



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

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

In Re: 12488566

DATE: MAR. 5, 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1101(a)(27)(J). The Director of the National Benefits Center (Director) denied the Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition) and the Petitioner appealed that decision to the Administrative Appeals Office (AAO). Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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 his or her parents' country of nationality or last habitual residence. *Id.* at section 101(a)(27)(J)(ii).

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

II. ANALYSIS

A. Relevant Facts and Procedural History

In 2017, when the Petitioner was 20 years old, a Probate and Family Court in Massachusetts issued an order entitled *SPECIAL FINDING OF FACTS & RULINGS OF LAW* (SIJ

order), declaring that the court made its findings “[a]fter a hearing on the matter and consideration of presented evidence.” The SIJ order states, in pertinent part, that the court has jurisdiction pursuant to M.G.L. c215 § 6 to make equity determinations within the meaning of the Act and that the Petitioner remains dependent upon the Court’s jurisdiction until the age of 21. The SIJ order further declares that the Petitioner’s reunification with his father is not viable due to abandonment and neglect, and that it is not in his best interest to return to Colombia, the country of his nationality. The SIJ order formed the basis of the Petitioner’s SIJ petition, which he filed in October 2017.

In February 2020, the Director denied the SIJ petition, determining that the Petitioner did not establish that he warranted USCIS’ consent. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), which the Petitioner responded to, in part, with an amended order issued *nunc pro tunc*. The Director concluded that while “the order was issued *nunc pro tunc* to [redacted] [redacted] 2017, it [is] unclear what benefit a retroactive dependency finding and relief provide you, apart from enabling you to petition for an immigration benefit.” The Director determined that since the Petitioner did not meet his burden of showing that the court provided some form of relief in connection with the finding of dependency, USCIS’ consent was not warranted.

In support of his appeal, the Petitioner submits a brief, a second amended SIJ order, and previously submitted documents. The Petitioner argues that the second amended SIJ order demonstrates that the court did provide some form of relief to protect him from his father’s abandonment and neglect by referring him to probation to assist him with his education, health, and welfare.

B. Applicability of Section 39M

During the pendency of the SIJ petition, the Massachusetts legislature amended the Massachusetts General Laws, Public Welfare Title, Chapter 119 pertaining to the “Protection and Care of Children” by adding a section entitled “Dependency proceedings for abused, neglected and abandoned children; determination of child’s best interest; petition for special findings.” Mass. Gen. Laws ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113 (West). In enacting section 39M, the Massachusetts legislature determined that the new provision “shall apply” to certain requests for special findings pending in a juvenile court as of March 4, 2016, or commenced on or after that date; and, as applicable to the Petitioner’s case here, “retroactively to any special findings issued that form the basis of a child’s petition for special immigrant juvenile classification if that petition is subject to denial or revocation based on the child’s dependency status or age when the special findings were issued.” 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105 (West). Because the order in this case was issued after March 4, 2016, section 39M applies retroactively to the Petitioner’s case.

C. USCIS’ Consent is Warranted

To warrant USCIS’ consent, juveniles must establish that the requisite juvenile court or administrative determinations were sought primarily to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that court orders were not sought primarily for the purpose of obtaining lawful permanent resident status, rather than for the purpose of obtaining relief from abuse or neglect)). 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, beyond an order with factual findings enabling an individual to file an SIJ petition with USCIS. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 6-7.

In the instant case, USCIS' consent is warranted because the Petitioner has established that his primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit. A juvenile court's dependency declaration, on its own, is insufficient to warrant USCIS' consent to SIJ classification absent evidence that the court issued the dependency declaration in juvenile court proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Matter of E-A-L-O-*, Adopted Decision 2019-04, 8 (AAO Oct. 11, 2019). As such, the retroactive application of section 39M does not, by itself, establish that a juvenile sought relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. *Id.* at 7-8. We recognize that section 39M provides for certain relief in the form of "orders necessary to protect the child against further abuse or other harm," including complaints for abuse prevention or support, as well as court-provided referrals for "psychiatric, psychological, educational, occupational, medical, dental or social services or . . . protection against trafficking or domestic violence." Mass. Gen. Laws ch. 119, §§ 39M(c)-(d).

Here, however, as the Petitioner argues on appeal, the court ordered such relief because the second amended SIJ order submitted on appeal provides him with actual protective and remedial relief under Massachusetts law separate from findings enabling him to file an SIJ petition with USCIS. The second amended SIJ order states "Pursuant to M.G.L. c. 119 § 39M(d), this court refers [the Petitioner] to probation for services to assist with his education, health and welfare, as relief from the parental abandonment and neglect he has suffered. This order and his dependency on this Court will also assist him with establishing residency for educational services and healthcare purposes."

Accordingly, the preponderance of the evidence demonstrates that the Petitioner sought the juvenile court order to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9. Accordingly, USCIS' consent to a grant of SIJ classification is warranted.

III. CONCLUSION

The Petitioner has demonstrated that he merits USCIS' consent to a grant of SIJ classification and he is otherwise eligible for SIJ classification.

ORDER: The appeal is sustained.