



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

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

MATTER OF D-J-L-R-

DATE: MAR. 22, 2017

APPEAL OF SAN ANTONIO, TEXAS FIELD OFFICE DECISION

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

The Petitioner was born in Honduras and entered the United States as a child. When she was [REDACTED] years old, the Petitioner's mother obtained a temporary court order in which the court found that reunification with the Petitioner's father was not viable due to abandonment or neglect. Based on this order, 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). The SIJ classification protects foreign children in the United States who cannot reunify with one or both of their parents because of abuse, neglect, abandonment, or a similar basis under state law.

The Director of the San Antonio, Texas, Field Office denied the SIJ petition because the state court order was temporary and was not issued pursuant to the court's jurisdiction over the Petitioner as a juvenile.

On appeal, the Petitioner submits a short statement claiming that the state court order was issued in accordance with state law and that U.S. Citizenship and Immigration Services (USCIS) does not have authority to go behind the order.

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

I. LAW

To establish eligibility for SIJ classification, petitioners must show that they are unmarried, under 21 years of age, and have been subject to a state juvenile court order determining that the petitioners 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(c). Petitioners must have been declared dependent upon a juvenile court or the juvenile court must have placed the petitioners in the custody of a state agency or a guardian appointed by the state 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 petitioners' best interest to return to their or their parents' country of nationality or last habitual residence. *Id.* at § 101(a)(27)(J)(ii). 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

The Petitioner was born in Honduras in [REDACTED] and entered the United States in 2013. The Petitioner's mother later filed a petition in suit affecting parent-child relationship (SAPCR) and motion for declaration of dependency with the district court in [REDACTED] Texas, seeking child support from the Petitioner's father and her appointment as conservator of the Petitioner. In 2015, when the Petitioner was [REDACTED] years old, the district court issued a temporary order on conservatorship and motion for declaratory judgment in support of special immigrant juvenile petition (temporary order), in which it appointed the Petitioner's mother as her Parent Sole Managing Conservator, ordered the Petitioner's father to pay child support, and made findings relating to the Petitioner's eligibility for SIJ classification.

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

The Petitioner has not established that the temporary order was issued by a juvenile court. 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. 8 C.F.R. § 204.11(a); 6 USCIS Policy Manual, J.2(D)(4), J.3(A)(1), <https://www.uscis.gov/policymanual>. State law is, therefore, controlling on the definition of a juvenile or child within the states' child welfare provisions. *Id.*

Texas district courts are those of general jurisdiction under Texas law. Tex. Const. Art. V, § 8. However, in its temporary order, the district court here did not exercise jurisdiction over the Petitioner as a juvenile under Texas law because she had reached the age of majority. Rather, the district court asserted jurisdiction over the Petitioner as a person over 18 years of age solely for the purposes of child support. Under the Texas Family Code:

(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.

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Tex. Fam. Code Ann. § 101.003 (West 2017). The Petitioner was [REDACTED] years old when the district court issued the temporary 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 or any other provision of Texas law regarding minors. Accordingly, the temporary order does not meet the requirements of subsection 101(a)(27)(J)(i) of the Act as implemented by the regulation at 8 C.F.R. § 204.11(c)(3).

On appeal, the Petitioner asserts that the district court qualifies as a juvenile court for SIJ purposes because a SAPCR order may be issued after the child's 18th birthday for purposes of child support if an individual is enrolled in a secondary school and complying with minimum attendance requirements. 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 temporary order. However, a juvenile court must have authority to determine both the custody and care of juveniles under state law. 8 C.F.R. § 204.11(a). The record does not establish that the district court had jurisdiction to determine the custody of the Petitioner as a child under Texas law. Consequently, the order was not issued by a juvenile court.

B. No Qualifying Dependency Declaration or Custody Placement

The district court's temporary order is also insufficient because it does not contain a qualifying declaration of dependency or placement of custody. 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 juvenile court should use language establishing that the determination was made under state law. 6 USCIS Policy Manual, *supra*, at J.3(A)(2). Here, the temporary order briefly states that the Petitioner "has been declared dependent on this court," but the order does not reference any state law on juvenile dependency under which the district court's determination was made. Consequently, the temporary order lacks a qualifying juvenile dependency declaration.

