



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

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

MATTER OF C-E-G-G-

DATE: NOV. 28, 2018

APPEAL OF HOUSTON, TEXAS FIELD 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 Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the Houston, Texas Field Office denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner did not submit a juvenile court order containing a qualifying parental reunification finding. Accordingly, the Director withheld the consent of U.S. Citizenship and Immigration Services (USCIS) to the Petitioner's SIJ classification. On appeal, the Petitioner submits a brief, copies of Texas law, and copies of previously submitted evidence, and reasserts his eligibility. 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 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. The Juvenile Court's Order

When the Petitioner, a citizen of El Salvador, was 11 years old, a juvenile court in [REDACTED] Texas, issued an "Order in Suit Affecting Parent-Child Relationship" (SAPCR Order) appointing the Petitioner's half-sister as his sole managing conservator pursuant to Texas Family Code (TFC) section 153.005(b). The juvenile court also determined that the Petitioner's "reunification with his parents is not viable due to their deaths which left the child as an orphan not under the care of a designated managing conservator or guardian," and that both parents "failed to make arrangements for necessary care of the child after [their] death[s]." Additionally, the family court concluded that it was not in the Petitioner's best interest to be returned to El Salvador. Based on this order, the Petitioner seeks SIJ classification.

B. The Order Lacks a Qualifying Determination that Parental Reunification is Not Viable

The Director determined that the juvenile court's order did not contain a qualifying determination that the Petitioner's reunification with one or both of his parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires.

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). *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, <https://www.uscis.gov/policymanual>, 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). Also, the court order should specify with which parent(s) the petitioner cannot reunify, and which ground applies: abuse, neglect, abandonment, or a similar basis under state law. 6 USCIS Policy Manual, *supra*, at J.3(A)(4).

The Director correctly noted that the juvenile court did not specify whether its parental reunification finding was based on abuse, neglect, abandonment, or a similar basis under Texas law. On appeal, the Petitioner argues that it is not necessary for the juvenile court to "indicate whether a similar basis was similar to abuse, neglect, or abandonment" To the contrary, a juvenile court should specify the ground on which its parental reunification determination is based: abuse, neglect, abandonment, or a similar basis under state law. 6 USCIS Policy Manual, *supra*, at J.3(A)(4). Although the Petitioner correctly notes that the juvenile court need not use identical language to that in the Act, the court's findings still must have the same meaning as the SIJ requirements. *Id.* at J.3(A)(2). In this case, the juvenile court did not specify in its SAPCR Order, and the record does not otherwise establish, that the Petitioner's reunification with his parents was not viable due to abuse, neglect, or abandonment.

The Petitioner also has not shown that the court based its findings on a similar basis under state law. The Petitioner contends that a similar basis must “be similar in terms of entitling a child to juvenile court intervention and protection as well as similar in outcome to children who are abused, neglected and abandoned,” and that the juvenile court found that “death is [a] similar basis under state law to abandonment.” The juvenile court did not make such a finding in its SAPCR Order, but instead stated that the Petitioner’s parents “failed to make arrangements for necessary care of the [Petitioner] after [their] death[s]” and that his reunification with his parents is not viable “due to their deaths which left the [Petitioner] as an orphan not under the care of a designated managing conservator or guardian.” The juvenile court did not cite to any state law in making its finding, and although the Petitioner asserts that the court “adopted the . . . reasoning in [his] complaint,” his underlying original SAPCR petition and amended petition also did not state that reunification was not possible due to a similar basis to abuse, neglect, or abandonment under Texas law.

The Petitioner also argues that we must determine “whether orphaned children . . . are equally entitled to court intervention and protection and whether outcomes for orphaned children are the same as children who have been abused, neglected or [abandoned].” He argues that the protection provided to orphans under TFC section 102.003(a)(13), which the juvenile court cited in its SAPCR Order, shows that it is a similar basis under state law to TFC section 152.102(1), which defines an “abandoned” child. However, section 102.003(a)(13) governs who has standing to file a suit affecting the parent-child relationship. Specifically, it provides that where both of a child’s parents are deceased, a “person who is a relative of the child within the third degree by consanguinity,” which in this case was the Petitioner’s half-sister, has standing to file suit. Section 102.003(a)(13) of the TFC itself does not provide protection to a child who has been subjected to abuse, neglect, abandonment, or a similar basis, and is not a legal basis for the court’s finding that the Petitioner could not reunify with his parents.

