



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

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

In Re: 27812524

Date: SEPT. 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 El Salvador, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish the state court exercised jurisdiction over him as a juvenile in issuing the order underlying his SIJ petition. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification.

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 sustain 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 [REDACTED] 2022, when the Petitioner was 18 years old, the Juvenile and Domestic Relations District Court [REDACTED] in Virginia (district court) issued a custody order (SIJ order), which committed the Petitioner to the “legal and physical custody” of J-J-C-¹, whom the Petitioner claims is his mother’s cousin. Based on that SIJ order, the Petitioner filed his SIJ petition in the same month, [REDACTED] 2022. The Director issued a notice of intent to deny (NOID) in October 2022, advising the Petitioner that the SIJ petition would be denied on the basis that the Petitioner did not establish that the district court had exercised jurisdiction over him as a juvenile under state law because the SIJ order was issued after his 18th birthday. The Petitioner responded to the NOID, submitting a brief, various USCIS policy and regulatory documents, and a copy of section 16.1-241 of the Code of Virginia. The Director subsequently denied the SIJ petition in January 2023 on the ground that the Petitioner did not establish the district court exercised jurisdiction over him as a juvenile under Virginia state law when it issued the SIJ order.

On appeal, the Petitioner asserts that under Virginia Code section 16.1-241(A1) the district court retained jurisdiction over the Petitioner as a juvenile until his 21st birthday. Virginia Code section 16.1-242 states, in relevant part, “[w]hen jurisdiction has been obtained by the court in the case of any child, such jurisdiction, which includes the authority to suspend, reduce, modify, or dismiss the disposition of any juvenile adjudication, may be retained by the court until such person becomes 21 years of age.” A review of the SIJ order reflects that the district court found that it had continued to exercise its jurisdiction over the Petitioner “under Virginia Law to make determinations about the custody and care of juveniles under Virginia Code § 16.1-241.” Thus, based on the preponderance of the evidence in this case, we conclude the district court properly exercised jurisdiction over the Petitioner as a juvenile under state law in issuing the SIJ order, as section 101(a)(27)(J)(i) of the Act requires.

In addition, the SIJ order includes a qualifying custodial placement indicating that J-J-C- shall have custody of the Petitioner. The SIJ order also contains a finding that reunification with the Petitioner’s father is not viable due to abandonment and neglect, as defined in sections 16.1-228 and 63.2-100 of the Virginia Code. The record contains a factual basis for this finding, indicating the Petitioner’s father “failed to provide him with financial, emotional or educational support” and “no meaningful relationship presently exists” between the Petitioner and his father. Finally, the SIJ order also includes a finding that it would not be in the Petitioner’s best interest to be returned to his home country of El Salvador because his “father has failed to maintain a parental relationship with him,” and he would be at risk of harm” based on threats of violence from gangs. The district court concluded it would instead be in the Petitioner’s best interest to remain in the United States in the care of J-J-C.

For these reasons, the Petitioner has overcome the Director’s grounds for denying his petition. The Petitioner was under the age of 21 years old at the time he filed his SIJ petition, and the record indicates he remains unmarried. The SIJ order from the district court contains a qualifying custody placement and parental reunification and best interest determinations, and it was sought in proceedings granting relief from parental neglect and abandonment. Accordingly, the Petitioner has established his eligibility for SIJ classification and that his request warrants USCIS’ consent. The Director’s decision is withdrawn, and the appeal is sustained.

¹ Name withheld to protect the individual’s identity.

ORDER: The appeal is sustained.