



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

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

In Re: 16829404

Date: MAR. 15, 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 now 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, the appeal will be sustained.

**I. LAW**

To establish eligibility for SIJ classification, petitioners must establish 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 [REDACTED] 2018, when the Petitioner was 16 years old, the District Court for the [REDACTED] Judicial District in [REDACTED] Texas issued an *Order in Suit Affecting Parent-Child Relationship* (SAPCR order). In its order, the District Court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner was “dependent upon the Court as this Court has jurisdiction over the custody and care of the child” pursuant to Texas law. Further, the District Court found that the Petitioner’s reunification with her mother was not viable due to abandonment and neglect and her reunification with her father was not viable due to his death. The District Court noted that “[r]egarding Conservatorship, the Court finds that the following orders are in the best interest of the child” and appointed the Petitioner’s sister as sole managing conservator. Additionally, the District Court found that it “is not in the child’s best interest for [her mother] to be appointed Possessory Conservator” and that “the Standard Possession Order is inappropriate under the circumstances and not in the best interest of the child . . . .”

Based on the SAPCR order, the Petitioner filed her SIJ petition in June 2018. The Director denied the petition, determining that USCIS’ consent to the Petitioner’s SIJ classification was not warranted because the District Court did not make a qualifying declaration that it was not in the Petitioner’s best interest to return to Honduras, her country of nationality, as section 101(a)(7)(J)(ii) of the Act requires.

### B. The SAPCR Order Includes a Qualifying Best Interest Determination

SIJ classification requires an administrative or judicial determination “that it would not be in the [petitioner’s] best interest to be returned to the [petitioner’s] or parent’s previous country of nationality or country of last habitual residence . . . .” Section 101(a)(7)(J)(ii) of the Act. A petitioner must submit evidence of a best interest determination made in judicial or administrative proceedings by a court or agency recognized by a juvenile court and authorized by law to make such a decision. 8 C.F.R. § 204.11(d)(2)(iii). While the standards may vary among states, the best interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services and orders are best for a child, as well as who is best suited to care for the child. *See Matter of A-O-C-*, Adopted Decision 2019-03, at 7 (AAO Oct. 11, 2019) (citing U.S. Department of Health and Human Services, Children’s Bureau, Child Welfare Information Gateway (2016), *Determining the Best Interests of the Child*). A juvenile court order need not contain the same language as that of the Act for a court’s best interest determination so long as the court’s conclusions under state law have the same meaning as the requirements for SIJ classification. *See 6 USCIS Policy Manual J.3(A)*, <https://www.uscis.gov/policy-manual> (explaining that juvenile court orders may use different legal terms other than those found in the Act for the court’s SIJ-related determinations).

Here, the Director determined that the SAPCR order did not contain a qualifying best interest determination. On appeal, counsel for the Petitioner contends that, pursuant to Texas Family Code section 153.002, “[i]n determining conservatorship and possession of and access to a child, Texas family courts shall always have the child’s best interest as the primary consideration.” She argues that the SAPCR order and underlying SAPCR petition reflect that the District Court determined that it was

in the Petitioner's best interest to remain in her sister's custody in the United States and that her mother should not be appointed possessory conservator, which is sufficient to establish that the court made a qualifying determination regarding her best interest. The Petitioner's proceedings before the District Court were SAPCR proceedings to which Texas Family Code section 153.002 necessarily applied. Additionally, as we have explained in policy guidance, the juvenile court is required to make an individualized best interest assessment, with the "child's safety and well-being" as the typical "paramount concern." 6 *USCIS Policy Manual* at J.2(C)(3). We have also clarified that where a juvenile court makes a custodial placement or dependency finding for a child pursuant to state law, "and the order includes facts reflecting that the caregiver has provided a loving home, bonded with the child, and is the best person available to provide for the child, this would likely constitute a qualifying best interest finding with a sufficient factual basis to warrant USCIS consent." *Id.*

