

2026 PA Super 239

MARIA GABRIEL GARCIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
ARMANDO AUGUSTIN Y AUGUSTIN	:	No. 3176 EDA 2025
	:	

Appeal from the Order Entered November 17, 2025
In the Court of Common Pleas of Delaware County Civil Division at
No(s): CV-2025-000685

BEFORE: McLAUGHLIN, J., SULLIVAN, J., and FORD ELLIOTT, P.J.E.*

OPINION BY FORD ELLIOTT, P.J.E.: **FILED OCTOBER 26, 2026**

Maria Gabriel Garcia (Mother) appeals the order denying her request for specific judicial findings necessary to establish eligibility for her children, A.R.A.G. (born 1/2012) and K.R.A.G. (born 6/2007) (Children), to seek Special Immigrant Juvenile (SIJ) status before the United States Citizenship and Immigration Services (USCIS), pursuant to 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11. We reverse and remand for the court to enter orders as to each child consistent with this decision.

On January 23, 2025, Mother sought relief in the custody court pursuant to Section 5328 of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), 23 Pa.C.S. §§ 5401-5482, to include a final custody order regarding the Children. Within that custody petition, Mother also sought for

* Retired Senior Judge assigned to the Superior Court.

the court to enter specific findings of fact that would permit the Children to seek SIJ status. On March 7, 2025, a hearing officer entered a temporary custody order, referring the matter to a judge for a hearing at Mother's request. At that March 7 hearing, defendant Armando Augustin y Augustin (Father) was not present.¹ Prior to K.R.A.G.'s eighteenth birthday, Mother filed a petition requesting that the court rule on the merits of K.R.A.G.'s case prior to her eighteenth birthday, which emergency request the court denied on May 19, 2025. In its denial order, the court cited ***Orozco v. Tecu***, 284 A.3d 474 (Pa. Super. 2022), for the proposition that the case "unmistakably implies that the [Court of Common Pleas of Delaware County] will retain jurisdiction in this matter, and can make the SIJ determination, even if the subject child has turned 18." Order, 5/5/25.² On July 3, 2025, this Court quashed Mother's timely appeals of that denial of her emergency request, which was docketed in this Court at 1400 EDA 2025, due to our finding that they were interlocutory.

¹ "Augustin" is alternately spelled "Agustin" and "Agostini" in the certified record.

² The order is dated May 5, 2025, but it was not entered on the docket with notice pursuant to Pennsylvania Rule of Civil Procedure 236 until May 19, 2025.

The court held a combined custody hearing and SIJ findings hearing on October 1, 2025, and thereafter denied relief on November 17, 2025.³ In that order, the court awarded Mother sole legal and primary physical custody of A.R.A.G. and awarded Father partial physical custody, as the parties may agree upon.

The court set forth the facts underlying that decision as follows:

[Mother commenced this case via her filing of a custody complaint, which] alleged, *inter alia*, that the issuance of [SIJ status] is in the best interest of [the Children] because it is not in the [C]hildren's best interest to return to Guatemala, due to abandonment by [Father]; that reunification is not possible with Father due to Father's abandonment, abuse[,] and neglect; and there exists unsafe conditions for the children in Guatemala. [Father was neither present at the June 4, 2025] pre-trial conference [nor at the] October 1, 2025[hearing]. [. . . Mother] was required to serve [Father] with each of the court notices, [and Mother's counsel represented to the court they were properly served]. In Mother's proposed findings of fact and conclusions of law, provided to the court, she states that the complaint in custody was hand-delivered "to an adult residing at [Father]'s home in Guatemala." Moreover, at [the combined custody and SIJ hearing], Mother testified that "a relative of hers served [Father] personally and that the documents were mailed to [Father]." A review of the affidavit of service states that the petition for special relief was handed to "Catalina Agustin Perez de Agustin, who is an adult member of the family with whom Armando Agustin y Agustin resides."

Unlike most of the custody cases before this court, where both biological parents are present to address their custody concerns with the court, this case is noticeably different in that Father is a

³ Although the certified record does not contain the transcripts of the October 1, 2025 hearing, the court summarized the testimony and proceedings, and we conclude that the omission does not materially impede our review where there is no material disagreement with that summarization.

foreign national, who remains in Guatemala, and has not allegedly asserted any claims for custody. Nor is there any other party who is presently seeking custody, visitation with [the Children], or to assert a right pertaining to [the Children.] Likewise, Mother did not provide to the court any prior custody orders from Guatemala. Thus, Mother has always been free to exercise her parental rights, attendant to the [C]hildren, without consideration of Father or any other adult's input. Therefore, it appears that Father's alleged abandonment was not an issue for Mother, while in Guatemala where the [C]hildren spent the majority of their lives, as there were no orders in support or orders in custody issued in Guatemala, and presented to the court. Hence, this court gathers that Mother now seeks an order in custody at this juncture, and specific findings of fact, for purposes of immigration.

