



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

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

In Re: 2434343

Date: DEC. 7, 2023

Appeal of Long Island, New York Field Office 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). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 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 Long Island, New York Field Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), concluding that the Family Court did not have jurisdiction under New York law over the Petitioner's custody as a juvenile, the Petitioner's court orders lacked qualifying parental reunification and best interest determinations, and the Petitioner did not establish that U.S. Citizenship and Immigration Services' (USCIS) consent to his request for SIJ classification is warranted. 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 Family Court did not have jurisdiction under New York law over the Petitioner’s custody as a juvenile, the Petitioner’s court orders lacked qualifying parental reunification and best interest determinations, and the Petitioner did not establish that USCIS’ consent to his request for SIJ classification is warranted. However, we are not reaching the Petitioner’s arguments on appeal regarding the Director’s determination because the Petitioner has not addressed or overcome the evidence in the record, as set forth in our NOID, indicating that the Petitioner is otherwise statutorily ineligible for 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 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 [REDACTED], 2022 in Michigan.

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).