal reflecting that the Petitioner is named S-K- and that her date of birth is in [] 1998 were issued to her after she arrived in Turkey as a refugee and are based only on her statements rather than an original birth certificate or other such evidence regarding her identity.

⁶ The International Catholic Migration Commission (ICMC) is a private, non-governmental organization.

She claims that the Embassy of Afghanistan in Washington, DC is closed due to the failure of the Afghan government, and she cannot seek Afghan identity documents because the Taliban have taken over the government. We acknowledge that the Petitioner claims she is now unable to secure evidence of her identity from Afghanistan due to country conditions. However, as a consequence, the Petitioner's earliest identification documents are Iranian school records showing that her name is S-H- and that her date of birth is in [] 1993. As discussed, she previously stated to UNHCR that it was her "corrected" Iranian residence permit that allowed her to attend school in Iran, and she did not assert that her attendance in school was based on fake identification documents obtained by her parents. Consequently, she has not shown in response to the NOID that the Turkish and U.S. government-issued documents carry more weight than the school records.

III. CONCLUSION

The Petitioner has shown that a Family Court in [] has the authority to exercise its jurisdiction over an individual as a juvenile under state law if the individual was over the age of 18 years and under 21 years, and we withdraw the portion of the Director's decision that is to the contrary. However, because the Petitioner's evidence regarding her identity and date of birth is contradictory and remains unresolved, the Petitioner has not established by a preponderance of the evidence her actual date of birth and identity as an initial matter. Therefore, the Petitioner has not shown that she was under 21 years of age at the time of filing the SIJ petition in October 2017, as required for purposes of SIJ classification. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)(1). Consequently, the SIJ petition cannot be approved and remains denied.

ORDER: The appeal is dismissed.