



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

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

In Re: 22794243

Date: NOV. 7, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), because the record included material inconsistencies and the Petitioner did not establish that a primary reason for seeking his juvenile court order was to obtain relief from parental maltreatment. On appeal, the Petitioner asserts his eligibility for SIJ classification. We review 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 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).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).

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.

¹ The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

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

In [REDACTED] 2017, when the Petitioner was 20 years old, the Family Court of the State of New York, [REDACTED] (Family Court) issued an order titled *ORDER APPOINTING GUARDIAN OF PERSON* appointing P-K-² as his guardian in guardianship proceedings brought under sections 103(27) and 1707 of the New York Surrogate’s Court Procedure Act (N.Y. Surr. Ct. Proc. Act) and sections 115 and 661(a) of the New York Family Court Act (N.Y. Fam. Ct. Act). The order stated that “unless terminated by the Court, the appointment shall last until the subject’s 21st birthday.” In a separate order titled *ORDER-SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), the Family Court determined that reunification with the Petitioner’s parents was not viable due to neglect and abandonment under applicable New York statutes and case law; and that it was not in his best interest to be removed from the United States and returned to India, his country of origin.

Based on the SIJ order, the Petitioner filed this SIJ petition in October 2017. While the SIJ petition was pending, the Director issued a request for evidence (RFE). The Director requested documentary evidence to explain why the Petitioner’s asylum application listed his date of birth as [REDACTED] 1996, but his SIJ petition listed his birth date as [REDACTED] 1996. In addition, the Director noted several inconsistencies in the file. Firstly, the Petitioner’s SIJ order indicated that his parents neglected and abandoned him because his father forced him to work instead of allowing him to go to school. While on his 2016 asylum application, he stated he did not work in India; and he attended elementary to high school from 2002 until 2014. Thus, he was approximately 17 years old when he left high school. Secondly, the Director noted that in his credible fear interview in May 2016, the Petitioner stated that he was a student in India and when asked if “anyone in your family ever threatened, harmed, or mistreated you,” or if he feared “that someone in your family will threaten, harm or mistreat you in the future,” he answered “No.” The Director found that this contradicted the SIJ order regarding reunification viability with one or both parents where the SIJ order said the Petitioner’s father forced him to work. Thirdly, the Director noted that the Petitioner submitted a sworn statement with his asylum application in which he stated, “after my second attack by the BADAL party, my family was scared for my life. They sent me to live with a family relative in a nearby village.” The Director observed that the SIJ order stated that both parents neglected and abandoned the Petitioner which was inconsistent with this sworn statement since by sending him to a nearby village, his parents sought to protect him from harm. Finally, the Director noted another inconsistency during the credible fear interview when the Petitioner stated that he feared for his life and had to stay with a relative before his family decided to send him out of India to the United States for his protection, even though the SIJ order stated his “parents forced him to leave the house at such a young age,” “did not do anything to protect [him]” and “were not concerned about [his] life.” Thus, the Director requested the Petitioner to explain these discrepancies found in the record because they undermined the Petitioner’s claim that

² We use initials to protect the privacy of individuals.

the purpose of seeking the SIJ order was to obtain relief from parental maltreatment rather than to obtain an order for immigration purposes.

In December 2021, the Petitioner responded to the RFE with a letter from Counsel, a copy of his birth certificate showing [REDACTED] 1996 as his date of birth, and his affidavit.³ In January 2022, Counsel submitted additional evidence in response to the RFE. However, in February 2022, the Director issued a denial in which only the December 2021 RFE response was discussed. Therefore, the Director did not consider the additional evidence, which was received after the due date, but before the denial was issued. Because the Director's decision does not reflect a consideration of all the evidence submitted in response to the RFE, we will remand the matter for consideration of all relevant evidence and a redetermination of whether the Petitioner has established eligibility for the benefit sought, including whether the inconsistencies detailed above materially conflict with the eligibility requirements for SIJ classification, such that the Petitioner's request for such relief was not *bona fide*.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ In his Affidavit, the Petitioner explains that his prior attorney made the birth date error on the asylum application.