



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

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

In Re: 15510774

Date: MAY 10, 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). 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 (Director) denied the SIJ petition and three subsequent motions. The Petitioner has now filed a timely appeal of the Director's August 2020 decision on his most recent motion. 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 establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they 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; 8 C.F.R. § 204.11(b), (c)(1). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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. 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)–(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 Facts and Procedural History

The record shows that the Petitioner was born in India in early [redacted] 1995, and entered the United States in February 2013, after he had turned 18 years of age. In [redacted] 2016, when the Petitioner was 20 years old, the New York Family Court for [redacted] County (Family Court) appointed the Petitioner's family friend, R-S-D-¹, as his guardian in proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The related guardianship order stated that "the appointment shall last until the [Petitioner's] 21st birthday" In a separate order titled *ORDER-SPECIAL JUVENILE STATUS* (SIJ order), also issued the same day, the Family Court determined, among other findings necessary to establish SIJ eligibility, 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 or Family Court." The Family Court also found that the Petitioner's reunification with his father was not viable due to his father's abuse and neglect. In addition, the Family Court concluded that it would not be in the Petitioner's best interest to return to India, his country of nationality, because he "has no resource [and] he has no family willing to give him a home." Based upon the Family Court's orders, the Petitioner filed his SIJ petition in January 2016.

In response to a notice of intent to deny the petition, the Petitioner submitted an undated order, *Resettled and Amended Order – Special Findings* (amended SIJ order), issued by the Family Court in [redacted] County, New York. The amended SIJ order clarifies the New York child welfare law on which the Family Court relied for its parental reunification determination, specifying that the Petitioner's reunification with his father is not viable due to the father's excessive use of corporal punishment, which the court found constitutes neglect under New York law, citing to relevant New York appellate court decisions.

The Director denied the SIJ petition, concluding that the Petitioner did not establish that USCIS' consent to his SIJ classification was warranted in light of material inconsistencies in the record indicating that the Petitioner's request for SIJ classification was not bona fide, as required. The Director specified that the Petitioner's prior testimony before U.S. Customs and Border Protection (CBP) in 2013 and before USCIS during his subsequent credible fear and SIJ interviews contradicted the Petitioner's claims before the Family Court and to the New York City Administration for Children's Services (ACS) in his juvenile court proceedings. The Director concluded that the purported inconsistencies in the record indicated that the Petitioner had a relationship with his father other than the abusive one he had represented to the Family Court, indicating that he sought the court

¹ We use initials to protect identities.

orders for the purpose of obtaining an immigration benefit rather than to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law.

The Petitioner filed a motion to reopen and reconsider asserting that he was eligible for SIJ classification because he was a class member to *R.F.M. v Nielsen*, 365 F. Supp. 3d 350, 377-80 (S.D.N.Y. Mar. 15, 2019). In dismissing the motion, the Director ultimately determined that the Petitioner was not an *R.F.M.* class member and that he had not otherwise overcome the Director's prior decision finding that USCIS' consent was not warranted. The Director also dismissed two subsequent motions.²

On appeal, the Petitioner asserts that that he meets all other eligibility criteria and that he has established by a preponderance of the evidence that a primary reason he sought the juvenile court determination was to obtain relief from parental neglect and abandonment rather than to obtain permanent resident status. Consequently, he also contends that his SIJ petition is bona fide and warrants USCIS consent. Finally, he asserts that he is eligible for SIJ classification because he is an *R.F.M.* class member.³

B. USCIS' Consent Is Warranted

The Petitioner has met his burden of establishing that USCIS' consent to his SIJ classification is warranted.

To warrant USCIS' consent, juveniles must meet all the other eligibility criteria and establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect"). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings). Furthermore, 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).

To establish 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.

² The Petitioner's last two Forms I-290B, Notice of Appeal or Motion, were filed as appeals but the Director adjudicated them as motions. In denying the two motions, the Director addressed only the Petitioner's renewed assertions that he is an *R.F.M.* class member without reaching the Petitioner's renewed arguments that his SIJ classification request warrants USCIS' consent.

³ The Director properly concluded that the Petitioner is not an *R.F.M.* class member since his SIJ petition was not originally denied on the basis that the Family Court lacked jurisdiction as a juvenile court to make the SIJ related findings in his case when he was between the ages of 18 and 21 years at the time the findings were made. As this SIJ petition was denied on other grounds, *R.F.M.* is inapplicable to the Petitioner's case.

§ 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).

In denying the petition, the Director concluded that consent is not warranted because there were inconsistencies between the Petitioner's statements to CBP and USCIS and his statements to the Family Court and the investigative agency that prepared a report to the court. Specifically, the Director stated that the Petitioner attested to CBP in 2013 that his parents had paid for and arranged his travel to the United States, but in September 2015, he informed an investigator for ACS that his maternal and paternal aunts had funded his travel to the United States, and in September 2019, he attested to a USCIS officer that his mother and maternal aunt had funded his travel to the United States. The Director also indicated that when CBP asked if he ever worked in India, the Petitioner specified "no, I was just a student," but later told USCIS that he started working at 14 years of age (approximately 2009) while attending school and then his father took him out of school at age 15 to continue to work. The Director further claimed that during the court-ordered ACS investigation, the Petitioner's father in India asserted that he sent the Petitioner away to live with paternal and maternal aunts at the age of 13 years (approximately 2008), but the Petitioner testified to USCIS that he lived with his parents until 2012, when he was about 17 years old, and then began living at both his parents' home and the home of his paternal aunt. Lastly, the Director noted that his statement during his 2013 credible fear interview that he and his father went to the police station together to report an attack against the Petitioner by members of a political party in India in 2011 or 2012 conflicted with his 2019 sworn statement from his SIJ interview which indicates that he stated his father had stopped showing an interest in his wellbeing sometime earlier in 2009 or 2010. The Director concluded that these were inconsistencies about the nature of his relationship with his father that cast doubt on the bona fides of the Petitioner's SIJ petition, and therefore the SIJ petition did not merit USCIS consent.

