



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S-E-R-R-

DATE: DEC. 19, 2018

APPEAL OF NATIONAL BENEFITS CENTER DECISION

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

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 denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (SIJ petition), concluding that the Petitioner's state court orders did not establish his eligibility for SIJ classification because the orders did not contain a qualifying declaration of dependency or custody of placement. On appeal, the Petitioner submits a brief and copies of previously-submitted documents. 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 juvenile court must have declared a petitioner dependent upon the court or placed the petitioner in the custody of a state agency or a guardian. Section 101(a)(27)(J)(i) of the Act. The record must 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' previous 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 U.S. Citizenship and Immigration Services (USCIS). *Id.* at section 101(a)(27)(J)(i)-(iii). A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. 8 C.F.R. § 103.2(b)(1); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

II. ANALYSIS

A. District Court Orders

In 2017, the District Court in [REDACTED] Texas (district court), issued a declaratory judgment titled, *Amended Order of Declaratory Judgment and Findings* (amended order). In its amended

order, the district court found the Petitioner, a native of El Salvador, “dependent upon this juvenile court in accordance with the laws of the State of Texas while such child is under the jurisdiction of this Court.” The court also found that the Petitioner’s mother “abandoned and neglected [her] within the meaning of Sections 152.102 and 261.001 of the Texas Family Code,” and “reunification by [the Petitioner] with his [*sic*] mother . . . is not a viable option due to abandonment and neglect.” The district court further determined that it was not in the Petitioner’s “best interest to be returned to her or her parent’s previous country of nationality or country of last habitual residence, El Salvador, due to the history of abandonment and neglect.” *Amended Order of Declaratory Judgment and Findings*, [REDACTED] Judicial District, [REDACTED] Texas [REDACTED] 2017).

In response to the Director’s request for evidence, the Petitioner submitted an *Order Clarifying the Order of Dependency and Findings* (clarifying order), issued by the district court. In its clarifying order, the court explained that by finding the Petitioner dependent on the court “means that [she] needs the Court for help to render an *Order of Dependency and Findings* . . . to relieve her from further neglect and abandonment.” (italics added). The court also explained “[t]he definitions of abandonment and neglect are found in Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship) of the Texas Family Code, which sets out laws related to the physical and mental health and welfare for juveniles.” The court further explained its reunification finding “means that it is not a viable option for [the Petitioner] to join her mother, due to the court’s findings of abandonment and neglect[,]” and it made its best-interest finding “because there is no suitable caretaker for the Petitioner in El Salvador: Petitioner was abandoned and neglected by her mother since she was 5 years old and because her father is unable to support her due to his health issues.” *Order Clarifying the Order of Dependency and Findings*, [REDACTED] Judicial District, [REDACTED], Texas [REDACTED] 2017).

B. Orders Do Not Contain a Declaration of Dependency or Placement of Custody

The Director determined that the district court’s orders were insufficient because they did not contain any indication that the district court declared the Petitioner “dependent or made any determination regarding [her] custody under any provision of Texas law governing juvenile dependency or child custody.” For SIJ classification, a juvenile court must have declared a petitioner dependent upon the juvenile court, or must have legally committed the petitioner to, or placed the petitioner 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. 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).

On appeal, the Petitioner argues that the district court determined her dependency on the court pursuant to definitions of *dependent* and *dependency* contained in “leading dictionaries,” and the court’s authority provided by sections 24.008 and 24.601(a)-(c) of the Texas Government Code, and sections 37.001-011 of the Texas Civil Practice and Remedies Code. Tex. Gov’t. Code Ann. §§ 24.008, 24.601 (West 2017); Tex. Civ. Prac. & Rem. Code Ann. §§37.001-011 (West 2017).

Neither the Texas Government Code nor the Texas Civil Practice and Remedies Code provisions referenced by the Petitioner discuss a juvenile dependency proceeding, but rather define the jurisdiction of family and other district courts, the courts' responsibility involving family law matters, and the general purpose of declaratory judgments contained in the Uniform Declaratory Judgments Act (UDJA). Although the district court stated in its clarifying order its "primary responsibility for cases involving family law matters" along with its "declaratory judgment power pursuant to the Texas [UDJA] with concurrent discretion to make findings of fact," and its "power to hear . . . and to grant any relief that could be granted by either courts of law or equity[.]" the district court does not cite any Texas law governing juvenile dependency or otherwise show that the court declared the Petitioner dependent upon the court in accordance with any "state law governing such declarations of dependency," as 8 C.F.R. § 204.11(c)(3) requires.

