



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

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

MATTER OF C-A-A-O-

DATE: JUN. 12, 2018

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

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 New York, New York District Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner was not a child under New York law when the family court orders were issued. On appeal, the Petitioner submits additional evidence and a brief asserting that he has established his eligibility for SIJ classification. 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 of age, and have been subject to a state juvenile court order determining that they 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) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon a juvenile court or the juvenile court must have placed the petitioners in the custody of a state agency or department or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also 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. *Id.* at section 101(a)(27)(J)(ii). SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS). *Id.* at section 101(a)(27)(J)(iii). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

**II. ANALYSIS**

**A. Family Court Orders**

In 2016, when the Petitioner was 19 years old, the [REDACTED] New York Family Court issued an order titled "Special Immigrant Juvenile Status Order" (SIJ Status Order) which states, in pertinent part:

This Court, after examining the motion papers and supporting affidavits, all the pleadings and prior proceedings in this matter, and/or hearing testimony, finds, in accordance with 8 U.S.C. § 1101(a)(27)(J), that:

1. The above-named child is under 21 years of age.
2. The above-named child is unmarried.
3. The above-named child is dependent upon the Family Court, or has been committed to or placed in the custody of a state agency or department, or an individual or entity appointed by the state or Family Court.
4. Reunification with one or both of his parents is not viable due to [check applicable box(es)]: ☒ neglect; ☒ abandonment; ☐ and/or a similar basis under New York law because [specify the basis for the determination]:  

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5. It is not in the child's best interest to be removed from the United States and returned to [specify country]: Ecuador, his country of nationality or country of last habitual residence of the child or of his birth parent or parents.

*SIJ Status Order* (Mar. 14, 2016) (brackets, checked boxes and blank line in original).

In a separate, but related order citing section 661 of the New York Family Court Act (FCA) and section 1707 of the Surrogate's Court Procedure Act (SCPA), the family court appointed the Petitioner's uncle as his guardian, and further ordered that "unless terminated by the Court, the appointment shall last until the subject's 21<sup>st</sup> birthday, since the subject is over 18 and has consented to the appointment until he/she reaches the age of 21 . . . ."

#### B. The Family Court Appointed a Guardian

The Director determined that the guardianship order was insufficient, in part, because the family court did not place the Petitioner in the physical custody of his guardian. On appeal, the Petitioner claims that the Director imposed an *ultra vires* requirement of physical custody, and the guardianship order is not a custody order, but a declaration of dependency. The Director's decision did not impose an *ultra vires* requirement of physical custody because physical custody is inherent to an SIJ petitioner being "placed under the custody of ... an individual" for purposes of SIJ classification under section 101(a)(27)(J)(i) of the Act. See 6 USCIS Policy Manual, *supra*, at J.2(D)(1) (explaining that "under the custody of" requires physical custody).

In this case, we do not reach the issue of whether the Petitioner's guardianship by consent under section 661(a) of the New York Family Court Act (FCA) constitutes a qualifying custody placement under the Act. A child may be eligible for SIJ classification if he or she is either: in the custody of a

state agency or an individual or entity appointed by the state or the juvenile court; or declared dependent upon a juvenile court. Section 101(a)(27)(J)(i) of the Act. A juvenile court's dependency declaration must be made in accordance with state law governing such dependency while the petitioner is under the juvenile court's jurisdiction. 8 C.F.R. § 204.11(c)(3), (d)(2)(i). As the Petitioner asserts on appeal, New York courts have held that guardianship by the consent of individuals aged 18 to 21 renders them dependent upon the family court. *See In the Matter of Sing W.C.* 83 A.D.3d 84, 86 (N.Y. App. Div. 2011) (finding FCA § 661(a) permits the Family Court to appoint a guardian for a youth between the ages of 18 and 21 in order to establish that the youth is dependent on the court). However, as discussed below, the record does not establish that the SIJ Status Order finding the Petitioner "dependent upon the Family Court" was issued by a juvenile court, as the Act and regulations require.

