



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

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

In Re: 28659395

Date: NOV. 29, 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). 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, 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).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. 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 eligibility criteria and establishes that the request for SIJ classification is *bona fide*, which requires the

¹ 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).

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

On [] 2021, the Family Court of [] County, New York (Family Court) issued an order entitled *Order Appointing Guardian of the Person* (guardianship order) and awarded custody of the Petitioner to R-V-.² On the same date, the court also issued a separate finding, determining in part, that the Petitioner’s reunification with his parents was viable. The court found the Petitioner failed both to establish that his parents abused, neglected or abandoned him and that it was not in his best interest to be returned to Albania, his country of nationality. The Petitioner filed his SIJ petition on May 20, 2021, with the guardianship order. The Petitioner subsequently submitted evidence of a pending appeal of the Family Court order with the Supreme Court of the State of New York Appellate Division (Supreme Court). The Director denied the petition, concluding that the Petitioner did not provide a juvenile court order with the required judicial determinations in support of SIJ classification.

The Petitioner filed a motion to reopen with the Director. He submitted a [] 2022 order from the Supreme Court reversing the [] 2021 Family Court order. The Supreme Court concluded the record supported a finding that the Petitioner’s reunification with his parents was not viable within the meaning of Family Court Act § 1012(f)(i)(A)-(B) and Social Services Law § 384-b(5)(a) and it was not in his best interest to return to Albania. The Director dismissed the motion, concluding the Petitioner did not establish that at the time he filed his SIJ petition he had a court order with the requisite judicial determinations because the Supreme Court did not stipulate the order was nunc pro tunc.

On appeal, the Petitioner submits additional evidence and asserts he has established eligibility for the SIJ classification. The Petitioner provides an updated [] 2023 Supreme Court order that specified the [] 2021 Family Court order was reversed and the Petitioner’s motion for an order of special findings enabling him to petition for SIJ status was granted nunc pro tunc. The [] 2023 order indicated a review of the evidence supported a finding that reunification with the Petitioner’s parents was not viable and it would not be in his best interest to return to Albania. The Supreme Court states the “hearing testimony established that the [Petitioner’s] parents have not contributed to his financial support or maintained contact with him since he came to the United States” and “[i]n addition to his testimony regarding parental abandonment, the [Petitioner] testified that he had been the target of several assaults of his family’s political affiliation, and the parents were unable to protect him[.]”

Upon review, the new evidence submitted on appeal overcomes the deficiencies noted by the Director. The [] 2023 Supreme Court order stipulated that the Petitioner’s motion for an order of special findings enabling him to petition for SIJ status was granted nunc pro tunc, thereby overcoming the Director’s sole basis for denial. Based on the foregoing, and because he meets the remaining eligibility criteria, the Petitioner has met his burden to establish that he is eligible for, and merits USCIS’ consent to a grant of, his SIJ classification.

² We use initials to protect identities.

ORDER: The appeal is sustained.