



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 29200153

Date: NOV. 17, 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 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). 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (Special Immigrant Juvenile) (SIJ petition), determining the Petitioner had not established their eligibility because the juvenile court order, serving as the basis for the SIJ petition, did not contain the required findings for SIJ classification. 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).¹ The juvenile court must have made a judicial determination related to the petitioner's custodial placement or dependency by declaring the petitioner dependent upon the juvenile court; or legally committing or placing the petitioner under the custody of an agency or department of a state, or an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1)(i)(A). In addition, the record must contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their

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).

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). The juvenile court must have made the requisite judicial determinations under applicable state law to establish eligibility. 8 C.F.R. § 204.11(c)(3).

SIJ classification may only be granted upon the consent of U.S. Citizenship and Immigration Services (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).

II. ANALYSIS

A. Relevant Background and Procedural History

The Petitioner filed their SIJ petition and included as the basis for the classification a “Temporary Custody Order” (order) by the Court of Common Pleas of [REDACTED] County, Pennsylvania (court). The order is a form and identifies the parties, the Petitioner, the Petitioner’s date of birth, and checks boxes awarding physical and legal custody of the Petitioner to two of their relatives. Under “Other” it provides, “[p]ursuant to the complaint it is in the child’s best interest to remain with plaintiffs as the evidence is such as mother cannot properly care for child.” The order is signed by a “custody conciliator” and dated March 2021, but is unsigned by the court. No further information is provided or boxes checked. The Petitioner also submitted the “Complaint for Custody” (complaint) and “Petition for Special Findings” (underlying petition) filed with the court. The complaint included the following: the Petitioner was taken out of school by their parents at 13 years and forced to work, they were brought to the United States by their father when they were 15 years old, approximately a year later the Petitioner’s father died, the Petitioner has resided and been in the care of their relatives, the named plaintiffs on the complaint, who have enrolled them in school, provided emotional and physical support, as well as, a loving environment. The complaint further added that the Petitioner has a relationship with their mother but cannot reunite with her because of neglect as she is unable to provide for their educational and physical needs. The underlying petition explains that the court “has jurisdiction over children to make findings pursuant to 42 Pa. C. S. § 6301 et. seq.” 42 Purdon’s Pennsylvania Statutes and Consolidated Statutes (Pa. Stat. and Cons. Stat.) section 6301 identifies chapter 62 as the “Juvenile Act” and section 6303 describes the scope of the chapter, which applies, in relevant part, to children alleged to be delinquent or dependent. See generally 42 Pa. Stat. and Cons. Stat. §§ 6301, 6303 (2021).

The Director issued a request for evidence (RFE) seeking a juvenile court order signed by a judge and containing a hearing date. The Petitioner responded with a coversheet indicating, in relevant part, that the case had been assigned to a hearing officer and scheduled for hearing on March 22, 2021. The Petitioner also included a court document titled, “Notice is given under Pennsylvania Rule of Civil Procedure [Pa. R. Civ. P.] No. 236 that an Order in the above case has been entered on 03-31-2021” (notice).² The notice also indicates that an order was signed on March 22, 2021, and identifies the signor, who the Petitioner states is a judge. The Petitioner also submitted a statement explaining that their case was presented before a hearing officer and describing the testimony they gave. The Director

² Pa. R. Civ. P. section 236 describes notice procedures by the clerk of the court of an entry of order or judgement. (2021)

issued a second RFE, seeking a signed juvenile court order with the requisite findings for SIJ classification. The Petitioner responded with several of our non-precedent decisions and a brief explaining, in relevant part, that the notice evidences that a judge signed the order and the order was entered. The Director then issued a notice of intent to deny (NOID) again seeking a signed juvenile court order containing the requisite determinations for SIJ classification. The Petitioner responded with an explanatory letter and the Director denied the SIJ petition determining the Petitioner's submissions did not overcome the basis of the NOID. On appeal, the Petitioner asserts that the order contained the requisite determinations and the Director erred in not considering the supporting court documents as supplementing the order.

B. The Court's Order Does Not Include All Requisite Findings for SIJ Classification

The juvenile court order must provide the required judicial determinations regarding dependency or custody, parental reunification, and best interests under state law. 8 C.F.R. § 204.11(c)(3). This requirement may be met if the order cites those state laws, or if the petitioner submits supplemental evidence which could include, for example, a copy of the petition with state law citations, excerpts from relevant state statutes considered by the state court prior to issuing the order, or briefs or legal arguments submitted to the court. See generally 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policymanual> (explaining, as guidance, qualifying juvenile court determinations).

