



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

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

In Re: 18783127

Date: OCT. 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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish that she is unmarried and that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment. On appeal, the Petitioner asserts her 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 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), (c)(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 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 Petitioner, a native and citizen of Guatemala, entered the United States without inspection, admission, or parole in February 2018. In [REDACTED] 2020, when the Petitioner was 20 years old, the Massachusetts Probate and Family Court in [REDACTED] (Family Court) issued a *Judgment of Dependency Pursuant to G. L. c. 119, § 39M* (SIJ order) for her. In its order, the Family Court declared the Petitioner to be “dependent upon this Court for his/her protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of Child or to remedy the effects on Child of abuse, neglect, abandonment, or similar circumstances.” The Family Court determined that it is not viable for the Petitioner to reunify with her father due to neglect and abandonment pursuant to “G.L. c. 119 sec. 39M” and “G.L. c. 215 sec. 6.” The Family Court also determined it is not in the Petitioner’s best interest to return to Guatemala.

Based on the Family Court’s judgment, the Petitioner filed her SIJ petition. The Director issued a request for evidence (RFE) and a notice of intent to deny (NOID) notifying the Petitioner about discrepancies in the record concerning her marital status and her primary purpose for the request for SIJ classification. The Petitioner responded with a brief for both the RFE and NOID. The Director subsequently denied the SIJ petition, concluding that the Petitioner did not establish that she is unmarried and that she sought SIJ classification to obtain relief from parental maltreatment and that her request warrants USCIS consent.

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that she has never been married and argues that the SIJ order was sought to gain relief from her father’s neglect and abandonment and USCIS’ consent is therefore warranted.

B. The Petitioner Established She is Unmarried

A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be unmarried and 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)-(2) (stating that an SIJ petitioner must be under 21 years of age and unmarried); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(d)(6), Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed).

In the SIJ petition, the Petitioner indicated that she was single. However, the record shows that during her Credible Fear Interview in March 2018, the Petitioner stated several times that she was married to D-C-.¹ In response to the RFE, NOID and on appeal, the Petitioner explains that D-C- was her live-in domestic partner and not her husband. On appeal, the Petitioner further explains that “[i]n the Spanish language, “marido” or “esposo” is used interchangeably for one’s legal spouse as well as for one’s domestic partner.” Therefore, when the Petitioner said, “my husband,” she asserts that she was in fact referring to her live-in domestic partner. In support of her assertions, the Petitioner submits on appeal a Certificate of Non-Impediment from the Civil Registry of the People in [REDACTED] Guatemala that states she does not have any annotations in the Civil Registry that modifies her civil status and, therefore, she is single. Upon review, we find that the Petitioner has overcome this ground for denial. As such, the Director’s determination that the Petitioner did not establish that she is single is withdrawn.

C. USCIS’ Consent is Warranted

As previously noted, the Director also determined the Petitioner does not merit USCIS’ consent to SIJ classification as she did not establish that she is seeking SIJ classification to obtain relief from parental maltreatment. On appeal, the Petitioner contends that the family court reviewed her Affidavit in Support of Special Findings of Fact and Law, and its findings and judgment were based on the established facts.

As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 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). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

In the instant matter, USCIS’ consent is warranted because the Petitioner has established by a preponderance of the evidence that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit. Here, the SIJ order cites to M.G.L. ch. 119, section 39M for its jurisdiction, declares the Petitioner dependent on the court, and includes the juvenile court’s determinations that reunification with the Petitioner’s father is not viable due to abandonment and neglect and that it is not in the Petitioner’s best interest to return to Guatemala. *See* 8 C.F.R. § 204.11(d) (evidentiary requirements for USCIS consent). The evidence submitted also provides a factual basis for the parental reunification and best interest determinations. *See id.* The SIJ order also refers the Petitioner to probation for occupational and domestic violence counseling. The court further specifies that it is in the best interest of the Petitioner to remain in the care of N-S-P- and that “[t]his Judgment is issued for the protection from abuse, abandonment, and neglect, and for the health, safety, and well-being of” the Petitioner.

¹ We use initials to protect the privacy of individuals.

Accordingly, the SIJ order establishes, by a preponderance of the evidence, that a primary reason the Petitioner sought the juvenile court order was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief. Consequently, the Petitioner has demonstrated that she is eligible for and merits USCIS' consent to her request for SIJ classification.

III. CONCLUSION

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

ORDER: The appeal is sustained.