



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

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

In Re: 20447168

Date: OCT. 13, 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), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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). 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).

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 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

In [redacted] 2020, when the Petitioner was 18 years old, the Surrogate's Court in [redacted] New York issued a *Decision and Order* (SIJ order), declaring the Petitioner dependent on the court based on the appointment of V-S-¹ as his guardian. The Surrogate's Court also found that the Petitioner's reunification with his parents is not viable due to abandonment and neglect by his father and abuse and neglect by his mother, and that it would not be in his best interest to be returned to India, his country of origin. The *Notice of Motion for Special Findings* to the Surrogate's Court clarified that the court relied on provisions of the New York Family Court Act, New York Surrogate's Court Procedure Act, and New York Domestic Relations Law in making its determinations. Based on the SIJ order, the Petitioner filed his SIJ petition. The Director denied the petition, explaining that due to unresolved inconsistencies between the Petitioner's SIJ petition and his Form I-589, Application for Asylum and for Withholding of Removal (asylum application), the record did not establish that USCIS' consent is warranted.

B. USCIS' Consent is Warranted

As discussed above, SIJ classification may only be granted upon the consent of DHS, through USCIS, where the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. For USCIS to consent, the request for SIJ classification must be bona fide, which means the petitioner must establish that a primary reason for seeking the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). USCIS may withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification is not bona fide. *Id.*

As an initial matter, the Petitioner claims that when the Director issued a request for evidence (RFE) requesting additional documentation to establish the reasonable factual basis for the Surrogate's Court's findings, the Director was requesting "documents that have been held to violate" the Administrative Procedure Act and *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). However, the Petitioner does not provide any legal analysis or evidence to support this assertion. The evidence does not show that the Director based the RFE or denial decision on grounds related to *R.F.M. v. Nielsen*, which applied to petitioners whose SIJ petitions were erroneously denied based on a determination that New York Family Courts lack jurisdiction over the custody of individuals 18 years of age or older and that the court must have authority to order the return of a juvenile to the custody of the parent(s) with whom their reunification was not viable. 365 F. Supp. 3d at 377-80. The record does not support a determination that this case was denied on such grounds, or that the Director otherwise erred in issuing an RFE for more evidence to resolve the inconsistencies in the record, as the regulation at 8 C.F.R. § 204.11(b)(5) permits.

¹ We use initials to protect privacy.

The Petitioner also asserts on appeal that he has submitted sufficient evidence to establish his eligibility for SIJ classification. He provides explanations for the inconsistencies the Director noted and argues that the record contains a reasonable factual basis for the juvenile court's determinations such that USCIS' consent is warranted. Upon *de novo* review, the Petitioner has resolved the inconsistencies in the record.

The Director concluded that the Petitioner's report on his asylum application about his education and employment conflicted with the evidence he provided in support of his SIJ petition. Specifically, the Director noted that the Petitioner did not report a seven-month gap in his school attendance or any employment history on his asylum application, but indicated in his affidavit before the Surrogate's Court that his mother prevented him from attending school and forced him to work. On appeal, the Petitioner reasonably explains that the wording and format of the question on the asylum application about schools attended does not provide space or instruction to report a temporary gap in education, and that he did not consider labor he was forced to do as a child to be employment. Additionally, the Director found inconsistencies between the Petitioner's description of his parents as "callous" people who did not concern themselves with his welfare and his statements that his father allowed him to live with him, his mother did not force him to return to bonded labor after escaping, and his mother sold the family's property to help fund his trip to the United States. The Petitioner explains that, as described in his affidavit, his father was generally absent and neglectful but allowed him to stay with him when the Petitioner had nowhere else to go after fleeing bonded labor. However, his father still prevented him from attending school and made him attend political rallies where his safety was at risk. Additionally, while his mother did not force him to return to bonded labor, she was angry that he was not helping support his family.

With regard to his mother's contributions to his travel expenses, the Petitioner described this situation in detail in his affidavit to the Surrogate's Court, which determined after considering the evidence that the Petitioner's parents had abused, neglected, and abandoned him. The Surrogate's Court had a reasonable factual basis for its determinations and we will not go behind the court's order to reassess the evidence. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066, 13086 (Mar. 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."); *see also* 6 USCIS Policy Manual J.2 (providing guidance to officers on deference to juvenile court determinations made under state law and explaining that we do not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law).

The Director also noted the Petitioner submitted affidavits from each of his parents in which they relinquished their parental rights and consented to the appointment of a guardian because he "cannot return to his home country because he has been or will be targeted for persecution because of his or his family religious [*sic*], political views, race or nationality, or because he/his family are a [*sic*] member of [a] particular social group." However, counsel states on appeal that the Petitioner's parents received a full copy of the proceedings before the Surrogate's Court. Furthermore, the intentions of the Petitioner's parents in signing the affidavits does not necessarily negate the intention of the Petitioner himself in seeking the SIJ order. The Surrogate's Court, after considering the evidence, made determinations regarding the Petitioner's ability to reunify with his parents and best interest, and the record demonstrates that the court had a reasonable factual basis for its findings. The Petitioner has established by the preponderance of the evidence that a primary reason he sought the SIJ order

was to obtain relief from his parents' abuse, neglect, and abandonment, and the record does not contain unresolved material inconsistencies that would support a conclusion that the Petitioner's request for SIJ classification is not bona fide. 8 C.F.R. § 204.11(b)(5). Accordingly, the Petitioner has established his eligibility and USCIS' consent is warranted.

ORDER: The appeal is sustained.