



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

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

In Re: 23530226

Date: DEC. 05, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of Mexico, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the juvenile court order lacked a qualifying determination that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law. The Director further concluded the juvenile court order did not include a finding that it would not be in the Petitioner's best interest to be returned to his country of nationality or last habitual residence, as section 101(a)(27)(J)(i) of the Act requires.

The matter is now before us on appeal. On appeal, the Petitioner asserts that he has demonstrated his eligibility for SIJ classification. 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.

## 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).<sup>1</sup> 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). 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).

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<sup>1</sup> 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).

## II. ANALYSIS

### A. Relevant Facts and Procedural History

In [REDACTED] 2017, when the Petitioner was 17 years old, the Superior Court of New Jersey, Chancery Division – Family Part, [REDACTED] (Family Court) issued an order (custody order) granting temporary sole custody of the Petitioner to K-E-C-<sup>2</sup>, the Petitioner’s mother. Additionally, in the custody order, the Family Court found the Petitioner’s father allegedly resided in El Salvador and had not had contact with the Petitioner in “at least 16 years.”

Based on the custody order, the Petitioner filed this SIJ petition in January 2019. The Director later issued a request for evidence (RFE), asking the Petitioner to provide a copy of a juvenile court order including complete findings: 1) declaring the Petitioner dependent on the court or under the custody of an agency or department of the state, or an individual entity appointed by the court; 2) that reunification with one or both parents was not viable due to abuse, neglect, abandonment, or similar basis under state law; and 3) that it would not be in the Petitioner’s best interest to be returned to his or his parents’ country of nationality or last habitual residence. The Petitioner responded to the RFE, filing a copy of the original [REDACTED] 2017 custody order. The Director subsequently issued a notice of intent to deny, and the Petitioner did not file a response. In March 2020, the Director denied the SIJ petition, determining the Petitioner failed to submit a qualifying juvenile court order that showed the Petitioner was eligible for SIJ classification at the time the SIJ petition was filed with USCIS.

### B. Parental Reunification Determination

An SIJ petitioner must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of a state agency or department, or of an individual or entity appointed by a state or juvenile court, and that declaration must be made in accordance with state law governing such declarations. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The declaration must include a determination that the SIJ petitioner 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) of the Act; 8 C.F.R. § 204.11(b).

Here, the Family Court order does not include a qualifying parental reunification determination. The custody order indicates the Petitioner’s father presumably lives in El Salvador and has not had contact with the Petitioner “for at least 16 years.” However, the order makes no determination as to the reason why the Petitioner cannot reunify with his father, such as abandonment, neglect, or similar basis under state law. *See* Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The order further does not include any reference to the state law governing the order. Thus, the Petitioner has not established the Family Court made a qualifying determination as to the viability of reunification with his father.

### C. Qualifying Best Interest Determination

SIJ classification requires an administrative or judicial determination “that it would not be in the [juvenile’s] best interest to be returned to the [juvenile’s] or parent’s previous country of nationality

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<sup>2</sup> Initials are used to protect the privacy of this individual.

or country of last habitual residence”. Section 101(a)(27)(J)(ii) of the Act. A petitioner must submit evidence of a best interest determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions. 8 C.F.R. § 204.11(c)(2)(i). While the standards may vary among states, the best interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services and orders are best for a child, as well as who is best suited to care for the child. *See* U.S. Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway (2016), *Determining the Best Interests of the Child*. As we have explained in policy guidance, in making its best interest determination, the court must “make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations.” *See* 6 *USCIS Policy Manual* J.2(C)(3), <http://www.uscis.gov/policy-manual> (explaining that “[t]he child’s safety and well-being are typically the paramount concern” and that “USCIS defers to the juvenile court in making this determination . . .”).

The custody order filed by the Petitioner does not contain any findings regarding whether it would be in his best interest to be returned to his or his parents’ country of nationality or last habitual residence. There is insufficient evidence to establish the Family Court found it would not be in the Petitioner’s best interest to be returned to El Salvador.

### III. CONCLUSION

The evidence in the record does not establish the Family Court made a qualifying finding as to the viability of parental reunification or that it was not in the Petitioner’s best interest to be returned to El Salvador – the country of his nationality and his parents’ last habitual residence. Therefore, the Petitioner has not met his burden to establish that he is eligible for SIJ classification.

**ORDER:** The appeal is dismissed.