



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

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

In Re: 26842916

Date: JUN. 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) 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 regarding abuse, neglect, abandonment, or a similar basis 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 19 years old, the Commonwealth of Massachusetts [REDACTED] Probate and Family Court (juvenile court), issued a *Judgment of Dependency Pursuant to G.L. c. 119 section 39M* (SIJ order). The SIJ order indicated that the Petitioner's father moved to the United States when she 5 years old. The Petitioner lived with her mother until she died in 2014, after which she lived with her grandmother, who did not provide basic necessities, and the Petitioner received threats of sexual abuse and violence. At the age of 16, the Petitioner left Honduras for the United States. The SIJ order further indicated that reunification of the Petitioner with one or both of her parents was not viable due to "a similar basis under Massachusetts law namely: Death." The SIJ order stated that it was not in the Petitioner's best interest to return to Honduras, and cited *Recinos v. Escobar*, 473 Mass. 741 (2016), *Eccleston v. Bankosky*, 438 Mass. 428 (2003), Massachusetts General Laws (M.G. L.) c. 215 section 6, and M.G. L. c. 119 section 1, as the legal standards under which the juvenile court made its findings.

The Director denied the SIJ petition, and determined that, while the SIJ order indicated death of a parent as a similar basis, 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 Massachusetts 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. In her brief, the Petitioner contends that the Director's decision second guessed the juvenile court's order, and states that section 101(a)(27)(J) of the Act "doesn't state that a legal conclusion must or even should be made by the court" but only that a "similar basis be found." 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. 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).

The Petitioner continues that her mother's death should be considered as similar to abandonment, as defined under the Massachusetts Child Custody Jurisdiction Act. In support of her argument, she cites other Massachusetts court cases which were not cited in the SIJ order or the *Complaint for Dependency Pursuant to G. L. c. 119 section 39M* (underlying petition) and do not discuss the issue raised by the Director. Although the Petitioner argues that her mother's death was similar to abandonment because it left her without his care, the record does not show that the juvenile court made such a finding. 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." 6 *USCIS Policy Manual* J.3(A)(1), <https://www.uscis.gov/policy-manual>. The SIJ order does not cite the statutory or case law the Petitioner references on appeal, nor does it otherwise indicate there was a judicial conclusion that she

was abandoned or that her mother's death was similar to abuse, neglect, or abandonment. The SIJ order only notes that the similar basis is "death" and does not provide any legal determination as to how death is similar to abuse, abandonment, or neglect under Massachusetts law, and further, the citations provided for how the court reached their findings relate only to jurisdictional issues, and do not discuss how parental death is legally similar under Massachusetts law to abuse, neglect or abandonment. The underlying complaint for dependency also lacks legal citations or analysis to indicate that death is a similar basis to abuse, neglect, or abandonment under state law. Accordingly, the SIJ order does not provide evidence of either the juvenile court's determination as to how the basis 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.