



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

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

In Re: 18329020

Date: SEPT. 26, 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). The Petitioner appealed. We dismissed the subsequent appeal, concluding that the Form I-290B, Notice of Appeal or Motion, was not properly signed. 8 C.F.R. § 103.2(a)(2)(i). The matter is now before us on a motion to reconsider. On motion, the Petitioner submits an affidavit, confirming he did sign the Form I-290B. We will withdraw our prior decision and consider the Petitioner's motion to reconsider on the merits. Upon review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner 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 of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J) of the Act; 8 C.F.R. § 204.11(b). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner in the custody of a state agency or an individual or entity appointed by the state or 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 petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through U.S. Citizenship and Immigration Services (USCIS), when a 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. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.* The petitioner bears 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

The Petitioner, a native and citizen of Honduras, entered the United States without inspection, admission, or parole in February 2017. In [] 2017, when the Petitioner was 17 years of age, the District Court for the [] Judicial District in [] Texas (District Court) issued an *Order of Declaratory Judgment and Findings* (declaratory judgment). The District Court found the Petitioner “dependent upon this juvenile court in accordance with the laws of the State of Texas” The District Court determined the Petitioner’s reunification with his mother is not viable due to neglect. Specifically, the District Court found the Petitioner was neglected by his mother under “Section 261.011(4)(A)(ii)(a) of the Texas Family Code,” as she placed a child in, or failed to “remove child from a situation that a reasonable person would realize requires judgement or actions beyond the child’s level of maturity, physical condition, or mental abilities and that results in bodily injury or substantial risk of immediate harm to the child.” The District Court declared that it is not in the Petitioner’s best interest to return to Honduras “due to the history of neglect.”

Based on the District Court’s declaratory judgment, the Petitioner filed his SIJ petition. The Director issued a notice of intent to deny (NOID), and the Petitioner responded with a brief. The Director subsequently denied the SIJ petition, concluding that the Petitioner did not meet his 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.

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. To establish eligibility, 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). 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”).

We note that an SIJ petitioner need not be declared dependent upon a juvenile court *and* placed under the custody of an individual or entity. The record demonstrates the Petitioner was declared dependent on the District Court. As stated, the District Court found the Petitioner “to be dependent on this juvenile court in accordance with the laws of the State of Texas” The Petitioner has shown by a preponderance of the evidence that the District Court declared him 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 he had not met his burden of establishing that USCIS' consent to his SIJ classification is warranted.

As stated above, classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). We do not question the Family Court's purpose in issuing its orders, but here, USCIS' consent is not warranted because the Petitioner has not established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Texas law. To warrant USCIS' consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be sought "primarily for the purpose of obtaining [lawful permanent resident] status . . . , 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. *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). Furthermore, USCIS may 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).

In our NOID, we determined the record does not demonstrate the declaratory judgment provided the Petitioner with any actual protective or remedial relief from parental maltreatment under Texas law. In response to our NOID, the Petitioner asserts that in accordance with the USCIS Policy Manual requirements, he has established he warrants USCIS' consent to SIJ classification because he demonstrated court ordered dependency was the relief sought from the District Court. The Petitioner also argues he merits USCIS' consent because the factual basis of each of the required District Court's findings is bona fide. Although USCIS generally consents to the grant of SIJ classification where the record contains a reasonable factual basis for all the required rulings, USCIS' consent is not warranted where the state court orders have not established that a primary purpose in seeking the court order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis.

We also determined the record does not indicate the District Court took jurisdiction over the Petitioner in any proceedings providing him with relief or remedy from parental abuse, abandonment, neglect, or a similar basis under state law. The Petitioner claims he merits USCIS' consent because the District Court states in its declaratory judgment that the purpose of the order "is to protect the [Petitioner] from further neglect and abandonment." Although the District Court order indicates the intent to protect the Petitioner from neglect and abandonment, the Petitioner has not established he requested such relief from the District Court. The Petitioner's underlying petition to the District Court seeks SIJ-

related findings in a declaratory judgment but does not request any protective or remedial relief from maltreatment pursuant to Texas law.

Beyond the declaration of dependency, the District Court did not issue any orders or referrals to support the Petitioner's health, safety, or welfare as relief from parental maltreatment, apart from the special findings enabling him to seek SIJ classification before USCIS. *See* 6 USCIS Policy Manual, *supra*, at J.2(C)(1) n.12 (*citing* to U.S. Department of Health and Human Services documentation and *Budhathoki*, 898 F.3d at 513, and explaining that "[i]f the court is providing relief through child welfare services, the order or supplemental evidence should reference what type of services or supervision the child is receiving from the court[,] such as "psychiatric, psychological, educational, occupational, medical or social services, services providing protection against trafficking or domestic violence, or other supervision by the court or a court appointed entity"). Likewise, the Petitioner did not submit any additional evidence indicating that the District Court took jurisdiction over him in any other prior or related proceeding providing him with any other type of relief from parental maltreatment under Texas law. Accordingly, the preponderance of the evidence does not establish that a primary reason the requisite juvenile court determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law.

The Petitioner further contends that he merits USCIS' consent to SIJ classification because he was in the custody of the Department of Health and Human Services Office of Refugee Resettlement (ORR), and minors housed by ORR are in the physical custody of the federal government. However, the Petitioner's declaratory judgment was issued in April 2017, and governmental records indicate the Petitioner was released from ORR custody in March 2017. As such, the Petitioner has not established he was in federal custody at the time the court issued his declaratory judgment.¹

The Petitioner has not demonstrated that a primary reason the required juvenile court determinations were sought was to obtain relief from parental maltreatment. He has therefore not established that his request for SIJ classification merits is bona fide and warrants USCIS' consent, as section 101(a)(27)(J)(iii) of the Act requires.

ORDER: The appeal is dismissed.

¹ If a petitioner receives a qualifying dependency determination under state law while in ORR custody, USCIS may consider evidence of the court's recognition of the ORR placement to be the protective remedial relief provided in conjunction with the dependency determination. *See* 8 CFR 204.11(d)(5)(ii)(B); 6 USCIS Policy Manual, *supra*, at J.3(A)(2). Placement in ORR custody generally affords protection to unaccompanied children under federal law and removes a state juvenile court's need to provide a petitioner with additional relief from parental maltreatment. *See generally* Homeland Security Act of 2002, Pub. L. 107-296, § 462(b)(1), 116 Stat. 2135, 2203 (2002) (providing that ORR shall be responsible for "coordinating and implementing the placement and care of unaccompanied alien children in Federal custody by reason of their immigration status. . .").