Mother seeks an award of custody of [the Children], and also seeks specific findings, that [the Children] are unable to return to Guatemala, due to abandonment, abuse, neglect, and that reunification with one or both parents is not viable. [. . . Mother] testified that the[Children] were born during the marriage and that she remains married to [Father]. Mother left [Guatemala] for the U.S. shortly after Father left her and their children, in 2017. Prior to Father's departure, Mother stated that Father was physically abusive to her. She alleged that he would shove her, rip her clothes off, and pull her hair. Mother further alleged that Father was also an alcoholic and, when drunk, he would become physically abusive. Though Father did not physically harm the children, Mother stated in her proposed findings of fact and conclusions of law [] that he committed the alleged acts of violence, towards her, in front of their children.

However, at trial, Mother testified that Father was not physically violent to her in front of the kids.^[4] Lastly, in Mother's [proposed

⁴ A different judge, in another case listed at trial court docket number 2021-008173 in the Court of Common Pleas of Delaware County, granted Mother's requested SIJ status findings as to two older siblings in 2023. The notes of testimony from that 2023 hearing and the SIJ findings wherein the court determined that it was not in the best interest of the older siblings to return to Guatemala because of Father's abandonment are part of the certified record for appeal in this case. In the prior case, Mother testified that Father physically abused her and that she made police reports to no avail. **See** N.T. Hearing, 3/31/23, at 26.

f]indings, she confirmed that Father left their home and moved in with his mother, paternal grandmother. Mother contends that Father has maintained no contact with her[] or [the Children] and that Father has never provided financial support for them.

Mother currently resides in Chester with [the Children], three [] of her other children, her partner, her adult nephew, and K.R.A.G.'s seven [] month[s'] old child. Mother states that she has lived in the United States [] for seven [] years, and that the [C]hildren have been with Mother for one [] year. Mother does not work; however, Mother[states] that her partner is able to care for her [and the Children.] Mother testified that A.R.A.G. is currently attending Toby Farms Elementary, and that she works hard. There were no other activities mentioned, whether social or extracurricular, on behalf of A.R.A.G. While providing her name to the court, the court noticed that A.R.A.G. clearly looked at notes, written in the palm of her hand, for assistance. The court did not inquire as to what other information A.R.A.G. had on her hands, though she would look down on occasion during the trial.

On the other hand, K.R.A.G. was pregnant by the time she entered into the U.S. She went to Chester High School, and graduated. Similarly, there was no mention of other activities, social or extracurricular, on her behalf. Presumably, K.R.A.G. is tasked with being a new parent and caring for a young child. It was stated that the father of K.R.A.G.'s child remains in Guatemala.

Unlike Guatemala, where Mother testified that her children were concerned for their daily safety, her children feel safe in the U.S. [The Children] remained with maternal grandmother when Mother first immigrated to the U.S. After residing with maternal grandmother, for approximately two [] years, [the Children] then lived with paternal grandmother for approximately four [] years. Their two [] older siblings came first to the United States, and now only Mother's three [] brothers remain in Guatemala. Nevertheless, it is Mother's belief that [the Children] prefer to remain in the U.S., with her.

K.R.A.G. testified that she has no relationship with Father, and that she has had no contact with him since he and Mother separated. When Mother immigrated to the U.S., she left [the Children] in the care of maternal grandmother. Eventually, [the Children] went to live with paternal grandmother, because she lived closer to their school. K.R.A.G. alleges that paternal grandmother was verbally abusive and that it became worse when

she became pregnant. K.R.A.G. came to the U.S. after becoming pregnant, and a few months shy of her eighteenth [] birthday. Her child is now seven [] months[] old. K.R.A.G. stated that she has no relationship with the father of her child either, and that he disappeared once she informed him that she was pregnant. The father of her child is eighteen [] years old himself, and K.R.A.G. testified that she does not receive financial support from him. Ultimately, K.R.A.G. states that she would like to remain in the U.S. Maternal grandmother passed away, and she is unable to live with the father of her child. Though paternal grandmother was able to see that [the Children] made it to school in Guatemala, and that they were safe, K.R.A.G. prefers to remain in the U.S.

A.R.A.G. echoed the sentiment expressed by [K.R.A.G.] and Mother. She testified that she has no relationship with Father, and has not received any support from him as well. A.R.A.G also stated that she didn't feel safe in Guatemala because her mother was not there. She desires to remain in the U.S., with Mother, and continue her studies with the hopes of graduating one day.

