

Circuit Court for Baltimore City
Case No. C-24-FM-24-000072

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1559

September Term, 2024

IN THE MATTER OF JOSE LOJA LOPEZ

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: April 7, 2025

* This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited as persuasive authority only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

While seeking guardianship over his cousin, Jose Manuel Loja Lopez, Jose Fernando Vasquez Lopez requested an order confirming his cousin’s eligibility for Special Immigrant Juvenile (“SIJ”) status. The Circuit Court for Baltimore City granted the guardianship, but determined that it could not make the factual findings required for his cousin to become eligible to apply for SIJ status.

We vacate the circuit court’s decision and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

Jose Fernando¹ petitioned for guardianship over his younger cousin, Jose Manuel. Simultaneously, Jose Fernando requested a predicate order containing factual findings that confirmed Jose Manuel’s eligibility to apply for SIJ status. The circuit court heard the following testimony from Jose Manuel and Jose Fernando:

Jose Manuel was born in Ecuador in February 2005. There, Jose Manuel lived with his mother, grandmother, and two sisters in a single rented room. The room had two beds, one of which Jose Manuel shared with his sisters. The room had electricity, but the bathroom and access to water were outside.

Jose Manuel attended and successfully finished high school while living in Ecuador. When Jose Manuel was 15 years old, he began working in construction. He worked 10-hour days on Saturdays and Sundays; he did not have to work on weekdays. He surrendered all his earnings to his mother to help support the family.

¹ Because Jose Fernando Vasquez Lopez and Jose Manuel Loja Lopez share a surname (an *apellido materno*), we refer to them by their first names. We mean no disrespect.

Jose Manuel testified that it is dangerous in his hometown in Ecuador. He stated there were “was a lot of crime and robberies” and detailed one account where his mother’s car was broken into and stolen.² Jose Manuel testified that he was afraid for his and his family’s safety in Ecuador, and he believed that his mother could not protect them from the dangers in his hometown. Jose Fernando agreed that there was “a lot of criminality and drugs” in Ecuador. He felt it would not “be good for [Jose Manuel] to go [back] over there.”

Jose Manuel arrived in the United States in December 2022, two months shy of his eighteenth birthday. In January 2023, he was released into his father’s custody in New York. Because his father had lived in the United States for as long as Jose Manuel could remember, this was the first time he recalled meeting the man. During his childhood, Jose Manuel had had no relationship with his father, and his family had received monetary support from his father only twice a year.

Jose Manuel lived with his father for about six months. He decided to move out when his father told him “to start working, to pay the rent, [and] to buy [his] own food” to “support [him]self.”

² The guardianship petition and the motion for findings of SIJ eligibility detail other specific incidents of crime that were not discussed at the hearing. On one occasion, an individual came to Jose Manuel’s mother’s small store, demanded a free beer, said that he was connected to a gang, said that he knew where they lived, and threatened to harm them. The following week, the man attacked Jose Manuel’s family at a cousin’s graduation; the local police were unhelpful.

After leaving his father’s house in the summer of 2023, Jose Manuel moved in with his cousin, Jose Fernando, in his Baltimore City home. There, Jose Manuel has one of the four bedrooms to himself. The home has a kitchen, living room, laundry room, basement, and backyard. Jose Manuel believes, and Jose Fernando corroborated, that Jose Fernando adequately “take[s] care of all of [Jose Manuel’s] needs.”

At the time of the guardianship and SIJ status proceeding, Jose Manuel was 19 years old and had been living with Jose Fernando for over one year. Jose Manuel was not working or enrolled in school, but he was taking English classes regularly. Jose Manuel dreams of a future in the United States; he “would like to study and become a police officer.” Both Jose Manuel and Jose Fernando wish for Jose Manuel to stay under Jose Fernando’s care and support. Jose Fernando believes that it is in Jose Manuel’s best interests to remain in the United States with him.

