



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

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

In Re: 15827487

Date: APR. 25, 2022

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 petition, concluding the Petitioner had not demonstrated she warrants USCIS' consent to SIJ classification. On appeal, the Petitioner asserts her eligibility for SIJ classification. Upon *de novo* review, we will dismiss 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 they 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 them 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 (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; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. The petitioner bears 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

### A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of El Salvador, claims to have entered the United States without inspection, admission, or parole in 2008. In [REDACTED] 2019, when the Petitioner was 20 years old, the [REDACTED] Probate and Family Court in Massachusetts (family court) issued a *Judgment of Dependency* (dependency order) and *Order of Special Findings of Fact and Rulings of Law* (SIJ order) for her. In [REDACTED] 2020, the family court issued a *Supplemental Order of Special Findings of Fact and Rulings of Law* (supplemental order) *nunc pro tunc* to the day after its dependency and SIJ orders. In its orders, the family court declared the Petitioner to be “dependent upon this Court for his/her protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of Child or to remedy the effects on Child of abuse, neglect, abandonment, or similar circumstances.” The family court determined it is not viable for the Petitioner to reunify with her parents due to abandonment under “Mass. Gen. Laws ch. 210 § 3,” as after she lived with them from the age of nine to 17, “she has lived apart from them with DCF group homes, at a shelter, and with third parties for the past three years.” The family court also determined it is not in the Petitioner’s best interest to return to El Salvador as she has not returned to that country since she was nine years old, has no ties to the country, would probably be unable to provide for herself upon return, and her safety would be in jeopardy due to crime levels.

Chapter 119, section 39M of the Massachusetts General Laws applies to the probate and family court decree in this case. In enacting section 39M, the Massachusetts legislature determined that the new provision “shall apply” to certain requests for special findings pending in a juvenile court as of March 4, 2016, or commenced on or after that date; and “retroactively to any special findings issued that form the basis of a child’s petition for special immigrant juvenile classification if that petition is subject to denial or revocation based on the child’s dependency status or age when the special findings were issued.” 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105 (West). As section 39M applies to the family court decree in this case, we will consider its application in our analysis of the Petitioner’s eligibility.

### B. USCIS’ Consent

The Director determined the Petitioner had not established USCIS’ consent to SIJ classification was warranted as the record did not contain evidence of a reasonable factual basis for the family court’s best interest determination.

SIJ classification may only be granted upon the consent of DHS, through USCIS, where a juvenile meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS’ consent, juveniles must 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 the requirement that the court’s orders were not 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 parental maltreatment)). 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. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 8.

On appeal, the Petitioner submits the family court's supplemental order, which contains a reasonable factual basis for its best interest determination. Specifically, the family court indicated it was not in the Petitioner's best interest to return to El Salvador as she has not returned to that country since she was nine years old, has no ties to the country, would probably be unable to provide for herself upon return, and her safety would be in jeopardy due to crime levels.

However, the Petitioner remains ineligible for SIJ classification as she has still not demonstrated she merits USCIS' consent to SIJ classification. In our NOID, we determined the Petitioner has not established her primary purpose in seeking the court decree was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit.

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 id.*; *see also Budhathoki v. Nielsen*, 898 F.3d at 511, n.5 (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ determinations); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the USCIS Policy Manual explained).

In response to our NOID, the Petitioner contends that our determination the family court orders do not contain protective or remedial relief for the Petitioner is incongruous with the facts of the case and amounts to an arbitrary and capricious application of the law. The Petitioner asserts the family court "clearly found and ordered" that the Petitioner "is dependent upon this Court for his/her protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of Child or to remedy the effects on Child of abuse, neglect, abandonment, or similar circumstances." The Petitioner further asserts the family court was not required to make a custody determination for her as it made the requisite dependency determination, setting her own matter apart from the facts of *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019). We acknowledge a dependency declaration was made for the Petitioner by the family court, rendering a custody determination unnecessary for dependency purposes. However, as stated in *Matter of E-A-L-O-*, Adopted Decision 2019-04 at 7-8, a dependency declaration alone is not sufficient to warrant USCIS' consent to SIJ classification absent evidence that the dependency declaration was issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law.

The Petitioner asserts on appeal that the family court issued orders findings that she was abandoned by her parents, and the record clarifies she sought these orders to gain the family court's protection. The Petitioner contends the family court's orders allowed her to be referred to various services offered

by the state of Massachusetts, including its housing programs. The Petitioner notes the family court's factual finding that she has resided in Department of Children and Families group homes, at a shelter, and with third parties in the past. Though the Petitioner asserts she is now eligible for Massachusetts state services due to the family court's findings, she has not established she requested, or the family court ordered any protective or remedial relief for maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law apart from findings enabling her to file an SIJ petition with USCIS. We recognize that section 39M provides for certain relief in the form of "orders necessary to protect the child against further abuse or other harm," including complaints for abuse prevention or support, as well as court-provided referrals for "psychiatric, psychological, educational, occupational, medical, dental or social services or . . . protection against trafficking or domestic violence." Mass. Gen. Laws ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113 (West). However, application of section 39M does not, by itself, establish that a juvenile sought relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. *Matter of E-A-L-O-*, Adopted Decision 2019-04 at 7-8. We acknowledge that the family court's orders considered whether the Petitioner was mistreated by her parents and made other SIJ-related determinations for her. But here, the family court did not issue any orders or referrals to the Petitioner to support her health, safety, and welfare under the 39M provisions as relief from parental maltreatment as found under state law.

USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. But to warrant USCIS' consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law, rather than, as in this case, requesting only findings relating to an immigration benefit under federal law. *See, e.g., Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO) (concluding that USCIS' consent was warranted where juvenile court issued SIJ-related findings in child protection proceedings removing the juvenile from her abusive father's home and placing her in the custody of the state department of family and protective services).

Overall, the preponderance of the evidence shows that the Petitioner primarily sought the juvenile court decree to obtain an immigration benefit rather than to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. Consequently, USCIS' consent to a grant of SIJ classification is not warranted.

### III. CONCLUSION

As discussed above, the Petitioner has overcome the basis of the Director's denial on appeal but has still not demonstrated that she warrants USCIS' consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated her eligibility for SIJ classification.

**ORDER:** The appeal is dismissed.