



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

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

In Re: 20217522

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). 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).<sup>1</sup> 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

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<sup>1</sup> 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).

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, a native and citizen of Honduras, entered the United States in May 2019, at the age of 16 years. In [redacted] 2020, when the Petitioner was 17 years old, the Superior Court of the State of Arizona for the [redacted] Juvenile Division (juvenile court) issued *Findings of Fact and Conclusions of Law as to Identity and Age* (findings), which determined that the Petitioner established that he was born in [redacted] 2003 and provided the names of his parents. On the same date, the juvenile court issued an *Order Regarding Child's Dependency Proceedings* (SIJ order), determining in part that the Petitioner's reunification with his father was not viable, as his father was deceased. The SIJ order further determined that reunification with his mother was not viable due to neglect, as defined in Section 8-201(25) of the Arizona Revised Statutes (ARS), and abandonment, as defined in Section 8-201(1) of the ARS. The juvenile court noted that the Petitioner's mother had "plac[ed] [the Petitioner's] health and welfare at an unreasonable risk of harm" and "was unable to provide for [the Petitioner's] basic needs." The juvenile court also determined that the Petitioner only attended school for one year at the age of 7, and that he left his mother's home at the age of 12 as he feared for his life, and that she had not supported him since that time, nor had she made efforts to communicate with the Petitioner since he left the home. Furthermore, the juvenile court concluded that if the Petitioner was returned to Honduras, "[he] will continue to suffer from his mother's neglect. He will again be forced to go hungry, live in housing without electricity, unable to obtain schooling and forced to work under unsafe conditions, and without the appropriate medical care to treat injuries and illness." The juvenile court determined that it was in the Petitioner's best interest to remain the United States and placed him in the care and custody of C-C-M-, his half-brother.<sup>2</sup>

The Petitioner filed his SIJ petition June 2020. After initial review, the Director issued two requests for evidence (RFE) to obtain documentation regarding the Petitioner's date of birth. In response to these RFE, the Petitioner supplied declarations regarding his age and unavailability of a birth certificate, a copy of his school records in the US, a copy of the Office of Refugee Resettlement (ORR) Verification of Release, a DNA test conducted with C-C-M-, a certification from a midwife in Honduras, letters from the National Registry of Persons in Honduras confirming that there was no birth certificate available for the Petitioner, and letters from an attorney in Honduras documenting attempts to obtain additional documentation of the Petitioner's date of birth.

The Director denied the SIJ petition, determining that the Petitioner had not "definitively" established that he was born in Honduras, and that the evidence provided by the Petitioner was issued by entities in the US. The Director further noted that as the declaration from the midwife was dated "almost 14" years after his birth, the Director was "unable to recognize this as an acceptable record" of the Petitioner's birth. On appeal, the Petitioner submits a brief and additional evidence.

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<sup>2</sup> We use initials to protect the identity of individuals.

## B. Evidence of the Petitioner's Age

Federal immigration law mandates that 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 when the Director stated that the Petitioner did not “definitively” prove that he was born in Honduras as the applicable regulations for SIJ classification do not require that a petitioner provide evidence of their country of birth; rather, the regulations require that a petitioner provide evidence to establish, by a preponderance of the evidence, that they were under 21 years of age at the time of filing. We note that in the Director’s second RFE, the Petitioner was asked to submit “an original written statement from the government agency authorized to issue birth certificates in Honduras.” The Petitioner’s response to the RFE included such a document, signed by F-S-G-V-, an official of the Municipal Civil Registry in the location where the Petitioner has stated he was born. In F-S-G-V-’s letter, he stated, “in this municipality in which [F-S-G-V-] [has] jurisdiction, there are countless cases of minors and even adults who are not registered.” In response to the Petitioner’s request, a “negative record” was supplied, which confirmed the non-registration of the Petitioner’s birth, and noted that there was an inclusion of a certificate from the midwife who oversaw the Petitioner’s birth.

In our *de novo* review, we determine that the Petitioner has established, by a preponderance of the evidence, that he was under 21 years of age at the time of filing his petition for SIJ classification. We note that the USCIS Policy Manual states, “[a]n SIJ petitioner should submit documentation of age in the form of a valid birth certificate, official government-issued identification document, or other document that in USCIS’ discretion establishes the petitioner’s age. If primary documentation of birth is not available to the petitioner, USCIS may consider affidavits or secondary evidence of age, which may include baptismal certificates, school records, hospital records, or immunization records, to evaluate whether the petitioner has met the petitioner’s burden of proof by the preponderance of the evidence.” 6 *USCIS Policy Manual* J.3, <https://www.uscis.gov/policy-manual>.

In the Director’s decision, it is noted that the evidence provided to establish the Petitioner’s date of birth was issued by entities in the United States. However, the Petitioner has provided documentation from government officials in Honduras that establishes that his birth was not registered there. Further, in our review of the SIJ order, it was noted before the juvenile court that the Petitioner only attended school for one year at the age of 7 and did not receive adequate medical care when he was living with his mother. The Petitioner also notes that the findings issued by the juvenile court stated, “[the Petitioner] has established that his date of birth” is in 2003.

On appeal, the Petitioner further submits an affidavit from D-M-G-, an attorney in Honduras. In this affidavit, D-M-G- states that, in order for the Petitioner to register himself, he would have to present “proof of birth either of a duly certified midwife or of the clinic where the birth was carried out, vaccination card, school acknowledgement, documents of parents and siblings, copy of the birth folios, and if the minor is over 17 years of age, fingerprints and DNA must be taken to assess their true age.”

D-M-G- further explains that for this to take place, the Petitioner's mother would also need to be registered, and it was determined that her birth was also unregistered, and his father is deceased.

In our review of the Petitioner's arguments and evidence submitted, we find that the Petitioner has submitted sufficient documentation to show by a preponderance of the evidence that he was under 21 years of age when he filed his SIJ petition. He has submitted supporting documentation, including government documents from Honduras, which were not given sufficient weight 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).

### C. The Remaining Eligibility Requirements

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). 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).

In review of the Petitioner's request for SIJ classification, we determine that he was subject to a court order that determined that he could not reunify with either of his parents, as his father is deceased and his mother neglected and abandoned him, and the juvenile court cited applicable Arizona state law in support of its findings in the SIJ order. The Petitioner was declared dependent upon the court and placed in the care and custody of his half-brother, C-C-W-. The SIJ order further contained a judicial determination that it was not in his best interest to return to Honduras. Finally, we determine that the Petitioner meets all other eligibility requirements and has established that his request for SIJ classification is bona fide, and that the applicable juvenile court determinations were sought to obtain relief from parental abuse and abandonment, and therefore 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.