



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

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

In Re: 17274759

Date: JAN. 11, 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 (Director) 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 therefore her request for SIJ classification was not bona fide and USCIS consent was not warranted. On appeal, the Petitioner asserts her eligibility for SIJ classification. 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) 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. 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. *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.

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).

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).

I. ANALYSIS

A. Relevant Evidence and Procedural History

In [] 2019, when the Petitioner was 20 years old, the [] Family Court in New York appointed guardianship of the Petitioner to her aunt, R-K-, ² finding that such appointment would last “until the subject’s 21st birthday.” *Order Appointing Guardian of the Person*, dated [] [] 2019. In a separate order dated [] 2019, the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, the Petitioner is “dependent upon the Family Court.” The Family Court also found that the Petitioner’s reunification with her parents was not viable due to neglect and abandonment. The Family Court noted that the Petitioner’s parents had evinced an intent to forego their parental rights and obligations by failing to visit and communicate with the Petitioner and neglecting to provide her with adequate food, clothing, shelter, or education. The Family Court also determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to Albania, her country of nationality, because the Petitioner had a strong support network in the United States, “including her guardian, who has been taking care of her for eight months, and there are no family members who are willing or able to provide [the Petitioner] with the basic needs and a safe home back in Albania.” *Order-Special Findings* (SIJ order), dated [] 2019. The SIJ order formed the basis of the Petitioner’s SIJ petition, which she filed in December 2019.

In January 2021, the Director denied the SIJ petition, concluding that USCIS’ consent was not warranted because the record contained material inconsistencies that established that the Petitioner’s primary purpose in seeking the juvenile court order was to obtain an order with factual findings to enable her file a petition for SIJ classification. Specifically, the Director noted that while the Petitioner had listed her grandfather on her student visa documents as the individual who would pay her academic expenses in the United States, government records indicated that the Petitioner had listed her mother on her extension of stay request as the individual responsible for paying her academic expenses. Further, the Director noted that while the Petitioner stated in response to a notice of intent to deny the SIJ petition that she was unable to register for a new semester at a university as R-K- lost her job in March 2020, the record indicated that R-K- was not the individual who was to pay the tuition, and the Petitioner did not resign her student status at the university until May 2020. The Director also detailed that it appeared that the Petitioner was not residing with R-K-, as her 2019 nonimmigrant visa application indicated she would reside with R-K- in [] New Jersey, but her SIJ petition stated that she resided in [] New York. Finally, the Director noted that the special findings order was issued less than 30 days before the Petitioner turned age 21, and the legal guardianship order was sought by the Petitioner less than three months after entering with a student visa. Therefore, the Director denied the SIJ petition, determining that there was insufficient evidence to establish that the

² Initials are used to protect the individual’s privacy.

Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment, rather than for immigration purposes.

B. Consent 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 established that a primary reason for seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New York law.

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 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"). 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

On appeal, the Petitioner maintains that the Director erred in finding that inconsistencies existed in the record and asserts that she is eligible for SIJ classification and warrants USCIS' consent. With respect to the two addresses that the Petitioner provided on immigration documents, R-K- asserts in an affidavit that she had a secondary address in New Jersey due to her employment, but the Petitioner has lived with her since she arrived in the United States. As for the Director's findings concerning payment of the Petitioner's academic expenses in the United States, the Petitioner maintains in her affidavit that when she applied for a student visa in February 2019, the Petitioner's grandfather was listed as the person who would fund her academic expenses on the Form I-20, Certificate of Eligibility for Nonimmigrant Student Status (Form I-20). The Petitioner states that when she later requested an extension of her student status in January 2020, her grandparents had run out of money and thus, she listed her mother as the person who would fund her academic expenses on the Form I-20. R-K- further maintains that she began paying her niece's tuition and the school did not give them any issues as the Petitioner was on a payment plan and the invoices were paid timely. In March 2020, when the

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).

coronavirus pandemic hit, R-K- states she lost her job temporarily and was unable to afford to pay the Petitioner's tuition.

