



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

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

In Re: 26387010

Date: MAY 25, 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).

The Director of the National Benefits Center denied the petition, concluding that the Petitioner did not establish that he was under the age of 21 when he filed the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and was therefore not eligible for SIJ classification. 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); 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),

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).

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).

II. ANALYSIS

The Petitioner claims that he was born in Bangladesh in [] 2001. The record indicates that he last entered the United States without inspection in August 2018. In [] 2019, when the Petitioner asserts that he was 18 years old based on this claimed date of birth, the New York Family Court for [] (Family Court) appointed M-D-² as the Petitioner’s guardian pursuant to 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 guardianship order stated that “the appointment shall last until the [Petitioner’s] 21st birthday . . .” In a separate order titled *ORDER-SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), also issued in [] 2019, the Family Court determined, among other findings, that the Petitioner was “dependent upon the Family Court.” The Family Court found that the Petitioner’s reunification with his father was not viable due to abuse under section 1012(e) of the N.Y. Fam. Ct. Act, and reunification with both parents was not viable due to neglect under section 1102(f) of N.Y. Fam. Ct. Act and abandonment under section 384-b(5)(a) of the New York Social Services Law (N.Y. Soc. Serv. Law). The SIJ order included the court’s factual findings that the Petitioner’s father had “physically assaulted the [Petitioner]” and “forced the [Petitioner] to drop out of school to join [a] political party” and both parents had “evinced an intent to forego [their] parental rights by . . . a failure to visit or communicate with the [Petitioner]” and “by not providing any financial support”. In addition, the Family Court concluded that it would not be in the Petitioner’s best interest to return to Bangladesh, his country of nationality or last habitual residence, because “there is no adult able to financially or emotionally support [him].”

In September 2019, the Petitioner filed his petition for SIJ classification based on the Family Court orders. Documents that the Petitioner provided below in support of his claimed [] 2001 date of birth include:

- Petitioner’s affidavit dated February 12, 2022;
- Birth Registration Certificate showing that his birth was registered in Bangladesh on [] [] 2007, and issued on September 10, 2017;
- Partial copy of a Bangladeshi passport issued in April 2019 (Passport No. []);
- Certificate of Birth Registration issued on December 27, 2021;
- [] High School Certificate;
- Letter from [] (family physician);
- Affidavit from [] (midwife);

² We use initials to protect identities.

- Affidavit from [redacted];
- Affidavit from [redacted] (grandmother);
- Affidavit from [redacted] (uncle);
- Affidavit from [redacted] (cousin);
- Affidavit from [redacted] (aunt); and
- a child vaccination card.

The Director subsequently denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because the record contained material inconsistencies regarding his true date of birth and therefore, he had not shown that he was under 21 years of age when he filed his SIJ petition, as required. Specifically, the Director stated that although the Petitioner claimed on the SIJ petition that his date of birth is in [redacted] 2001, U.S. government records showed that the Petitioner had previously claimed a date of birth in [redacted] 1994, which would mean that he was 25 years of age when he filed the SIJ petition.

On appeal, the Petitioner contends that he has established by a preponderance of the evidence that his date of birth is [redacted] 2001, and therefore that he was under 21 years of age when he filed his SIJ petition in September 2019. He submits an additional personal affidavit to explain his use of two different dates of birth. He explains that he told immigration officers that his date of birth was in [redacted] 1994, because his smuggler told him beforehand that international authorities would detain him if they found out that he was only 17 years old. The Petitioner also submits a notarized document from a local official in his hometown in Bangladesh dated June 7, 2022, attesting that the Petitioner's date of birth is [redacted] 2001, his birth was registered in December 2007, and his birth certificate was issued on September 10, 2017. The Petitioner asserts that the birth certificate and verification of his birth date from the local official in his hometown in Bangladesh are the best evidence of his age.

As previously outlined by the Director, the record contains documents submitted by the Petitioner's previous attorney in support of his Motion to Request Bond listing the Petitioner's date of birth as [redacted] 1994. In December 2018, the Petitioner submitted a birth certificate and passport (No. [redacted]) indicating his date of birth is [redacted] 1994. The record indicates that the Petitioner also had another passport (No. [redacted]) indicating his date of birth is [redacted] 1994. This passport was issued on February 10, 2017, when the Petitioner was living in Bangladesh. The Petitioner states in his most recent affidavit that he never spoke to the attorney who submitted these documents, a distant uncle provided the documents to the attorney, and that he does not know how the documents were procured. The petitioner also states that only passport he has ever received from the government of Bangladesh is the one issued in April 2019 (No. [redacted]), which indicates his birthday is [redacted] 2001. This is contrary to evidence that the Petitioner was issued a passport in Bangladesh before traveling to the United States. The Petitioner's affidavit does not explain why his uncle and attorney claimed the Petitioner's date of birth is in [redacted] 1994. The Petitioner also does not explain why the documents submitted in support of his Motion to Request Bond list the same date of birth that he had provided to the authorities of multiple foreign countries on his way to the United States. Finally, the Petitioner has not addressed how his most recent passport was issued based on verification of his old record when his two previous passports contained a different date of birth.

We have reviewed the Petitioner's previously submitted documentation, the most recently submitted birth certificate and birth verification. The Petitioner asserts that the birth certificate indicating his

date of birth is [] 2001, and the verification of his birth date from the local official in his hometown in Bangladesh are the best evidence of his age. He contends, through counsel, that these two documents are the best evidence of his age because they are “verif[ied] through the Bangladesh government.” However, both birth certificates and the passports in the record are all official government documents. Also, the local official, [] signed both birth certificates with differing dates of birth. Based on the foregoing and upon de novo review of the entire record, the Petitioner has not established by a preponderance of the evidence that his actual date of birth is [] 2001.

We acknowledge the Petitioner’s evidence in support of his claimed date of birth. However, considering the evidence in the record relating to his date of birth, he has not established by a preponderance of the evidence that his date of birth is in [] 2001. As a consequence, the Petitioner also has not established by a preponderance of the evidence that he was under 21 years old on the date that he filed his SIJ petition. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b); *see also Matter of Chawathe*, 25 I&N Dec. at 375 (stating that it is the Petitioner’s burden to establish eligibility for the benefit sought).

III. CONCLUSION

The Petitioner has not overcome the Director’s decision on appeal as he has not established that he was under 21 years of age at the time of filing. He is therefore ineligible for SIJ classification.

ORDER: The appeal is dismissed.