



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

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

In Re: 11853025

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 denied the 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, resubmits evidence previously in the record, and argues that he has established eligibility for the benefit sought. The Administrative Appeals Office 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, we will dismiss the appeal.

I. LAW

Petitioners bear the burden of establishing 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 old, 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) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon the juvenile court, or the juvenile court must have placed them 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 petitioners' best interest to return to their or their 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 Secretary of Homeland Security, through U.S. Citizenship and Immigration Services (USCIS), when a petitioner meets all other eligibility requirements and establishes that the juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 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] 2018, when the Petitioner was 18 years old, the District Court for the [redacted] Judicial District of [redacted] Texas (district court) issued an *ORDER IN SUIT AFFECT THE PARENT-CHILD RELATIONSHIP* (SAPCR order). In the SAPCR order, the district court “having examined the pleadings and heard the evidence” determined it had “jurisdiction of this case and of all the parties[.]” and appointed J-A-Z,¹ the Petitioner’s aunt, as the Petitioner’s sole managing conservator. The district court noted that the Petitioner was “under the age of 21 and unmarried[.]” and that he came before the court “for conservatorship orders after being neglected and abandoned by [his] father[.]” The district court further noted that it would be in the Petitioner’s best interests to remain in Texas with [his] aunt because she “has taken responsibility for the custody and care of the [Petitioner] since [he] entered the United States” and because he currently resides with her. The district court also noted that the Petitioner’s reunification with his father was not viable “due to his unknown whereabouts, and it is not in the best interest of the [Petitioner] to be returned to Pakistan due to the lack of family, violent conditions, and [the] presence of [his] aunt in the United States. The district court then determined:

1. This court has jurisdiction under Texas law to “make judicial determinations about the custody and care of juveniles” within the meaning of [section] 101(a)(27)(J) of [the Act];
2. [The Petitioner is] dependent upon this Court . . . within the meaning of [section] 101(a)(27)(J) of [the Act];
3. Reunification with one or both of the parents is not viable due to abuse, neglect, abandonment, or a similar basis found under the laws of this State; and
4. It is not in the [Petitioner]’s best interests to be returned to their parent’s previous country of nationality or country of last habitual residence.

The district court also determined that the Petitioner’s father had “a duty to support the [the Petitioner], however, no support is ordered at this time.” The Petitioner submitted the SAPCR order in support of his SIJ petition.

The Director denied the SIJ petition, concluding that the Petitioner had not met his burden of demonstrating that the district court was acting as a juvenile court when it issued the SAPCR order, because the Petitioner was 18 years of age when the order was issued and, accordingly, no longer a juvenile under applicable Texas state law.

On appeal, the Petitioner generally contends that USCIS exceeded its statutory authority because Texas appellate courts, and not USCIS, determine whether district courts in Texas properly exercise jurisdiction over children as juvenile courts. The Petitioner also argues that Texas law recognizes

¹ Initials are used to protect the identity of individuals.

multiple jurisdictional grounds for SAPCR proceedings, including child support, and that in certain circumstances, district courts retain jurisdiction to order child support even after a child attains the age of 18. The Petitioner last contends that because he filed his SAPCR petition prior to his 18th birthday, the district court retained continuing jurisdiction over him as a “child” under Texas law, notwithstanding the fact that the SAPCR order was entered after his 18th birthday.

B. The Petitioner Has Not Established that the District Court Acted as a Juvenile Court for SIJ Purposes

To establish eligibility for SIJ classification, a petitioner must have been subject to an order containing the requisite dependency or custody, parental reunification, and best interest determinations issued by a “juvenile court,” which is defined as a court “in the United States having jurisdiction under state law to make judicial determinations about the custody and care of juveniles.” Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(a). While the specific title and type of court may vary, petitioners must establish that the court had competent jurisdiction to make judicial determinations about their dependency and/or care and custody as juveniles under state law. *See* section 101(a)(27)(J)(i) of the Act (requiring that petitioners have been “declared dependent on a juvenile court . . . or whom such a court has legally committed to, or placed under the custody of, an agency or department . . . , or an individual”); 8 C.F.R. § 204.11(a), (d)(2)(i) (stating that required, initial evidence includes a juvenile court order issued by a court of competent jurisdiction); 6 *USCIS Policy Manual* J.2(C), <https://www.uscis.gov/policy-manual> (citing to *Matter of A-O-C-*, Adopted Decision 2019-03, at 4 (AAO Oct. 11, 2019) and providing, as guidance, that “the court must have the authority to make determinations about the dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued”).

