



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 28563665

Date: OCT. 23, 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 Special Immigrant Juvenile (SIJ petition), determining the Petitioner had not established her eligibility because the juvenile court order, serving as the basis for the SIJ petition, did not contain the factual basis for the court's best interest determination and the Petitioner therefore did not warrant USCIS' consent. 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 sustain 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).<sup>1</sup> In addition, the record must 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). 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).

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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).

SIJ classification may only be granted upon the consent of U.S. Citizenship and Immigration Services (USCIS) after the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5). For USCIS' consent, the petitioner must establish 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. 8 C.F.R. § 204.11(b)(5). Petitioners must also establish the juvenile court order or supplemental evidence includes the factual basis for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5)(i).

## II. ANALYSIS

In [REDACTED] 2021, the Trial Court [REDACTED] of Massachusetts, Probate and Family Court Department (court), entered a judgment incorporating its findings of fact and rulings of law (order) placing the Petitioner in the custody of her mother. The court stated it had jurisdiction over the Petitioner pursuant to Massachusetts General Laws Annotated (Mass. Gen. Laws Ann.) chapter 119, section 39M, titled "Dependency proceedings for abused, neglected and abandoned children; determination of child's best interest; petition for special findings." Mass. Gen. Laws Ann. ch. 119 § 39M (2021). According to the order, the court found, after a hearing and review of the pleadings, that the Petitioner was a child, unmarried, and unable to reunify with her father due to neglect. The court stated that the Petitioner suffered neglect by her father as defined by Massachusetts state regulations, explaining that the Petitioner's father failed to provide her with clothing, shelter, sufficient food, financial and emotional support, safety, and healthy living conditions. The court also detailed some of the emotional and physical abuse witnessed by the Petitioner, describing her to be "very traumatized." After laying out its findings, the court then determined, "it is not in the best interests of [the Petitioner] to be returned to Guatemala, the country of her nationality. It is in the best interests to remain in the custody of her mother, [REDACTED]." The Director issued a request for evidence, to which the Petitioner responded and included the underlying motion to the court and a declaration by the Petitioner's mother. The Director denied the SIJ petition, concluding the record does not contain an individualized determination why it is not in the Petitioner's best interest to return to Guatemala, noting that the Petitioner's mother states in her declaration that the Petitioner's siblings are living safely with other family members. We note that the Petitioner's mother, in her declaration, also documented the abuse she faced by the Petitioner's father and which the Petitioner witnessed. Her declaration explained that the Petitioner had a fear and lack of trust in men, the Petitioner's paternal grandmother treated the Petitioner poorly, and that under her care the Petitioner is doing well, is healthy and getting better emotionally.

The appeal filing indicates that the Petitioner would file a brief within 30 calendar days<sup>2</sup> but also asserts that the "basis for appeal" is:

[t]he Petitioner has clearly documented a factual basis as to why it is not in her best interest to return to Guatemala. She witnessed the father attempt to kill her mother. In

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<sup>2</sup> The Petitioner did not file an appeal brief.

addition, the father never provided financial or emotional support. She was born [in 2012] and clearly is unable to return to Guatemala herself.”

Recognizing the standards for making best interest determinations may vary between states, USCIS defers to the juvenile court and does not request more analysis by the court than that required by the state in making best interest determinations. See generally 6 USCIS Policy Manual J.2(C)(3), <https://www.uscis.gov/policymanual> (explaining, as guidance, that juvenile courts “may consider a number of factors related to the circumstances of the child and the circumstances and capacity of the child’s potential caregiver(s)” and while “the standards for making best interest determinations may vary between states . . . [t]he child’s safety and well-being are typically the paramount concern” and USCIS “does not require the court to conduct any analysis other than what is required under state law”). Here, the order cites to Mass. Gen. Laws Ann. chapter 119, section 39M, which provides, in relevant part:

Upon reviewing the petition or complaint seeking special findings, any supporting affidavits and other evidence presented, the court shall issue findings of fact and rulings of law that shall determine whether the child who is the subject of the proceeding . . . may not be returned to the child’s or parent’s country of nationality or country of last habitual residence because it is not in the best interest of the child. . . . The health and safety of the child shall be of paramount concern. When considering the child’s health and safety, the court shall consider whether present or past living conditions will adversely affect the child’s physical, mental or emotional health.

Based on our de novo review of the record, the court weighed the Petitioner’s past living conditions, the abuse she witnessed, her current trauma, and her lack of safety in Guatemala prior to making its best interest determination. In addition, the underlying motions and declaration by the Petitioner’s mother, which were acknowledged by the court, also contained additional factors relevant to a best interest determination, i.e., the Petitioner’s young age, and that under her mother’s care the Petitioner is doing well, is healthy and getting better emotionally. The Petitioner has therefore met her burden, by a preponderance of the evidence, in establishing that the juvenile court order and supplemental evidence include the factual basis for the court’s best interest determination, as required under 8 C.F.R. § 204.11(d)(5)(i), and that she warrants USCIS’ consent under section 101(a)(27)(J)(i)-(iii) of the Act; 8 C.F.R. § 204.11(b)(5).

ORDER: The appeal is sustained.