The Act requires the juvenile court to determine that an SIJ Petitioner’s reunification with one or both parents is not viable due to parental abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act. Where the juvenile court’s reunification finding is based on a similar basis, the petitioner must establish that the nature and elements of the state law are similar to the nature and elements of laws on abuse, neglect, or abandonment. 6 USCIS Policy Manual, *supra*, at J.3(A)(2). The Petitioner has not shown that the nature and elements of TFC section 102.003(a)(13), which defines who has standing to bring suit under the SAPCR provisions, are similar to any Texas laws on abuse, neglect, or abandonment.

The Petitioner argues that the definitions of abuse and neglect under Texas law do not apply to his case because they appear only in Chapter 261 of the TFC, which governs investigation and reports of child abuse and neglect, and that “[n]o juvenile court intervention may be brought under” that chapter because it is solely “an investigatory section.” With regard to abandonment, the Petitioner asserts that Texas law does not contain a definition of the term that is applicable to his case. He states that the only similar term is “abandoned,” which appears in section 152.102(1) of the TFC, but he argues that the “term is not a child welfare provision that entitles a child to intervention, protection, and any specific outcome” but instead applies only to a jurisdictional issue under the Uniform Child Custody and Jurisdiction Enforcement Act. Nevertheless, he argues that if we do

“recognize the definition of ‘abandoned’ found at” section 152.[1]02(1)¹ of the TFC, we should “recognize that Section 102.003(a)(13) is also a child welfare provision similar to Section 152.[1]02(1).” He asserts that both are “jurisdictional provisions” which “trigger special jurisdictional authority for children in need of protection.” However, the issue in this case is not whether there is a similar jurisdictional basis to file a SAPCR suit for children whose parents are deceased and those who are abused, neglected, or abandoned, but that the nature and elements of the state law upon which the court relied are similar to abuse, neglect, or abandonment. The nature and elements of section 102.003(a)(13) of the TFC, which defines only who can file a SAPCR suit, are not comparable to the definition of “abandoned” at TFC section 152.001(1).

According to the Petitioner, Chapter 153 of the TFC contains numerous sections which “would constitute a similar basis under State Law to abuse, neglect, or abandonment because they serve to entitle a child to similar protections and similar interventions as those children deemed abused, neglected and abandoned” He states that in his case, the juvenile court applied TFC section 153.001(a)(2), which provides that state public policy is to “provide a safe, stable, and nonviolent environment for the child,” and 153.005, which allows for the appointment of a managing conservator. He argues that the court “applied the same statutory child welfare provisions and the same intervention and protections offered to children who have been subject to abuse, neglect, or abandonment in the state of Texas,” and that it “reached the same result and appointed a non-parent as managing conservator.” Therefore, the Petitioner concludes that the juvenile court made a qualifying parental reunification finding. However, in this case, the juvenile court made a factual determination that the Petitioner could not reunify with his parents due to their unfortunate deaths, and therefore appointed his half-sister as his sole managing conservator.

The record does not indicate that the juvenile court concluded that through their unfortunate deaths, the Petitioner’s parents subjected him to abuse, neglect, abandonment, or a similar basis under Texas law which prevented his return to their custody. We do not question the validity of the order under Texas law or the Petitioner’s half-sister’s standing to bring the SAPCR suit. However, the Petitioner has not shown that the juvenile court determined that the Petitioner could not be reunified with his parents due to their abuse, neglect, abandonment, or a similar statutory basis to one of those grounds under Texas law.

III. CONCLUSION

We do not question the difficult circumstances the Petitioner experienced in El Salvador, as reflected in the record. However, the Petitioner’s SAPCR order lacks a qualifying finding that he cannot reunify with one or both of his parents due to abuse, neglect, abandonment, or a similar basis under state law. Accordingly, USCIS’ consent to his SIJ classification is not warranted.

¹ The Petitioner mistakenly cites section 152.002(1) of the TFC in this portion of his brief, but he appears to have intended to cite section 152.102(1). Subsection 152.002(1) does not exist, and section 152.002 does not, as he claims, provide a definition of “abandoned,” but instead governs conflicts between this provision and other Texas statutes. The Petitioner previously correctly referenced the definition of “abandoned” at section 152.102(1).

Matter of C-E-G-G-

ORDER: The appeal is dismissed.

Cite as *Matter of C-E-G-G-*, ID# 1557476 (AAO Nov. 28, 2018)