



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

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

In Re: 16273938

Date: FEB. 28, 2023

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, concluding that the Petitioner did not establish that he was under the age of 21 when he filed the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and was therefore not eligible for SIJ classification. The Director also concluded that consent to the request for SIJ classification was not warranted because the Petitioner did not establish that the primary purpose of seeking the juvenile court order was to obtain relief from parental maltreatment. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review 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 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. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

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).

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

The Petitioner claims that he was born in Bangladesh in [] 1998. The record indicates that he last entered the United States without inspection in December 2015. In [] 2017, when the Petitioner asserts that he was 18 years old based on this claimed date of birth, the New York Family Court for [] County (Family Court) appointed A-B² as the Petitioner’s guardian pursuant to proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate’s Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The guardianship order stated that “the appointment shall last until the [Petitioner’s] 21st birthday . . .” In a separate order titled *ORDER* (SIJ order), also issued in [] 2017, the Family Court determined, among other findings, that the Petitioner was “dependent upon the family court.” The Family Court also found that the Petitioner’s reunification with his father and mother was not viable due to abandonment or a similar basis under section 384-B of the New York Social Services Law (N.Y. Soc. Serv. Law), which defines an abandoned child. The SIJ order included the court’s factual findings that the Petitioner’s father had “fail[ed] to provide [the Petitioner] with financial or emotional support while living in Bangladesh and by forcing him to leave his home . . . without any financial support or further contact” and both parents had “evinced an intent to forego [their] parental rights by . . . a continuous failure to communicate with, or visit” with the Petitioner such that the Family Court was forced to appoint a guardian. In addition, the Family Court concluded that it would not be in the Petitioner’s best interest to return to Bangladesh, his country of nationality or last habitual residence, because “he would not have anyone to care for him and he would not have a safe home environment in which to live.”

In August 2017, the Petitioner filed his petition for SIJ classification based on the Family Court orders. Documents that the Petitioner provided below in support of his claimed [] 1998 date of birth include: his personal statement; a birth certificate showing that his mother registered his birth in Bangladesh in December 2015 (after the Petitioner had already departed Bangladesh); a Bangladeshi nationality certificate from May 2020; a partial copy of a Bangladeshi passport issued to him in June 2017; his school records from Bangladesh; a statement from his aunt claiming that she was present at the Petitioner’s birth in [] 1998 and served as midwife; and a child vaccination card. The Director subsequently denied the SIJ petition, concluding that the Petitioner was ineligible for SIJ classification because the record contained material inconsistencies regarding his true date of birth and therefore he

² We use initials to protect identities.

had not shown that he was under 21 years of age when he filed his SIJ petition, as required. Specifically, the Director stated that although the Petitioner claimed on the SIJ petition that his date of birth is in [] 1998, U.S. government records showed that the Petitioner had previously claimed a date of birth in [] 1992, which would mean that he was 25 years of age when he filed the SIJ petition. The Director further concluded that USCIS' consent to the Petitioner's request for SIJ classification was not warranted because the record also contained material inconsistencies regarding the Petitioner's claimed lack of relationship with his mother, indicating that the Petitioner's primary purpose in seeking the juvenile court order was to obtain an SIJ order for immigration purposes rather than to obtain relief from parental maltreatment.

On appeal, the Petitioner contends that he has established by a preponderance of the evidence that his date of birth was in [] 1998, and therefore that he was under 21 years of age when he filed his SIJ petition in August 2017. He claims that the Director's denial of his petition is arbitrary and capricious in light of the documents he has provided as valid proof of identity, and that since his 2015 encounter with U.S. Customs and Border Protection, he has continuously claimed that his correct date of birth is in [] 1998. In addition, the Petitioner argues that aside from when he claimed the [] 1992 date of birth to Panamanian authorities in 2015 while in transit to the United States, there is no evidence that his date of birth is anything other than in [] 1998. He explains that he told immigration officers in Panama that his date of birth was in [] 1992, because his smuggler had told him beforehand that Panama might keep him "in the camp" if they found out that he was only 17 years old. Documents that the Petitioner submits on appeal in support of his claimed [] 1998 date of birth include: his statement; a partial copy of a second Bangladeshi passport, issued in October 2017; and a medical record from Bangladesh. The Petitioner also includes on appeal a statement from his sister explaining that she had to obtain their mother's assistance in registering the Petitioner's birth for the first time in 2015, and a notarized November 2020 Nationality Certificate from a local official in his hometown in Bangladesh, who attested that the Petitioner's mother had registered the Petitioner's birth in December 2015, using his medical and school records as evidence of his [] 1998 date of birth.