### C. Family Court Orders Not Issued by a Juvenile Court

The Director also determined that the family court was not acting as a juvenile court for SIJ purposes because it did not have jurisdiction under New York law over the Petitioner's custody as a juvenile since he was 19 years old when the orders were issued and had already attained the age of majority in New York, 18 years of age. For SIJ classification, a petitioner must have been subject to an order containing the requisite determinations issued by a "juvenile court." Section 101(a)(27)(J)(i) of the Act; *see* 8 C.F.R. § 204.11(c)–(d) (stating the eligibility and evidentiary requirements of an order and findings issued by a juvenile court). A "juvenile court" is defined as a court "having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). While the specific title and type of court may vary from state to state, the record must establish that the court had competent jurisdiction under state law to make the required determinations about the care and custody of the petitioner as a juvenile. 8 C.F.R. § 204.11(a), (d)(2); *see also* 6 USCIS Policy Manual, <https://www.uscis.gov/policymanual>, J.2(D)(4), J.3(A)(1) (explaining juvenile court jurisdiction and the types of courts that qualify as juvenile courts for purposes of SIJ classification).

On appeal, the Petitioner asserts that the SIJ final rule removed the prior requirement for petitioners to be juveniles under state law and implemented a uniform rule that petitioners must be under 21 years of age. He argues that the Director imposed an *ultra vires* requirement that he remain a juvenile under state law. However, the Act and regulation do not define the term "juvenile" and the regulation's specification of the age of 21 only denotes the requirement that an SIJ petitioner be "under twenty-one years of age" at the time the SIJ petition is filed with USCIS. 8 C.F.R. § 204.11(c)(1). *See* 6 USCIS Policy Manual, *supra*, at J.2(B) (explicating general requirement that petitioner be "[u]nder the age of 21 on the date of filing the Petition").

The preamble to the SIJ rule further explained that the requirement for an SIJ petitioner to be "under twenty-one years of age" applies to the filing deadline of the SIJ petition and a petitioner who applies after this deadline "will no longer be eligible for special immigrant juvenile status." 58 Fed. Reg. 42843, 42846 (Aug. 12, 1993) (preamble to SIJ final rule). To interpret the under 21 years of age requirement as applying to the age of a petitioner at the time of the juvenile court's order would render meaningless the requirement of a juvenile dependency declaration or custody placement

issued while a petitioner is under the court's jurisdiction given many states' definition of a child as under the age of 18. See 6 USCIS Policy Manual, *supra*, at J.2(D)(4) (noting that a juvenile court may lack jurisdiction to issue a juvenile dependency or custody order for a juvenile who is 18 years of age or older even though the juvenile may file an SIJ petition with USCIS until the age of 21). As explained in the preamble to the SIJ final rule, "the Service believes that certain inequities caused by variations in state law are unavoidable in determining eligibility for [SIJ classification]. Juvenile court issues are under the jurisdiction of the states and therefore dependent upon state statutes." *Id.* State law is, therefore, controlling on the definition of a juvenile or child within the states' child welfare provisions.

The Petitioner's guardianship order is titled "guardian of the person," which is a provision under subsection 661(a) of the FCA that allows the appointment of a guardian for a "minor or infant," including "a person who is less than twenty-one years old who consents to the appointment or continuation of a guardian after the age of eighteen." Section 1707 of the SCPA<sup>1</sup> also authorizes New York courts to appoint a guardian of an "infant," and specifies that the guardianship will expire when the infant attains majority, unless the infant consents to the continuation of or appointment of a guardian after his or her eighteenth birthday, in which case the guardianship will expire on the infant's twenty-first birthday, or earlier upon good cause shown.

