



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

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

MATTER OF J-Y-R-P-

DATE: AUG. 29, 2018

APPEAL OF HOUSTON, TEXAS FIELD OFFICE DECISION

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

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 Houston, Texas Field Office denied the SIJ petition as the Petitioner was not under the district court's jurisdiction as a juvenile under Texas law, there was no qualifying parental reunification or best interest determination, no state law basis for the custody determination, and United States Citizenship and Immigration Services (USCIS) consent was not warranted. On appeal, the Petitioner submits a brief asserting her eligibility for SIJ classification. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years of age, and has been subject to a state juvenile court order determining that the petitioner cannot reunify with one or both 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). A 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 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 the petitioner's best interest to return to his or her, or his or her parents', country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

SIJ classification may only be granted upon the consent of the Department of Homeland Security (DHS), through USCIS, when a petitioner meets all other eligibility criteria. *Id.* at section 101(a)(27)(J)(i)-(iii). 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 on [REDACTED] 1998, and entered the United States without inspection, admission, or parole in July 2015, at the age of 16 years. On [REDACTED] 2016, when the Petitioner was 18 years old, a district court in [REDACTED] Texas issued an order titled: “Order in Suit Affecting Parent-Child Relationship” (SAPCR order), assigning the Petitioner a conservator and finding that the Petitioner’s reunification with her parents was not viable due to their deaths, and that it would not be in the Petitioner’s best interest to return to her previous country of nationality.

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

The Director correctly determined that the district court’s SAPCR order was not issued pursuant to the court’s jurisdiction over the Petitioner as a juvenile, because Texas law defines a child as under the age of 18 and the Petitioner was 18 years old when the court issued its order. For SIJ classification, a petitioner must have been subject to an order containing the requisite determinations issued by a “juvenile court.” Section 101(a)(27)(J)(i) of the Act; *see* 8 C.F.R. § 204.11(c)–(d) (stating the eligibility and evidentiary requirements of an order and findings issued by a juvenile court). A “juvenile court” is defined as 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). Though the specific title and type of court may vary from state to state, the record must establish that the court had competent jurisdiction under state law to make the required determinations about the care and custody of the petitioner as a juvenile, including whether parental reunification is viable. 8 C.F.R. § 204.11(a), (d)(2); 6 USCIS Policy Manual, <https://www.uscis.gov/policymanual>, J.2(D)(4), J.3(A)(1). State law is, therefore, controlling on the definition of a juvenile or child within the states’ child welfare provisions. The court must indicate the specific state law basis in order to demonstrate its competent juvenile jurisdiction. *Id.* at J.2(D)(4), J.3(A)(2).

Texas district courts do have subject matter jurisdiction over family law issues involving child welfare and custody. However, district courts are courts of general jurisdiction and therefore do not rule on juvenile matters in every case that comes before them. *See* Tex. Gov’t Code Ann. §§ 24.007, 24.601 (West 2015) (jurisdiction of district courts); Tex. Const. Art. V, § 8 (same). When a district court does take jurisdiction over issues involving the custody and care of juveniles, it is bound to adhere to the Texas Family Code. In relevant part, Texas law generally defines a “child” as “a person under 18 years of age.” Tex. Fam. Code Ann. § 101.003(a).

The Petitioner asserts that she was 17 years old and met the definition of child at the time the court made its ruling that all requested relief would be granted to her, on [REDACTED] 2016. However, though the Petitioner submitted a [REDACTED], 2016, docket sheet entry indicating that all relief would be granted, the entry also states that the order required the judge’s signature. The judge did not sign the SAPCR order until [REDACTED] 2016, when the Petitioner was 18 years old. The Petitioner has not cited to any relevant statute or case law in asserting that court’s docket entry constituted a valid and enforceable grant of conservatorship and SIJ findings. For a petitioner to be eligible for SIJ classification, a juvenile court in the United States must have *issued an order* or

orders with the requisite SIJ findings. 8 C.F.R. § 204.11(d); 6 USCIS Policy Manual, *supra*, J.2(D)(4).

In the alternative, the Petitioner asserts that we must accord full faith and credit to the state court judgment even if she was 18 years old upon order issuance. However, the full faith and credit provisions of 28 U.S.C. § 1738 apply to courts, not federal administrative agencies such as USCIS. *See NLRB v. Yellow Freight Systems, Inc.*, 930 F.2d 316, 320 (3d Cir. 1991), *cert. denied*, 502 U.S. 820 (1991) (“federal administrative agencies are not bound by section 1738 because they are not ‘courts’”); *American Airlines v. Dept. of Transportation*, 202 F.3d 788, 799 (5th Cir. 2000), *cert. denied*, 530 U.S. 1284 (2000) (finding that 28 U.S.C. § 1738 did not apply to the Department of Transportation because it is “an agency, not a ‘court’”).

