



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

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

In Re: 8494948

Date: MAY 13, 2022

Appeal of Long Island, New York Field Office 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 Long Island, New York Field Office (Director) denied the petition, concluding the Petitioner had not demonstrated qualifying parental reunification or that he warrants USCIS' consent to SIJ classification. On appeal, the Petitioner asserts his eligibility for SIJ classification. 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 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)(i) of the Act; 8 C.F.R. § 204.11(b). 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. *Id.* at section 101(a)(27)(J)(ii); 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. 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). 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 [] 2017, when the Petitioner was 14 years old, the New York Family Court for [] (family court) issued an *Order Appointing Guardian of the Person* for him, appointing guardianship of the Petitioner to I-H-B-M-.¹ In [] 2017, the family court issued an *Order – Special Immigrant Juvenile Status* (SIJ order) making determinations related to the Petitioner's SIJ eligibility. The SIJ order indicates the Petitioner is "dependent on the Family Court" as the family court appointed him a guardian. The family court cites to New York case law in support of its dependency declaration. The family court found the Petitioner's reunification with his parents, E-C- and B-B-, is not viable due to his mother's neglect and abandonment under the "Family Court Act §§ 1012(f)(ii) and 1012(f)(i)(A), Social Services Law § 384-b(5)," and his father's death. The family court specified the Petitioner's mother left him with his paternal family a month after he was born and has since been absent from his life, not providing for him or keeping in contact with him. The family court also determined it is not in the Petitioner's best interest to return to El Salvador as his "most suited caretaker" is in the United States, "there is nobody in El Salvador able and willing to take care of him," and he "would be subject to the threat of crime and gang-related violence," upon his return.

B. Qualifying Parental Reunification

The Director determined the family court did not make a qualifying parental reunification determination for the Petitioner. The Director concluded the court did not make a determination concerning the identity of the Petitioner's father. The Director notes the Petitioner's birth certificate bears a father's name that differs from the father's name the Petitioner claims in his SIJ petition.

To be eligible for SIJ classification, the Act requires a juvenile court determination that a juvenile's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. The record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. 8 C.F.R. § 204.11(c)(i). Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *Id.* at 6; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) ("Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.").

On appeal, the Petitioner asserts the family court did make a determination concerning the identity of his father in its SIJ order as it contains his father's name, B-B-. The Petitioner further notes the family court made two separate qualifying parental reunification determinations, finding both that reunification with his father is not viable and reunification with his mother is not viable.

¹ Initials are used to protect the privacy of this individual.

Here, the family court made a qualifying parental reunification for the Petitioner, finding the Petitioner could not reunify with his mother due to neglect and abandonment under state law. Based in part on this determination, custody of the Petitioner was granted to I-H-B-M-. The Director does not identify any irregularities in the record related to the family court's determination that the Petitioner cannot reunify with his mother. And to establish eligibility for SIJ classification under the Act, a petitioner must be 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. Overall, the record establishes by a preponderance of the evidence that the family court proceedings made a qualifying determination that he cannot reunify with his mother due to abandonment and neglect. As such, we need not consider whether the family court also made a qualifying parental reunification for his father.

C. USCIS' Consent

The Director determined the Petitioner does not merit USCIS' consent to SIJ classification as the record lacks a reasonable factual basis for the family court's best interest determination and does not indicate the court made an informed decision. The Director found there was no evidence the family court contemplated the availability of other caregivers in El Salvador for the Petitioner, such as his grandmother, in rendering its best interest determination. The Director also found that as the Petitioner did not disclose his gang membership to the family court, the court did not make an informed decision in finding it is not in the Petitioner's best interest to return to El Salvador due to gang-related violence.

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* An example of court-recognized remedial relief includes the recognition of a petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain 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). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.*

On appeal, the Petitioner asserts the family court was aware of his grandmother's role as caretaker for him while he resided in El Salvador and explicitly considered whether possible caregivers exist for him in El Salvador. As stated above, the family court determined it is not in the Petitioner's best interest to return to El Salvador as his "most suited caretaker" is in the United States. The family court considered the availability of caregivers in El Salvador, finding that "there is nobody in El Salvador able and willing to take care of" the Petitioner. The Petitioner notes the family court relied upon "the motion papers and supporting affidavits, all the pleading and prior proceedings in this matter, and/or hearing testimony," in issuing its SIJ order. And in a supporting affidavit to the family court, I-H-B-M- asserted the Petitioner's grandmother "does not have the capacity to take care of" the Petitioner as well as I-H-B-M- can, due to his grandmother's advancing age. Accordingly, the record demonstrates the record contains a reasonable factual basis for the family court's best interest determination.

As stated, USCIS' consent function is limited to determining whether reasonable factual bases for the court's parental reunification and best interest determinations, whether relief from parental maltreatment was granted or recognized, and whether the request for SIJ classification is bona fide. Here, guardianship of the Petitioner was granted to I-H-B-M- and reasonable factual bases exist for the court parental reunification and best interest determinations. The family court made all of the requisite findings relevant to the Petitioner's eligibility for SIJ classification and set forth the facts that formed the basis for these findings. We acknowledge the Director's finding that the record contains evidence of the Petitioner's gang membership. However, this finding does not constitute a material conflict related to SIJ classification requirements. The Petitioner's own gang membership does not except him from being subject to gang-related violence in El Salvador, as contemplated by the family court. Overall, we find the Petitioner established a primary reason for seeking the family court's SIJ order was to obtain relief from parental maltreatment. As such, we find no basis for withholding USCIS's consent to the Petitioner's request for SIJ classification.

III. CONCLUSION

The Petitioner has overcome the bases of the Director's denial on appeal and has demonstrated his eligibility for SIJ classification.

ORDER: The appeal is sustained.