



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

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

In Re: 16729675

Date: FEB. 25, 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 establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they 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; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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 juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). 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 Facts and Procedural History

In [] 2017, when the Petitioner was 20 years old, a District Court in [] Mississippi issued an *Order Appointing Guardian of Minor* (guardianship order), appointing the Petitioner's mother as his guardian. The District Court also found that the Petitioner's reunification with his father "is not possible as the biological father is deceased," and that it is not in the Petitioner's best interest to return to Guatemala, his country of nationality, because it is in his best interest to "remain in the State of Mississippi in the long term care, custody, and control under the guardianship of" his mother.

Based on the guardianship order, the Petitioner filed his SIJ petition in November 2017. The Director denied the petition, concluding that the guardianship order did not contain a qualifying determination that the Petitioner's reunification with one or both parents was 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. The Director explained that although the District Court found that the Petitioner's reunification with his father was not possible due to his death, the record did not contain evidence that the court made a legal determination that the death of the Petitioner's father was "equivalent" to abuse, neglect, or abandonment.

B. No Qualifying Parental Reunification Determination

Based on our *de novo* review, we agree with the Director that the Petitioner has not established that the District Court made a qualifying parental reunification determination. The Act requires a juvenile court's determination that an SIJ petitioner's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the petitioner was subjected to such maltreatment by one or both parents under state law. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6. The Petitioner bears the burden of proof to demonstrate the state law upon which the juvenile court relied. *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 determination. *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 6 (AAO Oct. 11, 2019); see 6 *USCIS Policy Manual* J.3(A)(1), <https://www.uscis.gov/policy-manual> (providing guidance that orders "that just mirror or cite to federal immigration law and regulations are not sufficient.").

In the guardianship order, the District Court indicated that the Petitioner's reunification with his father is not possible because his father is deceased. The Petitioner asserts on appeal¹ that while this portion of the court's finding "does not specifically state that there has been abandonment by one or more of the natural parents," that finding is included later in the order, where the District Court indicates that the Petitioner's mother "is willing and able to give proper care and support to [the Petitioner] . . . [and]

¹ The first page of the appeal brief was not submitted. Based on information on the second page of the brief, the first page appears to have contained procedural history.

is the fit and proper person to exercise the rights of a general guardianship of the person over the [Petitioner].” The section of the guardianship order the Petitioner references does not contain a finding that the Petitioner’s father subjected him to abuse, neglect, abandonment, or a similar basis under state law, nor does any other evidence in the record.

The Petitioner correctly notes that a finding of abuse, neglect, or abandonment is not required, as a determination that reunification is not viable due to a similar basis under state law will also meet the SIJ requirements. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c). He asserts that the impossibility of reunification due to his father’s death “constitutes a ‘similar basis’ to abandonment.” However, the guardianship order in this case does not indicate that the District Court found the Petitioner’s father’s death to be a similar basis to abandonment under Mississippi law, and there is no other evidence in the record to support such a conclusion. Furthermore, the guardianship order does not contain any reference to the state law that formed the basis for the court’s determination that the Petitioner’s reunification with his father is not viable due to his father’s death. The Petitioner bears the burden of proof to demonstrate the state law upon which the court relied. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6.

The Petitioner also argues on appeal that even if his father’s death is an insufficient basis for the court’s determination that parental reunification is not viable, the evidence also shows that his father abandoned him over a year prior to his death. He asserts that this evidence appears in his personal statement, but in that statement, which was submitted with his initial SIJ petition, he did not mention abandonment by his father, but instead reported, “At the age of 4 my father died in an accident on 2001 [*sic*]. I have missed him very much; it was and continues to be very sad for me to remember him.” However, in a statement submitted in response to the Director’s notice of intent to dismiss (NOID), the Petitioner’s mother indicated that the Petitioner’s father was physically abusive toward her and her children until he abandoned the family in March 2000, and then subsequently died in June 2001. The Petitioner’s sister also claimed in a statement in response to the NOID that she and her family were the victims of domestic violence at the hands of their father, who later abandoned them. Nevertheless, the record does not establish that the District Court considered any evidence of abuse or abandonment by the Petitioner’s father, and the guardianship order does not indicate that such mistreatment was the basis of the District Court’s determination that the Petitioner could not reunify with his father. Moreover, even if the evidence did indicate that the District Court found that the Petitioner’s reunification with his father was not viable due to abandonment, which is not supported by the evidence, the record lacks any reference to the state law that formed the basis for the court’s determinations. As discussed, the record must contain evidence of a judicial determination that the petitioner was subjected to such maltreatment by one or both parents under state law, and the Petitioner bears the burden of making such a showing. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6.

Accordingly, the Petitioner has not met his burden of establishing that the District Court made a qualifying determination that his reunification with one 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. He is therefore ineligible for SIJ classification.

ORDER: The appeal is dismissed.