Along with the cousins’ testimony, the court considered Jose Manuel’s mother’s written consent to the guardianship, in which she admits that she is “unable to provide [Jose Manuel] with the financial or emotional support necessary for his well-being” and that she is “convinced that is it in [Jose Manuel’s] best interests” that the guardianship be granted.

The court granted Jose Fernando guardianship over Jose Manuel, but determined that it could not enter an order confirming Jose Manuel’s eligibility for SIJ status. The court found that Jose Manuel’s father had abandoned him. Nonetheless, the court did not see enough evidence that Jose Manuel’s mother had abandoned, neglected, or abused

him, that “forced reunification would have a negative impact” on Jose Manuel’s well-being, or that he would be exposed to more dangers in Ecuador than he would be in this country. The court acknowledged, however, that “[t]his is a challenging case.”

Jose Fernando moved to alter or amend the circuit court’s order and provided supplemental “evidence related to the degree of violent crime in Ecuador.” The circuit court denied Jose Fernando’s motion, and this timely appeal followed.

These facts are supplemented in the discussion section where relevant.

STANDARD OF REVIEW

“[W]e review the trial court’s factual findings for clear error and its legal conclusions *de novo*.” *Romero v. Perez*, 463 Md. 182, 196 (2019). “We are tasked here with interpreting Maryland and federal law to decide whether the circuit court’s order was legally correct.” *Id.* at 196-97. “We do so *de novo*.” *Id.* at 197.

QUESTIONS PRESENTED

We have condensed and rephrased the questions presented as follows: Did the court err in concluding that Jose Manuel was not eligible to apply for SIJ status?³

³ Jose Fernando presents his questions as follows:

1. Did the Circuit Court err in determining that the evidence presented was insufficient to establish neglect or abandonment under Maryland law, particularly in light of:
 - a. The documented pattern of paternal abandonment;
 - b. The mother’s role in facilitating child labor;
 - c. Exposure to dangerous living conditions; and

For the reasons stated below, we shall vacate the judgment and remand the case to the circuit court for further proceedings.

DISCUSSION

“Congress created SIJ status to ‘provide humanitarian protection for abused, neglected, or abandoned child immigrants’ who lack immigration status.” *Romero v. Perez*, 463 Md. 182, 187-88 (2019) (quoting U.S. Citizenship and Immigration Services (“USCIS”), *Policy Manual*, Vol. 6, Part J, Ch. 1, § A (current as of Jan. 23, 2019) (hereinafter, “USCIS Policy Manual”), <https://perma.cc/2VMS-YTJD>).⁴ “This policy allows such children to become lawful permanent residents of the United States if they satisfy certain eligibility criteria.” *Id.* at 185.

- d. The failure to protect from known dangers?
2. Did the Circuit Court err by failing to apply the broad interpretation standard required by Maryland law when evaluating whether reunification with one or both parents is viable due to abuse, neglect, or abandonment, as mandated by *In re Dany G.*, 223 Md. App. 655 (2015)?
3. Did the Circuit Court err in its best interest analysis by:
 - a. Failing to properly consider the totality of circumstances regarding Jose Manuel’s welfare;
 - b. Drawing improper inferences from limited positive factors; and
 - c. Disregarding substantial evidence of ongoing risk?

⁴ The identical language appears in the same volume, part, chapter, and section of the USCIS policy manual today. <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-1>.

To apply for SIJ status, the child, or someone acting on the child’s behalf, must obtain a predicate order from a state juvenile court that includes certain factual findings regarding the child’s eligibility. *Id.*; *see also* 8 C.F.R. § 204.11(b)-(c). If the state court makes the requisite findings, the child, or someone acting on the child’s behalf, must then submit the court’s order, along with a petition, to U.S.C.I.S. for approval. *Romero v. Perez*, 463 Md. at 188. If USCIS approves the petition, the child is eligible to apply to become a permanent resident. *Id.* at 189.

