



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

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

In Re: 16384637

Date: FEB. 7, 2022

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 petition, concluding the court was not acting as a juvenile court when it issued its order for the Petitioner. The Petitioner asserts that she has demonstrated her eligibility for SIJ classification. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Upon *de novo* review, we will dismiss the appeal.

I. LAW

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 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 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; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019), at 5-6. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2018, when the Petitioner was 18 years old, the Colorado District Court for [] (District Court) issued an *Order Regarding Request for Specific Findings of Fact* (SIJ order), in which it awarded custody of the Petitioner to her older sister and made determinations related to the Petitioner's SIJ eligibility. The District Court found that the Petitioner's reunification with her parents is not viable due to abandonment and neglect. The District Court specified that the Petitioner's parents "allowed and encouraged" the Petitioner to travel unlawfully to the United States, exposing her "to an extreme risk of harm" when she was 16 years old; and the Petitioner's parents do not intend to come to the United States to reunite with the Petitioner. The District Court further determined it is not in the Petitioner's best interest to return to El Salvador, as she does not have anybody "willing and able to provide a safe life for her there."

The District Court, in its SIJ order, referred to the Petitioner as a "minor" who was "18 years old at the time of this filing," and "became the subject of these District Court proceedings regarding the Allocation of Parental Responsibilities on [] 2018." We note the Petitioner was 17 years old on [] 2018. Though the Petitioner filed a request for an Allocation of Parental Responsibilities with the District Court, the District Court did not issue such an allocation. In its SIJ order, the District Court found the Petitioner was under its jurisdiction and indicated it would maintain jurisdiction "over the Minor until [s]he reaches emancipation, unless otherwise ordered by this Court."

Prior to its SIJ order in [] 2018, the District Court issued a *Minute Order Re: Initial Status Conference* (minute order), finding the Petitioner came to live in her sister's household and filed her Petition for Allocation of Parental Responsibilities with the District Court before the Petitioner reached the age of majority. The District Court found that as the Petitioner also resided in [] and had lived in Colorado at least six months before her petition for an Allocation of Parental Responsibilities, the District Court would find it had jurisdiction over the parties and subject matter upon presentation of a waiver of service.

In May 2018, based upon the District Court's orders, the Petitioner filed her SIJ petition.

B. Juvenile Court

The Director determined the Petitioner did not meet her burden of demonstrating the District Court had jurisdiction over her as a juvenile under state law when it issued its SIJ order. On appeal, the Petitioner asserts the record demonstrates the District Court took jurisdiction over her as a juvenile despite her age, 18 years old, at the time of SIJ order issuance.

For SIJ classification, petitioners 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." Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(a). USCIS' Policy Manual and adopted decisions clarify that, while the specific title and type of court may vary, SIJ petitioners must establish that the court had jurisdiction under state law to make judicial

determinations about their dependency and/or custody and care as a juvenile. 8 C.F.R. § 204.11(a), (d)(2)(i); *Matter of A-O-C-*, Adopted Decision 2019-03, at 3 (AAO Oct. 11, 2019); *Perez-Olano v. Holder*, No. CV 05-3604, Settlement Agreement ¶ 8 (C.D. Cal. Dec. 15, 2010); *see also Budhathoki v. Nielsen*, 898 F.3d 504, 513 (5th Cir. 2018). The adopted decision further clarified that state law and not federal law governs the definition of “juvenile,” “child,” “infant,” “minor,” “youth,” or any other equivalent term for juvenile that is applicable to the dependency or custody proceedings before the juvenile court. *Matter of A-O-C-*, Adopted Decision at 4; *Matter of E-A-L-O*, Adopted Decision 2019-04, at 4 (AAO Oct. 11, 2019). As such, the dependency declaration or custodial placement and related SIJ findings must be entered by a juvenile court “while the [Petitioner] was . . . under the jurisdiction of the court.” 8 C.F.R. § 204.11(c)(3).

