Circuit Court for Prince George's County
Case No. CAE 18-28069

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3058

September Term, 2018

IN THE MATTER OF

D. V. L.

Wright,
Graeff,
Kehoe,

JJ.

Opinion by Kehoe, J.

Filed: August 30, 2019

This appeal arises from a judgment of the Circuit Court for Prince George's County denying S. S. D. L. R.'s petition for appointment as guardian of his nephew, D.V.L.,[1] as well as Mr. D. L. R.'s request that the court make factual findings as to D.V.L.'s eligibity for Special Immigrant Juvenile status. Mr. D. L. R. (hereafter "Uncle") has appealed and raises two issues for our review, which we have rephrased slightly:

> 1. Did the circuit court err by denying Uncle's petition for guardianship?
>
> 2. Did the circuit court err in denying Uncle's motion for findings of fact regarding D.V.L.'s eligibility for Special Immigrant Juvenile status?

For the reasons that follow, we will reverse the circuit court's judgment and remand this case for further proceedings consistent with this opinion.

A Brief Overview of Special Immigrant Juvenile Status

The Court of Appeals has recently provided a thorough overview of the current state of the law regarding Special Immigrant Juvenile ("SIJ") status cases:

> Congress created SIJ status to provide humanitarian protection for abused, neglected, or abandoned child immigrants" who lack immigration status. SIJ status is an immigration classification that may allow for these vulnerable children to immediately apply for lawful permanent resident status.
>
> The application process for SIJ status is set forth in the Federal Immigration and Nationality Act and involves two primary steps. First, the child, or, as here, 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 for SIJ status. Without that order, a child cannot apply for

[1] To protect the minor's identity, we will refer to the parties by their initials.

> SIJ classification. Second, the child, or any person acting on the child's behalf, must submit a petition, along with the predicate order and other supporting documents, to [the United States Citizenship and Immigration Services ("USCIS')] for review and approval. If USCIS approves the petition, the child is then eligible to apply for adjustment of status to a lawful permanent resident under 8 U.S.C. § 1255.9
>
> Judge Zarnoch, writing for the Court of Special Appeals in *Simbaina v. Bunay*, 221 Md. App. 440 (2015), aptly noted that the process for attaining SIJ status is atypical in that "a State juvenile court is charged with addressing an issue relevant only to federal immigration law." 221 Md. App. at 449 (citation omitted). The State court's role is limited, however, to rendering findings about SIJ status eligibility; the findings do not confer any immigration benefits.
>
> Federal regulations define "juvenile courts" as "courts having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). Maryland law designates circuit courts as having such jurisdiction and, consequently, authority to preside over SIJ status proceedings.

Romero v. Perez, 463 Md. 182, 187–90 (2019) (some citations, quotation marks, ellipses and footnotes omitted).

Background

On August 28, 2019, Uncle, through counsel, filed a petition for guardianship of a minor seeking guardianship of his nephew, D.V.L. Concurrently, Uncle filed a motion for factual findings pursuant to Maryland Code (1984, 2012 Repl. Vol.) Family Law ("FL")

§ 1-201(b)(10),[2] requesting that the court make specific factual findings that would allow D.V.L. to apply for SIJ status with the federal government.

On November 30, 2018, a hearing was held on the petition and the motion. Only Uncle and D.V.L. testified. Their testimony, which was uncontroverted, is summarized below.

D.V.L. was born in February 2001 in Guatemala, where he lived with his parents for sixteen years. When he turned seven years old, D.V.L. began working on the family farm Monday through Friday from 5:00 a.m. to 11:00 a.m., and on Saturdays and Sundays from 7:00 a.m. to 3:00 p.m. Among his duties, D.V.L. applied pesticides and chemical fertilizers to crops without the benefit of a breathing mask, gloves, or other protection. Then, at the age of fourteen, D.V.L. left his job on the family farm and began working in a clothing manufacturing plant in order to pay for school. At the factory, he worked Monday through Friday from 6:00 a.m. to 11:30 a.m., and on Saturday and Sunday from 7:00 a.m. to 7:00 p.m.

D.V.L. left Guatemala for the United States on or about July 20, 2017. According to D.V.L., he left because the Mara 18 gang had taken control of his neighborhood. He testified that the gang "controls the whole neighborhood . . . and [they] threaten us. If we

[2] FL § 1-201(b)(10) provides that an equity court has jurisdiction over "custody or guardianship of an immigrant child pursuant to a motion for Special Immigrant Juvenile factual findings requesting a determination that the child was abused, neglected, or abandoned before the age of 18 years for purposes of § 101(a)(27)(J) of the federal Immigration and Nationality Act."

don't join, they threaten us." He also testified that those who refused to join the gang could be kidnapped or murdered.

