



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

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

In Re: 15840607

DATE: FEB. 24, 2022

Appeal of Long Island, New York Field 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). The Director of the Long Island, New York Field Office (Director) revoked the approval of the Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition), and the matter is now before us on appeal. In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner must show that he or she is unmarried, under 21 years old, and has been subject to a state juvenile court order determining that the petitioner 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). 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 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 his or her 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. *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). The Petitioner bears the burden of proof to demonstrate his or her eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

USCIS may revoke the approval of an SIJ petition upon notice to the petitioner for "good and sufficient cause" when the necessity for the revocation comes to the attention of USCIS. Section 205 of the Act, 8 U.S.C. § 1155; 8 C.F.R. § 205.2(a). We review appeals from revocation proceedings *de novo*. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542, 542 n.1 (AAO 2015).

II. ANALYSIS

A. Relevant Facts and Procedural History

In [] 2016, when the Petitioner was 16 years old, the [] Family Court in New York (family court) issued an order appointing custody of the Petitioner to W-M-¹ in custody proceedings pursuant to Article 6 of the New York Family Court Act. In a separate order titled *ORDER-Special Immigrant Juvenile Status*, the family court determined, among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner had been committed to or placed in the custody of an individual appointed by the state or Family Court. Additionally, the family court found that the Petitioner's reunification with his mother is not viable due to abandonment and neglect, "since she has never supported the child in any capacity." Finally, the family court found that it was not in the Petitioner's best interest to be removed to Honduras, his country of nationality.

The SIJ order formed the basis of the Petitioner's SIJ petition, which he filed in July 2016. The Director approved the SIJ petition in September 2016 but issued a notice of intent to revoke (NOIR) in May 2018. The NOIR stated that the approved SIJ petition was being revoked because the SIJ order did not contain a qualifying reunification or best interest determination, and the Petitioner did not therefore warrant USCIS' consent. The Director issued a second NOIR in February 2020 for the same reasons as the first NOIR. The Petitioner did not respond to either NOIR. The Director revoked the approved SIJ petition in April 2020. The Director held that there was no qualifying reunification determination because "the order fails to reference any New York state law on child welfare." The Director went on to hold that the record did not contain a reasonable factual basis for the best interest determination in the SIJ order. Since the Director held that there was no qualifying reunification or best interest determinations, she also found that the Petitioner did not warrant USCIS' consent.

On appeal, the Petitioner claims that neither he nor his counsel received the NOIRs and did not have a proper opportunity to respond to the NOIRs.² The Petitioner also argues that he was unable to obtain an amended SIJ order because of the COVID-19 pandemic.³ The Petitioner further contends that USCIS erred in revoking the SIJ petition because it does not have the authority to apply or interpret state law to individual facts when determining SIJ eligibility.

¹ We use initials to protect the privacy of individuals.

² We note that the record does not support the Petitioner's contention. USCIS sent the NOIRs to the Petitioner and his counsel's addresses on file at the time, and the mail was not returned to USCIS. The Petitioner also received other mail from USCIS during this time including, but not limited to the Director's revocation decision. Finally, the Director's four-page decision delineated the reasons for revocation that were indicated in the prior NOIRs. Therefore, the Petitioner's appeal of the denial is an additional opportunity to respond to the NOIRs. Therefore, the Petitioner's argument that he did not have a proper opportunity to respond to the NOIRs is unavailing.

³ We acknowledge that the COVID-19 pandemic has created inconveniences for petitioners. However, New York State Courts began allowing represented parties in pending matters to submit motions and other court documents since the end of May 2020. *See* NY Admin. Order No. AO/115/20 (May 28, 2020), <https://www.nycourts.gov/whatsnew/pdf/AO-115-20.pdf>. The Petitioner has now had over 18 months to obtain an amended SIJ order and submit it to the Administrative Appeals Office as a supplement to his appeal. Therefore, the Petitioner's argument that he was unable to obtain an amended SIJ order due to the COVID-19 pandemic is unavailing.

B. No 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 finding 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. Accordingly, state court orders that only cite or paraphrase immigration law and regulations will not suffice if the Petitioner does not otherwise establish the basis in state law for the juvenile court's reunification determination. *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 6 (AAO Oct. 11, 2019). The petitioner bears the burden of proof to establish the state law the juvenile court applied in its reunification determination. *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. 369, 376 (AAO 2010); *see also Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 6.