The Petitioner also asserts that we may not instruct juvenile courts on how to apply their own state law. However, while USCIS cannot decide issues of child welfare under state law, USCIS must still determine whether a state court order meets the statutory and regulatory requirements for SIJ classification. 6 USCIS Policy Manual, *supra*, at J.2(A), (D); *Budhathoki v. Nielsen*, No. 16-51449, 2018 WL 3649655, at *6 (5th Cir. Aug. 1, 2018) (“Whatever responsibilities are exclusively for the state court, USCIS must evaluate if the actions of the state court make the applicant eligible for SIJ status.”). Here, the Director did not question the validity of the court’s order under Texas law. Nor did the Director question the district court’s authority to issue an order. The Director instead reviewed the SAPCR and determined that the district court did not exercise its jurisdiction over the Petitioner as a juvenile under state law and consequently was not acting as a juvenile court for SIJ purposes.

The Petitioner asserts on appeal that the district court is conferred authority to issue an SAPCR order for the care and custody of a juvenile, even when the subject of the suit is no longer a minor, for child support and conservatorship purposes for those in the Department of Child Protective Services’ custody. As such, the Petitioner contends that the district court may adjudicate juvenile-related issues even for individuals over the age of 18, and she was subject to such an order. We acknowledge that as an exception to the general “child” definition, a child may include a person over 18 years of age, but that definition applies only to child support proceedings. *Tex. Fam. Code Ann.* § 101.003(b). The Petitioner also cites to section 263.602 of the Texas Family Code, which allows for the extension of foster care over young adults over the age of 18. However, the Petitioner has not demonstrated that either of these limited exceptions apply to her rather than the general definition of a child as a person under 18 years of age in the Texas Family Code, as the court did not order child support or extend foster care over the Petitioner.

Moreover, even if child support had been ordered for the Petitioner, we do not question the state court’s jurisdiction over the Petitioner as a child over 18 solely for purposes of child support under Texas law. The record does not, however, show that the court had jurisdiction over the Petitioner as a juvenile under Texas child welfare law for the purpose of making a determination over her “custody and care,” as the SIJ regulation requires of qualifying juvenile court orders. *See* 8 C.F.R. § 204.11(a) (definition of “juvenile court”). The U.S. Circuit Court of Appeals for the Fifth Circuit, within whose jurisdiction this case arises, recently upheld USCIS’ determination that similar child

support orders did not establish SIJ eligibility because the plaintiffs were over the age of 18 when the orders were issued. *Budhathoki*, No. 16-51449, 2018 WL 3649655, at *7 (explaining that “[a]lthough the regulation permits an applicant for SIJ status to be someone who has not yet become age 21, what controls on eligibility for that status is the state law governing decisions over the care and custody of juveniles.”).

Accordingly, the record does not establish that the district court had jurisdiction over the Petitioner’s custody and care as a juvenile under Texas child welfare law such that it could be considered a juvenile court under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(a).

B. The Order Lacks a Qualifying Declaration of Dependency or Placement of Custody

The record shows that even if the order had been issued by a juvenile court, it is still deficient because it lacks a qualifying juvenile 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. Section 101(a)(27)(J)(i) of the Act; 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 and should not just mirror or cite immigration laws and regulations. 6 USCIS Policy Manual, *supra*, at J.3(A)(2).

While the Act allows SIJ eligibility to be based on either a declaration of juvenile dependency or a placement of custody, both determinations must be made by a juvenile court, which must have jurisdiction over the custody of the petitioner as a juvenile even where the state court does not make a custody placement, but instead declares the petitioner dependent on the court. *See* section 101(a)(27)(J)(i) of the Act, as amended by section 235(d)(1) of the Trafficking Victims Protection and Reauthorization Act (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (Dec. 23, 2008) (expanding SIJ eligibility to include children for whom a juvenile court has made a custody placement in addition to those declared dependent upon the juvenile court); 6 USCIS Policy Manual, *supra*, at J.3(A)(1) (explaining that qualifying juvenile court proceedings are those in which the court has jurisdiction under state law to make determinations about the custody of children pursuant to the definition of “juvenile court” at 8 C.F.R. § 204.11(a)).