On appeal, we find that USCIS' consent is not warranted because 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, and not primarily to obtain an immigration benefit. The record contains information that is materially inconsistent with the Family Court's findings concerning the Petitioner's parents' failure to provide her with support. The [REDACTED] 2019, SIJ order states that the Petitioner's parents "evinced an intent to forego their parental rights and obligations," failed to communicate with her, and "neglect[ed] to provide her with adequate food, clothing, shelter, or education," but when requesting an extension of her student status on January 6, 2020, less than two months later, she listed her mother as the person who would fund her academic expenses on the Form I-20. On appeal the Petitioner states, "my mother was listed because my grandparents could no longer afford to pay for me." She does not explain why she indicated on the Form I-20 that her mother would pay her expenses, despite stating that her mother "was neither supporting[her] nor had the money to cover the cost of tuition" and claiming her guardian was paying her expenses at the time. Furthermore, while R-K- stated that she made tuition payments so that the Petitioner could continue her studies, there is no evidence to support this assertion, and the Petitioner does not state when those tuition payments began, and who paid the Petitioner's tuition and other expenses before that.

In addition, while the Petitioner claims that she resided with R-K- in New York since arriving in the United States with her student visa in March 2019, and the Family Court noted in the [REDACTED] 2019 SIJ order that R-K- has been taking care of the Petitioner "for eight months," the Petitioner has not provided sufficient documentation to support that claim, and she and R-K- have provided inconsistent information concerning their residence. R-K- states in her January 2021 affidavit that the Petitioner has resided with her since her arrival in the United States and that they reside in the [REDACTED]. She states that she maintains "a secondary address in New Jersey" because of employment in New Jersey and further states, "my niece is always with me. If I ever need to stay at that address temporarily she is by my side. If there is another address in your records for me, this would be the reason for it." We note that government records indicate that R-K- had resided in [REDACTED] New Jersey since approximately 2014 and still resided there in 2019, and she does not specify when she began residing in New York or provide further detail about her employment or the need to maintain two residences. Further, the Petitioner stated in her January 2021 affidavit that "between the time I had applied for the visa and my arrival in America, my aunt had moved to the [REDACTED] . . . where I settled from the time of my arrival."⁴ The Petitioner makes no reference to R-K- having two homes, one in New York and one in New Jersey, or residing part-time at both locations.⁵

Government records indicate that the Petitioner's guardian resides in [REDACTED] New Jersey, and the record does not support the claim that she has resided in the [REDACTED] New York with the Petitioner. On

⁴ The Petitioner submitted her nonimmigrant visa application listing R-K-s address in New Jersey on February 21, 2019, the visa was issued on February 28, 2019, and she entered the United States with her F-1 visa on March 9, 2019.

⁵ We note that for the [REDACTED] Family Court in New York to have jurisdiction over the Petitioner's SIJ proceedings, the Petitioner would need to establish that she resided in New York. If she in fact resided in [REDACTED] New Jersey, the court would not have jurisdiction and the SIJ order would not be valid.

appeal, the Petitioner submits one page of a bank statement dated December 2020 listing R-K-'s address in the [redacted] New York but does not provide any other evidence that R-K- has resided in New York with the Petitioner and cared for her since March 2019 as she has asserted.

Finally, the Petitioner has not submitted copies of documents she submitted to the Family Court in New York in support of her SIJ and guardianship proceedings, such as the petitions themselves, court transcripts, or records from the judicial proceedings. It is thus unclear what information was provided to the court concerning R-K-'s and the Petitioner's place of residence in the United States and who supported the Petitioner's and paid her tuition and other expenses in the United States and for what period.

As detailed above, USCIS may withhold consent if evidence materially conflicts with the SIJ eligibility requirements of section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b) such that the record reflects that the request for SIJ classification was not bona fide. On appeal, the Petitioner has not overcome the Director's findings in the decision to deny the SIJ petition, as the record contains evidence or information that materially conflicts with the eligibility requirements. Therefore, the Petitioner has not met her burden of establishing by a preponderance of the evidence that a primary reason for seeking the juvenile court determinations was to obtain relief from parental maltreatment and 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.