In *In re Dany G.*, 223 Md. App. 707 (2015), this Court reviewed the applicable federal statute and regulations and identified the following findings that a circuit court must make in granting an SIJ petition:

- (1) The minor is presently in the U.S., unmarried, and under the age of 21;
- (2) The minor is dependent on the court or has been placed under the custody of a state agency/department or individual/entity appointed by the court;
- (3) The presiding court has jurisdiction under Maryland law to make determinations about the minor’s custody and care;
- (4) Reunification with one or both of the minor’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
- (5) It is not in the minor’s best interest to return to [the minor’s] country of nationality or last habitual residence.

Romero v. Perez, 463 Md. at 192-93.

The statutory “terms ‘abuse,’ ‘neglect,’ and ‘abandonment’ should be interpreted broadly when evaluating whether the totality of the circumstances indicates that the minor’s reunification with a parent is not viable, i.e., workable or practical, due to prior

mistreatment.” *Romero v. Perez*, 463 Md. at 202. “[A]ll the relevant factors must be understood in the light most favorable to determinations of neglect and abandonment.” *Id.* (quoting *B.R.L.F. v. Sarceno Zuniga*, 200 A.3d 770, 777 (D.C. 2019)).

“In applying this standard, circuit courts should consider factors such as (1) the lifelong history of the child’s relationship with the parent (i.e., is there credible evidence of past mistreatment); (2) the effects that forced reunification might have on the child (i.e., would it impact the child’s health, education, or welfare); and (3) the realistic facts on the ground in the child’s home country (i.e., would the child be exposed to danger or harm).” *Id.* at 202-03. “Trial courts may consider other factors based on the evidence and testimony before the court, but such factors must relate to the ultimate inquiry of whether reunification is viable.” *Id.* at 203.

“[I]n SIJ status cases, Maryland courts are to apply Maryland law, and not the law of the child’s home country.” *Id.* at 204. “In rendering SIJ status findings, therefore, ‘trial judges are to determine whether the child would be considered abused, neglected, or abandoned under Maryland law without regard to where the child lived’ when the mistreatment occurred.” *Id.* at 205 (quoting *In re Dany G.* 223 Md. App. at 718). We do not employ “a standard that automatically sends a child back to wretched conditions that our state has found to be abusive, [or] neglectful, or to constitute abandonment solely because those conditions are considered acceptable in the child’s home country.” *In re Dany G.*, 223 Md. App. at 718 (emphasis omitted).

In deciding SIJ cases, “trial courts should bear in mind that Congress established the requirements for SIJ status knowing that those seeking the status would have limited abilities to corroborate testimony with additional evidence.” *Id.* at 715. “The purpose of the law is to permit abused, neglected, or abandoned children to remain in this country.” *Id.* Thus, in making its factual findings, a circuit court “should assess witness credibility and discredit evidence when warranted” (*Romero v. Perez*, 463 Md. at 203), but it should not “impose insurmountable evidentiary burdens on SIJ petitioners.” *Id.*; accord *In re Dany G.*, 233 Md. App. at 715 (stating that “[i]mposing insurmountable evidentiary burdens of production or persuasion is therefore inconsistent with the intent of the Congress”).

Finally, “trial judges are *not* gatekeepers tasked with determining the legitimacy of SIJ petitions; that is exclusively the job of USCIS.” *Romero v. Perez*, 463 Md. at 203 (emphasis in original). “The ‘state court’s role in the SIJ process is not to determine worthy candidates for citizenship, but simply to identify abused, neglected, or abandoned alien children under its jurisdiction who cannot reunify with a parent or be safely returned in their best interests to their home country.’” *Simbaina v. Bunay*, 221 Md. App. 440, 458 (2015) (quoting *Leslie H. v. Superior Court*, 168 Cal.Rptr.3d 729, 737 (Ct. App. 2014)).

In this case, there is no question that Jose Manuel met the first three factors for SIJ status: he is currently in the U.S., unmarried, and under the age of 21; the circuit court appointed Jose Manuel’s cousin as his guardian and thus made Jose Manuel dependent on

the court; and the circuit court has jurisdiction under Maryland law to make determinations about Jose Manuel’s custody and care. *See, e.g., Romero v. Perez*, 463 Md. at 190. The court concluded, however, that Jose Manuel had not met the fourth factor, principally because it reasoned that his mother had not abused, neglected, or abandoned him. Having reached that conclusion, the court did not evaluate the fifth factor, about whether it would not be in Jose Manuel’s best interests to return to Ecuador.