Here, the record contains the requisite assessment, as the SAPCR order awards sole managing conservatorship to the Petitioner's sister and determines that possessory conservatorship by her mother would not be in her best interest. In addition, the District Court found that the Petitioner should not be reunified with her mother due to neglect and abandonment, explaining that the Petitioner's mother abandoned the Petitioner when she was eight years old, neglected to provide for her emotionally or financially, failed to protect her from the man who raped her, and did not protect her "from the mother's partner when he told the child to leave and never return." Further, the underlying SAPCR petition notes that when the Petitioner was raped by a family friend when she was seven years old, her mother did not call the police or do anything to prevent future rape. Additionally, the Petitioner's mother "was rarely in the home during [the Petitioner's] childhood and did not provide support for [her]." As a result, the Petitioner's sister took her in when the Petitioner was eight years old "and essentially living on her own." The Petitioner resided with her sister until age 12, when her sister moved to the United States. The Petitioner then lived with her aunt, but there she was frequently threatened and assaulted by her cousin, and her aunt "was unable to properly provide for her or protect her from her cousin." The Petitioner eventually left Honduras for the United States, and when she went to say goodbye to her mother, the man who had raped her was living next door and threatened to kill her if he ever saw her again. Moreover, the Petitioner's mother's partner told the Petitioner "not to return because he would not feed another man's child and she was not welcome in his home." The Petitioner's mother "did not intervene on her behalf and let her leave without offering any assistance or support," and has not tried to contact her in the United States. The SAPCR petition indicates that the Petitioner would have to live with her aunt if she returned to Honduras, and that it is not in the Petitioner's best interest to return to Honduras. Further, the SAPCR petition notes that the Petitioner's sister "resides in the United States and can properly care for the child here" and requests that the court find that the "residence of the child should be restricted to the United States" and "prohibit [the Petitioner's mother] . . . from removing the child from Texas or the United States . . . ." The SAPCR order and underlying petition demonstrate that the District Court found that the Petitioner was unable to live safely in Honduras, her sister has provided her a safe, stable, caring home, and that it is in her best interest to remain here. Accordingly, the record demonstrates that the District Court made a qualifying best interest determination as required under section 101(a)(27)(J)(ii) of the Act.

### C. USCIS Consent is Warranted

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where the petitioner meets all other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, a petitioner 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. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 7-8 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement "that neither the dependency order nor the administrative or judicial determination of the [petitioner'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 the petitioner to file an SIJ petition with USCIS. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511, n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding that USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the petitioner sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the USCIS Policy Manual explained).

The Director determined that USCIS' consent was not warranted because the District Court did not conclude that it would not be in the Petitioner's best interest to return to Honduras. As discussed, the record does establish that the District Court made a qualifying best interest determination as required under section 101(a)(27)(J)(ii) of the Act. Furthermore, the Petitioner has shown that the nature and purpose of the proceedings before the District Court were to protect her from parental neglect and abandonment. The SAPCR order named the Petitioner's sister as her sole managing conservator, determined that reunification with her mother was not viable due to neglect and abandonment under Texas law and that reunification with her father was not viable due to his death, and that it was not in her best interest to be returned to her home country of Honduras. In appointing a sole managing conservator, the District Court gave the Petitioner's sister various rights and responsibilities, including the right to determine her place of residence, "duty of care, control, protection, and reasonable discipline" of the Petitioner, the duty to provide her with "clothing, food, shelter, education, and medical, psychological, and dental care." Further, the SAPCR petition requested that the District Court "deny [her mother] access to the child." Accordingly, the Petitioner has established that she sought the SAPCR order to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit, and USCIS' consent to her SIJ classification is warranted.

### III. CONCLUSION

The Petitioner has overcome the grounds for denial of her SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ

classification warrants USCIS' consent, she has established eligibility under section 101(a)(27)(J) of the Act.

**ORDER:** The appeal is sustained.