



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

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

In Re: 15511122

Date: March 28, 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 [REDACTED] 2019, when the Petitioner, a native and citizen of Guatemala, was 16 years old, the [REDACTED] Ohio Juvenile Court (juvenile court) issued a *Decision of Magistrate* (SIJ order) placing the Petitioner in the legal custody of her father. The SIJ order states, as relevant here, that the Petitioner's reunification with her mother is not "appropriate due to the limited [sic] access mother has to food, education and resources for [sic] child or similar basis found under state law." The SIJ order cites to section 3109.04(C) of the Ohio Revised Code, which describes the process a court may undertake to investigate parents prior to determining shared parenting. The SIJ order further declares that it is not in the Petitioner's best interest to return to Guatemala.

The SIJ order additionally describes the Petitioner's family situation and prior living conditions in Guatemala. It explains that the Petitioner's parents are married and have not filed for divorce, that her father came to the United States to earn money to support the family in Guatemala, and that he continues to provide for them. The SIJ order also states that during her childhood, the Petitioner lived in an adobe house with no electricity, that her family used a river half an hour away as a water source, and that medical care and employment and educational opportunities were limited. The SIJ order explains that the Petitioner left Guatemala to live with her father because of her "inability to find work and inability to continue to attend school." The Petitioner filed the instant SIJ petition in July 2019 based on the SIJ order.

The Director denied the petition, determining that the Petitioner had not established that USCIS' consent to her SIJ classification was warranted. The Director explained that there was no reasonable factual basis for the juvenile court's neglect rulings,<sup>1</sup> as the difficulties described in the SIJ order spoke to "general country conditions in rural Guatemala...[and not to] parental maltreatment."

Subsequently, we issued a notice of intent to dismiss (NOID) informing the Petitioner that our review of the record indicated that she was ineligible for SIJ classification on an additional ground, as she had not established that the juvenile court made a qualifying parental reunification determination. We did not receive a response to the NOID.

### B. The SIJ Order Lacks a Qualifying Parental Reunification Determination

The Act requires a 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. *See id.*; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6. The Petitioner bears the burden of proof to establish the state law the juvenile court applied in this determination. *Id.*

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<sup>1</sup> To the extent that the Director's decision implied that the juvenile court made a qualifying determination that the Petitioner's reunification with her mother is viable due to neglect, this finding is withdrawn for the reasons explained herein.

On appeal, the Petitioner claims that the juvenile court made the requisite findings of abandonment, neglect, and non-viability of reunification based on her mother's neglect and failure to provide adequate parental care, as evinced by the court's description of the Petitioner's living conditions in Guatemala. Under Ohio law, as relevant here, a child is considered to be neglected if they lack "adequate parental care because of the faults or habits of the child's parents," or the parent "neglects the child or refuses to provide proper or necessary subsistence, education, medical or surgical care or treatment, or other care necessary for the child's health, morals, or well-being." Ohio Rev. Code § 2151.03(A)(2), (3). A child who is abandoned by their parents is also considered neglected. *Id.* at § 2151.03(A)(1).

Upon *de novo* review, the Petitioner has not established that the juvenile court determined that her reunification with her mother was not viable due to neglect and abandonment, as claimed. As previously stated, the SIJ order declares that the Petitioner's reunification with her mother "is not appropriate due to the limited [sic] access mother has to food, education and resources for [sic] child or similar basis found under state law." Notably, the SIJ order does not state that the Petitioner's mother neglected her, nor does it indicate that the juvenile court determined that the Petitioner's limited resources and access to opportunities were due to her mother's "faults[, ]habits," refusal to provide for her, or abandonment, as required to establish neglect under Ohio law.

Moreover, although the SIJ order references a "similar basis found under state law," the record does establish that the juvenile court determined that the Petitioner's reunification with her mother is not viable due to a similar basis to one of the enumerated grounds in section 101(a)(27)(J)(i) of the Act. As we have explained in policy guidance, an SIJ petitioner may establish that a state law is similar to abuse, neglect, or abandonment "if the elements of the state law are contained in the order, by providing a copy of the law the court relied upon and a description of how the elements of the similar basis are equivalent, or by showing that the child is entitled to equivalent juvenile court protection and intervention based on the court's determination of the similar basis to abuse, neglect, or abandonment." *See 6 USCIS Policy Manual 3.A(1)*, <https://www.uscis.gov/policy-manual>; *id.* at n.6 (providing, as an example of a legal provision that may be similar to abuse, abandonment, or neglect for the purpose of establishing a similar basis, a child who is "uncared for" under Connecticut law). Here, however, the record does not indicate the state law the juvenile court applied when it used the "similar basis" language and does not state which ground of mistreatment—abuse, neglect, or abandonment—it is similar to. Although the SIJ order cites to section 3109.04(C) of the Ohio Revised Code, which describes the process a court may undertake to investigate parents prior to determining shared parenting, the Petitioner does not claim, nor does the record show, that this provision describes a similar basis to abuse, neglect, or abandonment.

Accordingly, the Petitioner has not demonstrated that the juvenile court made a qualifying determination that her reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required. The Petitioner has therefore not established that she is eligible for and merits USCIS' consent to her SIJ classification.

**ORDER:** The appeal is dismissed.