



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

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

In Re: 26685303

Date: MAY 5, 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 Petitioner had not submitted a juvenile court order containing the required findings. 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, a petitioner must show 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). The petitioner 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

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. Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2021, when the Petitioner was 17 years old, a Circuit Court in [] County, Florida issued an *Order for Temporary Custody* (custody order) granting physical and legal custody of the Petitioner to his uncle. The Circuit Court specified that the order would remain in effect until the Petitioner reached 18 years of age.¹ Also, the Circuit Court noted that the Petitioner's parents had executed consent forms agreeing to the grant of temporary custody. The court also stated, "Based on the evidence presented during the evidentiary hearing, the Court makes no findings as to abuse, neglect or abandonment."

Based on the custody order, the Petitioner filed his SIJ petition in September 2021. The Director denied the petition based on a determination that the custody order did not contain the required findings that the Petitioner's reunification with his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law and that it would not be in his best interest to return to Guatemala, his country of origin.² On appeal, the Petitioner argues that the Circuit Court's order did contain the necessary findings. As explained below, the Petitioner has not established his eligibility for SIJ classification on appeal.

B. Lack of Qualifying Parental Reunification Determination

The Act requires a juvenile court's determinations that an SIJ petitioner cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act. The order should use language showing that the required determinations were made under state law. 6 *USCIS Policy Manual* J.6(3)(A)(1) (citing 8 C.F.R. § 204.11(c)(3)).

In the custody order, the Circuit Court specified that it "makes no findings as to abuse, neglect or abandonment." Although the court placed the Petitioner into his uncle's custody, it did not make any determinations regarding his ability to reunify with his parents or find that he had been subjected to abuse, neglect, abandonment, or a similar basis under state law. The court omitted such orders despite

¹ In his appeal brief, the Petitioner makes arguments regarding the permanency of the custody order. The Director did not deny the SIJ petition on the ground that the custody order was labeled temporary. As it is not a basis for the denial, we need not address this issue on appeal.

² The Petitioner also alleges on appeal that the Director made an inappropriate request for "documentation to establish a reasonable factual basis for the Court's findings" and that the denial stated that USCIS "cannot find that the court made an informed decision and that the request for SIJ classification is bona fide." However, the denial decision does not contain such language. Although the Director previously mentioned evidence of a reasonable factual basis in a request for evidence, the denial was not based on the lack of a factual basis for the Circuit Court's findings. Similarly, while the Director discussed consent generally as one of the requirements for SIJ eligibility, the Director did not deny the petition on the ground that USCIS' consent was not warranted because the request was not bona fide. Accordingly, we will not reach the Petitioner's arguments about these issues on appeal.

the request in the *Petition for Temporary Custody by Immediate Family* that the Circuit Court make those findings.

On appeal, the Petitioner argues that pursuant to Florida Statutes section 751.05(3)(b), a court can only grant a petition for temporary custody if it finds by clear and convincing evidence that the parent or parents are unfit, which means determining that they have “abused, abandoned, or neglected the child” Fla. Stat. Ann. § 751.05(3)(b). However, section 751.05(2) specifies that a court must award temporary or concurrent custody if it is in the child’s best interest, “[u]nless the minor child’s parents object.” By contrast, in cases where the parents do object to a grant of temporary custody, the court must then determine by clear and convincing evidence that the parent(s) are unfit before issuing the order. Fla. Stat. Ann. § 751.05(3)(b). In this case, the record reflects that the Petitioner’s parents consented to the grant of custody through their execution of sworn waivers. Furthermore, the Circuit Court did not cite Florida Statutes section 751.05(3)(b) or make any finding that the Petitioner’s parents were unfit due to abuse, neglect, or abandonment, as that section would have required if they had objected to the custody order. Instead, the court explicitly made “no findings as to abuse, neglect or abandonment.” Contrary to the Petitioner’s assertion on appeal that the Circuit Court made a parental reunification determination and that the placement of the Petitioner in his uncle’s custody also “implied that reunification with [his] parents is not in the best interest of the child . . .”, the record does not support such a conclusion. Instead, the order reflects the Circuit Court’s intention not to make such a finding. Accordingly, the Petitioner has not met his burden of establishing by a preponderance of the evidence that the Circuit Court made a qualifying parental reunification determination under state law, as section 101(a)(27)(J)(i) of the Act requires.

Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding whether the Circuit Court made a qualifying best interest determination. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not met his burden of establishing that the Circuit Court made a qualifying determination that his reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under Florida law, as section 101(a)(27)(J)(i) of the Act requires. Consequently, the Petitioner has not overcome the grounds for the Director’s denial on appeal and has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.