



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

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

In Re: 18570634

Date: SEP. 16, 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 denied the petition because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment and was therefore not eligible for SIJ classification. On appeal, the Petitioner submits a brief and asserts that he has established his eligibility for SIJ classification and that he warrants USCIS' consent in granting it.¹ 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).² 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

¹ Although the brief submitted on appeal was prepared by counsel representing the Petitioner in previous proceedings, the appeal was not accompanied by a new, properly completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative as required pursuant to 8 C.F.R. § 292.4(a). Accordingly we treat the Petitioner as self-represented in this matter.

² 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 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).

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. 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 Facts and Procedural History

In [] 2020, when the Petitioner was 19, the Circuit Court for [] Maryland (Family Court) issued an *ORDER REGARDING THE MINOR CHILD’S ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS* (SIJ order) in which it made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The SIJ order cites to Md. Code Ann., Fam. Law §§ 9.5-201 and 1-201 for the court’s jurisdiction, and finds that the Petitioner “shall” be placed under the sole physical and legal custody of S-M-C-R-.³ The record also includes a custody order issued by the Family Court placing the Petitioner under S-M-C-R-’s sole physical and legal custody. In the SIJ order, the Family Court finds that reunification with the Petitioner’s parents is not viable due to neglect and abandonment under Md. Code Ann., Fam. Law § 5-701, defining “neglect,” and Md. Code Ann., Fam. Law § 9.5-101, defining “abandonment,” and sets forth the facts forming the basis for this determination. In addition, the SIJ order finds that it is not in the best interest for the Petitioner to return to his country of nationality and that it is in his best interest to remain in the United States in the care of S-M-C-R-.

In November 2020, the Director issued a notice of intent to deny (NOID) requesting that the Petitioner provide additional evidence to establish a factual basis for the best interest determination made in the SIJ order. The Director also advised the Petitioner that, due to material inconsistencies between statements made by the Petitioner to federal agents when he was apprehended and the parental reunification finding in the SIJ order, USCIS was unable to determine if a primary purpose for obtaining the SIJ order was to obtain relief from parental mistreatment or for immigration purposes. Specifically, the Director noted that when the Petitioner was apprehended by federal agents at the border, the Petitioner indicated that his father made arrangements to have him smuggled to the United States and that his father had made arrangements to pay his smugglers. The Director further noted that the Petitioner told these agents that he was entering the United States to stay with his uncle and attend school. The Director explained that these statements were materially inconsistent with the parental reunification determination made by the Family Court that reunification was not viable because the Petitioner’s parents had abandoned him when he was a toddler.

³ Initials are used to protect the privacy of the individual.

With his timely response to the NOID, the Petitioner submitted an affidavit in which he attested that he could not remember what he had said to the agents when he was apprehended, but that he would not have said anything about his biological father because his father had never helped him. He also submitted a sworn statement from counsel asserting that he had never made such statements.

The Director then denied the SIJ petition, concluding that the Petitioner had not established that his request for SIJ classification was bona fide and that USCIS' consent is warranted because the record lacked a factual basis for the Family Court's best interest determination and because it lacked evidence explaining the aforementioned inconsistencies or showing that the Family Court was aware of these inconsistencies when it issued the SIJ order.

On appeal, the Petitioner contends that the SIJ order in the record below establishes his eligibility for SIJ classification.

B. USCIS' Consent is Warranted

To warrant USCIS' consent, petitioners must establish that 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, 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. *See id.*; *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

Upon *de novo* review, the Petitioner has established that USCIS' consent to his request for SIJ classification is warranted. As an initial matter, contrary to the Director's conclusion, the record below contained a reasonable factual basis for the best interest determination made by the Family Court in the SIJ order. The SIJ order was issued “[u]pon the foregoing Amended Petition and supporting documentation, as well as upon all the pleadings and testimony herein.” Upon review of these documents, the Family Court set forth facts that formed the basis for its parental reunification

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

determination, including that the Petitioner's parents had abandoned him as a toddler and have not been in contact with him since, and that his parents had not provided "any support, emotional, psychological, or financial" in his entire life. Upon consideration of the documents containing these facts, the Family Court found that the Petitioner should be placed in the sole legal and physical custody of S-M-C-R-. It further found that it was in the Petitioner's best interest not to return to his country of nationality but rather to remain in the United States and in the care of S-M-C-R-, "in whose care [he] had been for over a year." In totality, a preponderance of the evidence establishes that the supplemental evidence in the record included the factual basis for the Family Court's best interest determination, as required at 8 C.F.R. § 204.11(d)(5)(i).

As it relates to the inconsistencies identified in the Director's decision between the Petitioner's statements to agents upon his apprehension and the Family Court's parental reunification determination, the Petitioner provided a reasonable explanation for these inconsistencies in an affidavit submitted with his NOID response. In this affidavit, the Petitioner stated that he had entered the United States four months after gangs had killed his uncle and that he could not remember what he told the agents at the border but that he could not have said anything about his biological father because "he has never helped me." As noted in the USCIS Policy Manual, "[c]hildren often do not share personal accounts of their family life with an unknown adult," so we "should exercise careful judgment when considering statements made by children at the time of initial apprehension by immigration or law enforcement officers to question the determinations made by the juvenile court."

6 *USCIS Policy Manual* J.3(B), <https://www.uscis.gov/policy-manual>. In addition, although the Petitioner indicated to agents at the time of his apprehension that he intended to live with his uncle and to pursue his education, this is not in conflict with the Family Court's conclusions.

Based upon the foregoing, the Petitioner has demonstrated, by a preponderance of the evidence that the record below contained the factual basis for the Family Court's best-interest determination required to warrant USCIS' consent to his request for SIJ classification. *See* 8 C.F.R. § 204.11(d)(5)(i). The Petitioner has further shown, by a preponderance of the evidence, that his request for SIJ classification was bona fide such that a primary reason that 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. The Petitioner therefore has established, by a preponderance of the evidence, that USCIS' consent to his request for this classification is warranted, as section 101(a)(27)(J)(i)-(iii) of the Act requires.

ORDER: The appeal is sustained.