



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

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

In Re: 16829367

Date: APR. 4, 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 dismissed.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their 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(c). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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 juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). 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 [] 2019, when the Petitioner was 16 years old, the [] Family Court in New York issued an order appointing the Petitioner's aunt, N-A-,¹ as her guardian in guardianship proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The order stated that "the appointment shall last until the [Petitioner's] 18th birthday" In a separate order titled *ORDER – SPECIAL FINDINGS*, (SIJ order) issued in [] 2019, the Family Court determined, among other findings, that the Petitioner was "placed in the custody or guardianship of an individual appointed by the Family Court of the State of New York, []" The Family Court also found that the Petitioner's reunification with her mother, S-A-, is not viable due to abandonment under New York law, "because this child was abandoned at the age of two years old and left at a boarding school with poor living conditions." Further, the Family Court concluded that it was not in the Petitioner's best interest to return to the Republic of Ghana, her country of nationality, "or to her biological Mother, because it was the child's Mother who abandoned her at two years old to be bounced from one family member to another until a family member left her at a boarding school with deplorable living conditions."

Based on the Family Court's orders, the Petitioner filed her SIJ petition in November 2019. The Director issued a notice of intent to deny (NOID), indicating that the Petitioner had not established that USCIS' consent to her SIJ classification is warranted because her claims in support of her SIJ petition that reunification with her mother was not viable due to her abandonment at the age of two years conflicted with information relating to the Petitioner's applications for B1/B2 nonimmigrant visas in 2013 and 2018. Specifically, the Director indicated that when the Petitioner appeared for interviews with the U.S. Department of State (DOS) relating to her visa applications, her mother was present at the interviews and the Petitioner expressed an intention to travel with her mother. Furthermore, the Director noted that the records indicate that the Petitioner "had additional travel with [her] mother."

In response to the NOID, the Petitioner argued that her maternal aunt, M-A-, not her biological mother, accompanied her during her visa interviews and travel to the United States. She submitted a personal statement in which she explained that she lived with many of her mother's family members during her childhood, including her mother's older sister, M-A-, and that, "In Ghana, it's the norm to call your mother's sister 'Mom' if they take care of you or if you see them as a parental figure." She also provided a statement from M-A-, who indicated that she had "traveled with [the Petitioner] on several occasions." M-A- stated that she "always clarified being her mother when asked in time of . . . traveling and moreover [she] ha[s] a letter [of] written permission signed by [the Petitioner's biological parents]." Furthermore, she claimed that "due to [her] sister's negligence she has been unable to take care of her daughter since the age of two, so [the Petitioner] lived with most of her aunts including [M-A-]," but the Petitioner is not M-A-'s biological daughter. In a supplemental statement, M-A- claimed that she took the Petitioner on summer trips to the Netherlands and United States with a "legal guardianship document" signed by the Petitioner's biological parents, and that she cared for the

¹ We use initials to protect identities.

Petitioner in her parents' absence. Furthermore, she stated that the Petitioner "addresses [her] as 'mother' even up till today" for cultural reasons, but that she "always clarified when asked" during travel. According to M-A-, the Petitioner eventually reached out to N-A-, an aunt in the United States, due to poor conditions in the boarding school where her father had left her.

The Petitioner also submitted a statement from N-A-, her aunt and legal guardian, who stated that she is another sister of the Petitioner's mother, and the Petitioner "has in the past resided with four of her Aunties." Additionally, N-A- indicated that "[i]n Ghana, your mother's sister can be referred to as your mother, whereas your father's sister addressed as your Aunty based on the matrilineal lineage [*sic*]. It is very common among the Ashantes (Akans) to address one as a senior/junior mother" She specified that the Petitioner "has lived and traveled with [M-A-]," who is "senior mother as referred in the Ashanti custom" As additional supporting evidence, the Petitioner provided an article stating, in relevant part, that in the Akan ethnic group in Ghana, "All the brothers of your mother are your uncles and her sisters are your mothers. . . . In the paternal side, all the sisters of your father are your aunties and his brothers are your fathers." Furthermore, the article indicates that "the kids of your mother's sister are your siblings because their mother is your mother too by blood." The Petitioner also submitted a statement from the Deputy Judicial Secretary of the Judicial Service of Ghana, confirming that M-A- is "not the biological mother of [the Petitioner]"; documentation showing that M-A- purchased an airline ticket for the Petitioner in August 2018; a copy of her birth certificate listing S-A- as her biological mother; and copies of the Petitioner's visas and stamps in her passport. Additionally, the Petitioner provided copies of M-A-'s nonimmigrant visas and entry stamps that she claims are from M-A-'s passport. The Director found this evidence to be insufficient and denied the petition based on a determination that the Petitioner had not met her burden of showing that USCIS' consent to her SIJ classification is warranted.