Father, an alleged resident of Guatemala, did not participate in these proceedings. [Mother] was required to serve [Father] with each of the court notices, of which [Mother's counsel explained how service was achieved]. Mother[and the Children] allege that Father has not attempted to communicate with any of them, nor has he sought to provide financial assistance for them.

Custody Court Opinion, 11/17/25, at 2-5 (headings and unnecessary capitalization omitted).

The custody court found that neither Mother nor the Children were credible and denied Mother's SIJ status findings request as follows:

The court questions [if] service [is] being made on someone other than Father. Moreover, the court is skeptical as to the alleged lack of contact, and assistance, [the Children] had with [and from] Father considering they lived for several years[] in Guatemala while Mother was in the U.S.[] with paternal grandmother. And Father was said to have left Mother[and the Children] to reside with paternal grandmother. Given the very minimal testimony and lack of documentary evidence presented to the court[,] i.e. no prior custody orders sought on behalf of K.R.A.G. until she was 17.5 years old, coupled with the aforementioned concerns, it

seems as if [the Children] are well-intentioned teens who traveled to the United States in the hopes of a better life and opportunities, with K.R.A.G. being pregnant at the time. Thus, Mother, A.R.A.G.[,] and K.R.A.G.'s testimony seem to be guided by their motivation to demonstrate to the court that [the Children] satisfy the requirements necessary to qualify for SIJ[status].

[. . .] The court struggled not to believe that A.R.A.G. and K.R.A.G.'s departure from Guatemala was really for the sole purpose of trying to benefit from the child custody laws in Pennsylvania and for them to become a United States citizen, rather than the stated reasons in the complaint alleging neglect, abuse, and abandonment. There was no documentary evidence, presented at trial, for this court to consider for a child custody determination.

It appears that Mother never requested an order in custody until she was present in the U.S.[and] A.R.A.G. and K.R.A.G. were 13 and 17.5 years old respectively[.] Father allegedly resides hundreds of miles away[,], which would impact his participation in custody proceedings, and Father allegedly has had no contact with [the Children] in seven [] years. Additionally, there were no documents presented that indicate that Mother has ever sought an order in support, while residing in Guatemala, and that Father was capable of providing support. Mother states that she obtained an order of protection, due to Father's physical abuse. Yet, Mother did not mention seeking an order in custody nor was there any order, from Guatemala, presented to the court.

The court has concerns as to the absence of any documentary evidence, which could assist the court with a finding that abuse, abandonment, or neglect was the reason for seeking an order in custody at this juncture, and when considering that Mother also seeks a finding [the Children] are unable to return to Guatemala, and the parties are understandably motivated to provide testimony in order to qualify for a [SIJ] determination. Moreover, should [the Children] return to Guatemala, they would be able to return to paternal grandmother's care.

Custody Court Opinion, 1/17/25, at 5-6. The court further analyzed the particular facts of the custody case, including the request for SIJ findings, as follows:

[Mother] seeks [that] this court make[s] a determination, based upon the testimony submitted, that [the Children] were subjected to abandonment, abuse and neglect by [Father] and therefore, [Mother] should be awarded sole legal and sole physical custody. It is this subtlety, which makes this different from most custody cases presented to the court when immigration is not a factor. Mother, by default, possessed sole physical and sole legal custody of [the Children] in that Father seemingly has never challenged Mother's decisions as it pertained to education, religion, or even leaving the country of Guatemala. According to Mother's own testimony, and her complaint in custody, there has not been a contest to her custodial rights from Father or presumably from anyone else. Moreover, Mother did not testify that she had an order in custody while residing in Guatemala, or that Father was seeking their return. However, for immigration purposes, a final order in custody is needed to proceed with a [SIJ] determination.

Moreover, in most cases presented to this court, where allegations of abuse, abandonment, or neglect are claimed, physical evidence typically accompanies the complaint and is presented at the hearings, whether it be recent photos, police reports, hospital records, social services involvement, text messages, etc. No such evidence was presented in this case. Even with the allegations that no financial support has been provided, the court was not presented with any evidence that Mother ever sought support and that Father was deemed able to provide it.

Lastly, K.R.A.G. testified that she and A.R.A.G. resided with paternal grandmother, for several years, immediately before coming to the U.S. During this time, Mother had two [] additional children in the U.S., with her new partner. It was also testified to that Father left Mother [and the Children] to reside with paternal grandmother. Moreover, the affidavit of service referenced that the petition for special relief was handed to someone other than Father.

