



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

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

In Re: 26540285

Date: MAY 10, 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 record did not establish that USCIS' consent to the Petitioner's SIJ classification is warranted. 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, a petitioner 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). The petitioner 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 petitioner's 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).

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. Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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 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

A. Relevant Facts and Procedural History

In [] 2020, a District Court in [] County, Texas issued an *Agreed Order in Suit Affecting Parent Child Relationship* (SAPCR order), appointing the Petitioner's aunt as his parent managing conservator. The District Court also concluded that the Petitioner's reunification with his mother and father is not viable due to abandonment and neglect and that it is not in his best interest to return to El Salvador, his country of origin.

Based on the SAPCR order, the Petitioner filed his SIJ petition in May 2021. The Director denied the SIJ petition, determining that the Petitioner had not established that USCIS' consent to his SIJ classification was warranted. The Director explained that the record did not show a factual basis for the District Court's parental reunification and best interest findings.

B. USCIS' Consent is Not Warranted

As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish that 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. 8 C.F.R. § 204.11(b)(5). To establish that USCIS' consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i).

In this case, USCIS' consent is not warranted because, as the Director correctly determined, the record does not contain sufficient evidence of the factual basis for the District Court's findings. The District Court concluded that the Petitioner's reunification with his parents was not viable due to abandonment and neglect and that it was not in his best interest to return to his country of origin, but the SAPCR order did not contain any facts underlying those determinations. The underlying SAPCR petition states that the Petitioner's parents "have had a history or pattern of abandonment and child neglect directed against [the Petitioner]," but did not describe such history or provide any other information. In response to a request for evidence (RFE) from the Director, the Petitioner provided a personal affidavit, dated May 2022, in which he stated that his parents were unable to protect him from threats from gangs in El Salvador. He claimed that he therefore "braved being put in a smuggler caravan" to the United States, and that he was angry at his parents at first for risking his safety but "now understand[s] that they did the best they could do." The Petitioner's aunt similarly stated in a May 2022 affidavit that that her brother, who is the Petitioner's father, sent the Petitioner to her because he was unable to protect the Petitioner from gangs in El Salvador. She recalled that she feared for the Petitioner's safety during the journey through Mexico, but because "his parents could simply not protect him any longer [they] risked a smuggler to send him to the United States."

The Petitioner has not overcome the Director's determination on appeal. He argues that the District Court "received oral evidence" and then made findings that his parents neglected and abandoned him, as evidenced by the SAPCR order signed by the court. He further states that he provided supplemental evidence that he was neglected and abandoned in the form of the May 2022 affidavits from him and his aunt, and that the Director raised no "defects in the evidence." The Petitioner cites *Consolidated Edison Co. of New York v. N.L.R.B.*, 305 U.S. 197 (1938) to support his contention that where "more than a scintilla [of evidence] is offered then the evidence is admitted and the information is acceptable." In *Consolidated Edison*, the Supreme Court discussed the sufficiency of evidence supporting a finding by the National Labor Relations Board (NLRB), noting that the NLRB's findings, "if supported by evidence, shall be conclusive," meaning that they must be supported by "substantial evidence." The Court explained that "substantial evidence" is "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 217. In this case, the Petitioner has the burden of establishing his eligibility for SIJ classification by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We have accepted and considered the evidence the Petitioner provided, but it is insufficient to meet his burden.

Contrary to the Petitioner's arguments, the issue on appeal is not whether the District Court made findings that the Petitioner's parents neglected and abandoned him, but whether the record contains a reasonable factual basis for the court's determinations such that USCIS' consent is warranted. To merit consent, a petitioner for SIJ classification must submit evidence of a factual basis for the state juvenile court's determinations. 8 C.F.R. § 204.11(d)(5)(i). As we have explained in policy guidance, examples of evidence that may establish the factual basis include supporting documents submitted to the juvenile court, the petition or complaint that initiated the juvenile court proceedings, transcripts of court hearings, affidavits summarizing the evidence that was presented to the court with records from the proceedings, or affidavits or other records that are consistent with the court's determinations. 6 *USCIS Policy Manual* J.3(A)(2). Either the court order or the supporting evidence should indicate, in relevant part, the factual basis for the court's parental reunification and best interest findings. *Id.* at J.3(A)(3).

As discussed, in the SAPCR order the District Court found that the Petitioner's reunification with his parents was not viable due to abandonment and neglect and that it is not in his best interest to return to El Salvador. However, the Director correctly denied the SIJ petition because the District Court did not provide, and the record does not otherwise contain, a factual basis for those determinations. The underlying SAPCR petition lacks a factual basis, stating only that there was a history of abandonment and neglect by the Petitioner's parents. Although the Petitioner submitted affidavits from himself and his aunt in response to the RFE in which they described the circumstances surrounding the Petitioner's departure from El Salvador, those affidavits were drafted nearly two years after the District Court issued the SAPCR order and the evidence does not indicate that the testimony contained therein was presented to the court. The Petitioner does not claim and the record does not indicate that the District Court considered the information in the affidavits, or any testimony or evidence consistent with those affidavits, in making its determinations. Accordingly, the Petitioner has not provided evidence of the factual basis for the District Court's findings, as 8 C.F.R. § 204.11(d)(5)(i) requires.¹ Therefore, he

¹ Although not determinative in this decision, we also note that the record lacks sufficient indication that the District

has not met his burden of establishing by a preponderance of the evidence that he is eligible for and merits USCIS' consent to his SIJ classification.

ORDER: The appeal is dismissed.

Court's findings were based in state law, as required by section 101(a)(27)(J)(i) of the Act and 8 C.F.R. §§ 204.11(c)(3). Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).