We shall focus on the fourth factor: whether reunification with one or both of the minor’s parents is not viable because of abuse, neglect, abandonment, or a similar basis under state law.

We turn first to Jose Fernando’s argument that a “minor need only show that reunification with one parent is not viable[.]” Jose Fernando bases this argument on the federal statutory requirement that the minor show that “reunification with 1 or both of [the minor]’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” 8 U.S.C. § 1101(a)(27)(J)(i). Because the circuit court found that one of Jose Manuel’s parents—his father—had abandoned him, Jose Fernando argues that the court erred in concluding that he did not satisfy the fourth factor.

Jose Fernando did not make this argument in the circuit court. Consequently, he did not preserve the argument for appellate review. Md. Rule 8-131(a).

Even if Jose Fernando had made that argument, we would conclude that it lacks merit under the circumstances of this case. The statutory distinction between one or both of the child’s parents becomes relevant when the child “seeks to remain with one parent

in the United States while avoiding reunification with the other.” *Romero v. Perez*, 463 Md. at 192 n.16. The distinction does not apply in a case like this one, where the child has been abandoned by a parent in the United States and seeks to avoid reunification with another parent in another country. *See J.U. v. J.C.P.C.*, 176 A.3d 136, 138-39 (D.C. 2018) (stating that “[a] finding is sufficient for SIJ status if reunification with only one parent is not viable due to abuse, neglect, or abandonment, at least where, as here, the parent in question is located in the home country to which the minor would otherwise be deported[]”); *see also In re Israel O.*, 188 Cal. Rptr. 548, 556 (Ct. App. 2015) (stating that “an eligible minor under section 1101(a)(27)(J) includes a juvenile for whom a safe and suitable parental home is available in the United States and reunification with a parent in [the juvenile’s] country of origin is not viable due to abuse, neglect or abandonment[]”).

Furthermore, under Jose Fernando’s interpretation of what he calls the “one parent” standard, the fourth factor could be satisfied by a finding of abuse, neglect, or abandonment by the parent with whom the child is *not* facing reunification, regardless of conduct by the parent with whom the minor would be reunified in the home country. We cannot adopt this application. Mistreatment by a U.S.-based parent who is not seeking custody is irrelevant to whether the child may be safely reunited with the parent in the home country. *See In re Marisol N.H.*, 979 N.Y.S.2d 643, 647 (App. Div. 2014) (stating that “SIJS is designed to prevent a child from being deported to a parent who abandoned” the child). In SIJ status cases, a court’s conclusions about abuse, neglect, and

abandonment pertain to the parent with whom reunification is challenged and with whom the child may be forced to reunite.

Nonetheless, we disagree with the circuit court’s conclusion that Jose Fernando failed to establish that Jose Manuel’s mother neglected him, when that term is “interpreted broadly” and “understood in the light most favorable to [a] determination[] of neglect[.]” *Romero v. Perez*, 463 Md. at 202 (quoting *B.R.L.F. v. Sarceno Zuniga*, 200 A.3d at 777).

Under Maryland law, “[n]eglect’ means the leaving of a child unattended or other failure to give proper care and attention to a child by any parent. . . under circumstances that indicate . . . that the child’s health or welfare is harmed or placed at substantial risk of harm[.]” Md. Code (1984, 2012 Repl. Vol., 2018 Supp.), § 5-701(s) of the Family Law Article; *see also* Md. Code (1974, 2013 Repl. Vol.), § 3-801(s)(1) of the Courts & Judicial Proceedings Article. For example, “if a child works ‘under dangerous conditions, a finding of neglect would surely follow.’” *Romero v. Perez*, 463 Md. at 206 (quoting *In re Dany G.*, 233 Md. App. at 721).