This court questions the credibility of Mother[and the Children] when they testified that Father has had no contact with [the Children.] This court believes that more than likely Father continues to live with paternal grandmother and/or maintains a close relationship with paternal grandmother, and that [the Children] were at the home with both paternal grandmother and Father and/or Father assisted in their care in some way. Paternal grandmother may have been the individual who accepted service on behalf of Father. No testimony was provided as to the identity

of the adult who accepted service on behalf of Father. A.R.A.G. and K.R.A.G. did not come to the U.S. until K.R.A.G. became pregnant and was a few months away from her eighteenth [] birthday.

After careful consideration of the testimony, and the lack of physical evidence; examination of that testimony and the witnesses; the factors set forth in 23 Pa.C.S.[] § 5328(a) and 231 Pa. Code § 1930.4; and consistent with the above analysis, the court awards Mother sole legal and primary physical custody. This court awards Father partial physical custody, as the parties may agree upon.

[. . . Mother and the Children] testified that Father has had no involvement with the care and upbringing of [the Children.] However, the court again has concerns as to the veracity of the testimony provided, given the fact that the [C]hildren resided with paternal grandmother for several years before immigrating to the U.S. Additionally, Mother did not assert, or provide to the court evidence, that she ever sought an award in custody for [the Children] in a venue where Father would have been more easily able to assert any legal rights to the [C]hildren, should he desire to do so. It doesn't appear that Mother lacked access to the legal system, since she testified that she received an order from the court regarding Father's alleged physical abuse. Nonetheless, this court is tasked in every custody case[] to consider the factors set forth in 23 Pa.C.S. § 5328(a) in support of its decision as opposed to making limited specific findings of fact, requested by a party, to facilitate an application for [SIJ status].

* * *

Mother claims that it would be in the best interest of A.R.A.G. and K.R.A.G. for the court to issue [the requested SIJ findings] because it will presumably enable [the Children] to pursue permanent lawful status. Whereas this court can understand [the Children]'s desire to seek permanent lawful status, and perhaps United States citizenship one day, neither lawful status and/or citizenship are factors this court is tasked with considering. Additionally, the record in this matter does not support a conclusion that it is in the best interest of [the Children] to issue a [SIJ status] order due to abandonment, abuse, or neglect. The court cannot conclude, in the absence of unbiased and credible testimony, that reunification is not possible with one or both parents. [The Children] both lived with paternal grandmother for

several years immediately before coming to the U.S. Paternal grandmother's home was where Father went to reside, after leaving Mother. It is extremely likely that Father has had contact, if not lived with [the Children], at the same time A.R.A.G. and K.R.A.G. were in paternal grandmother's physical care and custody while Mother resided in the U.S. and was expanding her family. Therefore, should [the Children] return to Guatemala, they would be returning back to paternal grandmother and presumably Father. Likewise, [the Children] have spent more time in Guatemala[] than here in the U.S. Moreover, [the Children] appear to know little English, with A.R.A.G. not involved in any activities outside of school.

Custody Court Opinion, 11/17/25, at 8-10 (headings and unnecessary capitalization omitted).

After the court's November 17, 2025 order, Mother filed a timely appeal and concise statement pursuant to Pennsylvania Rule of Appellate Procedure 1925. On appeal, Mother presents the following issues for our review:

1. Whether the custody court erred in considering Mother's request for SIJ determinations without following the guidelines and standards established by the Supreme Court in **Velasquez v. Miranda**[], 321 A.3d 876 (Pa. 2024)]?
2. Whether the custody court erred in finding that the testimony presented at [the hearing], indicating that Father abandoned Mother and the children in 2017, has never attempted to have any contact with the children since then, and has never provided any financial support for the children since then, was not sufficient to conclude that the children's reunification with Father is not viable due to abandonment and neglect, as those terms are defined under Pennsylvania law?
3. Whether the custody court erred in finding that the testimony at [the hearing] indicating that the children are doing well living with Mother in Pennsylvania and are afraid of returning to Guatemala for security reasons, and that there is no one in Guatemala to take care of them, was not sufficient to support a finding that it is not in the children's best interest to be returned to Guatemala, especially after concluding that it was in the best interest of the children to award sole legal and

partial physical custody to Mother, who lives in Pennsylvania and is providing care and support for the child[ren] in Pennsylvania?

See Appellant's Brief, at 2-3 (party descriptors omitted).

Prior to reaching the merits of this appeal, we must ensure that the custody court had jurisdiction under the UCCJEA to issue an initial custody determination because that is the vehicle through which Mother invoked the court's custody and SIJ findings jurisdiction. **See Velasquez**, 321 A.3d at 882 (holding that "pursuant to federal SIJ law, a child who is the subject of custody proceedings that result in sole custody being awarded to the parent presently in the United States may seek SIJ determinations in that custody proceeding"); **see also B.J.D. v. D.L.C.**, 19 A.3d 1081, 1082 (Pa. Super. 2011) (noting "[I]t is well-settled that the question of subject matter jurisdiction may be raised at any time, by any party, or by the court *sua sponte*.") (citation omitted).

