



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

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

In Re: 9232481

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. On appeal, the Petitioner submits a brief. Upon *de novo* review, the appeal will be sustained.

I. LAW

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). 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 the petitioner's or the petitioner's parent's 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 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [redacted] 2017, when the Petitioner was 17 years of age, the District Court for the [redacted] Judicial District in [redacted] Texas (District Court), issued an *ORDER OF DECLARATORY JUDGMENT AND FINDINGS* (declaratory judgment). In the declaratory judgment, the District Court determined in pertinent part that the Petitioner’s reunification with her father was “not viable due to history of neglect,” explaining that her father neglected her within the meaning of the Texas Family Code when he “left her life when [she] was fifteen years old without making any provisions in regards to her care” and, prior to his leaving, did not “provid[e] for [her] needs on a regular basis and communication between them was sporadic.” The District Court further provided:

9. That the [Petitioner] is dependent upon this juvenile court in accordance with the laws of the State of Texas Furthermore, the Court finds that the term “dependency is not defined under Texas statute but has been previously defined under Texas law provisions to include neglected children who are destitute, homeless or abandoned; or who has no[] proper parental care or guardianship. In this case, the Court finds that the [Petitioner] has been neglected as defined by the Texas Family Code

The District Court last determined that it was not the Petitioner’s best interest to be returned to her home country of origin, Guatemala, based on the neglect she suffered at the hands of her father and the lack of a suitable caregiver for her there. The District Court provided that the purpose of the order was to “protect the [Petitioner] from further neglect.”

In March 2017, and based on the District Court’s declaratory judgment, the Petitioner filed her SIJ petition. The Director denied the SIJ petition, concluding that the Petitioner had not met her burden of establishing that the District Court made a qualifying declaration of dependency or custodial placement, as required by section 101(a)(27)(J)(i) of the Act. Specifically, the Director concluded that the record did not establish that the District Court “declared [the Petitioner] dependent or made any determination regarding [her] custody under any enforceable provision of Texas law governing juvenile dependency or custody.” On appeal, the Petitioner asserts that neither the Act or implementing regulations require that a declaration of dependency issued under state law be “enforceable” and that the District Court’s declaratory judgment contains the requisite declaration of dependency.

B. The District Court Made a Qualifying Declaration of Dependency

SIJ petitioners 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. The juvenile court’s dependency declaration must be made in accordance with state law governing such declarations. 8 C.F.R. § 204.11(c)(3). As part of their burden to establish eligibility for SIJ classification, petitioners must establish the state law that the juvenile court applied in its dependency declaration. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 5 (AAO Oct. 11, 2019) (citing to 8 C.F.R. § 204.11(c)(3) and providing that,

because “the dependency declaration or custodial placement must be entered in accordance with the state law that governs such determinations, the state law itself is a question of fact that must be proved by the Petitioner to establish eligibility”).

In its declaratory judgment, the District Court declared that the Petitioner was “dependent upon this juvenile court in accordance with the laws of the State of Texas” and provided that “the term ‘dependency’ is not defined under Texas statute[s] but has previously been defined under Texas [l]aw . . . to include neglected children In this case, the Court finds that the [Petitioner] has been neglected as defined by . . . Section 261.001(4)(ii)(c) of the Texas Family Code.” *See* Tex. Govt. Code § 261.001(4)(ii)(c) (defining “neglect” to include “the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child”) (West 2019). Based on this language, the Petitioner has established that the District Court declared her dependent on the court in accordance with Texas state law. *See 6 USCIS Policy Manual J.2*, <https://www.uscis.gov/policy-manual> (providing, as guidance, that USCIS generally defers to the court on matters of state law and does not go behind the relevant order to make independent determinations regarding the requisite SIJ determinations). Accordingly, the record contains a qualifying dependency declaration, as section 101(a)(27)(J)(i) of the Act requires. As the Petitioner has overcome the sole ground for denial of her SIJ petition, and otherwise established that she is eligible for, and warrants USCIS’ consent¹ to her request for, SIJ classification, the appeal is sustained.

ORDER: The appeal is sustained.

¹ As stated above, SIJ classification may only be granted upon the consent of the DHS, 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; *see also 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. *See 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 declaratory judgment 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. . . .”).