



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

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

In Re: 26480817

Date: JUN. 27, 2023

Appeal of National Benefits Center Decision

Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile)

The Petitioner, a native and citizen of Honduras, 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), concluding the juvenile court order lacked a qualifying determination that parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

The matter is now before us on appeal. On appeal, the Petitioner asserts that she has demonstrated her eligibility for SIJ classification. 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. 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 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

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).

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 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 Evidence and Procedural History

In [] 2019, when the Petitioner was 17 years old, the Juvenile and Domestic Relations District Court, [] Virginia (juvenile court) issued a custody order finding the Petitioner under its jurisdiction under Virginia Code section 20-146.12(A)(1). The custody order stated the Petitioner was a minor child under the state laws of Virginia and, determining that it was in the Petitioner’s best interest to remain in the United States in the custody of her mother. The custody order also included findings that the Petitioner’s father previously failed to provide “emotional or financial support” for the Petitioner, abused and “effectively abandoned” the Petitioner, and he was deceased as of 2007. Based on the custody order, the Petitioner filed an SIJ petition in June 2021. The Director issued a request for evidence (RFE), advising the Petitioner that she had failed to establish the juvenile court made a judicial determination that reunification with her father was not viable due to abuse, neglect, abandonment, or a similar basis under state law. In response, the Petitioner submitted a copy of the custody order and a statement from the Petitioner’s attorney. The Director denied the SIJ petition in June 2022, determining the custody order did not contain a legal conclusion that parental death constitutes abuse, neglect, or a similar basis under Virginia state law.

B. Parental Reunification Determination

An SIJ petitioner must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of a state agency or department, or of an individual or entity appointed by a state or juvenile court, and that declaration must be made in accordance with state law governing such declarations. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The declaration must include a determination that the 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) of the Act; 8 C.F.R. § 204.11(b).

On appeal, the Petitioner argues the Director took an unnecessarily restrictive interpretation of the requirement in the Act that the underlying juvenile court order must have a finding that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. She states that the custody order indicates she was abused and neglected by her father prior to his death in 2007. Further, she argues the juvenile court order need not contain specific language in the reunification finding for it to be a qualifying finding.

Here, the custody order from the juvenile court does not include a qualifying parental reunification determination because it lacks a determination that reunification is not viable due to a qualifying basis under state law. The custody order indicates the Petitioner’s father died in 2007 and also states her father failed to provide support for the Petitioner, abused her, and “effectively abandoned” the Petitioner and her mother. However, the order includes no determination that the Petitioner cannot reunify with her father due to abuse, neglect, abandonment, or similar basis under state law, as required

under section 101(a)(27)(J) of the Act. 8 C.F.R. § 204.11(c)(3) (requiring the juvenile court have “made the requisite judicial determinations in this paragraph under applicable State law). The Form I-360 – through a box-check – indicates the Petitioner cannot reunify with one parent due to abuse and abandonment. The custody order itself does not include such a finding by the juvenile court. Although the Petitioner correctly argues on appeal that the juvenile court is not required to include a particular word or phrase in the order, the custody order does not include any reunification determination at all. *See generally* 6 USCIS Policy Manual J(3)(A)(1), www.uscis.gov/policy-manual (“The language of the order may vary based on individual state child welfare law due to variations in terminology and local state practice in making child welfare decisions.”). Thus, despite finding the Petitioner’s father abused her and died in 2007, the juvenile court did not make a finding that reunification was not viable on either basis.

The custody order also does not include any reference to the state law governing the parental reunification findings in the order. Rather, the juvenile court found the Petitioner’s “biological father is deceased,” without citing to any controlling state law nor explicitly stating reunification is not possible. *See generally* 6 USCIS Policy Manual J(3)(A)(1), www.uscis.gov/policy-manual (“The order(s) should use language establishing that the specific judicial determinations were made under state law.”). Thus, the Petitioner did not establish the juvenile court made a qualifying determination as to the viability of reunification with one or both of her parents.

The evidence in the record does not establish the juvenile court made a qualifying finding as to the viability of parental reunification. Therefore, the Petitioner has not met her burden to establish that she is eligible for SIJ classification.

ORDER: The appeal is dismissed.