



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

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

In Re: 25857206

Date: APR. 06, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ). See Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the National Benefits Center denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the record did not establish that the court had jurisdiction over his custody and care as a juvenile under state law and was therefore not eligible for SIJ classification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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, 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).<sup>1</sup> 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). A “juvenile court” is defined as a court “in the United States having jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles.” 8 C.F.R. § 204.11(a), (b). 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

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<sup>1</sup> 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).

dependency and/or custody and care as juveniles under state law at the time the order was issued. See 8 C.F.R. § 204.11(a). Further, not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification. See generally 6 USCIS Policy Manual J.2, <https://www.uscis.gov/policy-manual> (providing, as guidance, a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes).

## II. ANALYSIS

In July 2017, the Petitioner entered the United States without inspection and was placed in the custody of the Office of Refugee Resettlement (ORR) within U.S. Department of Health and Human Services. In September 2017, ORR released him to the care of a paternal aunt. In [REDACTED] 2021, the State of Arkansas, [REDACTED] County Circuit Court Probate Division issued an order appointing the Petitioner's brother as his permanent guardian. When the order was issued, the Petitioner was 20 years old.<sup>2</sup> According to the order, in relevant part, the court has jurisdiction under Arkansas law to make judicial determinations about the care and custody of juveniles. The court determined that the Petitioner is "incapacitated by reason of his mental disability" of posttraumatic stress disorder and major depressive disorder and "lacks the legal capacity to manage his person and is thereby dependent on the court." Citing to Arkansas Code Annotated (Ark. Code Ann.) section 28-65-401(b)(1)(B), the court further determined that the Petitioner lacked sufficient understanding to make or communicate decisions to meet his health and safety requirements, and because his incapacity was not solely due to his minority, it was in his best interest to extend permanent guardianship beyond his 18th birthday.

In July 2022, the Director denied the petition for SIJ status explaining that the age of majority in Arkansas is 18 years and at the time the guardianship order was issued, the Petitioner was no longer a minor, and the court did not have jurisdiction to make judicial determinations about his dependency and/or custody and care as a juvenile under state law. On appeal, the Petitioner asserts that Ark. Code Ann. section 28-65-401 "restricts minority to those under the age of twenty-one,"<sup>3</sup> the Petitioner was declared a dependent of the court, and the order by the court states it has jurisdiction under Arkansas law to make judicial determinations about the care and custody of juveniles. The Petitioner further asserts that Arkansas law is similar to New York law and the Director erred by not following the holding of *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019).

The Petitioner is required to establish that the court exercised its authority over him as a juvenile. 8 C.F.R. § 204.11(c)(3). Pursuant to Ark. Code Ann. section 28-65-107, the circuit court has exclusive jurisdiction over all matters of guardianship, other than guardianships ad litem. This includes guardianship proceedings of minors and adults. See Ark. Code Ann. § 28-65-210 (2020) (describing the matters considered by the court as including the determination whether a person is either a minor or otherwise incapacitated before appointing a guardian); see also Ark. Code Ann. §§ 28-65-101(5)(B) (2020) (providing an incapacitated person includes an endangered adult or impaired adult, who is in the custody of the Department of Human Services); 28-65-101(5)(A) (2020) (defining an incapacitated person as a person who is "impaired by reason of a disability . . . to the extent of lacking sufficient

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<sup>2</sup> The Petitioner submitted a copy of his passport with his SIJ petition.

<sup>3</sup> Ark. Code Ann. section 28-65-401 is discussed below. The statute does not provide that it "restricts minority to those under the age of twenty-one" and the Petitioner does not provide relevant case law supporting his interpretation or explain how he came to his interpretation.

understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate”); 28-65-104(1) (providing that incapacitated persons, for purposes of the chapter on guardianship, include persons under age 18 whose disabilities have not been removed). The chapter on guardianship within the Ark. Code Ann. does not define juvenile, but at the time the order was issued, a “juvenile” or “child” was defined under Ark. Code Ann. section 12-18-103 as, “an individual who is from birth to eighteen (18) years of age.” See also §§ 9-8-101 (2020) (defining “child” as “person under eighteen (18) years of age” under Arkansas’ family law provisions); 9-25-101 (providing the age of majority is 18 years and persons less than 18 are considered minors). In other words, for purposes of guardianship, Arkansas law considers incapacity to include being a minor. The Petitioner was 20 years old when the court issued its order. While the court order provided that the court had jurisdiction to make judicial determinations about the care and custody of juveniles, it did not determine that it had jurisdiction over the Petitioner as a juvenile. Rather, the court determined that the Petitioner is incapacitated by reason of his mental disability and lacks the legal capacity to manage his person and is thereby dependent on the court. The court did not state that the Petitioner’s incapacitation was due to him being a minor. As a result, the Petitioner has not established that the court was acting as a juvenile court and exercising its jurisdiction over him as a juvenile when it issued the guardianship order.

