



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

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

In Re: 17758119

Date: SEP. 07, 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 petition, concluding the Petitioner had not demonstrated a juvenile court made a qualifying parental reunification or that he warrants U.S. Citizenship and Immigration Services (USCIS)' consent to SIJ classification. On appeal, the Petitioner asserts his eligibility for SIJ classification. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they 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; 8 C.F.R. § 204.11(b).¹ Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 petitioner's best interest to return to their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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

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).

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 History

In [] 2018, when the Petitioner was 17 years old, a juvenile court in [] Virginia (juvenile court) entered an initial *Order* (temporary order) ordering that the Petitioner be placed in the temporary custody of R-T- and S-T-, his grandparents.² The order also contained findings that the Petitioner was in the United States without his parents, who remained in El Salvador, and that “it is not in [the Petitioner’s] best interests to be returned to El Salvador” and it was “in his best interest that relatives have custody of him.” In [] 2018, the juvenile court issued an *Order for Custody/Parenting Time/Visitation Granted to Individuals* (SIJ order). This SIJ order finalized the prior temporary order and granted custody to R-T- and S-T-. The juvenile court further added that it had jurisdiction under Virginia Code section 16.1-241(A)(2), which involves “custody . . . of a child [w]ho is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship,” and stated that the Petitioner was without parental care and guardianship at the time of the temporary order. The SIJ order further reasserted that it was “not feasible, practical, nor in his best interest” to return the Petitioner to El Salvador.

In July 2020, the Petitioner filed his SIJ petition based on the court’s order. After reviewing the record, which included the temporary and SIJ orders, the *Petition for Sole Legal and Physical Custody* (underlying petition), and affidavits from the Petitioner’s court appointed attorney, B-C-, and the attorney who represented R-T- and S-T-, T-C-, the Director denied the SIJ petition, concluding that the SIJ order lacked a qualifying parental reunification determination. The Director further noted that as there was no qualifying parental reunification determination, the Petitioner did not warrant USCIS’ consent in granting him SIJ classification.

On appeal, the Petitioner submits a brief asserting his SIJ eligibility, and copies of evidence submitted in response to the Director’s notice of intent to deny (NOID). After reviewing all the evidence, we conclude that the Petitioner has not shown a qualifying parental reunification determination was made on his behalf.

B. Qualifying Parental Reunification Determination

Juveniles seeking SIJ classification must establish that reunification with one or both of their 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. The juvenile court must have made certain judicial determinations related to the petitioner’s custody or dependency and determined that the petitioner cannot reunify with their parent(s) due to abuse, neglect, abandonment, or a similar basis under State law.

² We use initials to protect the identity of individuals.

8 C.F.R. § 204.11(c)(1). 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).

In reviewing the temporary order, the juvenile court stated that the Petitioner was “in the United States without parents who remain in El Salvador” and that the Petitioner had been residing with his grandparents for two years. The temporary order further stated, “[g]iven that the juvenile will be eighteen years of age . . . it is not in his best interests to be returned to El Salvador at this time. It is, however, in his best interest that relatives have custody of him.” The temporary order then provided citations to Virginia Code sections 16.1-278.4 and -278.5, which contain the statutory authorities for placement a child in need of services (16.1-278.4) and supervision (278.5), in support of placing the Petitioner in the temporary custody of his grandparents.

Approximately two months after the issuance of the temporary order, the juvenile court issued the SIJ order. In this order, the juvenile court stated that it confirmed the temporary order granting custody of the Petitioner to his grandparents and found “that it has jurisdiction to grant custody under 16.1-241 A. 2.” and again found that the Petitioner was “without parental care and guardianship.” The juvenile court also found “special circumstances” because the Petitioner “was sent to this country from El Salvador by his mother and that four days before his eighteenth birthday it was not feasible, practical, nor in his best interest to order that he return to El Salvador.” The SIJ order ended by stating that the Petitioner was “now eighteen years of age, therefore no further proceedings in this matter are needed and the case is ended.”

