



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

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

In Re: 27813573

Date: SEP. 19, 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 Colombia, 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 SIJ order was issued by a court exercising jurisdiction over the Petitioner as a juvenile. 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). A petitioner 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 petitioner's 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).

In  2022, when the Petitioner was 18 years old, the Juvenile Court of  County, State of Georgia (juvenile court) issued an order entitled *Proposed Final Order of Adjudication and*

*Disposition* (SIJ order). Based on that SIJ order, the Petitioner filed her SIJ petition in May 2022. The Director issued a notice of intent to deny (NOID) in January 2023, indicating the SIJ petition would be denied on the basis the Petitioner did not establish the juvenile court exercised jurisdiction over her as a juvenile under state law. The Petitioner responded to the NOID in February 2023, submitting an amended copy of the SIJ order, a copy of the Petitioner's passport, and a copy of the Petitioner's birth certificate. The Director subsequently denied the SIJ petition in February 2023 on the ground that the Petitioner did not establish the juvenile court exercised jurisdiction over her as a juvenile under Georgia state law.

The Petitioner has not established her eligibility for SIJ classification. First, the Petitioner did not submit a valid juvenile court order at the time of filing her SIJ petition. The regulations require that a petitioner for SIJ classification must submit a petition on the form prescribed by USCIS and in accordance with the form instructions. 8 C.F.R. § 204.11(d)(1); *see also* 8 C.F.R. § 103.2(a)(1) (requiring that every form must be submitted and executed in accordance with the form instructions, which are hereby incorporated into the regulations requiring its submission). According to the form instructions for SIJ petitions, a petition must be filed with a copy of the court or administrative documents that establishes eligibility for this classification, including the specific findings of fact or other relevant evidence in support of the judicial determinations. The requirement that an SIJ petitioner be the subject of a juvenile court dependency or child custody order at the time of filing and that the petitioner submit such order with the SIJ petition as initial evidence are substantive eligibility requirements that we may not disregard. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974) (holding that government officials are bound to adhere to the governing statute and regulations).

As to the jurisdiction of the juvenile court over the Petitioner as a juvenile, the SIJ order indicates that under Official Code of Georgia Annotated section 15-11-10(C), the juvenile court had "exclusive original jurisdiction" over the Petitioner as "a child who is alleged to be abandoned." The Petitioner's counsel contends the SIJ order was issued, pursuant to that jurisdiction, after a hearing on [REDACTED] 2022 – a day before the Petitioner's 18th birthday – during which an oral decision was rendered, granting the request for the SIJ order. However, as explained by counsel, the order was not signed until March 7, 2022. Although counsel argues the order is a record of what occurred at the hearing on [REDACTED] 2022, the evidence is not sufficient to establish what transpired at the hearing. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (stating that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). The first page of the transcript of the hearing was submitted, but it does not contain the oral decision or any testimony which may have occurred. Without more, we cannot find the record establishes the court issued an order containing the SIJ findings prior to the Petitioner's 18th birthday such that it exercised jurisdiction over her as a juvenile.

Moreover, the regulations require that juvenile court orders must be in effect on the date the petitioner files the petition and continue through the time of adjudication. 8 C.F.R. § 204.11(c)(3)(h). Here, the Petitioner's SIJ order was issued by the juvenile court at the time of filing the instant SIJ petition; however, she was not a juvenile under controlling state law at the time the initial order was issued, and the evidence is insufficient to demonstrate that the court made the requisite findings prior to her 18th birthday. Thus, the Petitioner was not the subject of a juvenile court order containing the requisite dependency or custody determination and did not establish her eligibility for SIJ classification at the time of filing, as required. *See id.*; *see also* 8 C.F.R. § 103.2(b)(1) (providing that petitioners for

immigration benefits must establish eligibility for the requested benefits at the time of filing). On appeal, the Petitioner does not submit sufficient evidence to establish that the court order issued after the filing of the SIJ petition with an earlier *nunc pro tunc* effective date memorialized prior findings and amounted to a properly executed juvenile court order establishing SIJ eligibility at the time of filing. Accordingly, the Petitioner has not established by a preponderance of the evidence that she was the subject of a juvenile court order containing the requisite dependency or custody determination at the time of filing her SIJ petition, as required. Therefore, the Petitioner has not met her burden to establish that she is eligible for SIJ classification.

As discussed above, the Petitioner has not demonstrated that at the time of filing her SIJ petition she was the subject of a properly issued juvenile court order. Accordingly, the Petitioner has not overcome the Director's ground for denial. We will dismiss her appeal.

**ORDER:** The appeal is dismissed.