



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

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

In Re: 22794267

Date: NOV. 2, 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), concluding the Petitioner had not demonstrated that a qualifying parental reunification determination had been made for him and thus he did not meet his burden of proving that his SIJ petition should be approved. On appeal, the Petitioner reasserts 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). 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. Section 101(a)(27)(J)(ii) of the Act; 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 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 Facts and Procedural History

In [] 2020, when the Petitioner was 17 years old, the Circuit Court of the [] Judicial Circuit in and for [], Florida (Circuit Court) issued a *Final Judgment on Petition for Temporary Custody and Best Interest Order* (final judgment). The Circuit Court granted temporary custody of the Petitioner to his brother, M-O-G-C-,¹ noting that M-O-G-C- "... is granted custody of the minor child until the child reaches the age of 22 years old, marries or becomes emancipated or until the minor child attains his legal permanent residency, whichever occurs first." The Circuit Court also stated that it was its intention to place the Petitioner with M-O-G-C- permanently, and that the final judgment was not an *in loco parentis*² order. The Circuit Court also determined that "[i]t is not in the child's best interest to return to his home country of Guatemala because (*sic*) child is under substantial risk of imminent abuse, abandonment and neglect. Rather, it is in the child's best interest to remain in the United States where he can be protected from further abuse, abandonment and neglect."

Based on the Circuit Court's final judgment, the Petitioner filed his SIJ petition in April 2021. In November 2021, while the SIJ petition was pending, the Director issued a request for evidence (RFE), seeking the information that the Circuit Court used to determine that reunification with one or both of the Petitioner's parents was not viable due to abandonment, neglect, or abuse; and why it would not be in his best interest to return to Guatemala. In response to the RFE, the Petitioner submitted a letter from his attorney and a [] 2021 order from the Circuit Court titled *Amended Final Judgment* in which it made the following determinations related to the Petitioner's care and custody: "It is not in the child's best interest to return to his home country of Guatemala because (*sic*) child is under substantial risk of imminent abandonment and neglect. The child's parents neglected their duty to protect the child and allowed and encouraged him to leave the country without parental supervision placing him at imminent risk. The child entered the United States as an unaccompanied minor and was released to [M-O-G-C-]. Rather, it is in the child's best interest to remain in the United States where he can be protected from further neglect." After review, the Director denied the SIJ petition, concluding that the Circuit Court orders lacked both a qualifying parental reunification determination and a factual basis that it was not in the Petitioner's best interest to be returned to Guatemala.

B. Qualifying Parental Reunification Determination

To be eligible for SIJ classification, the Act requires a juvenile court determination that a juvenile'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 juvenile was subjected to such maltreatment by one or both parents under state law. 8 C.F.R. § 204.11

¹ Initials are used to protect the individual's privacy.

² The legal concept of *in loco parentis* is one which provides someone supervisory authority over a child for a short period of time.

(c)(1)(ii). Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) ("Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.").

On appeal, the Petitioner claims that the Circuit Court's orders contain a qualifying parental reunification determination. Specifically, he argues that temporary custody orders under chapter 751 of the Florida Statutes Annotated (Fl. Stat. Ann.) meet the non-viability of reunification requirement for SIJ eligibility because they specify that reunification is not viable due to abuse, abandonment, or neglect. In support of this assertion, he notes that parents seeking to dissolve such an order must demonstrate that they are fit parents, and a fit parent is one who has not abused, abandoned, or neglected their child.

Upon *de novo* review, no evidence in the record reflects that the Circuit Court made a qualifying parental reunification determination in the Petitioner's case. In this regard, neither of the Circuit Court's orders contains a judicial determination that the Petitioner's reunification with his parents is not viable due to abuse, abandonment, or neglect under any Florida law. Although the Petitioner cites to section 751.03(9) of the Fl. Stat. Ann in his brief on appeal and asserts it is a basis for a non-viable reunification determination due to abuse, neglect, and abandonment under Florida law, the record does not indicate that the Circuit Court based its determinations on section 751.03(9).³ Further, we note that section 751.03(9) of the Fl. Stat. Ann. does not require a finding of abuse, abandonment, or neglect, but allows for temporary custody based upon parental consent.⁴ Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that the Circuit Court made a qualifying parental reunification determination under state law, as section 101(a)(27)(J)(i) of the Act requires.⁵

III. CONCLUSION

While we are sympathetic to the hardships the Petitioner has faced, he has not overcome the basis of the Director's denial on appeal. As a result, he has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.

³ Fl. Stat. Ann. section 751.03(9) provides, in pertinent part, "[e]ach petition for temporary or concurrent custody of a minor child must be verified by the petitioner, who must be an extended family member, and must contain statements, to the best of the petitioner's knowledge and belief, [pertaining to] the consent of the child's parents, or the specific acts or omissions of the parents which demonstrate that the parents have abused, abandoned, or neglected the child as defined in chapter 39."

⁴ In his appellate brief, the Petitioner notes that his parents consented to the grant of temporary custody.

⁵ Because the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's remaining appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).