



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

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

In Re: 29184007

Date: DEC. 12, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (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 petition, concluding that the record did not establish that the consent of U.S. Citizenship and Immigration Services (USCIS) for approval of the SIJ petition was warranted. 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 sustain the appeal.

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). Petitioners must have been declared dependent upon the juvenile court; alternatively, 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 juvenile's 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).

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.

In [] 2021, when the petitioner was 19 years old, the [], Massachusetts Trial Court, Probate and Family Court (family court) issued a “Judgment of Dependency Pursuant to G.L. c. 119, § 39M” (dependency judgment). The family court noted that it was acting as a juvenile court and made the following determinations: the Petitioner was an unmarried child under the age of 21; the Petitioner was dependent on the family court and was referred for educational, occupational, counseling, and social services with the probation service; the Petitioner’s biological father had neglected and abandoned him by failing to maintain a relationship with him and leaving the Petitioner’s mother to act as sole caretaker; reunification with the biological father was not viable due to this neglect and abandonment; and it was not in the Petitioner’s best interest to return to Brazil. The family court further ordered the Petitioner’s father to not abuse the Petitioner in any way or take “any action to impede or impact the health and well-being” of the Petitioner.

The Petitioner submitted the SIJ petition to USCIS, relying on the dependency judgment and the underlying affidavit that had been filed before the family court. The Director denied the petition, concluding that the Petitioner had not established that the record included a factual basis for the determination that it was not in the Petitioner’s best interest to return to Brazil.

On appeal, the Petitioner submits a brief contesting the Director’s analysis of the family court order. He also reattaches copies of the dependency order and underlying affidavit, the family court docket for the case, and responses to the Director’s requests for evidence. After de novo review of the record, the dependency judgment and underlying affidavit provide a factual basis for the court’s best interest finding. The Petitioner’s affidavit to the family court indicated that he spent much of his childhood without contact with his father. His mother raised him, and he “never had a father figure” to teach and support him. The Petitioner’s father briefly returned home for three months, but during this period he did not interact with the Petitioner and acted aggressively.

The family court incorporated the information from the Petitioner’s affidavit into the dependency judgment. The dependency judgment notes “[t]he following facts in support of this Judgment,” namely that Parent One (the Petitioner’s biological father) had no relationship with the Petitioner. The dependency judgment further noted that the “affidavit exhibits the times when the Minor would call his father to no avail” and that the Petitioner was raised by his mother alone. Ultimately, the family court ordered that the Petitioner remain in his mother’s care. The underlying complaint submitted to the family court indicates that his mother resided with him in Maryland, while his father remained in Brazil. Reading the family court documentation in its totality, the record establishes that the family court authorized continued sole custody to his mother, then residing in the United States after previously acting as his sole caretaker in Brazil. It also found reunification with his father, in Brazil, not feasible. The documentation presented before the family court establishes the factual basis that the family court relied upon in making its determination that returning to Brazil was not in the Petitioner’s best interest. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS’ consent to his request for SIJ classification.

ORDER: The appeal is sustained.