



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

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

In Re: 22268774

Date: MAR. 29, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native of China, 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 application, concluding that consent was not warranted because she was unable to determine whether the Petitioner's primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment or to obtain an order for immigration purposes. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits additional evidence and reasserts his eligibility for SIJ classification. 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. *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

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).

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

A. Relevant Facts and Procedural History

In [] 2017, when the Petitioner was 17 years old, he and J-Y-² appeared in the Superior Court of California County of [] (Superior Court) for a guardianship hearing. After hearing testimony, a judge appointed J-Y-, as the Petitioner's guardian and determined that “[r]eunification with both parents [wa]s not viable due to abandonment, and [it was] not in his best interests to be returned to China, his country of last residence.” In a separate order issued on the same day and entitled *Special Immigrant Juvenile Findings* (SIJ order), the Superior Court made determinations, pursuant to section 155 of the California Code of Civil Procedure (Cal. Code of Civ. Proc.), necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The Superior Court determined that reunification with both parents was not viable due to abandonment or similar basis found under state law, and that “it [wa]s not in the best interest of [the Petitioner] to return to his parent’s previous country of nationality or country of last habitual residence—the People’s Republic of China— within the meaning of section 101(a)(27)(J) of the Immigration and nationality Act, 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11(d)(2)(iii).”

Based on the SIJ order, the Petitioner filed this SIJ petition in November 2017. With his SIJ petition, the Petitioner submitted an October 2017 personal statement, in which he explained that he traveled to the United States in April 2017 so that he could visit with J-Y- and attend a semester of school. He further stated that he had not seen or spoken to his parents since his arrival in the United States. He maintained that he did not find out that his parents abandoned him until J-Y- was appointed as his guardian in [] 2017, and he indicated that he had not left the United States since April 2017. The Petitioner also submitted a copy of his memorandum submitted to the juvenile court in support of his guardianship petition.

The Director denied the petition, finding that there were several inconsistencies on the record and that USCIS’ consent was not warranted because the Petitioner had not established that his primary purpose in seeking the juvenile court order was to obtain relief from parental maltreatment, rather than for immigration purposes. Specifically, the Director noted inconsistent information concerning the Petitioner’s purpose in traveling to the United States and the circumstances surrounding his abandonment by his parents.

The Director noted that the Petitioner told the Superior Court that he came to the United States in April 2017 after his parents asked J-Y- if he could spend his school vacation with her, and that when his

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

school vacation was over, J-Y- attempted to contact his parents. J-Y- was then informed the Petitioner's parents could not support him and had no return ticket for him. However, in a 2020 statement in response to a request for evidence (RFE), the Petitioner stated that he traveled to the United States in April 2017 to spend a short vacation with J-Y- and then go to school, with funding provided by his parents. The Director also highlighted that the Petitioner told the Superior Court and USCIS that he lived with his grandparents before he traveled to the United States in April 2017. However, he had stated on his March 2017 visa application that he lived with his parents in China.

The Director further noted that government records indicated the Petitioner traveled to China in June 2017 for one month. This contradicted his statement submitted with his SIJ petition claiming that he had been in the United States since arriving in April 2017 and had not seen his parents since that time. Additionally, the Director noted that the Petitioner did not provide any proof of who paid for the trip to China, or a statement explaining why he did not disclose the trip to the Superior Court or USCIS. The Director also noted that when USCIS raised this discrepancy in an RFE, the Petitioner claimed he traveled to China to prepare for the SAT exam, which he planned to take in May 2018. He did not provide evidence of who paid for the course, and the Director pointed out numerous grammar and spelling mistakes in the certificate from the institute where he states he took this course.

The Director noted that the record contained conflicting statements concerning when the Petitioner found out his parents had abandoned him. Although his October 2017 statement in support of the SIJ petition indicated that he did not find out that his parents abandoned him until after the Superior Court appointed J-Y- as guardian, the Petitioner's December 2020 affidavit stated that he went to see the lawyer to allow J-Y- to become his guardian in May 2017.

The Director further noted that J-Y- opened a joint account with the Petitioner with a \$3,000 deposit on the same day the Petitioner arrived in the United States. and that J-Y- paid \$5,000 to [REDACTED] Academy in February 2017— two months before the Petitioner arrived in the United States. The Director found that the joint account conflicted with the Petitioner's assertions that J-Y- was a family friend who decided to take care of him after his parents abandoned him in the United States. The Director also stressed that the Petitioner's father transferred \$5,000 to J-Y-'s spouse for "living expenses" in October 2018, which contradicted his claim that his parents had abandoned him.

