



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

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

In Re: 5612222

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 residing in the State of Texas and is under the jurisdiction of this Court.” The order also found that the Petitioner’s father neglected him within the meaning of two separate subsections of the definition of “neglect” at section 261.004(4) of the Texas Family Code, and it summarized the father’s conduct in support of these determinations. The court further determined that the Petitioner’s reunification with his father was not viable due to his neglect and that it was not in the Petitioner’s best interest to return to Honduras, his country of nationality, or to Mexico, the country of his or his parents’ last habitual residence. The Petitioner subsequently filed his SIJ petition based on the declaratory judgment.

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 the record lacked a qualifying parental reunification determination because the record did not establish that the juvenile court had jurisdiction over his custody and care as a juvenile.

On appeal, the Petitioner submits a brief asserting his eligibility for SIJ classification. After reviewing the record and his response to our notice of intent to dismiss (NOID), we find that he has established his eligibility and shown that his request for SIJ classification merits USCIS’ consent.

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, a preponderance of the evidence shows that the district court’s order contains a qualifying dependency declaration, as it determined that the Petitioner was “dependent upon this District Court in accordance with the laws of the State of Texas while [he] is residing in Texas and is under the jurisdiction of this Court.”

The declaratory judgment also contains a qualifying parental reunification determination, as the court referenced the Texas Family Code for its conclusion that the Petitioner’s reunification with his father was not viable due to the father’s neglect.¹

Accordingly, the Petitioner has overcome the grounds for denial of his petition.

¹ USCIS does not require the juvenile court to have jurisdiction to place the juvenile in the custody of the unfit parent(s) in order to make a qualifying determination regarding the viability of parental reunification. *See R.F.M. v Nielsen*, 365 F.Supp.3d 350, 382 (SDNY Mar. 15, 2019); *J.L. v. Cissna*, 341 F.Supp.3d 1048 (N.D.C.A. 2018); *Moreno-Galvez v. Cissna*, No. 19-321 (W.D.W.A. July 17, 2019); and *W.A.O. v. Cissna*, No. 19-11696 (D.N.J. July 3, 2019); *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6 n.4.

The record also establishes that the District Court entered a qualifying best interest determination and that the nature and purpose of the proceedings were to protect the Petitioner from further neglect.² Consequently, the Petitioner has established that he is eligible for and warrants USCIS' consent to his SIJ classification.

ORDER: The appeal is sustained.

² 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. . . .").