



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 20334838

Date: JAN. 19, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) because the Petitioner did not establish that his request for SIJ classification was bona fide and that U.S. Citizenship and Immigration Services' (USCIS) consent was warranted. On appeal, the Petitioner submits a brief and additional documents, asserting his eligibility for SIJ classification.

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 SIJ classification may only be granted upon the consent of USCIS after the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5). For USCIS' consent, the petitioner must establish 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. 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. *Id.*

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).

II. ANALYSIS

The Petitioner, a native and citizen of India, entered the United States in December 2019 without inspection. In [] 2020, the Court of Common Pleas of [] County in Pennsylvania (Court) issued a custody order determining the Petitioner was under 21 years old, under the jurisdiction of the Court, and was unable to reunify with his parents due to neglect, pursuant to Pennsylvania law.² According to the Court's order, the Petitioner made the following representations: he suffered constant physical abuse by his father, who wanted him to "tend to his fields or cattle rather than attend[] school" and forced him to work, which resulted in him repeating grade 10 for truancy. His father deprived him of food on one occasion in 2018 and the Petitioner submitted records of medical treatment.³ The Petitioner's mother and father are separated due to the father's abuse. The Petitioner's father brought him to Canada in late 2019 to live with an uncle, and forced him to work to support the family, as well as his father's alcohol addiction. The Petitioner showed up on his "brother's doorstep seeking refuge" in the United States in defiance of his father's wishes. The Petitioner's father has not contacted him since he arrived in the United States and neither parent has provided for the Petitioner financially. The Court determined that the mother lacked the financial ability to support the Petitioner due to her poverty, while the Petitioner's brother works as a software engineer at "[]". The Court awarded custody of the Petitioner to his brother, determining it was in the Petitioner's best interest to not return to India.

The Director issued a notice of intent to deny (NOID) discussing inconsistencies in the record. We highlight the inconsistencies raised in the NOID material to the Court's determination that the Petitioner was unable to reunify with his parents due to neglect. The Petitioner applied for a nonimmigrant visa in October 2019, while in India, and applied again in November 2019, while in Canada. According to the Petitioner's nonimmigrant visa applications, he intended to travel with his parents to the United States, would be funded by his father, was a full-time student, and lived with both his parents in their home in India. During his interview in December 2019, which occurred in Canada, the Petitioner also informed the consular officer that he had no family in Canada. The Director explained, in relevant part, that the Petitioner's statements on his visa applications were inconsistent with his claims that his mother and father had separated due to the father's abuse and that he defied his father by coming to the United States, as his father intended to fund the trip. The Director further stated that the Petitioner's statements during his visa interview conflicted with his testimony to the Court that he was brought to live with an uncle in Canada and worked in Canada to provide for his family. The Petitioner responded to the NOID. After considering the record, the Director denied the petition, determining that USCIS' consent was not warranted. According to the Director, the record contained material inconsistencies relevant to the Petitioner's assertions of neglect to the Court, which the response to the NOID did not overcome.

After a de novo review of the underlying record, we identify additional inconsistencies relevant to the Court's parental reunification determination. The Petitioner's school records submitted in response to the NOID list his grades and indicate that the Petitioner attended grade 10 from 2017⁴ to March 2018

² The Court did not address the Petitioner's marital status. However, the Petitioner indicated on his SIJ petition that he was unmarried and the record includes documents in support.

³ The Petitioner did not provide Court submissions in the record, nor did he represent whether the documents provided to USCIS were also made available to the Court.

⁴ The school records do not indicate when in 2017 the Petitioner began school.

but did not advance because he failed the class board examination. According to the school records, the Petitioner passed his grade 10 exams in March 2019. This evidence conflicts with the Petitioner's claim to the Court that he repeated grade 10 due to truancy, and that his father withheld him from school to tend the fields and cattle. The only evidence of attendance was for the period of time when the Petitioner was in Canada and no longer in grade 10.⁵ Moreover, the Petitioner provided USCIS documents to establish that he changed his name in 2019, but his school records from the 2017-2018 school year list his new name, raising issue with the authenticity of the school documents. Further, the medical documentation submitted in response to the NOID was not produced contemporaneously but were handwritten on hospital stationary describing events after the fact, i.e., one document describes treatment performed in February 2018 and is dated March 2020, and the other document describes treatment in July 2019 and is dated February 2020. The author of the medical documentation is not identified, and the documents are initialed in a different color ink. Therefore, the submitted medical documents did not sufficiently support the Petitioner's claims of being constantly harmed by his father. The Petitioner also submitted a brief by his counsel, which added explanations for some of the inconsistencies raised by the Director. However, the Petitioner did not include affidavits or declarations in support of counsel's statements. Unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1998) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). We therefore conclude that the Petitioner's NOID response did not sufficiently explain the inconsistencies in the record, which were relevant to, and materially conflicted with, the Court's determination that the Petitioner was unable to reunify with his parents due to neglect.