Fearing for his safety and wanting a better life, D.V.L. entered the United States on August 7, 2017. He was detained by Immigration and Customs Enforcement ("ICE"). Eventually, ICE released D.V.L. to the care of Uncle, who resides in Prince George's County. Since his release from ICE custody, D.V.L. has lived with Uncle and his family, and currently attends high school. D.V.L. testified that it was in his best interest to remain in the United States in his uncle's care, and that he receives no support from his parents in Guatemala. D.V.L. is unmarried.

At the close of testimony, counsel for Uncle requested that the court appoint Uncle as D.V.L. 's guardian. Counsel argued that it is in D.V.L.'s best interest to remain in the United States and that Uncle has the resources and capacity to care for him. Then, counsel asked the court to make factual findings pursuant to FL § 1-201(b)(10), contending that D.V.L. was "neglected," as defined in FL§ 5-701(s),[3] in Guatemala. Further, counsel

[3] FL § 5-701(s) defines "neglect" as:

> the leaving of a child unattended or other failure to give proper care and attention to a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:
>
> (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
>
> (2) mental injury to the child or a substantial risk of mental injury.

maintained that D.V.L.'s duties on the family farm and in the clothing factory would constitute violations of Maryland Code (1991, 2016 Repl. Vol), Labor and Employment Article ("Lab. & Empl."), §§ 3-203 and 3-211(a)(1)(4).

Then, the circuit court issued its oral decision on the petition and the motion. Although sympathetic to D.V.L.'s situation and acknowledging that "circumstances in Guatemala are bad," the court denied the petition. The court found:

> [T]he current immigration law doesn't permit him to come here legally and I, however, do not find that he's dependent on this court. He's three months short of 18. He—his parents provided for him. He lived with them until he chose, himself, to leave. Not because of any abuse, neglect, or abandonment by his parents but because he wanted to improve his prospects, which is admirable, but he is not in need of a guardian. His parents were providing care and oversight and they've consented to the uncle doing it without any court intervention. He wasn't abandoned by them. He wasn't neglected or abused by them. The reunification with them is viable and even acknowledging the application and the Court of Special Appeals decision [in *In re Dany G.*], I do not find that it amounts to neglect for a parent in foreign country to do the very best that they can for their children.

Based on those findings, the court found that guardianship was "neither required nor appropriate" given the circumstances. Finally, the court denied the motion for factual findings on the basis that "the predicate for that is when the court has assumed judicial authority over the child[,]" which it had already decided not to do. Uncle has filed this timely appeal.

Standard of Review

Our standard of review is well-established:

> When an action has been tried without a jury, the appellate court will review the case on both the law and evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Maryland Rule 8-131(c).

We review the trial court's legal conclusions *de novo*. *Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72 (2004). Whether to grant a petition for guardianship is a matter for the trial court's discretion. This does not mean, however, that the court's discretion is untrammeled. "A trial court has no discretion to misapply equitable doctrines or to refuse to apply one when the facts and circumstances of the case clearly warrant its application." *Noor v. Centreville Bank*, 193 Md. App. 160, 175 (2010).

Analysis

Uncle argues that the circuit court erred by denying the petition for guardianship and motion for findings of fact because sufficient evidence was presented showing that D.V.L. was neglected by his parents. Although the court acknowledged the appropriate standard from *In re Dany G.*, 223 Md. App. 707 (2015), Uncle suggests that the court did not properly apply that standard in light of the uncontroverted evidence that D.V.L. presented. Specifically, Uncle points to evidence of D.V.L.'s full-time labor on the family farm at the age of seven, where he was exposed to dangerous pesticides and chemicals; his full-time

employment at a clothing factory to pay for his education; and the growing threat from the Mara 18 gang in his parents' neighborhood. Further, Uncle suggests that D.V.L.'s work on the farm and in a clothing factory would Lab. & Empl. §§ 3-203[4] and 3-209,[5] had such employment occurred in Maryland.

1.

The Court of Appeals has recently summarized the appropriate approach for Maryland courts in SIJ status cases in *Romero* (emphasis added):

> The Court of Special Appeals has held, and we agree, that when a party requests SIJ status findings in his or her pleadings, the circuit court **must** undertake the fact-finding process (hear testimony and receive evidence) and issue "independent factual findings regarding" the minor's eligibility for SIJ status. No separate motion is required, but a party's filings must put "the court . . . on notice" that such findings have been requested. *Simbaina*, 221 Md. App. at 458.
>
> Under federal law, a minor is eligible for SIJ status "if he or she is present in the United States, unmarried, under the age of 21," and

[4] Lab. & Empl. § 3-203 provides, in pertinent part, that minors may engage in work that:

> (1) is performed outside the school hours set for that minor;
> [and]
> (4) is limited to:
> (i) farm work that is performed on a farm;
> (ii) domestic work that is performed in or about a home;
> (iii) work that is performed in a business that a parent of the minor or a person standing in place of the parent owns or operates[.]

