



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

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

In Re: 27442956

Date: JUL. 31, 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) 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 denied the petition, concluding that the record did not establish what state law(s) the juvenile court relied upon when reaching its determinations that parental death is a similar basis to abuse, neglect, or abandonment under state law. 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).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. *Id.* at section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

When the juvenile court determined that parental reunification was not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must provide evidence of how the basis is legally similar

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).

to abuse, neglect, or abandonment under State law. 8 C.F.R. § 204.11(d)(4). Such evidence may include the juvenile court's determinations as to how the basis is similar to abuse, neglect, or abandonment under State law, or other evidence that establishes that the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law. *Id.* at (i) and (ii).

II. ANALYSIS

In [redacted] 2021, when the Petitioner was 17 years old, the State of Rhode Island Family Court in [redacted] (juvenile court), issued an *Order* (SIJ order). The SIJ order indicated that after the Petitioner's father died in 2015, she and her mother received threats to repay the debts of her father, and they fled to the United States for safety. The SIJ order stated that reunification with her father was not viable due to her father's death, and that it was not in her best interest to return to her home country.

The Director denied the SIJ petition, and determined that, while the SIJ order indicated that the Petitioner could not reunify with her father due to his death, the juvenile court did not provide an explanation or analysis of how death is a similar basis to the nature and elements of laws on abuse, neglect, or abandonment under Rhode Island State law. Also, the SIJ order did not establish which state law(s) the juvenile court relied on to make its determinations.

On appeal, the Petitioner submits a brief, which resembles the Memorandum in Support provided in response to the Director's request for evidence (RFE). In her brief, the Petitioner claims that the Director's decision second guessed the juvenile court's order and asserts that she "has been unable to find any authority permitting USCIS to seek evidence to establish factual basis of the court findings." Although we generally defer to the findings of a state court, USCIS retains the authority to determine whether the court order contains a qualifying parental reunification determination. Section 101(a)(27)(J)(i) of the Act states that the findings from the court should establish that reunification with one or both parents is not viable due to abuse, neglect, abandonment, *or a similar basis under State law* (emphasis added). The accompanying regulations reiterate that proper issuance under state law is one requirement for a juvenile court order to establish SIJ eligibility. *See* 8 C.F.R. § 204.11(a), (c)(1)(ii). Finally, the regulations specifically provide that, when the juvenile court determined that parental reunification was not viable due to a basis similar to abuse, neglect, or abandonment, the petitioner must provide evidence that establishes that the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law. 8 C.F.R. § 204.11(d)(4).

In our de novo review of the record, we concur with the Director's determination that, while the SIJ order stated that reunification with the Petitioner father was not possible due to his death, the SIJ order did not provide any State law citation regarding how death of a parent is similar to abuse, neglect, or abandonment under Rhode Island state law. As the guidance in the USCIS Policy Manual provides, the record should contain a "legal conclusion from the juvenile court" that establishes "that parental death constitutes abuse, neglect, abandonment, or is legally equivalent to a similar basis under state law." *See generally* 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policy-manual>. The family court did not cite any Rhode Island law that it relied upon to reach their determination, nor does the SIJ order otherwise indicate there was a judicial conclusion that she was abandoned or that her

father's death was similar to abuse, neglect, or abandonment. The Petitioner puts forth a series of arguments regarding why, in light of the definition of abandonment under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), parental death is the equivalent of abandonment; however, borrowing from both the Director's decision and the analysis above, there is no documentation in the record indicating that the juvenile court, in its issuance of the SIJ order, made such a legal determination.

Accordingly, the SIJ order does not provide evidence of either the juvenile court's determination as to how the basis of parental death is legally similar to abuse, neglect, or abandonment under State law, or other evidence that establishes the juvenile court made a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under State law, as required. 8 C.F.R. § 204.11(d)(4)(i) and (ii).

Consequently, the Petitioner has not overcome this basis of the Director's denial on appeal and has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.