



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

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

In Re: 21162205

Date: NOV. 22, 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), concluding the Petitioner did not establish that he warranted the consent of U.S. Citizenship and Immigration Services (USCIS). 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 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).

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)

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).

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 Evidence and Procedural History

The record reflects that the Petitioner, a native and citizen of India, submitted an SIJ petition in [REDACTED] 2015. The Petitioner included an order from the Family Court of the State of New York, [REDACTED] (Family Court) appointing R-S-² as his guardian in guardianship proceedings. In a separate order titled *ORDER-SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order), the Family Court made determinations in accordance with “8 U.S.C. § 1101(a)(27)” necessary for SIJ eligibility. The Family Court determined that the “minor was abandoned by his father from ages 6-17 years. During that period of the time minor was the only source for himself and his mother. When the father returned to the home, the minor was 17 years old. The father physically abused the minor upon his return.” The Family court also determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to India.

While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), informing the Petitioner that USCIS’ consent was not warranted as the record contained material inconsistencies. The Director described statements made by the Petitioner in his January 2012 nonimmigrant visa application, [REDACTED] 2013 interview upon his apprehension in the United States, January 2014 asylum application, and November 2016 interview at the New York City, New York Field Office. The Director also referenced findings in the [REDACTED] 2015 SIJ order. Specifically, the SIJ order provided the Petitioner was the sole provider for himself and his mother despite his visa and asylum applications listing he had not been employed and his visa application listing his mother as the one paying for his travel to the United States. The Director then noted that during the November 2016 interview, the Petitioner stated his father never gave him money and his coworkers gave him money to travel to the United States. However, in his [REDACTED] 2013 statement, the Petitioner asserted his father paid smugglers to help him travel to the United States. The Director noted the Petitioner’s father paying for and arranging his travel is inconsistent with the Petitioner’s claim that he was abandoned by his father.

Furthermore, the SIJ order provided the Petitioner’s father abandoned him and did not return home until the Petitioner was 17 years old. However, in the Petitioner’s November 2016 interview he indicated his father returned home on April 15, 2013, when he would have been 18 years old and after he claimed to have left his home to live in a Sikh temple and around the time he left India to travel to the United States. As a result of these inconsistencies, the Director determined that the Petitioner did not establish that his father was residing with him during the time he claims he was abused. Based on the above, the Director was unable to determine whether a primary reason for the Petitioner seeking the SIJ order was to obtain relief from parental maltreatment, and therefore USCIS’ consent was not

² We use initials to protect the privacy of individuals.

warranted.³ The Petitioner responded to the NOID with a brief and documents including, but not limited to, educational records, court filings, affidavits, and identification documents.

The Director reviewed the Petitioner's response and determined that USCIS' consent was not warranted as the record contained material inconsistencies. The Director listed the abovementioned information from the NOID and addressed the Petitioner's claims that he did not understand the legal process and the impact of his statements when apprehended in the United States, but the Director did not give them weight as the Petitioner was an adult at the time of his sworn statements, he provided specific and detailed responses, and he swore that the statements were true and correct to best of his knowledge. The Director concluded that USCIS' consent was not warranted because the Petitioner did not establish that a primary reason he sought the SIJ order was to obtain relief from parental maltreatment.

B. Consent Not Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). We do not question the Family Court's purpose in issuing its orders, but here, USCIS' consent is not warranted because evidence materially conflicts with the eligibility requirements and the Petitioner has not established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New York law.

To warrant USCIS' consent, juveniles must establish that the request for SIJ classification was *bona fide*, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , 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. 8 C.F.R. § 204.11(b)(5); *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). Furthermore, 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*. 8 C.F.R. § 204.11(b)(5).⁴

³ In addition, the Director stated that USCIS' consent was not warranted because there was no reasonable factual basis for the Family Court's best interest ruling. The Director also mentioned that the Petitioner did not establish he was residing in New York or under jurisdiction of the Family Court at the time of his SIJ order. Lastly, the Director noted that the SIJ order is not clear whether reunification is not viable with one or both of the Petitioner's parents, and whether it is not viable due to abuse, neglect, abandonment, or a similar basis under state law.

⁴ In the preamble to the final rule, DHS explained that "USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification such that the record reflects that the request for SIJ classification was not bona fide. . . . This may include situations such as one in which a juvenile court relies upon a petitioner's statement, and/or other evidence in the underlying submission to the juvenile court, that the petitioner has not had contact with a parent in many years to make a determination that reunification with that parent is not viable due to abandonment, but USCIS has evidence that the petitioner was residing with that parent at the time the juvenile court order was issued. Such an inconsistency may show that the required juvenile court determinations were sought primarily to obtain an immigration

On appeal, the Petitioner submits a brief, an affidavit, and previously submitted documents. The Petitioner asserts that his SIJ order includes the requisite findings listed in section 101(a)(27)(J) of the Act, and he has submitted evidence which establishes his eligibility for SIJ classification. The Petitioner states that he told the Family Court his trip to the United States was funded by his mother, sister, and coworkers. He asserts that his statement upon apprehension in [REDACTED] 2013, in which he stated his father paid for his trip, should not be relied upon as he did not know how to explain the money came from different sources, language and cultural barriers caused him fear and confusion, and he was still a juvenile at the time of the interview. The record reflects that his [REDACTED] 2013 interview was taken when the Petitioner was 18 years old, and he was provided a Punjabi language interpreter. Therefore, we give minimal weight to his claims and acknowledge the material inconsistencies related to his father's financial assistance and lack of abandonment.

Next, the Petitioner states that he left India on April 15, 2013, as reflected in his SIJ order and asylum application, and therefore it is highly unlikely he would state his father returned home on the date of his departure from India as indicated in his November 2016 interview.⁵ The Petitioner mentions that he may have misunderstood the question, or his answer was misunderstood. The Petitioner states that he left his house in January 2013, and he stayed in a Sikh temple until he departed India in April 2013. The Petitioner's statements on appeal do not resolve the material inconsistencies in the record pertaining to whether his father was residing with him during the time he claims he was abused.

The Petitioner has not established by a preponderance of the evidence that a primary reason he sought the SIJ order was to gain relief from parental maltreatment such that USCIS' consent is warranted. There is no indication that the Family Court was aware of the material inconsistencies described above, which directly relate to whether his father abandoned and abused him, as determined by the Family Court. Therefore, the Petitioner has not met his burden of establishing that his SIJ petition is *bona fide*, such that USCIS' consent to a grant of SIJ classification is warranted. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.⁶

ORDER: The appeal is dismissed.

benefit rather than relief from parental maltreatment.” Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13089 (March 8, 2022).

⁵ The Petitioner previously stated that his father returned home in January 2012, when he was 17 years old, and began physically abusing him.

⁶ As we determined that the Petitioner has not established by a preponderance of the evidence that he warrants USCIS' consent, we decline to reach and hereby reserve the Petitioner's arguments that it was not in his best interest to be removed from the United States and returned to India. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (explaining that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).