



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

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

In Re: 13692346

Date: SEP. 20, 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 petition because the Petitioner did not establish that her petition for SIJ classification was *bona fide* and therefore that U.S. Citizenship and Immigration Services' (USCIS) consent was not warranted. 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).

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

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).

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

In [REDACTED] 2018, when the Petitioner was 16 years old, the Family Court of the State of New York in the [REDACTED] issued an *Order Appointing the Guardian of the Person*, appointing R- as the Petitioner's guardian.² In a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), the Family Court made determinations, pursuant to sections 661 and 1012 of the New York Family Court Act, and New York State (NYS) Surrogate's Court Procedure Act § 1701, necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Family Court determined that reunification with the Petitioner's father was not viable due to abandonment pursuant to NYS Social Services Law 384-(b)(5)(a), as the Petitioner's father had "failed to maintain contact with [the Petitioner] for over 5 years." The Family Court also found that the Petitioner's mother was unable to provide for her, and that the Petitioner feared her mother would force her into child marriage. The Family Court determined that it was not in the Petitioner's best interest to return to India, her country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in February 2019. While the SIJ petition was pending, the Director issued a request for evidence (RFE), requesting evidence to address inconsistencies with information in the Petitioner's record. The Director notified the Petitioner that it was inconsistent for the Family Court to conclude, in 2018, that the Petitioner's father abandoned her "for over 5 years" when records indicated that that her father appeared with her for a nonimmigrant visa interview in 2015 and provided financial documents and employment information from her father at a second nonimmigrant visa interview in 2016. In her response to the RFE, the Petitioner submitted a personal statement, where she claimed that her father left her and her mother in 2013, and that in 2015, when she heard about a school trip to the U.S., she begged her mother to contact her father to come to the embassy for the visa interview. The Petitioner further stated that she believed her father came to the interview due to her mother's insistence. The Director denied the SIJ petition in July 2020 determining that the Petitioner had failed to meet her burden of showing that her petition for SIJ classification was *bona fide* and therefore, she did not warrant USCIS' consent to SIJ classification.

B. USCIS' Consent is 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 the Petitioner has not adequately addressed material inconsistencies in the record regarding her claim of abandonment by her father.

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

² We use initials to protect the identity of individuals.

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).

On appeal, the Petitioner submits a brief. She states that she “does not deny that her father appeared with her for her visa interview once in 2015” and notes that she explained why he agreed to appear for the interview, which was due to the insistence of the Petitioner’s mother and other parents in the community. The Petitioner further notes that at the second interview in 2016, her father did not appear, but provided financial documents. The Petitioner states that the appearance in 2015 and his providing financial documents in 2016, “do not negate the fact that he had abandoned [the Petitioner].” The Petitioner states that her father had not had contact with her in the two years prior to the visa interview and has had no contact with him “since her arrival in the United States.” The Petitioner argues that her failure to disclose this information to the Family Court was a “mere oversight” on her part and claims that “[e]ven if the family court was aware of this fact, it would not have changed the finding of abandonment as this contact was insignificant and is not inconsistent with the claim of abandonment.”

In support of the Petitioner’s argument, she cites to *Matter of Carter A. (Jason A.)*, 111A.D.3d 1181, 977N.Y.S.2d 415, 2013 NY Slip Op 7891 (2013). This case held that “two visits within the six-month period preceding the filing does not preclude finding of abandonment.” The Petitioner further cited other cases in New York where contact with a parent was infrequent, but the court still held that abandonment had occurred. We acknowledge the submission of caselaw regarding what does and does not constitute abandonment under New York law. However, we disagree with the Petitioner’s assertion that, had she disclosed the contacts with her father, “it would not have changed the finding of abandonment,” as she did not disclose the contacts to the Family Court, and therefore, they did not rule specifically in her case regarding this issue. The fact remains that the Petitioner’s SIJ order specifically states that she had been “abandoned for over 5 years” and the Petitioner admits to not informing the Family Court of her contacts with her father in the years between 2013 and 2018.³

The Petitioner has not established by a preponderance of the evidence that USCIS consent is warranted, as she has not adequately addressed the material inconsistencies in the record. Despite the evidence submitted by the Petitioner, there is no indication that the Family Court was aware of the Petitioner’s contacts with her father in 2015 and 2016 before it issued the SIJ order stating that the Petitioner has been abandoned by her father for “over 5 years.” *See* 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”). Therefore, the Petitioner

³ Aside from the *Order Appointing the Guardian of the Person* and the SIJ order, there is no other evidence in the record, such as the underlying petition for guardianship, documents submitted to the Family Court supporting the SIJ order, court transcripts, affidavits summarizing the evidence presented to the court, or other records that indicate what the Petitioner told the court regarding the abandonment by her father.

has not met her burden of establishing, by a preponderance of the evidence, that her SIJ petition is bona fide, such that USCIS' consent to a grant of SIJ classification is warranted.

Accordingly, the Petitioner has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.