



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

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

In Re: 18794695

Date: OCT. 19, 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 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, we will sustain 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).<sup>1</sup> 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).

United States Citizenship and Immigration Service (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). Petitioners bear the

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<sup>1</sup> 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).

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

In [redacted] 2017, when the Petitioner was 15 years old, the Family Court in [redacted] New York (Family Court) issued an *ORDER APPOINTING GUARDIAN OF THE PERSON* appointing C-N-B-<sup>2</sup> as the Petitioner's guardian in guardianship proceedings brought under sections 661 and 1012 (f) of the New York Family Court Act (N.Y. Fam. Ct. Act) and section 384-b(5)(a) of the New York Social Services Law (N.Y. Soc. Serv. Law). In a separate order entitled *SPECIAL FINDINGS ORDER* (SIJ order), and issued the same day, the Family Court determined, among other findings, 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 has been placed in the custody or guardianship of an individual or entity appointed by the state or Family Court." The Family Court also found that the Petitioner's reunification with his parents was not viable because his mother failed to call, visit, and financially provide for him since the age of 4 months old. In addition, his father was deceased, and death constituted a similar basis under the law. Furthermore, the Family Court concluded that it was not in the Petitioner's best interest to return to El Salvador, his country of nationality, because there was no one to care for him and his safety was at risk.

Based on the SIJ order, the Petitioner filed this SIJ petition in July 2017. Prior to issuing a decision, the Director issued a notice of intent to deny (NOID). The NOID indicated that the Petitioner had not submitted evidence to establish that there was a reasonable factual basis for the parental reunification determinations and provided the Petitioner the opportunity to submit additional evidence showing why USCIS should not deny the SIJ petition. In response to the NOID, the Petitioner submitted a letter from his attorney; his affidavit explaining the discrepancy in his addresses, his contacts with his mother, and the circumstances under which he obtained a learner's permit in Maryland; an affidavit from his aunt B-B-R- stating that the Petitioner lived in [redacted] New York, only visited Maryland and used his mother's address solely to obtain a learner's permit; a copy of his Maryland learner's permit issued in 2019; another copy of the SIJ order; a copy of his father's 2002 death certificate;<sup>3</sup> and a copy of his Form AR-11, Alien's Change of Address Card (Form AR-11).<sup>4</sup> The Director denied the SIJ petition concluding that the Petitioner did not meet his burden to show that a juvenile court made a qualifying parental reunification determination. Moreover, the Director determined that the record did not establish that the Family Court had a reasonable factual basis for the parental reunification rulings. The Director did not discuss whether the death of the Petitioner's father was a similar basis to abuse, neglect, or abandonment under state law.

On appeal, the Petitioner argues that he has established eligibility for relief. In support, he submits a brief; an *Amended Special Findings Order Nunc Pro Tunc* (amended SIJ order) issued by the Family

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<sup>2</sup> We use initials to protect the identity of individuals.

<sup>3</sup> We note that in her decision, the Director erred in describing this document as the death certificate for the Petitioner's brother.

<sup>4</sup> On his Form AR-11, dated July 2020, the Petitioner claims that [redacted] New York was his previous physical address prior to [redacted] Texas where he now resides.

Court in [redacted] 2021; a copy of a different version of his father's 2002 death certificate; his high school report card from [redacted] New York showing his attendance from 2016 through 2018.

## B. Qualifying Parental Reunification Determination

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).

Where a juvenile court finds that parental reunification is not viable due to a similar basis, such as the death of a parent, the Petitioner must establish that the nature and elements of the state law are indeed similar to the nature and elements of laws on abuse, neglect, or abandonment. 8 C.F.R. § 204.11(d)(4). Here, in the amended SIJ order, the Family Court determined that "reunification of the minor, [the Petitioner], with his father is not a viable option because he is deceased." The SIJ order and the amended SIJ order indicated that the Family Court's findings were in accordance with section 384-(b)(5)(a) of N.Y. Soc. Serv. Law, sections 413, 661, and 1012(f) of the N.Y. Fam. Ct. Act, and New York child welfare case law. The Family Court determined that the death of the Petitioner's father was a similar basis to abuse, neglect, or abandonment by identifying case law and statutory provisions whose nature and elements are similar to the nature and elements of abuse, neglect, or abandonment under New York law. In doing so, the Family Court cited sections 115(a)(iv)(C) and 1092 of the N.Y. Fam. Ct. Act and section 384-b-4(a) of N.Y. Soc. Serv. Law. Section 115(a)(iv)(C) of the N.Y. Fam. Ct. Act provides, in pertinent part, that, "the death of one or both parents, where no guardian of the person of the child has been lawfully appointed" is a ground of termination of parental rights, among the enumerated grounds of permanent neglect, mental illness, intellectual disability, severe and repeated child abuse. Upon *de novo* review and considering the foregoing, the Petitioner has established by a preponderance of the evidence that the Family Court determined that reunification with his father was not viable due to his death, a similar basis to abuse, neglect, or abandonment under New York state law, as required by section 101(a)(27)(J)(i) of the Act.<sup>5</sup>

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<sup>5</sup> Because the Family Court made a qualifying parental reunification determination regarding the Petitioner's father, the inconsistencies identified by the Director regarding the Petitioner's relationship with his mother do not affect his eligibility for SIJ classification, and we need not address whether the Petitioner was also abused, neglected, or abandoned by his mother.

### C. USCIS' Consent is Warranted

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). To warrant USCIS' consent, juveniles must establish that the request for SIJ classification was *bona fide*, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought “primarily for the purpose of obtaining [lawful permanent resident] status . . . , rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted. 8 C.F.R. § 204.11(b)(5); *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings).

Here, the record reflects that the Family Court declared the Petitioner dependent upon it and appointed a guardian for him, satisfying the requirements of 8 C.F.R. § 204.11(d)(5)(ii). Additionally, the amended SIJ order determined that the death of the Petitioner's father is a similar basis to abuse, neglect, or abandonment under New York law, a determination that was supported by the record before the Family Court. Accordingly, and because the Petitioner has established that he meets all other eligibility criteria, USCIS' consent to his SIJ classification is warranted.

**ORDER:** The appeal is sustained.