[5] Lab. & Empl. § 3-209 provides:

> Except as otherwise provided in this subtitle, a minor under the age of 14 years may not be employed or allowed to be employed.

> (i) . . . has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law [and]
>
> (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence.

Id. at 450-51 (quoting 8 U.S.C. § 1101(a)(27)(J)). The *In re Dany G*. court extracted the following "plain English" framework from § 1101(a)(27)(J) and the applicable regulations, which circuit courts should follow when assessing the requisite SIJ status factors:

> (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 his or her country of nationality or last habitual residence.

223 Md. App. at 714-15, 117 A.3d 650 (internal citations omitted) When assessing these factors, circuit courts should be mindful that "USCIS relies on the expertise of the juvenile court," USCIS Policy Manual, Vol. 6, Part J, Ch. 2, § D.5, and "does not go behind the juvenile court order to reweigh evidence," id. at Vol. 6, Part J, Ch. 2, § A. **Accordingly, "it is imperative**

> **that the predicate order be worded very precisely and contain all necessary language."** *In re Dany G.*, 223 Md. App. at 716, 117 A.3d 650. **The orders must provide USCIS with a "reasonable factual basis" for confirming "that the juvenile court made an informed decision** ... for all of the required findings." USCIS Policy Manual, Vol. 6, Part J, Ch. 2, § D.5.

463 Md. at 190-193 (parallel citations and footnotes omitted).

Additionally, the Court stated (emphasis added):

> [W]e reiterate what our colleagues on the Court of Special Appeals have observed: trial judges are not gatekeepers tasked with determining the legitimacy of SIJ petitions; that is exclusively the job of USCIS. *See Simbaina*, 221 Md. App. at 458-59 (noting that state courts are "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[.]") (citation omitted). **Trial judges should not step in for, or act on behalf of, an unrepresented party. Nor should they impose insurmountable evidentiary burdens on SIJ petitioners.** *Benitez* [*v. Doe*, 193 A.3d [134] at 139 [(D.C. 2018)]; *see also In Re Dany G*., 223 Md. App. at 715, ("Congress established the requirements for SIJ status knowing that those seeking the status would have limited abilities to corroborate testimony with additional evidence.").

463 Md. at 203 (some citations and interior quotation marks omitted).

The facts of *Romero* were as follows. Romero sought sole custody of his seventeen-year-old son, R.M.P., an undocumented minor and a Guatemalan native, and requested findings of fact so that R.M.P. could be eligible for SIJ status. 463 Md. at 186. Romero argued that it was not in his son's best interest to return to Guatemala to live with his mother, and that reunification with his mother in that country was not viable due to neglect. *Id*. Both Romero and R.M.P. testified, and their testimony was uncontroverted. *Id*. at 194. It was alleged that R.M.P., when he was ten years old, was forced to work on a farm, gather

firewood by himself in the mountains where he was exposed to venomous snakes, and, at one point, he injured his wrist, for which his mother did not seek medical attention. *Id*. His forced labor continued until he was seventeen when he fled to the United States. *Id*. Once here, he attended high school and lived a stable life with his father. *Id*.

The circuit court awarded Romero custody but did not find that reunification with the mother was not viable due to neglect. *Id*. Undecided whether to apply the clear and convincing standard or the preponderance of the evidence standard to Romero's case, the court ruled that under either standard, Romero could not meet his burden that reunification of the mother was not possible due to neglect. *Id*. 195. On appeal, the Court of Special Appeals, in a reported opinion, found that the preponderance of the evidence standard was appropriate. *Id*. But this Court agreed with the circuit court and concluded that Romero did not provide sufficient evidence to meet that burden. *Id*. at 195-96.

Romero petitioned the Court of Appeals for certiorari, which the Court granted. *Id*. at 196. The Court, after oral argument, issued a *per curiam* order reversing the Court of Special Appeals and remanding with instructions to vacate the circuit court's order and remand to that court with instructions to enter an amended order with the requisite SIJ status findings. *Id*. at 187; *see Romero*, 462 Md. 60, 61 (2018).