Moreover, the matter presently before us arises within the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit, which recently determined that for SIJ purposes, dependency has a "specific federal meaning," and it is not the presence of "formulaic language in . . . state court orders" which will establish a qualifying dependency order. *Budhathoki v. Nielsen*, 898 F.3d 504, 513, 517 (5th Cir. 2018). While the language of juvenile court orders may vary according to individual state child welfare laws, the record must establish that the juvenile court's dependency declaration meets the requirements of the Act and the SIJ regulation. See 6 USCIS Policy Manual J.3(A)(2), <https://www.uscis.gov/policymanual> (explaining how USCIS assesses the sufficiency of state court orders under the Act). In making a dependency declaration, the juvenile court must have competent jurisdiction under state law over the custody and care of the SIJ petitioner as a juvenile. 8 C.F.R. § 204.11(a), (c)(3). See 6 USCIS Policy Manual, *supra*, at J.2(D)(1), n.5 (citing section 300 of the California Welfare and Institutions Code as an example of a state law governing declarations of dependency). Consequently, a qualifying dependency order must in some way encompass custody. See *Budhathoki*, 898 F.3d at 513 (finding that Texas child support orders "were not the equivalent of the necessary 'care and custody' rulings required" for SIJ classification, in part, because "there were no arguments or recorded consideration by the courts of whether any of the subjects . . . should be made dependent on those courts or placed in the care and custody of another person or some institution . . .").

Here, the district court's orders do not show that the district court addressed custody or indicate that the dependency statement in the orders were issued under any Texas state law in juvenile dependency, child custody, or other protective child welfare proceeding in which the court had jurisdiction over the petitioner's custody.¹ As discussed previously, the provisions cited by the Petitioner on appeal only address the jurisdiction of Texas family district courts over matters including child custody and dependency along with general provisions concerning declaratory judgments; however, the court orders do not show that the district court actually made a subsequent

¹ On appeal, the Petitioner does not submit the underlying petition for declaratory judgment or any other evidence of the basis in Texas child welfare law upon which the district court made its declaration that the Petitioner is dependent on the court.

dependency determination under any provision of Texas law governing juvenile dependency proceedings, for example, the child welfare provisions of the Texas Family Code. *See, e.g.*, Tex. Fam. Code Ann. §§ 152.102(4) (West 2017) (defining *child custody proceeding* to include proceedings for neglect, abuse, dependency, guardianship, or termination of parental rights), 262.001(a) (stating that a governmental entity may take possession of a child); Tex. Fam. Code Chap. 261 (regarding proceedings for the investigation of child abuse or neglect). *See also* Tex. Fam. Code Ann. § 51.01(3) (stating one purpose of the Juvenile Justice Code as providing for the care, protection and wholesome development of children). Although the court referred to the Petitioner's release to her uncle by the Department of Health and Human Services – Office of Refugee Resettlement, the Petitioner also does not claim, and the orders do not show, that the district court made any ruling on the Petitioner's custody in the declaratory judgment or any other related proceedings. Consequently, the record lacks a qualifying dependency declaration or custody placement, as section 101(a)(27)(J)(i) of the Act requires.

C. District Court Was Not a Juvenile Court for SIJ Purposes

Although not discussed by the Director, the record does not establish that the district court issued its orders pursuant to the court's jurisdiction over the Petitioner as a juvenile as required for SIJ purposes. 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). While 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. 8 C.F.R. § 204.11(a), (d)(2); *see also* 6 USCIS Policy Manual, *supra*, at J.2(D)(4), J.3(A)(1) (explaining juvenile court jurisdiction and the types of courts that may qualify as juvenile courts for purposes of SIJ classification).

Here, the district court stated in its amended order that the Petitioner's petition for declaratory judgment "came for final decision before the Court" on [REDACTED] 2017, and in its clarifying order, the court stated it "was exercising jurisdiction over Petitioner . . . as a 'juvenile court.'" However, the court did not issue the amended order until [REDACTED] 2017, when the Petitioner already attained 18 years and almost one month of age.² Consequently, the record does not indicate 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 required for SIJ classification, because the Petitioner had already reached the age of majority under Texas law at the time the court issued its order. *See* 8 C.F.R. § 204.11(a) (definition of *juvenile court*); *see also* Tex. Fam. Code Ann. § 101.003(a) (definition of *child* or *minor*); *Budhathoki*, 898 F.3d at 513 (stating "[a]lthough the regulation permits an applicant for SIJ status to be someone who has not yet become age 21, what

² The record does not include the Petitioner's original order.

controls on eligibility for that status is the state law governing decisions over the care and custody of juveniles.”); *In Interest of B.A.L.*, No. 01–16–00136–CV, 2017 WL 3027660, at *6 (Tex. App. Jul. 18, 2017) (explaining that when a child who was subject of a lawsuit affecting the parent-child relationship turned 18 years of age, he “was no longer a ‘child’ as defined by the Texas Family Code, and the referring court no longer had juvenile jurisdiction over him”); 6 *USCIS Policy Manual*, *supra*, at J.2(D)(4), J.3(A) (explaining if a court does not have jurisdiction over an individual 18 years of age or older, it may not be able to take jurisdiction over that person to issue a qualifying order even though the individual may file an SIJ petition with USCIS until 21 years of age).

