



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

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

In Re: 12221439

Date: MAR. 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

In [REDACTED] 2017, when the Petitioner was 18 years old, a probate court in Kansas issued an order appointing his mother as his guardian. The court found that the Petitioner “is in need of a guardian as he was abandoned by his biological father” and that his mother “is a fit and proper person to be appointed guardian.” Based on the guardianship order, the Petitioner filed his SIJ petition in October 2017. The Director denied the petition, concluding that the record lacked a reasonable factual basis for the probate court’s determinations that the Petitioner’s reunification with one or both parents is not viable due to abuse, neglect, or abandonment and that it would not be in his best interest to return to Honduras, his country of origin.

During adjudication of the Petitioner’s appeal, we issued a notice of intent to dismiss (NOID), notifying the Petitioner that the probate court’s guardianship order does not contain the parental reunification and best interest findings required by section 101(a)(27)(J)(i)-(ii) of the Act. The probate court did not find in the guardianship order that the Petitioner’s reunification with his father is not viable and that it is not in his best interest to return to Honduras. Although the underlying petition for guardianship asserts that “returning to reside with his biological father is not in the best interest of the [Petitioner]” due to his father’s abandonment, the probate court did not include a corresponding finding in its order. Accordingly, we notified the Petitioner that he had not submitted a juvenile court order containing judicial determinations that his reunification with one or both parents is not viable due to abuse, neglect, or abandonment and that it would not be in his best interest to be returned to his country of nationality, as required under section 101(a)(27)(J)(i)-(ii) of the Act.

Furthermore, we notified the Petitioner in our NOID that the record does not establish that the probate court’s determinations were based in state law. 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. 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. Similarly, as part of their burden to establish eligibility for SIJ classification, petitioners must establish the state law that the juvenile court applied in its dependency declaration or custodial placement. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 (citing to 8 C.F.R. § 204.11(c)(3) and providing that, because “the dependency declaration or custodial placement must be entered in accordance with the state law that governs such determinations, the state law itself is a question of fact that must be proved by the Petitioner to establish eligibility”). In the guardianship order, the probate court determined that the Petitioner’s father abandoned him, and therefore placed him in the guardianship of his mother. However, the court did not cite to any Kansas law on abandonment or child welfare, and the underlying petition for guardianship cites only general provisions relating to the issuance of guardianship orders. Accordingly, a preponderance of the evidence does not show that the probate court’s findings were based in state law.

The Petitioner did not respond to our NOID. Accordingly, the evidence does not show that the probate court made qualifying determinations under state law that the Petitioner cannot reunify with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under state law, and that it would not be in his best interest to return to Honduras. Therefore, the Petitioner has not established eligibility for SIJ classification.

ORDER: The appeal is dismissed.