



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

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

In Re: 21947445

Date: NOV. 14, 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 Petitioner appealed that decision to the Administrative Appeals Office (AAO). 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, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner under 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 petitioner's best interest to return to his or her 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 [] 2019, when the Petitioner was 15 years old, the Circuit Court of [] Probate Division in Arkansas (Court) issued an order titled *ORDER FOR APPOINTMENT OF GUARDIAN OF THE PERSON AND ESTATE OF S-M-E*¹ (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Court had jurisdiction over “the persons and subject matter of this case” pursuant to section 28-65-202 of the Arkansas Code Annotated. The Court also found that a guardian was needed for the Petitioner because his parents abandoned him and failed to provide for his support or protection. The Court noted that the Petitioner’s father left him when he was one year old, and never contacted him or his mother again. The Court also found that his mother left him when he was 7 years old and had not provided for the Petitioner since then. Thus, the Court concluded that the Petitioner’s reunification with his parents was not viable. The Court also noted that “[the Petitioner] does not receive any services from any facility requiring notice” and it was “in the best interest of [the Petitioner] to remain in the United States” with his appointed guardian.

Based on the SIJ order, the Petitioner filed this SIJ petition in May 2019. In March 2021, the Director issued a request for evidence (RFE) informing the Petitioner that he needed to clarify whether he was previously in the custody of the Department of Health and Human Services; and submit evidence that the Court determined that it would not be in his best interest to return to Guatemala. The Director noted that since the SIJ order only stated that it was in the Petitioner’s best interest to remain in the United States, it did not address the lack of viability regarding his return to Guatemala; and it did not provide a factual basis why it would not be in the Petitioner’s best interest to return to Guatemala. The Director provided examples of acceptable documentation that would establish the factual basis for the Court’s order. The Director also instructed the Petitioner to provide secondary evidence of his age and identity; and explain the inconsistencies in the record concerning his name, the name of his father and his date of birth, which he had provided upon arrival. In June 2021, the Petitioner responded with a letter from his attorney; a Form G-28, Notice of Appearance as Attorney; a copy of the Petitioner’s Guatemala Consular identification card; and two affidavits from the Petitioner.

In October 2021, the Director issued a second RFE acknowledging the documentation received in June 2021; and requesting a copy of a juvenile court order declaring that it would not be in the Petitioner’s best interest to be returned to Guatemala. The Director explained that the SIJ order stated that it was in the best interest of the Petitioner to remain in the United States with S-M-E-, but did not state why it would not be in the Petitioner’s best interest to be returned to Guatemala. In January 2022, the Petitioner responded with a letter from his attorney summarizing the response to the RFE as follows, “[t]he predicate order previously provided explicitly states that it is in [the Petitioner’s] best interest to remain in the U.S. If this is in his best interest, it logically follows that it is ***NOT*** in his best interest to be sent to any other country, including his home country of Guatemala.” The Director denied the

¹ We use initials to protect the privacy of individuals.

SIJ petition explaining that the SIJ order only references the Petitioner's best interest to remain in the United States without referencing the Petitioner's or his parent's country of nationality or last habitual residence; and it lacked a factual basis for why it would not be in the Petitioner's best interest to return to Guatemala. Therefore, the Director concluded that the Petitioner did not meet his burden of proof in demonstrating that the petition should be approved under section 101(a)(27)(J) of the Act.

On appeal, the Petitioner submitted another copy of the SIJ order and a letter from his attorney in which she again argues that the SIJ order explicitly stated that it was in the Petitioner's best interest to remain in the United States and "it logically follows that it is ***NOT*** in his best interest to be sent to any other country, including his home country of Guatemala."² His attorney further argues that the Director's interpretation of the SIJ order was "unreasonably rigid" and therefore "seeking an amended order in state court would be a gross misuse and waste of judicial resources, which are already strained in the midst of a global pandemic." Upon *de novo* review of all the evidence, the Petitioner has not established by a preponderance of the evidence that the Court made a qualifying judicial determination that it would not be in his best interest to return to Guatemala, his country of nationality.

B. SIJ Order Did Not Contain a Qualifying Best Interest Determination

SIJ classification requires an administrative or judicial determination "that it would not be in the [juvenile's] best interest to be returned to the [juvenile's] or parent's previous country of nationality or country of last habitual residence[.]" Section 101(a)(27)(J)(ii) of the Act. A petitioner must submit evidence of a best-interest determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions. 8 C.F.R. § 204.11(d)(2)(iii). While the standards may vary among states, the best-interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services and orders are best for a child, as well as who is best suited to care for the child. *See* U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway (2016), *Determining the Best Interests of the Child*.

When adjudicating an SIJ petition, USCIS must read the juvenile court order(s) as a whole and consider the Petitioner's eligibility based on the preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376. USCIS generally defers to juvenile courts on matters of state law. However, 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, 511-512 (5th Cir. 2018) ("Whatever responsibilities are exclusively for the state court, USCIS must evaluate if the actions of the state court make the applicant eligible for SIJ status."). In this case, we do not question the validity of the Arkansas court's order awarding guardianship of the Petitioner to S-M-E-. However, the record does not establish that, in issuing this order, the Court also reached judicial determinations regarding whether it was not in the Petitioner's best interest to return to Guatemala. In totality, a preponderance of the evidence must establish that the Court considered the facts relating to the Petitioner's circumstances in Guatemala and his circumstances in the United States, while conducting an individualized assessment, and before determining that it was in the Petitioner's best interest to be placed in the guardianship of S-M-E-, thus

² We note that the Petitioner has maintained that his parents are citizens of Guatemala, where they currently reside.

constituting a qualifying best interest determination for purposes of SIJ eligibility. *See 6 USCIS Policy Manual*, J.2(C)(3), <https://www.uscis.gov/policy-manual/>, stating that the juvenile court is required to “make an individualized assessment and consider the factors that it normally takes into account when making best interest determination, and the record should reflect the factual basis for the juvenile court’s determination.”

In the SIJ order, the Court determined that it was in the best interest of the Petitioner to remain in the United States with his guardian. The Petitioner states that the Court’s determination that he should remain in the United States with S-M-E-, a resident of Arkansas, entailed the Court’s determination that it was not in his best interest to return to Guatemala. However, the SIJ order makes no reference to the Petitioner’s circumstances in Guatemala should he return. Further, the SIJ order did not contain a factual basis for the Court’s best interest determination and did not reference the court filings and evidence provided by S-M-E- which describes the care he provides for the Petitioner in the United States and conversely, the absence of available caretakers in Guatemala, or any untenable conditions in Guatemala that the Petitioner would face. Moreover, the Petitioner has not submitted into the record any of the documentation provided to the Court, and considered by it, during the guardianship proceedings.³ Based on the foregoing, the Petitioner has not established by a preponderance of the evidence that the Court considered the facts relating to the Petitioner’s circumstances in Guatemala versus his circumstances in the United States before determining that it was in the Petitioner’s best interest to be placed under the sole responsibility of a guardian in the United States. As such, the Petitioner has not established that the Court made a qualifying best interest determination as required by the Act and regulations.

III. CONCLUSION

For these reasons, the Petitioner has not overcome the Director’s grounds for denying his petition. While we acknowledge the Petitioner faced unfortunate circumstances and hardships during his childhood, he is ineligible for, and does not warrant USCIS’ consent to his request for SIJ classification under section 101(a)(27)(J) of the Act.

ORDER: The appeal is dismissed.

³ Such evidence could include the original petition or motion filed with the Court initiating guardianship proceedings, transcripts of any Court hearings, and supporting affidavits, statements, or other evidence.