



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

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

In Re: 26553947

Date: MAY 3, 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). 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 National Benefits Center denied the petition, concluding that the Petitioner did not establish that USCIS' consent to his SIJ classification is warranted. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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, a petitioner must show 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. Section 101(a)(27)(J)(ii) of the Act; 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. Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2019, the District Court in [] County, Texas issued an *Order in Suit Affecting the Parent-Child Relationship* (SAPCR order), appointing the Petitioner's mother as parent sole managing conservator. The District Court also found that the Petitioner's reunification with his father is not viable due to abandonment as defined at section 152.102 of the Texas Family Code, and that it is not in his best interest to be returned to Honduras, his country of origin. In the SAPCR order, the District Court specified that the Petitioner's father abandoned the Petitioner and his mother in October 2004, when the Petitioner was an infant, "never had significant contact with his son save for sporadic and brief visits," and "never provided for the support of the child, even when the child was hospitalized for respiratory problems while still an infant."

Based on the SAPCR order, the Petitioner filed his SIJ petition in April 2021. The Director denied the SIJ petition, determining that the Petitioner had not established that USCIS' consent to his SIJ classification is warranted because the record did not show a reasonable factual basis for the District Court's best interest finding.

B. USCIS' Consent is Warranted

As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish that 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. 8 C.F.R. § 204.11(b)(5). To establish that USCIS' consent is warranted, the juvenile court order or supplemental evidence must include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i).

Based on our de novo review, the Petitioner has submitted evidence below and on appeal to establish that the District Court had a sufficient factual basis for its best interest determination and that USCIS' consent is warranted. The USCIS Policy Manual explains that state standards for making best interest determinations may vary, and that we require evidence that the court has made an individualized assessment and considered the factors that it ordinarily would when making best interest determinations. 6 *USCIS Policy Manual* J.2(C)(3), <https://www.uscis.gov/policy-manual> (explaining that the "child's safety and well-being are typically the paramount concern," and that where the order reflects that the appointed "caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a sufficient factual basis in support of a qualifying best interest determination to warrant DHS consent.")

Before making detailed orders regarding the Petitioner's conservatorship, ability to reunify with his father, and best interest, the District Court indicated in the SAPCR order that the Petitioner's father "abandoned the child when the child was of a tender age. The Court therefore finds that the following orders are in the best interest of the child." Later in the SAPCR order, the court made special findings relating to the Petitioner's eligibility for SIJ classification, describing the Petitioner's father's abandonment and failure to provide for him. The District Court also noted the participation of an amicus attorney who had been appointed "to assist the court in protecting the best interests of the child" On appeal, the Petitioner submits further evidence about the role of the amicus attorney, including her appointment for the purpose of "represent[ing] the interest" of the Petitioner, her access to the Petitioner and all records relating to him, and the agreement of both parties to reimburse the amicus attorney for her services.

Furthermore, in response to a request for evidence (RFE) from the Director, the Petitioner previously submitted the *Original Petition in Suit Affecting the Parent-Child Relationship* (SAPCR petition), which specifies that the Petitioner resides in Texas while his father does not; his parents are separated; his father "has engaged in a history or pattern of child neglect"; the Petitioner's mother requests that his father be denied access to him or have only supervised periods of visitation; and that his mother does not seek child support because the Petitioner's father does not reside in the United States, so any order would be unenforceable, and he "has been unable or unwilling to support the child in the past, and is not likely to support him in the future." The Petitioner also provided copies of documents submitted before the District Court, including evidence of the Petitioner's residence in Texas with his mother, information about the unsuccessful attempts to locate the Petitioner's father in Honduras, and an affidavit from the Petitioner's mother stating that his father had only "sporadic contact" with the Petitioner when he was young. As noted in the SAPCR order, the District Court considered the evidence and arguments submitted by the Petitioner and his attorney in making its determinations. In its totality, the record indicates that the court considered the housing, care, and financial support provided by the Petitioner's mother, as well as the absence of his father, in deciding to grant his mother sole managing conservatorship of the Petitioner and making SIJ-related determinations. Upon de novo review, the record indicates that the District Court conducted an individualized assessment under state law in determining that it was not in his best interest to return to Honduras. *See* 6 USCIS Policy Manual, *supra*. Accordingly, the preponderance of the evidence establishes that the District Court made a qualifying determination regarding the Petitioner's best interest, with a sufficient factual basis, and USCIS' consent is warranted.

III. CONCLUSION

The Petitioner has demonstrated that he is eligible for and merits USCIS' consent to his SIJ classification.

ORDER: The appeal is sustained.