"Our standard of review over whether a court possesses subject matter jurisdiction is a question of law, which we review *de novo* with a plenary scope, whereas review of a court's decision of whether or not to exercise jurisdiction is for an abuse of discretion." **OMalley v. Isquierdo**, 345 A.3d 321, 325 (Pa. Super. 2025). Further, where the UCCJEA governs subject matter jurisdiction, we engage in statutory interpretation, which is a question of law, requiring *de novo* review under a plenary scope. **See id.**

When interpreting statutes, we are guided by the following principles:

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.

Every statute shall be construed, if possible, to give effect to all its provisions. The plain language of the statute is generally the best indicator of legislative intent, and the words of a statute shall be construed according to rules of grammar and according to their common and approved usage. We generally look beyond the plain language of the statute only where the words are unclear or ambiguous, or the plain meaning would lead to a result that is absurd, impossible of execution or unreasonable.

Id. at 325-26 (citations, quotation marks, and brackets omitted).

It is well settled that “[t]he purpose of the UCCJEA is to avoid jurisdictional competition, promote cooperation between courts, deter the abduction of children, avoid relitigating custody decisions of other states, and facilitate the enforcement of custody orders of other states.” **A.L.-S. v. B.S.**, 117 A.3d 352, 356 (Pa. Super. 2015).

Section 5421(a) of the UCCJEA sets forth the limited circumstances for vesting a court with subject matter jurisdiction to make an initial child custody determination. **See OMalley**, 345 A.3d at 326. Section 5421(a) sets forth the following bases for establishing jurisdiction to make an initial custody determination:

(a) General rule. — Except as otherwise provided in section 5424 (relating to temporary emergency jurisdiction), a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

(1) this Commonwealth is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within the six months before the commencement of the proceeding and the child is absent from this Commonwealth and a parent continues to live in the Commonwealth;

(2) a court of another state does not have jurisdiction under paragraph (1) or a court of the home state of the child has declined to exercise jurisdiction on the ground that this

Commonwealth is the more appropriate forum under section 5427 (relating to inconvenient forum) or section 5428 (relating to jurisdiction by declined by reasons of conduct) and:

- (i) the child and the child's parents, or the child and at least one parent or person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence; and
 - (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training[,] and personal relationships;
- (3) all courts having jurisdiction under paragraphs (1) and (2) have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under section 5427 or 5428; or
- (4) no court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3).

23 Pa.C.S. § 5421.

Home state jurisdiction under Section 5421(a)(1) is the preferred basis for determining jurisdiction under the UCCJEA. **See R.M. v. J.S.**, 20 A.3d 496, 501 (Pa. Super. 2011). The UCCJEA defines "home state," in relevant part, as "[t]he state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." 23 Pa.C.S. § 5402. Foreign countries qualify as states under the UCCJEA. **See id.** at § 5405(a). Commencement of proceedings is defined under the UCCJEA as "[t]he filing of the first pleading in a proceeding." **Id.** at § 5402.

Instantly, the custody court made no specific findings as to jurisdiction to issue a custody determination and SIJ findings for the Children. Mother

filed the underlying custody complaint in January 2025 and, therein, indicated Children left Guatemala in June 2024 and began living with her in Chester in September 2024. **See** Complaint, 1/23/25, at ¶ 6. Mother's testimony at the hearing similarly established that Children left Guatemala in June 2024. **See** N.T. Hearing, 6/4/25, at 31.

After our review, we cannot conclude determinatively on this record that Pennsylvania was the Children's home state under the UCCJEA when Mother filed her custody complaint in January 2025 because there is not clear record evidence that the Children lived in Pennsylvania for the prior six months, although it is possible. **See** 23 Pa.C.S. §§ 5421(a)(1), 5402. Further, it is not clear that Guatemala was not the Children's home state when Mother filed the custody complaint as there remains the possibility that country served as the Children's home state in the lookback period from the commencement of the proceedings backwards through to July 2024, which would defeat jurisdiction in Pennsylvania. **See id.** at §§ 5421(a)(1)-(2), 5402. Guatemala might be the relevant home state in that lookback period because the UCCJEA's "home state" definition and the initial custody provisions establish home state jurisdiction in the state that was the home state within six months of the commencement of the child custody proceeding and a child's home state is where the child lived for six consecutive months ending within the six months before the child custody proceeding was commenced. **See id.** at §§ 5421(a)(1), 5402, 5405(a). Nevertheless, this court cannot find facts in the first instance. **See, e.g., Bouzos-Reilly v. Reilly**, 980 A.2d 643, 646 (Pa.

