



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 18783091

Date: OCT. 06, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the Petitioner had not demonstrated that a juvenile court made a qualifying parental reunification. On appeal, the Petitioner asserts his eligibility for SIJ classification. The Administrative Appeals Office 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, 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) 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. 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).

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.

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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).

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 Facts and Procedural History

In [ ] 2018, the Petitioner, at age nine, entered the United States without inspection. Soon after entering the United States, the Petitioner was apprehended by immigration officials and placed into the custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement (ORR), Division of Unaccompanied Children's Services. In June 2018, ORR released the Petitioner into the custody of his mother, a resident of New York. In [ ] 2019, the Family Court in [ ] New York (Family Court) issued an order appointing the Petitioner's mother as his guardian in guardianship proceedings brought under section 661 of the New York Family Court Act and section 1707 of the New York Surrogate's Court Procedure Act. In a separate order entitled ORDER-Special Immigrant Juvenile Status (SIJ order), and issued the same day, the Family Court determined, among other findings, that the Petitioner was "dependent upon the Family Court and has been committed to or placed in the physical custody of an individual, namely, [Petitioner's mother], an entity appointed by the state or Family Court." The Family Court also found that the Petitioner's reunification with his father was not viable due to the father's death in 2017. Further, the Family Court concluded that it was not in the Petitioner's best interest to return to Honduras, his country of nationality, because he "would have no parent there able to care for him." The Petitioner filed his SIJ petition in April 2019.

The Director denied the petition, concluding the Petitioner did not establish that the Family Court made a judicial determination regarding whether reunification with both of the Petitioner's parents is not viable due to abuse, neglect, or abandonment, or a similar basis found under State law, as required under section 101(a)(27)(J)(i) of the Act.

On appeal, the Petitioner contends that the Director erred in concluding that the Family Court's findings were not pursuant to state law as the SIJ order makes clear that the Family Court applied New York law as well as relevant case law in making its findings.

### B. Qualifying Parental Reunification Determination

To be eligible for SIJ classification, the Act requires a juvenile court 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. 8 C.F.R. § 204.11(c)(1)(ii). Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. See *Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) ("Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that

purpose.”). The Petitioner bears the burden of proof to establish eligibility, which includes demonstrating the state law the juvenile court applied in its reunification determination. 8 C.F.R. § 204.11(c)(3).

Where a juvenile court finds that parental reunification is not viable due to a similar basis, such as the death of a parent, the petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. 8 CFR 204.11(d)(4). Here, in the SIJ order, the Family Court determined that “reunification of the minor, [the Petitioner], with his father is not a viable option because he is deceased.” The SIJ order indicated that the Family Court’s findings were in accordance with section 384-b of the New York Social Services Law, sections 413, 661, and 1012 of the New York Family Court Act, and New York child welfare case law. However, the Family Court did not indicate or determine how death is a similar basis to abuse, neglect, abandonment under New York child welfare law by identifying a statutory provision whose nature and elements are similar to the nature and elements of abuse, neglect, or abandonment under New York law. As a result, the Petitioner has not established by a preponderance of the evidence that the Family Court determined that reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required by section 101(a)(27)(J)(i) of the Act. Accordingly, the Petitioner has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.