



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

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

In Re: 27815980

Date: SEP. 19, 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). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish the court exercised jurisdiction over him as a juvenile under state law at the time of issuing the order. 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 sustain 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

A. Relevant Factual and Procedural History

In [] 2022, when the Petitioner was 18 years old, the Juvenile and Domestic Relations District Court of the County [] in Virginia (District Court) issued a *Custody Order*, placing the Petitioner under the sole legal and physical custody of his mother. The District Court specified that it “has proper jurisdiction over this matter pursuant to [sections] 16.1-241(A)(3) and [] 16.1-241(A1) of the [Virginia Code Annotated (Va. Code Ann.)] to place the minor child in the custody of his mother.” The District Court further determined, in relevant part, that the Petitioner’s reunification with his father is not viable due to his father’s abuse, neglect, and abandonment, pursuant to sections 20-124.3(5) and (7) of the Va. Code Ann. Additionally, the District Court concluded that it is not in the Petitioner’s best interest to return to Guatemala, his country of nationality, because there is no one willing or able to care for him there and it is in his best interest to remain in the custody of his mother in Virginia. The Petitioner also submitted a copy of the *Petition for Determination of Custody and Findings of Fact Pursuant to § 16.1-241(A1)* (custody petition), along with supporting documents submitted to the court, all with a District Court “received” stamp of August 2021, and a copy of the receipt of the custody petition from the District Court, also dated August 2021. The District Court’s Custody Order formed the basis of the Petitioner’s SIJ petition, which he filed in April 2022.

The Director denied the petition,² concluding that, as the Petitioner was over the age of 18 at the time the District Court issued the Custody Order, he did not establish that the court exercised jurisdiction over him as a juvenile under state law, as required by section 101(a)(27)(J) of the Act. The Director also noted that the Petitioner did not provide sufficient evidence to demonstrate that Virginia has extended jurisdiction over someone who is over the age of majority.

On appeal, the Petitioner argues that the District Court’s jurisdiction vests at the time a petition for custody is properly filed with the court and, in accordance with section 16.1-241(A1) of the Va. Code Ann., once a Virginia court has jurisdiction over a child prior to their 18th birthday, “the court may continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of entering findings of fact . . . necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).” In support of the appeal, the Petitioner resubmits copies of the court documents in the record and a copy of the relevant Virginia statute.

² The Director issued a Notice of Intent to Deny the SIJ petition prior to the denial, which we incorporate by reference. However, the Director’s conclusions remained the same in the denial of the SIJ petition.

B. Juvenile Court

An SIJ petitioner must establish that the court exercised jurisdiction over them as a juvenile for purposes of court-ordered juvenile dependency or custody to protect the petitioner from parental abuse, neglect, abandonment, or a similar basis under state law, as required of qualifying juvenile court orders under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(a) (explaining that the term “juvenile court” is defined as a court “in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.”) While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. *See Matter of A-O-C-*, Adopted Decision 2019-03, at 4 (AAO Oct. 11, 2019); *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 3-4 (AAO Oct. 11, 2019); 6 *USCIS Policy Manual* J.2(C), <https://www.uscis.gov/policy-manual>.

The Director erroneously determined that since the Petitioner was 18 years old and over the age of majority in Virginia when the District Court issued its Custody Order, the court did not have jurisdiction over him under Virginia law. However, the evidence in the record establishes that the District Court maintained continuing jurisdiction over the Petitioner pursuant to sections 16.1-241 and 16.1-242 of the Va. Code Ann. The District Court specified in its Custody Order that it had jurisdiction over the Petitioner pursuant to sections 16.1-241(A)(3) and 16.1-241(A1) of the Va. Code Ann., and Virginia law provides for the court’s retention of jurisdiction past the Petitioner’s 18th birthday. Accordingly, the record shows that the District Court had jurisdiction over the Petitioner as a juvenile when the Custody Order was issued, as section 101(a)(27)(J)(i) of the Act requires.

III. CONCLUSION

The Petitioner has overcome the ground for denial of his SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS’ consent, he has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.