



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

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

In Re: 8406100

DATE: MAR. 5, 2021

Appeal of National Benefits Center Decision

Form I-360, Petition for 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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). Upon *de novo* review, we will dismiss the appeal.

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner 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. The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to his or her 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), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act. *See also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). The petitioner bears the burden of proof to demonstrate his or her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

In 2017, when the Petitioner was 20 years old, the New York Family Court for (Family Court) appointed guardianship of the Petitioner to J-V-,¹ finding that such appointment “shall last until the [Petitioner's] 21st birthday.” On the same day, the Family Court issued a separate order titled *CORRECTED ORDER-Special Immigrant Juvenile Status* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon the Family Court, or has been committed to or placed in the custody of a state agency

¹ We use initials to protect the privacy of individuals.

or department, or an individual or entity appointed by the state or Family Court.” The Family Court further found that the Petitioner’s reunification with his parents was not viable due to their neglect and that it was not in his best interest to be removed from the United States and returned to Guatemala, his country of nationality.

In January 2017, based upon the Family Court’s orders, the Petitioner filed his SIJ petition. The Director denied the SIJ petition finding that the Petitioner was not eligible at the time of filing because the SIJ order, dated [redacted] 2017, (corrected SIJ order) submitted with the SIJ filing was signed by the Family Court Judge after the Petitioner filed his SIJ petition on January 23, 2017. The Director further concluded that even assuming the Petitioner was eligible at the time of filing, the Petitioner had attained the age of majority in New York when the orders were granted and the Family Court was not acting as a juvenile court, which is defined in 8 C.F.R. § 204.11(a) as a court with “jurisdiction under state law to make judicial determinations about the custody and care of juveniles.”

On appeal, the Petitioner submits a brief, various USCIS documents, and the original guardianship order and SIJ order, dated [redacted] 2017(original SIJ order). He argues that he was eligible for SIJ classification because the Family Court issued the SIJ order prior to his filing of the SIJ petition and that the Family Court had both the jurisdiction and authority to issue the SIJ orders. The Petitioner provides the original SIJ order, dated three days after he filed his SIJ Petition, and asserts that it was dated incorrectly by the Family Court due to a clerical error. To bolster his claim that the original SIJ order was dated incorrectly, he purports that the corrected SIJ order was issued in [redacted] 2017 for the purpose of correcting the date on the original SIJ order to [redacted] 2016. The Petition cites to *Merrick v. Merrick*, 194 N.E. 55, 56 (N.Y. 1934) to support his argument.

A petitioner must establish that he is eligible for the requested benefit at the time of filing. 8 C.F.R. § 103.2(b)(1). On appeal, the Petitioner has not overcome the Director’s determination that he was not eligible at the time he filed his SIJ petition. Contrary to the Petitioner’s assertions, the record does not substantiate his claims regarding a clerical error by the Family Court. The record does not contain any evidence, such as a copy of the docket list from the Family Court or an affidavit from the Family Court clerical staff showing that the SIJ hearing took place and order was issued on [redacted] 2016. Further, it is unclear if the corrected SIJ order was issued in order to correct the original SIJ order’s date or to materially correct the substance of the order, given that the corrected order includes specific New York state law cites, not contained in the original SIJ order, that are required for a qualifying parental reunification finding.² The Family Court also had the opportunity to issue the corrected order *nunc pro tunc* so that it retroactively applied to [redacted] 2016, however, did not chose to do so. Finally, *Merrick* does not support the Petitioner’s position because the case stands for the proposition that irregularities in court procedures can be corrected *nunc pro tunc*. See 194 N.E. at 56. Since the corrected SIJ order was not issued *nunc pro tunc* and did not address the date of the original SIJ order, *Merrick* is inapplicable to the Petitioner’s case. *Id.*

² The Act requires a determination that a petitioner’s reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the Petitioner was subjected to such maltreatment by one or both parents under state law. *Matter of D-Y-S-C-*, Adopted Decision 2019-02. The Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination. *Id.*

Since the Petitioner did not provide an SIJ order that pre-dated the filing of his SIJ petition, he has not met his burden to establish that he was eligible at the time of filing, and he is therefore ineligible for SIJ classification.³

ORDER: The appeal is dismissed.

³ As the Petitioner is ineligible on this ground, we need not reach the other basis for the Director's denial.