



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

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

MATTER OF L-A-R-M-

DATE: SEPT. 26, 2018

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) 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 San Antonio Field Office in Texas 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 he had attained the age of majority in Texas and was not a juvenile under state law when the Texas court issued the orders. On appeal, the Petitioner submits a brief. 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 they 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), when a petitioner meets all other eligibility requirements. *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 [REDACTED] 2016, when the Petitioner, a native of Guatemala was 19 years of age, the District Court in [REDACTED] Texas (district court), issued an *Order in Suit Affecting Parent-Child Relationship* (SAPCR order)¹ on his behalf, in response to his uncle's SAPCR petition and motion for declaratory judgment. The SAPCR order contains a ruling for the Petitioner's parents to pay child support for the Petitioner's financial support. In its order, the court included a section titled, *Other Findings*, and stated the following:

1. The child is under the age of 21 and is unmarried.
2. The Court finds that the subject child has been subjected to parental abandonment and neglect as defined under Chapter 261.001(4), Texas Family Code.
3. Reunification with [the child's] father and mother is not viable due to neglect.
4. It is not in the child's best interest to be returned to Guatemala, his country of nationality or last habitual residence.

With his response to the Director's request for evidence, the Petitioner submitted the district court's *Order on Motion to Clarify in Suit Affecting Parent-Child Relationship* (clarifying SAPCR order), issued in [REDACTED] 2016, in which the court included a section titled, *Clarification*, and explained the following:

- a) [T]he Court asserted jurisdiction over [the Petitioner] as a 'child' as defined by Tex. Fam. Code 101.003(b);
- b) [The Petitioner] is dependent on this Court pursuant to the Court's authority under Texas Family Code 154.001(a)(1) and 154.002. At the time of the original SAPCR proceeding, the child was enrolled in a program leading toward a high school diploma . . .
- c) Upon rendering its order dated [REDACTED] 2016, this Court ordered child support be paid in order to provide relief to the child . . . from parental abandonment or neglect;

¹ Section 101.032(a) of the Texas Family Code explains SAPCR as "a suit filed . . . in which the appointment of a managing . . . or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is requested."

- d) Upon rendering its order dated [REDACTED] 2016, this Court acquired continuing, exclusive jurisdiction over support for the child

B. District Court Was Not a Juvenile Court 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 J.2(D)(4), J.3(A)(1), <https://www.uscis.gov/policymanual> (explaining juvenile court jurisdiction and the types of courts that may qualify as juvenile courts for purposes of SIJ classification).

The Director determined that the district court did not issue the SAPCR orders pursuant to the court’s jurisdiction over the Petitioner as a juvenile because section 101.003(a) of the Texas Family Code defines a child as an unmarried person under age 18 years. On appeal, the Petitioner argues that USCIS exceeds its statutory authority and acts arbitrarily by requiring SIJ petitioners in Texas, like him, to demonstrate that juvenile courts exercised jurisdiction over them pursuant to the general definition of a *child* under section 101.003(a) of the Texas Family Code because Texas law recognizes multiple jurisdictional grounds for SAPCR proceedings, including child support for persons over 18. He further cites to provisions in the Texas Family Code, case law, and a professional journal article regarding the definitions of *child*, *child support*, and *adult*, and argues that under Texas law, a person is defined either as a *child* or an *adult*, and as explained in the district court’s clarifying SAPCR order, the court asserted jurisdiction over him as a child because “nothing in Texas family law allows a court to order ‘child support’ for an ‘adult.’”

Although Texas district courts have subject matter jurisdiction over family law issues involving child welfare and custody, they are courts of general jurisdiction, and therefore, do not rule on juvenile dependency and child custody matters in every case that comes before them. *See* Tex. Gov’t Code Ann. §§ 24.007, 24.601 (West 2016) (jurisdiction of district courts); Tex. Const. Art. V, § 8 (same). The Texas Family Code, which contains provisions for child custody and juvenile dependency, defines a “‘child’ or ‘minor’ [as] 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.” Tex. Fam. Code Ann. § 101.003(a); *see also id.* at § 51.02(2) (defining *child* in the Juvenile Justice Code as a minor between 10 and 16 years of age; or between 17 years and 17 years, 11 months of age when there is delinquent or other conduct indicating a need for supervision).

