



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

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

In Re: 16807906

DATE: JUN. 08, 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 Petitioner appealed that decision to the Administrative Appeals Office (AAO). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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(b). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner under 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 petitioner's best interest to return to his or her parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

II. ANALYSIS

In [] 2018, when the Petitioner was 19 years old, the Circuit Court of [] Arkansas (circuit court) issued an order titled *ORDER OF PERMANENT GUARDIANSHIP OF THE PERSON* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "incapacitated by a reason of his mental disability of Posttraumatic Stress Disorder and Major Depressive Disorder, and lacks the legal capacity to manage his person, and is therefore declared a dependent of the Court." The circuit court further found that the Petitioner's reunification with his parents was not viable due to abuse, abandonment, and neglect. In addition, the circuit court appointed guardianship of the Petitioner to M-M-L-,¹ finding that the "permanent guardianship be continued beyond his eighteenth birthday until such time as it is terminated by the Court. Ark. Stat. Ann § 28-65-401(b)(1)(B)." The circuit court further found that

¹ We use initials to protect the privacy of individuals.

it was not in the Petitioner's best interest to be removed from the United States and returned to El Salvador, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in November 2019. Prior to issuing a decision, the Director issued a notice of intent to deny (NOID) to the Petitioner. The NOID stated that the Petitioner had not submitted evidence to establish that the court was acting as a juvenile court and exercising its jurisdiction over him as a juvenile, and therefore determined that he had not met his burden of proof in demonstrating that his petition should be approved. The NOID provided the Petitioner the opportunity to submit additional evidence showing that the court was acting as a juvenile court and exercising its jurisdiction over him as a juvenile. In response to the NOID, the Petitioner submitted a brief, copies of relevant Arkansas law, and previously submitted documents, including a copy of the petition for guardianship, a copy of the consent to guardianship, copies of the affidavits underlying the SIJ order, and a mental health evaluation of the Petitioner. The Director denied the SIJ petition because the Petitioner did not overcome the concerns delineated in the NOID.

On appeal, the Petitioner submits a brief and previously submitted documents. The Petitioner argues that the court had jurisdiction over him as a juvenile under state law.

To be eligible for SIJ classification, petitioners must have been subject to a dependency or custody order issued by a "juvenile court," which is defined as a court "in the United States having jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a), (b). While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. *See* 8 C.F.R. § 204.11(a). Further, not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification; for example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes, and the burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued. 6 *USCIS Policy Manual* J.2, <https://www.uscis.gov/policy-manual>; *see also* 8 C.F.R. § 204.11(c)(3).

Arkansas law specifies that the age of majority is generally 18 years of age. *See* Arkansas Code Annotated (Ark. Code Ann.) §§ 9-8-101 (defining "child" as "person under eighteen (18) years of age"), 9-9-202 (defining a "minor []," for purposes of the Revised Uniform Adoption Act, as an "individual under the age of eighteen (18) years"), 9-19-102 (defining "child[.]" for purposes of the Uniform Child-Custody Jurisdiction and Enforcement Act, as "an individual who has not attained eighteen (18) years of age"), 9-25-101 (specifying that "[a]ll persons of the age of eighteen (18) years shall be considered to have reached the age of majority and be of full age for all purposes"); *but cf.* Ark. Code Ann. § 9-27-303(32) (defining "juvenile" as "an individual who is ... [f]rom birth to eighteen (18) years of age . . . or . . . [a]djudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile circuit court prior to eighteen (18) years of age and for whom the juvenile division of the circuit court retains jurisdiction").

In the present case, the SIJ order was issued when the Petitioner was 19 years of age and no longer a "child," "minor," or "juvenile" as contemplated by Arkansas law. *See* Ark. Code Ann. §§ 9-8-101, 9-9-202, 9-19-102, 9-25-101. While the Petitioner argues that he should be considered a juvenile

because he was under 18 years of age when his mother abused and abandoned him, contrary to the Petitioner's position, he is required to be considered a juvenile under Arkansas law at the time the SIJ order was issued. *See* 8 C.F.R. § 204.11(c)(3).

We also acknowledge the Petitioner's argument that the circuit court has exclusive jurisdiction over all guardianships, and that Arkansas law allows for the extension of the circuit court's jurisdiction to individuals 18 to 21 years of age in specific circumstances. *See* Ark. Code Ann. §§ 28-65-401(b)(1)(B) (stating "if the court finds upon a proper showing by substantial competent evidence that it is in the best interest of the ward that the guardianship be continued *after the ward reaches majority*, the court may order the guardianship to continue until such time as it may be terminated by order of the court") (emphasis added). However, the circuit court only stated that "it is in [the Petitioner's] best interest that the permanent guardianship be continued beyond his eighteenth birthday until such time as it is terminated by the Court;" it did not provide that the Petitioner was in fact adjudicated dependent-neglected prior to the age of 18 under section 9-27-306 of the Ark. Code Ann. While the circuit court deemed the Petitioner to be an incapacitated person, it did not cite to state law, such as 28-65-101 of the Ark. Code Ann., and instead cites to section 28-65-401(b)(B) of the Ark. Code Ann., which allows a guardianship to continue beyond the age of majority, states that the Petitioner's designation as incapacitated was "not solely due to "[his] minority," and extends the guardianship beyond his eighteenth birthday. As such, while we acknowledge evidence in the record of the Petitioner's mental health condition, the preponderance of the evidence does not show that the court exercised its jurisdiction over him as a juvenile, as opposed to as an incapacitated person, within the meaning of such term under section 28-65-104 of the Arkansas Code.

Additionally, even if the circuit court had properly determined that the Petitioner was an incapacitated person under Arkansas law, due to his age over 18 at the time of issuance of the order, the Petitioner has not established that the court exercised jurisdiction over him as a juvenile, which is required for SIJ purposes. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)-(d). Although Arkansas law extends guardianship protections to persons between the ages of 18 to 21 who obtained a guardianship while still a minor, the Petitioner has not shown that he obtained any order from the court while he was under 18 years of age. Moreover, the only provision that appears to define minority, section 9-25-101 of the Arkansas Code, does not provide any exception for individuals who have reached the age of 18. Accordingly, the record does not demonstrate that the court had jurisdiction over the Petitioner's custody and care as a juvenile under Arkansas child welfare law such that it could be considered a juvenile court, as required for SIJ classification.

III. CONCLUSION

While we acknowledge the Petitioner's unfortunate circumstances and the hardships he faced during his childhood, he is ineligible for SIJ classification because the circuit court was not acting as a juvenile court when it issued its order.

ORDER: The appeal is dismissed.