



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

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

In Re: 1477287

Date: MAR. 11, 2021

Motion on Administrative Appeals 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). After providing notice, the Director of the Houston, Texas Field Office revoked the approval of the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). *See* Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. § 205.2(a) (setting forth the requirements for revocation). We dismissed the Petitioner's subsequent appeal of the revocation, and the matter is now before us on a motion to reconsider. Upon review, we will grant the motion and sustain the appeal.

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). USCIS may revoke approval of an SIJ petition at any time for good and sufficient cause upon notice to the petitioner. Section 205 of the Act; 8 C.F.R. § 205.2.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

II. ANALYSIS

A. Relevant Facts and Procedural History

The Petitioner, a native and citizen of El Salvador, entered the United States without inspection, admission, or parole in July 2014. In [redacted] 2014, when she was 17 years of age, a District Court in [redacted] Texas (district court), issued an *Order of Declaratory Judgment and Findings* (declaratory judgment order). In [redacted] 2015 and [redacted] 2017, the district court also issued *nunc pro tunc* declaratory judgment orders, in which the court determined that the Petitioner was dependent upon the court, that reunifying the Petitioner with her father was “not viable due to abandonment and neglect or a similar basis found under State law” because the Petitioner’s “alleged father” abandoned and neglected her as those terms are defined in sections 152.102 and 261.001 of the Texas Family Code, and that it was not in her best interest to return to El Salvador, her country of nationality.

In dismissing the Petitioner’s appeal, we determined that the district court did not make a qualifying declaration of dependency because the declaratory judgment orders did not contain the state law under which the dependency determination was made. We also determined that the district court’s orders did not contain a qualifying parental reunification determination, and that USCIS’ consent was not warranted because the district court’s best interest determination was not supported by a reasonable factual basis.

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). Subsequent to our decision dismissing the Petitioner’s appeal and during the pendency of the instant motion, USCIS issued an adopted decision clarifying that, as a 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 (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”). 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”).

On motion, the Petitioner argues that the district court made a qualifying declaration of dependency pursuant to its authority under Texas law and that we erred in concluding otherwise. When the district court issued the 2017 *nunc pro tunc* order, the court declared that the Petitioner was “dependent upon this juvenile court in accordance with the laws of the State of Texas while such child is residing in the State of Texas and is under the jurisdiction of this Court.” The record further includes a copy of the Petitioner’s *Original Petition for Findings and Declaratory Judgment* (declaratory judgment petition) that references specific provisions of Texas law in support of such a declaration and upon which the court relied in declaring the Petitioner dependent on the court. Considering this evidence, the Petitioner has 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 and we withdraw our previous determination otherwise.

C. The District Court Made a Qualifying Parental Reunification Determination

To be eligible for SIJ classification, the Act requires a juvenile court determination that a petitioner’s reunification with one or both parents “is not viable due to abuse, neglect, abandonment, or a similar basis found under State law.” Section 101(a)(27)(J)(i) of the Act. Because the Act references this determination as made under state law, the record must contain evidence of a judicial determination that the juvenile was subjected to such maltreatment by one or both parents under state law. See *id.*; see also *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 5-6. The petitioner bears the burden of proof to establish the state law the juvenile court applied in its reunification determination. See *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 5. When adjudicating an SIJ petition, USCIS must read the juvenile court order(s) as a whole and consider the Petitioner’s eligibility based on the preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; see also *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6.

On motion, the Petitioner argues that pursuant to Texas Family law, the district court, in issuing the declaratory judgment order, established the identity of her alleged father based upon the entirety of the evidence in the record. In the Petitioner’s declaratory judgment petition and accompanying affidavit before the district court, the Petitioner listed her father’s name and identified him as her “alleged father” pursuant to the laws of Texas. The Petitioner also averred that her father abandoned her at birth and in so doing, neglected her by failing to communicate with her or provide for her wellbeing. The Petitioner further indicated that when she has contacted her father, “he has refused to talk with [her] and has even told [her] that he has better things to do than to worry about [her].” The Petitioner also expressed a fear of returning to El Salvador, in part, because she has “no parents to care and protect [her]” as her father abandoned her, and her mother “cannot provide for [her] education and basic necessities.” Considering this evidence, the district court, in its 2017 *nunc pro tunc* order, expressly named the Petitioner’s alleged father and determined that the Petitioner was abandoned and neglected by him pursuant to Texas law. Based on the foregoing, the Petitioner has established by a

preponderance of the evidence that the district court made qualifying parental reunification determination as section 101(a)(27)(J)(i) of the Act requires. We withdraw our prior determination to the contrary.

D. USCIS' Consent

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where 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. To warrant USCIS' consent, a petitioner 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 7-8 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement "that neither the dependency order nor the administrative or judicial determination of the [petitioner's] best interest was sought primarily for the purpose of obtaining the status of an [individual] lawfully admitted for permanent residence, 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 the petitioner to file an SIJ petition with USCIS. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d at 511, n.5 (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ findings); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding that USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the petitioner sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit as the *USCIS Policy Manual* explained).

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. A reasonable factual basis for the juvenile court's determinations may be shown through, for example, factual findings in the juvenile court order(s), the underlying petition for dependency or custody, other supporting documents submitted to the juvenile court and transcripts or other records of the judicial or administrative proceedings, if available, or affidavits or records attesting to the evidence presented to the juvenile court and consistent with its findings. *See, e.g., Reyes v. Cissna*, 737 Fed. Appx. at 145-46 (finding USCIS did not abuse its discretion and properly withheld consent to an SIJ petition based on juvenile court orders with no factual findings and accompanied by no evidence considered by the court).

On motion, the Petitioner contends that the declaratory judgment order and supplemental evidence filed in support of the order provide the factual basis for the district court's best interest determination. As noted above, in the Petitioner's declaratory judgment petition and accompanying affidavit, she expressed a fear of returning to El Salvador, in part, because she has "no parents to care and protect [her]" as her father abandoned her, and her mother "cannot provide for [her] education and basic

necessities.” Considering this evidence, the district court determined that it was not in the Petitioner’s best interest to return to El Salvador. Thus, upon review, the Petitioner has established that the record contains a qualifying best interest determination supported a reasonable factual basis and we withdraw our determination otherwise. As the Petitioner has established that there was not good and sufficient cause to revoke approval of her SIJ petitioner and has otherwise established that she is eligible and warrants USCIS’ consent¹ to her request for SIJ classification, her motion to reconsider is granted and her appeal is sustained.

ORDER: The motion to reconsider is granted and 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 order 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. . .”).