On appeal, the Petitioner asserts the Director's decision was based on erroneous law.⁶ The Petitioner discusses the overly burdensome nature of NOIDs and asserts that USCIS need not evaluate intent nor weigh evidence to determine whether the Court made proper findings in order to grant consent. The Petitioner is correct that USCIS guidance advises against using our consent authority to reweigh the evidence considered by the juvenile court. See generally 6 USCIS Policy Manual J.2(D), <https://www.uscis.gov/policymanual>. However, USCIS may withhold consent if evidence materially conflicts with the eligibility requirements for SIJ classification. 8 C.F.R. § 204.11(b)(5). The Petitioner adds that USCIS need not request corroboration of every underlying fact that the Court considered. However, in light of the material inconsistencies in the record directly relevant to the Court's neglect determination, the Director properly requested additional information from the Petitioner regarding these inconsistencies. See generally 6 USCIS Policy Manual J.3(B) (explaining, as guidance, if there is significant contradictory information in the file that the juvenile court was likely not aware of or may impact whether a reasonable factual basis exists for the court's determinations, officers may request additional evidence from the petitioner).

Further, the Petitioner's submissions on appeal do not cure the existing inconsistencies. Rather, the submissions introduce additional inconsistencies into the record that materially conflict with the Court's determination that the Petitioner was unable to reunify with his parents due to neglect. The Petitioner submits affidavits by his mother, uncle, and aunt for the first time. They attest to versions of the following assertions: the Petitioner reunited with his father at some point after the July 2019 beating and they traveled together to Canada in December 2019. While in Canada, the Petitioner

⁵ A letter signed by the school's principal explains that the Petitioner attended 55 out of 127 days as of December 2019 when he was in grade "10+1."

⁶ Most of the appeal brief discusses the jurisdiction of the juvenile court, which was not contested by the Director below.

called his mother to say his father forgot to feed him, “wanted” the Petitioner to work, beat the Petitioner “badly,” and threatened to kill him. When the Petitioner’s father returned to India in January 2020, he beat his spouse and told her to pay for her son’s expenses by selling her land. The testimony describing the Petitioner’s harm in Canada, which was presumably provided to explain why the Petitioner left his father’s care, was not mentioned in the Court’s order and appears to have only been submitted to USCIS. The Petitioner has not submitted evidence reflecting that the Court was aware of or considered information regarding the harm he endured in Canada, other than his claim to the Court that he was forced by his father to live and work there. This statement to the Court was already at issue in light of the Petitioner claiming he had no family in Canada during his visa interview. The affidavits state that the Petitioner’s father “wanted” him to work, which is different from being forced to work in Canada to support his family and his father’s alcohol addiction, as was represented to the Court. Further, we note that the evidence about the mother being a property owner conflicts with the Court’s determination that she was living in “poverty” and unable to support her son.⁷

As discussed previously, it is the Petitioner’s burden to establish his eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Pursuant to 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. The Court’s order summarized the details it relied on to make its determination that the Petitioner was neglected by his father, but these details were found inconsistent with the record before us. The Petitioner’s evidence of his father physically abusing him, forcing him to work and neglect school had authenticity concerns. His claims relating the pervasiveness of his father’s abuse were contradicted by his visa records and interview statements. Similarly, his claims of being forced to live and work in Canada and of defying his father conflicted with his visa interview statements and affidavits in the record. Further, the Petitioner did not establish that the Court was aware of the discrepancies in his testimony and the authenticity issues, raised by his visa applications and documentation submitted to USCIS, when it determined that reunification with his parents was not viable due to neglect. As such, the Petitioner has not established by a preponderance of the evidence that a primary reason he sought the SIJ order was to gain relief from parental maltreatment. Therefore, the Petitioner has not established that his request for SIJ classification was bona fide, such that USCIS’ consent is warranted.

III. CONCLUSION

The Petitioner has not demonstrated that he warrants USCIS’ consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.

⁷ The Court did not explain how it came to its determination that the Petitioner’s mother was unable to fund his care. The Court also did not explicitly state the reasons for finding the Petitioner’s mother neglected him. However, the Court did state that the mother denied the Petitioner the opportunity to complete high school and repeatedly discussed the mother’s poverty, indicating it placed significant weight on this factor.