Super. 2009) (remanding for limited purpose to find facts necessary to determine jurisdiction under UCCJEA).

Accordingly, we must vacate the custody determination and remand for the limited purpose of holding an evidentiary hearing on the court's jurisdiction to enter an initial custody determination and make SIJ findings for the Children. Thus, we direct the court to hold a hearing, permit Mother to present to the court additional evidence on the jurisdictional issue, and make a determination as to whether the court had jurisdiction under the UCCJEA, within thirty days of remand of the record. If the court finds that it was vested with jurisdiction, it shall reenter its custody award. If the court determines that it is divested of jurisdiction, Mother may take a new appeal from that subsequent order.

Nevertheless, to the extent the court finds on remand that it is vested with jurisdiction, a new custody hearing is not necessary, but we must address additional errors that we have identified in the court's analysis in its refusal to issue the requested SIJ findings. In doing so, we need only reach Mother's first issue.

Specifically, in her first issue, Mother claims that the ***Velasquez*** decision stands for several propositions: (1) custody courts are "juvenile courts" within the meaning of the federal SIJ statute and regulations; (2) it is not necessary for a child to be the subject of dependency proceedings for the court to make SIJ determinations; (3) Pennsylvania courts have a limited role insofar as "[i]t is USCIS that decides whether to grant the child an immigration

benefit; the state judicial determinations and their supporting facts do not confer or guarantee an immigration status to the child”; (4) the appropriate burden of proof is that SIJ petitioners need only establish their entitlement to predicate findings by a preponderance of the evidence; (5) Pennsylvania custody courts have wide latitude to interpret Pennsylvania law in finding whether reunification is not viable due to abandonment, abuse, neglect, or similar basis; (6) a court’s custody determination awarding custody to an individual in Pennsylvania is in itself a sufficient basis for concluding that it would not be in the best interest of a child to return to his or her country of origin, since the custody determination is based on what is in the best interest of the child. **See** Mother’s Brief, at 15-17. Mother points out that the custody court judge in this case is the same judge whose decision was reversed in **Velasquez**, and she asserts that, in both cases, the court misapprehended its role in the SIJ process by questioning the motives in seeking SIJ determinations. **See id.** at 17. Mother further maintains that in both **Velasquez** and in the present case, the custody court applied standards that the Supreme Court struck down in **Velasquez**. **See id.** at 19.

Further, Mother argues that there was no record support for the court’s credibility finding it made against her and the Children’s testimony insofar as the court based its decision on its assumption that Father was living with the Children when they lived with paternal grandmother. **See id.** at 14. Mother claims that she testified that she did not know where Father was after he left them, and K.R.A.G. testified that the last time she had contact with Father

was approximately seven years prior, when Father left the family home. **See id.** Mother argues that the court credited her testimony regarding Father's abandonment and neglect because it awarded full legal and partial physical custody to her. **See id.** at 15. In conclusion, Mother seeks an order reversing the custody court's order and remanding to the custody court for entry of orders pursuant to 8 U.S.C. § 1101(a)(27)(J) and 8 C.F.R. § 204.11, directing it to include the determinations that: (1) the Children's reunification with Father is not viable under Pennsylvania law due to Father's abandonment, abuse, and neglect; and (2) it is not in the Children's best interest to be returned to Guatemala. **See id.** at 25.

Our standard of review of the denial of requested SIJ predicate findings is as follows:

When considering pure questions of law, our standard of review is *de novo* and our scope of review is plenary. **See Int. of K.T.**, 296 A.3d 1085, 1104 (Pa. 2023). We generally do not "interfere with the trial court's factual conclusions unless they are unreasonable in view of the trial court's factual findings and thus represent an abuse of discretion." **T.B. v. L.R.M.**, 786 A.2d 913, 916 (Pa. 2001); **see also Int. of K.N.L.**, 284 A.3d 121, 132-33 (Pa. 2022) ("In matters arising under the Adoption Act, as well as appeals of child custody and dependency decisions, our plenary scope of review is of the broadest type; that is, an appellate court is not bound by the trial court's inferences drawn from its findings of fact, and is compelled to perform a comprehensive review of the record for assurance the findings and credibility determinations are competently supported.") (internal quotation marks omitted). Likewise, while we have a broad scope of review, we cannot nullify the fact-finding function of the judge presiding over the custody hearing or their ability to make credibility determinations. **See Lombardo v. Lombardo**, 527 A.2d 525, 529 (Pa. 1987).

Velasquez, 321 A.3d at 891.

