



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

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

In Re: 5474893

Date: MAR. 11, 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 and previously submitted evidence. The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 show 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

The Petitioner, a native and citizen of Honduras, entered the United States without inspection, admission, or parole in August 2014. In [redacted] 2017, when the Petitioner was 13 years old, 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 made the following relevant determinations:

1. This Court of the State of Texas has subject matter jurisdiction to enter Declaratory Judgments to declare rights, status, and other legal relations regarding those persons over whom this court has personal jurisdiction.
2. This Court has personal jurisdiction over [the Petitioner] . . . as [she] reside[s] within the geographical boundaries of the State of Texas.
11. The Court FINDS that [the Petitioner is] dependent upon this juvenile court in accordance with the laws of the State of Texas while [she is] under the jurisdiction of this Court.

The District Court then determined that reunifying the Petitioner with her father was not viable because he abused and neglected her within the meaning of sections 261.001(1)(C), 261.001(4)(B)(ii)(c), and 261.001(4)(A)(ii)(a) of the Texas Family Code. The District Court further determined that it was not in the Petitioner's best interest to be returned to Honduras, her country of nationality, because of the history of abuse and neglect by her father and the fact that she does not have anyone to take care of her in the country. Lastly, the District Court declared that the purpose of the declaratory judgment was "to protect [the Petitioner] from further abuse and neglect" and ordered that it retained jurisdiction over the matter until the Petitioner's 21st birthday or until the court transferred jurisdiction. In May 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 nor implementing regulations require that a declaration of dependency issued under state law be enforceable and, if there were such a requirement, the District Court's declaratory judgment is enforceable and 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”). As acknowledged by the Petitioner on appeal, determining whether petitioners have met this requirement does not exceed USCIS’ authority, as it is required for USCIS to adjudicate their eligibility for SIJ classification under federal law. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511 (5th Cir. 2018) (“Whether a state court order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had the authority to examine the orders for that purpose”).

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 specified that the Petitioner was abused and neglected as those terms are defined in the Texas Family Code. Considering this evidence, the Petitioner has overcome the basis for the Director’s denial and established, by a preponderance of the evidence, 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 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 her protection as an unaccompanied child pursuant to Federal law and obviated the District Court’s need to provide her 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. . .”).