



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

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

In Re: 21201552

Date: NOV. 09, 2022

Motion on Administrative Appeals Office 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). We dismissed the Petitioner's appeal, and the matter is now before us on a motion to reconsider. Upon review, we will dismiss the motion.

**I. LAW**

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

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(b).<sup>1</sup> 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, through USCIS, when the petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought to obtain relief from parental

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<sup>1</sup> The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. See *Special Immigrant Juvenile Petitions*, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

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; 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

In [redacted] 2019, when the Petitioner was 17 years old, the District Court for the [redacted] Judicial District in [redacted] Texas (District Court), issued an *ORDER OF DECLARATORY JUDGMENT AND FINDINGS* (declaratory judgment). In the declaratory judgment, the district court found that the Petitioner is “dependent upon this juvenile court in accordance with the laws of the State of Texas” while she resides in Texas. Additionally, the district court concluded that the Petitioner’s reunification with her mother is not viable due to abuse and neglect as defined at sections 261.001(1) and (4) of the Texas Family Code. The district court also noted that the Petitioner “is currently under the care and custody of her father,” that it is “in the [Petitioner’s] best interest to remain in that placement,” and that there “are no other suitable persons or family members to care for the [Petitioner] in HONDURAS,” her country of nationality. The Petitioner filed her SIJ petition in January 2019 based on the declaratory judgment.

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. Specifically, the Director concluded that the record did not establish that the district court “declared [the Petitioner] dependent or made any determination regarding [her] custody under any provision of Texas law governing juvenile dependency or child custody, which would demonstrate that the court is providing some type of relief from parental abuse, abandonment, neglect, or a similar basis under state law.” Additionally, the Director determined that the Petitioner had not met her burden of establishing that USCIS’ consent to her SIJ classification is warranted.

In our previous decision, incorporated here by reference, we determined that the district court made a qualifying declaration of dependency under Texas law; however, we determined that the Petitioner did not warrant USCIS’ consent, as she did not establish, by a preponderance of the evidence, that the order provided any protective or remedial relief from her mother’s abuse and neglect, and only issued findings that would enable the Petitioner to seek SIJ classification from USCIS.

On motion the Petitioner submits a brief. In her brief, the Petitioner reasserts that she sought the declaratory judgment for protection from her mother’s abuse and neglect and provided evidence and testimony to the district court to support her petition, which demonstrates that her SIJ petition is *bona fide*. Additionally, she claims that the “court order did not lack evidence that actual relief was granted because, . . . *the court-ordered dependency is the relief [the Petitioner] sought from the juvenile court.*” However, to establish the dependency declaration is *bona fide*, and thereby warranting USCIS’ consent, the dependency declaration should also provide for child welfare services, and/or other recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii)(B); *see also* 6 USCIS Policy Manual, *supra*, at J.2(C)(1) (explaining, as guidance, that a juvenile court’s determination of dependency generally means the child is subject to the court’s jurisdiction because allegations of parental maltreatment were sustained by the evidence and were legally sufficient to support state

intervention on behalf of the child); *id.* at J.2(D) (explaining, as guidance, that the relief provided or recognized by the juvenile court may include dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief). The district court acknowledged that the Petitioner was abused and neglected by her mother in Honduras and that she was in the custody of her father in the United States, but made no further determinations or provisions for intervention, protective or remedial relief, from the state of Texas.

The Petitioner likens her case to *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019).<sup>2</sup> While adopted AAO nonprecedent decisions provide policy guidance to USCIS employees in making determinations on applications and petitions for immigration benefits, the Petitioner here has not established that her case is similar to the adopted decision. In *Matter of D-Y-S-C-*, we sustained the appeal, concluding, in relevant part, that the petitioner established the purpose of the juvenile court proceedings was to protect her from parental maltreatment as the Court's order removed the petitioner from her father's custody, denied him access to her, and appointed a state agency custodianship. The Court's order in *Matter of D-Y-S-C-* provided protective and remedial relief from parental maltreatment. Here, the district court's order did not discuss relief, but rather reserved the right to make clarifying orders. The Petitioner states, "[t]here was no need for the court to change her custody or placement at the time the order was presented, the court did not have the need to issue orders or referrals under the provisions of Texas law to support her welfare or provide other protective or remedial relief from [*sic*] his mother's neglect." The Petitioner asserts that because the judge did not make such referrals in the order does not change that the Petitioner has the ability to seek these remedies using the order as a basis, so it was sought not for immigration purposes but rather to protect her from future harm. The Petitioner points out that the district court reserves the right to make changes to the declaratory judgement and may issue additional orders or referrals to support her health, safety, or welfare as relief from parental maltreatment. While we acknowledge this fact, no subsequent clarifying orders were issued by the district court providing relief under Texas law. Furthermore, the Petitioner's statements about being cared for by her father and the district court's determination that no further intervention was necessary do not support the Petitioner's assertions that the district court's order provided relief from parental abuse, neglect, abandonment, or a similar basis under state law.

The Petitioner has not cited any binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy and has not established that our prior decision was incorrect based on the evidence of record at the time of the initial decision, as required under 8 C.F.R. § 103.5(a)(3). Therefore, she has not established eligibility for the benefit sought.

**ORDER:** The motion to reconsider is dismissed.

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<sup>2</sup> The USCIS Policy Alert issued on June 10, 2022, noted that the SIJ final rule and policy update superseded the guidance found in Administrative Appeals Office adopted decisions: *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019); *Matter of A-O-C-*, Adopted Decision 2019-03 (AAO Oct. 11, 2019); and *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019). USCIS Policy Alert PA-2022-14, Special Immigrant Juvenile Classification and Adjustment of Status, 2 (Jun. 10, 2022). <https://www.uscis.gov/sites/default/files/document/policy-manualupdates/20220610-SIJAndAOS.pdf>.