



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

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

In Re: 21880590

Date: DEC. 2, 2022

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). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

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) 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. 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).

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), 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

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).

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). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Evidence and Procedural History

In [] 2018, when the Petitioner was 17 years old, the [] Family Court in New York appointed guardianship of the Petitioner to his uncle (uncle/guardian), finding that such appointment would last “until the subject’s 21st birthday.” *Order Appointing Guardian of the Person*, dated [] [] 2018 (guardianship order). In a separate order dated [] 2018, the Family Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner is “dependent upon the Family Court.” The Family Court also found that the Petitioner’s reunification with his parents was not viable due to “abuse, neglect, abandonment, financial hardship or similar basis found under New York state law, and under INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J)” and that it was not in the Petitioner’s best interest to be returned to India, his country of nationality. *Order Regarding Minor’s Eligibility for Special Immigrant Juvenile Status* (SIJ order), dated [] 2018. The SIJ order formed the basis of the Petitioner’s SIJ petition, which was filed in October 2018.

The Director denied the SIJ petition, determining that the guardianship order lacked a qualifying parental reunification determination. The Director noted that while the Family Court had found that reunification with the Petitioner’s parents was due to “abuse, neglect, abandonment, financial hardship, or similar basis,” it did not “specify under which of the grounds that reunification is not viable with [the Petitioner’s] parents.” Furthermore, the Director stated that the Petitioner had not established his date of birth as previously requested in the Director’s Request for Evidence.

B. Lack of Qualifying Parental Reunification Determination

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).

On appeal, the Petitioner asserts that the Family Court heard testimony from the Petitioner regarding the unviability of reunification prior to issuing the SIJ order. The Petitioner also maintains that New York case law was referenced by the Family Court, specifically, *Matter of Trudy-Ann W.*, 73 A.D. 3d 793 (2nd Dept. 2010).² The Petitioner also submits additional documentation in support of his date of birth and explains that if he previously provided the wrong date of birth to immigration officials, it was because he did not speak or understand English at the time.

² We acknowledge the Family Court’s reference to the above-cited New York case in the SIJ order. However, the Family Court cited that case in the SIJ order when discussing the Petitioner’s dependency on the Court; the case was not cited by the Family Court with respect to the parental reunification provision in said order.

On appeal, the Petitioner has not established that the Family Court found that reunification with one or both parents was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as the guardianship order did not specify which of these grounds was the basis for the parental reunification determination and did not cite or otherwise reference any relevant state statutory provisions. We note that the *Memorandum of Points and Authorities in Support of Request for Order Regarding Child's Eligibility for Special Immigrant Juvenile Status* states that the Petitioner was neglected and abandoned by his parents "by virtue of their consent to waive their rights and appearance as to [the Petitioner's] custody."³ However, the guardianship order does not contain a legal determination that the Petitioner was subject to abandonment or neglect under New York law, and the record does not contain evidence demonstrating the state law basis for the Family Court's parental reunification determination. Section 101(a)(27)(J)(i) of 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. Further, where a juvenile court finds that parental reunification is not viable due to a similar basis, "the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under state law." See *6 USCIS Policy Manual J.3(A)(1)*, <https://www.uscis.gov/policymanual>. Accordingly, the Petitioner has not established by a preponderance of the evidence that the Family Court made a qualifying determination that he cannot reunify with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under state law, as required.

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.

³ We note that this memorandum also indicates that the Petitioner's request for guardianship was based on the risk to his safety from [redacted] members" who wanted the Petitioner to join the group and do and sell drugs. The Petitioner states in his June 2018 declaration that his parents were very "scared of the threats of [redacted] members," and his mother arranged for him to leave India and travel to the United States for his safety.