



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

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

In Re: 17745355

Date: NOV. 16, 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, 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)(i) 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; 8 C.F.R. § 204.11(c)(1). 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).

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, 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

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).

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 18 years old, a Family Court in [] New York issued an *Order Appointing Guardian of the Person* (guardianship order), appointing the Petitioner's mother as his guardian. The Family Court also found that the Petitioner's reunification with his father was not viable because his father died when the Petitioner was three years old, and his death constituted a similar basis under prevailing New York State Law. Lastly the Family Court found it was not in the Petitioner's best interest to return to his country of nationality because: "He has no one in Guatemala who can protect or provide for him. He was threatened and attacked by classmates, stabbed and hospitalized. His uncle made him work in a dangerous situation at a very young age."

Based on the guardianship order, the Petitioner filed his SIJ petition in January 2018. The Director denied the petition, explaining that although the juvenile court order found that the Petitioner's reunification with his father was not viable due the father's death, the order was insufficient because it did not establish how death is a similar basis to abuse, neglect, or abandonment under New York state law. The Director determined that evidence submitted did not establish that death is a statutory provision whose nature and elements are similar elements of abuse, neglect, or abandonment under New York child welfare law.

B. The Amended SIJ Order Has a Qualifying Parental Reunification Determination

The Act requires a 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. For claims in which the nonviability of parental reunification is due to a "similar basis," we have explained in policy guidance that an SIJ petitioner must establish that the "nature and elements" of the state law are similar to those of the state law regarding abuse, neglect, or abandonment. 6 *USCIS Policy Manual* J.3(A)(1), <https://www.uscis.gov/policy-manual>.

On appeal, the Petitioner submits a brief and a *Nunc Pro Tunc* Amended Special Findings Order issued in [] 2020. In the amended SIJ order, the Family Court clarifies that reunification with the Petitioner's father is not viable because the facts of the case constitute abandonment and a similar basis, namely death of a parent under prevailing New York law. The amended order states: "The record establishes that the child's father is deceased making reunification impossible. The loss of a parent effectively left the child abandoned and a destitute child, and falls within the 'similar basis' category." In support, the amended order cites to New York Family Court Act §§ 1012[e],[f]; 1092[a],[l]; Death is a similar basis under precedential NY case law (*See Matter of Carlos A.M. v. Maria T.M.*, 141 A.D.3d 526, 528, 35 N.Y.S.3d 406 [2016]; *Matter of Victor C.G. v. Santos C.T.*, 140 A.D.3d 951, 953, 34 N.T.S. 3d. 117 (2016); *Matter of Luis R. v. Maria Elena G.*, 120 A.D.3d 581, 582, 990 N.Y.S.2d 851 [2014]; *Ericza K. v. Jose YY (In re Jose YY)*, 69 N.Y.S.3d 733, 735 (N.Y. App. Div. 2018); *Matter of Denia M.E.C. v. Carlos R.M.O.*, 2018 NY Slip Op 3355.)

The Act requires a juvenile court's determination that an SIJ petitioner 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. In this case, the Family Court specifies in the amended SIJ order that the Petitioner's reunification with his father is not viable due to a similar basis of abandonment under New York state law. In support of its parental reunification determination, the Family Court cites to the New York Family Court Act as well as case law establishing that reunification is not possible when a petitioner's parent is deceased. The amended SIJ order indicates the basis for the Petitioner's inability to reunify with his father and identifies relevant state law. Thus, the Petitioner has established, by a preponderance of the evidence, that the amended SIJ order contained a qualifying parental reunification determination. *See* 8 C.F.R. § 204.11(c)(1)(ii). With the amended SIJ order the Petitioner has overcome the sole reason for the Director's denial; that the court order lacked a qualifying parental reunification determination.

C. USCIS' Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). The record shows that the Family Court exercised jurisdiction over the Petitioner as a juvenile under New York state law in proceedings where the nature and purpose were to protect the Petitioner from further parental maltreatment. The court order provides the factual basis in determining that the Petitioner's reunification with his father was not viable because the facts of the case constitute a similar basis to abandonment. The court further demonstrates relief from parental maltreatment by granting custody of the Petitioner to his mother.

Accordingly, the Petitioner has established by a preponderance of the evidence that the court made a qualifying parental reunification determination, as section 101 (a)(27)(J)(i) of the Act requires. On appeal, the Petitioner has overcome the grounds for denial of his SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, he has established eligibility under section 101(a)(27)(J) of the Act. The Director's decision is withdrawn, and the appeal is sustained.

ORDER: The appeal is sustained.