



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

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

In Re: 20585049

Date: OCT. 19, 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 Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner under 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 his or her 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). 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 [] 2021, when the Petitioner was 20 years old, the District Court of [] Oklahoma (district court) issued an order titled *ORDER APPOINTING GUARDIAN* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care

or custody of himself . . . is unable to manage his . . . property and financial affairs effectively, or to meet requirements for mental or physical health or safety, or to protect himself . . . from abuse, neglect, or exploitation without assistance from others” pursuant to title 43, section 10-103(5) of the Oklahoma Statutes Annotated (Okla. Stat. Ann.). The district court determined that the Petitioner was a “[v]ulnerable adult” because he was 20 years old at the time of filing, and he was incapacitated because of physical or mental disability, incapacity, or other disability and was substantially impaired. The district court also determined that the Petitioner’s reunification with his parents was not viable due to abandonment, because he had not seen or spoken to his father since 2009, and his mother failed to provide for his basic care including necessities such as housing, food, and clothing, and a safe living environment free of neglect and abuse. In addition, the district court appointed guardianship of the person and property of the Petitioner to M-G-C-.¹ The district court also determined that it was not in the Petitioner’s best interest to be removed from the United States and returned to Guatemala, his country of nationality, “due to dangers outlined in the US State Department Country Conditions Report.”

Based on the SIJ order, the Petitioner filed this SIJ petition in January 2021. Prior to issuing a decision, the Director issued a notice of intent to deny (NOID) to the Petitioner, informing him that he had not submitted evidence to establish that the district court exercised its jurisdiction over him as a juvenile under state law, since he was over 18 years old at the time the district court issued the SIJ order. The NOID provided the Petitioner the opportunity to submit additional evidence showing that the district court was acting as a juvenile court and exercising its jurisdiction over him as a juvenile. In response to the NOID, the Petitioner submitted a brief and a copy of the SIJ order. After review, the Director denied the SIJ petition, concluding the Petitioner did not establish that the district court exercised its jurisdiction over him as a juvenile under state law.

On appeal, the Petitioner argues that the district court had jurisdiction over him as a juvenile under state law. In support, the Petitioner submits a brief, a copy of the Petition for Appointment of Guardian of Ward, a copy of the Letters of Guardianship, a copy of his birth certificate, and copies of previously submitted documents.

B. The District Court Was Not Acting as a Juvenile Court

To be eligible for SIJ classification, petitioners must have been subject to a dependency or custody order issued by a “juvenile court,” which is defined as a court “in the United States having jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.” 8 C.F.R. § 204.11(a). While the specific title and type of court may vary, SIJ petitioners must establish that the court had jurisdiction under state law to make judicial determinations about their dependency or custody as a juvenile in order to meet the definition of a juvenile court at 8 C.F.R. § 204.11(a). 8 C.F.R. § 204.11(c)(1), (3). Further, not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification; for example, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes, and the burden is on the petitioner to establish that the court is acting as a juvenile court at the time that the order is issued. 8 C.F.R. § 204.11(c)(3); *see generally* 6 USCIS Policy Manual J.2,

¹ We use initials to protect the privacy of individuals.

<https://www.uscis.gov/policy-manual> (explaining, as guidance, the jurisdictional issues involving juvenile courts and courts of general jurisdiction).

Oklahoma law specifies that the age of majority is 18 years of age. *See* Okla. Stat. Ann. 43, § 1-1-105 (defining “child” as “any unmarried person under eighteen (18) years of age”) and (defining “minor” as “same as the term “child” as defined in this section”); Okla. Stat. Ann. 10, § 7501-1.3 (defining “minor” as “any person who has not attained the age of eighteen (18) years” under the Oklahoma Adoption Code); Okla. Stat. Ann. 43, § 551-102 (providing that “child” means “an individual who has not attained eighteen (18) years of age”); Okla. Stat. Ann. 10A, § 2-1-103 (defining “child” or “juvenile” as “any person under eighteen (18) years of age, except for any person charged and convicted for any offense specified in the Youthful Offender Act”); *see also Arganbright v. State*, 328 P.3d 1212, 1219 (Okla. Crim. App. 2014) (“In Oklahoma, the age of majority has been set at the age of 18 years by the Constitution.”). In this case, the Petitioner was 20 years old at the time that the district court issued the SIJ order, and he has not provided sufficient evidence to meet his burden of establishing, by a preponderance of the evidence, that the district court exercised jurisdiction over him as a juvenile under Oklahoma law when it entered the SIJ order in his case.