We recognize the importance of proceedings for declaratory judgment and Texas’ efforts for care of its youth, and do not question the district court’s jurisdiction over the Petitioner as an individual over 18 years of age “within the geographical boundaries of the States of Texas,” or the validity of the court’s orders. However, “[t]he federal question . . . is not whether these are valid [] orders, but whether they are the equivalent of declaring the child dependent on a juvenile court.” *Budhathoki*, 898 F.3d at 513. After considering the definitions of a *child* contained in the Texas Family Code and Texas case law regarding the jurisdiction of state courts to rule on the custody and care of a child, the Fifth Circuit upheld USCIS’ determination that Texas district court orders for child support of persons over 18 years of age “were not the equivalent of the necessary ‘care and custody’ rulings required for SIJ status.” *Id.* at 515.

Based on the foregoing, the record does not demonstrate 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 as required for SIJ classification.

D. District Court’s Parental Reunification Determination Is Not Qualifying

Also not discussed by the Director, the district court’s orders do not contain a qualifying parental reunification determination. The plain language of section 101(a)(27)(J)(i) of the Act indicates that a juvenile court’s reunification finding must be made under state law and must encompass both a determination of abuse, neglect, abandonment, or a similar basis under state law, and a corresponding determination that a petitioner cannot be returned to the custody of the unfit parent(s). While the language of juvenile court orders may vary depending on specific state laws and SIJ petitioners’ individual circumstances, the determination that family reunification is no longer viable is a legal conclusion under relevant state child welfare laws made by a court with competent jurisdiction to determine whether the parent(s) will be able to regain custody of the SIJ petitioner. *See* 8 C.F.R. § 204.11(a), (d)(2)(i)-(ii) (requiring juvenile court order to be issued by a court of competent jurisdiction under state law to make determinations regarding the custody of the juvenile, including the requisite determination that family reunification is no longer viable); *see also* 6 *USCIS Policy Manual*, *supra*, at J.2(D), J.3(A)(2) (explaining that the juvenile court’s parental reunification finding must be under the relevant state child welfare law(s)).

In the *Findings* section of the clarifying order, the district court declared the Petitioner's mother "abandoned and neglected [the Petitioner] within the meaning of Sections 152.102 and 261.001 of the Texas Family Code" and reunification with her mother "is not a viable option due to a history of neglect and abandonment against the Child, pursuant to Tex. Fam. Code[] § 152.102(1) and § 261.001(4)(A)." Although the order contains findings with the terms *reunification* and *not viable*, those words alone do not satisfy the requirements for SIJ classification. See *Budhathoki*, 898 F.3d at 513 (noting that deficiencies were not merely "the absence of formulaic language in the state court orders . . ."). While the court cited in its order to the definition of *neglect*, this provision applied to a *child* defined, as indicated previously, as a person less than 18 years of age.

Even if the district court had made a legal finding that the Petitioner was subjected to abandonment or neglect under the Texas Family Code before reaching 18 years of age, the court lacked jurisdiction over the Petitioner's custody at the time of the order's issuance. Therefore, the record does not show that the reunification finding in the court's orders included a legal determination that the Petitioner could not be returned to her mother's custody under Texas law due to such abandonment or neglect. In Texas, district courts appear to lose jurisdiction over a juvenile's custody once the individual attains 18 years of age. See *Ngo v. Ngo*, 133 S.W.3d 688, 691 (Tex. Ct. App. 2003) (finding custody issue moot once child reached 18 years of age); *In re N.J.D.*, No. 04-13-00293-CV, 2014 WL 555915, at *1 (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 of age); *In re E.H.*, No. 2-07-343-CV, 2008 WL 2404490, at *1 (Tex. Ct. App. Jun. 12, 2008) (same); Tex. Fam. Code Ann. § 152.102(2),(4) (definitions for *child*, "an individual who has not attained 18 years of age," and *child custody proceeding*). Based on the foregoing, 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).

