



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

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

In Re: 18234337

Date: DEC. 06, 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 Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding the Petitioner did not establish that USCIS' consent was warranted in granting this classification.

On appeal, the Petitioner asserts his eligibility for SIJ classification. We review the questions in this matter *de novo*. See *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).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. *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

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).

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).

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 [] 2016, when the Petitioner was 20 years of age, the Family Court in [], New York issued an order appointing a guardian for the Petitioner in proceedings brought under section 661 of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 1707 of the New York Surrogate's Court Procedure Act (N.Y. Surr. Ct. Proc. Act). The order stated that “the appointment shall last until the [Petitioner]’s 21st birthday” In a separate order issued the same day and titled *ORDER Special Juvenile Status* (SIJ order), 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 [*sic*], or ha[ve] been committed to or placed in the custody of a state agency or an individual or entity appointed by the state or Family Court,” that his reunification with one or both of his parents is not viable as his “father is deceased as a result of which reunification with the father is not viable,” and that it would not be in his best interest to return to India, his country of nationality.

Based on the Family Court’s orders, the Petitioner filed his SIJ petition and the Director denied it, concluding that USCIS’ consent was not warranted because he had not shown the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)–(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”).

On appeal, the Petitioner contends that the Director erred in concluding that USCIS consent was not warranted to his request for SIJ classification. While the appeal was pending, we issued a notice of intent to deny (NOID) requesting evidence to establish that the record contained the requisite qualifying parental reunification determination. With the Petitioner’s timely NOID response he submitted an *AMENDED ORDER – Special Immigrant Status* (amended SIJ order) issued by the Family Court *nunc pro tunc* to [] 2015.

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. *Id.* Accordingly, state court orders that only cite or paraphrase immigration

law and regulations will not suffice if the petitioner does not otherwise establish the basis in state law for the juvenile court's reunification finding.

Upon *de novo* review of the record in its entirety, it lacks the requisite qualifying parental reunification determination. In the initial SIJ order the Family Court did not cite to any specific provision in New York law when determining that reunification with the Petitioner's father was not viable, instead indicating that its findings were in accordance with federal immigration law. Further, the Family Court did not specify that the Petitioner's reunification with his father was not viable due to abuse, neglect, abandonment, or a similar basis under state law. Instead, the SIJ order stated that reunification with the Petitioner's father was not viable because his father is deceased.² The Family Court did not make a parental reunification determination with regard to his mother in the SIJ order.

In the amended SIJ order the Family Court now issues findings "in accordance with New York State Family Law Act § 113, 115 (c), 141, 661, New York State Domestic Relations Law § 240" including that the Petitioner's reunification with his father is not viable "due to a similar basis" and that "reunification is not possible with the [Petitioner]'s father as the [Petitioner]'s father is deceased." However, the Family Court does not specify whether this basis is similar to abuse, neglect, or abandonment under New York state law. Accordingly neither the initial nor the amended SIJ order contain the requisite parental reunification determination. *See* section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b).

In addition to the initial and amended SIJ orders, the record also contains a *Notice of Motion For Special Findings Order* (SIJ motion) and accompanying *Affirmation*, filed on the Petitioner's behalf by his counsel in these proceedings. In this SIJ motion, counsel requested that, pursuant to section 661 of the N.Y. Fam. Ct. Act, the Family Court find, in relevant part, that reunification with the Petitioner's parents was not viable due to the death of his father. However, the SIJ motion did not indicate that reunification with his father was not viable due to abuse, neglect, abandonment, or a similar basis. Although the SIJ motion also requested that the Family Court find that reunification with his mother was not viable due to her inability to protect him from his stepfather, neither the SIJ order nor the amended SIJ order show that the Family Court did so.

For the foregoing reasons, the Petitioner has not established his eligibility for SIJ classification as he has not shown, by a preponderance of the evidence, that his "reunification with 1 or both ... parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law" as section 101(a)(27)(J)(i) of the Act requires. As the Petitioner has not established his eligibility for SIJ classification, we need not reach, and will reserve, the Petitioner's arguments on appeal that USCIS' consent is warranted in granting his request for SIJ classification.³

ORDER: The appeal is dismissed.

² The Family Court cited to *In the Matter of Luis R. Elena G.*, 2013-08591 (2nd Department 8-31-14), noting that this ruling held "that the death of one parents satisfies a finding that reunification is not viable with one parents."

³ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).