On appeal, the Petitioner cites an unpublished New York Family Court decision, *Matter of Alana M.*, stating guardianship over a child "is akin to lawful custody," but does not acknowledge that the case involved a 15-year-old child. In conducting its analysis on whether the guardianship in question conferred custody the court relied upon the first clause of section 103(27) of the SCPA, which defines an infant as "any person under the age of eighteen years." *Matter of Alana M.*, No. A-8869/11, 2011 WL 6445582, at \*8, (Fam. Ct. Dec. 22, 2011). The Petitioner also did not submit any evidence that these arguments were presented to or accepted by the New York family court that issued his guardianship order. While New York family courts have jurisdiction to determine the "custody or visitation of minors," in the context of custody proceedings "[t]he term 'infant' or 'minor' means a person who has not attained the age of eighteen years." N.Y. Fam. Ct. Act §§ 119(c), 651 (West 2015). It appears that once a person attains the age of 18, New York family courts lack jurisdiction over the person's custody. *Matter of Merando v. Vantassel*, 66 A.D.3d 783 (N.Y. App. Div. 2009) (dismissing as academic an appeal involving related visitation, guardianship, and child custody proceedings pursuant to the FCA because the child had reached the age of 18). See *Troy SS. V. July UU.*, 140 A.D.3d 1348, 1350 (N.Y. App. Div. 2016) (dismissing an appeal of a child custody order because the child had reached the age of 18). As the Petitioner asserts on appeal, the guardianship provisions of both the SCPA and FCA reference the custody, care, and control of a child and guardianship may encompass custody where, for example, a child's welfare requires the intervention of the state and courts, but the record in this case does not show that the family court was acting in a comparable capacity when it issued the FCA § 661(a) guardianship and SIJ Status

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<sup>1</sup> In a determination of guardianship "the provisions of the surrogate's court procedure act shall apply to the extent they are applicable to guardianship of the person of a minor or infant and do not conflict with the specific provisions of [the FCA]." N.Y. Fam. Ct. Act § 661(a) (McKinney 2016).

orders. *Compare* FCA § 661(a) (concerning guardianship by the consent of a person aged 18 to 21) *with* FCA § 614 (providing for the guardianship and custody of a neglected child) *and* FCA § 1096 (providing for the custody or guardianship of a destitute child).

While the Petitioner correctly notes that the Act allows SIJ eligibility to be based on a declaration of juvenile dependency or a placement of custody, both determinations must be made by a juvenile court. *See* section 101(a)(27)(J)(i) of the Act, as amended by section 235(d)(1) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008) (expanding SIJ eligibility to include children for whom a juvenile court has made a custody placement in addition to those declared dependent upon the juvenile court); 6 USCIS Policy Manual, *supra*, at J.3(A)(1) (explaining that qualifying juvenile court proceedings are those in which the court has jurisdiction under state law to make determinations about the custody of children pursuant to the definition of “juvenile court” at 8 C.F.R. § 204.11(a)). Consequently, while we do not question the validity of the family court’s dependency declaration and grant of guardianship by the Petitioner’s consent under FCA § 661(a), the record does not establish that the court had jurisdiction over the Petitioner’s custody as a juvenile such that it could be considered a juvenile court under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(a).

#### D. No Qualifying Parental Reunification Determination

The Director further determined that the SIJ Status Order was not valid for establishing SIJ eligibility because it cites to federal immigration law as the basis for its findings, rather than state law. On appeal, the Petitioner asserts that the special findings order was based on the Form GF-42, a New York family court standard form. He further asserts that New York state court orders are issued under New York law, even if a federal statute or regulation is referenced for informational purposes. Again, we do not question the validity of the SIJ Status Order in New York and acknowledge that the language of juvenile court orders may vary depending on individual state child welfare law and an SIJ petitioner’s individual circumstances. However, the plain language of section 101(a)(27)(J)(i) of the Act indicates that the reunification finding must be made under state law and must encompass both a determination of abuse, neglect, abandonment, or a similar basis and a determination that the petitioner could not be returned to the custody of the unfit parent(s). Consequently, the juvenile court orders must have been properly issued under state law and orders that only cite or paraphrase immigration law and regulations will not suffice to establish SIJ eligibility. Section 101(a)(27)(J)(i) of the Act. *See* 8 C.F.R. 204.11(d)(2)(ii) (stating that initial evidence for an SIJ petition includes a juvenile court order issued by a court of competent jurisdiction showing a determination that family reunification is not a viable option); *see also* 6 USCIS Policy Manual, *supra*, at J.3(A)(2) (explaining that the juvenile court order should use language establishing that the specific findings were made under state law and not just mirror or cite to immigration law and regulations).

