



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

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

In Re: 17741773

Date: OCT. 13, 2022

Certification 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). On appeal, we remanded the matter to the Director for the entry of a new decision and requested certification if the decision was adverse to the Petitioner. The Director issued a new decision denying the SIJ petition and the matter is now before us on certification. The Petitioner has not submitted a brief or additional evidence on certification. The Administrative Appeals Office reviews 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 affirm the Director's decision denying the petition.

I. LAW

To establish eligibility for SIJ classification, a petitioner 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 of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b).¹ The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 petitioner's 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a 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

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).

was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). 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. *Id.* The petitioner bears 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 Factual and Procedural History

In [] 2017, when the Petitioner, a native and citizen of Honduras, was 18 years of age, his sister filed a *Complaint for Custody* with the South Carolina Family Court for [] (Family Court). She requested the Family Court to grant her “permanent and sole custody (nunc pro tunc)” of the Petitioner and to find that the Petitioner is under 21 years of age and unmarried, that his parents abandoned him and “reunification is not possible[,]” and that it would not be in his best interest to return to Honduras. In [] 2017, the court issued a *Nunc Pro Tunc Order to Dismiss*, stating, in pertinent part, that “the case is hereby dismissed due to the minor child turning eighteen[,]” “all relief as requested in the Plaintiff’s Complaint and Prayer for Relief is made a final order of this court by way of the court’s *nunc pro tunc* powers[,]” and the “Defendant [the Petitioner’s parents] has made no response to the relief requested and publication was made on [] 2017. Thirty days have since elapsed and there has been no responsive pleading filed.”

In June 2017, based upon the Family Court’s order, the Petitioner filed his SIJ petition. The Director denied the petition for lack of a qualifying determination regarding parental reunification, concluding that the record did “not establish that the state court had jurisdiction under state law to make a legal conclusion about returning [the Petitioner] to [his] parent(s)’ custody” because he had already attained the age of majority in South Carolina when the Court issued its order. The Director also indicated that the Petitioner must demonstrate the Court’s “authority to determine whether the allegedly unfit parent should regain or lose custody of [the Petitioner].”

On appeal, we found that after the Director’s denial of the Petitioner’s SIJ petition, a newly adopted decision instructed that USCIS does not require a petitioner to demonstrate the juvenile court had jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification.² We remanded the matter to the Director and noted that although the Petitioner overcame the sole basis for the denial, the Director did not address whether the Family Court was acting as a juvenile court and did not make all the requisite determinations regarding parental reunification, custody or dependency, the Petitioner’s best interest, and whether USCIS’ consent to his SIJ classification is warranted.

² *Matter of D-Y-S-C-*, Adopted Decision 2019-02, (AAO Oct. 11, 2019). This adopted decision was superseded by the SIJ final rule, effective April 7, 2022, amending regulations governing the requirements and procedures for petitioners who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. at 13066. USCIS updated guidance in the USCIS Policy Manual to incorporate these changes. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic. USCIS Policy Alert PA-2022-14, Special Immigrant Juvenile Classification and Adjustment of Status (Jun. 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>.

The Director issued a new decision, finding that the record as a whole, including the evidence submitted with the initial SIJ petition and in response to the Notice of Intent to Deny (NOID), did not establish that the Petitioner warrants USCIS consent. Specifically, the Director determined that the submitted evidence did not indicate whether the court provided some form of relief to protect the Petitioner from parental abuse, abandonment, neglect, or a similar basis under state law. The Director also noted that while the record contains the *Complaint for Custody*, which was filed 35 days after the Petitioner turned 18, the subsequent *Nunc Pro Tunc Order to Dismiss* stated that the court dismissed the case because the Petitioner turned 18. Further, the record did not include evidence that a final hearing was held concerning the custody proceedings and therefore it was unclear whether the nature and purpose of the court proceedings was to grant relief from abuse, abandonment, neglect, or a similar basis under state law. The Director stated that the evidence indicated the Petitioner's primary purpose in seeking the court order was to file a petition for SIJ classification and referred to the *Complaint for Custody*, which notes the Petitioner is in immigration court proceedings and the only relief available for him requires a family court making a finding of custody and that it would not be in his best interest to be returned to Honduras. On certification, the Petitioner does not submit a brief or additional evidence.

B. USCIS' Consent Is Not Warranted

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). 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.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. *See* 8 C.F.R. § 204.11(d)(5)(ii).

Here, the Petitioner has not established that 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. The record does not indicate that the Family Court granted any form of protective relief from parental abuse, abandonment, neglect, or a similar basis under state law. Though we acknowledge that

relief may include a court-ordered custodial placement, the *Nunc Pro Tunc Order to Dismiss* does not reference any prior judicial action regarding the Petitioner, and the record, including the *Complaint for Custody*, does not otherwise demonstrate the existence of a previous judicial action or order relating to the Petitioner's care, custody, or other requirements for SIJ classification. Moreover, the order does not clarify whether there was a previous award of custody. Therefore, the record does not establish that the Petitioner sought the requisite juvenile court determinations primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit, such that USCIS' consent to his request for SIJ classification is warranted. Accordingly, the Petitioner has not demonstrated his eligibility.

We further note that the record indicates additional grounds of ineligibility not addressed by the Director. The Petitioner has not established that the *Nunc Pro Tunc Order to Dismiss* is a qualifying court order for purposes of establishing his SIJ eligibility. Without evidence of an underlying order, the Petitioner has not met his burden to establish that the *nunc pro tunc* order is a qualifying court order for SIJ purposes. See 6 USCIS Policy Manual J.2(C), <https://www.uscis.gov/policy-manual> (discussing evidentiary requirements for juvenile court orders). In addition, the order lacks a qualifying parental reunification finding or custody placement, as neither the order nor the complaint establishes the basis in South Carolina law for the abandonment finding or for granting custody of a child *nunc pro tunc* after the child has reached age 18. See section 101(a)(27)(J)(i) of the Act; see also 6 USCIS Policy Manual J.3(A)(1) (indicating, as guidance, that the SIJ order should use language establishing that the specific judicial determinations were made under state law.) The Petitioner has also not established that the Family Court exercised jurisdiction over him as a juvenile under South Carolina law because it issued the order and made the requisite SIJ-related determinations after the Petitioner's 18th birthday. See 8 C.F.R. § 204.11(a), (c)(3)(i) (requiring courts to have jurisdiction over and make determinations about juveniles under applicable state law).³

ORDER: The petition is denied.

³ The Petitioner must address these deficiencies in any subsequent motions or filings.