



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

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

In Re: 17930340

Date: SEP. 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. On appeal, the Petitioner asserts her eligibility for SIJ classification. We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain 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).¹ 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

¹ 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).

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 [] 2018, when the Petitioner was 18 years old, the [] Judicial District Court of [] New Mexico (District Court) issued an *ORDER AWARDING SOLE LEGAL CUSTODY TO RESPONDENT AND ENTRY OF SPECIAL FINDINGS* (custody order). In the custody order, the District Court found that it has “continuing jurisdiction over the child” and that the Petitioner was in high school, unmarried, and under the age of 21. Further, the District Court noted that the Petitioner’s mother neglected and abandoned her and therefore concluded that reunification with her mother is not viable. The District Court also awarded sole legal and physical custody of the Petitioner to her father. Additionally, the District Court found that it was not in the Petitioner’s best interest to be returned to Mexico, her country of nationality, “because she has lived in the United States since 2001, her home and school are in [] and there is no one in Mexico able and willing to care for the child.”

Based upon the custody order, the Petitioner filed her SIJ petition in July 2018. The Director denied the petition, concluding that the Petitioner had not met her burden of establishing that the District Court took jurisdiction over her as a juvenile as required by section 101(a)(27)(J) of the Act. On appeal, the Petitioner submits a brief and argues that she has met her burden to demonstrate by a preponderance of the evidence that the District Court acted as a juvenile court in issuing the custody order in her case.² Specifically, she argues that the custody order was issued pursuant to Exhibit J of the New Mexico Domestic Affairs Statute, at section 40-4-7-(G) of the New Mexico Statutes Annotated (N.M. Stat. Ann.) which provides the district court with “exclusive jurisdiction of all matters pertaining to the guardianship, care, custody, maintenance and education of the children until the parents’ obligation of support for their children terminates.” The Petitioner further contends that New Mexico law defines “juvenile” as a child who is up to age 19 if the child is in high school, according to section 40-4-7(B)(3)(b) of the N.M. Stat. Ann. Finally, she asserts that while the custody order does not specifically cite section 40-4-7(B)(3)(b) of the N.M. Stat. Ann., the reference to her age and status as a high school student indicate the court relied upon this statute, and that therefore the order “was properly issued under state law pursuant to the court’s jurisdiction” under that statute.³

² In addition to the arguments discussed here, the Petitioner also argues that the Director erred in relying on sections of 8 C.F.R. § 204.11(d)(2)(ii) that have been superseded by the Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA). Pub. L. 110-457, 122 Stat. 5044 (2008). Our review of the record does not indicate that the Director relied on these sections of this regulation in denying the SIJ petition. We also note that the Director’s decision includes an attachment regarding applicable law and regulation noting that of 8 C.F.R. § 204.11(d)(2) has been superseded in part by the TVPRA. Nonetheless, to the extent that the decision cited outdated or incorrect portions of the regulation, that characterization is withdrawn.

³ Additionally, the Petitioner cites an AAO non-precedent decision that finds that courts are acting as juvenile courts “under circumstances that indicate that a child is 18 and still attending high school when making determinations about the care and custody of the child”, citing specifically to N.M. Stat. Ann, section 40-4-7(B)(3)(b). This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent

B. The District Court Made a Qualifying Declaration of Dependency

SIJ petitioners must establish that the court exercised jurisdiction over them as a juvenile for purposes of court-ordered juvenile dependency or custody to protect the petitioner from parental abuse, neglect, abandonment, or a similar basis under state law, as required of qualifying juvenile court orders under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(a) (explaining that the term “juvenile court” is defined as a court “in the United States having jurisdiction under State law to make judicial determinations about the custody and/or care of juveniles.”) While the specific title and type of state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. 6 *USCIS Policy Manual* J.2(C), <https://www.uscis.gov/policy-manual>.

On appeal, the Petitioner argues that she has shown that the District Court was acting as a juvenile court due to the custody order’s reference to her age and the fact that she was in high school when the order was issued. The custody order characterized the Petitioner as a “minor child” who is unmarried, under the age of 21, and still in high school and reflects that the District Court retained “continuing jurisdiction over the child”. Evidence in the record also establishes that she was a high school student at the time the District Court issued the custody order. We therefore agree that the District Court was acting as a juvenile court consistent with the jurisdiction set forth in section 40-4-7-(G) of the N.M. Stat. Ann. Considering this evidence, the Petitioner has established, by a preponderance of the evidence, that the declaratory judgment contained a qualifying custody or dependency determination. *See* 8 C.F.R. § 204.11(c)(1)(i)(A).

Accordingly, the Petitioner has demonstrated that the District Court took jurisdiction over her as a juvenile under New Mexico law when the custody order was issued, as section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11(a) require. We withdraw the Director’s determination otherwise.

II. 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.

decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.