



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

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

In Re: 15301085

Date: MAY 11, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The matter is now before us on appeal. On appeal, the Petitioner submits evidence previously in the record and a brief arguing that she has established eligibility for the benefit sought. 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, we will remand the matter to the Director.

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(b). 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; 8 C.F.R. § 204.11(c)(1). 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; 8 C.F.R. § 204.11(c)(2).

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. 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. *Id.* 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

In [REDACTED] 2018, when the Petitioner was 17 years old, a probate and family court (family court) in Massachusetts issued an *Order of Special Findings of Fact and Rulings of Law* (initial SIJ order) in which it declared the Petitioner to be dependent on the court. On the same day, the family court also issued a *Decree and Order of Appointment of Guardian of a Minor* appointing the Petitioner's brother as her guardian. The initial SIJ order stated that the Petitioner was neglected by her mother and father in Haiti, she came to the United States to live with her brother as a result of the neglect, and her parents continued their neglect after she relocated here. The family court determined that it is not in the Petitioner's best interest to return to her country of nationality, Haiti, because of the inability of her mother and father to provide her with adequate financial and emotional care and support in Haiti.

Based on the initial SIJ order, the Petitioner filed her SIJ petition in November 2018. In response to a request for evidence (RFE) issued by the Director, the Petitioner submitted a *Corrected Order of Special Findings of Fact and Rulings of Law* (corrected SIJ order) issued *nunc pro tunc*, in which the family court determined that the Petitioner's reunification with her parents was not viable due to the inability of her mother and father to provide her with adequate financial and emotional care and support in Haiti. After review, the Director issued a notice of intent to deny (NOID), notifying the Petitioner that the record contained material inconsistencies regarding parental reunification. While the family court determined that the Petitioner's parents neglected her in Haiti and continued their neglect after the Petitioner's relocation to the United States in 2014, and concluded that reunification with her parents is not viable for this reason, government records indicated that both parents came here on several occasions since 2014 and were staying at the same address the Petitioner provided on her SIJ petition. The Petitioner responded to the NOID with, among other evidence, affidavits from herself and her siblings, indicating that although her parents had lived with the Petitioner in the United States, they were not able to support her and continued to neglect her.

After review, the Director denied the SIJ petition, concluding that the Petitioner had not met her burden of showing that USCIS' consent to her SIJ classification is warranted. The Director found that the affidavits from the Petitioner and her brother and sister provided in response to the NOID, as well as government records, indicated that on the date of the corrected SIJ order, the Petitioner was living with her parents, sister, and brother in the United States. As such, the Director determined that the Petitioner's primary purpose in seeking the SIJ order was to enable her to file an SIJ petition, her request for SIJ classification was not bona fide, and USCIS' consent to her SIJ classification is not warranted.

On appeal, the Petitioner argues, among other issues, that the Director erred in concluding that USCIS' consent to SIJ classification was not warranted without addressing or considering the substance of the three affidavits provided with the NOID response. The Petitioner asserts that the submitted affidavits reflect that even though her parents were present here, they continued their physical, emotional, and financial neglect of her. She argues that the Director erred as a matter of law in finding that because her parents came here, she therefore reunified with them and was no longer neglected. Upon review, we agree with the Petitioner that the Director did not meaningfully address the Petitioner's and her

siblings' affidavits describing how her parents continue to neglect her and do not provide for her in the United States. As a result, we will remand the matter for the Director to reevaluate the evidence in the record to determine whether the Petitioner's request for SIJ classification merits USCIS' consent.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis which, if adverse, shall be certified to us for review.