



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

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

In Re: 28124999

Date: OCT. 26, 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 Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), concluding that U.S. Citizenship and Immigration Services (USCIS) consent is not warranted because the record did not include a reasonable factual basis for the juvenile court's best interest determination. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner submits a brief and reasserts his eligibility.

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)(i) 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; 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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

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).

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 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 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 demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Evidence and Procedural History

In [] 2021, when the Petitioner was 18 years old, the Superior Court for Juvenile Matters at [] in the Fourth Judicial District of the State of Connecticut (juvenile court) issued an order, titled *MEMORANDUM OF DECISION* (SIJ order), where it made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. The juvenile court determined that the Petitioner was dependent upon the court, reunification with his father was not viable due to neglect and abandonment under Connecticut law, and it was not in his best interest to be returned to his or his parents' country of nationality or last habitual residence, Ecuador.

Based on the juvenile court order, the Petitioner filed this SIJ petition in September 2021. The Director denied the SIJ petition, specifically concluding that the SIJ order did not provide the factual basis for the juvenile court's determination for why it would not be in the Petitioner's best interest to return to Ecuador. The Director further noted that the Petitioner did not provide sufficient documentation, in response to the RFE, to establish a reasonable factual basis for the court's best interest determination.

On appeal, the Petitioner submits a brief asserting that the juvenile court's order "clearly and in abundant detail" provides the basis under which it made the parental reunification and best interest determinations. The Petitioner reiterates that the juvenile court specifically indicated in the SIJ order that it relied on testimony from the Petitioner, his mother, his older brother, and the Department of Children and Families (DCF) worker assigned to prepare a study for the court. The SIJ order also indicates that the juvenile court received documentary evidence, including the social study prepared by DCF and a written affidavit from the Petitioner's mother. The Petitioner emphasizes the juvenile court's discussion of his father's abandonment and neglect and contends that, based on this discussion, the court determined that it would be in his best interest not to return to Ecuador and remain in the care of his mother in Connecticut as it is a placement that fosters his interest in sustained growth, development, well-being, and in the continuity and stability of his environment.

B. USCIS' Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To warrant USCIS' consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect"). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings). Furthermore, 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).

As noted above, the Petitioner must demonstrate that in a juvenile court order (or in administrative proceedings recognized by the juvenile court), the juvenile court made a determination that it would not be in the best interest of the Petitioner to be returned to the country of nationality or last habitual residence of the Petitioner or the Petitioner's parents. *See* section 101(a)(27)(J)(ii) of the Act; *see also* 8 C.F.R. § 204.11(c)(2). This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations, and the record should reflect the factual basis for the juvenile court's determination. *See 6 USCIS Policy Manual J.2(C)(3)*, <https://www.uscis.gov/policymanual>.

We have also clarified that where a juvenile court makes a custodial placement or dependency finding for a child pursuant to state law, "and the order includes facts reflecting that the 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 qualifying best interest finding with a sufficient factual basis to warrant USCIS consent." *Id.* Here, the record before the Director contained the requisite assessment, as the SIJ order finds that the Petitioner's mother is his natural guardian, a competent caregiver, and his sole means of support. In addition, as observed by the Petitioner on appeal, the juvenile court found that after hearing testimony from the Petitioner, his mother, his older brother, and a DCF worker, and reviewing documentary evidence, including the social study prepared by DCF and a written affidavit from the Petitioner's mother, all concluding that reunification with the Petitioner's father is not viable due to abandonment and neglect, it was also not in the Petitioner's best interest to be returned to Ecuador. Such a finding by the juvenile court is supported by the fact that the Petitioner's father remains in Ecuador and would be considered his natural guardian there, whom the court has already determined to have abandoned and neglected him. When considered in its entirety, the record contains a sufficient factual basis for the juvenile court's determination that it is not in the Petitioner's best interest to be returned to Ecuador, his country of nationality or last habitual residence. The Petitioner therefore has shown that his request for SIJ classification is bona fide such that USCIS' consent is warranted under section 101(a)(27)(J)(iii) of the Act.

ORDER: The appeal is sustained.