Colorado district courts have jurisdiction over juveniles and probate issues involving child welfare and custody but are also courts of general jurisdiction under Colorado law and therefore, do not rule on juvenile matters in every case before them. *See* Colo. Rev. Stat. § 13-1-124 (stating that the district court has jurisdiction over “any person, whether or not a resident of the state of Colorado, either in person or by an agent”). Accordingly, though Colorado district courts *may* qualify as “juvenile courts” for the purposes of SIJ classification, we must determine whether the Petitioner demonstrated the District Court was acting as a juvenile court for SIJ purposes in her own matter when the court exercised its jurisdiction to award custody to her sister and make SIJ-related rulings after her eighteenth birthday.

The Petitioner contends the record demonstrates the District Court took jurisdiction over her as a juvenile based on: 1) its acceptance of her Petition for Allocation of Parental Responsibilities when she was 17 years old, 2) its SIJ order statement that it would maintain jurisdiction over her until she reached emancipation, and 3) its minute order statement that it would find jurisdiction over the parties and subject matter. But even though the District Court asserted its jurisdiction over the Petitioner in its orders, it did not explicitly assert such jurisdiction over the Petitioner as a juvenile. We note that in its minute order statement, the District Court based its jurisdiction over the Petitioner on, not only her filing of her Petition for Allocation of Parental Responsibilities before the age of majority, but also her location and period of residence in the state of Colorado. We also acknowledge the District Court refers to the Petitioner as a minor in its SIJ order, but the District Court does not cite to any relevant state law providing it with jurisdiction over the Petitioner as a juvenile at the time of SIJ order issuance, despite her age.

The Petitioner argues that in accordance with Colorado law, she was still under the jurisdiction of a juvenile court when she was 18 years old. Specifically, the Petitioner contends that Colorado’s Uniform Dissolution of Marriage Act does not prohibit the allocation of parental responsibilities for a child over the age 18 and presumes emancipation does not occur until the age of 19 at the earliest. The Petitioner further asserts the Colorado Revised Statutes at section 2-4-401(6) defines a minor as a person who has not attained the age of 21 years, and that the Colorado Supreme Court relied upon this definition in determining parents have a duty to support children until they reach 21 years of age in *Koltay v. Koltay*, 667 P.2d 1374, 1376 (Colo. 1983). The Petitioner similarly cites to the Colorado Revised Statutes at section 14-10-115(13) in support of her assertion that the District Court had authority to maintain jurisdiction over her as a child until she was nineteen years old. However, the Petitioner’s preceding citations encompass a district court’s jurisdiction over a juvenile for child support purposes. The District Court did not assert in its orders, and the record does not otherwise

indicate, that it took jurisdiction over the Petitioner in any proceedings related to child support. Rather, the District Court's SIJ order found the Petitioner "became the subject of these District Court proceedings regarding the Allocation of Parental Responsibilities on [REDACTED] 2018." And the Colorado Court of Appeals determined, in *Matter of Marriage of Tibbetts*, 428 P.3d 686 (Colo. App. 2018), that in allocating parental responsibilities, it makes sense to adopt the definition of the Uniform Child-Custody Jurisdiction and Enforcement Act, which defines a child as "an individual who has not attained eighteen years of age." Colo. Rev. Stat. § 14-13-102(2). And though the Petitioner asserts the Colorado Revised Statutes at section 14-10-123(1.5) defines a child as an unmarried individual who has not attained 21 years of age for the allocation of parental responsibilities, this definition was not added to the statute until March 2019, following the issuance of the District Court's orders. The amended statute does not indicate, and the Petitioner has not demonstrated, that it has retroactive application to her 2018 orders.

As stated, the Petitioner bears the burden of proof in these proceedings to demonstrate the District Court's jurisdiction under state law to make judicial determinations about her dependency and/or custody and care as a juvenile. 8 C.F.R. §§ 204.11(a), (d)(2)(i); *Matter of A-O-C-*, Adopted Decision 2019-03. Here, the District Court did not cite to any applicable Colorado provision or law under which it exercised jurisdiction over the Petitioner as a juvenile after her eighteenth birthday.

III. CONCLUSION

The Petitioner has not overcome the basis of the Director's denial on appeal and has not demonstrated her eligibility for SIJ classification.

ORDER: The appeal is dismissed.