We acknowledge the Petitioner’s argument that Arkansas law allows for the extension of the court’s jurisdiction to individuals over 18 years of age in specific circumstances. However, the specific circumstances extending jurisdiction of a minor past 18 years requires the court to have initially had jurisdiction of the minor. Ark. Code Ann. section 28-65-104(3) provides, in relevant part, that incapacitated persons, for purposes of the chapter on guardianship, include persons under age 21 who:

(A) Have reached eighteen (18) years of age; (B) Have a current guardianship established based solely on the minority age of the person; (C) Agree to allow the current guardianship to continue up to twenty-one (21) years of age; and (D) Receive a guardianship subsidy paid for or approved by the Department of Human Services. (emphasis added).

See also Ark. Code Ann. § 9-27-303(32) (defining “juvenile” as “an individual who is ... [f]rom birth to eighteen (18) years of age ... or ... [a]djudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile circuit court prior to eighteen (18) years of age and for whom the juvenile division of the circuit court retains jurisdiction”) (emphasis added). The court specifically determined that the Petitioner’s designation as incapacitated was “not solely due to his minority” but because he lacked sufficient understanding to make or communicate decisions to meet his health and safety requirements. Further, when the court extended permanent guardianship beyond the Petitioner’s 18th birthday, the court did not cite to Ark. Code Ann. §§ 28-65-104(3) and/or 9-27-303(32), which extends jurisdiction over 18 years for specific circumstances, but rather cited to Ark. Code Ann. section 28-65-401(b)(1)(B), which provides “if the court finds upon a proper showing by substantial competent evidence that it is in the best interest of the ward<sup>4</sup> that the guardianship be continued after the ward reaches majority, the court may order the guardianship to continue until such time as it may be terminated by order of the court.” To the extent the Petitioner is asserting that the court interpreted “ward” to mean minor, a review of the language of

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<sup>4</sup> Ward is defined as an incapacitated person for whom a guardian has been appointed. Ark. Code Ann. § 28-65-101.

the overall order does not support this interpretation, i.e., the court does not reference the Petitioner's minority status but mirrors the language in Ark. Code Ann. § 28-65-101(5)(A), defining incapacitated person as a person who is "impaired by reason of a disability . . . to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate."

The Petitioner also asserts that a federal judge in *R.F.M. v. Nielsen* ruled that U.S. Citizenship and Immigration Service's policy of denying SIJ petitions filed by petitioners between the ages of 18 and 20 is a violation of the Administrative Procedures Act. The Petitioner's assertion is unavailing however, as the holding in *R.F.M. v. Nielsen* is limited to New York cases. In *R.F.M. v. Nielsen*, the court held, in relevant part, that New York law grants the family court jurisdiction over the custody and care of juveniles up to the age of 21 for certain proceedings, including guardianship proceedings, with the consent of the juvenile. *R.F.M. v. Nielsen*, 365 F. Supp. 3d at 378 (citing N.Y. Fam. Ct. Act § 661(a); N.Y. Surr. Ct. Proc. Act § 103(27)). Here, the Petitioner has not identified a similar statute under Arkansas state law extending the juvenile court's jurisdiction up to age 21. See N.Y. Fam. Ct. Act § 661(a) (providing, in relevant part, that for purposes of appointment of a guardian of the person, the terms infant or minor shall include a person who is less than 21 years old who consents to the appointment or continuation of a guardian after the age of eighteen).

The Petitioner has not established that the court exercised jurisdiction over him as a juvenile, which is required for SIJ purposes. Although Arkansas law extends guardianship protections to persons between the ages of 18 to 21 who obtained a guardianship while still a minor, the Petitioner has not shown that he obtained any order from the court while he was under 18 years of age. Moreover, the only provision that appears to define minority, Ark. Code Ann. section 9-25-101, does not provide any exception for individuals who have reached the age of 18.

### III. CONCLUSION

The Petitioner has not established by the preponderance of the evidence that the court had jurisdiction over his custody and care as a juvenile under Arkansas child welfare law such that it could be considered a juvenile court, as required for SIJ classification under section 101(a)(27)(J)(i) of the Act; 8 C.F.R. §204.11(c).

ORDER: The appeal is dismissed.