



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

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

In Re: 26685426

Date: JULY 6, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 revoked approval of the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish that his request for SIJ classification was bona fide and the consent of U.S. Citizenship and Immigration Services (USCIS) to such classification was therefore not warranted. The matter is now before us on appeal.

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 sustain 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).<sup>1</sup> 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.

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). To warrant

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<sup>1</sup> The Department of Homeland Security (DHS) 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).

USCIS' consent, the petitioner must establish that their 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.*

The Secretary of Homeland Security, through USCIS, may revoke the approval of an SIJ petition upon notice to the petitioner for "good and sufficient cause" when the necessity for the revocation comes to the attention of the agency. Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. 205.2(a).

## II. ANALYSIS

### A. Background and Procedural History

In [ ] 2017, when the Petitioner was 18 years old, the New York Family Court for [ ] (Family Court) appointed his sister as his legal guardian, and ordered that the appointment "shall last until [the Petitioner's] 21st birthday." Two weeks later the Family Court issued a separate ORDER-SPECIAL IMMIGRANT JUVENILE STATUS (SIJ order) declaring the Petitioner "dependent upon the juvenile court in that the court has taken jurisdiction over his guardianship proceeding pursuant to § 661 . . . of the New York State Family Court Act." The Family Court further determined that the Petitioner's reunification with his parents was not viable due to abandonment and neglect or similar basis under state law pursuant to section 1012 of the Family Court Act, and section 384-b of the Social Services law. Specifically, the Family Court found that the Petitioner's father "suffered from paralysis rendering him unable to provide financial support for [the Petitioner] for a prolonged period of time," and the Petitioner's "mother neglected and abused him; she forced him to work, would not send him to school, and deprived him of food; she also rebuked and slapped him." Lastly, the Family Court determined that it was not in the Petitioner's best interest to be returned to his country of origin, Bangladesh, "as he [had] no one to return to, and [was] fearful of repercussions should he return."

In August 2017, while he was under 21 years of age the Petitioner filed his SIJ petition based on these orders. The Director approved the SIJ petition in January 2020, but later revoked the approval. The Director determined that there was "good and sufficient" cause for the revocation because the Petitioner did not establish his request for SIJ classification was bona fide. In making this determination the Director pointed out that in April 2018, while the Petitioner's request for SIJ classification was pending, his sister/legal guardian petitioned for the parents to immigrate to the United States by filing Forms I-130, Petitions for Alien Relative on their behalf, and they were admitted to the United States as lawful permanent residents in 2019. The Director further noted that on their respective immigrant visa applications the parents listed the Petitioner's and his sister's address as their intended place of residence in the United States, which indicated that the Petitioner resided with his parents "prior to the adjudication of [his SIJ petition]" inconsistently with his claims of parental neglect and abandonment before the Family Court. Thus, the Director determined that the primary reason the Petitioner sought the SIJ determinations was to gain an immigration benefit rather than to obtain relief from parental maltreatment, such that his request for SIJ classification was not bona fide and did not warrant USCIS' consent. Consequently, the Director found that "good and sufficient cause" existed to revoke the approval of the SIJ petition.

On appeal, the Petitioner asserts that the Director misapplied the Act and USCIS policy by revoking the approval of his SIJ petition based solely on the fact that his sister/guardian petitioned for their parents to immigrate to the United States. He further states that the Director's conclusion implying that his sister's continuing relationship with the parents undermines his testimony before the Family Court was in error, as it is not uncommon for a parent to be emotionally and/or physically neglectful to one of their children, while having at least an average parent-child relationship with the other. Lastly, the Petitioner reiterates referencing his sister's and his own affidavits in response to the Director's notice of intent to revoke (NOIR) that he never resided with his parents in the United States, nor was he aware that his sister decided to petition for the parents, and her decision to do so should not affect his eligibility for SIJ classification.

We have reviewed the entire record, and for the reasons explained below conclude that it does not establish a "good and sufficient cause" for revoking the SIJ petition's approval.

#### B. USCIS' Consent to SIJ Classification Was Warranted

As stated, to warrant USCIS' consent, a petitioner must establish in part that a primary reason they sought the requisite juvenile court or administrative determinations was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and 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). "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 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).

