



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

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

In Re: 15507267

Date: January 28, 2022

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 (Director) denied the Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), and the matter is now before us on appeal. We exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). 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 the petitioner cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioners 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. 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. 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 (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

The record reflects that the Petitioner, a native and citizen of Kosovo, entered the United States on a J-1 student exchange visa in May 2017, when he was 19 years old. In [ ] 2018, when the Petitioner was 20 years old, a New York Family Court in [ ] New York (Family Court) issued an order granting guardianship of the Petitioner to his uncle. Subsequently, in [ ] 2018, the Family Court issued an order entitled *SIJS Order* (SIJ order) which states, in pertinent part, that: the Petitioner is dependent on the Family Court and has been appointed a guardian; the Petitioner's reunification with both of his parents is not viable due to neglect and abandonment as defined by section 384-b(4)(a) of the New York Social Service Law and section 1012(f)(1)(A) of the New York Family Court Act; and it is not his best interest to be returned to his country of last origin, Kosovo. Based on these orders, in August 2018, he filed the instant SIJ petition.

The Director denied the petition, determining that the Petitioner had not established that USCIS' consent to his SIJ classification was warranted because the record indicated that his primary purpose in seeking the juvenile court order was to obtain an order with factual findings to enable him to file an SIJ petition, rather to obtain relief from parental maltreatment. The Petitioner has overcome this determination on appeal.

SIJ classification may only be granted upon the consent of DHS, through USCIS, where a juvenile meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, juveniles must establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that the court's orders were not sought primarily for the purpose of obtaining the status of an individual lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from parental maltreatment)).

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 juvenile court's determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d at 511, n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ determinations); *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). Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment, or a similar basis under state law, the record must also contain a reasonable factual basis for each of the requisite SIJ determinations. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 8.

In the present case, the Director explained that the record indicated that the Petitioner had misrepresented his statements to the Family Court by alleging that his parents had neglected and abandoned him by failing to protect him from "peers, thugs and others who denounced [C]hristianity,"

and suggesting that his uncle had taken him in to offer refuge, while at the same time not informing the Family Court that he had entered the United States on a J-1 nonimmigrant visa as an exchange student and that he was already enrolled in school when he filed the J-1 application. However, the SIJ order states that the Petitioner's parents neglected and abandoned him in violation of New York law by failing to visit and communicate with him and "failing to exercise a minimum degree of care in supplying him with adequate food, clothing, shelter or education." These findings are supported by the record, as the Petitioner's [ ] 2018 *Affidavit in Support of Motion for Special Findings* states that he left his village in 2015 after being attacked multiple times for being an ethnic Albanian and Christian and moved to the capital city, where he waited tables to support himself and continue his education. The Petitioner explained that his parents did not provide for him, that he had little contact with them, that they did not help him after he suffered additional threats and physical attacks, and that he had not heard from them in over two years as they did not answer the phone when he tried to reach them. Moreover, in response to our notice of intent to dismiss (NOID) informing the Petitioner that contrary to his claim that his parents did not support him, his J-1 visa application indicated that his father financed his travel to the United States, the Petitioner provided evidence that he relied on other sources of support for his education and travel, including documentation that another individual paid for his airfare and that he had received an academic scholarship from the Municipality of [ ] Republic of Kosovo.

The record, in its totality, indicates that the Petitioner sought the guardianship of his uncle and order with SIJ-related findings in proceedings granting relief from parental neglect and abandonment under New York law. Moreover, the record contains a reasonable factual basis for each of the requisite judicial determinations and the Petitioner has demonstrated that he meets the remaining eligibility requirements for SIJ classification. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his SIJ classification.

**ORDER:** The appeal is sustained.