



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

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

In Re: 17741964

Date: SEP. 15, 2022

Appeal of National Benefits Center Decision

Form I-360, 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 because the Petitioner did not establish that consent was warranted because there was no factual basis for the parental reunification determination. On appeal, the Petitioner asserts her eligibility for SIJ classification.

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 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).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 (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

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).

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 20 years old, the [] Children’s Probate Court (Children’s Court) in [] Connecticut issued an order appointing the Petitioner’s maternal grandmother, her adoptive mother, as her guardian in guardianship proceedings brought under sections 45a-616 and 45a-608n of the General Statutes of Connecticut (Conn. Gen. Stat.).² In this order, the Children’s Court found that the Petitioner had no parent with guardianship rights. In a separate decree titled *DECREE/SPECIAL IMMIGRANT JUVENILE FINDINGS* (SIJ order), the Children’s Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon this Court” as defined in Conn. Gen. Stat. § 45a-608(n). The Children’s Court further found that it would not be in the Petitioner’s best interest to be returned to her country of nationality or to her parents and set forth facts in support of this finding.

Additionally, the Children’s Court found that the Petitioner’s reunification with her adoptive mother, her maternal grandmother, is viable and should be sustained. In making the determination that the Petitioner should remain with her adoptive mother, however, the Children’s Court did not make a determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under the relevant state laws pursuant to 101(a)(27)(J) of the Act.

Based on the Children’s Court’s orders, the Petitioner filed her SIJ petition later in March 2020. The Director then issued a request for evidence to establish that USCIS’ consent was warranted. Specifically the Director asked the Petitioner to provide documentation, including, but not limited to, supporting documents submitted to the Children’s Court, the petition for custody initiating the Children’s Court proceedings, court transcripts, affidavits summarizing the evidence presented to the court during the judicial proceedings, or other evidence, establishing a factual basis for why she could not be reunified with one or both of her or parents due to abuse, neglect, abandonment, or other similar basis under state law. Upon review of the Petitioner’s timely response, the Director denied the petition, concluding that consent was not merited because the record did not establish a factual basis for the juvenile court’s parental reunification determination and therefore did not show that a primary purpose for which Petitioner sought the juvenile court order was to obtain relief from parental maltreatment.

² The record below contained a decree titled *DECREE/ADULT ADOPTION* (a adoption order) issued by the [] Probate Court (Probate Court) in [] Connecticut identifying the Petitioner’s maternal grandmother as her adoptive mother.

On appeal, the Petitioner resubmits a copy of the adoption order in the record below, contends that the Children's Court issued this order, and asserts that as the Children's Court made a finding in this order the Petitioner was neglected by both of her parents and issued the adoption order on that basis and referenced the statute of neglect that was the basis for the adoption, the adoption order is sufficient to establish a factual basis for this court's parental reunification determination. The Petitioner noted that as part of this adoption order, her parents' parental rights were terminated pursuant to Conn. Gen. Stat. § 45a-731(5),(6), and (7).

B. Factual Basis for Parental Reunification Determination

Upon *de novo* review, the record does not establish a factual basis for the Children's Court's parental reunification determination. Although the SIJ order finds that reunification with the Petitioner's adopted mother is viable and should be sustained, it does not set forth facts demonstrating that this reunification should be sustained because the Petitioner's reunification with one or both of her biological parents is not viable due to a specific child welfare ground (abuse, neglect, abandonment, or similar basis) under state law. Similarly, the guardianship order in the record does not set forth facts to show that the basis for conferring guardianship on the Petitioner's adoptive mother was the abuse, neglect, abandonment, or similar basis under Connecticut law by the Petitioner's biological parent or parents. The record lacks other evidence, such as the guardianship petition, affidavits of evidence submitted to the court in support of that petition, or other relevant materials, demonstrating the facts that formed the basis for the Children's Court's issuance of the guardianship order. Finally, in the adoption order in the record, issued by the Probate Court rather than by the Children's Court as the Petitioner asserts on appeal, the Probate Court set forth no facts and made no finding with respect to neglect by the Petitioner's parents, nor does it cite to any facts or other child welfare grounds under Connecticut law as a basis for issuing the adoption order. The record below did not contain the agreement of adoption, adoption proceedings, or other evidence that might establish the facts forming the basis of the adoption under state law.

