



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

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

In Re: 17265975

Date: JUN. 16, 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 that USCIS' consent to SIJ classification was not warranted. On appeal, the Petitioner asserts his 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)(i) of the Act; 8 C.F.R. § 204.11(b). 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; 8 C.F.R. § 204.11(c)(1). 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); 8 C.F.R. § 204.11(c)(2).

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 request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5). 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 [REDACTED] 2017, when the Petitioner was 20 years old, the Massachusetts Probate and Family Court in [REDACTED] (Family Court) issued an order titled, ORDER OF SPECIAL FINDINGS OF FACT AND RULINGS OF LAW (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that under Massachusetts law, “pursuant to M.G.L. c. 215 § 119,” the Family Court had jurisdiction over the Petitioner. The Family Court further found that the parents of the Petitioner “abused, abandoned, or neglected him and reunification with his parents was not viable. The Family Court went on to find that it was not in his best interest to be removed from the United States and returned to El Salvador, his country of nationality.

Based on the SIJ order, the Petitioner filed his SIJ petition in [REDACTED] 2017, the day after his 21<sup>st</sup> birthday.<sup>1</sup> In December 2020, the Director denied the SIJ petition, determining that the Petitioner did not establish that he warranted USCIS’ consent. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), requesting evidence that the Family Court provided some form of placement, supervision, or services in connection with the finding of dependency, and the Petitioner responded timely. In his response to the NOID, the Petitioner submitted a brief and a copy of an amended *nunc pro tunc* SIJ order that cited to Massachusetts General Law, Chapter 119, section 39M (section 39M). After receiving the Petitioner’s response to the NOID, the Director determined that the SIJ order did not indicate whether the court provided some form of relief to protect the Petitioner from parental neglect or abandonment such as custodial placement, supervision, or services in connection with the finding of dependency. Therefore, the Director could not determine if the Petitioner sought the SIJ order primarily to obtain an immigration benefit or relief from parental mistreatment and held that the Petitioner did not warrant USCIS’ consent.

On appeal, the Petitioner submits a brief and previously submitted documents. He argues, through counsel, that the Family Court provided him with relief from parental mistreatment and USCIS’ consent is therefore warranted.

### B. Applicability of Section 39M

During the pendency of the SIJ petition, the Massachusetts legislature amended the Massachusetts General Laws, Public Welfare Title, Chapter 119 pertaining to the “Protection and Care of Children” by adding a section entitled “Dependency proceedings for abused, neglected and abandoned children; determination of child’s best interest; petition for special findings.” Mass. Gen. Laws ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113 (West). In enacting section 39M, the Massachusetts legislature determined that the new provision “shall apply” to certain requests for

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<sup>1</sup> We note that it does not appear that the Petitioner was under 21 years old at the time he filed his SIJ petition. See 8 C.F.R. § 103.2(a)(7)(i) (stating filing date is day USCIS receives petition). The record demonstrates that the Petitioner was born on [REDACTED] 8, 1996, and his SIJ petition was filed with USCIS on [REDACTED] 9, 2017. Consequently, he was not under 21 years old at the time of the filing and is ineligible for SIJ classification. Generally, we would issue a notice of intent to deny (NOID) because the Director did not address the issue, and the Petitioner was not given an opportunity to respond to the potential ground of ineligibility. However, since the Petitioner remains ineligible on the grounds identified by the Director, we will not address the issue further in the interest of judicial efficiency.

special findings pending in a juvenile court as of March 4, 2016, or commenced on or after that date; and, as applicable to the Petitioner's case here, "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). Because the order in this case was issued after March 4, 2016, section 39M applies retroactively to the Petitioner's case.

### C. USCIS' Consent

To warrant USCIS' consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief, granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. *Id.* An example of court-recognized remedial relief includes the recognition of a petitioner's placement in the custody of the Department of Health and Human Services, Office of Refugee Resettlement. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.* USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, 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. *See* 8 C.F.R. § 204.11(d)(5)(ii).

The Petitioner has not established that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. The record does not indicate that the Family Court provided any protective or remedial relief for maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law, apart from findings enabling him 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. However, application of section 39M does not, by itself, establish that a juvenile sought and was provided relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. *See* 8 C.F.R. § 204.11(d)(5)(ii); *see also Matter of E-A-L-O-*, Adopted Decision 2019-04, 7-8 (AAO Oct. 11, 2019). Here, the amended SIJ order stated that "this order shall serve as a basis for [the Petitioner] to establish residency and

healthcare as well as protect [him] from future harm pursuant to the laws of the Commonwealth of Massachusetts.” However, the Family Court did not issue any specific orders or referrals to support the Petitioner’s health, safety, and welfare under the 39M provisions as relief from parental maltreatment, as required by 8 C.F.R. § 204.11(d)(5)(ii). *See* Massachusetts General Laws, ch. 119, section 39M.

Overall, the preponderance of the evidence does not establish that a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. Consequently, USCIS’ consent to a grant of SIJ classification is not warranted.

### III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that he warrants USCIS’ consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

**ORDER:** The appeal is dismissed.