



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

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

In Re: 18000157

Date: NOV. 21, 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 (SIJ petition), concluding that the record did not establish that a juvenile court had jurisdiction over the Petitioner as a juvenile under state law.

We review the questions in this matter *de novo*. See *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, among other things, that they 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). They 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). In addition, they must obtain consent from U.S. Citizenship and Immigration Services (USCIS) and their request for SIJ classification must be bona fide, which requires petitioners to establish that a primary reason for seeking the juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 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**

On [ ] 2018, [ ] before the Petitioner turned 18 years old, the [ ] (Kentucky) Circuit Court, Family Court, juvenile division (Circuit Court), entered an Order at a Temporary

Removal Hearing placing the Petitioner in the temporary custody of E-G-P-<sup>1</sup>, the Petitioner's cousin. The Circuit Court found that the Petitioner "has been brought before this Court pursuant to" Kentucky Revised Annotated Statutes (Ky. Rev. Stat. Ann.) § 610.010 and that its jurisdiction had been properly sought.<sup>2</sup> Under this jurisdiction, the Circuit Court determined that pursuant to Ky. Rev. Stat. Ann. § 620.060,<sup>3</sup> an Emergency Custody Order was justified as the Petitioner's parents were "unable to provide the petitioner's basic needs, protect him, or come back to retrieve him." The Circuit Court further found that the Petitioner came to the United States as an unaccompanied minor from Guatemala and that the Petitioner's parents "live in extreme poverty, and in dangerous area and [are] unable to provide for or protect [him]." The Order continued the matter for further proceedings and scheduled a hearing for two weeks later on [REDACTED] 2018.

After the hearing on [REDACTED] 2018, when the Petitioner was 18 years of age, the Commonwealth of Kentucky [REDACTED] District Court (District Court) entered an Order Nunc Pro Tunc, granting his cousin guardianship over him. This Order Nunc Pro Tunc found that the District Court has jurisdiction over the matter pursuant to Ky. Rev. Stat. Ann. § 610.010(2). In this order, the District Court made determinations necessary for SIJ eligibility under section 101(a)(27)(J) of the Act. It found that the Petitioner was 17 years of age and was unmarried. The District Court also found that the Petitioner is dependent upon the District Court, and has been abandoned and neglected by his parents pursuant to Ky. Rev. Stat. Ann. § 600.020(1). The District Court further found that reunification with either parent is not a viable option due to the abandonment and neglect perpetrated by his mother and father. The District Court also found that it is not in the Petitioner's best interest to be returned to Guatemala "within the meaning of ... applicable Kentucky law." It provided the factual bases for each of these findings. On [REDACTED] 2018, the District Court signed a docket printout, stating, "Order entered Nunc Pro Tunc giving custody to cousin, E-G-P-. Child [the Petitioner] now 18, so case closed." Based on these Court Orders, the Petitioner filed an SIJ petition in March of 2020, which the Director denied, concluding that the Petitioner did not establish that the District Court had jurisdiction over him as a juvenile under state law.

On appeal, the Petitioner submits a brief, copies of the Court Orders, and a copy of Ky. Rev. Stat. Ann. § 610.010. He contends that the Circuit Court placed him in the temporary custody of his cousin when he was 17 years old, and the fact that the Order Nunc Pro Tunc was issued after his 18th birthday is irrelevant.

## B. Juvenile Court

To be eligible for SIJ classification, juveniles must have been subject to a dependency or custody order issued by a "juvenile court," which is defined as a court "in the United States having jurisdiction under State law to make judicial determinations about the about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a). While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. *See* 8 C.F.R. § 204.11(a), (d)(3)

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<sup>1</sup> We use initials to protect the identities of the individuals in this case.

<sup>2</sup> This section addresses the court's jurisdiction of juvenile matters. Ky. Rev. Stat. Ann. § 610.010.

<sup>3</sup> Section 620.060(1) of the Ky. Rev. Stat. Ann. provides, in part, that "[t]he court for the county where the child ordinarily resides or will reside or the county where the child is present may issue an ex parte emergency custody order when it appears to the court that removal is in the best interest of the child."