On appeal, the Petitioner first argues that he should be considered a juvenile because the district court took jurisdiction over him despite his age. Contrary to the Petitioner’s position, he is required to be considered a juvenile under Oklahoma law at the time the SIJ order was issued. 8 C.F.R. § 204.11(c)(3).

In support of his argument that the district court had jurisdiction over him as a juvenile, the Petitioner cites title 30, section 1-103(A) of the Okla. Stat. Ann. which provides:

Except as otherwise specifically provided by law, the Oklahoma Guardianship and Conservatorship Act applies to: 1. Minors in this state. Guardianships for minors established pursuant to Section 3 of this act shall only be subject to provisions of the Oklahoma Guardianship and Conservatorship Act as provided in subsection B of this section; 2. Incapacitated and partially incapacitated persons in this state; and 3. Property located in this state of nondomiciliaries who are minors or incapacitated or partially incapacitated persons, or property coming into the control of a guardian who is subject to the laws of this state.

This section of Oklahoma law provides the court with two options for appointing a guardian. The first option is for a minor, a person under the age of 18 years old, and the second is for an incapacitated person. The district court’s order specifically determined the Petitioner to be an incapacitated person rather than a minor, as defined by Oklahoma law. As such, the evidence reflects that the district court exercised jurisdiction over the Petitioner and entered an order in guardianship proceedings based on his status as an incapacitated person.

In further support of his argument that the district court had jurisdiction over him as a juvenile, the Petitioner also cites title 30, section 1-103(A) of the Okla. Stat. Ann. which provides:

It is the purpose of the Oklahoma Guardianship Act to promote the general welfare of all citizens by establishing a system of general and limited guardianships for minors

and for incapacitated and partially incapacitated persons which provides for the protection of their rights and the management of their financial resources.

We acknowledge the Petitioner's argument that the district court has exclusive jurisdiction over all guardianships, and that Oklahoma law allows for the extension of the district court's jurisdiction to individuals 18 years and older in specific circumstances. We note, however, that the Petitioner has not established that any such specific circumstances apply to his case and that the district court referred to the Petitioner as a "vulnerable adult," which, under title 43A, section 10-103 of the Okla. Stat. Ann. means:

[A]n individual who is an incapacitated person or who, because of physical or mental disability, including persons with Alzheimer's disease or other dementias, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

While we acknowledge that the district court conducted an inquiry, and found the Petitioner to be "impaired in his ability to provide adequately for the care and custody of himself and is unable to properly manage his property and financial affairs effectively," the preponderance of the evidence does not show that the district court exercised its jurisdiction over him as a juvenile, as opposed to an incapacitated person, within the meaning of such terms under Oklahoma law.

In these proceedings, the Petitioner must establish that the district court exercised jurisdiction over him as a juvenile. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)-(d). Upon *de novo* review of the record, the Petitioner has not established that the district court exercised jurisdiction over his custody and care as a juvenile under Oklahoma child welfare law such that it could be considered a juvenile court, as required for SIJ classification.

III. CONCLUSION

While we acknowledge the Petitioner faced unfortunate circumstances and hardships during his childhood, he is ineligible for SIJ classification because the district court was not acting as a juvenile court when it issued its order as section 101(a)(27)(J)(i) of the Act requires.

ORDER: The appeal is dismissed.