The temporary order also lacks a qualifying custody placement. Although the district court appointed the Petitioner's mother as her Parent Sole Managing Conservator, it did not cite to or reference any state law on child custody determinations under which this determination was made. In her SAPCR petition the Petitioner's mother requested her appointment as the Petitioner's conservator pursuant to sections 153.005, 153.371, and 153.373 of the Texas Family Code, but these provisions would not have applied to the Petitioner because she was not a child as defined in sections 101.003(a) or 152.102(2) of the Texas Family Code.

Furthermore, even if, as the Petitioner contends, the district court had jurisdiction over the Petitioner for child support matters under sections 101.003(b) and 154.001-2 of the Texas Family Code, none of those provisions addresses juvenile dependency or custody matters. The district court found that the Petitioner was subjected to parental abandonment and neglect as defined under section 261.001(4) of the Texas Family Code, but there is no indication that the court consequently declared the Petitioner dependent or made any determination regarding her custody under any provision of

Texas law governing juvenile dependency or child custody such as, for example, the child welfare or custody provisions of the Texas Family Code, as she was not a child under those provisions at the time. *See e.g.* Tex. Fam. Code Ann. §§ 261 et. seq. (regarding proceedings for “Protection of the Child”) and 152.102(4) (defining “child custody proceeding” to include proceedings for neglect, abuse, dependency, guardianship, or termination of parental rights under the Uniform Child Custody Jurisdiction and Enforcement Act). Accordingly, the temporary order does not contain a qualifying dependency declaration or child custody placement under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

Even if Texas law encompasses the appointment of conservators for young adults such as the Petitioner, the order here is also insufficient because it is temporary. Court-ordered custodial placements that are intended to be temporary generally do not qualify for the purpose of establishing eligibility for SIJ classification. 6 USCIS Policy Manual, *supra*, at J.2(D)(1). Although termination of parental rights is not required, the record must reflect that the juvenile court determined that reunification with the SIJ’s parent(s) was not viable on more than a temporary basis. *Id.* at J.2(D)(2). The record should reflect that the juvenile court’s determination would remain in effect until the SIJ reached the age of majority and aged out of the juvenile court’s jurisdiction. *Id.* Here, the Petitioner had already reached the age of majority at the time of the order and even if the court retained jurisdiction over her as a young adult for child support, the order does not indicate that the non-viability and custody determinations would extend beyond the temporary finding. On appeal, the Petitioner does not address this deficiency.

The Petitioner further contends that USCIS is not qualified to review or analyze state law. Although USCIS is not the fact finder in regards to issues of child welfare under state law, USCIS must examine the court order to determine if it was issued by a juvenile court and contains the requisite findings of dependency or custody; and nonviability of reunification due to abuse, neglect, or abandonment as section 101(a)(27)(J)(i) of the Act requires. We do not question the district court’s jurisdiction to order child support be paid to the Petitioner’s mother and that the Petitioner was dependent upon the court for such support as a young adult. However, in all SIJ cases we must determine whether the state court order meets the federal statutory and regulatory requirements for SIJ classification. *See* 6 USCIS Policy Manual, *supra*, at J.2(A), (D). Here, the order does not cite or reference any Texas state law governing its jurisdiction over the Petitioner as a juvenile, or any state law on juvenile dependency or child custody under which the court’s determinations were made. Additionally, the order is temporary and lacks a qualifying declaration of juvenile dependency or child custody placement.

III. CONCLUSION

The temporary order was not issued by a juvenile court as defined in the regulation, and does not contain a qualifying dependency determination or custody placement. Consequently, the Petitioner is ineligible for SIJ classification and the appeal will be dismissed.

Matter of D-J-L-R-

ORDER: The appeal is dismissed.

Cite as *Matter of D-J-L-R-*, ID# 68980 (AAO Mar. 22, 2017)