



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

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

In Re: 17460887

Date: APR. 29, 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 petition, concluding the Petitioner had not demonstrated a juvenile court made a qualifying parental reunification and best interest determination for him, or that he warrants USCIS' consent to SIJ classification. On appeal, the Petitioner asserts his eligibility for SIJ classification. Upon *de novo* review, we will dismiss 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) of the Act; 8 C.F.R. § 204.11(c). 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. 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).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. The petitioner bears 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 Guatemala, claims to have entered the United States without inspection, admission, or parole in 2018. In [REDACTED] 2019, when the Petitioner was 17 years old, a Florida Circuit Court in [REDACTED] (circuit court) issued a *Final Order on Verified Petition for Temporary [sic] Custody of Minor by Extended Family Member* (SIJ order) for him. In its custody order, the circuit court granted custody of the Petitioner to his brother-in-law, O-P-S-.¹ The circuit court also found that placement of the Petitioner with O-P-S- is in his best interest because O-P-S- provides “a stable home environment and the financial ability to provide for the [Petitioner’s] mental, emotional, [m]edical and physical well-being.”

The Petitioner filed his SIJ petition in January 2020. The Director denied the petition concluding the Petitioner had not demonstrated a juvenile court made a qualifying parental reunification and best interest determination for him, and the record does not contain a reasonable factual basis for a best interest determination.

B. Qualifying Parental Reunification Determination

The Director determined the circuit court’s order lacked a qualifying determination that parental reunification is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required by the Act.

To be eligible for SIJ classification, the Act requires a juvenile court determination that a juvenile’s reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found 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. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6. Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner’s eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *Id.* at 6; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) (“Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.”). The Petitioner bears the burden of proof to establish eligibility, which includes demonstrating the state law the juvenile court applied in its reunification determination. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2.

On appeal, the Petitioner asserts the circuit court relied upon both his *Verified Petition for Temporary Custody by Extended Family* (underlying petition) and hearing testimony in issuing its SIJ order. The record also contains an affidavit from the attorney who represented O-P-S- in obtaining custody of the Petitioner. The attorney asserts that, to the best of her recollection, the circuit court heard testimony that the Petitioner could not reunify with his parents in Guatemala due to neglect and failure to provide

¹ Initials are used to protect the privacy of this individual.

him with a safe environment, food, shelter, and medical care. We acknowledge the circuit court's SIJ order indicates it was issued in proceedings arising from the Petitioner's underlying petition, and the circuit court heard related testimony. However, as stated, the record must contain evidence of a *judicial* determination that a juvenile cannot reunify with one of both parents due to abuse, neglect, abandonment, or a similar basis under state law. Though the Petitioner's underlying petition to the circuit court and his hearing testimony before the circuit court contain assertions concerning his inability to reunify with his parents due to one of these grounds, such claims do not constitute judicial determinations. And the circuit court's SIJ order does not contain a finding that the Petitioner was subjected to such maltreatment by one or both parents under state law and unable to reunify with them on this basis.

As stated, petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Petitioner has not satisfied his burden of demonstrating the circuit court made a determination that he cannot reunify with his parent(s) due to parental maltreatment. Accordingly, the record does not contain a qualifying parental reunification determination for the Petitioner.

C. Best Interest Determination

The Director determined that the circuit court's SIJ order lacks a determination that it would not be in the Petitioner's best interest to return to Guatemala.

SIJ classification requires an administrative or judicial determination "that it would not be in the [petitioner's] best interest to be returned to the [petitioner's] or parent's previous country of nationality or country of last habitual residence. . . ." Section 101(a)(7)(J)(ii) of the Act. A petitioner must submit evidence of a best interest determination made in judicial or administrative proceedings by a court or agency recognized by a juvenile court and authorized by law to make such a decision. 8 C.F.R. § 204.11(d)(2)(iii). While the standards may vary among states, the best interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services and orders are best for a child, as well as who is best suited to care for the child. *See Matter of A-O-C-*, Adopted Decision 2019-03, at 7 (AAO Oct. 11, 2019) (citing U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway (2016), *Determining the Best Interests of the Child*). A juvenile court order need not contain the same language as that of the Act for a court's best interest determination so long as the court's conclusions under state law have the same meaning as the requirements for SIJ classification. *See 6 USCIS Policy Manual J.3(A)*, <https://www.uscis.gov/policy-manual>.

Here, the circuit court found that placement of the Petitioner with O-P-S- is in his best interest because O-P-S- provides "a stable home environment and the financial ability to provide for the [Petitioner's] mental, emotional, [m]edical and physical well-being." As we have explained in policy guidance, the juvenile court is required to make an individualized best interest assessment, with the "child's safety and well-being" as the typical "paramount concern." *6 USCIS Policy Manual* at J.2(C)(3). And, where a juvenile court makes a custodial placement or dependency finding for a child pursuant to state law, "and the order includes facts reflecting that the caregiver has provided a loving home, bonded with

the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent.” *Id.*

The record contains the requisite assessment, as the circuit court order awarded custody of the Petitioner to O-P-S- and indicates it heard testimony that the Petitioner’s parents reside in Guatemala and have no contact with the Petitioner. The circuit court found O-P-S- is “fit, able and willing to continue caring” for the Petitioner and placement of the Petitioner with O-P-S- is in the Petitioner’s best interest because O-P-S- has been caring for the Petitioner since July 2018 and provides the Petitioner with stability and the ability to care for him mentally, emotionally, medically, and physically. In his underlying petition to the circuit court, the Petitioner asserted he cannot reunify with his parents in Guatemala because they neglected him and did not provide him with food, shelter, medical care, or a safe environment. The record reflects the Petitioner was placed in the custody of the Department of Health and Human Services’ Office of Refugee Resettlement when he arrived as a minor child in the United States in April 2018, until his release to O-P-S-. Overall, the record demonstrates the circuit court made a qualifying best interest determination as required under section 101(a)(27)(J)(ii) of the Act.

D. USCIS’ Consent

The Director determined the Petitioner had not established USCIS’ consent to SIJ classification was warranted as the record did not contain evidence of a reasonable factual basis for the circuit court’s best interest determination. As discussed above, the record established the circuit court made a qualifying best interest determination as required under section 101(a)(27)(J)(ii) of the Act.

SIJ classification may only be granted upon the consent of DHS, through USCIS, where a juvenile meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS’ consent, juveniles must establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that the court’s orders were not sought primarily for the purpose of obtaining the status of an individual lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from parental maltreatment)). Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment, or a similar basis under state law, the record must also contain a reasonable factual basis for each of the requisite SIJ determinations. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 8.

The circuit court determined O-P-S- is “fit, able and willing to continue caring” for the Petitioner and provides the Petitioner “a stable home environment and the financial ability to provide for the [Petitioner’s] mental, emotional, [m]edical and physical well-being.” The circuit court also determined that placement of the Petitioner with O-P-S- is in the Petitioner’s best interest as O-P-S- has been caring for the Petitioner since July 2018. And as stated above, where a juvenile court makes a custodial placement or dependency finding for a child pursuant to state law, “and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent.” 6 *USCIS Policy Manual* at J.2(C)(3). As

such, the record demonstrates a sufficient factual basis for the circuit court's best interest determination.

III. CONCLUSION

Though the Petitioner has demonstrated a best interest determination was made for him and the record contains a reasonable factual basis for this determination, he has not overcome the Director's finding that the circuit court did not make a qualifying parental reunification determination for him. Accordingly, the Petitioner has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.