



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

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

In Re: 23548967

Date: DEC. 14, 2022

Appeal of National Benefits Center Decision

Form I-360, Petition for Special Immigrant Juvenile

The Petitioner, a native and citizen of El Salvador, 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). The matter is now before us on appeal. On appeal, the Petitioner asserts that she has demonstrated her eligibility for SIJ classification. We review 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 remand the matter to the Director for the issuance of a new decision.

To establish eligibility for SIJ classification, a petitioner 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(b). 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 juvenile court. Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1). The record must also contain a judicial or administrative determination that it is not in the petitioner's best interest to return to their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act; 8 C.F.R. § 204.11(c)(2).

Further, 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 a petitioner meets all other eligibility criteria and establishes that the request for SIJ classification is bona fide, which requires the petitioner to establish that a primary reason the required juvenile court determinations were sought was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under State law. 8 C.F.R. § 204.11(b)(5). Finally, the petitioner bears the burden of proof to demonstrate their eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

Here, the Petitioner, a native and citizen of El Salvador, entered the United States without inspection, admission, or parole in October 2016. In  2016, when the Petitioner was 20 years of age,

the Trial Court of the Probate and Family Court Department – Commonwealth of Massachusetts (Family Court) issued a Decree of Special Findings of Fact and Rulings of Law (SIJ findings). The Family Court found the Petitioner subject to its jurisdiction and made findings of fact related to her SIJ eligibility. As part of those findings, the Family Court found reunification with the Petitioner's parents was "not a viable option" because of "abandonment or a similar basis under state law." The Family Court further found it was not in the Petitioner's best interest "to return to El Salvador, the country of her parents' nationality."

Based on the Family Court's SIJ findings, the Petitioner filed her SIJ petition. The Director issued a request for evidence (RFE), and the Petitioner responded with a brief and additional evidence. The Director subsequently denied the SIJ petition, solely based on the conclusion the Family Court lacked jurisdiction over the Petitioner as a juvenile, as required by section 101(a)(27)(J)(ii) of the Act.

On review, we conclude the SIJ petition was issued by a court exercising jurisdiction over the Petitioner as a juvenile. To be eligible for SIJ classification, juveniles must have been subject to a dependency or custody order issued by a "juvenile court." Section 101(a)(27)(J)(i) of the Act. The term "juvenile court" 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." 8 C.F.R. § 204.11(a). While the specific title and type of state court may vary, a petitioner must establish that the court in her particular case had jurisdiction to make judicial determinations about her dependency or custody and care as a juvenile under state law.

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 her case.

The Director previously concluded that the Family Court "was not acting as a juvenile court pursuant to 101(a)(27)(J)(i); 8 CFR 204.11(a)" because the Petitioner was 20 years old and the age of majority in Massachusetts is 18. However, section 39M now specifically identifies the Family Court as a court "competent to make decisions concerning the protection, wellbeing, care and custody of a child." Mass. Gen. Laws ch. 119, § 39M(a). It further provides "that when issuing special findings under this section" the probate and family court "shall be acting under the jurisdiction specified." *Id.* The record also demonstrates that the Family Court took such jurisdiction over the Petitioner as a juvenile under Massachusetts law because section 39M defines the term "child" as "an unmarried person under the age of 21." *Id.* As a result, the SIJ findings were issued by a juvenile court, and we withdraw the Director's finding otherwise as it was based on an evaluation of the law cited in the order before section 39M was enacted.

Although the Petitioner has overcome the sole basis for the Director's denial, the Director did not make all the requisite determinations regarding whether USCIS' consent to her SIJ classification is warranted. As stated, SIJ classification may only be granted upon the consent of DHS, through USCIS, when a petitioner meets all the other eligibility criteria under section 101(a)(27)(J)(i)-(iii) of the Act, and the request for SIJ classification is bona fide. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish a primary reason for seeking the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). For USCIS to consent, petitioners must establish the juvenile court order or supplemental evidence includes the factual bases for the parental reunification and best interest determinations and the relief from parental maltreatment that the court ordered or recognized. 8 C.F.R. § 204.11(d)(5).<sup>1</sup> Therefore, we will remand the matter to the Director for a determination of whether the Petitioner meets all the requirements for SIJ classification and whether USCIS' consent to her request for SIJ classification is warranted.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis

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<sup>1</sup> The regulations specify that such relief may include a court-ordered custodial placement, court-ordered dependency on the court for the provision of child welfare services, or court-ordered or recognized protective or remedial relief. 8 C.F.R. § 204.11(d)(5)(ii). See generally 6 USCIS Policy Manual J.2(D), <https://www.uscis.gov/policy-manual> (providing examples of relief a court may grant).