The SAPCR order lacks a qualifying custody placement. Although the district court appointed the Petitioner’s uncle as her conservator, it cited to sections 153.001(a)(2) and 153.005(b) of the Texas Family Code as the basis for the appointment. However, these sections refer to providing a safe environment for a child by appointing a conservator. *Id.* As stated above, though the Petitioner met the definition of a child under the Texas Family Code when the court heard her petition, she was no longer a child when the court’s SAPCR order was issued, as required. Accordingly, the SAPCR order does not contain a qualifying child custody placement under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(c)(3).

C. The Order Does Not Contain a Qualifying Parental Reunification Determination

The Director determined that the SAPCR order's finding relating to the non-viability of reunification with the Petitioner's parents lacked clarity. Specifically, the Director determined that though the court cited to the neglect statute under section 261.001(4) of the Texas Family Code, it cited language from the abandonment statute under section 152.102(1). The Director also noted that though the court found that reunification was not viable with both of the Petitioner's parents, her birth certificate does not list a father, the court did not identify her father, and the Petitioner did not submit sufficient documentation of her father's identity.

A juvenile court's order must contain a qualifying determination that the petitioner's "reunification with 1 or both of [her] parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law," as required by section 101(a)(27)(J)(i) of the Act. The plain language of section 101(a)(27)(J)(i) of the Act indicates that the reunification finding must be made under state law and must encompass both a determination of abuse, neglect, abandonment or a similar basis and a determination that the petitioner could not be returned to the custody of the unfit parent(s). The juvenile court order should show that this determination was made under state law and the order should not just cite federal immigration law and regulations. 6 USCIS Policy Manual, *supra*, at J.3(A)(2). Moreover, the juvenile court order should indicate which of the specific grounds—abuse, neglect, or abandonment, or a similar basis under state law—applies to which parent in the case. *Id.* at J.3(A)(4).

Here, the district court in its SAPCR order stated that the Petitioner's mother "is deceased and has failed to make arrangements for necessary care for her child after her death under Tex. Fam. Code § 261.001(4)." Section 261.001(4) of the Texas Family Code defines neglect under Texas law and states that neglect includes "the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return . . ." Accordingly, the district court identified the state law under which its non-viability determination for the Petitioner's mother was made, and provided a factual basis that parallels the language of the cited statute.

The district court made similar non-viability determinations for the Petitioner's "alleged father," L-A-M-G-, stating that the Petitioner "has no other alleged, presumed, acknowledged or adjudicated father." As section 101(a)(27)(J)(i) of the Act only requires non-viability of parental reunification with one parent, and the court made a non-viability determination relating to the Petitioner's mother, we need not address whether the court's determination relating to the Petitioner's alleged father is sufficient.

However, even if the district court had made a legal finding that the Petitioner was subjected to neglect under Tex. Fam. Code § 261.001(4), the record does not show that the reunification finding in the SAPCR order included a determination that the Petitioner could not be returned to her parents' custody under Texas law due to such neglect because the district court lacked jurisdiction over the Petitioner's custody at the time the order was issued. In Texas, district courts appear to lose jurisdiction over a juvenile's custody once the juvenile attains the age of 18. *See Ngo v. Ngo*, 133

S.W.3d 688, 691 (Tex. Ct. App. 2003) (finding custody issue moot once child reached the age of 18); *In re N.J.D.* No. 04–13–00293–CV, 2014 WL 555915 (Tex. Ct. App. Feb. 12, 2014) (dismissing as moot an appeal of order awarding Department of Family and Protective Services permanent managing conservatorship of a child because the child had turned 18 years old); *In re E.H.*, No. 2-07-343-CV, 2008 WL 2404490 (Tex. Ct. App. June 12, 2008) (same); Tex. Fam. Code Ann. § 152.102 (West 2015) (defining *child* “as an individual who has not attained 18 years of age” and *child custody proceeding* as “a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear.”).

Consequently, the record does not indicate that the district court made a legal, rather than solely factual determination on the viability of parental reunification. Because the reunification determination is a legal conclusion, juvenile court orders that contain only factual findings about a petitioner’s ability to reunify with his or her parent(s) will not suffice. *See* 6 USCIS Policy Manual, *supra*, at J.3(A)(2) (explaining that the juvenile court order must show that the requisite determinations, including parental reunification, were made under state law).