At the outset, these proceedings arise within the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit, which found that USCIS did not exceed its authority in denying SIJ petitions where Texas state court orders did not assert jurisdiction over plaintiffs as children as that term is defined under Texas law. *See Budhathoki v. Nielsen*, 898 F.3d 504, 511, 513 (5th Cir. 2018) (stating that the agency “had the authority to examine” the court order for purposes of determining whether it was issued by a juvenile court, and that “what controls on eligibility for that status is the state law governing decisions” over the dependency and/or care and custody of juveniles); *see also In Interest of B.A.L.*, No. 01–16–00136–CV, 2017 WL 3027660, at *6 (Tex. App. Jul. 18, 2017) (explaining that when a child who was subject of a lawsuit affecting the parent-child relationship turned 18 years of age, he “was no longer a ‘child’ as defined by the Texas Family Code, and the referring court no longer had juvenile jurisdiction over him”); 6 *USCIS Policy Manual*, *supra*, at J.2(D)(4), J.3(A) (explaining if a court does not have jurisdiction over an individual 18 years of age or older, it may not be able to take jurisdiction over that person to issue a qualifying order even though the individual may file an SIJ petition with USCIS until 21 years of age). Further, although we acknowledge the Petitioner’s contention that Texas district courts are courts of general jurisdiction and have subject matter jurisdiction over family law issues involving child welfare and custody, the Petitioner must show that the district court acted as a “juvenile court” in his particular case; that is, it had jurisdiction to determine his dependency and/or custody and care as a juvenile under Texas law. *See* section 101(a)(27)(J)(i) of the Act (requiring individualized determinations by a “juvenile court”); 8 C.F.R. § 204.11(d)(2)(i), (iii) (requiring, as initial required evidence, a “juvenile court order” making various judicial determinations specific to the petitioner). *See also* 6 *USCIS Policy Manual*, *supra*, at J.2(C)

(explaining that the definition of juvenile court at 8 C.F.R. § 204.11(a) “means the court must have the authority to make determinations about dependency and/or custody and care of the petitioner as a juvenile under state law at the time the order was issued”). In this regard, the Tex. Fam. Code Ann., which contains provisions for child custody and juvenile dependency, defines a “‘child’ or ‘minor’ [as] a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.” Tex. Fam. Code Ann. § 101.003(a); *see also id.* at § 51.02(2) (defining *child* in the Juvenile Justice Code as a minor between 10 and 16 years of age; or between 17 years and 17 years, 11 months of age when there is delinquent or other conduct indicating a need for supervision).

As stated above, the Petitioner asserts that, pursuant to section 155.001 of Tex. Fam. Code Ann., he was under the jurisdiction of the district court as a juvenile or child when his SAPCR order was issued because he filed the underlying petition when he under the age of 18. This argument is unavailing however, because pursuant to that provision, a district court only acquires continuing jurisdiction once it renders a final order, and the Petitioner was over the age of 18, and no longer a child or juvenile as defined by Texas law when his final order was issued. *See* Tex. Fam. Code Ann. § 155.001(a) (West 2019) (providing, in pertinent part, that “a court acquires continuing, exclusive jurisdiction over the matters provided for by this title in connection with a child on the rendition of a final order”). The Petitioner further asserts that Texas district courts retain jurisdiction over individuals over the age of 18 in multiple contexts, including child support. However, the district court did not cite to, discuss, or reference in the SAPCR order any statutory or legal provision or authority under Texas law as the basis for assuming jurisdiction over the Petitioner as a juvenile or child despite his being 18 years of age when the order was issued, nor did it order child support for the Petitioner. The Petitioner likewise did not submit into the record any additional evidence provided to the district court otherwise establishing that it relied upon any provision of Texas law to extend its jurisdiction over the Petitioner as a juvenile.

The Petitioner bears the burden of establishing eligibility for SIJ classification, including establishing that the district court was acting as a juvenile court when it issued the requisite SIJ-related determinations. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(a); *Chawathe*, 25 I&N Dec. at 375. Considering the foregoing, the Petitioner has not established, by a preponderance of the evidence, that the district court exercised its jurisdiction over him as a juvenile under Texas law or that it relied upon provisions of Texas law permitting for continuing jurisdiction over him as a juvenile when it issued the SAPCR order.

As the Petitioner has not established by a preponderance of the evidence that the district court acted as a juvenile court for SIJ purposes, he likewise has not established that a juvenile court made qualifying determinations concerning his juvenile dependency and/or custody and care, viability of reunification with his father, or best interest, as required by section 101(a)(27)(J) of the Act. While we acknowledge the unfortunate circumstances and hardships the Petitioner faced during his childhood, he has not established his eligibility for, and does not warrant USCIS’ consent to his request for, SIJ classification.

ORDER: The appeal is dismissed.