



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

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

In Re: 26685378

Date: MAY 11, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that because the Petitioner did not establish the factual basis for the best interest determination, the Petitioner had not shown that consent for her SIJ classification was warranted.

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 sustain 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. *Id.* at section 101(a)(27)(J)(ii); 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

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).

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

In [] 2021, when the Petitioner, a native and citizen of Guatemala, was 17 years old, the District Court of the 264th Judicial District in [] Texas (District Court) issued an order entitled *Order in Suit Affecting Parent-Child Relationship and Declaratory Judgement* (SAPCR order). The SIJ order states, in pertinent part, that the Petitioner’s mother is appointed Sole Managing Conservator of the Petitioner and her brother. The District Court determined that the Petitioner’s father “failed to provide [the Petitioner] with food, clothing, and shelter necessary to sustain the life and health of [the Petitioner]” and “left [the Petitioner] without provision for reasonable and necessary care.” The District Court further determined that the Petitioner has been subjected to parental abandonment and abuse by her father, citing sections 261.001(4) and 152.102 of the Texas Family Code. Finally, the District Court found that “it is not in [the Petitioner’s] best interest to be returned to Guatemala, [her] country of nationality or last habitual residence.”

Based upon the SIJ order, the Petitioner filed her SIJ petition in December 2021. In August 2022, the Director issued a request for evidence (RFE), advising that USCIS’ consent to her SIJ classification was not warranted, because the record lacked a reasonable factual basis for the District Court’s best interest determination. In response to the RFE, the Petitioner submitted the following relevant evidence: the affidavits of the Petitioner and her mother that were submitted to the District Court. Upon review of this evidence, the Director denied the SIJ petition on the ground that USCIS’ consent was not warranted because the SIJ order did not set forth the factual findings or cite the evidence on which the court relied in making the best interest determination.

On appeal, the Petitioner submits the *Original Petition in Suit Affecting Parent-Child Relationship and Motion for Declaratory Judgement* (SAPCR petition). She contends that the record established a reasonable factual basis for the District Court’s determination that it was not in her best interest to be returned to Guatemala. She therefore asserts that she has established that her request for the SIJ order was bona fide and accordingly that USCIS’ consent to her request for SIJ classification is warranted.

B. USCIS’ Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To warrant USCIS’ consent, juveniles must 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).

As noted above, the Petitioner must demonstrate that in a juvenile court order (or in administrative proceedings recognized by the juvenile court), the juvenile court made a determination that it would not be in the best interest of the Petitioner to be returned to the country of nationality or last habitual residence of the Petitioner or the Petitioner’s parents. *See* section 101(a)(27)(J)(ii) of the Act; *see also* 8 C.F.R. § 204.11(c)(2). This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court’s determination. *See* 6 *USCIS Policy Manual* J.2(C)(3), <https://www.uscis.gov/policymanual>.

We have also clarified that where a juvenile court makes a custodial placement or dependency finding for a child pursuant to state law, “and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent.” *Id.* Here, the record before the Director contained the requisite assessment, as the SAPCR order awards sole managing conservatorship to the Petitioner’s mother. In addition, the District Court found that “[a]fter reviewing the motion, the court file, and hearing arguments of counsel” that the Petitioner is “unable to reunify with her father due to neglect and/or abandonment” and that it was not in the Petitioner’s best interest to be returned to Guatemala. The record on appeal is further strengthened with the submission of the SAPCR petition. The SAPCR petition submitted to the District Court stated that “[d]ue to the lack of protection to [c]hildren in Guatemala, the children subject of his suit will not find adequate protection under the law in their country and will in deplorable conditions.” When considered in its entirety, the record contains a sufficient factual basis for the District Court’s determination that it was not in the Petitioner’s best interest to be returned to Guatemala, her country of nationality or last habitual residence. The Petitioner therefore has shown that her request for SIJ classification is bona fide such that USCIS’ consent is warranted under section 101(a)(27)(J)(iii) of the Act.

ORDER: The appeal is sustained.