



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

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

In Re: 22022872

Date: OCT. 25, 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), concluding that the Petitioner did not provide evidence of her age through an acceptable government record such as a birth certificate, and thus she did not meet her burden of proving that her SIJ petition should be approved. On appeal, the Petitioner asserts her eligibility for SIJ classification. 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),(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. *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). 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

The Petitioner claimed to be a native and citizen of Mexico,² and applied for admission at the Bridge of the Americas Port of Entry in [redacted] Texas in August 2018. The Petitioner was not in possession of any valid entry documents as required by the Act. Therefore, the Petitioner was apprehended and placed in the care and custody of the Office of Refugee Resettlement (ORR), Division of Unaccompanied Children’s Operations. ORR determined that the Petitioner’s date of birth was [redacted] 2017. Thus, she was nearly 1 year old at the time of her entry. ORR noted that the Petitioner did not have a birth certificate because her birth was never registered in Mexico. In [redacted] 2019, she was released to the custody of G-L-³ her maternal aunt, after a DNA test of the Petitioner, her aunt, and her mother confirmed the familial relationship.

In [redacted] 2020, when the Petitioner was 2 years old, the District Court of [redacted] Colorado (District Court) issued an *ORDER REGARDING REQUEST FOR ADDITIONAL FINDINGS ESTABLISHING ELIGIBILITY FOR DESIGNATION AS A SPECIAL IMMIGRANT JUVENILE* (SIJ order) on her behalf. The District Court appointed G-L-, as her guardian. In its SIJ order, the District Court declared the Petitioner to be “the subject of these juvenile court proceedings and under the jurisdiction of this District Court.” The District Court determined that it was not viable for the Petitioner to reunify with her father because he never had contact with the Petitioner since her birth, and he had never supported her financially or emotionally. The District Court concluded that he left the Petitioner without reasonable and necessary care or supervision and had not provided food, clothing, shelter, and medical care. The District Court determined that such conduct constituted abandonment and neglect by the Petitioner’s father⁴ and cited the appropriate Colorado law. The District Court determined that the age, nationality, paternity, and maternity of the Petitioner was established despite the Petitioner not having a birth certificate. The District Court also determined it was not in the Petitioner’s best interest to return to Mexico because no one was willing or able to protect her there.

² The Petitioner submitted a February 2021 letter from the Mexican Consulate in Denver, Colorado which states that they were unable to locate any record of her birth and it was not possible for them to register her birth, nor provide a birth certificate for her since “there was not enough information to ensure that she was born Mexico.”

³ We use initials to protect the privacy of individuals.

⁴ Because the District Court made a qualifying parental reunification determination with regards to the Petitioner’s father, but not her mother, the Petitioner is still eligible for SIJ classification, and we need not address whether the Petitioner was also abused, neglected or abandoned by her mother.

Based on the District Court's order, the Petitioner filed her SIJ petition. Prior to issuing a decision, the Director issued a request for evidence (RFE) notifying the Petitioner that the SIJ regulations required her to provide evidence of her age. The Director noted that such evidence could include a birth certificate, passport, government issued identification card, or secondary evidence such as a baptismal certificate or school records, which in the discretion of USCIS could establish her age. The Petitioner responded with a letter from her attorney and copies of the following documents: Verification of Release from ORR and additional ORR documentation listing [redacted] 2017 as the Petitioner's date of birth; birth certificate for S-L- (the Petitioner's mother who was born on [redacted] 1995); DNA Test Report for the Petitioner and her mother; the Petitioner's Official Immunization Record from Texas and supporting medical documentation listing her date of birth as [redacted] 2017; Form I-862, Notice to Appear, listing [redacted] 2017 as the Petitioner's date of birth; Form I-216, Record of Persons and Property Transferred, listing [redacted] 2017 as the Petitioner's date of birth; [redacted] 2020 *ORDER APPOINTING GUARDIAN FOR MINOR* from the District Court listing [redacted] [redacted] 2017 as the Petitioner's date of birth; copy of active treatment plan from the Petitioner's dentist listing [redacted] 2017 as her date of birth; and a February 2021 letter from the Mexican Consulate listing her date of birth as [redacted] 2017 and stating that the Petitioner cannot obtain a Mexican birth certificate because her birth was never registered.