In addition, although the SAPCR order contains findings with the words “reunification” and “not viable,” those words alone do not satisfy the requirements for SIJ classification. *See Budhathoki*, No. 16-51449, 2018 WL 3649655, at *8 (noting that the deficiencies were not merely “the absence of formulaic language in the state court order[.]”). On appeal, the Petitioner has not established that at the time of the SAPCR proceedings the district court had competent jurisdiction under Texas law over her custody as a juvenile, and could make a judicial determination that parental reunification was not viable for SIJ purposes. Consequently, the SAPCR order lacks a qualifying legal conclusion on the viability of parental reunification under Texas child welfare law, as the Act requires for SIJ classification.

D. The Order Does Not Contain a Qualifying Best Interest Determination

The Petitioner’s SAPCR order states that “it is in the child’s best interest to remain with [E-S-R-P-] as he can properly care for her since she is an orphan.” Though the order indicates that the best placement for the Petitioner’s care is with her uncle, it does not make a determination concerning whether it is in her best interest to return to Honduras. The Petitioner asserts on appeal that by finding that it was in the Petitioner’s best interest to remain in the United States, it follows that it is also not in her best interest to be returned to Honduras. However, the SAPCR order also does not specify that it would be in the Petitioner’s best interest to remain in the United States, it only states that her care best remains with her uncle. The record must 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. Section 101(a)(27)(J)(ii) of the Act. And, “a court’s finding that a particular custodial placement is the best alternative available to the petitioner in the United States does not necessarily establish that a placement in the petitioner’s country of nationality would not be

in the child's best interest." USCIS Policy Manual at J.2(D)(3). Accordingly, the order does not contain a qualifying best interest determination for the Petitioner.

E. USCIS' Consent is Not Warranted

USCIS' consent determination is an acknowledgment 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. H.R. Rep. No. 105-405, 130 (1997); 6 USCIS Policy Manual, *supra*, at J.2(D)(5) and J.3(A)(3).

To determine if consent is warranted, USCIS first reviews the juvenile court order to ensure it contains the requisite determinations of juvenile dependency or child custody, best interest, and that parental reunification is not viable due to abuse, neglect, abandonment, or a similar basis under state law. 6 USCIS Policy Manual, *supra*, at J.2(A), (D)(5). If all the requisite findings are present, USCIS then reviews the record to ensure the juvenile court order includes or is supplemented by a reasonable, factual basis for the SIJ findings, which shows that the juvenile court made an informed decision. *Id.* at J.2(D)(5), J.3(A)(3). Where the juvenile court order does not contain findings of fact, USCIS may consider, for example, the underlying petition for dependency or custody, records from the juvenile court proceedings, any supporting documents submitted to the court, affidavits summarizing such evidence, or affidavits and records consistent with the court's findings. *Id.* at J.3(A)(3).

USCIS' consent is not warranted in this case because the requisite determinations of juvenile dependency or child custody, parental reunification, and best interest were not made, and there is otherwise no evidence that the order was sought to compel any action that provides relief from abuse, abandonment, or neglect. H.R. Rep. No. 105-405, at 130 (1997); 6 USCIS Policy Manual, *supra*, at J.2(D)(5) (explaining that the court-ordered dependency or custodial placement of the child is the relief being sought from the juvenile court); 8 C.F.R. § 204.11 (explaining that a dependency declaration must be made "in accordance with state law governing such declarations of dependency" by a "juvenile court . . . having jurisdiction under State law to make judicial determinations about the custody and care of juveniles"). *See also*, Special Immigrant Status, Final Rule, 58 Fed. Reg. 42,839, 42,846 (Aug. 12, 1993) (explaining the expansion of the definition of "long-term foster care" to "allow juveniles to qualify for special immigrant status when guardianship or adoption is deemed to be in the juvenile's best interest after the alien is found to be dependent upon the juvenile court"). None of the provisions in the district court's order indicate that it was issued in relation to any juvenile dependency, child custody, or other protective proceeding over the Petitioner as a minor under Texas law. Therefore, the Petitioner did not seek the order primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis to these grounds. Consequently, the Petitioner has not demonstrated that her request for SIJ classification is *bona fide* and merits USCIS' consent.

III. CONCLUSION

While we do not question the facts underlying the SAPCR order, the record does not establish that the order was issued by a juvenile court. The court's order also lacks a qualifying juvenile dependency declaration or custody placement and does not contain a qualifying parental reunification or best interest determination. Because the Petitioner is ineligible on these grounds and has not established that her request for SIJ classification is *bona fide*, USCIS' consent to her SIJ classification is not warranted.

ORDER: The appeal is dismissed.

Cite as *Matter of J-Y-R-P-*, ID# 1481080 (AAO Aug. 29, 2018)