



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

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

MATTER OF V-A-A-E-

DATE: FEB. 6, 2017

APPEAL OF SAN ANTONIO, TEXAS FIELD OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as a special immigrant juvenile (SIJ). *See* Immigration and Nationality Act (the Act) sections 101(a)(27)(J) and 204(a)(1)(G), 8 U.S.C. §§ 1101(a)(27)(J) and 1154(a)(1)(G). SIJ classification protects foreign-born children in the United States who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Field Office Director, San Antonio, Texas, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), because the judicial order was not issued by a juvenile court, and U.S. Citizenship and Immigration Services' (USCIS') consent was not warranted.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that he was subject to a qualifying state juvenile court order. He further contends that USCIS erred in withholding consent based on derogatory evidence not disclosed to the Petitioner.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 204(a)(1)(G) of the Act allows an individual to self-petition for classification as an SIJ. Section 101(a)(27)(J) of the Act defines an SIJ as:

an immigrant who is present in the United States—

- (i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

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- (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
- (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—
 - (I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and
 - (II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act[.]

The burden of proof is on a petitioner to demonstrate eligibility for SIJ classification by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner was born in El Salvador on [REDACTED] and entered the United States without inspection, admission, or parole in 2013. When the Petitioner was [REDACTED] years old, the [REDACTED] Texas, district court issued an order in a suit affecting the parent-child relationship (SAPCR), which appointed the Petitioner's mother as his sole managing conservator and included findings relating to the Petitioner's eligibility for SIJ classification.

A. The District Court was Not a Juvenile Court for SIJ Purposes

For SIJ classification, the term "juvenile court" is a court "having jurisdiction under State law to make judicial determinations about the custody and care of juveniles." 8 C.F.R. § 204.11(a). The specific title and type of court may vary from state to state, but the record must establish that the court exercised jurisdiction over the petitioner as a juvenile under the applicable state law. *See* 8 C.F.R. § 204.11(c)(3); 6 USCIS Policy Manual J.3(A)(1), <https://www.uscis.gov/policymanual>.

Texas district courts are those of general jurisdiction under Texas law. Tex. Const. Art. V, § 8. In its SAPCR order, the district court did not exercise jurisdiction over the Petitioner as a juvenile under Texas law. Rather, the district court asserted jurisdiction over the Petitioner as a person over 18 solely for the purposes of child support. Under the Texas Family Code:

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- (a) “Child” or “minor” means a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.
- (b) In the context of child support, “child” includes a person over 18 years of age for whom a person may be obligated to pay child support.

....

Tex. Fam. Code Ann. § 101.003 (West 2017). The Petitioner was [redacted] years old when the district court issued the SAPCR order, which applied to the Petitioner as a person over the age of 18 under section 101.003(b) of the Texas Family Code. The district court made no judicial determination regarding the custody or care of the Petitioner as a child under section 101.003(a) of the Texas Family Code.

On appeal, the Petitioner asserts that the district court qualifies as a juvenile court for SIJ purposes because under section 154.002 of the Texas Family Code, a court “may render an original support order” after a child’s eighteenth birthday “if the child is enrolled in certain educational programs.” We do not question the district court’s jurisdiction over the Petitioner as a person over the age of 18 solely for purposes of child support within the SAPCR order, even though support was waived. That order does not, however, establish that the district court exercised jurisdiction over the Petitioner as a child under Texas law for purposes of court-ordered juvenile dependency or custody, as required of qualifying juvenile court orders under section 101(a)(27)(J)(i) of the Act.

B. No Qualifying Declaration of Dependency or Placement of Custody

Even if the SAPCR order had been issued by a juvenile court, it lacks the requisite dependency or custody determination. An SIJ 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. 8 U.S.C. § 1101(a)(27)(J)(i). *See also* 8 C.F.R. § 204.11(c)(3); 6 USCIS Policy Manual, *supra*, at J.2(D). A juvenile court’s dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3). The order should use language establishing that the dependency or custody determination was made under state law. 6 USCIS Policy Manual, *supra*, at J.3(A)(2). Here, the SAPCR order appointed the Petitioner’s mother as his sole managing conservator and briefly stated that the Petitioner’s “dependency may continue” until at least one of four conditions were met. However, the SAPCR order does not reference any state law on juvenile dependency or child custody under which the district court’s determination was made.¹ Consequently, the SAPCR order lacks a qualifying juvenile dependency or custody determination.

¹ The record does not contain the underlying SAPCR petition or any other court documents referencing any relevant state law on juvenile dependency or custody.

On appeal, the Petitioner contends that dependency is defined by Texas common law that pre-dates the Texas Family Code, and that “a dependency order in the State of Texas for an individual between the ages of 18 and 21 *can* be issued in accordance with State law.” However, the Petitioner cites no common law regarding dependency of individuals over the age of 18. Instead, the Petitioner cites *De Witt v. Brooks*, 182 S.W.2d 687 (Tex. 1944) for the general proposition that dependency in Texas is a child protective measure. However, the child in *De Witt* was under 18 years of age when the dependency proceedings took place and the court in *De Witt* upheld the dependency finding based on the statutes in effect at the time, which have been replaced by the Texas Family Code and other statutory revisions. *See id.* at 690 (“It will be noted that the statute . . . authorizes the court to adjudge a child to be a dependent child upon a proper showing.”). While dependency in Texas and other states may be a child protective measure, the Petitioner has not shown that the district court declared him dependent under any state law extending such measures to individuals over the age of 18.

