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## Recent Developments: Romero v. Perez

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## RECENT DEVELOPMENT

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**ROMERO V. PEREZ: IN SPECIAL IMMIGRANT JUVENILE STATUS CASES, THE BURDEN OF PROOF IS THE PREPONDERANCE OF THE EVIDENCE STANDARD AND, THE COURTS SHOULD CONSIDER BROAD EVIDENCE ABOUT THE VIABILITY OF REUNITING A CHILD WITH A PARENT, BASED ON THE TOTALITY OF THE CIRCUMSTANCES.**

**By: Morgan Lynch**

The Court of Appeals of Maryland held that the preponderance of the evidence standard is the appropriate standard of proof to determine whether a child's reunification with a parent is viable in Special Immigrant Juvenile ("SIJ") status cases. *Romero v. Perez*, 463 Md. 182, 197, 205 A.3d 903, 912 (2019). The court also found that when determining whether a child's reunification with another parent is not viable, the court should interpret the terms "neglect," "abuse," and "abandonment" in a broad sense and consider the totality of the circumstances surrounding the child's entire relationship with the parent in question. *Id.* at 202, 205 A.3d at 914-15.

In September 2015, Celso Monterosso Romero ("Romero"), a United States citizen, filed a complaint in the Circuit Court for Baltimore City seeking sole legal and physical custody of his 17-year-old son, R.M.P., an undocumented immigrant from Guatemala, and simultaneously filed a separate motion requesting an order containing SIJ status factual findings. The SIJ status would give R.M.P. the ability to remain in the United States with Romero. Romero argued that it was not viable for R.M.P. to be reunified with his mother, Josefa Perez Carreto ("Perez"), in Guatemala because she had neglected him.

Romero and R.M.P. testified that R.M.P. was born to Romero and Perez in Guatemala in 1998. Romero and Perez separated in 2000, and Romero immigrated to the United States in 2004. R.M.P. lived with Perez but remained in frequent contact with Romero. When R.M.P. was ten, Perez began forcing him to collect heavy loads of firewood in the mountains, unsupervised and surrounded by venomous snakes. In 2012, R.M.P. injured his wrist, but Perez did not seek medical attention for her son. In 2015, after seven years of daily, forced labor, R.M.P. fled to the United States to live with Romero.

The Circuit Court granted Romero sole legal custody of R.M.P. However, the court was unclear as to the correct burden of proof to apply to find that R.M.P.'s reunification with Perez would be unviable. Prior to this case, Maryland had not yet established the burden of proof for SIJ cases. The

Circuit Court held that regardless of which burden governed in this case, Romero had not met the level of evidence to persuade the court that R.M.P.'s reunification with Perez was not viable and, therefore denied Romero's request to order SIJ factual findings. Romero filed a motion to alter or amend the judgment, which the Circuit Court denied. Romero then appealed the judgment to the Maryland Court of Special Appeals. The Maryland Court of Special Appeals affirmed the Circuit Court's judgment, holding that the correct burden of proof for SIJ status decisions is a preponderance of the evidence. The Court of Special Appeals found that Romero had not produced sufficient evidence to determine that R.M.P.'s reunification with Perez was not viable due to neglect.

The Court of Appeals of Maryland granted certiorari on July 12, 2018, to decide whether the burden of proof in SIJ cases is the preponderance of the evidence and whether courts should use a broad or narrow interpretation of neglect when evaluating the viability of reunifying a parent and child. *Id.* at 196, 205 A.3d at 911.

First, the Court of Appeals of Maryland held, in the first decision of its kind, that the preponderance of the evidence standard is the appropriate burden of proof in SIJ status cases. *Id.* at 197, 205 A.3d at 912. The court gave two reasons for this conclusion. *Id.* First, the preponderance of the evidence standard is "'generally applicable in civil actions' in Maryland." *Id.* (quoting *Shurupoff v. Vockroth*, 372 Md. 639, 659, 814 A.2d 543 (2003)). Second, the court determined that SIJ status cases do not involve "unusual coercive action" that would require the application of a clear and convincing standard, such as termination of parental rights proceedings. *Id.* at 198, 205 A.3d at 912. In SIJ status cases, the court does not seek to terminate any parental rights, but merely to determine whether the reunification of a child with a parent is viable. *Id.* at 199, 205 A.3d at 912-913. Therefore, the court held that the preponderance of the evidence standard is appropriate in SIJ status cases. *Id.* at 199, 205 A.3d at 913.

In its second holding, the Court of Appeals determined that in SIJ status cases, the court should use broad interpretations of the terms "neglect," "abuse," and "abandonment." *Id.* at 202, 205 A.3d at 914-15. The court should base its determination on the totality of the circumstances between the child and the parent. *Id.* The court established three factors for courts to evaluate while applying this standard, including "(1) the lifelong history on the child's relationship with the parent . . . (2) the effects that forced reunification might have on the child . . . and (3) the realistic facts on the ground in the child's home country." *Id.* at 202-03, 205 A.3d at 915.

In applying these factors to determine whether the evidence of neglect was enough to meet the preponderance of the evidence standard based on the totality of the circumstances, the court reasoned that it should use the

Maryland law that defines neglect by a parent. *Id.* at 204, 205 A.3d at 916. Maryland law defines “neglect” as, “leaving 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.” *Id.* at 206, 205 A.3d at 917 (quoting CJP § 3-801(s); Md. Code Ann., Fam. Law § 5-701(s)). The court placed a heavy significance on R.M.P.’s young age when Perez forced him to collect heavy firewood unsupervised, in mountainous terrain that contained venomous snakes. *Id.* at 206, 205 A.3d at 917. The court also considered the fact that Perez did not seek medical attention for her son after a wrist injury. *Id.* The court stated, in considering the totality of the circumstances, that Perez’s behavior in forcing R.M.P. to work in these conditions that placed him at a substantial risk of harm, and thus met the broad definition of neglect under Maryland law. Therefore, the court concluded that reunification between R.M.P. and his mother was not viable. *Id.*

In *Romero*, the court held that in SIJ status cases, since the court’s actions are not unusually coercive, but only seek to decide whether forcing a child to go back and live with a certain parent would be in the best interest of the child, the preponderance of the evidence standard is proper. To meet the newly established preponderance of the evidence standard in SIJ status cases, petitioners may present any evidence that establishes neglect of a parent that would make reunification with a child unviable. This includes any information about the relationship between the child and the parent that would meet Maryland’s definition of neglect, regardless of the law on neglect in the parent’s country of citizenship. Based on this decision, since petitioners can now introduce a broader range of evidence as to a parent’s neglect, more SIJ status findings will likely be issued in Maryland. The court’s decision indicates that Maryland places a high priority on protecting children from neglectful parents. Therefore, children navigating the immigration system in Maryland can know that the courts are likely to grant them SIJ status in order to place them with the appropriate parent in cases of neglect.