In ***Velasquez***, the Pennsylvania Supreme Court considered a nearly identical factual case faced by the same judge, wherein the court denied a Mother's request for SIJ findings but awarded her sole custody of her Guatemalan immigrant children. Further, in that case and in this one, the mother alleged the father's abuse, abandonment, and neglect prevented reunification with him in Guatemala, and it was not in the children's best interests to return to Guatemala. In ***Velasquez***, the Supreme Court explained the role of the Pennsylvania state courts in the SIJ scheme, including the requirement that state courts evaluate a request for SIJ findings under state law. ***See id.*** at 903. The best interest of the child analysis in custody cases where SIJ findings are requested is also reviewed under state law and is considered on a case-by-case basis in accordance with the statutory factors. ***See id.*** at 904; ***see, e.g.,*** 23 Pa.C.S. § 5328(a). The child's best interests and custody determinations are interrelated as follows:

If analysis of the child's best interest results in a determination that sole legal and physical custody should be with the child's parent or other individual who resides in the United States, then the court can also make the predicate SIJ judicial determination related to the child's best interest — that it is in her best interest not to be returned to her country of nationality or habitual residency. Similarly, if the court awards sole legal and physical custody to the U.S.-resident individual, its findings on this question may support the SIJ predicate judicial determination that reunification with the parent located elsewhere is not viable due to that parent's abuse, abandonment, or neglect of the child, or a similar basis under state law.²²

²² Findings related to the non-viability of reunification may involve varying degrees of failure to meet a child's needs and parental duties. Our custody courts may be guided by statutory definitions of relevant terms under the Domestic

Relations Code, specifically the definitions of “abandon[ment],” “abuse,” as used in protection from abuse and child custody matters, and “child abuse,” which includes “serious physical neglect,” under 23 Pa.C.S. §§ 5402, 6102, 5322, and 6303 respectively. Non-viability of reunification may also be due to neglect or similar circumstances that are not defined by statute, and “abuse” need not necessarily be established by evidence of a crime, a report of child abuse, or involvement with U.S. or foreign child protective services. Indeed, Section 5328(a)(2) does not make the custody court’s consideration of “abuse committed by a [parent]” contingent on evidence of a crime, report, or protective services. **See also** 23 Pa.C.S. § 6102 (“abuse” not limited to incidents involving crimes, police report, or protective services). A minor SIJ petitioner may have experienced abuse abroad where there are distinct systems of criminal justice, protection from abuse, and child welfare. Suffice it to say “abuse” may be established through other credible evidence, such as testimony by a parent.

Velasquez, 321 A.3d at 905.

Further, the **Velasquez** Court clarified that the appropriate burden of proof is “whether Mother established by a preponderance of the evidence that it would be in Children’s best interest not to return to Guatemala.” **Id.** at 906. Ultimately, the **Velasquez** Court rejected the custody court’s findings where it applied an improper standard and burden of proof. **See Velasquez**, 321 A.3d at 906. Nevertheless, as the court’s custody determination was supported by the record, that custody ruling formed the basis for concluding that the mother in **Velasquez** met her burden of proof for establishing that it was in her children’s best interest to not return to Guatemala. **See id.** at 908. Thus, the **Velasquez** court remanded with instructions to enter the requested SIJ findings. **See id.** at 909.

Instantly, similar to our Supreme Court's conclusion in **Velasquez**, we find that, if the court is vested with jurisdiction, the Children are entitled to predicate SIJ determinations. **See id.; see also K.N.L.**, 284 A.3d at 133. Accordingly, we reject the custody court's SIJ findings because it applied the wrong legal standard and burden of proof in this case, as it did in **Velasquez**. **See Velasquez**, 321 A.3d at 906. Nevertheless, again assuming jurisdiction is vested, we credit the court's factual findings that are supported in the record that led it to award Mother sole legal custody of A.R.A.G.,⁵ but we conclude that, in applying the wrong evidentiary burden and standard, the court improperly confused the issues. In effect, it wrongly discredited Mother's and the Children's testimony that would have otherwise entitled the Children to the requested SIJ findings. Further, there is no direct record support for the

⁵ As K.R.A.G. was eighteen years old prior to the court's issuance of the custody determination, the court could only enter a custody determination as to A.R.A.G. **See M.B.S. v. W.E.**, 232 A.3d 922, 927-28 (Pa. Super. 2020) (noting that court may not render decision in custody appeal involving child who attained eighteen years of age during pendency of appeal). Nevertheless, assuming the court was vested with jurisdiction under the UCCJEA, the court maintained jurisdiction to enter SIJ findings as to both Children where Mother's timely-filed custody petition as to both Children preserved all of the SIJ issues. **See Orozco**, 284 A.3d at 479 n.1 (noting that county courts of common pleas have jurisdiction to enter SIJ findings until juvenile reaches twenty-one years of age); **see also Orellana v. Chuva**, 353 A.3d 212, 225 (Pa. Super. 2026) (remanding for entry of SIJ findings for child over eighteen years of age). In any event, the Pennsylvania courts leave the final SIJ eligibility determination to the appropriate authorities. **See Velasquez**, 321 A.3d at 895 ("It is USCIS that decides whether to grant the child an immigration benefit; the state judicial determinations and their supporting facts do not confer or guarantee an immigration status to the child.").