First, the Court of Appeals agreed with the Court of Special Appeals that the appropriate burden of proof in SIJ status cases is the preponderance of the evidence standard. 463 Md. at 197.

Then the Court moved on to the legal standards for abuse, neglect, and abandonment in SIJ status cases. Because this was an issue of first impression, the Court looked to two recent decisions from the District of Columbia Court of Appeals: *J.U. v. J.C.P.C.*, 176 A.3d 136 (D.C. 2018), and *Benitez v. Doe*, 193 A.3d 134 (D.C. 2018). In *J.U.*, the Court explained that the proper inquiry in SIJ status cases is:

> not the abstract question of whether the minor has been neglected or abandoned by the parent. Rather, it is whether reunification with the parent in the country of origin is "viable" due to "abandonment," abuse, or neglect. It calls for a realistic look at the facts on the ground in the country of origin and a consideration of the entire history of the relationship between the minor and the parent in the foreign country.

436 Md. at 200 (cleaned up) (quoting *J.U.*, 176 A.3d at 140).

The Court of Appeals proceeded to adopt the District of Columbia Court of Appeals' definition of "viable" as "common-sense practical workability" and that its sister court instructed District of Columbia "trial courts to determine whether forced reunification between a parent and a child was workable given 'the impact of . . . the parent's past conduct.'" *Id*. (quoting *J.U.*, 176 A.3d at 140-41).

The Court of Appeals next looked to *Benitiz*, where the appellate court concluded that "abandonment" should be interpreted broadly. *Id*. at 202 (citing *Benitiz*, 193 A.3d at 138). That court also "cautioned trial courts 'against imposing such insuperable evidentiary burdens on SIJ status applicants.'" *Id*. (quoting *Benitiz*, 193 A.3d at 139).

The Court of Appeals adopted the approach of the District of Columbia Court of Appeals in *J.U.* and *Benitiz* and held that:

> in SIJ status cases in Maryland, the 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.

463 Md. at 202.

The Court observed that this holding "furthers Congress's intent in creating SIJ status, and is consistent with Maryland's public policy of protecting children[.]" *Id*. (internal citations omitted). The Court espoused several factors circuit courts should consider when applying that standard, including:

> (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.

The Court indicated that this was not an exhaustive list, and that 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. In doing so, however, the Court signified that "trial judges should not abdicate their responsibility as fact finders; judges should assess witness credibility and discredit evidence when warranted. But they must do so with caution because creation of contrary evidence often rests on surmise, particularly in uncontested cases." *Id*. (internal quotation marks omitted).

Next, the Court held that in SIJ status cases, Maryland courts must apply Maryland law and not the law of the child's home country. *Id*. at 204; *see also In re Dany G.*, 233

Md. App. at 718 ("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.").

Finally, the Court applied those standards to Romero's petition. "The ultimate inquiry," the Court observed," is "whether R.M.P.'s reunification with [his mother] is not viable because [his mother's] prior conduct constituted neglect under Maryland law." *Id.* at 206. The Court found that the labor R.M.P. was forced to endure by his mother, and the injuries he sustained therefrom, while at only the age of ten would be illegal in Maryland. *Id*. at 206 (citing Lab. & Empl. §§ 3-203, 3-209). Based on those findings, the Court concluded that "returning R.M.P. to the custody of a mother who inadequately cared for and supervised him 'cannot be a reunification that is viable.'" *Id*. (quoting *J.U.*, 176 A.3d at 143). The Court also concluded that the circuit court erred by applying "a narrow analysis of whether [the mother] was neglectful in a technical sense," instead of assessing the mother's behavior in broad terms. The Court characterized such an approach as "a far too demanding and rigid standard." *Id*. at 206. The Court also took issue with the circuit court's challenges to R.M.P.'s testimony in light of the fact that it was uncontroverted (emphasis added):

> The court challenged the veracity of R.M.P.'s testimony about his injury because he was able to continue working afterward, even though the uncontroverted evidence indicated that Perez forced him to do so. The court also concluded that because R.M.P. worked for his mother and still managed to attend school, no "Maryland standards" were violated. **While such an exacting inquiry is appropriate in a Termination of Parental Rights**

> **hearing, it has no place in an uncontested SIJ status proceeding.** The circuit court's order—and consequently, the Court of Special Appeals' decision affirming that order—was therefore legally incorrect.

Id. at 206. The Court vacated and remanded both this Court's decision and the circuit court's judgment, and remanded the case to the circuit court "to issue an amended order with the requisite SIJ status findings." *Id*. at 207.

2.

