



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

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

In Re: 28659661

Date: DEC. 6, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for 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 (Director) denied the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), concluding that the Petitioner did not establish the court exercised jurisdiction over her as a juvenile under state law at the time of issuing the order. 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 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)(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. Section 101(a)(27)(J)(ii); 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (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),

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).

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 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

In [REDACTED] 2022, when the Petitioner was 18 years old, the Juvenile and Domestic Relations Court of [REDACTED] County in Virginia (juvenile court) issued a custody order (SIJ order), which “ordered, adjudged, and decreed” that the Petitioner’s mother had “sole legal and physical custody” of the Petitioner prior to her 18th birthday. The juvenile court specified that it has “jurisdiction under Virginia law to make judicial determinations about the custody and care of juveniles pursuant to [Virginia Code Annotated] Va. Code Ann. § 16.1-241(A)[.]” The juvenile court further determined, in relevant part, that the Petitioner’s reunification with her father was not viable due to abuse and abandonment. Additionally, the juvenile court concluded that it was not in the Petitioner’s best interest to return to El Salvador, her country of nationality, because there was no suitable adult to care for her there and it was in her best interest to remain with her mother in Virginia.

Based on that SIJ order, the Petitioner filed her SIJ petition in March 2022. The Petitioner also submitted a copy of the *Petition for Custody and Request for Factual Findings to Allow Child to Apply for Special Immigrant Juvenile Status* (custody petition) along with supporting documents submitted to the juvenile court. The Director issued a request of evidence (RFE), requesting additional information to show that the juvenile court had exercised jurisdiction over the Petitioner as a juvenile under state law because the SIJ order was issued after her 18th birthday. The Petitioner responded to the RFE, submitting a brief, section 16.1-241 of the Va. Code Ann., and a copy of the custody petition that showed it was filed with the juvenile court in September 2021 when the Petitioner was under the age of 18. The Director subsequently denied the SIJ petition, concluding the Petitioner did not establish the juvenile court exercised jurisdiction over her as a juvenile when it issued the SIJ order. On appeal, the Petitioner asserts that under Virginia law the juvenile court retained jurisdiction over the Petitioner as a juvenile until her 21st birthday.

Upon review of the record, the Director erroneously determined that since the Petitioner was 18 years old when the juvenile court issued its SIJ order, the court did not have jurisdiction over her. Section 16.1-242 of the Va. Code Ann. states, in relevant part, “[w]hen jurisdiction has been obtained by the court in the case of any child, such jurisdiction, which includes the authority to suspend, reduce, modify, or dismiss the disposition of any juvenile adjudication, may be retained by the court until such person becomes 21 years of age[.]” Further, in accordance with section 16.1-241(A1), once a Virginia court has jurisdiction over a child prior to their 18th birthday, “the court may continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of entering findings of fact . . . necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).” The juvenile court specified in its SIJ order that it had jurisdiction over the Petitioner pursuant to section 16.1-241(A) of the Va. Code Ann. and Virginia law

provides for the court's retention of jurisdiction past the Petitioner's 18th birthday. Accordingly, the record shows that the juvenile court had jurisdiction over the Petitioner as a juvenile when the SIJ order was issued, as section 101(a)(27)(J)(i) of the Act requires.

The Petitioner has overcome the ground for denial of her SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, she has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.