On appeal, the Petitioner states that the documents he had provided sufficiently establish that his SIJ petition was approvable, and, citing to the Family Court's SIJ related determinations and related factual findings in the SIJ orders, claims that the preponderance of the evidence demonstrates that the primary purpose in seeking the guardianship awarded by the Family Court was to obtain him relief from neglect and not to secure permanent resident status.

Upon de novo review, the Petitioner has established that USCIS' consent to his request for SIJ classification is warranted. Contrary to the Director's determination, the record does not reflect material inconsistencies relating to the court's SIJ related determinations and the Petitioner's assertions before the court in support of those determinations. The purported inconsistencies that the Director cited are primarily between the Petitioner's statements to USCIS and the Family Court (including to ACS) relating to his SIJ eligibility and his prior 2013 statements to CBP and at his credible fear interview and in 2019 to USCIS at his SIJ interview, and relate to when he last resided with his parents in India, when he last had contact with his father when he was in India, who funded and arranged his travel to the United States, and whether he was solely a student or was working prior to coming to the United States. However, even if the record established the claimed inconsistencies in the Petitioner's statements on which the Director relied, our review does not disclose any conflicts in the record with the Family Court's determination that the Petitioner could not reunify with his father due to neglect in part because the Petitioner's father *physically abused* him, resulting in the Petitioner bleeding from his mouth and nose, and that such "use of excessive corporal punishment" constituted

neglect under New York law. His statements also do not materially conflict with the other factual findings by the court in support of the reunification determination, including that the father deprived the Petitioner of adequate food and forced him to engage in age inappropriate labor.

Additionally, some of the purported inconsistencies on which the Director relied are not supported as such by the record. For example, contrary to the Director's finding, the Petitioner did not testify at his 2019 SIJ proceedings that he lived with his parents until 2012 (when he was about 17 years old) and then began living at both his parents' home and the home of his paternal aunt from 2012 until he departed India later that same year. His sworn statement from the 2019 SIJ interview reflects that the Petitioner specifically clarified his testimony and stated that he lived with his aunt and uncle beginning in 2009 or 2010 (when he was approximately 14 years of age) and thereafter went back and forth between their residence and his parents' home for two years, depending on whether there were problems at his parents' home. Consequently, his 2019 sworn statement is not materially inconsistent with the Petitioner's or his father's statements to ACS that he left home around the age of 13 or 14 (around 2008 or 2009). Similarly, the Petitioner's testimony during his 2013 credible fear interview that he and his father went to the police station together to report an attack against the Petitioner by members of a political party in India in 2011 or 2012 does not materially conflict with his 2019 sworn statement that his father had stopped showing an "interest in his wellbeing" sometime in 2009 or 2010, particularly as the Petitioner specifically explained in the same sworn statement that he continued to reside with his father, off and on, until his departure to the United States in 2012. We acknowledge that the Petitioner claimed to CBP in 2013 that he did not work in India and was "just a student" but later told the Family Court that his father had forced him to perform labor and took his wages, and then told USCIS that he started working at 14 years of age. Likewise, he stated that his "parents" paid for his travel to the United States but later provided varying responses about who paid for his travel to the United States. However, the record shows that the Petitioner, a minor at the time of his CBP interview, was only briefly questioned about whether he ever worked in India and who paid for his travel. Additionally, at his 2019 SIJ interview, the Petitioner explained that when he spoke to CBP in 2013, he was not sure who paid for his travel, and only later found out that his mother and aunt had helped to finance his trip. Regardless, as stated, the purported discrepancies in the Petitioner's statement with respect to who paid for his travel and whether he worked in India do not conflict with his assertions to the Family Court and the court's SIJ related findings that he could not reunify with his father due to the physical abuse the latter inflicted on the Petitioner. As a consequence, the record does not support the Director's reliance on the referenced inconsistencies in concluding that the Petitioner's request for SIJ classification was not bona fide.

As discussed, the record establishes the Family Court made the requisite parental reunification and best interest determinations and the factual bases for the determinations are set forth in the SIJ orders and underlying documents, including that the Petitioner's reunification with his father is not viable due to neglect under state law because of the physical abuse the father inflicted. Further, as discussed, the record does not disclose any material inconsistencies with the Family Court's SIJ findings or the Petitioner's assertions to the court in his court proceedings in support of those findings. The Family Court also granted the Petitioner relief from the maltreatment by his father by granting sole legal and physical custody of the Petitioner to a family friend. Therefore, the Petitioner has established by a preponderance of the evidence that the requirements for consent are met. *See* 8 C.F.R. § 204.11(d)(5) (explaining that for USCIS to consent, the juvenile court order and supplemental evidence must

establish a factual basis for the court's SIJ determinations and the relief from parental maltreatment that the court granted).

Accordingly, the Petitioner has shown by a preponderance of the evidence that a primary reason he sought the juvenile court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that he was granted such relief. Therefore, the Petitioner has established that USCIS' consent to his SIJ classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

ORDER: The appeal is sustained.