The Director subsequently denied the SIJ petition, concluding that the Petitioner did not establish evidence of her age. The Director acknowledged the documentation submitted but noted that the Petitioner did not submit an official government record of her birth from Mexico as required under section 101(a)(27)(J)(d)(1) of the Act. Therefore, the Director concluded that the Petitioner did not meet her burden of proof in demonstrating that the SIJ petition should be approved.

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that she is under the age of 21 years old.

B. The Petitioner Has Established She is Under the Age of 21 Years Old

A petitioner must be eligible for the immigration benefit sought at the time of filing, and a petitioner seeking SIJ classification must be under the age of 21. 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit "must establish that he or she is eligible for the requested benefit at the time of filing the benefit") and 204.11(b)(1)-(2) (indicating that an SIJ petitioner must be under 21 years of age and unmarried); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, section 235(d)(6), Pub. L. 110-457, 122 Stat. 5044, 5080 (2008) (providing age-out protections for SIJs who are unmarried and under the age of 21 at the time their petitions are filed). An SIJ petitioner must submit documentary evidence of his or her age. 8 C.F.R. § 204.11(d)(2). Examples of documentary evidence of age include birth certificates, official government-issued identification, or other documentation "that in USCIS' discretion establishes the petitioner's age. Under no circumstances is the petitioner compelled to submit evidence that would conflict with paragraph (e) of this section."⁵ *Id.*

⁵ No contact. During the petition or interview process, USCIS will take no action that requires a petitioner to contact the person(s) who allegedly battered, abused, neglected, or abandoned the petitioner (or the family member of such person(s)). *See* 8 C.F.R. § 204.11(e).

On appeal, the Petitioner submits a brief from her attorney and copies of the following documents: a general health appraisal form which lists her weight as 23.7 pounds as of August 2021, and her date of birth as [redacted] 2017; a November 2021 letter from her dentist stating that he estimates the Petitioner to be between the ages of 3.5 and 5 years old; a February 2021 dental imaging X-ray of the Petitioner's mouth and lower jaw; and G-E-'s 2020 tax returns.

Upon *de novo* review, a preponderance of the evidence supports the Petitioner's contention that she was born on [redacted] 2017, and consequently she was 2 years old at the time of filing. At the outset, a review of the record of proceeding shows that both the Department of Homeland Security and the Department of Health and Human Services determined that the Petitioner's date of birth was [redacted] 2017. Documentation in the record from ORR regarding her care and placement as an Unaccompanied Minor (UAC) corroborates the same. A dental imaging X-ray of the Petitioner's mouth and lower jaw, bolstered by the letter from her dentist confirms that the Petitioner is currently no more than five years old. Other documentation in the record likewise establishes the Petitioner's age. Based on the foregoing, the Petitioner has overcome the Director's sole ground for denial of the SIJ petition, and has established by a preponderance of the evidence both her age and that she was under 21 years old when she filed her SIJ petition.

C. USCIS' Consent is Warranted

As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria, section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is *bona fide*. 8 C.F.R. § 204.11(b)(5). To demonstrate 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).

In this case, the Petitioner has established by a preponderance of the evidence that a primary reason she sought the juvenile court order was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that she was granted such relief. As the Petitioner has established that she meets all other eligibility criteria, she has demonstrated that she is eligible for and merits USCIS' consent to her request for SIJ classification.

III. CONCLUSION

The Petitioner has overcome the sole basis of the Director's denial on appeal and has demonstrated her eligibility for SIJ classification.

ORDER: The appeal is sustained.