



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

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

In Re: 28334547

Date: OCT. 13, 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 Special Immigrant Juvenile (SIJ petition), concluding that the evidence did not establish that the Petitioner was subject to an order from a court that had jurisdiction over her as a juvenile. 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).¹ 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).

A "juvenile court" is defined as a court "in the United States having jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a), (b). While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody

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).

and care as juveniles under state law at the time the order was issued. *See* 8 C.F.R. § 204.11(a). Further, not all courts having jurisdiction over juveniles under state law may be acting as juvenile courts for the purposes of SIJ classification. *See generally* 6 USCIS Policy Manual J.2(C), <https://www.uscis.gov/policy-manual> (providing, as guidance, that a court of general jurisdiction that issues an order with SIJ-related findings outside of any juvenile custody or dependency proceeding would generally not be acting as a juvenile court for SIJ purposes).

II. ANALYSIS

In [REDACTED] 2022, when the Petitioner was 20 years old, the Circuit Court of [REDACTED] County, Arkansas (Circuit Court) issued an *Order of Permanent Guardianship of the Person* (guardianship order) appointing the Petitioner's cousin as her permanent guardian. The Circuit Court determined that the Petitioner was "incapacitated by reason of her mental disability of Posttraumatic Stress Disorder, and lacks the legal capacity to manage her person" and was therefore dependent on the court and in need of a guardian. Further, the Circuit Court concluded that the Petitioner's reunification with her parents was not viable due to their abandonment, abuse, and neglect as defined by Arkansas Code Annotated (Ark. Code Ann.) section 12-18-103 and it would not be in her best interest to return to Mexico, her country of nationality, because she "has no home or source of income or support there." Citing to Ark. Code Ann. section 28-65-401(b)(1)(B), the Circuit Court also determined that the Petitioner lacked sufficient understanding to make or communicate decisions to meet her health and safety requirements, and because her incapacity was not solely due to her minority it was in her best interest to extend permanent guardianship beyond her 18th birthday.

The Petitioner filed her SIJ petition in January 2022 based on the guardianship order. The Director denied the SIJ petition based on a determination that because the Petitioner was over the age of 18 years, the age of majority under Arkansas law, at the time the guardianship order was issued, the Circuit Court did not exercise jurisdiction over the Petitioner as a juvenile. On appeal, the Petitioner asserts that she meets the requirements because Ark. Code Ann. section 28-65-401 "restricts minority to those under the age of twenty-one," the Petitioner was declared dependent on the court, and the guardianship order states the Circuit Court has jurisdiction under Arkansas law to make judicial determinations about the care and custody of juveniles. The Petitioner also contends that the Director erred by not following the holding of *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019).

The Petitioner is required to establish that the Circuit Court exercised its authority over her as a juvenile. 8 C.F.R. § 204.11(c)(3). Arkansas circuit courts generally have jurisdiction over the custody and care of minors under Arkansas law, and therefore they may qualify as "juvenile courts" for the purposes of SIJ classification in some instances. *See* Ark. Const. Amend. 80, § 6 (outlining the jurisdiction of circuit courts as "trial courts of original jurisdiction of all justiciable matters not otherwise assigned pursuant to" the Arkansas Constitution); Ark. Code Ann. § 16-13-201 (same). As the Petitioner correctly notes on appeal, pursuant to Ark. Code Ann. section 28-65-107, the circuit court has exclusive jurisdiction over all matters of guardianship other than guardianships ad litem. This includes guardianship proceedings relating to both minors and adults. *See* Ark. Code Ann. § 28-65-210 (describing the matters considered by the court as including the determination whether a person is either a minor or otherwise incapacitated before appointing a guardian); *see also* Ark. Code Ann. §§ 28-65-101(5)(B) (2020) (providing that an incapacitated person includes an endangered adult or impaired adult who is in the custody of the Department of Human Services); 28-65-101(5)(A)

(defining an incapacitated person as a person who is “impaired by reason of a disability . . . to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate”); 28-65-104(1) (providing that incapacitated persons, for purposes of the chapter on guardianship, include persons under age 18 whose disabilities have not been removed). However, to establish eligibility for SIJ classification, the Petitioner must establish that the circuit court acted as a juvenile court in her own case.

At the time the order was issued, a “juvenile” or “child” was defined under the Arkansas Child Maltreatment Act, upon which the Circuit Court relied in determining the Petitioner was the victim of abuse, neglect, and abandonment, as “an individual who is from birth to eighteen (18) years of age.” Ark. Code Ann. section 12-18-103(6) (2022). The other provisions in the Ark. Code Ann. relating to family law and protective proceedings contain similar definitions. *See, e.g.*, §§ 9-8-101 (defining “child” as “person under eighteen (18) years of age” under Arkansas’ family law provisions); 9-25-101 (providing the age of majority is 18 years and persons less than 18 are considered minors); 28-72-401 (defining an “adult” as a person “who is at least eighteen (18) years of age” for purposes of custodial trusts); 28-74-102 (defining an adult as a person who has reached the age of 18 for purposes of guardianships of adults).

