



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

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

In Re: 21761404

Date: NOV. 1, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner appealed that decision to us. On appeal, the Petitioner submits a brief and asserts that the record establishes his eligibility for SIJ classification. Upon review, we will sustain 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) 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).

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). Petitioners bear the burden of proof to demonstrate their

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).

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 [REDACTED] 2018, when the Petitioner was 17 years old, the Circuit Court of the [REDACTED] Judicial Circuit in [REDACTED] Florida (juvenile court) entered an *AGREED ORDER FOR RELATIVE CUSTODY* (order), granting legal and physical custody of the Petitioner to his brother until the Petitioner attained 18 years of age, pursuant to section 751.05(2) of the Florida Statutes (2018), which governs temporary custody of children by extended family.² The court also determined that it was in the Petitioner's best interest to remain in the legal and physical custody of his brother, who "can provide a safe and stable home" in Florida, and not to return to his home country, which is Guatemala, where his parents currently reside. The court order further indicated that the Petitioner's mother and father had both executed parental consent to a relative custody of the Petitioner by his brother, which had been filed with the court and was "incorporated herein."

Based on the juvenile court order, the Petitioner filed the instant SIJ petition in March 2021. The Director denied the petition, finding that the order lacked a qualifying determination that parental reunification is not viable due to abuse, neglect, or abandonment, or a similar basis under state law.

B. 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).

The Director found that even if abuse and neglect were the reasons why the petition was filed, this is insufficient to meet the requirement of receiving a legal ruling that reunification with one or both parents was not viable due to abuse, neglect, abandonment, or a similar basis under state law. The Director concluded that the determination did not qualify under section 101(a)(27)(J)(i) of the Act because the order did not provide the child welfare basis (abuse, neglect, abandonment, or a similar basis under state law) on which the reunification determination was based.

As the Petitioner correctly contends on appeal, the juvenile court made findings and awarded custody of the Petitioner to his brother after taking into consideration the underlying Petition for Relative Custody (custody petition). The court order, taken together with the custody petition, establishes the child welfare basis for the juvenile court's reunification determination. The custody petition asserted that the Petitioner's father physically abused the Petitioner "by beating him with a belt, sticks and ropes," and that his mother abused the Petitioner "by having him witness the physical abuse by the father against her," consistent with the definition of abuse under section 39.01 of the Florida Statutes. The petition

² Section 751.05 of the Florida Statutes also provides for a relative's concurrent custody of a child with the child's parent(s) consent. The record here indicates that the Petitioner's brother sought and was granted temporary custody under Chapter 751 of the Florida Statutes.

further asserted that it was “in the best interest of the child” to grant custody of the Petitioner to his brother because reunification with his parents was not viable due to such “abuse and neglect.” Accordingly, the preponderance of the evidence demonstrates that the juvenile court’s parental reunification determination was based on a finding of parental abuse and neglect under relevant Florida child welfare laws. The record therefore demonstrates that the juvenile court made a qualifying parental reunification determination under section 101(a)(27)(J)(i) of the Act, and we withdraw the Director’s decision to the contrary.

The Petitioner has overcome the Director’s grounds for denying the SIJ petition and has otherwise met his burden to establish that he is eligible for and merits USCIS’ consent to his SIJ classification. The Director’s decision is therefore withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.