



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

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

In Re: 13867527

Date: JUN. 08, 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 petition because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment, rather than to obtain an immigration benefit, and was therefore not eligible for SIJ classification. On appeal, the Petitioner asserts her eligibility for SIJ classification. We review the questions in this matter *de novo*. See *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) of the Act; 8 C.F.R. §§ 204.11(b), (c)(1).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) of the Act; 8 C.F.R. 204.11(c)(2).

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 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

¹ On March 8, 2022, the Department of Homeland Security (DHS) amended its regulations governing the requirements and procedures for juveniles seeking SIJ classification, effective April 22, 2022, and applying to all pending petitions before U.S. Citizenship and Immigration Services (USCIS). See *Special Immigrant Juvenile Petitions*, 87 Fed. Reg. 13066 (March 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

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). In these proceedings, it is the petitioner’s burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Evidence and Procedural History

In [REDACTED] 2018, when the Petitioner was 20 years old, the Superior Court of California [REDACTED] (Family Court) issued an order appointing J-E-M-², her stepmother, as the Petitioner’s guardian in guardianship proceedings brought under sections 1510 and 1514 of the California Probate Code. The order stated that “extension of the guardianship of the person past the ward’s 18th birthday is necessary or convenient.” In a separate order titled *SPECIAL IMMIGRANT JUVENILE FINDINGS* (SIJ order), the Family Court made determinations, pursuant to section 155 of the California Code of Civil Procedure, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner’s mother and father was not viable due to abandonment as defined under California law and that it was not in her best interest to be removed from the United States and returned to Guatemala, her country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in December 2018. While the SIJ petition was pending, the Director issued a request for evidence (RFE), requesting evidence to support the best interest determination that was made in the SIJ order as well as evidence to clarify a discrepancy identified within the reunification determination. The Director notified the Petitioner that it was inconsistent for the Family Court to conclude that the Petitioner’s mother abandoned her as a young child when records indicated that she recently lived with her mother in the United States. The Director later issued a notice of intent to deny (NOID), requesting that the Applicant explain an additional discrepancy the Director identified. The Director indicated that it was inconsistent for the Family Court to find that the Petitioner’s father abandoned her when records indicated that she was currently living with him. In her responses to the RFE and NOID, the Petitioner submitted a letter from her counsel, a case summary, a copy of the minutes from the SIJ hearing, a copy of a 2018 declaration from the Petitioner, a copy of a 2020 declaration from the Petitioner, the petition underlying the SIJ order, a copy of a 2020 psychological evaluation of the Petitioner, and previously submitted documents. The Director denied the SIJ petition in July 2020, determining that there was insufficient evidence to establish that the Petitioner’s primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment, rather than for immigration purposes, because the record contained the two inconsistencies identified in the RFE and NOID that called into question why the Petitioner obtained the SIJ order.

B. Consent Not 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). We do not question the Family Court’s purpose in issuing its orders,

² We use initials to protect the privacy of individuals.

but here, USCIS' consent is not warranted because the Petitioner has not established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under California law, rather than to obtain an immigration benefit.

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, and not primarily to obtain an immigration benefit. 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).³

On appeal, the Petitioner submits a brief. She states that the only grounds for denial were the Director's assertions that the SIJ order was "violat[ed]" and "null[]" because it stated that she could not be reunified with her father when she currently lives with him. The Petitioner argues that even though she lives with her father, he still had abandoned her at a young age. Further, she asserts that even though the Office of Refugee Resettlement (ORR) released her in the care of her mother when she entered the United States, it does not mean that her mother did not abandon her at a young age, and again abandon her in the United States. The Petitioner contends that since the Family Court determined that the Petitioner's mother and father abandoned her in the past, she has established her eligibility under section 101(a)(27)(J) of the Act and it is of no consequence if she was reunified and residing with her father at the time the SIJ order was issued or had recent contact and involvement with her mother sufficient for ORR to release the Petitioner into her mother's custody. She also disputes the inconsistencies identified by the Director because the SIJ order stated that her mother and father abandoned her in the past and did not say that they had abandoned her recently. The Petitioner also argues that the Family Court's factual findings never stated that the Petitioner's reunification with