The Petitioner was 20 years old when the Circuit Court issued its order. Although the guardianship order provided that the court had jurisdiction to make judicial determinations about the care and custody of juveniles, it did not determine that it had jurisdiction over the Petitioner as a juvenile. Rather, the Circuit Court determined that the Petitioner is incapacitated by reason of her mental disability, lacks the legal capacity to manage her person, and is thereby dependent on the court. The Circuit Court did not state that the Petitioner’s incapacitation was due to her being a minor. As a result, the Petitioner has not established that the court was acting as a juvenile court and exercising its jurisdiction over her as a juvenile when it issued the guardianship order.

As the Petitioner acknowledges on appeal, the Circuit Court specifically determined that the Petitioner’s designation as incapacitated was “not solely due to her minority.” Instead, the Circuit Court found she was incapacitated due to her mental disability and that she lacked the legal capacity to manage her affairs. Further, although the Circuit Court found that it would be in the Petitioner’s best interest to extend the permanent guardianship beyond the Petitioner’s 18th birthday, the court did not cite to Ark. Code Ann. §§ 28-65-104(3) and/or 9-27-303(32), which allow a court to retain jurisdiction beyond 18 years for specific circumstances when the court has already taken jurisdiction over a person as a minor. Instead, the Circuit Court cited Ark. Code Ann. section 28-65-401(b)(1)(B), which provides “if the court finds upon a proper showing by substantial competent evidence that it is in the best interest of the ward² that the guardianship be continued after the ward reaches majority, the court may order the guardianship to continue until such time as it may be terminated by order of the court.” The Circuit Court did not indicate that the Petitioner was a minor or that the guardianship was ordered for that reason, but instead mirrored the language in Ark. Code Ann. § 28-65-101(5)(A), defining incapacitated person as one who is “impaired by reason of a disability . . . to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his or her health or safety or to manage his or her estate.”

² “Ward” is defined as an incapacitated person for whom a guardian has been appointed. Ark. Code Ann. § 28-65-101.

The Petitioner also asserts³ that a federal judge in *R.F.M. v. Nielsen* ruled that U.S. Citizenship and Immigration Service’s policy of denying SIJ petitions filed by petitioners between the ages of 18 and 20 is a violation of the Administrative Procedures Act. The Petitioner’s assertion is unavailing however, as the holding in *R.F.M. v. Nielsen* is limited to New York cases. In *R.F.M. v. Nielsen* the court held, in relevant part, that New York law grants the family court jurisdiction over the custody and care of juveniles up to the age of 21 for certain proceedings, including guardianship proceedings, with the consent of the juvenile. *R.F.M. v. Nielsen*, 365 F. Supp. 3d at 378 (citing N.Y. Fam. Ct. Act § 661(a); N.Y. Surr. Ct. Proc. Act § 103(27)). Here, the Petitioner has not identified a similar statute under Arkansas state law extending the juvenile court’s jurisdiction up to age 21. See N.Y. Fam. Ct. Act § 661(a) (providing, in relevant part, that for purposes of appointment of a guardian of the person, the terms infant or minor shall include a person who is less than 21 years old who consents to the appointment or continuation of a guardian after the age of eighteen). Furthermore, although the Petitioner contends that the court in *R.F.M. v. Nielsen* “held that the plain language of the statute does not require the dependency order to come from a ‘juvenile court’” and that it can instead be issued from any state court, the Petitioner does not provide a citation from *R.F.M. v. Nielsen* to support her assertion. In *R.F.M. v. Nielsen*, the court found that “the plain language of the SIJ statute dictates that the [New York] Family Court need not have the authority to make a custody determination in cases where it appoints a guardian,” 365 F. Supp. 3d at 377, and that the statute does not require *both* a custody order and a dependency finding. *Id.* at 378. In this case, the Circuit Court issued a guardianship order and clarified that the Petitioner was dependent on the court, and the Director did not require otherwise, but the evidence is not sufficient to show that the court took jurisdiction over the Petitioner as a juvenile under state law.

The Petitioner has not established that the court exercised jurisdiction over her as a juvenile, which is required for SIJ purposes. Although Arkansas law extends guardianship protections to persons between the ages of 18 to 21 who obtained a guardianship while still a minor, the Petitioner has not shown that she obtained any order from the court while she was under 18 years of age. Instead, the Circuit Court issued its guardianship order based on a determination that the Petitioner was incapacitated due to mental illness. Moreover, the provisions in the Ark. Code Ann. relating to definitions of minority and majority indicate that a child or juvenile is a person who is under the age of 18 years while an adult is someone who has reached the age of 18, and the Petitioner has not shown that any exception under Arkansas law applies in her case.

III. CONCLUSION

The Petitioner has not established by a preponderance of the evidence that the Circuit Court had jurisdiction over her custody and care as a juvenile under Arkansas child welfare law such that it could

³ The Petitioner generally claims in her appeal brief that she meets the SIJ eligibility criteria as set forth in the Act, regulations, USCIS Policy Manual, and adopted decisions *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019) and *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019). She does not provide any specific analysis as to how *Matter of A-O-C-* and *Matter of D-Y-S-C-* support her claims. The SIJ Final Rule, effective April 7, 2022, 87 Fed. Reg. 13066, and related policy updates superseded the guidance found in *Matter of A-O-C-* and *Matter of D-Y-S-C-*. USCIS Policy Alert PA-2022-14, Special Immigrant Juvenile Classification and Adjustment of Status 2 (Jun. 10, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220610-SIJAndAOS.pdf>.

be considered a juvenile court, as required for SIJ classification.

ORDER: The appeal is dismissed.