



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 28658037

Date: OCT. 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). 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 his 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).<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).

## II. ANALYSIS

### A. Relevant Background and Procedural History

In [redacted] 2021, the Commonwealth of Kentucky, [redacted] Family Court, Circuit Court Division III (court), entered an order determining: the Petitioner is a child, was essentially raised by his grandmother in Guatemala, has resided with his mother since March 2020, his mother is financially capable of providing for the Petitioner, his father left the family when the Petitioner was six months old, and since then, has not provided any type of support for the Petitioner or visited him. The court concluded that given the father's lack of involvement and the unlikelihood of these circumstances changing in the future, and the mother's best position to provide for the Petitioner's needs, it is in the best interest of the child to award sole custody to his mother, citing "KRS 403.270(2)."<sup>2</sup> The Petitioner filed his SIJ petition, using the order as the basis for SIJ classification. The Director issued a request for evidence (RFE), which notified the Petitioner that, among other issues, the order did not contain the requisite parental reunification and best interest determinations by the court. The Petitioner responded with a memo from his counsel, and printouts of sections from the Ky. Rev. Stat. Ann., a state case, and USCIS' Policy Manual. The Director denied the petition explaining the Petitioner's response to the RFE did not cure the deficiencies raised regarding the requisite parental reunification and best interest determinations for SIJ classification. The Petitioner filed this appeal, submitting a brief, printouts of Kentucky statutes, and parts of the underlying record.

### B. Parental Reunification and Best Interest Findings

According to the Petitioner, the facts contained in the order support a finding that parental reunification with the Petitioner's father is not viable due to abandonment or a similar basis under state law and that it would not be in the best interest of the Petitioner to return to Guatemala, so it should be inferred that these determinations were made by the court. For example, the Petitioner highlights parts of the order where the court provides the facts it relied upon to determine the Petitioner's mother should have sole custody and asserts:

Such a restriction on [the] [f]ather's visitation rights indicates the [c]ourt's conclusion that reunification of the child with [the] [f]ather is not viable, and the court based its decision on [the] father's abandonment of the [Petitioner] and his failure to support [the Petitioner] for years. (emphasis added).

Similarly, with respect to the required best interest determination, the Petitioner asserts:

By placing the [Petitioner] in the custody of a guardian who resides in Kentucky – a decision that required a preliminary finding that the granting of custody was in the best interest of the child – the Court necessarily found that it was conversely not in the [Petitioner]'s best interest to return to Guatemala, where the appointed caregiver no longer resides. . . . [T]he court's finding that [the Petitioner] "was essentially raised by his maternal grandmother in Guatemala," indicates the [c]ourt's awareness of the

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<sup>2</sup> Kentucky Revised Statutes Annotated (Ky. Rev. Stat. Ann.) section 403.270 is titled, "Custodial issues; best interests of child shall determine; rebuttable presumption that joint custody and equally shared parenting time is in child's best interests; de facto custodian." (2021).

existence of an alternative caregiver in Guatemala and the option for [the Petitioner] to return to Guatemala were that determined to be in his best interest. (emphasis added).

However, the SIJ regulations require a petitioner to submit a juvenile court's order containing the requisite determinations in order to be eligible for SIJ classification. See 8 C.F.R. § 204.11(c)(1)(ii) (providing a 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)(2) (providing a determination must be made by a court 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); see generally 6 USCIS Policy Manual J.2(C), <https://www.uscis.gov/policymanual> (explaining, as guidance, to be eligible for SIJ classification, the petitioner must submit a juvenile court order with a dependency or custody, parental reunification, and best interest determination); *id.* at J.3(A)(1) (explaining, as guidance, "[t]he juvenile court order(s) must provide the required judicial determinations regarding dependency or custody, parental reunification, and best interests."). Inferring or assuming the court's intention does not meet the requirements of the SIJ statute or its implementing regulations.

The Petitioner also states that the Director erred by requiring the juvenile court's order to recite the statutory language and asserts that the order "utilized language similar to the state statutes on custody, reunification, and abandonment." The Petitioner is correct in that the juvenile court order may use different legal terms than those found in the Act, as long as the determinations have the same meaning as the requirements for SIJ classification, and orders that just mirror or cite to federal immigration law and regulations are not sufficient. *Id.* at J.3(A)(1). However, while juvenile court orders may use differing terms, *i.e.*, guardianship may be equivalent to custody, the orders must contain the required determinations and they must be made under state law. *Id.* Here, the order does not state anywhere that reunification with the Petitioner's father is not viable due to abuse, neglect, abandonment, or a similar basis under Kentucky law, nor does it state that it is in the best interest of the Petitioner to not return to Guatemala. Further, to the extent the order uses language similar to Kentucky statutes on reunification and abandonment, the court does not cite to these statutes or case law in the order. While the Petitioner also correctly states that he may meet his burden of establishing the judicial determinations were made under state law with 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, we note that the Petitioner provided no such supplemental evidence in the record.

The Petitioner further asserts that pursuant to Ky. Rev. Stat. Ann section 199.502, a child can be approved for adoption where the court finds the parent has abandoned the child for a period of not less than ninety days. However, according to the Petitioner, pursuant to Ky. Rev. Stat. Ann section 530.040, abandonment of a minor is a class D felony, punishable with one to five years in prison, so a juvenile court may not be inclined to include the term "abandonment" in a custody order. The Petitioner explains that abandonment is therefore considered less of a defined term and more of a demonstration of a set of facts evidencing an intent to abandon a minor. In support, the Petitioner quotes *S.B.B. v. J.W.B.*, 304 S.W.3d 712, 716 (Ky. Ct. App. 2010) as follows: "Abandonment is not actually defined in our jurisprudence in the context of termination proceedings. Rather, 'abandonment is demonstrated by facts or circumstances that evince a settled purpose to forego all parental duties and relinquish all parental claims to the child.'" We acknowledge the Petitioner's argument that a

court may not be inclined to determine abandonment. However, to the extent the Petitioner claims that the court's determination, i.e., the father lacks involvement, is a similar basis to abandonment, such a determination would need to be in the order. See 8 C.F.R. § 204.11(c)(1)(ii); see generally 6 USCIS Policy Manual at J.3(A)(1) (explaining, as guidance, to establish a similar basis under state law the juvenile court has to make a judicial determination that the legal basis is similar to abuse, neglect, or abandonment under state law and the petitioner must provide evidence of how the basis is legally similar to abuse, neglect, or abandonment under state law). We further note that the order does not cite to S.B.B. v. J.W.B. or use language found in the case, and there is no supplemental evidence in the record that the court considered this case in its analysis.

### III. CONCLUSION

The court's order does not contain the requisite parental reunification and best interest determinations as required under section 101(a)(27)(J)(i) and (ii) of the Act and the corresponding regulations at 8 C.F.R. § 204.11(b) and (c). The Petitioner has therefore not established his eligibility for SIJ classification.

ORDER:      The appeal is dismissed.