The case before us is, for all practical purposes, factually indistinguishable from *Romero*. Applying *Romero's* analysis and holdings to the present case, it is clear that the critical inquiry is whether D.V.L.'s reunification with his parents in Guatemala is viable in light of his parents' prior conduct when that conduct constituted neglect under Maryland law. *See Romero*, 463 Md. at 206. In answering that question, we interpret the terms "abuse," "neglect," and "abandonment" broadly. *See* 463 Md. at 202. By that standard, we agree with Uncle that the judgment of the circuit court must be vacated and this case remanded for further proceedings.

At issue is whether D.V.L.'s "reunification with one or both parents is not viable due to abuse, neglect, or abandonment or similar basis found under State law." *See* 8 U.S.C. § 1101(a)(27)(J)(i). The uncontroverted testimony was that D.V.L. worked on the family farm in Guatemala from the ages of seven to fourteen. During that time, he applied harmful pesticides to crops without the benefit of a face mask. He also handled chemical fertilizers without wearing gloves. D.V.L. worked on the farm forty hours a week for seven years.

That D.V.L. was exposed to the dangers posed by exposure to pesticides at such a young age is a clear indicator that, by the standards of Maryland law, he was neglected by his parents. *Romero*, 463 Md. at 206 ("[I]n Maryland, if a child works 'under dangerous conditions, a finding of neglect would surely follow'" quoting *In Re Dany G.*, 223 Md. App. at 721)).

At the hearing, the court asked D.V.L. several questions when counsel had finished his line of questioning. Notably, the court asked D.V.L. if his parents had provided him with food and shelter, to which D.V.L. replied "yes" to both questions. The court seemed satisfied that this was sufficient reasoning to find that D.V.L. was not neglected by his parents.[6] But parents can neglect a child even if they provide adequate food and shelter. A child can be neglected in other ways, such as forced to do hard labor, *Romero*, 400 Md. at 206, or to be exposed to herbicides while working on a farm, *In re Dany G.*, 223 Md. App. at 711, or to be exposed to threats from criminal gangs. *Martinez v. Sanchez*, 235 Md. App. 639, 642 (2018). Moreover, we have no doubt that requiring a child to work 40 hours a week in a factory would constitute neglect, if not abuse, under Maryland law. Undoubtedly,

[6] The circuit court's decision appears to have been based upon the implicit premise that D. V. L.'s treatment would not constitute neglect under Guatemalan law. ("I do not find that it amounts to neglect for a parent in foreign country to do the very best that they can for their children."). This reasoning is problematic because the applicable standard in a SIJ status case is whether the conduct of the parents would constitute neglect under the law of Maryland, not the minor's country of origin. *Romero,* 463 Md. at 205–06*; In re Dany G.*, 223 Md. App. 707, 718 (2015).

D.V.L.'s past history falls within several of the categories that the Court of Appeals and this Court have held to constitute neglect.

The circuit court also took issue with the fact that D.V.L., at the time of the hearing, was "three months short of 18," and so was "not in need of a guardian." This reasoning is unjustified, however, in light of 8 C.F.R § 204.11(c)(1), which requires that the minor be under the age of twenty-one. Additionally, because this is an SIJ status case, the trial court retains jurisdiction over D.V.L. until he reaches the age of 21. *See* FL § 1-201(b)(10). Thus, we conclude that Mr. De-Leon Rivera has met his burden of production by unchallenged evidence. *See Romero*, 463 Md. at 197.

We have the benefit of the *Romero* case as guidance for our decision. The circuit court, of course, did not. In light of *Romero's* very clear teachings, we conclude that the circuit court erred when it found that D.V.L. was not abused, neglected, nor abandoned by his parents and denied Mr. De-Leon Rivera's petition for guardianship and motion for findings of fact.

We reverse the trial court's judgment and remand this case for the court to enter a judgment granting Mr. De-Leon Rivera's petition and to make the findings of fact

required by 8 U.S.C. § 1101(a)(27)(J).[7] Additionally, the findings "must provide USCIS with a reasonable factual basis for confirming that the juvenile court made an informed decision[.]" *Romero*, 463 Md. at 193.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR ENTRY OF A JUDGMENT CONSISTENT WITH THIS OPINION. APPELLANT TO PAY COSTS.

[7] As the Court explained in *Romero*:

> the "'plain English' framework from § 1101(a)(27)(J) and the applicable regulations, which circuit courts should follow when assessing the requisite SIJ status factors [is]:
> (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 his or her country of nationality or last habitual residence.

463 Md. at 191–93 (footnotes omitted) (quoting *In re Dany G.*, 223 Md. App. at 713-14); *see also* 8 C.F.R. § 204.11(a), (c), and (d).