



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

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

In Re: 13382353

Date: SEP. 23, 2022

Motion on Administrative Appeals Office 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 District Director, New York, New York, (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and we dismissed the Petitioner's appeal. The matter is now before us on a motion to reopen and reconsider. Upon review, we will grant the motion to reopen and sustain the appeal. The motion to reconsider is moot.

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).

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

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).

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).

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). 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

In our prior decision, incorporated here by reference, we determined that the Petitioner, a native and citizen of India, had not established that USCIS' consent to his SIJ classification was warranted due to an unresolved discrepancy related to the identity of his father. We explained that although the guardianship order, underlying petition, and birth certificate of the Petitioner indicated that his father's name was '[REDACTED]' and he represented the same during a 2017 USCIS interview, the biographical pages of the Petitioner's passport stated that his father's name was '[REDACTED]' and the record indicated that his family had used this name when applying for visas in 2011. We concluded that because the identity of the Petitioner's father was in question, he had not demonstrated that he sought the family court's orders to gain relief from his father's abuse, and not primarily to obtain an immigration benefit.

On motion, the Petitioner provides an affidavit explaining that his father's true name is '[REDACTED]' and that he was born on [REDACTED] 1970. The Petitioner states that the name that appears on his birth certificate as his father, '[REDACTED]' is incorrect, that he only became aware of this issue when he was older, and that it is very common in India for the two names to be used as if they were the same name. The Petitioner also submits an affidavit from his father, who states that his name is '[REDACTED]' his date of birth is [REDACTED] 1970, and the names are used interchangeably, as evidenced by his Government Tax ID of India, which states that his name is '[REDACTED]'. He states that he did not notice the error on the Petitioner's birth certificate until the Petitioner was older and did not attempt to correct it. The Petitioner further provides an affidavit from his grandfather, R-P-,² corroborating the accounts of the Petitioner and his father and stating that the guardianship petition was prepared using the information on the Petitioner's birth certificate and that they forgot to explain the issue to their prior attorney. R-P- states that he implored the Petitioner's father to send an affidavit explaining the issue and that although he was initially reluctant to do so, he ultimately provided it.

In addition, the Petitioner submits documentary evidence that his father is '[REDACTED]'. Specifically, he provides a Government of India identification card, biographical passport page, Election Commission of India Identity Card, Union of India Driving License, Leaving Certificate (High Secondary School), marriage certificate, and birth certificate with the name [REDACTED] and [REDACTED] 1970, date of birth. In addition, the Government of India, Income Tax Department document referenced in the affidavit of the Petitioner's father identifies an individual named [REDACTED] with the [REDACTED] 1970, date of birth.

² We use initials to protect the privacy of individuals.

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).³

Here, the preponderance of the evidence establishes that the identity of the Petitioner's father is [REDACTED] and clarifies that the two names that appear in the record as the Petitioner's father belong to the same individual. In addition, the Petitioner has established that he satisfies the remaining eligibility requirements for SIJ classification. Consequently, the Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification.

ORDER: The motion to reopen is granted and the appeal is sustained.

³ 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).