



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

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

In Re: 28918478

Date: NOV. 9, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal, which we review 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), (c)(1).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. Section 101(a)(27)(J)(ii) of the Act; 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 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,

¹ The Department of Homeland Security (DHS) issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for those who seek SIJ classification. See Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (revising 8 C.F.R. §§ 204, 205, 245).

neglect, abandonment, or a similar basis under State law. *See* section 101(a)(27)(J)(i)–(iii) of the Act; *see also* 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 establish 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 [] 2018, when the Petitioner was 17 years old, a Texas District Court for [] County (District Court) issued an “ORDER IN SUIT TO MODIFY PARENT-CHILD RELATIONSHIP” (SIJ order), appointing the Petitioner’s maternal aunt N-K-N-² and her spouse M-D-D- as the Petitioner’s “joint managing conservators” with legal custody and parental rights, and granting possession of the Petitioner to his both parents as his “possessory conservators” at any and all times mutually agreed upon by the parties. The court further determined, among other SIJ related findings, that the Petitioner’s reunification with one or both his parents was not viable due to abandonment by both his parents, and that it was not in the Petitioner’s best interest to be returned to Vietnam, his country of nationality. In making these determinations, the court found that both the Petitioner’s parents “abandoned” and “failed to support him since his birth.” The court also found that the Petitioner’s maternal grandparents and the joint managing conservators provided for the Petitioner’s care since he was 5 months old, and that he was in the joint managing conservators’ care since he last entered the United States in July 2015.

Based on the District Court order, the Petitioner filed his SIJ petition in April 2019. Following a request for evidence (RFE) and a notice of intent to deny (NOID), the Director denied the SIJ petition, concluding that the Petitioner did not demonstrate that his request for SIJ classification was bona fide and warranted USCIS’ consent because the court’s parental reunification determination based on the claim that the Petitioner’s both parents abandoned him since birth was inconsistent with government records. On appeal, the Petitioner submits a brief reasserting his eligibility for SIJ classification. He also maintains that his request for SIJ classification is bona fide and warrants USCIS’ consent.

B. USCIS’ Consent Is Not Warranted

As stated, 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. *Id.* 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 and 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). If, however, 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. 8 C.F.R. § 204.11(b)(5).

² We use initials to protect individuals’ privacy.

As the Director noted, the record contains evidence that materially conflicts with the District Court's determination that the Petitioner could not reunify with both his parents due to their abandonment of him since his birth and the factual bases on which the court relied in making the determination. The Director's NOID and RFE specifically identified conflicting information in the record showing that in November 2013, December 2014, and May 2015, the Petitioner indicated in his respective U.S. nonimmigrant visa (NIV) applications that he lived with his mother who was also paying for his travels to the United States, and she in fact traveled with the Petitioner to this country on three separate occasions in 2013, 2014, and 2015.

We acknowledge M-D-D-s' assertions in response to the RFE that both the Petitioner's parents abandoned him at birth, and they never supported him, lived with him, or had any ongoing relationship with him. M-D-D- in his statement further explained that the Petitioner's maternal grandparents had provided for him since shortly after his birth until he last entered the United States, but they asked both his parents to help him obtain a U.S. visa after the grandparents became ill in December 2014 and that his mother ultimately helped him apply for a U.S. visa. However, these assertions do not address the remaining inconsistencies in the record, specifically the government records showing that the Petitioner's mother personally assisted him in applying for his U.S. visas in 2013, 2014, and 2015 even before his grandparents' illness in December 2014; listed him as living with her each time she helped the Petitioner apply for his U.S. visas; indicated that she was paying for the Petitioner's travels to the United States on all three NIV applications; and in fact traveled with him to this country on three separate occasions in 2013, 2014, and 2015.

In his statement and appeal brief, the Petitioner admits that his mother helped him obtain his visas in 2013, 2014, and 2015, indicated that they resided together in each NIV application, and traveled with him here on the three occasions. However, he nonetheless asserts, without additional explanation or corroborating evidence, that his mother merely accompanied him here because Vietnamese law does not permit minors to obtain a passport or travel without "legal parents." He also contends that the fact that his mother helped him with his NIV applications and traveled with him here does not establish that he had an ongoing parent-child relationship with his mother, or that such fact conflicts with the District Court's determination that his father also abandoned him at birth. The Petitioner also adds that even though he never lived with his mother, he had to use her address as his "registered address" for NIV application purposes because his grandparents never formally adopted him and his mother always had "legal custody" of him in Vietnam. He further states that his grandparents actually paid for his visa applications and travels to the United States.

While we acknowledge the Petitioner's assertions and appeal arguments, they do not overcome the inconsistencies as to why his 2013, 2014, and 2015 NIV applications indicated that he was living with his mother at the same address in Vietnam, if, in fact, *both* his parents had abandoned him at birth as he asserted to the court, and as he asserts in these proceedings, they never resided with him or supported him, and he had been living with his grandparents until he last entered the United States in July 2015. Moreover, he concedes that he traveled to the United States with his mother on three separate occasions and that she assisted him in obtaining visas to the United States, which on its face directly contradict with the court's finding, based on his assertions and evidence to the court, that both his parents had abandoned him since birth. Although the Petitioner asserts that consent is still warranted because the court made a qualifying parental reunification determination as to his father, the court relied on the same factual findings he presented to the court in determining that *both* his

parents “abandoned” and “failed to support him since his birth.” The Petitioner, who bears the burden of proof, did not submit the underlying petition or other evidence of factual assertions he presented to the District Court that may clarify and resolve the inconsistencies.

The Petitioner also alleges on appeal that the Director’s decision did not specify the inconsistencies on which the Director relied in denying the SIJ petition and failed to address why his explanations did not overcome the inconsistencies to warrant USCIS’ consent. However, the Director delineated and explained the inconsistencies in detail in the RFE and NOID and provided the Petitioner opportunities to explain them, and he was aware of the identified inconsistencies, as he responded to the RFE and NOID. As stated, the Petitioner’s evidence, comprising his own and M-D-D-’s statements, does not overcome the other evidence in the record showing that his respective NIV applications repeatedly indicated that he was living with his mother in Vietnam, that his mother paid for his travel to the United States, and that she even traveled with him to the United States multiple times, which materially conflicts with the court’s determination that both his parents abandoned him at birth and did not support him since. The Petitioner did not submit any new evidence on appeal.

Petitioners bear the burden to show eligibility for SIJ classification, including that their request for SIJ classification is bona fide and merits USCIS’ consent. *Matter of Chawathe*, 25 I&N Dec. at 375. USCIS generally defers to the court on matters of state law and do not reweigh evidence or make independent determination as to parental reunification. *See generally* 6 *USCIS Policy Manual* J.2(A), <https://www.uscis.gov/policy-manual>. However, USCIS may withhold such consent where the record contains material conflicts related to SIJ eligibility requirements indicating that the request is not bona fide. 8 C.F.R. § 204.11(b)(5). Here, the Petitioner has not met his burden to overcome derogatory evidence in the record that materially conflicts with the District Court’s parental reunification determination that he cannot reunify with both his parents due to their abandonment and lack of support since birth. Considering the foregoing, the Petitioner has not established that his request for SIJ classification is bona fide and warrants USCIS’ consent. 8 C.F.R. § 204.11(b)(5).

ORDER: The appeal is dismissed.