



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

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

In Re: 21110316

Date: NOV. 22, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of Nicaragua, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the juvenile court order lacked a qualifying determination that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification and warrants USCIS consent. 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).<sup>1</sup> 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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

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

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<sup>1</sup> The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

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

In [REDACTED] 2018, when the Petitioner was 12 years old, the Family Court of the State of New York to the [REDACTED] (Family Court) issued an order (guardianship order) appointing C-M-C-<sup>2</sup>, the Petitioner's aunt, as his legal guardian. The Family Court found the guardianship placement to be in the Petitioner's best interest.

Based on the guardianship order, the Petitioner filed this SIJ petition in August 2020. The Director later issued a request for evidence (RFE), requesting that the Petitioner provide a juvenile court order containing the requisite findings to establish eligibility for SIJ classification. Specifically, the Director requested an order that included findings that the Petitioner was dependent on the court or in the custody of a court-appointed individual, that reunification was not viable with the Petitioner's parents due to abuse, neglect, abandonment, or a similar basis under state law, and that it was not in the best interest of the Petitioner to return to the country of his or his parents' nationality or last habitual residence. In response to the RFE, the Petitioner submitted a copy of the guardianship order. The Director denied the SIJ petition in May 2021, determining the guardianship order lacked a qualifying parental reunification determination.

On appeal, the Petitioner asserts that it would not be in his best interest to return to Nicaragua and submits a statement from his guardian and other evidence in support. In her statement, his guardian explains that she was unable to provide a court order determining that reunification was not viable with the Petitioner's parents due to abuse, neglect, abandonment, or similar basis and that it was not in his best interest to return to Nicaragua.

Although the Petitioner was declared dependent upon a juvenile court, the guardianship order issued by the Family Court did not determine that he cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law, as required under section 101(a)(27)(J)(i) of the Act. The order does not reference the Petitioner's parents or determine that he was subject to abuse, abandonment, neglect, or other maltreatment; nor did the Family Court make any factual findings related to the parental relationship or past treatment of the Petitioner by his parents or viability of reunification with either parent.

Further, although the Petitioner argues that it would not be in his best interest to return to Nicaragua, the evidence submitted does not establish that the Family Court made this determination. Section 101(a)(27)(J)(ii) of the Act. The guardianship order includes no findings as to any potential return of the Petitioner to Nicaragua, the country of both his and his parents' nationality and last habitual

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<sup>2</sup> Initials are used to protect the privacy of this individual.

residence, and lacks a qualifying best interest determination as required under section 101(a)(27)(J)(ii) of the Act.

In this case, the guardianship order did not include judicial determinations by the juvenile court regarding parental reunification and the Petitioner's best interest, as required by section 101(a)(27)(J) of the Act. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

**ORDER:** The appeal is dismissed.