



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

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

In Re: 29184378

Date: DEC. 18, 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 South Carolina court exercised jurisdiction over the Petitioner as a juvenile. 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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; 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).

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).

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.

II. ANALYSIS

A. Relevant Evidence and Procedural History

In [redacted] 2021, when the Petitioner was 18 years old, the [redacted] [redacted] (juvenile court) issued a “Final Order” (final order). The case initially came before the juvenile court in [redacted] of 2019 when the Petitioner’s mother filed a request for sole custody and care of her three children, including the Petitioner. In the final order, the juvenile court determined that it had jurisdiction over the child, who could not be “protected from harm without intervention.” The juvenile court cited S.C. Code Ann. §§ 63-3-510, 63-3-530, and 36-3-560 in support of its jurisdiction finding.² The juvenile court further noted that “due to exceptional circumstances” the Petitioner was dependent on and “brought under the jurisdiction” of the court.

The juvenile court made additional findings that the Petitioner had been abandoned by his biological father several years prior and no family members in Honduras could protect or care for him. The juvenile court found that it was not in his best interest to return to Honduras due to his father’s abandonment and subsequent incarceration, the lack of a suitable caregiver in Honduras, the impossibility of reunifying with his father or other family in Honduras, and the risk to his safety and security upon return. Ultimately, the Court found that sole custody to the Petitioner’s mother was in his best interest.

The Petitioner submitted Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition) to USCIS, relying on the final order. The Director denied the SIJ petition because the Petitioner was over the age of 18 at the time the final order was issued, and therefore the Petitioner could not meet his burden of proof to show that the juvenile court exercised jurisdiction over the Petitioner as a juvenile. Section 101(a)(27)(J) of the Act, 8 C.F.R. § 204.11(a), (c).

On appeal, the Petitioner submits a brief contesting the Director’s determination that the court was not acting as a juvenile court. The Petitioner notes that, while South Carolina’s age of majority is 18 years, South Carolina has passed various statutes allowing for individuals over the age of 18 to be considered children in specified situations. As the juvenile court cited to these statutes in issuing its decision, the record reflects that the juvenile court exercised jurisdiction over the Petitioner as a juvenile when entering the final order. The Petitioner provides various court decisions analyzing sections of South Carolina’s family code as they relate to jurisdiction for SIJ classification.

² The reference to S.C. Code Ann. § 36-3-560 appears to have been in error, as Title 36, Chapter 3 deals with “Commercial Code-Negotiable Instruments.” As this citation is not dispositive of the decision, we will focus on the citations to S.C. Code Ann. §§ 63-3-510 and 63-3-530.

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.” While the specific title and type of state court may vary, SIJ petitioners must establish that the court “has 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). The Petitioner must demonstrate that the court exercised its authority over him “as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law.” 8 C.F.R. § 204.11 (c)(3).

South Carolina’s Children’s Code, contained in Title 63, generally defines a child as a person under 18; however, this definitional section notes that the relevant terms in Title 63 may be “otherwise defined” or have an alternative meaning where “the specific context indicates otherwise.” S.C. Code Ann. § 63-1-40(1). The juvenile court cited to S.C. Code Ann. § 63-3-510 for its jurisdiction finding; this section notes that “[w]henver the court has acquired the jurisdiction of any child under eighteen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child.” The juvenile court also cited to S.C. Code Ann § 63-3-530 which grants the Family Court jurisdiction to order child support past the age of 18.

Notably, both sections cited by the juvenile court refer to individuals over the age of 18 as “children” in specified circumstances. Although the Petitioner was over 18 at the time the final order was entered, the juvenile court referred to him as a child throughout the final order. The Family Court held that there were “exceptional circumstances” present in the Petitioner’s case that necessitated a finding that the Petitioner was dependent on the court and remained under its jurisdiction.³ The record establishes that the Family Court exercised jurisdiction over the Petitioner as a juvenile, and a preponderance of the evidence establishes that the Family Court acted as a “juvenile court,” as that term is referenced in section 101(a)(27)(J) of the Act and defined at 8 C.F.R. § 204.11(a). Accordingly, we withdraw the Director’s decision to the contrary.

C. Remaining SIJ Eligibility Criteria

The Director determined that the Petitioner did not establish his eligibility for SIJ status because the Family Court was not acting as a “juvenile court,” pursuant to section 101(a)(27)(J) of the Act. Given our determination here that the Family Court was acting as a “juvenile court,” we will remand this matter to the Director to determine in the first instance whether the Petitioner has satisfied the remaining SIJ eligibility requirements.

ORDER: The Director’s decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ The language used by the juvenile court may imply that the Petitioner was only “brought” under its jurisdiction at the time the final order was entered, when the applicant was over 18, rather than the continuing or extended jurisdiction contemplated by statute. Despite this phrasing, we note that the proceedings in this case were initiated prior to the Petitioner reaching age 18, and we will not disturb the juvenile court’s invocation of state law in establishing jurisdiction.