



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

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

In Re: 13258676

Date: NOV. 24, 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 (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner 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 petitioner's best interest to return to his or her 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 (DHS), 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). The petitioner bears the burden of proof to demonstrate his or her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2016, when the Petitioner was 18 years old, the [] Judicial District Court in [] [] Texas (district court), issued an order entitled, *ORDER IN SUIT AFFECTING PARENT CHILD RELATIONSHIP* (SIJ order), declaring that the court made its findings “after examining the record and hearing the evidence and argument of Petitioner.” The SIJ order states, in pertinent part, that the court has jurisdiction over the Petitioner as a child, pursuant to “Tex. Fam. Code Chapter 102 and Tex. Fam. Code § 154.002. [The Petitioner] is a child pursuant to Tex. Fam. Code § 101.003.” The SIJ order further declares that the Petitioner’s reunification with his mother is “not viable due to neglect as defined under Chapter 261.001(4), Texas Family Code,” and “reunification with the child’s father is not viable because he is deceased.” Finally, the district court determined that it is not in the Petitioner’s best interest to return to Honduras, the country of his nationality. In addition to the SIJ order, in [] 2016, the district court issued an order entitled, *ORDER ON MOTION TO CLARIFY IN SUIT AFFECTING PARENT-CHILD RELATIONSHIP* (clarifying SIJ order), which stated the following:

- “a) In hearing the matter of the original Suit Affecting the Parent-Child Relationship (“SAPCR”), and issuing its order dated [] 2016, the Court asserted jurisdiction over [the Petitioner] as a ‘child’ as defined by Tex. Fam. Code § 101.003(b);
- b) [The Petitioner] is dependent on this Court pursuant to the Court’s authority under Texas Family Code 154.001(a)(1) and 154.002. At the time of the original SAPCR proceedings, the child was enrolled in a program leading toward a high school diploma and in compliance under Chapter 25, Education Code, which established the basis for dependency for the support and care of the child;
- c) Upon rendering its order dated [] 2016, this Court ordered child support be paid in order to provide relief to the child, [the Petitioner] from parental abandonment or neglect;
- d) Upon rendering its order dated [] 2016, this Court acquired continuing, exclusive jurisdiction over support for the child pursuant to Tex. Fam. Code § 155.001(a) and therefore Pursuant to Tex. Fam. Code § 156.001 and Tex. Fam. Code § 156.401(a), this Court has continuing jurisdiction over modification of child support until all current support and all support arrearages have been paid, and such modification requires further action by this Court.”

Based on the district court orders, the Petitioner filed this SIJ petition in January 2017. The Director denied the SIJ petition, finding that “he did not meet [his] burden of showing that the district court had jurisdiction over [him] as a juvenile under state law pursuant to INA 101(a)(27)(J).” The Director further determined that the Petitioner’s request for SIJ classification did not merit USCIS’ consent

because the SIJ order “does not indicate whether the court provided some form of relief to protect [him] from parental abuse, abandonment, neglect, or a similar basis under state law.”

On appeal, the Petitioner submits a brief arguing that the Director erred in finding that the district court did not have proper jurisdiction over the Petitioner as a juvenile, and that the Petitioner was declared dependent on the district court, and, therefore, he is eligible for SIJ classification.

B. Juvenile Court

To be eligible for SIJ classification, juveniles must have been subject to a dependency or custody order issued by a “juvenile court.” Section 101(a)(27)(J)(i) of the Act. The term “juvenile court” 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 jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. *See Matter of A-O-C-*, Adopted Decision 2019-03, at 4 (AAO Oct. 11, 2019); *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 3-4 (AAO Oct. 11, 2019); 6 USCIS Policy Manual J.2(C), <https://www.uscis.gov/policy-manual>. In addition, 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 2019-3 at 4 (*citing to* 8 C.F.R. § 204.11(a) and (d)(2)(i), *Perez-Olano v. Holder*, No. CV 05-3604, Settlement Agreement ¶ 8 (C.D. Cal. Dec. 15, 2010), and *Budhathoki v. Nielsen*, 898 F.3d 504, 513 (5th Cir. 2018) (“Although the regulation permits an applicant for SIJ status to be someone who has not yet become age 21, what controls on eligibility for that status is the state law governing decisions over the care and custody of juveniles.”)).

Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner’s eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 6 (*citing Budhathoki*, 898 F.3d at 511 (“Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.”)).

