



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

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

In Re: 17403646

Date: APR. 26, 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 Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the matter is before us on appeal. 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). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must demonstrate that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that they cannot reunify with one or both of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (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

A. Relevant Facts and Procedural History

In [] 2019, when the Petitioner, a native and citizen of Venezuela, was 17 years old, the District Court for the [] Judicial District in [] Texas (District Court), issued an *Order of Dependency and Findings* (SIJ order). The District Court noted it had jurisdiction over the Petitioner, the Petitioner was dependent on the court, the Petitioner's reunification with her father and mother "is not viable due to abuse, abandonment, neglect, or a similar basis under Texas state law," and it was not in her best interest to return to Venezuela. The Petitioner filed her SIJ petition in October 2019 based on the SIJ order.

The Director denied the SIJ petition, concluding that the SIJ order did not "indicate whether the court provided some form of relief to protect [her] from parental abuse, abandonment, neglect, or a similar basis under Texas state law." Therefore, the Petitioner had not met her burden of establishing that the Petitioner warranted USCIS' consent.¹

On appeal, the Petitioner submits a brief and previously submitted documentation. She argues that since the court "left [the Petitioner] in the care of her brother," the court was not required to provide some form of relief, such as custodial placement, supervision, or services in connection with the finding of dependency, and USCIS's consent is therefore warranted.

B. USCIS' Consent is Not Warranted

As stated above, 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 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)). 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 id.*; *see also Budhathoki v. Nielsen*, 898 F.3d at 511, n.5 (5th Cir. 2018) (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

¹ We also note that it is unclear whether the SIJ order contained a qualifying parental reunification determination. Neither the SIJ order, nor the underlying petition for the SIJ order that was submitted by the Petitioner, cited to the state law basis for the parental reunification determination, as required for SIJ eligibility, and only cited to federal immigration law. *See* Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c). However, since we are dismissing the appeal on separate grounds, we will not address this issue further.

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 addition, the requisite SIJ determinations must be made under state law in connection with proceedings granting some form of relief or remedy from parental maltreatment. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9 (AAO Oct. 11, 2019); *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 7-8 (concluding that USCIS' consent was warranted where juvenile court issued SIJ-related findings in child protection proceedings removing juvenile from her abusive father's home and placing her in custody of state department of family and protective services).

In the instant case, USCIS' consent is not warranted because the Petitioner has not established that her primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Texas law, rather than to obtain an immigration benefit. Although the SIJ order declares the Petitioner to be dependent on the court, a juvenile court's dependency declaration, on its own, is insufficient to warrant USCIS' consent to SIJ classification absent evidence that the court issued the dependency declaration in juvenile court proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 8.

The Petitioner argues that USCIS' consent to her SIJ classification is warranted because the District Court heard testimony about her parents' mistreatment of her, made qualifying findings regarding her dependency, inability to reunify with her parents, and best interest, and determined that she needed the court's protection by placing her under its jurisdiction and acknowledged that her brother was caring for her. Although we acknowledge these claims, the record does not indicate that the SIJ order was sought to compel an action that provides "relief from abuse or neglect," or abandonment. H.R. Rep. No. 105-405, at 130; 6 *USCIS Policy Manual*, *supra*, at J.2(D)(5) (explaining that court-ordered dependency or custodial placement of child is relief being sought from juvenile court). There is no evidence in the record that the District Court granted the Petitioner any specific relief related to the abandonment or neglect she endured in the past, or that the court took jurisdiction over the Petitioner in any other prior or related proceeding providing her with any type of relief or remedy from parental abuse, neglect, abandonment, or a similar basis under Texas law. Further, the petition underlying the SIJ order did not request the order any relief or remedy from parental maltreatment aside from a declaratory judgment from the District Court demonstrating her eligibility for SIJ classification under federal immigration law. The Petitioner has not established that such relief was sought and granted in this case. We do not seek to diminish the unfortunate facts in the record regarding the Petitioner's experience in Venezuela; however, she has not established by a preponderance of the evidence that the SIJ orders provided her with any protective or remedial relief under Texas law apart from findings enabling her to file an SIJ petition with USCIS.

III. CONCLUSION

As discussed above, the Petitioner has 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.