



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

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

In Re: 19152065

Date: JAN. 9, 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) 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 Juvenile (SIJ petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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, the appeal will be dismissed.

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. 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. 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

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).

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 2017, when the Petitioner was 20 years old, the New York Family Court for the [REDACTED] (Family Court) appointed T-L-R-C-² as his guardian, finding that such appointment “shall last until the [the Petitioner’s] 21st birthday.” On the same day, the Family Court issued a separate order titled *ORDER-Special Immigrant Juvenile Status* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by state of Family Court.” The Family Court found that the Petitioner’s reunification with one or both of his parents was not viable due to a similar basis under New York law namely, that, “[his] father [L-Z-R-] ha[d] failed to provide for any of [his] needs since [he was] five years old and ha[d] fully abdicated all parental responsibilities with regard to the [the Petitioner].” The Family Court further found that it was not in the Petitioner’s best interest to be removed from the United States and returned to Guatemala, his country of nationality.

We issued a notice of intent to dismiss (NOID), informing the Petitioner that the SIJ order did not contain a legal determination that his father’s conduct was a similar basis to abandonment, neglect or abuse under New York law. We noted that the record did not contain the underlying petition for the SIJ order, hearing transcript, or any other relevant evidence demonstrating the state law basis for the Family Court’s parental reunification determination and specifying whether it was similar to abandonment, neglect or abuse.

In response to our NOID, the Petitioner submitted copies of a *Notice of Motion for an Order of Special Findings for Special Immigrant Juvenile Status* (motion), *Affidavit of Minor in Support of Motion for Special Findings* (affidavit), and a *Memorandum of Law in Support of Motion for Special Findings* (memorandum of law). The Petitioner argues that the language in the SIJ order indicates that he was constructively abandoned by his father, and includes a list of New York caselaw regarding abandonment, and copies of section 384(b) of the New York Social Services Law and section 260.09 of the New York Penal Code in support of his assertion.

As stated, the Petitioner bears the burden of proof to establish the existence of a qualifying judicial determination of parental maltreatment, including the state law the juvenile court applied in reaching its determination. Section 101(a)(27)(J)(i) of the Act. Here, the Petitioner has not met his burden. We note that the memorandum of law stated that the Petitioner’s father “abandoned” him and his mother when he was five years old. We further note that the memorandum of law asked the Family Court to find that the Petitioner is unmarried and under the age of 21; has been placed in the custody of an individual appointed by the court; and that it was not in his best interest to return to Guatemala. However, other than mentioning the word “abandoned,” the memorandum of law did not cite to New York case law regarding abandonment or otherwise argue that the Petitioner’s father’s conduct

² Initials are used to protect the individual’s privacy.

constituted abandonment under New York state law. We acknowledge the list of New York case law and sections of the New York Social Services Law and New York Penal Code. However, there is no indication from the record that the Family Court applied the case law or aforementioned sections of the New York Social Services Law or New York Penal Code presented by counsel on appeal when it entered its findings. Accordingly, the Petitioner has not established that the Family Court entered a qualifying determination that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under New York law.

III. CONCLUSION

A preponderance of the evidence does not establish that the Petitioner 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.