



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

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

In Re: 15361115

Date: AUG. 30, 2022

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 petition, concluding the Petitioner had not demonstrated a juvenile court made a qualifying parental reunification and best interest determination for him, or that he warrants U.S. Citizenship and Immigration Services (USCIS)' consent to SIJ classification. On appeal, the Petitioner asserts his eligibility for SIJ classification. 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).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. 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 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

A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of Guatemala, claims to have entered the United States without inspection, admission, or parole in 2018. In [redacted] 2019, when the Petitioner was 17 years old, a Florida Circuit Court in [redacted] (circuit court) issued an *Order Granting Petition for Temporary Custody by Extended Family* (SIJ order) for him. In its custody order, the circuit court granted custody of the Petitioner to his aunt, M-S-R-P.² The circuit court also noted repeatedly that “[t]he court makes no findings of abuse, neglect, or abandonment” and crossed out sections of the order that would have included those findings.

The Petitioner filed his SIJ petition in May 2019. The Director denied the petition concluding the Petitioner had not demonstrated a juvenile court made a qualifying non-viability of parental reunification determination and that USCIS’ consent to the Petitioner’s SIJ classification was not warranted.

B. Qualifying Parental Reunification Determination

The Director determined the circuit court’s order lacked a qualifying determination that parental reunification is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as required by the Act.

To be eligible for SIJ classification, the Act requires 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. 8 C.F.R. § 204.11(c)(1)(ii). 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).

² Initials are used to protect the privacy of this individual.

On appeal, the Petitioner asserts the circuit court relied upon both his *Petition for Temporary Custody by Extended Family* (underlying petition), and the *Waiver of Service of Process and Consent for Temporary Custody* (waiver) signed by the Petitioner's mother and father, and maintains that while the circuit court indicated that it had not made any findings of abuse, abandonment, and neglect, Florida law requires those findings in order for the underlying petition to be granted. We acknowledge the circuit court's SIJ order indicates it was issued in proceedings arising from the Petitioner's underlying petition and the waivers signed by his mother and father, and the circuit court heard related testimony. However, as stated, the record must contain evidence of a *judicial* determination that a juvenile cannot reunify with one of both parents due to abuse, neglect, abandonment, or a similar basis under state law. Though the Petitioner's underlying petition to the circuit court and the waivers signed by his mother and father before the circuit court contain assertions concerning his inability to reunify with his parents due to one of these grounds, such claims do not constitute judicial determinations. The circuit court's SIJ order does not contain a finding that the Petitioner was subjected to such maltreatment by one or both parents under state law and unable to reunify with them on this basis. Instead, the circuit court specifically noted that it did not make any findings of abuse, abandonment, or neglect, and crossed out sections of the order that otherwise would have indicated that parental reunification was not possible.

As stated, petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the Petitioner has not satisfied his burden of demonstrating the circuit court made a determination that he cannot reunify with his parent(s) due to parental maltreatment. Accordingly, the record does not contain a qualifying parental reunification determination for the Petitioner.

C. USCIS' Consent

The Director determined the Petitioner had not established USCIS' consent to SIJ classification was warranted as the record did not contain evidence of a reasonable factual basis for the circuit court's grant of the SIJ order. As discussed above, the record has not established that the circuit court made a qualifying parental reunification determination as required under section 101(a)(27)(J)(i) of the Act.

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 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).

The circuit court determined that the Petitioner's mother and father signed and filed waivers to award temporary custody to M-S-R-P-, but again noted that “[t]he court makes no findings of abuse, neglect, or abandonment.” While the basis of the underlying petition submitted to the circuit court included statements regarding the abandonment and neglect of the Petitioner by his parents and noted that it was not in his best interest to return to Guatemala, the circuit court was clear that they did not consider those bases for its determination and grant of temporary custody of the Petitioner to M-S-R-P-. We

note the Petitioner's arguments on appeal regarding the grant of the SIJ order, and the underlying Florida laws that require findings aligned with the underlying petition. The fact remains that the circuit court explicitly did not make determinations about the non-viability of reunification due to abuse, neglect, abandonment, or a similar basis. Even though the Petitioner requested the findings in the underlying petition, there is no corresponding judicial determination, and we can see it was the circuit court's intention to not make such determinations. The Petitioner has not established that he meets the grounds of eligibility, and therefore his SIJ petition does not warrant our consent. As a result, the Petitioner has not overcome the Director's determination that he did not warrant USCIS' consent in granting him SIJ classification.

III. CONCLUSION

The Petitioner has not overcome the Director's finding that the circuit court did not make a qualifying parental reunification determination for him or that his SIJ classification warrants USCIS consent. Accordingly, the Petitioner has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.