



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 23016318

Date: MAR. 02, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the Petitioner did not demonstrate that he warrants USCIS' consent. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner contends that he has established eligibility for the benefit sought.

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) 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. 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

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<sup>1</sup> 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).

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).

## II. ANALYSIS

### A. Relevant Factual and Procedural History

In [ ] 2016, the Family Court of [ ] County, New York (Family Court) issued an order entitled Order-Special Juvenile Status (SIJ order), determining, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was dependent upon the Family Court, reunification with his father was not viable due to neglect and abandonment, and it would not be in his best interest to be removed to India. Based on the SIJ order, the Petitioner filed his SIJ petition in December 2016. The Director denied the petition, concluding that USCIS' consent was not warranted because the record contained inconsistent information regarding the Petitioner's claim of abandonment and neglect by his father.

In October 2022, we issued a notice of intent to dismiss (NOID) advising the Petitioner that he was also ineligible for SIJ status because he did not demonstrate that a juvenile court made a qualifying parental reunification determination in his case. In response to the NOID, the Petitioner submitted a nunc pro tunc order dated [ ] 2023, entitled Amended Order for Special Findings (amended SIJ order) and effective retroactively to the date of the original SIJ order. In the amended SIJ order, the Family Court specifies that the Petitioner's reunification with his father is not viable due to abandonment, as defined in section 384-b(4)(b) of the New York Social Services Law, and neglect, as defined in section 1012(f)(i) of the New York Family Court Act, and cites to New York child welfare law related to abandonment and neglect.

The amended SIJ order demonstrates that the Family Court's parental reunification determination was based on a finding of abandonment and neglect under relevant New York child welfare laws. Accordingly, the Petitioner has established by a preponderance of the evidence that the Family Court made a qualifying parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires.

### B. USCIS' Consent is Warranted

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse,

neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.*

As stated above, USCIS' consent function is limited to determining whether there are reasonable factual bases for the court's parental reunification and best interest determinations, whether relief from parental maltreatment was granted or recognized, and whether the request for SIJ classification is bona fide. We do not go behind a court order to reevaluate determinations of abuse, neglect, abandonment, or a similar basis properly made under state law. See 87 Fed. Reg. 13066, 13086 (March 8, 2022) ("USCIS does not go behind the juvenile court order to reweigh evidence and generally defers to the juvenile court on matters of State law."). We acknowledge the Director's finding that the record contains inconsistent evidence regarding the Petitioner's claim of abandonment and neglect by his father. However, guardianship of the Petitioner was granted to an individual appointed by the Family Court, the Family Court determined that the Petitioner was abandoned and neglected by his father who "has not provided him with financial and emotional support" and "subjected [the Petitioner] to excessive corporal punishment and has also exposed his son to domestic violence." Here, the Family Court made all of the requisite findings relevant to the Petitioner's eligibility for SIJ classification. As such, the Petitioner has established both a factual basis for the Family Court's determinations and that a primary reason he sought SIJ classification was to obtain relief from parental maltreatment.

Based upon the evidence submitted on appeal, the Petitioner has overcome the Director's determination and established, by a preponderance of the evidence, that he sought the juvenile court orders to obtain relief from parental abandonment and neglect and that the Family Court, in fact, granted such relief. Consequently, the Petitioner's request for SIJ classification merits USCIS' consent under section 101(a)(27)(J)(iii) of the Act.

ORDER: The appeal is sustained.