



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

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

In Re: 14451884

Date: MAY 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 dismissed.

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)(i) of the Act; 8 C.F.R. § 204.11(b). 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; 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 their or their 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).

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 request for SIJ classification is *bona fide*, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not *bona fide*. 8 C.F.R. § 204.11(b)(5). 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 [] 2020, when the Petitioner was 20 years old, a probate court in Colorado issued an order appointing a guardian for the Petitioner. In a separate order issued the same day and titled *SPECIAL IMMIGRANT JUVENILE FINDINGS* (SIJ order), the probate court determined that the Petitioner's reunification with her parents "is no longer a viable option because they are both deceased." Further, the court concluded that it was not in the Petitioner's best interest to be returned to Guatemala, her country of nationality, because of threats to her physical safety there, and that it is in her best interest to remain in Colorado "under the protection of this Court, and in the legal and physical care and custody of [her guardian]."

Based on the probate court's orders, the Petitioner filed her SIJ petition in April 2020. The Director denied the petition based on a determination that the probate 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 probate court found that the Petitioner's reunification with her parents is not viable because they are deceased, the court's orders did not contain a legal conclusion that "parental death constitutes abuse, neglect, or abandonment, or is legally equivalent to a similar basis under state law."

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. Pursuant to the regulation at 8 C.F.R. § 204.11(d)(4), when the juvenile court determines that parental reunification is not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must submit either "[t]he juvenile court's determination as to how the basis is legally similar to abuse, neglect, or abandonment under State law" or "[o]ther evidence that establishes the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law." As explained in the USCIS Policy Manual,

This requirement may be met 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.

6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policy-manual>. The death of one or both of a petitioner's parents "is not itself a similar basis to abuse, abandonment or neglect under state law," and the petitioner must show that the juvenile court made a legal conclusion that "parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law." *Id.*

On appeal, the Petitioner submits an amended SIJ order in which the probate court states, “Reunification with one or both of the minor’s parents is no longer a viable option because they are both deceased. In this case, the Court wishes to clarify that parental death constitutes abandonment or the equivalent thereof.” Although the Petitioner alleges on appeal that the amended SIJ order clarifies that death is equivalent to abuse, neglect, abandonment, or a similar basis under state law, the amended SIJ order does not cite any state law for the probate court’s determination.

In response to a request for evidence from the Director, the Petitioner previously submitted a brief in which she argued that the probate court appointed a guardian for her due to neglect and abandonment, and that pursuant to Colorado law “neglect of a child occurs when a minor ‘lacks proper parental care through actions or omissions of the parent, guardian, or legal custodian.’” Further, she stated that a child without proper parental care “is homeless, without proper care, or not domiciled with his or her parent, guardian, or legal custodian” under Colorado law, and that she was declared dependent on the probate court because she “does not have parental figures.” As supporting evidence, she provided minute orders from the probate court indicating that “reunification is not a viable option as both parents are deceased. It is not in the minor’s best interests to return to her country of origin. It is in the minor’s best interests to remain in the state of CO and under care/custody of guardian.” Additionally, the Petitioner provided a copy of Colorado Children’s Code section 19-3-102, which states that “[a] child is neglected or dependent if” in relevant part they “lack[] proper parental care through the actions or omissions of the parent . . .” or their “environment is injurious to [their] welfare.” However, the probate court did not find that the Petitioner was neglected, but instead stated that parental death is equivalent to abandonment. The record does not contain any state law underlying the probate court’s determination, nor is there evidence to support the Petitioner’s claim that the probate court found the deaths of her parents to be equivalent to neglect. Accordingly, the Petitioner has not met her burden of establishing that the probate court made a qualifying parental reunification determination, as section 101(a)(27)(J)(i) of the Act requires.

ORDER: The appeal is dismissed.