On appeal, the Petitioner provides a letter indicating that the Petitioner sought a DNA parentage test regarding her relationship with M-A- and that results were pending; a copy of a search for her mother's I-94 record and travel history with a result of "[n]o record found for traveler"; a copy of the identification and first page of her mother's passport showing no arrival or departure stamps; copies of the Petitioner's own passports showing her U.S. visas and admission stamps; previously submitted photocopies of passport stamps she claims are from M-A-'s passport; and a copy of a previously submitted article regarding the Akan Family System in Ghana. She argues that she has submitted sufficient evidence to show that her mother abandoned her and that M-A- accompanied her during her visa interviews and travel, and that USCIS should consent to her SIJ classification because she has met all eligibility requirements.

B. USCIS' Consent is Not Warranted

The Petitioner has not met her burden of establishing that USCIS' consent to her SIJ classification is warranted. SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 6-7 (citing H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement "that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather

than for the purpose of obtaining relief from abuse or neglect’’)). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted and the agency must consider whether the court’s determinations were sought in proceedings granting relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond an order enabling an individual to file an SIJ petition with USCIS. *See* H.R. Rep. No. 105-405, at 130; *Budhathoki*, 898 F.3d 504, 511 n. 5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the *USCIS Policy Manual* explained).

As the Director discussed, records relating to the Petitioner’s applications for a B1/B2 nonimmigrant visa indicates that her mother accompanied her during her interview. DOS notes from the Petitioner’s June 5, 2018 interview for a B1/B2 nonimmigrant visa indicated, “Mother here with daughter at [redacted] girls.” As the Petitioner contends on appeal, this portion of the visa application information does not name the “mother,” but other evidence indicates that it was the Petitioner’s biological mother, S-A-. We recognize that M-A- is not the Petitioner’s biological mother and that the Petitioner refers to her aunt as her mother for cultural reasons. Further, we acknowledge the Petitioner’s claim that M-A-, not S-A-, accompanied her at the interview and during travel. However, the evidence is not sufficient to support her assertion. On the Petitioner’s visa application, her biological mother, S-A-, is listed as her mother in the section on “Relatives,” while M-A- is listed in the “Travel Companion” section as “OTHER RELATIVE.” Furthermore, the “Preparer of Application” is listed as M-A-, and the Petitioner’s relationship to her is noted to be “NIECE.” Similarly, M-A- is listed as the “Person/Entity Paying for Your Trip,” and her relationship to the Petitioner is again entered as “OTHER RELATIVE.” The Petitioner and M-A- differentiated between her biological mother and her aunt on her visa application, which does not support her claim that she referred to M-A- as her mother during the application process. Furthermore, the evidence does not establish that the DOS officer who conducted the interview would identify M-A- as the Petitioner’s mother when she was clearly listed on the form as another relative. Additionally, M-A- indicated in her statement that she “always clarified when asked” that she was not the Petitioner’s mother and presented a letter signed by the Petitioner’s biological parents authorizing her to travel with the Petitioner. The Petitioner and M-A- have not explained why, if M-A- attended the visa interview, she did not clarify her relationship to the Petitioner and present the letter from the Petitioner’s parents, as she had on the application form and claims she always does.

Moreover, the Petitioner submits passport stamps that she claims show M-A- traveled on the same dates as the Petitioner, but the stamps are not clearly from M-A-’s passport. The photocopies of the stamps are enlarged and do not contain legible identifying information linking them to M-A-, and the record lacks other evidence regarding M-A-’s travel history. We acknowledge the documentation the Petitioner submits regarding a lack of travel history by her biological mother, but the evidence is insufficient to refute the information in the record that the Petitioner’s mother accompanied her during her visa interview. Counsel claims in the brief that “the aunt has, in fact, been regarded and represented as her mother, on all occasions including at the embassy and in her travels,” but this assertion conflicts with M-A-’s statement that she always clarified her true relationship to the Petitioner during their travel together and presented a legal document from the Petitioner’s biological parents granting her

permission to travel with the Petitioner. Although the Petitioner refers to M-A- as her mother and states she has traveled with M-A- in the past, the evidence indicates that the Petitioner's mother appeared with her at her 2018 visa interview, which is inconsistent with the Petitioner's claim before the Family Court that her mother abandoned her when she was two years old. Accordingly, the record does not establish that she sought the Family Court's orders for the purpose of obtaining relief from parental abuse, neglect, abandonment, or a similar basis under state law, beyond an order enabling her to file an SIJ petition with USCIS. Therefore, the Petitioner has not met her burden of establishing that USCIS' consent to her SIJ classification is warranted, as section 101(a)(27)(J)(iii) of the Act requires.

ORDER: The appeal is dismissed.