



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

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

In Re: 28963894

Date: NOV. 15, 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 record did not establish that the juvenile court judge made the required findings for SIJ classification, as the order did not indicate that reunification with one or both parents was not viable and also did not state that returning to Guatemala was not in the Petitioner's best interest. 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, 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). Petitioners must have been declared dependent upon the juvenile court; alternatively, 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 juvenile's 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).

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),

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.

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2022, the Fifteenth Judicial Circuit in [] County, Florida (state juvenile court) issued an “Order on Petition for Temporary Custody by Extended Family” (custody order), appointing the Petitioner’s brother as her custodian. In addition to the custody order, the Petitioner submitted the initial petition for custody that was presented to the state juvenile court, as well as a copy of her birth certificate. Based on the custody order, the Petitioner filed her SIJ petition in June 2022. The Director denied the SIJ petition, determining that the custody order had not made a finding regarding the viability of parental reunification or whether returning to Guatemala was in the Petitioner’s best interest.

On appeal, the Petitioner argues that the custody order makes all necessary findings for SIJ classification because it granted custody to an individual. The Petitioner contends that the Director erred in finding that the state juvenile court had not made an informed decision or that the SIJ petition was not bona fide. She notes that the temporary custody statute requires judges to find parents unfit due to abandonment, abuse, or neglect. Fla. Stat. Ann. § 751.05(3)(b). The judge made the custody finding under this statute, and the Petitioner alleges that the Director overstepped in deciding that the judge had no basis on which to make an informed decision. The Petitioner further contends that with the custodial placement “it is implied that reunification with one [or both] of the child’s parents is not in the best interests of the child not to be returned to her previous country of Guatemala.” With respect to the order entered, the Petitioner notes that the statutory language of “temporary” is not dispositive, as the custody order remains in place unless a subsequent petition is entered, and the court in fact retained jurisdiction until the Petitioner reached 18 years of age. Ultimately, the Petitioner contends that custody, reunification, and best interest determinations are not made by USCIS and are solely within the purview of the state juvenile courts.

B. The Record Does Not Establish Eligibility for SIJ Classification

As an initial matter, we note that portions of the Petitioner’s appeal brief do not appear to correspond to the Director’s decision in this matter. The Director’s decision was not based on a finding that the SIJ petition was not bona fide or that the state juvenile court did not make an informed decision in this case. The Director’s decision also does not address the issue of temporary versus permanent custody. After reviewing the Director’s decision, there are two listed deficiencies in the state juvenile court’s order that preclude a finding of SIJ classification: a lack of a reunification finding, and an inadequate best interest finding.

The Act requires a juvenile court's determination that SIJ petitioners 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 plain language of the Act requires this reunification determination to be made under state law. *See id.*; 8 C.F.R. § 204.11(c)(1). While the custody order specifies which statutory subsection gave the state juvenile court the authority to place the Petitioner with her brother, the custody order does not contain a parental reunification determination by the state juvenile court. The Petitioner argues that this finding is implicit in the court's determination, as Florida's temporary custody statute requires a finding that a parent is unfit due to abuse, abandonment, or neglect. However, a finding of a parent's unfitness does not necessarily correspond to a finding that reunification is not viable. We appreciate that the underlying custody petition alleged that reunification was not viable, but the judicial order does not reflect that the court made the requisite reunification determination. Relatedly, the court did not specify the basis upon which the custody order was entered; the underlying custody petition appears to allege either abuse or neglect, but the custody order does not indicate which parental actions or inactions gave rise to the custody determination. As a result, the record does not reflect that the state court determined that the Petitioner's reunification with her parents is not viable due to abuse, neglect, abandonment, or any similar basis under Florida law.

Because the lack of reunification finding in the state juvenile court's order is dispositive, we need not reach, and hereby reserve, whether the Petitioner has met her burden of showing that a best interest determination was made. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner has not met her burden of establishing that the state juvenile court made a qualifying determination that her reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under Illinois law as section 101(a)(27)(J)(i) of the Act and the regulation require. Consequently, the Petitioner has not overcome this basis of the Director's denial on appeal and has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.