Here, the SIJ order does not identify any New York law under which the family court determined that reunification with the Petitioner's mother was not viable due to abandonment and neglect. Instead, the order specifies that the family court's determinations were made "in accordance with" only federal immigration law. In addition, the Petitioner only cited to federal immigration law in the cover letter that accompanied the SIJ petition. Contrary to the Petitioner's contentions on appeal, USCIS is not applying or interpreting state law because no New York law was cited to in the order. We cannot assume the state law basis on which the family court issued its order, since the Petitioner bears the burden of proof of establishing the specific state law the juvenile court applied in its reunification determination. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 2, 5. The record does not contain any underlying documentation for the SIJ order, such as the petition, motion, hearing transcript, related memorandum of law, or any other relevant evidence demonstrating that the family court determined the Petitioner could not be reunified with one or both of his parents due to abuse, abandonment, neglect, or a similar basis under New York law. Accordingly, the Petitioner has not met his burden in establishing by a preponderance of the evidence that the family court determined parental reunification was not viable due to abuse, neglect, abandonment, or a similar basis under state law, as section 101(a)(27)(J)(i) of the Act requires, and the Director had good and sufficient cause therefore to revoke the approval of the Petitioner's SIJ petition.

B. USCIS' Consent Is Not 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. Section 101(a)(27)(J)(i)-(iii) of the Act. To warrant USCIS' consent, juveniles must establish that the requisite juvenile court or administrative determinations were sought 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 5-6 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating requirement "that neither the dependency order nor the administrative or judicial determination of the alien's best interest was sought primarily for the purpose of obtaining the status of an alien 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 to enable an individual to file a petition for SIJ classification. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d 504, 511, n.5 (5th Cir. 2018) (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 USCIS did not abuse its discretion and properly withheld consent from SIJ petition unsupported by sufficient evidence that petitioner sought court order to obtain relief from parental maltreatment, and not primarily to obtain immigration benefit, as *USCIS Policy Manual* explained).

The Petitioner argues that USCIS does not have the authority to second guess the Family Court and act as a factfinder, and the Director erred in finding that USCIS’ consent was not warranted because there was no reasonable factual basis for the best interest determination. Generally, orders that have the necessary determinations and include, or are supplemented by, the factual basis for the court’s determinations (for example, the judicial findings of fact) are usually sufficient to establish eligibility and to demonstrate that the request for SIJ classification is bona fide. *See* section 101(a)(27)(J)(iii) of the Act (consent requirement); H.R. Rep. 105-405 (PDF), p. 130 (1997). If a petitioner cannot obtain a court order that includes facts that establish a factual basis for all the required determinations, USCIS may request evidence of the factual basis for the court’s determinations. 6 USCIS Policy Manual J.3(A)(3), <https://www.uscis.gov/policy-manual>. However, the burden is on the petitioner to provide the factual basis for the court’s determinations. *Id.* Here, the SIJ order states that “it is not in the child’s best interest to be removed from the United States and returned to Honduras.” The SIJ order does not contain any specific facts regarding the Petitioner. There is no other evidence in the record, such as documents submitted to the Family Court supporting the SIJ order or documents that initiated the Family Court proceedings, court transcripts, affidavits summarizing the evidence presented to the court, or other records that are consistent with the determinations made by the court. Further, the Petitioner does not explain why such documentation is unavailable. Without any factual basis present in the record, we cannot determine that the Petitioner sought the order as relief from parental maltreatment, and therefore USCIS’ consent is not warranted.

Furthermore, even if there was a reasonable factual basis for the best interest determination, the Petitioner has not established that he warrants USCIS’ consent to SIJ classification because, as discussed above, the Petitioner did not provide evidence that demonstrates a state law basis for the family court’s parental reunification determination. Absent a qualifying reunification determination, the Petitioner necessarily does not warrant USCIS’ consent, and the Director had good and sufficient cause to revoke the approval of the Petitioner’s SIJ petition.

III. CONCLUSION

The Petitioner has not overcome the basis of the Director’s revocation on appeal and has not demonstrated his eligibility for SIJ classification. Consequently, the Director had good and sufficient cause to revoke approval of the Petitioner’s SIJ petition.

ORDER: The appeal is dismissed.