



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

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

In Re: 12890448

Date: September 14, 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 Amerasian, Widow(er), or Special Immigrant (SIJ petition) and the matter is before us on appeal. 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). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2018, when the Petitioner, a native and citizen of El Salvador, was 17 years old, the District Court of the [] Judicial District in [] Texas (District Court) issued an order entitled *Amended Order in Suit Affecting Parent-Child Relationship* (SIJ order). The SIJ order states, in pertinent part, that the Petitioner's mother is appointed Sole Managing Conservator of the Petitioner and her sister. The SIJ order further declares that the Petitioner's physical and emotional well-being would be endangered by her father's possession of or access to her, pursuant to sections 152.102 and 261.001(4) of the Texas Family Code, that the Standard Possession Order is inappropriate for "good cause shown," and that these arrangements are not in her best interest. The District Court declined to order child support from the Petitioner's father, noting that her mother was able to support her. The SIJ order also reflects that the Petitioner resided at her mother's address at the time the District Court issued the order.

The Director denied the petition, determining that the SIJ order lacked qualifying determinations regarding the non-viability of parental reunification and best interest. The Petitioner has overcome these determinations on appeal.

B. The SIJ Order Contains a Qualifying Parental Reunification Determination

The Act requires a judicial determination that a juvenile's reunification with one or both parents "is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." Section 101(a)(27)(J)(i) of the Immigration and Nationality Act (the Act). The Petitioner bears the burden of proof to establish the state law the juvenile court applied in making this determination. *See id.*; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6.

In the instant case, the District Court declared that it was not in the Petitioner's best interest for her father to possess or have access to her pursuant to sections 152.102 and 261.001(4) of the Texas Family Code, as this arrangement "would endanger [her] physical and emotional well-being." Notably, the provisions cited to in the SIJ order provide the state law definitions of "[a]bandoned" and "[n]eglect," respectively, in the context of the parent-child relationship. Tex. Fam. Code §§ 152.102(1), 261.001(4). The record reflects that the District Court applied Texas child welfare law regarding abandonment and neglect in denying the Petitioner's father access to her. As such, the preponderance of the evidence demonstrates that the District Court made a qualifying determination that the Petitioner's reunification with her father was not viable on these grounds. The Director's determination to the contrary is withdrawn.

C. The SIJ Order Contains a Qualifying Best Interest Determination

We also withdraw the Director's determination that the Petitioner did not establish that the District Court made a qualifying best interest determination. The Act requires an SIJ petitioner to provide a judicial or administrative determination that it is not in their best interest to be returned to their (or their parents') country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act. As we have explained in policy guidance, the juvenile court must individually assess and consider the

factors that it ordinarily considers when making best interest determinations. 6 USCIS Policy Manual J.2(C)(3), <https://www.uscis.gov/policy-manual>; *see also id.* (explaining that the “child’s safety and well-being are typically the paramount concern.”). USCIS defers to the juvenile court in making such determination and does not require the court to conduct any analysis other than what is required under state law. *See id.*

Here, the record indicates that the District Court considered the housing, care, and financial support provided by the Petitioner’s mother in deciding to grant her Sole Managing Conservatorship of the Petitioner. A court transcript from an [REDACTED] 2018 trial, provided below in response to the Director’s request for evidence (RFE), indicates that the District Court heard testimony that the Petitioner had been living with her mother since May 2014 and that prior to that time, the Petitioner had resided in El Salvador with her maternal grandmother, who mistreated her. The Petitioner’s mother further testified that the Petitioner had no relationship with her father and that he did not provide for her. The Petitioner also provided, in response to the RFE, affidavits from her mother and older sister, J-C,¹ which were submitted to the District Court and contain additional detail regarding these circumstances.² Upon *de novo* review, the record indicates that the District Court conducted an individualized assessment under state law, including consideration of prior conditions for the Petitioner in El Salvador, in determining that it was in her best interest to remain with her mother in Texas. *See 6 USCIS Policy Manual J.2(C)(3)*. Accordingly, the preponderance of the evidence establishes that the Direct Court made a qualifying determination regarding the Petitioner’s best interest.

III. CONCLUSION

The Petitioner has demonstrated that the juvenile court made qualifying parental reunification and best interest determinations. As such, the Petitioner has established that she is eligible for and merits USCIS’ consent to her SIJ classification.

ORDER: The appeal is sustained.

¹ We use initials to protect the privacy of individuals.

² The RFE states that the record lacked a factual basis for the best interest determination and requested that the Petitioner submit a qualifying best interest determination from the juvenile court. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 8 (“Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment or a similar basis under state law, the record must also contain a reasonable factual basis for each of the requisite SIJ determinations to establish that a petitioner’s request for SIJ classification merits USCIS’ consent.”); *6 USCIS Policy Manual J.2(D)* (explaining, in policy guidance, that the factual basis of each of the required determinations is evidence that the request for SIJ classification is bona fide). Our review indicates that the evidence provided in response to the RFE and described herein contains a sufficient factual basis for the Family Court’s best interest determination.