The Memorandum of Law in Support of Application for Guardianship and Motion for Special Findings (Memorandum) submitted to the New York family court requested the court to make findings of fact to comply with immigration law requirements, including that the Petitioner be considered “eligible for long-term foster care” as defined under 8 C.F.R. § 204.11(a). The SIJ Status

Order states, in pertinent part: “This Court . . . finds, in accordance with 8 U.S.C. § 1101(a)(27)(J), that: . . . Reunification with one or both of his parents is not viable due to [check applicable box(es)]: ☒ neglect; ☒ abandonment; ☐ and/or a similar basis under New York law because [specify the basis for the determination]: \_\_\_\_\_.” (brackets, boxes and blank line in original). The order does not reference the specific provisions of New York child welfare law regarding neglect or abandonment or any other basis under New York law for its determination, nor does it specify with which parent, or if with both parents, reunification is not viable. Although the underlying Memorandum provides facts relevant to the family court’s parental reunification determination, it cites the federal SIJ regulations, rather than any applicable New York law on neglect, abandonment or parental reunification.

Moreover, the Petitioner has not established that the family court’s jurisdiction in this case encompassed legal determinations on the viability of parental reunification. The determination that parental reunification is no longer viable is a legal conclusion under relevant state child welfare laws made by a court with competent jurisdiction to determine whether a parent would be able to regain custody of the SIJ petitioner, if warranted. *See* 8 C.F.R. § 204.11(a), (d)(2)(ii) (requiring the juvenile court order to be issued by a court of competent jurisdiction under state law to make determinations regarding the custody of the juvenile, including the requisite determination that family reunification is no longer viable); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D), J.3(A)(2) (explaining that the juvenile court’s parental reunification finding must be under the relevant state child welfare law). Although the family court made factual findings of neglect and abandonment, the record does not show that those findings were related to child protective proceedings, or that the court otherwise determined whether the Petitioner could be returned to his parents’ custody because of neglect and abandonment as a matter of state law.

The Petitioner argues that in *Matter of Sing W.C.*, the New York appellate court determined that the family court had jurisdiction to order a child protective agency home study for individuals between the ages of 18 and 21 in guardianship proceedings because they are considered “children” under section 661(a) of the FCA. As that case explains, guardianship in New York under the FCA, like custody, was limited to children under the age of 18 until 2008 when the legislature amended section 661(a) of the FCA to extend guardianship to persons between the ages of 18 and 21 “in response to the federal law and regulations creating special immigrant juvenile status.” *Matter of Sing W.C.*, 83 A.D.3d at 87. The amendment, however, did not create a corresponding extension to the family court’s jurisdiction to make a parental reunification determination for a person aged 18 or older. Once a person attains the age of 18, New York courts generally lack jurisdiction over that person’s custody. *See In re Shontae R.*, 48 A.D.3d 1006 (N.Y. App. Div. 2008) (finding appeal in child protective proceedings by child’s parent to be moot because the child had reached the age of 18); *In re Michael O.F.*, 119 A.D.3d 785 (N.Y. App. Div. 2014) (dismissing as academic appeal from custody order in child neglect proceedings because child had reached the age of 18). The Petitioner did not submit any evidence that the New York family court had competent jurisdiction to place him under the custody of his parents.

The petitioner did not submit evidence that the family court’s factual findings in the SIJ Status Order included any legal determination regarding his parents’ ability to regain custody of him. The SIJ

Status Order and the underlying Memorandum do not reference any child welfare, custody or other relevant New York laws under which the family court's parental reunification finding was made. Consequently, although we do not question the family court's jurisdiction to assign a guardian for the Petitioner upon his consent under section 661(a) of the FCA, the record does not establish that the family court had jurisdiction to determine, and ultimately determined, that the Petitioner could not reunify with his parents due to their neglect and abandonment under New York law.

