



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 31360270

Date: MAY 01, 2024

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 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). 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 approved the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), but subsequently revoked the SIJ petition after issuing a notice of intent to revoke (NOIR) and concluding that the Petitioner had not established that U.S. Citizenship and Immigration Services (USCIS)' consent was warranted. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 remand this matter for further proceedings consistent with this decision.

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, among other SIJ related determinations, 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

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).

to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of U.S. Citizenship and Immigration Services (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). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(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).

USCIS may revoke the approval of an SIJ petition upon notice to the petitioner for “good and sufficient cause” when the necessity for the revocation comes to the attention of the agency. Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. § 205.2(a).

II. ANALYSIS

On [] 2021, the Commonwealth of Massachusetts Probate and Family Court, [] Division (court), issued a judgment of dependency (judgment) determining it had jurisdiction over the Petitioner and was sitting as a juvenile court, referencing Massachusetts laws in support. The judgment referred the Petitioner to the Probation Service for the coordination of educational, occupational, social, and domestic violence services, and counseling. The court also incorporated the Special Findings of Fact and Rulings of Law (SIJ order) and the facts set forth in the Petitioner's affidavit in support of the judgment.

Within the SIJ order, the court determined that reunification with the Petitioner's mother is not viable due to abuse, abandonment, and neglect under Massachusetts law. In support of this determination, the SIJ order describes, in relevant part, the sexual abuse suffered by the Petitioner because her mother did not protect her when she was seven years old, the physical violence suffered by the Petitioner when her mother beat her and locked her in a room, and the Petitioner's mother's refusal to provide her with proper clothing and toiletries, to get her treatment for lice or to take her to the doctor for treatment of an infection and anemia. In the SIJ order, the court also cited Massachusetts law in determining it was not in the Petitioner's best interest to return to Brazil, the country of her nationality, in part because she would be subjected to further abuse, neglect, and abandonment. The court further found that the Petitioner does not have family that will care for her or financially support her in Brazil, and she has a stable job and home in the United States.

In April 2021, the Petitioner filed her SIJ petition, using the judgment, the SIJ order, and supporting documents filed with the court, as the basis for SIJ classification. The Director approved the SIJ petition in October 2021. In December 2021, the Petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status (adjustment application), based on the approved SIJ petition. In May 2023, the Director issued a notice of intent to revoke (NOIR) explaining that the SIJ petition

was approved in error as the record contains material inconsistencies with the SIJ eligibility requirements evidencing that USCIS' consent was not warranted. The Petitioner filed a brief in response to the NOIR. In October 2023, USCIS revoked the SIJ petition and denied the Petitioner's adjustment application.

The Director revoked the approval of the Petitioner's SIJ petition, finding there were material inconsistencies in the record raising issue with whether 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, as required, such that the Petitioner's request for SIJ classification was bona fide. The Director determined that the Petitioner made conflicting statements to the Department of State (DOS) and USCIS on her SIJ petition, adjustment application, and Forms I-539, Application to Extend/Change Nonimmigrant Status (extension application) and concluded the Petitioner's primary purpose for entering the United States was to establish a life in Massachusetts, where she works and lives with her boyfriend.

In the revocation decision, the Director raised the following inconsistencies: The Petitioner submitted an affidavit with her SIJ petition stating in relevant part that she finished high school in Brazil, her mother's financial situation was very difficult, her mother had to work multiple jobs to stay afloat, her mother refused to provide her with proper living conditions in Brazil, and nothing was provided for her. The Director compared this information with the Petitioner's March 2019 non-immigrant visa (NIV) application, where she claimed she was a student at a training institution in Brazil, she lived with her mother, her mother worked as an analyst and was paying for herself, the Petitioner, and another individual to travel to the United States. According to the Director, the visa records do not support the Petitioner's statements that her mother could not provide her with proper living conditions or that she was unable to further her education.