C. Qualifying Parental Reunification Determination

The Petitioner asserts on appeal that a qualifying parental reunification determination was made by the Children's Court. While not part of the Director's ground for denial, and contrary to the Petitioner's assertion on appeal, the record does not reflect that the Children's Court made the requisite finding that reunification with one or both of the Petitioner's parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. The Act requires a judicial determination that a juvenile's "reunification with 1 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; 8 C.F.R. § 204.11(b). As the language of the Act indicates, this reunification finding must encompass a specific determination of parental abuse, neglect, abandonment, or a similar basis under state law. *See id.* The juvenile court order or supporting evidence should therefore indicate the specific child welfare ground under state law (abuse, neglect, abandonment, or similar basis under state law) for the court's determination regarding parental reunification. As the Act references this the reunification finding as being made under state law, the record must also contain evidence of a judicial determination that the juvenile was subjected to maltreatment by one or both parents under state law. *See id.*; 8 C.F.R. § 204.11(b). The Petitioner bears the burden of proof to establish the state law the juvenile court applied in the reunification determination. Future filings should provide additional evidence to establish, by a preponderance of the evidence, that the Children's Court made the

requisite qualifying parental reunification determination according to Connecticut law as well as demonstrating that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and warrants USCIS consent.

Here the SIJ order made no finding that reunification with one or both of the Petitioner's parents is not viable due to parental abuse, neglect, abandonment, or a similar basis under state law. The record also includes a guardianship order naming the Petitioner's adoptive mother as her guardian, but similarly lacks evidence demonstrating that the Children's Court considered child welfare grounds under state law as applicable to the Petitioner's biological parent or parents when issuing the guardianship order. Likewise, the record lacks evidence sufficient to establish that the Probate Court made a finding of neglect under state law when issuing the adoption decree. Instead, the Probate Court found that the legal relationship between the Petitioner and her parents was terminated pursuant to Conn. Gen. Stat. § 45a-731(5),(6), and (7).³ This Connecticut law does not indicate that a finding of abuse, neglect, abandonment, or a similar basis is required for a termination of the legal relationship between the adopted person and their biological parent(s) nor does it or otherwise address these child welfare grounds. Although the Petitioner submits a document titled *Conn. Gen. Stat. § 45a-731 Removal of Parent as Guardian* containing language regarding a court's authority to remove a parent as a guardian when a finding of neglect has been made, the document indicates that this statute was effective as of 2020. However, the adoption order was issued in 2017, and the Petitioner does not offer evidence or an explanation sufficient to show that the version of the Connecticut statute submitted on appeal was considered by the Probate Court in issuing the adoption order. Further, the Petitioner does not submit other evidence to demonstrate that the Probate Court considered other Connecticut laws in issuing this decree.

In summary, in the SIJ order in the record below, the Children's Court does not make a finding that reunification with the Petitioner's biological parent or parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law as required at section 101(a)(7)(J)(ii) of the Act. Moreover, the Petitioner has not established, by a preponderance of the evidence, the factual basis for

³ At the time the adoption order was issued, this statute provided, in relevant part that:

A final decree of adoption, whether issued by a court of this state or a court of any other jurisdiction, shall have the following effect in this state:

(5) ... the legal relationship between the adopted person and the adopted person's biological parent or parents and the relatives of such biological parent or parents is terminated for all purposes, including the applicability of statutes which do not expressly include such an adopted person in their operation and effect. The biological parent or parents of the adopted person are relieved of all parental rights and responsibilities;

(6) ... the biological parent or parents and their relatives shall have no rights of inheritance from or through the adopted person, nor shall the adopted person have any rights of inheritance from or through the biological parent or parents of the adopted person and the relatives of such biological parent or parents, except as provided in this section;

(7) ... the legal relationship between the adopted person and the adopted person's biological parent or parents and the relatives of such biological parent or parents is terminated for purposes of the construction of documents and instruments, whether executed before or after the adoption decree is issued, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship, except as provided in this section;

Conn. Gen. Stat. Ann. § 45a-731(5-7) (West 2017).

the Children's Court's determination that her adopted mother retain guardianship. We are therefore unable to determine if the basis for which this determination was made was to provide the Petitioner relief from maltreatment from her biological parents. Accordingly, she not established that a primary purpose that she sought the SIJ order was to obtain relief from parental maltreatment and that she merits USCIS' consent. We will therefore dismiss the Petitioner's appeal.

ORDER: The appeal is dismissed.