Although the Petitioner claims on appeal that USCIS does not have evidence to refute his claim that his date of birth is in [] 1998, he admits in his own statement on appeal to having used the [] 1992 date of birth to authorities in Panama.³ In addition, he admits he used another travel document en route to the United States, and apart from stating that it was a false document that a smuggler obtained for him and later took away, he does not further explain whether that travel document was in his name and claimed [] 1998 birthdate, the [] 1992 birthdate, or an entirely different identity and date of birth. Additionally, although not previously raised, USCIS records also show that the Petitioner appears to have used the [] 1992 date birth a second time when U.S. immigration officials encountered him in December 2015.

In addition, evidence the Petitioner submitted to USCIS in the context of his SIJ petition, intended to show that his date of birth is in [] 1998, is also inconsistent with his prior claims to USCIS. Specifically, the Petitioner submitted school records in support of his SIJ petition that show he passed the annual exam for Grade 6 at [] High School in December 2013, and passed the

³ The record indicates that the Petitioner's encounter with Panamanian officials occurred in October 2015.

subsequent annual exam for Grade 7 at [REDACTED] Cadet School in 2014.⁴ According to a notarized November 2020 Nationality Certificate from the local official from his hometown, the information in his December 2015 birth registration, including his claimed [REDACTED] 1998 date of birth, is based, in part, on these school records. However, the Petitioner's 2016 Form I-589, Application for Asylum and Withholding of Removal, does not reflect that he attended either of these schools. In addition, the record indicates that during his May 2017 asylum interview, the Petitioner inconsistently told the interviewing USCIS officer that he had attended [REDACTED] Primary School from June 2003 to December 2011, and [REDACTED] High School in Bangladesh from January 2012 to December 2014, during the same period that the school records submitted in these SIJ proceedings reflect he attended the two other schools. The record lacks any explanation for this discrepancy in the school records he provided. Moreover, the two passports that the Petitioner submitted in these SIJ proceedings bearing the [REDACTED] 1998 birthdate were issued three months apart in 2017: one with a validity period of June 2017 to June 2022; and the other with a validity period of October 2017 to October 2022, and a spelling error in the stamp of the issuing official, the "Frist" Secretary (Passport and Visa Wing). The record contains no explanation as to why the Petitioner has two passports with overlapping validity dates.

We acknowledge the Petitioner's evidence in support of his claimed date of birth. However, in light of the unresolved discrepancies in the Petitioner's own statements and evidence in the record relating to his date of birth, he has not established by a preponderance of the evidence that his date of birth is in [REDACTED] 1998. As a consequence, the Petitioner also has not established by a preponderance of the evidence that he was under 21 years old on the date that he filed his SIJ petition. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b); *see also Matter of Chawathe*, 25 I&N Dec. at 375 (stating that it is the Petitioner's burden to establish eligibility for the benefit sought).

As this basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issues as to whether USCIS' consent is warranted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not overcome the Director's decision on appeal as he has not established that he was under 21 years of age at the time of filing. He is therefore ineligible for SIJ classification.

ORDER: The appeal is dismissed.

⁴ The school records from [REDACTED] Cadet School submitted in these SIJ proceedings reflect that the school was established in 2013; therefore, it cannot be related to [REDACTED] High School, which the Petitioner had previously claimed on her asylum application to have attended beginning in January 2012.