(stating that required initial evidence includes a juvenile court order with the required judicial determinations.). The Petitioner must further demonstrate that the juvenile court exercised its authority over him as a juvenile and made the requisite judicial determinations under applicable State law to establish eligibility. *See* 8 C.F.R. § 204.11(c)(3)(i).

On appeal, the Petitioner first notes that in the Order at a Temporary Removal Hearing, the Circuit Court placed him under the temporary custody of his aunt while he was still under the age of 18, and asserts that this demonstrates that this Court had jurisdiction over him as a juvenile under state law. We agree. The record shows that on this Order, the Circuit Court indicated that it was acting as a Family court, Juvenile division and cited to section 610.010 of the Ky. Rev. Stat. Ann. for its jurisdiction, which provides, in relevant part that “the juvenile session of the District Court of each county or the family division of the Circuit Court shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday.” Under this jurisdiction, the Circuit Court placed the Petitioner in the emergency custody of his aunt, ordered the matter continued and scheduled a hearing on [REDACTED] 2000.

Following the [REDACTED] hearing, when the Petitioner was 18 years of age, the District Court issued an Order Nunc Pro Tunc in which it made findings under its jurisdiction pursuant to Ky. Rev. Stat. Ann. § 610.010(2), which provides the District Court with “exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday” and who, in relevant part “allegedly... [i]s dependent, neglected, or abused.” In this Order Nunc Pro Tunc, District Court “ordered and decreed” that the Petitioner “is 17 years old” and made determinations about the Petitioner “as a minor child.” Per the court docket in the record, the District Court then closed the case, which the docket identified as a Dependency Action Order under section 620.070 of the Ky. Rev. Stat. Ann.<sup>4</sup> because the Nunc Pro Tunc order granted custody to the Petitioner’s aunt and the Petitioner was 18. The record, when considered in its entirety, therefore establishes by a preponderance of the evidence that the District Court held jurisdiction over the Petitioner as a juvenile and acted as a “juvenile court” under Kentucky law when it issued the Order Nunc Pro Tunc.

### C. USCIS’ Consent is Warranted

Upon *de novo* review, the Petitioner has established that his request for SIJ classification is bona fide and that USCIS’ consent to his request 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). To warrant USCIS’ consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d

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<sup>4</sup> Ky. Rev. Stat. Ann. § 620.070(2)(b) provides that a dependency action is filed in a juvenile session of the District Court.

504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings).

As discussed above, the District Court, acting as a juvenile court and having jurisdiction over the Petitioner as a juvenile, issued an Order Nunc Pro Tunc in which it appointed E-G-P- as the Petitioner’s guardian. In this Order, having “considered the testimony of [E-G-P-],” the District Court found that the Petitioner’s “Mother and Father are too impoverished to provide the basic necessities of life” and “abandoned the Minor to the care, custody, and control of” E-G-P-. The District Court further found that the Petitioner’s parents “neglected to provide the basic necessities of life” for the Petitioner. The court additionally found that “there is no one available in Guatemala to care for” the Petitioner. Based upon these findings, the District Court “ordered and decreed” that the Petitioner’s Mother “did in fact neglect and abandon [the Petitioner] under Kentucky law by virtue of her lack of provision of the basic necessities of life” and similarly that the Petitioner’s father “did in fact neglect and abandon [the Petitioner] under Kentucky law by virtue of his lack of provision of the basic necessities of life.” The court further found that it is not in the Petitioner’s best interest to be returned to Guatemala “within the meaning of ... applicable Kentucky law” because “he does not have a guardian in Guatemala to provide appropriate means and commitment to care for and support” him. Accordingly, the Petitioner has demonstrated, by a preponderance of the evidence, that a primary purpose for which he sought this juvenile court order was to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and that he was granted such relief. He therefore has established that he is eligible for and merits USCIS’ consent to his request for SIJ classification.

**ORDER:** The appeal is sustained.