³ "The final rule clarifies that USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification such that the record reflects that the request for SIJ classification was not bona fide[...]. This may include situations such as one in which a juvenile court relies upon a petitioner's statement, and/or other evidence in the underlying submission to the juvenile court, that the petitioner has not had contact with a parent in many years to make a determination that reunification with that parent is not viable due to abandonment, but USCIS has evidence that the petitioner was residing with that parent at the time the juvenile court order was issued. Such an inconsistency may show that the required juvenile court determinations were sought primarily to obtain an immigration benefit rather than relief from parental maltreatment." *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (March 8, 2022).

her mother and father was not viable.⁴ Finally, the Petitioner argues that the denial violated her constitutional right to due process.⁵

The Petitioner is correct that the court made a qualifying parental reunification determination based on her parents' past abandonment. However, the Petitioner has not established by a preponderance of the evidence that a primary reason she sought the SIJ order was to gain relief from parental maltreatment, and not to obtain an immigration benefit, such that USCIS consent is warranted. Despite the evidence submitted by the Petitioner, there is no indication that the court was aware of the Petitioner's living arrangements with her father before it issued the SIJ order stating that reunification with her father was not viable or that the court was made aware of the Petitioner's more recent living arrangements and communication with her mother before the SIJ order held that reunification with her mother was not viable. Additionally, the evidence does not indicate specific reasons for seeking her stepmother's guardianship considering those facts.⁶

The record in this case demonstrates, and the Petitioner does not contest, that she lives with her father in the United States and was living with him both at the time she sought the court order and at the time the SIJ order was issued. Further, the record indicates, and the Petitioner does not dispute, that she was released by ORR to her mother when she arrived in the United States. There is also no explanation for why she sought the appointment of her stepmother as her guardian when she was already living with both her father and stepmother and was in contact with her biological mother. The information regarding the Petitioner's current living situation with her father and recent living situation and communication with her mother more strongly support a determination that she sought the SIJ order primarily for an immigration benefit, and not to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. *See* 8 C.F.R. § 204.11(b)(5) ("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"). Therefore, the Petitioner has not met her burden of establishing, by a preponderance of the evidence, that her SIJ petition is bona fide, such that USCIS' consent to a grant of SIJ classification is warranted.

⁴ Contrary to the Petitioner's contention, the SIJ order indicates that reunification with both her mother and father was not viable. Paragraph 5 of the SIJ order states, "Reunification of the child with," then both of the individual boxes for 'the mother' and 'the father' are checked, and goes on to state, "is not viable under California law because of parental abandonment." Further, under the description portion of Paragraph 5, the SIJ order states, "here minor was abandoned by her father before she was born" and "also, minor was abandoned by her mother because mother left Guatemala when minor was two years old." The SIJ order goes on to describe that the "father voluntarily failed to support minor and minor's mother also surrendered minor when she left minor in charge of minor's grandmother." Finally, in Paragraph 5 of the original petition to the Family Court, the Petitioner requested determinations that reunification with "both parents" is not viable under California law due to abandonment.

⁵ We note that there are no due process rights implicated in the adjudication of a benefits application. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) ("We have never held that applicants for benefits, as distinct from those already receiving them, have legitimate claim of entitlement protected by Due Process Clause of Fifth or Fourteenth Amendment"). Therefore, we will not address this argument further in this decision.

⁶ Aside from the form entitled "Petition for Special Immigrant Findings," there is no other evidence in the record, such as documents submitted to the Family Court supporting the SIJ order, court transcripts, affidavits summarizing the evidence presented to the court, or other records that indicate why the Petitioner sought the order, given the current living arrangements with her parents, even though the Director specifically requested such documents in the RFE and NOID.

Accordingly, the Petitioner has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.