



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

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

In Re: 09874257

Date: March 23, 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 [] 2018, when the Petitioner, a native and citizen of El Salvador, 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 its authority to issue declaratory judgments under sections “37.002(b)(c), 37.003(a)(b)(c) and 37.011” of the Texas Civil Practice and Remedies Code. The SIJ order states that the Petitioner is dependent on the court “pursuant to the Court’s authority. . . under Tex. Gov’t Code § 24.601(b)(4),” and declares that such dependency is “for determinations as to her best interest and general welfare.” The SIJ order further states that the Petitioner’s reunification with her father is not viable due to abandonment and neglect pursuant to sections 261.001(4)(A)(ii)(c) and 152.102(1) of the Texas Family Code, and that it is not in her best interest to return to El Salvador. The Petitioner filed her SIJ petition in February 2019 based on this order.

The Director denied the SIJ petition, concluding that the Petitioner had not met her burden of establishing that the District Court made a qualifying declaration of dependency or custodial placement, as required by section 101(a)(27)(J)(i) of the Act. The Director explained that the SIJ order was a declaratory judgment and that the record did not establish that the District Court “declared [the Petitioner] dependent or made any determination regarding [her] custody under any enforceable provision of Texas law governing juvenile dependency or child custody.”

As discussed below, the record establishes that the District Court issued a qualifying declaration of dependency. Nonetheless, the Petitioner remains ineligible for SIJ classification because she has not demonstrated that USCIS’ consent to her SIJ classification is warranted.

B. The District Court Made a Qualifying Declaration of Dependency

SIJ petitioners must be declared dependent upon a juvenile court, or be legally committed to, or placed under the custody of, a state agency or department, or of an individual or entity appointed by a state or juvenile court. Section 101(a)(27)(J)(i) of the Act. The juvenile court’s dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3). As part of their burden to establish eligibility for SIJ classification, petitioners must establish the state law that the juvenile court applied in its dependency declaration. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5 (citing to 8 C.F.R. § 204.11(c)(3) and providing that, because “the dependency declaration or custodial placement must be entered in accordance with the state law that governs such determinations, the state law itself is a question of fact that must be proved by the Petitioner to establish eligibility”). Determining whether petitioners have met this requirement is required for USCIS to adjudicate their eligibility for SIJ classification under federal law. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) (“Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had the authority to examine the orders for that purpose”).

Here, the SIJ order states that the Petitioner is “dependent on the Court pursuant to the Court’s authority. . . under Tex. Gov’t Code § 24.601(b)(4). As such, the Petitioner has overcome the basis for the Director’s denial and established, by a preponderance of the evidence, that the District Court declared her dependent on the court in accordance with Texas state law. *See* 6 *USCIS Policy Manual* J.2, <https://www.uscis.gov/policy-manual> (providing, as guidance, that USCIS generally defers to the court on matters of state law and does not go behind the relevant order to make independent determinations regarding the requisite SIJ determinations). Accordingly, the record contains a qualifying dependency declaration, as section 101(a)(27)(J)(i) of the Act requires.

C. USCIS’ Consent is Not Warranted

During our adjudication of this appeal, we issued a notice of intent to dismiss (NOID) to inform the Petitioner that she had not met her burden of establishing that USCIS’ consent to her SIJ classification is 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 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 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, 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 (AAO Oct. 11, 2019).

In response to our NOID, the Petitioner argues that USCIS’ consent to her SIJ classification is warranted because the District Court heard testimony about her father’s maltreatment and threats against her by gang members in El Salvador, made qualifying findings regarding her dependency, inability to reunify with her father, and best interest, and determined that she needed the court’s

protection by placing her under its jurisdiction. 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 the court-ordered dependency or custodial placement of the child is the relief being sought from the 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.

The Petitioner further maintains that seeking immigration relief as a secondary benefit does not preclude the consent of USCIS, especially in cases like hers where protection from removal is “essential” to ensuring that she is protected from the abandonment and neglect found by the District Court. 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 granting some form of relief or remedy from parental maltreatment. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9; *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 the juvenile from her abusive father’s home and placing her in the custody of the state department of family and protective services). 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 El Salvador; 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. Consequently, the Petitioner has not established that she is eligible for and merits USCIS’ consent to her SIJ classification.

ORDER: The appeal is dismissed.