Upon review of the record, the referenced information in the 2019 NIV application relating to the Petitioner's mother's ability and willingness to pay for the cost of the Petitioner's travel to the United States at that time, and whether the Petitioner was still a student in Brazil, does not materially conflict with the court's SIJ related determinations or the factual findings in support of them. Pursuant to the SIJ order, the court determined that reunification with the Petitioner's mother is not viable due to abuse, abandonment, and neglect because the Petitioner's mother failed to protect her from sexual abuse, physically abused her, and refused to provide her with the necessities to maintain proper hygiene and health in Brazil. The court, in making its parental reunification determination, did not rely on or make any factual findings regarding whether the Petitioner's mother had an ability to financially support her. Instead, the SIJ order describes the Petitioner's mother's refusal to provide her with the medical or physical care and necessities she needed and the mother physically and emotionally abusing the Petitioner, which is not dependent on her financial income. In addition, the information in the NIV application does not directly conflict with the Petitioner's assertions in her affidavit regarding the physical and emotional abuse and neglect she was subjected to by her mother, which as discussed above, were the facts relied upon by the court in its parental reunification determination. Further, this information in the NIV application is not inconsistent with the court's determination that it would not be in the Petitioner's best interest to be returned to Brazil because she does not have family that will care for her or financially support her in Brazil and that she would be subjected to further abuse, neglect, and abandonment. While the Petitioner's mother may have been willing to pay to bring her to the United States, this does not mean that the Petitioner's mother would

be willing to provide the care or financial support she needs or that she would not subject the Petitioner to future abuse, neglect, and abandonment.

The Director also raised these inconsistencies: The Petitioner's affidavit to the court indicates she works doing internet sales for a cable provider in the United States, and she has more opportunities in the United States. The Director explained that her adjustment application also indicates the Petitioner has worked in the United States since October 2019. The Director compared this information with her extension applications, filed in November 2019 and June 2020 to extend her stay in the United States, where she claimed she was not working, would be supported by her "boyfriend [L-L],² with his personal income from Brazil," and is "eagerly awaiting a return" to Brazil. She described traveling to cities in the United States and her desire to continue to travel. She included photographs of her and L-L- in various places in the United States and financial statements evidencing L-L-'s ability to support her. According to the Director, this conflicting information by the Petitioner in her affidavit and various immigration applications indicates that her primary purpose for entering the United States was to establish a life in the United States with her boyfriend. The Director further states that her extension applications depict her as a tourist who was not working and eagerly awaiting her return to Brazil.

These inconsistencies highlighted by the Director also do not materially conflict with the court's SIJ related determinations or otherwise show that the Petitioner's SIJ request was not bona fide. USCIS generally defers to the court on matters of state law and does not go behind the juvenile court order to reweigh evidence and make independent determinations about the best interest of the juvenile and abuse, neglect, abandonment, or a similar basis under state law. See 87 Fed. Reg. 13066, 13086 (March 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 generally 6 USCIS Policy Manual, supra, at J.2 (explaining, as guidance, the deference given to a juvenile court in reviewing eligibility requirements). The Petitioner's misrepresentations about her immigrant intent in applying for an extension of her tourist visa, including her statements about her ability to be supported by her boyfriend in the United States, her desire to return to Brazil in 2019 and 2020 when she filed her extension requests, and her travel within the United States, do not materially conflict with the court's parental reunification determination that she was abused, abandoned, and neglected by her mother in Brazil and its best interest determination that she would be without family to protect her and financially support her in Brazil and she would be subjected to further abuse, neglect, and abandonment by her mother if she returned to Brazil. While there is an inconsistency in the record with whether the Petitioner has a stable job in the United States, this was one of the many factors considered by the court in its assessment of her safety and well-being, which included she had a stable home in the United States and would suffer future harm in Brazil without the protection and financial support of family. See generally 6 USCIS Policy Manual J.2(C)(3), <https://www.uscis.gov/policymanual> (explaining, as guidance, the child's safety and well-being are typically the court's paramount concern in its individualized assessment of factors that it normally considers when making best interest determinations).

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 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

² Initials are used to protect the identities of the individuals.

maltreatment and not primarily to obtain an immigration benefit. However, USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. See generally 6 USCIS Policy Manual, *supra*, at J.2(D) (explaining, as guidance, the requirements for USCIS consent). USCIS may nevertheless withhold consent if the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide. 8 C.F.R. § 204.11(b)(5). Here, the Director raised several inconsistencies between the court's findings and the Petitioner's prior statements to the DOS and other filings with USCIS, but as discussed, her statements do not materially conflict with the court's SIJ related determinations or specific factual findings in support of those determinations. They are therefore not sufficient to show that USCIS' consent to the Petitioner's request for SIJ classification should be withheld.

II. CONCLUSION

The inconsistencies raised by the Director do not amount to "good and sufficient cause" to revoke the approval of the Petitioner's SIJ petition under section 205 of the Act and 8 C.F.R. § 205.2(a). Accordingly, we will remand the matter for the Director for further proceedings consistent with this decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.