



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

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

In Re: 18118979

Date: NOV. 10, 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 (SIJ petition), concluding that the Petitioner had not established that the state probate court in Georgia made a qualifying parental reunification determination and that U.S. Citizenship and Immigration Services' (USCIS) consent to the request for SIJ classification was warranted. The matter is now before us on appeal. We review 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, 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)(i) of the Act; 8 C.F.R. § 204.11(b) (2022). 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 petitioners' 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).

In addition, 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). 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 Evidence and Procedural History

In [] 2016, when the Petitioner was 13 years old, the Probate Court of [] Georgia (state probate court) issued an Order (SIJ order) appointing his sister, N-V-C-,¹ as the Petitioner's guardian. The SIJ order also includes the state probate court's determination that reunification with the one or both of the Petitioner's parents was not viable due to abuse, neglect, abandonment or a similar basis found under state law, and that it was not in the Petitioner's best interest to be returned to Guatemala, his country of nationality or last habitual residence.

Based on the SIJ order, the Petitioner filed this SIJ petition in September 2016. The Director denied the SIJ petition, determining in pertinent part that the SIJ order the Petitioner had provided did not establish the specific ground(s) (abuse, neglect, abandonment, or similar basis under state law) that served as the basis for the parental reunification determination and did not specify the parent or parents to whom that determination applied. In the Director determined that USCIS' consent to the Petitioner's request for SIJ classification was not warranted because the record did not establish the factual basis for the court's parental reunification determination.

On appeal, the Petitioner resubmits the SIJ order and includes additional documents that were submitted to the state probate court during his 2016 guardianship proceedings and which he asserts establishes "the factual and legal bases" for the court's findings. The Petitioner further submits copies of Georgia state law provisions defining abandonment and neglect, asserting that the state probate court issued the SIJ order to protect him from parental abandonment and neglect. He also asserts that his SIJ petition should be adjudicated under the USCIS policy that was in effect at the time he filed his SIJ petition in 2016. In the alternate, the Petitioner claims that the additional evidence he includes on appeal is sufficient to establish his eligibility for the requested benefit.

As explained later in this decision, the Petitioner has not shown that the state probate court made a qualifying parental reunification determination as required. Since the lack of a qualifying parental reunification determination is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the whether or not USCIS' consent is warranted. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

B. Lack of Qualifying Parental Reunification Determination

Section 101(a)(27)(J)(i) of the Act requires a juvenile court's determination that SIJ petitioners cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under

¹ We use initials to protect the privacy of individuals.

state law. *See also* 8 C.F.R. § 204.11(c)(1)(ii). As the language of the Act indicates, the parental reunification finding must encompass a specific determination of parental abuse, neglect, abandonment, or a similar basis under state law. *Id.* The juvenile court order or supporting evidence therefore should indicate the specific child welfare ground under state law (abuse, neglect, abandonment, or similar basis under state law) for the court's determination regarding parental reunification. As the Act references the reunification finding as being made under state law, the record must also contain evidence of a judicial determination that the juvenile was subjected to maltreatment by one or both parents under applicable state law. *See id.*; *see also* 8 C.F.R. § 204.11(c)(3)(i) (stating that a juvenile court must have made the requisite judicial determinations under applicable state law in order to establish SIJ eligibility). In addition, the court order or supporting evidence should establish the parent(s) to whom the reunification determination applies. *See 6 USCIS Policy Manual J.3(A)(3)*, <https://www.uscis.gov/policy-manual>.

In this case, the SIJ order contains the state probate court's determination that the Petitioner's reunification with one or both of his parents is not viable due to abuse, neglect, abandonment or similar basis under state law. However, a parental reunification determination that merely mirrors the language of the Act is not sufficient. Here, the SIJ order the Petitioner provided below does not specify the parent or parents with whom the Petitioner cannot reunify or which form(s) of parental maltreatment the court found served as the basis for the court's reunification determination. Additionally, the SIJ order does not cite to any relevant Georgia law for its determination, instead citing solely to the federal statute and regulations relating to SIJ eligibility requirements at 8 U.S.C. § 1101(a)(27)(J)(i) and former 8 C.F.R. § 204.11(d)(2)(ii) (2021).

