



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

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

In Re: 16793618

Date: MAR. 18, 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 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 [] 2018, when the Petitioner was 16 years old, a Juvenile and Domestic Relations District Court in Virginia issued a Custody Order placing the Petitioner in the custody of his mother. The District Court determined that it was in the Petitioner's best interest to be placed under his mother's legal custody under Virginia law, because his mother "is solely responsible for [his] care and support" and "is willing and able to continue providing for [him]" Further, the District Court concluded that the Petitioner's father abandoned him, as that term is defined in Virginia law, "shortly after the minor child's seventh birthday," when he "relinquished all responsibility over [the Petitioner] and cut all ties to the minor child." Accordingly, the District Court found that "[t]here is no possibility that the minor child reunite with his father given his father's inability and unwillingness to provide for [him]." The court also specified that it is not in the Petitioner's best interest to return to El Salvador, his country of nationality, and live with his father. Based on the Custody Order, the Petitioner filed his SIJ petition in July 2018.

The Director denied the petition, determining that USCIS' consent to the Petitioner's SIJ classification was not warranted. The Director explained that the Petitioner's claim in support of his SIJ petition that his father had abandoned him when he was seven years old was inconsistent with a statement the Petitioner made to immigration officials during an encounter in [] 2016, when he indicated that he had resided with his father just before traveling to the United States.

B. USCIS Consent is Warranted

On appeal, the Petitioner has established that USCIS' consent to his SIJ classification is warranted. SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, a petitioner 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. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 7-8 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement "that neither the dependency order nor the administrative or judicial determination of the [petitioner's] best interest was 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 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 juvenile court's determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling the petitioner to file an SIJ petition with USCIS. *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); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding that USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the petitioner sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the USCIS Policy Manual explained).

The Director determined that USCIS' consent was not warranted because the record contained an unresolved inconsistency between the Petitioner's statements to immigration officials in [] 2016 and his claims in his SIJ petition. In response to a notice of intent to deny from the Director (NOID) on this issue, the Petitioner submitted a personal affidavit in which he stated that he lived with his aunt in El Salvador before coming to the United States and did not live with his father. He claimed that his father abandoned him in approximately 2007, "never communicated with [him] or maintained any relationship with [him]," and did not provide him any financial support after 2007. The Petitioner asserts that he did not tell immigration officials that he lived with his father and opines that they misunderstood him when he said he had lived with his father until 2007. He also submitted an affidavit from his mother, who similarly stated that before coming to the United States the Petitioner lived with his aunt and that his father abandoned him around 2007. In denying the SIJ petition, the Director concluded that the affidavits from the Petitioner and his mother were insufficient to overcome the evidence that he had claimed to have lived with his father.

On appeal, the Petitioner argues that the notation that he told immigration officers he lived with his father must have been made in error, and that he has provided sufficient evidence to rebut it. As further supporting evidence, he submits an affidavit from his aunt, who states that her brother, the Petitioner's father, abandoned his three children "since he began living with his new partner." The Petitioner's aunt further claims that the Petitioner's mother "suffered a lot to give them education and sustenance; for this reason, she asked [the aunt] to take care of her three children, that is, [her] nephews." Additionally, the Petitioner submits an affidavit from his father, who states that "[s]ince 2006 he started his life with a new partner and because she was bothered by any contact he could have with his children, he was forced to abandon them completely and stopped having contact with them; he did no longer visit them." Furthermore, the Petitioner's father reports that "he has not been able to provide for the needs of his children" and their mother "has always been the person responsible for his and their other two children[s] livelihood."

Although USCIS records indicate that the Petitioner stated during his [] 2016 encounter that he "lived with his father in El Salvador" before leaving home, the Petitioner has provided sufficient evidence to overcome the Director's determination. The Petitioner has explained in a sworn affidavit that his father abandoned him in about 2007, and affidavits from his mother, the aunt with whom he lived, and his father verify his claim. Furthermore, other USCIS records show that the Petitioner otherwise reported having lived with his aunt in El Salvador. Accordingly, the Petitioner has established that he sought the Custody Order to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit, and USCIS' consent to his SIJ classification is warranted.

III. CONCLUSION

The Petitioner has overcome the grounds for denial of his SIJ petition. As the record 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.