



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

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

In Re: 15257351

Date: November 18, 2021

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner seeks classification as a special immigrant juvenile (SIJ) under sections 101(a)(27)(J) and 204(a)(1)(G) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition) and the matter is now before us on appeal. We exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). Upon *de novo* review, we will sustain the appeal.

## I. LAW

To establish eligibility for SIJ classification, petitioners must show that they are unmarried, under 21 years old, and have been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioners in the custody of a state agency or an individual or entity appointed by the state or the juvenile court. Section 101(a)(27)(J)(i) of the Act. The record must also contain a judicial or administrative determination that it is not in the petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

SIJ classification may only be granted upon the consent of the Department of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)–(iii) of the Act; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). Petitioners bear the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

## II. ANALYSIS

The record reflects that in [ ] 2018, when the Petitioner, a native and citizen of Honduras, was 18 years old, a General Court of Justice, District Court Division in [ ] North Carolina

(District Court) issued an *Order Granting Permanent Custody* (custody order) granting “sole permanent physical and legal care, custody, and control” of the Petitioner to his father. The custody order states, in pertinent part, that the Petitioner’s reunification with his mother is not viable due to neglect and abandonment pursuant to section 50A-102(1) of the General Statutes of North Carolina (N.C. Gen. Stat.), and that it is not in his best interest to return to Honduras, his country of nationality. Based on the custody order, the Petitioner filed the instant SIJ petition in February 2018.

The Director denied the petition, determining that the Petitioner had not demonstrated that the custody order was issued by a juvenile court. The Director reasoned that the record lacked sufficient evidence that the District Court took jurisdiction over him prior to his 18th birthday, or that the custody order was written pursuant to section 50-13.8 of the N.C. Gen. Stat., as counsel claimed. The Petitioner has overcome this determination on appeal.

To be eligible for SIJ classification, juveniles must have been subject to a dependency or custody order issued by a “juvenile court,” which is defined as a court “in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). While the specific title and type of state court may vary, SIJ petitioners must establish that the court had competent jurisdiction to make judicial determinations about their dependency or custody and care as juveniles under state law. *See* 8 C.F.R. § 204.11(a), (d)(2)(i) (stating that required initial evidence includes a family court order issued by a court of competent jurisdiction).<sup>1</sup> In the context of federal immigration benefits contingent on prior legal determinations regarding a child’s welfare, the term “competent jurisdiction” refers to the court’s authority under state or foreign law to adjudicate the dependency or custody and care of the child. *Compare* 8 C.F.R. § 204.11(a), (d)(2)(i) (requiring an order issued by a court of competent jurisdiction over the SIJ’s custody and care) *with* 8 C.F.R. §§ 204.3(b), 204.301 (referencing courts of competent jurisdiction as those authorized under the foreign country’s child welfare laws to be entrusted with the custodial care of an abandoned child in anticipation of adoption as an orphan or Hague Convention adoptee). In making this determination, state law, not federal law, governs the definition of “juvenile,” “child,” “infant,” “minor,” “youth,” or any other equivalent term for juvenile which applies to the dependency or custody proceedings before the juvenile court. *Matter of A-O-C-*, Adopted Decision 2019-03, at 4 (AAO Oct. 11, 2019).

On appeal, Petitioner’s counsel reiterates her prior claim that the District Court exercised jurisdiction over the Petitioner as a juvenile when it issued the custody order. Counsel maintains that the critical consideration in a judge’s custody determination is the best interest of the child, which considers the child’s “age, safety and specific needs.” Counsel avers that although a “minor” is defined under North Carolina law as “any person who has not reached the age of 18 years,” N.C. Gen. Stat. § 48A-2, North Carolina law also provides that “[f]or the purposes of custody, the rights of a person who is mentally or physically incapable of self-support upon reaching his majority shall be the same as a minor child for so long as he remains mentally or physically incapable of self-support.” N.C. Gen. Stat. § 50-13.8. Counsel claims that in the instant case, the judge was aware of and acted correctly in treating the Petitioner as a minor and applying section 50-13.8 of the N.C. Gen. Stat., as the judge heard testimony that the Petitioner was not fluent in English, still enrolled in the tenth grade, and a

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<sup>1</sup> Consistent with the district court’s decision in *R.F.M. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. Mar. 15, 2019) and section 101(a)(27)(J)(i) of the Act, USCIS interprets the definition of juvenile court at 8 C.F.R. § 204.11(a) to mean a court located in the United States having jurisdiction under state law to make judicial determinations about the dependency and/or custody and care of juveniles.

victim of a sexual assault in Honduras that scarred him psychologically—facts that are referenced in the custody order.

Upon *de novo* review, the record supports these claims. The *Motion for Factual Findings in Support of Petition for Special Immigrant Juvenile Status* (motion) submitted to the District Court in [redacted] 2017, before the Petitioner’s 18th birthday, stated that the Petitioner was in the ninth grade at [redacted] High School and was not working. The custody order, issued the following year, stated that he was “developing [his] English skills and adjusting to the school,” and that he “continue[d] to struggle with the emotional and psychological trauma proper of a young boy who was a victim of sexual assault.” Throughout the custody order, the judge referred to the Petitioner as a “minor child.”

In addition, the Petitioner submits on appeal an unofficial transcript from the [redacted] 2018 custody hearing. The transcript reveals that the Petitioner was “very shy” and “wouldn’t eat” after coming to the United States, but was eventually able to confide in a local pastor about the sexual assault, which was perpetrated by a neighbor. The judge agreed with counsel that returning the Petitioner to Honduras could exacerbate the trauma he had experienced due to the assault. The judge acknowledged that the Petitioner was in the tenth grade at the time of the hearing, and explicitly stated that the court was “still calling him a minor child at this point.”

The record reflects that the District Court considered the Petitioner’s status as a high school student, emotional trauma as a result of a sexual assault, and continued dependence on his father, in determining that despite reaching the age of 18, he was physically or mentally incapable of self-support such that his rights were the same as for a minor child under North Carolina law for purposes of making a custody determination. Consequently, the Petitioner has established that the District Court exercised jurisdiction over him as a juvenile and was acting as a juvenile court as defined in 8 C.F.R. § 204.11(a) when it placed him in the custody of his father.

### III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and merits USCIS’ consent to his SIJ classification.

**ORDER:** The appeal is sustained.