



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

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

In Re: 19317685

Date: NOV. 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 (the Director) denied the petition. On appeal, the Petitioner asserts his eligibility for SIJ classification. We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss 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. *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

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).

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

The record reflects that the Petitioner is a native and citizen of Bangladesh. On [] 2020, the Family Court of the State of New York for [] New York (Family Court), issued an *Order – Special Immigrant Juvenile Status* (SIJ order) an *Order Appointing Permanent Guardian* (guardianship order). The Petitioner filed his SIJ petition in July 2020 on this basis. In December 2020, the Director issued a notice of intent to deny (NOID) informing the Petitioner that the record contained material inconsistencies between the date of birth on his SIJ petition and government records indicating he had used different dates of birth. The Petitioner submitted a timely response to the NOID.

After reviewing the record, the Director denied the SIJ petition, concluding that the Petitioner had not met his burden to demonstrate that he was under the age of 21 when he filed the petition, as required. Specifically, the Director concluded that the Petitioner had made materially inconsistent statements regarding his date of birth and his name. The Director observed that government records indicated that the Petitioner had previously used a date of birth of [] 1996, under the name A-K-² and that he had also been issued a passport with a date of birth of [] 1992, using this name. However, on the SIJ petition, the Petitioner indicated his name was I-H- and his date of birth was [] [] 2001. The Director also noted that the Petitioner testified in an interview on January 9, 2019, that the name on his SIJ petition was on all his certificates and official paperwork. Finally, the Director determined that the three birth certificates in the record for the Petitioner indicate they were issued on the same day, April 16, 2013, but the position of the signatures was inconsistent, indicating that the three copies were distinct. As a result of the inconsistencies, the Director further determined that the Petitioner had not established that his SIJ petition was bona fide, nor that USCIS' consent was warranted.

On appeal, the Petitioner submits a brief, a new self-affidavit, affidavits related to his birth certificate, and other documents. In the new self-affidavit, the Petitioner states that he was born on [] 2001. He reiterates claims made below that he left Bangladesh when he was seventeen due to neglect and abandonment. He contends that his attorney did not inform him that he should explain the inconsistencies regarding his different dates of birth in his NOID response, but that on appeal he has fully explained them.

To address the inconsistencies, the Petitioner recounts that before he left Bangladesh, he found a smuggler who suggested that he apply for a passport with a different date of birth because this was the only way the Petitioner could leave the country as a minor without parental supervision. A week later, at the airport where he left Bangladesh, the smuggler gave the Petitioner a passport with an alternate name, A-K, and a date of birth of [] 1992, in order to indicate that the Petitioner was an adult. The Petitioner claims that, on his journey to the United States, a smuggler in Colombia took

² Initials used to protect individuals' privacy.

that passport and that he has not seen it since then. He states that he used the passport's name and date of birth in Colombia, Panama, Mexico, and Costa Rica, at the smuggler's instructions, so he could continue his journey to the United States. He argues that he did not divulge the use of this passport during his credible fear interview with a USCIS asylum officer in his January 2019 interview because he was afraid to say that the smuggler "faked" the name for him and thought if he did so, he would be sent back to Bangladesh. The Petitioner also claims that he has never used a date of birth of [REDACTED] 1996, and does not know why USCIS records would reflect that he had. He contends that "perhaps the smuggler may have indicated that date of birth for me on the paperwork in the countries to which I traveled before arriving in the US" but that the Petitioner "was not able to review or understand the paperwork".

Further, through counsel, the Petitioner disagrees that the Director's finding that the position of the signatures on his three birth certificate indicates that they are inconsistent. In support of his claim that his birth certificates were validly issued, he submits affidavits from officials in Bangladesh. Finally, the Petitioner argues that his SIJ order contains a factual basis for the required determinations, was sought primarily to gain relief from parental maltreatment, and that he therefore warrants USCIS's consent.

On appeal, the Petitioner has not overcome the reasons for the denial of his SIJ petition. A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be under the age of 21. 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit "must establish that he or she is eligible for the requested benefit at the time of filing the benefit") and 204.11(b)(1) (stating that an SIJ petitioner must be under 21 at the time of filing the petition). The Petitioner has not met this eligibility requirement by a preponderance of the evidence. The Petitioner's claimed date of birth on his SIJ petition materially conflicts with government records indicating that he has used other dates of birth, including on identity documents he presented as his own. These alternate birthdates indicate that he was older than 21 when he filed his SIJ petition. The Petitioner's statements and explanations on appeal do not resolve these inconsistencies. Furthermore, the Petitioner's statements on appeal introduce additional inconsistencies that cast further doubt on his eligibility for SIJ classification and whether his petition is bona fide.

The Petitioner claims on appeal that he has only used one alternate birthdate. However, in his credible fear interview, he stated that he used different dates of birth in different countries. He further claims on appeal that he remembers that the passport he used indicated his date of birth as [REDACTED] 1992. This conflicts with his credible fear testimony that he did not remember any of the alternate dates of birth his smuggler instructed him to use, even when the asylum officer asked him whether he had used several specific alternate birthdates. Furthermore, the Petitioner states on appeal that, rather than using the date of birth he claims is his true birthdate, the smuggler instructed him purposely to use a date of birth that would make him appear older than he was. However, this is inconsistent with his credible fear testimony that he did not know why the smuggler instructed him to give different dates of birth. At the time of his credible fear interview, the Petitioner claimed that his date of birth was [REDACTED] 2001, and when asked why he used a different date of birth, he answered that he did not know and simply followed the smuggler's instructions. The Petitioner has not explained the reason for these inconsistent statements.

An SIJ petitioner is required to be under the age of 21 at the time of filing the petition according to 8 C.F.R. § 204.11(b)(1). The Petitioner's inconsistent statements about his date of birth, and his reasons for providing different ones to differing government officials, call into question what his true date of birth is and whether he was, in fact, under the age of 21 when he filed his SIJ petition. Therefore, the Petitioner has not established by a preponderance of the evidence that he meets this requirement. Furthermore, we also find that USCIS' consent is not warranted per 8 C.F.R. § 204.11(b)(5), given the material conflicts in the record which suggest that the Petitioner has misrepresented his age for immigration purposes.

Accordingly, the Petitioner is ineligible for SIJ classification.

ORDER: The appeal is dismissed.