Here, at the time of issuing the SIJ order, the district court declared its “jurisdiction of this case and of all parties and that no other court has continuing, exclusive jurisdiction of this case.” After specifying the Petitioner’s date of birth, the district court consistently identified him as a child, found him to be the subject of the suit affecting the parent-child relationship, and ordered his mother to pay child support. The SIJ order and the clarifying SIJ order pointed to specific state law provisions that provided it with jurisdiction over the Petitioner as a child, including Tex. Fam. Code sections 101.003(b) (stating that “in the context of child support, ‘child’ includes a person over 18 years of age for whom a person may be obligated to pay child support”), 154.001(a)(1) (stating that “the court may order either or both parents to support a child in the manner specified by the order; until the child is 18 years of age or until graduation from high school, whichever occurs later”), and 154.002 (stating that “the court may render an original support order, or modify an existing order, providing child support past the 18th birthday of the child to be paid only if the child is enrolled under Chapter 25,

Education Code, in an accredited secondary school in a program leading toward a high school diploma”).

The district court determined that since the Petitioner is enrolled in a program leading toward a high school diploma in compliance with “Chapter 25, Education Code,” the basis for his dependency on the district court “for the support and care of the child” was established. The district court ordered the Petitioner’s mother to pay monthly child support, an obligation to continue while he is enrolled and complying with minimum attendance requirements in a specified secondary educational program “leading toward a high school diploma.” In ordering the ongoing support obligations by the Petitioner’s mother and stating its continued jurisdiction over the Petitioner as a child if he remained subject to the provisions for support beyond the age of eighteen years set out under chapter 25 of the Texas Education Code, the district court specified the Petitioner was “dependent on this Court pursuant to Tex. Family Code 154.001(a)(1) and 154.002.”

These determinations, viewed in totality, establish by a preponderance of the evidence that the district court was acting pursuant to its jurisdiction over the Petitioner’s dependency and care as a child under Texas law, and accordingly, the order was issued by a juvenile court as section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(a) require. *See Budhathoki*, 898 F.3d at 514 (explaining that plaintiffs’ child support orders did not establish SIJ eligibility as orders contained no explicit dependency declaration, parents filed waivers of service and did not appear, and there was no consideration of subject’s dependency on the court, or placement in care and custody of others and court’s authority to make such determinations despite plaintiffs’ age). Therefore, we withdraw the Director’s determination otherwise.

C. USCIS’ Consent

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where a petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS’ consent, petitioners must also establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7 (*citing* section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating requirement “that neither the dependency order nor the administrative or judicial determination of the [juvenile’s] best interest was sought primarily for the purpose of obtaining the status of an [individual] lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from abuse or neglect”). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS’ consent is warranted and the agency must consider whether the juvenile court’s determinations were sought in proceedings granting relief from parental maltreatment, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6-7; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511, n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs agency to determine “primary purpose” of request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from SIJ petition unsupported by sufficient evidence that petitioner sought

court order to obtain relief from parental maltreatment, and not primarily to obtain immigration benefit, as USCIS Policy Manual explained).

The Director determined that USCIS' consent was not warranted because the SIJ orders were made solely for the purpose of enabling the Petitioner to petition for SIJ classification. In support of this finding, the Director stated that the Petitioner "did not submit evidence that the court provided some form of placement, supervision, or services in connection with the finding of dependency to meet [his] burden of showing that the dependency determination was not made solely for the purpose of enabling [him] to petition for SIJ classification with USCIS." On appeal, the Petitioner argues that since the district court ordered that the Petitioner's mother pay child support, it provided a form of relief from parental abandonment or neglect. We agree with the Petitioner.

USCIS recognizes that there may be immigration related motive for seeking a juvenile court order. *See* 6 USCIS Policy Manual J.2(D). Here, the district court "examined the record and heard the evidence and argument of Petitioner," before issuing the SIJ order. The Petitioner previously submitted a copy of the original petition in suit affecting the parent-child relationship and motion for declaratory judgment filed with the district court in support of the SIJ orders. The petition stated that the Petitioner's mother neglected him and requested that she pay child support to him. The district court then ordered the Petitioner's mother to pay child support to him, pursuant to Tex. Fam. Code section 154.002, and thus provided him relief from his mother's neglect.

Therefore, contrary to the Director's findings, the preponderance of the evidence, including the SIJ orders and the underlying court documents, establishes that the Petitioner sought the SIJ order for monetary relief from his mother's neglect and did not seek the SIJ order solely to obtain an immigration benefit. Accordingly, USCIS' consent to the Petitioner's SIJ classification is warranted, and we withdraw the Director's determination otherwise.

III. CONCLUSION

The Petitioner has met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification. The Director's decision is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.