In this case, the evidence establishes that Jose Manuel’s mother required him to begin working in the construction industry on both weekend days when he was only 15 years of age. A construction site is a dangerous place even in the United States, which has workplace protections such as occupational safety and health laws. The work itself is physically demanding. The work typically involves handling, operating, or working in

close proximity to heavy machinery. One can only imagine how much more dangerous a construction site would be in a less-developed country like Ecuador.

Although the circuit court was correct in observing that many American teenagers are allowed to work, no 15-year-old child would be allowed (much less required) to work legally at a construction site in Maryland. To the contrary, in Maryland, minors under 16 years old are strictly prohibited from working “in, about, or in connection with . . . construction[.]” Md. Code (1991, 2016 Repl. Vol.), § 3-213(b)(4)(i) of the Labor & Employment (“L&E”) Article.⁵ A job at McDonald’s is not comparable to the job that Jose Manuel was forced to work. In our judgment, therefore, Jose Manuel’s mother “neglected” her child, as that term is interpreted under Maryland law, by requiring him to work in the construction industry at the age of 15. *See Romero v. Perez*, 463 Md. at 206; *In re Dany G.*, 233 Md. App. at 721.

Perhaps because it concluded that Jose Manuel’s mother had not neglected him, the circuit court also concluded that reunification with his mother was not unworkable. We disagree with that conclusion as well. Returning a young man to the care of a parent who expected him to work under conditions that posed a substantial risk of harm to his health and safety because she relied on him to help support the family financially is not

⁵ The “Employment of Minors” subtitle does not apply to a work activity that is performed by a minor outside of school hours, so long as the activity “does not involve manufacturing or mining[,] . . . is not a hazardous occupation restricted under § 3-213(c)(1) or (2) . . . and . . . is limited to” the enumerated activities in L&E § 3-203(4). *See* L&E § 3-203(1)-(4). Here, Jose Manuel’s weekend-only work was outside of school hours, but it was not limited to one of the nine listed activities, so the subtitle, and L&E § 3-213(b)(4)(i) in particular, applies here.

“a reunification that is viable.” *Romero v. Perez*, 463 Md. at 206 (quoting *J.U. v. J.C.P.C.*, 176 A.3d at 143).

Forced reunification would place Jose Manuel, and probably his sisters as well, in an uncomfortable and unhealthy living situation. As a young man, Jose Manuel would return to a one-room space that he would have to share with four women. He would share a bed with his two sisters. Forced reunification would also inhibit his ability to pursue a desired, fulfilling career. In his past, Jose Manuel surrendered all his earnings to his mother to support his family. If returned to Ecuador, he may again have to work just to help support his family, meaning he “would be unable ‘to make something of [himself][,.]’” as a police officer. *In re Dany G.*, 233 Md. App. at 712. Finally, Jose Manuel’s mother also admitted that she is “unable to provide [Jose Manuel] with the financial or emotional support necessary for his well-being.”

“[T]he totality of the circumstances” here “indicates that [Jose Manuel]’s reunification with” his mother in Ecuador is not workable or practical. *Romero v. Perez*, 463 Md. at 202. The evidence, when viewed in a way that is “consistent with the humanitarian purpose of the [SIJ] law[.]” does not support the circuit court’s contrary conclusion. *In re Dany G.*, 233 Md. App. at 718. Consequently, we shall vacate the judgment and remand the case to the circuit court with instructions to revise its findings to include the conclusion that Jose Manuel’s mother “neglected” him, as that term is defined in Maryland law, and that reunification with his mother is not viable.

Had the court concluded that Jose Manuel’s mother’s past neglect, the effects of a forced return, and the dangers in his hometown frustrated the viability of reunification, the court would have been required to then analyze the final SIJ status factor—whether it is not in Jose Manuel’s best interests to return to Ecuador. The circuit court did not make that finding because it concluded that Jose Manuel’s mother did not neglect him. On remand, the circuit court shall determine whether it is not in Jose Manuel’s best interests to return to Ecuador.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID BY
APPELLANT. MANDATE TO ISSUE
FORTHWITH.**