



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

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

In Re: 9186273

Date: MAR. 4, 2021

Appeal of Long Island, New York Field Office 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 New York, New York District Director (Director) revoked approval of the Form I-360, Petition for Special Immigrant Juvenile (SIJ petition), and the Petitioner appealed that revocation to us. Upon *de novo* review of the record, we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried and under 21 years old, and has been subject to a state juvenile court order determining that he or she 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). The petitioner must have been declared dependent upon the juvenile court, or the juvenile court must have placed the petitioner 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 petitioner's best interest to return to the petitioner's or his or her 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 through U.S. Citizenship and Immigration Services (USCIS), when the petitioner meets all other eligibility criteria and establishes that the juvenile court determinations were 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).

A petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

USCIS may revoke approval of an SIJ petition at any time for good and sufficient cause. Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. § 205.2. We review appeals from revocation proceedings *de novo*. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 542 n.1 (AAO 2015).

II. ANALYSIS

In [redacted] 2015, when the Petitioner was 15 years old, the New York Family Court for the [redacted] [redacted] (Family Court) awarded sole custody of the Petitioner to his mother. In a separate *ORDER-Special Immigrant Juvenile Status* (SIJ order) issued the same day, the Family Court reached findings related to his eligibility for SIJ classification, determining that the Petitioner's reunification with his father was not viable due to his abandonment and that it was not in the Petitioner's best interest to be returned to El Salvador, his country of nationality. The Petitioner filed his SIJ petition in January 2016 based on the Family Court's orders, and the Director approved the petition.

In response to the later notice of intent to revoke (NOIR), the Petitioner submitted an *AMENDED ORDER Special Immigrant Juvenile Status* (amended order), issued by the Family Court in 2018. The amended order states:

Reunification with the father . . . is not viable due to abandonment under New York law. After testimony and a review of the record the court finds that the father has not supported the child and has not provided for the care and custody of the child. . . .

The amended order cited pertinent New York case law and statutes in support of its determination. The petitioner also provided his affirmation and the memorandum of law filed with the 2015 petition for custody and motion for SIJ findings.

The Director revoked approval after determining that record was insufficient to establish eligibility for SIJ classification because it did not establish the basis in state law for the Family Court's parental reunification determination. The Director also determined that the request for SIJ classification did not merit USCIS' consent because the record did not establish the factual basis for the court's best interest determination and because the Petitioner had not established that he sought the SIJ order for the primary purpose of obtaining relief for parental maltreatment.

On appeal, the Petitioner submits a brief asserting his eligibility. After reviewing the record, we conclude that the Petitioner has overcome the Director's reasons for revoking approval of his SIJ petition.

The memorandum of law and the amended order specify that the Petitioner's reunification with his father is not viable due to abandonment. Both the memorandum and amended order cite New York statutes and judicial precedent defining abandonment, and both summarize the father's conduct before explaining that his actions meet that definition. Thus, the record establishes the basis in New York state law for the Family Court's parental reunification determination.

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). Consequently, the nature and purpose of the juvenile court proceedings is central to whether USCIS' consent is warranted, and the agency must consider whether the juvenile court's determinations were sought in proceedings granting relief from parental maltreatment. *Id.*

In this case, the record shows that the nature and purpose of the proceedings were to protect the Petitioner from parental abandonment, as the court granted relief by placing the Petitioner in the sole custody of his mother.

Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment or a similar basis under state law, the record must also contain a reasonable factual basis for each of the requisite SIJ determinations to establish that a petitioner's request for SIJ classification merits USCIS' consent. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 9. The Director concluded that the record lacked evidence of a reasonable factual basis for the court's best interest determination, stating that the Petitioner had provided information to U.S. Customs and Border Protection that contradicted the facts he later asserted to the Family Court.

In seeking the Family Court's SIJ findings, the Petitioner asserted that it was not in his best interest to return to El Salvador due to the instability and abuse he would likely encounter there. The affirmation and the memorandum of law explained that he had no family there to offer a safe home for him, and he risked dropping out of high school and being victimized by criminal gangs. In the amended order, the Family Court referenced these factors in support of its best interest determination. Thus, contrary to the Director's determination, the record reflects the factual basis for the Family Court's best interest determination. Further, the record of the Petitioner's apprehension by CBP contains multiple internal discrepancies regarding his parents' locations: it lists the same address in El Salvador for the Petitioner, his mother, and his father, and it states that the Petitioner resided with his mother in El Salvador, but it also states that his destination was New York, where his mother lived. Given these inconsistencies and the absence of a detailed record of his interview, the record does not establish that the Petitioner made statements to CBP that contradicted the factual basis for the Family Court's SIJ findings.

Accordingly, the record reflects a reasonable factual basis for the Family Court's SIJ determinations. The Petitioner has established that his request for SIJ classification is *bona fide* and warrants USCIS' consent.

III. CONCLUSION

The Petitioner has overcome the grounds for revocation of his SIJ petition, as the preponderance of the evidence shows that he is eligible for and warrants USCIS' consent to SIJ classification. Consequently, the record does not establish a good and sufficient cause to revoke the approval of his SIJ petition. The Director's decision is withdrawn and the appeal is sustained.

ORDER: The appeal is sustained.