In his brief on appeal, the Petitioner argues that as the juvenile court cited to Virginia code section 16.1-241(A)(2), the juvenile court necessarily found that the Petitioner “was abandoned or without parental care and guardianship or both. And this determination in turn equates to “abused and neglected” child under Virginia 16.1-228 . . . which in turn meets the standard of the SIJ statute.” However, in our review of the language of Virginia code section 16.1-241(A)(2), the statute involves “custody . . . of a child [w]ho is abandoned by his parent or other custodian *or* who by reason of the absence *or* physical or mental incapacity of his parents is without parental care and guardianship” (emphasis added). The statute cited by the juvenile court contains three different scenarios under which custody of a child may be granted; critically, however, the juvenile court did not clearly indicate which of the three fit the Petitioner’s case, and while it indicates that the Petitioner was “sent to this country from El Salvador by his mother” it did not include a judicial determination that the Petitioner had been abandoned. The Petitioner’s appeal brief argues that the determination under Virginia Code section 16.1-241(A)(2) “in turn” equates to findings of abuse and neglect; however, this citation was not noted or discussed in the issuance of either the temporary order or the SIJ order. The argument made by the Petitioner’s attorney that Virginia Code section 16.1-241(A)(2) results in a finding under Virginia Code section 16.1-228 is unsupported by the documentation submitted, as the Petitioner did not submit evidence that these two statutory citations are linked, outside of his attorney’s assertions. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

The Petitioner further argues on appeal that the juvenile court is not a “court of record” and therefore transcripts of the proceedings were unavailable. In lieu of transcripts, the Petitioner submitted

affidavits from B-C-, the attorney who represented him, and T-C-, who represented his grandparents. The Petitioner states that both attorneys submitted credible testimony regarding the facts that were presented to the juvenile court in the proceedings. The Petitioner also asserts the juvenile court relied upon his *Petition for Sole Legal and Physical Custody* (underlying petition), and maintains that while the SIJ order did not include references to the non-viability of reunification with one or both of his parents, the underlying petition submitted to the juvenile court included applicable references under Virginia state law, and the affidavit from T-C- specifically states that oral testimony was heard from the Petitioner and his grandmother regarding the abuse he suffered, and that evidence was also submitted to the juvenile court that the Petitioner should not be reunified with his parents.

As noted above, we acknowledge that the juvenile court's SIJ order indicates it was issued under the jurisdiction of Virginia Code section 16.1-241(A)(2), and that the juvenile court heard related testimony. However, as stated, the record must contain evidence of a judicial determination that a juvenile cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Though the Petitioner's underlying petition to the juvenile court contains assertions concerning his inability to reunify with his parents due to these grounds, such claims do not constitute judicial determinations. The juvenile court's SIJ order does not contain a finding that the Petitioner was subjected to such maltreatment by one or both parents under state law and was unable to reunify with them on this basis. Instead, the juvenile court cited to a section of the Virginia Code which states "custody . . . of a child [w]ho is abandoned by his parent or other custodian *or* who by reason of the absence *or* physical or mental incapacity of his parents is without parental care and guardianship" (emphasis added), and that the SIJ order did not specifically note the non-viability of reunification of the Petitioner with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under state law.

As stated, petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Petitioner has not satisfied his burden of demonstrating the juvenile court made a judicial determination that he cannot reunify with his parent(s) due to parental maltreatment, as required by 8 C.F.R. § 204.11(c)(1). Accordingly, the record does not contain a qualifying parental reunification determination for the Petitioner.

C. USCIS's Consent Is Not Warranted

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).

The Director determined the Petitioner had not established USCIS' consent to SIJ classification was warranted as the record did not contain evidence of a reasonable factual basis for the juvenile court's

grant of the SIJ order. As discussed above, the record has not established that the juvenile court made a qualifying parental reunification determination as required under section 101(a)(27)(J)(i) of the Act.

While the basis of the underlying petition submitted to the juvenile court included statements regarding the abandonment and abuse of the Petitioner by his parents and noted that it was not in his best interest to return to El Salvador, the juvenile court did not include these determinations in the issuance of the temporary order or the SIJ order. Even though the Petitioner requested the findings in the underlying petition, there is no corresponding judicial determination regarding the non-viability of reunification with one or both of his parents. While the Petitioner was granted relief by being placed in the custody of his grandparents, the Petitioner has not established that the relief was granted to protect him from parental abuse, neglect, abandonment, or a similar basis under State law granted or recognized by the juvenile court. 8 C.F.R. § 204.11(d)(5)(ii). As a result, the Petitioner has not overcome the Director's determination that he did not warrant USCIS' consent in granting him SIJ classification.

III. CONCLUSION

The Petitioner has not overcome the Director's finding that the juvenile court did not make a qualifying parental reunification determination for him or that his SIJ classification warrants USCIS consent. Accordingly, the Petitioner has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.