



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

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

In Re: 23695675

Date: MAY 11, 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). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the petition, finding that the Petitioner had not established that he was under the age of 21 at the time of filing, and that U.S. Citizenship and Immigration Services' (USCIS) consent to special immigrant juvenile (SIJ) classification was not warranted because the record contained material inconsistencies and the record did not establish the factual basis for the state court's best interest determination. The matter is now before us on appeal. 8 C.F.R. § 103.3. We subsequently issued a Notice of Intent to Dismiss (NOID) the 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 dismiss the appeal as abandoned.

To establish eligibility for SIJ classification, a petitioner 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). The petitioner 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 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).

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).

In this case, the Director denied the SIJ petition, finding that the Petitioner had not established that he was under the age of 21 at the time of filing, and that USCIS consent was not warranted because the record contained inconsistencies as to the Petitioner's date of birth and the record did not establish the factual basis for the state court's best interest determination. However, we are not reaching the Petitioner's arguments on appeal regarding the Director's determination that because the Petitioner has not addressed or overcome the derogatory evidence in the record, as set forth in our NOID, indicating that the Petitioner is otherwise statutorily ineligible for special immigrant juvenile (SIJ) classification. Specifically, USCIS records show that the Petitioner is the beneficiary of a pending Form I-130, Petition for Alien Relative, filed on his behalf as the spouse of a U.S. citizen in June 2022. We issued the NOID informing the Petitioner of the derogatory information showing that he is married and therefore not eligible for SIJ classification.¹ Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b).² In the NOID, we advised the Petitioner of our intent to dismiss the case and offered him the opportunity to respond and submit additional evidence to rebut this information and establish his eligibility for SIJ classification. 8 C.F.R. § 103.2(b)(16)(i). The record does not reflect that we have received a response from the Petitioner. Accordingly, we will dismiss the Petitioner's appeal as abandoned. *See* 8 C.F.R. § 103.2(b)(13)(i) (discussing effects for failing to respond to a NOID).

ORDER: The appeal is dismissed as abandoned under 8 C.F.R. § 103.2(b)(13).

¹ Documentation in the record indicates that the Petitioner was married on [] 2020, before he filed his SIJ petition attesting that he was unmarried on February 24, 2020.

² 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).