Here, the district court explained in the clarifying SAPCR order that it had jurisdiction over the Petitioner “as a ‘child’ as defined by Texas Family Code § 101.003(b),” which stated at the time of issuance, “[i]n 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.” The court also found the Petitioner was “dependent on this Court pursuant to the Court’s authority under Texas Family Code 154.001(a)(1) and 154.002,” which provide Texas courts with jurisdiction to enter a child support order for an individual over 18 years of age until he or she graduates from high school.

We recognize the importance of SAPCR proceedings, including child support, for the care of youth under Texas law and do not question the court’s jurisdiction over the Petitioner as an individual over 18 years of age solely for purposes regarding child support. However, 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 his “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 SAPCR orders. *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*).

Moreover, the matter presently before us arises within the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit, which recently found that USCIS did not exceed its authority in denying SIJ petitions where Texas state court orders did not assert jurisdiction over plaintiffs as children defined at section 101.003(a) of the Texas Family Code, and further determined “[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.” *Budhathoki v. Nielsen*, 898 F.3d 504, 513 (5th Cir. 2018). *See also 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).

The Petitioner also argues that the Act “expressly recognizes that a juvenile court may make dependency orders *or* custody orders,” and neither the Act nor the regulations requires a juvenile court to make both care and custody determinations “regarding an SIJ *child*.” While the Petitioner correctly notes that the Act allows SIJ eligibility to be based on a declaration of juvenile dependency or a placement of custody, the Act requires that a juvenile court make these determinations. As stated previously, SIJ provisions in the regulation defines a *juvenile court* as having jurisdiction under State law to make determinations regarding the custody *and* care of juveniles. 8 C.F.R. § 204.11(a). A plain reading of these provisions indicates that when courts do not make determinations regarding a petitioner’s custody and care, they are not a juvenile court for SIJ-related purposes. *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); *see also* 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 and care of children pursuant to the definition of *juvenile court* at 8 C.F.R. § 204.11(a)).

The Petitioner further argues that USCIS also exceeds its statutory authority because federal law does not require the issuance of SAPCR orders for the particular purpose of protecting him from parental abuse, neglect, or abandonment. In so doing, he refers to the provisions in the Texas Family Code defining the purposes for SAPCR proceedings. At the same time, he also refers to Texas legislation and the state's recognition to provide for individuals over the age of 18 years in the form of child support, and asserts the district court exercised its jurisdiction over him "as a child, determined that he had been abandoned and neglected, and entered orders . . . to provide relief from that abandonment and neglect."

Again, we recognize the importance of SAPCR proceedings 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 for child support-related purposes or the validity of the court's orders. However, "[t]he federal question . . . is not whether these are valid support 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.

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

Although not discussed in the Director's denial, the SAPCR orders do not contain a qualifying declaration of dependency or placement of custody. For SIJ classification, a petitioner 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. 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).

On appeal, the Petitioner argues that his SAPCR proceeding was a qualifying dependency proceeding because the district court found him dependent on the court due to his need of "parental support for his care," and in so doing, ultimately ordered his relief from parental abandonment and neglect.

The clarifying SAPCR order explains that the Petitioner “is dependent on this Court . . . under Texas Family Code 154.001(a)(1) and 154.002[,]” provisions concerning the court’s authority to issue the Petitioner’s child support order. However, “[d]ependent’ for SIJ purposes . . . demands that a state court do more than impose a financial obligation on parents” and “‘dependency’ for SIJ status purposes has a specific federal meaning.” *Budhathoki*, 898 F.3d at 513, 517. As the Fifth Circuit concluded in *Budhathoki*, “before a state court ruling constitutes a dependency order, it must in some way address custody or at least supervision.” *Id.* at 513. Here, as with the plaintiffs in *Budhathoki*, the record contains “no arguments or recorded consideration by the courts of whether any of the subjects of the support orders should be made dependent on those courts or placed in the care and custody of another person or some institution, and if so, whether there was authority to do so despite the age of the plaintiffs.” *Id.* at 514.

