



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

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

In Re: 11297642

Date: FEB. 24, 2021

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

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 (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner subsequently appealed that decision. On appeal, the Petitioner submits a brief and an amended juvenile court order.

We review the questions raised in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain the appeal.

I. LAW

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). To establish eligibility for SIJ classification, petitioners must show that they are unmarried, under 21 years old, 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). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual or entity 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 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.

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 criteria and establishes that the juvenile court order was sought to obtain relief from parental maltreatment. Section 101(a)(27)(J)(i)–(iii) of the Act. See *Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 2, 6-7 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy).

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of Honduras, entered the United States without being inspected, admitted, or paroled in July 2016. In [redacted] 2017, when the Petitioner was 15 years old, the Juvenile and Domestic Relations District Court for [redacted] Virginia (juvenile court) issued an *ORDER FOR CUSTODY/PARENTING TIME/VISITATION GRANTED TO INDIVIDUAL(S)* (order), granting “legal and physical custody of [the Petitioner] . . . to [S-R-G-], mother” in accordance with sections 20-124.1 to 124.6 and 20-146.15 of the Virginia Code. The record demonstrated that the court’s exercise of jurisdiction in the custody proceedings was under sections 16.1-241 and 20-146.12 of the Virginia Code.

Based on the juvenile court order, the Petitioner filed this SIJ petition in November 2017. In response to a request for evidence (RFE) by the Director, the Petitioner provided copies of additional documents, including an initial custody filing and a Temporary Custody Order. The Director denied the SIJ petition, concluding that the court order lacked a qualifying parental reunification determination and did not contain a determination that it would not be in the Petitioner’s best interest to be returned to her or her parents’ country of nationality or last habitual residence.

On appeal, the Petitioner submits a new *Order* issued [redacted] 2019 when she was 17 years old (amended order). The amended order restates findings from the initial order and makes additional determinations related to the Petitioner’s ability to reunify with her father and her best interest in remaining in the United States. Specifically, the amended order states that “The [Petitioner] cannot be reunified with [her father] due to his abandonment and neglect under [Virginia] Code § 20-81.” The amended order further declares, in part:

It is in the [Petitioner’s] best interest to remain in Virginia in the legal and physical custody of [her mother] under Virginia Code § 20-124.3. It is not in the [Petitioner’s] best interests to return to Honduras because there are no reliable family members who are able to care or provide for the [Petitioner] under Virginia Code § 20-124.3. The [Petitioner’s] father abandoned her at age 14 and his location is unknown in Honduras. The [Petitioner’s] father has not provided any financial support. Additionally, her father has not attempted to contact the [Petitioner] for the last three years. The [Petitioner] does not have any other family members that can care for and provide for her in Honduras. The [Petitioner’s] mother resides in the United States.

B. Qualifying Parental Reunification Determination

Juveniles seeking SIJ classification must establish that reunification with one or both of their parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. Because the Act references this finding as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6. The Petitioner bears the burden of proof to establish eligibility, which includes demonstrating the state law the juvenile court applied in its reunification determination. *Id.* at 2. When adjudicating an SIJ

petition, USCIS must read the juvenile court order(s) as a whole and consider the Petitioner's eligibility based on the preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6 (three juvenile court orders issued over a three-year period sufficient to establish SIJ eligibility). USCIS generally defers to juvenile courts on matters of state law. However, whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *Budhathoki v. Nielsen*, 898 F.3d 504, 511-12 (5th Cir. 2018).

Here, the amended order submitted on appeal contains a specific determination of parental maltreatment in the form of abandonment and neglect by the Petitioner's father, as defined by section 20-81 of the Virginia Code. Accordingly, the preponderance of the evidence demonstrates that the juvenile court issued a qualifying determination that the Petitioner's reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis found under state law, as section 101(a)(27)(J)(i) of the Act requires. The Director's decision to the contrary is withdrawn.

C. Qualifying Best Interest Determination

SIJ classification requires an administrative or judicial determination "that it would not be in the [juvenile's] best interest to be returned to the [juvenile's] or parent's previous country of nationality or country of last habitual residence[.]" Section 101(a)(27)(J)(ii) of the Act. A petitioner must submit evidence of a best-interest determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions. 8 C.F.R. § 204.11(d)(2)(iii). While the standards may vary among states, the best-interest determination generally refers to the deliberation undertaken by a juvenile court (or in administrative proceedings recognized by the juvenile court) when deciding what types of services and orders are best for a child, as well as who is best suited to care for the child. *See* U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway (2016), *Determining the Best Interests of the Child*.

Here, the amended order determines it is in the best interest of the Petitioner to remain with her mother in the United States and not return to Honduras because there are no family members there that can care and provide for her. Accordingly, the Petitioner has established that the juvenile court made a qualifying determination that return to Honduras would not be in her best interest. The Director's decision to the contrary is withdrawn.

III. CONCLUSION

The Petitioner has overcome the grounds for denial of her SIJ petition, as the record now establishes that the juvenile court issued a qualifying parental reunification determination under state law and the amended order contains a qualifying best interest determination based on a reasonable factual basis. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and her request for SIJ classification warrants USCIS' consent, she has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.