



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

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

In Re: 16383061

Date: APR. 1, 2022

Appeal of New York District Office 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 New York District Office (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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(c). 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. 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.

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 juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). 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 [] 2016, when the Petitioner was 18 years old, the New York Family Court for [] (Family Court) appointed the Petitioner's cousin, S-S-¹, as his 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 order stated that "the appointment shall last until the [Petitioner's] 21st birthday" In a separate order titled *ORDER-SPECIAL JUVENILE STATUS* (SIJ order), issued in [] 2016, the Family Court determined, among other findings, 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 parents was not viable due to abandonment and neglect, explaining that the Petitioner's father abandoned the family in January 2012 and has not since "made any attempt to contact . . . or financially support" the Petitioner. Further, the Family Court noted that the Petitioner's mother neglected and abandoned him when she "threw him out of the home shortly after the family was abandoned by the father." 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 home and no one who cares for him."

The Director issued a notice of intent to dismiss (NOID), noting inconsistencies between the Applicant's statements to U.S. Customs and Border Protection (CBP) when he was apprehended upon entry into the United States and his claims before the Family Court. The Petitioner told CBP on [] [] 2013, through an interpreter, that he came to the United States due to threats and injuries he incurred at the hands of members of an opposing political party, and that he had last seen his parents a month and a half prior. He did not mention any problems with his parents. In [] 2013, he was released from Immigration and Customs Enforcement (ICE) custody into the custody of S-S-, and at that time neither the Petitioner nor S-S- mentioned problems with the Petitioner's parents in India. The Petitioner later informed the Family Court that he had not seen either of his parents since 2012. He told the court that his father abandoned him and his family on January 1, 2012, when he was 14 years old. He also reported to the Family Court that his mother abandoned and neglected him shortly after his father's departure, when he was 15 years old, in that she made him quit school and begin working to support the family in his father's absence. When he was unable to do so, she kicked him out of the house, after which he went to live with his uncle. In a sworn statement given during an April 2017 adjustment of status interview with USCIS, the Petitioner stated, through an interpreter, that he had not been in contact with his father and mother since 2012.

In response to the Director's NOID, the Petitioner submitted a personal affidavit in which he stated that during his June 2013 interview with CBP, he "may have stated" he was the member of a political party, although he was not actually old enough to be a member yet, because his family supports that party. He noted that he "was scared and confused . . . [and] was trying not to anger the CBP Officer by taking too much time to answer the questions even if [he] did not fully understand the questions." Further, the Petitioner claimed that when he said he had last seen his parents a month and a half prior, he "was speaking about [his] mother and not [his] father," because his mother lives in his uncle's

¹ We use initials to protect identities.

village and he saw her frequently there even after moving in with his uncle. He claimed that his language, Punjabi, does “not use the word ‘parent’ or ‘parents’” but instead uses the term “family” to refer to a mother and father, so the use of “the word ‘parents’ rather than ‘parent’ may have been translation error.” Additionally, he alleged that he did not tell the CBP officer that his parents had abandoned and neglected him because he was ashamed, and that S-S- did not do so because the Petitioner had not authorized him to speak about his private family matters. The Petitioner also submitted an affidavit from another uncle, M-S-, who is the elder brother of the Petitioner’s father. M-S- stated that the Petitioner’s father left the home on January 1, 2012, and never returned, and that it was very difficult for the Petitioner and his mother to manage their expenses in his absence. M-S- indicated that the Petitioner had a disagreement with his mother when he “had to leave his first job,” and his mother “told him to leave” and would not allow him to return, so the Petitioner moved in with M-S-. According to M-S-, the Petitioner’s mother lived in the same village, but the Petitioner “did not see his mother” because she “did not want to see him” and “did not give money for him.” Eventually, M-S- sent the Petitioner to the United States to live with S-S-.

The Director denied the SIJ petition based on a determination that the Petitioner did not establish that USCIS’ consent to his SIJ classification was warranted. The Director noted that the Petitioner’s testimony before CBP contradicted the Petitioner’s claims before the Family Court, and that the affidavits from the Petitioner and M-S- were insufficient to resolve the discrepancies. In particular, the Director explained that although the Petitioner had given a reason for why he stated that he had last seen his parents a month and a half prior, he had not provided an adequate explanation for “why he testified to CBP officers that he was injured (in India) and feared for his life if returned to India.” Furthermore, the Director noted that the Petitioner stated in his affidavit that he saw his mother frequently in the village, while M-S- claimed that the Petitioner did not see his mother.

On appeal, the Petitioner submits a supplemental affidavit from M-S-, who asserts that “when [he] said [the Petitioner] did not see his mother [he was] saying she did not give him attention.” He explains that the Petitioner’s mother lived about four houses away, so the Petitioner did “see his mother in the street but that is not what [he] is trying to say.” Instead, he explains that the Petitioner’s mother “did not take notice of her son and she does not give him recognition when she see [*sic*] him on the street. That is why [M-S-] said she did not want to see him.” The Petitioner also submits on appeal an amended SIJ order in which the Family Court, in relevant part, provides the state law on which it based its parental reunification and best interest findings.

B. USCIS’ Consent is Warranted

The Petitioner has met his burden of establishing that USCIS’ consent to his SIJ classification is warranted. SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 6-7 (citing H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement “that neither the dependency order nor the administrative or judicial determination of the alien’s best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, 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 and the agency

must consider whether the court's determinations were sought in proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond an order enabling an individual to file an SIJ petition with USCIS. *See* H.R. Rep. No. 105-405, at 130; *Budhathoki*, 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); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the *USCIS Policy Manual* explained).

In this case, the Petitioner has provided a reasonable explanation for the differences between his statement to CBP and his claims in support of his SIJ petition. He and his uncles specify that although he did see his mother in the village after he went to live with his uncle, she did not provide him any support or acknowledgement. Furthermore, the fact that the Petitioner did not discuss his problems with his parents with CBP officers does not negate the Family Court's determination regarding his ability to reunify with his parents due to their neglect and abandonment. As noted in the USCIS Policy Manual, "[c]hildren often do not share personal accounts of their family life with an unknown adult," so we "should exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the determinations made by the juvenile court." 6 *USCIS Policy Manual* J.3(B), <https://www.uscis.gov/policy-manual>. Although the Director also indicated that the Petitioner did not provide an explanation for why he stated that he had been injured in India and feared returning there, this is not in conflict with the Family Court's conclusions. The Petitioner has established by a preponderance of the evidence 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.