Moreover, the court’s jurisdiction over the Petitioner as a *child* defined under section 101.003(b) to make child support-related decisions under sections 154.001(a)(1) and 154.002 of the Texas Family Code, does not address child welfare in juvenile dependency or child custody proceedings. *See id.* at 515 (finding that Texas child support orders for individuals 18 years of age or older are not equivalent to rulings on the “care and custody” of a child within the meaning of the SIJ provisions). The record does not indicate that the court made any determination regarding the Petitioner’s custody under any provision of Texas law governing juvenile dependency or child custody such as the child welfare or custody provisions of the Texas Family Code. *See, e.g.*, Tex. Fam. Code Ann. §§ 152.102(4) (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).

Based on the foregoing, the district court’s SAPCR orders lack a qualifying juvenile dependency declaration or placement of child custody, as section 101(a)(27)(J)(i) of the Act requires.

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

Also not discussed in the Director’s denial, the SAPCR orders do not contain a qualifying parental reunification determination. The plain language of section 101(a)(27)(J)(i) of the Act indicates that the juvenile court’s determination that parental reunification is not viable is a legal conclusion, made in accordance with relevant state child welfare laws. This determination encompasses a finding of abuse, neglect, abandonment, or a similar basis under state law, and a finding that a petitioner consequently could not be returned to the custody of unfit parent(s). *See* 8 C.F.R. § 204.11(a), (d)(2)(ii) (requiring a determination by a juvenile court with competent jurisdiction over the juvenile’s custody that family reunification is no longer viable); 6 USCIS Policy Manual, *supra*, at J.2(D)(2), (4) (explaining that the parental reunification determination must be made under the relevant state child welfare laws regarding abuse, abandonment, neglect or a similar legal basis, and

the juvenile court order must be properly issued under state law governing jurisdiction over child custody).

In the *Other Findings* section of the SAPCR order, the district court declared the Petitioner “has been subjected to parental abandonment and neglect as defined under Chapter 261.001(4), Texas Family Code” and “[r]eunification with [his] father and mother is not viable due to neglect.” 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 original SAPCR order included a legal determination that the Petitioner could not be returned to his parents’ 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 SAPCR proceedings the district court had competent jurisdiction under Texas law over his custody as a juvenile and could make a judicial determination that parental reunification was not viable for SIJ purposes. The SAPCR 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).

On appeal, the Petitioner asserts USCIS violates its own policy and errs as a matter of law by “conflat[ing] SIJ eligibility requirements with USCIS’ consent function” because it erroneously determined that he was not dependent on a juvenile court and the Act “requires, in addition to—not as part of—the findings to be made by state ‘juvenile court,’ [sic] that the Secretary of Homeland Security consent to the grant of [SIJ] status.”

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. *See* 6 USCIS Policy Manual, *supra*, at J.2(A), (D). 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 determinations in regard to child support 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 SAPCR orders primarily to gain such relief. USCIS’ consent is not warranted because he has not otherwise established his eligibility for SIJ classification since the SAPCR orders were not issued by a juvenile court and lack qualifying rulings on juvenile dependency or custody and parental reunification. Because the Petitioner is ineligible on these grounds, USCIS’ consent to his SIJ classification is not warranted.²

III. CONCLUSION

While we acknowledge the Petitioner’s unfortunate circumstances and hardships during his childhood, as reflected in the SAPCR petition, he is ineligible for SIJ classification because the district court was not acting as a juvenile court when it issued its SAPCR 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.

² In his brief submitted on appeal, the Petitioner asserts that in numerous other decisions, we have provided “essentially boilerplate analysis of Texas state law” He cites in his brief to one of our independent, non-precedent decisions, and makes arguments why our decision erred as a matter of law and policy in regard to SAPCR proceedings for a petitioner over 18 years of age in Texas. Unlike decisions issued as precedents under 8 C.F.R. § 103.3(c), non-precedent decisions do not bind USCIS officers in future adjudications. Moreover, as discussed, we have conducted *de novo* review of the entire record before us, including, but not limited to, the Petitioner’s submission on appeal and evidence related to his SAPCR proceedings, and have made an independent determination regarding his eligibility for SIJ classification.

Matter of L-A-R-M-

ORDER: The appeal is dismissed.

Cite as *Matter of L-A-R-M-*, ID# 685995 (AAO Sept. 26, 2018)