On appeal, the Petitioner contends that he has established that the primary purpose of his juvenile court petition was to obtain relief from parental maltreatment and that his memorandum to the juvenile court and information provided to USCIS in support of the SIJ petition are not inconsistent. He submits additional evidence, including copies of his June 2017 airline reservation and payment receipt for an English course in China.

B. USCIS' Consent is 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). 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). The preponderance of the evidence, including the new evidence submitted on appeal, does not establish that a primary reason the Petitioner sought the SIJ order was to obtain relief from his parents’ abandonment.

The Petitioner told the Superior Court that he came to the United States in April 2017 after his parents asked J-Y- if he could spend his school vacation with her. He claimed that, after his school vacation was over, J-Y- spoke to his mother, who informed her that she was in “financial distress” and could no longer care for him. She also informed J-Y- that there was no return ticket and no one in China who could care for him. His memorandum to the juvenile court states that J-Y- “then enrolled [the Petitioner] in school (a private school as the minor is not yet eligible to attend public school).” Based on these statements, the Superior Court determined that reunification of the Petitioner with his parents was not viable under California law because of parental abandonment.

The record indicates that the Petitioner applied for an F-1 student visa in March 2017 and entered the United States with that visa on April 9, 2017, to study at [REDACTED] Academy beginning in mid-April. In his personal statement submitted with his SIJ petition, the Petitioner stated that he came to the United States to visit J-Y- and study a semester in school. However, his memorandum to the juvenile court states only that he came for visit during his school vacation and that his guardian enrolled him in school after being informed his parents could not take care of him. The Petitioner did not disclose to the juvenile court that he arrived in the United States with a student visa for the purpose of studying, with funding provided by his parents, at a private school beginning immediately upon his arrival in April 2017.³ The record also contains inconsistent statements from J-Y- in support of the SIJ petition, initially stating that she was aware that the Petitioner would spend his school vacation and attend school in the United States and later claiming that she decided to register the Petitioner in school after she learned that the Petitioner’s parents had abandoned him in the United States. J-Y-’s statement is further contradicted by the fact that she paid for the Petitioner’s schooling prior to his arrival to the United States in April 2017.

In addition, government records indicate that the Petitioner traveled to China in June 2017 for one month, despite claiming his parents had abandoned him and told his guardian there was no ticket for him to return to China. The Petitioner states that he traveled to China to attend an SAT preparation course and contends on appeal that J-Y-’s cousin paid for his June 2017 trip, and he had no contact with his family while there. However, the Petitioner does not explain why he failed to disclose during proceedings in the Superior Court in [REDACTED] 2017, or in the SIJ petition he filed with USCIS in November 2017, that he had traveled to China and returned to the United States in July. He provides few details about his travel to China or why he was sent to China to take an SAT preparation course

³ U.S. Department of State records indicate that the Petitioner applied for an F1 student visa in March 2017 to attend high school classes at [REDACTED] Academy, with a mid-April start date.

immediately after J-Y- learned his parents could not take care of him or pay for his return to China, and that there was no one in China who could take care of him.

It also remains unclear how the Petitioner funded his tuition and living expenses in the United States. As the Director noted in her decision, the Petitioner's joint account with J-Y- was funded by cash deposits, transfers from the [REDACTED] and J-Y-'s spouse's account. J-Y-'s spouse's account was mainly funded by ATM deposits, with no identifiable source of those deposits into the account. We also note that J-Y-'s spouse received a \$5,000 wire transfer for "living expenses" from the Petitioner's father in October 2018. We acknowledge the Petitioner's contention that the wire transfer is not inconsistent with his claims of abandonment because it represented a small portion of his tuition and living expenses. However, the Petitioner has not explained on appeal how his father was able to transfer \$5,000 to him for living expenses after consistently representing that his parents were in such financial distress that they could no longer take care of him.

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. Here, the juvenile court relied on information that is inconsistent with the record before us to make its determination that the Petitioner was abandoned by his parents. The Petitioner did not disclose to the court that he had recently visited China and returned to the United States around the same time he claims his parents abandoned him. The record contains additional inconsistencies concerning his purpose in traveling to the United States, when he learned his parents abandoned him, and when the decision was made to enroll him in school, and other facts material to the finding that reunification with his parents was not viable due to abandonment. On appeal, the Petitioner does not resolve or provide a reasonable explanation for these inconsistencies. 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 overcome the ground for denial of his SIJ petition. As the record does not demonstrate that the Petitioner's request for SIJ classification warrants USCIS' consent, he has not established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is dismissed.