



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

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

In Re: 18623160

Date: FEB 7, 2023

Appeal of National Benefits Center Decision

Form I-360, Petitioner 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 Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition), and the Petitioner appealed that decision to us. On appeal, the Petitioner submits additional evidence and reasserts his eligibility for SIJ classification. We issued a notice of intent to dismiss (NOID) based on a ground of ineligibility that the Director did not address. The Petitioner did not respond to the NOID within the time period provided.

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) 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. 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).

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

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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).

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 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

In [redacted] 2017, the Superior Court in the [redacted] Indiana (Superior Court) issued an *Order Appointing Guardian* (guardianship order) designating A-S-N-<sup>2</sup> as the Petitioner's guardian in proceedings brought under section 31-30-2-1(d) of the Indiana Code Annotated (Ind. Code. Ann.). In the guardianship order, the Superior Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was "a minor child [who] was dependent upon the court," that his reunification with one or both of his parents was not viable due to abuse, neglect or abandonment or similar basis under state law, and that it would not be in his best interest to return to Guatemala, his country of citizenship, nationality, or last habitual residence.

The Director of the National Benefits Center (Director) denied the Form 1-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner appealed that decision to us.<sup>3</sup> Upon review, we determined that the Superior Court had a reasonable factual basis for its best interest determination, and the Petitioner had established eligibility on the grounds for which the Director determined him to be ineligible. However, an additional ground of ineligibility remained that the Director did not address: whether the Superior Court made a qualifying parental reunification determination under state law. We gave the Petitioner notice of this deficiency in a NOID, and he has not submitted a timely response.

To establish eligibility for SIJ classification, the Act requires, *inter alia*, a juvenile court determination that a juvenile's reunification with one 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. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. See *Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) ("Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose."). The Petitioner bears the burden of proof to establish eligibility, which includes demonstrating the state law the juvenile court applied in its reunification determination. 8 C.F.R. § 204.11(c)(3).

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<sup>2</sup> Initials are used to protect the individual's privacy.

<sup>3</sup> The Director denied the SIJ petition because the record did not contain a reasonable factual basis for the Superior Court's best interest finding.

Here, the Petitioner has not established that the Superior Court made a qualifying parental reunification determination because he did not submit evidence that the Superior Court's parental reunification determination was issued in accordance with relevant state law. In the guardianship order, the Superior Court determined that "reunification is not viable due to abuse, neglect or abandonment or similar basis found under State law under INA § 101(a)(27)(J), 8 U.S.C. § 1101 (a)(27)(J)." Specifically, the Superior Court determined that, "[the Petitioner's] mother abandoned [him] and the family years ago in Guatemala." However, the Superior Court did not cite any Indiana law that formed the legal basis for the finding that the Petitioner was abandoned. Moreover, none of the documents the Petitioner submitted to the Superior Court, including the *Memorandum of Law in Support of Petition* or the *Amended Petition to Extend Guardianship Past Age 18*, cite to any Indiana law that the Superior Court considered or upon which it based its finding that the Petitioner was abandoned. As noted above, we informed the Petitioner of this deficiency in the NOID, and he did not respond within the time period provided. Accordingly, he has not met his burden of establishing, by a preponderance of the evidence, that the Superior Court determined that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under Indiana law.

### III. CONCLUSION

The Petitioner has not established that he was subject to a state juvenile court order determining that he could not reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law, as required. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11 (c). As he has not shown that he is eligible for SIJ classification, the petition remains denied.

**ORDER:** The appeal is dismissed.