



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

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

In Re: 28943254

Date: NOV. 30, 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 this country 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 sustain the appeal.

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, 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 also withhold consent if evidence materially conflicts with the

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).

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).

In [] 2021, when the Petitioner was 20 years of age, the Massachusetts Probate and Family Court (Family Court), [] Division, issued a *Judgment of Dependency* (dependency order) along with *Special Findings of Fact and Rulings of Law* (SIJ order), both of which asserted the court's jurisdiction over the Petitioner as a minor child "pursuant to M.G.L. Chapter 119, § 39M" and declared him dependent on the court. The Family Court further determined that the Petitioner's reunification with his mother was not viable due to her neglect as defined under "110 C.M.R. 2.00" and that, having "considered the health, educational, developmental, and emotional interests of [the Petitioner]" under state law, it was not in his best interest to be returned to El Salvador, his country of nationality. The SIJ order also included the court's factual findings in support of its parental reunification and best interest findings, and the record also contains the underlying court documents and factual assertions the Petitioner presented to the court.

Based on the court orders, the Petitioner filed his SIJ petition in October 2021. Following a request for evidence, the Director denied the SIJ petition, concluding that he did not establish that the court provided any form of protective relief from parental neglect. On appeal, he submits amended dependency and SIJ orders issued in [] 2023, nunc pro tunc to the date of the original orders when he was under 21 years of age and still a juvenile under state law. The amended dependency order specifically referred the Petitioner the Probation Service for educational and occupational services, and similarly, the amended SIJ order specifically referred him "to probation for resources of medical, educational, and occupational services" pursuant to M.G.L. Chapter 119, § 39M, to remedy the parental neglect as described in the court's SIJ order. He also submits an appeal brief, reasserts his SIJ eligibility, and maintains that his request for SIJ classification warrants USCIS' consent.

As stated, SIJ classification may only be granted upon USCIS' consent, when a petitioner meets all other eligibility criteria and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To show 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). 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). 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). 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.* 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.*

We agree with the Petitioner that the amended court orders establish that the court granted him remedial or protective relief from parental neglect. The Family Court here granted the Petitioner remedial relief by referring him to available resources for medical, educational, and occupational services pursuant to relevant state statute. 8 C.F.R. § 204.11(d)(5)(ii) (stating that in determining whether USCIS' consent is warranted, the juvenile court order or supplemental evidence must show

the relief from parental maltreatment that the court granted or recognized). The record also reflects that the Petitioner sought relief from his mother's neglect, as evidenced by the underlying court documents contained in the record, and the Family Court in its both SIJ orders also specifically considered the Petitioner's "health, educational, developmental, and emotional interests" in his juvenile dependency proceedings. Further, both dependency orders also specifically state that "the [court's] judgment is issued for the protection [of the child] from abuse, abandonment, and neglect, and for the health, safety, and well-being of the child." Moreover, the court's amended SIJ order consistently clarified its SIJ findings related to the Petitioner's protective relief from parental maltreatment. 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"); *6 USCIS Policy Manual* at J.2(A), <https://www.uscis.gov/policy-manual> (providing guidance to officers on deference to juvenile court determinations made under state law). The record therefore sufficiently demonstrates that the Petitioner sought and obtained protective relief from his mother's neglect in the form of remedial referral services as described above. Accordingly, the Petitioner's evidence on appeal has overcome the Director's determination to the contrary.

Further, the record shows that the court made the requisite, qualifying SIJ related findings regarding juvenile dependency and/or custody, parental reunification, and best interest, as the juvenile court orders establish that the court declared the minor Petitioner dependent on the court under relevant state law, determined that the Petitioner's reunification with his mother is not viable due to neglect under applicable state law, and that it is not in his best interest to be returned to El Salvador. Section 101(a)(27)(J)(i)–(ii) of the Act; 8 C.F.R. § 204.11(c). Furthermore, the record establishes a factual basis for these determinations; and we discern no evidence that materially conflicts with the SIJ related determinations. Section 101(a)(27)(J)(iii) of the Act 8 C.F.R. § 204.11(b)(5), (d)(5)(i). The Petitioner therefore has demonstrated, by a preponderance of the evidence, that a primary reason he sought the juvenile court orders was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that he was granted such relief under applicable state law, as evidenced by the court-ordered referral services. As the record otherwise shows that the Petitioner meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, he has established his eligibility for SIJ classification under the Act. 8 C.F.R. §§ 204.11(b), (d).

ORDER: The appeal is sustained.