



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

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

In Re: 27815005

Date: NOV. 27, 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) 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the record did not establish that the consent of U.S. Citizenship and Immigration Services (USCIS) was warranted. 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, a petitioner 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).<sup>1</sup> The petitioner 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 petitioner'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).

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.

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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).

Section 101(a)(27)(J)(iii) of the Act. The petitioner must also establish that the request for SIJ classification is bona fide, which requires showing 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 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 [ ] 2021, when the Petitioner was 17 years old, the 339th District Court – [ ] County, Texas (District Court) issued an *Agreed Order in Suit Affecting Parent Child Relationship* (SIJ order), including findings related to the Petitioner’s eligibility for SIJ classification. The District Court appointed the Petitioner’s mother as his primary managing conservator. Additionally, the District Court found that the Petitioner’s reunification with his father was not viable due to abandonment, and it would not be in the Petitioner’s best interest to return to El Salvador, his country of nationality.

Based on the SIJ order, the Petitioner filed his SIJ petition in March 2022. The Director issued a request for evidence (RFE) in November 2022, allowing the Petitioner an opportunity to submit additional supporting evidence to establish a factual basis for the District Court’s findings regarding the viability of reunification with his father and the determination it was not in his best interest to return to El Salvador. The Petitioner responded to the RFE in December 2022 with a letter from his attorney and an affidavit from his mother. The Director subsequently denied the SIJ petition on the ground that the Petitioner did not establish USCIS’ consent to his SIJ classification is warranted because the record lacks a sufficient factual basis for the District Court’s best interest determination.

During our adjudication of this appeal, we issued a notice of intent to dismiss (NOID) informing the Petitioner that the evidence does not establish that the District Court’s findings were made under state law, as the Act and regulations require. The Petitioner did not respond to our NOID.

As an initial matter, the record contains a reasonable factual basis for the District Court’s determination that it would not be in the Petitioner’s best interest to return to El Salvador. As stated, to be eligible for SIJ classification, the record must contain a judicial or administrative determination that it is not in the petitioner’s 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). We have explained in policy guidance that the juvenile court must individually assess and consider the factors it ordinarily considers when making best interest findings. *See generally* 6 *USCIS Policy Manual, supra*, at J.2(C)(3) (explaining that the “child’s safety and well-being are typically the paramount concern.”). USCIS defers to the juvenile court in making such determination, which may vary between states, and does not require the court to conduct any analysis other than what is required under state law. *See id.*

In this case, the District Court found it would be in the Petitioner’s best interest that his mother be appointed his primary managing conservator due to abandonment by his father, who resides in El Salvador and cannot reunite with him. The District Court granted the Petitioner’s mother the right to manage all aspects of his care, including medical decisions, housing, and education. In response to the Director’s RFE, the Petitioner submitted a sworn affidavit from his mother describing the

information she provided to the District Court, including that she had cared for the Petitioner since giving birth to him at the age of 15 years and that the Petitioner's father always refused to provide any financial or emotional support. Considered in the aggregate, the evidence is sufficient to show that the District Court made the necessary individualized determination as required under section 101(a)(27)(J)(ii) of the Act.

However, the Petitioner still has not established his eligibility for SIJ classification because the record does not demonstrate that the District Court's determinations were based in state law. 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. Section 101(a)(27)(J) of the Act. A juvenile court's dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3)(i). The Act also 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. *Id.* Accordingly, state court orders that only cite or paraphrase immigration law and regulations will not suffice if the petitioner does not otherwise establish the basis in state law for the juvenile court's reunification finding.

In the SIJ order, the District Court appointed a primary managing conservator for the Petitioner and determined that his reunification with his father was not viable because he abandoned him and resides in El Salvador. However, the SIJ order does not contain a citation to any state law underlying the District Court's findings. The record also does not contain the underlying petition for the SIJ order, hearing transcript, or any other relevant evidence to demonstrate a state law basis for the District Court's determinations. Although we notified the Petitioner of this deficiency in our NOID, he did not respond with any additional evidence or argument. Accordingly, a preponderance of the evidence does not establish that the Family Court made a qualifying dependency declaration and determination that the Petitioner cannot reunify with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

**ORDER:** The appeal is dismissed.