Instead, the Petitioner mistakenly equates jurisdiction with dependency. The Petitioner contends that although child support was waived, because the district court could have exercised jurisdiction over him for child support matters, he became dependent upon the court. While the district court may have had jurisdiction over the Petitioner for child support matters under sections 101.003(b) and 154.001-2 of the Texas Family Code, neither of those provisions addresses juvenile dependency or child custody matters. The district court found that the Petitioner’s father subjected him to abandonment and neglect, but the court cited no Texas law governing its conservatorship appointment.² The record in this case does not reference any state law regarding juvenile dependency or child custody under which the district court’s conservatorship appointment was made. Consequently, the SAPCR order does not contain a qualifying dependency declaration or custody appointment under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

On appeal, the Petitioner also asserts that a “juvenile is ‘dependent’ upon the court if he or she ‘[h]as been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court.’” The Petitioner mistakenly quotes the regulation’s provision on the best-interest determination at 8 C.F.R. § 204.11(c)(6), rather than the provision for the dependency declaration, which must be made “in accordance with state law governing such declarations of dependency, while the alien was . . . under the jurisdiction of the court.” 8 C.F.R. § 204.11(c)(3). *See* 6 USCIS Policy Manual, *supra*, at J.2(D)(1), (citing subsection (c)(3) of the regulation).

C. USCIS’ Consent to SIJ Classification

On appeal, the Petitioner asserts that the Director violated USCIS policy and regulations by withholding consent based on derogatory information not provided to the Petitioner prior to issuing the denial.

² We note that section 153.132 of the Texas Family Code addresses the rights and duties of the parent appointed the sole managing conservator of a “child,” but the district court did not reference this provision and the Petitioner was not a child under the applicable definition at section 101.003(a) of the Texas Family Code at the time.

Subsection 101(a)(27)(J)(iii) of the Act requires the Secretary of the Department of Homeland Security, through USCIS, to consent to the grant of SIJ classification. This consent determination is an acknowledgement that the request for SIJ classification is *bona fide*, which means that the juvenile court order and the best interest determination were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit. *Id.* at J.2(D)(5).

USCIS is not the fact finder in regards to issues of child welfare under state laws and relies upon the expertise of the juvenile court. *Id.* USCIS does not reweigh the evidence to determine parental abuse, neglect, abandonment, or any similar basis under state law. *Id.* Rather, the agency reviews the juvenile court order to ensure it contains the requisite dependency or custodial placement and includes or is supplemented by the factual basis for the order. *Id.* at J.3(A)(3). While template orders that merely recite the Act and regulations will not suffice, juvenile court orders that contain or are supplemented by judicial findings of fact are generally sufficient to establish a reasonable basis for the juvenile court's order and the judicial or administrative best-interest determination. *Id.* Where the juvenile court order does not contain such findings of fact, USCIS may consider, for example, the underlying petition for dependency or custody, any supporting documents submitted to the juvenile court, affidavits summarizing such evidence, or affidavits and records consistent with the court's findings. *Id.*

In this case, the Director determined that there was "insufficient evidence to conclude that the primary purpose of the SIJ petition is to escape relief from abuse, abandonment, or neglect . . . as opposed to seeking SIJ status as a vehicle to become a lawful permanent resident of the United States." The Director cited to a sworn statement that the Petitioner made to U.S. Customs and Border Protection upon his entry into the United States that purportedly contradicted his mother's affidavit.

The Director erroneously interpreted and applied the consent requirement for two reasons. First, it is the juvenile court order, not the SIJ petition, which must be sought primarily to obtain relief from abuse, neglect, abandonment or a similar basis under state law and not primarily to obtain an immigration benefit. *Id.* at J.2(D)(5) (citing H.R. Rep. No. 105-405, at 130 (1997)). By definition, an SIJ petition is a request for immigrant status, which may be part of a petitioner's motive for seeking the juvenile court order where, for example, the order contains findings that will enable USCIS to determine a petitioner's eligibility for SIJ classification. *Id.* at J.2(D)(5). In this case, the court order contains such findings, which are supported by the record.

Second, in questioning the *bona fides* of the Petitioner's request for SIJ classification, the Director improperly referenced the Petitioner's statements to immigration officials upon his entry into the United States. USCIS may request additional evidence if there is significant contradictory information in the file of which the juvenile court was unaware, or which could affect whether a

reasonable factual basis exists for the court's determinations.³ *Id.* at J.3(B). However, in this case the Director relied upon a single transcribed sentence that refers to the Petitioner in the third person as a female and is an unreliable source of any purported contradiction.

The record here provides a reasonable factual basis for the court's determinations. In the order, the district court granted the Petitioner's mother's SAPCR and based its findings upon review and consideration of her evidence and testimony. The Petitioner's mother explained that her testimony to the court included the information in her affidavit that she subsequently provided to USCIS. The Petitioner's mother's affidavit describes in detail the abuse, abandonment, and neglect of the Petitioner's father and supports the court's determinations. The record lacks any evidence that contradicts the court's order. The preponderance of the evidence shows that the Petitioner's request for SIJ classification is *bona fide* and would warrant USCIS' consent under section 101(a)(27)(J)(iii) of the Act were he otherwise eligible.

III. CONCLUSION

The SAPCR order was not issued by a juvenile court and does not contain a qualifying dependency or custody determination. Consequently, the Petitioner is ineligible for SIJ classification and the appeal will be dismissed. In these visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of V-A-A-E-*, ID# 00067899 (AAO Feb. 6, 2017)

³ However, USCIS exercises careful judgment when considering statements made by children at the time of initial apprehension to question a juvenile court's order. 6 USCIS Policy Manual, *supra*, at J.3(B).