



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

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

In Re: 27162444

Date: AUG. 2, 2023

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). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law. The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner's guardianship order lacked qualifying parental reunification and best interest determinations. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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).¹ 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); 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),

¹ 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).

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).

II. ANALYSIS

In [REDACTED] 2022, when the Petitioner was 17 years old, a Florida Circuit Court (state juvenile court) issued an *Order on Petition for Temporary Custody by Extended Family* (guardianship order), appointing the Petitioner's aunt as his sole guardian in the United States. In addition to the guardianship order, the Petitioner also submitted a copy of his aunt's *Petition for Temporary Custody by Extended Family* (guardianship petition) provided to the state juvenile court. Based on the guardianship order, the Petitioner filed his SIJ petition in January 2022. The Director denied the SIJ petition, determining that the guardianship order lacked qualifying parental reunification and best interest determinations.

On appeal, the Petitioner submits a brief asserting his eligibility. He indicates that the guardianship order "grant[s]" the guardianship petition "for Chapter 751 custody by extended family member [which] contains all the requisite findings and language pursuant to [section] 101(a)(27)(J) [of the Act]." He asserts that the Judge reviewed all the evidence and heard testimony prior to issuing the guardianship order, and upon placing him in the custody of his aunt, "it is implied that reunification with (one or both) of [his] parents is not in [his] best interest" and he should not be returned to his previous country of Guatemala. In support, he cites section 751.05(3)(b) of the Florida Statutes (Fla. Stat. Ann.), which provides that the court shall grant the petition for temporary custody only upon a finding, by clear and convincing evidence, that the child's parent or parents are unfit to provide for the care and control of the child, requiring a finding that the parent has abused, abandoned, or neglected the child, as defined in Fla. Stat. Ann. § 39. The Petitioner reasons that, because the state juvenile court granted the guardianship order under Fla. Stat. Ann. § 751, based on the guardianship petition submitted to the court, which includes parental reunification and best interest information, the court made a finding that the Petitioner's reunification with one or both of his parents was not viable and that it was not in his best interest to return to Guatemala.

After reviewing the record and the statutes cited by the Petitioner, we agree with the Director that the record does not establish that the court entered qualifying parental reunification or best interest determinations, as required by section 101(a)(27)(J)(i) of the Act.²

² Since the identified basis for denial with respect to the lack of qualifying parental reunification determination from the state juvenile court is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the issue of whether the state court made a qualifying best interest determination. *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).

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 state law. Section 101(a)(27)(J)(i) of the Act. The plain language of the Act requires this reunification determination to be made under state law. *See id.*; 8 C.F.R. § 204.11(c)(1).

Here, the guardianship order does not address the viability of the Petitioner's reunification with his mother or father, nor does it express any finding of past parental maltreatment. Rather, it states that the Petitioner's "parents signed waiver and consent to the temporary custody."

In proceedings under chapter 751 of the Florida Statutes, an order granting temporary custody is issued under either of two scenarios:

... Unless the minor child's parents object, the court shall award temporary ... custody of the child to the petitioner if it is in the best interest of the child.

... If one of the minor child's parents objects to ... the petition for temporary custody, the court shall grant the petition only upon a finding, by clear and convincing evidence, that the child's parent or parents are unfit to provide for the care and control of the child. In determining that a parent is unfit, the court must find that the parent has abused, abandoned, or neglected the child, as defined in chapter 39.

Fla. Stat. Ann. § 751.05(2)-(3) (2022).

The Petitioner's parents' signed consent was a sufficient basis for the court to award temporary custody and a finding of abuse, abandonment, or neglect was not necessary. Because the court referenced only the parents' signed consent to the award of temporary custody, and did not enter a finding by clear and convincing evidence of parental unfitness, a preponderance of the evidence does not establish that a judicial determination of parental abuse, abandonment, or neglect under Florida law was inherent or encompassed by the order.

Although the parents' consent was identified in the order, the consent itself does not constitute a judicial determination that the parents' past conduct met the definition of abuse, abandonment, or neglect under Florida state law, and the order does not address or reference the allegations of abuse, abandonment, or neglect contained in the guardianship petition. Further, the guardianship petition does not reference Florida state law defining abuse, abandonment, or neglect. Thus, the record does not establish that, in ratifying the parents' consent and granting temporary custody on the basis of their consent, the court also reached a judicial determination that the facts alleged in the guardianship petition constitute parental abuse, abandonment, or neglect as those terms are defined under Florida law.

For these reasons, the Petitioner has not met his burden to demonstrate a judicial determination that he was subjected to parental abuse, neglect, abandonment, or a similar basis under state law as required by section 101(a)(27)(J) of the Act. Therefore, the record lacks a determination that reunification with one or both of his parents is not viable on account of such maltreatment.

Consequently, the Petitioner has not overcome this basis of the Director's denial on appeal and has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.