On appeal, the Petitioner resubmits the SIJ order and includes documents that he had submitted to the state probate court during his Georgia guardianship proceedings, including the underlying guardianship petition and a 2016 declaration from the Petitioner. The Petitioner also provides a copy of the Georgia statutes that contain the definitions of abandonment and neglect that, he asserts, are applicable to his case.

In the 2016 declaration to the state probate court in support of his guardianship petition, the Petitioner asserted that his mother had been ill with diabetes for a long time and was unable to support him. According to the Petitioner, he came to the United States because his parents could not take care of him and did not have the economic means to support him. The 2016 guardianship petition also reflects his guardian's assertions to the probate court that the Petitioner's mother was ill, that neither of the Petitioner's parents worked or could provide for him, and that neither parent had visited or had any intent to visit Georgia, where the Petitioner resides. Based on this additional evidence provided on appeal, the Petitioner has shown that the parental reunification determination from the court with respect to his maltreatment relates to both of his parents.

However, the documents provided on appeal do not show that the child welfare grounds for the court's parental reunification determination was neglect and abandonment as defined under state law, as he claims on appeal. As stated, the SIJ order states that in the Petitioner's case, parental reunification "is not viable due to abuse, neglect, abandonment or a similar basis under state law" without specifying which form or forms of maltreatment under state law his parents caused him to suffer. Although the underlying documents to the court provided on appeal discuss the facts on which the Petitioner sought the parental reunification determination, they do not show that the reunification determination was

sought or based on parental neglect or abandonment under Georgia law. Neither the underlying guardianship petition or the Petitioner's affidavit assert that his parents' maltreatment constituted neglect, abandonment, or both as defined under state law, nor do they cite to the state child welfare laws relating to neglect or abandonment.

The Petitioner asserts, however, that the parental maltreatment described in the underlying documents to the state probate court is consistent with the definitions of abandonment and neglect under Georgia law. Although the Petitioner submits, on appeal, a copy of the Georgia child welfare statutes for abandonment and neglect that he claims was applicable to the state probate court's parental reunification determination, it remains that the relevant evidence, including the underlying petition for guardianship, the Petitioner's 2016 declaration to the court, and the SIJ order, do not reference these provisions or indicate that the state probate court relied upon them in making the reunification determination. In fact, although not raised in the Director's decision, neither the SIJ order nor the underlying court documents reference any applicable child welfare provisions under Georgia law in support of the parental reunification determination, and as stated, the court order mirrored the parental reunification language of the Act and cited only to federal immigration statute and regulations as the basis for the determination. On appeal, the Petitioner does not submit any additional court orders or documents to establish the specific child welfare ground(s) for the state probate court's parental reunification determination and demonstrate that the determination was issued under state law. Consequently, the Petitioner has not overcome the Director's finding that the record does not show that the state probate court made a qualifying parental reunification determination under state law, as section 101(a)(27)(J)(i) of the Act requires for SIJ classification.

Finally, with respect to the Petitioner's assertion that his SIJ petition should be adjudicated under the USCIS policy that was in effect at the time he filed his SIJ petition in 2016 rather than policy in effect at the time of the Director's decision, we note that the Director's determination, as well as ours here, regarding the parental reunification determination is based on the requirements of section 101(a)(27)(J)(i) of the Act, which have not changed.² In this regard, the Petitioner has not overcome the Director's determination that he has not shown that the state probate court made a qualifying parental reunification determination under state law, as required by section 101(a)(27)(J)(i) of the Act.

III. CONCLUSION

As the SIJ order in this case lacks a qualifying parental reunification determination under state law, as required under section 101(a)(27)(J)(i) of the Act, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.

² The Department of Homeland Security has more recently issued a final rule, effective April 7, 2022, amending its regulations at 8 C.F.R. § 204.11 for petitioners who seek SIJ classification. *See Special Immigrant Juvenile Petitions*, 87 Fed. Reg. 13066 (March 8, 2022). However, as explained in the USCIS Policy Alert, "[t]he SIJ Final Rule . . . codifies statutorily mandated changes regarding the requirements and procedures for juveniles seeking classification as an SIJ . . ." USCIS Policy Alert, PA-2022-14, *Special Immigrant Juvenile Classification and Adjustment of Status 1* (Jun. 10, 2022), <https://www.uscis.gov/policy-manual>.