



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

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

In Re: 21319925

Date: NOV. 17, 2022

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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The matter is now before us on appeal. 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, the appeal will be sustained.

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. 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 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

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).

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 Facts and Procedural History

The Petitioner, a native and citizen of Bangladesh, entered the United States in January 2016, at the age of 17 years. In [redacted] 2018, when the Petitioner was 20 years old, the Family Court of the State of New York in the [redacted] (Family Court) issued an *Order Appointing the Guardian of the Person*, which placed the Petitioner in the custody of M-P-². On the same day, the Family Court issued an *Order-Special Immigrant Juvenile Status* (SIJ order) which determined that the Petitioner was under 21 years of age, was dependent upon the juvenile court, and placed in the custody of M-P-. The SIJ order further determined that the reunification with the Petitioner's parents was not viable due to abandonment under New York Social Services Law 384-b(5)(a), and a similar basis under New York Law as the Petitioner's father passed away in October 2017, and the Petitioner's mother was confined to bed due to illness. The SIJ order also determined that it was not in the Petitioner's best interest to be returned to Bangladesh, as his father is deceased, his mother is unable to care for him, and he does not have family who can care for him in Bangladesh. The SIJ order stated, "should [the Petitioner] be forced to return, he would be destitute and homeless. In contrast, [the Petitioner] has been residing with [M-P-] who loves and cares for [him] and ensures that all his needs are met."

The Petitioner filed his SIJ petition in April 2018. After initial review, the Director issued a notice of intent to deny (NOID) to obtain documentation regarding the Petitioner's date of birth. In response to the NOID, the Petitioner supplied declarations from his primary school, an affidavit from the midwife who assisted with his delivery, a self-affidavit, his Verification of Release from the Office of Refugee Resettlement, and country specific information from Bangladesh regarding the issuance of birth certificates.

The Director denied the SIJ petition, determining that the Petitioner had not established that he was under 21 years of age at the time he filed his SIJ petition, and that the Petitioner had not established that his request for SIJ classification was bona fide due to material inconsistencies in the record regarding his date of birth. The Director noted that the Petitioner's birth certificate, which was issued in December 2015, and indicates that the Petitioner's birth was not registered until July 2007, nine years after his birth. The Director stated that the date of birth on the Petitioner's birth certificate created a conflict, as the Petitioner had previously disclosed to USCIS, during his interview for asylum, that he had used a false date of birth to officials outside of the United States and stated in the decision that the Petitioner did not acknowledge this in the affidavit submitted in response to the NOID. The Director further discussed dates that were present regarding the Petitioner's school attendance and noted that they appeared to conflict with the dates provided with his Form I-589, Application for Asylum and for Withholding of Removal (asylum application). On appeal, the Petitioner submits a brief, an updated affidavit, and copies of evidence that were provided in response to the NOID.

² We use initials to protect the identity of individuals.

B. Evidence of the Petitioner's Age

A petitioner must be eligible for the immigration benefit sought at the time of filing and that a petitioner seeking SIJ classification must be under the age of 21 at the time of filing. 8 C.F.R. § 204.11(b)(1). Our *de novo* review of the record shows that the Petitioner has established by a preponderance of the evidence that he was under 21 at the time of filing, as required.

On appeal, the Petitioner argues that the Director improperly denied the SIJ petition, as the denial contained derogatory information that the Petitioner was not made aware of prior to the issuance of the decision. The Petitioner notes that in the NOID, the Director indicated only that, “[the Petitioner] stated that [he was] born on [] 1996, during a previous encounter with immigration officials.” The Petitioner writes in his brief on appeal that this was insufficient to notify the Petitioner of the issue, as the Director went on in the decision to note that the Petitioner had claimed this date of birth to foreign countries’ immigration officials, which the Petitioner disclosed during his interview for asylum. The Director further stated in the decision that the Petitioner’s affidavit did “not acknowledge that [he] previously disclosed providing an alternate date to foreign officials.” As the Petitioner was not clearly made aware of what facts the Director was requesting a response to, we withdraw the Director’s determination that the Petitioner providing a false date of birth to foreign countries’ immigration officials creates a material conflict with his date of birth. When reviewing the information that the Petitioner previously provided in the record, he clearly indicated that he has not provided false information to any United States immigration officials, and this statement was previously included in his response to the NOID. Further, the Director notes a conflict in the dates that the Petitioner was certified to have been in school in Bangladesh when compared to his asylum application. The Director indicated that the Petitioner “reviewed the information on his [asylum application] and confirmed it to be correct.” However, the Director’s decision did not note the Petitioner’s response when questioned if he completed the asylum application himself, where his response was, “[n]o, [his] lawyer helped [him].”

In the Petitioner’s updated affidavit submitted with his appeal, he addresses the inconsistencies noted by the Director. The Petitioner states that he did not provide exact dates to his prior attorney when completing the asylum application but notes that the exact details may not have matched, as he had to drop out of school in 2007, prior to the 6th grade, because his father couldn’t pay the tuition. The Petitioner additionally states that he didn’t return to school until 2009, where he failed the 6th grade and was unable to proceed to 7th grade until 2011. The Petitioner also clarifies that he provided the false date of birth in other countries prior to his arrival to the United States, as the smugglers gave it to him, and he was worried about being detained prior to getting to the United States if the officials in other countries found out that he was a minor.

The Director’s decision did not call into question the Petitioner’s birth certificate, outside of mentioning that it appeared to be late-registered.³ While the Petitioner admitted to providing a false date of birth to foreign countries’ immigration officials, we do not find his actions to create a material inconsistency with the evidence he provided to establish his actual date of birth. Further, the

³ We note that while the Petitioner’s birth was late-registered, it was registered in 2007, approximately 9 years prior to his travel to the United States, and 11 years prior to seeking SIJ classification.

Petitioner's failure to disclose this on his SIJ petition when he had already admitted the act to USCIS in an interview for a separate immigration benefit does not create a material inconsistency.

As a result, in our *de novo* review of the record, we determine that the Petitioner has established, by a preponderance of the evidence, that he was under 21 years of age at the time he filed his SIJ petition. The Petitioner submitted his birth certificate, as well as affidavits regarding his school attendance, an affidavit from the midwife who oversaw his birth, and documents from United States government agencies, and has adequately addressed the inconsistencies noted by the Director. A totality of relevant, credible evidence supports a conclusion that the Petitioner was under 21 years of age when he filed his SIJ petition, and he has therefore met the requirement at 8 C.F.R. § 204.11(b)(1). As such, we withdraw the Director's determination to the contrary.

C. USCIS' Consent is Warranted

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).

The Director's decision notes that as the record contained material inconsistencies regarding the Petitioner's date of birth, he had not established that his request for SIJ classification was bona fide, and therefore did not warrant USCIS' consent. As discussed above, we have withdrawn the Director's determination of material inconsistencies regarding the Petitioner's age and find that he was under 21 years of age at the time he filed his SIJ petition. Further, the Petitioner had previously established that he was unmarried, that he was placed in the custody of M-P-, and that the Family Court determined that reunification with one or both of the Petitioner's parents was not viable due to abandonment under New York law. The Family Court additionally indicated that it was not in the Petitioner's best interest to return to Bangladesh. Therefore, we determine that the Petitioner's request for SIJ classification is bona fide and warrants USCIS' consent.

III. CONCLUSION

As the Petitioner has overcome the Director's determination that he had not submitted sufficient evidence to establish that he was under 21 years of age at the time of filing his SIJ petition, we will sustain his appeal.

ORDER: The appeal is sustained.