court's conclusion that Father lived with the Children when they lived with their paternal grandmother, which is largely the basis for the custody court's credibility findings. Moreover, contrary to the court's suggestion, documentary evidence of abuse, abandonment, and neglect is not required to satisfy the burden of proof nor to establish credibility. ***See Velasquez***, 321 A.3d at 905 n.22.

Here, as to the central issue of credibility, despite raising its various stated concerns that weighed against Mother's and the Children's perceived credibility, the custody court evidently credited their testimony regarding Father's abandonment and neglect because it awarded Mother sole legal custody of A.R.A.G., as well as primary physical custody. Also, despite raising concerns regarding service on Father for the relevant prior proceedings and regarding other stated reasons for discrediting Mother and the Children, the court nevertheless proceeded in the case and ultimately awarded sole legal custody and primary physical custody of A.R.A.G. to Mother, which demonstrated the court's crediting of their testimony that service was appropriate and that Father abandoned and neglected the Children.⁶ This finding is supported by the record evidence including Father's repeated failure to appear for any of the proceedings, including those proceedings in the other

⁶ The court's award of partial physical custody to Father is insignificant in this analysis where there is no record evidence of Father's exercise of any such rights after his abandonment and where those rights do not materially interfere with Mother's primary physical custody and sole legal custody.

siblings' 2023 case, which was made a part of the record in this case. In any event, we must point out that the custody court now reverses course on its prior statements to Mother's counsel on the record where the court informed counsel at the June 4, 2025 proceedings that "I'm just noting for the record, the way you served [Father] before seems reasonable and if you take those same steps, the [c]ourt would find those reasonable as well. I'm not asking you to do anything additional, [c]ounsel." N.T. Hearing, 6/4/25, at 28. In the end, we observe that the court never considered the appropriate question of "whether Mother established by a preponderance of the evidence that it would be in Children's best interest not to return to Guatemala." **Velasquez**, 321 A.3d at 906. Although the custody court stated that it believed that the Children would be able to return to paternal grandmother's care in Guatemala, including, potentially, to Father's care, the court made that assumption without any specific record support, and we are not bound by the custody court's inferences. **See id.** at 891 (noting appellate court is not bound by trial court's inferences and must assure findings and credibility determinations are competently supported). After our review, assuming jurisdiction under the UCCJEA, we conclude that Mother met her burden to establish by a preponderance of the evidence that it was not in the Children's best interest to return to Guatemala when the court awarded her sole legal custody of

A.R.A.G.,⁷ which custody order is supported in the record. **See id.** at 905. Indeed, Mother and the Children testified that Father abandoned the family for at least seven years and neglected them prior to that abandonment. The custody court's preoccupation with the uncontested nature of the proceedings due to Father's failure to participate, the lack of physical or documentary evidence in the record, and the immigration motive and purposes underlying the findings request, caused the court to misapprehend its role and fail to apply the relevant standard and burden of proof. Instantly, assuming jurisdiction under the UCCJEA, the court's custody award answers the question of whether it is in the Children's best interest to return to Guatemala, which it is not, and which finding is supported by the record.

Assuming the court is vested with jurisdiction, the result in **Velasquez** governs our disposition in this case as well. Accordingly, on remand, if the court finds that it was vested with jurisdiction to enter an initial custody determination, the court shall forthwith enter orders including the relevant SIJ findings that: (1) the Children's reunification with Father is not viable under Pennsylvania law due to Father's abandonment, neglect, and abuse; and (2) it is not in the Children's best interest to be returned to Guatemala. **See Velasquez**, 321 A.3d at 908-09. These orders shall include the factual basis for such determinations, consistent with this decision.

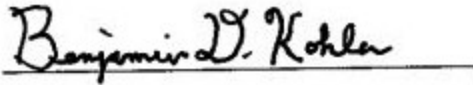
⁷ Although the custody order only applies to A.R.A.G., the factual basis for making that determination applies equally to K.R.A.G., and forms a basis for the SIJ findings as to both Children.

Order reversed. Remanded with instructions. Jurisdiction relinquished.

Judge McLaughlin joins the opinion.

Judge Sullivan files a concurring dissenting opinion.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/26/2026