Consequently, the Petitioner has not established that at the time of the declaratory judgment 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. The orders lack a qualifying legal conclusion on the viability of parental reunification under Texas child welfare law, as section 101(a)(27)(J)(i) of the Act requires for SIJ classification.

E. USCIS Consent is Not Warranted

SIJ classification may only be granted upon the consent of DHS, through USCIS, when a Petitioner meets all the other eligibility criteria. Section 101(a)(27)(J)(i)-(iii) of the Act. USCIS' consent determination is also 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). *See also* 6 *USCIS Policy Manual, supra*, at J.2(D)(5), J.3(A)(3) (explaining that the court ordered dependency or custodial placement of the child is the relief being sought from the juvenile court).

While USCIS cannot decide issues of child welfare under state law, as noted in *Budhathoki*, “[w]hether 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 ha[s] authority to examine the orders for that purpose.” 898 F.3d at 511. As discussed previously, we do not question the district court’s jurisdiction or its ability to make declaratory findings for the Petitioner as an individual over 18 years of age. However, we do have the authority, and are required to determine, whether the court’s orders contain requisite findings and whether the Petitioner sought the orders primarily to gain relief from parental abuse, neglect, or abandonment. Here, we do not reach the issue of whether the Petitioner sought the orders primarily to gain such relief. USCIS’ consent is not warranted because she has not otherwise established her eligibility for SIJ classification since the orders were not issued by a juvenile court, and also lack qualifying rulings on juvenile dependency or custody and parental reunification. Because the Petitioner is ineligible on these grounds, USCIS’ consent to her SIJ classification is not warranted.

F. Full Faith and Credit; Administrative Procedures Act

On appeal, the Petitioner argues that USCIS is required to give the district court’s orders “full faith and credit” and “not engage in a *de novo* review of the facts and circumstances underlying” the district court’s orders or “question a state court judge’s determination of that state’s law.” In addition, the Petitioner argues that the SIJ provisions contained in the *USCIS Policy Manual* violate the Administrative Procedures Act (APA) because they contain mandatory requirements not contemplated by the Act and the SIJ regulation, and consequently, she “had no notice that she would be expected to comply with additional requirements and no opportunity to do so.”

When determining whether the SIJ petitioner has established eligibility, USCIS reviews juvenile court orders to ensure they contain 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). Consequently, as previously indicated, USCIS is permitted and required to review the entire record to ensure the court’s orders contain a reasonable, factual basis for each of the court’s conclusions. *Id.* at J.2(D)(5), J.3(A)(3).

Moreover, the full faith-and-credit provisions of 28 U.S.C. § 1738 apply to courts, not federal administrative agencies such as USCIS. *See American Airlines, Inc. v. Dep’t of Transportation*, 202 F.3d 788, 799 (5th Cir. 2000), *cert. denied*, 530 U.S. 1284 (2000) (finding that section 1738 did not apply to the Department of Transportation because it “is an agency, not a ‘court.’”); *N.L.R.B. v. Yellow Freight Systems, Inc.*, 930 F.2d 316, 320 (3d Cir. 1991), *cert. denied*, 502 U.S. 820 (1991), (stating “federal administrative agencies are not bound by section 1738 because they are not ‘courts.’”). Similarly, an assertion of a violation by federal administrative agencies of the

rulemaking requirements proscribed in 5 U.S.C. § 553 should be addressed to the courts. *See* 5 U.S.C.A. §§ 702 (West 2018) (stating “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.”), 704 (stating “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.”).

Nevertheless, we do not question the validity in Texas of the district court’s orders and factual findings regarding the Petitioner’s mother’s abandonment and neglect, as we generally defer to state courts on matters of state child welfare law. *6 USCIS Policy Manual, supra*, at J.2(A). However, as discussed, the Petitioner has not demonstrated her eligibility for SIJ classification by a preponderance of the evidence because the district court’s orders do not meet the statutory requirements of section 101(a)(27)(J)(i) of the Act and the regulation currently in effect at 8 C.F.R. § 204.11; the orders were not issued by a juvenile court, and also lack qualifying rulings on juvenile dependency or custody and parental reunification.

III. CONCLUSION

While we acknowledge the Petitioner’s unfortunate circumstances and hardships during her childhood, as reflected in the district court’s orders, she is ineligible for SIJ classification because the district court was not acting as a juvenile court when it issued its orders, the orders lack a qualifying dependency declaration or custody placement, and they do not contain a qualifying parental reunification determination. Given these deficiencies, USCIS’ consent to the Petitioner’s SIJ classification is not warranted.

ORDER: The appeal is dismissed.

Cite as *Matter of S-E-R-R-*, ID# 1856123 (AAO Dec. 19, 2018)