



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

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

In Re: 26686694

Date: JUN. 08, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner, a native and citizen of Honduras, 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 petition, concluding that the record did not establish that the Petitioner was eligible for SIJ classification at the time his petition was filed. 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.

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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2). Finally, SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (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).

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).

In [REDACTED] 2022, when the Petitioner was 20 years old, the Superior Court of California, County of [REDACTED] Probate Division (juvenile court) conducted a hearing on his request for the appointment of a guardian and for the issuance of findings on eligibility for SIJ classification (SIJ findings). Based on the juvenile court's determinations in the hearing, the Petitioner filed his SIJ petition. USCIS received the SIJ petition on [REDACTED] 2022 – the Petitioner's 21st birthday. The Director issued a notice of intent to deny (NOID) in October 2022, indicating the SIJ petition would be denied on the basis that the Petitioner did not provide a court order or orders from a juvenile court with the required determination in support of SIJ classification and inviting the Petitioner to submit any additional evidence supporting his eligibility for SIJ classification. The Petitioner responded to the NOID in October 2022, submitting a copy of SIJ findings by the juvenile court, a guardianship order and letters of guardianship from the juvenile court, his Honduran passport, and his Honduran birth certificate. The Director subsequently denied the SIJ petition in December 2022, finding the Petitioner failed to establish he was eligible for SIJ classification at the time he filed his SIJ petition.

On appeal, the Petitioner asserts his SIJ petition should be granted because the hearing at which the court granted his request for a guardianship order and SIJ findings was prior to when he submitted his SIJ petition; however, the juvenile court did not sign or issue the actual orders until after USCIS received the SIJ petition and the Director issued the NOID. Evidence that a state juvenile court made the requisite determinations must be submitted in support of the SIJ petition. *See* 8 C.F.R. § 204.11(d) (stating “a petitioner must submit all of the following evidence, as applicable to their petition: . . . Juvenile court order(s) with the judicial determinations required . . .”). . Further, a petitioner must be eligible for the immigration benefit sought at the time of filing. 8 C.F.R. §§ 103.2(b)(1) (providing that a petitioner for an immigration benefit “must establish that he or she is eligible for the requested benefit at the time of filing the benefit”) and 204.11(b)(4) (stating that an SIJ petitioner must be subject to a juvenile court order meeting the requirements further delineated in the regulations); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that “Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts.”). The regulations list the required initial evidence, including a juvenile court order or orders that comport with the requirements outlined in the regulations and are “in effect on the date the petitioner files the petition.” 8 C.F.R. § 204.11(b)(4); (c)(3)(ii). Although the Petitioner provided transcripts of court proceedings indicating an intent on the court's part to grant the Petitioner's requests, the actual orders were not signed, dated, or issued until October 2022 – after he filed his SIJ petition. Thus, the Petitioner has not provided evidence that he was subject to a qualifying juvenile court order or orders at the time of filing. As such, he is ineligible for SIJ classification.

ORDER: The appeal is dismissed.