#### E. USCIS' Consent

USCIS' consent determination is an acknowledgment that the request for SIJ classification is *bona fide*, which means that the juvenile court order and the best interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit. H.R. Rep. No. 105-405, 130 (1997); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D)(5) and J.3(A)(3) (explaining that the court ordered dependency or custodial placement of the child is the relief being sought from the juvenile court).

To determine if consent is warranted, USCIS first reviews the juvenile court order to ensure it contains the requisite determinations of juvenile dependency or child custody, best interest, and that parental reunification is not viable due to abuse, neglect, abandonment, or a similar basis under state law. *Id.* at J.2(A), (D)(5). If all the requisite rulings are present, USCIS then reviews the record to ensure the juvenile court order includes or is supplemented by a reasonable, factual basis for each of the court's conclusions, which shows that the juvenile court made an informed decision when applying the relevant state laws. *Id.* at J.2(D)(5), J.3(A)(3). Where the juvenile court order does not contain findings of fact to support its rulings, USCIS may consider other supporting documentation, for example, the underlying petition for dependency or custody, records from the juvenile court proceedings, any supporting documents submitted to the court, affidavits summarizing such evidence, or affidavits and records consistent with the court's findings. *Id.* at J.3(A)(3).

The Director found that the SIJ Status Order did not contain a reasonable, factual basis for its best interest determination. While the SIJ Status Order does not contain factual findings for the family court's best-interest determination, the underlying Memorandum submitted to the court explains that it is not in the Petitioner's best interest to return to Ecuador because his parents abandoned him and he fears gang violence in Ecuador. As the SIJ Status Order was issued upon the family court's examination of this memorandum, the record contains a reasonable, factual basis for the family court's determination that it was not in the Petitioner's best interest to be returned to Ecuador.

Nevertheless, the Petitioner has not demonstrated that his request for SIJ classification is *bona fide*. Although USCIS generally consents to the grant of SIJ classification where the record contains a reasonable factual basis for all the required rulings, USCIS' consent is not warranted where the state court orders were not issued by a juvenile court, lack required rulings, or the record indicates the order was sought primarily to obtain an immigration benefit. *Id.* at J.2(D)(5). SIJ classification was created for abused, neglected, and abandoned children who were declared dependent on the court or placed in the custody of an individual or agency because the children could not be reunified with their unfit parent(s). *See* H.R. Rep. No. 105-405, at 130 (USCIS must "determine that neither the

dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect"). In this case, the record does not indicate that the family court orders were sought primarily for "relief from abuse or neglect." *Id.*

The record does not show that the Petitioner's guardianship was issued by a juvenile court and resulted from, for example, child protective proceedings under Article 10 of the FCA, or otherwise involved a legal determination that the Petitioner could not be returned to his parents' custody due to their abuse, neglect, abandonment or a similar basis under New York law. Rather, the underlying memorandum repeatedly indicates that the primary purpose of obtaining the guardianship and SIJ status orders was to enable the Petitioner to "gain legal immigration status in the United States" and requests the family court to "make factual findings . . . so that he may be eligible to file a petition for SIJS with USCIS." While the family court made a factual finding that reunification with "one or both" of the Petitioner's parents was not viable, it cited to federal immigration law instead of New York child welfare law and the record does not indicate that the court had jurisdiction to make a determination regarding the Petitioner's custody as a juvenile. While USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order, the agency's consent is not warranted where a petitioner obtained a predicate order primarily for the purpose of securing SIJ classification. 6 USCIS Policy Manual, *supra*, at J.2(D)(5). Because the Petitioner has not demonstrated that the family court orders were sought primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis to these grounds under New York law, he has not demonstrated that his request for SIJ classification is *bona fide* and merits USCIS' consent.

### III. CONCLUSION

We acknowledge the unfortunate circumstances and hardship that the Petitioner faced in Ecuador, but he remains ineligible for SIJ classification because the family court's orders were not issued by a juvenile court and the orders do not contain a qualifying parental reunification determination. USCIS' consent to the Petitioner's SIJ classification is also not warranted because the Petitioner has not demonstrated that his request for SIJ classification is *bona fide*.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-A-A-O-*, ID# 955014 (AAO Jun. 12, 2018)