For USCIS to consent to the grant of SIJ classification, the juvenile court order and any supplemental evidence submitted by the petitioner must include the factual basis for the required determinations, as well as the relief from parental abuse, neglect, abandonment, or a similar basis under state law granted or recognized by the court. See 8 CFR 204.11(d)(5)(i) and (ii) (providing the evidentiary requirements for consent). The burden of proof is on the petitioner to provide the factual basis for the court's determinations. See generally 6 USCIS Policy Manual at J.3(A)(2) (explaining, as guidance, that the petitioner may meet their burden in providing the factual basis for the juvenile court order by providing supporting documents, e.g., petitions or complaints initiating proceedings with the court; court transcripts; affidavits summarizing evidence presented to the court).

As a preliminary matter, the Director determined that the order submitted by the Petitioner was unsigned. However, the Petitioner explained the process they underwent in presenting their case to a hearing officer, who signed the order. The notice then evidences that the order was signed by a judge and entered by the clerk of court. The Petitioner has therefore met their burden in establishing that the order was signed.

1. Dependency or Custody

As noted above, the juvenile court must have made a judicial determination related to the petitioner's custodial placement or dependency by declaring the petitioner dependent upon the juvenile court; or legally committing or placing the petitioner under the custody of an agency or department of a state, or an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1)(i)(A).

In this case, the order evidences that the court awarded custody to the Petitioner's family members, and thereby made the requisite custody determination. In addition, the order references the complaint,

which provides a list of reasons for why the court granted custody, including that the Petitioner's caretaker died, their relatives are caring for them and providing them the support they need, establishing a factual basis for the determination. While the court did not specify the state law it relied upon, the Petitioner submitted the underlying petition which identifies the relevant sections of the Pa. Stat. and Cons. Stat. providing jurisdiction. Considering the foregoing, the juvenile court made a judicial determination related to the Petitioner's custodial placement in accordance with state law governing such determinations by legally placing the Petitioner under the custody of an individual appointed by the juvenile court in accordance with 8 C.F.R. § 204.11(c)(1)(i)(A).

2. Parental Reunification and Best Interest Determinations

The juvenile court must have made a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. 8 C.F.R. § 204.11(c)(1)(ii). In addition, a determination must be made by a court or agency recognized by the juvenile court and authorized by law to make such decisions that it would not be in the petitioner's best interest to be returned to the petitioner's or their parent's country of nationality or last habitual residence. 8 C.F.R. § 204.11(c)(2). This requires the juvenile court to make an individualized assessment and consider the factors that it normally takes into account when making best interest determinations. See generally 6 USCIS Policy Manual J.2(C)(3), <https://www.uscis.gov/policymanual> (explaining, as guidance, the requirements of a juvenile court order).

The court made a qualifying best interest determination that it would not be in the Petitioner's best interest to return to Honduras. The order contains the following finding: "[p]ursuant to the complaint, it is in the child's best interest to remain with plaintiffs as the evidence is such as mother cannot properly care for child." In making the determination, the court references the complaint which describes the Petitioner as being cared for, supported, and loved by their relatives. The complaint also describes how the Petitioner's parents forced them to stop attending school and to work at the age of 13, and that their mother is unable to provide for their education and physical needs, and that their preference is to remain with their relatives in the United States. Further, the underlying petition identifies state case law guiding a best interest determination in Pennsylvania. Therefore, a preponderance of the evidence establishes that the court considered the facts relating to the Petitioner's circumstances in Honduras and their circumstances in the United States before determining that it was in the Petitioner's best interest to be placed in the custody of their relatives, thus constituting a qualifying best interest determination for purposes of SIJ eligibility.

However, the order does not contain a judicial determination that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. The Petitioner asserts on appeal that the supporting documentation contains the requisite determinations. While we may look outside the record for the relevant state law and factual basis for the court's determination, there must be an actual parental reunification finding made in the order. Upon review of the entire record, the Petitioner has not submitted evidence that the court determined that parental reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that the court made a qualifying parental reunification determination. The Petitioner has therefore not established their eligibility for SIJ classification.

ORDER: The appeal is dismissed.