



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

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

In Re: 17322700

Date: APR. 11, 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 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 [] 2018, when the Petitioner was 19 years old, the [] Family Court in New York issued an order appointing the Petitioner's uncle as his guardian in 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). In a separate order issued the same day and titled *ORDER – Special Immigrant Juvenile Status* (SIJ order), the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon the family court, and has been committed to and placed in the physical custody of an individual . . . appointed by the state or Family Court . . .” under New York law. Additionally, the Family Court found that the Petitioner's reunification with his father was not viable because his father is deceased, and that it would not be in his best interest to be returned to El Salvador, his country of nationality, because he would have no one to care for him there and would be in danger due to violence in that country.

Based on the Family Court's orders, the Petitioner filed his SIJ petition in February 2018. The Director denied the petition, concluding that the Family Court did not make a qualifying determination that the Petitioner's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required. The Director explained that although the Family Court found that the Petitioner's reunification with his father was impossible and therefore not viable because his father is deceased, the record did not establish that the Family Court found the Petitioner's father's death to be a similar basis to abuse, neglect, or abandonment under New York law.¹

On appeal, the Petitioner submits an amended SIJ order, issued *nunc pro tunc*, in which the Family Court specifies in relevant part that the Petitioner's reunification with his father is not viable due to his father's death, which is a “similar basis as defined by NY Family Court Act § 1012(f) and NY Social Service Law § 384-b(5).”

B. Qualifying Parental Reunification Determination

The Act requires a juvenile court's determination that an SIJ petitioner 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. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. *Id.*; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6.

¹ In the brief on appeal, counsel alleges that the Director also denied the SIJ petition on the grounds that the Petitioner had attained the age of majority in New York when the orders were granted and therefore the Family Court did not have jurisdiction under New York law over the Petitioner's custody as a juvenile and the guardianship issued upon his consent was not equivalent to a qualifying custodial placement. These are matters addressed in the District Court for the Southern District of New York's issuance of a judgment in *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019). However, the basis for the Director's decision was limited to the lack of a qualifying parental reunification determination under state law and did not include the *RFM* grounds, and we need not reach this portion of the Petitioner's brief.

The Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination. *Id.*

In this case, the Family Court specifies in the amended SIJ order that the Petitioner's reunification with his father is not viable due to a similar basis under section 1012(f) of the N.Y. Fam. Ct. Act, which provides the definition of "neglected child," and section 384-b(5) of the New York Social Services Law, which defines an abandoned child. In support of its parental reunification determination, the juvenile court cites to New York child welfare law, as well as case law establishing that reunification is not possible when a petitioner's parent is deceased. As the amended SIJ order indicates the basis for the Petitioner's inability to reunify with his father and identifies relevant state law, the juvenile court made the requisite parental reunification determination and we will not go behind that finding. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6 (explaining that "USCIS generally defers to juvenile courts on matters of state law"); *see also* 6 USCIS Policy Manual J.2, <https://www.uscis.gov/policy-manual> (providing guidance to USCIS officers on deference to juvenile court determinations made under state law and explaining that USCIS does not go behind a juvenile court order to make independent determinations about abuse, neglect, abandonment, or a similar basis under state law). Accordingly, the Petitioner has established by a preponderance of the evidence that the juvenile court made a qualifying parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires.

ORDER: The appeal is sustained.