



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

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

In Re: 5987680

Date: MAR. 4, 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 matter is now before us on appeal. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish 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 of their parents due to abuse, neglect, abandonment, or a similar basis under state law. Section 101(a)(27)(J)(i) 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 them in the custody of a state agency or an individual appointed by the state agency 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 their or their parent's country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

Petitioners bear the burden of proof of demonstrating their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 the petitioner meets all other eligibility criteria and establishes that the juvenile court order was sought in proceedings granting relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act. *See also 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). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

In 2017, when the Petitioner was 17 years old, the District Court of the [] Judicial District in [] [] Texas (district court) entered an *Order of Declaratory Judgment and Findings* (declaratory judgment) containing findings related to SIJ eligibility. The court found that, at the time the order was entered, the Petitioner was in the custody of the U.S. Department of Health and Human Services Office of Refugee Resettlement, and it also declared him “dependent upon this juvenile court in accordance with the laws of the State of Texas while [he] is under the jurisdiction of this Court.” The order also found that the Petitioner’s father neglected him, citing the definition of “neglect” in the Texas Family Code and summarizing the father’s conduct towards the Petitioner, and it determined that the Petitioner’s reunification with his father was not viable on account of that neglect. Finally, the court found that it was not in the Petitioner’s best interest to return to Honduras, his country of nationality. The Petitioner filed his SIJ petition based on the declaratory judgment.

The district court subsequently entered an *Order Nunc Pro Tunc of Declaratory Judgment and Findings* (*nunc pro tunc* order) in which it reiterated its original determinations, adding citations to specific provisions of the Texas Government Code in support of its dependency determination.

The Director denied the petition for lack of a dependency declaration or custody placement under an enforceable provision of Texas law governing juvenile dependency or child custody. The Director also determined that there was insufficient evidence of the factual basis for the court’s best interest determination.

On appeal, the Petitioner submits a brief asserting his eligibility for SIJ classification.

An SIJ 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) 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). Here, the court determined in its declaratory judgment that the Petitioner was “dependent upon this District Court in accordance with the laws of the State of Texas while [he] is under the jurisdiction of this Court,” and in its subsequent *nunc pro tunc* order, the court identified sections 311.011 and 311.023 of the Texas Government Code as the specific statutory basis for its determination. Accordingly, a preponderance of the evidence shows that the district court’s orders contain a qualifying dependency declaration made in accordance with Texas state law.

The Petitioner has also overcome the Director’s conclusion that the record lacked evidence of a factual basis for the court’s best interest determination. The record includes an affidavit by the attorney who represented the Petitioner before the district court. The attorney attests that the Petitioner submitted a written declaration to the court in which he described his circumstances in Honduras, including the financial and psychological hardships that resulted from his father’s neglect and the lack of support available to him if he returned there.

Accordingly, the Petitioner has overcome the grounds for denial of his petition. The record establishes a qualifying juvenile court dependency declaration and the parental reunification and best interest determinations required for SIJ classification. The record further establishes that that the nature and

purpose of the proceedings were to protect the Petitioner from further neglect.¹ Consequently, the Petitioner has established that he is eligible for and warrants USCIS' consent to his SIJ classification.

ORDER: The appeal is sustained.

¹ As stated above, SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, when a petitioner meets all other eligibility criteria and establishes that the juvenile court or administrative determinations were sought primarily to gain relief from parental maltreatment. Section 101(a)(27)(J)(i)-(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 6-7. A declaration of dependency, absent any evidence that actual relief from parental maltreatment was granted, is generally not sufficient to warrant USCIS' consent. *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 7-8 (AAO Oct. 11, 2019) (concluding that USCIS' consent was not warranted, in part, because the Petitioner did not show that the relevant court order provided him with any protective or remedial relief pursuant to applicable child welfare provisions or any other relevant state law). In the present case, the record reflects that the Petitioner was in Federal custody with the U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), Division of Unaccompanied Children's Services, when the initial SIJ order was issued. We acknowledge that this placement afforded him protection as an unaccompanied child pursuant to Federal law and obviated the District Court's need to provide him' with additional relief from parental maltreatment under Texas state law. *See generally* Homeland Security Act of 2002, Pub. L. 107-296, § 462(b)(1), 116 Stat. 2135, 2203 (2002) (providing that ORR shall be responsible for "coordinating and implementing the placement and care of unaccompanied alien children in Federal custody by reason of their immigration status. . . .").