The Director concluded that the evidence pointing to the Petitioner's residence with his parents in the United States materially conflicted with his statements before the Family Court that his parents neglected and abandoned him. In particular, the Director found that while the Petitioner and his sister/guardian resided at [REDACTED] in New York, his parents listed the same address on their immigrant visa applications.<sup>2</sup> The Director stated in the revocation notice that because "USCIS records indicate[d] that [the Petitioner's] parents . . . came to the United States (US) on January 14, 2019 . . . and have been living with [the Petitioner] and [his] sister . . . since then," the Petitioner did not establish that his request for SIJ classification was bona fide.

The preponderance of the evidence in the record, including affidavits and documents submitted in response to the NOIR, however, does not support such a conclusion.

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<sup>2</sup> We note that the Director referred to those applications as "Nonimmigrant Visa (NIV) application[s]." However, there is nothing in the record to indicate that the parents applied for nonimmigrant visas at any time before immigrating to the United States in 2019.

As an initial matter, while the Director indicated that the Petitioner resided with his parents in New York since January 14, 2019, USCIS records reflect that the parents were not admitted to the United States as lawful permanent residents until *November 14, 2019*.<sup>3</sup> Consequently, they could not have been residing with the Petitioner and his sister in New York since *January 14, 2019*. Furthermore, the Petitioner has previously addressed the perceived inconsistency between his claims of neglect and abandonment and his alleged ongoing relationship and residence with his parents. Specifically, the Petitioner explained in his November 2021 sworn statement submitted in response to the NOIR that his parents never lived with him at [REDACTED] rather, since arriving in the United States in November 2019, they have been residing at [REDACTED] in New York. His sister confirmed these statements in her own affidavit, attesting that she moved to [REDACTED] in May 2019, and that the parents have been living there with her since November 2019. The documentary evidence supports these statements. A real estate deed in the record confirms that in May 2019 the sister's spouse purchased the property at [REDACTED] and the parents' summaries of medical visits in the United States dated from January 2020 through September 2021 show that they both indicated [REDACTED] as their residential address. The record also includes copies of the Petitioner's paystubs, tax-related documents, and bank statements reflecting that as of 2021 he continued to reside at [REDACTED]. Moreover, the Petitioner's sister/guardian explained in her affidavit that the father's paralysis<sup>4</sup> affected his ability to work and support the family and, as her mother also has numerous health issues, she petitioned for the parents because she wanted to share in her older brother's burden to care for the parents who were not receiving adequate medical care in Bangladesh. She further stated that her guardianship of the Petitioner was based on the parents' failure to take care of him in Bangladesh, and that the parents are dependent on her financially and do not provide any support for the Petitioner. Lastly, the sister stated that when she took action to assist her troubled family she did not believe she was prohibited from petitioning for her ailing parents even though they neglected and abandoned the Petitioner, and that he should not be prejudiced by her decision to bring them to the United States.

The Petitioner's and his sister's statements, corroborated by documentary evidence discussed above indicate that contrary to the Director's determination the Petitioner has not been residing with his parents after they arrived in the United States. Furthermore, given the specific circumstances in this case, including the father's paralysis and the mother's health issues, the fact that the Petitioner's sister sponsored the parents to immigrate to the United States, or that the Petitioner may have had contact with his parents after they entered the country over two years after the SIJ order was issued does not constitute a material inconsistency with respect to the Family Court's determination that the parents neglected and abandoned the Petitioner. Thus, the Petitioner has met his burden of proof to demonstrate that his primary purpose in seeking the guardianship and SIJ orders was to obtain relief from parental neglect and abandonment under New York law, and that his request for SIJ classification was bona fide.

We conclude, therefore, that the Petitioner has overcome the sole basis for the revocation of his SIJ petition, as the preponderance of the evidence shows that he was eligible for and warranted USCIS' consent to SIJ classification at the time his request for such classification was granted. Consequently,

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<sup>3</sup> A review of their immigration records shows that the U.S. Department of State issued their immigrant visas in late October 2019.

<sup>4</sup> The father's medical records reflect that he had a stroke which left him partially paralyzed. The mother's medical and other records, in turn, reflect that she suffers from multiple health issues and was never employed.

the record does not establish a good and sufficient cause to revoke the approval of his SIJ petition. The Director's decision is therefore withdrawn and the approval of the SIJ petition is reinstated.

**ORDER:** The appeal is sustained.