



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

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

In Re: 15777683

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 Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition), and the matter is now before us on appeal. 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). Upon *de novo review*, we will sustain the appeal.

**I. LAW**

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner under 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 petitioner's best interest to return to his or her parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

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 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

In [REDACTED] 2017, when the Petitioner was 14 years old, the Family Court of the [REDACTED] Circuit Court for the Commonwealth of Kentucky (Family Court) issued an order titled, *ORDER GRANTING MOTION FOR FULL CUSTODY* (SIJ order). The Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that full custody of the Petitioner was granted to his uncle. The Family Court also found that the Petitioner's reunification with his parents was not viable due to abuse, abandonment, and neglect under Kentucky law and that it was not in his best interest to be removed from the United States and returned to India, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in August 2017. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID) notifying the Petitioner that the SIJ order did not appear to contain a reasonable factual basis for the best interest determination and that USCIS' consent was not warranted because immigration records showed that his uncle was petitioning the Petitioner's mother to immigrate to the United States and live with him and the Petitioner, even though the SIJ order stated that the Petitioner's mother abandoned and neglected him. The Petitioner submitted documentation underlying the SIJ proceedings, including motion papers and a transcript of the SIJ hearing. The Director concluded that due to a lack of a reasonable factual basis for the best interest determination and to conflicting information in the record, the Director was unable to determine whether the Petitioner's primary purpose in seeking the SIJ order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes, and the petition did not therefore warrant USCIS' consent.<sup>1</sup> In August 2020, the Director denied the SIJ petition.

On appeal, the Petitioner submits a brief, copies of affidavits from the Petitioner and his uncle, and copies of updated SIJ proceeding documents, including an amended SIJ order entered *nunc pro tunc* to the date of the original SIJ order (amended SIJ order) and motion papers.

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<sup>1</sup> 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). We note that the Director's decision was issued under the prior regulations, however, will be in accord with the amended regulations.

authority to provide under state law. *See id*; 6 USCIS Policy Manual J.2(C)(2), <https://www.uscis.gov/policy-manual>.

On appeal, the Petitioner argues that the Director erred in finding that USCIS' consent was not warranted because there was no reasonable factual basis for the best interest determination. Generally, orders that have the necessary determinations and include, or are supplemented by, the factual basis for the court's determinations (for example, the judicial findings of fact) are sufficient to establish eligibility and to demonstrate that the request for SIJ classification is bona fide. *See* section 101(a)(27)(J)(iii) of the Act (consent requirement); H.R. Rep. 105-405 (PDF), p. 130 (1997); 6 USCIS Policy Manual J.2(D), <https://www.uscis.gov/policy-manual>. If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all the required determinations, USCIS may request evidence of the factual basis for the court's determinations. *Matter of Chawathe*, 25 I&N Dec. at 375; 6 USCIS Policy Manual J.3(A)(3), <https://www.uscis.gov/policy-manual>. Further, the burden is on the petitioner to provide the factual basis for the court's determinations. *Id.* Here, both the original SIJ order and the amended SIJ order were issued after the Family Court "reviewed the records and being otherwise sufficiently advised." The original SIJ order states that the Petitioner's parents abandoned him by failing to support him and not remaining in contact with him. Additionally, the amended SIJ order describes the parents' abuse and neglect, including that he "was beaten by his father almost every day" and his parents refused to provide him with "basic necessities as a child." The Family Court went on to specify the specific portions of Kentucky law, including KRS 600.020(1)(a)(1-3) (abuse), KRS 600.020(1)(a)(4) (neglect), and KRS 600.020(1)(a)(7-8) (abandonment). Further, the Petitioner provided other evidence, including documents submitted to the Family Court supporting the amended SIJ order. Therefore, a preponderance of the evidence demonstrates that there was a reasonable factual basis for the best interest determination, and we withdraw the Director's determination to the contrary.

The Petitioner additionally contends that the Director erred in finding that USCIS' consent was not warranted because she was "unable to determine whether the primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes" due to inconsistencies regarding whether the Petitioner's mother abandoned him. Based on the immigration records of the Petitioner's uncle, the Director found that the uncle petitioned for the Petitioner's mother to gain lawful immigration status in the United States and live with the uncle, at the same address where the minor Petitioner is currently living. On appeal, the Petitioner argues, through counsel, the uncle's petition for the Petitioner's mother is not inconsistent with the SIJ orders because the priority date to receive a visa for the Petitioner's mother is approximately 15 years away, at which time the Petitioner would be over 30 years old and likely not living with his uncle. We agree that contrary to the Director's findings, the petition filed by his uncle on behalf of his mother does not reflect an inconsistency with the record of the Family Court proceedings because his mother's potential immigration to the United States in 15 years does not show that she did not abandon the Petitioner when he came to the United States, as suggested by the Director.

Therefore, contrary to the Director's findings, the preponderance of the evidence establishes that a primary reason the Petitioner sought the SIJ order was to obtain relief from his parents' abuse, abandonment, and neglect in the form of a custody placement. The Family Court orders provided that the Petitioner's custody was granted to his uncle. The Family Court also found that the Petitioner's reunification with his parents was not viable due to neglect and abandonment, pursuant to K.R.S.

section 600.020. Finally, as discussed above, the SIJ order indicated it was not in his best interest to be removed from the United States and returned to India, his country of nationality. Since the Petitioner has met all eligibility requirements for SIJ classification, USCIS' consent is warranted, and we withdraw the Director's determination otherwise.

### III. CONCLUSION

The Petitioner has overcome the grounds for denial of his SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, he has established eligibility under section 101(a)(27)(J) of the Act.

**ORDER:** The appeal is sustained.